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# Window On Washington - July 2, 2018, Vol. 2, Issue 26

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## Outlook for This Week in the Nation's Capital

**Recess Week.** The House and Senate are both in recess this week for the 4th of July holiday. Clark Hill wishes you a safe and enjoyable Independence Day.

**Supreme Court.** The retirement announcement of Supreme Court Justice Anthony Kennedy is teeing up a busy summer and fall for the Senate as it begins work to confirm a new Supreme Court Justice. President Trump is using the opportunity to remake the court replacing a justice that in recent years was a swing vote that occasionally sided with the liberal wing of the court with a more conservative justice that is more in line Trump's first nominee, Justice Neil Gorsuch. It's currently unclear if Democrats up for reelection in swing states would confirm Trump's eventual nominee or work to block the nominee as is being called for already by many liberal groups.

## Last Week in the Nation's Capital

### CONGRESS

#### *Budget*

**House Passes \$675B Defense Spending Bill:** The House easily passed \$675 billion in defense spending after lawmakers tacked on provisions to bar the Pentagon from doing business with the Chinese telecom firms ZTE and Huawei and to pave the way for a dual purchase of aircraft carriers by the Navy. The vote was 359-49, with 137 Democrats joining all but three Republicans to pass the fiscal 2019 defense appropriations bill. ([Politico](#))

**Senate Committee Advances All 12 FY2019 Appropriations Bills:** Senate Appropriations Committee Chairman Richard Shelby announced that the committee has approved all 12 fiscal year 2019 appropriations bills with strong, bipartisan support in advance of the July 4th recess. The committee has operated under an aggressive schedule since Shelby became chairman in April, generating momentum for a return to regular order and stability in the annual budget process. This marks the most punctual timeframe in which the committee has completed its regular appropriations bills since 1988. ([Senate Appropriations Committee](#))

**Senate Appropriations Committee Advances \$675B Pentagon Spending Bill:** The Senate Appropriations defense subcommittee advanced a \$675 billion Pentagon spending bill for fiscal 2019. The bill would provide \$607.1 billion for the Pentagon's base budget and \$67.9 billion for a war fund known as the Overseas Contingency Operation (OCO) account, according to a summary of the bill. ([The Hill](#))

**Senate Committee Clears FY2019 Labor, HHS, & Education Appropriations Bill:** The Senate Committee on Appropriations advanced the FY2019 Labor, Health and Human Services, and Education (Labor-HHS) Appropriations Act, which continues investments in critical medical research, opioid abuse prevention and treatment, and education. The committee-approved funding measure contains \$179.3 billion, an increase of \$2.2 billion above the FY2018 level, in base discretionary funding for the Departments of Labor, Health and Human Services, and Education and Related Agencies. In addition, the bill includes \$711 million pursuant to the 21st Century Cures Act. The measure was advanced by a vote of 30-1. ([Senate Appropriations Committee](#))

#### *Tax Reform*

**GOP Chairman Envisions Tax Reform 2.0 as a Package of Bills:** House Ways and Means Committee Chairman Kevin Brady (R-Texas) last Tuesday said that he sees a second round of tax cuts taking the form of more than one bill. "I don't see it as one bill," Brady said at an event hosted by The Washington Post. "I see it as a package of two, three or four approaches with permanency being one of them." The White House and House Republicans have been discussing pursuing a second phase of tax cuts, with a focus on permanently extending tax cuts for individuals that would expire after 2025 under the tax law President Trump signed last year. Brady has also said he wants to bolster incentives to save for retirement and education as part of a second tax package. ([The Hill](#))

#### *Space, NASA & NOAA*

**House Science Committee Approves Space Traffic Management Bill:** The House Science Committee approved a bill June 27 that would give the Commerce Department new responsibilities for space traffic management despite opposition by some Democrats that the bill "rubber stamps" the administration's space policy. The committee favorably reported on a voice vote H.R. 6226, the American Space Situational Awareness and Framework for Entity (SAFE) Management Act. The legislation would authorize the Commerce Department to provide space traffic management services, such as collision warnings, to civil and commercial satellite operators within one year of the bill's enactment. The bill authorizes NASA to develop a space traffic management science and technology plan, outlining research to be done to improve work in the area. It also calls on the Commerce Department to develop a pilot program for space traffic coordination. ([Space News](#))

#### *Energy*

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**Senators Question Nominees for DOE's Science and Clean-Energy Research Wings:** The Senate Committee on Energy and Natural Resources held a confirmation hearing for the White House's nominees to head various parts of the Department of Energy (DOE), including Christopher Fall, who would lead DOE's \$6.26 billion Office of Science, and Daniel Simmons, who would lead DOE's \$2.32 billion applied research program in energy efficiency and renewable energy (EERE). Democratic committee members fretted that, ironically, Simmons had previously been a vice president at a think tank that called for eliminating EERE. ([Science Mag](#))

**Senate Passes \$145B Spending Bill, With Boost to Energy Innovation Programs:** The Senate voted through a \$145 billion spending bill on a margin of 86-5, with provisions to fund the Energy Department in the 2019 budget year. The legislation keeps spending level or slightly increases funds for programs offered through the Office of Energy Efficiency and Renewable Energy, as well as the Energy Information Agency. The Advanced Research Projects Agency-Energy received \$375 million, the most since its creation. The DOE Office of Science also received record appropriations funding at \$6.65 billion. ([greentechmedia](#))

#### *Defense*

**Will \$95B for R&D Make its Way to the Final Defense Appropriations Bill?:** Senate defense appropriators have advanced a proposed \$675 billion Pentagon spending measure for 2019, touting its heavy investment in innovation and research to maintain America's military edge. Hewing to the bipartisan, two-year budget deal, the spending bill includes \$607.1 billion in base budget funding and \$67.9 billion in the war budget. The bill also seems to surpass the Senate-passed policy bill's emphasis on future warfare, with \$929 million for hypersonics, \$564 million to develop advanced offensive and defensive space capabilities, \$317 million to develop a directed-energy weapon, and \$308 million for artificial intelligence, according to a [summary](#) by the Senate Appropriations Committee. ([Defense News](#))

#### *Health*

**Senate Proposes 5.4 Percent Boost to 2019 NIH Budget:** In its funding bill, the Senate Labor, Health and Human Services, and Education appropriations subcommittee recommended raising the NIH's budget to \$39.1 billion from its current \$37.1 billion. This increase includes an additional \$425 million for Alzheimer's research for a total of \$2.3 billion; \$429.4 million for the BRAIN initiative, a \$29 million increase; and \$376 million for the All of Us precision medicine study, \$86 million more than in FY 2018. ([Genome Web](#))

**Bills Tackling Maternal Health, Premature Births Sail out of Senate Panel:** The Senate Health, Education, Labor and Pensions Committee advanced the Maternal Health Accountability Act, which would allow the federal government to support the creation of maternal mortality review committees in states. The committees are made up of epidemiologists, ob-gyns, social workers, and others to study maternal deaths and make recommendations about how they can be prevented. ([The Washington Examiner](#))

#### *Cybersecurity*

**Can Congress Salvage a Broken Cyber Strategy?:** A cyberspace ambassador. An exchange program between government and private security experts. A cyber blue-ribbon commission based on nuclear age strategy. These are among the scattershot of proposals that Congress has considered this week as lawmakers attempt to articulate a national cybersecurity strategy in the face of continued digital hostility from Russia and China. Amid a barrage of recent criticism leveled at both the Trump and Obama administrations for a cybersecurity policy that is either entirely absent or timid, the proposed legislation is sending a message: America needs a plan. Yet in comparison to the crisp Chinese five-year plans and Russian digital assaults, the cyber plan forged by Congress appears increasingly scattershot to analysts. ([Fifth Domain](#))

#### *Agriculture*

**Senate Passes Farm Bill, Setting Up Food-Stamp Fight with House:** The Senate bill, passed 86-11 Thursday, would renew subsidies for farmers and crop-insurance companies, along with food aid for low-income families. The Senate bill doesn't include the work rules. The House version would make work requirements stricter and would shift some food-stamp benefits to job-training programs -- changes critics say are designed to throw needy Americans off the rolls. The House and Senate versions of the five-year, \$867 billion legislation will need to be reconciled. Trump backs the work rules in the House plan, which was [passed](#) 213-211 last week without [any Democratic votes](#). Lawmakers are under pressure to act before current farm programs begin to expire on Sept. 30. ([Bloomberg](#))

### **EXECUTIVE BRANCH**

#### *White House*

**White House Defends Government Reorganization Proposals Amid Congressional Criticism:** The White House fended off a barrage of criticisms and concerns over its plan to reorganize the federal government during a hearing to review the proposal last Wednesday, with members of both parties pushing back on key parts of the plan. Facing the objections, Office of Management and Budget Deputy Director for Management Margaret Weichert said all of the recommendations stemmed from a desire to make improvements in three areas: agency missions, services for citizens and stewardship of taxpayer dollars. Republicans on the House Oversight and Government Reform Committee generally praised the overall intent of the plan, but repeatedly flagged specific suggestions they found problematic. Democrats, meanwhile, questioned the Trump administration's motives in putting forward its blueprint and focused specifically on negative effects they said it would have on federal workers. ([Gov Exec](#))

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**White House Kicks Off NEPA Reform:** The White House Council on Environmental Quality (“CEQ”) has issued an Advanced Notice of Proposed Rulemaking (“ANPRM”) providing an exceptional opportunity for stakeholders to participate in improving the federal National Environmental Policy Act (“NEPA”) review process. The ANPRM, entitled “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” (“NEPA”), was issued on June 20, 2018 pursuant to Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects” (“E.O. 13807”). E.O. 13807 directs CEQ to suggest actions to modernize the federal environmental review process and was one of several steps taken by the Trump Administration aimed at streamlining an often burdensome and lengthy regulatory review process. Comments are due by July 20, 2018. ([Clark Hill Insight](#))

#### *FERC*

**Republican FERC Commissioner Robert Powelson to Resign Amid Fight Over Coal Bailout:** Robert Powelson, a Republican member of the Federal Regulatory Commission, announced Thursday he is resigning effective in mid-August. Powelson, a nominee of President Trump who has been in office for less than a year, took to Twitter to say he is leaving FERC with “mixed emotions” to become president and CEO of the National Association of Water Companies. ([Washington Examiner](#))

#### *FDA*

**The Trump Administration’s Proposal to Reorganize the FDA:** The Trump Administration is proposing for the Food and Drug Administration (FDA) to get a makeover by removing food safety from FDA oversight and reorganizing all food safety functions into a single agency at the United State Department of Agriculture. According to the Government Office of Management and Budget. Reorganization is one tool among many that this Administration is using to drive transformational change in Government. Meeting the needs of the American people, as well as the President’s mandate for greater efficiency, effectiveness, and accountability, requires a range of transformational approaches to support reorganization. ([Clark Hill Insight](#))

#### *Banking & Housing*

**Wall Street Regulator Coddles Big Banks but Clobbers Small Firms:** JPMorgan Chase, the nation’s largest financial services firm, has paid \$28 billion to settle cases brought by federal agencies in the past 10 years, most of them related to the 2008 financial crisis. Yet the massive fines extracted from banks like JPMorgan for their role in the Wall Street meltdown have done little to deter other types of misconduct in the decade since, and one reason is lenient treatment from the Securities and Exchange Commission, according to our analysis of SEC enforcement records with a Georgetown University law professor. ([Roll Call](#))

#### *HHS*

**GAO: 340B Hospitals, Outside Pharmacies Need More Oversight:** The 340B drug discount program is in need of a major overhaul including additional oversight by the Department of Health and Human Services (HHS), a government watchdog said. The nonpartisan Government Accountability Office made seven recommendations in a report to that Health Resources and Services Administration (HRSA) on how to prevent duplicate discounts and ensure compliance with outside pharmacies. Of the 55 covered entities reviewed by the GAO, 25 did not pass savings to low income, uninsured patients. ([FierceHealthcare](#))

**HHS Secretary Says It’s Up to Congress to Reunite Migrant Families:** Lawmakers pressed President Trump’s top health official on Tuesday for answers on how and when migrant children would be reunited with their parents. But Health and Human Services Secretary Alex Azar put the onus back on them. He told the Senate Finance Committee that if lawmakers find a legislative fix to a court ruling that bars children from being held in detention centers for longer than 20 days, then the families could be reunited immediately. Otherwise, he said, those children will need to wait for their parents to be either granted entry to the United States or deported. ([The Washington Post](#))

**Trump Administration Plays Regulatory Hardball in Drug-price Talks:** The Trump administration is threatening drug manufacturers with enhanced regulations as part of an aggressive behind-the-scenes campaign to win lower prices for prescription treatments, according to people familiar with the talks. The effort follows President Trump’s proclamation last month that drug companies were preparing to announce “massive” cuts on the price of prescription treatments. The sources say no plans were in the works prior to that statement, and now federal officials are scrambling to make Trump’s statement a reality. ([The Washington Examiner](#))

#### *Labor & Workforce*

**Senate Jump-Starts Process for New Career-Education Law:** Senate lawmakers look to be on the verge of a bipartisan agreement to update the law governing \$1 billion in annual federal spending on career and technical education in the U.S. -- much of it at community and technical colleges. The Senate HELP Committee marked up and voted out a bill last week to reauthorize the Perkins Career and Technical Education law just over a year after corresponding legislation sailed through the House. In recent weeks, Education Secretary Betsy DeVos, White House adviser Ivanka Trump and business leaders joined a chorus of voices urging senators to prioritize the legislation after it stalled for months due to partisan disagreements. The agreement finalized by GOP and Democratic negotiators over the weekend would allow states to largely set their own goals for career and technical education, a departure from current law. ([Inside Higher Ed](#))

**How Cities Became the New Unions:** The \$15 minimum wage was just the beginning. Now Seattle is trying to build a whole safety net for workers—and triggering a war with its biggest companies. In an era when most economic and political trends are making it harder for workers—such as this week’s

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Supreme Court "Janus" ruling on public union dues—Seattle is pushing the other way and positioning itself almost as a municipal version of a labor union—pushing for precisely the sort of benefits that unions were built to fight for, before globalization undercut labor's power. ([Politico](#))

#### *Defense*

**How the DOD is Synchronizing Missile Defense Systems:** In April the Missile Defense Agency announced a successful missile defense tracking exercise at White Sands Missile Range, New Mexico. Subsequent events have given the test particular weight. Conducted in cooperation with the Army, the test demonstrated interoperability between the Terminal High Altitude Area Defense and low-altitude Patriot weapons systems. ([C4ISRNET](#))

**Underwater: Will Rising Debt Spark Pentagon Cutbacks?:** The U.S. government's annual budget deficit is set to grow to \$1 trillion in 2020 and record levels afterward, part of a gloomy economic outlook from the nonpartisan Congressional Budget Office. The report comes amid military spending increases to counter Russia and China, raising the question of how those increases are compatible with the 6-month-old GOP tax cuts and the huge deficits they're expected to spawn. ([Defense News](#))

#### *DOT*

**Trump Plan Would Move TSA, FEMA to USDOT:** The U.S. Department of Transportation (USDOT) would undergo significant changes as part of the Trump administration's plan to reorganize government agencies. According to the Office of Management and Budget's (OMB) proposed reorganization, the Army Corps of Engineers' commercial navigation functions, the Federal Emergency Management Agency (FEMA) and the Transportation Security Administration (TSA) would be moved into the USDOT. ([Progressive Railroading](#))

#### *Trade*

**Trump, Trudeau Discuss Trade, Economic Issues Over Phone Call:** President Trump spoke with Canadian Prime Minister Justin Trudeau late on Friday to discuss trade and other economic issues, White House Press Secretary Sarah Sanders said on Saturday. The phone call between the two leaders was the first to be publicly disclosed since Trump blasted Trudeau as "very dishonest and weak" at the end of the Group of Seven leaders meeting in Canada earlier this month. ([Reuters](#))

#### *DHS*

**Summary: The Department of Homeland Security's Cybersecurity Strategy:** With an anticipated 20 billion devices connected to the internet by 2020, cybersecurity has become a core component of homeland security. Complicating the threat picture, nation-states have begun to use proxies, and malicious actors with apparent criminal and nation-state affiliations now engage in online criminal activity. The DHS Office of Strategy, Policy, and Plans led the development of the strategy, in collaboration with all DHS components. The strategy document identifies five pillars of a department-wide risk-management approach to cybersecurity. The first pillar aims to better understand the threats facing the U.S. The second, third and fourth pillars work to reduce the frequency and damage of cyberthreats. Finally, the fifth pillar aims to make cyberspace more defensible. ([LawFareBlog](#))

#### *DOE*

**The United States and Israel Establish Joint Center of Excellence in Energy:** The U.S. Department of Energy and the Israeli Energy Ministry signed the Implementation Agreement to establish the U.S.-Israel Center of Excellence in Energy, Engineering and Water Technology ("the Center"). The United States Congress appropriated \$4 million for the Department of Energy to establish the Center for joint research and development with Israel. This sum will be matched by the Israeli government as well as by private sector partners, for a total targeted initial sum of \$16 million dedicated to this project. The Center aims to accelerate development and more rapid deployment of critical and innovative technologies for fossil energy, energy cybersecurity in critical infrastructure, the energy-water nexus, energy storage, and other areas of energy that are needed to diversify energy supply and promote higher efficiency. ([DoE Press Releases](#))

#### *Space, NASA & NOAA*

**Trump's Pick to Lead Weather Agency Spent 30 Years Fighting It:** Barry Myers, President Trump's pick to lead NOAA, and formerly AccuWeather's chief executive officer, has taken a more conciliatory approach in recent years, proselytizing about the need for all parties involved in forecasting—the government, academics, businesses—to collaborate. However he was previously accused of trying to undermine the National Weather Service, and remains a champion of limiting the agency's public role, opposing its use of social media to spread warnings. ([Bloomberg](#))

**ESA's Unexpected Fleet of Space Weather Monitors:** A team of researchers, supported under ESA's Basic Activities, has recently investigated a resourceful new method of monitoring space weather. They analyzed data from spacecraft magnetometers typically used for attitude control -- so-called "platform magnetometers"-- to see if these devices could also be used to investigate the impact of solar storms on the magnetic field around Earth and concluded that platform magnetometers can provide excellent insight into space weather. Their contribution to monitoring this phenomenon can be significantly increased by initiating coordination between different groups and developing new data processing techniques, both of which are relatively low cost compared to developing dedicated instruments and missions. ([Space Ref](#))

#### *Cybersecurity*

**All the Services Get New Cyber Commanders:** U.S. Cyber Command has undergone a series of rapid changes in only a few short weeks. Since the

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beginning of May, the command has been elevated to a full unified combatant command, received a new leader in Gen. Paul Nakasone, reached a critical staffing milestone for its cyber mission force known as full operational capability and unveiled a new cyber nerve center called the Integrated Cyber Center/Joint Operations Center that will coordinate global cyber operations. At the same time, leadership is turning over at each of the service cyber components. Marine Corps Maj. Gen. Reynolds will assume command of the Marine Corps Forces Cyberspace Command on July 2. Maj. Gen. Robert Skinner will assume command of the 24th Air Force/ Air Forces Cyber this summer. Lt. Gen. Stephen Fogarty assumed command of the Army Cyber Command on June 1. Vice Adm. Timothy White assumed command of the 10th Fleet/Fleet Cyber Command on June 18. ([Fifth Domain](#))

**The Secret's Out: National Reconnaissance Office Gets New Deputy Director:** The National Reconnaissance Office has appointed Brig. Gen. Mark A. Baird as its new deputy director, according to a June 25 agency tweet. As deputy director, Baird will assist the director and principal deputy director in managing strategic and tactical operations. Baird will also serve as the commander, Air Force Element, where he will manage Air Force personnel at NRO and act as senior adviser to the director on military matters. ([C4ISR](#))

#### *DOJ*

**DOJ Announces 600 Charges in Health Care Fraud Crackdown:** The Department of Justice announced charges against 601 people allegedly responsible for \$2 billion in health care fraud, including 65 doctors, nurses and other licensed medical professionals. Those charged were accused of cheating federal health programs, including Medicare and Medicaid, through false billing practices. Of those charged, 162 defendants, including 76 doctors, were charged for their roles in prescribing and distributing opioids and dangerous narcotics. ([The Hill](#))

#### **JUDICIARY**

##### *Intellectual Property*

**Supreme Court Allows Damages for Foreign Lost Profits in Patent Infringement Case:** As a general rule, patents are instruments providing government sanctioned monopolies that are territorially bound to the issuing government. On June 22, 2018, the U.S. Supreme Court held that damages could be recovered in an instance of a foreign use of a system that infringed on a U.S. patent. ([Clark Hill Insight](#))

##### *Environment*

**Litigation Risk for Perfluorinated Chemicals Continues to Mount:** High-stakes litigation against manufacturers and historical users of per- and poly-fluorinated chemicals ("PFAs") continues to grow, moving beyond PFA manufacturers to numerous downstream products and uses. Products and manufacturing operations that used PFAs include textiles, leather goods, paper and packaging materials, cleaning solutions, pesticides, firefighting foam, and many more. These PFA uses have been directly and indirectly tied to groundwater contamination. In recent weeks, headline-making state litigation and new government studies that may lead to much lower regulatory limits have raised the stakes, increasing risk for companies that historically used these chemicals. Although there is considerable scientific uncertainty associated with human health and environmental risk from these chemical compounds, legacy users of PFAs (potentially dating back to the late 1940s) should immediately assess their exposure to new operational requirements, groundwater cleanup liabilities, and personal injury litigation. ([Clark Hill Insight](#))

##### *Employment*

**Supreme Court Overturns 42-Year Precedent and Strikes Down State Fair Share Laws:** This week the Supreme Court issued its long-awaited decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31 et al.*, striking down "fair share" union fees for government workers. As a result, state and public sector-unions may no longer extract "fair share" fees that cover the cost of collective bargaining from nonconsenting employees. The decision stands to invalidate 22 state and territory agency shop laws, and is a rare deviation from the Court's long-standing principle that it will not overturn its own decisions. As a result of *Janus*, public sector employers should immediately consult with labor counsel to determine if any fair share fees are currently being deducted and whether such practices should be ceased. ([Clark Hill Insight](#))