



ML Strategies Legislative Update

ML
STRATEGIES

Neal Martin rmartin@mlstrategies.com

David Leiter djleiter@mlstrategies.com

Jeremy Rabinovitz jrabinovitz@mlstrategies.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, DC 20004 USA
202 296 3622
202 434 7400 fax
www.mlstrategies.com

JULY 9, 2012

Congress Returns from Fourth of July Recess

The House and Senate return this week from the Fourth of July recess to begin a four week work period during which they will tackle an ambitious legislative agenda before departing again for a five week summer recess that runs through the week of Labor Day. During this recess both parties will hold their presidential nominating conventions, raising the political stakes for legislative compromise before the November elections, but positioning several proposals for post-election activity during the lame duck congress.

Before adjourning for Independence Day, Congress passed and sent to the president three significant pieces of legislation – **a two-year transportation reauthorization bill, a bill to maintain interest rates on student loans at the current rate for another year, and a bill extending the National Flood Insurance Program (NFIP).**

While many pundits and observers have been tempted to call the 112th a “Do Nothing Congress,” the legislative accomplishments over the past six months belie this charge. The transportation reauthorization, student loan bill, and NFIP extension join a growing list of significant legislative measures approved by congress this year that includes **reauthorization of the Federal Aviation Administration; a ten-month extension of the payroll tax cut, unemployment insurance, and the Medicare “doc fix”; the *Jumpstart Our Business Startups (JOBS) bill*, which improves access to public capital markets for small businesses; reauthorization of the Export-Import Bank; and the *Food and Drug Administration Safety and Innovation Act*, a bill regarding user fee programs for prescription drugs, medical devices, generic drugs, and biosimilars.**

Substantial progress has also been made on other legislative efforts that could see additional movement during the month of July before the summer recess:

The Agriculture Reform, Food, and Jobs Act, a five-year authorization measure – generally known as the **Farm Bill** – was approved by the Senate in June, and the House is expected to act on its bill in July. Final passage could come before the elections in November.

The House approved **cybersecurity** legislation, HR 3523, in April – the *Cyber Intelligence Sharing and Protection Act* (CISPA) – although the White House has said the president would veto this legislation. Senate Majority Leader Reid continues to say that he wants to bring to the floor in July a bipartisan cybersecurity bill sponsored by Senators Lieberman (I-CT) and Collins (R-ME), S. 2105, the *Cybersecurity Act*. Republicans have an alternative measure, the *Secure IT Act*, introduced by Senators McCain (R-AZ) and Hutchison (R-TX), while Senators Whitehouse (D-RI) and Kyl (R-AZ) have floated a compromise measure. If a final bill does pass the Senate, it will be the result of an amendment process during consideration of the Lieberman/Collins bill, during which elements of the alternative proposals are debated and considered for inclusion. With the House and Senate passing very different pieces of cybersecurity legislation, it is difficult to predict the timing of a final bill, but this is a priority issue for many and is likely to remain a focus of the congressional agenda.

The Fiscal Year 2013 **National Defense Authorization Act (NDAA)** was approved by the House on May 17 and the Senate Armed Services Committee completed the markup of its bill a week later. We remain confident that congress will approve this annual bill, although the timing is unclear and it could easily slip into the lame duck congress after the November elections.

Fiscal Year 2013 Appropriations bills continue to make progress, with the House having approved the Commerce/Justice/Science; Energy & Water; Homeland Security; Legislative Branch; and Military/Veterans bills. The House Appropriations Committee has approved the Agriculture; Defense; Financial Services; Interior & Environment; State/Foreign Operation; and Transportation/HUD bills setting them up for consideration on the House floor. The Labor/HHS/Education bill is still outstanding at the committee level. In the Senate, the Appropriations Committee has approved the Agriculture; Commerce/Justice/Science; Energy & Water; Financial Services; Homeland Security; Labor/HHS/Education; Military/Veterans; State/Foreign Operations; and Transportation/HUD bills. Committee action is still needed on the Defense; Interior & Environment; and Legislative Branch bills. No appropriations bills have been approved by the full Senate as of yet. Congress will continue to work through these bills over the coming months, but it is highly unlikely that they will complete all of them before the beginning of the new fiscal year on October 1. Some may be passed as stand-alone measures, but a more likely scenario is that we see one or perhaps two Continuing Resolutions funding the government until the process is completed sometime in the lame duck congress – or even early next year. Final passage of FY13 spending will almost certainly be in the form of a series of “minibus” measures packaging multiple spending bills together, or in one large Omnibus covering all spending for FY13.

The **Law of the Sea (LOS) Treaty** enjoys a broad range of support from various industry sectors, including telecommunications and defense, and is also supported by the environmental community. While action will have to wait until the lame duck congress later this year, there is a very high probability that we will see the LOS on the floor of the Senate with final approval. This is a priority of Senator Foreign Relations Committee Chairman Kerry (D-MA) and Ranking Member Lugar (R-IN).

As noted above, earlier this year Congress passed, and President Obama signed, a ten-month **extension of the payroll tax cut, unemployment insurance, and the Medicare “doc fix”** through the end of 2012. There will certainly be a robust effort by some to secure another extension, particularly for the “doc fix” since a failure to do so would mean a 27.4 % cut in federal reimbursement for physicians who see patients on Medicare, potentially leading some doctors to no longer provide care for seniors, but any action on this will occur in the lame duck congress.

A long-shot legislative proposal for activity this year is S. 1000, the **Energy Savings and Industrial Competitiveness Act**, introduced by Senators Shaheen (D-NH) and Portman (R-OH). While final passage of this bill is uncertain, if it does move it could happen before the elections or in the lame duck.

Other bills that could see progress at some point this year are the **Violence Against Women Act, the Miscellaneous Tariff Bill, and postal reform legislation.**

Finally, Congress is under increasing pressure to address what has come to be referred to as “**the fiscal cliff**” – the convergence of the expiration of the so-called Bush tax cuts at the end of the year, mandatory spending cuts (also known as sequestration) required by the 2011 Budget Control Act and taking effect at the beginning of next year, and the federal government once again reaching its debt limit as early as October 2012 or as late as March 2013. Today, President Obama called for a one-year extension of the Bush tax cut for workers earning under \$250,000 per year. While many are concerned about the economic implications of waiting until the end of the year to address these issues, there is virtually no chance of action until we know the outcome of the elections in November.

* * *

[Click here to view ML Strategies professionals.](#)

Copyright © 2012 ML Strategies. All rights reserved.

This communication may be considered attorney advertising under the rules of some states. The information and materials contained herein have been provided as a service by the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; however, the information and materials do not, and are not intended to, constitute legal advice. Neither transmission nor receipt of such information and materials will create an attorney-client relationship between the sender and receiver. The hiring of an attorney is an important decision that should not be based solely upon advertisements or solicitations. Users are advised not to take, or refrain from taking, any action based upon the information and materials contained herein without consulting legal counsel engaged for a particular matter. Furthermore, prior results do not guarantee a similar outcome.

The distribution list is maintained at Mintz Levin's main office, located at One Financial Center, Boston, Massachusetts 02111. If you no longer wish to receive electronic mailings from the firm, please visit <http://www.mintz.com/unsubscribe.cfm> to unsubscribe.

X-1736-0312-DC-MLS-X