FBB Update: COVID-19 Legislation Introduced in Senate
July 28, 2020

Senate Majority Leader Mitch McConnell today unveiled legislation to provide approximately $1 trillion in funding to help government, business and individuals respond to the health care and economic crisis caused by the COVID-19 pandemic. This bill is primarily designed to keep the health care system and economy afloat during the pandemic and therefore includes limited funding for long-term "stimulus".

Important for Oregon Ports:

- While the Senate bill does not contain money specifically for Ports, we are working with Senator Merkley to introduce legislation that would give MARAD authority to distribute emergency funding to ports (Senate counterpart to DeFazio bill) and provide additional funding for this purpose, and will be working to include that legislation and funding in whatever final COVID bill is sent to the President.

- The Senate bill creates a bipartisan committee for examining the health of the Highway Trust Fund (as well as for Social Security, Medicare), but no transportation dollars (other than $10 billion for the Airport Improvement Program). By comparison, the House-passed COVID bill (HEROES Act) provides the remaining FY20 Federal-aid Highway formula dollars from the FAST Act at 100% federal share and allows money to cover operational, maintenance, and administrative expenses, including payroll; and HEROES contains $15 billion in stopgap funds for state departments of transportation.

- The Senate bill also includes $500 million for fisheries.

Note that this bill signifies the next step in the negotiations and is not a final product. We are watching these negotiations closely and talking with members and staff from the House and Senate, and from both sides of the aisle – we will keep you updated as events warrant.

In the meantime, this email contains the following information:

- What happens next.
- Questions about enhanced unemployment benefits.

- What is in the Senate bill.
- What needs to be resolved before a final bill can be signed into law.
- Congressional Action to Date.

Email me if you have any questions.

ADDITIONAL INFORMATION

What Happens Next

Just as the HEROES Act represented the negotiating position of House Democrats, the Senate bill represents the negotiating position of Senate Republicans and the White House. A number of issues will need to be resolved (more on that below), and negotiations are expected to extend beyond the end of the week (July 31), which marks the expiration of the additional $600 in unemployment benefits.

While the House is scheduled to adjourn for its five-week August recess on July 31, that chamber will stay in session until a final bill is negotiated. The Senate is not scheduled to adjourn for the August recess until August 7.

Questions about Enhanced Unemployment Benefits

Assuming that negotiations do in fact extend beyond August 31, this begs the question of whether / how Congress will extend unemployment benefits and at what level. Options include:

- Congress could let benefits lapse and then extend retroactively. This would create tremendous uncertainty for people that currently rely on these benefits.

- The House and Senate could pass a short-term extension of unemployment benefits to give Congressional leaders more time to work out a comprehensive deal.

- Congress could pull the unemployment benefit discussion out of the larger COVID package and extend unemployment benefits through the end of the year.

Each option could complicate the COVID negotiations in different ways.

What is in the Senate Bill

We are just starting to go through the Senate bill – here are items that may be of interest:

- Reduces enhanced unemployment benefits from $600 to $200 for two months and requires states to implement a more targeted system during that time which pays individuals 70% of their lost weekly wages. State unemployment benefits generally replace 45 percent of a worker's wages before they lost their job.
    - States "unable" to provide the more targeted form of benefit by Oct. 5 can ask the Labor Department for a waiver to continue the flat payment for an additional two months, the proposal states.
- Makes numerous changes to PPP (email me if you'd like a detailed summary of the changes). Included among the changes:
    - Small businesses with 300 or fewer employees that show a revenue loss of 50% would be able to apply for a second loan.
    - Streamlined loan forgiveness for smaller loans.
    - Expands forgivable expenses.
- Includes credits for companies that retain employees.
- Includes payments to individuals (similar to the $1,200 payment included in the CARES Act for individuals making less than $75,000).
- Includes $105 billion for schools, including $29 billion for higher ed and $70 billion for K-12.
- Includes additional funding for coronavirus testing.
- Provides liability protection for businesses, schools and other organizations from lawsuits arising from exposure to coronavirus due to reopening. Lawsuits would be moved to federal courts, and plaintiffs would have to show "gross negligence" by employers in order to win. Liability protections would be in place for five years.

- Includes deductions for employer purchases of testing, PPE, and certain other supplies.

- Allows state/local governments to use CARES Act money to make up lost revenues.

What Needs to be Resolved Before a Final Bill Can Be Signed Into Law

As noted above, while Senate bill is an opening offer – and although many of the aforementioned items are likely to be contained in a final bill in some way – there are a number of things that will need to be reconciled:

- Overall Funding – the Senate bill contains approximately $1 trillion in spending; Democrats are seeking closer to $4 trillion (more than what was contained in the HEROES Act).

- Additional funding for state and local governments – there is no money in the Senate bill; Democrats are seeking $1 trillion.

- Unemployment Benefits – the HEROES Act extends unemployment benefits at the current $600 level; the Senate bill pares back unemployment benefits.

- Funding for education – Democrats are seeking approximately four times the money included in the Senate bill.

- Liability protection – The press generally report that Democrats oppose liability protection; that is not entirely accurate, however, Democrats and Republicans are not aligned on scope and duration.

Congressional Action to Date

Congress has passed four pieces of emergency legislation since March 3rd to address the economic and health care crisis created by COVID-19:

1. ***Coronavirus Preparedness and Response Supplemental Appropriations Act*** (P.L. 116-123): This bill, which was signed into law on March 3rd, focused largely on coronavirus testing capability and federal agency COVID-19 response capacity.

2. ***Families First Coronavirus Response Act*** (P.L. 116-127): This bill, which was signed into law on March 18th, focused on paid sick and family leave, unemployment benefits and propping up government safety-net programs.

3. ***Coronavirus Aid, Relief, and Economic Security Act, or CARES Act*** (P.L. 116-138): This bill, which was signed into law on March 27th, provides enhanced unemployment benefits, creates new loan programs for small businesses, provides significant funding to facilitate lending to companies of all sizes, provides for direct payments to U.S. taxpayers, and includes individual and corporate tax provisions to help individuals and businesses through the crisis. The bill also includes provisions to give a boost to our nation's health care system and contains $330 billion in supplemental appropriations for government agencies to help state, local and tribal governments respond to the COVID-19 crisis.

4. ***Paycheck Protection Program and Health Care Enhancement Act*** (P.L 116-139): This bill, which was signed into law on April 24, replenishes the SBA Paycheck Protection Program (PPP)and Economic Injury Disaster Loan (EIDL) Program (both programs had run out of funding), provides additional funding for hospitals and healthcare providers to support the need for COVID-19 related expenses and lost revenue, and increases funding for COVID-19 testing capacity.

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