



*Week of 2-22-16
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Congressional Overview

Both Chambers of Congress returned this week (after a weeklong recess) to decide two battles: the House Budget and President Obama's attempt to replace the late Supreme Court Justice Antonin Scalia. On Tuesday, Republicans on the Senate Judiciary Committee came to a consensus decision to not have hearings or a vote on a Supreme Court nominee in 2016. However, the Democrats have and will continue to place intense political pressure on Republicans to back off on their preemptive refusal to approve any nomination from Obama.

Multiemployer Pension Reform Update

Next Tuesday, March 1, the Senate Finance Committee will hold a hearing entitled, "The Multiemployer Pension Plan System: Recent Reforms and Current Challenges." This week, House Education and Workforce Chairman John Kline (R-MN) discussed multiemployer pension reform, stating:

"We began that process with the bipartisan Multiemployer Pension Reform Act. Signed by President Obama more than a year ago, the law is critical to averting a crisis that has been growing for decades. The men and women affected by this crisis face a terrible situation, but because we acted, Congress and the administration helped ensure these retirees are better off than if we had done nothing. We're now working to develop reforms that will modernize the multiemployer pension system, improve the financial outlook of the federal insurance agency overseeing defined benefit pension plans, and provide workers with a new, innovative option to plan for retirement."

On Feb. 9, the Treasury Department announced another opportunity for the stakeholders in the Central States pension fund to weigh in on the multiemployer plan's request to reduce plan participants' benefits. The original comment period ended on Dec. 7, 2015, but the agency extended that deadline to Feb. 1 and now the agency has reopened the comment period until March 1. In its notice of the reopening, the agency said it's seeking comments from interested parties, including contributing employers, employee organizations and participants and beneficiaries of the Central States fund.

Last September, Central States became the first multiemployer pension fund to apply for approval of a plan to cut plan participants' benefits under the Multiemployer Pension Reform Act (MPRA), also known as the Kline-Miller Act. Since then, two other multiemployer plans have filed applications with Treasury. The multiemployer funds are required under the MPRA to seek the Treasury's approval of benefit cuts. The Treasury has 225 days from a filing to reject an application. Otherwise, it will be considered approved.

Finally, President Obama is asking Congress for a \$100 million legislative proposal that would expand access to retirement accounts and "sow the seeds" for future retirement models that would provide portable benefits coverage through innovations in multiple employer pension plans. The legislation would expand coverage in two ways: through innovation grants to spur the provision of new multiple employer benefit models and the creation of open multiple employer plans.

Research Study Examines Impact of State Prevailing Wage Laws

The research study, "[The Economic, Fiscal, and Social Impacts of State Prevailing Wage Laws: Choosing Between the High Road and the Low Road in the Construction Industry](#)," compared various social and economic dynamics in the 25 states with strong or average prevailing wage statutes against states that impose minimal or no prevailing wage protections. Since the study was released, significant legislative action has taken place in two of those 25 states. The West Virginia Legislature overrode the governor's veto of legislation to repeal the state's prevailing wage law on Feb. 12, and the New Mexico House approved a bill on Feb. 9 that would remove prevailing wage requirements from publicly funded highway and school construction projects.

Impact on States Key findings from the prevailing wage study include:

- Repealing state prevailing wage laws would have a negative effect on state governments. States with weak or no prevailing wage laws pay \$367 million more per year in food stamps and tax credits than prevailing wage states.
- Prevailing wage laws have no effect on total construction costs. The prevalence of the peer-reviewed research indicates construction costs are not affected by prevailing wage rates. In general, labor comprises only 23 percent of total construction costs.
- Prevailing wage laws close employment gaps linked to race, support veterans and reduce income inequality. In addition, prevailing wage laws support middle class families, with workers earning 17 percent more than counterparts in non-prevailing-wage states.

U.S. Department of Commerce to Revisit Aluminum Extrusions Tariff Decision

The U.S. Department of Commerce (DOC) will have to revisit its decision to extend anti-dumping and countervailing duty orders on some curtainwall units imported from China. Last week, Judge Donald C. Pogue of the U.S. Court of International Trade (CIT) reprimanded the DOC for its March 2014 scope ruling that determined Yuanda's unitized curtainwall units fall under orders on aluminum extrusions from China.

Yuanda, Jango Curtain Wall Americas, Permasteelisa and their affiliates challenged the decision in the CIT, arguing that the scope ruling "is not in accordance with law, unsupported by substantial evidence, and arbitrary and capricious." The United States, named as the defendant, opposed the motion, as did Architectural Glass & Aluminum Co., Walters & Wolf and Bagatelos Architectural Glass Systems Inc., collectively referred to in documents as the "Curtain Wall Coalition."

In Pogue's order, entered Feb. 9, he asserts the DOC's scope ruling "redefines key terms contrary to the plain language of the [orders]...does not reasonably consider the characteristics of Plaintiffs' merchandise and the evidence that weighs against the agency's determination...and offers insufficient reasons for treating similar products differently." The conclusion reads, in part, "... As Commerce anticipated elsewhere, an interpretation of 'finished goods kit' that requires 'all parts to assemble the ultimate downstream product' to enter at the same time ... has led to an 'unreasonable,' if not 'absurd' result."

The CIT remanded to the DOC for further consideration, giving the department until March 22 to complete and file its redetermination. Yuanda has until April 5 to file comments, and the U.S. and the Coalition will have until April 15 to file any reply.

Senate to Work on Separate Bill to Aid Flint, MI

The Senate reached a deal on Wednesday to offer a separate bill to send federal aid to Flint, MI to address the water crisis. The agreement would be to have the energy bill go forward, as well as addressing not just Flint, but broader water infrastructure issues.

Legislation to Help Speed Up Zika Virus Vaccine

Per the Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee Lamar Alexander (R-TN), legislation that aims to speed the development and approval of a Zika virus vaccine could dovetail with ongoing efforts to spur biomedical innovation. On Wednesday, he indicated that a bill to make Zika vaccines eligible for priority reviews will be considered next month, when the panel marks up a slate of other bills intended to serve as a companion to House-passed 21st Century Cures legislation. Also on Wednesday, the House Oversight and Government Reform Committee held a hearing focused on travel guidelines for pregnant women and probing the United States Olympic Committee on how it's preparing to handle the emerging virus in advance of the 2016 Summer Olympics in Brazil.

Senate Committees Advance Legislation to Combat Opioid Abuse

On Feb. 11, the Senate Judiciary Committee advanced a pair of bills intended to address the prescription drug abuse epidemic. One bill sponsored by Sens. Sheldon Whitehouse (D-RI) and Rob Portman (R-OH) would provide financial assistance to states including prescription drug monitoring programs. The bill would also increase access to drugs that can counteract the effect of opioids and prevent overdoses, as well as expand prevention and treatment efforts. A second bill, sponsored by Senator Orrin Hatch (R-UT) would instruct the Drug Enforcement Agency and the Department of Health and Human Services to collaborate on strategies to prevent prescription drug abuse while ensuring that patients who legitimately need the drugs can still access them. Both bills were cleared by voice vote and will likely be taken up by the full Senate after the President's Day recess.

House Budget Resolution Update

Republicans on the House Budget Committee have agreed on a FY 17 budget resolution that would offer multiple options for cutting mandatory spending programs to offset the \$30 billion in additional discretionary spending that Congress passed last year. However, the committee will not consider the bill until March 25. The conclusion reached this past weekend to unite behind the budget plan defied the expectations of many on the Hill, who doubted that House Budget Chairman Tom Price (R-GA) would be able to craft a resolution that would satisfy members of the Budget Committee and win adoption in the House.

Conservatives in the caucus wanted to break from the higher discretionary spending caps that were enacted in last year's budget deal and instead use lower spending levels. Critics of that approach, including House Speaker Paul Ryan (R-WI), argued that maintaining the levels from the budget deal offered the best chance to pass appropriations bills this year, a priority for Ryan in his first full year as speaker.

Rep. Price had been working to find ways to incorporate tens of billions of dollars of additional savings in the budget plan through rapid and credible cuts to mandatory spending programs to satisfy conservatives who are worried about the climbing deficit and debt. The key to bringing conservatives on board was to include a plan within the budget resolution that would offer numerous options for bringing legislation to the floor quickly to overhaul and reduce the cost of mandatory spending programs. The agreement likely would call for attaching changes in entitlement programs to FY 17 appropriations bills, along with offering standalone legislation on the floor. Conversely, Democrats blasted the GOP for not moving more quickly toward a markup.

As expected, the budget resolution lays out a path to eliminate the deficit within 10 years, requiring a combination of deep cuts in mandatory and discretionary spending programs and proposals aimed at encouraging economic growth. Balancing the budget in a decade has been a prerequisite to get enough Republican support for the resolution over the past several years. The plan will include both proposed changes in the budget process and reconciliation instructions aimed at saving billions of dollars.

One idea under consideration is to delay use of reconciliation until next year, when there could be a Republican president who would sign GOP deficit-cutting legislation. If that happened, Congress could potentially move a reconciliation bill based on the FY 17 budget resolution early next year, and then move a second reconciliation bill later in the year based on instructions from a FY 18 budget resolution. However, in order to proceed with reconciliation, the House and Senate first have to agree on a budget resolution containing reconciliation instructions. There are widespread doubts about whether the Senate will move a budget resolution this year.

U.S. Supreme Court: Battle Over the Vacant Seat

Within a few hours after the death of Justice Antonin Scalia, President Obama made it clear he would nominate a successor to fill the vacancy and hoped the Senate would confirm his nominee. Sen. Mitch McConnell (R-KY) and others immediately stated that the vacancy should be filled by the next president and would try and block any nominee from Senate confirmation.

How does the passing of Justice Scalia affect cases that are now before the Court?

- Votes that Justice Scalia cast in cases that have not been publicly decided are void if Justice Scalia's vote was not necessary to the outcome. For example, if he was in the dissent or if the majority included more than five Justices, then the case will still be decided by the eight-member Court.
- If Justice Scalia was part of a five-Justice Majority in a case, the Court is now divided four to four. Since there is no majority for a decision, the lower court's ruling stands as if the Supreme Court had never heard the case. For example, in a case regarding funding of public sector unions, challengers are asking the justices to overturn a 1977 Supreme Court ruling that allows unions to require dues from employees they represent but aren't members. The Court is now split down the middle, so the lower court's ruling stands.
- There is also recent precedent for the Court to attempt to avoid issuing a number of equally divided rulings. In Chief Justice Roberts's first term, the Court decided a number of significant cases in similar circumstances by instead issuing relatively unimportant, often procedural, decisions. It is unclear if the Justices will take the same approach in any of this term's major, closely divided cases.

DOL Conflict of Interest Rule Should be Finalized in First Half of 2016

On Feb. 12, the DOL announced its conflict-of-interest rule should be finalized in the first half of 2016 and will reflect careful consideration of nearly 35,000 public comments. Assistant Labor Secretary Phyllis C. Borzi said she would consider the forthcoming final fiduciary rule a success if reasonable people of good will can look at it and say that the department listened to their comments and the testimony of 75 witnesses who testified during public hearings on the rule.

DOL Secretary Discusses Job Growth and the DOL's 2017 Budget

DOL Secretary Thomas Perez issued the following statement regarding the DOL's work and future budget: "We've accomplished a lot over the last seven years to recover from the worst economic crisis of our lifetimes. The economy shed more than 2 million jobs in the three months before President Obama took office. Today, we're in the middle of the longest streak of private sector job growth on record – 71 consecutive months and 14 million jobs. The unemployment rate, which had reached a nearly catastrophic high of 10 percent, is now down to 4.9 percent."

"Despite the fastest six months of wage growth since the start of the recovery, the decades-long trend of modest increases means too many people are still finding opportunity beyond their reach. We need to do more to create shared prosperity and an economy that works for everyone. The Department of Labor's 2017 budget, builds on the bipartisan work of Congress when it passed the Workforce Innovation and Opportunity Act (WIOA), which is modernizing and reforming the workforce for the 21st century. The budget helps realize the goals of WIOA by funding its core formula grants at their full authorized level – a \$138 million increase over this year's amount. The budget also gives the department and states the funding necessary to oversee and implement extensive changes envisioned in

the law. That includes a \$40 million investment to build state and local capacity to track employment and educational outcomes of WIOA program participants.”

“The budget reinforces the department’s commitment to apprenticeships, sustaining the \$90 million in grants provided in the 2016 budget and adding a \$2 billion mandatory Apprenticeship Training Fund. These investments would help meet the president’s goal to double the number of apprentices across the nation, giving more workers the opportunity to develop job-relevant skills while they are earning a paycheck.”

“The budget also creates an American Talent Compact, providing \$3 billion in mandatory funds to train half a million people for high-demand jobs through regional partnerships among workforce boards, community colleges and other organizations. And the budget provides \$1.5 billion in mandatory funding to states to fund Career Navigators in American Job Centers to help people looking for jobs and training opportunities.”