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Government "Shutdown" Looms as Senate Ponders Options

A federal government "shutdown" – if only for a few days – seems inevitable, even with the House approving its latest four-week continuing resolution (CR) late January 18 to keep operations humming. While House leadership managed to get a 230-197 vote to approve the latest spending stopgap which runs until February 16 – 11 Republicans voted against it, but six Democrats backed the CR – the Senate is a wild card.

House Minority Leader Nancy Pelosi (D, CA) tried to rally opposition to the House CR, and urged House Speaker Paul Ryan (R, WI) to bring two very different immigration bills up for a vote – one authored by Rep. Bob Goodlatte (R, VA), legislation considered too conservative to pass the House, and one bipartisan measure Pelosi thinks could be approved. Ryan refused.

"This is like giving you a bowl of doggy doo, put a cherry on top and called it chocolate sundae," she told reporters just before the Thursday vote.

Lost in the wrangle over spending and a possible government shutdown are ag issues, including a fix to an "inadvertent" glitch in the new tax law which disadvantages private companies to cooperatives on grain sales; an $81-billion disaster relief bill, including language allowing cotton growers to qualify for Price Loss Coverage (PLC) and dairy producers to qualify for Livestock Gross Margin (LGM) insurance, and a possible tax credit extenders bill.

While a Senate move could come very late Friday, January 19, or sometime over the weekend, not since 2013 has there been as great a likelihood of a government shutdown as this week.

To get to voting on the House-approved CR, the Senate will first need 60 votes to invoke cloture cutting off debate – expected late morning on January 19, even though "regular order" would set that vote for Saturday, January 20 – but the schedule remains wide open. Senate Majority Leader Mitch McConnell (R, KY) rejected a request by Minority Leader Charles Schumer (D, NY) to hold the cloture vote late Thursday, knowing the 60 votes the GOP needed aren't there.

When McConnell tried to get agreement to allow a simple majority vote to approve the CR, Schumer refused. Schumer countered with a proposal for GOP leaders to move a shorter CR, one that funds the government for a few days to allow work on an immigration deal and overall budget caps. Some GOP Senators are warm to Schumer's idea; McConnell has not reacted to it.

That same day, President Trump walked into a Pentagon meeting, opining a government shutdown "could very well be." Trump says the Democrats are trying to tarnish the Republican win on tax reform; Democrats say it's all about the Republicans' refusal to come up with a comprehensive immigration reform plan, including a fix to the DREAM Act allowing the children of undocumented workers brought to the U.S. as minors to be legally protected. The Democrats also want to see higher budget caps on non-military spending, a nonstarter for the GOP.

McConnell will keep the Senate in formal session through the weekend, scheduling a series of CR votes, and focusing "blame" for the shutdown on 10 Democrat Senators from conservative states up for reelection in the fall. He'll force votes on reauthorizing a federal children's health insurance program, and other related programs, making Democrats vote repeatedly against keeping the government open.

If there is a "shutdown, about 40% of the federal government machine – that portion funded through discretionary, non-military spending – grinds to a halt. Only personnel deemed "essential," including civilian and law enforcement/security personnel – including TSA – and military personnel and combat troops, will report to work, though when they'll receive paychecks remains up in the air. The October, 2013, shutdown over Obamacare, lasted nearly 17 days and put over 850,000 federal workers on furlough per day, costing the government about $4 billion.

How USDA will operate can be found here: https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-shutdown-furloughs.pdf.

Dole Receives Congressional Gold Medal in Capitol Ceremony

Former two-time Senate Majority Leader Bob Dole (R, KS), surrounded by current and former lawmakers, including President Trump and Vice President Pence, this week received the Congressional Gold Medal, the highest honor Congress can bestow on an American. The lawmaker-packed ceremony to honor Dole – celebrated for his "service to the nation as a soldier, legislator and statesmen" – was held in the Rotunda of the Capitol Building.

The 94-year-old's career is well known given his unsuccessful 1976 vice presidential run with President Gerald Ford, and his loss, with Jack Kemp, to President Bill Clinton and former Sen. Al Gore in 1998. Dole was first elected to the House in 1961 for three terms, then was elected to the Senate in 1968, where he served until resigning his seat and as majority leader to run for president. Most recently, Dole works for Washington, DC, law firms as both an attorney and a registered lobbyist and registered foreign agent.

Dole is married to Elizabeth Hanford Dole, 81, a former Senator from North Carolina, former chair of the Republican National Committee, as well as serving as Secretary of Labor, Secretary of Transportation and president of the American Red Cross.

In addition to Trump and Pence, the ceremony featured Sen. Pat Roberts (R, KS), Sen. Jerry Moran (R, KS) and the full Kansas delegation, Majority Leader Mitch McConnell (R, KY), Senate Minority Leader Chuck Schumer (D, NY), House Speaker Paul Ryan (R, WI), Minority Leader Nancy Pelosi (D, CA) and Minority Whip Rep. Steny Hoyer (D, MD). Also attending were former Majority Leader Trent Lott (R, MS), retired Senate Agriculture Committee Chairs Tom Harkin (D, IA), Dick Lugar (R, IN), and former Vice President and Senator Dan Quayle (R, IN).

Two of Dole's proudest legislative moments dealt with childhood hunger, and protection of Americans with disabilities, particularly military veterans. With former presidential candidate Sen. George McGovern (D, SD), Dole authored the McGovern-Dole International Food for Education & Child Nutrition Program to fight childhood hunger in poverty-stricken areas around the globe. Dole was also a key mover of the 1990 American With Disabilities Act (ADA), protecting individuals with disabilities from discrimination. He also created the Dole Foundation, a nonprofit organization helping people with disabilities to find work.

Co-Op Tax Fix Still Evolving

Senators who shoehorned into the new tax reform law an offsetting provision to the repeal of the Sec. 199 manufacturing deduction so valuable to farmer-owned cooperatives remained confident this week a “dial back” of that provision’s unintended harm to grain marketing will be part of an FY2018 omnibus spending package in mid-February. However, those same Senate authors were confident a week ago a solution was in hand.

The section in question is how the new Sec. 199A, essentially a redefinition of which businesses qualify as “pass-through” entities for tax purposes, can be rewritten to maintain an equitable grain marketing playing field. As it now applies to cooperatives the pass-through deduction is so attractive, independent grain growers are far more likely to sell grain to cooperatives than to private grain companies, including country elevators. So dire are the long-term consequences of the mistake, some grain companies are looking into setting up cooperatives to take advantage of the new deduction.

To date, the IRS has not written rules on how the new Sec. 199A deduction is going to work, so most businesses are relying on accounting and audit firms to provide counsel. Some experts warn the deduction impacts each company differently, so based on income and other factors, for some the deduction may be worthless.

Sen. John Thune (R, SD) and Sen. John Hoeven (R, ND) led a handful of colleagues in getting the definition of a pass-through entity rewritten so cooperatives would qualify for a new 20% deduction. The Senators believed their solution would “mimic” the economic benefits of the original Sec. 199 deduction, most of which cooperatives send back to their members, using the remainder to invest in infrastructure and other expenses. These same Senators are negotiating a fix with the National Council of Farmer Cooperatives (NCFC), which pushed for the Sec. 199 substitute, and the National Grain & Feed Assn. (NGFA), which represents most of the nation’s country elevators as well as companies like Cargill, Inc. and ADM Co.

The two groups agree the goal is to preserve the intent of the Thune-Hoeven redefinition – a solution “that preserves the benefits that cooperatives and their farmer patrons enjoyed under Sec. 199” – but not turn the nation’s grain marketing system on its ear. Hoeven, who’s been hosting meetings between Senate staff and industry groups, says all stakeholders agree a fix is needed; Thune says he’s surprised industry didn’t recognize the potential problems the original fix might cause.

No Word on Farm Bill Price Tag – Yet

House Agriculture Committee Chair Mike Conaway (R, TX) is still waiting for the Congressional Budget Office (CBO) to tell him how much his FY2018 Farm Bill draft is going to cost taxpayers. Conaway asked CBO a few weeks back to give him an official 10-year price tag so he can roll out the omnibus ag policy package next month.

Getting those CBO numbers dictates if Conaway can hit his mid-February target to begin Farm Bill markup in full committee, though floor time schedules for a full House vote after markup remain “fuzzy.” “Until we get scores back, we don’t know if we can afford the proposal,” Conaway told *Politico* this week. It’s also possible his committee’s draft bill may need “tweaking” to keep costs under control, he said.

While the 2014 Farm Bill is projected to cost about $875 billion running through 2024, Conaway and his counterpart Senate Agriculture Committee Chair Pat Roberts (R, KS) are under no illusion there’s going to be one extra dime to be spent on farm programs in the next Farm Bill. Conaway has been more circumspect on what modifications can be made to current farm programs in light of a very tight spending baseline, while Roberts has told ag groups not to expect major new programs or even major rewrites of existing programs.

Rural Broadband Fix Gets Overnight Attention

Improving rural high-speed broadband internet access across America is an issue that's been paid lip service since the Obama administration, but over the last two weeks, the issue has taken on new life, including more White House attention, introduction of House legislation on broadband infrastructure investment and infrastructure, and increased Senate attention.

A massive expansion of rural high-speed internet service to rural areas and Indian reservations was a highlighted goal of USDA's recently released 23-page report on rural prosperity, and President Trump signed an executive order at last week's American Farm Bureau Federation (AFBF) convention designed to speed up the broadband expansion process.

Ajit Pai, chair of the Federal Communications Commission (FCC), which recently voted to toss out Obama internet neutrality measures, this week circulated documents to his panel's members calling for $500 million in federal subsidies to cooperatives and small telecom company to be used to speed up building rural broadband networks and expand those networks to tribal lands. Pai said one of the biggest roadblocks to network expansion is uncertainty over "insufficient and unpredictable funding;" however, there is no word on where that money will come from.

Five Senators this week piggybacked on Pai's FCC order by calling for Trump to included dedicated funding for broadband in the White House infrastructure investment legislative package the president has promised. The Senators want specific dollars pegged to broadband so federal investment doesn't get "lost" on bigger projects, including locks/dams, highways, bridges, etc.

In the House Energy & Commerce Committee, Rep. Adam Kinzinger (R, IL) introduced the "Streamlining & Expediting Approval for Communications Technologies Act," a bill to speed up federal review of broadband applications while allowing private telecom companies to erect equipment on federal land. The committee is expected to hold hearings on the Kinzinger bill "soon." Two other broadband-related bills were introduced as well, including one calling for a Government Accountability Office (GAO) "spectrum study."

Biodiesel/Renewable Diesel Tax Extenders Bill Back in Spotlight; Grassley has "Hope" for E15

Floated just before the Senate approved the comprehensive federal tax reform bill at Christmas – but too late or expensive to get on the legislative train – is a bill to reauthorize several federal tax credits which expired at the end of 2016, including those for several biofuels. The "biomass-based diesel" industry wants action quickly to get that bill approved and to the president's desk.

In a related biofuels development, Sen. Charles Grassley (R, IA), ethanol's biggest congressional champion, this week said he's hopeful EPA will administratively permit year-around sales of 15% ethanol blends in transportation fuels, so-called "E15." Grassley said this week his request of EPA Administrator Scott Pruitt, echoed by several other ethanol state senators, to allow 365-day E15 sales, is "about the only real solution to both helping E15 and getting around the RIN issue." Regulatory permission from the agency will boost ethanol sales, he said, and lower the cost of RIN compliance by increasing the supply of credits that companies must buy. The industry is waiting for EPA to tell it whether the agency has the legal authority to take administrative action or whether Congress must approve new authority, a long shot given the controversy surrounding the Renewable Fuel Standard (RFS).

On the tax credit extenders effort, a letter was sent this week to House and Senate leaders signed by 73 companies and three organizations representing plant and animal-based biodiesel, renewable diesel and "renewable aviation fuels," asking Congress to approve language identical to that in S. 2256, introduced in December by Senate Finance Committee Chair Orrin Hatch (R, UT) and a number of his committee colleagues. The extenders package includes a $1-per-gallon blenders' credit for biodiesel/renewable diesel. The industry wants to see those credits reauthorized for a minimum of three years, retroactive to January 1, 2017.

Trade Notes

Next Round of NAFTA 2.0 Talks Extended – Canada, the U.S. and Mexico have agreed to extend next week's round of NAFTA 2.0 negotiations by front-loading more discussions on agriculture, regulatory "best practices" and textiles at the start of the sixth round of talks, and delaying the meeting of government trade officials by a day. The round begins in Montreal on January 21, two days earlier than originally scheduled, with additional government meetings on January 27. If any of the working groups on specific issues – including the group meeting on sanitary/phytosanitary measures on food safety, which all three nations hope to close out next week – appears close to agreement, the talks could be extended into January 28. Trade ministers are tentatively scheduled to meet January 29. While the U.S. enjoys bilateral talks with each of the other NAFTA signers, Canada has suggested a trilateral council be formed moving forward. U.S. industry opposes the move.

More USTR Nominees on "Hold" – Sen. Jeff Flake (R, AZ) continues to block the nomination of well-liked ag economist Gregg Doud to be the U.S. Special Trade Representative's (USTR) chief agriculture negotiator. The hold has nothing to do with Doud and everything to with an unresolved U.S. proposal as part of NAFTA 2.0 negotiations that would allow U.S. produce growers to more easily bring anti-dumping actions against their Mexican counterparts. While western U.S. produce growers oppose the action, southeastern fruit and vegetable growers strongly support it. Sen. Pat Roberts (R, KS), chair of the Agriculture Committee, has criticized Flake for the hold, but says, "We're working on it." Meanwhile, two other USTR nominees found their nominations blocked this week because their boss irritated a member of the Senate Finance Committee who says USTR Robert Lighthizer has ignored him. Sen. Tim Scott (R, SC) told a Senate Finance Committee confirmation hearing on two USTR nominees – Dennis Shea to be deputy USTR in Geneva, representing the U.S. at the World Trade Organization (WTO), and C.J. Mahoney, named to be deputy USTR for trade in Africa, China and the Western Hemisphere – he'd keep the holds in place until Lighthizer responds to a phone call Scott placed to talk about a South Carolina-specific trade issue which was never returned. Lighthizer showed up in Scott's office 20 minutes later, but the Senator would not relent. "You cannot call me back, but you cannot disrespect the companies and the trading partner that is South Carolina," Scott said at the public hearing.

New Industry NAFTA, Pro-trade Campaign Launches Soon – A new industry organization – Americans for Farmers & Families (AFF) – will launch soon, and according to the American Soybean Assn. (ASA), an AFF member, the new coalition of growers, producers, suppliers and consumers is "dedicated to preserving the North American Free Trade Agreement (NAFTA)." AFF's operation goal is to galvanize "grasstops/grassroots/earned media" to deliver pro-trade, pro-NAFTA messages to the public. "The mission of AFF is to educate policymakers on the best way to modernize NAFTA to fit America's evolving needs," ASA said. "Improvements to NAFTA should be pursued by policymakers to ensure fair and balanced trade with our partners that benefits American exporters, consumers and helps create and grow American jobs."

On Infrastructure Spending CofC wants Federal Gas Tax Hike

The U.S. Chamber of Commerce says hiking the federal gas tax 25 cents per gallon is "the simplest, fairest and most effective way" to pay for President Trump's much-talked-about national infrastructure investment initiative.

However, House Rules Committee Chair Pete Sessions (R, TX) floated the notion this week that funding infrastructure and local transportation projects may be reason enough to resurrect "earmarks" in the appropriations' process, a much-vilified practice of individual members being able to corral government spending for projects specific to home states and districts. The notion is to allow earmarks only on transport/infrastructure spending for now, show success in how they're handled, and then try and broaden the use of earmarking to all appropriations bills.

Meanwhile, Senate Democrats are saying the current estimate that the infrastructure plan to build and improve the country's highways, bridges, airports and other transportation hubs will cost $200 billion is way too low, and that to garner bipartisan support a whole lot more money will need to be spent.

Chamber President & CEO Tom Donohue told his organization's America's Infrastructure Summit that his group has a four-part plan to give the U.S. a "21st century infrastructure system for a 21st century economy." The Chamber plan, he said, includes a "modest increase in the federal fuel fee."

"We need to increase the federal fuel user fee, which hasn't been raised in 25 years," Donohue said. "Why? It's the simplest, fairest, and most effective way to raise the money we need for roads, bridges, and transit."

The Chamber plan proposes a five-cent increase over five years. "Increasing the fee by a total of 25 cents, indexed for inflation and improving fuel economy, would raise $394 billion over the next 10 years," said Donohue. Calling the federal per-gallon gas tax a "user fee," Donohue said the tax was last raised in 1993, but since "inflation and vehicle fuel economy have eroded its value. As a result, the federal highway and transit trust fund faces a shortfall of $138 billion over the next decade."

"From a cost-benefit perspective, this makes a lot of sense," the Chamber said in a press statement. The tax increase "would cost the average motorist about $9 a month," Donohue said. But "our badly deteriorating roads are causing approximately $40 a month in increased maintenance and operating costs. With that additional revenue, we can get better and safer roads, something the public supports," he said.

"By a 22-point margin — 50 to 28 — voters support implementing a federal fuel user fee, provided the money will go toward modernizing our infrastructure," said Donohue.

Two Key Trump Administration Ag Personnel Named

Kenneth Barbic, a Western Growers Assn. lobbyist, has been nominated by President Trump to be USDA assistant secretary for congressional affairs. Meanwhile, Jeff Sands, director of policy at the Agricultural

Retailers Assn. (ARA) and former Syngenta lobbyist, has quietly settled in as agricultural advisor to EPA Administrator Scott Pruitt.

Barbic was deputy assistant U.S. trade representative for congressional affairs from 2007-2009, and worked directly on the Korea-U.S. free trade agreement, as well as other agriculture, labor and environmental issues. From USTR, Barbic moved to Western Growers, where he worked immigration, tax reform, health care reform and ag trade issues for the fruit and vegetable growers group.

"I'm very excited by the nomination of Ken Barbic to fill this key role," said Agriculture Secretary Sonny Perdue. "I'm eager to get him on the job right away."

EPA's Sands holds a Master's degree in public administration from Georgia's Valdosta State University, and a turf management degree from Abraham Baldwin Agricultural College in Tifton, Georgia. He was with ARA from 2012-2014, before joining Syngenta as manager of federal government relations and industry relations for corn. He also worked as staff for Rep. Tom Marino (R, PA), handling ag issues.