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AGENDA

Tight fiscal deadlines await lawmakers after recess

George Cahlink and Kellie Lunney, E&E News reporters

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Senate lawmakers approved a roster of nominees and noncontroversial bills this week. Martin Falbisoner/Wikipedia

Energy and environmental issues will likely take a back seat when the Senate returns in September to more pressing fiscal priorities, including avoiding a government shutdown and a potential financial crisis.

The Senate left yesterday for a more than four-week recess after approving a slew of nominees and bills ([see related story](#)). The chamber returns Sept. 5, when it will consider a federal court nominee.

Once back, senators will try to move fast on fiscal 2018 spending bills, with federal agencies facing a potential shutdown if they don't have new dollars or stopgap funding in place by Oct. 1.

Senate appropriators have passed six of the 12 annual funding bills, but, unlike in the House, none of them has reached the floor.

"We are working individual bills, but in the final analysis, if history is any guide, we probably would put together an omnibus" spending package, said Sen. Richard Shelby (R-Ala.), a senior appropriator.

Sen. Dianne Feinstein (D-Calif.), ranking member on the Energy and Water Development Appropriations Subcommittee, hasn't given up hope that bipartisan \$38.4 billion legislation covering the Department of Energy and Army Corps of Engineers could make it to the floor on its own.

"I don't think there is controversy that would keep it off the floor," said Feinstein.

Sen. Tom Udall (D-N.M.), the ranking member of the Interior and Environment Appropriations Subcommittee, said the measure that funds U.S. EPA and the Interior Department will be marked up in September. It's not clear if it would get any floor time.

Senate Majority Leader Mitch McConnell (R-Ky.), however, tipped his legislative hand in favor of an omnibus earlier this week when he took procedural steps that would allow him to more quickly

call up a four-bill fiscal 2018 spending package passed by the House last month.

The procedural move signals McConnell is likely to work on a broad funding deal come September, rather than pushing individual bills.

The chamber will only meet for 16 days until the new fiscal year begins. That's why several senators have floated the idea of a continuing resolution to keep agencies running while negotiations continue.

'Whatever is easiest'

A more heated partisan fight is expected in September over raising the nation's \$19.8 trillion debt ceiling. The Treasury Department has said it needs Congress to back an increase by October, otherwise the government won't be able to pay its debts.

Conservatives have pressed for other cuts in spending to go along with the debt hike, a move likely to be resisted by Senate Democrats who could filibuster the plan.

(Left to right) Senate Majority Leader Mitch McConnell (R-Ky.) and House Speaker Paul Ryan (R-Wis.) are preparing their caucuses for a potentially tough fall. C SPAN

Sen. John Boozman (R-Ark.), a senior appropriator, said a debt ceiling increase is likely to be attached to other must-pass spending legislation, most likely a CR, to get enough votes.

Other senators have not ruled out having it ride on other expiring policy measures coming due in the fall, including a Federal Aviation Administration reauthorization.

"Anything's up for grabs, whatever is easiest, these are things that need to be done," Boozman added.

Beyond debt and spending bills, Sen. Roy Blunt of Missouri, a member of Senate GOP leadership, is expecting the White House to weigh in this fall on plans for a possible tax overhaul and a large infrastructure package.

He recommended the administration should avoid the often combative tone it took in a failed bid to have the Senate back a repeal of the 2010 health care law.

"I'd rather they deal with it more like they dealt with the [Supreme Court Justice Neil] Gorsuch nomination, which is make your points, stand back and only step in when your points need to be made a second time," said Blunt.

The House plans to move forward with trying to pass a budget in the fall, and Senate Budget Chairman Mike Enzi (R-Wyo.) is planning a markup on his own chamber's blueprint.

The process this year is less about spending levels than about setting the stage for tax reform negotiations under the process of reconciliation to prevent a Senate filibuster.

Monuments review, energy bills

A few energy and environmental issues could emerge quickly once Congress returns.

Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) will keep pushing for the chamber to take up her energy reform bill, which came close to emerging before recess.

In the House, the Energy and Commerce Committee will release legislation to reauthorize the Department of Energy and likely change some of its operations (*E&E Daily*, Aug. 3).

Interior Secretary Ryan Zinke's final recommendations on whether to alter 27 national monuments is due Aug. 24. Whatever he decides could prompt lawmakers on both sides of the issue to introduce legislation to overhaul the 111-year-old Antiquities Act.

Many members with designated sites under review in their states — with the notable exception of the all-Republican Utah delegation — oppose shrinking or rescinding any of the monuments.

So far, Zinke has exempted four monuments located in Colorado, Idaho, Montana and Washington state. But he is expected to recommend major changes to Utah's 1.35-million-acre Bears Ears monument, as well as to the Grand Staircase-Escalante site designated in 1996 ([Greenwire](#), Aug. 3).

"We will fight" President Trump if he tries to reverse monument designations under the Antiquities Act, ENR ranking member Maria Cantwell (D-Wash.) said at a July rally along with five other Western Democratic senators.

Republicans and Democrats on Capitol Hill have split over whether the Antiquities Act gives the president the ability both to create and dismantle monuments ([E&E News PM](#), March 29).

Zinke in June told lawmakers that he wants Congress to work on legislation to "clean up" ambiguities in the management of national monuments, including Bear Ears.

House Natural Resources Chairman Rob Bishop (R-Utah) has repeatedly said that he wants to introduce legislation reforming the "damn" law.

TOP LINES

- 1. Preparing for Battle:** Senate leaders want to pass a fiscal 2018 budget blueprint in September -- if they can untangle numerous policy knots.
- 2. Unfinished Business:** Congress left town after punting on tough decisions on the debt, spending and more.
- 3. Republican Tax Tangle:** Senate Republicans are divided on how to structure income tax rates for businesses.

FULL BRIEFING

1. McConnell's Message

Before leaving town for the August recess, Senate Majority Leader [Mitch McConnell](#) gathered his troops to deliver a message: Get a budget blueprint ready for action next month.

The order to Republicans on the Senate Budget Committee wasn't exactly a surprise. GOP lawmakers are eager to get a fiscal 2018 budget resolution passed this fall to lay the groundwork for their top priority of the year: a tax code overhaul.

But passing a budget plan in September promises to be no easier than it's been all year, with Republicans deeply divided over spending levels and tax policy. There is still no agreement on what a tax plan should look like or how much entitlement programs should be cut as part of an effort to produce a long-term balanced budget. The House Budget Committee passed its own budget resolution ([H Con Res 71](#)) last month, but support for the measure in the full House remains shaky.

McConnell (Bill Clark/CQ Roll Call)

Yet with little time left on the legislative clock, McConnell has apparently concluded it's now or never. "The leader wants us on the Budget Committee to get together and work, come up with a plan, and we're going to do that," said Sen. [John Kennedy](#), R-La.

The budget resolution, which sets spending limits for the coming fiscal year, is expected to include a so-called reconciliation provision aimed at easing passage of a tax code overhaul. The reconciliation process allows Republicans, who hold 52 Senate seats, to advance tax legislation with a simple majority instead of a 60-vote threshold.

But plenty of sticky policy fights must be resolved before any budget resolution can get passed. Those include whether the budget should assume that any tax overhaul would increase the deficit, what level of economic growth the budget should envision, and what method should be used for forecasting revenue, as CQ's Paul M. Krawzak [explains](#).

Sen. [Ron Johnson](#), R-Wis., said the key issue to be addressed is "how much are we willing to accept in terms of potential deficits caused by whatever we do in terms of tax reform." Democrats have insisted that any tax code overhaul should not add to projected deficits.

The bottom line: Look for a budget blueprint to be produced next month -- but don't count on its passage yet.

2. September Squall

Senators fled the Capitol for summer recess Thursday, leaving behind a host of budget problems that could set the stage for a September squall.

After about seven months of work, lawmakers have no budget blueprint for the coming fiscal year, no agreement on spending levels, and no real

prospect for funding the government on time. When they return next month, they will be staring down two imminent deadlines for legislative action, either of which could wreak havoc, as CQ's Ryan McCrimmon [reports](#).

Congress has until Sept. 29 to raise the nation's debt limit to avoid a default, under a deadline set by Treasury Secretary Steven Mnuchin. And it has until Sept. 30 to pass some kind of spending package to avoid a government shutdown when the new fiscal year begins on Oct. 1.

With so much to do and so little time left to do it, "it seems like a train wreck right now," said Sen. [Chris Van Hollen](#), D-Md., a member of the Budget Committee. There are just a dozen legislative work days left between Sept. 5, when Congress returns from recess, and Sept. 30, when current spending ([PL 115-31](#)) is set to expire. That means there's not enough time to pass the 12 regular spending bills that are supposed to be used to fund the government each year.

Senators of both parties acknowledged the need for passing another stopgap continuing resolution in September that would extend current funding levels into the new year. "That's what it looks like right now," said Senate Majority Whip [John Cornyn](#), R-Texas.

Lawmakers also agree that a new bipartisan budget deal will be needed to raise spending limits before any appropriations bills have a chance of passing in the Senate. The House last month passed a nearly \$790 billion "minibus" package, mostly for the military, but it would violate current law by busting a cap on defense spending.

3. Tax Tangle

It's not just a lack of revenue that may hold up work on a tax code overhaul this fall.

Senate Republicans also can't resolve how to structure income tax rates for businesses. GOP lawmakers are torn over whether to provide a reduced tax rate for so-called pass-through businesses, such as partnerships and limited liability corporations, or make them pay the same rate as corporations, as CQ's Alan K. Ota [reports](#).

"That's a question mark," said Sen. [Rob Portman](#), R-Ohio, a member of the Finance Committee. The tax treatment of pass-through businesses, which include many hedge funds, large law firms and real estate partnerships, has emerged as a point of contention between the House and Senate.

Portman (Tom Williams/CQ Roll Call)

The House GOP tax blueprint calls for a 20 percent corporate tax rate and a 25 percent rate for pass-through businesses. Owners of such businesses currently pay the top individual rate of 39.6 percent on their profits.

The Trump administration in April proposed a 15 percent rate for all businesses, but Mnuchin has said not all pass-through businesses would get the proposed lower rate. He said the plan would include a mechanism to ensure that wealthy individuals couldn't form a pass-through business just to avoid paying more taxes.

Portman said Republicans would need to resolve concerns about the potential for tax evasion if there were a wide gap between the top individual rate and a reduced rate for pass-through business owners.

Sen. Charles E. Grassley, R-Iowa, another Finance Committee member, said there would be strong GOP support for a lower rate for pass-through business owners. But he predicted it would not be as low as the proposed new rate for corporations. "That's going to be difficult to do," he said.

The dispute over rate structure is just the latest obstacle to slow down a tax code overhaul, which GOP leaders initially hoped to complete before the August recess. House leaders wanted to offset the cost of lower rates by imposing a so-called border adjustment tax, which would eliminate corporate deductions on imports. White House and congressional leaders agreed to abandon that idea last month after critics complained it would lead to higher prices for consumers.

But the loss of the border tax also means the loss of an estimated \$1.2 trillion in new revenue over the next decade. Republicans have said any tax code overhaul would be designed not to increase the deficit.