



## CSAC

### WASHINGTON BRIEFS

### FIRST QUARTER 2011

Due to the failure of the previous Congress to finalize any of the fiscal 2011 appropriations bills, the new, divided 112<sup>th</sup> Congress was forced to grapple with current year spending challenges throughout the first quarter of 2011. With the constant threat of a government shutdown looming, most other matters were largely pushed aside as budgetary issues dominated the agenda in Washington in recent months.

Operating under a series of stopgap funding measures since the beginning of the fiscal year (October 1, 2010), congressional leaders and President Obama finally reached an agreement in April that would shave \$38 billion from federal spending this year. The compromise package resolved an impasse that had threatened to disrupt most federal programs and activities.

During the intense negotiations, Republicans remained committed to their proposed \$62 billion in discretionary cuts, as well as elimination of funding for Planned Parenthood and curbing certain environmental regulations. Given that the so-called policy riders were unable to gain any traction in the Democratic-controlled Senate, House GOP leaders agreed to drop the provisions in exchange for the \$38 billion in cuts in federal spending.

In other budget developments during the first quarter, President Obama released in February his \$3.73 trillion fiscal year 2012 budget request to Congress, maintaining that the plan would trim the deficit by more than a \$1 trillion over the next decade. Under the proposal for next year, overall spending would drop by 2.7 percent from the \$3.8 trillion the president had proposed for the current fiscal year.

With mounting pressure to rein in soaring budget deficits, President Obama's funding proposal provides for a five-year freeze in overall domestic discretionary spending at fiscal year 2010 levels, though the president would cut specific programs to pay for some of his new initiatives. According to the White House, the proposed freeze would save an estimated \$400 billion over 10 years.

Some programs, however, would be sheltered from the freeze, including education, biomedical research and other priority items. In fact, these programs would actually realize a boost in funding under the president's spending recommendations.

With Congress finalizing this year's budget, lawmakers will now begin the more difficult task of cobbling together a funding plan for fiscal 2012, which begins October 1. To that end, House Republicans released in early April a controversial budget blueprint that proposes to restructure Medicare for those under age 55, transform Medicaid into a block grant, and reduce spending for other domestic programs. Drafted by the chairman of the House Budget Committee, Paul Ryan of Wisconsin, the proposal is expected to pass the House, but is likely to receive a chilly reception by Senate Democrats and the Obama administration.

### NATIVE AMERICAN AFFAIRS

This past quarter, Representatives Tom Cole (R-OK) and Dale Kildee (D-MI) – the co-chairs of the Congressional Native American Caucus – introduced legislation (HR 1291 and HR 1234, respectively) that would overturn the U.S. Supreme Court's *Carcieri v. Salazar* decision. In *Carcieri*, the Court held that the secretary of Interior lacks authority to take land into trust for Indian tribes that were not under federal jurisdiction at the time of the passage of the Indian Reorganization Act (IRA) of 1934.

Under the Cole/Kildee measures, the secretary of Interior would regain authority to take land into trust for *all* Indian tribes. The legislation, known as *Carcieri* "clean fix" bills, would not provide reforms in the fee-to-trust process.

Across Capitol Hill, Senate Indian Affairs (IA) Committee Chairman Daniel Akaka (D-HI) introduced a companion *Carcieri* "clean fix" bill (S 676) in late March. The legislation was recently approved by the committee without dissent.

During consideration of S 676, the panel adopted an amendment by Vice Chairman John Barrasso (R-WY) that would direct that secretary of Interior to conduct a study on the effects of the *Carcieri* decision on Indian tribes. The amendment, which specifies that the study include a list of affected tribes and lands, would need to be published not later than one year *after* the bill's enactment.

The IA Committee action is only the opening salvo in what will become a multifaceted and deliberative process surrounding efforts to move a *Carcieri* "fix." Prior to any Senate floor consideration, there will be extensive discussion among a number of key senators regarding the makeup of the legislation.

On a related matter, Senator Dianne Feinstein (D-CA) recently introduced a bill designed to limit the establishment of off-reservation Indian casinos. *The Tribal Gaming Eligibility Act* (S 771), which is cosponsored by Senator Jon Kyl (R-AZ), seeks to end the practice known as

“reservation shopping” whereby tribes seek to build casinos on lands that are hundreds or even thousands of miles away from their homelands.

Under S 771, tribes could only open casinos on trust land acquired after the passage of the *Indian Gaming Regulatory Act of 1988* (IGRA) if the tribe could demonstrate a substantial modern connection to the land and a substantial aboriginal or ancestral connection to the land or by going through IGRA’s “two-part determination” test. Under the two-part determination, the secretary of Interior can take land into trust for a tribe for purposes of gaming if it can be demonstrated that the casino would be in the best interest of the tribe and is not detrimental to the surrounding community; the determination requires the concurrence of the governor.

### **REAUTHORIZATION OF THE SECURE RURAL SCHOOLS ACT**

President Obama’s fiscal year 2012 budget proposes a five-year reauthorization of the Secure Rural Schools (SRS) program. In fiscal year 2012, the White House is recommending \$328 million in discretionary funding for SRS, though the budget indicates that the administration is open to working with Congress to fund the program through either discretionary or mandatory appropriations.

Under the president’s plan, the SRS program would realize annual ramp downs in payments. The budget also recommends several policy modifications, including changes to the program’s allocation structure.

In other developments, the House fiscal year 2012 budget resolution includes a deficit neutral reserve fund for rural counties and schools. Under the resolution, the Committee on Budget is permitted to revise the allocations of another committee(s) pursuant to legislation that would provide for a reauthorization of the SRS program or make changes to the Payments-in-Lieu-of-Taxes Act (or both) provided that the legislation would not increase the deficit or direct spending. The inclusion of the aforementioned language in the House budget resolution is due to the collective efforts of stakeholder organizations and their champions in Congress pushing for a long-term renewal of the SRS program.

In the Senate, discussions are ongoing relative to the reauthorization of the SRS Act. Although the Senate budget resolution has not yet been released, that document is expected to be unveiled in early May.

### **REAUTHORIZATION OF SAFETEA-LU**

Congress approved in early March yet another extension of the nation’s highway and transit programs. The most recent extension runs through the end of September and marks the seventh time that lawmakers have extended SAFETEA-LU since the Act first expired on September 30, 2009.

In what seems like an endless attempt to produce a multi-year bill, transportation leaders in both the House and Senate are aiming to introduce transportation proposals this spring, but that time-frame could easily slip into later in the year.

In an effort to begin moving the process forward, the Senate Environment and Public Works Committee and the House Transportation and Infrastructure Committee held a series of reauthorization-related hearings this past quarter. The committees held hearings in Washington, D.C., as well as in several states, including California.

In related transportation news during the opening quarter, U.S. Transportation Secretary Ray LaHood testified on Capitol Hill in February, facing congressional committees to defend the Obama administration's six-year, \$556 billion surface transportation reauthorization proposal that was outlined in its fiscal year 2012 budget request.

Among other items, President Obama's budget plan would consolidate 55 highway programs into five. Additionally, the president's transportation initiative would merge rail spending within the Highway Trust Fund to create a Transportation Trust Fund (TTF). The proposed TTF would be comprised of four separate accounts (highways, transit, high-speed rail, and the National Infrastructure Bank). The new National Infrastructure Bank would finance large-scale public works projects.

The president's transportation plan, however, does not provide for a funding mechanism to replace the gas tax. Secretary LaHood noted that the administration was leaving funding decisions up to Congress, which continues to be one of the main sticking points as lawmakers deliberate on the SAFETEA-LU rewrite.

#### **ARMY CORPS OF ENGINEERS LEVEE VEGETATION REMOVAL POLICY**

In the face of considerable opposition to its levee vegetation removal policy, the Army Corps of Engineers agreed this past quarter to delay final action on the policy pending further stakeholder comments and recommendations. Under the Corps' policy, state and local agencies are required to remove vegetation from levees regardless of whether the vegetation could result in the weakening of levees. It should be noted that although the Corps has a variance process in place, the high cost associated with the variance application process is prohibitive for most agencies and can consume financial resources that could be spent on levee improvement projects.

For its part, CSAC has continued to work closely with key members of the California congressional delegation on this issue. A number of members of the House, led by Representatives Doris Matsui (D-CA) and John Garamendi (D-CA), have continued to urge the Corps to not only delay implementation of its variance process, but to modify its vegetation policy to take into account regional differences in relation to the policy and to consider state and local expertise in the redevelopment process. Senators Feinstein and Barbara Boxer (D-CA) also have strongly supported CSAC and other stakeholders in this matter.

As the Corps considers revising its vegetation maintenance policy, CSAC and other stakeholders have proposed language for the next Water Resources Development Act (WRDA) that would provide specific, statutory direction to the Corps with regard to clarification of the levee vegetation policy.

### **CLEAN WATER ACT**

Several members of Congress have introduced legislation that would amend various sections of the Clean Water Act (CWA), with a number of other lawmakers readying additional proposals and amendments to modify the Act. Although it remains unclear whether CWA amendments will advance in the House or Senate, discussions are expected to continue throughout the new Congress.

CSAC, along with other stakeholders, is again calling on Congress to amend Section 404 of the CWA to provide a maintenance exemption for removal of sediment, debris and vegetation from flood control and drainage facilities. Legislation to provide for such an exemption is expected to be introduced in the House in the near future.

### **STATE CRIMINAL ALIEN ASSISTANCE PROGRAM**

The Obama administration requested as part of its fiscal year 2012 budget submission \$136 million for the State Criminal Alien Assistance Program (SCAAP). The proposal represents a \$194 million reduction from the fiscal year 2010 funding level.

The president's budget also would eliminate the 80 percent credit received by counties, as well as the 65 percent credit received by states, for inmates of unknown immigration status in the calculation of SCAAP payments. The credit is based on a match of records of foreign-born inmates against federal immigration databases.

It should be noted that the federal government does not screen the immigration status of most state and local inmates; however, identifying information on all legal immigrants – but not many undocumented immigrants – is included in federal immigration databases. As a result, inmates of unknown immigration status are far more likely to be unlawfully than lawfully in the country. Moreover, these inmates are more likely to be in county jails where far more foreign-born inmates are released without being screened by federal immigration agents. Accordingly, the Obama administration's credit elimination would have a disproportionately negative impact on counties.

With regard to fiscal year 2011, it appears as though SCAAP will be receiving roughly \$273 million under the recently approved budget deal. Under the final budget, funding for state and local law enforcement programs is reduced by a little over 17 percent, meaning SCAAP is reduced by over \$56.5 million in the current fiscal year.

## TEMPORARY ASSISTANCE FOR NEEDY FAMILIES REAUTHORIZATION

As expected, this year's Temporary Assistance for Needy Families (TANF) reauthorization process has gotten off to a deliberate start. For its part, the Obama administration proposed in its fiscal year 2012 budget to explore with Congress a *"variety of strategies to strengthen the program's ability to improve outcomes for families and children, including helping more parents succeed as workers by building on the recent successes with subsidized employment, using performance indicators to drive program improvement; and preparing the program to respond more effectively in the event of a future economic downturn."*

TANF hearings may be conducted later this year, with reauthorization legislation not expected to be unveiled until States submit in late summer new, more comprehensive data on the use of program funds. In the mean time, TANF continues to operate under a temporary extension, which provides programmatic authority through September 30, 2011.

## RENEWABLE ENERGY

This past quarter, Senate Energy and Natural Resources (ENR) Committee Chairman Jeff Bingaman (D-NM) stated his intention to resurrect bipartisan legislation that was approved by the committee in the last Congress. Among the bills likely to be back on the ENR Committee's agenda is a measure that would provide for a nationwide renewable energy standard.

In order to determine the likelihood of achieving legislative consensus and to help inform the committee during the potential development of "Clean Energy Standard" (CES) legislation, Chairman Bingaman released this past quarter a white paper soliciting comments on key questions and potential design elements of such a standard. The committee is seeking input on a variety of threshold and cost-related questions.

Across Capitol Hill, House Energy and Commerce Committee Republicans in laying out their agenda for the new Congress expressed opposition to energy technology mandates that must be met regardless of cost, though indicated governments have important roles to play in facilitating development of alternative energy. Committee Chairman Fred Upton (R-MI) has stated that the committee will be exploring the electricity cost and reliability implications associated with federal government mandates for increased renewable energy mandates.

For his part, President Obama unveiled a proposal this past quarter that calls for deriving 80 percent of U.S. power from clean sources by 2035. The proposal calls for the inclusion of emission-free nuclear power, as well as clean coal, natural gas, wind, and solar energy.

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