



CSAC WASHINGTON BRIEFS

THIRD QUARTER 2014

With election-year politics in full swing, the third quarter of 2014 was largely dominated by partisan posturing as Republicans and Democrats alike worked to reinforce their parties' contrasting agendas. The heightened sense of acrimony on Capitol Hill - combined with the fact that there were relatively few legislative days on the calendar - resulted in little substantive progress in recent weeks.

Despite the anticipated gridlock, lawmakers did manage to reach agreement on several "must-pass" items, including a government-wide Continuing Resolution (CR). The CR (PL 113-164), which became necessary in the absence of a fiscal year 2015 budget deal, provides level funding for federal agencies, programs, and operations through December 11.

Although the CR is largely void of "anomalies," the measure does include several extraneous spending and policy provisions. For example, the legislation reauthorizes the Export-Import (Ex-Im) Bank through June 30, 2015. The Ex-Im Bank has come under fire in recent months from conservative lawmakers who view it as a form of corporate welfare; in contrast, supporters of the Bank argue that it helps boost the country's competitiveness in otherwise difficult-to-access foreign markets.

The CR also provides \$88 million in new funding to combat the Ebola outbreak in West Africa, as well as increased funds for disability-claims processing at the Department of Veterans Affairs. Of particular interest to counties, the resolution temporarily extends (through December 11) a law that prevents local governments from taxing broadband internet access. The current moratorium was set to expire on November 1, 2014.

The relatively short-term duration of the CR means that lawmakers will be returning to Washington, D.C. for a post-election lame duck session of Congress. At that time, congressional leaders will need to decide whether to extend the CR or attempt to cobble together a catch-all fiscal year 2015 omnibus spending package. If Republicans take control of the Senate, it appears likely that GOP leaders will want to defer any major budgetary or policy-related decisions until the New Year.

While avoiding a government shutdown was at the top of Congress' agenda this past quarter, lawmakers did consider several other items. For starters, Congress cleared and President Obama signed into law in early August a short-term bailout of the Highway Trust Fund. The law (PL 113-159) provides \$10.9 billion to fund transportation infrastructure projects through May 2015 and extends programs authorized under MAP-21 through that same date.

Congress also finalized a long-awaited reauthorization of the nation's workforce development law. The measure, entitled the *Workforce Investment and Opportunity Act* (WIOA, PL 113-128), preserves local and regional governance and provides additional flexibility in managing funding streams. The law also consolidates several programs from the *Workforce Investment Act* while retaining the adult and youth employment and training programs, as well as the dislocated worker program.

In addition, the House and Senate approved the *Preventing Sex Trafficking and Strengthening Families Act* (PL 113-183), which includes a number of adoption assistance, child welfare, and youth sex trafficking provisions. Signed by the president on September 29, the Act amends the adoption assistance program to include, for the first time ever, incentive awards of \$4,000 for subsidized guardianship placements.

TRANSPORTATION REAUTHORIZATION

As reported above, Congress recently approved a short-term bailout of the Highway Trust Fund (HTF). The legislative rescue was necessary in light of the fact that revenues flowing into the trust fund have steadily declined due to inflation and higher vehicle fuel economy. Absent the infusion of funding, the HTF would have fallen below a critical level and resulted in delayed transportation reimbursement payments to states starting August 1.

All told, the short-term extension provides \$10.9 billion to fund highway projects through May of 2015. The legislation also extends the nation's highway and transit law (MAP-21) through the same date.

Although some congressional authorizers and transportation advocates are calling on Congress to act on a long-term highway renewal in the upcoming lame-duck session, such action appears unlikely. With a short-term extension already in place, the more likely scenario is that congressional authorizers will work to finalize a new bill in mid-to-late 2015.

It should be noted that any pending legislation - including the Senate Environment and Public Works (EPW) Committee-passed highway reauthorization bill (S 2322) - will not carry over into the 114th Congress. Accordingly, new legislation will need to be introduced when Congress convenes early next year. If Senate Democrats maintain control of the upper chamber, the chair of the EPW Committee - Senator Barbara Boxer (D-CA) - is expected to reintroduce a bill that closely mirrors S 2322.

Senator Boxer's legislation would provide \$265 billion for highway programs over six years (or level funding, plus inflation) while continuing the core program structure put into place by MAP-21. This includes the National Highway Performance Program (NHPP), the Surface Transportation Program (STP), the Highway Safety Improvement Program (HSIP), and the Congestion Mitigation and Air Quality Improvement Program (CMAQ). In addition, the measure would create a new National Freight Program.

The bill would expand eligibility under the NHPP to include funding for locally-owned "on-system" bridges. Although the measure, as introduced, would have capped NHPP funding for such bridges at 10 percent, an amendment that was accepted during committee consideration increased the cap to 15 percent.

In addition, S 2322 would maintain current law's dedicated federal funding stream for off-system bridges. Specifically, the measure would continue to require a State to obligate for local bridge projects not less than 15 percent of the funds that were apportioned to the State under the Highway Bridge Program in fiscal year 2009. Should State and local officials determine that the State has inadequate needs to justify the expenditure, the Transportation Secretary could rescind this requirement.

Senator Boxer's legislation also would modify the provisions of current law that trigger mandatory spending on high-risk rural roads. Under MAP-21, construction and operational improvements on rural roads is one of a number of allowable project areas within HSIP, with mandatory spending triggered if the fatality rate on rural roads in a State increased over the most recent two-year period. Pursuant to S 2322, mandatory spending would be triggered if rural road fatality rates in a state do not decrease over the most recent two-year reporting period and the state's fatality rate exceeds the national rate. In addition, the bill would reduce the amount of funding states would be required to spend on projects that meet the aforementioned criteria (dropping the threshold from 200 percent of 2009 spending to 150 percent).

The measure also includes provisions that would allow states to use innovative financing mechanisms to fund transportation projects. As first introduced, the bill would have maintained the current funding level of \$1 billion per year for the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. However, the program's funding was reduced to \$750 million via an amendment during committee consideration. TIFIA provides direct loans, loan guarantees, and lines of credit to surface transportation projects at favorable terms to leverage private and other non-federal investment in transportation improvements.

The measure also would provide states with the ability to use federal highway funding to capitalize State Infrastructure Banks (SIB) and would allow the DOT Secretary to make TIFIA loans to SIBs. The bill also would expand program eligibility to public infrastructure projects in transit-oriented developments.

In the House, Transportation & Infrastructure Committee Chairman Bill Shuster (R-PA) has yet to unveil a highway and transit reauthorization package. The chairman will likely introduce his MAP-21 renewal bill in the new 114th Congress.

NATIVE AMERICAN AFFAIRS

This past quarter, the Department of the Interior (DOI) announced an extension of the public comment period on proposed regulations that would reform the process by which Indian tribes are formally recognized by the federal government. The comment period, which was originally slated to close on August 1, was extended through September 30. DOI also held this past quarter several additional public meetings and tribal consultations in connection with the proposed acknowledgment rule.

For its part, CSAC conveyed in official correspondence to DOI the association's concern that many of the Department's proposed rule changes would significantly diminish the ability of counties and other interested parties to participate in the federal acknowledgment process. Among other issues, CSAC registered concern with proposed revisions to the definition of "interested parties," which would result in counties and other stakeholders not receiving timely and important information about acknowledgment petitions.

CSAC also noted other defects of the proposed rule, including changes to the availability of technical assistance, which would exclude counties and other interested parties (only petitioners would receive this service under DOI's proposal). Additionally, the association stated that reduced comment periods - from 180 to 90 days on a Proposed Finding and from 180 to 60 days for an extension option - would present a significant burden to interested parties to gather and submit evidence.

In terms of opportunities to appeal decisions, DOI's proposed rule would replace the existing appeals process with formal administrative hearings offered only in limited circumstances to appeal Proposed Findings. CSAC noted that a formal hearing process would be more burdensome for interested parties, as the current process provides for essential checks and balances that result in more accurate findings. The association also stated that litigation would become the only option for interested parties to appeal a final decision - which would be more costly and time consuming than the existing Interior Board of Indian Appeals process.

It should be noted that many California counties have expressed concerns with and opposition to changes to the existing criteria that would reduce the evidentiary showing required by petitioners to achieve federal acknowledgment. The state is already home to 109 federally recognized tribes and a recent report entitled "California Indian Petitioners and the Proposed Revisions of the Federal Acknowledgement Process," found that the overall impact of the proposed rule could result in as many as 34 newly recognized Indian tribes. These additional acknowledgements could lead to the acquisition of a significant amount of trust lands which, as the authors of the aforementioned report suggest, could lead to the development of 22 new casinos.

DOI is currently in the process of reviewing public comments. Although CSAC, as well as other stakeholders, are urging revisions to the proposed rule, there is concern that Interior will move to finalize the rule with little or no substantive changes.

On the legislative front, there was no movement this past quarter on legislation that would overturn the U.S. Supreme Court's *Carcieri v. Salazar* decision. In *Carcieri*, the 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 of 1934* (IRA).

Earlier this year, the Senate Committee on Indian Affairs approved a bill (S 2188) that would overturn *Carcieri* and restore the secretary's authority to take land into trust for all tribes. During the committee's consideration of the bill, the panel adopted an amendment by Vice Chairman John Barrasso (R-WY) that would direct the secretary to conduct a study on the effects of the *Carcieri* decision on Indian tribes and tribal land.

As part of his opening remarks, Chairman Jon Tester (D-MT) acknowledged that some of his colleagues in the Senate still have issues with the bill; accordingly, he pledged to work with those members going forward. Absent agreement on next steps, S 2188 will not advance to the floor. For its part, CSAC continues to work with Senator Dianne Feinstein (D-CA) and others in an effort to ensure that meaningful reforms in the Indian fee-to-trust process are part of any *Carcieri* "fix" legislation.

In the House, two *Carcieri* bills that were introduced in the House earlier this year remain in legislative limbo. The first piece of legislation, HR 666, has 33 cosponsors, including all five Democratic members who sit on the Natural Resources Committee's Indian and Alaska Native Affairs Subcommittee. The second bill, HR 279, has a total of 37 cosponsors.

Both measures would provide the Interior secretary with authority to take land into trust for all tribes. However, HR 279 would explicitly extend the secretary's trust acquisition authority to any Alaska native community that the secretary acknowledges to exist as an Indian tribe.

REAUTHORIZATION OF THE SECURE RURAL SCHOOLS ACT

Earlier this year, the U.S. Forest Service distributed a total of \$329 million to more than 700 counties as part of the Secure Rural Schools (SRS) program. A total of 39 rural counties in California received approximately \$32.7 million in fiscal year 2013 SRS payments. Unless Congress reauthorizes or extends the program, these will be the final payments.

It should be noted that if SRS is not renewed, county payments will return to a revenue-based system. Consequently, most rural, forested counties in California would be left with significantly less funding than in recent years. Lawmakers have been considering options for

reauthorizing or modifying SRS for fiscal year 2015 and beyond, though it has been difficult for key policymakers to reach a bipartisan consensus on how best to move forward.

For its part, the House approved legislation in 2013 - the *Restoring Healthy Forests for Healthy Communities Act* (HR 1526) - that would address the pending expiration of SRS. The chamber also recently approved identical SRS language as part of a catch-all jobs package, the *Jobs for America Act* (HR 4). Notably, both measures include a number of forest management reforms that would be accomplished primarily by rolling back environmental laws and other legal protections. As such, the measures have little chance of passage in the Democrat-controlled Senate.

Across Capitol Hill, Senate Finance Committee Chairman Ron Wyden (D-OR) unveiled a draft proposal this past quarter that would permanently authorize and fully fund SRS, as well as the Payments-in-Lieu-of-Taxes (PILT) program and the Land and Water Conservation Fund (LWCF). Under the draft bill, SRS would be permanently funded at 150 percent of its fiscal year 2011 authorization; PILT at 150 percent of its current authorization; and, LWCF at \$900 million per year. The draft also would permanently authorize and fully fund two new programs for counties with onshore and offshore energy development. Senator Wyden is likely to formally introduce the legislation later this year.

CSAC has continued to advocate for a multi-year renewal of SRS. However, in the absence of a long-term agreement, CSAC supports a short-term extension of funding. In correspondence to the California congressional delegation, CSAC urged members to provide immediate economic certainty to counties by securing a one-year extension of SRS and PILT.

PAYMENTS-IN-LIEU-OF-TAXES

Earlier this year, the Department of the Interior distributed a total of \$436.9 million to nearly 1,900 local governments under the PILT program. PILT, which was extended for one year as part of the Farm Bill (PL 113-79), compensates local governments for large quantities of un-taxable federal lands within their jurisdiction.

As a whole, California counties generally receive more PILT funding each year than any other state. In fact, all 58 of California's counties received a combined \$45.3 million in PILT payments this year, or more than 10 percent of the amount available for the program nationwide. Incidentally, this is the largest amount of funding ever allocated under the program. However, unless Congress acts, this will be the last year that full funding is authorized for PILT.

CSAC has continued to urge lawmakers to provide a multi-year renewal of this critically important program. The association also is closely monitoring the aforementioned Wyden proposal that would provide for a long-term renewal of PILT, SRS, and LWCF. In addition, and as previously mentioned, the association sent a letter to the California congressional delegation urging members to secure an additional year of funding for PILT and SRS.

As key lawmakers continue to discuss options, CSAC is urging leaders of the House and Senate Appropriations Committees to include funding for PILT as part of the fiscal year 2015 appropriations process. Although the fiscal year 2015 House Interior and Environment appropriations bill would provide an additional year of program funding, Congress has not finalized its budget for the upcoming fiscal year.

In other developments, the National Association of Counties (NACo) held a Washington, D.C. PILT fly-in during the quarter. Traveling to the nation's capital to advocate for the continuation of program funding were a number of county officials from across the nation, including three supervisors from California. Trinity County Supervisor Judy Morris, Inyo County Supervisor Matt Kingsley, and San Bernardino County Supervisor Robert Lovingood joined the NACo contingent in a series of meetings on Capitol Hill. County officials also had meetings with key representatives of the Obama administration, including officials from the Department of Agriculture and the Department of the Interior.

Finally, consistent with a request from CSAC, Representatives Jaime Herrera Beutler (R-WA) and Joe Garcia (D-FL) have been circulating a Dear Colleague letter urging House leaders to provide funding for PILT and SRS in fiscal year 2015. As of this writing, 39 members have agreed to sign on, including 12 from the California congressional delegation.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

This past quarter, the Bureau of Justice Assistance announced fiscal year 2014 State Criminal Alien Assistance Program (SCAAP) awards. In total, 51 California counties are receiving roughly \$13.4 million, with the State of California receiving over \$41.5 million. California's combined total represents roughly 34 percent of all available SCAAP funding.

As in recent years, the Department of Justice (DOJ) exercised its authority to reallocate 10 percent of fiscal year 2014 SCAAP funds to other departmental activities (the maximum amount allowable under the law). Although the reprogramming of SCAAP funds has been criticized by counties and States, DOJ has been authorized by Congress to shift a certain portion of funds from SCAAP and other grant programs to other Agency purposes, including various administrative activities.

Looking ahead, it remains to be seen how much funding Congress will ultimately make available for SCAAP in fiscal year 2015. Once Congress reconvenes for its post-election lame duck session, lawmakers are expected to cobble together a catch-all omnibus appropriations bill, which will include new spending levels for all programs. If Republicans take control of the Senate, those funding decisions could be put off until the New Year.

Earlier this year, the House approved its fiscal year 2015 Commerce-Justice-Science (CJS) Appropriations legislation (HR 4660). Overall, the bill would slash spending by nearly \$400 million compared to current levels - including an overall reduction in investment for state and local justice assistance grant programs.

Despite an overall cut in state and local funding, the bill would provide a \$30 million boost for SCAAP. The proposed increase, which would bring total program spending in fiscal year 2015 to \$210 million, represents a positive development for CSAC and California's counties, which have worked with key members of the California congressional delegation and others in an effort to boost SCAAP funding.

In the Senate, the Appropriations Committee-passed CJS measure (S 2437), like the House bill, would cut nearly \$400 million from current spending. With regard to SCAAP, the legislation would provide \$150 million, or a \$30 million reduction from fiscal year 2014.

If lawmakers draft an omnibus spending bill this fall, they will be working off of the funding levels that are included in the aforementioned bills. Accordingly, CSAC will be urging lawmakers to, at a minimum, fund SCAAP at the House-passed level of \$210 million.

PROPERTY ASSESSED CLEAN ENERGY PROGRAM

In the third quarter of 2014, Congress was unable to advance legislation that would help expand residential Property Assessed Clean Energy (PACE) programs nationwide. The bipartisan bill (HR 4285), which has been endorsed by CSAC, is sponsored by Representatives Mike Thompson (D-CA), Peter King (R-NY), and Sean Patrick Maloney (D-NY). In all, the measure is cosponsored by 28 members of Congress, including 19 from the California delegation.

The impetus for the legislation is a 2011 Federal Housing Finance Agency (FHFA) directive, which objects to local governments holding the first lien on residential PACE homes. In FHFA's view, such a practice represents a significant risk to Fannie Mae and Freddie Mac. To address the agency's concerns, HR 4285 would establish important national program standards to limit any and all financial risk to the lenders. The bill also would direct FHFA to rescind its 2011 policy guidance.

It should be noted that the bill is modeled after California's successful Loan Loss Reserve Fund. The state-backed fund helps to ensure that PACE assessments are paid off in the event of a mortgage default, which effectively eliminates any financial risk to Fannie Mae, Freddie Mac, or any other mortgage lender. Similar to language included in HR 4285, PACE programs enrolling in the Reserve Fund must meet basic structural criteria, comply with certain underwriting standards, and pay an annual premium based on the size of their portfolio.

However, despite these assurances, FHFA continues to have concerns with California's first-lien PACE program, claiming that it fails to offer full loss protection to Fannie Mae and Freddie Mac in the event of a foreclosure. In addition, FHFA Director Mel Watt has questioned 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.

REMOTE SALES TAX

This past quarter, the House approved a bill – the *Permanent Internet Tax Freedom Act* (HR 3086; PITFA) – that would make permanent an expiring ban on state and local taxation of Internet access. Prior to its passage, supporters of remote sales tax legislation expressed their desire to pair PITFA with the *Marketplace Fairness Act* (MFA; S 743), which the Senate approved in 2013. The MFA, which has been endorsed by CSAC, would give states the ability to collect sales taxes from out-of-state Internet retailers.

For his part, Senate Majority Leader Harry Reid (D-NV) has indicated that the two measures will be linked going forward. In fact, Senators Mike Enzi (R-WY) and Dick Durbin (D-IL) recently introduced bipartisan legislation that would combine the bills. Specifically, their legislation – the *Marketplace and Internet Tax Fairness Act* (MITFA; S 2609) – would combine the MFA with a 10-year extension of the Internet access tax moratorium.

It should be noted that the current access tax moratorium was set to expire on November 1, 2014, but was extended through December 11 as part of the CR. An extension of the moratorium is considered by many observers to be "must pass" legislation. As such, House and Senate leaders will have to decide how to proceed on the measure following the November elections.

While this presents the best opportunity yet to advance stalled remote sales tax legislation, several key members of Congress continue to have reservations about the MFA, particularly House Judiciary Committee Chairman Bob Goodlatte (R-VA) and Senate Finance Committee Chairman Wyden. Saying that, Goodlatte and Wyden are expected to block any attempt to pair the two measures. If the remote sales tax component is ultimately stripped from the final bill, the MFA is expected to be reintroduced when the new Congress convenes in 2015.

CHILD WELFARE FINANCING REFORM

On September 29, President Obama signed into law the *Preventing Sex Trafficking and Strengthening Families Act* (HR 4980; PL 113-183). The bipartisan, bicameral legislation was previously adopted by voice vote in both the House and Senate.

Policy changes affecting child welfare agencies include provisions requiring states to include a "reasonable and prudent parent standard" - similar to what already exists in California - to enable foster youth to participate more readily in extracurricular, cultural, and social activities with their peers. The law also eliminates Another Planned Permanent Living Arrangement (APPLA) as a permanency goal for children under the age of 16 in order to continue to push agencies to find a permanent placement for youth with a family. Additionally, the Act enables youth ages 14 and older to enlist the assistance of two other individuals to be part of their case planning team.

Effective one year after enactment, the new law requires child welfare agencies to provide youth exiting care who were not adopted or returning to live with family with a birth certificate, a Social Security card, health insurance information, medical records, and a driver's license or state-issued ID.

Furthermore, the law amends the adoption assistance program to include, for the first time, incentive awards of \$4,000 for subsidized guardianship placements. The Act also includes a safeguard ensuring that a child placed with a guardian could continue to be cared for by a successor guardian if a relative guardian dies or is incapacitated, instead of going back to court.

With respect to sex trafficking, the law requires state plans for foster care and adoption assistance to include policies and procedures for identifying, screening, and determining appropriate services for children who are believed to be victims of sex trafficking, or are at risk of being victims. Sex trafficking data would be included in the federal adoption and foster care analysis and reporting system (AFCARS).

Finally, the Act includes child support provisions that will make it easier to obtain and enforce orders across international boundaries and requires the federal Office of Child Support Enforcement to engage stakeholders in identifying best practices and other efficiencies in the program.

CLEAN WATER ACT – SECTION 404 PERMITTING

CSAC has continued to promote legislation (HR 1296) that would streamline the *Clean Water Act's* (CWA) Section 404 permitting process. The bill, which was introduced by Representative Gary Miller (R-CA), would provide a narrow exemption for maintenance removal of sediment, debris, and vegetation from flood control channels and basins.

Under Section 404, counties and local flood control agencies are required to obtain permits from the Corps for the discharge of dredged or fill material into navigable waters. The CWA also provides a permitting exemption for the maintenance of currently serviceable structures. However, the Corps has determined that the CWA's exemption language does not apply to certain routine maintenance activities, which has caused a number of negative, unintended consequences, including a significant permitting backlog.

CSAC has worked closely with Congressman Miller on HR 1296 and has endorsed the legislation. The association also has worked to broaden national support for the Miller bill, including working with the National Association of Flood and Stormwater Management Agencies (NAFSMA), as well as with NACo.

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