Friday, September 22, 2006

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CONGRESSIONAL SCHEDULE  NEW

The House was not in session today; the Senate convened briefly today, with no votes, and also is now out of session. Both chambers will reconvene on Monday, September 25, for what is expected to be an intense week of legislative activity. Republican leaders have said they intend to conclude business by next weekend to allow Members greater time to campaign for reelection, but the schedule could slip into the first week of October. The post-election lame-duck session is expected to begin November 13.

Next week, both chambers are expected to approve conference reports for the FY07 Defense and Homeland Security appropriations bills (H.R. 5631 and H.R. 5441). CQToday reports that the Defense bill will carry the continuing resolution (CR) to fund programs in the remaining appropriations bills, which will not be completed before the start of the new fiscal year on October 1. The CR will last through November 17 and fund programs at their FY06 levels.

Also likely next week is action on the conference report for the Defense authorization bill (H.R. 5122) and consideration of legislation addressing domestic surveillance and military tribunals.

The House also will consider draft legislation to reauthorize the National Institutes of Health (see item below), as well as bills dealing with open space and farm preservation (H.R. 5313), transporting minors across state lines for an abortion (H.R. 748), and suing federal officials over public expressions of religion (H.R. 2679). The Senate is expected also to consider legislation (H.R. 6061) to authorize construction of fencing along 700 miles of the U.S.-Mexico border.
BUDGET AND APPROPRIATIONS

HOUSE, SENATE NEGOTIATORS AGREE ON FY07 DEFENSE FUNDING BILL

UPDATED

House and Senate negotiators on the FY07 Defense appropriations bill (H.R. 5631) yesterday bowed to the Administration’s veto threat and agreed on the House-approved funding level, or $4 billion below the Administration’s request. The Senate bill had cut $9 billion from the Pentagon spending request, but the Administration insisted it would veto a measure that cut more than the House bill. The final $447 billion package includes an extra $70 billion in emergency supplemental funding for military operations in Iraq and Afghanistan.

DEFENSE FUNDING BILL TOTAL COULD REDUCE FY07 SPENDING INCREASES FOR DOMESTIC PROGRAMS

UPDATED

By agreeing to fund the Defense budget at the higher House level, appropriators have put greater pressure on FY07 domestic spending. Earlier in the year, the House and Senate versions of the FY07 budget resolution allowed appropriators to use cuts in the President’s Defense budget to bolster domestic spending accounts while remaining under the overall discretionary spending cap. The Senate budget resolution (S. Con. Res. 83) reallocated $9 billion from Defense to domestic programs, while the House measure (H. Con. Res. 376) reallocated $4 billion. Negotiators now will have to reconcile the $5 billion gap between the House and Senate funding totals for domestic programs.

Complicating the picture is the fact that earlier this year, House and Senate moderate Republicans—with strong support from the research university community—spearheaded efforts to secure an extra $7 billion above the President’s request for the Labor-HHS-Education bill (H.R. 5647), which funds student aid and the National Institutes of Health (NIH).

Last March, 73 Senators voted to support the Specter-Harkin amendment to the Senate budget resolution calling for the additional $7 billion. The Labor-HHS-Education funding bill reported from the Senate Appropriations Committee included an extra $5 billion for the measure. Senators Arlen Specter (R-PA) and Tom Harkin (D-IA) are now collecting signatures for a letter to the Senate leadership urging the additional $2 billion increase. So far, 39 Senators have signed.

In the House, Republican leaders last March promised Republican moderates, led by Rep. Michael Castle (R-DE), that they would find the full $7 billion for the Labor-HHS-Education bill in exchange for their support of the House budget resolution. The bill reported from the House Appropriations Committee provides just $4 billion of that total, so another $3 billion would be needed to meet the agreement. Rep. Castle is asking his fellow moderate Republicans to sign a letter to the House leadership reminding them of the agreement to provide the full $7 billion. Eighteen Representatives have signed so far.

CQToday reports that when House Majority Leader John Boehner (R-OH) was asked yesterday if he was concerned about finding the extra $3 billion for the House Labor-HHS-Education bill, he said, “No. Cross one bridge at a time.” House Appropriations Committee Chairman Jerry Lewis (R-CA) said he would ask his subcommittees to search for programs that weren’t performing and could be cut. “It’ll be harder in the Senate but we’ll get there,” he said. The publication adds that a senior Republican leadership aide yesterday cited an across-the-board cut
to other programs as one possible way to free up funding for the Labor-HHS-Education bill. Such action could affect funding for the President’s American Competitiveness Initiative (ACI) and other priorities for research universities.

OTHER CONGRESSIONAL DEVELOPMENTS

HOUSE ENERGY AND COMMERCE COMMITTEE REPORTS NIH REAUTHORIZATION BILL  UPDATED

The House Energy and Commerce Committee approved Chairman Joe Barton’s (R-TX) bill to reauthorize the National Institutes of Health (NIH) on September 20 by a vote of 42-1. AAU staff understands that the measure is scheduled for consideration under the House suspension calendar on Monday, September 25. Although there is no companion legislation in the Senate, the Chronicle of Higher Education reports that Rep. Barton hopes to see the bill approved by both chambers before Congress adjourns in December.

During committee markup of the bill, committee Democrats expressed concern that the authorized spending increases of five percent a year over three years were too low and that the measure gave the NIH director too much authority to reduce the number of centers and institutes without congressional approval. But all committee Democrats voted to approve the bill, except Rep. Edward Markey (D-MA).

AAU, the Association of American Medical Colleges, and the Federation of American Societies for Experimental Biology have endorsed the legislation. The AAU letter to Chairman Barton expressing support for the measure is available at:
http://www.aau.edu/research/Ltr_Berdahl_NIHReauthBill_091806.pdf.

Chairman Barton has been working on the reauthorization proposal for the past year, soliciting the views of the NIH leadership and the academic research community. His plan would strengthen the management authority of the NIH director, require development of a comprehensive NIH database to track all research activity in a standardized format, and authorize a five-percent budget increase for the agency each year over the three-year period of the authorization. It includes creation of a “common” fund to support broad, cross-NIH initiatives. The fund would receive one-half of any new money appropriated to NIH until it reached five percent of the agency’s total budget. Thereafter, the NIH director, in consultation with an advisory council, would recommend to Congress changes to the amount reserved for the common fund.

SENATORS PREPARE TO INTRODUCE COMPREHENSIVE COMPETITIVENESS BILL  UPDATED

Senate supporters of legislation to authorize a variety of federal competitiveness programs and activities plan to introduce their comprehensive bill next week. They hope to have the bill considered on the floor before the Senate recesses for the November election.

The “National Competitiveness Investment Act” represents a bipartisan agreement among leaders of three key Senate committees. The measure will incorporate provisions from the PACE-Energy Act (S. 2197), reported from the Senate Energy and Natural Resources Committee, and the “American Innovation and Competitiveness Act” (S. 2802), reported from
the Senate Commerce Committee. Although the Health, Education, Labor and Pensions (HELP) Committee did not consider competitiveness legislation, Committee Chairman Michael Enzi (R-WY) and Ranking Member Edward Kennedy (D-MA) helped shape provisions in the new bill that fall under the panel’s jurisdiction.

A section-by-section analysis of the legislation is available on the AAU Web site at: http://www.aau.edu/research/NCIA_Section_by_section.pdf.

**HIGHER EDUCATION ACT EXTENSION INTRODUCED IN HOUSE**  
*NEW*

With Congress unable to approve a reauthorization of the Higher Education Act (HEA) this session, an extension bill (H.R. 6138) has been introduced in the House. The measure would authorize programs until June 30, 2007.

**OTHER**

**SIX HIGHER EDUCATION ASSOCIATIONS ISSUE PLAN TO ADDRESS THE NATION’S UNDERGRADUATE EDUCATION CHALLENGES**  
*NEW*

The six presidentially based higher education associations, including AAU, yesterday made public a letter to college and university presidents around the country laying out a plan for providing institutions assistance in addressing seven key issues in undergraduate education. The letter is intended to follow up on recommendations from a variety of sources, such as the National Academies and the Secretary of Education’s Commission on the Future of Higher Education.

Working together and with allied groups, the six associations will seek to convene and coordinate activities within the higher education community and act as an information clearinghouse.


**AAU, NASULGC ENDORSE HOUSE ORPHAN WORKS COPYRIGHT LEGISLATION**

AAU and the National Association of State Universities and Land-Grant Colleges (NASULGC) yesterday sent a letter to leaders of the House Judiciary Committee endorsing “orphan works” copyright legislation developed by the House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property. The full committee is now considering the measure as part of a larger bill on music licensing on which AAU and NASULGC have not taken a position.

The associations’ letter says that the orphan works legislation “would produce sound public policy, making a wealth of creative works available for education and research contingent upon a diligent search for the copyright owners and appropriate attribution to the authors and owners, and provides for reasonable compensation should the copyright owners be located.”

Orphan works are copyrighted works whose owners cannot be located. Under current law, if an orphan work is used—if it is included in a derivative work, for example—and the copyright owner later appears, the copyright owner may sue for copyright infringement or secure a court-ordered injunction to stop use of the work. As a consequence, many donated writings, film clips, and other materials remain unused in archives around the country.

The orphan works legislation would clear the way for using such works. It would prohibit a court from granting a copyright owner a court injunction if the user had conducted a due-diligence search for the copyright owner and had provided appropriate attribution for the work. The parties would be expected to reach agreement on reasonable compensation. If that could not be negotiated, the copyright holder could go to court to seek a court-determined payment of reasonable compensation. The amount of compensation would be what the court determined the user would have paid to the copyright owner if the owner had been located at the beginning of the use of the work.

AAU and NASULGC became involved in the issue last year because the Constitutional right of state sovereign immunity prevents state entities, including public universities, from being sued for damages in federal court. Specifically, sovereign immunity permits a court to impose an injunction for copyright infringement, but the court may not impose monetary damages. Since the orphan works legislation would prevent the use of injunctions for copyright infringement, copyright owners would be without recourse for use of orphan works by state entities.

Some copyright owners suggested that the solution was to exclude public universities and other state entities from the orphan works provisions. To avoid that prospect, the associations negotiated an agreement for state entities that would allow a court to determine what would constitute reasonable compensation without directing the state entity to pay that amount. The state entity would be free to either pay the compensation or stop using the copyrighted work. If the state entity chose not to pay the compensation and to continue using the copyrighted work, it would be in violation of the orphan works act. In that case, the copyright owner could go back to court and secure an injunction.

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