



## CSAC

### WASHINGTON BRIEFS

### FOURTH QUARTER 2010

The 111<sup>th</sup> Congress adjourned sine die in late December after weary lawmakers waged battle on a number of legislative fronts. Although partisan wrangling threatened to keep lawmakers in the nation's capital through the start of the New Year, the propinquity of the holidays helped to catalyze the end of what was a tumultuous post-election session of Congress.

Perhaps the most heavily debated issue on Capitol Hill during this past quarter's lame-duck session had been the expiring Bush-era tax cuts. An eleventh-hour deal was struck by the Obama administration and congressional negotiators that extends the lower rates for all taxpayers, provides unemployment benefits for an additional 13 months, and reinstates a modified estate tax through 2012. The \$857.8 billion bipartisan measure (HR 4853) was passed by the Senate on December 15 by an overwhelming 81-19 margin and was subsequently cleared by the House on a 277-148 vote. President Obama signed the measure into law on December 17.

On the budget front, lawmakers were unable to reach agreement on an omnibus appropriations package that would have funded government operations through the remainder of fiscal year 2011. In place of a long-term budget deal, Congress approved on December 21 a stop-gap spending measure, known as a Continuing Resolution (CR), which funds most of the government at fiscal 2010 levels through March 4, 2011.

The CR also includes several policy riders, including language that restores the 25 percent geothermal payments to counties. Absent the geothermal restoration provision in the CR, counties' share of the revenues for fiscal year 2011 would have been returned to the U.S. Treasury.

In other developments, on December 13 President Obama signed into law the Healthy, Hunger-Free Kids Act (S 3307). The child nutrition measure will provide more access for poor children to receive free meals at school, raise the nutritional quality of school food programs, and reduce the amount of junk food and sugar-laden beverages sold in schools. The \$4.5 billion bill was offset in part by a \$2.2 billion cut to the food stamp program in 2014.

Of additional interest to California's counties, a collective bargaining bill failed to advance in the Senate this past quarter. The measure (S 3991), opposed by CSAC and the League, would have mandated state and local governments to enter into collective bargaining agreements with police officers, firefighters, and other public safety workers and would have placed California's current collective bargaining process for such workers under the Federal Labor Relations Authority.

## NATIVE AMERICAN AFFAIRS

In a major victory for CSAC, the 111<sup>th</sup> Congress adjourned without approving language overturning the U.S. Supreme Court's *Carcieri v. Salazar* decision. After considerable late-session discourse on the issue – which included a House floor debate and back-room negotiations among various key members of Congress – lawmakers were unable to reach agreement on the terms of a so-called *Carcieri* “fix.”

For their part, many tribes and their congressional supporters had been aggressively pushing to approve language that would provide the Secretary of Interior with authority to take land into trust for *all* Indian tribes. Such a provision, characterized as a “clean fix,” would have been a straight reversal of the Supreme Court's *Carcieri* decision. 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.

With regard to CSAC, the association has continued to strongly oppose congressional action that would overturn the *Carcieri* decision in the absence of comprehensive reforms in the Indian land into trust process. CSAC is supported by NACo and other local and state government organizations that believe it is essential for fee-to-trust reform to be tied to any legislation that provides the secretary of Interior with trust land acquisition authority.

Notably, late-session negotiations on *Carcieri* involved talk of including language that would limit off-reservation gaming. Senator Dianne Feinstein (D-CA), a long-time opponent of allowing tribes to acquire lands in trust that are far from their historical and ancestral homelands for purposes of establishing casinos, sought to include the off-reservation gaming restriction language as part of any *Carcieri* fix.

The *Carcieri* debate will be revisited in 2011 as tribes, their supporters in Congress, and the Obama administration, continue to push for a clean fix. However, the political calculus on the issue will be somewhat altered, most notably due to the change of party control in the House.

## MEDICAID

Earlier this year, Congress approved legislation (HR 1586) extending the enhanced match for Medicaid and IV-E foster care payments through June 30, 2011. 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 retained the American Recovery and Reinvestment Act's (ARRA) unemployment-related FMAP increase, but reduced 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.

On a related matter, there has been much discussion regarding the prospects for a repeal of the health care reform law since the Republican gains in the mid-term elections. While the GOP-controlled House may consider a repeal measure sometime next year, the Senate is highly unlikely to adopt such a bill. Furthermore, President Obama's veto pen would strike down any repeal effort.

Some Republicans also have discussed 'starving' the health reform bill by not appropriating money to federal agencies that are charged with implementing the legislation. A number of the bill's components have mandatory funding requirements, however, making it much more difficult to defund these particular aspects of health reform.

## **REAUTHORIZATION OF SAFETEA-LU**

Congress approved this past quarter another extension of the nation's highway and transit programs. The most recent extension, which was tacked onto the aforementioned CR, provides continuing authority for programs authorized under SAFETEA-LU through March 4. The CR's approval marks the sixth time that Congress has extended SAFETEA-LU since the Act first expired on September 30, 2009.

Looking ahead to the new Congress, it is unlikely that lawmakers will be able to finalize a new authorization bill before the latest extension expires. Moreover, many observers are predicting that a new transportation bill will have to wait until after the next presidential election cycle. Nevertheless, congressional authorizing committees are likely to hold hearings and begin policy discussions when lawmakers return from their winter break.

As was the case in the 111<sup>th</sup> Congress, the single biggest challenge facing lawmakers in the 112<sup>th</sup> Congress will be finding a reliable and sustainable financing mechanism for future surface transportation investment. The incoming chairman of the House Transportation and Infrastructure Committee, Representative John Mica (R-FL), has indicated that he intends to use public-private partnerships, tap unspent federal dollars, and accelerate aid to states to fund a new surface transportation bill. Mica also recently stated that Build America Bonds (BABs) should be considered as a means of providing funds for transportation projects.

## **CLIMATE CHANGE-RENEWABLE ENERGY**

Climate change and renewable energy legislation fell by the wayside in the 111<sup>th</sup> Congress after Senate Democratic leaders were unable to secure sufficient support for a series of hotly contested proposals. Although Democrats had hoped to score a victory on the heels of health care reform by passing yet another Obama administration priority, cap-and-trade legislation – and to a lesser extent, a renewable energy mandate – proved to be too controversial.

With Senate Republicans and some Democrats unwilling to agree to advance legislation that included a carbon pricing component, Senate Majority Leader Harry Reid (D-NV) attempted to advance a scaled-back energy package. Although it had been expected that a renewable energy standard would serve as the foundation of the bill, Reid opted not to include the requirement in his revised measure over the objections of a number of members of the Democratic caucus. The composition of the bill mattered little in the end, however, as even Reid's slimmed-down energy package failed to advance.

On a related matter, in late December the Environmental Protection Agency (EPA) announced a two-year timetable for issuing new greenhouse gas (GHG) reduction rules for power plants and oil refineries. The announcement prompted some congressional Republicans to charge that the Obama administration was seeking to circumvent Congress in order to create a cap-and-trade program.

EPA has indicated that preliminary rules will be issued in July of 2011 for oil and coal-fired power plants; preliminary rules for refineries are scheduled to be released in December of 2011. Final rules for power plants and for refineries are expected in May of 2012 and November of 2012, respectively. The Agency's announcement solidifies that the GHG debate will continue into the 112<sup>th</sup> Congress and perhaps factor prominently in the presidential election cycle.

## **STATE CRIMINAL ALIEN ASSISTANCE PROGRAM**

Funding for the State Criminal Alien Assistance Program (SCAAP) is currently frozen at fiscal year 2010 spending levels under the recently approved CR. It should be noted that most programs are flat funded under the CR, which runs through March 4.

Earlier in 2010, the Senate Appropriations Committee approved its version of the Commerce-Justice-Science (CJS) Appropriations bill for fiscal year 2011. The legislation included \$300 million for SCAAP, or a \$30 million reduction from the fiscal year 2010 funding level.

Across Capitol Hill, the House CJS Appropriations Subcommittee recommended \$330 million for SCAAP, or the same level of funding as the current fiscal year. The House Appropriations Committee never acted on the CJS spending bill.

In other developments, the Bureau of Justice Assistance announced this past quarter the fiscal year 2010 SCAAP awards. The State of California and its counties are receiving nearly \$129 million, or roughly 40 percent of the SCAAP funding nationwide.

### **TEMPORARY ASSISTANCE FOR NEEDY FAMILIES REAUTHORIZATION**

This past quarter, Congress approved and President Obama signed into law a one-year extension of the Temporary Assistance for Needy Families (TANF) program. Under the law (PL 111-291), the basic TANF block grant is extended through September 30, 2011. The TANF Emergency Fund, which was created by ARRA and expired on September 30, 2010, was not extended.

The law also includes two new state reporting requirements on how TANF funds are used. The reports are intended to help inform Congress on what changes may be needed as it undertakes a more in-depth review of TANF next year.

### **EXTENSION OF ARRA/SUPPORT FOR FEDERAL JOBS PACKAGE**

The changing political climate on Capitol Hill and a heightened awareness of the need to reign in the deficit made advancement of legislation that would provide new federal stimulus spending unfeasible this past quarter. While Democrats had hoped earlier in 2010 that Congress might pass a follow-up to ARRA, plans for additional jobs-related spending were ultimately shelved and are likely mothballed for the foreseeable future.

A recent example of lawmakers' reluctance to provide for new federal spending was the omission of President Obama's proposal to pump \$50 billion into infrastructure projects as part of the House-passed one-year CR (HR 3082). The long-term CR was seen as a likely vehicle for the administration's infrastructure investment plan, which is designed to jumpstart job creation. Under the plan, \$50 billion would be invested in highway, bridge, transit, high-speed rail, and aviation infrastructure in the first year of what would be a new six-year transportation reauthorization initiative.

With time running out on the legislative session and with new jobs-related spending off the table, much of the attention in the final days of the Congress turned to extending the Bush tax cuts. The product of intense bipartisan negotiations, the nearly \$858 billion tax package revives and renews dozens of business and individual tax breaks. Incidentally, the so-called "extenders" were billed by many as crucial for retaining jobs and helping to spur economic growth.

## CLEAN WATER ACT

In a victory for counties, legislation (HR 5088/S 787) designed to overturn two U.S. Supreme Court rulings that restrict the scope of the Clean Water Act (CWA) did not advance in the 111<sup>th</sup> Congress.

The bills, sponsored by outgoing House Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) and Senator Russ Feingold (D-WI), would delete the term “navigable” from the CWA. According to opponents of the legislation, the bills, as written, could bring under federal review every vernal pool and minor water course in the nation.

Incidentally, both Representative Oberstar and Senator Feingold lost their reelection bids. It remains to be seen if the “navigable waters” legislation will be championed by other members in the new 112<sup>th</sup> Congress.

On a related matter, and within the context of CWA reform, CSAC and other stakeholders have been 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. Congressional supporters of the 404 modifications will be looking to identify a CWA bill or other germane legislative vehicle in an effort to advance the reforms in the 112<sup>th</sup> Congress.

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