



## FEDERAL LEGISLATIVE UPDATE CALIFORNIA CAUCUS - SUNDAY, JULY 12, 2015

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### FISCAL YEAR 2016 FEDERAL BUDGET

**STATUS:** The fiscal year (FY) 2016 budget and appropriations process has moved at an unusually rapid pace. As of this writing, the House Appropriations Committee has approved ten of the 12 annual spending bills, six of which have been cleared by the lower chamber. In the Senate, the Appropriations Committee has passed nine FY 2016 funding measures.

**OUTLOOK:** Despite the brisk pace with which this year's appropriations bills have advanced, several factors will likely complicate efforts to finalize a budget. For starters, a number of bills include extraneous "policy riders," many of which are opposed by congressional Democrats. By way of illustration, the House Energy & Water spending bill – as well as both chambers' Interior & Environment appropriations legislation – includes language that would block the Obama administration from implementing its recently finalized "Waters of the U.S." (WOTUS) rule.

Moreover, Senate Democrats are vowing to prevent all 12 appropriations bills from reaching the floor of the upper chamber until Republicans agree to negotiate a deal that would allow for additional federal spending. Specifically, Democrats and the White House are pushing for a "Ryan-Murray type" budget accord that would replace, beginning next fiscal year, some of the sequestration cuts that were mandated under the 2011 *Budget Control Act* (BCA). While the original Ryan-Murray agreement dialed back a portion of the BCA's reductions in FYs 2014 and 2015, the Act did not make room for additional federal spending in FY 2016 and beyond.

For his part, President Obama has stated that he will reject any FY 2016 appropriations measure that does not raise the sequestration law's spending caps. The administration's veto threats, along with Senate Democratic unity against the GOP spending bills, set the stage for Republicans to come to the budget negotiating table later this year.

Finally, the deadline for a number of congressional committees to report "budget reconciliation" legislation is rapidly approaching. Under the terms of the FY 2016 budget resolution, committees have until July 24 to report their reconciliation measures, which may, in turn, be considered under an expedited process. Notably, the budget resolution includes instructions allowing for the repeal of the 2010 health care law.

## TRANSPORTATION REAUTHORIZATION

**STATUS:** The nation's surface transportation law (MAP-21) is currently operating under an extension that will expire on July 31. With lawmakers struggling to reach a consensus on how to pay for a new multi-year bill, another short-term extension of current law will be necessary.

In recent developments, the Senate Environment & Public Works (EPW) Committee approved a six-year highway reauthorization bill (S 1647). The legislation, entitled the *Developing a Reliable and Innovative Vision for the Economy (Drive) Act*, was cleared by the panel on a 20-0 vote.

Notably, the *DRIVE Act* does not include a funding mechanism to pay for future transportation spending. In the Senate, the job of identifying a revenue source belongs to the Finance Committee, which is currently examining various infrastructure financing options.

Key details of S 1647 are as follows:

- Authorizes over \$277 billion for surface transportation projects for FYs 2016 – 2021. The spending level equates to a roughly three percent annual increase above the amounts authorized in MAP-21, or an average growth rate of \$5.3 billion per year.
- With regard to funding for local bridges – a key CSAC priority – the bill would require states to spend a certain percentage of Surface Transportation Program funds on bridges that are *not* located on the National Highway System (NHS). Although MAP-21 created a funding "set-aside" for local bridges that are neither located on the NHS nor on the Federal-Aid Highway System (referred to as "off-system" bridges), the Act did *not* require states to spend any money on local bridges that are off of the NHS but *on* a Federal-Aid Highway.
- During committee consideration of the bill, Senator Kirsten Gillibrand (D-NY) offered, but withdrew, an amendment that would have made all bridges that are not a part of the NHS eligible for funding under the National Highway Performance Program. Senator Gillibrand is planning to offer her amendment on the floor of the Senate.
- The bill includes a number of other provisions that are of interest to California's counties, including: language designed to further streamline the transportation project delivery process; a requirement that states obligate increased funding for rural road safety projects if the fatality rate on rural roads does not decrease and the state fatality rate exceeds the national average; and, updates to the Transportation Infrastructure Finance and Innovation Act (TIFIA) program.

**OUTLOOK:** It is unclear when the *DRIVE Act* will be considered on the Senate floor. While committee leaders would like the upper chamber to debate the legislation prior to the August recess, there are a number of complicating factors that may thwart the expeditious consideration of a long-term transportation bill. Meanwhile, in the House, Transportation & Infrastructure Committee leaders have not yet set a timetable for release of their multi-year reauthorization measure.

## NATIVE AMERICAN AFFAIRS

**STATUS:** Lawmakers are continuing to consider options for a legislative response to the Supreme Court's *Carcieri v. Salazar* decision. In *Carcieri*, the Court ruled that the secretary of the Interior can only take land into trust for tribes that were "under federal jurisdiction" at the time of the passage of IRA.

Since the Court's action in 2009, many Indian tribes have urged Congress to pass *Carcieri* "clean fix" legislation, which would simply reverse the Supreme Court's ruling without providing for other modifications to the IRA. For their part, county governments – led by CSAC – have insisted that any *Carcieri* "fix" include comprehensive reforms in the BIA's flawed fee-to-trust process.

Earlier this year, the Senate Committee on Indian Affairs held a roundtable discussion entitled "The *Carcieri v. Salazar* Supreme Court Decision and Exploring a Way Forward." CSAC was one of only four organizations invited to participate in the event, with Sonoma County Supervisor David Rabbitt and Napa County Supervisor Diane Dillon representing the association. As part of the dialogue, the supervisors provided examples of the deficiencies in the BIA's trust-land process and urged the committee to approve CSAC's comprehensive fee-to-trust reform proposal.

Additionally, CSAC testified at a recent hearing in the House Subcommittee on Indian, Insular and Alaska Native Affairs entitled "*Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act (IRA) of 1934.*" The House hearing, as well as the Senate roundtable, potentially set the stage for legislative action this year.

**OUTLOOK:** The Senate Committee on Indian Affairs, in direct consultation with CSAC, has been drafting a fee-to-trust reform package. The current draft, which is expected to be made available in the near future, includes many elements of CSAC's reform proposal.

## SECURE RURAL SCHOOLS

**STATUS:** The Secure Rural Schools (SRS) program is currently operating under a two year-extension. Funding for SRS was included as part of the recent "doc fix" legislation, which requires payments to be made to counties for FY 2014 (retroactive) and FY 2015.

On the long-term reauthorization front, Senators Ron Wyden (D-OR) and Mike Crapo (R-ID) introduced bipartisan legislation (S 517) that would extend the SRS program for three years at 2011 funding levels. The bill also would restore mandatory funding for the Payments-in-Lieu-of-Taxes (PILT) program. While the legislation does not include a spending offset, the bill's authors have pledged to work to identify a viable source of funding.

In the House, several bills have been introduced that would reform forest management practices, including:

- HR 2178 (Rodgers, R-WA) - would require the U.S. Forest Service to actively manage its commercial timber lands. Before transitioning back to a payment structure based solely on timber sales, HR 2178 would provide a three-year extension of SRS at 2010 funding levels.
- HR 2316 (Labrador, R-ID) - would establish a pilot program to allow local management of National Forest System land.
- HR 2644 Ryan Zinke (R-MT) - would, among other things, discourage litigation by requiring plaintiffs who challenge Forest Service timber sales to post cash bonds.

**OUTLOOK:** Supporters of the SRS program are continuing to look for opportunities to move a long-term program renewal. The challenge remains finding a way to pay for any newly authorized spending. In the absence of a new SRS package, another short-term extension would be needed to avoid a lapse in funding.

### **PAYMENTS-IN-LIEU-OF-TAXES**

**STATUS:** The Department of the Interior recently announced that it will be distributing nearly \$405 million in FY 2015 PILT payments to eligible counties. Pursuant to the announcement, 57 California counties will receive a combined total of approximately \$42.2 million.

It should be noted that Congress approved a total of \$442 million in FY 2015 PILT funding, slightly more than the previous fiscal year. The dollars were included in two separate bills: \$70 million in PL 113-291 and \$372 million in PL 113-235.

Pursuant to PL 113-291, PILT funding was split into two separate payments: (1) \$33 million for FY 2015, and (2) \$37 million to be available beginning on October 1, 2015.

According to Interior Department officials, the underlying statute governing PILT requires the second tranche of funding to be calculated under the *FY 2016 formula*, which will take several months to process. As a result, the funding will likely not be made available to counties until the first quarter of 2016. Furthermore, Interior considers the \$37 million as a sort of "down payment" on PILT for FY 2016, rather than a continuation of the FY 2015 payment.

**OUTLOOK:** There is currently an effort underway to clarify the congressional intent of PL 113-291. In fact, the FY 2016 Senate Interior spending bill includes language that would make clear that the aforementioned \$37 million is to be treated as an *FY 2015 payment*.

### **WATERS OF THE UNITED STATES**

**STATUS:** In late May, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) finalized their controversial rule redefining which waterways fall under the regulatory purview of the *Clean Water Act (CWA)*. The "waters of the U.S." regulation will become effective on August 28.

Although EPA and the Corps have indicated that the intent of the rule is to simply "clarify" the scope of waters protected under the CWA, many affected stakeholders - including states, local governments, and agricultural interests - have stated that the rule will vastly expand federal oversight and create costly delays in critical work. Since the regulation was finalized, at least three separate multi-state lawsuits have been filed by state attorneys general asking federal courts to strike down the rule.

On Capitol Hill, lawmakers have moved aggressively to block implementation of the WOTUS rule. In the House, three such bills have been approved by the lower chamber (two appropriations measures (HR 2028 & HR 2822) and one stand-alone package (HR 1732)). In the Senate, the EPW Committee approved on a 16-14 vote legislation (S 1140) that would prohibit the administration's regulation from taking effect unless EPA/Corps undertake certain steps to revise the rule (including setting clear limits on the federal regulation of water, consulting with key stakeholders, and ensuring that a thorough economic analysis is undertaken).

**OUTLOOK:** Although congressional Republicans are aggressively attacking the Obama administration's WOTUS proposal, it is unclear if any of the aforementioned bills would win approval from the full Senate. Moreover, the president would undoubtedly veto any legislation that would unwind the regulation.

#### **CHILD WELFARE FINANCING REFORM / ACA EXCISE TAX**

**STATUS:** Senate Finance Committee Ranking Member Ron Wyden issued in May a discussion draft to provide new prevention funding through Title IV-E foster care. The draft proposal includes IV-E reimbursement for up to 12 months of services to keep children out of foster care or to help a child exit care. Eligible services would include, but not be limited to: parenting skills; counseling; substance use; housing barriers; and, domestic violence services.

The discussion draft also proposes to increase mandatory funding under the Title IV-B Promoting Safe and Stable Families program to \$1 billion from the current level of \$345 million. Those funds also support prevention services and family reunification efforts.

With regard to the *Affordable Care Act* (ACA), the law will impose, beginning in 2018, a 40 percent federal excise tax on high-cost health insurance plans that have a total cost exceeding a statutory dollar amount. The excise tax is based on the total cost of the employer and employee contribution to the plan, as well as any savings account arrangements such as health reimbursement arrangements and flexible spending accounts.

The cost of any employer-sponsored retiree health plan also is included in calculating the aggregate value of health coverage. The tax would be imposed on health care coverage costing over \$10,200 annually for individuals and \$27,500 for family coverage. Standalone dental and vision plans, long-term care, and other types of insurance are excluded from the calculations.

A number of California counties offer health insurance plans and related programs that will exceed the totals prescribed in the law. Existing labor agreements lock the current plans in place and negotiations of new labor contracts may have to take the tax into consideration.

**OUTLOOK:** Senator Wyden's child welfare proposal is the first such draft that has circulated this session. The senator may formally introduce his legislation later in the year, but a markup is not expected this summer.

On the ACA front, Representative Joe Courtney (D-CT) recently introduced legislation that would eliminate the excise tax. The bill (HR 2050) has 115 co-sponsors, only seven of whom are Republican. The measure was referred to the House Ways and Means Committee, where no action, to date, has been scheduled.

### **STATE CRIMINAL ALIEN ASSISTANCE PROGRAM**

**STATUS:** The House and Senate Appropriations Committees have approved their respective versions of the FY 2016 Commerce-Justice-Science (CJS) spending legislation (HR 2578; no Senate bill number). The full House went on to approve its package on a 242-183 vote; the Senate has yet to consider the CJS measure.

The House bill includes a \$35 million increase in funding for the State Criminal Alien Assistance Program (SCAAP). Under the legislation, SCAAP would be funded at \$220 million, compared to current spending of \$185 million. Notably, the legislation includes the aforementioned SCAAP funding boost despite an overall decrease in grant program funding.

The Senate bill, on the other hand, would provide \$75 million for SCAAP, or a proposed \$110 million decrease in funding. Historically, the Senate's version of the CJS legislation has included limited funding for SCAAP.

It should be noted that both the House and Senate bills include language would allow DOJ to reallocate a certain percentage of SCAAP funding for other departmental activities. In recent years, the Department has exercised its authority to transfer 10 percent of SCAAP funds to other agency functions (the maximum amount allowable under the law).

The FY 2016 Senate CJS bill would allow DOJ to transfer *up to 17 percent* of SCAAP funding – as well as other state and local law enforcement/criminal justice funding – for other agency purposes. The House version does *not have a fixed cap* on the percentage of state/local justice funding that can be transferred.

**OUTLOOK:** The prospects for finalizing an FY 2016 budget remain unclear. Nevertheless, lawmakers will continue the process of negotiating funding levels for individual spending programs as the year progresses.

## REMOTE SALES TAX

**STATUS:** House Oversight & Government Reform Committee Chairman Jason Chaffetz (R-UT) has introduced Internet sales tax legislation – the *Remote Transaction Parity Act* (RTPA; HR 2775). The bill seeks to build upon another online sales tax measure – the *Marketplace Fairness Act* (MFA; S 698), which has been endorsed by CSAC. Like the MFA, the Chaffetz legislation would give states the ability to collect sales taxes from out-of-state Internet retailers, with the tax based on the final *destination* of the purchase.

While the two bills are fairly similar, RTPA includes significant audit protections for small businesses that are not included in S 698. One critique of the MFA was that it could leave small businesses vulnerable to multiple audits in every state. Under HR 2775, however, companies that use certified software would only be subject to an audit from their home state and/or any state where the company has a physical presence. Furthermore, businesses with less than \$5 million in gross annual sales would be fully exempt from remote sales tax audits, unless there is a reasonable suspicion that the seller has engaged in intentional misrepresentation or fraud.

Another key difference is that the RTPA would exempt more small businesses from tax collection requirements in the first few years. In the first year, the bill would exempt businesses with less than \$10 million in gross annual sales. By the second year, the exemption would drop to \$5 million, and by the third year, only businesses with less than \$1 million in gross revenue would be exempt from tax collection requirements. However, the legislation does not include an exemption for products sold over an electronic marketplace (i.e. eBay, Amazon, etc). Finally, HR 2775 would require states to provide remote sellers with the software needed to collect and remit the taxes owed.

The Chaffetz bill has been referred to the House Judiciary Committee, where Chairman Bob Goodlatte (R-VA) has been working on his own proposal – the *Online Sales Simplification Act*. Unlike the two aforementioned bills, the Goodlatte draft would allow states to require retailers to charge sales taxes based on the *location of the seller*, rather than the consumer. Additionally, Goodlatte's draft proposal would only subject remote sellers to one audit by their home state taxing authority, and does not include an exemption for small businesses.

**OUTLOOK:** While Chairman Goodlatte has yet to publicly comment on the RTPA, early indications are that he would not support the bill. Further complicating matters, House and Senate GOP leaders have shown little interest in moving remote sales tax legislation this year.

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

