



## CSAC

### WASHINGTON BRIEFS

### SECOND QUARTER 2011

The second quarter of 2011 was characterized by political wrangling over the fiscal year 2012 budget and the impending debt crisis. While news of the death of Osama bin Laden provided a brief respite from the usual partisanship on Capitol Hill, it was short-lived, as lawmakers immediately resumed their acrimonious discussions surrounding the nation's fiscal policies.

The first battle saw House Republicans – led by Budget Committee Chairman Paul Ryan (R-WI) – quarrel with Democrats over the budget plan for the upcoming fiscal year. In the end, Republicans were able to marshal a fiscal year 2012 budget blueprint (H Con Res 34) through the House, but it was not without some hullabaloo. Among some of the measure's most controversial provisions were proposals to restructure Medicare for those under age 55, transform Medicaid into a block grant, and reduce spending for other domestic programs. While Republicans nearly had unanimous support in their caucus, not one Democrat voted for the package. In fact, four House Republicans also broke ranks to oppose the resolution.

For its part, the Senate considered several budget blueprints, including Ryan's proposal; however, the votes were largely for show, as it was clear that none had enough support for passage. Senate Budget Committee Chairman Kent Conrad (D-ND) has indicated that Democrats on the Budget Committee are close to an agreement, and that they will indeed produce a budget plan of their own. Due to the fact that negotiations have persisted well into the summer, however, the chairman will defer on a committee markup.

The absence of a formal budget has not sidetracked the annual appropriations process in the House, as the Appropriations Committee has cleared six (of 12) fiscal year 2012 bills, with floor action completed on three of the measures. The House budget resolution has been used to set allocation levels for each of the chamber's 12 appropriations subcommittees. The Senate, however, has been slow to move on spending legislation due to the lack of a Senate budget plan.

With regard to the debt crisis, the U.S. government officially reached the federal debt limit on May 16, forcing Treasury Secretary Timothy Geithner to take "extraordinary measures" to avoid a default on the U.S. government's \$14.3 trillion debt. These measures give lawmakers until

August 2<sup>nd</sup> before the nation defaults on its financial obligations. While both parties acknowledge that the debt limit should be raised well in advance of the deadline, a deal seems far off as the two sides continue to bicker about what deficit reduction measures to pair with an increase in borrowing.

## **NATIVE AMERICAN AFFAIRS**

This past quarter, Senator Dianne Feinstein (D-CA) introduced legislation 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.

In related news, the Senate Indian Affairs Committee held an oversight hearing on June 23 entitled “The Indian Reorganization Act – 75 Years Later: Renewing our Commitment to Restore Tribal Homelands and Promote Self-Determination.” The committee heard testimony from several members of the academic community, as well as from tribal advocates and tribal leaders.

Earlier this year, the Indian Affairs Committee approved legislation that would amend the Indian Reorganization Act to restore the Secretary of Interior’s authority to take land into trust for all Indian tribes. The measure (S 676), sponsored by the committee’s Chairman, Daniel Akaka (D-HI), would overturn the U.S. Supreme Court’s *Carcieri v. Salazar* decision. In *Carcieri*, the Court held that the Secretary of the 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 IRA.

Across Capitol Hill, the House Natural Resources Committee’s Indian and Alaska Native Affairs Subcommittee is slated to hold a *Carcieri*-related hearing on July 12. The subcommittee is expected to receive testimony from a variety of witnesses and will examine several topics related to the *Carcieri* decision, including potential reform of the Bureau of Indian Affairs’ land into trust process.

## **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 addition, the House of Representatives included a deficit neutral reserve fund for rural counties and schools in its fiscal year 2012 budget resolution. 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 program (or both) provided that the legislation would not increase the deficit or direct spending.

In related news, the House Committee on Natural Resources’ Subcommittee on National Parks, Forests, and Public Lands has scheduled a hearing for July 14 to discuss SRS reauthorization.

According to Committee staff, the hearing will be strictly oversight with a focus on forest management. Aside from the upcoming hearing, much legislative work still remains, as there are a number of important questions regarding SRS reauthorization that must be answered, including the duration of the program's renewal and the overall level of funding.

In the Senate, there are just as many, if not more, unanswered questions as to the future of SRS. The Senate budget resolution is expected to be unveiled in July, and could perhaps reveal the upper chamber's plans for reauthorization.

### REAUTHORIZATION OF SAFETEA-LU

This past quarter, Senate Environment & Public Works (EPW) Committee and House Transportation & Infrastructure (T&I) Committee staff worked to all but finalize their respective transportation reauthorization measures. The chairman of the aforementioned committees, Senator Barbara Boxer (D-CA) and Representative John Mica (R-FL), have indicated that their bills will be officially introduced in July, with committee action expected shortly thereafter.

It should be noted that House Majority Leader Eric Cantor (R-VA) did not include surface transportation reauthorization on his list of legislation that would be allocated floor time before the August recess. Accordingly, the timing for the consideration of Mica's bill remains uncertain.

The Boxer and Mica bills are expected to look very different. Boxer, who released this past quarter a bipartisan outline of her reauthorization package called *Moving Ahead for Progress in the 21<sup>st</sup> Century*, or simply MAP-21, has indicated that the duration of her bill will be two years. The legislation is expected to cost \$12 billion more than the Highway Trust Fund (HTF) will bring in, meaning the Senate Finance Committee would need to find a way to pay for the shortfall.

Mica's legislation, on the other hand, will be a six-year bill. Limited to the confines of the House-passed budget resolution – which requires cuts in transportation programs of over 30 percent compared to current levels – the bill's authorized funding level will be approximately \$230 billion over six years. The funding level represents what the committee believes can be sustained by revenues deposited into the HTF over that period.

In other developments, Congressman Gary Miller (R-CA) introduced this past quarter legislation that would create a new pilot demonstration program whereby States and local governments could carry out the responsibilities of the Secretary of Transportation with respect to highway projects through implementation of State environmental laws instead of Federal laws. Under the legislation (HR 2389), the Secretary would need to determine that a State's laws are substantially equivalent to the National Environmental Policy Act (NEPA) and that participation in the program would not diminish protection of the environment.

CSAC has worked very closely with Congressman Miller on the development of his environmental streamlining bill and has endorsed the legislation. The bill is bipartisan and has a number of original cosponsors from the California congressional delegation.

On a related matter, Representative Laura Richardson (D-CA) introduced her own environmental streamlining legislation (HR 2160), the *Jobs Through Environmental Safeguarding and Streamlining Act of 2011*. The bill would provide for a number of transportation streamlining initiatives, including expanding and making permanent the Surface Transportation Project Delivery Pilot Program.

In addition, the Richardson bill includes provisions that would provide States and local governments with an increased role in the environmental review and project decision-making process. The measure also would direct the Secretary of Transportation to initiate a study on the feasibility of entering into reciprocity agreements with States to maximize their participation in the environmental review process for certain projects and the potential benefits of such agreements in expediting project delivery.

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

The Army Corps of Engineers (Corps) did not publish this past quarter an expected revision to its Levee Vegetation Variance Policy Guidance Letter (PGL). Under Corps' levee vegetation policy, state and local agencies are required to remove most vegetation from levee systems to allow access by personnel and equipment for surveillance, inspection, maintenance, and flood fighting.

A number of California stakeholders have criticized the Corps' policy for a variety of reasons, including the fact that vegetation removal in California would cost billions of dollars without providing tangible benefits to public safety. 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.

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 policy to take into account a variety of important factors, such as regional variations in levee management, and to consider state and local expertise in the redevelopment process. Senators Dianne Feinstein (D-CA) and Boxer also have strongly supported CSAC and other stakeholders in this matter.

On the legislative front, CSAC has proposed language for the next Water Resources Development Act (WRDA) that would provide specific, statutory direction to the Corps with regard to clarification of its levee vegetation policy. CSAC also has suggested that similar language be included in the fiscal year 2012 Energy and Water Appropriations legislation.

Finally, conservation groups filed a lawsuit this past quarter challenging the Corps' levee vegetation removal policy. The suit was filed in federal district court in Sacramento. The groups allege that the policy violates federal law because the Corps has not prepared an environmental impact study, nor has it consulted with federal wildlife agencies, as required by the National Environmental Policy Act.

## CLEAN WATER ACT

Representative Gary Miller recently introduced bipartisan legislation to help streamline the Clean Water Act's (CWA) Section 404 permitting process. The legislation, entitled the *Flood Control Facility Maintenance Clarification Act* (HR 2427), would provide a narrow exemption for maintenance removal of sediment, debris, and vegetation from flood control channels and basins.

Under Section 404, counties, local flood control agencies, and similar local government 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 this exemption does not apply to certain routine maintenance activities.

This narrow interpretation of the law has caused a number of unintended consequences, including drastically increasing the Corps' workload and creating a significant permitting backlog; the processing time for a 404 permit can take from one to three years, and often comes with costly mitigation conditions attached. It also has hampered local agencies in their efforts to perform routine maintenance in a timely and responsive manner, leaving them open to undue liability for flood damage.

CSAC has worked closely with Representative Miller on his Section 404 bill and has endorsed the legislation. Several Members of the California congressional delegation have signed on as original cosponsors of the bill.

On a related matter, the House Transportation and Infrastructure Committee approved bipartisan legislation on June 22 – authored by Committee Chairman Mica and Ranking Member Nick Rahall (D-WV) – that would grant states more authority to make determinations with respect to their water quality standards. The bill (HR 2018), called the *Clean Water Cooperative Federalism Act of 2011*, would restrict the Environmental Protection Agency's (EPA) ability to revoke or delay a state's permitting and water quality decisions under the CWA once it has approved a state's program. In addition, the legislation would place limits on EPA's ability to veto dredge and fill permits issued by the Corps and would give states more flexibility to administer permitting programs.

## STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

CSAC, in partnership with the California State Sheriffs' Association (CSSA) administered its annual State Criminal Alien Assistance Program (SCAAP) survey this past quarter. As part of the survey, CSAC requested counties to estimate their SCAAP costs in fiscal year 2010, as well as provide other pertinent information related to their undocumented jail populations. The completed survey was then distributed to members of the California delegation. According to the results, California's counties continue to shoulder significant costs as a result of incarcerating undocumented criminals, with SCAAP payments falling far short of providing adequate reimbursement to affected counties.

In other developments, Representatives Mike Honda (D-CA), Zoe Lofgren (D-CA) and Adam Schiff (D-CA) took the lead in organizing a letter on SCAAP to the leaders of the Commerce-Justice-Science (CJS) Appropriations Subcommittee. The letter – signed by 27 Democratic members of the California delegation – urges the subcommittee to fund SCAAP at its previously authorized level of \$950 million.

Despite the strong efforts of the California delegation, House Appropriations Committee leadership made the decision to eliminate SCAAP as part of its draft fiscal year 2012 CJS spending bill. Amendments to restore a portion of SCAAP funding are expected to be offered by members of the California delegation during full Committee markup of the draft bill, with additional amendments possible when the legislation reaches the House floor.

On a related matter, legislation to reauthorize SCAAP is pending in Congress, as Senator Feinstein has introduced a bill (S 639) to reauthorize the program at \$950 million each year through 2015. In addition, Senator Feinstein has sponsored legislation that would change the SCAAP program's reimbursement criteria to enable jurisdictions to be reimbursed for the costs of housing undocumented individuals who are accused but not ultimately convicted of their alleged crimes. CSAC has worked closely with Senator Feinstein and has endorsed both measures.

## TEMPORARY ASSISTANCE FOR NEEDY FAMILIES REAUTHORIZATION

With each passing month, the slated reauthorization of the Temporary Assistance for Needy Families (TANF) program becomes less likely. The delay has been anticipated, due to new state reporting requirements on the use of TANF funds that are under review at the Department of Health and Human Services (HHS) and among congressional staff. A second series of reports are due at the end of the summer. These new, more comprehensive data are expected to provide the congressional authorizing committees with information that will assist them in crafting a reauthorization bill.

Meanwhile, TANF continues to operate under a temporary extension, which provides programmatic authority through September 30, 2011. That extension is expected to be renewed if a full reauthorization does not occur.

In other human services-related developments, the second quarter saw a flurry of activity on proposals to identify Medicaid savings as part of an overall federal deficit reduction package. In early April, House Budget Committee Chairman Ryan proposed to transform Medicaid into a block grant as part of the fiscal year 2012 House budget resolution. The resolution would convert the federal share of the program into a fixed amount of money per state, based on its current spending and indexed for overall inflation and population growth. States would have the flexibility to set their own program requirements and eligibility criteria.

The House budget assumed that the proposal will save at least \$750 billion over ten years and \$1.1 trillion over the same period of time if the Affordable Care Act was also repealed.

For its part, the Obama administration opposes a Medicaid block grant. While the Senate Budget Committee did not release a budget blueprint, Democratic leaders in the Senate also adamantly oppose the House proposal.

In May, the California House Democratic Caucus sent a letter to President Obama opposing the transformation of Medicaid into a block grant. The Caucus requested that similar correspondence be drafted from local elected officials. CSAC drafted such a letter, which was attached to the House delegation letter.

While there was no House legislative activity to mark up a Medicaid block grant bill, a measure was introduced and approved by a House subcommittee to allow states to no longer meet Medicaid maintenance of effort (MOE) requirements. The MOE provisions were enacted under the Recovery Act's enhanced federal match for Medicaid and for the MOE required to receive the higher Medicaid match under the Affordable Care Act. The "State Flexibility Act" (S 868/HR 1683), introduced by Sen. Orrin Hatch (R-UT) and Rep. Phil Gingrey (R-GA), would remove the potential federal sanction of losing the federal Medicaid match if a state decided to reduce eligibility under the program.

The Congressional Budget Office has estimated that the bill will save the federal government about \$2.8 billion over the next five years and that 300,000 people will lose Medicaid coverage.

While it is expected that the Senate will reject the measure, bills to reduce or eliminate MOE requirements could be a "compromise" to counter the more radical attempts to block grant Medicaid if Congress decides to identify entitlement savings.

As the second quarter came to a close, other Medicaid cost-cutting provisions were rumored to be under consideration by both the Obama administration and Congress, including combining the different federal matching contributions to Medicaid and the Children's Health Insurance Program (Healthy Families) into one blended rate. While federal savings would accrue under the proposal, it would likely shift costs to states and counties.

## RENEWABLE ENERGY

The energy debate picked up steam as gas prices soared to new heights in the last quarter. The House approved three GOP-backed bills to expand offshore oil drilling, while Senate Republicans pushed similar measures. Senate Democrats, on the other hand, focused their attention on eliminating tax breaks for the five largest oil companies.

In other news, Representatives Mike Thompson (D-CA), Dan Lungren (R-CA), and Nan Hayworth (R-NY) are in the process of developing bipartisan legislation to restore the Property Assessed Clean Energy (PACE) program. The legislation builds upon Thompson's PACE bill from the last Congress, but it has been updated to reflect conversations with the Federal Housing Finance Agency (FHFA), stakeholders, and the committees of jurisdiction.

Thompson's previous bill directed Fannie and Freddie to adopt underwriting standards that would be consistent with Department of Energy guidelines for PACE programs. It also prohibited FHFA, Fannie, and Freddie from discriminating against local governments and property owners for participating in PACE programs.

The new draft bill goes a step further than the previous version by directing Fannie and Freddie to rescind prior guidance on PACE and to issue new guidance clarifying that PACE assessments and PACE liens do not constitute default on any Fannie/Freddie secured loan.

Also of note, Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) have recently introduced legislation to create a \$2.9 billion loan program to promote energy savings in rural America and allow companies to receive loan guarantees for energy efficiency upgrades at commercial, industrial, municipal and school and hospital facilities.

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