



CSAC WASHINGTON BRIEFS

FIRST QUARTER 2015

As expected, the start of the 114th Congress saw its share of partisanship as the newly strengthened Republican majority found a number of opportunities to take on congressional Democrats and the White House. From efforts to block President Obama's Executive Order on immigration to passage of a bill authorizing the construction of the Keystone XL oil pipeline (S 1), GOP leaders worked to advance their party's post-election agenda amid significant pushback from Democrats. Incidentally, both of the aforementioned issues ultimately fell by the wayside, as Republicans failed to override a presidential veto of the Keystone legislation and were forced to abandon efforts to use the fiscal year 2015 Department of Homeland Security (DHS) spending bill to roll back the administration's immigration actions.

After passing a "clean" DHS funding bill (HR 240) in early March - which prevented a partial government shutdown and officially brought to a close the current-year budget and appropriations process - lawmakers turned their attention to crafting a budget for fiscal year 2016. As part of that process, a number of committees held hearings to review details of President Obama's fiscal year 2016 budget request.

All told, the administration is proposing to spend nearly \$4 trillion next fiscal year while assuming same-year revenues of \$3.53 trillion. The resulting \$474 billion deficit would equate to 2.5 percent of gross domestic product (GDP), slightly down from the estimated 2.6 percent in fiscal year 2015.

The president's budget also would scrap the post-sequester discretionary spending caps that were established under the 2011 *Budget Control Act* (BCA, PL 112-25). Pursuant to the administration's plan, base discretionary spending would amount to \$1.091 trillion in fiscal year 2016, or \$75 billion above the \$1.016 trillion allowed under the BCA. The additional outlays - which would amount to a seven percent funding increase - would be split almost evenly between defense and non-defense programs. The plan also would repeal the post-sequester caps through their scheduled end in 2021.

For their part, the House and Senate Budget Committees began this past quarter the process of crafting their respective fiscal year 2016 budget resolutions. On the discretionary spending side, both chambers' measures (H Con Res 27 and S Con Res 11) seek billions of dollars in

savings over the next ten years. The House assumes roughly \$460 billion in unspecified cuts, while the Senate measure includes about \$620 billion in savings over the ensuing decade. It remains to be seen whether and how those cuts would be achieved.

The House and Senate budget blueprints - which were approved this past quarter on largely party-line votes - also include "reconciliation" instructions. As in previous years, the House budget proposes to convert Medicaid and the Supplemental Nutrition Assistance Program (SNAP) into state block grants and calls for the repeal of the *Affordable Care Act* (ACA).

The Senate budget resolution includes a similar proposal to block grant Medicaid, but would protect low-income, elderly individuals and persons with disabilities. The upper chamber's budget also includes reconciliation instructions calling for the repeal of the ACA. If Congress approves subsequent legislation that would dismantle the health care law, President Obama would undoubtedly veto the bill.

Looking ahead, House and Senate negotiators will be working to craft a concurrent budget resolution in an effort to produce a final spending blueprint for fiscal year 2016.

Finally, the National Association of Counties (NACo) held this past quarter its annual Legislative Conference in Washington, D.C. California was well represented at the event, with CSAC leaders and numerous California county officials making the trip to the nation's capital. During their time on Capitol Hill, CSAC officers and staff met with key members of Congress and agency officials to discuss the association's federal legislative priorities for 2015.

SECURE RURAL SCHOOLS

In a victory for California's forest counties, the House overwhelmingly approved on March 26 a two-year extension of the Secure Rural Schools (SRS) program. The long-awaited SRS extension was included in legislation (HR 2) that provides for a continuation of several key health and human services programs. The bill also includes a provision that would permanently correct the Medicare program's physician payment formula (known as the "doc fix"). Although the Senate left town for its two-week recess without taking action on HR 2, the upper chamber is expected to clear the legislation in the second quarter of 2015.

Specifically, the SRS section of the bill would provide payments to counties for fiscal year 2014 (retroactive) and fiscal year 2015. The legislation also would require the U.S. Forest Service to provide the fiscal year 2014 payment in a timely manner – within 45 days of enactment.

Because the program has already expired, the *Twenty-Five Percent Fund Act* of 1908 will, for the time being, guide the 2014 distribution of payments. The Act essentially requires the federal government to share with states 25 percent of the receipts generated on national forest land. While this model worked well for a number of years, declining federal timber production and sales led to the development of the SRS program.

In fact, the U.S. Forest Service earlier this year distributed more than \$50 million to 746 timber counties under the 1908 law. Of the \$50 million, California counties received approximately \$8.7 million. Last year, by comparison, about \$300 million was allocated under the SRS program, with \$35.6 million going to California counties. Furthermore, unlike SRS, the 25-percent payments do not allow states to allocate funds for work similar to Title II (conservation work on national forests) or Title III (county projects for Firewise programs, emergency services or community wildfire protection plans).

On the long-term reauthorization front, Senators Ron Wyden (D-OR) and Mike Crapo (R-ID) introduced bipartisan legislation (S 517) this past quarter 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, Senators Wyden and Crapo have pledged to work to identify a viable source of funding that would be acceptable to both parties. After meeting with CSAC officials in late February, Senator Dianne Feinstein (D-CA) agreed to cosponsor the Wyden-Crapo legislation.

Finally, it should be noted that President Obama's budget for fiscal year 2016 includes a five-year reauthorization of SRS, with funding provided through mandatory appropriations beginning in fiscal year 2015.

PAYMENTS-IN-LIEU-OF-TAXES

In March, 100 members of Congress - including 15 from the California delegation - sent bipartisan correspondence to House Speaker John Boehner (R-OH) and Minority Leader Nancy Pelosi (D-CA) regarding the PILT program. Specifically, the letter urges House leaders to work in a bipartisan, bicameral fashion to secure full funding for PILT in fiscal year 2016 and beyond. For its part, CSAC supported the effort and urged members of the California congressional delegation to sign on.

For fiscal year 2015, Congress has already approved \$442 million in discretionary spending for PILT. The funding was included late last year in two separate pieces of legislation (PL 113-291 and PL 113-235). While this will ensure that counties receive their annual PILT payments this June, there is no guarantee that the program will be funded beyond the current fiscal year.

It should be noted that the interaction between PILT and SRS is such that a cut in SRS would significantly impact annual PILT payments to certain counties. As a result, if Congress fails to extend the SRS program, a number of California counties will experience a significant decline in their PILT funding for fiscal year 2015.

On the budget front, the president's proposal for fiscal year 2016 included a one-year extension of mandatory PILT funding at the full entitlement amount. If fully funded, the program is expected to total \$452 million, slightly more than the fiscal year 2015 enacted level. In addition, the budget acknowledges that a sustainable, long-term funding solution for PILT must be developed.

For its part, the Senate included a provision in its budget resolution that would create a deficit-neutral reserve fund for PILT. If approved, this would allow the Budget Committee chairmen to revise the resolution to accommodate legislation reauthorizing the program.

NATIVE AMERICAN AFFAIRS

This past quarter, the Senate Committee on Indian Affairs held a roundtable discussion entitled "The *Carcieri v. Salazar* Supreme Court Decision and Exploring a Way Forward." The intent of the roundtable was to bring key stakeholders together for a conversation regarding the implications of the *Carcieri* decision, as well as the process used by the Bureau of Indian Affairs (BIA) to take land into trust.

In *Carcieri*, the Supreme Court ruled that the secretary of the Interior'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* (IRA) of 1934. Since the Court's decision in 2009, many Indian tribes have called upon Congress to pass legislation overturning the Court's action. For its part, CSAC has been the lead voice in insisting that any *Carcieri* "fix" legislation include long-overdue reforms in the BIA's trust acquisition process.

Notably, CSAC was one of only four organizations invited to participate in the roundtable, with Sonoma County Supervisor David Rabbitt and Napa County Supervisor Diane Dillon representing the association. As part of the dialogue, the supervisors provided detail on and examples of the various long-standing deficiencies in the BIA's trust-land process. To remedy the lack of standards in current law, Supervisor Dillon and Rabbitt called upon Congress to approve CSAC's comprehensive fee-to-trust reform proposal.

Among other things, CSAC's proposal would ensure that counties receive timely notice of fee-to-trust applications and have adequate opportunity to provide input and comment on proposed tribal trust acquisitions. Moreover, the association's legislative reform package includes a proposal that would incentivize local mitigation agreements between tribes and counties. Under the reform proposal, a tribe that enters into a local mitigation agreement with the affected county would be able to have land taken into trust under a streamlined process.

In addition to CSAC, the National Association of Counties, the National Congress of American Indians, and the United South and Eastern Tribes participated in the Senate forum.

On the legislative front, so-called *Carcieri* "clean fix" legislation has been introduced in both chambers of Congress. In the House, Representative Tom Cole (R-OK), the Republican co-chair of the Congressional Native American Caucus, introduced a clean fix measure in January; the bill currently has 17 cosponsors. Representative Betty McCollum (D-MN), the Democratic co-chair of the Native American Caucus in the House, introduced HR 407; McCollum's bill has four cosponsors.

Across Capitol Hill, Senator Jon Tester, who serves as the vice-chairman of the Senate Committee on Indian Affairs, introduced in March a *Carcieri* fix companion bill to HR 249 and HR 407. Tester's legislation (S 732) has a total of seven cosponsors.

Finally, a bipartisan group of lawmakers sent a letter this past quarter to Interior Secretary Sally Jewell regarding the Department's proposed regulations that would reform the process by which Indian tribes are formally recognized by the federal government. The letter asks the secretary to refrain from finalizing the proposed rule until the federal government understands the impacts that the rule change would have on tribal and non-tribal communities.

Last year, the Interior Department accepted public comments on its proposed tribal acknowledgement rule. CSAC conveyed in official correspondence to the Department the association's concern that many of the proposed rule changes would significantly diminish the ability of counties and other interested parties to participate in the federal acknowledgment process.

Although CSAC, as well as other stakeholders, are urging revisions to the proposed rule, there is concern that Interior will move to finalize the proposal with little or no substantive changes.

TRANSPORTATION REAUTHORIZATION

Transportation committees in the House and Senate held a series of hearings this past quarter to examine key issues surrounding the reauthorization of the nation's highway and transit law. The current surface transportation act (MAP-21), which is operating under a short-term extension, is slated to expire on May 31.

This year, lawmakers are once again faced with the politically formidable challenge of identifying a new source of revenue to pay for the nation's infrastructure needs. The purchasing power of the federal gasoline tax - once a sufficient source of revenue for transportation program financing - has been eroded due to inflation. Moreover, the advent of more fuel-efficient cars has translated into fewer trips to the pump and decreased gas tax receipts flowing into the Highway Trust Fund (HTF).

For his part, House Transportation & Infrastructure (T&I) Committee Chairman Bill Shuster (R-PA) has indicated that he opposes an increase in the federal gasoline tax. Instead, Shuster favors taxing repatriated corporate profits to pay for new transportation investment.

In the upper chamber, Senators Barbara Boxer (D-CA) and Rand Paul (R-KY) announced in late January that they will be introducing legislation that would pay for a new long-term highway bill by cutting the tax rate for repatriated earnings. Although the proposed financing mechanism appears to be gaining some level of momentum on Capitol Hill - as well as within the Obama administration - a number of key policymakers oppose the option. For one, the chairman of the Senate Finance Committee - Senator Orrin Hatch (R-UT) - has expressed skepticism about the viability of such a plan.

Due to a lack of consensus over how to pay for a new long-term transportation bill, it is very likely that Congress will need to pass another short-term extension of MAP-21.

In related developments this past quarter, Congressman Jeff Denham (R-CA) launched an effort aimed at securing additional federal funding for local bridges as part of MAP-21 reauthorization. Specifically, Congressman Denham has requested members of the California congressional delegation to sign onto correspondence urging the leaders of the T&I Committee to make funding for crumbling bridges a top priority. Additionally, the letter - which was drafted by CSAC - urges Congress to provide a dedicated funding stream for locally owned bridges that are *on* the Federal-Aid Highway System.

CSAC has partnered with Congressman Denham and other key members in pushing Congress to provide bridge funding parity under federal law. Pursuant to MAP-21, local bridges that are off of the Federal-Aid System receive a special funding set-aside; on-system bridges, however, do not have a dedicated federal funding source. In light of the fact that over half of locally-owned bridges in California are located on Federal-Aid Highways, CSAC is urging Congress to create a similar funding mechanism for these important components of the state's transportation network.

Finally, the leadership of the County Engineers Association of California (CEAC) joined forces with CSAC to promote California counties' priorities for MAP-21 reauthorization during the recent NACo Legislative Conference. Association representatives met with House and Senate transportation committee staff and key California delegation offices to advocate for a number of important issues.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

This past quarter, Representatives Paul Gosar (R-AZ) and Linda Sánchez (D-CA) circulated 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 2016 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 \$185 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 2016 budget submission to Congress, marking the third year in a row that the administration has proposed the elimination of SCAAP. Although the lack of administration support for the

program arguably makes it more difficult to secure adequate funding, key members of the California congressional delegation continue to press for an increase in SCAAP funding.

Finally, the Department of Justice in early March announced the application period for the fiscal year 2015 SCAAP solicitation. Jurisdictions will have until April 20th to submit their completed applications to the Department.

PROPERTY ASSESSED CLEAN ENERGY PROGRAM

This past quarter, a contingent of CSAC officials and staff met with Alfred Pollard, General Counsel of the Federal Housing Finance Agency (FHFA), to encourage the agency to withdraw its objections to residential Property Assessed Clean Energy (PACE) programs. While Mr. Pollard acknowledged that FHFA was supportive of energy/water efficiency upgrades to residential properties, he continues to believe that first liens established by PACE assessments in California (and a number of other states) pose risk management challenges for existing mortgage lenders.

In addition, FHFA continues to have concerns with California's Loan Loss Reserve Program, claiming that it fails to offer full loss protection to Fannie Mae and Freddie Mac. Questions have also been raised about the Reserve Fund's ability to be sustainable over time. As such, the Agency is not prepared to change its position and will continue to prohibit housing lenders from purchasing or refinancing mortgages with a PACE lien. Mr. Pollard also warned that the Agency would not hesitate to act, despite the rapid expansion of PACE programs in California. Looking ahead, CSAC will continue to work with FHFA on a viable path forward.

In other developments, Governor Jerry Brown and Department of Housing and Urban Development (HUD) Secretary Julián Castro - in partnership with the MacArthur Foundation - recently announced the creation of the California Multifamily PACE pilot program. Specifically, the pilot will enable PACE financing for certain multifamily properties, including specific properties within HUD, the California Department of Housing and Community Development, and the California Housing Finance Agency's portfolios. Prior to the announcement, HUD-backed housing projects were not eligible for PACE financing.

According to the Obama administration, about a quarter of households live in multifamily housing units, including more than three million units in California. The California pilot will help make existing multifamily buildings more affordable to low-income families. As a result, it will save money for both consumers and taxpayers. It should be noted that the U.S. Department of Energy will study the performance of the program. If the study concludes that the pilot is indeed successful and delivers on the intended benefits, it can have positive implications for the national PACE market.

REMOTE SALES TAX

House Judiciary Committee Chairman Bob Goodlatte (R-VA) circulated during the first quarter a long-anticipated discussion draft on online sales tax enforcement. Among other things, Chairman Goodlatte's proposal would require Internet vendors to collect their own home state sales taxes and remit those proceeds to the customer's home state. For example, if an online vendor located in Virginia sells a product to a customer living in California, the vendor would collect the sales tax at Virginia's rate and remit the payment to California.

Vendors in states without a statewide sales taxes would have the option of reporting an interstate sale to the buyer's state or collecting a flat rate that is based on the lowest combined state and local sales tax rate. In addition, the draft measure would only allow retailers to be audited by their own state, addressing a key concern for Goodlatte and other critics of previous proposals. Finally, it should be noted that the proposal does not include an exemption for small businesses.

There are a number of fundamental differences between Goodlatte's discussion draft and CSAC-endorsed legislation - the *Marketplace Fairness Act* (MFA; S 698) - which was reintroduced in the Senate in March. For example, the MFA would give states the ability to collect sales taxes from out-of-state Internet retailers based on the destination of the purchase, rather than the origin of the sale. The MFA also includes language exempting retailers with less than \$1 million in annual remote sales from any tax collection requirements.

Representative Jason Chaffetz (R-UT) also is working on draft legislation in an effort to provide sales tax parity. Like the MFA, the proposal would require online vendors to collect sales taxes based on the destination of the purchase. However, there are a number of key distinctions between the two proposals.

Among other things, the Chaffetz bill includes language that would shield sellers from being audited in states where they do not have a physical presence. It also would allow remote sellers to avoid lawsuits for the over-collection of sales taxes. These and other provisions are intended to address concerns raised by critics of the MFA. Saying that, it remains to be seen whether House and Senate leaders will indeed bring remote sales tax legislation to the floor of their respective chambers.

In other developments, Supreme Court Justice Anthony Kennedy recently expressed a desire to reconsider the court ruling (*Quill v. North Dakota*) that prevented states from compelling sales tax collection by vendors with no nexus or presence in their borders. Kennedy's remarks are significant in that he has raised the possibility of new court rulings that may favor states. If the judicial branch appears to be on the cusp of such action, it could very well provide the necessary motivation for Congress to act.

CHILD WELFARE FINANCING REFORM

Congress and the Obama administration have introduced legislative and budget proposals, respectively, to address child welfare issues. On Capitol Hill, the House adopted by voice vote the *Justice for Victims of Trafficking Act* (HR 181) that would provide competitive federal grants to states or counties to encourage intergovernmental collaboration and provide services to youth victims of sex trafficking. Many of the sexually exploited youth have been in the child welfare system. The measure would use an existing administrative and funding structure within the U.S. Department of Justice.

In the Senate, lawmakers recently considered a similar child welfare bill (S 178). The legislation, which was on the Senate floor for nearly two weeks, was ultimately pulled from consideration. While the underlying proposal enjoys broad, bipartisan support, the Senate measure includes a controversial abortion-related rider. Democratic senators have strongly objected to the rider, including both senators from California.

It is uncertain when the upper chamber will reconsider S 178. If the impasse is overcome and the bill is adopted, the House and Senate would have to reconcile the slightly different measures before sending the legislation to President Obama for his signature.

On the budget front, the Obama administration's fiscal year 2016 budget proposal includes a number of provisions addressing child welfare. Of particular note is a request, supported by CSAC, that would address the over-prescribed use of psychotropic medications among foster youth. Specifically, the administration is requesting \$250 million in mandatory funding over five years through the federal foster care program to build state capacity in using evidence-based psychosocial interventions as alternatives to psychotropic medications. The White House also is proposing a related \$500 million Medicaid initiative over five years to give performance-based incentives to states to coordinate care and reduce the use of psychotropic drugs in the foster care system.

Currently, the federal foster care program provides little to no funding for preventing at-risk children from entering care. To address that reality, the administration is proposing funding for preventive services and additional funding to support families who are fostering youth. The proposal is estimated to cost \$586 million over ten years by giving states the option to draw down a 50 percent federal match for evidence-based pre-placement and post-permanency services in order to prevent removals and improve the stability of those children placed into foster care. Of importance to California counties, the initiative would include funding to support kinship families.

HEALTH PROGRAM EXTENSIONS

Several health program extensions are included as part of a comprehensive bill changing the way doctors are paid under Medicare. The so-called "doc fix" bill (HR 2) extends funding for two key programs serving low-income families. Passed by the House (392-37) in late March,

the measure includes a two-year funding extension for the Children's Health Insurance Program (CHIP/Healthy Families), which was set to expire on September 30, 2015. Without the extension, the federal financial match would decrease from 65 percent to 50 percent. California's Health and Human Services Agency estimates a loss of up to \$533 million annually if CHIP is not extended.

The bill also includes a two-year extension of funding at the current level of \$400 million annually for the Maternal, Infant, and Early Childhood Home Visiting Program. California received \$22.6 million in fiscal year 2015 funding in February. As of that month, 21 California counties participated in the federal program, which supports pregnant women and families and helps at-risk parents of pre-school children by using evidence-based, cost-effective models that improve maternal and child health and prevents child abuse and neglect.

The Senate is expected to adopt the doc-fix bill once it returns from its spring recess. The measure would then go to the president, who has expressed support for the legislation.

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

