BUDGET/APPROPRIATIONS: CR EXTENDS FUNDING THROUGH DECEMBER 18

The House approved another Continuing Resolution (H.J.Res. 101) extending government funding for FY 2011 through December 18, 2010, indicating that the lame-duck session will probably continue at least until the week before Christmas. The Senate needs to consider the extension before the current CR ends on December 3rd.

Rep. Jerry Lewis (Redlands), the current Ranking Republican on the Appropriations Committee and a leading contender for the chairmanship next year, opposed the measure because it continues funding at last year’s levels rather than reducing funding levels to at least the FY08 level.

The vote on final passage, mostly along party-lines, was 239-178.

TAXES: SENATE REPUBLICANS TO BLOCK ALL BILLS UNTIL FUNDING AND TAX CUTS RESOLVED

All 42 Republican Senators signed a pledge on December 1, 2010 vowing to prohibit the floor consideration of any legislation until measures dealing with long-term funding for Fiscal 2011 and the expiring 2001 and 2003 tax cuts have passed the Senate. The pledge, contained in a letter to Senate Majority Leader Harry Reid (NV), effectively halts Senate consideration of any other legislation, because 60 votes would be needed to overcome a filibuster.

Reid nevertheless indicated that he would schedule cloture votes to try and move three other measures, including the DREAM Act (S. 3992), which would create a process for obtaining legal status for illegal immigrant children attending college or joining the military. The other two bills deal with health problems relating to September 11th and extending bargaining rights to firefighters and police officers in right-to-work states. Major legislation that would be blocked because of the pledge includes the START Treaty with Russia and the Defense Authorization bill containing language on the military’s Don’t Ask, Don’t Tell policy. Other legislation could still be approved by the Senate, if it can garner unanimous consent.
**Agriculture: Senate Passes Food Safety Bill, But Enactment Jeopardized**

The Senate voted 73 to 25 on November 30, 2010 to approve S. 510, the FDA Food Safety Modernization Act. The bill establishes a sweeping food safety program that will affect all whole and processed foods except meat, poultry and some egg products, which are regulated by the Department of Agriculture.

Despite the Senate’s overwhelming support for the bill, a constitutional glitch has now put its enactment in jeopardy. The measure contains revenue raising provisions, and therefore was required to originate in the House. Although the House can pass the measure under a House bill number and send it back to the Senate, or call for a conference with the Senate, it is uncertain whether there is time in the lame-duck session to overcome Senate hurdles to reconsideration. The House originally passed its version of the legislation on July 30, 2009.

The bill is aimed at improving prevention of food contamination by identifying hazards before food becomes contaminated. It would allow the FDA to issue mandatory recalls if businesses do not voluntarily recall harmful foods. Also, grocery stores and other food retailers would have to notify consumers if they have sold food that has been recalled. Provisions are also included to improve disease surveillance so outbreaks can be discovered earlier and allow FDA to respond more quickly when food-borne illness does occur by improving the ability to trace contaminated food back to its source.

Other provisions would:

- require food processing, manufacturing, shipping, and other regulated facilities to conduct an analysis of the most likely safety hazards and to design and implement risk-based controls to prevent them
- establish science-based performance standards for the most significant food contaminants
- increase frequency of inspections, tighten record-keeping requirements, and extend more oversight to certain farms
- increase the scrutiny of food imports by requiring documentation that they at least meet the equivalent of U.S. safety standards.

The bill also levies fees for reinspecting food facilities, mandatory recalls, registering food importers and accreditation of third-party auditors of regulatory compliance.

Despite opposition from larger producers, the Senate approved an amendment to exempt from new FDA regulations small farmers who sell directly to consumers within 275 miles of the farm and whose annual sales average less than $500,000.

A provision proposed earlier by Sen. Dianne Feinstein to prohibit the use of the chemical bisphenol A (BPA) in plastic baby bottles was not included in the final Senate bill. S. 510 is expected to cost $1.4 billion over the next four years, including the expense of hiring 17,800 new FDA inspectors.

HEALTH: CONGRESS EXTENDS MEDICARE PHYSICIAN PAYMENT RELIEF
A one-month extension of the current Medicare payment rates for physicians was enacted on November 30, 2010. Without passage of H.R. 5712, the payment rate would have been cut by 23 percent on December 1st. The bill pushes the date back to January 1, 2011, but if no further action is taken, the reduction is scheduled to go to almost 25 percent on that date.

The one-month extension, colloquially known as the “Doc fix,” is intended to give congressional leaders time to fashion a longer-term solution. The current extension is fully offset by savings from within the Centers for Medicare and Medicaid Services physician payment system. Although there is bipartisan support for deferring the payment cuts for a year, there is no agreement on how to pay for the roughly $19 billion it would cost. Even though Pay-Go rules do not require an offset for the one-year extension, in the current budget climate deficit hawks are pushing for offsets.

The Senate passed the bill by unanimous consent on November 18th, and the House approved the Senate bill under suspension of the rules by voice vote on November 29th. The President signed the bill immediately thereafter.

For further information, go to: http://thomas.loc.gov.

TAXES: HOUSE PASSES TAX EXTENSION
The House passed H.R. 6467, 234-188, on December 2, 2010. The legislation permanently extends the 2001 and 2003 tax rate cuts, but only on income below $200,000 for individuals and $250,000 for couples. The bill also contains several other tax provisions, including:
- extending the child tax credit and the earned income tax credit
- limiting the marriage penalty tax
- providing a two year fix to prevent the Alternative Minimum Tax (AMT) from affecting middle income taxpayers
- extending expedited expensing rules for small businesses
- extending the deductibility of student loan interest payments for taxpayers with an adjusted gross income up to $75,000 ($125,000 for couples).

The total 10-year cost of all that would be $1.5 trillion.

The Senate is not expected to take up this bill, although it may become the vehicle for a compromise on the expiring tax provisions, if one can be reached. Sen. Jon Kyl (AZ), a member of the House-Senate group attempting to forge a compromise, has apparently indicated that December 6th is the deadline for negotiating a deal, in order to allow the Senate time to act on other issues, including the START Treaty with Russia.

For further information on the bill, go to: http://waysandmeans.house.gov.

EDUCATION: HOUSE PASSES SCHOOL MEALS AND NUTRITION BILL
By a vote of 264-157, the House on December 2, 2010, passed S. 3307, the Healthy, Hunger-Free Kids Act of 2010. The $4.5 billion authorization overhauls school food programs and establishes nutritional requirements for those programs. According to Committee documents, the Act will provide the first real increase in the Federal reimbursement rate for school lunches in over 30 years. The bill now goes to the President for signature, as the Senate passed it under unanimous consent on August 5, 2010.

The bill will:
- expand the school meals program to about 115,000 more students by using Medicaid data to directly certify eligible children
- enhance meal access for eligible children in high poverty communities by using census data to determine school wide income eligibility
- provide an additional 21 million meals annually for at-risk children nationwide by allowing Child and Adult Care Food Program (CACFP) providers to be reimbursed for meals provided to low-income children after school
- provide funding for state and local projects to address childhood hunger and promote food security for low-income children
- increase the federal reimbursement rate six cents per meal for school lunches for school districts that comply with federal nutrition standards
- establish nutrition standards for all foods sold in schools in order to remove junk food from schools
- establish nutrition requirements for CACFP in child care settings
The cost of the bill is offset by other changes in the school lunch program and Supplemental Nutrition Assistance Program (SNAP).
For further information on the bill, go to: http://edlabor.house.gov

ENERGY & ENVIRONMENT: SENATE EPW REPORTS DRINKING WATER AND DIESEL EMISSION BILLS
The Senate Environment and Public Works Committee, chaired by Sen. Barbara Boxer, held a mark up on November 30, 2010 and favorably reported S. 3874, the Reduction of Lead in Drinking Water Act, and S. 3973, the Diesel Emission Reduction Act of 2010.
S. 3874 reduces the amount of lead allowed in plumbing fixtures. Currently, federal law allows plumbing fixtures that carry drinking water to have as much as 8 percent lead. Under the bill, the standard will change so that the wetted surface of such plumbing cannot contain more than a weighted average of 0.25 percent lead. The bill was approved by voice vote without amendment.
S. 3973 is a five-year reauthorization of the Diesel Emissions Reduction Act of 2005, which established a voluntary national and state-level grant and loan program to reduce diesel emissions. S. 3973 also expands the scope of the underlying law by allowing the Environmental Protection Agency (EPA) to establish rebates, along with loans and grants, to promote diesel emissions reductions. It also was reported by voice vote without amendment.
For more information on the bills, go to: http://epw.senate.gov

INTELLECTUAL PROPERTY: SENATE JUDICIARY REPORTS FASHION DESIGN PROTECTION BILL
The Senate Judiciary Committee on December 1, 2010 favorably reported by voice vote S.3728, the Innovative Design Protection and Piracy Prevention Act. The bill, authored by Sen. Charles Schumer (NY) and co-sponsored by Sen. Dianne Feinstein, extends copyright protection to fashion designs. According to Sen. Schumer, however, the intellectual property protection is limited “to the most original fashion designs – those that are extremely unique and extraordinary – and does so in a way that limits unwarranted litigation."
The legislation is aimed at preventing copy-cat knock offs. Under S. 3728, the standard for protection requires that the design be the result of the designer’s own creative endeavor and provides a unique, distinguishable, non-trivial and non-utilitarian variation over prior designs for similar types of articles. Colors and patterns cannot be used in determining whether a design is protected. Additionally, the protection begins when a design is made public and lasts for only a three year period.
In order for a design to count as infringing on a protected design, the copy must be substantially identical, that is, it is so similar in appearance that it is likely to be mistaken for the protected design. Everything that has been created prior to the enactment of the bill is considered public domain and cannot be protected. The bill also puts a high burden on plaintiffs to bring a case to court, in order to limit the costs of frivolous litigation.
For more information, go to: http://schumer.senate.gov/new_website/record.cfm?id=328793