Appropriations: Senate Considers First Appropriations “Minibus”

In the hopes of avoiding an Omnibus appropriations bill combining as many as a dozen individual bills, the Senate has opted to assemble a series of “Minibuses,” packaging together a few bills at a time. On Tuesday, October 18, 2011, it began consideration of the first of these Minibuses — the Agriculture appropriations (H.R. 2112), combined with the Transportation, Housing and Urban Development (S. 1596), and Commerce, Justice, Science (S. 1572) appropriations measures. Total funding in the Minibus is $128 billion.

Senators have introduced over 70 amendments to the package, but only a couple dozen are expected to be voted on. On Wednesday, Majority Leader Harry Reid (NV) and Minority Leader Mitch McConnell (KY) reached an agreement to consider at least six pending amendments on Thursday. Reid expressed hope that consideration of the bill could be completed by the end of the week, but whether that is possible is still in question.

The Agriculture bill provides overall discretionary spending for Fiscal Year 2012 of $19.780 billion. This represents a net security/non-security decrease of $138 million below the Fiscal Year 2011 continuing resolution. However, non-security spending alone is reduced by $192 million below the Fiscal Year 2011 continuing resolution. The bill also includes $266 million to respond to floods, storms, and other natural disasters.

The FY 2012 Commerce, Justice, Science, and related agencies measure contains funding that totals $52.701 billion in discretionary budget authority, a reduction of $626 million below the fiscal year 2011 enacted level. The bill also includes $135 million in disaster assistance.

The FY 2012 Transportation, Housing and Urban Development, and Related Agencies Appropriations bill includes budget authority of $55.3 billion, $100 million less than the 2011 enacted level. Total funding, including limitations on obligations related to programs funded by the Highway Trust Fund, is $109.5 billion. The total funding level is $100 million or 0.1 percent below the equivalent 2011 enacted level.

In action on Wednesday, the Senate tabled an amendment, 59-39, by Sen. John McCain (AZ) that would have prohibited transportation funds from being used for highway beautification or historic preservation projects.
On Thursday, the Senate agreed to an amendment by voice vote that would bring funding for the Fair Housing Initiatives Program up to the level contained in the House bill.

An amendment was defeated, 45-55, that would have prevented the Food and Drug Administration from banning the non-commercial importation of FDA-approved prescription drugs from Canada. Another amendment that would have established a National Criminal Justice Commission was also defeated 57-43, and an amendment to impose strict accountability standards on DOJ grant recipients went down 46-54.

Under the Senate rules, the amendments required sixty votes for passage.

The individual Senate bills, summaries, and reports can be found at: http://appropriations.senate.gov or http://appropriations.senate.gov/news.cfm?method=news.view&id=3c3f4ce-2fb1-4232-88ef-69f561220adb.

EDUCATION: SENATE HELP COMMITTEE BEGINS NCLB REAUTHORIZATION MARK UP

On Wednesday October 19, 2011, the Senate Health, Education, Labor and Pensions Committee began to mark up legislation to reauthorize the Elementary and Secondary Education Act, also known as No Child Left Behind (NCLB).

The 860-page bill would significantly rewrite NCLB, and eliminate one of its major tenets – the mandate that all students, without exception, be proficient in reading and math by the year 2014. This mandate has come under heavy criticism over the last several years, because it does not differentiate between typical or average students and those with learning disabilities or those who come from disadvantaged circumstances. The draft bill instead would mandate states to adopt “college and career ready” standards and make federal funding contingent on the development of their own statewide accountability system.

As introduced, the bill would also codify the Administration’s Race to the Top and Investing in Innovation competitive grant programs. Furthermore, it would expand charter school initiatives and give states more flexibility in how they use federal dollars. States would also be able to develop their own process for identifying struggling schools and those with significant achievement gaps.

At the opening of the mark up, Chairman Tom Harkin (IA) and Ranking Member Michael B. Enzi (WY) expressed the hope that the Committee would be able to complete the markup in only a day or two, despite 144 possible amendments to the bill. Wednesday morning’s session, however, was forced to adjourn when Sen. Rand Paul (KY), the author of 77 of the pending amendments, invoked a Senate rule that prohibits committees from meeting while the Senate is in session without unanimous consent. He argued that there had been insufficient time to read the massive bill, much less contribute to its drafting. Harkin responded that he, Sen. Enzi, and the Committee’s members had been holding hearings and working on the reauthorization for over a year and a half, and the draft bill had been posted on the web for almost a week. By the time the markup was halted on Wednesday, the Committee had worked through only four amendments.
On Thursday morning, Sen. Paul again employed the rarely-used procedural tactic to force the markup to conclude after two hours. An agreement was again reached, allowing the mark up to proceed throughout Thursday and possibly Friday. In exchange, Chairman Harkin agreed that the Committee would hold a hearing on the bill after it is reported out of committee but before it reaches the Senate floor (tentatively scheduled for November 8, 2011). As of the close of business Thursday, the Committee continued to work through proposed amendments.

Thursday’s amendments included a proposal by Sen. Johnny Isakson (GA) which would allow states to adopt modified achievement standards for students with disabilities. It would eliminate NCLB’s cap which limits the number of students with significant cognitive disabilities that are allowed to be evaluated using alternative assessments. The amendment was defeated by an 8-14 vote.

Sen. Lisa Murkowski’s (AK) amendment to allow certain American Indian, Alaska Native, or Native Hawaiian teachers exemption from teacher qualification requirements, for the purpose of preserving native history and language, was adopted by voice vote. Another amendment, also adopted by voice vote, amends Title II to allow parents to have the opportunity to transfer their child to a school they deem "better" and to prioritize this option for those students who are transferring out of the lowest 5% of schools. The amendment doesn't require school districts or SEAs to put aside funding for this purpose, however.

As the markup got started, twenty-one organizations, including the U.S. Chamber of Commerce, NAACP, and the National Council of La Raza, withdrew their support for the bill. The groups, in a joint letter, cited students with disabilities, low-income students, students of color, English-language learners and migrant students and stated “[t]he bill’s weak accountability system excludes the vast majority of children we represent, and is a major barrier to our organizations’ support.”


**ECONOMY: HOUSE SMALL BUSINESS HOLDS HEARING IN SOUTHERN CALIFORNIA**

On Monday, October 17, 2011, the House Small Business Subcommittee on Contracting and the Workforce held a field hearing titled *Land of Opportunity: Pursuing the Entrepreneurial American Dream.* The hearing was held at the Richard H. Chambers Courthouse in Pasadena, California.

Witnesses included Mr. Manuel Martinez, President Elect, SCORE LA, Los Angeles; Ms. America Tang, CEO, Ace Fence Company, La Puente, CA; Mr. Jesse Torres, President, Pan American Bank, Los Angeles; and Ms. Yusa Chang, Vice President and Chief Operating Officer, Pacific Asian Consortium in Employment (PACE), Los Angeles.

The hearing was held “to examine the resources available for members of the new American community interested in becoming entrepreneurs” and discussed what needs to be done to encourage “more people to become business owners or help current business owners grow their business and create more jobs.” The hearing also examined what resources are currently available to help prospective business owners and discussed whether additional outreach methods are required.

Mr. Martinez and Ms. Tang expressed support for the Small Business Administration (SBA). Ms. Tang further stated that “there is no question that the SBA and its program designed to help Small Businesses, Women and Minorities works.” However, she did testify that the SBA is affected by the “failure to communicate” the availability of its programs to the public, especially those who are not yet business owners. Ms. Tang said that this lack of communication exacerbates the effects of the economic downturn, especially as the American Recovery and Reinvestment Act of 2009 has yet to “trickle down” to small businesses. She recommended that Congress focus on improving communication about small business programs, and also examine cash flow problems that small businesses face as subcontractors.
Mr. Torres testified regarding the “particular concern” that mainstream financial institutions largely ignore and fail to serve primarily immigrant-, minority-, and family-owned small businesses in east Los Angeles. Numerous challenges exist when serving this population group, and Mr. Torres testified that Pan American Bank has made unique efforts to address such challenges, including establishing partnerships with EastLA Works and the Small Business Development Center. Mr. Torres asked for Committee support to back traditional and non-traditional ways of bolstering small business development, especially in this population group.

Ms. Chang testified that in the last 18 years, PACE’s Business Development Center “helped to create and sustained over 10,000 businesses and created 14,000 jobs” by helping businesses “in accessing $43 million in capital.” However, like Mr. Torres, she recognizes shortfalls in the financing of small business. Her recommendations to Congress include at least doubling the budgets of SBA programs and she requested also that the Committee strongly support the SBA Women Business Center, SBA Microloan program, expand the Small Business Investment Program, make permanent the Community Advantage initiative, and initiate a credit building/credit counseling program for small businesses. Another recommendation was that the Committee should examine working with banks as partners to reexamine and make more flexible home equity lines of credit (HELOC) and home equity loans, which before 2008 provided easy access to capitals for small business owners.

For more information, please visit http://smallbusiness.house.gov.

RESOURCES: House Subcommittee Reviews Impact of PILT Program

The House Natural Resources Subcommittee on National Parks, Forests, and Public Lands held an oversight hearing on October 14, 2011 to review the Payments in Lieu of Taxes Program. PILT compensates local governments for lost property tax revenues on non-taxable federally-owned land within local jurisdictions. Since 1977, the Department of the Interior has distributed more than $5.5 billion in PILT payments. The program is scheduled to expire at the end of FY 2012.

Witnesses included: Pamela K. Haze, Deputy Assistant Secretary, Office of Budget, Finance, Performance and Acquisition, Department of Interior; M. Lynne Corn, Ph.D., Specialist in Natural Resources Policy, Congressional Research Service-RSI, Library of Congress; and Ryan M. Yonk, Ph.D., Associate Professor of Political Science, Department of Political Science & Criminal Justice, Southern Utah University.

Subcommittee Chair Rob Bishop (UT) PILT an "essential lifeline for many rural communities," especially in the West, where "over half of all the land … is owned and managed by the federal government." Furthermore, he stated that "PILT is not an equalizer" as its compensation is not adjusted when federal land use is changed from open multi-use to more closed operations.

Ms. Haze testified that the Emergency Economic Stabilization Act of 2008 transitioned PILT from a yearly-appropriated program to a mandatory funding program, allowing counties the full PILT entitlement level. She said Interior supports the reauthorization of PILT in FY 2012.

According to testimony by Ms. Corn, although the issue of full entitlement funding was "put to rest" for the period from 2008-2012, there are 3 other issues in addition to reauthorization that Congress should be aware of and consider: inclusion of Indian or other categories of lands; tax equivalency, especially for eligible urban lands; and payments affecting the National Wildlife Refuge System.

Mr. Yonk also made clear that a potential shortcoming of PILT is that federal "lands have varying potential" and that treating all as "having identical trade-offs and opportunity costs as the current PILT system does, fails to recognize the context that each community and public lands area functions within and arbitrarily assigns a value that is independent of that context."

For more information, please visit: http://naturalresources.house.gov/.
TRANSPORTATION: GAO REPORT SHOWS ALL STATES RECEIVE MORE HIGHWAY FUNDS THAN THEY CONTRIBUTE

On October 12, 2011, the GAO released a report on the Highway Trust Fund. The report found that for the period from 2005 to 2009, all states received more in highway funds than they paid into the system.

Federal highway funding is provided to states through grant programs known collectively as the Federal-Aid Highway Program through the Department of Transportation (DOT). Under the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), $197.5 billion was authorized for the Federal-Aid Highway Program for the period from 2005-2009. The program is designed and operated using a "user pay" system, with users contributing to the fund through taxes and fees. Historically, states that receive less than they contribute to the fund are referred to as "donor" states while those that receive more than they contribute are called "donee" states.

According to the report, the GAO found that for the period in question, "every state received more funding for highway programs than they contributed to the Highway Account of the Highway Trust Fund. This was possible because more funding was authorized and apportioned than was collected from the states, and the fund was augmented with about $30 billion in general revenues since fiscal year 2008."

The report also examined the percentages of contributions compared to the percentage of funds received. It found: "If the percentage of funds states contributed to the total is compared with the percentage of funds states received (i.e., relative share), then 28 states received a relatively lower share and 22 states received a relatively higher share than they contributed. Thus, depending on the method of calculation, the same state can appear to be either a donor or donee state."

When examining overall return, California received $1.19 in funding for every $1.00 it contributed to the fund - a 19 percent return for the total period from 2005-2009. In comparison with other highly populated states, California had neither the lowest nor highest return. Texas received $1.03, Florida received $1.15, and New York received $1.40. It is also worth noting that some less populous states had much greater returns per dollar; South Dakota, North Dakota, West Virginia, Hawaii, Vermont, Delaware, Rhode Island, and Montana received over $2.00 for each dollar contributed, while Alaska received $4.99 and the District of Columbia received $5.85 for each contributed dollar. Therefore, California, along with every other state, was considered a "donee" state during this period.

When looking at states' relative share rate of return, the report highlights California as an example of a state that can appear as a "donee" when looking at overall dollar contribution ($1.19 or $1.04 for each dollar), but can also be seen as a "donor" state when looking at a state's relative share rate of return. The report states:

"California provides a useful example. From fiscal years 2005 through 2009, using same-year contributions and funding across all Highway Trust Fund Highway Account allocations and apportionments, California received $1.19 for each dollar contributed. This analysis shows California as a donee state. . . . Alternatively, when calculating a dollar rate of return using state contribution estimates available at the time of apportionment . . . and including only programs covered in rate-of-return adjustments, California remains a donee state, receiving $1.04 for each dollar contributed. In contrast, using the relative share approach for the fiscal year 2005 through 2009 period, California received 91 percent of the share it contributed in federal highway-related taxes, which would make it a donor state."

As for other states, Texas and Florida also received around 91 percent of the share they contributed, while New York state received 115 percent. Overall, 25 states received less than 100 percent relative rate of return and 26 states received more than a 100 percent relative rate of return. While multiple states had the lowest returns at around 91 percent, the highest state returns were the District of Columbia at 461 percent and Alaska at 428 percent.

**STATE ISSUES: LAO REPORT COMPARES CA UNEMPLOYMENT INSURANCE WITH OTHER STATES**

On October 13, 2011, the Legislative Analyst's Office released a report titled *California's Unemployment Insurance Program: Gaining Insight Through Interstate Comparisons* (Report). The Report compares California's Unemployment Insurance (UI) system to UI programs in other states in order to provide context to the California State Legislature as that body considers potential fixes to the State's current UI insolvency.

The Report had several major findings for the Legislature to consider, including:

- In relative terms, California's UI program pays lower weekly benefits than the majority of states, yet has high total costs because it pays weekly benefits for a longer duration and to a relatively larger caseload.

- Despite high costs, California's UI program taxes employers at a level about equal to the national average. However, California's total UI benefit costs are significantly underfunded. This imbalance led to an insolvency in California's UI fund beginning in 2009. Since then, California, along with many other states, has borrowed from the federal government in order to continue paying UI benefits.

- While a portion of California's comparatively high caseload and longer benefits duration can be attributed to California's UI policies, it appears that a significant portion is attributable to other factors, such as consistently higher unemployment rates and longer average spells of unemployment.

- During the recent recession, variation in UI fund solvency across states is more closely related to differences in unemployment rates and program caseloads than differences in UI tax and benefit policies.

The Report also outlined possible solutions, including:

- The legislature may consider changes to UI program policies, such as reducing the prior earnings limit or tightening program eligibility requirements. However, the Report notes that the ability of policy reforms to reduce UI costs may be limited, because factors beyond the immediate control of program policies highly affect UI costs.

In related news, the *Los Angeles Times* recently published an article called "Unemployed Californians Face Benefit Losses," which was published online on October 11, 2011 and authored by Marc Lifsher. The article cites a National Employment Law Project report finding that "Nearly 1.8 million jobless Americans could lose their unemployment insurance benefits at year's end unless Congress approves the president's proposal to reauthorize the federal program through 2012." The article also states "California leads the other 49 states with 305,400 unemployed people facing a cutoff." In more detail, about "70,600 would see their 26 weeks of regular, state-paid checks run out. Another 122,500 would stop getting federal emergency unemployment compensation, and 112,300 immediately would lose special, extended federal benefits."

BRIEFING: CONNECT HOSTS BRIEFING ON TECHNOLOGY AND INNOVATION IN PROOF OF CONCEPT CENTERS

On October 18, 2011, the San Diego-based entrepreneurship and innovation non-profit CONNECT held a congressional briefing titled Technology and Innovation in Proof of Concept Centers: Accelerating the Commercialization of University Innovation.

Speakers included Mr. Timothy Tardibono, Vice President Public Policy, CONNECT; Dr. Rosibel Ochoa, Executive Director, UC San Diego - William J. von Liebig Entrepreneurism Center; Dr. Geert Schmid-Schonbein, Distinguished Professor and Director of the Microcirculation Laboratory, Department of Bioengineering, UC San Diego; and Mr. John Rodenrys, CEO, Leading Biosciences, CEO, InflammaGen Therapeutics.

Mr. Tardibono gave an opening description of the work that CONNECT does to drive commercialization of innovations in high tech and life sciences by fostering a “culture of collaboration” between researchers, capital sources, industry, and entrepreneurs. He also gave a description of the “clusters” around which CONNECT’s work is organized: defense, nearsourcing, sport innovation, and regenerative medicine.

Dr. Ochoa highlighted the von Liebig Center’s similar work to help connect innovators and entrepreneurs, eliminating the so-called “Valley of Death” between research and commercialization as well as the “culture gap” between academia and business. The von Liebig Center serves as a Proof of Concept Center (POC Center), where innovators and researchers, especially graduate students, can receive funding and complete research to determine whether commercialization of their projects is viable. Business mentorship for these science and engineering students is the main focus of the program, which has to date funded 82 total projects at a cost of $4.6 million, which led to the successful creation of 32 start-up business ventures in science and engineering fields, which on average pay their workers 95-percent more than the average U.S. wage.

Dr. Schmid-Schonbein, a researcher, and Mr. Rodenrys, a business entrepreneur, highlighted a specific project they are collaborating on and the successes and problems associated with it. The project revolves around a new procedure to stop sepsis and physiological shock, which together kill over 20 people every hour in the U.S. With help from the von Liebig Center, Mr. Rodenrys, was able to more successfully navigate the process of getting Dr. Schmid-Schonbein’s research into clinical trials and eventually to commercialization. Even with such assistance, Mr. Rodenrys asserted however, that the “Valley of Death,” various bureaucratic hurdles and time lines, risk for failure and resulting legal consequences, and the complicated nature of hospital and university governance still poses a major roadblock to getting “life saving projects on the market.”

The participants suggested that Congress do the following to facilitate innovation:

- Support H.R. 1036, which incentivizes repatriated funds to be used for pro-innovation uses, such as POC Centers;
- Streamline the FDA and IRB process for acute diseases;
- Increase availability of early stage revenue for translational projects;
- Reform the tort system to minimize risk aversion in U.S. health care; and
- Reauthorize SBIR/STTR and simplify the process.

For more information about this briefing and about CONNECT, please visit http://www.connect.org. For more information about the von Liebig Center, please visit http://www.vonliebig.ucsd.edu/.