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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 GOES ON SPRING BREAK:** A recap on the major legislation passed in the last six weeks
- **ON THE HORIZON:** Find out what we can expect when Congress returns the week of April 20th in the areas of Health Care, Labor, Energy and Climate Change, Financial Services Regulation, Food Safety, Patent Reform, and Tobacco Regulation.
- **ISSUE OF THE DAY:** The Fiscal Year 2010 Budget – What Could be Wrong with “Reconciliation?”



## CONGRESS GOES ON SPRING BREAK

Congress left town on Friday April 3, for a two week District Work Period, also known as “Spring or Easter Recess.” It has been six weeks since Congress took its last break from Washington, and it has been a busy session. During the past six weeks, Congress has completed work on several pieces of major legislation:

### **The Senate Passed:**

- DC Voting Rights Bill (S. 160) -- Legislation would give the District of Columbia voting rights in the House of Representatives, an additional House seat for Utah, and includes a controversial amendment overturning DC gun control laws. Bill has stalled in the House over the gun provision.
- FY 2009 Omnibus Appropriations Bill (H.R. 1105) – the bill totaled \$410 billion and combines 9 unfinished appropriations bill to provide funding for most government agencies through September 30, 2009. (Signed into law March 11<sup>th</sup>.)
- An Omnibus Public Lands Bill (H.R. 146) -- incorporated 150 public lands related bills that designate a total of 2 million acres as new wilderness. (Signed into law March 30<sup>th</sup>.)
- National Service/ Americorps Bill (H.R. 1388) -- promotes volunteerism and increases the Americorps program from 75,000 to 250,000 volunteers.
- FY2010 Budget Resolution (S. Con. Res. 13) – provides \$3.53 trillion in federal funding over 5 years.

### **The House Passed:**

- FY09 Omnibus Appropriations Bill (H.R. 1105)
- The Helping Families Save their Homes Act (H.R. 1106) – would allow bankruptcy courts to alter the terms of primary residence mortgages including interest rates and principal, referred to “cramdown”
- TARP Recipient Bonus 90% Bonus Taxation Bill (H.R. 1664) -- levies 90% tax on bonuses provided to employees of firms who have taken significant TARP funding from the federal government.
- Omnibus Public Lands Bill (H.R. 146)
- National Service/ Americorps Bill (H.R. 1388)
- FDA Tobacco Regulation Bill (H.R. 1256) – grants FDA authority to regulate tobacco products.
- FY2010 Budget Resolution (H. Con. Res. 85) -- \$3.55 trillion in federal funding over 5 years.

## ON THE HORIZON

Just because Congress leaves town, it does not mean they are not working. Back home they reconnect with their constituents, and some of their constituents will be members of grassroots organizations pressing hard to see Congress enact so-called “Card Check” legislation, health care reform, etc. When Congress returns to session the week of April 20<sup>th</sup>, there will be more maneuvering on these and many other issues.

**Health Care** – At a White House summit on health care reform on March 5, stakeholders appeared united in their support for comprehensive health care reform; however significant fissures exist, most notably on the concept of a public plan that competes with private insurers. Other significant hurdles exist on issues of how to pay for reform, specifically reduced hospital, physician and other provider payments through Medicare and Medicaid and the taxation of employer health benefits. Some in Congress want to act this summer, before they go home for August recess. The possible addition of reconciliation instructions in the budget resolution during a conference between the House and Senate (see below), could serve as a hammer to force bipartisan cooperation by September.

**Labor** – One of the biggest battles of the 111<sup>th</sup> Congress, with fierce lobbying on both sides, is being waged on legislation titled the Employee Free Choice Act (EFCOA), also known as “Card Check.” The bill would negate the requirement for a secret ballot election and require employers to negotiate with employees organizes in a union IF more than 50 percent of workers sign authorization cards. Labor and management would also face binding arbitration if they cannot agree on a first contract within 120 days. Major grassroots campaigns from both sides are planned in Congressional districts and states to sway legislators. The momentum recently has shifted to the business lobby with two Senators withdrawing their support from the bill. However, neither side is giving up. Hearings and markups are expected in the Senate Health, Education, Labor and Pensions Committee when Congress returns from spring recess.

**Energy and Climate Change** – On March 31, the Senate Committee on Energy and Natural Resources considered four pieces of legislation in what is expected to be the first of several additional markup meetings to forge a comprehensive energy bill, which Committee Chairman Jeff Bingaman (D-NM) wants ready for consideration by the end of April. According to Majority Leader Harry Reid (D-NV), a Senate energy bill will likely be meshed with a cap and trade plan and be considered by the full Senate this summer. Also on March 31, the Democratic leaders of the House Energy and Commerce Committee released a 600-page, four-part draft of an energy and climate strategy. The four parts include clean energy, energy efficiency, global warming and transitioning to a low-carbon economy. The core of the bill is a cap on greenhouse gases that would cover 85 percent of domestic emissions and set up a market-based trading program for businesses to meet the cap. How the emissions allowances would be allocated – and sold or given away -- is an open question. Expect House hearings to start when Congress returns April 20<sup>th</sup>, with markups starting the following week. House Chairman Henry Waxman (D-CA 30<sup>th</sup>) hopes to have a bill on the House floor before Memorial Day.

**Financial Services Regulation** – The Obama Administration has laid out principles for further regulation of the financial services industry, including a proposal to establish a government regulator for systemic risk. The House Financial Services Committee Chairman Barney Frank (D-MA 4<sup>th</sup>) plans to move quickly on a multi-faceted regulatory bill in the next couple of months with the goal of having legislation on the President’s desk this summer. The Senate appears to be on a slower track, with concerns about consolidating power in a single government entity charged with analyzing and reducing systemic risk being expressed by both Senate Banking Committee Chairman Dodd and Ranking Member Shelby. The mood on Capitol Hill has become wary of financial services reform legislation in light of the Treasury Department’s perceived missteps with the TARP program, so the debate is becoming more extended than originally expected. [Click here to read Secretary Geithner’s testimony before the Committee on Financial Services.](#)

**Food Safety** – With concerns that the U.S. food supply is not as safe as it should be in light of numerous recent outbreaks of food contamination, several bills have been introduced and hearings held in the House and Senate with the goal of improving oversight of the nation’s food supply and those who regulate it. Where to house the oversight authority within the government has become is a key issue, with some proposing that food safety authority be placed directly within the Department of Health and Human Services, while others would increase both the authority and funding for the FDA (a part of HHS) while allowing it to retain jurisdiction over the issue. Others have proposed a merger of all food safety functions into one agency, combining the FDA with the Department of Agriculture’s (USDA) Food Safety Inspection Service (FSIS.) Combining the two agencies has many major hurdles, not the least of which is internal Congressional turf concerns regarding committee jurisdictions. The House Energy & Commerce Committee and the Senate Health, Education, Labor and Pensions

Committee have jurisdiction over the FDA while the Agriculture Committees in both Houses have jurisdiction over FSIS. None of the committees are eager to cede their jurisdiction. In fact, the Chairman of the House Agriculture Committee Collin Peterson has indicated that he plans to make the safety of imported food a priority, staking out his territory.

**Patent Reform** –The Senate Judiciary Committee reported out legislation (S. 515) that would reform the U.S. patent system. While previously divergent stakeholders have united to support the bill, Chairman Patrick Leahy (D-VT) lost the support of his lead cosponsor, Senator Orrin Hatch (R-UT), by making changes to the bill in order to gain more support regarding inequitable conduct by patent applicants. Another change would give judges clearer requirements on handling evidence of patent infringement and more leeway in awarding compensatory damages and royalties. Other parts of the compromise deal with appeals and restrictions on forum shopping, as well as a pilot program for training judges in patent law and hiring experts as clerks. The financial services industry remains opposed to the bill. The House is letting the Senate take the lead on the issue.

**Tobacco Regulation** – By a large majority (298-112), the House passed legislation (H.R. 1256) to give the FDA regulatory authority over tobacco products, but the FDA is prohibited from banning cigarettes or other tobacco products. An alternative offered by Rep. Buyer that would have provided different regulatory authority through HHS to promote Harm Reduction from Tobacco Products was defeated (142-284). The Senate has its own version of the legislation that it may take up after the spring recess. Senate supporters believe they have the votes necessary to pass the legislation, which also has the support of the Obama Administration.

## ISSUE OF THE DAY

### ***The Fiscal Year 2010 Budget – What Could be Wrong with “Reconciliation?”***

Each year, politicians campaign with the promise of changing the tone in Washington and reaching across the aisle to achieve bipartisan solutions. So, one would think if Washington was interested in pursuing reconciliation, that would be a welcome development. In fact, reconciliation has become a very controversial notion in Washington these days, because in reference to the budget debate, the term “reconciliation” has significant ramifications when it comes to making law. In short, budget reconciliation provides a mechanism to fast track changes to laws by skirting Senate filibusters that require “cloture” votes to end. That means the votes needed to pass the “protected” legislation is reduced from 60 to 51. This is a critical issue in a year when Democrats control 58 votes (with a strong possibility that that number will increase to 59 if, as it appears, the Minnesota race is decided in challenger Al Franken’s favor.)

Last week, the House and the Senate each passed their versions of the FY2010 Budget Resolution, providing for budgets of \$3.55 and \$3.53 trillion over five years, respectively. While a budget resolution does not have the force of law, it is the basis on which Congress establishes how much the appropriations committees will be allocated to spend to fund the various government agencies. Further, through so-called reconciliation instructions, the resolution directs authorizing committees to draft legislative policy that affects spending and revenue collections.

The main difference between the House and Senate budget resolutions is the inclusion of the instructions to the authorizing committees. The House version includes reconciliation instructions for comprehensive health care reform that require the committees with jurisdiction over the issue to come up with \$1 billion in savings over the next five years. It also includes instructions for the Education and Labor Committee to find \$1 billion over the next five years with the expectation that the money will be found by taking private lenders out of the student loan program. The Senate adopted an amendment to their resolution that would bar the use of reconciliation protection for climate change legislation. Both resolutions project a deficit of \$1.2 trillion this year, falling to \$598 billion in the House version and to \$508 billion in the Senate version by 2014.

Over the next few weeks negotiators from both chambers will meet to iron out differences and come to agreement on the blueprint for the functioning of the federal government for the next year – and, for some issues, possibly beyond. The most controversial issue in these negotiations will be whether or not to utilize the reconciliation process to move the President’s and the Congressional leadership’s legislative agendas.

It is not a foregone conclusion that the Congressional Democratic leadership will use the reconciliation process to push health care reform and other massive, controversial pieces of legislation through Congress. There is considerable concern within some members of the Democratic Caucus, chiefly from the conservation Blue Dog Democrats, that reconciliation should not be used in this way. For Republicans, who are not in control of either

legislative body or the White House, the idea of using an expedited process that allows a partisan result is particularly unappealing.

There are other considerations in determining whether to utilize the reconciliation process. While reconciliation protections lower the votes necessary to pass legislation, Senate rules, specifically the “Byrd Rule,” do not allow such protections to be afforded to provisions that do not affect spending and revenue. In the case of health care reform, for example, that means legislation that affects policy, such as placing new requirements on insurance providers or imposing a mandatory coverage policy would likely be challenged and possibly struck, making a comprehensive approach to reform harder to achieve.

Congress will be debating the pros and cons of any reconciliation strategy in the coming weeks as the final budget resolution is negotiated in a House-Senate conference. Their decisions will have a dramatic effect on the health care debate in particular in the months ahead.

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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