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Bill raises cost of global business

Lawmakers find overseas cash to fund border security, state aid

By Seth McLaughlin

With their usual sources for money drying up, lawmakers on Capitol Hill have started tapping the wallets of foreign workers and international businesses to pay for their pre-election wish list - moves that have put them at odds with the U.S. Chamber of Commerce, the Indian government and possibly the World Trade Organization.

On Thursday, Congress passed a spending bill that raises visa fees on companies that bring in a large number of foreign workers, and earlier this week President Obama signed a second spending package that raises $10 billion in additional taxes on multinational companies that call the U.S. home.

The $600 million in new visa fees is being used to pay for a boost in border security, and the multinational tax financed an extension of parts of last year's stimulus bill, freeing up billions of dollars for cash-strapped states.

Sen. Charles E. Schumer, the New York Democrat who wrote the border security bill, said Thursday that it makes sense to increase fees on companies that rely heavily on temporary workers brought here under so-called H-1B or L-1 visas, since some of those companies are violating the spirit of the law.

"First, it will provide necessary funds to secure our border without raising taxes or adding to the deficit," Mr. Schumer said. "Second, it will level the playing field for American workers, so they don't lose out on good jobs here in America because it's cheaper to bring in a foreign worker than hiring an American worker."

But India's trade minister, Shri Anand Sharma, sent a letter this week to President Obama's trade representative protesting that it is "inexplicable to our companies to bear the cost of such a highly discriminatory law." Indian Commerce Secretary Rahul Khullar told the Indian press that the U.S. border bill "reflects an overwhelmingly protectionist frame of mind."

Indian officials argue that their high-tech companies will suffer an unfair burden in financing the bill because so many Indian skilled workers use the special visas to work for clients in the United States, while U.S.-based firms that issue the same visas typically will not face the higher fees.

On Tuesday, Mr. Obama signed the $26.1 billion aid package into law and praised "closing tax loopholes that encourage corporations to ship American jobs overseas." He said Thursday that he planned to sign the border-security bill and that it would help protect the U.S.-Mexico border.

Heading into this week's votes, lawmakers insisted that in the current economic environment, imposing the taxes and fees on foreign workers and companies was the best way to raise the money needed to address two of the country's most pressing issues: unemployment and illegal immigration.

But, in doing so, Som Mittal, president of Nasscom, the high-tech association of India, suggested that Congress may have walked into the cross hairs of the World Trade Organization, which polices member-nations' adherence to international trade pacts.

"The bill is ... an indirect form of protectionism and runs contrary to the Obama administration's oft-repeated goal of opening markets and doubling U.S. exports," Mr. Mittal said. "What's more, provisions like these are contrary to the spirit and rules of the World Trade Organization and the General Agreement on Trade in Services."

R. Bruce Josten, executive vice president of government affairs for the U.S. Chamber of Commerce, agreed. "If approved, this legislation would not only risk potential adverse impacts on U.S.-based companies, but also retaliation by affected foreign governments, either in the [WTO] or directly at U.S.-based companies looking to compete in those markets," he said in a letter sent to Congress this week.

In his letter, Mr. Josten highlighted **a recent study from the National Foundation for American Policy** that, he said, "concluded that discriminatory measures similar to the Senate fee increases could bring action by other governments against the United States in the WTO."

While the study focused on a different immigration-reform bill that Democrats unveiled earlier this year, an author of the study said that the visa-fee increases passed Thursday share some similarities with parts of the immigration bill and could raise some "red flags."

"To the extent these provisions are purported to specifically limit the ability of foreign companies to bring nonimmigrant employees to the U.S., or to target companies in certain countries, that naturally raises red flags about a potential collision with U.S. obligations under the GATS," Marguerite Trossevin, of Washington-based law firm Jochum Shore and Trossevin, told The Washington Times.

"In bad economic times with high unemployment, trade rules and commitments can become inconvenient, but that is also when they become more important," Ms. Trossevin

said. "The U.S. certainly expects its trading partners to be cognizant of the commitments they made, even when times are tough, and we need to do the same."
Yesterday, Mr. Schumer tried to dispel such concerns.

"It is simply untrue that the purpose is to target Indian companies," he said. "We are raising the fees for businesses who use the H-1B visa to do things that are contrary to the program's original intent. That will be on any company from any country that does it."
His bill increases the visa fees on companies whose work forces are more than 50 percent foreign.

It was the second time this month that Congress has looked to companies with extensive foreign ties to pick up the tab for new spending bills.

Last week, Democrats, with the help of two Senate Republicans, ushered through a $26.1 billion state aid package that relied on about $10 billion in additional taxes levied on multinational companies that call the United States home. Roughly $16 billion went to help states pay for Medicaid and $10 billion went to teacher salaries.

Democrats said they were closing a tax loophole that allowed multinational companies to sidestep some of their U.S. tax obligations.

"Large multinational corporations have been getting away with paying billions less than they owe in taxes," Rep. Chellie Pingree, Maine Democrat, said during the floor debate over the measure. "This bill will close the loopholes that have allowed this abuse to go on and allow American jobs to be shipped offshore."

But the National Association of Manufacturers, many of whose members may be hit by the change, warned that the extra taxes "will jeopardize the jobs of American manufacturing employees and stifle our fragile economy," and Republicans said the proposal needed further review and could result in 140,000 more jobs being lost.

"Most of these [changes] have never been the subject of any committee hearing or markup," said Rep. Dave Camp, the ranking Republican on the House Ways and Means Committee.

Mr. Camp said the changes could make sense as part of a larger reform of the tax code to make U.S. firms more competitive in the global marketplace.

"But we never got the opportunity to hear from American employers or to offer any amendments," he said.