TAXES/ECONOMY: EXTENDERS/BENEFITS BILL FAILS ANOTHER CLOTURE VOTE IN SENATE; DOC FIX PASSED

The Senate failed by a vote of 57-41 to gain the 60 votes needed to invoke cloture and move forward on H.R. 4213 on Thursday, June 24, 2010. This latest vote was on a new substitute that Sen. Max Baucus (MT), chair of the Finance Committee, submitted on Wednesday. The substitute cut funding in the bill to $110 billion and offset the costs for everything except the extension of unemployment benefits through Nov. 30, which would cost about $35.5 billion.

A major change made in the latest version reduced the aid to states in the bill by about a third, from $24.2 billion to $16.2 billion. The original bill contained almost $200 billion in numerous programs to extend unemployment benefits, health insurance subsidies for the unemployed, and the “doc fix” for Medicare physicians, as well as extending numerous tax credits, such as the R&D credit.

The Senate separately passed a bill, H.R. 3962, that would delay the 21 percent cut in Medicare payment rates for physicians through Nov. 30th. The bill is retroactive to June 1st. The House took the bill up on Thursday and passed it under suspension of the rules by a vote of 417-1.

The future of the bill is quite uncertain. Senate Majority Leader Harry Reid (NV) indicated before the cloture vote that if it failed he would pull the bill from the floor and take up a small business incentives bill.

More information on the latest Baucus substitute can be found at: http://finance.senate.gov.

INTELLECTUAL PROPERTY: SENATE JUDICIARY HOLDS HEARING ON ENFORCEMENT OFFICE

On June 23, 3010, the Senate Judiciary Committee held an oversight hearing on the Office of the Intellectual Property Enforcement Coordinator. Witnesses were: Victoria A. Espinel, Intellectual Property Enforcement Coordinator, Office of Management and Budget; Barry M. Meyer, Chairman and CEO, Warner Bros. Entertainment Inc.; Paul E. Almeida, President, Department for Professional Employees, AFL-CIO; David Hirschmann, President and CEO, Global
Intellectual Property Center, U.S. Chamber of Commerce; and Caroline Bienstock, President and CEO, Carlin America.

Congress created the IP enforcement coordinator position in the last congress in response to concerns that the numerous agencies within the Government sharing responsibility for protecting intellectual property were not sharing information and coordinating their efforts as effectively as they could. The first task for the enforcement coordinator was to create a Joint Strategic Plan against counterfeiting and infringement. The focus of the hearing was to discuss that plan.

Coordinator Espinel testified that the plan will be targeting counterfeiters and pirates, and that increased coordination, cooperation, and prioritization must accompany this first step. She also stated that legislative action may be required in order to fulfill the plan’s goals. She emphasized that the development of the strategy was an inter-agency collaboration, among Justice, Homeland Security, Commerce, USTR, HHS, State and others, and that comments were received from 1,600 individuals and entities. She laid out several goals of the government’s plan, including:

- working to collect and analyze data to determine jobs and exports that are generated by the intellectual property-intensive industries. It will also start collecting annual data on U.S. Government resources spent on intellectual property enforcement to make certain that resources are being used efficiently.

- establishing a government-wide procurement working group which will prepare recommendations on how to reduce the risk of the procurement of counterfeit products.

- increasing information-sharing with rightholders. The government will make sure that victims know how and where to report a potential intellectual property crime. It will work to ensure that victims of crimes and the public are appropriately informed of law enforcement activities.

- working with foreign governments to increase foreign law enforcement efforts and promote enforcement of American intellectual property rights through trade policy tools, such as trade agreements and “Special 301” action plans.

- establishing a counterfeit pharmaceutical interagency committee to examine the problems associated with unlicensed internet pharmacies, health and safety risks in the United States associated with the distribution of counterfeits, and the proliferation of the distribution of counterfeit pharmaceuticals abroad.

Mr. Meyer supported the work of the Coordinator and the Joint Strategic Plan. Discussing the challenges that the growth of the Internet has created, he stated that Warner Bros. has adjusted its strategic plan to ensure that it delivers “content to consumers in the highest quality, with the greatest variety of choices, with reliable convenience and portability and at reasonable price points, while diminishing the risks of unauthorized reproduction and distribution using a variety of tactics.” He explained how Warner Bros. is modifying the traditional distribution windows through its video-on-demand window, which coincides with the packaged media release dates so consumers can access both physical and digital options of its content sooner. As a result of the FCC’s recent decision promoting use of secure digital outputs, Warner Bros. is also
actively pursuing opportunities for an early window release of its films over cable and satellite systems in advance of DVD and Blu-ray.

In his testimony, Mr. Almeida said: “My message is simple. Intellectual property equates to jobs and income for American workers. Theft of intellectual property raises unemployment and cuts income.” From the entertainment professionals to those involved in the manufacturing process, piracy costs jobs and loss of income and results in a diminished incentive to invest and a downward spiral for U.S. workers and the economy, he said. The AFL-CIO Department of Professional Employees, as a result, strongly support the confirmation of Ms. Espinel as the Intellectual Property Enforcement Officer and the goals of the Joint Strategic Plan.

The testimony of all the witnesses can be found at: http://judiciary.senate.gov.

HOMELAND SECURITY: HOUSE COMMITTEE AMENDS UASI GRANT MANAGEMENT


The bill clarifies guidance to State and local entities on how they can spend grant dollars. Currently, FEMA can require grantees to use a specific percentage of its award for certain activities – even if those activities are outside of its FEMA-approved homeland security plan. The bill would end this practice. The bill also requires FEMA to consider whether the current limits on “Management and Administration” reimbursements are appropriate. And finally, H.R. 5562 directs FEMA to partner with the Department’s Chief Financial Officer to complete a feasibility study on issuing multi-year program guidance for the homeland security grant program.

“H.R. 5562 . . .will make our nation safer by using taxpayer dollars in the most efficient way possible and in the areas where first responders are needed most,” Rep. Richardson said. “These legislative shortcomings have created headaches for our state and local homeland security agencies for nearly eight years, and now is the time to fix the problem so our focus can be on keeping our nation safe and not on red tape.”

More information can be found at: http://hsc.house.gov.

EDUCATION: COMMITTEE EXPLORES FEDERAL INVESTMENT IN FOR-PROFIT EDUCATION

On June 24, 2010, the Senate Health, Education, Labor and Pensions Committee held a hearing titled “Emerging Risk: An Overview of the Federal Investment in For-Profit Education.” The hearing discussed the committee’s report “Emerging Risk: An Overview of Growth, Spending, Student Debt, and Unanswered Questions in For-Profit Higher Education,” which takes a close look at how for-profit schools are operating.

Witnesses Included: Kathleen Tighe, Inspector General, Department of Education; Steven Eisman, Portfolio Manager, Front-Point Financial Services Fund LP, New York; Yasmine Issa, Former Student, Sanford Brown Institute, Yonkers, N.Y.; Sharon Thomas Parrott, Senior Vice President for Government and Regulatory Affairs, and Chief Compliance Officer, DeVry Inc., Chicago; and Margaret Reiter, Former Supervising Deputy Attorney General, California Department of Justice, San Francisco.

The report, which focuses on the subject of federal investment in for-profit education released by the Senate HELP Committee, noted that in order to increase access to postsecondary education, the Federal government has provided grants and loans to students for more than half a century, steadily increasing its investment nearly every year.

In fiscal year 2010, Federal funding for financial aid to postsecondary students is expected to total $145 billion. The United States now ranks 10th in the percentage of people with a college degree. President Obama has set the goal of making the United States, once again, first in the world in the proportion of college graduates by 2020. Over the last three years Congress has taken steps to increase student borrowing limits, recently committing $36 billion in mandatory Pell grant funding over the next 10 years, which was
included in the Health Care and Education Reconciliation Act of 2010, $17 billion in discretionary funding through the American Recovery and Reinvestment Act of 2009, and annual discretionary funding, which in FY2010 was $17.56 billion.

The report’s key findings included:
- Over the past 20 years, the for-profit higher education industry has grown and evolved, bringing innovation to postsecondary education and expanding the number of students it enrolls. In 2008, nearly two million students were enrolled in for-profit institutions to pursue everything from technical certificates to graduate degrees.
- Enrollment has grown by 225% over the past ten years, and there have been tremendous increases in the numbers of students taking classes online. At four of the large publicly traded schools more than 200,000 students are taking classes almost exclusively online.
- Nearly every student who attends a for-profit school borrows to pay the tuition. While only 38 percent of 2008 community college students graduates took out loans, 98 percent of for-profit students graduated with debt.
- For-profit students were also eight times more likely to graduate with a loan larger than $20,000. Not surprisingly for-profit college students are more likely to default on their loans than their non-profit peers. According to one recent analysis by the U.S. Department of Education, for-profit colleges accounted for only 10 percent of enrolled students but 44 percent of defaults.
- The growth of for-profit colleges has been dependent on Federal subsidies, including Pell grants, Federal student loans, and military and veteran’s benefits. And while the for-profit share of enrollment has grown significantly, the sector’s share of Federal student aid dollars has grown even larger.
- The sector enrolls approximately 10 percent of students but received approximately 23 percent of all Federal Pell grants and student loans in 2008 – more than $23 billion.

Margaret Reiter, former Supervising Deputy Attorney General of California’s Department of Justice, discussed issues facing the current system, raising concerns that the accreditation processes in place do not prevent poor outcomes, fraud or abuse and indicated that the redress processes for students and those impacted are inadequate.

This was the first in a series of hearings the Committee expects to hold to examine the for-profit education sector.

For more information, visit: http://help.senate.gov.

**RESOURCES: DELTA PUMPING/SMELT PROTECTION AGREEMENT REACHED**

On June 23, 2010, Secretary of the Interior Ken Salazar announced that an agreement on pumping operations in the Delta has been reached among all parties. The agreement will run through June and will both preserve the reliability of water exports and protect the Delta smelt.

Salazar, the U.S. Department of the Interior, the California Department of Water Resources, water users and environmental groups reached the agreement on operations of the Central Valley Project (CVP) and the State Water Project (SVP), but it does not address the underlying challenge to the pending court challenge to the Fish and Wildlife Services biological opinion.

“it was not so long ago that this level of cooperation among these parties would not have been possible, and I commend everyone for their hard work and perseverance in reaching this agreement,” said Secretary Salazar. “As we develop the long term solutions to California’s water challenges, I look forward to working with the congressional delegation and all stakeholders to find ways to improve reliability of water deliveries throughout California while also improving environmental conditions in the Delta.”

The opportunity for consensus arose after the U.S. District Court in Fresno issued a decision on May 27, 2010, finding that the irrigators were likely to succeed in their challenge to FWS’s biological opinion. Rather than holding hearings regarding an injunction, the court granted the parties’ request to attempt to negotiate an appropriate agreement.

According to Association of California Water Agencies (ACWA), under the agreement, pumping operations of the Central Valley Project and State Water Project must maintain Old and Middle River flows
not more negative than -5,000 cubic feet per second. If the numbers of smelt harmed at the pumps exceeds agreed upon levels or if an imminent threat to the species is detected, the U.S. Fish and Wildlife Service may require reduced pumping operations to increase flows.

As of July 1, all pumping restrictions required under the smelt biological opinion cease. Hearings on the challenge to the substance of the biological opinion are scheduled for July 8 and 9.

For more information, visit: http://www.doi.gov.

TRADE: SENATE COMMITTEES FOCUS ON CHINA-U.S. ISSUES

On June 23, 2010, the Senate Finance Committee and the Senate Foreign Relations Committee each held hearings on China. The Finance Committee discussed the U.S.-China economic relationship, with Gary Locke, Secretary of Commerce, and Ron Kirk, U.S. Trade Representative. The Foreign Relations Committee held a hearing on “Finding Common Ground With a Rising China.” Witnesses included: Zbigniew Brzezinski, Counselor and Trustee, Center for Strategic and International Studies, and former National Security Adviser; Laura Tyson, Professor, Haas School of Business, University of California at Berkeley, and Former Chairwoman, Council of Economic Advisers; and Carla a Hills, Chairwoman, National Committee on U.S.-China Relations, and Former U.S. Trade Representative.

The Senate Finance Committee focused its discussion on trade imbalances, highlighting the importance of using the multi-lateral approach to develop a comprehensive administrative wide plan to improve U.S.-China relations, and ensuring strong partnerships between USTR and Commerce.

Witnesses in the Senate Foreign Relations Committee discussed ways to encourage positive relations with China. UC Berkeley professor Laura Tyson, provided the committee with a series of recommendations to improving and maintaining relationships, including:
- The US should continue to cooperate with China in the G20 on macroeconomic policies to support a strong global recovery and to foster more balanced global growth in the future.
- China’s exchange rate should be assessed from a multilateral perspective rather than from a bilateral, dollar-centric perspective.
- The US should refrain from making explicit demands about how China should go about implementing its rebalancing agenda. In particular, the choice between pro-consumption structural adjustments and the RMB-dollar exchange rate should be left to China.
- The US should not impose tariffs on Chinese exports if there is not a significant appreciation of the RMB.
- Congress should work with the Administration to pass a credible multi-year deficit reduction plan to stabilize the debt to GDP ratio.
- The US should encourage the reduction of barriers that impede the access of US companies to China’s markets and this should continue to be a major objective of US trade policy.
- The US should continue to negotiate with China to reduce indigenous innovation policies barriers both in the S&ED discussions and in regional and multilateral discussions that include China’s other trading partners who are also disadvantaged by such barriers.
- WTO should be a major objective of US trade policy.
- The US should take the lead in negotiating a Trans-Pacific Partnership agreement as a major step to the creation of a free trade area for the Asia Pacific region.


ECONOMY: SUBCOMMITTEE EXAMINES INNOVATION IN AMERICA

On June 22, 2010, the Competitiveness, Innovation, and Export Promotion Subcommittee of the Senate Commerce, Science and Transportation Committee held a hearing titled “Innovation in America: Opportunities and Obstacles.” The Committee discussed the programs and policies in place to support innovation and stay competitive.

Witnesses included: Aneesh P. Chopra, Chief Technology Officer and Associate Director for Technology, Office of Science and Technology Policy, Executive Office of the President; Andrew M.
Weiss, President and CEO, CoAxia Inc.; Robert D. Atkinson, President, Information Technology and Innovation Foundation; Stephen J. Ubl, President and CEO, Advanced Medical Technology Association; and Rhys L. Williams, President, New World Angels.

Chairwoman Amy Klobuchar (MN) raised concerns that the United States has been losing market share in global high-tech exports, shifting from a trade surplus in the late 1990s to an $80 billion deficit in 2008. While American research and development (R&D) expenditures grew at a rate of 5 percent to 6 percent annually over the period 1996–2007, the R&D growth rate in Asian economies often exceeded 10 percent. In China’s case, the rate of growth was 20 percent.

Witnesses discussed the regulatory environment; financial systems impacting venture capital; and successes and failures of government efforts to encourage innovation. Atkinson and the other witnesses encouraged the Committee to build innovation into government policy and suggested that there be a government agency with firm level innovation in its mission.

More information can be found at: http://commerce.senate.gov.

**REPORT: CALIFORNIA HOUSING GROUP SAYS EXPIRING MORTGAGES OF LOW INCOME CALIFORNIANS IS A CRISIS**

Over the last year, the California Housing Partnership Corporation (CHPC) has published a series of regional reports on the at-risk housing crisis due to expiring Section 8 contracts. In their most recent 2010 issue, CHPC explores a second overlapping crisis: expiring mortgages. In the issue, CHPC highlights that without federal or state intervention to preserve these at-risk apartments, thousands of low-income families, seniors and people with disabilities remain directly at-risk of homelessness.

According to CHPC, the current wave of expiring mortgages represents those properties developed under Section 221(d)(3) and Section 236 that are now reaching the end of their original 40-year term of affordability. Over the next decade, dozens of project-based section 8 contracts in Alameda, Contra Costa and San Mateo Counties will expire without any assurance of renewal by the private landlords who control them, potentially ending the subsidies that ensure affordable housing for thousands of low-income families in the region. In the next year alone, there are 995 apartments with expiring contracts in the three counties, CHPC says. Within 5 years without interventions this number will rise to 1,233 apartments with expiring contracts.

For more information, visit: CHPC at http://www.chpc.net/.