

WASHINGTON, D.C. UPDATE



December 2016

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With the last minute passage of a Continuing Resolution to stave off a government shutdown, the 114th Congress has come to an end. When Congress returns in January, it will be faced with a number of immediate challenges, including passing 11 of the 12 fiscal year 2017 appropriations bills that fund federal government operations before the CR expires on April 28 and then quickly moving on to the same process for fiscal year 2018, which must be completed by October 1, 2017. Congress will also have to reckon with an expected nomination to the Supreme Court and the federal government is expected to run up against the debt limit sometime in the late spring or early summer. Needless to say, the first half of 2017 is going to be very busy in Washington.

However, before leaving town Congress was able to come to agreement on a number of bipartisan, bicameral agreements during the shortened lame duck session, including:

- Continuing Resolution Keeps Government Open Until April 28, 2017;
- Water Resources Development Act Passes, Authorizing 30 New Infrastructure Projects Nationwide;
- House and Senate Overwhelmingly Pass Final National Defense Authorization Act of the Obama Administration; and
- 21st Century Cures Passes Congress and is Signed into Law.

A number of legislative items either failed to make the cut or were purposefully held over until next year, including an energy bill proposed by House Republicans who elected to delay its consideration in order to put it before a presumably more receptive 115th Congress and Trump Administration.

On a related programming note, please be sure to check out Baker Donelson's new website at www.bakerdonelson.com where you can find a database of our past Washington, D.C. updates.

Please feel free to reach out to me for additional information on these topics or other issues of importance.

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Continuing Resolution Keeps Government Open Until April 28, 2017

On Friday, December 9, the Senate passed a Continuing Resolution (CR) extending fiscal year 2016 funding until April 28, 2017, narrowly avoiding a government shutdown. The bill passed by a vote of 63 to 36 after having passed the House on Wednesday. The CR had been expected to pass the Senate easily but was temporarily delayed last week when Senators Joe Manchin (D-WV), Heidi Heitkamp (D-ND), Bob Casey (D-PA), and Claire McCaskill (D-MO) objected to limiting the extension of health benefits for miners to the duration of the CR rather than for a full year. Democrats, faced with shutting down the government, elected to drop their objections and voted to move the bill forward.

Under the CR, federal government spending will remain at the same levels it has for the past year (roughly \$1.07 trillion per year in discretionary, non-entitlement spending). The CR also funds a number of new priorities and provides \$4.1 billion for disaster relief to rebuild areas damaged by Hurricane Matthew and other storms, including \$1.8 billion in block grants to rebuild communities, \$1 billion for projects to avert future storm damage, and \$1 billion for highway reconstruction. The CR also provides \$170 million to aid communities with lead-contaminated drinking water (\$100 million for Flint, Michigan, \$50 million for healthcare for children who suffered lead poisoning, and \$20 million to forgive old drinking water loans). The measure also includes \$827 million to implement the 21st Century Cures Act and additional money for treatment of opioid addiction.

However, a number of proposed initiatives failed to make the final text, including language allowing the Export-Import Bank to resume approving loan guarantees exceeding \$10 million and popular tax breaks known as tax extenders.

Takeaway: With the government funded until April 28, 2017, the incoming Trump Administration now has the opportunity to shape both the FY2017 appropriations process and the upcoming FY2018 process, which will begin in the spring of next year.

Water Resources Development Act Passes, Authorizing 30 New Infrastructure Projects Nationwide

After months of back and forth, the House and Senate agreed on passage of the Water Resources Development Act (WRDA), a nearly \$12 billion measure authorizing 30 new infrastructure projects around the country. The bill, which passed the House 360 to 61 and the Senate 78 to 21, deepens ports, addresses flood risk management, helps disadvantaged communities provide safe drinking water, and authorizes the Environmental Protection Agency (EPA) to approve state permitting programs for coal ash, among others. In addition to authorizing the Flint, Michigan related spending included in the Continuing Resolution, WRDA provides another \$40 million for programs to communities to reduce lead in drinking water and \$100 million for grants to test for lead contamination in schools and child care facilities.

The measure was nearly scuttled by a dispute over whether to temporarily relax environmental standards and instruct federal officials to divert more water to farms and other users in California. Supporters of the clause, including Majority Leader Kevin McCarthy (R-CA) and Senator Diane Feinstein (D-CA), were able to get the language inserted in the bill, which led some Democrats to object and eventually a “no” vote from Senator Barbara Boxer (D-CA).

The bill also authorized a number of other projects, including the Central Everglades Planning Project and port deepening projects throughout the country. Democrats had pushed to require government projects to use American-made steel, but House Republicans were able to remove the language from the final bill.

Takeaway: Passage of the Water Resources Development Act authorizes a variety of water and transportation-related programs and touches nearly every state in the country. On an unrelated note, the bill also authorizes the transfer of the remains of Kennewick Man, a roughly 9,000 year old skeleton discovered 20 years ago in Washington State, to five Native American tribes for final burial.

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House and Senate Overwhelmingly Pass Final National Defense Authorization Act of the Obama Administration

On December 8, the Senate voted 92 to 7 to send the wide-ranging National Defense Authorization Act (NDAA) to President Obama's desk. The House approved the bill by a margin of 375 to 34 the week before. If signed by the President, the NDAA would authorize a total of \$618.7 billion in spending (\$9 billion more than President Obama requested), including more than \$67 billion for the overseas contingency operations (OCO) account. The bill also includes a \$3.2 billion increase in military spending without a similar increase in non-defense spending, something congressional Democrats have long been pushing against and a troop pay raise of 2.1 percent, above the president's request for a 1.6 percent pay raise.

The White House has not yet said whether the President will sign the bill and has expressed its disappointment with the NDAA's restrictions on transferring detainees out of the Guantanamo Bay detention facility, which the President has been trying to close. President Obama vetoed the 2016 NDAA over objections related to OCO spending and Guantanamo restrictions. He later approved a modified version that addressed his budget concerns but left the Guantanamo measure in place. Secretary of Defense Ash Carter has recommended the President sign the 2017 NDAA into law.

One key change would decentralize an important position at the Pentagon. Currently, the Defense Department's head of technology development also is in charge of acquisition. Under the new law, those positions will be split apart. The bill also elevates the Pentagon's cyberwarfare arm to make it what is known in the military as a "combatant command," the 10th such command in the Pentagon structure. That status will provide it with greater authority to develop and wage high-tech warfare.

Takeaway: The final defense policy bill of the Obama Administration, the 2017 NDAA sets the stage for debate next year over Republican proposals to increase the levels of defense spending allowed by the budget spending caps. Vice President-elect Mike Pence has already said the Trump Administration will send Congress a defense supplemental appropriations request within its first 100 days in office.

21st Century Cures Passes Congress and is Signed into Law

After more than four years of halting progress, Congress approved and the President signed the 21st Century Cures Act. The legislation, which passed the Senate 94 to 5 and the House 392-26, authorizes \$6.3 billion in spending, addressing weaknesses in the nation's mental health systems and altering the regulatory system for drugs and medical devices.

A rare bipartisan, bicameral effort, the act authorized spending on a number of priorities, including \$4.8 billion in biomedical research initiatives and \$500 million to help states prevent opioid misuse and provide additional treatment options. The act also authorizes funding to support President Obama's Precision Medicine Initiative, the BRAIN initiative, and Vice President Biden's Cancer Moonshot.

Finally, the 21st Century Cures also provides additional authorities to government agencies to partner with private sector companies to develop new drug therapies and medical devices and to expedite federal approval for newly developed treatments. The act expands the National Institute of Health's authority to finance high-risk, high-reward research with special procurement procedures, allows for the creation of "eureka prize" competitions, and speeds up review of drugs and devices at the Food and Drug Administration.

The act also takes steps to improve mental health care by creating a new Assistant Secretary for Mental Health and Substance Abuse and directs federal agencies to step up enforcement of laws on mental health parity.

The act was not uniformly supported, facing opposition from both the Democrats wanting to address drug pricing and how drugs are brought to the market and Republicans who objected to mandatory spending levels. In order to pay for the additional spending the bill cuts roughly \$3.5 billion – about 30 percent – from the Prevention and Public Health Fund.

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Takeaway: The 21st Century Cures Act is one of the biggest pieces of legislation focusing on health care to pass since the Affordable Care Act and one of the final pieces of legislation signed into law by President Obama. The fact that it was bipartisan and bicameral and passed with overwhelming majorities is testament to the four years of work that was put into ensuring there was something for (nearly) everyone. The legislation's expected impact on biomedical research, cancer treatment and prevention, drug discovery and approval, and mental health care will touch nearly all Americans.

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