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Legislative Notes

September 7-8, 2016, Self-Governance Strategy Session

The rest of the 114th Congress will be divided into 2 sections:

- *Pre-election*, September 6 -30 (the House out Sept. 16 and 19). The Senate may still be in for the first week of October. If so, that is 17 days for the House and 23 days for the Senate.
- *Post-election/lame duck*, currently scheduled for November 14-17, and then resume November 29-December 16 (the House will be out Dec. 9 and 12). That is 16 days for the House and 18 days for the Senate, should Congress stay in that long.

Pre-election Top Job – A FY 2017 Continuing Resolution (CR).

Enacting a CR is the top job prior to the election. Question: how long will it extend? Democrats, appropriations leaders of both parties, and Members focused on defense funding, want a CR that extends only into December at the longest. The post-election session would then focus on putting together a FY 2017 omnibus spending bill.

House Minority Leader Reid is adamant that a CR that would extend into the next Administration will be not enacted. Members who are particularly focused on defense also feel that a CR that extends 6 months or longer would be very harmful to the Defense Department, preventing it from instituting needed actions. The same might be said about the IHS and other agencies, too.

The most conservative House Members – the Freedom Caucus – want a 6- or even 12-month CR and also want to break the current budget agreement cap by lowering domestic spending by \$30 billion for FY 2017. They will make a lot of noise but probably will not prevail.

It has been 20 years (1996) since we did not need a Continuing Resolution enacted to fund federal programs.

Zika Funding. President Obama is adamant that Congress include Zika funding in the CR, that it not wait until we have an omnibus appropriations bill. Depending on where one is from, this has Republican support, notably Senator Rubio of Florida. Additional *opioid* funding will probably have to wait until we have an omnibus appropriations bill enacted. There is increased funding to address this crisis in the pending HHS and Justice appropriations bills.

What might else be done in September?

Energy – the House and Senate have passed differing major energy bills (HR 8; S. 2012) but key negotiators of both Houses and both parties appear genuine in wanting to be able to conference the bills in September, and that it be a bill that the President will sign. A first public conference meeting has been scheduled for September 8. Staff of both Houses have been working on it throughout the summer. If a conference agreement is reached in September, final consideration might have to wait until the post-election session. (see our GM 16-041 on the energy bills).

There is some traction to include a section in a final energy bill that would address *wildfire funding* reform.

Water Resources Development Act. The Senate is considering this week whether to bring their Water Resources Development Act (S. 2848) to the Senate floor and Senators Reid and McConnell would like to be able to pass it on the Senate floor and conference it in September, pending the House voting on its version (HR 5303). The bill has considerable bipartisan support. The Senate bill contains important provisions regarding drinking water infrastructure and help for the community of Flint, Michigan, provisions which are not in the House bill.

Advocacy Efforts/Possible Action on Indian/Alaska Native Legislation. There is no guarantee that any Indian bills will be enacted before the end of the 114th Congress, but advocacy and congressional Committee action is still underway.

Major tribal advocacy efforts:

Tribal Labor Sovereignty Act (HR 511; S 248) – Tribal advocates want it added to any must-pass legislation. The bill would provide tribes with parity with federal, state, and local governments regarding the inapplicability of the National Labor Relations Act. The House has passed the bill. Senator McConnell would like to add it to any must-pass legislation. Prospects not good.

Crime Victims Tribal Allocation – the House and Senate pending Justice appropriations bills each provide a 5% tribal allocation (about \$147 million) for tribes, but maintaining this in a final omnibus appropriations bill will be very difficult. Judiciary Committees feel the Victims of Crime Act would have to be amended to provide a direct tribal allocation. If we could get the Justice Department tribal funding for even a year it would go a long way toward working for a more permanent fix in the authorization legislation. (See our GM 16-053.)

Self-Governance Legislation. Legislation (S. 286) to expand the Self-Governance program to non-BIA agencies in the Interior Department has passed the Senate and is scheduled to be marked up by the full House Natural Resources Committee on September 8. Our great hope is that it will be approved by the House as passed by the Senate and

scheduled for a floor vote under suspension of the rules. This would be a huge, and long fought, victory.

477 Legislation. Indian Employment, Training and Related Services Consolidated Act of 2015, legislation introduced by Senator Murkowski (S. 1443) and by Rep. Don Young (HR 329). S. 1443 was approved by the Senate in July 2016 and HR 329 was approved by the House Natural Resources Committee in March 2016. Following Senate passage of S. 1443, it was sent to the House and held at the desk. We hoped it would be approved by the House with no further action necessary. It appears, however, that we are waiting for a House Committee report to be filed and then to find House floor time to consider the Senate-passed S. 1443. The bill would make the P. L. 477 program permanent, expand the programs eligible to be included in 477 plans, clarify the waiver and plan approval processes, and make other improvements to strengthen tribal employment and training programs.

Indian bills scheduled for Committee action at this time:

SCIA scheduled hearing for September 7 on:

S. 2285, Senator Burr's bill to provide Lumbee recognition.

HR 4685, Tule River Indian Tribe land-into-trust. It has passed the House under suspension of the rules.

S. 3234, Senator Barrasso's Native American Business Development, Trade Promotion, and Tourism Act. He is looking for feedback on this bill – likely in preparation for next Congress.

S. 3261, Senator Tester's bill to establish a business incubators program within the DOI to promote economic development in Indian communities.

SCIA scheduled markup for September 7 on:

S. Con. Res 49, a resolution (not bill) to support efforts to stop the international theft, sale, etc. of tribal cultural items of Native peoples in the U.S. Approval of this would hopefully set the stage for enactment of legislation in the next Congress addressing this issue. Sponsors are Senators Udall, McCain, and Heinrich.

S. 2711, Senator McCain's bill that would institute a voucher system for children attending BIE schools to be able to transfer schools (very controversial with the BIE schools).

S. 2959, Senators McCain and Flake's White Mountain Apache Water Rights bill.

SCIA scheduled hearing for September 14 on:

S. 2636, Senator Tester's bill to amend the Act of June 18, 1934 to require mandatory approval of applications for land to be taken into trust if the land is wholly within a reservation.

S. 3216, Senator Grassley's bill to confer jurisdiction on the state of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation.

S. 3222, Senator Wyden's bill regarding Columbia River In-Lieu and Treaty fishing Access Sites Improvement Act.

As yet to be introduced bill, Hualapai Tribe Water Rights Settlement Act.

Not scheduled as of now, the SCIA also hopes to *mark up* Senator Heitkamp's Johnson O'Malley education bill (S. 2842) and Senator Rounds's RESPECT Act (S. 2796) which would eliminate a large number of arcane and offensive references to Native people and tribes in federal laws.

House Natural Resources Committee scheduled markup for September 7-8 (discussion of bills on September 7 and actual markup on September 8) on:

HR 3764, Rep. Bishop federal recognition bill providing that acknowledgement as an Indian tribe may only be done by an Act of Congress.

HR 4564, Rep. Zinke bill to direct the Secretary of Interior to reestablish the Royalty Policy Committee (the Certainty for States and Tribes Act).

A September 13, 11:00 AM House Natural Resources hearing has been scheduled on a Northern Marianas issue.

Post-Election.

Depending on who wins the Presidency and whether the Senate will have a Democratic or Republican majority next Congress will have an effect on the lame duck session.

In any event, the main business will have to be extension of the CR or putting together a FY 2017 omnibus appropriations bill. Some leftover stuff from the September session might squeeze through.

Should the Senate flip to Democratic majority for the next Congress, the current Democrats would not have a lot of incentive to try to compromise on legislation during the lame duck session. On the other hand, Republicans might try to get through a somewhat broad tax package or something they think would do not be doable in the next Congress should the Democrats be set to take control of the Senate in 2017.

An extension of the 30 or so expiring tax breaks may be considered.

Should Hillary Clinton be elected there is some incentive for the Senate to have a hearing and vote on the Supreme Court nomination of Judge Garland, with Republicans concerned she would nominate someone to the left of Garland.

Conclusion.

Please do not hesitate to contact Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745) if you have any questions or would like more information regarding the topics discussed above.