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CONTENTS

CONGRESSIONAL SCHEDULE  NEW
Democrats Review Agenda for Post-Election, Lame-Duck Session  NEW

BUDGET & APPROPRIATIONS
Congress Passes FY11 Continuing Resolution  NEW

OTHER CONGRESSIONAL ISSUES
Congress Approves NASA Reauthorization  NEW
House S&T Panel Reviews “Gathering Storm” Follow-up Report
Senate Confirms NSF Director  NEW

OTHER
Action Continues in Stem Cell Lawsuit; CAMR Files Amicus Brief
Solicitor General’s Office Recommends Supreme Court Consideration of Stanford v. Roche Patent Case
NRC Releases Assessment of U.S. Doctoral Programs

CONGRESSIONAL SCHEDULE  NEW

Congress has concluded its pre-election work and will meet again for legislative business on Monday, November 15, to begin the lame-duck session.

The House adjourned on September 30. The Senate finished its legislative business on September 29, but will reconvene every few days in pro-forma session between now and November 15 in order to keep President Obama from making any recess appointments.

The most important outcome of the Senate leaders’ decision is to prevent the recess appointment of Jacob Lew as director of the Office of Management and Budget. Senator Mary Landrieu (D-LA) has placed a hold on Lew’s nomination over the Administration’s temporary moratorium on offshore oil and gas drilling.

DEMOCRATS REVIEW AGENDA FOR POST-ELECTION, LAME-DUCK SESSION  NEW

Democratic leaders have said the lame-duck session will focus on three major items, reports CQToday. These are an FY11 omnibus appropriations package, extension of the expiring individual tax cuts for all but the top income brackets, and, in the Senate, approval of a strategic arms control treaty with Russia. Other legislation likely to be considered includes the FY11
Defense authorization bill (H.R. 5136, S. 3454), extension of a variety of “tax extenders” (such as the R&D tax credit), and extension of child nutrition programs (H.R. 5504, S. 3307).

In the Senate, Majority Leader Harry Reid (D-NV) has filed cloture motions on three bills: one to create incentives for alternative fuel vehicles (S. 3815), another on pay equity (S. 3772), and the third on improved food safety (S. 510), which may take up all of the floor time during the first week of the lame-duck session.

Congress also may consider possible recommendations from the President’s fiscal commission. The commission is to make its recommendations for addressing the nation’s medium- and long-term fiscal challenges on December 1, two days before the FY11 continuing resolution expires.

BUDGET & APPROPRIATIONS

CONGRESS PASSES FY11 CONTINUING RESOLUTION  NEW

Since none of the 12 FY11 appropriations bills has been passed and the new fiscal year begins today, Congress has approved an FY11 continuing resolution (CR) (H.R. 3081) that sustains federal funding through Friday, December 3. The House vote was 218 to 194 and the Senate vote was 69 to 30.

According to the Senate Appropriations Committee press release, “Under the CR, funding will continue at FY 2010 enacted levels for most programs.” The CR does not include the $5.5 billion needed to address the Pell Grant program shortfall and prevent reductions in student awards next year. It does include $264 million for the National Nuclear Security Administration’s weapons program and $25 million for the Interior Department to inspect offshore oil and gas rigs.

During Senate consideration of the CR, the chamber rejected two Republican amendments to reduce spending. The first, offered by Senator John Thune (R-SD), proposed to reduce discretionary spending by five percent, excluding defense, homeland security, and veterans programs. The amendment was defeated by a vote of 48 to 51. The second, offered by Senator Jim DeMint (R-SC), would have extended the CR through February 4, giving the new, presumably more Republican Congress, the chance to make final FY11 funding decisions. The amendment was defeated by a vote of 39 to 60.

OTHER CONGRESSIONAL ISSUES

CONGRESS APPROVES NASA REAUTHORIZATION  NEW

The House of Representatives on September 29 approved the Senate-passed version of the NASA Authorization Act of 2010 (S. 3729), sending the bill to the President for signature. The House vote, which was 304 to 118, came after weeks of negotiations between the two chambers over a final bill. House leaders finally opted to vote on the Senate bill. Senate Commerce Committee Chairman Jay Rockefeller (D-WV) thanked his House colleagues for their action.
Among other elements, S. 3729 authorizes $58 billion in federal funding for the space agency for fiscal years 2011-2013. It also paves the way for the development of a new heavy-lift launch vehicle, adds one extra shuttle flight, provides continued support for the International Space Station until 2020, and provides federal funding for the development of commercial spacecraft industry. The bill also underscores the importance of Earth science and observation missions, support for space science research, and robust support for aeronautics and space technology development.

Although the bill passed the House by a significant margin, House Science and Technology Committee Chairman Bart Gordon (D-TN) said he remains concerned about a number of the exploration-related programs in the bill. In a committee press release on September 29, he said:

“I see today’s floor consideration to be only one more step in crafting a sustainable, affordable, and productive future path for NASA, and to ensuring stability and clarity to the NASA workforce and larger space community. To that end, I plan to continue to advocate to the Appropriators for the provisions in the Compromise language we released last week. I believe that the Compromise language provides a solid basis for NASA’s future.”

The “compromise language” that Chairman Gordon mentioned refers to language the House Science and Technology Committee proposed to the Senate as a compromise between the two chambers’ NASA bills. The language is available on the committee’s website at http://science.house.gov, as is information on the House bill (H.R. 5781).

HOUSE S&T PANEL REVIEWS “GATHERING STORM” FOLLOW-UP REPORT

The House Science and Technology Committee held a hearing September 29 on the new report from the National Research Council (NRC), “Rising Above the Gathering Storm, Revisited: Rapidly Approaching Category 5.” The new report found that in the five years since publication of the original report, “Rising Above the Gathering Storm,” the outlook for Americans’ ability to compete globally for quality jobs has further deteriorated. Among other recommendations, the new report urged Congress to reauthorize the America COMPETES Act, which expires at the end of this year.

A focus of discussion during the hearing was how to keep jobs in the United States. “Gathering Storm” committee chairman Norman Augustine told the panel that failure to reauthorize the America COMPETES Act will be a signal to the business community that the U.S. is not willing to address the problems in science, technology, engineering, and mathematics (STEM) education. This could prompt businesses to send more jobs overseas.

The Committee website provides additional details on the hearing, including statements from the witnesses.

SENATE CONFIRMS NSF DIRECTOR

The Senate on September 29 confirmed Subra Suresh as director of the National Science Foundation (NSF) for a six-year term. Dr. Suresh, who is a former dean of engineering at the
Massachusetts Institute of Technology, was nominated by the President in June. As noted in an NSF press release, he replaces Arden L. Bement, Jr., who led the agency from 2004 until he resigned in May of this year.

OTHER

ACTION CONTINUES IN STEM CELL LAWSUIT; CAMR FILES AMICUS BRIEF

The U.S. Court of Appeals for the D.C. Circuit has extended the stay of the preliminary injunction which briefly halted federal funding of human embryonic stem cell (hESC) research, allowing NIH to continue funding the research for now.

The continuation was in response to an emergency motion filed by the Justice Department and remains in place pending the government’s appeal of the injunction itself, which is still being considered by the Court of Appeals. The ruling came after oral arguments held on September 27, in which the three-judge panel grilled attorneys representing both the Justice Department and the plaintiffs on the nuances of the relevant law and science. The judges also called for the appeal of the injunction to be expedited.

Meanwhile, the underlying case continues in the district court, where the plaintiffs, two adult stem cell researchers, have filed a motion for a summary judgment by Judge Royce Lamberth, without further trial. This week, the government filed a brief in opposition to that motion and cross-filed a motion for summary judgment in its favor. By filing motions for summary judgment, both sides are claiming that no facts are in dispute and that the case should be decided purely on the basis of existing law. The government’s filing was accompanied by a declaration from Story Landis, director of the National Institute of Neurological Disorders and Stroke, that countered the point that funding hESC research was providing an incentive for destroying embryos. The declaration pointed out that 73 of the 75 approved lines were “derived from embryos prior to the issuance of the Guidelines.”

AAU, through its membership in the Coalition for the Advancement of Medical Research (CAMR), has joined an amicus brief filed September 28 in support of the government’s opposition to the plaintiffs’ motion for summary judgment. The plaintiffs’ response to the government is due on October 7, and the lower court is expected to rule sometime in mid-to-late October.

SOLICITOR GENERAL’S OFFICE RECOMMENDS SUPREME COURT CONSIDERATION OF STANFORD V. ROCHE PATENT CASE

In good news for the university research community, the Office of the U.S. Solicitor General (SG) filed a brief on September 28 recommending that the Supreme Court take up the Stanford v. Roche patent case. Historically, such SG petitions have been granted 80 percent of the time, and the support of the Solicitor General on the merits of a patent case has been a powerful predictor of ultimate success.
Stanford v. Roche is important because the ruling of the Court of Appeals of the Federal Circuit overturns the structure of the Bayh-Dole Act, in which the rights to inventions resulting from federally funded research are assigned to the university.

In determining whether to weigh in on the case, the Office of the Solicitor General consulted with several federal research agencies. The research university community met with officials in those agencies to explain their view that the agencies’ rights also were compromised by the Federal Circuit’s ruling.

AAU, several other associations, and 44 individual institutions filed an amicus brief in Stanford v. Roche on April 26. The Wisconsin Alumni Research Foundation and MIT also filed briefs in the case.

**NRC RELEASES ASSESSMENT OF U.S. DOCTORAL PROGRAMS**

The National Research Council (NRC) on September 28 released its long-awaited assessment of U.S. doctoral programs, with data on more than 5,000 programs in 62 fields at 212 universities across the nation.

In a prepared statement, AAU President Robert M. Berdahl thanked the NRC and the participating universities for the time and effort they put into the project. He expressed hope that the “perhaps unavoidable delays will not seriously affect the utility of the data,” which was first collected in academic year 2005-2006. Dr. Berdahl added:

“… [W]e believe the information in the report will be enormously beneficial to university administrators as they review their own doctoral research programs in the national context, to students who are seeking the best fit for their interests and abilities, and for others who wish to better understand the extraordinary breadth and depth of doctoral research programs at America’s universities.”

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