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**Congressional & Administration News**

BUDGET BRIEFING: Democrats Release New Spending Bills

* Conference spending bills could attract more GOP support
* Tensions run high in Congress as stalemate drags on

By Jack Fitzpatrick | January 18, 2019

Bloomberg Government

House Democrats want to keep the pressure on Republicans next week, and plan to vote on a six-bill spending package that lawmakers negotiated before Democrats took control of the House.

The move isn’t likely to end the shutdown, but will put Republicans in an uncomfortable position by daring them to vote against bills they themselves drafted. The six-bill package consists of measures that were negotiated by House and Senate lawmakers when Republicans still controlled both chambers.

The measures would provide appropriations for all unfunded agencies except the Department of Homeland Security. Without border wall funds, the bills are dead on arrival in the Senate.

The House has already held a series of votes this year on the Senate-drafted appropriations bills. Majority Leader Mitch McConnell (R-Ky.) refused to bring those measures up for a vote, despite previously supporting them, saying President Donald Trump would only veto them.

**Tempting Republican Votes**

By voting on the bills that were negotiated by members of both chambers, Democrats are responding to Republicans who opposed the Senate bills, saying the conference-negotiated measures were better. It may help them attract a few more GOP defectors in the upcoming votes.

Rep. Mario Diaz-Balart (R-Fla.), ranking member of the House Appropriations Transportation-HUD Subcommittee, said last week he opposed the Senate-drafted bills because he knew the conference-negotiated bill was better. Bringing up the Senate bills were just a political move by Democrats to put pressure on McConnell, he said.

“The negotiated bill between the House and the Senate, I will tell you, is not only far superior to the Senate bill, it’s far superior to the House bill,” Diaz-Balart told reporters last week.

House Freedom Caucus Chairman Mark Meadows (R-N.C.) also explained his opposition to the Senate bills by pointing to the conference-negotiated bills.

“I think that if you’re really looking at truly where we are, the conference bills would be a better representation of where both bodies would think funding levels and funding priorities should be,” Meadows said last week.

House Majority Leader Steny Hoyer (D-Md.) said in a statement this package of bills is theoretically what those Republican critics wanted to vote on.

“I will bring to the Floor a package of six appropriations bills that represent the compromise position negotiated by Democrats and Republicans in the House and Senate, which is what some House Republicans have said they would prefer to support instead of the Senate-passed bills,” Hoyer said yesterday.

The bills would provide funds for Agriculture-FDA, Commerce-Justice-Science, Financial Services, Interior-Environment, State and Foreign Operations and Transportation-HUD appropriations. They would also extend the authorizations for the National Flood Insurance Program until Sept. 30, 2019; the Pesticide Registration Improvement Extension Act until March 1, 2019, and the Temporary Assistance for Needy Families program through 2020, according to a summary by House Appropriations Committee Democrats.

**No Savings Account**: The Financial Services spending measure does not include Rep. Tom Graves’s (R-Ga.) proposed $585 million savings account that would bar the government from spending the money until the federal deficit has been eliminated. House Minority Leader Kevin McCarthy (R-Calif.) backed the idea.

**Space Council Struggles**: The explanatory statement for the Commerce-Justice-Science bill criticizes the National Space Council for a series of bad contracts featuring “poor workmanship, poor oversight and poor performance,” as well as overly “ambitious technology development, optimistic scheduling, and poor cost estimation.”

**EPA Reorganization**: The Interior-Environment explanatory statement notes that the bill does not include funds for “workforce reshaping” and that “it is expected that the Agency will not consolidate or close any regional offices in fiscal year 2019.”

**EPA Calendars**: The EPA portion of the explanatory statement also says lawmakers appreciate “that the EPA has recently taken steps to improve transparency of the daily calendars of the Agency’s senior leaders,” likely a reference to former Administrator Scott Pruitt’s reported use of a private calendar.

**Shutdown Frustration**

Frustration over the shutdown appeared to hit a high point yesterday, with an uproar on the House floor and a canceled congressional trip to Afghanistan.

Trump canceled a congressional delegation, or “CODEL,” visit to Afghanistan in what some lawmakers believed was a retaliation over House Speaker Nancy Pelosi‘s (D-Calif.) request that Trump either delay his State of the Union address or deliver it in writing. Trump called Pelosi’s trip a “public relations event” and said she needed to stay in Washington during the shutdown, unless she wanted to fly commercial.

While Trump’s letter didn’t mention Pelosi’s letter, “it sounded like a response,” Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters. Shelby described the mood on Capitol Hill as “bleak” earlier this week.

The shutdown has been “a political meltdown,” said Sen. Joe Manchin (D-W.Va.), who helped lead an unsuccessful meeting of moderate senators aimed at finding a path to end the standoff.

Meanwhile, a vote on a stopgap spending measure yesterday turned into a quarrel on the House floor. Lawmakers passed the continuing resolution (H.J. Res. 28) by a voice vote before adjourning. Republicans claimed Rep. Brett Guthrie (R-Ky.) had asked for a recorded vote and was ignored, though Democrats and some Republicans said they didn’t actually hear Guthrie say anything. By the time Republicans complained, most Democrats had left the chamber to catch flights home.

Amid the uproar, Rep. Jason Smith (R-Mo.) yelled, “Go back to Puerto Rico!” Smith later issued a statement saying he was referring to some Democrats’ recent trip there, but Hoyer said on the floor it seemed to have a racial overtone.

Hoyer agreed to vacate the voice vote and hold another vote next week when lawmakers have returned to Washington.

**More Budget and Appropriations News**

**Mnuchin Won’t Testify**: Treasury Secretary Steven Mnuchin declined a request to testify next week about his department’s plans to handle the shutdown, House Ways and Means Committee Chairman Richard Neal (D-Mass.) said.

Trump and Mnuchin plan to meet today at the White House, according to an official advisory.

**Davos Delegation Canceled**: Trump yesterday also canceled the U.S. delegation’s trip to the global economic summit in Davos. “Out of consideration for the 800,000 great American workers not receiving pay and to ensure his team can assist as needed, President Trump has canceled his Delegation’s trip to the World Economic Forum in Davos, Switzerland,” White House Press Secretary Sarah Sanders said in a statement.

**Shutdown’s Impact on the Economy**: The shutdown is causing some real pain, but economists are largely brushing off the risk to the expansion. Analysts project the government will reopen by mid-February, though if the closure lasts through March, the disruptions will cause economic growth to dip below 2 percent this quarter, according to the median forecast in a Jan. 15-17 Bloomberg survey. At the same time, just under half say the shutdown increases the probability of a recession this year.

The relatively sanguine assessment is at odds with some more-dire recent predictions, including by Deutsche Bank AG, and the White House itself doubled the estimated negative fallout.

House to Vote on 6 New Spending Bills, No Wall Money Included

* Democrats release 6 of 7 remaining spending measures
* Legislation was negotiated by House, Senate appropriators

By Jack Fitzpatrick | January 17, 2019

Bloomberg Government

House Democrats released six new spending bills as they call for an end to the partial government shutdown, but the lack of funds for the Department of Homeland Security or the construction of a border wall mean the legislation is unlikely to break the current impasse.

Democrats released the six bills that House and Senate appropriators have negotiated. House Majority Leader Steny Hoyer (D-Md.) said in a statement the chamber would vote next week on all six bills as a package, H.R. 648. The measures had been set aside until a broader spending deal could be reached, and hadn’t been released publicly until Thursday afternoon.

President Donald Trump has said he won’t support any spending bills that fail to provide funds for a border wall. While the measures would likely garner bipartisan support on their own merits, they’re dead on arrival in the Senate for now, as Majority Leader Mitch McConnell (R-Ky.) has said members won’t vote on any measure the president doesn’t plan to sign into law.

The bills would provide funds for Agriculture-FDA, Commerce-Justice-Science, Financial Services, Interior-Environment, State and Foreign Operations and Transportation-HUD appropriations. They would also extend the authorizations for the National Flood Insurance Program until Sept. 30, 2019, the Pesticide Registration Improvement Extension Act until March 1, 2019, and the Temporary Assistance for Needy Families program through 2020, according to a summary by House Appropriations Committee Democrats.

The legislation would also negate the need for the White House to impose a sequestration order that would cause across-the-board funding cuts of roughly half a billion dollars, which would have been necessary to make up for the fiscal effects of legislation passed in the 115th Congress.

**Bills Avoid Controversial Policies**

All six bills would get a boost compared with fiscal 2018 levels. The package includes a measure that would give federal employees a 1.9 percent pay raise. Several policy riders are included that would continue to block the implementation of Obama administration environmental regulations. But largely, the bills avoid delving into controversial policies.

The Agriculture-FDA bill would provide slightly more than $23 billion in discretionary funding, $32 million above the fiscal 2018 level.

The Commerce-Justice-Science bill would include $71.5 billion, $409.1 million above the fiscal 2018 amount. That includes $11.4 billion for the Department of Commerce, $276.6 million above the fiscal 2018 level. The Department of Justice would receive $30.9 billion, $638 million above fiscal 2018 funds. NASA would receive $21.5 billion, $763.9 million above fiscal 2018.

The Financial Services bill would have $23.8 billion in discretionary funding, $387 million higher than in fiscal 2018. The bill would override the administration’s pay freeze for federal employees, providing a 1.9 percent raise for 2019. The Department of the Treasury would receive $12.6 billion.

The Interior-Environment bill would provide $35.6 billion in discretionary funds, $300 million above fiscal 2018. It includes measures that would require the Environmental Protection Agency to treat air emissions from forest biomass products as carbon neutral, block the Fish and Wildlife Service from proposing a new rule to protect the sage-grouse under the Endangered Species Act, and bar any rules regulating the content of lead ammunition or fishing tackle under the Toxic Substances Control Act.

The State and Foreign Operations bill would include $54.2 billion in discretionary funding, which includes $8 billion in Overseas Contingency Operations funds that aren’t subject to discretionary spending caps. The total is $200 million above the fiscal 2018 funding level.

The Transportation-HUD bill would provide $71.1 billion in discretionary funds, $1 billion above the fiscal 2018 level. That includes $900 million for BUILD grants, formerly called TIGER grants, which were given a one-time boost to $1.5 billion in fiscal 2018. The bill would provide $3.4 billion for Community Development Block Grants. The bill would provide $10 million for the deployment of magnetic levitation, or maglev, trains, down from $150 million initially included in the House’s Transportation-HUD bill (H.R. 6072 in the 115th Congress). Those funds could go toward a proposed maglev train that would eventually run between Washington and New York City.

**Agriculture News**

USDA Farm Service Agency Offers Some Service Amid Shutdown

By Melodie Warner and Shruti Date Singh | January 16, 2019

Bloomberg Government

The U.S. Department of Agriculture is recalling about 2,500 Farm Service Agency employees to perform certain limited services for farmers and ranchers.

* Many FSA offices will reopen temporarily on Jan. 17, Jan. 18 and Jan. 22 during normal business hours
* FSA staff will be available to assist agricultural producers with existing farm loans and to ensure the agency provides 1099 tax documents to borrowers by the Internal Revenue Service’s deadline
* Services not available at reopened offices include:
  + New direct or facility loans, new farm loan guarantees and new marketing assistance loans
  + New applications for the Market Facilitation Program, certification of 2018 production for related payments
  + Dairy Margin Protection Program, disaster assistance programs
* While Jan. 15 was the deadline for farmers to apply for aid under the MFP program, they haven’t been able to do so since Dec. 28 when FSA offices closed because of the lapse in federal funding
  + As a result, the deadline is being extended for a period of time equal to the number of business days FSA offices end up being closed, once the government shutdown ends

**Federal Employee News**

Back Pay for Furloughed Employees Signed into Law

Fedweek | January 17, 2019

President Trump has signed into law a bill (S-24) that had quickly passed Congress to assure that federal employees who have been on unpaid furloughs due to the partial government shutdown will receive back pay.

That has been done in prior partial shutdowns, although usually as part of the bill ending the shutdown. However, with no end to this one in sight—and the second missed pay distribution now only a week away for employees in agencies whose funding has lapsed—enactment of the bill provides some reassurance for the meantime.

Employees who have remained on the job but unpaid always have been guaranteed, without the need for further action, that they will be paid for that time because the government has incurred an obligation to them.

However, for both them and for furloughed employees, back pay can’t be distributed until funding is restored for the affected agencies, which together account for 800,000 employees—about 420,000 of whom have continued to work because their jobs involve protection of life or property. That number is rising to about 460,000 with the callback to work of employees at various agencies, most numerously the IRS. However, they will remain in unpaid status.

Some of those who have been furloughed have applied for unemployment benefits, terms of which vary according to state law. When they ultimately receive back pay, they will have to repay those benefits.

Meanwhile, two bills have been introduced to benefit employees working without pay (although not those on furlough): S-113 would make a special appropriation to begin paying their salaries immediately; and HR-338 would allow them take withdrawals from their TSP accounts, without penalty, up to their regular biweekly pay, with the option of repaying the money into the TSP after they return to paid status.

Also, HR-545 would allow all employees who have been in unpaid status to take withdrawals from the TSP and other retirement savings without penalty, with the option of paying it back in later.

Lawsuits, Workarounds as Shutdown Drags On and Employees Called Back

Fedweek | January 16, 2019

As the partial government shutdown continues to drag on, agencies are increasingly turning to workarounds to get work accomplished, and federal employee organizations are increasingly turning their attention to public opinion and the courts as attempts to reopen shuttered agencies through the political process continue to stall.

As has happened in past shutdowns, agencies have started calling back to work some employees who have been on furlough. The largest number is at the IRS, which is calling back some 35,000 employees to work on processing tax returns and refunds for the new tax filing season, in addition to the 10,000—of a total of 80,000—who had continued working unpaid. The recalled employees will remain in non-pay status, though.

Other recalls include certain employees to supplement the skeleton staff that had remained on the job in national parks and wildlife preserves that have remained open and which suffered from uncollected trash and other problems; and some Treasury employees to process forms needed for mortgage applications to proceed.

The TSA meanwhile somewhat softened the financial blow for screeners who have been working unpaid, by finding a way to pay $500 bonuses for working during the holiday season plus Saturday pay for those who worked on the first day of the shutdown, December 22. And the unfunded Agriculture Department moved to advance its February round of funding to states under the food stamps program after deciding it still could make those payments if it was done by January 20. On the other hand, some federal court operations that have remained open by using funds from fees reportedly will have to start closing late this week.

Those actions have come as the shutdown has lasted long enough to pass thresholds making a back pay award more likely to some employees under lawsuits filed by the AFGE, NFFE and NTEU unions. Those suits involve a provision of the Fair Labor Standards Act requiring prompt payment of overtime pay that resulted in an award of back pay following the 2013 shutdown. However, that involves only those who have worked overtime pay and the amount awarded due to that shutdown was relatively small per employee—in addition, that money still hasn’t been paid out because the case remains on appeal.

Meanwhile, on Tuesday a federal judge hearing another suit rejected a request that he issue an emergency order to bar unpaid work as unconstitutional; as a fallback argument, the suit claims that only those in jobs involving “imminent” threats to life or property may be kept at work unpaid. NTEU, NATCA and a law firm representing some individual employees making those arguments had asked the judge for a temporary restraining order to stop unpaid work, which would have increased pressure to end the shutdown.

However, the judge—while expressing sympathy for employees working without pay—said that since money has not been appropriated to pay them, such an order would compel agencies to take them off the job. That could result in a chaotic and possibly dangerous situation since they are still working because of their security and safety responsibilities, he said. The case will proceed, though, with another hearing already set for January 31 on a different motion, for a preliminary injunction.

Unions also have been conducting rallies to draw the public’s attention to the loss of services due to the shutdown and the financial impact on the 800,000 employees in non-pay status. Some members of Congress have appeared at those rallies although only those already favoring an immediate end to the shutdown.