



CSAC

WASHINGTON BRIEFS

SECOND QUARTER 2016

The fiscal year 2017 budget process took center stage throughout much of the second quarter as lawmakers made progress on most of the 12 annual appropriations bills. By July 1, every spending measure – but for the House Labor-Health and Human Services (Labor-HHS) and State & Foreign Operations legislation – had been cleared at the committee level. Additionally, the full House and Senate have approved their respective versions of three of the fiscal year 2017 funding bills.

Despite measured progress on the budget, late-quarter disputes over several high-profile issues would suggest that Congress will be sailing into rough seas in the lead-up to the November elections. In the upper chamber, Senator Chris Murphy (D-CT) led a 15-hour filibuster during which time he and fellow Democrats demanded votes on several gun-control measures as a response to the June 12 mass shooting at an Orlando nightclub. While Murphy and his colleagues succeeded in gaining assurances from GOP leaders that the chamber would hold votes on two firearms-related proposals, those amendments have since failed. A bipartisan group of senators, however, may be nearing agreement on an alternative proposal.

Across Capitol Hill, Democrats staged their own protest over what they charged was a lack of House action on gun control. Led by Representative John Lewis (D-GA), Democrats held a 25-hour “sit-in” that featured a series of impassioned speeches and raucous chants from the well of the lower chamber. After attempting unsuccessfully to restore order in the House, Speaker Paul Ryan (R-WI) opted for an early adjournment ahead of the July 4 recess. With the cameras turned off, Democrats continued to livestream their activities via various social media outlets while vowing to continue their protest when the House reconvenes following the Independence Day break.

In addition to the debate over gun control, several other high-profile issues have been at the center of partisan disputes in recent weeks. For one, lawmakers have been unable to advance a \$1.1 billion emergency spending bill designed to combat the Zika virus. Although the Obama administration requested \$1.9 billion in emergency Zika funding back in February, the legislation proposed by Republican leaders has been mired in controversy over several unrelated items, including limits on birth control services and a suspension of *Clean Water Act* permitting requirements.

Lawmakers did finally manage to finalize this past quarter legislation (HR 5278/S 2328) addressing Puerto Rico's burgeoning debt crisis. The bill – which had been the subject of a months-long, often cantankerous debate – paves the way for creation a financial control board that will be charged with helping to restructure Puerto Rico's \$70 billion debt.

NATIVE AMERICAN AFFAIRS

In June, the Senate Committee on Indian Affairs filed its long-awaited Committee Report to the *Interior Improvement Act* (S 1879, Sen. Barrasso). Approved last December, S 1879 would overhaul 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.

While the filing of a committee report is often a precursor to legislative floor action, the outlook for the *Interior Improvement Act* remains unclear. For starters, there is very little floor time available in the Senate due to the extremely tight election-year schedule. In addition, Indian Country, as a whole, has not signaled a definitive position on the legislation, complicating efforts to move the bill to the floor. Meanwhile, a number of individual tribes have continued to work behind the scenes to prevent the measure from advancing.

While the Barrasso legislation has some level of support in the Senate, 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 Dianne Feinstein (D-CA), who have made it clear that they want to see a series of changes to the legislation prior to floor action.

It should be noted that 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.

During the committee's markup of the legislation, Chairman Barrasso introduced 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 continues to actively seek several important modifications to the bill. Among other changes, the association 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.

In other developments, the House Appropriations Committee adopted an amendment to the fiscal year 2017 Interior Appropriations bill (HR 5538) that would overturn, in part, the *Carcieri* decision. Under the language – which was secured by the chairman of the Congressional Native American Caucus, Representative Tom Cole (R-OK) – tribal trust-land acquisitions made between June 18, 1934 and February 24, 2009 would be insulated from legal action challenging the Secretary of the Interior's authority to hold the land in trust.

CSAC has gone on the record in opposition to the aforementioned language. Pursuant to association policy, CSAC opposes any legislative "fix" to *Carcieri* that does not provide for comprehensive reforms to the BIA's fee-to-trust process.

Looking ahead, and with a number of key members of Congress strongly opposing the Cole amendment, it is unclear whether the language will be finalized as part of the fiscal year 2017 budget process.

HEALTH AND HUMAN SERVICES

Child Welfare Financing Reform

Just days after its introduction in the House, the Ways and Means Committee adopted on June 21 a major child welfare reform bill. The bipartisan, bicameral legislation – entitled the *Family First Prevention Services Act* (HR 5456) – includes two main sections affecting county child welfare agencies and the children they serve.

Following the committee's release of the 100-page bill, the California Department of Social Services (DSS) and the County Welfare Directors Association (CWDA) analyzed the legislation and determined that it included a number of provisions that would make State and local implementation of California's Congregate Care Reform law (AB 403) much more difficult and costly. The analyses also concluded that the legislation would undo other preventive services that are already in place. In light of those concerns, CSAC, CWDA and DSS aggressively lobbied House members in an effort to secure changes to the bill that would allow California's reforms under AB 403 to proceed without an overlay of conflicting federal provisions. Despite the coordinated advocacy efforts, the House passed HR 5456 by voice vote under a no-amendments rule.

Beginning October 1, 2019, the House legislation would provide a 50 percent federal match for up to 12 months for a limited set of services to prevent a child from being placed into foster

care. The mental health, substance abuse, and parenting-skills services would be available to the biological, kin, or adoptive family and the child living with them. The bill also includes a number of stringent federal mandates that are designed to reduce the use of group homes and other congregate care settings. In California's view, those provisions – which also are slated to become effective October 1, 2019 – are well-intentioned but will cost the State and counties hundreds of millions of dollars over the next decade.

In the Senate, Finance Committee staff have determined that a recently introduced companion measure (S 3065) should go straight to the floor and be considered by unanimous consent (UC). Consideration under UC would mean that the legislation could not be modified or amended. It should be noted, however, that a senator(s) could prevent the measure from reaching the floor by placing a legislative "hold" on the bill.

CSAC, DSS, CWDA and others have had numerous discussions with the Senate Finance Committee and have briefed staff to Senators Feinstein and Boxer. CSAC also requested that our senators place a hold on the bill. Notably, New York has similar concerns with the legislation and has worked collaboratively with California on a select list of amendments for both states' Senate offices to review.

TANF Reauthorization

On June 21, the House adopted by voice vote a one-year extension of the Temporary Assistance for Needy Families program (TANF/CalWORKs). The bill (HR 5170) also includes \$100 million in grants available to states who wish to test social impact partnerships and would create a TANF best practices clearinghouse within the Department of Health and Human Services (HHS). The House action to extend the TANF program through September 30, 2017 signals that, once again, a comprehensive reauthorization bill will wait for another Congress.

Earlier in the quarter, the House Ways and Means Committee held two markups on specific provisions within the TANF program. While the committee approved four separate TANF-related measures, those bills were not included in the aforementioned House-approved extension.

Notably, the Committee approved a bipartisan measure (HR 2990) that would create a \$100 million subsidized employment grant program for TANF recipients. Supported by CSAC and similar to the Obama administration's proposal, states would apply for demonstration grants to draw down a 50 percent wage match from the federal government for public or private employers hiring TANF recipients. Available for up to one year, the grants could support employment for a number of individuals, including youth up to age 24, non-custodial parents, and those individuals whose income is less than 200 percent of poverty.

Fiscal Year 2017 Labor, HHS Appropriations Legislation

On June 25, the Senate Appropriations Committee reported out its fiscal year 2017 spending legislation (S 1695) for the Departments of Labor and HHS. The measure essentially freezes funding for most discretionary programs at fiscal year 2016 levels. The bill awaits floor action, which is not likely until the fall.

The House Labor-HHS Appropriations Subcommittee is expected to consider its version of the spending legislation before the mid-July summer break. The measure is similar to the Senate bill. It is unlikely that a final bill will reach the president's desk until very late in the year, given the usual controversial policy riders that accompany the legislation.

FEDERAL FOREST MANAGEMENT

This past quarter, CSAC sent a letter to the Senate Energy and Natural Resources (ENR) Committee providing comments on draft legislation – the *Wildfire Budgeting, Response, and Forest Management Act* – aimed at improving federal forest management and wildfire budgeting. The bipartisan measure was unveiled in June by ENR Chairwoman Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA), as well as Senators Ron Wyden (D-OR), Mike Crapo (R-ID), and Jim Risch (R-ID).

Among other things, the proposed legislation would end the practice of “fire borrowing” by allowing the U.S. Forest Service and the Department of the Interior to access disaster funding once all appropriated fire suppression funding (100 percent of the 10-year average) has been exhausted. In addition, the bill would allow the agencies to invest any excess suppression funds into fuel-reduction projects near at-risk communities, high-value watersheds, and areas with a high wildfire hazard potential.

With regard to forest management, the draft bill would streamline the environmental review process by limiting the number of alternatives that must be analyzed for certain projects, including those that reduce hazardous fuels, install fuel and fire breaks, restore forest health, and protect municipal water supplies and wildlife habitat. The measure also would incentivize collaboration by streamlining process requirements to accelerate implementation of collaboratively developed projects. In addition, it would authorize \$500 million over the next seven years to provide assistance to at-risk communities to invest in proven programs that reduce wildfire risk, property loss, and suppression costs.

On June 23, the ENR committee held a legislative hearing on the discussion draft. During her opening statement, Chairwoman Murkowski stated her desire to move the bill through the committee and onto the Senate floor as soon as possible. For her part, Ranking Member Cantwell expressed some concerns with the environmental streamlining provisions, but she also acknowledged that something needs to be done to reduce the fire risk in the West. In her view, the legislation offers some incremental reforms that would benefit the National Forest System in the long run.

The invited witnesses were generally supportive of the proposal, with several of the stakeholders offering suggestions to further improve the bill. CAL FIRE Chief Ken Pimlott, who also spoke on behalf of the National Association of State Foresters, gave his perspective regarding the upcoming California fire season and the tree-mortality crisis. In doing so, he urged the Forest Service to provide additional funding and operational support for tree removal in high hazard areas in California, consistent with a recent request made by Governor Brown. In

addition, he expressed support for provisions that would end “fire borrowing,” expedite the NEPA review process for collaboratively developed projects, establish a pilot program for ponderosa pine/mixed conifer forests, and provide increased funding for risk mapping.

On the other side of the spectrum, Peter Nelson, who testified on behalf of Defenders of Wildlife, expressed serious concerns with the forest management reforms included in the bill.

Likewise, two witnesses for the Obama administration also were critical of the legislation. According to Under Secretary Robert Bonnie from the Agriculture Department and Director Bryan Rice from the Interior Department's Office of Wildland Fire, the bill does nothing to address the rising costs of fire suppression. Additionally, while the White House recognizes the need to complete forestry projects on federal land, the administration's witnesses indicated that potential legislation to expedite the environmental review process should include strong environmental safeguards and rely on collaboration among a broad group of stakeholders. As currently written, the administration does not believe that the draft strikes the right balance. However, both witnesses signaled that their departments are open to working with the committee to improve the bill as it moves through the legislative process.

SECURE RURAL SCHOOLS

On April 29, Senators Mike Crapo (R-ID) and Jon Tester (D-MT), along with 32 of their colleagues, sent a bipartisan letter to Senate leaders urging them to reauthorize the Secure Rural Schools (SRS) program for fiscal year 2016 and beyond. At the request of CSAC, Senators Feinstein and Barbara Boxer (D-CA) both agreed to support the Crapo-Tester effort. This past quarter, CSAC also encouraged the Senate Energy and Natural Resources Committee to reauthorize the program.

In March, the Department of Agriculture (USDA) and the U.S. Forest Service released \$272 million in SRS payments to 720 counties nationwide. In total, 39 California counties received roughly \$31.8 million, slightly more than the \$31 million that was made available in the previous year. However, the program expired at the end of fiscal year 2015, and unless it is reauthorized or extended, these will be the final payments.

In the absence of such funding, the law reverts to a previous Act – the *Twenty-Five Percent Fund Act* (PL 60-136) – which is based on a revenue sharing model developed over a century ago. Pursuant to PL 60-136, the federal government would share with states 25 percent of timber harvest receipts generated on national forests. 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. For its part, the Obama administration has proposed a five-year reauthorization of SRS, although the White House, too, lacks a viable funding source. As an alternative, several measures have been

introduced that would reform forest management practices in an effort to increase timber revenues.

PAYMENTS-IN-LIEU-OF-TAXES

On June 22, the Department of the Interior released \$451.6 million in fiscal year 2016 PILT payments to approximately 1,900 local governments. In total, 57 California counties received nearly \$47.3 million, up from \$45.8 million in the previous fiscal year. As a whole, California counties have typically been the highest recipients of PILT funding. By comparison, Utah receives the next highest PILT allocation amounting to just over \$38.4 million.

Unless PILT is reauthorized or extended, this will be the last year of funding for the program. Despite the best efforts of key lawmakers to advance legislation (S 517; S 1925; HR 3257; S 2164) that would reauthorize long-term mandatory funding for PILT, such proposals have not been able to garner broad bipartisan support. Similar to the situation with legislation providing for a long-term renewal of SRS, it has been difficult for Congress to identify a viable spending offset.

In a positive development, House and Senate appropriators have agreed to include an additional year of discretionary funding (\$480 million) for PILT as part of their respective fiscal year 2017 Interior spending bills. However, it is unclear whether Congress will be able to finalize a budget prior to the October 1 start of the new fiscal year. Accordingly, the future of the PILT program remains uncertain.

For its part, CSAC has continued to urge members of the California congressional delegation to make the program a top budgetary priority. Earlier this year, CSAC encouraged members to sign onto several letters to House and Senate leaders calling on them to provide full funding for PILT in fiscal year 2017 and beyond. The most recent correspondence in the House was signed by 80 members of Congress, including 18 from the California delegation. Across Capitol Hill, a similar letter to Senate leaders was supported by Senators Feinstein and Boxer.

FAA REAUTHORIZATION/RULING ON AVIATION FUEL TAXES

With the latest extension of Federal Aviation Administration (FAA) spending authority slated to expire on July 15 – and with Congress still a long way off from finalizing a multi-year reauthorization bill – key lawmakers were close to reaching late in the second quarter an agreement that would keep aviation programs operational through next fiscal year. While largely a “clean” extension of current law, the bill was expected to carry several policy modifications.

The new aviation extension measure became necessary after weeks of debate over how to advance a long-term FAA rewrite. While key senators had continued to press the House to take up the Senate’s reform bill (S 2658, reordered as HR 636), House leaders did not want to abandon attempts to move their own committee-approved legislation (HR 4441) to the floor. Disagreements, however, over provisions of HR 4441 that would shift air-traffic control (ATC)

responsibilities from the FAA to a federally chartered, non-profit corporation kept the bill from gaining traction.

Throughout the second quarter, CSAC continued to explore the viability of adding to the aviation-extension bill provisions that would reverse a recent FAA ruling that will negatively impact certain self-help counties. Under the FAA's ruling, States and local governments will be required beginning in 2017 to spend the proceeds of *any* aviation-related tax – those derived from excise taxes or local voter-approved sales taxes – on airport uses *only*. The ruling conflicts with current practices whereby some States and localities spend such proceeds on a number of non-aviation-related governmental functions (including roads, schools, public safety, etc.).

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.

Looking ahead, CSAC will continue to work with congressional supporters in an effort to build momentum for an amendment to the next FAA policy rewrite that would reverse or modify the FAA's ruling.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

In late May, the House Appropriations Committee approved its fiscal year 2017 Commerce-Justice-Science (CJS) spending legislation (HR 5393). The bill would provide \$56 billion in total discretionary funding to the Departments of Commerce and Justice, NASA, and related agencies, or \$279 million more than current spending and \$1.4 billion above the Obama administration's budget request.

With regard to funding for state and local law enforcement assistance, the House bill would provide nearly \$1.2 billion in fiscal year 2017 – a level that is roughly \$227 million below current spending.

In a victory for CSAC, the bill would provide an additional \$64 million for the State Criminal Alien Assistance Program (SCAAP), bringing total program spending to \$274 million. CSAC has continued to work closely with key members of the California congressional delegation to boost SCAAP funding.

In the Senate, the Appropriations Committee-approved CJS bill (S 2837) would provide \$56.3 billion in fiscal year 2017 funding, or \$563 million more than the fiscal year 2016 enacted level. The Senate bill's proposed investment for state and local law enforcement assistance closely mirrors the House CJS bill.

Of the aforementioned total, \$100 million would be provided for SCAAP, or a proposed cut of \$110 million. The upper chamber typically provides limited funding for SCAAP, with senators dedicating resources to other local justice programs.

It should be noted that the Senate legislation includes language directing DOJ to ensure that all SCAAP, Byrne-JAG, and COPS program applicants are required to certify that they are in compliance with all applicable federal laws – and that they will continue to remain in compliance throughout the duration of their grant award period. The language is designed to prevent so-called “sanctuary cities” from receiving federal justice grant funding in fiscal year 2017.

On the SCAAP reauthorization front, Representative Paul Gosar (R-AZ) introduced in late April legislation (HR 5035) that would renew the program. The bill, endorsed by CSAC, also 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. HR 5035 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 – originally drafted by CSAC during the Senate’s consideration of immigration reform legislation in 2013 – that would require 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.

It should be noted that HR 5035 is a companion bill to legislation (S 2395) that Senators John McCain (R-AZ), Feinstein, Jeff Flake (R-AZ), and Chuck Schumer (D-NY), introduced last December.

VOCA FUNDING

The aforementioned House CJS spending bill would dedicate roughly \$2.74 billion for the Victims of Crime Act (VOCA) fund in fiscal year 2017. The proposed cap is \$300 million below

the amount that can be spent from the VOCA fund in the current year. It should be noted that the bill does not propose to transfer \$379 million from the Crime Victims Fund to the Office of Violence Against Women (OVM), as occurred in fiscal year 2016.

Across Capitol Hill, the Senate's version of the CJS appropriations bill would set the VOCA cap at \$2.95 billion, or \$85 million shy of current spending. Although the Senate legislation has a higher overall VOCA cap, the bill includes a transfer of \$379 million to the OVM, as well as a new tribal set-aside that totals \$536.85 million. As a result of these and other proposed set-asides, more funds would be available for state VOCA victim assistance grants under the House bill than the Senate legislation.

For its part, the Obama administration proposed a reduction in the amount of funds that can be made available for expenditure under the VOCA fund. 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.

Finally, 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

Earlier this year, Congress approved 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 (PL 114-125). It should be noted that a long-term extension of ITFA was long viewed as a key bargaining chip for supporters of Internet sales tax legislation. Therefore, in exchange for allowing the broader customs bill to move forward, Senate Majority Leader Mitch McConnell (R-KY) pledged to hold a vote on the *Marketplace Fairness Act* (MFA; S 698) – or a similar proposal – later this year.

There are currently three competing proposals that would allow states to enforce local sales and use-tax laws on remote sales. The MFA and a separate proposal – the *Remote Transaction Parity Act* (RTPA; HR 2775) – would, among other things, give states the ability to collect sales taxes from out-of-state Internet retailers, with the tax based on the final destination of the purchase. A third proposal – the *Online Sales Simplification Act* – would allow states to require retailers to charge sales taxes based on the location of the seller, rather than on the location of the consumer.

Each of the aforementioned proposals has its own set of detractors, which has thus far stalled efforts to advance remote sales tax legislation. While CSAC has continued to urge House and Senate leaders to act in a timely manner, Congress is unlikely to consider any of the pending

legislative proposals in the time left before the November elections. However, if Majority Leader McConnell remains true to his pledge, action is possible later this year during the lame-duck session. Like ITFA, remote sales tax legislation will more than likely move as part of a larger package, rather than as a standalone bill.

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

