



## CSAC

### WASHINGTON BRIEFS

### THIRD QUARTER 2011

The debate over the nation's dire fiscal situation continued to dominate the congressional agenda in the third quarter of 2011. After a months-long partisan stalemate that threatened to destabilize global markets and undermine the sputtering economic recovery, congressional leaders reached an historic agreement on a compromise to raise the federal debt limit in exchange for over \$2 trillion in long-term spending reductions. The deal, however, was not enough to preserve the government's top credit rating as Standard & Poor's downgraded the nation's rating from AAA to AA+.

As part of the debt limit deal, Congress formed what has been called a "supercommittee," tasked with recommending as much as \$1.5 trillion in deficit reduction through spending cuts, new revenues, or a combination of both. If Congress fails to approve at least \$1.2 trillion in budgetary savings, across-the-board spending cuts would be triggered. The supercommittee is attempting what no other commission or group before them has been able accomplish. It remains to be seen whether or not the committee will succeed, but the automatic spending cuts, known as sequesters, could serve as a strong incentive to work out an agreement.

For his part, President Obama unveiled this past quarter a broad deficit reduction plan – entitled *Living Within Our Means and Investing in the Future* – that could serve as a guide for the supercommittee. As a whole, the president's plan would reduce the debt by more than \$3 trillion over the next ten years; however, it is widely acknowledged that the proposal is far more progressive than anything that is likely to come out of Congress.

In the face of a slow economic recovery and stubbornly high unemployment, the president also has proposed an economic stimulus package that is funded in his deficit reduction plan. Called the *American Jobs Act*, the proposal features a mix of tax cuts for workers and businesses, as well as billions of dollars in spending geared toward infrastructure projects, aid to states, and unemployment insurance. The tax cuts in the package could attract support from some members of the GOP, but the size and scope of the proposed spending will be a tough sell for House Republicans, who are more focused on reducing the size of government.

On the budget front, Congress failed to approve any of the fiscal year 2012 appropriations bills before the October 1 start of the new federal fiscal year. As a result, lawmakers were forced to clear a continuing resolution (CR) that funds federal government operations through November 18. Given the lack of progress on the budget, and with few legislative days remaining in the session, it is increasingly likely that Congress will be forced to bundle most if not all of the appropriations bills into a massive omnibus spending package.

## NATIVE AMERICAN AFFAIRS

This past quarter, the House Natural Resources Committee's Indian and Alaska Native Affairs Subcommittee held a hearing on legislation (HR 1291/HR 1234) that would provide the secretary of the Department of Interior with authority to take land into trust for all Indian tribes. The bills, sponsored by Representatives Tom Cole (R-OK) and Dale Kildee (D-MI), would reverse the U.S. Supreme Court's ruling in *Carcieri v. Salazar*. In *Carcieri*, the Court ruled that the secretary's trust land acquisition authority is limited to those tribes that were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934.

Testifying at the hearing on behalf of CSAC and the National Association of Counties (NACo) was Susan Adams, President of the Marin County Board of Supervisors. In her remarks to the subcommittee, Supervisor Adams stated that a *Carcieri* "quick fix," such as those embodied in HR 1291/HR 1234, would perpetuate problems that have resulted in years of expensive and unproductive conflict between tribes and local governments.

In order to repair the underlying problems in the current fee-to-trust process, Supervisor Adams called upon the subcommittee to work with counties to develop a new process that provides the framework for local governments and tribes to work together on a government-to-government basis. Adams recommended that legislation provide the secretary of Interior clear direction to: 1) provide adequate notice to local government, 2) consult with local governments, 3) provide incentives for tribes and local governments to work together, and 4) provide for cooperating agreements that are enforceable.

Across Capitol Hill, the Senate Indian Affairs Committee approved this past quarter legislation (S 703) entitled the *Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011* (HEARTH Act). During committee markup, the bill was amended to include a *Carcieri* "quick fix" measure (S 676). Senator Dianne Feinstein (D-CA) has placed a hold on the HEARTH Act due to her objections over inclusion of the *Carcieri* language.

In other developments, Senators John McCain (R-AZ) and Jon Kyl (R-AZ) have introduced legislation (S 1424) that would prevent the Department of the Interior from taking off-reservation land into trust for gaming purposes if the land is not within a "reasonable commuting distance" from the reservation of the Indian tribe. The bill would reinstate a Bush-era guidance memorandum that was recently withdrawn by the Obama administration.

S 1424 also includes provisions that would require the Interior Department to evaluate state and local concerns before determining whether to take off-reservation land into trust for gaming. In evaluating those concerns, the Secretary of Interior would need to prepare a report that includes an assessment of a number of factors, including whether the land transfer is likely to disrupt local governmental operations and whether the Indian tribe has submitted intergovernmental agreements necessary to address the concerns of State and local governments.

Under S 1424, off-reservation land would not be allowed to be acquired in trust unless the Secretary of Interior determined that the Indian tribe had adequately addressed all of the concerns enumerated in the bill.

Finally, there was no movement this past quarter on Senator Feinstein's legislation (S 771) designed to limit the establishment of off-reservation Indian casinos. *The Tribal Gaming Eligibility Act*, which is cosponsored by Senator Kyl, seeks to end the practice known as "reservation shopping" whereby tribes seek to build casinos on lands that are hundreds or even thousands of miles away from their homelands.

#### **REAUTHORIZATION OF THE SECURE RURAL SCHOOLS ACT**

With the expiration of the Secure Rural Schools (SRS) Act fast approaching, the House Natural Resources Committee has turned its attention to addressing the long-term future of the program. In July, the Subcommittee on National Parks, Forests, and Public Lands held an oversight hearing to discuss continuation of payments under the SRS. Paul Pearce, who chairs the Skamania County (WA) Board of Commissioners, was called upon to give testimony on behalf of NACo and the Partnership for Rural America Campaign. His testimony focused on the need for a long-term solution that is both dependable and sustainable.

Another witness, Anna Morrison of Oregon Women in Timber, urged legislators to consider a different approach. Instead of reauthorizing county payments, she favored legislation that would restore active management of forests.

Following the hearing, the subcommittee unveiled a draft measure – the *National Forest County Revenue, Schools and Jobs Act of 2011* – that would substantially alter the way that SRS payments are made. Under the legislation, the Secretary of Agriculture would be required to act as trustee to carry out various trust projects – which could include timber sales, issuance of special permits, etc. – to meet an annual revenue requirement (ARR) on each unit of the National Forest System. From the ARR, 75 percent of revenues would be shared with counties, 20 percent would go to the Forest Service, and 5 percent would be directed to the federal Treasury. The measure also would provide a transition period to temporarily continue SRS payments to counties and schools. Details of the transition period and how much would be authorized for payments have yet to be determined.

On September 22, the National Parks, Forests, and Public Lands Subcommittee held another hearing on SRS. This time, the focus was on the recently unveiled draft legislation. It was evident during the hearing that the proposal would be divisive as Democrats raised concerns over the new forest management provisions and the U.S. Department of Agriculture registered its opposition. On the other hand, Ron Walter, Commissioner of Chelan County (WA) and President of NACo's Western Interstate Region, offered his support for the draft bill calling it "a step in the right direction."

For their part, key members of the Senate have continued to seek a clean extension of SRS payments. In addition, senators have expressed a desire to bundle an SRS extension with an extension of the Payment-in-Lieu-of-Taxes (PILT) program, which expires in fiscal year 2012.

CSAC, in partnership with the Regional Council of Rural Counties (RCRC), has remained active in pressing for a reauthorization of the SRS program. Following the announcement of the *American Jobs Act* in September, CSAC and RCRC sent correspondence to the California congressional delegation in support of a balanced and well-funded SRS reauthorization. In the letter, the associations argue that SRS funding would provide immediate stimulus to rural California counties that are struggling to balance their budgets.

#### **REAUTHORIZATION OF SAFETEA-LU**

Lawmakers continued to labor over the details of a multi-year surface transportation rewrite in the third quarter of 2011. Absent agreement on a new long-term bill and with highway and transit programs set to expire in September, Congress recently approved a ninth extension of SAFETEA-LU. The latest extension will fund transportation programs for an additional six months, giving lawmakers until March 2012 to reconcile their differences on a multi-year bill.

In the House, Transportation and Infrastructure Committee Chairman John Mica (R-FL) unveiled a proposal in July that would authorize \$230 billion for transportation infrastructure spending over six years, a level that can be sustained solely by revenues deposited into the Highway Trust Fund. Overall, this would amount to a 33 percent reduction in spending compared to current levels.

Outside of the revenue component of the bill, Mica's proposal would streamline project delivery, consolidate duplicative programs, and encourage states to create their own infrastructure banks. The legislation also would increase funding for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, which essentially loans federal money to important state and local projects.

It should be noted that Chairman Mica recently indicated that he was cleared by House GOP leadership to find additional revenue to finance surface transportation programs. Mica, who is seeking non-gas tax generated revenue, is reportedly looking to raise an additional \$15 billion annually. The increased revenue would bring the House bill more in line with the Senate's proposal.

Across Capitol Hill, the Senate Environment and Public Works Committee, chaired by Senator Barbara Boxer (D-CA), held a hearing on transportation reauthorization on July 21. The hearing came on the heels of a bill outline that was released by Chairman Boxer and the committee's ranking member, James Inhofe (R-OK).

Boxer and Inhofe have agreed, in principle, on a two-year measure funded at \$109 billion, an amount that reflects current spending levels plus inflation. This, however, will require an additional \$12 billion in new revenue that has yet to be identified. The Senate Finance Committee has reportedly finalized a proposal for how to raise the money, but the details of the plan have not yet been released.

In other transportation-related developments, Congressman Gary Miller (R-CA) introduced earlier this year legislation that would create a new pilot demonstration program whereby States and local governments could carry out the responsibilities of the secretary of Transportation with respect to highway projects through implementation of State environmental laws instead of Federal laws. Under the legislation (HR 2389), the secretary would need to determine that a State's laws are substantially equivalent to the National Environmental Policy Act (NEPA) and that participation in the program would not diminish protection of the environment.

CSAC has worked very closely with Congressman Miller on the development of his environmental streamlining bill and has endorsed the legislation. The bill is bipartisan and has a number of original cosponsors from the California congressional delegation.

#### **ARMY CORPS OF ENGINEERS LEVEE VEGETATION REMOVAL POLICY**

The U.S. Army Corps of Engineers (USACE) released this past quarter a report on initial research into the effects of woody vegetation on levees. The research, which was conducted by the U.S. Army Engineer Research and Development Center (ERDC), will be used by the Corps to inform its decision making regarding trees on levees in the USACE levee safety program.

Despite the fact that the ERDC research shows that the existence of trees on levees can increase flood safety in certain situations, Corps officials have indicated that the agency does not intend to modify its controversial levee vegetation removal policy. Under the policy, state and local agencies are required to remove most vegetation from levee systems to allow access by personnel and equipment for surveillance, inspection, maintenance, and flood fighting.

It should be noted that Corps officials have signaled that the agency is drafting a new stand-alone document that will allow some exceptions to its vegetation policy. The document will augment current vegetation standards, with exceptions either being site-specific or national in scope. The Corps also is creating regional teams of levee and wildlife experts who will be charged with identifying solutions to levee safety and habitat concerns.

In addition to ERDC's initial levee research, the Corps is working on other levee vegetation management products that it says are intended to improve levee safety policy. For example, the Corps is scheduled to release this fall a system-wide improvement framework policy that is designed to provide levee sponsors with an opportunity to optimize resources and prioritize improvements and corrective actions based on risk. The Corps also will be publishing revised vegetation variance request policy guidance. According to the Corps, the revised draft will be posted in the *Federal Register* late this year, with comments considered prior to the issuance of the final policy.

For its part, CSAC has continued to work closely with key members of the California congressional delegation on the levee vegetation removal policy. A number of members of the House have continued to urge the Corps to not only delay implementation of its variance process, but to modify its policy to take into account a variety of important factors, such as regional variations in levee management, and to consider state and local expertise in the redevelopment process. Senators Feinstein and Boxer also have strongly supported CSAC and other stakeholders in this matter.

On the legislative front, CSAC has proposed language for the next Water Resources Development Act (WRDA) that would provide specific, statutory direction to the Corps with regard to clarification of its levee vegetation policy. CSAC also has suggested that similar language be included in the fiscal year 2012 Energy and Water Appropriations legislation.

#### **CLEAN WATER ACT**

Representative Gary Miller introduced this past quarter bipartisan legislation that would streamline the Clean Water Act's (CWA) Section 404 permitting process. The bill, entitled the *Flood Control Facility Maintenance Clarification Act* (HR 2427), would provide a narrow exemption for maintenance removal of sediment, debris, and vegetation from flood control channels and basins.

Under Section 404, counties, local flood control agencies, and similar local government agencies are required to obtain permits from the Corps for the discharge of dredged or fill material into navigable waters. The CWA also provides a permitting exemption for the maintenance of currently serviceable structures. However, the Corps has determined that this exemption does not apply to certain routine maintenance activities.

This narrow interpretation of the law has caused a number of unintended consequences, including drastically increasing the Corps' workload and creating a significant permitting backlog; the processing time for a 404 permit can take from one to three years, and often comes with costly mitigation conditions attached. It also has hampered local agencies in their efforts to perform routine maintenance in a timely and responsive manner, leaving them open to undue liability for flood damage.

CSAC has worked closely with Representative Miller on his Section 404 bill and has endorsed the legislation. Several members of the California congressional delegation have signed on as original cosponsors of the bill.

On a related matter, the House approved bipartisan legislation in July that would grant states more authority to make determinations with respect to their water quality standards. The bill (HR 2018), entitled the *Clean Water Cooperative Federalism Act of 2011*, would restrict EPA's ability to revoke or delay a state's permitting and water quality decisions under the CWA once it has approved a state's program. In addition, the legislation would place limits on EPA's ability to veto dredge and fill permits issued by the Corps and would give states more flexibility to administer permitting programs.

### STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

The House Appropriations Committee approved this past quarter its version of the fiscal year 2012 Commerce-Justice-Science (CJS) spending bill. In total, the legislation would provide \$50.2 billion in funding, or a \$3.1 billion decrease from current levels.

The House CJS package would cut funding for several local law enforcement and justice-related grant programs, and would eliminate the State Criminal Alien Assistance Program (SCAAP). Overall, the House bill would reduce funding for state and local law enforcement programs by 38 percent.

During the committee's markup of the CJS measure, several members of Congress registered their strong support for the SCAAP program. While several funding restoration amendments were in play during the committee's consideration of the bill, none of the amendments were approved. For his part, Representative Mike Honda (D-CA) withdrew his SCAAP restoration amendment based on assurances by CJS Subcommittee Chairman Frank Wolf (R-VA) that the program would be "addressed" as the bill moves forward.

Across Capitol Hill, the Senate Appropriations Committee approved in mid September its fiscal year 2012 CJS spending measure (S 1572). Overall, the legislation would provide \$52.7 billion in federal discretionary spending, which translates into a one percent reduction below current levels, and would cut funding for state and local law enforcement programs by 17 percent.

With regard to SCAAP, the bill provides \$273 million for the program, or the same level of funding as fiscal year 2011.

The timing of floor action for the Senate and House CJS bills remains in question, as does the overall fiscal year 2012 budget picture.

Finally, legislation to reauthorize SCAAP is pending in Congress, as Senator Feinstein has introduced a bill (S 639) to reauthorize the program at \$950 million each year through 2015. In addition, Senator Feinstein has sponsored legislation that would change the SCAAP program's

reimbursement criteria to enable jurisdictions to be reimbursed for the costs of housing undocumented individuals who are accused but not ultimately convicted of their alleged crimes. CSAC has worked closely with Senator Feinstein and has endorsed both measures.

#### TEMPORARY ASSISTANCE FOR NEEDY FAMILIES REAUTHORIZATION

In late September, Congress adopted and President Obama signed a three-month extension of funding for the Temporary Assistance for Needy Families (TANF) program. As expected, the measure (HR 2943) did not make any substantive changes to current law. It is likely that yet another extension will be approved before Congress adjourns for the year, as no long-term reauthorization bill has been introduced.

This past quarter, CSAC joined the County Welfare Directors Association of California in submitting to the House Ways and Means Committee a statement for the record in conjunction with a recent committee hearing on TANF. In the testimony, the associations noted that many of the provisions in the last reauthorization that mandate federally-imposed processes are detrimental to moving families into self-sufficiency. The testimony also urged Congress to restore state and county flexibility to tailor work and family stabilization activities to families' individual needs.

On a related matter, the Obama administration's jobs package contains a TANF-related initiative used successfully by California's counties under the American Recovery and Reinvestment Act. The administration's *Pathways Back to Work Fund* is similar to the efforts via the TANF Emergency Contingency Fund (TANF-ECF), which is designed to place youth and low-income individuals into subsidized jobs. Approximately 45,000 subsidized jobs in California were created with TANF-ECF funding. Counties worked with small businesses and non-profit organizations to identify jobs and successfully place CalWORKs and summer youth recipients in those positions, allowing program participants to gain vital skills and maintain a work history at a time when many are unable to find even part-time positions.

In other human services-related developments, there continues to be concern about possible cuts to the Medicaid program emerging from the Joint Select Committee on Deficit Reduction. The Obama administration has again proposed blending the various federal Medicaid matching rates into one rate for each state. The proposal is estimated to save the federal government \$15 billion over a six-year period beginning in 2017. While the impact on any individual state is not yet known, the proposal would shift costs to states and counties.

#### PROPERTY ASSESSED CLEAN ENERGY (PACE)/RENEWABLE ENERGY

Representatives Nan Hayworth (R-NY), Mike Thompson (D-CA) and Dan Lungren (R-CA) unveiled legislation this past quarter to restart stalled Property Assessed Clean Energy (PACE) programs in California and across the country. The bill – called the *PACE Protection Act of 2011* (HR 2599) – would prevent federal housing regulators from adopting policies that contravene

established state and local PACE laws, thus allowing counties and other local governments to once again offer the popular program.

The legislation also defines PACE programs as property tax assessments rather than loans, as the regulators contend. Meanwhile, other provisions of the bill would limit or, in some cases, eliminate any risk to Fannie Mae and Freddie Mac. Despite these assurances, the Federal Housing Finance Agency (FHFA) continues to maintain its reservations about PACE, and according to the bill sponsors, the agency has been unwilling to negotiate any type of settlement.

With regard to next steps, the bill's sponsors have embarked upon an "education campaign" among their House colleagues in an effort to counter expected resistance from the FHFA, Fannie Mae, and Freddie Mac. While there is currently no established timeframe for legislative action, the sponsors of the legislation are hopeful that there will be movement before the end of the year. Right now, they are concentrating on shoring up sponsorships from other members of the House, as well as support from local governments, home builders, and local chambers of commerce. CSAC, in partnership with RCRC, has endorsed the *PACE Protection Act of 2011*.

In other energy-related news, Senate Majority Leader Harry Reid (D-NV) signaled just before the August recess that Senate Democrats would pursue clean energy initiatives as part of a broader jobs agenda. Democrats have long talked about moving major energy legislation through Congress, but have struggled to gain broad support for such a package. At this point, it's still unclear what an energy bill would look like or whether there would be a stand-alone bill capable of generating bipartisan support.

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