

SEA-ZING THE DAY: PREPARING FOR MARITIME ISSUES IN THE 116TH CONGRESS

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Maritime Alert

By: Darrell L. Conner, Michael F. Scanlon, James A. Sartucci, Elle M. Stuart

After a whirlwind midterm election night, the results are (mostly) in. The Republicans increased their majority in the Senate with wins in Indiana, North Dakota, and Missouri (and are leading in Florida) while losing only Nevada (with Arizona "too close to call"). Meanwhile the Democrats have taken control of the House. There are around 30 House seats that are yet to be called, but if the current leader in all of them ends up winning, the House will be 227 Democrats to 208 Republicans. Even without knowing every race, we know that there will be a lot of new faces in Washington, with at least 100 new members starting in the 116th Congress, due to losses by incumbents, a high number of retirements, and Members of Congress giving up their seats to run for other offices.

What does all this mean for the maritime industry? It means change...and lots of it. As must-pass legislation and new legislation is debated in the next year, the maritime industry must prepare for change in the key committees of jurisdiction, in the priorities set for the new Congress, and for potential cuts in the overall budget. The maritime team at K&L Gates will be closely monitoring developments in the new Congress and is available to help your organization plan for new opportunities.

CHANGES IN THE COMMITTEES OF JURISDICTION

Senate

Sen. Roger Wicker (R-MS) is likely to chair the Committee on Commerce, Science and Transportation, which is the key maritime authorizing panel in the Senate. The current chairman, Sen. John Thune (R-SD), is likely to assume a leadership role in the 116th Congress, moving up to become the Senate Majority Whip, the number two position in the Senate. Sen. Wicker is a strong proponent for the domestic maritime industry, including domestic shipbuilding capabilities in his home state of Mississippi. On the Democratic side, if current Ranking Member Sen. Bill Nelson (D-FL) loses his race against Gov. Rick Scott (a recount is possible), then Sen. Maria Cantwell (D-WA) is a logical candidate to assume the Ranking Member role. However, she is currently the Ranking Member on the Energy and Natural Resources Committee. She will need to decide which committee to serve as Ranking Member.

The second key committee is the Armed Services committee. Sen. Jim Inhofe (R-OK) will remain Chairman, since the Republicans remain in control of the Senate. Sen. Wicker may choose to retain the Seapower Subcommittee chairmanship, but he would have to give up his chairmanship of the Commerce Committee's Subcommittee on Communications, Technology, Innovation, and the Internet.

House

There are two principal key committees of jurisdiction in the House — the Armed Services Committee, which has jurisdiction over the national security elements of the industry, and the Transportation and Infrastructure Committee, which has jurisdiction over the commercial issues.

Rep. Adam Smith (D-WA) will become the new Chairman of the Armed Services Committee, with current Chairman Mac Thornberry (R-TX) serving as Ranking Member. Rep. Smith has expressed concern regarding the upward trajectory of defense spending, and spending reductions could have a significant impact on maritime programs. Rep. Joe Courtney (D-CT) likely will take over as Chairman of the Subcommittee on Seapower and Projection Forces, with Rep. Rob Wittman (R-VA) taking over as Ranking Member. A related panel is the Homeland Security Committee, which also has jurisdiction over maritime security issues. Rep. Bennie Thompson (D-MS) will take over as Chairman. Rep. Thompson is a supporter of the maritime industry.

The Transportation and Infrastructure (T&I) Committee will see major changes. Rep. Peter DeFazio (D-OR) will likely become the Chairman of the full T&I Committee, while Rep. John Garamendi (D-CA) could take over as chairman of the Coast Guard Subcommittee. Rep. Garamendi is also possibly in line for a subcommittee chairmanship in the House Armed Services Committee, and he will have to choose between a Transportation Committee subcommittee chairmanship and an Armed Services Committee subcommittee chairmanship. Both Rep. DeFazio and Rep. Garamendi are strong maritime supporters. On the Republican side, Chairman Bill Shuster (R-PA) is retiring, while Duncan Hunter (R-CA), who until recently was the Chairman of the Subcommittee on Coast Guard and Maritime Transportation, is term-limited and will have to step down as chair, despite winning reelection. The Ranking Member of the full committee likely will be either Jeff Denham (R-CA) or Sam Graves (R-MO). Brian Mast (R-FL), the current chairman of the Coast Guard Subcommittee, won reelection and could return as Ranking Member of the Coast Guard Subcommittee.

Appropriations Committees

The House and Senate Transportation, Housing and Urban Development, and Related Agencies Subcommittees (sometimes known as the "THUD Subcommittee") fund most maritime programs and the U.S. Maritime Administration. The Senate THUD Subcommittee is likely to remain relatively unchanged, with Sen. Susan Collins (R-ME) and Sen. Jack Reed (D-RI) as the chairman and ranking member. The big shake-up will occur in the House, where current THUD Subcommittee Ranking Member Rep. Dave Price (D-NC) is the likely new chairman and current Subcommittee Chairman Rep. Mario Diaz-Balart (R-FL) could be the new ranking member or move to be the ranking member on another appropriations subcommittee.

MARITIME LEGISLATION IN THE LAME DUCK AND 116TH CONGRESS

There are a number of issues outstanding in this Congress, including completion of a Coast Guard authorization bill (which includes numerous maritime provisions such as the Vessel Incidental Discharge Act (VIDA) and a reauthorization of the Federal Maritime Commission), and a FY '19 THUD appropriations bill containing funding for key maritime programs like the Maritime Security Program and National Security Multi-Mission Vessel program. The Coast Guard reauthorization bill will be first out of the blocks, with the Senate scheduled to vote on cloture early next week. If that bill passes, it is expected that the House will move quickly to pass the bill. The current continuing resolution funding certain government operations, including the Department of Transportation,

expires on December 7th. With the election less than one day behind us, it is unclear whether Congress will act on the remaining appropriations bills by then or will punt the issue into the next Congress.

In the next Congress, despite the split in control between Democrats (House) and Republicans (Senate), we would expect to see Congress act on the usual maritime legislation – a defense authorization bill, a Maritime Administration reauthorization bill, a Coast Guard reauthorization bill, a Water Resources and Development Act (WRDA), and several relevant appropriations bills. However, each of these bills could be impacted by the return of sequester-level budget cuts. The Budget Control Act of 2011 will reinstate spending caps in September of 2019. Unless the law is changed, sequester-level spending caps for defense and non-defense programs will return, along with the threat of significant budget cuts. A recent Congressional Budget Office report calculates that FY-20 topline budget will necessitate cuts of about \$90 billion (or 7.4%) compared to the cap set in BCA for FY-19. This will impact anyone who does business with the federal government.

Additionally, maritime bills will have to garner bipartisan support to pass both chambers. The good news is that maritime issues historically receive bipartisan support.

The early bill to watch next year is the National Defense Authorization Act (NDAA). It has passed Congress each year for the last 55 years. It is a prime vehicle for maritime provisions, including an authorization for the Maritime Administration and defense sealift provisions. The Coast Guard authorization bill (a perennial favorite for maritime provisions) and WRDA are normally started in the first session of a Congress and completed in the second session.

Authorized funding levels for MSP are scheduled to decrease in FY '22-25. Congress is expected to review the program and consider increasing funding for MSP in those fiscal years so as to avoid adverse impacts to the program in the future. The MSP is a public-private partnership by which the Department of Defense (DOD) pays a stipend to 60 U.S.-flag vessels operating in international trade. In return, MSP operators are required to make their vessels and logistics networks available upon request by the DOD during times of war or national emergency.

During the 115th Congress, Rep. John Garamendi pushed for enactment of his Energizing American Shipbuilding Act of 2018, a bill that would require that a percentage of exported crude oil and LNG be transported on U.S.-built and U.S.-flagged vessels. Since he will be in the majority in the next Congress, and as such will have more sway over the issues included in yearly authorization bills, he may look to include this legislation in the 116th Congress Coast Guard Authorization Act. Nevertheless, his bill could face hurdles from energy interests in both the House and the Senate.

The appropriations bills funding maritime programs face headwinds in the next Congress. As noted above, the Budget Control Act (BCA) will impose significantly lower budget caps on government spending. In the absence of a quick budget agreement in the new Congress, there will be downward pressure on government funding, including for maritime programs. For example, the MSP program could see cuts of approximately 9 percent under the BCA. It may also be difficult to fund defense sealift recapitalization programs with lower overall defense spending levels.

On a longer-term basis, the Trump Administration has indicated that it is willing to work across the aisle with House Democrats to pass an infrastructure package. Rep. Peter DeFazio, the likely new Chairman of the full T&I Committee, is a strong proponent for a new infrastructure plan. Rep. John Yarmuth (D-KY), the new chair of the

House Budget Committee, believes that there is potential to work with the White House on infrastructure in the new Congress. Rep. DeFazio will test this by pressing to take the Harbor Maintenance Trust Fund (which pays for maintenance dredging of U.S. harbors) off budget. Any infrastructure package that is passed is likely to have impact on maritime infrastructure and assets, and should be closely watched. While a new WRDA and the next highway bill is due in 2020, with work beginning as early as next year, these bills would likely be impacted by the passage of a large infrastructure bill.

Finally, there are some important regulatory issues coming due in the next two years. The proposed International Maritime Organization (IMO) 2020 low-sulfur emissions rule will be a topic of conversation in Washington over the next year. The Trump administration has signaled that it wants the new ship fuel pollution limits. Effective January 1, 2020, to be phased in slowly, but the IMO has so far refused to delay implementation. This new rule will have a substantial impact on the maritime industry, as concerns about availability of fuel and compliance with the new regulation come to the forefront of the shipping business. Also, if VIDA is enacted, the EPA is due to produce new regulations for commercial vessel incidental discharges within two years.

Overall, the 116th Congress promises to be an active one for the maritime industry, with a number of new Members of Congress to educate and new maritime legislation to track. Now is the time to focus on opportunities in the new Congress so your organization is prepared for the upcoming changes. For more information on the new Members elected to Congress and a starting point for assessing the coming changes to House and Senate committees in the 116th Congress, please see the K&L Gates 2018 Election Guide, available at <http://www.klgates.com/electionguide2018/>.

KEY CONTACTS



DARRELL L. CONNER
GOVERNMENT AFFAIRS COUNSELOR
WASHINGTON DC
+1.202.661.6220
DARRELL.CONNER@KLGATES.COM



MICHAEL F. SCANLON
PARTNER
WASHINGTON DC
+1.202.661.3764
MICHAEL.SCANLON@KLGATES.COM



JAMES A. SARTUCCI
GOVERNMENT AFFAIRS COUNSELOR
WASHINGTON DC
+1.202.778.9374
JIM.SARTUCCI@KLGATES.COM



ELLE M. STUART
ASSOCIATE
WASHINGTON DC
+1.202.778.9081
ELLE.STUART@KLGATES.COM

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