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### Congress - Difficult Issues Stack Up As End-of-Year Approaches

This week, Congress struggled over differing strategies to extend the Social Security payroll tax cut that is set to expire December 31<sup>st</sup>. The payroll tax cut was part of a deal reached by Administration and Republicans in late 2010 that reduced the tax paid by employees and the self-employed from 6.2 percent to 4.2 percent. In November, Senate Democrats proposed reducing it to 3.1 percent for 2012, and cutting employers' taxes on the first \$5 million in taxable payroll to the same level. To offset the cut, the bill calls for a 3.25 percent tax on gross income over \$1 million for single filers and married couples filing jointly.

Senate Republican leaders countered with an offer to keep the payroll tax rate at its current level for another year to be offset by freezing the pay of federal employees through 2015 and gradually reducing the federal work force by 10 percent (approx. 200,000 employees). By week's end, both proposals had been defeated in the Senate and the next move belongs to the House, with action likely next week. House Speaker Boehner has signaled that he wishes to extend the payroll tax-cut and is willing to seek a compromise on a renewal of long-term jobless benefits through the end of 2012.

In addition to the payroll tax-cut and unemployment extensions, Congress also has a number of additional high priority measures to address including payments to Medicare doctors, renewal of several expiring research and development tax provisions that range from the

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tax credit to the state and local tax deduction and finalizing FY 2012 appropriations.

Appropriators continue to negotiate over FY 2012 spending levels for the remaining areas of the federal government that have yet to have their FY 2012 appropriations approved. Congress has approved FY 2012 appropriations for the departments of Agriculture, Justice, Commerce, Transportation and Housing and Urban Development. The remaining agencies are currently funded under a continuing resolution (CR) that runs through December 16, a looming deadline that will most likely necessitate the passage of another short-term CR.

The major challenges to timely approval of a nine-bill minibuss are a series of controversial policy riders and conflicting FY 2012 budget caps approved by Congress. This spring, the House Budget Resolution included a funding cap of \$1.019 trillion. The Budget Control Act, passed in August, set total funding levels for FY 2012 at \$1.043 trillion, creating a nearly \$24 billion difference that has yet to be resolved.

### **Senate Passes Department of Defense Authorization Act**

On December 1, the Senate approved the Department of Defense Authorization Act by a vote of 93 yeas to 7 nays. The bill authorizes appropriations for fiscal year 2012 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy.

### **Transportation - House Prepares Reauthorization Push for 2012**

Faced with a short, crowded congressional floor schedule, House Republican Leadership informed Transportation and Infrastructure Chairman John Mica (R-FL) this week that there is no room in the stocking for surface transportation reauthorization legislation to move this year. In addition to the lack of floor time, Chairman Mica has acknowledged that they have failed to identify a viable means to pay for the bill. This fall, Speaker Boehner has promoted the concept of opening new offshore and Arctic areas to oil exploration, and taxing output from those new wells to fund the bill. This idea has yet to see the light of day and was immediately dismissed by congressional democrats.

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In a conference call with the transportation community this week, Senate Committee on Environment and Public Works Chairman Barbara Boxer (D-CA) stated that “January is too late” and the bill needs to move this year. She indicated that she, along with Ranking Member Inhofe (R-OK), had recently met with their respective leadership to push for immediate action. In addition, she asked those on the call to reach out to members on the Senate Finance Committee to push for the immediate identification of additional funds and action before Congress departs for the Winter Holiday recess.

### ***Reauthorization II - House Democrats Push Buy America Provision***

Congressman Nick Rahall (D-WV), Ranking Member of the Committee on Transportation and Infrastructure has announced his intent to seek incorporation of the Invest in America Jobs Act of 2011 ([H.R. 3533](#)) into the surface transportation authorization bill currently being drafted. The Invest in American Jobs Act strengthens existing Buy America requirements for investments in highway, bridge, public transit, rail, water systems, and aviation infrastructure equipment. It also applies Buy America requirements to investments in rail infrastructure grants, loans, and loan guarantees, clean water state revolving fund grants and Economic Development Administration grants. The bill incrementally increases the percentage of U.S. components in rolling stock (buses, rail cars, and prototypes) and aviation equipment such as runway lighting systems and navigational radio beacons from 60 percent under current law, to upwards of 100 percent by fiscal year 2016.

### **Citizen Suits and POTWs Legislation Introduced**

Representative Tom McClintock (R-CA) introduced [H.R. 3544](#), which seeks to clarify how citizen suits can be initiated under the Clean Water Act. Publicly Owned Treatment Works (POTW) have experienced frequent lawsuits for alleged violations that in some instances had been corrected or were not being prosecuted by state or EPA officials. In some instances, failure by a state or the EPA to respond to a potential violation in a timely manner has placed the POTW in a position of liability based on the provisions of the Clean Water Act. As a result, a cottage industry has grown up using the Clean Water Act's citizen suit provisions to litigate against the permit holder, the POTW.

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As introduced, H.R. 3544 establishes a series of limitations, similar to other environmental mandates, that would protect against frivolous litigation. To this end, litigation could not proceed unless the violation was in fact one of "significant noncompliance" as defined by EPA. Additionally, the bill creates a series of affirmative defenses that a POTW could invoke: 1) act of God, 2) act of war, 3) act of omission by a third party or a contractor where a preponderance of evidence illustrates that the POTW took due care with respect to the actions of the third party.

Taking aim at the bounty hunter provisions of the existing law's citizen suits authority, H.R. 3544, directs courts to make any such awards consistent with prevailing rates and fees of the community where the found violation occurred.

The bill also provides for an extended NPDES permit terms of 15 years from the current 5 years, this recognizes the true time required for states and EPA to renew such permits. And finally, in an unrelated area, the bill includes a mandate that new or revised treatment mandates be subjected to cost benefit analysis to ensure the benefits of such mandates outweigh the costs.

### **Cybersecurity Measure Introduced in House**

On December 1, the House Committee on Intelligence approved the Cyber Intelligence Sharing and Protection Act of 2011 ([H.R. 3523](#)). This legislation introduced by Chairman Mike Rogers (R-Mich.) and ranking member Dutch Ruppersberger (D-MD) would establish a process that "allows private sector entities to share information anonymously or restrict who they share with, including the government." The legislation includes a provision shielding companies from lawsuits and public disclosure requirements when they inform federal agencies about their security vulnerabilities and the type of cyber-attacks.

Cybersecurity is a priority issue for Congress and the Administration; in March 2011 the Government Accountability Office issued a report on the threat of cybersecurity. The study, *Cybersecurity: Continued Attention needed to Protect Our Nation's Critical Infrastructures and Federal Information Systems*, detailed the "potentially devastating threat to the systems and operations of our nation's critical infrastructure" posed by cyber-attacks.

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The voluntary, targeted House bill is vastly different from an effort the administration has been attempting to push forward in the Senate. The Senate proposal(s) seek greater federal involvement and the use of penalties/fines and would create both an office in the White House to deal with cyber security policies and a National Center for Cybersecurity and Communications (NCCC) at the Homeland Security Department.

### **New Reports**

Cybersecurity Human Capital: Initiatives Need Better Planning and Coordination. <http://www.gao.gov/highlights/d128high.pdf>

### **Industry Pushes for Renewable Energy Grant Program**

This week, all facets of the renewable energy sector expressed strong support for Congress to pass a one-year extension of the [Treasury Department's 1603 Program](#) (Payments for Specified Energy Property in Lieu of Tax Credits). The program, which was originally introduced as part of the 2009 stimulus package, allows renewable energy companies to claim an upfront grant as opposed to previous programs which gave an after the fact tax credit. In a letter to Congress signed by over 760 entities, the coalition states that the "1603 program was the single biggest driver of renewable energy deployment over the last two years." The program, which ends December 31, encouraged companies to take equity stakes in wind and solar projects and paid out \$3.3 billion last year, about a 10th of the \$34 billion invested in clean energy in the U.S.

### **Hearings**

#### **Senate**

Date: December 8, Time: 2:30 p.m.  
Committee: Energy & Natural Resources  
Hearing: Domestic & Global Water Supply Issues

#### **House**

Date: December 7, Time: 10:00 a.m.  
Committee: Science, Space & Technology  
Hearing: Research and Strategic Priorities for Energy Critical Elements

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