

State Association Weekly Washington Report 12.8.16

114th Congress Ready to Call it a Day

The House has already left town having passed a four-month continuing resolution to keep the government running, and as soon as the Senate follows suit, the 114th Congress will come to an end. Both chambers will adjourn sine die, to be recalled on January 4, 2017, to be gavelled in as the 115th Congress. The first part of January will be taken up by office assignments, committee assignments, etc. The real work will begin the week following the January 20, inauguration of Donald J. Trump, Jr. as the 45th president of the U.S.

Trump Nominates OK AG Pruitt as EPA Head, Branstad as Envoy to China

President-elect Donald Trump spent the week in New York, interviewing, vetting, selecting and announcing a good number of cabinet-level senior administration nominations. Among the names released this week is Scott Pruitt, Oklahoma attorney general to be administrator of EPA, setting off a media frenzy.

Pruitt is one of two lead attorneys general on a multi-state suit against EPA over the agency's waters of the U.S. (WOTUS) rule, and an outspoken skeptic on climate change, and his nomination set off a firestorm of opposition from environmental groups and Democrats on Capitol Hill.

Also named this week was Iowa Gov. Terry Branstad to serve as U.S. ambassador to China. The longest serving governor of Iowa is also personally close to Chinese President Xi Jinping, whom he calls his "old friend." Xi and Branstad met in 1983, during Branstad's first term as governor. Xi was part of a delegation from China in the U.S. to study agricultural practices representing his rural province of Hebei. "My impression of this country came from you," he told Branstad and the Iowa group at the time. "For me, you are America." Branstad has since been to China several times promoting Iowa exports.

The Chinese praised the nomination, describing Branstad as an "old friend to the Chinese people," government-speak describing trusted foreign politicians. "We would welcome him playing a bigger role in promoting Sino-American relations," a government spokesman said this week. Branstad is a big promoter of U.S. agricultural exports, particularly ethanol and other biofuels, for which the Chinese are expected to be huge customers for at least the next two years.

Pruitt's name rose to the top of the EPA candidates list after Oklahoma attorney met with Trump in New York, and after being blessed by investor Carl Icahn, a major Trump supporter who's advised the real estate magnate on EPA matters, including problems with the Renewable Fuel Standard (RFS), which has been criticized publicly as "a flawed program" by Pruitt. Icahn says he met with Pruitt four times, along with other EPA hopefuls.

A former Obama administration environmental advisor calls Pruitt "an existential threat to the planet." Rhea Suh, president of The Natural Resources Defense Council (NRDC), said Trump "flunked" the test of public health protection and safeguards for air, land and water. "If confirmed, Pruitt seems destined for the environmental hall of shame...," she said. Another environmental activist said Pruitt's nomination was akin to "putting an arsonist in charge of the fire department."

Sen. Jim Inhofe (R, OK), chair of the Environment & Public Works Committee, praised Pruitt's nomination, explaining he talks with Pruitt at least weekly, and that Pruitt has "been my best friend on all these over-regulations."

As attorney general, Pruitt's office has filed suits against the RFS, the Affordable Care Act (ACA), Dodd-Frank and other federal laws and programs, actions taken by at least two dozen other states.

Ag Secretary Nomination Ready for Prime Time, May Come Next Week

Who will sit at the top of the federal government's second largest bureaucracy and the department which dictates how food is produced in the U.S. is still an open question with no lack of candidates from whom President-elect Donald Trump can choose. There appears no rush to nominate an agriculture secretary, sources say, but the nomination may surface next week.

The USDA nomination, traditionally seen as a political payback to a sitting or former ag state governor, has taken on a more critical role, particularly as the 115th Congress will take up the next omnibus farm bill as early as next year.

In discussions with transition head Vice President-elect Mike Pence this week during the Senate's GOP caucus lunch, Sen. Pat Roberts (R, KS), chair of the Senate Agriculture Committee, took advantage of Pence's long-time priority on production agriculture as a lawmaker and a governor, to drive home the need for a secretary who understands USDA, understands federal agriculture policy and politics, and has the depth of management experience to keep the ship afloat.

Currently bouncing at the top of the list for USDA secretary are a long-time DC veteran and a former southern governor.

Chuck Conner, an Indianan like Pence, who currently serves as president of the National Council of Farmer Cooperatives (NCFC). Conner served as USDA deputy secretary to Secretary Mike Johanns during President George W. Bush's presidency, as well as Bush's special assistant for food, agriculture and trade. Conner, who comes off a cattle farm in southern Indiana, began his public policy career as the ag staffer to Sen. Richard Lugar (R, IN), rising to Lugar's chief of staff when he took the gavel of the ag panel.

Former Georgia Gov. Sonny Perdue is also emerging as a top candidate to head USDA and is known to want the job. Perdue, who met with Trump this week in New York, said the president-elect is definitely factoring in to his nominations how much work various individuals did to help him get elected. Perdue, a veterinarian by training, son a farmer, a grain broker, a small business owner, and cousin of sitting Sen. David Perdue (R, GA), was one of Trump's highest profile surrogates in the South.

Other names under consideration include Kansas Gov. Sam Brownback; former Nebraska Gov. Dave Heineman, and former Texas Gov. Rick Perry. A number of Indianans make the list including Mike McCloskey, a major dairy executive in Indiana; Kip Tom, a farmer who ran for the House from Indiana, but lost in the primary; Don Villwock, president of the Indiana Farm Bureau, and Ted McKinney, director of the Indiana Department of Agriculture under Pence. Bruce Rastetter, a major Republican donor in Iowa, is also among those being considered, Arabella said.

As to when a nomination may surface, Roberts said that may not happen until next week. Roberts said Pence was "imprecise" when asked when a nomination could be expected. Roberts and House

Agriculture Secretary Mike Conaway (R, TX) have both offered to act as sounding board's for possible ag secretary nominations.

Who's Been Nominated So Far

President-elect Donald Trump's transition machine continues to crank out nominations, all of which will need to get 51 votes for Senate confirmation. In addition to Oklahoma Attorney General Scott Pruitt to head EPA, the following individuals have received the nod from Trump for various key administration and cabinet posts important to agriculture and agribusiness:

Secretary of Labor: Fast food executive Andy Puzder – his CKE Restaurants owns the Carl's Jr. and Hardees hamburger chains – has been nominated to head the parent department of OSHA. A staunch opponent over time of federal overregulation of the restaurant industry – which he says has cost billions in lost profits and jobs – Puzder will be a key player on immigration reform issues, arguing low-skilled immigrant labor is critical to the U.S. economy, and supported the 2013 Senate comprehensive immigration reform bill.

Secretary of Health & Human Services: Rep. Tim Price (R, GA), who sat on both the House Budget and Ways & Means Committees in the 114th Congress, gets the nod to head the department overseeing U.S. health care, Medicare/Medicaid and FDA, the animal food industry's chief regulator. An orthopedic surgeon by training, he favors replacing the Affordable Care Act (ACA).

Secretary of Transportation: Former Secretary of Labor under President George W. Bush, Elaine Chao has been nominated to head the Department of Transportation (DOT). Having also served as deputy secretary of transportation under President George H.W. Bush, Chao is married to Senate Majority Leader Mitch McConnell (R, KY).

Secretary of Commerce: Billionaire investor and businessman Wilbur Ross was nominated to head the Commerce Department (DOC). Making his money as a "turn-around" specialist with failing companies, Ross was a registered Democrat, but an early Trump supporter and a long-time Trump friend.

Secretary of Homeland Security: Retired General John Kelly, a decorated and respected military leader, has been nominated to head the Department of Homeland Security (DHS). A veteran of Operation Desert Storm and Operation Iraqi Freedom, he's the former commander of the U.S. Southern Command.

Trump Names Business Advisory Council

President-elect Donald Trump, saying it will help him "bring back jobs and make America great again," created this week a group called the President's Strategic and Policy Forum, a business advisory council with some of the biggest names in industry as members.

The chief goals of the council will be to recommend ways to cut regulation which negatively impact business and lowering corporate tax rates.

Members of the council include Blackstone co-founder Steve Schwarzman, General Motors CEO Mary Barra, JP Morgan head Jamie Dimon, Walt Disney CEO Bob Iger, former SEC commissioner and head of Patomak Global Partners Paul Atkins, Cleveland Clinic CEO Toby Cosgrove, BlackRock head Larry Fink, Boston Consulting CEO Rich Lesser, Wal-Mart Stores CEO Doug McMillon, former Boeing president/CEO and chair Jim McNerney, Global Infrastructure Partners Adebayo Ogunlesi, IBM head Ginni Rometty, EY

Chair Mark Weinberger, Kevin Warsh, Hoover Institute and former Federal Reserve board of governors member, GE former CEO Jack Welch, and IHS Markit vice chair Daniel Yergin.

House Approves CR with USDA Disaster Loan Fix, Senators Want Miner Money, Threaten Shutdown

As promised, the House easily approved this week a long-term continuing resolution to keep the federal government operating through the end of April, 2017. However, the deal is hung up in the Senate by Sen. Joseph Manchin (D, WV) and others who have threatened to block the measure and shut down the government unless it carries a long extension of expiring retirement and medical benefits for miners.

The House recessed on passing its CR on 326-96 vote, and it's unlikely Manchin will prevail in his effort if shutting down the federal government two weeks before Christmas is the only option given the current CR on FY2017 spending expires at midnight December 9. The bill currently grants four months of continued health/retirement insurance, but the Democrats want at least a year of medical protections and pension protections. Republicans say the Democrats should be grateful for the four-month provision and that they will not return to the negotiating table over the retirement issue.

Important to President-elect Donald Trump's transition effort is language included in the CR which grants a waiver to Gen. James Mattis, ret., Trump's nominee to head the Department of Defense, from a federal law requiring retired officers to be out of the military for seven years before they can be considered for the secretary of defense job.

Included in the CR is language giving USDA's Farm Service Agency (FSA) more authority to fund emergency loan programs, giving the department new authority to make loans to producers in proportion to demand from the country. The language, supported by nearly all of production agriculture and the Administration, is designed to ensure that all farmers can get assistance loans during the winter and spring when loan demand traditionally peaks. In spring, 2016, USDA ran out of money for direct and guaranteed operating loan programs.

House Democrats, who have for the last several years tried to increase spending at the Commodity Futures Trading Commission (CFTC), said the bill's maintenance of already low FY2016 CFTC spending means the commission may have to furlough employees to stay under budget.

Also tucked into the CR is \$170 million in assistance to rebuilding the Flint, Michigan water system, a move that had sidetracked more than one piece of "must-pass" legislation this fall. Another \$5.8 billion is included in Defense Department funding to maintain the war effort, along with \$4.1 billion for the states to fund disaster relief in the wake of severe weather events. Also funded in the CR are various bills approved separately, including a biomedical research initiative and money to curb opioid use.

Senate Controls Fate of Pending Bills, including WRDA; Others Die Quiet Death

With House approval this week of a four-month continuing resolution (CR) to keep the federal government operating at FY2016 spending levels, the chamber recessed, leaving the fate of several pending bills in Senate hands. That chamber is expected to work through the weekend and possibly on Monday, to not only pass the CR, but finish other major legislation.

Meanwhile, the list of bills which will die – bills for which supporters hoped 11th-hour agreements could be reached – grows. Any introduced legislation on which formal and final action isn't taken by the final bell in the 114th Congress dies, and must be reintroduced in the next Congress.

First up is the Water Resources Development Act (WRDA) – now dubbed the Water Infrastructure Improvement Act (WIIN) – legislation funding 30 federal government construction/maintenance projects as part of the inland waterways system, including the lock-and-dam system critical to grain shippers. The House approved the bill this week, kicking it to the Senate for action.

A “buy America” provision in the bill, which applies to steel and iron used in waterway and drinking water projects, is a temporary program in the House bill, but Senate Democrats what to make it permanent. The bill also carries major watershed “restoration” language important to environmentalists.

However, Sen. Barbara Boxer (D, CA), who’s retiring from Congress, has threatened to block the legislation because it carries House GOP drought program language impacting California that makes Democrats unhappy. Ironically, the 11th-hour drought language Boxer opposes was negotiated between House Majority Leader Kevin McCarthy (R, CA) and Sen. Dianne Feinstein (D, CA).

The so-called comprehensive energy bill, once touted as the poster child for bipartisan cooperation in creating incentives to businesses and governments to conserve energy, has died, according to its chief Senate sponsor Sen. Lisa Murkowski (R, AK), chair of the Senate Energy & Natural Resources Committee. Murkowski blamed the House when Speaker Paul Ryan (R, WI) this week announced there was no time to get a final agreement on the energy package, craft a conference report and get the bill through a final vote in both chambers.

Murkowski said negotiations had been on track until this week. However, she said it quickly became apparent “the House was just done. They stopped negotiating in good faith.” She said she’ll bring the package back in the new Congress, a move insiders contend was the goal of House leadership from the beginning.

Another long-pending reauthorization which died this week was legislation to modernize child nutrition programs at USDA. Sen. Pat Roberts (R, KS), chair of the Senate Agriculture Committee, which had kept the child nutrition bill on life support for months, said, “Today is a day I hoped would not come. I’m very disappointed that the bipartisan, bicameral Child Nutrition Reauthorization negotiations have come to an end for the 114th Congress.”

Observers say the November GOP election sweep undermined Republican desire to negotiate the bill, believing a better package can be achieved in the next Congress. “It is unfortunate that certain parochial interests and the desire for issues rather than solutions were put ahead of the well-being of vulnerable and at-risk populations and the need for reform,” Roberts said.

CFTC Reproposes Position Limits Rule

The Commodity Futures Trading Commission (CFTC) this week voted unanimously to repropose a controversial rulemaking on position limits. The new rulemaking focuses on “implementing limits on speculative futures and swaps positions” as called for by Dodd-Frank, the commission said.

Commission Chair Timothy Massad said the proposed position limits are not unique, aren’t new or untested and “work well.” “While speculators play a necessary and important role in our markets, position limits can prevent the type of excessive speculation by a few large participants that leads to

corners, squeezes and other activities that can distort markets and be unfair to other participants,” Massad said in written statement.

However, Sen. Pat Roberts (R, KS), chair of the Senate Agriculture Committee, said he was glad the CFTC action was a proposal and not a final rule, sentiment shared by his counterpart on the House Agriculture Committee, Rep. Mike Conaway (R, TX).

Roberts said he was encouraged the commission had opted to walk away from finalizing its previous position limits proposed rule. “I’m encouraged the CFTC decided not to make controversial parts of this rule final. With the new administration preparing to hit the ground running and critical issues remaining unresolved, I’m hopeful the CFTC will not take away valuable risk management tools for our farmers, ranchers and end-users. They need more tools – not less,” Roberts said.

Committee ranking member Sen. Debbie Stabenow (D, MI) said she was disappointed the commission had not finalized the previous position limits rulemaking, and said finalizing a new rule must be the commission’s top priority next year.

The CFTC is in transition, Massad said, alluding to the fact a new administration dictates a new rule be proposed rather than “adopting a final rule that the commission would choose not to implement or defend next year.”

Comments will be accepted for 60 days once the proposal is published in the Federal Register. Also repropose for comments is the CFTC’s new definition of a “bona fide hedging position” and exemptions for a bona fide hedging position in physical commodities.