



CSAC

WASHINGTON BRIEFS

THIRD QUARTER 2008

Members of Congress concluded a busy third quarter of 2008 with approval of a massive Wall Street bailout plan the week of September 29. Passage of the legislation represents the last definitive action taken by the 110th Congress, barring completion of any outstanding items in a possible lame-duck session.

The centerpiece of the financial bailout is authority granted to the U.S. Department of Treasury to purchase up to \$700 billion in troubled assets – primarily in the form of mortgage-backed securities – from faltering financial institutions. If implementation proceeds as planned, the action will help stabilize the nation’s credit and housing markets, which have seized up in the face of ongoing market turbulence.

In addition to the financial rescue package, Congress also managed to clear several other major pieces of legislation this past quarter. For starters, lawmakers approved a \$186.5 billion fiscal year 2008 emergency supplemental appropriations bill to pay for, among other things, ongoing military operations in Iraq and Afghanistan.

Lawmakers also debated and passed a landmark housing bill intended to provide relief to the besieged housing sector. The legislation – enacted into law on July 30 – includes provisions to help homeowners avoid foreclosure and provides financial reinforcement for mortgage giants Fannie Mae and Freddie Mac. Additionally, the bill includes nearly \$4 billion in Community Development Block Grants to assist state and local governments with the purchase, rehabilitation and resale of foreclosed houses.

On the fiscal year 2009 budget front, lawmakers finalized and President Bush signed into law on September 30 a massive year-end Continuing Resolution (CR). The bill’s enactment, which occurred just hours before the start of the new fiscal year, capped a tumultuous appropriations season in which Congress failed to clear any of the 12 regular spending bills for fiscal year 2009.

The \$600 billion CR provides funding for federal programs through March 6, leaving decisions over how to fund the balance of the fiscal 2009 budget year to the new president and the next

Congress. Although the measure freezes federal spending for most programs, it does provide increased investment for defense, military construction, veterans affairs, and homeland security-related initiatives.

The following sections provide a status report on the California State Association of Counties' (CSAC) key federal legislative priorities for 2008.

SECURE RURAL SCHOOLS/COUNTY PAYMENTS

In a major victory for California's forest counties, the financial rescue legislation (HR 1424) includes a long-awaited, four-year renewal of the Secure Rural Schools (SRS) program. Championed by a number of key members of the California congressional delegation, the provisions of the new law authorize a four-year phase down of funding provided under the program. The new law also designates additional transition funding for California, Oregon, and Washington during the first three years of the reauthorization period.

All told, the bailout legislation includes \$1.6 billion in SRS funding through 2011. The \$1.6 billion is in addition to the \$100 million in annual funding that would otherwise have been available from timber harvest receipts.

Established in 2000 to help rural counties adjacent to U.S. national forest lands cope with sharp declines in revenue from federal forest timber sales, the authorization for SRS expired in 2006, with Congress approving one-year extensions of the program since that time. Absent a renewal of the SRS program, many rural counties in California and in other parts of the country would have been forced to make significant cuts to a number of essential local services. Securing a multi-year reauthorization of the SRS program had been one of CSAC's top federal legislative priorities throughout the 110th Congress.

On a related matter, the final bailout legislation also includes \$1.684 billion in funding for the Payment-in-lieu-of-Taxes (PILT) program. Under the bill, the PILT program – which provides federal funding to local governments to help offset losses in property taxes due to nontaxable Federal lands within their boundaries – will be fully funded through 2012. Like SRS, the PILT program is of critical importance to California's rural counties, whose budgets rely heavily on PILT payments.

MEDICAID/SCHIP

Given the crush of must-pass legislation at the end of September, House and Senate Democrats abandoned the idea of pushing for a long-term renewal of the State Children's Health Insurance Program (SCHIP). Instead, SCHIP will continue to operate under a short-term extension through next March.

Bowing to political pressure, the federal Centers for Medicare and Medicaid Services (CMS) announced that it would not take action in the near term against states that are not complying with its August 2007 directive that effectively restricts state efforts to increase SCHIP coverage to families above 250 percent of poverty. At the same time, CMS stated that it would not rescind the directive.

On the Medicaid front, the Bush administration has delayed further action on implementing six of its seven pending Medicaid regulations pursuant to the moratoria enacted into law in June. A proposed rule restricting payments for outpatient hospital services remains the one outstanding regulation without a moratorium. It should be noted that Senators Dianne Feinstein (D-CA) and Barbara Boxer (D-CA) introduced legislation (S 3656) before the recess that would place a six-month moratorium on the outpatient hospital rule. A companion bill (HR 7241) was recently introduced in the House.

In other developments, CSAC's Washington representatives urged members of the California congressional delegation to sign onto a recent letter to the U.S. Department of Health and Human Services (HHS) requesting that the agency withdraw new eligibility requirements imposed on the state's longstanding family planning waiver. Under the waiver, the State of California provides family planning services to persons who have incomes too high to qualify for Medi-Cal but less than 200 percent of poverty.

CSAC's Washington representatives worked with Governor Schwarzenegger's Washington office to obtain the signatures of all of the State's Democratic representatives. To date, there has been no response from the secretary of HHS to the state's Democratic members of Congress. It should be noted that the Medicaid outpatient legislation described above (S 3656/HR 7241) also would delay any changes to the current family planning waiver (until June 30, 2009).

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

The final funding figure for the State Criminal Alien Assistance Program (SCAAP) remains unsettled in the wake of Congress' failure to approve a new budget for the fiscal year that began October 1. Funding for the SCAAP program will be revisited early next year when the new Congress and president negotiate a final budget package for fiscal year 2009.

Although Congress failed to clear any of this year's appropriations bills, a number of spending measures were approved by the House and Senate Appropriations Committee. In the lower chamber, the House Appropriations panel approved its Commerce-Justice-Science spending bill with \$420 million in funding for SCAAP, or a \$10 million increase over the previous spending level. The Senate Appropriations Committee recommended \$355 million for SCAAP.

It remains to be seen whether the new 111th Congress will use this year's committee-approved appropriations bills as a baseline in the development of a final fiscal year 2009 budget package.

In other news, the Bureau of Justice Assistance announced this past quarter the fiscal year 2008 SCAAP awards. The State of California and its counties are receiving nearly \$161.5 million, or over 40 percent of the SCAAP funding nationwide.

REAUTHORIZATION OF SAFETEA-LU

In early September, Senator Boxer, the chairwoman of the Senate Environment & Public Works Committee, conducted a series of field briefings in California to solicit comments on the reauthorization of the nation's surface transportation law (SAFETEA-LU). Senator Boxer heard testimony from a number of stakeholders from state and local governments, as well as from representatives of business and industry.

In conjunction with the field briefing that took place in Sacramento, Senator Boxer met with CSAC officials and representatives of the Coalition Against Bigger Trucks. During the meeting, Senator Boxer agreed to cosponsor S 3021, the Safe Truck Operations and Preservation Act, which would prohibit the federal government from authorizing an increase in the allowable size and weight of commercial trucks.

In related news, and with projections showing a major shortfall in federal transportation funding beginning in fiscal year 2009, Congress approved in mid September legislation (HR 6532) that transfers \$8.017 billion from the General Treasury to the Highway Trust Fund (HTF). President Bush, who had opposed the general fund transfer earlier in the year, signaled his support for the measure in the face of increased pressure to shore up the HTF. The president signed the bill into law on September 15.

All told, the HTF was facing a projected shortfall of anywhere between \$3 billion and \$6 billion. According to the American Association of State Highway and Transportation Officials, roughly 380,000 jobs were at risk due to the impending hole in the trust fund. Overall, states were facing a 34 percent cut in highway funding, with California projected to lose 32,000 jobs if Congress did not act.

COMMUNITY DEVELOPMENT BLOCK GRANT

The final fiscal year 2009 funding level for the Community Development Block Grant (CDBG) has not been determined by Congress. Instead, like most other federal spending programs, the CDBG is funded at fiscal year 2008 levels through March 6. Once lawmakers reconvene early next year, final funding figures for individual spending programs will be settled.

Earlier this year, the House Transportation-Housing and Urban Development (HUD) Appropriations Subcommittee approved roughly \$4 billion for the CDBG program, or a \$134 million increase over current spending. Across Capitol Hill, the Senate Appropriations Committee approved \$3.9 billion for the CDBG program.

Like past years, the Bush administration once again proposed slashing funding for the CDBG as part of its fiscal year 2009 budget proposal. Specifically, the administration's budget called for a cut of 18 percent from the previous funding level.

CLIMATE CHANGE

The Senate voted in early June to shelve major global warming legislation (S 3036) after a clash over judicial nominations bogged down debate on the measure. Although observers expected a lengthy discussion on the bill, the upper chamber only spent about two days debating the legislation. In the end, supporters of the bill were unable to garner the 60 votes necessary to invoke cloture.

S 3036, championed by Senator Boxer, would cap emissions of carbon dioxide and other greenhouse gases at 19 percent below current levels by 2020 and 71 percent by 2050. Under the legislation, utilities and other facilities could reduce their own carbon emissions or buy allowances on a so-called carbon market; the government would then auction the allowances and spend the revenues on compliance costs and investments in clean technologies.

In addition to providing significant funding to various private sector industries, S 3036 would allocate funds to states and localities, including \$171 billion for mass transit activities through 2050. Additionally, the measure would fund the Energy Efficiency and Conservation Block Grant (EECBG) program at \$136 billion. The EECBG was created in the recently enacted Energy Independence and Security Act of 2007, and is designed to assist eligible entities – including counties – implement energy efficiency and conservation strategies. The bill also would reward states that take actions to reduce greenhouse gas emissions with \$566 billion through 2025.

With a wide disparity of views among senators as to the climate change legislation's potential impact on the economy, many observers were skeptical that bill supporters would be able to generate sufficient support for S 3036, even if the judicial nominee spat hadn't bogged down the Senate's debate. According to Boxer, the cloture vote, though disappointing, provides a roadmap for the next president in assessing levels of support for major climate change legislation in the future.

FARM BILL

After months of negotiations and procedural hurdles to correct a clerical error that omitted the Trade Section of the Farm Bill, the House and Senate overrode President Bush's veto of the final legislation (HR 2419/PL 110-234). Congress' vote to override the Farm Bill veto represents one of the few occasions in which the 110th Congress has successfully overruled the president.

Enacted into law on May 22, the \$289 billion, five-year Farm Bill significantly increases nutrition spending while at the same time preserving crop subsidies. All told, the legislation provides roughly \$10.3 billion in new funding for nutrition programs, including \$1.2 billion to restock

food banks and \$1 billion for a school snack program. Nutrition funding comprises more than 73 percent of the new Farm Bill.

The new law also sets stricter income eligibility limits for farmers to receive payments, and provides new incentives for alternative energy.

With regard to the Rural Development title of the bill, the new law modifies the definition of “rural” to ensure that federal funding is directed to rural areas with the greatest needs. Additionally, the bill authorizes the Rural Water and Wastewater Circuit Rider Program at \$25 million for each fiscal year from 2008 through 2012 and extends the Rural Business Investment Program authorization through 2012. The final legislation also provides \$120 million in mandatory funds for applications that are pending for water systems, waste disposal systems, and emergency community water assistance grants.

INDIAN GAMING

This past quarter, CSAC submitted correspondence to the National Indian Gaming Commission (NIGC) in response to a series of questions posed by the commission with respect to Indian Lands Determinations made under the after-acquired lands provisions of the Indian Gaming Regulatory Act (IGRA). CSAC’s response, which was shared with the state’s congressional delegation, made a number of recommendations that are intended to ensure that local governments receive sufficient notice of and have the opportunity to comment on various rules and regulations that could impact local communities.

On Capitol Hill, members of the 110th Congress adjourned without considering any major restructuring of IGRA. Instead, committees with jurisdiction over tribal matters held a number of hearings on various gaming-related issues throughout the year.

For one, the House Natural Resources Committee held a hearing earlier this year to review the Bureau of Indian Affairs’ (BIA) guidance on taking off-reservation land into trust for gaming purposes. In the wake of the hearing, the committee’s chairman – Representative Nick Rahall (D-WV) – introduced legislation (HR 5608) that would require the federal government to consult with tribal governments prior to developing or modifying policies, rules, or regulations that could affect tribes.

It should be noted that Rahall’s measure would essentially codify Executive Order (EO) 13175, which was signed by President Clinton back in 2000 and requires federal agencies to consult with Indian tribes on a government-to-government basis. According to Rahall, the legislation is necessary in light of the Bush administration’s repeated failure to adhere to the EO, with the latest example being BIA’s January 3 guidance.

Pursuant to BIA’s new policy directive, all off-reservation land acquisitions – whether for gaming or non-gaming purposes – must be a “commutable distance” from a tribe’s reservation land. In defending its new policy, BIA has pointed to current regulations, which require land

acquisitions to be made in accordance with the tribe's best economic and social interests, while at the same time taking into account concerns raised by state and local governments as to an acquisition's potential impacts on regulatory jurisdiction, real property taxes, and special assessments.

FUELS MANAGEMENT

Congressional appropriators made little progress on this year's Interior Appropriations legislation, with only the House Interior spending panel approving a draft version of its bill. Included in the measure is \$2.97 billion for the wildland fire accounts of the U.S. Forest Service and the Department of the Interior, or \$141 million above the level requested by the president and \$217 million above the 2008 enacted level. Additionally, the committee recommended a \$194 million increase for fire suppression operations.

In other news, lawmakers adjourned without taking action on legislation by Representative Mark Udall (D-CO) (HR 5218) that would provide at-risk communities with incentives to improve fire prevention efforts is pending before a number of House Committees. Under the measure, communities that adopt a new model ordinance with regard to building codes, creation of "defensible space" around homes, and reduction of hazardous fuels, would be eligible for increased federal assistance. The bill also would authorize a new \$25 million grant program to assist local communities in implementing fire-prevention strategies.

It should be noted that HR 5218 is a companion bill to legislation that Senator Feinstein introduced last year. That bill, S 2390, also did not see any legislative action this year.

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