

## **Congress Faces Full Schedule, Little Time**

Returning from the spring recess, Congress faces a full schedule of legislation and only a few weeks in which to complete its work before November's elections. One of the top priorities will be passage of the 13 separate appropriations bills that fund the federal government. Before considering individual appropriations bills, the House and Senate must first reach a compromise on the \$2.5 trillion fiscal year 2005 budget resolution, including how to handle a Senate provision that extends the "pay-as-you-go" requirement for deficit-neutral offsets to tax legislation. There is some concern among the congressional leadership that the budget resolution will make it impossible to pass 13 separate spending bills this year. In this regard, some members of Congress – including House Appropriations Committee Chairman C.W. "Bill" Young (R-FL) – are urging Republican leaders to craft one, massive omnibus spending bill that would encompass the 13 separate bills. Although the Republican leadership may agree to the plan, it is certain that Democratic leaders would not, leaving open the possibility that Congress would need to pass a continuing resolution to cover federal spending for fiscal year 2005.

As the November general elections grow closer, the level of partisanship in Congress continues to increase. The rancor that has dominated recent debates may make it exceedingly difficult for Congress to finalize legislation in the weeks remaining before the target adjournment date of October 1<sup>st</sup>. It is possible, therefore, that a lame duck session of Congress will be necessary for Congress to complete its work in areas including export tax legislation, job safety, energy policy, healthcare, and overtime regulations.

### **Export Tax Legislation**

Legislation to replace the Extraterritorial Income Exclusion (ETI) Act remains a priority matter for both Congress and the Administration. In March, the European Union began gradually imposing trade sanctions on certain U.S. exports in retaliation for the United States failing to meet the deadline requirement for replacement of the current federal export tax system.

In the House, legislation (H.R. 2896) introduced by Rep. Bill Thomas (R-CA), Chairman of the House Ways and Means Committee, has stalled after being passed by committee – despite months of negotiations, which resulted in Rep. Thomas dropping some of the more costly provisions from the bill (lowering its overall cost from the original \$60 billion to approximately \$48 billion). The House bill would replace the current export tax system with a 3-percentage point reduction in the corporate tax rate for domestic manufacturers, a rate reduction for corporations earning less than \$20 million, and a variety of deferral relief and international tax provisions. H.R. 2896 is being opposed by Rep. Don Manzullo (R-IL), Chairman of the House Small Business Committee, who objects to the international tax provisions because he believes they will result in the outsourcing of additional U.S. jobs.

The Senate version of ETI legislation (S. 1637) was introduced by Senate Finance Committee Chairman Charles Grassley (R-IA). As originally drafted, S.1637 – the so-called JOBS Act, for Jumpstart Our Business Strength – would have lowered the tax rate for manufacturers from 35 to 32 percent, but, unlike the House bill, would implement the reduction through a deduction mechanism whose benefits would phase in more slowly for international companies. The Senate Finance Committee passed S. 1637 last fall with little debate. The legislation has been delayed in reaching the Senate floor, however, because of disagreement about the amount and subject of possible floor amendments (specifically, over the refusal of Republican leaders to allow a vote on Senator Tom Harkin's (D-IA) overtime amendment). Cloture votes to limit debate and allow a vote on the original version of the legislation and on a substitute version of the bill (which added many of the tax incentive provisions from the stalled energy bill) failed. In early April, before leaving for the spring recess, an agreement was reached regarding floor amendments that could be offered to the bill, including the Harkin overtime amendment and a series of amendments from Senator John McCain (R-AZ) to strip the energy bill provisions from the legislation.

The Administration issued a statement in early March urging swift passage of ETI replacement legislation, but has been largely silent on the issue. Administration officials have expressed concern, however, with the equity of restricting tax benefits to domestic manufacturers and have been strongly supportive of international tax reform provisions.

The Senate is expected to begin consideration of ETI legislation before the House – which is relying on momentum generated by Senate passage of S. 1637 to jumpstart interest and action on the House version of the legislation.

### **Job Safety**

Several pieces of job safety legislation are currently pending in Congress, including bills to assist small businesses in dealing with the Occupational Safety and Health Administration (OSHA). Of the series of job safety bills that have been introduced, only one – H.R. 205, which would provide confidential assistance to small businesses to improve their compliance with federal and state regulations – has been approved by the House and sent to the Senate for consideration. Other House bills would give the Occupational Safety and Health Review Commission (OSHRC) the flexibility to make exceptions when small businesses miss the deadline for responding to OSHA citations (H.R. 2728), would increase the number of Occupational Safety and Health Review Commissioners from three to five (H.R. 2729), would clarify that OSHRC is an independent agency that is given deference by courts reviewing appeals of OSHA decisions (H.R. 2730), and would permit small businesses to be awarded court costs when they successfully contest OSHA citations in court (H.R. 2731). While it is possible that this series of bills introduced by Representative Charlie Norwood (R-GA), Chairman of the House Education and Workforce Subcommittee on Workforce Protections, will be considered by the full committee this year, the bills are opposed by labor and Democrats and have no companion legislation in the Senate.

### **Energy**

The Bush Administration unveiled its energy policy recommendations almost three years ago to great fanfare, yet multiple versions of energy policy legislation remain stalled in the Senate and House and Senate members are in strong disagreement over the renewable fuels provisions contained in the bills. The House passed its version of energy legislation (H.R. 6) in November by a vote of 246-180, with 46 Democrats supporting the measure. In the Senate, a lack of Democratic support has made it possible for Senate Democrats to prevent a cloture vote (which requires 60 votes) on the legislation to limit debate and allow for a vote. The legislation that emerged from the House/Senate conference committee contains a provision that would limit liability for producers of the gasoline additive methyl tertiary butyl ether (MTBE). Senate Democrats have called the MTBE liability provision a “poison pill” they are unwilling to accept. While the MTBE provision was not a part of the original Senate legislation (S. 2095), Texas House members insisted it be a part of the final conference agreement. In addition, fiscal conservatives have expressed concern over the \$31 billion cost of the legislation, as has the Administration (which has stated that it would like the overall cost of the bill to be between \$8-10 billion).

In February, Senator Pete Domenici (R-NM), Chairman of the Senate Natural Resources Committee and primary sponsor of the Senate energy bill, introduced a scaled-down version of the conference report (S. 2095) in an effort to generate new momentum. The new bill lowered the overall cost of the legislation by half and eliminated the MTBE provision. Despite these attempts to garner additional support, there is still strong disagreement from Senate Democrats regarding efforts to limit the number of amendments they may offer on the Senate floor. (Republicans fear Democrats plan to offer hundreds of amendments in an attempt to filibuster the bill.) If an agreement on amendments cannot be reached in the Senate, other portions of the comprehensive legislation may be combined into “must pass” bills (as the tax provisions were incorporated into ETI legislation – opening the door for other parts of the energy bill to be

introduced and added during a conference committee on ETI legislation) or introduced as smaller, less controversial, stand-alone bills.

### **Health Care**

Finding a way to expand health insurance coverage to uninsured Americans continues to be the topic of debate in Congress, but there is little agreement. Republicans point to recently passed tax-favored health savings accounts as progress and continue to press for other market-based initiatives. In contrast, Democrats support initiatives that would expand and support public health insurance coverage.

With respect to market-based reforms, legislation has been introduced in the House and Senate that would lower the cost of health insurance for small businesses by allowing them to join together into association health plans (AHPs), which would cross state lines, to purchase health insurance (H.R. 660/S. 545). In addition, Representative Phil Crane (R-IL) has introduced a bill (H.R. 3901) that would make any premiums associated with AHPs tax-deductible. To date, however, House Ways and Means Committee Chairman Bill Thomas has been unwilling to move such legislation.

In the Senate, Republicans have established a task force to investigate the problem of uninsured Americans and the increasing cost of health care. The panel is anticipated to issue their recommendations later this year. With the deficit continuing to increase, and the large amount of time spent on passing the Medicare legislation in 2003, it is unlikely that health care legislation will be enacted this year. The presidential election will continue to focus attention on the issue of the uninsured, however, and it is possible that AHP legislation could receive further attention in the Senate.

### **Overtime**

Senator Tom Harkin (D-IA) plans to continue to look for a legislative vehicle in the Senate to which to attach his amendment to prevent the Administration from implementing its rule to change the overtime requirements under the Fair Labor Standards Act. Senator Harkin believes the overtime rule will result in millions of workers losing their overtime status, through changes to the definitions of "exempt" and "non-exempt" employees. The Administration disputes this charge, and contends that millions of workers who are currently not eligible for overtime benefits will gain. The Harkin amendment would prohibit the Administration from issuing any regulation that would strip workers of their overtime rights, while permitting regulations that would expand overtime coverage or other improvements that do not affect overtime eligibility. The Administration believes changes to the overtime regulations are necessary to update them to reflect more accurately the current workforce composition.

Senator Harkin successfully offered a similar amendment to the fiscal year 2004 appropriations bill for the Departments of Labor and Health and Human Services, but it was dropped from the bill at the Administration's request during conference committee negotiations. Senator Harkin had reached a deal with Senate Finance Committee Chairman Charles Grassley to allow a vote on his amendment during consideration of ETI legislation on the Senate floor, but after objections from Senate Majority Whip Mitch McConnell (R-KY), who is married to Secretary of Labor Elaine Chao, the Republican leadership took the ETI bill to a cloture vote (which failed) – killing all amendments. It is possible that the Harkin amendment could still be offered to the ETI bill, after a last minute deal on amendments that was reached prior to the spring congressional recess. Senator McConnell's objections to the amendment were based on a feeling that it is wrong to repeatedly vote on amendments upon which the Senate has already voted. In response to Senator McConnell's objections, and the subsequent cloture vote, Senator Harkin stated that he would now oppose any procedural unanimous consent agreements to consider legislation on the Senate floor until he gets a vote on his amendment and is able to attach it to legislation that will make it to a House/Senate conference committee.