August 18, 2025

Where's Congress?

Every August, Washington, D.C. quiets down as Congress takes its month-long recess, a tradition allowing members and staff to return to their home states and districts.

This break provides opportunities to meet constituents, attend local events, or campaign. While legislative business typically pauses, Congress may reconvene for urgent matters like disaster relief or major legislation, ensuring critical issues are addressed despite the recess.

The August recess traces its roots back centuries, driven partly by Washington's oppressive summer climate before air conditioning arrived in 1929. Vice President John Nance Garner famously quipped, "No good legislation ever comes out of Washington after June," capturing the pre-recess exodus sentiment.

The tradition was formalized by the Legislative Reorganization Act of 1970, which mandated the recess for odd-numbered years. Though the 1970 law applied only to odd-numbered years, by the 1990s, the August recess became an annual practice.

If you have ever tuned into C-SPAN during August, you might see the House and Senate convene every few days for a "pro-forma" session. In the Senate, this is typically done to prevent presidential recess appointments. The House conducts a similar session to keep the bodies technically in session without conducting substantive business. These sessions maintain continuity while members are away.

Lawmakers will return to their official duties in September, with the House and Senate set to reconvene on September 2.

ENERGY STAR Update

Just before the August recess, the Senate Appropriations Committee approved its FY'26 funding bill for the EPA, which includes a $36 million appropriation for maintaining the ENERGY STAR program. Passing with strong bipartisan support, the matter was advanced by a 26–2 vote.

The committee is recommending the same funding level as FY'24 and directs the EPA to provide a report on the program's future within 30 days of enactment. The action follows the House's report language signaling that both chambers are aligned in continuing the joint agency initiative.

Washington Wire readers may recall that the Environmental Protection Agency (EPA) sought to eliminate the ENERGY STAR program, as part of a broader deregulatory agenda and the President's disdain for appliance efficiency standards.

Earlier this year, NAED joined 30 leading trade associations to key Senate and House leaders on a letter emphasizing the critical role of the ENERGY STAR program, which is co-managed by the Department of Energy and EPA.

The letter urged continued support for ENERGY STAR, noting its widespread recognition. More than 90% of households are familiar with its blue label and its status as a trusted public-private partnership. The signatories stress that ENERGY STAR is a proven example of effective, voluntary government action that delivers tangible savings and environmental benefits without imposing regulatory burdens.

NAEDPAC

NAED recently formed a Political Action Committee (NAEDPAC). The formation of the PAC and its committee will enable NAED to improve our effectiveness in Washington when advocating for legislation by raising our profile with lawmakers.

The PAC also allows NAED to support the work of our channel partners (NEMA, NECA and NEMRA) who frequently support lawmakers through political giving.

NAEDPAC will use voluntary, personal contributions to help elect and support Members of Congress whose policies align with NAED's legislative objectives.

If you are interested in learning more, or want to get involved, please contact Ed Orlet or Bud DeFlaviis, or email naedpac@naed.org

Reminder – 179D Tax Deduction for Efficient Lighting

The recently enacted reconciliation bill made significant changes to the Energy Efficient Commercial Building Deduction (Section 179D). Under the new law, Section 179D is no longer a permanent part of the tax code and is now set to phase out for projects that begin construction after July 1, 2026. This creates a short window of opportunity for commercial property owners to launch qualifying projects and claim deductions of up to $5.81 per square foot.

For those considering energy upgrades to existing commercial buildings, additional tax incentives may apply. These include Section 179 expensing, which has doubled its cap from $1.25 million to $2.5 million, and bonus depreciation, both of which can provide significant tax benefits.

Because each incentive has its own rules and benefits, navigating the options can be complex. Developers and project participants should consult a qualified tax professional to ensure they are maximizing incentives under the new law.

Moving forward, NAED and other coalition partners will continue to advocate for a continuation of the 179D provisions, which have been a useful tool for energy efficiency lighting systems for new commercial building construction.

State Notices – New Jersey, Michigan, California, and Washington

Following the passage of the One Big Beautiful Bill, state legislators have introduced their own tax code changes. For example, in **New Jersey**, (A5371/S4219) a proposal would revamp the municipality payroll tax, specifically allowing municipalities to require certain additional reporting by employers to assist in the administration of the tax.

Meanwhile, in **Michigan** lawmakers are considering a newly introduced tax bill (HB 4737) that would incrementally roll back corporate income tax to 4.25% from the current rate of 6% by Oct. 1, 2030.

The **California** Senate has advanced SB-7, which would impose new requirements on employers using AI in employment decisions. Under the bill, employers must:

- Provide written notice to any worker affected by an AI-based employment decision.
- Allow the worker to appeal the decision, with the appeal reviewed by a human.
- Give workers access to the data collected or used by the AI system and permit them to correct any errors.

The bill also specifies prohibited uses of AI in employment. SB-7 passed out of committee on July 9 and now awaits consideration by the full Assembly.

In *Brown v. Old Navy, LLC*, the **Washington** Supreme Court broadened the scope of the state's Consumer Electronic Mail Act (CEMA). The Court ruled that CEMA prohibits any false or misleading information in commercial email subject lines—beyond just misrepresentations about the nature of the email—marking a departure from federal CAN-SPAM rules and prior federal court interpretations.

The case arose from Old Navy promotional emails with subject lines such as "50% Off Ends Today," which created a false sense of urgency because discounts continued beyond the stated deadline. The Court clarified that subjective puffery (e.g., "Best Deals of the Year") is not actionable, but the decision nonetheless heightens litigation risks over promotional claims in subject lines.

CEMA violations automatically trigger the state's Consumer Protection Act, allowing for $500 in statutory damages per recipient without proof of harm—creating significant potential liability for advertisers. Multiple class-action suits alleging "false urgency" or misleading discounts have already been filed.

Unresolved questions—such as whether traditional fraud elements must be proven or whether CAN-SPAM preempts CEMA—are now before the U.S. District Court for the Western District of Washington. Advertisers targeting Washington residents should review email subject lines for accuracy to avoid costly legal exposure under this expanded interpretation.