



CSAC WASHINGTON BRIEFS

FOURTH QUARTER 2014

After spending much of the fourth quarter on the campaign trail, lawmakers returned to Washington, D.C. in mid-November for a brief albeit busy lame-duck session of Congress. With relatively few legislative days available to them, the biggest question facing congressional leaders was how to dispense with the unfinished fiscal year 2015 budget. While some Republicans had advocated putting off final spending decisions until the new year - when the GOP will control both the House and Senate - Republican leaders in the lower chamber ultimately decided to work with Senate Democrats to clear the legislative decks.

Following several weeks of intense negotiations, appropriators released in early December a sweeping \$1.1 trillion omnibus spending measure (HR 83). Although the bill's fate in the House appeared to be in doubt, the legislation advanced on a narrow 219-206 vote as 60 Democrats joined a majority of Republicans in endorsing the bill. In the Senate, 31 Democrats, 24 Republicans, and one Independent cast votes in favor of HR 83 (for a final vote tally of 56 to 40). President Obama signed the measure into law (PL 113-235) on December 16.

Overall, the Act sets fiscal year 2015 discretionary funding at \$1.013 trillion, which adheres to the nondefense and defense spending caps that were established under last year's Ryan-Murray budget deal (PL 113-67). While the law provides long-term funding - through September 30, 2015 - for programs under the purview of 11 of the 12 annual appropriations measures, it funds the Department of Homeland Security (DHS) via a short-term Continuing Resolution (CR). The CR portion of the measure, which will run through February 27, is intended as a GOP rebuke of President Obama's recent Executive Order on immigration and will likely force a partisan showdown over immigration policy early in the new Congress.

HR 83 also includes emergency funding for several high-priority activities, including \$5.4 billion for various agencies to combat the Ebola crisis in West Africa. Additionally, the Act provides \$64 billion in uncapped war spending, which includes \$5.6 billion in emergency funds for military operations against the Islamic State terrorist group.

Although budgetary matters dominated the congressional agenda in the fourth quarter, lawmakers also used the year-end session to conduct organizational meetings, which included the selection of party leaders for the upcoming 114th Congress. In the House, no changes will

be made to the chamber's hierarchy as Republicans and Democrats alike voted to reinstate their full slate of leaders. Across Capitol Hill, Senators Harry Reid (D-NV) and Mitch McConnell (R-KY) will swap jobs, with McConnell leading his party as majority leader and Reid assuming the role of minority leader.

In California, 47 members of the state's 53-member congressional delegation will be returning to Washington D.C. in January. Despite four very close races, all of California's incumbent House members were re-elected to office. With regard to the state's six open seats, all but one will continue to be represented by a member of the same political party.

PAYMENTS-IN-LIEU-OF-TAXES

In a major win for California's counties, Congress approved \$442 million in fiscal year 2015 discretionary spending for the Payments-in-Lieu-of-Taxes (PILT) program, slightly more than the previous fiscal year. The funding was included in two separate measures - the *Buck McKeon National Defense Authorization Act* (HR 3979) and the year-end omnibus appropriations law. It should be noted that the Department of the Interior will need to make adjustments to counties' PILT payments for fiscal year 2015 should Congress fail to extend or reauthorize the Secure Rural Schools (SRS) program in a timely manner.

For its part, CSAC continued to work with lawmakers to ensure that PILT would be fully funded in fiscal year 2015, including urging members of the California congressional delegation to make PILT a top budgetary priority.

CSAC also encouraged members to sign onto several letters to House and Senate leaders calling on them to provide full funding for PILT and SRS. For starters, recent correspondence spearheaded by Representatives Jaime Herrera Beutler (R-WA) and Joe Garcia (D-FL) garnered the signature of 41 lawmakers, including 13 from the California delegation. A similar letter to Senate leaders - drafted by Senators Tom Udall (D-NM) and Mike Crapo (R-ID) - was signed by 34 members, including Senators Feinstein and Boxer.

Looking ahead to the new Congress, CSAC is once again poised to work with members of the California congressional delegation and other key members in an effort to secure long-term, mandatory PILT funding.

REAUTHORIZATION OF THE SECURE RURAL SCHOOLS ACT

Although congressional leaders agreed to address PILT as part of the omnibus budget bill, the package did not include an extension of funding for the SRS program. House Speaker John Boehner (R-OH) and Majority Leader Kevin McCarthy (R-CA), however, both pledged to work with the new GOP majority in the Senate to devise a long-term solution that would provide certainty for rural forested communities. In the interim, House Republican leaders have assured their colleagues that an SRS extension would be considered an early priority for the new Congress.

In an effort to show support for such a strategy, Representatives Jared Huffman (D-CA), Doug LaMalfa (R-CA), Derek Kilmer (D-WA), and Chris Stewart (R-UT) organized a letter to House leaders urging swift action in 2015 to extend and reauthorize the SRS program. The letter, which was endorsed by CSAC, was signed by a total of 35 lawmakers, including nine members of the California congressional delegation.

It should be noted that if SRS is not renewed, county payments will return to a revenue-based system. Consequently, most rural, forested counties in California would be left with significantly less funding than they have received in recent years. Lawmakers have been considering options for reauthorizing or modifying SRS for fiscal year 2015 and beyond, though it has been difficult for key policymakers to reach a bipartisan consensus on how best to move forward.

NATIVE AMERICAN AFFAIRS

The 113th Congress adjourned without approving legislation that would overturn the U.S. Supreme Court's *Carcieri v. Salazar* decision. In *Carcieri*, the Court ruled that the secretary of the Interior'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* (IRA).

Earlier this year, the Senate Committee on Indian Affairs approved a bill (S 2188) that would have reversed *Carcieri* by restoring the secretary's authority to take land into trust for *all* tribes. During the committee's consideration of the legislation, the panel adopted an amendment by Vice Chairman John Barrasso (R-WY) directing the secretary to conduct a study on the effects of the *Carcieri* decision on Indian tribes and tribal land.

As part of his remarks, Chairman Jon Tester (D-MT) acknowledged that some of his colleagues in the Senate still had concerns with the bill; accordingly, he pledged to work with those members going forward. It should be noted that Senator Tester will become the ranking member of the Indian Affairs Committee in the new 114th Congress, with Senator Barrasso assuming the committee chairmanship.

In the House, two separate *Carcieri* bills failed to be considered in the full House or in committee. The first piece of legislation, HR 666, garnered a total of 33 cosponsors, including all five Democratic members who sit on the Natural Resources Committee's Indian and Alaska Native Affairs Subcommittee. The second bill, HR 279, attracted a total of 37 cosponsors.

Both measures would have provided the Interior secretary with authority to take land into trust for all tribes. However, HR 279 would have explicitly extended the secretary's trust acquisition authority to any Alaska native community that the secretary acknowledges to exist as an Indian tribe.

Incidentally, the Interior Department finalized a rule this past quarter that allows the Department to accept land into trust for federally recognized Alaska tribes, thus overturning previous regulations that limited trust acquisitions to tribes in the continental United States. Under the newly finalized rule, land owned by tribes, and not the millions of acres owned by Alaska Native corporations, will be eligible to be held in trust by the federal government.

In other developments, the Interior Department recently accepted public comments on proposed regulations that would reform the process by which Indian tribes are formally recognized by the federal government. For its part, CSAC conveyed in official correspondence to the Department the association's concern that many of the proposed rule changes would significantly diminish the ability of counties and other interested parties to participate in the federal acknowledgment process. Among other issues, CSAC registered concern with proposed revisions to the definition of "interested parties," which would result in counties and other stakeholders not receiving timely and important information about acknowledgment petitions.

CSAC also noted other defects of the proposed rule, including changes to the availability of technical assistance, which would exclude counties and other interested parties (only petitioners would receive this service). Additionally, the association stated that reduced comment periods - from 180 to 90 days on a Proposed Finding and from 180 to 60 days for an extension option - would present a significant burden to interested parties to gather and submit evidence. CSAC also registered a number of concerns with changes that would alter opportunities to appeal acknowledgement decisions.

It should be noted that many California counties have expressed concerns with and opposition to changes to the existing criteria that would reduce the evidentiary showing required by petitioners to achieve federal acknowledgment. The state is already home to 109 federally recognized tribes and a recent report entitled "California Indian Petitioners and the Proposed Revisions of the Federal Acknowledgement Process" found that the overall impact of the proposed rule could result in as many as 34 newly recognized Indian tribes. These additional acknowledgements could lead to the acquisition of a significant amount of trust lands which, as the authors of the aforementioned report suggest, could lead to the development of 22 new casinos.

Although CSAC, as well as other stakeholders, are urging revisions to the proposed rule, there is concern that Interior will move to finalize the proposal with little or no substantive changes.

TRANSPORTATION REAUTHORIZATION

Several key lawmakers and transportation advocates continued to call on Congress to approve a long-term highway and transit bill during the fourth quarter. For her part, Senate Environment and Public Works Committee Chairwoman Barbara Boxer (D-CA) wrote to House Ways and Means Committee Chairman Dave Camp (R-MI) to urge him to move a long-term transportation measure during the lame duck session. The Ways and Means Committee, which

has jurisdiction over the Highway Trust Fund (HTF), is responsible for the financing portion of MAP-21.

Despite the urging of Senator Boxer and others, congressional authorizers opted not to act on a multi-year transportation program renewal. Instead, with the current extension of MAP-21 running through May of next year - and absent agreement on a funding mechanism to pay for new infrastructure investment - lawmakers will need to renew the reauthorization discussion in 2015.

It should be noted that the current MAP-21 extension (PL 113-159) also provides \$10.9 billion to keep the HTF afloat through the end of May. The bailout represents the sixth time since 2008 that Congress has had to rescue the trust fund, as spending from the account has continued to far exceed its revenues.

Incidentally, the Government Accountability Office released this past quarter a new analysis on the HTF. According to the report - which examined highway program grants in fiscal year 2013 - only 10 percent of funds obligated by the Federal Highway Administration for road and bridge projects went for new construction. The balance of funds were allocated for maintenance and reconstruction of existing, outdated infrastructure.

Looking ahead, lawmakers will need to continue to wrestle with the question of how to pay for future investments in transportation. Additionally, authorizing committees will be examining potential policy-related adjustments to MAP-21.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

In a positive development for California's counties, Congress approved as part of the recent omnibus spending package a modest \$5 million increase to the State Criminal Alien Assistance Program (SCAAP). It should be noted that the spending boost was adopted despite a \$1.5 billion cut to programs under the Commerce-Justice-Science (CJS) title of the omnibus. All told, SCAAP will be funded at \$185 million in fiscal year 2015.

Earlier this year, the Bureau of Justice Assistance announced fiscal year 2014 SCAAP awards. In total, 51 California counties received roughly \$13.4 million, with the State of California receiving over \$41.5 million. California's combined total represents roughly 34 percent of all available SCAAP funding.

As in recent years, the Department of Justice (DOJ) exercised its authority to reallocate 10 percent of fiscal year 2014 SCAAP funds to other departmental activities (the maximum amount allowable under the law). Although the reprogramming of SCAAP funds has been criticized by counties and States, DOJ has been authorized by Congress to shift a certain portion of funds from SCAAP and similar grant programs to other Agency purposes, including various administrative activities.

PROPERTY ASSESSED CLEAN ENERGY PROGRAM

Congress was unable to advance legislation this year that would help expand residential Property Assessed Clean Energy (PACE) programs nationwide. The bipartisan bill (HR 4285), sponsored by Representatives Mike Thompson (D-CA), Peter King (R-NY), and Sean Patrick Maloney (D-NY), was cosponsored by 28 members of Congress, including 19 from the California delegation.

The impetus for the legislation is a 2011 Federal Housing Finance Agency (FHFA) directive, which objects to local governments holding the first lien on residential PACE homes. In FHFA's view, such a practice represents a significant risk to Fannie Mae and Freddie Mac. To address the agency's concerns, HR 4285 would have established important national program standards to limit any financial risk to the lenders. The bill also directs FHFA to rescind its 2011 policy guidance.

It should be noted that the legislation is modeled after California's successful Loan Loss Reserve Fund. The state-backed fund helps to ensure that PACE assessments are paid off in the event of a mortgage default. Similar to language included in HR 4285, PACE programs enrolled in the Reserve Fund must meet basic structural criteria, comply with certain underwriting standards, and contribute a modest annual premium.

While the Loan Loss Reserve Fund will help mitigate any potential loss to Fannie Mae and Freddie Mac, FHFA continues to have concerns. As such, the Agency has not publicly changed its position. However, reports are surfacing that FHFA may be willing to ease its formal stance on PACE programs, so long as mortgage lenders agree to repurchase any of the home loans that default. At this point, preliminary discussions are underway, but no official announcement has been made.

REMOTE SALES TAX

Despite intense pressure from advocates of an internet sales tax, House Speaker Boehner declined to bring the *Marketplace Fairness Act* (MFA; S 743) to the House floor. The measure, which has been endorsed by CSAC, would give states the ability to collect sales taxes from out-of-state Internet retailers. Speaker Boehner continues to have significant concerns with the bill and will defer to the House Judiciary Committee to examine the issue in the new Congress.

For his part, Judiciary Committee Chairman Bob Goodlatte (R-VA) was close to finalizing his own online sales tax proposal, which he will likely introduce early next year. Goodlatte and other critics of S 743 have expressed concerns about the challenges faced by businesses in collecting and remitting sales taxes to thousands of different jurisdictions. They also have stressed the need for safeguards to ensure that states cannot discriminate against out-of-state retailers.

In a related development, the final budget Act temporarily extends a law that prevents local governments from taxing broadband internet access. The current moratorium was set to

expire on December 11, 2014, but will now remain in place until October 1, 2015. In the new year, key lawmakers will once again attempt to link Internet sales tax legislation to a long-term extension of the Internet access tax moratorium.

CHILD WELFARE FINANCING REFORM

Earlier this year, Congress approved and President Obama signed into law the *Preventing Sex Trafficking and Strengthening Families Act* (HR 4980; PL 113-183). The bipartisan measure includes a number of initiatives to establish protocols for identifying and serving youth involved in sex trafficking, as well as several new foster care practice mandates. With respect to sex trafficking, the law requires State plans for foster care and adoption assistance to include policies and procedures for identifying, screening, and determining appropriate services for children who are believed to be victims, or are at risk of being victims. The Act also requires sex trafficking data to be reported to the federal government.

Effective one year after the law's enactment, the measure requires child welfare agencies to provide foster youth who are exiting care (and who were not adopted or returning to live with family) with a birth certificate, a Social Security card, health insurance information, medical records, and a driver's license or state-issued ID.

The law also amends the adoption assistance program to include, for the first time, incentive awards of \$4,000 for subsidized guardianship placements. Additionally, the Act includes a safeguard ensuring that a child placed with a guardian could continue to be cared for by a successor guardian if a relative dies or is incapacitated, instead of going back to court.

CSAC's Washington representatives participated in a meeting earlier in December with the Health and Human Services' Associate Commissioner for the Children's Bureau to discuss statutory issues needing further federal guidance for the successful implementation of the new law.

CLEAN WATER ACT – SECTION 404 PERMITTING

The 113th Congress adjourned without clearing legislation (HR 1296) that would streamline the *Clean Water Act's* (CWA) Section 404 permitting process. The bill, which was introduced earlier in the Congress by Representative Gary Miller (R-CA), would have provided a narrow exemption for maintenance removal of sediment, debris, and vegetation from flood control channels and basins.

Under Section 404, counties and local flood control 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 the CWA's exemption language does not apply to certain routine maintenance activities, which has caused a number of negative, unintended consequences, including a significant permitting backlog.

Because Representative Miller has retired from Congress, 404 streamlining advocates will need to find a new champion for their cause. Incidentally, with Republicans controlling both the House and Senate beginning in 2015, there may be increased opportunity to move CWA-related legislation.

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