

State Association Weekly Washington Report 2.8.18

Congress Cuts Two-Year Budget Deal, Moves New CR, Repeals Spending Caps, Raises Debt Ceiling

While technically the federal government “shut down” for nearly six hours after the February 8 midnight deadline to approve another continuing resolution (CR) to keep funding flowing passed, but ultimately the Senate voted 71-28 at 2 a.m., and the House followed with a 240-186 vote at 5:30 a.m. to approve a wide-ranging budget/temporary spending package jacking military and non-defense spending by more than \$300 billion over the next two years.

Sen. Rand Paul (R, KY), who opposed the bipartisan budget deal, ignored his party leadership and used Senate procedure to repeatedly block a vote to end debate and move to final consideration. He blocked the bill because Senate Majority Leader Mitch McConnell (R, KY) wouldn't give him a vote on his amendment to keep budget caps on spending and strip from the bill language raising the federal debt ceiling. McConnell allowed no amendments to the overall package.

While Senate and House leadership point to nearly \$100 billion in cuts to other programs to help pay for the budget package, President Trump took shots at the compromise bill because of what he considers unnecessary spending, though he didn't get specific in his criticism. Trump ultimately tweeted he'll sign the bill when it reaches his desk.

It was a fiscal spring cleaning a few months early, as Congress took “irreconcilable” budget and spending challenges, promptly reconciled them, passed a six-week continuing resolution (CR) to keep the government running until March 23, agreed to a \$300-billion-plus two-year budget deal – the Bipartisan Budget Act (BBA) – raised the federal debt ceiling through March, 2019, and made spending caps – the dreaded sequestration – just a memory.

The Senate tucked its fiscal fixes into a \$659.2-billion House bill approved earlier this week funding the Department of Defense through the end of FY2018. The new CR keeps the government open through March in hopes a full \$1.3-trillion omnibus spending package – all 12 department/agency spending bills – can successfully be completed.

Specific to agriculture, the bill does not include a hoped-for fix to the new tax reform law's Sec. 199A glitch that skews grain sales to cooperatives and away from private companies and elevators. While negotiations ran right up to the floor vote deadline this week, *AgriPulse* reports no deal was cut satisfying cooperatives, grain companies/elevators and Senate Democrats. “One of the problems is that co-ops weren't unified on a last-minute deal, splitting between larger and smaller co-op interests,” the on-line newsletter quotes an unidentified Senate source. The National Council of Farmer Cooperatives (NCFC) says it has concerns with the latest proposed fix and the “unintended consequences of disadvantaging farmer co-ops in the marketplace.” NCFC says its offered two proposed solutions, but explained “our understanding is that they are not yet acceptable to the other side.” The National Grain & Feed Assn. (NGFA), reiterating its commitment to finding a fix, told *AgriPulse* that “considerable progress has been made during the last several weeks...toward reaching an equitable solution.”

The bill does include language authorizing cotton growers to participate in the Price Loss Coverage (PLC) income support program, and removes the \$20-million spending cap on the Livestock Gross Margin (LGM) program to the benefit of dairy producers. While the cotton provision is paid for by killing off existing cotton support programs, the dairy provision is expected to cost about \$2 billion. Inclusion of

the dairy and cotton language was a major win for Senate Agriculture Committee Chair Pat Roberts (R, KS) and his House counterpart, Rep. Mike Conaway (R, TX), as it takes off the table two expensive and contentious Farm Bill issues, making a 2018 Farm Bill a bit easier to achieve.

Non-defense discretionary spending goes up \$63 billion in FY2018, and \$68 billion in the FY2019. When coupled with the repeal of sequestration and about \$57 billion in new spending, non-defense programs see an overall \$131 billion increase. Part of that new spending is about \$90 billion in disaster aid for Texas, Florida, Puerto Rico and California, wracked by hurricanes and wildfires. Florida citrus growers will receive \$2.4 billion. About \$2 billion is targeted to help Puerto Rico and the U.S. Virgin Islands to rebuild their power grids. Also included in the non-defense spending increase is \$20 billion for infrastructure rebuilds, and \$6 billion to fight the opioid crisis.

Total defense spending goes up \$700 billion in FY2018, and \$716 billion in FY2019. The bill increases discretionary military spending by \$80 billion and \$85 billion in FY2018-2019, and hikes emergency/overseas contingency funding by \$71 billion and \$69 billion in the same two fiscal years.

Credit for the sweeping budget/spending action goes to McConnell and Minority Leader Charles Schumer (D, NY) who hammered out the compromise deal. House Speaker Paul Ryan (R, WI) spent the week cajoling GOP lawmakers to vote for the package, as the conservative wing of his party seethed. Minority Leader Nancy Pelosi (D, CA) took to the floor for an historic 8-plus-hour speech on just how bad the budget/spending package is because it does not include what Democrats want as fixes to federal immigration laws. However, while she said she'd vote against the bill, she would not influence her party members either way, but the Democrat whip office sent out mixed signals to Democrats running up to the vote. Nevertheless, 79 Democrats voted for the package.

Senator after senator from both sides of the aisle took to the floor before the Senate's final action to explain the bill is a compromise, and how that means neither side of the spending/budget debate got everything they wanted, but that ultimately, "we're better off at the end of the process," said Sen. Patrick Leahy (D, VT).

Budget Deal Includes Sweeteners on Spending, Taxes

In addition to giving cotton growers access to the Price Loss Coverage (PLC) income support program, and jettisoning the spending cap on the Livestock Gross Margin (LGM) insurance program to the benefit of dairy producers, this week's sweeping budget/spending deal includes a number of other "sweeteners" on spending and tax issues.

Most of the unrelated tax and spending inclusions were done to win votes, in part to make either conservative GOP or liberal Democrat lawmakers happy by giving them something they can sell back home as a "win."

An abbreviated list of tax credit extenders was tacked on to the bill after the original list was not included in the overall tax reform package enacted in December. Included was an "extension" of the \$1-per-gallon blenders' tax credit on biodiesel/renewable diesel, but only covering calendar 2017, not the two-year extension retroactive to January 1, 2017, as sought by industry, or the nearly 36 expired tax credits included in a bill authored by Sen. Orrin Hatch (R, UT), chair of the Senate Finance Committee.

Sen. Charles Grassley (R, IA) was not happy, accusing both House and Senate leadership of reneging on a promise to include the two-year version of the extension. Sen. John Thune (R, SD) said the one-year extension of the credit means the issue will resurface as appropriators try and hammer out an FY2018 omnibus spending package. House Ways & Means Committee Chair Kevin Brady (R, TX) said a broad array of extenders will be the subject of hearings in his committee where stakeholders will have to justify the tax benefits and their “relevance in a world where the tax code has changed dramatically.”

While the National Biodiesel Board (NBB) and a number of other biofuel industry associations were equally disappointed, and the action spiked the market for Renewable Identification Numbers (RIN), which refiners can trade in lieu of actual biobased fuel purchases, including ethanol, and blending.

Several changes were made to USDA’s disaster assistance program, retroactive to 2017, including an end to a \$125,000 cap on livestock producer payments under USDA’s Livestock Indemnity Program (LIP), expanding the program to cover cattle sold at lower prices post-natural disaster, and the \$20-million cap on the Emergency Assistance for Livestock, Honey Bees & Farm-raised Fish was eliminated. Tax writers also resurrected the federal credit for maintaining short-line railroads that feed long-haul lines.

Next Up: Immigration Reform Battles

Part of the deal between Senate Majority Leader Mitch McConnell (R, KY) and Minority Leader Charles Schumer (D, NY) that got a two-year budget deal done this week was McConnell’s commitment to give floor time to immigration reform, and next Monday McConnell will make good on that pledge, taking up a House bill as the vehicle for Senate immigration action.

Meanwhile, House Minority Leader Nancy Pelosi (D, CA), just off her historic 8-plus hours on the House floor railing against the lack of immigration reform in the just-enacted budget deal, continues to push Speaker Paul Ryan (R, WI) to follow McConnell’s lead. Ryan says he’ll only bring to the House floor a bill “President Trump will sign.”

For its part, the White House wants the Senate to forge legislation mirroring the president’s “four pillars” of immigration reform, including meeting a March 5 deadline to create a pathway to citizenship for the approximately 1.8 million workers eligible for the administrative Deferred Action for Childhood Arrivals (DACA) protection, adult workers brought into the U.S. illegally as minor children; an end to the visa lottery system, a new limit to chain migration, and money to build Trump’s southern border wall and improve other physical protections on all borders. The plan has critics from both sides of the aisle.

A bipartisan group of lawmakers in both the House and Senate this week failed to come up with an immigration reform compromise the White House will support. This week, Sens. John McCain (R, AZ) and Chris Coons (D, DE) announced they have their own immigration reform bill, but the White House called the bill “a total waste of time” before it was introduced. The McCain/Coons package provides the citizenship process for DACA workers, would increase border security by 2020, but doesn’t mention the president’s wall or other parts of the Trump plan.

McConnell said his process, expected to take almost all of next week, is to move a bill “which will not have underlying immigration text, (but) will have an amendment process that will ensure a level playing field at the outset.”

EPA Finalizes WOTUS Repeal Rule; Ag Seeks Relief, States File Against Administration Action

EPA and the U.S. Army Corps of Engineers this week signed off on and published their final rule delaying implementation of the “waters of the U.S. (WOTUS)” final rule for two years, but New York is leading a group of 11 states and the District of Columbia seeking to challenge the Trump administration action in federal court. It’s expected the states will be joined by at least three environmental groups.

The EPA action halts the Obama era final rule while the thorny issue of repealing the existing rule and replacing it with a new rule goes on. In publishing the rule, the two federal agencies did not implement the conventional 30-day waiting period between publication and effective date which has riled a number of states. The action is designed to ensure the Obama rule does not go into effect while EPA rewrites it, a process the states contend is illegal.

To that end, a coalition of farm and livestock producer groups strongly opposed to WOTUS, filed for a preliminary injunction in the U.S. District Court for the Southern District of Texas seeking a nationwide stay on the Obama rule. Their concern is that through legal maneuvering and given the history and future of court action on the WOTUS rule, the rule could go into effect in some states and not others, creating “paralyzing uncertainty” and that national relief is needed. Some states and environmental groups are opposing the agriculture filing.

“The risk that the WOTUS rule might come in and out of effect repeatedly over the coming years as new regulations are promulgated and new lawsuits are brought represents a manifest irreparable harm not only to the states, but also to private landowners and business owners,” the ag group said in its filing. The ag groups also worry about citizen enforcement suits that could be brought against agriculture, suits which if successful carry heavy civil and criminal penalties.

The state action contends EPA Administrator Scott Pruitt violated due process and ignored legal obligations to protect the nation’s waters when he began the process of WOTUS repeal and replace. “Make no mistake,” said New York Attorney General Eric Schneiderman. “Abandoning the Clean Water Rule will mean pollution, flooding and harm to fish and wildlife in New York and across the country – undermining decades of work to protect and enhance our water resources.”

Grassley Unleashes on Cruz, Perdue in RFS Battles; Northey Nomination Still Hostage

Both Sen. Ted Cruz (R, TX) and Agriculture Secretary Sonny Perdue came in for heavy criticism from Sen. Charles Grassley (R, IA) this week over Cruz’s refusal to remove his hold on a key USDA executive nominee and Perdue’s alleged failure to stand up for ethanol in what Grassley sees as an escalating war against the Renewable Fuel Standard (RFS), and ethanol in particular.

The Grassley-Cruz bout spilled on to the Senate floor this week when Grassley filed a unanimous consent motion to move the nomination of former Iowa Agriculture Secretary Bill Northey to a vote to be USDA undersecretary for farm production and conservation. Cruz objected, refusing to lift the hold he’s had on Northey’s nomination since last October.

The issue has little to do with Northey, whose new job has nothing to do with alternative fuels, and everything to do with Cruz’s contention on behalf of home state petroleum interests that the RFS, and by extension the Renewable Identification Number (RIN) markets, because of their complexity and cost

threaten the livelihoods of small and medium-sized refiners. Cruz said without legislative fixes, the RFS/RIN issue “threatens tens, if not hundreds of thousands” of refinery jobs, most in Texas.

Grassley says Cruz is wrong, and that a study done by his staff shows economic threats to small refinery jobs are the result of other market forces, not the RFS. Grassley got strong support in his bid to free Northey’s nomination from Sen. Joni Ernst (R, IA), as well as Sen. Debbie Stabenow (D, MI), ranking member of the Senate Agriculture Committee, and Sen. Amy Klobuchar (D, MN), committee member, who both called on Cruz to get out Northey’s way. Stabenow urged Cruz to at least “move to a different debate” so Northey can go to work for farmers and ranchers, particularly when it comes to disaster recovery.

Senate Agriculture Committee Chair Pat Roberts (R, KS) has had several long discussions with Cruz, and if Cruz continues to push for a “White House summit” on fuel policy, “what they want is not possible.”

For his part, Cruz demanded and got one meeting with the White House and EPA to talk RFS after EPA Administrator Scott Pruitt, in response to Grassley, Ernst and other ethanol state senators, received formal written assurances from the agency on a host of issues, including the president’s support for ethanol and the RFS. The president told the assembled lawmakers to negotiate a “win-win” compromise, and when that effort failed, the senators put the job of finding an RFS “fix” in the hands of industry. Cruz contends ethanol interests refuse to negotiate, and it’s been 48 days since the two sides met. “On substance, there is a win-win here. I want a win for blue-collar refinery workers and I want a win for Iowa corn farmers,” Cruz said.

In his pursuit of administration support, Grassley called on Perdue to be a stronger champion for ethanol and the RFS given Iowan Northey won’t get to work at USDA if Cruz has anything to say about it.

“What I think we need in the Department of Agriculture is a pro-ethanol person like Vilsack was,” Grassley told reporters, referring to Perdue’s predecessor, Tom Vilsack, now president of the U.S. Dairy Export Council. (USDEC). One report quotes Grassley saying Perdue should be spending more time cheerleading for biofuels “instead of screwing around with the RFS.” Grassley has said over time he’s skeptical about Pruitt and Perdue’s agreement with Trump’s support for the RFS and ethanol.

For his part, Perdue told *Politico*, “It’s interesting that Sen. Grassley would have that opinion since I haven’t had a conversation with him about it since I stood on a hay truck in Nevada, Iowa, and expressed strong support for the RFS.”

Trade Notes

China Starts U.S. Sorghum Anti-Dumping, Countervailing Duties Investigation – With China representing about 40% of the U.S. sorghum industry’s market, word this week that China’s Commerce Ministry has begun an anti-dumping/countervailing duties investigation into U.S. sorghum trade and even the possibility of tariffs is worrying to producers, but the National Sorghum Producers (NSP) says it’s willing to work with the Chinese along with other industry players. “U.S. sorghum farmers do not dump our products into China or elsewhere and our products are not unfairly subsidized,” NSP said this week. Meanwhile, Agriculture Secretary Sonny Perdue brought perspective to the Chinese announcement by telling the House Agriculture Committee this week the U.S. needs to prepare for Chinese retaliation for White House recent actions to put tariffs on U.S. imports of aluminum, solar cells and washing machines from China. While the Chinese government says its investigation and the Trump

actions are unrelated, the Chinese investigation shows “how fragile and sensitive the ag economy and commodity prices are to trade disruptions,” Perdue said, urging care be taken as the situation moves forward. “Agriculture is usually the tip of the spear of retaliatory measures.” The Chinese study could take more than a year.

Perdue Sees NAFTA Deal by December; Canada Calls U.S. Proposals “Unconventional” – Ever the optimist, Agriculture Secretary Sonny Perdue this week told the House Agriculture Committee he thinks the U.S., Mexico and Canada will come up with NAFTA 2.0 by the end of 2018. “Once we get Mexican politics out of the way, I think we have a deal,” he said, referring to this summer’s Mexican presidential and national elections. In fact, Perdue is more optimistic about NAFTA given the success in dealing with Mexico, he said. Canadian Foreign Minister Chrysta Freeland said this week that U.S. “unconventional proposals” are slowing down NAFTA progress, even as she told a Canadian parliament committee about Canada’s “creative ideas” floated at the tripartite talks. Meanwhile, U.S. Special Trade Representative (USTR) Robert Lighthizer dangled for reporters the notion of a U.S.-Mexico NAFTA deal if Canada and the U.S. continue to lock up over dairy, automobiles and dispute resolution. Lighthizer later restated the U.S. commitment to a three-national NAFTA 2.0. The likelihood of a U.S.-Mexico deal is clouded by heavy pressure on U.S. negotiators by some in Congress to force labor reforms and environmental concessions.

Environmental Developments

Farmers Want Emissions Exemption – U.S. farmers want to be formally exempted from EPA rules on reporting hazardous emissions that kick in May 1. Two farmer witnesses told the Senate Environment & Public Works Committee this week that agriculture should not have to report 24-hour emissions of chemicals, including ammonia and hydrogen sulfide, as required by the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) and its cousin, the Emergency Planning & Community Right-to-Know Act (EPCRA). The American Farm Bureau Federation (AFBF) said the emissions reporting requirement recently reinstated after years of administrative exemption represents “a huge liability issue.” “We have no way of measuring emissions. We’d have to hire some expert, then the government may not agree with that expert, and make us hire another one, spending thousands of dollars we can’t afford,” said Zippy Duvall, AFBF president. Without accurate emissions measurements, farmers fear heavy fines, said representatives of the National Pork Producers Council (NPPC) and the Public Lands Council (PLC), an affiliate of the National Cattlemen’s Beef Assn. (NCBA). EPA admits there is no “generally accepted methodology” for estimating chemical emissions from farms, but says the agency is working on such methodology.

White House Kills CEQ Nomination – The White House this week formally agreed to withdraw the nomination of Kathleen Hartnett White to be chair of the president’s Council on Environmental Quality (CEQ). “I’ve been in this process for more than a year,” White said. Asking President Trump to withdraw her name, “is in the best interest of facilitating confirmation of the President’s nominees, as well as the needs of my family and work.” The move comes after Senate Environment & Public Works Committee ranking member Sen. Tom Carper (D, DE) called her confirmation hearing appearance “one of the worst” he’d seen in his tenure, and as GOP lawmakers began registering concerns over her qualifications in the wake of public statements over climate change and other controversial issues that are at odds with statements made in books and articles she’s written.

“Closed Mind” Enough for Clean Power Recusal for Pruitt -- Because of his “closed mind” when it comes to climate change, four Democrat senators this week called on EPA Administrator Scott Pruitt to recuse himself from agency actions to repeal and rewrite the so-called clean power plan (CPP) rules to limit carbon emissions from new and existing power plants. In comments to EPA’s public docket on how to rewrite the emissions rule, Sens. Sheldon Whitehouse (D, RI), Jeff Merkley (D, OR), Brian Schatz (D, HI) and Ed Markey (D, MA) said Pruitt shouldn’t lead the repeal/replace action of the agency because of his history of filing lawsuits against the Obama EPA while he was Oklahoma attorney general. The lawmakers refer to Pruitt’s “inalterably closed mind” on the rulemaking, citing his financial ties to the fossil fuel industry, his role as Oklahoma attorney general, numerous public statements he’s made denouncing the previous administration’s policy, and his “casting doubt on climate science.”

University Professors Set Up Global Warming Coalition – Led by University of California (UC) President and former Clinton cabinet member Janet Napolitano, about a dozen university presidents this week announced they’re forming a new coalition to fight global warming locally. The group, to be called the University Climate Change Coalition (UC3), comes after commitments by academic institutions to meet the goals of the Paris Climate Accord. In addition to the UC system, institutions involved in UC3 are Arizona State University, the California Institute of Technology, the Ohio State University, the State University of New York system, the University of Colorado Boulder, the University of Maryland College Park, the University of New Mexico, and the University of Washington. Two Mexican and two Canadian universities are also expected to participate.

House Lawmakers Seek ELD Delay, Exemptions

Certain truckers, including those who transport livestock, should enjoy a delay or exemption complying with new electronic logging device (ELD) rules, says a House lawmaker. While most of the trucking industry saw the ELD rule go into effect last December, livestock groups got a 90-day waiver.

Secretary of Transportation Elaine Chao received a letter from Reps. Ted Yoho (R, FL) seeking a long-term waiver from the new ELD requirements for livestock haulers. “I would ask that the department issue an exemption for livestock haulers for a period of five years, but no less than two years, which would allow stakeholders and policymakers to make further adjustments to these requirements,” Yoho said in his letter.

Meanwhile, Rep. Steve King (R, IA) and Rep. Brian Babin (R, TX), leading a list of 24 House members, sent a letter to the Federal Motor Carrier Safety Administration (FMCSA), supporting an exemption for small truckers with “exemplary safety records.”

“I continue to believe the ELD mandate should be delayed for all sectors so we can better understand its impact, particularly on small trucking companies and those that haul live animals,” said Rep. Kristi Noem (R, SD), a letter signer. “As the DOT begins examining the numerous applications for exemptions and waivers, it’s important we weigh into that process.” Noem has also cosponsored legislation to delay the ELD requirements for two years to allow time for impact studies.

2018 Net Farm Income Dropping Again

2018 net farm income is projected to be the lowest in 12 years, according to USDA’s Economic Research Service (ERS), as income drops nearly 7% to \$59.5 billion. The drop in net farm income is generally attributed to a \$3.5-billion increase in cost of production, and a \$2.1-billion drop in government

payments, USDA said. Average net farm cash income is predicted to be \$93,200, the fourth consecutive drop since 2014, and the lowest since 2011. Cash receipts for all commodities are expected to be off \$2 billion, according to the first forecast released by the department for 2018.