



CSAC

WASHINGTON BRIEFS

THIRD QUARTER 2015

Lawmakers tackled a number of high-priority items during the third quarter, the most pressing of which was a stopgap budget measure. With just hours to go before the October 1 start of the new federal fiscal year, President Obama signed into law a 10-week continuing resolution (CR) that provides spending authority for federal agencies through December 11.

The eleventh-hour approval of the short-term spending bill (PL 114-53) came on the heels of a tumultuous and protracted debate over Planned Parenthood. Although conservatives in both chambers were aggressively pushing to defund the organization, it became clear that they lacked the necessary votes to overcome objections from congressional Democrats and the Obama administration. In the end, funding for Planned Parenthood was preserved in the final CR.

The CR also includes language directing the Department of the Interior to release \$37 million in unspent Payments-in-Lieu-of-Taxes (PILT) funding. Although Congress appropriated a total of \$442 million for PILT in fiscal year 2015, only \$405 million has been distributed by the Department. Absent the PILT fix language, program funds would not have been made available to counties until March 2016 or later.

Of additional interest to counties, the spending measure includes \$700 million in emergency funding for wildfire suppression activities. The funds will cover operations for the 2015 fire season, as well as replenish other accounts that the U.S. Forest Service borrowed from in order to cover current firefighting expenses. The Obama administration initially sought \$450 million in supplemental funds, but increased its request as forest fires continued to rage in the West.

The spending package also provides a short-term extension of the EB-5 Immigrant Investor Visa program, as well as an extension of the moratorium on internet access taxes. The moratorium, which prevents local governments from taxing broadband internet access, was set to expire on September 30.

The relatively short-term duration of the CR means that congressional leaders and the Obama administration will have little time to come up with a new long-term budgetary framework before spending authority under PL 114-53 expires. While there appears to be broad agreement that the current sequester-level spending caps should be scrapped, there is no

bipartisan consensus on a new top-line budget number. Furthermore, Republicans and Democrats remain divided over how much additional spending to allocate to defense and nondefense programs, let alone how to offset any increased spending.

In addition to the debate over the federal budget, lawmakers spent a portion of the third quarter discussing the impending need to provide yet another increase in the nation's debt ceiling. While the Treasury Department has used extraordinary measures since the spring to extend its borrowing authority, those measures are nearly exhausted. As a result, and with little time to push a debt limit increase through both chambers, Congress will likely look to pair the issue with a potential new budget deal.

On the drought-relief front, Senators Dianne Feinstein (D-CA) and Barbara Boxer (D-CA) introduced this past quarter legislation designed to help communities address the effects of the current water crisis, as well as future droughts. Among other things, the bill (S 1894) would authorize funding for a variety of existing and new programs, with an emphasis on assisting drought-stricken communities, building desalination and water storage projects, and supporting water recycling, conservation, and groundwater recharge. The Senate bill differs in scope compared to the House Republican-sponsored drought-relief measure (HR 2898), which cleared the lower chamber in July. Although prospects for a final drought bill remain uncertain, key House and Senate lawmakers are expected to continue their efforts aimed at negotiating a consensus package.

Finally, House Speaker John Boehner (R-OH) unexpectedly announced during the third quarter that he will step aside as speaker and resign his House seat. After Representative Boehner's presumptive replacement - Majority Leader Kevin McCarthy (R-CA) - withdrew from the race for the top leadership position in the House, Boehner indicated that he will remain in his current role until a new speaker is installed.

TRANSPORTATION REAUTHORIZATION

The U.S. Senate approved this past quarter a long-awaited, six-year surface transportation reauthorization bill (HR 22, as amended). The legislation, entitled the *Developing a Reliable and Innovative Vision for the Economy (Drive) Act*, was cleared on a 65-34 vote.

Sponsored by Senate Environment and Public Works (EPW) Committee Chairman James Inhofe (R-OK) and Ranking Member Boxer, the DRIVE Act would authorize a total of \$361 billion for highways, highway safety, transit, and passenger rail programs. Under the bill, Federal-aid Highway Program spending would stand at \$275 billion (of which over \$257 billion would be for apportioned programs). The Drive Act's highway spending levels equate to a roughly three percent annual increase above the amounts authorized in current law (MAP-21), or an average growth rate of \$5.3 billion per year.

It should be noted that the legislation would transfer roughly \$46 billion from the U.S. Treasury's General Fund to the Highway Trust Fund (HTF) and calls for shifting \$300 million from the Leaking Underground Storage Tank Trust Fund to the HTF. The proposed transfers

would make it possible for the Department of Transportation (DOT) to meet projected obligations under the bill through 2018 (the first three years of the Drive Act).

In general, the legislation would maintain the structure of MAP-21 while building upon some of the reforms that were approved by Congress as part of the 2012 Act. With regard to funding for local bridges – a key CSAC priority – the bill would require states to spend a certain percentage of their Surface Transportation Program (STP) allocation on bridges that are not located on the National Highway System (NHS). Although MAP-21 created a funding "set-aside" for local bridges that are neither located on the NHS nor on the Federal-Aid Highway system (referred to as "off-system" bridges), the Act did not require states to spend any money on local bridges that are off of the NHS but *on* a Federal-Aid Highway.

The Senate EPW bill includes a number of other provisions that are of interest to California's counties, including: language designed to further streamline the transportation project delivery process; a requirement that states obligate increased funding for rural road safety projects if the fatality rate on rural roads does not decrease and the state fatality rate exceeds the national average; and, updates to the Transportation Infrastructure Finance and Innovation Act (TIFIA) program.

Across Capitol Hill, the Chairman of the House Transportation and Infrastructure Committee – Representative Bill Shuster (R-PA) – recently introduced his own six-year highway and transit reauthorization bill. The legislation (HR 3763), entitled the *Surface Transportation Reauthorization and Reform (STRR) Act of 2015*, would authorize a total of \$325 billion for surface transportation programs through 2021, including roughly \$261 billion for the Federal-aid Highway Program. The bill would essentially maintain current highway and transit funding levels, plus annual inflationary adjustments.

Of additional note, while HR 3763 authorizes six years of funding, the bill includes a provision that would prohibit DOT from distributing any funds beyond the first three years of the measure unless new revenues are generated and additional legislation is enacted. The Ways and Means Committee, which has jurisdiction over the revenue title of the bill, is currently working to identify a funding source that would sustain future transportation spending.

With regard to bridges, the STRR Act includes a provision that would make local on-system bridges eligible for funding under the National Highway Performance Program (NHPP). This proposed change to federal law is largely consistent with CSAC's request regarding local bridge funding and would help to address the fact that, currently, only local off-system bridges are eligible to receive dedicated federal funds.

At the same time, the STRR Act would stop short of ensuring direct investment in local on-system bridges. Accordingly, CSAC is seeking a modification to the bill that would require a certain minimum percentage of NHPP funds to be spent on local on-system bridge projects.

In a victory for CSAC, the legislation also includes a pilot program designed to eliminate duplication of environmental reviews. Such an environmental "reciprocity" program has been a long-standing priority for CSAC.

Specifically, the STRR Act would require the Secretary of DOT to establish a program whereby States would be allowed to conduct environmental reviews and make approvals for projects under State environmental laws and regulations instead of Federal laws and regulations. Moreover, the pilot program would allow a State to exercise authority under an approved program on behalf of up to 10 local governments for locally administered projects. In California, where local governments serve as lead agencies under the California Environmental Quality Act, local participation in the proposed reciprocity program is essential.

Finally, MAP-21 is currently operating under a short-term extension (slated to expire on October 29). Although DOT has projected that it will have sufficient revenues in the HTF to finance projects until June of 2016, Congress will still need to pass an extension of the federal policy that authorizes that particular spending.

SECURE RURAL SCHOOLS

Earlier this year, the U.S. Forest Service released a total of \$329 million to more than 700 counties as part of the Secure Rural Schools (SRS) program. In total, 39 California counties received approximately \$35.6 million, down slightly from \$35.8 million in the previous fiscal year. It should be noted that the program expired on September 30, and, unless it is extended or reauthorized, final payments will be distributed in March of 2016.

While there are a number of pending bills that seek to continue the SRS program, 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 example, Senators Ron Wyden (D-OR) and Mike Crapo (R-ID) have introduced bipartisan legislation (S 517) that would extend the SRS program for three years at increased funding levels. Senator Martin Heinrich (D-NM) also has introduced a bill (S 1925) that would extend the program for six years. Across Capitol Hill, Representatives Mark Meadows (R-NC) and Jared Polis (D-CO) have introduced their own proposal (HR 3257) that would provide five additional years of SRS payments. However, none of these proposals include an offset.

In addition to the aforementioned bills, there have been several measures introduced that would reform forest management practices. In fact, the House this past quarter approved legislation – the *Resilient Federal Forests Act* (HR 2647) – that aims to increase timber production by expediting the environmental review process for certain projects. In addition to shortening the review period, the legislation would require individuals or groups that want to challenge approved forest projects to post a bond. If the Forest Service succeeds in court, the agency would use the bond to cover legal fees and expenses. It should be noted that this provision has generated a fair amount of controversy, as the bond would only be returned to the plaintiff if they prevail on *all* causes of action – a significant hurdle.

The measure also would expand the list of eligible expenses under Title III of the SRS program to include law enforcement patrols, training, and equipment purchases. Additionally, the bill would repeal the current requirement that 50 percent of Title II funds be spent on stream and watershed restoration or road maintenance. Instead, the legislation calls for half of the funding to be spent on stewardship projects that include the sale of timber, among other things.

House Democrats and Obama administration officials have expressed serious concerns with HR 2647. In their view, the environmental exemptions are too broad, and the restrictions on judicial review are too extreme. In a Statement of Administration Policy, the White House has expressed its strong opposition to the legislation arguing that it would undermine environmental safeguards and severely diminish public participation.

For its part, CSAC – in partnership with RCRC – sent a letter to the California congressional delegation expressing support for a number of the bill's provisions. The letter also acknowledges that there is room to improve certain aspects of the legislation. Additionally, the correspondence expresses the need to provide a long-term extension of SRS.

PAYMENTS-IN-LIEU-OF-TAXES

In a victory for CSAC, lawmakers approved as part of the aforementioned CR language that directs the Department of the Interior to distribute the remaining \$37 million in fiscal year 2015 PILT funding. Although a total of \$442 million was appropriated for PILT in fiscal year 2015, only \$405 million had been distributed to eligible counties. Without additional direction from Congress, Interior officials indicated that these payments would not be released until March 2016 or later. CSAC worked closely with members of the California congressional delegation to ensure that such a provision was included in the CR.

It should be noted that unless PILT is reauthorized or extended, this will be the last year of funding for the program. While the fiscal year 2016 House Interior and Environment appropriations bill would provide an additional year of PILT funding, Congress has yet to finalize a budget for the remainder of the year. Accordingly, the future of the PILT program remains uncertain.

Despite the best efforts of key lawmakers to advance legislation (S 517; S 1925; HR 3257; S 2164) that would reauthorize 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.

Finally, the National Association of Counties (NACo) held a Washington, D.C. fly-in this past quarter to advocate for PILT funding. Mariposa County Supervisor Kevin Cann represented California's counties in a series of meetings on Capitol Hill. He, along with a number of other county officials from across the nation, urged Congress to provide full funding for PILT in fiscal year 2016 and beyond.

NATIVE AMERICAN AFFAIRS

During the third quarter, Senate Indian Affairs Committee Chairman John Barrasso (R-WY) introduced legislation that would overhaul the Department of the Interior's fee-to-trust process. The bill (S 1879), which includes a series of reforms spearheaded by CSAC, is expected to be considered by the panel sometime this fall.

Under S 1879, the Bureau of Indian Affairs (BIA) would be required to provide up-front notice to counties whenever the agency receives a complete or partial 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 to the extent practicable. Many of the provisions of S 1879 closely mirror CSAC's comprehensive fee-to-trust reform proposal.

It should be noted that throughout the development of S 1879, and since the bill's introduction in the Senate, CSAC has continued to aggressively pursue a number of modifications and clarifications designed to further strengthen the legislation. For example, CSAC is seeking modifications to the bill that would *explicitly require* the Secretary to determine – *prior to issuing a final decision to approve a trust land acquisition* – that all reasonably anticipated off-reservation impacts have been sufficiently mitigated. The association also is pursuing several other key revisions, including an amendment that would require the Secretary to undertake a thorough review process prior to any material change in use of existing trust land that would lead to significantly increased off-site impacts.

While California's counties have long sought statutory reforms in the BIA's fee-to-trust process, the Supreme Court's 2009 decision in *Carcieri v. Salazar* created an avenue for potential legislative action. In *Carcieri*, the Court ruled that Secretary of the Interior's trust acquisition authority was limited to those tribes that were "under federal jurisdiction" at the time of the enactment of the *Indian Reorganization Act* of 1934.

Since the landmark decision, many tribes have called upon Congress to reverse the Court's action by passing legislation that would put all federally recognized Indian tribes on equal footing relative to the opportunity to have land taken into trust. Such a legislative approach, known as a *Carcieri* "clean fix," would not institute standards in the BIA's fee-to-trust procedures. CSAC, while in agreement that Congress should address the inequity caused by the Supreme Court's action, has remained steadfast that any legislation restoring the secretary's trust acquisition authority must be coupled with reforms in the fee-to-trust process.

It should be noted that S 1879 was the topic of brief discussion during a late July Business Meeting of the Committee on Indian Affairs. During the meeting, Senator Jon Tester (D-MT) –

who serves as vice chairman of the committee – withdrew his *Carceri* clean fix (S 732). According to Vice Chairman Tester, the introduction of S 1879 - which includes language restoring the secretary's trust acquisition authority - warrants a further examination of the issue.

HEALTH AND HUMAN SERVICES

Child Welfare Financing Reform

Senate Finance Committee Ranking Member Wyden introduced in August the *Family Stability and Kinship Care Act* (S 1964). The bill, which is cosponsored by seven of the 11 Democrats who serve on the committee, would make fundamental changes to child welfare financing by providing a federal IV-E foster care match for prevention and post-permanency services.

On a related matter, the panel conducted a hearing in August on child welfare reforms where committee Chairman Orrin Hatch (R-UT) expressed his hope that a reform package could be marked up this fall. At this stage, Finance Committee staff on both sides of the aisle are working to craft a bipartisan bill and are sending provisions to the Congressional Budget Office (CBO) to obtain cost estimates of proposed new federal initiatives. There is no House companion bill at this time.

TANF Reauthorization

The House Ways and Means Committee held hearings during the summer on a possible reauthorization of the Temporary Assistance for Needy Families (TANF) program and released a discussion draft. Committee members stated that it was their hope that a bipartisan bill could be agreed to, but no further action has occurred since the draft was circulated.

Among other things, the draft measure would make several positive changes to the types and duration of activities that would qualify as work participation under the TANF program. At the same time, the draft would make it more difficult for states to meet federal work participation mandates by eliminating the ability to count as part of their TANF efforts certain programs, such as California's WINS benefit program. There was no similar movement in the Senate during the third quarter.

Affordable Care Act (ACA) Excise Tax

As reported earlier this year, a 40 percent federal excise tax effective in 2018 will be imposed on high-cost health insurance plans that have a total cost exceeding a statutory dollar amount. The excise tax is based on the total cost of the employer and employee contribution to the plan, as well as any savings account arrangements such as health reimbursement arrangements and flexible spending accounts.

During the past quarter, 45 cosponsors were added to the *Middle Class Health Benefits Tax Repeal Act of 2015* (HR 2050), which would eliminate the ACA excise tax. Thirty-two California members have signed on to the measure, for a total of 160 sponsors. According to CBO, repealing the tax would cost the federal government \$87 billion in lost revenues; accordingly, if HR 2050 is going to advance, it will be critical for bill supporters to identify an offset.

In September, Senators Dean Heller (R-NV) and Martin Heinrich (D-NM) introduced a companion measure (S 2045) to the House ACA bill. Senator Sherrod Brown (D-OH) has introduced a similar bill (S 2075), which is co-sponsored by Senator Boxer.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

This past quarter, the Bureau of Justice Assistance announced fiscal year 2015 State Criminal Alien Assistance Program (SCAAP) awards. In total, 50 California counties are receiving roughly \$12.8 million, with the State of California receiving nearly \$44.2 million. California's combined total represents roughly 34.5 percent of the more than \$165 million that was made available for SCAAP awards.

It should be noted that Congress appropriated \$185 million for SCAAP in fiscal year 2015; however, as in recent years, the Department of Justice (DOJ) exercised its authority to reallocate 10 percent of 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.

On the fiscal year 2016 appropriations front, the House earlier this year approved its Commerce-Justice-Science (CJS) spending legislation (HR 2578). The bill would provide a \$35 million boost for SCAAP, bringing total program spending to \$220 million. The proposed increase represents a positive development for CSAC and California's counties, which have worked with key members of the state's congressional delegation and others in an effort to boost SCAAP funding.

In the Senate, the Appropriations Committee-approved CJS bill would provide \$75 million for SCAAP, or a proposed \$110 million decrease in funding. Historically, the Senate's version of the CJS spending legislation has included limited funding for the SCAAP program.

Notably, both the House and Senate appropriations measures include language that would expand DOJ's authority to reallocate SCAAP funds for other departmental activities. Specifically, the Senate legislation would allow DOJ to transfer up to 17 percent of SCAAP funds for such purposes as training, technical assistance, and research. The House version would not cap the percentage of funds that can be transferred for research and related functions, which would leave the program potentially vulnerable to major administrative cuts.

Looking ahead, it remains to be seen how much funding Congress will ultimately make available for SCAAP in fiscal year 2016. For its part, CSAC sent correspondence this past quarter to members of the California congressional delegation urging lawmakers to support, at a minimum, the House funding level. In addition, the letter urges members to oppose any effort to expand DOJ's reprogramming authority.

Finally, and on a related matter, both the House and Senate considered legislation this past quarter that would bar so-called "sanctuary jurisdictions" from receiving federal funding for certain programs. In the House, lawmakers approved on a largely party-line vote a bill (HR 3009) that would preclude sanctuary jurisdictions from receiving SCAAP funding. The legislation also would prohibit such jurisdictions from receiving Byrne-JAG and Community Oriented Policing Services (COPS) program funding.

In the Senate, Democrats recently voted to block the chamber from considering legislation (S 2146) that would bar sanctuary jurisdiction from receiving SCAAP, COPS, and Community Development Block Grant (CDBG) funding. Pursuant to S 2146, jurisdictions would be required to honor all detainers issued by U.S. Immigration and Customs Enforcement or risk becoming ineligible for the aforementioned programs. The legislation also would impose mandatory minimum sentences for those who illegally reenter the country after being deported.

For its part, the Obama administration has expressed strong opposition to various legislative proposals that would target sanctuary jurisdictions, including HR 3009 and S 2146. In fact, the White House has issued official statements threatening to veto the aforementioned measures if they were to be presented to the president for his signature.

REMOTE SALES TAX

Earlier this year, House Oversight and Government Reform Committee Chairman Jason Chaffetz (R-UT) introduced Internet sales tax legislation – the *Remote Transaction Parity Act* (RTPA; HR 2775). RTPA builds upon another online sales tax measure, the *Marketplace Fairness Act* (MFA; S 698), which has been endorsed by CSAC. Like the MFA, the Chaffetz legislation would 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.

While the two bills are fairly similar, RTPA includes significant audit protections for small businesses that are not included in S 698. Another key difference is that the RTPA would exempt more small businesses from tax collection requirements in the first few years after enactment. Finally, HR 2775 would require states to provide remote sellers with the software needed to collect and remit the taxes owed (it also would require states to pay for set-up, installation, and maintenance costs of the software).

The Chaffetz bill has been referred to the House Judiciary Committee, where Chairman Bob Goodlatte (R-VA) has been working on his own draft proposal – the *Online Sales Simplification Act*. Unlike the two aforementioned bills, the Goodlatte draft 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. In addition, Goodlatte's proposal would only subject remote sellers to one audit by their home state taxing authority and does not include an exemption for small businesses. Thus far, House and Senate GOP leaders have shown little interest in moving remote sales tax legislation this year. However, it should be noted that Chaffetz is one of several candidates vying to become the next Speaker of the House. If he is successful in his bid, it could breathe new life into online sales taxes legislation.

In a related development, the CR temporarily extends a law that prevents local governments from taxing broadband internet access. The current moratorium was set to expire on September 30, 2015, but will now remain in place until December 11, 2015. Looking ahead, key lawmakers may once again attempt to link Internet sales tax legislation to a long-term extension of the Internet access tax moratorium, perhaps as part of a year-end budget deal.

PROPERTY ASSESSED CLEAN ENERGY PROGRAM

This past quarter, the Obama administration unveiled a number of initiatives designed to encourage renewable energy development and promote energy efficiency. Among other things, the administration's plan includes a proposal to expand financing options for residential Property Assessed Clean Energy (PACE) programs. The Department of Housing and Urban Development's (HUD) Federal Housing Administration (FHA) – which provides mortgage insurance for more than 7.6 million households nationwide – is expected to soon issue guidance allowing borrowers to use FHA financing for properties with existing PACE loans. However, it should be noted that the new guidelines will require the subordination of PACE financing to the first lien FHA mortgage.

For the most part, programs in California currently require PACE assessments to hold senior lien status, putting it first in line to be repaid in the event of a default. While this is the preferred option among investors, mortgage lenders have argued that this can be an impediment to the sale and refinancing of PACE-encumbered properties. Some lenders even require the lien to be paid in full prior to the sale or purchase of the property.

The dispute between investors and lenders has created some uncertainty in the PACE marketplace and has undoubtedly discouraged some homeowners from taking advantage of this innovative financing tool. At the very least, the forthcoming FHA guidance should help establish clarity for both borrowers and lenders, though it should be noted that the majority of programs operating in California will need to make some changes to their current financing structure to take full advantage of these new guidelines.

Finally, this announcement could set the stage for the Federal Housing Finance Agency (FHFA), which oversees Fannie Mae and Freddie Mac, to make a similar move. Since 2010, FHFA has largely thwarted residential PACE programs across the country, due in large part to the agency's view that senior liens established by PACE assessments pose risk management challenges for existing mortgage lenders.

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

