

November 2, 2012

Practice Group(s):

*Public Policy and
Law;*

*Global Government
Solutions*

Five Things You Should Know About This Lame Duck Session of the U.S. Congress

Maybe Not So Lame After All

By: Former Tennessee Congressman Bart Gordon, Former New York Congressman James T. Walsh, and Mark Ruge

The authors would like to thank Ivana Busuttill for her contribution to this alert.

1. The term “lame duck” refers to those Members of Congress returning to Washington, D.C. after the election (post-November 6) but before the next Congress begins (pre-January 3). A lame duck, the argument goes, legislates without the pressure of winning votes in future elections. On the other hand, the lame duck session of a Congress is part of the term that each Member of Congress has been elected to serve. The post-election session planned in this 112th Congress, beginning the week of November 12, is therefore known as a lame duck session of Congress.
2. Even before the elections, we know at least 63 Members of Congress are not returning due to lost primaries, death, resignation, retirement and decisions to run for other offices. That is more than 10% of the Congress. Plus, additional Members of Congress could be defeated in the November 6 elections and some certainly will. There are currently 32 sitting Members of Congress in races that the experts consider too close to call and 17 races pitting sitting Members of Congress against other Members of Congress.
3. Sometimes Congressional lame duck sessions are monumental, dealing with critical national issues. Other times the Congress stays in session for relatively minor or even *pro forma* reasons. The most common reason for a post-election lame duck session of Congress in modern times has been to deal with appropriations bills that were not completed by the beginning of the new Fiscal Year on October 1. In those cases, Congress stays in session primarily to enact appropriations bills to fund the government, often in the form of large omnibus appropriations bills or, most recently, via continuing spending resolutions which kick many of the decisions into the next Congress.
4. The lame duck session of the 112th session of Congress has the potential to be monumental or, at least, to set the stage for something monumental. This is so because a series of significant events are scheduled to occur automatically unless Congress acts by the end of the year. First, the so-called Bush tax cuts will expire, resulting in a significant effective tax increase for many American citizens, if Congress does not act to extend them by the end of the year. In addition, other less high profile but still important tax provisions expire by the end of the calendar year unless Congress acts. Second, a round of automatic across-the-board federal spending cuts will take place under the so-called “sequester” unless Congress adopts an alternative approach. The expiration of the tax cuts, the possible sequester and some other important issues are sometimes known as the “fiscal cliff.” Some experts, like the non-partisan Congressional Budget Office, have predicted that failure to act by Congress by the end of this year, resulting in the full-scale impact of the “fiscal cliff,” could push the United States into recession. In addition to addressing the fiscal cliff,

Five Things You Should Know About This Lame Duck Session of the U.S. Congress

Congress hopes to consider the once-every-five-years farm bill, the Defense Department reauthorization bill, and other significant legislation before the end of the year, including now the possibility of a large (or even massive) emergency supplemental appropriations bill to address the impact of Hurricane Sandy. There is nothing “lame” about those high-impact issues and legislation; and it has become increasingly clear that the agenda in the lame duck session of the 112th Congress will be significant by definition.

5. Despite the looming fiscal cliff, House of Representatives Speaker John Boehner recently downplayed the chances of significant changes before the end of this year: “Frankly, I’m not sure it’s the right thing to do -- have a lot of retiring members and defeated members voting on really big bills. Probably not the appropriate way to handle the lame duck,” he said. At the same time, President Obama told a national audience during the third presidential debate recently that “[the sequester] will not happen.” One way Congress could reconcile those two seemingly contradictory comments is to make short-term and relatively modest changes to patch the fiscal cliff issues during this lame duck session of Congress and to push the biggest decisions into the next Congress. Like most decisions in Washington, D.C., the path Congress chooses to take will be heavily affected by the results of the presidential and Congressional elections.

Authors:

Bart Gordon

Partner

bart.gordon@klgates.com

+1.202.778.9073

James T. Walsh

Government Affairs Counselor

jim.walsh@klgates.com

+1.202.778.9321

Mark Ruge

Partner

mark.ruge@klgates.com

+1.202.661.6231

K&L GATES

Anchorage Austin Beijing Berlin Boston Brussels Charleston Charlotte Chicago Dallas Doha Dubai Fort Worth Frankfurt Harrisburg
Hong Kong London Los Angeles Miami Milan Moscow Newark New York Orange County Palo Alto Paris Pittsburgh Portland Raleigh
Research Triangle Park San Diego San Francisco São Paulo Seattle Shanghai Singapore Spokane Taipei Tokyo Warsaw Washington, D.C.

K&L Gates includes lawyers practicing out of more than 40 fully integrated offices located in North America, Europe, Asia, South America, and the Middle East, and represents numerous GLOBAL 500, FORTUNE 100, and FTSE 100 corporations, in addition to growth and middle market companies, entrepreneurs, capital market participants and public sector entities. For more information about K&L Gates or its locations and registrations, visit www.klgates.com.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

©2012 K&L Gates LLP. All Rights Reserved.