



CSAC WASHINGTON BRIEFS

FIRST QUARTER 2010

The first quarter of 2010 was dominated by efforts at both ends of Pennsylvania Avenue to overhaul the nation's health care system, as well as promote initiatives geared to create jobs in an economy still struggling to rebound from one of the most severe recessions in history.

In addition, less than a week after his State of the Union address, President Obama released in early February his \$3.8 trillion fiscal year 2011 budget request. Under increasing pressure to rein in the soaring budget deficit, which is projected to reach \$1.3 trillion next year, the president's funding proposal provides for a three-year freeze in spending that is not related to national security programs and activities.

Clearly taking center stage, however, was health care reform as Congress finally completed action on the controversial legislation. After more than a year of contentious debate, President Obama signed into law on March 23 a sweeping health care reform package (HR 3590). Known as the "Patient Protection and Affordable Care Act," enactment of the legislation marks the most far-reaching changes to domestic policy since the 1965 creation of the Medicaid and Medicare programs.

Estimated to cover 94 percent of the country's population once fully implemented, the landmark health care reform act (PL 111-148) will add an estimated 32 million individuals to the nation's insurance plans. The new law, however, will not cover many of the uninsured until the year 2014.

Congress also approved on March 25 a second package of health care modifications (HR 4872), which includes significant changes to federal student loan programs and Pell grants. The measure, considered in the Senate under the seldom-used budget reconciliation process, allowed Republicans one last attempt to alter the fate of health care reform.

In an effort to spur economic growth, President Obama signed into law on March 18 a \$17.6 billion jobs-related bill. Included in the new law, dubbed the "Hiring Incentive to Restore Employment Act" (HIRE Act), is an extension of the Highway Trust Fund through the end of

December. The extension provides lawmakers with additional time to attempt to reach agreement on a long-term reauthorization of the nation's surface transportation law.

In other developments, the National Association of Counties (NACo) held its 2010 Legislative Conference March 6-10 in our nation's capital. California was well represented at the annual event as more than 100 California county officials made the trip to Washington, D.C., including leaders from CSAC.

HEALTH CARE REFORM

As previously indicated, lawmakers adopted this past quarter two health reform bills. The first measure (HR 3590) contained a series of sweeping changes to the nation's health care laws, while the second bill (HR 4872) – considered in the Senate under the budget reconciliation process – included a package of health care “fixes.” The president signed both bills into law.

The number of pages of statutory language is close to 3,000 and there were no conference reports detailing the congressional intent of the provisions. Accordingly, the legislative language will ultimately require some degree of interpretation by the U.S. Department of Health and Human Services via guidance and regulations.

Notably, 2014 is the year in which many of the law's changes affecting counties will become effective. In that year, Medicaid will be expanded to all non-disabled persons under age 65 with incomes up to 133 percent of the federal poverty level, including childless adults. Before 2014, States have the option to cover this population at the normal 50 percent match.

Under the new law, the federal government will finance Medicaid benefits given to the newly eligible group at 100 percent in calendar years 2014-2016; the federal match phases down over time to 90 percent in 2020 and remains at that rate. The normal 50 percent benefits match will apply to recipients meeting the current eligibility requirements. Administrative cost reimbursement remains at 50 percent for all individuals, including the new expansion populations.

Also effective in 2014, all persons who were in foster care and receiving Medicaid at age 18 will be eligible for Medicaid up to age 26.

For immigrant populations, prohibitions on full-scope Medicaid still apply to undocumented individuals. Additionally, the new law does not change the current five-year Medicaid bar applied to new legal immigrants.

With regard to local governments, States are prohibited from requiring localities to absorb a higher percentage share of the non-federal match beyond that required of them on December 31, 2009. In addition, States must maintain the eligibility and enrollment policies and procedures that were in effect on March 23, 2010. Furthermore, cuts that have been enacted but that are not yet part of the State's Medicaid or CHIP plan cannot proceed, although States

maintain the ability to expand their programs or implement more generous enrollment policies at any time.

Subject to appropriations, the federal health reform bill also provides an authorization of \$100 million annually in fiscal years 2011 through 2014 for adult protective services (APS) initiatives. The provision marks the first time that the federal government would fund APS.

Additionally, the act provides \$1.5 billion to States over five years through the Maternal and Child Health Block Grant for evidence-based maternal, infant, and early childhood home visitation programs. Appropriations begin in fiscal year 2010 at \$100 million, rising over time to \$400 million annually by fiscal year 2014.

On a related matter, but separate from the health reform bill, both the House and Senate have adopted six-month extensions – through June 30, 2011 – of the enhanced federal match for Medicaid and Title IV-E programs. The bills, however, have not been reconciled and it is uncertain when action will occur or if there will be another vehicle that will be used to extend the match. The enhanced match continues to be a high priority for House and Senate leadership and the National Governors' Association, so it is expected that the extension will be considered at some point this year.

NATIVE AMERICAN AFFAIRS

There were no legislative developments this past quarter with regard to legislation that would clarify the Secretary of Interior's authority to take land into trust for Indian tribes. The bills in question (S 1703/HR 3742/HR 3697) would essentially overturn the U.S. Supreme Court's ruling in *Carcieri v. Salazar*, which limits the secretary's trust land acquisition authority to those tribes that were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934.

Late last year, the Senate Indian Affairs Committee approved by voice vote and without dissent S 1703, which is sponsored by the committee's chairman, Senator Byron Dorgan (D-ND). During the committee's markup of the legislation, the panel approved an amendment offered by Senator Tom Coburn (R-OK) that requires the Department of Interior (DOI) to publish a list of tribes affected by the *Carcieri* decision. Under the amendment, DOI would need to produce the list within one calendar year.

Across Capitol Hill, the House Natural Resources Committee held last year a legislative hearing on HR 3742 and HR 3697. The bills are sponsored by Representative Dale Kildee (D-MI) and Representative Tom Cole (R-OK), respectively. Steven Woodside, County Counsel for Sonoma County, testified at the hearing on behalf of CSAC.

This past quarter, CSAC – along with several other state associations of counties and NACo – continued to advocate for comprehensive reforms of the fee to trust process. In arguing against advancing the aforementioned *Carcieri* "quick fix" bills, counties are proposing

congressional reforms that would repair the fee-to-trust process and encourage local governments and tribes to work together on a government-to-government basis.

REAUTHORIZATION OF SAFETEA-LU

Unable to reach agreement on a new long-term reauthorization of the nation's highway and transit law (SAFETEA-LU), lawmakers recently approved an extension of federal transportation programs as part of the HIRE Act. Specifically, the Act extends the Highway Trust Fund (HTF) through the end of the current calendar year via transfers of \$19.5 billion from the general fund to the HTF.

In addition, the Act restores in the current fiscal year \$8.7 billion in highway contract authority to states that had been rescinded at the end of fiscal year 2009. The bill also allows the HTF in the future to collect interest on its deposits.

With regard to the prospects for a new, multi-year transportation authorization bill, the single biggest hurdle in Congress remains identifying a financing source for highway and transit investment. Although the House Transportation & Infrastructure Committee's Highways and Transit Subcommittee has approved a draft six-year surface transportation bill totaling \$500 billion – or a 38 percent increase in spending – House lawmakers have not identified a corresponding financing mechanism.

Apart from the proposed funding levels, the House draft bill would consolidate or eliminate 75 programs and create the following five core highway formula-driven categories: 1) Critical Asset Investment (CAI) Program (includes National Highway System roads and bridges); 2) Freight Improvement Program; 3) Surface Transportation Program (STP) (former Highway Bridge Program projects would be eligible under STP); 4) Highway Safety Improvement Program (HSIP) (the High Risk Rural Road Program would be consolidated within the HSIP, but given distinct funding); and, the Congestion Mitigation and Air Quality (CMAQ) program.

In a victory for CSAC, the draft House bill includes language that would allow California to continue to participate in the Surface Transportation Project Delivery Pilot Program.

On the other side of Capitol Hill, the Senate Environment and Public Works Committee is still in the process of developing its highway measure. The Senate Banking, Housing, and Urban Affairs Committee, which has jurisdiction over transit in the upper chamber, is crafting its proposal on the public transportation provisions of the SAFETEA-LU rewrite.

CLIMATE CHANGE-RENEWABLE ENERGY

Senators John Kerry (D-MA), Lindsey Graham (R-SC), and Joe Lieberman (I-CT) continued this past quarter their efforts aimed at producing a bipartisan climate change bill. A draft version of the legislation is expected to be unveiled the week of Earth Day, April 22.

It should be noted that the Kerry-Graham-Lieberman package is expected to include new offshore oil drilling provisions as a way to attract Republican support for the legislation. Incidentally, President Obama also recently announced a drilling policy that would open federal waters to more offshore oil drilling.

The soon-to-be unveiled Senate climate change bill also will reportedly include provisions that would use revenue from a new tax on motor fuels for non transportation-related purposes. The proposal would be a departure from the long-standing policy of dedicating revenues derived from fuel taxes for transportation programs.

To be sure, any proposal to divert motor fuel tax revenue from the Highway Trust Fund will be especially controversial given the difficulty that transportation authorizers have had in financing a successor to SAFETEA-LU since the Act expired. At the same time, any new carbon tax also represents a potential positive revenue stream for transportation programs if indeed dedicated to highways and transit.

It should be noted that if a Senate climate change deal cannot ultimately be reached, it is possible that the renewable energy legislation (S 1462) that was approved last year by the Senate Energy and Natural Resources Committee could advance on its own.

For its part, the House of Representative approved last year a comprehensive climate change-renewable energy bill (HR 2454). The centerpiece of the legislation is a proposal that would cap the emissions of greenhouse gases at 17 percent below current levels by 2020 via implementation of an emissions allowance trading program. The measure also would require utilities to produce 20 percent of the nation's electricity from renewable energy sources by 2020.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

In a somewhat surprise move, the Obama administration requested as part of its fiscal year 2011 budget submission \$330 million – or level funding – for the State Criminal Alien Assistance Program (SCAAP). The proposal marks a turnaround for the Obama administration, which recommended the elimination of the SCAAP program in its last budget proposal to Congress.

It should be noted that the \$330 million fiscal year 2010 SCAAP funding level represents a \$70 million reduction from the previous fiscal year. Program advocates are working with congressional supporters to restore and increase funding for SCAAP in the fiscal year 2011 budget.

On a related matter, Senator Dianne Feinstein (D-CA) and Representative Linda Sánchez (D-CA) reintroduced their SCAAP reimbursement criteria bills in 2009. The legislation (S 168/HR 1314) would require the Department of Justice to reimburse local jurisdictions for incarceration costs associated with undocumented individuals that have been convicted *or accused* of a felony or

two or more misdemeanors. The current statute is limited to allowing reimbursement only in cases in which an individual is actually convicted of such crimes.

EXTENSION OF ARRA/SUPPORT FOR FEDERAL JOBS PACKAGE

With the nationwide unemployment rate continuing to soar, lawmakers have debated the merits of various measures aimed at spurring job creation. In late March, the House cleared the “Small Business and Infrastructure Jobs Tax Act” (HR 4849) on a 246-178 vote. Among other things, the legislation includes an extension of the Build America Bonds (BABs) program, which provides financial support to state and local governments through federal tax exemptions for interest on municipal bonds. Under the bill, the BABs program would be extended for three years – until March 31, 2013 – under a reduced subsidy rate.

The Senate has not yet considered the package, although may do so something this spring.

On a related matter, the recently enacted \$17.6 billion HIRE Act includes a provision that enables municipal issuers to receive direct, BAB-style payments from the following four types of tax-credit bonds: Clean Renewable Energy Bonds (CREBs); Qualified Energy Conservation Bonds (QECBs); Qualified School Construction Bonds (QSCBs); and, Qualified Zone Academy Bonds (QZABs). Under the Act, the tax credit can be received by the issuer as a subsidy payment for the lifetime of the bonds instead of being given to the investor.

Other, more ambitious, job-creation measures have been proposed, although face an uphill battle as members fight to find limited resources to fund their initiatives. For example, Representative George Miller (D-CA) has offered a nearly \$100 billion plan that would direct dollars to states and localities over the next two years for hiring or retaining government workers.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES REAUTHORIZATION

Although the Temporary Assistance for Needy Families (TANF) program is up for reauthorization in 2010, President Obama’s fiscal year 2011 budget blueprint proposes to extend the program for one year. Under the administration’s budget proposal, the TANF state family assistance grant would be funded at current levels.

For their part, congressional authorizers have indicated that they will follow the lead of the Obama administration and provide for a one-year TANF extension.

On a related matter, the aforementioned small business tax and jobs bill (HR 4849) that was recently adopted by the House would provide \$2.5 billion to continue subsidized jobs and other activities under the TANF Emergency Contingency Fund (ECF) in fiscal year 2011. Originally enacted under the ARRA, funding under the legislation would not roll-over unspent fiscal year 2010 funding. Efforts are being made with House and Senate champions to continue ARRA

funding slated to expire on September 30, 2010 for at least those subsidized employment slots created prior to October 1, 2010.

All California Democrats have cosponsored a bill (HR 4564) by Representative Jim McDermott (D-WA) that would provide \$2.5 billion in TANF-ECF in federal fiscal year 2011.

CLEAN WATER ACT

The Senate Environment and Public Works Committee last year approved legislation (S 787) that would broaden the reach of Clean Water Act (CWA) by placing waters traditionally under the purview of state authority under federal jurisdiction by removing the term “navigable” from the definition of the CWA. The legislation has not advanced to the floor of the Senate.

It should be noted that the aforementioned modification to the CWA is opposed by CSAC, NACo, and other local government organizations, as it could significantly expand federal regulatory jurisdiction over local lands and activities. Specifically, local government organizations are concerned that the bill, as written, would bring under federal review every vernal pool and minor water course in the nation.

Within the context of CWA reform, CSAC is advocating to amend Section 404 of the Act to provide a maintenance exemption for removal of sediment, debris and vegetation from flood control and drainage facilities. In addition, the association is seeking to modify the CWA to extend the general permit term from five to 10 years.

There was no CWA-related legislative activity in the first quarter of 2010. However, CSAC, along with other groups who are advocating for changes in the 404 program, were active in working with congressional offices to build support for the permitting reforms.

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