

State Association Weekly Washington Report 10.19.17

Senate Passes Budget Resolution with House Fixes, One Step Closer to Tax Reform

Senate Majority Leader Mitch McConnell (R, KY) sported a rare smile late this week as the Senate approved on a 51-49 party line vote the GOP-crafted FY2018 budget resolution, moving Congress one step closer to enacting some form of federal tax reform/tax cuts by the end of the year.

The final vote came after McConnell shepherded action on over 305 amendments filed on the resolution – a process dubbed a “vote-a-rama” – axing some amendments, allowing sponsors to talk about others, and permitting votes on just a handful of proposed changes. Ultimately, any amendments adopted are effectively political window dressing as the resolution has no force of law and President Trump is not required to sign it.

No Democrat voted for the measure, and Minority Leader Charles Schumer (D, NY) hammered on the package for adding to the deficit, predicting the ultimate tax reform measure will cut Medicare, Medicaid and other entitlement programs, while raising taxes on the middle class.

McConnell said during floor consideration, “It (the resolution) clears the way for committees to continue their critical work to spur steady economic growth while providing the legislative tools to advance tax reform.” Tax reform, he said, is “the single most important action we can take today to help our economy reach its full potential.

Neither chamber has a draft tax reform bill in hand, but House Speaker Paul Ryan (R, WI) continues to talk about a vote on a House package in early November. As soon as the resolution is approved by the House, the Ways & Means Committee will begin marking up its tax reform bill in order to get it to the floor quickly. However, both House and Senate tax writing committees need to resolve several major disputes over which tax credits, deductions, etc., will disappear as part of the formula for paying for tax reform.

The Senate resolution included last-minute procedural and technical changes found in the House-approved version of the budget plan, a move that will expedite final budget resolution approval. Because the Senate action is essentially a technical amendment to the House-passed version of the budget resolution, it provides the House with a single set of “instructions,” namely to craft a \$1.5-trillion tax reform bill that will move as part of budget reconciliation. This allows the Senate to approve the tax package on a simple majority vote and prohibits a Democrat filibuster to block the GOP tax plan.

The Senate resolution allows for \$1.5-trillion in tax cuts, a move that effectively would add that same amount to the deficit. The plan would maintain FY2017 spending for one year, and then cut nondefense spending in successive years to achieve a \$106-billion cut by 2027 – achieved by allowing drilling in the Alaskan Arctic National Wildlife Refuge – and allowing defense spending to increase without spending offsets to \$684 billion over the next 10 years. Medicare takes a \$473-billion cut over the same time frame, while Medicaid is reduced \$1 trillion. Both of those moves, however, would require additional legislation to take effect.

The next step is for the House to decide if it will set aside its already-approved budget resolution and take up the Senate version, shortcircuiting the process of getting to tax reform. If the House sticks with its bill, then the two chambers will to reconcile the two resolutions into a single package that sets

discretionary spending levels. Action to get to this endpoint must happen before December 8 when the current continuing resolution (CR) expires, or Congress would have to extend the CR.

Gloves Come Off at 4th Round of NAFTA Talks

The U.S. lobbed ugly issue after ugly issue onto the table at the fourth round of NAFTA renegotiations this week in suburban Washington, DC, only to have Canada and Mexico reject most proposals, leaving the U.S. chief negotiator to declare his “surprise and disappointment.”

So poorly did the negotiations go this week, media headlines declaring “Is NAFTA Dead?” and “The Death of NAFTA” or variations thereof, began appearing. Even a White House press officer responded to a question about the death of NAFTA with a “No, not yet...and if we can’t get there, we’ll let you know what the changes are.”

However, none of the negotiating principals declared an outcome so dire, but did say they’ve pushed back round five of the talks until November 17-21 in Mexico City, and started pegging out dates during the first quarter of 2018, action they hoped they wouldn’t have to take. The three nation’s also decided to allow 30-day periods for study between negotiating rounds. The mutual goal was to have a completed deal by the end of the year; the new goal is to have a deal by the end of March, 2018.

Apparent U.S. consternation centers on five highly contentious issues, including Canadian dairy imports and pricing; a U.S. demand that regional produce growers in the U.S. have an easier time filing anti-dumping complaints; a government-industry dispute resolution provision the U.S. wants to scrap; U.S. sourcing for things like auto parts and restrictions on eligibility for U.S. government contracts, and a five-year sunset provision both Canada and Mexico rejected before it was even put on the table.

The National Milk Producers Federation (NMPF) said it was generally pleased with the U.S. position on dairy market access put forward by U.S. negotiators; Canadian dairy producers strongly opposed the proposal, contending it equaled 10 times the market access Canada agreed to with the U.S. under the Trans-Pacific Partnership (TPP). One part of the U.S. position proposal would eliminate tariffs on all dairy, poultry and egg imports over 10 years; the second part would call for reversing and making more transparent the Canadian government’s price support system for dairy, which it contends stabilizes producer income by limiting supply, imports and setting prices.

The Canadian Teamsters Union, calling the U.S. position “a violent assault on Canada’s dairy supply management system,” told the media this week that the U.S.-Canadian dairy issue is so contentious it could bring down the entire treaty. “An unstoppable force is meeting an immovable object,” a union official said.

Robert Lighthizer, U.S. Special Trade Representative (USTR), told a post-session press conference, “Frankly, I’m surprised and disappointed by the resistance to change from our negotiating partners from both countries.” Later, Lighthizer explained he’s not focusing on the “what-if” of failed negotiations, but rather “Everybody has to give up a little bit of candy. That’s really what this is about.”

U.S. proposals were called “unorthodox” by Canada, and alleged to be likely in violation of World Trade Organization (WTO) trading rules. Mexican Economic Minister Ildefonso Guajardo reiterated his country has limits to what it can and cannot accept, and Canadian Foreign Minister Chrystia Freeland criticized the U.S.’s “winner-take-all mindset.” President Trump said last week he “wont’ be allowing” a

continuation of “massive trade deficits;” Lighthizer said this week, “We have seen no indication that our partners are willing to make any changes that will result in a rebalancing.” Freeland has tried to convince Lighthizer his dogged pursuit of eliminating trade deficits with Canada and Mexico is no measurement of success.

“New proposals have created challenges and ministers discussed the significant conceptual gaps among the parties. Ministers have called upon negotiators to explore creative ways to bridge these gaps,” the three principals said in what’s considered the harshest joint statement so far during the talks.

The Battle Over RFS Escalates, EPA Sends Assurances

All it took was EPA Administrator Scott Pruitt to call for comments on a possible plan to severely reduce the 2018 and 2019 Renewable Fuel Standard (RFS) for biodiesel and other “advanced biofuels,” and the wrath of seven GOP Senators came down on him and his agency, along with the ire of several Democrats, not to mention the entire alternative fuels industry.

By the end of the week, however, the fracas seems to have calmed a bit with a call from President Trump to the governor of Iowa, and a letter to certain GOP Senators from EPA Administrator Scott Pruitt.

Shortly after Pruitt’s agency published its “notice of data availability (NODA)” on the biodiesel RFS, Sen. Charles Grassley (R, IA), the acknowledged congressional champion for biobased alternative fuels, called for Pruitt to meet with him and other equally concerned Senators to explain the agency’s action, as well as the Iowa lawmaker’s concern Trump was going back on campaign pledges to support the RFS. And as those battle lines were drawn, the Senate Environment & Public Works Committee unexpectedly postponed a scheduled confirmation vote this week on several EPA nominees until an unspecified date in the future.

Grassley hit Pruitt with a letter signed by 34 bipartisan members of the Senate, outlining in detail their concerns with not only RFS issue, but a proposal out of EPA to allow ethanol exports to count toward mandated RFS volumes, a move critics contend would spur imports, drop domestic production and skew the price and market for Renewable Identification Numbers (RINs). That letter was quickly followed by a similar correspondence to Pruitt from the governors of Iowa, South Dakota, Missouri, Kansas and Nebraska.

Pruitt went to Capitol Hill this week and spent an hour with Grassley and Sens. Joni Ernst (R, IA), Pat Roberts (R, KS), Deb Fischer (R, NE), Ben Sasse (R, NE), John Thune (R, SD) and Mike Rounds (R, SD). While they received no definite commitment on the RFS issue at that time, most left the meeting reassured Pruitt understood their concerns. Pruitt also indicated he’s looking favorably at a separate petition to allow E15 to be sold year-around and not just during the summer.

In the meantime, President Trump and Pruitt both called Gov. Kim Reynolds of Iowa to reiterate administration support for ethanol, biodiesel and the renewable fuels broadly. Reynolds told the media the conversations were “constructive” and “positive.”

In a follow-up letter to the seven Senators, Pruitt assured the lawmakers he is well aware “my responsibility...is to faithfully administer the laws passed by the U.S. Congress. This agency must and will

respect those laws.” His statement echoes assurances he gave Senators prior to and during his confirmation hearing process when asked about the future of the RFS.

Pruitt assured the Senators EPA will meet its statutory deadline of November 30, to publish its final RFS/Renewable Volume Obligation (RVO). That proposal would require 19.24 billion gallons of biofuels to be blended into qualifying fuels, with 15 billion of that met by using “conventional or corn-based ethanol” and the remaining 4.24 billion met by blending so-called “advanced biofuels,” including 238 million gallons of cellulosic ethanol and at least 2.1 billion of biodiesel/renewable diesel.

He said it would be inappropriate for him to prejudge the ongoing RFS/RVO process, but “preliminary analysis suggests that all of the final RVOs should be set at amounts that equal to or greater than the proposed amounts, including at least 2.1 billion gallons for biomass-based diesel (biodiesel/renewable diesel) in 2018 and 2019.”

On the E15 petition, Pruitt wrote he’s still not sure his agency has the legal authority to issue a formal waiver of the current seasonal sales restriction, but said he wants to work with Congress to either clarify his agency’s authority on the issue or receive legal authority to issue the waiver. He also told the lawmakers he will not pursue regulations relative to the notion of biofuel exports qualifying as part of the RFS – despite a letter this week from four major refiners – and he’s decided to not grant a petition to shift the “point of obligation” on RFS blending, a decision that will be finalized within 30 days.

Senate Ag Approves Ibach, Northey; Leg Need to Clarify Northey’s Title, Job

The Senate Agriculture Committee this week approved the nominations of Nebraska Director of Agriculture Greg Ibach to be under secretary for marketing and regulatory programs, and long-time Iowa Secretary of Agriculture Bill Northey to under secretary for... – well, for what is kind of up in the air right now.

Northey was nominated by President Trump to be USDA under secretary for farm production and conservation, a title which reflects Agriculture Secretary Sonny Perdue’s recently announced reorganization of USDA program areas. However, at his confirmation hearing, his prospective job was listed by the pre-reorganization title of under secretary for farm and foreign agricultural services. The problem is the Senate can only confirm an individual for the job legally listed, and not a job reinvented and retitled, so the Senate would have to start a new confirmation process.

Senate Agriculture Committee Chair Pat Roberts (R, KS) and ranking panel member Sen. Debbie Stabenow (D, MI) are not about to start at square one on Northey’s nomination. They wrote to Perdue this week to tell him that Northey’s program area will be curtailed a bit for a while, but “we commit to working with the department to advance legislation which provides clarity about the titles of the undersecretaries and their positions and duties at USDA.” Perdue said he’s unconcerned about “nomenclature and titles” and just wants Northey working as soon as possible.

After the full Senate confirms Northey and Ibach – which is expected – Northey will be working a limited portfolio of domestic farm programs until the Roberts-Stabenow fix is completed. Under Secretary for Trade and Foreign Agriculture Ted McKinney, already in place at USDA, will handle the “foreign agriculture” program area.

Clovis, Valen May Get Confirmation Hearing Next Week

The nominations of Dr. Sam Clovis to be USDA under secretary for research, education and economics (REE) – the so-called “chief scientist” job – and Stephen Valen to be USDA general counsel may get a hearing next week if Senate Agriculture Committee Chair Pat Roberts (R, KS) can make the schedule work.

Roberts told reporters after the committee approved the nominations of Greg Ibach and Bill Northey to their respective under secretary jobs that it’s his “hope” to pull off the hearing next week. He said all of Clovis’ paperwork is in hand, and he’s planning to meet with Clovis and Valen soon.

Clovis still faces an uphill battle for confirmation given past statements while a private citizen on such issues as race, women’s and gay rights, federal crop insurance and the Renewable Fuel Standard (RFS). Sen. Debbie Stabenow (D, MI), panel ranking member, remains opposed to the Clovis nomination, contending he’s not qualified for the job. Senate Minority Leader Charles Schumer (D, NY) has called Clovis “wildly unqualified” for the chief scientist role.

FDA Issues Guidances on Feed Industry FSMA, Preventive Controls, CGMPs

Two guidance documents to help animal food makers understand their role under the Food Safety Modernization Act (FSMA) preventive controls rule, and whether a company is subject to new Current Good Manufacturing Practices (CGMPs) promulgated under FSMA were released this week by FDA.

Registered facilities wishing to access the guidance announcement with links to specific documents, should go to <https://www.fda.gov/Food/NewsEvents/ConstituentUpdates/ucm580606.htm>.

The first guidance is designed to help companies figure out if they’re subject to the new CGMPs under the preventive controls rule for animal foods, and “provides explanation and recommendations for meeting CGMP requirements,” FDA said. The guidance document includes a self-assessment tool that facilities can use to figure out if they’re supposed to be compliant with CGMPs.

The second guidance is a draft document discussing the applicability of “solely engaged” exemptions in the preventive controls rules for both animal food and human food. It explains when facilities are exempt from CGMPs or preventive control requirements because they qualify as “solely engaged” in certain activities. It also explains when exemption don’t apply. These exemptions relate to the “holding or transportation of raw agricultural commodities, the storage of raw agriculture commodities (other than fruits and vegetables), the storage of unexposed packaged food and other activities tied to the preparation of nuts and cotton.

The agency reminded industry that covered large and small businesses are now required to be in compliance with the animal food CGMP requirements, with very small businesses granted more time to comply. Large animal food producers are also now required to comply with preventive controls.

“Sue and Settle” Targeted by EPA

“The days of litigation by regulation are over,” said EPA Administrator Scott Pruitt this week, announcing his agency is pledging to crack down on various activist groups which sue the agency in hopes of getting a settlement that reflects their regulatory goals.

The bottom line on EPA’s announcement is that the agency will post all lawsuits online, and formally reach out to affected states, industries and other stakeholders to get input on any potential settlement.

Pruitt said the agency is trying to be more transparent when it's engaged in settling lawsuits with environmentalists and others. "We will no longer go behind closed door and use consent decrees and settlement agreements to resolve lawsuits filed against the agency by special interest groups where doing so would circumvent the regulatory process set forth by Congress," Pruitt said. He added the agency is also targeting attorneys' fees paid to litigants.

Regional Conservation Partnerships Program to Get Boost from Stabenow-Ernst Bill

New legislation to boost the Regional Conservation Partnerships Program (RCPP) by expanding its resources, increasing options available to producers and upping reporting requirements was introduced this week by Senate Agriculture Committee ranking member Sen. Debbie Stabenow (D, MI) and panel member Sen. Joni Ernst (R, IA).

The two lawmakers said they're trying to expand the RCPP's impact by "bolstering resources." Created in the 2014 Farm Bill, the program provides funds and technical assistance to participating farmers, conservation groups and others to develop and implement within a certain region plans that are tailored to local environmental needs. Iowa and the Great Lakes area have seen some success with the program in improving water quality, the two Senators said.

The bill eliminates RCPP requirements that projects operate only through existing USDA conservation projects, and allows participants the flexibility to define what combination of actions will be most effective to address local resource challenges. The bill streamlines farmer contracts, increases the amount of USDA conservation funding to 20% of total spending, up from the current 7%, and requires participants to report on project success or failure.

"This initiative is one of the largest commitments ever made to protecting our land and water, and is one of the biggest Farm Bill success stories in Michigan, and all across the country," Stabenow said in a joint statement with Ernst. "Businesses, non-profits and conservation leaders are working alongside farmers at the local level to improve water quality in our Great Lakes and create new habitats for hunting and fishing. This new bill incorporates ideas we've heard from current participants to pave the way for even more innovative conservation work."

"Our farmers and producers have an innate understanding of how to best care for the land they rely on to feed and fuel our world," said Ernst. "As we have seen in Iowa, the RCPP is a successful and cost-effective approach to encourage voluntary and proactive conservation. Such success makes it critically important to further develop the RCPP in order to continue incentivizing rural and urban partnerships, and allow greater flexibility in their efforts to improve water quality and soil health."

House Lawmakers Push Trump to Modernize Biotech Regulation

President Trump needs to take the Obama administration plan for reworking federal biotechnology regulation of plants and animals and make it workable for new and emerging technologies, said 80 House members this week.

The Obama plan didn't quite cut it, the lawmakers said, calling it a "good first step," in a letter sent to FDA Commissioner Scott Gottlieb, EPA Administrator Scott Pruitt and Agriculture Secretary Sonny Perdue. However, proposed rules and active policies contradict each other, confusing trading partners.

"We're concerned that if the administration does not quickly develop a uniform position on biotechnology in agriculture, including gene editing, we see an unworkable patchwork of international regulations emerge that will effectively further suppress American innovation and the solutions that come with it," the group wrote.

The bipartisan group, led by Reps. Neal Dunn (R, FL) and Jimmy Panetta (D, CA) said the administration should use the Interagency Task Force on Agriculture and Rural Prosperity, consult with trading partners and determine how best to update federal rules and guidances so they are in agreement and actually spur innovation.

Major European Glyphosate Actions Coming Next Week; Farmers Threaten to Sue

The fate of glyphosate in the European Union (EU) will be much clearer – it's hoped – next week when European Parliament and a key European Commission committee vote on whether to extend the weedkillers legal status for 10 years, or phase it out of EU use over the next three years.

Europe has a December 15 deadline to act on glyphosate's legal status. Early next week the full Parliament will vote on what to do with the world's most widely used weedkiller. The next day, the Commission's Standing Committee on Plants, Animals, Food & Feed will vote on whether to renew glyphosate for a decade. However, a negative, but mainly symbolic signal was sent this week, when the Parliament's Environment, Public Health & Food Safety Committee voted to phase out the chemical over three years.

Meanwhile, European farmers' unions are threatening to sue the Commission in the European Court of Justice if it doesn't meet its December deadline. The farmers say they're tired of the uncertainty the political debate over glyphosate is causing.

While environmental groups contend glyphosate is a carcinogen, and the chemical is the most non-selective herbicide on the market causing "direct and indirect impacts on the environment and the ecosystem." Supporters of the chemical say the science shows glyphosate is safe and that if Europe phases it out, producers will suffer major production, quality and wage losses because "there is no other product out there in terms of what it (glyphosate) does so cheaply," according to one report. Without glyphosate, farming in Europe becomes "a lot more mechanical and labor intensive."

In the U.S., a San Francisco judge is expected within the next month to rule on whether there is enough evidence of glyphosate's carcinogenicity to take a legal challenge to trial.