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Welcome to Womble Carlyle's *Capitol Connection* e-newsletter, a regular look at politics on Capitol Hill created by our Federal and State Government Affairs group for our Members and select clients they wish to send it to. Our goal is to be your connection to what's going on and what you can expect in Congress related to issues that may affect your business and clients.

This week in *Capitol Connection*:



- CONGRESS RETURNS FROM SPRING BREAK – Sen. Specter Departs
- ON THE HORIZON - Find out what to expect related to Health Care, the Budget, Financial Services, Tobacco, Transportation, Bio-Pharmaceuticals and Trade
- ISSUE OF THE DAY – The Political Dynamics of Climate Change Legislation

WHILE CONGRESS RETURNS FROM SPRING BREAK – SEN. SPECTER DEPARTS FOR DEMOCRATS

Sen. Specter – Sen. Arlen Specter (R-Pa.), Republican Ranking Member on the Judiciary Committee, announced Tuesday that he is switching parties and will run for re-election as a Democrat in 2010, drastically altering the balance of power in the Senate. Specter's party switch provides the Democrats with 59 seats with one seat still undecided in Minnesota, but with Democrat Al Franken increasingly looking like the eventual winner sometime in mid-June. That would appear to give the Democrats a 60-seat majority in the Senate in the near future – the number of votes needed under cloture to cut off debate and force final passage votes on legislation. Although Specter has indicated his voting will not be in lock-step with the Democratic party.

Congress is Back – Congress returned from a two-week Easter recess on Monday, April 20, for a 5-week legislative stretch before Memorial Day. While the floor schedules were generally light last week, both the House and Senate passed motions to go to conference on the Fiscal Year (FY) 2010 Budget Resolution (H.Con.Res. 85/S.Con.Res. 13) and appointed the conferees who will negotiate the final budget blueprint to be passed by both houses. The budget resolution will guide the appropriations committees' spending and could have a significant impact on the health care reform debate. Negotiators have agreed to provide reconciliation protection to health care reform, thereby making it easier to pass a massive change in law in the Senate by a simple majority instead of a filibuster-proof 60 votes. Conferees hope to have a final budget resolution approved by both the House and Senate by the middle of this week.

Off the floor, the Senate Finance Committee approved the nomination of Kansas Governor Kathleen Sebelius on April 21 by a 15-8 vote, and on Tuesday, April 28, Sebelius was confirmed by the Senate by a vote of 65 to 31.

ON THE HORIZON

Health Care – Chairman of the Senate Finance Committee, Max Baucus (D-MT), began unveiling his proposal for health care reform at meetings in Washington last week. He will share his plan with committee members in a closed-door meeting on Wednesday, April 29th. His plan is expected to track an earlier white paper on the subject that he released last November. Baucus indicated then that the idea of a government-offered single payer public plan was on the sidelines for now and that the proposal will preserve the ability of large companies to self-insure. He suggested the creation of a health care insurance exchange where companies and people without coverage can go to purchase insurance. Baucus' plan also included an expansion of enrollment in Medicare and Medicaid and revisions to the Medicare payment system to increase efficiencies. Insurance reforms are also expected, which will be designed to make insurance more accessible through changes such as limiting pre-existing condition exclusions.

Appropriations – With a final budget resolution to be voted on as early as Tuesday in the House and Wednesday in the Senate, the appropriations committees continue hearings in preparation for writing the 12 bills that will dictate FY10 discretionary spending, including “earmarks.” House Members have already submitted earmark requests to the subcommittees and posted those requests on their websites. Senators are preparing to make submissions in the next few weeks with many Senate Subcommittees requiring requests this week. In addition, President Obama submitted a FY09 supplemental appropriations request for \$83.4 billion, most of which (\$75.5 billion) will fund the Department of Defense activities and intelligence operations in Iraq and Afghanistan. Defense Secretary Gates and Secretary of State Clinton will testify Thursday before the Senate Appropriations Committee on the request.

Financial Services – Progress on negotiating a “cram-down” provision – allowing judges to alter the terms of mortgages as to both principal and interest rates on primary residences in bankruptcy proceedings – hit a snag when the National Association of Credit Unions issued a public statement opposing the compromise on the issue being crafted by Senator Dick Durbin (D-IL). While “cram-down” does not appear to have sufficient support to pass, the Senate may still consider the underlying housing bill (HR 1106) this week with the “cram-down” provision being offered as a floor amendment. The bill itself has bipartisan support to raise the FDIC's borrowing authority and make permanent an increase in the FDIC's deposit insurance to \$250,000 from \$100,000.

On the House side, the Financial Services Committee approved legislation to curtail certain credit card practices – such as raising interest rates on existing balances – and the House will consider the legislation this week. President Obama has indicated his support for the bill after calling credit card executives to a meeting at the White House.

While credit card legislation moves forward, broader financial services reform entailing significant regulatory changes for the financial industry has slowed. Chairman Barney Frank (D-MA) has pulled back legislation that would allow the government to take over large financial institutions not covered by the FDIC. The current strategy is to move one financial regulation bill that would include a systemic risk regulator, a complex task to work out that is taking more time than expected. Senate Banking Chairman Chris Dodd (D-CT) also favors a one-bill strategy with Rep. Frank committed to moving a bill this year. At the same time, there is support for establishing a commission to review the current financial and economic crisis. At the House Committee level, parties are busy finalizing Anti-Predatory Lending legislation by the end of the week.

Tobacco Bill – Look for Senate action on legislation to give FDA regulatory authority over tobacco products around the middle of May. Majority Leader Harry Reid (D-NV) put the House version of the legislation on the Senate calendar allowing him to move to consider it at any time.

Transportation – In the House, preparations are underway for considering the 6-year highway reauthorization bill, with a deadline of May 1st for project submissions to some of the relevant committees and subcommittees by representatives' offices. The House is tentatively scheduled to consider the bill the first week of June. Estimates from industry groups suggest that an investment of \$225 billion annually is required to fund current highway and transit needs. Even with the effort to begin early, most observers think it is unlikely a final bill will be passed by both the House and Senate and sent to the President this year.

Bio-Pharmaceuticals – The debate and lobbying is heating up on different approaches to providing a pathway for approval of generic biotech drugs – which has slowed progress on Energy and Commerce Committee Chairman Henry Waxman’s (D-CA) bill (H.R. 1427) that would provide five years of market exclusivity to biotech companies before generic companies can sell their “biosimilar” products, and on a similar bill by Senator Orrin Hatch (R-UT) which grants biotech companies 12 years of exclusivity. Hatch has the support of Sen. Edward Kennedy (D-MA) who chairs the Health, Education, Labor, and Pension Committee which has jurisdiction over the issue. There have been discussions of folding the biotech bill into broader the health care reform legislation – which is attractive due to the cost savings the biotech bill may offer to programs such as Medicare.

Trade – There has been increased attention to trade issues as President Obama visited Mexico and the Summit of the Americas in Trinidad and Tobago. It remains unclear how the Administration will resolve the issue of \$2.4 billion in retaliatory tariffs leveled by Mexico in response to a provision in the FY09 Omnibus spending bill that halted a federal program that allowed Mexican trucks further access to the United States shipping market. On another front, in an encouraging sign to free-trade advocates, newly confirmed U.S. Trade Representative Ron Kirk has indicated a willingness to work on trade agreements with Panama and Colombia, which had stalled at the end of the last Congress. At the same time, the Chairman and Ranking Member on the Senate Finance Committee, Max Baucus (D-MT) and Chuck Grassley (R-IA), asked President Obama to work to win approval of a trade pact with South Korea. Kirk is facing international pressure not to appear protectionist and political pressure at home to not jeopardize American jobs. Renegotiation of NAFTA currently is not on the table according to Kirk. Another hint of the Administration’s trade policy will come with the release of the Section 301 Committee’s report on the infringement of US Intellectual Property rights that is expected this Thursday.

ISSUE OF THE DAY – THE POLITICAL DYNAMICS OF CLIMATE CHANGE LEGISLATION

Celebration of Earth Day on April 22nd provided a backdrop for marathon hearings on climate change legislation held in the House Energy and Commerce Committee last week. Some 60 witnesses testified before the panel on the draft proposal presented by the Committee’s Chairman Henry Waxman (D-CA) and the Energy and Environment Subcommittee panel’s chairman Ed Markey (D-MA).

The bill caps greenhouse gas emissions (20 percent below 2005 levels by 2020 and 83 percent below by 2050) and sets up a market-based a cap and trade program to enforce compliance. Further, the Waxman-Markey draft imposes mandates on renewable electricity production, sets an energy efficiency requirement on utilities, and limits carbon content in fuels.

There was sufficient drama at the House hearings, with testimony by former Vice President Al Gore and former House Speaker Newt Gingrich on the final day. Not surprisingly, the two took opposing views of the legislation, with the former vice president suggesting its import was on par with civil rights legislation and the Marshall plan, while Gingrich equated it with “environmental extremism” and a knock-out blow to the U.S. economy. Despite the rhetoric, the issue is not solely a Liberal vs. Conservative or Democrat vs. Republican fight. In fact, during the hearings, former Chairman of the Energy and Commerce Committee, John Dingell (D-MI), who lost to Waxman in a contest for the chairmanship, created a stir by labeling the cap and trade scheme a “tax.” While the Republicans do seem to be unified in their opposition to the bill, the Democrats are currently negotiating among themselves. The divisions breakdown largely on regional lines, with the majority of Members concerned about the bill’s economic effects representing districts in the Midwest and South where the impact on local industries or lack of ability to generate power from renewable sources is significant.

The most basic of questions to be answered is how to allocate pollution allowances among various industries. Also at issue are the targets that will be set for lowering emissions. Concerns about coal-fired utilities and helping rate payers will need to be addressed as well. And, then there are proponents of adding nuclear energy as part of the renewable electricity requirement who want their views heard. A four-page document by Rep. Mike Doyle (D-PA), among other Democrat committee members who have raised concerns, will be at the center of the negotiations.

Despite the many issues left to be resolved, it is likely the bill will move forward, albeit not THIS week as Waxman and Markey sent out a letter on Monday postponing any possible consideration of the proposal until the week of May 4th. There is a commitment from the highest levels of the Democratic leadership, who have been lining up their ducks for some time to make this issue viable. Perhaps most notable is the support Speaker Pelosi gave to

Chairman Waxman in his move to unseat former Chairman Dingell last year. The President also strongly supports moving a bill and favors a cap and trade approach. So, while the intra-party dynamics have delayed a mark-up, House action is likely before the next congressional recess which begins March 25th.

Following the House's lead, the Senate Energy and Natural Resources Committee also delayed action on its planned mark up of an energy bill related to an electricity transmission network. That mark up will wait until next Wednesday, when the Committee may also consider a renewable electricity mandate. However, as in the House, Senate Democrats from states with coal, manufacturing or other industrial interests are part of a coalition led by Senator Debbie Stabenow (D-MI) and watching the energy debate closely. Senate Majority Leader Harry Reid (D-NV) has suggested energy legislation from the Energy Committee and a cap and trade bill being drafted by the Environment and Public Works Committee may be merged to mirror more closely the House approach.

If you would like additional information on any of these items or have any comments on how we can improve this product for you, please contact:

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