



CSAC

WASHINGTON BRIEFS

FIRST QUARTER 2016

With the implications of the upcoming winner-take-all election cycle driving much of the agenda on Capitol Hill, the first quarter of 2016 was, as anticipated, marked by a healthy dose of partisanship and posturing. Exhibit A was the response to how the U.S. Senate should deal with the vacancy left on the Supreme Court following the unexpected death of Justice Antonin Scalia.

For their part, Democratic lawmakers have been unified in calling for hearings and a vote on President Obama's choice for Scalia's successor, Merrick Garland. The vast majority of Republicans, however, have taken a hard line against holding even a single confirmation hearing for the current DC appellate court judge. Moreover, many GOP senators are refusing to entertain a private meeting with the president's nominee. Looking ahead, the feud over Garland's nomination may very well spill over into other legislative business, though the full implications of the stalemate are not yet clear.

On the fiscal year 2017 budget front, President Obama in early February delivered his eighth and final budget request to Congress. Release of the tax and spending blueprint represented the first official step in the budget and appropriations process for the fiscal year that begins on October 1.

As expected, the president's request received a chilly reception from GOP congressional leaders. With Republicans squarely in control of both chambers of Congress, very little of the administration's plan is expected to become law. However, there does appear to be bipartisan support for several of the White House's proposals, including accelerating cancer research, combating prescription drug abuse, and expanding the low-income tax credit. For the most part, the budget will continue to serve as a benchmark for congressional Democrats as they push their party's federal spending priorities ahead of the November elections.

All told, the administration is seeking roughly \$4.1 trillion in spending, while assuming same-year revenues of \$3.6 trillion. The White House estimates that its budget policies would reduce the deficit by \$2.9 trillion over the next ten years through a combination of budget cuts, health care savings, and tax code adjustments. The spending plan also assumes that adoption of the administration's policies on immigration reform would help boost economic growth.

It should be noted that the budget blueprint reflects the fiscal year 2017 discretionary spending caps agreed to last fall. In subsequent years, and consistent with previous spending plans submitted to Congress, the president has proposed eliminating the post-sequester caps established under the 2011 *Budget Control Act* (BCA, PL 112-25).

With the top-line budget numbers seemingly in place for fiscal year 2017, House and Senate GOP leaders are optimistic that they will be able to work through the regular appropriations process, rather than rely on stopgap funding measures and massive omnibus packages. However, fiscal hawks are already clamoring for a return to the previous, lower spending limits. Consequently, this year may prove to be just as difficult for Congress to advance individual spending bills. For that matter, the last time all twelve appropriations bills were completed prior to the start of the new fiscal year was in 1994.

In other developments, Senator Dianne Feinstein (D-CA) unveiled in February a revised drought-relief package. The measure, S 2533, builds on legislation that the senator introduced last year (S 1894). According to Senator Feinstein, the new bill includes provisions that provide “maximum assurances” that the legislation would not violate any environmental law, including the *Endangered Species Act* or the biological opinions for salmon or smelt. Looking ahead, the Senate Energy and Natural Resources (ENR) Committee is expected to hold a markup of S 2533 later this spring.

On a related matter, there are a number of other senators who are actively pushing the ENR Committee to tackle the current drought, but from a broader, Western-wide perspective. In that regard, Senator Maria Cantwell (D-WA) – the ranking member of the panel – released this past quarter a “National Policy Framework to Address Drought and Water Security in the United States.” Many of Senator Cantwell’s drought priorities overlap with elements of S 2533 (such as financing solutions through partnerships, streamlined federal funding, storage, conservation, recycling, etc.).

NATIVE AMERICAN AFFAIRS

In the wake of the Senate Committee on Indian Affairs’ approval of legislation (S 1879) that would overhaul the Department of the Interior’s fee-to-trust process, the committee’s chairman, Senator John Barrasso (R-WY), has been contemplating options for advancing the bill to the floor of the Senate. While there appears to be some level of support for the legislation, particularly among committee Republicans, it is unclear whether the vice chairman of the panel, Senator Jon Tester (D-MT), will ultimately endorse the bill.

Additionally, there are a number of other key senators, including Senator Feinstein, who have made it clear that they want to see a series of changes to the legislation prior to floor action. Given the uncertainty, it remains to be seen whether S 1879 will gain additional traction this year.

Entitled the *Interior Improvement Act*, the Barrasso bill would transform the process whereby the Bureau of Indian Affairs (BIA) takes Indian fee land into trust. Additionally, the legislation

would overturn the Supreme Court's controversial *Carciari v. Salazar* decision, which prohibits the Secretary of the Interior from taking land into trust on behalf of tribes that were not under federal jurisdiction as of 1934.

S 1879 includes a series of reforms spearheaded by CSAC, including provisions that would require the BIA to provide adequate, up-front notice to counties whenever the agency receives a partial or complete application from a tribe seeking to have off-reservation fee or restricted land taken into trust. In turn, counties would be afforded an opportunity to review and comment on the application.

Furthermore, the legislation would encourage tribes that are seeking trust land to enter into cooperative agreements with counties, the terms of which could relate to mitigation, changes in land use, dispute resolution, fees, etc. In cases in which tribes and counties have not entered into mitigation agreements, the bill would require the Secretary of the Interior to consider whether off-reservation impacts have been mitigated. Many of the provisions of S 1879 closely track CSAC's own comprehensive fee-to-trust reform proposal.

It should be noted that Chairman Barrasso introduced during the committee's markup of the legislation a revised version of S 1879, which included a number of revisions sought by CSAC. For example, the revised bill would provide counties with additional time to comment on trust-land applications (the original legislation included a comment period of 30 days; the substitute bill would provide for a 60-day comment period). In addition, the timeframe for the Secretary to both review an application and issue a "Determination of Mitigation" were expanded. The legislation also would further define and clarify several key terms.

Although S 1879 includes a number of key reforms to the fee-to-trust process, CSAC is actively seeking several important modifications to the bill. Among other changes, CSAC is pursuing the inclusion of a change-in-use provision, as well as language that would further tighten the bill's Determination of Mitigation requirement to ensure that anticipated impacts are mitigated prior to land being taken into trust.

SECURE RURAL SCHOOLS

The Department of Agriculture (USDA) and the U.S. Forest Service in March announced the release of \$272 million in Secure Rural School (SRS) payments to counties. In all, 39 California counties are receiving roughly \$31.8 million, slightly more than the \$31 million that was made available last year. This total reflects approximately \$27.4 million in SRS formula payments, combined with a little more \$4.3 million in timber receipts. While payments were slated to be released in February, they were temporarily delayed as the administration sought clarification as to whether the program should be subject to sequestration. However, it was determined that counties would receive their full SRS allocation this year, without a sequester reduction.

It should be noted that the SRS program expired at the end of fiscal year 2015, and unless it is extended or reauthorized, these will be the final payments. In the absence of such funding, the law reverts to the *Twenty-Five Percent Fund Act* of 1908, which requires that the federal

government share with states 25 percent of the receipts generated on national forests. In total, such a scenario would result in a loss of as much as \$27 million to California's forested counties.

While there are a number of pending bills in Congress that seek to continue the SRS payment structure, none have been able to gain much traction. This is due in large part to the inability of Congress to identify a source of funding to offset the cost of the program. The Obama administration has also proposed a five-year reauthorization of SRS, although it too lacks a viable funding source.

As an alternative, several measures have been introduced that would reform forest management practices. In fact, the House in 2015 approved legislation – the *Resilient Federal Forests Act* (HR 2647) – that aims to increase timber production on National Forest System land by expediting the environmental review process for certain projects. Congressional Democrats and Obama administration officials have expressed serious concerns with HR 2647 as, in their view, the legislation would undermine environmental safeguards and severely diminish public participation.

For its part, CSAC has urged the California congressional delegation to craft bipartisan legislation that would reform federal forest management policy. However, even with a new forestry program bringing increased economic vitality to California's counties, it will take many years for the infrastructure to rise to a level of productivity that could sufficiently cover what forested counties are currently receiving under the SRS program. Therefore, as part of any long-term solution, CSAC supports a multi-year extension of the program.

Finally, Senators Mike Crapo (R-ID) and Jon Tester (D-MT) late in the first quarter began circulating a Dear Colleague letter to Senate leaders in support of reauthorizing SRS for fiscal year 2016 and beyond. At the urging of CSAC, Senators Feinstein and Barbara Boxer (D-CA) agreed to support the Crapo-Tester effort.

PAYMENTS-IN-LIEU-OF-TAXES

In March, 80 members of Congress – including 18 from the California delegation – sent bipartisan correspondence to House appropriators regarding the PILT program. Specifically, the letter urged the leadership of the Interior Appropriations Subcommittee to work in a bipartisan, bicameral manner to secure full funding for PILT in fiscal year 2017 and beyond. A similar letter to key members of the Senate Appropriations Committee was supported by Senators Feinstein and Boxer. CSAC supported the House and Senate PILT letters and urged members of the California congressional delegation to make the program a top budgetary priority.

As part of its budget request for fiscal year 2017, the Obama administration has proposed another one-year extension of PILT at the full entitlement amount. If fully funded, the program is expected to total \$480 million, which is approximately \$28 million more than the fiscal year 2016 enacted level of \$452 million. In addition, the budget acknowledges that a sustainable, long-term funding solution must be developed.

It should be noted that Congress has already approved \$452 million in discretionary spending to fully fund PILT for the current fiscal year – up from \$442 million. As a whole, California counties typically receive the largest share of PILT funding each year. In fiscal year 2015, 57 California counties received a combined total of nearly \$46 million and should expect to receive a slight boost in payments this summer. By comparison, Utah counties received the next highest allocation of PILT funding amounting to just over \$37.6 million.

HEALTH AND HUMAN SERVICES

Child Welfare Financing Reform

Legislative action remains stalled on the bipartisan *Families First Act*. The yet-to-be introduced Senate measure has been sent to the Congressional Budget Office a number of times to receive estimates on the costs of the bill. Co-authored by Senate Finance Committee Chair Orrin Hatch (R-UT) and Ranking Minority Ron Wyden (D-OR), the legislation would provide a federal entitlement match under Title IV-E for a range of prevention services. The bill also includes congregate care provisions similar to AB 403, with a federal implementation date of October 1, 2019.

On the House side, Representative Lloyd Doggett (D-TX), ranking member of the Ways and Means Committee's Subcommittee on Human Resources, introduced last year the *Family Stability and Kinship Care Act* (HR 3781). This measure is a companion bill to S 1964, which was introduced last year by Senator Wyden. Many of the provisions of HR 3781/S 1964 are reflected in the Hatch-Wyden *Families First Act*.

TANF Reauthorization

According to House Ways and Means Committee staff, the panel is currently working to revive bipartisan discussions on a TANF reauthorization bill. While a discussion draft was released late last summer, no action was taken. It should be noted that this year's truncated congressional schedule increases the likelihood that Congress will be unable to finalize a new long-term TANF bill.

In related developments, the Ways and Means Subcommittee on Human Resources conducted a hearing this past quarter on the role of private sector employers in helping low-income individuals gain employment. The full committee also adopted a bill to eliminate the Social Services Block Grant (SSBG). Approved 20-16 with only one Republican crossing party lines, the legislation (HR 4724) would end SSBG on October 1, 2016. If approved, California would lose nearly \$192 million in flexible funding targeted toward services to individuals with disabilities and child care for low-income working families. The House has adopted similar bills in the past as a way to reduce the federal deficit, but the Senate has rejected them.

Health Legislation

In March, the House Energy and Commerce Committee adopted a number of CSAC-opposed provisions in the *Common Sense Savings Act of 2016* (HR 4725). Passed along party lines, the legislation would restrict the ability of counties to finance and provide services to individuals eligible for Medi-Cal. Among other things, the measure would eliminate enhanced Medicaid

payments for California's 80,000 jail inmates. Federal cost-sharing has been available when an eligible inmate's acute condition requires in-patient medical care not available within the jail itself. The bill also would eliminate the enhanced federal match under the *Affordable Care Act* for those individuals.

Additionally, HR 4725 would further restrict a state's ability to levy taxes on health care providers to finance Medicaid. The restrictions in the legislation could place additional future barriers on California's ability to finance Medi-Cal.

The bill also would eliminate the \$160 million Prevention and Public Health Fund used by county public health departments to provide core public health services, including immunizations, infectious disease surveillance, and protection of food and water supplies.

House floor action on the controversial measure has not been scheduled. In the Senate, no companion bill has been introduced.

FAA RULING ON AVIATION FUEL TAXES

In February, Representative Grace Napolitano (D-CA) offered an amendment to pending Federal Aviation Administration (FAA) reauthorization legislation (HR 4441) that would clarify that local sales tax measures of general application are not subject to provisions of federal law that require the proceeds of certain taxes to be spent for aviation purposes. The amendment, offered during the Transportation & Infrastructure Committee's consideration of the FAA rewrite, was defeated on a voice vote and subsequently withdrawn prior to a recorded vote.

The impetus for the Napolitano amendment is a 2014 FAA ruling (79 FR 66282) that requires States and local governments to spend the proceeds of *any* aviation-related tax – those derived from excise taxes and local sales taxes – on airport uses *only*. According to the FAA, “the agency interpreted the provisions of Sections 47107(b) and 47133 [49 USC] to apply to any state or local tax on aviation fuel, whether the tax was specifically targeted at aviation fuel or was a general sales tax on products that included aviation fuel without exemption.” Incidentally, the Conference Report to the *Airport and Airway Improvement Act* (PL 100-223), which houses the statute in question, states that the requirement was “intended to apply to local fuel taxes only, and not to other taxes imposed by local governments, or to state taxes” (Conf. Rept. No. 484, 100th Cong., 1st Sess. 1987 accompanying PL 100-223).

It is estimated that the FAA's policy amendment will mean a loss of over \$100 million for the State of California and its local governments. Nationwide, a recent study suggests that state and local governments will lose roughly \$190 million a year under the FAA rule change. Furthermore, because sales taxes on aviation fuel are not segregated from other taxable sources, state and local governments will need to implement an extensive new tracking system(s) in order to comply with the FAA's policy.

Looking ahead, Representative Napolitano will likely reoffer her amendment once HR 4441 reaches the floor of the House.

Across Capitol Hill, the Senate recently began consideration of its FAA reauthorization bill (S 2658, reordered to HR 636). As of this writing, it is unclear if a jet fuel tax amendment, similar to the Napolitano language, will be offered in the upper chamber.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

Representatives Paul Gosar (R-AZ) and Linda Sánchez (D-CA) circulated this past quarter a Dear Colleague letter to House appropriators urging them to include adequate resources for the State Criminal Alien Assistance Program (SCAAP) in the fiscal year 2017 Commerce-Justice-Science spending legislation. CSAC, which strongly backed the bipartisan effort, helped to garner the support of 25 members of the California congressional delegation. All told, 42 members of Congress signed the letter.

SCAAP, which provides partial reimbursement to States and counties for the costs of incarcerating undocumented criminals, is currently funded at \$210 million. It should be noted that California's counties, alone, are estimated to spend in excess of \$300 million annually to incarcerate undocumented criminals.

For its part, the Obama administration did not include any funding for SCAAP in its fiscal year 2017 budget submission to Congress, marking the fourth year in a row that the administration has proposed the elimination of SCAAP. Although the lack of administration support for the program makes it more difficult to secure adequate funding, key members of the California congressional delegation continue to press for an SCAAP increase.

In other developments, the Department of Justice (DOJ) in late March notified SCAAP applicants that the Department has been asked by Members of Congress to examine whether jurisdictions with so-called “sanctuary policies” are in violation of federal law (8 U.S.C § 1373). The notice advises that if the Office of Justice Programs receives information that indicates that a grant applicant is in violation of the aforementioned federal statute, the applicant may be referred to the Office of Inspector General for investigation and potential subsequent legal action.

DOJ has sent the same compliance notice to jurisdictions in reference to other grant programs, including the Justice Assistance Grant (JAG).

Finally, Senator Feinstein, along with Senators John McCain (R-AZ), Jeff Flake (R-AZ), and Chuck Schumer (D-NY), introduced in early December bipartisan legislation (S 2395) that would reauthorize SCAAP at \$950 million through fiscal year 2020. Although lawmakers have continued to provide funding for the program through the annual appropriations process, the authorization for SCAAP technically expired in fiscal year 2011.

In addition, the Feinstein legislation would allow jurisdictions to be reimbursed for the costs of housing undocumented individuals who are accused of certain crimes – and not only convicted of such offenses, as is allowed for under current law. The change would correct a long-standing flaw in federal statute that disadvantages county governments, which often spend a

considerable amount of financial resources housing pretrial offenders who may not ultimately be convicted of the crimes for which they are accused.

Current law also creates a gap in reimbursement if an individual's pretrial incarceration period and subsequent conviction do not occur within the same fiscal year. S 2395 would address these issues by ensuring that counties would be reimbursed for the costs associated with housing undocumented individuals who are accused of the crime or crimes for which they are being held.

Additionally, the bill includes language – drafted by CSAC during the Senate's consideration of immigration reform legislation in 2013 – that would require the Department of Justice (DOJ) to compensate jurisdictions for the costs of incarcerating inmates who are determined to be of "unknown" immigration status. Unknown inmates are classified as such because they have not had prior contact with federal immigration authorities and therefore are not included in the Department of Homeland Security (DHS) database.

The intent of the language is to preclude DOJ from unilaterally instituting a policy that would eliminate payments for unknowns. DOJ attempted to implement such a policy in 2012, which would have reduced California's counties' SCAAP allocations by roughly 50 percent. CSAC has argued that counties should not be financially penalized for what is ultimately the federal government's inability to verify the status of undocumented inmates. Notably, a federal review of inmate data revealed that a vast majority of inmates in county facilities who were previously categorized as "unknown" were subsequently shown to be of "known" status.

VOCA FUNDING

As part of its fiscal year 2017 budget request to Congress, the Obama administration proposed a reduction in the amount of funds that can be made available for expenditure under the *Victims of Crime Act* (VOCA). Set at \$3.04 billion in the current fiscal year, the administration has recommended lowering the VOCA cap to \$2 billion. The White House budget also would designate \$481 million for various programs that are not authorized under the VOCA statute and estimates \$85 million for Office of Justice Programs management and administrative costs, effectively leaving only \$1.4 billion for VOCA programs for the upcoming fiscal year.

While the amount of the annual VOCA cap varied from \$500 million to \$745 million during the years 2000 through 2014, Congress raised the cap to \$2.36 billion in fiscal year 2015 – a massive 217 percent increase. The 2015 and 2016 cap adjustments were made in response to repeated calls from program advocates that VOCA funding should be increased in order to more adequately support state and local programs that assist victims of crime. In California, VOCA grants provide funding for a number of victim services programs, including; crisis intervention; domestic violence shelters; services for victims of human trafficking; counseling; transportation; services for elder victims and victims with disabilities; translation services; needs assessments; and, other important support services that help victims deal with the trauma and aftermath of a crime.

Looking ahead, congressional appropriators will ultimately decide the VOCA cap for fiscal year 2017. In late March, 74 members of the House wrote to Appropriations Committee leaders requesting that the cap be set at \$2.7 billion, at a minimum. The letter, led by Representatives Jim Costa (D-CA) and Ted Poe (R-TX), also requested that the committee not include any carve outs or transfers to programs that are not authorized under the VOCA statute.

Finally, on a related matter, legislation pending in the Senate (S 1495) would require that the amount made available from the VOCA fund be no less than the average amount deposited into the fund over the previous three fiscal years. The legislation, entitled the *Fairness for Crime Victims Act of 2015*, was approved by the Budget Committee and is awaiting potential floor action in the upper chamber.

REMOTE SALES TAX

Congress approved this past quarter legislation to permanently extend the Internet Tax Freedom Act (ITFA) – a law that preempts local taxing authority. The ITFA provision, which would permanently ban local governments from collecting taxes on Internet access services, was included in an unrelated customs enforcement bill (HR 644). The policy rider was unexpected, as it was non-germane to the underlying bill and was not included in any previous version of the legislation.

In correspondence to Senators Feinstein and Boxer, CSAC urged the senators to oppose the provision and requested that they raise a point of order during Senate floor consideration. As an alternative, CSAC expressed support for a shorter-term bill – one that includes a clear sunset date and grandfathers all relevant existing state and local taxes. From a local government perspective, this is an issue that should be periodically revisited to determine whether the need for an access-tax ban still exists.

It should be noted that an extension of ITFA has long been considered a key bargaining chip for supporters of Internet sales tax legislation. Therefore, CSAC also urged Congress to consider an extension of ITFA in conjunction with legislative proposals that would allow states to enforce local sales and use tax laws on remote sales, such as the *Remote Transaction Parity Act* (RTPA; HR 2775) or the *Marketplace Fairness Act* (MFA; S 698). In exchange for allowing the broader customs bill to move forward, Senate Majority Leader Mitch McConnell (R-KY) agreed to take up Internet sales tax legislation later 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.

