

## Congress Returns To DC To Forge Virus Relief Deal — Quickly

By **Andrew Kragie**

*Law360 (July 17, 2020, 8:54 PM EDT)* -- Lawmakers return to Washington on Monday for a sprint to pass another comprehensive pandemic relief package with a price tag over \$1 trillion and provisions that could deal with business liability protections, state and local funding, direct payments and unemployment insurance.

Despite distinct priorities, there's a shared sense of urgency among House Democrats, Senate Republicans and the Trump administration. Virus cases are surging in much of the country, a deep economic crisis persists, and elected officials of all stripes need to show results ahead of November's elections. Advocates told Law360 that congressional leaders won't leave Washington for the traditional August recess until another major bill is on track to become law.

"The necessity and urgency of getting something done over the next several weeks seems pretty clear," said Broderick D. Johnson of Covington & Burling LLP, who held policy roles in Congress and recent Democratic administrations. "It's in the interest of the White House, it's in the interest of House Democrats, and it's in the interest of Senate Republicans."

It's been two months since the House approved the Heroes Act, a sweeping Democratic package with over \$3 trillion in funding, especially for state and local governments, along with myriad policy provisions including workplace safety standards, health insurance enrollment and the cannabis industry's access to banks.

Senate Republicans initially called for patience as lawmakers watched the effects of the trillions already allocated. However, pressure has built for another major relief bill as virus case pile up in red states including Texas and Florida, straining the health care system and extending economic woes. The GOP has grown increasingly comfortable with some amount of aid to state and local governments — though perhaps not as much as Democrats proposed in the Heroes Act.

"We have nearly \$1 trillion for state and local governments," House Speaker Nancy Pelosi said at a news conference Thursday. She summarized the other elements of the plan that include another round of direct relief payments — which could be limited to families with lower incomes — and the extension of a \$600 boost to weekly unemployment benefits, which Republicans and some business groups say is dissuading employees who might otherwise return to work.

"We urge the president and the GOP Senate to get on it and help the American people," the California Democrat said. "Help our state and local governments by honoring our heroes, open up our economy

and our schools by having the equipment needed to do it and the funds to facilitate that, put money in the pockets of the American people."

Senate Majority Leader Mitch McConnell has said he will not allow any package without **some liability shield**: "No bill will pass the Senate without liability protection for everyone related to the coronavirus," the Kentucky Republican said Monday in his home state.

A summary of McConnell's draft proposal circulated in Washington on Friday and was obtained by Law360. It would have all coronavirus-related lawsuits heard in federal courts and would provide that "defendants are liable only if they failed to make reasonable efforts to follow applicable public-health guidelines and committed an act of gross negligence or intentional misconduct."

Details are expected sometime in the next week when Senate Republicans unveil their proposal and tee off negotiations between the parties, the chambers of Congress and the Trump administration. Democrats generally fight efforts to limit liability, casting the issue as one of access to justice.

"Any attempt by Republicans or the business community to try to shut that is going to be a tough pill to swallow," said a former Democratic congressional staffer. "But this situation is so unique in American history that I don't know if past precedent is completely on all fours here."

Democrats may turn to "leave it to the states" arguments more often heard from Republicans. At least nine states had enacted some form of business immunity for coronavirus cases as of late June, with proposals pending in many more states. Some 16 states also had liability protections specifically for nursing homes.

For the next relief package, GOP senators have also discussed a slew of tax cuts and incentives: boosting the employee retention tax credit, allowing companies to write off entertainment expenses to encourage restaurant purchases, and perhaps including the payroll tax cut that President Donald Trump has pushed despite bipartisan skepticism about its efficacy.

Democrats, in contrast, focus more on direct payments to individuals and governments. Partisanship could make this package harder to negotiate if the focus shifts from stabilization to long-term economic boosts.

"The hard part is that we're moving past the things that everybody agrees on and getting into the parts where people disagree, particularly on stimulus," the former staffer said.

Treasury Secretary Steven Mnuchin is expected to represent the administration, as in previous relief negotiations, although congressman turned White House chief of staff Mark Meadows may also play a prominent role.

"Right now the ball is in the Senate's court for Sen. McConnell," Johnson said. "He's indicated that next week he's going to make details of Senate Republicans' next bill available for input from senators on both sides of the aisle. And then the Senate will work toward getting its bill done in the next several weeks."

Johnson predicted the sticking points will be aid to state and local governments, the beefed-up unemployment benefits, liability protections, and funding and policy provisions related to reopening schools. That last one has become a lightning rod in recent weeks, with Trump threatening to block

federal funding for school districts that don't resume in-person classes.

There could also be changes to the nearly \$660 billion Paycheck Protection Program that provides forgivable loans to small businesses. Senior lawmakers in both parties have discussed allowing a second round of loans for the smallest and hardest-hit businesses.

Congress might give more flexibility in loan terms or forgiveness requirements, such as lowering the requirement that 60% of forgiven funds go to payroll. Acceptable categories might expand to cover certain bad debts like unpaid customer bills. About \$140 billion remains available, and lawmakers say they want the money used to support small-business jobs.

The next relief package's final price tag seems likely to end up between \$1.5 trillion and \$2 trillion, one veteran lobbyist predicted, although McConnell will try to keep it closer to \$1 trillion.

"It feels right now like the Democrats have more leverage, given the uptick in cases, given where the economy is. It feels like there's pressure on doing a bigger bill," the lobbyist said. Although Pelosi has called for trillions of dollars, the lobbyist said she won't face much blowback from cutting a deal smaller than the Heroes Act because Democrats hope they can secure major stimulus early next year after gaining power in November's elections.

Negotiations are likely to be frenetic over the next two or three weeks. The Senate is scheduled to leave town Aug. 7 for Congress' customary monthlong break. The House is set to wrap up July 31, but Pelosi said she would keep the chamber in town longer to get a deal passed.

--Editing by Kat Laskowski.