November 27, 2017

CITY COUNCIL STUDY SESSION ITEM

SUBJECT
Federal Legislative Update

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POLICY ISSUES
Congress, the Administration, and Federal agencies each year approve actions that impact the City in a broad range of areas. Staff may recommend, and/or Council may wish to direct, communication to the City's Congressional delegation on a range of issues throughout the year.

ACTION	DIRECTION	INFORMATION ONLY
☐	☐	☒

No formal action is required; this is an informational briefing.

Council may wish to provide direction to staff regarding particular legislative proposals.

BACKGROUND/ANALYSIS

Big Picture D.C. Update

Congress returns from its Thanksgiving recess on Monday, November 27, with just a few weeks to wrap up its work before the end of the year. The first session of the 115th Congress is scheduled to conclude on December 15. However, it is possible – perhaps even likely – that leadership will decide to extend the session to allow more time to complete work on tax reform and other issues, including FY18 appropriations, several expiring reauthorizations, and potential fixes for Deferred Action for Childhood Arrivals (DACA) recipients and the Affordable Care Act's (ACA) cost-sharing reductions (CSRs).

Budget Resolution and Tax Reform

Overview of Process – The House and Senate agreed to a FY18 budget resolution in late October. A budget resolution typically sets topline spending numbers for appropriators to use in drafting spending bills each year. However, since Congress must reach a separate deal to raise spending caps for FY18, the primary function of the budget resolution this year is to pave the way for tax reform via the reconciliation process. Reconciliation instructions allow the Senate to pass a bill with a simple majority of votes and avoid a potential filibuster if the measure has budgetary impact and complies with other procedural rules. In this case, the budget resolution includes instructions for the House and Senate to develop a tax reform plan that cuts taxes and adds no more than $1.5 trillion to the federal deficit over 10 years.

With the budget resolution in place, the House rolled out its proposed tax bill on November 2 and quickly moved it through its legislative process. The measure passed on the House floor on November

16 with all Democrats and 13 Republicans opposed. The Senate introduced its proposal on November 9, and it passed out of the Senate Finance Committee on November 16.

The Senate bill will now head to the Senate Budget Committee to be combined with a revenue-generating measure to open a portion of the Arctic National Wildlife Refuge (ANWR) to fossil fuel production from the Senate Energy and Natural Resources Committee before heading to the Senate floor for final passage. The ANWR provision helps to offset the costs of the tax cuts included in the plan. If all goes according the Republican leaderships' plan, once the Senate has passed its bill, it will go to conference committee where the House and Senate will iron out the differences between the measures before sending it to the President's desk. While there is significant momentum behind the tax effort, it is still not a sure thing that it will ultimately pass particularly in the Senate where the majority can only lose two votes and still pass the measure.

Overview of Provisions in the Tax Bills – Both the House and Senate tax bills would permanently lower the corporate tax rate from 35% to 20%. Both bills would act on the rates for small businesses, with the House opting to lower the rate for "pass through" businesses to 25% and the Senate opting to include a 17.4% deduction for small business income. Senator Ron Johnson (R-WI) said recently that he would oppose the bill because of the way the proposal treats small businesses compared with the treatment of corporations, but he is widely expected to support the final measure if it addresses his concern.

There are also sweeping changes included in both bills for individuals. The House proposal would reduce individual tax rates and reduce the number of rates down to four. To offset the reduced rates, the House also proposes to eliminate or cap several deductions, including the capping the state and local tax deduction (called SALT), capping the mortgage interest deduction, and eliminating the medical expenses deduction, among others. The Senate proposal would lower individual rates in seven tax brackets and would eliminate the SALT deduction. Notably, the Senate bill would also sunset the individual tax cuts after eight years to avoid conflicting with reconciliation rules on impacts to the deficit.

The changes to SALT deductions have drawn concerns – and "no" votes – from House Republicans from states with significant local tax burdens, including California, New Jersey and New York. The deduction, which was originally eliminated in the House tax bill, was instead pared back to apply only to property taxes (not sales or income taxes) and would be capped at $10,000. The Senate eliminates the SALT deduction. Along with the changes to the SALT deduction, municipalities would be impacted by proposed changes to tax-exempt private activity bonds (PABs), as the House proposal would eliminate the authority to issue these bonds. Also, the advanced refunding on tax-exempt municipal bonds was proposed for elimination in eliminated in both the House and Senate bills.

FY18 Spending and Budget Control Act Caps

The 2011 Budget Control Act (BCA) set in place statutory caps on defense and non-defense discretionary spending. The BCA caps are set at $549 billion for defense and $516 billion for non-defense for FY18, but most members of Congress support raising the caps to allow for additional discretionary spending. If FY18 spending levels exceed the BCA caps, sequestration's across-the-board cuts will be triggered. To avoid sequestration and increase topline spending, House and Senate negotiators are working to reach a deal to lift the caps, much like Congress did in 2013 and in 2015. Negotiators are working on a two-year, $182 billion budget deal that would set spending levels at $603 billion for defense and $553 billion for non-defense. There is no agreement on this issue, as Democrats push for parity between defense and non-defense discretionary spending (the current deal would give a larger boost to defense than non-defense spending) and some Republicans are pushing for an even greater defense spending level. The budget compromise must be in place so that appropriators know what topline spending numbers they are working with to complete the FY18 spending.

The continuing resolution (CR) currently funding the government expires on December 8. House and Senate appropriators and leadership are indicating that they plan to pass an FY18 omnibus spending bill before the end of the year to fund the government through the rest of FY2018. House Republicans passed an FY18 omnibus spending bill in mid-September. That proposal will serve as a negotiating tool but is not representative of any final deal as it includes many provisions that are strongly opposed by Senate Democrats.

The Senate has yet to mark up four spending bills – Defense, Interior-Environment, Homeland Security, and Financial Services. Senate Appropriations Chairman Thad Cochran (R-MS) announced that he would release the text of those bills before the Thanksgiving break. With a budget deal in place, all the Senate spending bills released, and the House-passed omnibus in hand, appropriators will work to reach a final FY18 deal before the end of the year. It's possible that another brief CR will be needed, but it's unlikely at this point that a CR would extend past the holidays.

Health Care

Repeal of Individual Mandate in the Affordable Care Act (ACA) – Language to eliminate the individual mandate was included in the Senate's tax bill. The mandate is a very unpopular provision of the ACA, but it does ensure the participation of healthy individuals in the market which is an important element for market stability. Elimination of the individual mandate is favored by many Republicans who were frustrated by the failure of efforts to repeal and replace the ACA earlier this year. Repeal of this provision would also help offset the costs of the tax bill because the federal government will no longer be required to pay subsidies for individuals who opt out of the health care market once the threat of the penalty is eliminated. The non-partisan Congressional Budget Office estimates that eliminating the individual mandate would result in 13 million fewer people insured, which could jeopardize the support of some Senate Republicans for the broader tax bill.

ACA Individual Market Stabilization – The prospects for the "Murray-Alexander" proposal to stabilize the individual marketplace by continuing the CSRs and giving more flexibility to states to administer the ACA are dim. This is the agreement brokered by Senator Patty Murray (D-WA) and Senator Lamar Alexander (R-LA). Many Senators, including Senator Lisa Murkowski (R-AK), are pushing for the measure to come to a vote, but even it was passed out of the Senate, House Speaker Paul Ryan (R-WI) has indicated that he does not support the bill and wouldn't bring it to a vote in the House.

***Program Authorizations* –** The authorization for the Children's Health Insurance Program (CHIP), which provides insurance coverage for low-income children who don't qualify for Medicaid, and authorization for the Community Health Centers, both expired on September 30. Negotiations are ongoing to reach a compromise that would reauthorize both programs, however there is no agreement yet on how to fund extending these programs.

Transportation & Infrastructure

Infrastructure Package – The details of the long-awaited $1 trillion infrastructure investment package remain unclear. There is a chance that the package could be linked with tax reform, which could provide a revenue source for the spending involved, but no additional details have been released to date.

Waters of the U.S. Rule – As the legal battle over the controversial 2015 Waters of the U.S. rule issued by the Obama Administration carries on, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers have proposed delaying the effective date of the rule for two years. The move would allow more time for the agencies to develop a new definition of the waters of the U.S.

Immigration

Deferred Action for Childhood Arrivals (DACA) Fix – Some members of Congress are looking at the FY18 budget compromise as a vehicle to address permanent status for DACA recipients before the end of the program. The White House announced earlier this year that it would end the program in March 2018 unless Congress acts. The path forward on DACA is unclear.

Border Wall Funding – The House omnibus bill included funding for President Trump's proposed border wall. The Senate Department of Homeland Security spending bill expected to be released soon will also include $1.6 billion in funding for the first three segments of the proposed wall, extending 74 miles. Senate Democrats are firmly opposed to supporting any measure that includes funding for the wall, potentially setting up one of the major showdowns of the FY18 spending bill process.

ALTERNATIVES
N/A

RECOMMENDATION
N/A

ATTACHMENT(S)
N/A