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CONGRESSIONAL SCHEDULE  NEW

The House was in session today and approved a compromise bill to amend the Foreign Intelligence Surveillance Act (FISA) (H.R. 6304). The Senate continued its consideration of housing legislation but conducted no roll call votes.

The Senate will reconvene on Monday, June 23, but will hold no roll call votes until Tuesday, when there will be a cloture vote relating to the housing bill, H.R. 3221. According to CQ Today, the Senate is also expected to consider the emergency supplemental appropriations bill (H.R. 2642) (see article below) and H.R. 6304, the FISA bill.

The House also will reconvene on Monday, June 23. The agenda will include H.R. 3195, which would amend the Americans With Disabilities Act (see article below); H.R. 6275, which would provide a one-year patch for the alternative minimum tax; and, possibly, legislation to address rising energy costs.

BUDGET & APPROPRIATIONS

HOUSE SUPPLEMENTAL APPROPRIATIONS  BILL INCLUDES SCIENCE FUNDING  UPDATE
The House on June 19 approved an FY08 supplemental appropriations bill (H.R. 2642) for the wars in Iraq and Afghanistan that includes new funding for the National Institutes of Health (NIH), the National Science Foundation (NSF), the Department of Energy (DOE) Office of Science, and NASA.

The bipartisan compromise was negotiated with the White House, which issued a Statement of Administration Policy in support of the bill. The Senate was not included in the discussions; Senate Majority Leader Harry Reid indicated that the Senate will likely approve the bill next week. House and Senate Democratic leaders suggested they might pursue another supplemental appropriations bill later this year.

The bill provides a total of $400 million for science agencies, including $150 million for NIH, and $62.5 million each for NSF, the DOE Office of Science, and NASA. The bill also contains $62.5 million for DOE environmental management.

For NSF, the funds are broken down as follows:

- $22.5 million for Research and Related Activities, of which $5 million is set aside for a number of programs authorized by the America COMPETES Act
- $40 million for Education and Human resources

The NASA funds are directed to Science, Aeronautics, and Exploration.

Regarding the DOE Office of Science, the legislation, according to a House document describing the new measure, directs that the $62.5 million be spent as follows:

The Department of Energy is instructed to utilize this funding to eliminate all furloughs and reductions in force which are a direct result of budgetary constraints. Workforce reductions which are a result of completed work or realignment of mission should proceed as planned. This funding is intended to maintain technical expertise and capability at the Office of Science, and may be used for National Laboratory Research and Development including research related to new neutrino initiatives. Funding for research efforts shall not be allocated until the Office of Science has fully funded all personnel requirements.

The science funding is provided on an emergency basis. It is therefore considered a one-time appropriation that does not increase the spending baseline for future years.

The Senate version of the supplemental included a total of $1.2 billion for NIH, NSF, DOE, and NASA. However, the White House had threatened to veto the bill. House leaders decided to craft a bill that could gain Congressional approval and that the President would be willing to sign.

The bill also contains increased veterans’ education benefits, an extension of unemployment benefits, disaster funding for the recent tornadoes and flooding in the Midwest, and funding for a number of other priorities. While not all spending would be offset, the defense component of the bill was cut by $3.6 billion to help pay for the non-defense elements of the measure.

House action was structured to permit Members to vote separately on the war funding and the domestic spending in the legislation. The war funding was approved on a vote of 268-155, while the domestic spending package was adopted on a 416-12 vote.
The House Energy and Water Development Appropriations Subcommittee added $140 million to the President’s FY09 request for the Department of Energy (DOE) Office of Science in the appropriations bill it marked up on June 17.

Subcommittee Chairman Peter J. Visclosky’s (D-IN) opening statement included the following:

“Science
The bill recommends over $4.86 billion for science, $140 million above the President’s request and an increase of $844 million over the fiscal year 2008 enacted level. Science funds cutting-edge energy research which will be critical for addressing our long-term energy needs. This bill substantially funds the increase in the Science account authorized in the America COMPETES Act. It will provide for 2,600 more research personnel, including graduate students, to address major concerns over the availability of highly educated scientists and engineers whose innovations drive economic growth. The Committee also makes major investments in laboratory infrastructure, embraces proposals to build two dozen Energy Frontier Research Centers focused on addressing critical energy research needs, and provides $539 million, $15 million above the President’s request, for climate change research and scientific computing efforts.”

Additional details on the bill will be provided when they are available. Full committee markup is scheduled for next Wednesday, June 25.

The House Labor-HHS-Education Appropriations Subcommittee approved its FY09 funding measure on June 19, providing a 3.9% increase for the National Institutes of Health and an increase in the maximum Pell Grant.

For NIH, the bill would allocate $30.4 billion, a $1.15 billion increase over FY08. The legislation retains the annual $300 million transfer from NIH to the AIDS Global Fund that has been included in recent years. The bill also:

- Provides $192 million for the Children’s Study, an increase of $81 million over FY08
- Allocates $544 million to the Office of the Director for the Common Fund
- Makes permanent and mandatory the FY08 provision on public access to NIH-funded research

The measure would increase the maximum Pell Grant for needy students by $169. The Administration had requested a $100 increase. The maximum grant for FY08 is $4,731, which includes $490 from mandatory funds under the budget reconciliation legislation enacted last year. With the additional discretionary funds under the legislation approved today, the maximum Pell Grant would rise to $4,900, of which $4,410 would come from appropriated discretionary funds and $490 would come from mandatory funds.

Additional information on the legislation will be provided when it is available.
The full Appropriations Committee is scheduled to mark up the Labor-HHS-Education bill on Thursday, June 26. Markup of the Senate bill is also expected to begin next week.

SENATE APPROPRIATIONS COMMITTEE ADDS FUNDS FOR NASA, NSF UPDATE

The Senate Appropriations Committee on June 19 approved an FY09 Commerce-Justice-Science funding bill that funds the National Science Foundation and NASA at about the same levels as the bill approved by a House Appropriations subcommittee. The Senate committee action followed, by one day, Senate subcommittee approval of the legislation.

The Senate bill would provide $6.9 billion for the National Science Foundation, which is close to the President’s FY09 request of $6.85 billion and the same level as the House bill. It represents an increase of $789 million, or about 13 percent, over the FY08 spending level.

NASA would receive $17.8 billion, which is $199 million above the President’s FY09 request. NASA’s Science Mission Directorate would receive $4.5 billion, $226 million above the President’s request. The additional amount is distributed as follows: $72 million for Earth Science, primarily to implement the National Academies Decadal Survey recommendations and for Applied Science Pathways; $76.7 million for Planetary Science to provide increased funding for the Mars Exploration program; $21.6 million for Astrophysics, primarily for increases to Hubble and the James Webb Space Telescope; and $56 million for Heliophysics, primarily for Living with a Star and the Solar Terrestrial Probes.

NASA’s Aeronautics Research Mission Directorate would receive $53.5 million more than the President's request, Exploration would receive $30 million more for development of the Ares launch vehicle, and Education would receive $14.4 million more than the request, with full funding for NASA Space Grant and $10 million more for museums, science centers, and planetariums.

The House bill has been approved at the subcommittee level and is scheduled to be considered by the full Appropriations Committee on Wednesday, June 25. The additional NASA funds contained in the bill would be divided nearly evenly between science and aeronautics. The House bill is scheduled to be considered by the full Appropriations Committee on Wednesday, June 25.

HUMANITIES GROUPS SUPPORT FY09 NEH FUNDS, RAISE CONCERNS ABOUT PRESERVATION CUTS NEW

Several organizations with an interest in the humanities, including AAU and the National Association of State Universities and Land-Grant Colleges, wrote to the leaders of the Senate Appropriations Subcommittee on the Interior on June 19 to urge the panel to approve at least the level of funding for the National Endowment for the Humanities (NEH) recommended by the panel’s House counterpart.

The House subcommittee has proposed increasing FY09 funding for the National Endowment for the Humanities (NEH) to $160 million. This represents a $15.3 million increase over FY08 funding (and $15 million more than the President’s request).
“Our members and the thousands of teachers, scholars, humanities organizations and institutions they represent, use NEH grants to maintain a strong system of academic research, education, preservation and public programs in the humanities,” the organizations wrote to subcommittee Chair Dianne Feinstein (D-CA) and Ranking Member Wayne Allard (R-CO). “The $15.3 million increase recommended by the House Subcommittee will help restore funding lost more than a decade ago and will begin addressing national needs in the humanities that require serious federal investment and leadership...”

At the same time, the groups asked the Senate panel to reverse cuts approved by the House subcommittee in the preservation and access programs at NEH.

“We ask the Senate Subcommittee for its support in helping to restore funding for [the Preservation and Access Division], which makes grants to preserve and widen access to primary resource materials important for scholarly research, education, and public programming,” they wrote. “The...Division also supports the creation of significant research tools, such as catalogs, databases, dictionaries, translations, atlases, and encyclopedias that document the history of the United States and cultures around the world.”

AAU President Robert Berdahl expressed similar sentiments in a June 16 letter to House subcommittee leaders, which thanked them for the increase but expressed concern about cuts in the preservation programs. That letter was sent to panel Chairman Norman Dicks (D-WA) and Ranking Member Todd Tiahrt (R-KS).

SENATE APPROPRIATIONS COMMITTEE APPROVES SUBCOMMITTEE ALLOCATIONS

The Senate Appropriations Committee on June 19 approved the 302(b) allocations for the twelve FY09 appropriations bills. The Senate spending totals $1 trillion, the same as the House total, which is $21 billion above the President’s FY09 budget and $72 billion above the FY08 enacted level. Overall, the committee would provide $373 billion for domestic programs.

The House 302(b) allocations were approved by the House appropriations Committee on June 18.

A table comparing the House and Senate allocations with the President’s FY09 budget and last year’s enacted levels can be found on the AAU Web site.

SENATE AGAIN FAILS TO APPROVE TAX EXTENDERS BILL

The Senate again failed to take up the tax extenders bill (H.R. 6049) this week. Senate leaders tried on June 17 to invoke cloture but fell short of the required 60 votes. The tally was 52-44. The issue holding up the measure is whether it should contain revenue-raising offsets. A similar disagreement blocked approval of an extenders bill last year. The measure would extend a number of expired and expiring tax provisions, including the tuition tax deduction, the IRA charitable rollover, and the research and development tax credit.

The higher education community sent a letter last month to Chairman Baucus and Ranking Member Charles Grassley (R-IA) expressing support for renewal of the higher education provisions.
OTHER CONGRESSIONAL ISSUES

ADA LEGISLATION CONTAINS PROBLEMATIC PROVISIONS FOR HIGHER EDUCATION

The House Education & Labor and Judiciary Committees on June 18 approved legislation to modify the Americans with Disabilities Act (ADA). The bill contains two provisions of particular concern that would have unintended and negative consequences for academic programs at colleges and universities. The ADA Amendments Act of 2007 (H.R. 3195) was approved by voice vote in the Education & Labor Committee and by unanimous recorded vote in the Judiciary Committee. CQToday reports today that the bill is likely to be considered in the House next week. The timing in the Senate is less clear.

The American Council on Education on June 17 sent a letter to members of the House Education and Labor Committee, the chairman and ranking member of the Judiciary Committee, and Rep. Hoyer detailing the specific concerns of the higher education community. The letter included suggested language for addressing these issues.

Overall, H.R. 3195 seeks to address a series of Supreme Court decisions over the past decade that have narrowed the definition of disability. It represents a compromise worked out by committee staff with the employer and disability communities. AAU and other associations have no objection to the bill’s employer-focused provisions. But the higher education community was not included in the discussions until late last week, so the compromise legislation does not address academic concerns.

The key issue for higher education is that the bill would expand the list of individuals who qualify as disabled under the ADA to include those who are substantially limited in the major life activities of “thinking” and “concentrating.” The bill also would reject previous court decisions that require “substantially” and “major” to be interpreted strictly. These changes are particularly problematic for colleges and universities because the abilities to think and concentrate are exactly what students are expected to improve as a result of their education and the very activities on which institutions evaluate their students.

A second provision would add “learned behavioral or adaptive neurological modifications” to the list of mitigating measures that may not be considered in determining if an individual is disabled under ADA. This means that students who managed without accommodations before college could still claim to need accommodation in college, because the student’s previous study habits would be considered a learned behavior that mitigated the disability.

AAU AND NASULGC SEND LETTER ON ORPHAN WORKS LEGISLATION

AAU and the National Association of State Universities and Land-Grant Colleges (NASULGC) sent a letter on June 18 to the House Judiciary Committee on H.R. 5889, the Orphan Works Act of 2008. H.R. 5889 has been marked up in the Courts, the Internet, and Intellectual Property Subcommittee and awaits markup in full committee. In the Senate, the comparable bill is S. 2913, The Shawn Bentley Orphan Works Act of 2008. The Senate bill has been marked up by the Senate Judiciary Committee and could go to the floor soon.

The AAU/NASULGC letter expresses the strong support of universities for efforts to develop an effective, balanced program for using orphan works, copyrighted works whose owners cannot be
found. The letter notes that the framework of H.R. 5889 balances the importance of making orphan works available against the interests of copyright owners in not having their works inappropriately categorized as orphan works. The letter identifies three issues of concern in the proposed legislation:

• The current requirements or “best practices” for a qualifying search are overly burdensome. The letter states that they must be sufficiently flexible to accommodate search processes appropriate to universities and other nonprofit entities. Search requirements that are unreasonably burdensome will preclude effective use of the program by universities. Legislative language defining diligent but flexible search procedures is attached to the letter.

• The Notice of Use filing requirement would be extremely costly and burdensome without significant benefit to copyright owners, and universities should not be subjected to such a requirement.

• For public universities, certain provisions of the legislation need to be modified to clarify that these institutions can participate in the orphan works program under terms comparable to those applying to other entities without having to waive state sovereign immunity, which most public universities are not free to do; language providing such clarification is attached to the letter.

The Senate bill is similar or identical to the House bill in most respects but it improves the legislation by omitting a Notice of Use filing requirement.

EXECUTIVE BRANCH

DEFENSE DEPARTMENT RELEASES BAA ON MINERVA RESEARCH INITIATIVE

The Department of Defense (DOD) has issued a Broad Area Announcement (BAA) for the Minerva Research Initiative, the university-based social science research program that the Department has developed in consultation with AAU. Defense Secretary Gates announced the program at the AAU membership meeting in April.

The Initiative seeks to improve the Defense Department’s ability to address future international challenges through a better understanding of the sources of conflict, such as ethnic strife, disease, poverty, climate change, and failed and failing states. As described in the BAA, “Minerva will bring together universities, research institutions, and individual scholars and support multidisciplinary and cross-institutional projects addressing specific topic areas determined by the Department.” The announcement adds that all research and debate “will be open and transparent” and that research results “will be unclassified and open for publication.”

The Chronicle of Higher Education reports that Defense Department officials expect to coordinate closely with the National Science Foundation in setting up merit review panels for evaluating the proposals. A memorandum of understanding between the two agencies could be signed by the end of June.

White paper proposals are due on July 25, 2008, with full proposals due on October 3, 2008. The Department anticipates awarding grants in December. The program expects to distribute about $50 million over five years, with “typical” grants funded at between $1 million and $1.5 million each year.
The FY09 competition will focus on research in five general topic areas, but the BAA states that these detailed descriptions “are not meant to be restrictive. Innovative proposals related to these research topics are highly encouraged.” The five topic areas are:

1. Chinese Military and Technology Research and Archive Programs
2. Studies of the Strategic Impact of Religious and Cultural Changes within the Islamic World
3. Iraqi Perspectives Project
4. Studies of Terrorist Organization and Ideologies
5. New Approaches to Understanding Dimensions of National Security, Conflict, and Cooperation

HIGHER EDUCATION ASSOCIATIONS SEEK TO UNDERSTAND IMPACT OF E-VERIFY RULE

Several higher education associations, including AAU, are seeking to determine the impact on higher education of the Administration’s recent announcement that all federal contractors—including colleges and universities—will be required to use the government’s E-Verify system to confirm the employment eligibility of all new employees and of current employees who work on certain future federal government contracts. The extent to which universities will be affected by this new mandate is unclear, but early concern has focused on the relatively high error rate in the database used to verify employees’ eligibility for work.

On June 16, AAU staff hosted a conference call with representatives of the employer and human resource communities to better understand the complexity of the proposed rule and to discuss the possibility of developing a joint response by the three communities. Discussions among the higher education associations and among this broader group will continue.

In the meantime, members of the CFR are encouraged to discuss this issue with campus stakeholders, such as officials in the Office of General Counsel, the Office of Human Resources, the Financial Affairs-Business Office, and the International Affairs Office, to gauge the potential impact on their institution. AAU encourages members to consider submitting their own comments on the proposed rule. Written comments will be accepted until August 11, 2008.

The new requirement was made through an executive order issued by President Bush on June 9 and a subsequent proposed rule issued on June 12. The executive order requires all federal agencies to require their contractors, as a condition of each future federal contract, to use an electronic employee verification system designated by the Department of Homeland Security. The proposed rule requires that certain contracts contain a clause requiring contractors and subcontractors to use the E-Verify system to confirm the employment status of all new employees and of existing employees who work directly on the contract.

BIOSECURITY ADVISORY BOARD SEEKS PUBLIC VIEWS ON OVERSIGHT OF DUAL USE BIOLOGICAL RESEARCH

The National Science Advisory Board for Biosecurity will hold a public meeting next month at the National Institutes of Health (NIH) to hear from the scientific community and the general public about the Board’s proposed framework for oversight of dual use biological research. The
meeting will be held on Tuesday, July 15, from 8:30 a.m. to 4:00 p.m. in the Natcher Conference Center on the NIH campus in Bethesda, Maryland.

The Board has been charged with developing the framework for oversight as part of the government’s effort to prevent knowledge and technologies emerging from biological research from being misused to threaten public health or national security.

Those wishing to attend this public meeting are asked to pre-register because of limited seating. Information about the advisory board is available on the NIH Web site.

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