Policy Alert

Lame Duck Update

November 19, 2010

Akin Gump Strauss Hauer & Feld LLP is pleased to offer the first in a series of updates that will provide an overview of activities in the lame duck congressional session. We will provide these updates periodically to review legislative activity and activities to organize for the 112th Congress, which will convene on January 5.

Leadership Elections: Some New Faces—and Some Not So New

The incoming House Republican majority formally selected their leadership team for the 112th Congress. Rep. John Boehner (R-OH) will serve as speaker of the House of Representatives. Others elected to leadership roles include Rep. Eric Cantor (R-VA), majority leader; Rep. Kevin McCarthy (R-CA), majority whip; Rep. Jeb Hensarling (R-TX), Conference chairman; and Rep. Cathy McMorris Rodgers (R-WA), Conference vice chairman. Rep. Tom Price (R-GA) was elected chair of the Republican Policy Committee, and Rep. John Carter (R-TX) was elected Conference secretary. In an effort to respond to the historic number of members comprising the “freshman” class, the leadership appointed two representatives from that class to participate in leadership: Rep. Kristi Noem (R-SD) and Rep. Tim Scott (R-SC).

Democrats in the House will keep their leadership team in place, although in different roles: Rep. Nancy Pelosi (D-CA), will serve as the Democratic leader; and Rep. Steny Hoyer (D-MD) as Democratic whip. A compromise was reached to allow the current whip, Rep. Jim Clyburn (D-SC), to continue serving in leadership in a still-to-be-defined capacity of “assistant leader.” Other members of the leadership include Rep. John Larson (D-CT), caucus chairman, and Rep. Xavier Becerra (D-CA), caucus vice chairman.

In the Senate, the Democratic majority and Republican minority leadership teams were re-elected in their entirety. Sen. Harry Reid (D-NV) will continue as majority leader, and Sen. Richard Durbin (D-IL) as majority whip. Sen. Charles Schumer (D-NY) was re-elected as vice chairman of the Democratic Conference and chairman of the Democratic Policy Committee, but was given an expanded role whereby he will coordinate the policy and messaging functions of the Conference. Other members of the Senate Democratic leadership team include Sen. Patty Murray (D-WA), secretary of the Conference; Sen. Debbie Stabenow (D-MI), vice chairman of the Democratic Policy Committee; and Sen. Mark Begich (D-AK), chair of the Steering and Outreach Committee.

The Republican Senate leadership team will include Sen. Mitch McConnell (R-KY), Republican leader; Sen. Jon Kyl (R-AZ), Republican whip; Sen. Lamar Alexander (R-TN), Conference chairman; Sen. John Barrasso (R-WY), Conference vice chairman; and Sen. John Thune (R-SC), Chairman of the Republican Policy Committee.

Republicans Adopt Earmark Moratorium

Republicans in both the House and the Senate have adopted a two-year moratorium on “earmarks,” broadly defined to include congressionally directed spending as well as tax and tariff provisions of limited benefit. While the resolutions are nonbinding, the Republicans controlling the House will, in all likelihood, be able to enforce this moratorium in that chamber. A different picture is emerging in the Senate, where the Democratic majority has largely dismissed the Republican move to voluntarily forgo earmark requests. Given this posture by Republicans in both chambers, it is unclear whether Congress will be able to pass the outstanding
FY10 appropriations bills during the lame duck session, or whether a short-term continuing resolution (CR) will be necessary to fund the government past December 3 when the current CR expires.

**Legislative Agenda**

Most of the focus this week was on leadership and organizing activities. The Senate, however, debated food safety legislation and is poised to continue consideration of the legislation when they return. The House and Senate have recessed for the Thanksgiving holiday and will return on November 29. Congressional leaders from both parties will meet with President Obama on November 30 to discuss the path forward on several key issues that may be addressed during the remainder of the lame duck session, including—

- extension of the 2001/03 tax cuts
- the “Doc Fix” to address the automatic 23 percent cut in Medicare reimbursement rates for physicians that goes into effect December 1
- FY10 spending bills or a short-term CR
- reauthorization of the Federal Aviation Administration
- extension of the surface transportation authorization.

**Committee Leadership**

Parties in both chambers will use the remaining legislative calendar to continue organizing for the 112th Congress. Leadership positions on a number of key committees will be finalized in early December, including—

**House**

- Appropriations – Rep. Jerry Lewis (R-CA), who is term-limited by Republican conference rules, is seeking a waiver to continue as chairman. If he is unsuccessful, the gavel will likely pass to Rep. Hal Rogers (R-KY). Rep. Norm Dicks (D-WA) will serve as ranking member for the Democrats.
- Energy and Commerce – Rep. Joe Barton (R-TX) is also seeking a waiver to serve as chairman but Rep. Fred Upton (R-MI) is also seeking the post.
- Government Reform and Oversight – Rep. Darrell Issa (R-CA) will chair this committee in the next Congress. It is not clear who will serve as ranking member for the Democrats. Current Chairman Ed Towns (D-NY) is expected to be challenged by former presidential candidate Rep. Dennis Kucinich (D-OH).
- Resources – Rep. Doc Hastings (R-WA) will chair the committee, and Rep. Ed Markey (D-MA) has indicated his interest in assuming the ranking position.
- Transportation and Infrastructure – Rep. John Mica (R-FL) will assume the chairmanship, and Rep. Nick Rahall (D-WV) is expected to lead the Democrats on the committee.
- Ways and Means – Rep. Dave Camp (R-MI) will lead the committee in the next Congress, but it is unclear which Democrat will serve in the ranking slot, as both Rep. Sander Levin (D-MI) and Rep. Richard Neal (D-MA) are vying for the position.

**Senate**

- Agriculture – After the defeat of current Chairman Blanche Lincoln (D-AR), Sen. Debbie Stabenow (D-MI) is expected to assume the Ag Committee gavel.
- Energy and Natural Resources – Sen. Jeff Bingaman (D-NM) will continue as chair; however, who will lead the Republicans on the committee is not clear at this date. Sen. Lisa Murkowski (I-AK), who has served as ranking member, is returning to
the Senate as an independent (see related discussion below). There was an unsuccessful effort to strip her of her leadership role at the committee when she lost the Republican primary, and there may still be an effort to do so in the coming weeks. If she is stripped of this position, Sen. Richard Burr (R-NC) is expected to take the slot.

- Finance – Sen. Max Baucus (D-MT) will continue to lead the committee as chairman, but the Republican conference rules will term-limit Sen. Charles Grassley (R-IA). Accordingly, Sen. Orin Hatch (R-UT) will take on the ranking member role.

- Judiciary – Sen. Patrick Leahy (D-VT) will remain the committee chairman. Sen. Grassley, who is losing his leadership role on the Finance Committee, is expected to assert his seniority on Judiciary to assume the ranking position over current ranking member Sen. Jeff Sessions (R-AL). In turn, Sen. Sessions will take on the ranking role on the Budget Committee being vacated by retiring Sen. Judd Gregg (R-NH).

2010 Election Update

Sen. Murkowski won re-election to the Senate as a result of her write-in campaign, becoming the first candidate for the Senate to do so in 60 years. Republican nominee Joe Miller has not yet decided whether to ask for a recount. Six races for the House have not been decided, including two seats in California, two in New York and one each in North Carolina and Texas. Of those six, Republicans are currently leading in four races.

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