

Elks Government Relations Report
Items of Interest from the Congress, State Legislatures and the Courts
January, 2007

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1. Senate Set to Provide Cooling Saucer For House Bills Passed in First 100 Hours
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In a hot burst of energy, the U.S. House of Representatives, under Democratic Party control for the first time in a dozen years, made good on its pledge to pass six major bills within its "first 100 hours" in session. But the Senate is set to cool things off.

Orchestrated by Rep. Nancy Pelosi (D-Cal.), the nation's first female Speaker of the House, the media-savvy plan one-upped the "Contract with America," enacted by Speaker Newt Gingrich and House Republicans in their "first 100 days" in 1994. Polls show that each of this year's Democratic proposals commands majority support from the voters, but the bills are unlikely to become law in their present forms. Major changes are in store in the Senate, which moves at a more deliberative pace. George Washington is said to have told Thomas Jefferson that the Senate had been created in order to "cool" House legislation, just as a saucer was used to cool a cup of hot tea.

The House-passed bills (which are numbered H.R. 1 through H.R. 6) raise the minimum wage to \$7.25 an hour; mandate negotiation for lower Medicare prescription drug prices, reduce interest rates and lender subsidies on student loans; promote stem cell research; repeal certain tax breaks for energy companies, and implement the 9/11 Commission recommendations.

The Senate will pass a minimum wage increase-not as a stand-alone measure, but after adding tax breaks for business. The other topics will be addressed, but senators are questioning how to pay for lower student loan rates as well as the economic impact of requiring screening of all cargo entering U.S. ports, a major proposal of the 9/11 Commission. Many senators are reluctant to take on the pharmaceutical lobby; others charge that mandating lower drug prices for seniors smacks of price controls. Stem cell research and energy taxes are always controversial, and any issue before the Senate is subject to a filibuster requiring 60 votes to bring a matter to a final vote.

Senate Democratic Whip Richard Durbin of Illinois, who will be the point man for rounding up a majority to pass the legislation, said of the House: "They will finish their 100 hours with great pride, and then we will begin 100 days."

House Democrats also made good on other promises through their organizing resolution, which implemented lobby reform and reinstated pay-as-you-go budget rules that which require new

expenditures to be accompanied by equivalent spending reductions or tax hikes. Those "pay-go" rules could turn out to be the most significant political action of all. Republicans argue that Democrats, in order to implement the rest of their agenda, will be forced at some point to make unwelcome cuts, raise taxes, or go back on their word.

2. High Court Declines to Hear New Eminent Domain Case

The U.S. Supreme Court bypassed an opportunity to revisit its controversial 2005 ruling upholding government eminent domain power to foster economic development. Without comment, the justices declined to hear a case that challenged the right of a New York village to use eminent domain in a dispute between a property owner and a private company that had been designated as developer of a rundown 27-acre urban renewal area.

The redevelopment plan, adopted by Port Chester, N.Y., in 1999, envisioned a retail area that would include a Walgreen's drugstore. But the owner of the half-acre parcel where the store was to sit entered into a lease three years later with a competing drugstore chain, CVS. After negotiations between the developer and the property owner failed, the village sided with the developer and notified the property owner that his land would be taken by eminent domain. The owner brought suit, arguing that Port Chester's condemnation of his property was not for a true "public use." He also charged that the developer improperly demanded a financial stake in the plan for the CVS store as the price for permission to proceed.

Both the Federal District Court in Manhattan and the U.S. 2nd Circuit appellate court dismissed the lawsuit, saying the property owner had failed to file suit within the statute of limitations. The suit should have been filed within three years of the village's 1999 adoption of the redevelopment plan, the courts ruled, rejecting the property owner's argument that the clock did not start running until late 2003 when the village announced it would take his property.

3. VA Shifts Funds to Pay Rising Health Care Costs

Secretary of Veterans Affairs R. James Nicholson has notified Congress that he is transferring \$250 million from his construction and maintenance budget in order to pay for medical care costs for veterans.

The secretary also suggested he might have to transfer additional funds to meet rising health care costs. In the short term, the shift will be reflected in delays in facility maintenance, but if no funding increase is seen by mid-February, the department may place a freeze on hiring.

The Administration has requested a \$2.8 billion increase for VA health care in 2007, to be used for mental health and long-term care programs, as well as for increased medical care for veterans of Iraq and Afghanistan.

4. Legislatures Taking Hard Look At State Gaming Regulations

Lodges that offer bingo, tip jars and other charitable gaming are watching for changes in regulations governing their state's gambling industry. All but Hawaii and Utah have legalized some

form of gambling.

According to Stateline, a service that monitors state government news, experts foresee no letup in governments' thirst for gaming dollars. Instead of raising taxes, it is much easier for states to bring in cash by letting people lose it on lottery tickets or by taking a larger cut from games of chance or slot machines.

Arkansas has just approved letting charities hold bingo games, and South Dakota voters chose to keep the state's video lottery. The first slot machines have been installed in Pennsylvania and Florida, which join nine other states with "racinos." Pennsylvania is set to become the nation's biggest slots' state behind Nevada, eventually having 61,000 machines at 14 venues. This raises concerns from Delaware, New Jersey, New York and West Virginia, which also rely on gaming dollars, and it is sparking legislative momentum to expand gaming in Maryland.

More states are also trying to get a bigger cut from Indian gaming, which grew more than three times as fast as commercial gambling in 2005. While states cannot tax profits from Indian gaming, they benefit from compacts negotiated with tribes. In the 30 states with tribal casinos, local governments got more than \$1 billion from fees and revenue-sharing agreements-a 20 percent increase from the previous year.

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5. House Veterans Committee Gets Off to a Rocky Start
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The House Committee on Veterans Affairs, historically noted for being one of the least partisan committees, got off to a rocky start when its new chairman, Bob Filner (D-Cal.), fired the committee staff director and the staff directors of two of the four subcommittees. The move raised fears that the committee is losing invaluable institutional knowledge when funding for veterans' health programs is in crisis.

The atmosphere in the committee began to change two years ago when then-Chairman Chris Smith (R-N.J.) was removed from the committee. Smith, who had defied the Republican leadership by promoting increased VA funding, was replaced by Rep. Steve Buyer (R-Ind.), a combative fiscal conservative. Meanwhile, the committee's ranking Democrat, Rep. Lane Evans (D-Ill.), became ill and his duties were taken over by Filner, who developed a strident relationship with Buyer. Evans, who did not seek re-election, backed Rep. Mike Michaud (D-Maine) to become the new chairman, arguing that Filner lacked the cool temperament and bipartisan manner needed to head the committee.

Filner had seniority, however, and he won the chairmanship through a vote of the full Democratic Caucus.

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6. Veterans Leather Program Now Active in 21 States
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Hunters in 21 states are now gathering animal hides for the Veterans Leather Program, one of the most visible activities of the Elks.

For nearly 60 years, Elks have collected hides of deer, caribou, antelope, and, yes, elk. Hides are salted, stacked, shrink-wrapped and shipped to a Utah tannery for processing. Then, fingerless

wheelchair gloves, along with finished leather for use in crafts programs, are sent to veterans' medical facilities across the country.

It's a way to remember veterans' sacrifices, to assist them in occupational therapy and to help them get on with everyday life, Charles Cutshaw, national chairman of the Elks' program, told the Associated Press.

"People have the impression that everything in a VA hospital is provided [by the government], but that's not true," Cutshaw said.

Last year, Elks distributed about 2,400 pairs of gloves, including many to wheelchair athletes. Elks are also the only source of leather for the crafting of wallets, belts and clothing in the VA's occupational therapy program-"something to occupy their minds and their muscles," adds Cutshaw.

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7. Governors Lose In Power Struggle Over Control of National Guard
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A little-noticed change in federal law makes a dramatic change in who is in charge when a state is devastated by a disaster such as Hurricane Katrina.

To the dismay of the nation's governors, the White House is now empowered to go over a governor's head and call up the National Guard in time of natural disasters or other emergencies. Before, governors were the sole commanders-in-chief of citizen soldiers in local Guard units during emergencies within the state.

Over objections from all 50 governors, Congress in October tweaked the 200-year-old Insurrection Act to empower the hand of the president in future stateside emergencies. A conflict over who should control Guard units arose in the chaos following Hurricane Katrina when President Bush sought to federalize the Louisiana Guard and Gov. Kathleen Blanco refused to relinquish command.

The Posse Comitatus Act of 1878 forbids U.S. troops from being deployed on American soil for law enforcement. The only exception is the Insurrection Act of 1807, which lets the president use the military to put down rebellions or enforce constitutional rights if state authorities fail to do so.

Congress changed the Insurrection Act to list "natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident" as conditions under which the president can deploy U.S. forces and federalize state Guard troops if he determines that "authorities of the state or possession are incapable of maintaining public order."

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