



CSAC

WASHINGTON BRIEFS

THIRD QUARTER 2010

With the national unemployment rate just under 10 percent, Congress focused much of its attention during the third quarter on efforts to help jump-start the struggling economy. To that end, Congress finalized several pieces of legislation that aim to provide some relief to the unemployed and create incentives for small businesses to hire workers.

For starters, lawmakers approved a \$33.9 billion measure (HR 4213) that extended unemployment benefits through November 30. The new law includes 100 percent federal funding to states to help cover implementation costs. In addition, Congress approved this past quarter legislation (HR 1586) that extends the Federal Medical Assistance Percentage (FMAP) for Medicaid benefits and foster care payments for an additional six months, through June 30, 2011.

In another key development relating to the economy, in September, Congress cleared for President Obama's signature the Small Business Jobs and Credit Act of 2010 (HR 5297). The law establishes a \$30 billion lending program for small businesses to hire employees and expand operations. The Act also provides for an additional \$12 billion in tax breaks for small business owners.

Despite the legislative accomplishments noted above, Congress failed to approve any of the 12 fiscal year 2011 appropriations measures before the start of the new fiscal year, which began October 1. Given that Congress opted to delay action on the various spending bills until after the midterm elections, a Continuing Resolution to fund the federal government through December 3 was approved just before lawmakers adjourned in late September.

The unfinished funding bills for fiscal year 2011 are expected to be rolled into a massive omnibus appropriations measure during the lame-duck session, which is scheduled to begin November 15, or left for the new 112th Congress to complete in January or February.

Beyond efforts to finalize the spending measures, it is unclear at this point what additional legislation Congress will have the time or desire to address in the post-election session. While

there is no shortage of issues for Congress to tackle, much depends on the outcome of the midterm elections and the resulting political atmosphere on Capitol Hill.

MEDICAID

In early August, the Senate adopted legislation (HR 1586) extending the enhanced match for Medicaid and IV-E foster care payments through June 30, 2011. The House followed suit shortly thereafter, and President Obama signed the bill into law.

In order to provide sufficient offsets and revenues to pay for the legislation, lawmakers scaled back the cost of the FMAP extension from \$24 billion to \$16 billion. To do so, the measure retains the American Recovery and Reinvestment Act's unemployment-related FMAP increase, but reduces the across-the-board increase available to all states.

Due to California's high unemployment rate, the phase-out of the enhanced Medicaid contribution is slower than in many states. According to the Center on Budget and Policy Priorities, California will receive an additional \$1.869 billion in FMAP funding over the six-month extension period.

NATIVE AMERICAN AFFAIRS

This past quarter, the House Interior Appropriations Subcommittee approved its spending bill for fiscal year 2011. During the panel's consideration of the legislation, the subcommittee adopted an amendment sponsored by Representative Tom Cole (R-OK) that would restore the secretary of Interior's authority to take land into trust for all Indian tribes. The amendment, if approved by Congress, would 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.

It should be noted that the Cole amendment is similar to language in previously introduced stand-alone legislation (S 1703/HR 3742/HR 3697). Neither the amendment nor the aforementioned bills would provide any substantive reforms to the Indian land-into-trust process.

With lawmakers preparing to reconvene for a post-election lame-duck session, tribes are expected to make a strong push to include *Carcieri* "fix" language in any remaining legislative vehicle moving through the 111th Congress. At this point, it appears as though an omnibus appropriations bill will be one of the last pieces of legislation considered by the current Congress.

In other developments, Senator Dianne Feinstein (D-CA), the chair of the Senate Interior Appropriations Subcommittee, is reportedly preparing her own *Carcieri*-related proposal for potential inclusion in the omnibus spending bill. Although the precise details are not available

as of this writing, the proposal would apparently eliminate or significantly restrict the authority of the secretary of Interior to take newly acquired land into trust for tribal gaming. The proposal would permit, however, the secretary to approve non-gaming trust acquisitions for tribes regardless of whether they were under federal jurisdiction in 1934.

It should be noted that CSAC, along with several other state associations of counties and NACo, has continued to advocate for comprehensive reforms of the fee-to-trust process. In arguing against advancing the aforementioned *Carciari* “quick fix” bills, counties are proposing congressional reforms that would repair the land-into-trust process and encourage local governments and tribes to work together on a government-to-government basis.

REAUTHORIZATION OF SAFETEA-LU

Despite increased pressure from stakeholders and industry representatives regarding the need for Congress to approve a new multi-year highway and transit bill, the reauthorization of SAFETEA-LU remained idle this past quarter. A long-term renewal of the surface transportation law continues to languish due to the inability of policymakers to agree on a financing source(s) for future highway and transit investment.

As a result of the impasse over reauthorization, lawmakers approved earlier this year an extension of federal transportation programs as part of the HIRE Act (PL 111-147). Under the law, the Highway Trust Fund is extended through the end of the current calendar year. As of this writing, it appears as though Congress will renew the current extension, although it is unclear how many additional months another continuation of the program will cover.

In other developments, in early September President Obama announced an infrastructure investment plan designed to jumpstart job creation. Under the president’s plan, \$50 billion would be invested in highway, bridge, transit, high-speed rail, and aviation infrastructure in the first year of a new six-year transportation reauthorization initiative.

Although full details were not provided by the administration, the president has called for the creation of a national infrastructure bank, which would leverage private, state, and local capital to invest in projects that are most critical to economic progress. The Bank would base its investment decisions on analytical measures of performance in order to determine which projects would produce the greatest return for taxpayers.

The president also proposed continuing to support states’ development of high-speed rail, consolidating current transportation programs, and promoting competition and innovation in federal transportation grants. Additionally, the White House is placing a priority on expanding investments in environmental sustainability, safety, economic competitiveness, and livability.

Beyond the initial \$50 billion investment, it is unclear how much the president is willing to spend on infrastructure over the next six years, or the means by which the funds would be raised. By way of comparison, the draft bill approved by the House Transportation &

Infrastructure Committee's Highways and Transit Subcommittee would spend \$500 billion over six years – or a 38 percent increase in spending. House lawmakers have not yet 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, 5) the Congestion Mitigation and Air Quality (CMAQ) program.

In a victory for CSAC, the House measure 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

Early this past quarter, Senate Majority Leader Harry Reid (D-NV) finally unveiled an energy package after weeks of policy discussions regarding the composition of the legislation. Although it had been expected that a renewable energy mandate would serve as the foundation of the bill, Reid opted not to include the requirement in the legislation over the objections of a number of members of the Democratic caucus.

Among other things, Reid's bill would overhaul the federal management of outer continental shelf offshore drilling, promote home energy efficiency retrofits, encourage the development of natural gas and electric vehicles, and provide for increases in the Land and Water Conservation Fund.

In addition to calls for inclusion of a renewable energy standard, Reid has been under intense pressure from a number of colleagues to include a carbon pricing component in the Senate's energy bill. While consensus on a climate change measure has been difficult to achieve, Senators John Kerry (D-MA) and Joe Lieberman (D-CT) unveiled draft legislation that they believe could attract broad support in the Senate.

Unlike House-passed climate change legislation (HR 2454), which would set an industry-wide cap on greenhouse gas (GHG) emissions and establish a market for buying and selling government-issued allowances, the Kerry-Lieberman bill would employ a sector-by-sector approach to reducing GHG emissions. Under the draft, electric utilities would be subject to a

carbon cap at the start of the program, while a cap on manufacturers would phase in by the year 2016.

The measure also would preempt existing state cap-and-trade initiatives, including California's cap-and-trade program under AB 32. However, the Kerry-Lieberman bill would protect most state powers intended to advance clean energy and curb global warming pollution.

Overall, the Kerry-Lieberman measure aims to reduce carbon pollution 17 percent by 2020, and 80 percent by 2050.

The measure also includes provisions that would direct to the Highway Trust Fund (HTF) a portion of revenue raised from the sale of pollution credits to producers and importers of refined petroleum. All told, roughly \$6 billion annually would be available for transportation infrastructure projects that promote safety, effectiveness, and transportation through measures that are consistent with transportation efficiency planning. The proposal remains controversial among transportation industry officials, however, since a majority of the funds raised from the sale of carbon allowances to oil companies would be diverted from the HTF.

With a host of competing interests to consider, Majority Leader Reid indicated his intention to bring his more narrowly tailored energy package to the floor of the Senate prior to the summer recess. Reid's bill, however, did not advance to the floor and is unlikely to be considered during the lame-duck session of Congress.

Finally, Senator John Rockefeller (D-WV) has continued to lead efforts aimed at delaying the Environmental Protection Agency's (EPA) plans to regulate GHG emissions. Rockefeller has secured a commitment from Majority Leader Reid that his bill – which would suspend EPA regulation of GHGs from stationary industrial sources for two years – will be brought to the floor of the Senate for a vote this year.

It should be noted that President Obama has threatened to veto the legislation.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

Earlier this quarter, the Senate Commerce-Justice-Science (CJS) Appropriations Subcommittee approved its fiscal year 2011 spending bill. The legislation includes \$300 million for the State Criminal Alien Assistance Program (SCAAP), or a \$30 million reduction from the fiscal year 2010 funding level. The full Senate Appropriations Committee has endorsed the subcommittee's recommended funding for SCAAP.

Across Capitol Hill, the House CJS Appropriations Subcommittee has recommended \$330 million for SCAAP, or the same level of funding as the current fiscal year. The House Appropriations Committee has not acted on the CJS spending bill.

Given the relative lack of progress on the fiscal year 2011 budget, final funding levels for individual spending programs such as SCAAP are not expected to be negotiated as part of a formal conference committee on the CJS appropriations bill, but as part of a broader omnibus spending package.

On a related matter, Senator Dianne Feinstein (D-CA) and Representative Linda Sánchez (D-CA) reintroduced their SCAAP reimbursement criteria bills in the 111th Congress. 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

As indicated above, Congress has continued to focus much of its attention on legislation to help jump-start the struggling economy. During the third quarter, Congress finalized several bills that aim to provide relief to the unemployed and create incentives for small businesses to hire workers.

After months of back and forth on the legislation, Lawmakers approved a \$33.9 billion measure (HR 4213) that extends unemployment benefits through November 30. The law also includes 100 percent federal funding to states to help cover implementation costs.

In addition, Congress cleared and President Obama signed into law the Small Business Jobs and Credit Act of 2010 (PL 111-240). The law establishes a \$30 billion lending program for small businesses to hire employees and expand operations and provides for an additional \$12 billion in tax breaks for small business owners.

Earlier this year, 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. Congress did not take further action on the legislation in the third quarter.

On a related matter, President Obama signed into law earlier this year legislation (PL 111-147) 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

Lawmakers have deferred action on a long-term reauthorization of the Temporary Assistance for Needy Families (TANF) program, opting instead to extend the program without any substantive changes. As of this writing, TANF is extended through December 3, 2010 via the recently approved Continuing Resolution (CR).

Given the impending expiration, lawmakers are expected to approve another extension of TANF when Congress reconvenes for the upcoming lame-duck session. A subsequent continuation of the program will mean that the 112th Congress will be charged with conducting a full review of TANF, with a multi-year reauthorization expected to be considered sometime next year.

It should be noted that Congress did not extend the related TANF Emergency Contingency Fund (ECF) as part of the CR. The program's renewal, which has created jobs for over 25,000 Californians in the government, private, and non-profit sectors, has been passed twice by the House and was included in a fully-offset Senate package in September. Efforts will be made in the lame-duck session to include \$2.5 billion to extend the program for one year.

CLEAN WATER ACT

Earlier this year, House Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) introduced a revised version of legislation designed to overturn two U.S. Supreme Court rulings that restrict the scope of the Clean Water Act (CWA).

The latest version of the bill, like past measures, would delete the term "navigable" from current law. Unlike former attempts, however, the revised legislation (HR 5088) would replace existing language with the current regulatory definition of "waters of the United States."

According to Oberstar, this proposed action would preclude the need for EPA to develop a host of new rules. Oberstar is claiming that, under HR 5088, "if it was not regulated before 2001 (the date of the first Supreme Court decision), it will not be regulated with the enactment of this legislation."

For their part, key Republicans – including Transportation and Infrastructure Committee Ranking Member John Mica (R-FL) – have criticized Oberstar's latest proposal as another attempt to federally regulate nearly every minor pool or potentially wet area in the country.

Across Capitol Hill, the Senate Environment and Public Works Committee approved a similar CWA bill (S 787) last year. 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 would significantly expand federal regulatory jurisdiction over local lands and activities. Specifically, local government organizations are concerned that the legislation, as written, could bring under federal review every vernal pool and minor water course in the nation.

On a related matter, and 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.

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