



CSAC

WASHINGTON BRIEFS

SECOND QUARTER 2008

Members of Congress grappled with a number of contentious issues during the second quarter of 2008, including a massive fiscal year 2008 emergency supplemental appropriations bill (HR 2642) to pay for the ongoing wars in Iraq and Afghanistan. After considerable debate, and with the Pentagon running short on funds, lawmakers in late June granted final approval to the controversial spending legislation.

The final bill, which was signed into law by President Bush on June 30, provides \$161.8 billion in spending for overseas military operations. Additionally, the package includes \$24.7 billion for various domestic priorities, including funding for the largest expansion of veterans' educational benefits since World War II. The legislation also provides emergency funding to help parts of the Midwest recover from recent flooding, and extends unemployment payments for up to 13 weeks beyond the normal six months.

In a victory for states and counties, the new law includes a moratorium – until April 1, 2009 – on the implementation of six of the Bush administration's seven Medicaid regulations. Among the regulations that will be delayed are public hospital rules designed to limit Medicaid reimbursements and terminate graduate medical education payments. Regulations restricting payments and services for rehabilitative services and targeted case management for at-risk populations also will be delayed.

In addition to consideration of the supplemental spending legislation, lawmakers began in earnest the process of preparing a new budget for the fiscal year that begins October 1. To date, a number of individual appropriations bills in both the House and Senate have begun to advance through the committee process.

The following sections provide a status report on the California State Association of Counties' (CSAC) key federal legislative priorities for 2008.

SECURE RURAL SCHOOLS/COUNTY PAYMENTS

Despite a flurry of legislative activity aimed at renewing the Secure Rural Schools and Community Self-Determination Act (SRS/County Payments program), efforts to reauthorize the law fell short this past quarter.

In the Senate, SRS proponents succeeded in attaching a one-year extension of the program to the upper chamber's version of the fiscal year 2008 emergency supplemental spending legislation. After a series of negotiations with the House, however, most domestic funding – including the SRS extension – was dropped from the final version of the bill.

Across Capitol Hill, House lawmakers rejected legislation (HR 3058) in early June that would have provided for a multi-year reauthorization of the County Payments program after Republican lawmakers objected to the bill's financing provisions. House Republicans – along with the Bush administration – opposed the fact that the cost of the legislation would have been paid for by imposing a fee on oil and gas producers that erroneously received permanent royalty-free leases in the late 1990's.

HR 3058, sponsored by Congressman Peter DeFazio (D-OR), would provide four-years of transition payments to forest counties using a new funding formula. The formula would be based on historical allocations, the concentration of public land within each county, and the current economic condition of each county. Under the bill, payments to counties would be ramped down by 10 percent, fulfilling the principles of the National Forest Counties Schools Coalition that the safety-net program be temporary. The legislation also would provide transition funding to counties in eight states to assist in their adjustment to the new distribution formula (the eight states are: CA, OR, WA, LA, PA, SC, SD, and TX).

With forest counties facing a major budget crisis, champions of the SRS program have vowed to continue to fight for an extension or long-term reauthorization of the program. Lawmakers will be looking to include an SRS package as part of a second economic stimulus bill or as part of a follow-up to the emergency supplemental spending bill.

MEDICAID/SCHIP

With the State Children's Health Insurance Program (SCHIP) operating under an extension through next March, talk of a long-term renewal of the program has diminished in recent months. Nevertheless, SCHIP has not completely fallen off the congressional radar screen, as lawmakers set their sights this past quarter on reversing a recent administrative directive that effectively restricts state efforts to increase SCHIP coverage to families above 250 percent of poverty.

In the Senate, lawmakers included a provision in the Iraq spending bill that would have rescinded CMS' SCHIP directive. The language, however, was dropped from the final spending

measure. In response, key members of the Senate Appropriations Committee included the rescission in the upper chamber's version of the fiscal year 2009 Labor-HHS Appropriations bill. The legislation is currently awaiting Senate floor action.

In other developments, and as previously indicated, state and county governments and other health providers won a significant victory in June when Congress adopted provisions placing a moratorium on six of seven pending Medicaid rules issued by CMS. The provisions, adopted as part of the emergency spending bill, delay any further administrative action by CMS until April 1, 2009. According to a report released by the House Oversight and Government Reform Committee, the State of California is expected to lose over \$10.7 billion in federal Medicaid funds over the next five years if the CMS rules are implemented.

It should be noted that the one regulation not addressed in the supplemental spending bill has not yet been finalized by the Bush administration. The rule, which would restrict payments for outpatient hospital services, is expected to be closely reviewed by Congress once it is published by CMS.

In other news, bipartisan legislation was recently introduced by Representatives Alcee Hastings (D-FL) and Michael Burgess (R-TX) that would enable incarcerated individuals who are otherwise eligible for federal health benefits to continue to receive such coverage until adjudicated. The "Restoring the Partnership for County Health Care Costs Act" (HR 5698) would permit those individuals in county jails to continue receiving federal Medicaid, Medicare, SCHIP and SSI benefits. Under the bill, if the individual is found not guilty, federal benefits would be allowed to continue instead of requiring the individual to re-apply for the programs.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

The House and Senate Appropriations Committees in June approved their respective versions of the fiscal year 2009 Commerce-Justice-Science (CJS) spending legislation. In a victory for California's counties, the House Appropriations Committee approved \$420 million in funding for the State Criminal Alien Assistance Program (SCAAP), or a \$10 million increase over current spending.

It should be noted that Representatives Mike Honda (D-CA) and Adam Schiff (D-CA) – both members of the CJS Subcommittee – worked diligently behind the scenes to ensure that the bill coming out of the subcommittee included the aforementioned increase in SCAAP.

Across Capitol Hill, the Senate Appropriations Committee-approved bill includes \$355 million for SCAAP. The spending measure also would provide \$45 million to reimburse state and local governments for prosecuting or detaining defendants in federally-initiated and referred criminal cases.

For its part, the state of California and its counties are receiving over \$151 million in fiscal year 2007 SCAAP funding, or a little more than 40 percent of the funding allocated nationwide.

In other developments, and in another victory for California's counties, the House approved in early May Representative Linda Sanchez' (D-CA) SCAAP reimbursement criteria bill (HR 1512). The legislation would modify the SCAAP program to allow counties to be reimbursed for the costs associated with incarcerating undocumented individuals that are convicted *or accused* of a felony or two or more misdemeanors. Currently, the statute is limited to allowing reimbursement only in cases in which an individual is actually convicted of such crimes.

Senator Dianne Feinstein's (D-CA) companion SCAAP reimbursement criteria bill (S 2587) is currently pending in the upper chamber.

INDIAN GAMING

Earlier this year, the House Natural Resources Committee held a hearing to review the Bureau of Indian Affairs' (BIA) January 3 guidance on taking off-reservation land into trust for gaming purposes. In his opening remarks, Natural Resources Committee Chairman Nick Rahall (D-WV) registered his concern that the agency's guidance was developed without proper consultation with tribes. Accordingly, Mr. Rahall introduced legislation (HR 5608) that would require the federal government to consult with tribal governments prior to developing or modifying policies, rules, or regulations that could affect tribes.

It should be noted that Rahall's measure would essentially codify Executive Order (EO) 13175, which was signed by President Clinton back in 2000 and requires federal agencies to consult with Indian tribes on a government-to-government basis. According to Rahall, the legislation is necessary in light of the Bush administration's repeated failure to adhere to the EO, with the latest example being BIA's January 3 guidance.

Pursuant to BIA's new policy directive, all off-reservation land acquisitions – whether for gaming or non-gaming purposes – must be a “commutable distance” from a tribe's reservation land. In defending its new policy, BIA has pointed to current regulations, which require land acquisitions to be made in accordance with the tribe's best economic and social interests, while at the same time taking into account concerns raised by state and local governments as to an acquisition's potential impacts on regulatory jurisdiction, real property taxes, and special assessments.

It is unclear whether the Natural Resources Committee will take legislative action on HR 5608 later this year.

REAUTHORIZATION OF SAFETEA-LU

Although the nation's highway and transit law (SAFETEA-LU) does not expire until September of next year, both the House Transportation and Infrastructure Committee and the Senate Environment and Public Works (EPW) Committee continued this past quarter a series of

transportation reauthorization-related hearings. The panels held hearings focusing on such topics as maintaining the nation's highway and transit infrastructure, goods movement, and the transportation challenges facing metropolitan areas.

In other news this past quarter, lawmakers dropped language from the recently approved Federal Aviation Administration (FAA) extension that would have transferred \$8 billion in funding from the General Treasury to the Highway Trust Fund (HTF). The provision was designed to shore up the projected hole in the HTF in fiscal year 2009.

Although the \$8 billion was included in the House version of the FAA bill, Republicans on the Appropriations and Budget committees made a last minute, successful push to remove the language from the bill. While Republicans noted the need to address the HTF shortfall, they objected to the fact that the funding was being included without any proposed reforms or long-term solutions. With the GOP objections threatening to derail the FAA extension, congressional Democrats were forced to remove the HTF language to ensure that the FAA bill would pass prior to expiring.

In the Senate, a similar scenario occurred as Democrats were ultimately unable to attach the HTF funding to the upper chamber's version of the FAA bill. In the end, the Senate, like the House, approved a clean three-month extension of the aviation legislation.

All told, the HTF is facing a projected \$3.3 billion shortfall in fiscal year 2009, which would translate into a program cut of \$13.5 billion in federal-aid highway funding. According to the American Association of State Highway and Transportation Officials, roughly 380,000 jobs are at risk due to the impending hole in the trust fund. Overall, states are facing a 34 percent cut in highway funding, with California projected to lose 32,000 jobs if Congress does not act.

CLIMATE CHANGE

The Senate voted in early June to shelve major global warming legislation (S 3036) after a clash over judicial nominations bogged down debate on the measure. Although observers expected a lengthy discussion on the bill, the upper chamber only spent about two days debating the legislation. In the end, supporters of the bill were unable to garner the 60 votes necessary to invoke cloture.

A 3036, championed by Environment and Public Works Committee Chair Barbara Boxer (D-CA), would cap emissions of carbon dioxide and other greenhouse gases at 19 percent below current levels by 2020 and 71 percent by 2050. Under the legislation, utilities and other facilities could reduce their own carbon emissions or buy allowances on a so-called carbon market; the government would then auction the allowances and spend the revenues on compliance costs and investments in clean technologies.

In addition to providing significant funding to various private sector industries, S 3036 would allocate funds to states and localities, including \$171 billion for mass transit activities through

2050. Additionally, the measure would fund the Energy Efficiency and Conservation Block Grant (EECBG) program at \$136 billion. The EECBG was created in the recently enacted Energy Independence and Security Act of 2007, and is designed to assist eligible entities – including counties – implement energy efficiency and conservation strategies. The bill also would reward states that take actions to reduce greenhouse gas emissions with \$566 billion through 2025.

With a wide disparity of views among senators as to the climate change legislation’s potential impact on the economy, many observers were skeptical that bill supporters would be able to generate sufficient support for S 3036, even if the judicial nominee spat hadn’t bogged down the Senate’s debate. According to Boxer, the cloture vote, though disappointing, provides a roadmap for the next president in assessing levels of support for major climate change legislation in the future.

FARM BILL

After months of negotiations and procedural hurdles to correct a clerical error that omitted the Trade Section of the Farm Bill, the House and Senate overrode President Bush’s veto of the final legislation (HR 2419/PL 110-234).

Enacted into law on May 22, the \$289 billion, five-year Farm Bill significantly increases nutrition spending while at the same time preserving crop subsidies. All told, the legislation provides roughly \$10.3 billion in new funding for nutrition programs, including \$1.2 billion to restock food banks and \$1 billion for a school snack program. Nutrition funding comprises more than 73 percent of the new Farm Bill.

The new law also sets stricter income eligibility limits for farmers to receive payments, and provides new incentives for alternative energy.

With regard to the Rural Development title of the bill, the new law modifies the definition of “rural” to ensure that federal funding is directed to rural areas with the greatest needs. Additionally, the bill authorizes the Rural Water and Wastewater Circuit Rider Program at \$25 million for each fiscal year from 2008 through 2012 and extends the Rural Business Investment Program authorization through 2012. The final legislation also provides \$120 million in mandatory funds for applications that are pending for water systems, waste disposal systems, and emergency community water assistance grants.

FUELS MANAGEMENT

Earlier this year, the White House proposed cutting programs under the purview of the U.S. Forest Service as part of its fiscal year 2009 budget submission to Congress. Specifically, the administration proposed a \$13 million cut in funding for projects that reduce hazardous fuels, as well as a \$78 million reduction in fire preparedness programs. In addition, the Bush budget

recommended cutting the Forest Service's State Fire Assistance Program by \$13 million, bringing total funding to \$35 million in fiscal year 2009.

The White House also proposed a 60 percent reduction in the Forest Service's State and Private Forestry budget. Under the administration's proposal, funding for some priority programs – such as the Urban and Community Forestry Program – would be slashed by as much as 80 percent.

To date, the House and Senate Appropriations Committees have not yet considered the fiscal year 2009 spending bill for the Department of Interior and related agencies. The Interior Appropriations bill includes funding for U.S. Forest Service programs.

On a related matter, legislation introduced earlier this year by Representative Mark Udall (D-CO) (HR 5218) that would provide at-risk communities with incentives to improve fire prevention efforts is pending before a number of House Committees. As of this writing, however, no legislative action has occurred on the bill.

Under the measure, communities that adopt a new model ordinance with regard to building codes, creation of "defensible space" around homes, and reduction of hazardous fuels, would be eligible for increased federal assistance. The bill also would authorize a new \$25 million grant program to assist local communities in implementing fire-prevention strategies.

It should be noted that HR 5218 is a companion bill to legislation that Senator Feinstein introduced last year. That bill, S 2390, has been referred to the Committee on Homeland Security and Governmental Affairs where it is awaiting further action.

COMMUNITY DEVELOPMENT BLOCK GRANT

To date, the fiscal year 2009 spending measure for the departments of Transportation and Housing and Urban Development (HUD) has not been considered by either the House or Senate Appropriations Committee. Among other programs, the Transportation-HUD spending bill provides funding for the Community Development Block Grant (CDBG).

Like past years, the Bush administration once again proposed slashing funding for the CDBG. Specifically, the administration's fiscal year 2009 budget calls for a cut of 18 percent from the current funding level of \$3.6 billion.

As expected, key members of the House and Senate Appropriations Committee have signaled their continuing support for the CDBG program. Lawmakers have indicated that a bipartisan coalition will once again fight to protect funding for the program in this year's budget proceedings.

We hope this information is useful to California county officials. If you have any questions or comments, please feel free to contact us.