



CSAC

WASHINGTON BRIEFS

SECOND QUARTER 2010

Congress was occupied with a host of high-profile issues during the second quarter, including legislation designed to create jobs, initiatives to respond to the oil spill disaster in the Gulf of Mexico, an overhaul of the nation's financial regulatory system, and an emergency supplemental appropriations bill.

In an effort to boost employment, the House in late May approved a scaled-down version of a package of tax cuts and program extensions (HR 4213) that lingered on Capitol Hill for over a month. The so-called "extenders" bill cleared by the lower chamber carries a price tag of roughly \$113 billion and would increase the deficit by about \$54 billion, according to projections by the Congressional Budget Office.

For its part, the Senate failed in June to adopt its version of a jobs/tax extenders bill that would have, among other things, extended the Federal Medical Assistance Percentage (FMAP) for Medicaid benefits and foster care payments for an additional six months, through June 30, 2011. The legislation, which fell three votes short of the necessary 60, trimmed the FMAP boost by one-third, from \$24 billion to \$16 billion. The same measure also contains a \$2.5 billion extension through fiscal year 2011 for the Temporary Assistance for Needy Families Emergency Contingency Fund (TANF-ECF).

FMAP and TANF-ECF remain in legislative limbo until after the Senate returns from its one-week Fourth of July break.

On the other side of Capitol Hill, a bill (HR 5618) that would provide for an extension of unemployment benefits failed to garner enough votes to pass the House in late June. Republicans and a handful of moderate Democrats argued that the hefty \$33.9 billion price tag would add to the growing national deficit because the cost of the bill was not offset.

The continuing oil spill in the Gulf of Mexico also captured the attention of lawmakers as House leadership directed committee chairmen to develop a comprehensive legislative response to the catastrophe. Specifically, panel leaders are tasked with examining regulatory modifications,

worker safety, whistleblower protection, and increased corporate liability for maritime accidents.

In other developments, House and Senate negotiators reached a landmark agreement on legislation (HR 4173) that would overhaul the nation's financial regulatory system. The bill would, among other items, create a new government council that would monitor, identify and resolve risks to the nation's economy posed by large financial institutions. The measure also would create an independent consumer protection agency that would enforce consumer protection laws and banking and credit unions regulations.

Additionally, prior to the Independence Day recess, the House passed a \$58.8 billion fiscal year 2010 emergency supplemental spending measure (HR 4899) to finance the wars in Iraq and Afghanistan. The bill also includes funds for oil spill response activities in the Gulf, as well as money to beef up U.S.-Mexico border security and funding to prevent teacher layoffs.

HR 4899 will now return to the Senate for its approval of the amended bill. It should be noted that the Senate's emergency supplemental spending measure includes language that would reverse a provision in the fiscal year 2010 Department of Interior Appropriations Act (PL 111-88) that repealed the authority to make geothermal revenue sharing payments to counties. The repeal language is also included in the Senate version of the extenders bill.

MEDICAID

Senate Democratic leaders continued to struggle this past quarter to find 60 votes to adopt a six-month extension – through June 30, 2011 – of the enhanced federal match for Medicaid and IV-E foster care benefits. Originally enacted under the American Recovery and Reinvestment Act (ARRA), the extension is part of the aforementioned tax extenders bill.

In an attempt to garner votes for the overall legislation, Democratic leaders decreased ARRA's 6.2 percentage point increase in the federal match down to 5.3 percentage points for the timeframe covering January 2011 to March 2011; the percentage would then decrease to 3.2 percentage points from April 2011 to June 2011. The new proposal would bring \$1.87 billion in additional federal funds to California over the first half of 2011. Given its high unemployment rate, the state would still qualify for the additional 5.39 percentage point increase under the revised measure.

Citing concerns about the deficit, all Senate Republicans – along with Senator Ben Nelson (D-NE) – have expressed opposition to the bill, meaning Senate Democratic leaders do not have the necessary votes to avoid a filibuster. While a majority of the \$109 billion in spending is offset, the \$34 billion cost of extending unemployment insurance benefits is not paid for under the current version of the legislation. Additional attempts to move the bill are expected in late July.

It should be noted that both the House and Senate adopted FMAP extensions earlier in the year in separate legislative vehicles, but those bills were never reconciled. All California House Democrats and the state's two senators have supported the provision, while California Republicans have opposed it, citing concerns about the increasing federal deficit.

NATIVE AMERICAN AFFAIRS

Congress did not take further action this past quarter on legislation that would clarify the Secretary of Interior's authority to take land into trust for Indian tribes. The bills in question (S 1703/HR 3742/HR 3697) would essentially overturn the U.S. Supreme Court's ruling in *Carcieri v. Salazar*, which limits the secretary's trust land acquisition authority to those tribes that were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934.

Last December, the Senate Indian Affairs Committee approved by voice vote and without dissent S 1703, which is sponsored by the committee's chairman, Senator Byron Dorgan (D-ND). During the committee's markup of the legislation, the panel approved an amendment by Senator Tom Coburn (R-OK) that would require the Department of Interior (DOI) to publish a list of tribes affected by the *Carcieri* decision. Under the amendment, DOI would need to produce the list within one calendar year.

Across Capitol Hill, the House Natural Resources Committee held last year a legislative hearing on HR 3742 and HR 3697. The bills are sponsored by Representative Dale Kildee (D-MI) and Representative Tom Cole (R-OK), respectively. Steven Woodside, County Counsel for Sonoma County, testified at the hearing on behalf of CSAC.

It should be noted that CSAC, along with several other state associations of counties and NACo, have continued to advocate for comprehensive reforms of the fee to trust process. In arguing against advancing the aforementioned *Carcieri* "quick fix" bills, counties are proposing congressional reforms that would repair the fee-to-trust process and encourage local governments and tribes to work together on a government-to-government basis.

REAUTHORIZATION OF SAFETEA-LU

Unable to reach agreement on a new long-term reauthorization of the nation's highway and transit law (SAFETEA-LU), lawmakers approved earlier this year an extension of federal transportation programs as part of the HIRE Act (PL 111-147). Under the law, the Highway Trust Fund (HTF) is extended through the end of the current calendar year via General Fund transfers of \$19.5 billion.

In addition, the HIRE Act restores in the current fiscal year \$8.7 billion in highway contract authority to states that had been rescinded at the end of fiscal year 2009. The law also allows the HTF in the future to collect interest on its deposits.

With regard to the prospects for a new, multi-year transportation authorization bill, the single biggest hurdle in Congress remains identifying a financing source for highway and transit investment. Although the House Transportation & Infrastructure Committee's Highways and Transit Subcommittee approved last year a draft six-year surface transportation bill totaling \$500 billion – or a 38 percent increase in spending – House lawmakers have not identified a corresponding financing mechanism.

Apart from the proposed funding levels, the House draft bill would consolidate or eliminate 75 programs and create the following five core highway formula-driven categories: 1) Critical Asset Investment (CAI) Program (includes National Highway System roads and bridges); 2) Freight Improvement Program; 3) Surface Transportation Program (STP) (former Highway Bridge Program projects would be eligible under STP); 4) Highway Safety Improvement Program (HSIP) (the High Risk Rural Road Program would be consolidated within the HSIP, but given distinct funding); and, 5) the Congestion Mitigation and Air Quality (CMAQ) program.

In a victory for CSAC, the draft House bill includes language that would allow California to continue to participate in the Surface Transportation Project Delivery Pilot Program.

On the other side of Capitol Hill, the Senate Environment and Public Works Committee is still in the process of developing its highway measure. The Senate Banking, Housing, and Urban Affairs Committee, which has jurisdiction over transit in the upper chamber, is crafting its proposal on the public transportation provisions of the SAFETEA-LU rewrite.

CLIMATE CHANGE-RENEWABLE ENERGY

With the health care debate behind them, Senate Democratic leaders and President Obama focused considerable time and attention this past quarter on building support for a comprehensive climate change and energy package. For his part, the president delivered a nationally televised address in which he highlighted the country's need to reduce its dependency on oil, as well as speed the development of alternative energy sources.

Despite efforts to sway undecided senators, a series of recent events has cast doubts as to whether Democratic leaders will be able garner sufficient support for a global warming package in the time remaining in the second session of the 111th Congress. Most notably, the recent disaster in the Gulf of Mexico has thwarted advancement of the long-awaited climate bill that was unveiled in May by Senators John Kerry (D-MA) and Joe Lieberman (I-CT). Nevertheless, key factions of senators have continued their negotiations in an attempt to fashion a climate bill that could attract the 60 votes needed to prevent a filibuster.

Unlike the House-passed climate change legislation (HR 2454), which would set an industry-wide cap on greenhouse gas (GHG) emissions and establish a market for buying and selling government-issued allowances, the Kerry-Lieberman measure would employ a sector-by-sector approach to reducing GHG emissions. Under the bill, electric utilities would be subject to a

carbon cap at the start of the program, while a cap on manufacturers would phase in by the year 2016.

The legislation also would preempt existing state cap-and-trade initiatives, including California's cap-and-trade program under AB 32. However, the Kerry-Lieberman bill would protect most state powers intended to advance clean energy and curb global warming pollution.

Overall, the Kerry-Lieberman measure aims to reduce carbon pollution 17 percent by 2020, and 80 percent by 2050.

The measure also includes provisions that would direct to the Highway Trust Fund (HTF) a portion of revenue raised from the sale of pollution credits to producers and importers of refined petroleum. All told, roughly \$6 billion annually would be available for transportation infrastructure projects that promote safety, effectiveness, and transportation through measures that are consistent with transportation efficiency planning. The proposal remains controversial among transportation industry officials, however, since a majority of the funds raised from the sale of carbon allowances to oil companies would be diverted from the HTF.

With much uncertainty surrounding the prospects for the Kerry-Lieberman climate bill, Majority Leader Harry Reid (D-NV) has indicated his intention to bring a clean energy measure (S 1462) before the full Senate sometime this summer. The renewable energy legislation, which was approved last year by the Energy and Natural Resources Committee, could be amended to include a cap on carbon emissions. The centerpiece of S 1462 is a first-time federal renewable-energy standard that would require electric utilities nationwide to meet 15 percent of their electricity sales through renewable sources of energy or energy efficiency by 2021.

In related developments, the Senate rejected this past quarter a Republican-sponsored resolution (S J Res 26) intended to prevent the Environmental Protection Agency (EPA) from regulating GHG emissions. On a 47-53 vote, senators voted against a motion to proceed to the resolution, which would have overturned EPA's December finding that GHGs qualify as dangerous pollutants under the Clean Air Act. The "endangerment" finding was required by a 2007 Supreme Court decision that directed EPA to determine whether GHGs are a threat to human health.

Six Democrats joined all Senate Republicans in voting for the resolution, which was sponsored by Energy and Natural Resources Committee Ranking Member Lisa Murkowski (R-AK). Supporters of the effort argued that it was the role of Congress – and not the Executive Branch of government – to regulate GHGs.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

In late June, the House Commerce-Justice-Science (CJS) Appropriations Subcommittee approved its spending legislation for fiscal year 2011. Included in the bill is \$330 million for the

State Criminal Alien Assistance Program (SCAAP), or the same level of funding as the current fiscal year and the same amount as recommended by President Obama.

Overall, the CJS bill would provide a total of almost \$4 billion for state and local law enforcement activities, or a proposed increase of \$250 million above the fiscal year 2010 spending level.

Across Capitol Hill, the Senate CJS Appropriations Subcommittee has not yet considered its spending bill for next fiscal year.

On a related matter, Senator Dianne Feinstein (D-CA) and Representative Linda Sánchez (D-CA) reintroduced their SCAAAP reimbursement criteria bills in 2009. The legislation (S 168/HR 1314) would require the Department of Justice to reimburse local jurisdictions for incarceration costs associated with undocumented individuals that have been convicted *or accused* of a felony or two or more misdemeanors. The current statute is limited to allowing reimbursement only in cases in which an individual is actually convicted of such crimes.

EXTENSION OF ARRA/SUPPORT FOR FEDERAL JOBS PACKAGE

Congressional Democrats continued to promote this past quarter various measures aimed at spurring economic recovery and employment creation. Many of those efforts were tempered, however, by concerns over a growing federal budget deficit.

As indicated above, Congress spent considerable time this past quarter wrestling with a package of tax cuts and program extensions (HR 4213). Although previous versions of the bill included aid to struggling states and money for food stamps, Democratic leaders were forced to remove the provisions in order to scale back the legislation's price tag.

Earlier this year, the House cleared the "Small Business and Infrastructure Jobs Tax Act" (HR 4849) on a 246-178 vote. Among other things, the legislation includes an extension of the Build America Bonds (BABs) program, which provides financial support to state and local governments through federal tax exemptions for interest on municipal bonds. Under the bill, the BABs program would be extended for three years – until March 31, 2013 – under a reduced subsidy rate.

On a related matter, the recently enacted \$17.6 billion HIRE Act includes a provision that enables municipal issuers to receive direct, BAB-style payments from the following four types of tax-credit bonds: Clean Renewable Energy Bonds (CREBs); Qualified Energy Conservation Bonds (QECDs); Qualified School Construction Bonds (QSCBs); and, Qualified Zone Academy Bonds (QZABs). Under the Act, the tax credit can be received by the issuer as a subsidy payment for the lifetime of the bonds instead of being given to the investor.

Other, more ambitious, job-creation measures have been proposed, although face an uphill battle as members fight to find limited resources to fund their initiatives. For example,

Representative George Miller (D-CA) has offered a nearly \$100 billion plan that would direct dollars to states and localities over the next two years for hiring or retaining government workers.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES REAUTHORIZATION

Congressional authorizers have decided to renew the Temporary Assistance for Needy Families (TANF) program for one year with no changes to current law.

Congress has made some legislative progress on a related TANF provision originally enacted under ARRA. The TANF Emergency Contingency Fund (ECF) provides states and counties with funding to create subsidized jobs and fund other supports for low-income families. Both the House-passed and Senate-pending jobs bills (HR 4213) include \$2.5 billion to continue the program in fiscal year 2011. By the end of June, 2010, California's counties had placed nearly 25,000 individuals in government, private, and non-profit sector jobs.

It should be noted that all California Democrats have cosponsored a bill (HR 4564) by Representative Jim McDermott (D-WA) that would provide \$2.5 billion in TANF-ECF in federal fiscal year 2011.

CLEAN WATER ACT

In late April, House Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) introduced a revised version of legislation designed to overturn two U.S. Supreme Court rulings that restrict the scope of the Clean Water Act (CWA).

The latest version of the bill, like past measures, would delete the term “navigable” from current law. Unlike former attempts, however, the new legislation (HR 5088) would replace existing language with the current regulatory definition of “waters of the United States.”

According to Oberstar, this proposed action would preclude the need for EPA to develop a host of new rules. Oberstar is claiming that, under HR 5088, “if it was not regulated before 2001 (the date of the first Supreme Court decision), it will not be regulated with the enactment of this legislation.”

For their part, key Republicans – including Transportation and Infrastructure Committee Ranking Member John Mica (R-FL) – have criticized Oberstar’s latest proposal as another attempt to federally regulate nearly every minor pool or potentially wet area in the country.

Across Capitol Hill, the Senate Environment and Public Works Committee approved a similar CWA bill (S 787) last year. The legislation has not advanced to the floor of the Senate.

It should be noted that the aforementioned modification to the CWA is opposed by CSAC, NACo, and other local government organizations, as it would significantly expand federal regulatory jurisdiction over local lands and activities. Specifically, local government organizations are concerned that the legislation, as written, could bring under federal review every vernal pool and minor water course in the nation.

On a related matter, and within the context of CWA reform, CSAC is advocating to amend Section 404 of the Act to provide a maintenance exemption for removal of sediment, debris and vegetation from flood control and drainage facilities. In addition, the association is seeking to modify the CWA to extend the general permit term from five to 10 years.

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