Legislative Update: Election-Year Initiatives and Politics

February 1, 2012

Craig S. Brightup
The Brightup Group LLC
324 Fourth Street, NE
Washington, DC 20002
202-546-7584 (O)
craig@thebrightupgroup.com
The Budget Conundrum

• Budget Control Act signed into law August 2, 2011
  – Debt ceiling increase of $2+ trillion; $917b cuts over ten years
  – Also created Joint Cmte. on Deficit Reduction or “Super Cmte.”
    • Charged with finding $1.2 - $1.5 trillion more cuts over 10 years

• Budget Control Act Doesn’t Touch Entitlement Programs
  – Targets only discretionary spending

• Programs Relevant to Building Industry will be Cut
  – Dept. of Energy
    • Office of Energy Efficiency and Renewable Energy
    • Building Technologies Program
  – EPA
    • Energy Star
  – General Services Administration
    • Office of Federal High-Performance Green Buildings
Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act (HR 4853)

• “Tax Deal” signed Dec. 17, 2010 by President Obama
  – Two-year extension of ’01/’03 individual rates for all incomes
  – Two-year extension of capital gains/dividend rates
  – Two-year estate tax with a 35% rate and $5m exemption
  – Two-year patch of the alternative minimum tax (ATM)
  – Extension of Sec. 179 expensing at 100% through 2011
  – Extension of Sec. 179 expensing at 50% for 2012
  – 2% employee-side payroll tax “holiday” for 2011
  – 13-month extension of federally-funded unemployment benefits

• Tax-Extenders
  – Extension of R&D tax credit and other incentives
  – Extension of building energy-efficiency tax credits (45L & 25C)
Payroll Tax Cut Extension

• Temporary Payroll Tax Cut Continuation Act (HR 3630)
  – Two-month Senate extension approved by House 12/23/11
  – Also extends unemployment & Medicare physician payments
  – Requires Presidential decision on Keystone XL Pipeline

• Keystone = Jobs, Energy Independence & Nat’l Security
  – 1,700 mile, $7b project to be built by TransCanada Co.
  – Would bring 700,000 barrels of oil daily to Gulf Coast refineries
  – Would create 20,000 jobs and ultimately support 250,000 jobs
  – But, after 3-year review, White House delayed decision to 2013
  – Feb. 21, 2012 decision deadline set by HR 3630

• “Somehow we have to figure out how to boost the price of gasoline to the levels in Europe.”
  – U.S. Energy Secretary Steven Chu
The Regulatory Avalanche

• 2010 Federal Register hits all time high of 81,405 pages

• EPA considering over 200 major economic rules
  – Utility MACT Rules recently finalized
  – Greenhouse Gas (GHG) Regs could bring construction to a halt

• OSHA increases inspections and penalties
  – New regs on residential steep-slope fall protection
  – Draft regs on silica, recordkeeping, safety programs

• NLRB issues pro-union rulings
  – Employee rights notice-posting rule effective April 30, 2012
  – Published final “Ambush Election” rule Dec. 22, 2011

• Affordable Care Act
  – SCOTUS to hear challenges March 26, 27 & 28, 2012
Energy Mandates & Subsidies

- Federal Renewable Energy Mandates Likely Non-Starter
  - 29 states now have renewable electricity standards
  - Utilities required to provide electricity from renewable sources

- Era of Energy Subsidies Probably Winding Down
  - DOE loan-guarantee program involving Solyndra etc.

- No Energy Tax Incentive will be Spared Scrutiny
  - Ethanol tax credit allowed to expire

- The Future of Energy Tax Credits/Deductions in Doubt
  - Could be swapped for lower corporate tax rate
Building-Specific Tax-Incentive Vehicles

• 25C – Homeowner Energy-Efficiency Tax Credit
  – Extended through 2011 by tax deal
  – For 2009 -10 was 30% of qualified improvements with $1,500 cap
  – For 2011, pre-stimulus levels of 10% with a $500 cap

• 45L – Energy-Efficient New Home Tax Credit
  – Extended through 2011 by tax deal
  – $2,000 credit per home for builders
  – Homes qualify if they reduce cooling/heating consumption 50%

• Roofing Efficiency Jobs Act, HR 2962
  – Would shorten tax depreciation for commercial roofs to 20 years
  – Tied to ASHRAE Standard 189.1-2009 insulation R-Values
  – Must also be “cool roofs” in climate zones 1 - 5
  – Previous versions scored as costing Treasury $3b over ten years
Commercial Building Tax Deduction (CBTD)

- CBTD (179D) enacted in Energy Policy Act of 2005
  - Provides owner with deduction up to $1.80 per square foot
  - Deduction based on building floor area
  - Must achieve 50% energy savings above ASHRAE 90.1-2001 level

- Pro-rated for buildings below 50% of ASHRAE 90.1-2001
  - $.60 per sq. ft. for either of three subsystems that meet a 16.66% energy savings target or 20-20-10% targets:
    - Energy Efficient Lighting Property
    - Energy Efficient Heating, Cooling, Ventilation and Hot Water Property
    - Energy Efficient Building Envelope Property

- CBTD in place through 2013
  - White House Better Buildings Initiative would change to a tax credit
  - Treasury working with DOE to streamline deduction-claim process
  - Treasury also revising guidance for pro-rated subsystem targets
Election Outlook - Congress

• **2010 Recap**
  – Republicans take House ~ 242-193 (R+63)
  – Democrats keep the Senate ~ 53-47 (R+6)

• **2012 House Variables Favor Republican Majority**
  – Democrats must gain 25 seats to retake control, but…
    • Redistricting a net-neutral for both parties
    • Turnout for Obama not likely to replicate ’08
  – Congressional approval at an all-time low, but…
    • Democrats’ control of Senate confounds “do-nothing” charge
    • Low approval not boosting Democrats in generic ballot test

• **2012 Senate Variables Favor Republican Takeover**
  – Democrats must defend 23 seats; Republicans 10
  – Republicans must gain 4 seats for control with opportunities in:
    • Florida, Hawaii, Michigan, Missouri, Montana, Nebraska, Ohio, New Mexico, North Dakota, Virginia, Wisconsin
Election Outlook – White House

• Unemployment
  – No president since FDR reelected with unemployment over 8%
  – In the four elections since WW II with unemployment over 7%
    • 1976 – Ford lost
    • 1980 – Carter lost
    • 1984 – Reagan won (unemployment rate 7.2%)
    • 1992 – Bush lost

• Consumer Confidence
  – Since ‘72, the incumbent has only won with a CCI above 100
  – Dec. CCI = 64.5, up from 55.2 in Nov. (But was 66 in April.)

• Direction of the Country: Right Track, Wrong Track Polls
  – RCP average (12/8 – 12/22) = 24.5 Right Track, 70 Wrong Track
Questions?

Craig Brightup
The Brightup Group LLC
324 Fourth Street, NE
Washington, DC 20002
202-546-7584 (O)
202-400-2591 (D)
202-546-9289 (F)
202-658-6448 (C)
craig@thebrightupgroup.com
www.thebrightupgroup.com