



ABC's Weekly Federal Legislative Update May 18, 2020

Introduction

The Senate plans on considering Administration nominees for the Federal Election Commission and judicial nominees. The House will be conducting committee business but does not plan on voting on any legislation. The following is news from Washington, D.C.

Administration

Congress

[The House's Latest Coronavirus Relief Package – The HEROS Act](#)

Last Friday, the House passed its latest coronavirus relief package, called the HEROS Act. The bill contains many Democratic priorities, including aid to state and local governments and transportation agencies. This package remains narrow, focused on addressing the pandemic and does not contain many items related to renewable energy with the exception of a provision to assist biofuels producers including RNG. The bill now heads to the Senate where it will be met with strong opposition from the controlling GOP. While much of what is contained in the HEROS Act will change, the Senate GOP still has an impetus to move on legislation before July 1 when authorization for the Paycheck Protection Program expires. The follow three stories discuss this bill.

[Senate in No Rush](#)

Geoff Koss of [E&E Daily](#) wrote on May 18, "Congressional Democrats are calling for talks on additional pandemic stimulus after the House passed \$3 trillion more Friday, but Republicans continue to resist a rush to legislate more COVID-19 relief.

"House Speaker Nancy Pelosi (D-CA) yesterday rejected the GOP's push to assess the effectiveness of the more than \$3 trillion already enacted to stem the pandemic's health and economic fallout before launching new negotiations.

"Time is of the essence," Pelosi said on CBS's "Face the Nation." "They may think it's OK to pause. Well, people are hungry across America. Hunger doesn't take a pause. People are jobless across America."

"However, Pelosi cracked the door to a key GOP demand in the next stimulus package: liability protection for businesses and local governments for decisions made through the pandemic.

"We have no red lines," she said on CBS.

"She went on to suggest, however, that mandatory federal guidelines contained in the "Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act" passed Friday in the House would reduce the need for liability protection, which Republicans are insisting on.

"But Capitol Hill Republicans so far have refused to be dragged into another negotiation on pandemic relief, with Senate Majority Leader Mitch McConnell (R-Ky.) slamming the House Democrats' bill as a "totally unserious effort" and a "Democratic wish list."

"House Minority Leader Kevin McCarthy (R-Calif.) told reporters Friday that Congress needs to evaluate what it's done so far on COVID-19 before passing more.

"He declined to offer a timeline, but said there should be hearings on needs and efforts to reopen society. "States are beginning to open up," McCarthy said.

"Just one Republican — New York's Peter King — backed the "HEROES Act," which contains more relief for individuals and state and local governments.

"The package did not include clean energy provisions desperately sought by advocates, but the issue is likely to resurface as talks get underway. The legislation did have some energy- and environment-related priorities, including biofuels and agriculture aid and help for people with water and power bills.

"Fourteen House Democrats voted against the "HEROES Act," which passed 208-199. Critics included moderates, worried about the size of the package and lack of more deliberations, and progressives, who wanted more provisions.

Outlook next week, ahead

"Even as the two parties spar over the need for more stimulus, the two chambers are also at odds over legislating during a pandemic.

"The Senate is expected to adjourn for the Memorial Day recess this week without unveiling a counteroffer to the "HEROES Act."

“The House will be back May 27 and 28. Majority Leader Steny Hoyer (D-Md.) said on the floor that the chamber would consider Senate-passed national security legislation. Pandemic-related measures could also come up.

“The House on Friday voted largely along party lines to temporarily allow proxy voting on the floor and in committees during the pandemic.

“Hoyer said next week would give aides a chance to review those changes and "determine exactly how the new rules can be carried out."

“He said the House was looking forward to "getting product" from committees that can pass on the floor, including water resources, defense, highway and spending bills.

[Five Energy and Environmental Issues at Play in New HEROS Act](#)

On May 14, George Cahlink of [E&E Daily](#) submitted, “Even backers of the House's \$3 trillion pandemic aid package say it will have to change significantly if it's to become law. That means intense lobbying and negotiations will only increase.

“The House Rules Committee will meet today to debate the legislation, H.R. 6800, the largest bill yet to address the COVID-19 virus. House lawmakers are set to return tomorrow to pass it.

“Progress on the measure will then slow down, as tough negotiations lie ahead with Senate Republicans and the White House.

"It's, as they say, DOA. Dead on arrival. Nancy Pelosi knows that," President Trump said yesterday during a White House appearance, referring to House Speaker Pelosi (D-CA).

“Energy and environmental issues will be part of those talks, including funding and provisions already in the House bill as well as other matters that could emerge. Here are five issues to keep an eye on:

Direct business aid

“No single pandemic aid program has generated more attention than the Paycheck Protection Program, which has provided more than \$500 billion in loans to small businesses in recent weeks — including more than \$5 billion to energy firms and utilities.

“The House bill would extend the program, which is due to run out on July 1, through the end of the year. It would not provide any additional funds because more than \$100 billion remains from an emergency PPP infusion Congress approved last month.

“Republicans are likely to agree on extending the program until the end of year, and some say the July expiration of PPP could be the Senate's deadline for passing another major stimulus.

“Still, a fight could emerge over a provision Democrats added that would make all nonprofits eligible for PPP, including lobbying groups and trade associations.

“And while the House bill would not require full disclosure of loan recipients, proposed expanded PPP reporting requirements, including one related to bank lending fees, could run into GOP opposition.

“Progressive Senate Democrats, meanwhile, are likely to push for adding a provision that would block recent efforts by the Federal Reserve to make it easier for fossil fuel companies to tap the Main Street Lending Program, a multibillion-dollar pandemic loan initiative for midsize companies.

An oil renewables trade-off

“A Senate showdown could be coming over whether to approve billions of dollars to fill the nation's Strategic Petroleum Reserve in exchange for renewable tax breaks.

“Moderates from both parties have floated the potential deal that could emerge in the Senate. The House bill does not contain any of the \$3 billion sought by the White House for buying SPR crude, nor does it specifically address the renewable energy production and investment tax credits.

“Environmentalists lamented the lack of any action to preserve clean energy jobs in the House legislation, circulating a new analysis yesterday. It warned that nearly 600,000 jobs have already been lost and an additional 250,000 could be gone by June without congressional action.

“The \$3T bill just released by the House contains many important priorities for the country, and though it includes a lengthy tax section, it unfortunately leaves out COVID-19 related assistance that could save clean energy jobs. We cannot afford to let the clean energy industry backslide,” the Sierra Club said in a statement.

“But environmental groups aren't willing to make a deal on clean energy support at any cost. Several sent out press releases yesterday blasting House Majority Leader Steny Hoyer (D-MD) as a sellout to “Big Oil” for saying earlier this week that he backs filling the SPR.

“Hoyer's comments were seen as something of a trial balloon for a Senate deal involving taxes and buying crude.

“Still, a compromise can't be ruled out, with senators from both parties eager to claim they are protecting jobs ahead of this fall's elections.

Missing words

“The pandemic legislation is more than 1,800 pages, but not once does the text contain the word "climate." Nor does the bill seek to use the pandemic aid as leverage to push for curbs on pollution as some greens had hoped.

“House Democrats held back after an early version of the last major pandemic response bill — the Coronavirus Aid, Relief and Economic Security Act — was criticized by lawmakers from both parties for seeking to limit carbon emissions from airplanes in exchange for the carriers' getting loans.

“Republicans derided it as a bid to force a Green New Deal-style provision into law during a national emergency. House Democratic leaders abandoned the emissions effort, and the loans went ahead.

“No similar efforts to tie aid for businesses and state and local governments to climate action — such as corporate disclosures in exchange for federal support — are in the new legislation.

“Environmentalists and Senate Democrats may grouse about the climate being ignored, but they may have to settle for the House bill's \$50 million in new EPA environmental justice grants.

“Those grants could be used to study connections between exposure to pollution and the transmission of the coronavirus, supporters say.

Wildlife

“A push to make changes to the nation's oldest wildlife conservation law to prevent wildlife-borne diseases, known as the Lacey Act, may not fly in the Senate.

“House Democrats are proposing the first significant change to the Lacey Act in more than a decade to allow listing species that pose a risk to human health as "injurious," which would prevent their import or transport.

“While few question the effectiveness of the Lacey's Act original anti-poaching provisions, conservatives say recent changes, which have extended its reach to plants and trees, leave businesses more open to liability.

“Senate Republicans have made pandemic liability protections for businesses a priority, and Lacey Act changes might fall as part of that push.

“One potential compromise could allow for more than \$100 million in funds in the House bill for the U.S. Geological Survey and the Fish and Wildlife Service for fighting and preventing wildlife-borne diseases.

Transportation

“Congress is likely to dole out only a fraction of the \$2 trillion in infrastructure spending once floated as part of a pandemic plan.

“House Democrats backed off from far more ambitious transportation plans to instead focus on the need for immediate aid to state and local governments. Republicans who have been weary of how a large-scale building program would be funded aren't likely to object.

“More modest investments in the House bill that would provide \$15 billion for highway infrastructure programs and \$15.75 billion for public transit are likely to survive and could even increase a bit. Transportation spending is generally popular in both parties, especially in an election year.

“A more partisan fight could emerge between the two sides over a House provision that would require passengers and workers riding Amtrak, airplanes and most public transit to wear face masks during the pandemic.

“The use of protective coverings by the federal government could become a flashpoint among some on the right who say state and local officials should set social distancing guidelines.

“Separately, top lawmakers in both the Senate and House are moving forward with water and transportation infrastructure measures pending before the pandemic hit.”

Disclosure: E&E News has received funding from the Paycheck Protection Program.

[Biofuels Provisions in the HEROS Act](#)

The provisions discussed in this story would also pertain to RNG. As stated above, this product is far from finished and could drastically change in the Senate.

E&E Daily reporter Marc Heller published on May 13, “Biofuel producers hit hard during the coronavirus pandemic would receive cash assistance from the Department of Agriculture as part of the relief bill released by House Democrats yesterday.

“The bill would allow the USDA to pay biofuel producers 45 cents per gallon produced between Jan. 1 and May 1 — a helping hand advocated by several lawmakers from ethanol- and biodiesel-producing states, as well as by biofuel industry groups.

“The CEO of Growth Energy, Emily Skor, called it a “sorely needed beacon of hope for biofuel workers, our farm partners, and thousands of rural communities struggling to stay afloat.”

“Industry groups estimate that as much as half the nation's biofuel capacity went offline during the pandemic as transportation took a dive.

“Some producers said they were already under strain from EPA policies that allowed some small refineries to sidestep biofuel blending mandates because of their own economic hardship.

“Biofuel plants that were offline during the pandemic would still qualify for aid based on half their production in the same period a year ago, according to the legislation. More than 130 plants have shut for periods of time during the pandemic, industry groups said.

“In a letter yesterday to House and Senate leaders, Growth Energy, the Renewable Fuels Association and other groups outlined the industry's woes and the greater impact, including shortages of distiller's grains — a byproduct of ethanol plants — that farmers buy for livestock feed.

“In addition, they said, the food industry is short on a key ingredient used for refrigeration and preservation — carbon dioxide — that's supplied from biofuel plants.

“Several House lawmakers, including Reps. Cindy Axne (D-IA), Cheri Bustos (D-IL) and Ron Kind (D-WI), urged House and Senate leadership in a letter yesterday to include biofuels in the next COVID-19 relief package.”

[EPA Administrator Wheeler to Testify at Senate Oversight Hearing](#)

EPA Administrator Wheeler will testify this week at a Senate Oversight Hearing.

Kevin Bogardus of [E&E Daily](#) wrote on May 18, “EPA Administrator Andrew Wheeler will be on Capitol Hill this week for a Senate Environment and Public Works Committee oversight hearing.

“Wheeler will likely come under tough questioning from Democratic senators, including on issues related to the coronavirus pandemic. The agency has made a number of regulatory moves that have attracted scrutiny.

“The administration finalized the Safer Affordable Fuel-Efficient Vehicles rule in March, a joint effort by EPA and the National Highway Traffic Safety Administration. The rule requires automakers to increase their cars' fuel economy by 1.5% each year, less than the 5% that was mandated by the Obama administration.

“In addition, EPA last month pulled back the justification behind standards to curb power plants' mercury emissions. Critics worry that move will make it more difficult for EPA to set air pollution limits in the future.

“Even less high-profile moves by EPA have grabbed lawmakers' attention. The agency has proposed allowing wood stove retailers sell less stringent models because of the

pandemic, triggering a letter to Wheeler earlier this month from Senator Tom Carper (D-DE), the ranking member on the EPW panel.

"According to press reports, EPA is considering using the COVID-19 pandemic as a pretext to continue to allow retailers to sell residential wood heating systems that fail to meet the latest clean air standards," Carper said in the letter.

"The pandemic has seemingly slowed other rulemakings at EPA. Wheeler extended the comment period for the agency's so-called secret science rule, formally known as "Strengthening Transparency in Regulatory Science," which would limit research used to draft its regulations, for another month until today.

"EPA also issued a temporary enforcement policy in response to the coronavirus that congressional Democrats have spent weeks pummeling.

"That policy, released in March, gives the agency discretion on enforcement against polluters for noncompliance because of the pandemic. EPA has said the policy is in line with precedent, but it has already attracted litigation.

"For the hearing with Wheeler, the committee will follow public health guidelines under the pandemic, including maintaining social distancing of 6 feet between people.

Schedule: The hearing is Wednesday, May 20, at 10 a.m. in 106 Dirksen and via webcast.

Witness: EPA Administrator Andrew Wheeler.

Appropriations: [Senate Interior and Environment Chair Says Bill Remains on Track](#)

The ABC is working to include funding priorities in the annual appropriations process. The following story discusses the prospects for one of the annual bills on which the ABC is focused.

On May 11, Jeremy Dillion of E&E Daily submitted, "The Senate appropriations process for fiscal 2021 has the potential to remain on track despite the chaos sown by the coronavirus pandemic, Senator Lisa Murkowski (R-AK) said last week.

"Murkowski, who chairs the Interior and Environment Appropriations Subcommittee, said Friday that the process should follow a similar trajectory to previous years.

"We all know when our committees are expected to be prepared to be marking up, so we are going to stick to our schedule," Murkowski told reporters on a call. "I've been meeting with my approps team here regularly, and we are continuing to work through. So far as I know, we are pretty much on track."

“Republican subcommittee chairs met last week with full committee Chairman Richard Shelby (R-AL) to discuss schedule, allocations and process expectations. The meeting left most appropriators confident in the schedule, Murkowski said.

“Many process questions, such as how to move a bill through the committee markup process amid the pandemic, remain to be determined.

“But with the Interior-Environment bill usually reserved for the end, those questions may have answers before the bill needs to move.

"I think by the time we get our scheduled markup, I think we are going to be in good shape," Murkowski said. "I'm optimistic about appropriations, and I want to be able to move out a bipartisan bill as we have done the past several years. That's the goal here, and that's what we are going to work toward."

“The Interior-Environment title has proved to be one of the more controversial, as lawmakers from both parties look to add policy riders to boost their viewpoint of how environmental issues should be handled.

“The Trump administration proposed steep cuts to both the Interior Department and EPA as part of its fiscal 2021 request. Lawmakers have largely ignored those proposed cuts for the past three fiscal cycles.

“The expectation for this iteration of the bill is that the spending levels are likely to hover around last year's levels due to a bipartisan budget agreement. That is unlikely to change the House plan for the bill, that chamber's Interior-EPA Chairwoman, Betty McCollum (D-MN), told E&E last month.

“Murkowski, for her part, noted that challenges from the coronavirus may alter how Congress needs to approach this year's spending bill. That only grows more complicated with emergency funding approved in the Coronavirus Aid, Relief and Economic Security Act, she said.

"Usually you look at what last year's numbers were and then you look to this year," Murkowski said. "Now I think we are in a situation where we are looking at last year's, we are looking at what we have laid out through the CARES funding and now what we will need to do in this next fiscal year."

“Murkowski added, "So it's a little more challenging, but I think it's still very, very doable."

“That accounting for the coronavirus may prompt some broader budget discussions that could lead to a budget caps deal that could sustain public funding for virus-related accounts.

“Representative Tom Cole (R-OK), ranking member of the House Labor, Health and Human Services, and Education Appropriations Subcommittee, said during a hearing last week that such a scenario could help ensure that funding through the years.

"I think it's also clear that this is not a one and done supplemental type of problem," Cole said. "We're going to have to look at adjusting baselines going forward in light of the information that we have."

Other