



CSAC WASHINGTON BRIEFS

FOURTH QUARTER 2011

In a year already marked by memorably intense and bitter gridlock, the late-session failure of the so-called “Supercommittee” to produce a long-term deficit reduction package helped prolong an especially rancorous season of bickering in Washington. The initial enthusiasm that accompanied the historic debt limit deal (PL 112-25) quickly faded amidst a lack of bipartisan cooperation and reluctance to compromise. It comes as no surprise that the committee, officially known as the Joint Select Committee on Deficit Reduction, was confronted with the same ideological divide that caused an almost crippling impasse earlier in the year.

The debt panel’s failure triggers a sequestration process that will result in across-the-board budget cuts totaling \$1.2 trillion over the next decade. These automatic cuts will not begin until 2013 and will be split evenly between security and non-security spending. For the most part, entitlement programs like Medicare, Medicaid, and Social Security will be shielded from any sequester.

Republicans and pro-military Democrats have already begun searching for ways to avoid the steep reductions in Defense Department funding. They envision eliminating the defense cuts by decreasing spending in other areas of the federal budget.

For his part, President Obama has pledged to veto any legislation that would void the automatic reduction in military spending. Similarly, Democratic leaders have made clear that they will only consider such a proposal if it includes new offsetting revenue.

With regard to the fiscal year 2012 budget, Democrats and Republicans were finally able to advance all twelve appropriations measures, albeit with the help of several stop-gap continuing resolutions. Completion of the budget this past quarter puts to rest the threat of a government shutdown, at least through the end of the current fiscal year.

Early on, legislators were intent on addressing each spending measure separately, but with time running short, congressional leaders instead opted to bundle the various bills into two different packages. The first (PL 112-55) combined spending for Agriculture, Commerce-Justice-Science (CJS), and Transportation-Housing and Urban Development (HUD).

The second appropriations measure included the remaining nine spending bills for fiscal year 2012. As expected, most federal agencies will see a decrease in funding compared to the previous fiscal year. Congress also cleared a stand-alone bill (HR 3672) that will provide \$8.12 billion in disaster-related aid and \$483 million in an initiative to combat waste, fraud, and abuse in Social Security.

With the appropriations process finally complete, lawmakers turned their attention late in the quarter to other matters, specifically an expiring Social Security payroll tax cut, extension of unemployment benefits, and a looming cut in Medicare reimbursement rates for physicians. Congressional leaders tried to reach agreement on a long-term payroll tax cut extension, but eventually settled on a stop-gap two-month renewal.

NATIVE AMERICAN AFFAIRS

Lawmakers closed the books on the first session of the 112th Congress without approving language overturning the U.S. Supreme Court's *Carcieri v. Salazar* decision. In *Carcieri*, the Court ruled that the Secretary of Interior's trust land acquisition authority is limited to those tribes that were under federal jurisdiction at the time of the passage of the Indian Reorganization Act (IRA) of 1934.

Although Indian tribes waged an aggressive eleventh-hour effort to include a so-called *Carcieri* "quick fix" as part of the tax extenders package, the attempt was rebuffed by members of Congress who are seeking to include other reforms in any *Carcieri* legislation. Many of these lawmakers also are arguing that such legislation must proceed through regular order.

For its part, CSAC continued to promote this past quarter its comprehensive fee-to-trust reform package. The association, which is working as part of a broader trust reform coalition, has maintained that legislation addressing the *Carcieri* decision should provide long-overdue modifications to the Bureau of Indian Affairs' fee-to-trust process.

It should be noted that in 2011 the Senate Indian Affairs (IA) Committee approved two bills (S 676 and S 703) that would reverse the *Carcieri v. Salazar* decision. The bills remain stalled, however, due to opposition from key senators, including Senator Dianne Feinstein (D-CA), who object to the fact that the legislation does not include other key changes to federal law.

The IA Committee also held a hearing this past quarter entitled "*Carcieri* Crisis: the Ripple Effect on Jobs, Economic Development and Public Safety in Indian Country." The Department of Interior's Assistant Secretary of Indian Affairs, Larry Echo Hawk, urged the committee to ensure final passage of legislation that would overturn the *Carcieri* decision.

Earlier in 2011, the House Natural Resources Committee's Indian and Alaska Native Affairs Subcommittee held a hearing on two House *Carcieri* "quick fix" bills (HR 1291/HR 1234). Marin County Supervisor Susan Adams provided testimony before the subcommittee on behalf of CSAC and the National Association of Counties (NACo).

REAUTHORIZATION OF THE SECURE RURAL SCHOOLS ACT

A bipartisan group of senators introduced legislation – the *County Payments Reauthorization Act of 2011* (S 1692) – on October 12 that would reauthorize for five years both the Secure Rural Schools (SRS) and Payments-in-Lieu-of-Taxes (PILT) programs. Representative Martin Heinrich (D-NM) introduced identical legislation (HR 3599) in the House on December 7 that will act as a companion to the Senate proposal.

While PILT is currently authorized through fiscal year 2012, SRS is not. In fact, the program expired earlier this year. This is particularly concerning to rural forested counties that depend on SRS funding each year to preserve local education systems and maintain roads.

Under S 1692 and HR 3599, SRS payments would begin at fiscal year 2011 levels and decline five percent per year, while PILT payments would be maintained at current levels. Apart from the new end-date and the five percent ramp down, the only other change from the previous authorization is a provision that allows a Resource Advisory Committee (RAC) to donate up to 10 percent of its Title II payment to the Forest Service or Bureau of Land Management to help the agencies cover the cost of staffing. This would be voluntary and controlled by the RAC and the counties within the geographic area of the RAC.

While the Senate legislation has garnered bipartisan support, House Democrats and Republicans are split on the best way forward. Democrats would prefer a clean extension of the SRS program similar to the approach in HR 3599, whereas House Republicans are insisting on new forest management provisions that would expand logging and increase land usage. GOP leaders from the Natural Resources Committee have thus far been working off a discussion draft, but are expected to formally introduce their proposal early in 2012.

CSAC, in partnership with the Regional Council of Rural Counties (RCRC), has remained active in pressing for a reauthorization of the SRS program. CSAC and RCRC have provided formal comments to the California congressional delegation on all three legislative proposals.

REAUTHORIZATION OF SAFETEA-LU

This past quarter, the Senate Environment and Public Works (EPW) Committee unanimously approved legislation (S 1813) that would reauthorize the nation's surface transportation law (SAFETEA-LU). The bill, entitled *Moving Ahead for Progress in the 21st Century* (MAP-21), would reauthorize SAFETEA-LU for two years at current funding levels, plus inflation. The existing authority for federal transportation programs has been operating under a series of short-term extensions, the latest of which expires in March.

Map-21 would reduce the number of federal highway programs from 90 down to less than 30, including the number of core highway programs. The proposed consolidation is intended to

provide states and metropolitan areas with greater flexibility in determining how best to spend transportation dollars.

The legislation also includes various provisions designed to expedite project delivery, including language that would continue the Surface Transportation Project Delivery Pilot Program (California's current NEPA delegation program).

There are several provisions that are of concern to California's counties, including the proposed elimination of dedicated funding for off-system bridges and high risk rural roads. Additionally, the bill includes language that that would result in the elimination of certain Metropolitan Planning Organizations (MPOs). CSAC, in partnership with RCRC, has communicated these concerns to leaders of the EPW Committee and other key members of Congress.

It should be noted that the EPW Committee splits jurisdiction on transportation reauthorization with the Banking, Housing, and Urban Affairs Committee (Transit), the Commerce, Science, and Transportation Committee (Safety and Rail), and the Finance Committee (Revenue). The Commerce Committee approved its portion of SAFETEA-LU reauthorization on December 14, with the Banking Committee expected to act early in the New Year.

The Finance Committee, on the other hand, has struggled to identify a new source of transportation revenue, as MAP-21 would require an additional \$12 billion in spending beyond what can be supported by the Highway Trust Fund. While a wide range of options is being explored to support and sustain highway and transit financing, none of the current proposals have wide-ranging support.

Across Capitol Hill, House Speaker John Boehner (R-OH), Transportation and Infrastructure Committee Chairman John Mica (R-FL) and other House Republicans announced this past quarter their plans to move forward with a long-term transportation reauthorization bill. While details of the proposal are not yet available, the legislation will reportedly span five years, instead of six as previously advertised, and will link new American energy production to investment in infrastructure projects.

According to House Republicans, their transportation legislation will include three energy-related measures, including legislation that would lift the Obama administration's drilling ban on new offshore areas, a bill that would set clear rules for oil-shale development, and a proposal that would open roughly three percent of the Arctic National Wildlife Refuge (ANWR) to oil and natural gas development.

ARMY CORPS OF ENGINEERS LEVEE VEGETATION REMOVAL POLICY

The U.S. Army Corps of Engineers (USACE) released this past quarter its System-Wide Improvement Framework (SWIF) policy for levee systems. The policy, dated November 29, 2011, provides levee sponsors with a process to transition their levees over time to Corps' standards while remaining eligible for federal rehabilitation funding under Public Law 84-99. It

should be noted that the policy allows deficiencies – which may include vegetation – to be addressed on a “worst first” basis as part of a larger system-wide plan.

According to the Corps, the SWIF process may complement the vegetation variance request process as a means for a levee sponsor to address levee deficiencies. If required, a vegetation variance request can be part of the SWIF process.

On a related matter, the Corps released in December its response to public comments received on the Agency’s draft levee vegetation variance request policy. Pursuant to the Corps’ response, the Agency has revised some aspects of the Policy Guidance Letter (PGL) – Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls – based on its review and analysis of the comments received. CSAC and the County Engineers Association of California (CEAC) are among the key stakeholders that have recommended substantive revisions to the Corps’ levee vegetation removal policy.

Notably, many of CSAC’s concerns have been echoed by key members of the California congressional delegation. A number of members of the delegation have, for example, urged the Corps to modify its levee vegetation 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.

Finally, on the judicial front, the California Department of Fish and Game this past quarter filed a motion for intervention to join federal litigation that challenges the Corps’ levee vegetation removal policy. The case, *Friends of the River, et. al. v. United States Army Corps of Engineers, et. al.* was filed in the U.S. District Court for the Eastern District of California. The outcome of the case will likely have a significant impact on how California’s flood control agencies manage their levees.

CLEAN WATER ACT – SECTION 404 PERMITTING

Representative Gary Miller introduced earlier this year bipartisan legislation that would streamline the Clean Water Act’s (CWA) Section 404 permitting process. The bill, entitled the *Flood Control Facility Maintenance Clarification Act* (HR 2427), would provide a narrow permitting 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. A number of other members, however, have not signed on due to concerns that modifications to the CWA could attract other potentially harmful amendments to the Act.

It should be noted that CSAC and CEAC officials met with representatives of environmental organizations this past quarter to discuss HR 2427. Although it appears that environmental interests will continue to resist any modifications to the CWA, including the Miller bill, the groups committed to keeping the lines of communication open and to work together on issues of common interest.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

Earlier this year, the House Appropriations Committee approved a fiscal year 2012 CJS spending bill that aimed to substantially reduce funding for state and local law enforcement programs. The committee did not include funding for the State Criminal Alien Assistance Program (SCAAP). In response to concerns expressed by CSAC, the State of California, and other key stakeholders, several members of Congress registered their strong support for SCAAP, prompting CJS Subcommittee Chairman Frank Wolf (R-VA) to pledge to address the program's funding as the fiscal year 2012 budget process advanced.

Across Capitol Hill, the Senate Appropriations Committee earlier this year also approved a series of reductions to state and local law enforcement programs, though not as deep as the cuts approved by House appropriators. With regard to SCAAP, the Senate bill maintained funding at the fiscal year 2011 level of \$273 million.

After a formal House-Senate conference committee on the CJS-related provisions of the fiscal year 2012 budget, SCAAP was funded at \$240 million. While this represents a reduction from the previous fiscal year, the program was ultimately saved from the brink of elimination due in large part to the strong efforts of key members of the California congressional delegation.

Finally, legislation to reauthorize SCAAP is still pending in Congress. Senator Feinstein introduced a bill (S 639) earlier this year that would renew the program through 2015. Senator Feinstein has also sponsored legislation (S 638) 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

In the waning hours of the session, Congress adopted a two-month extension of the Temporary Assistance for Needy Families (TANF) program as part of the Temporary Payroll Tax Cut Continuation Act (HR 3765; PL 112-78). The new law also includes a two-month extension of emergency unemployment insurance benefits.

Earlier in December, the House adopted, by voice vote, an extension of TANF through September 30, 2012. The Senate, however, did not consider the measure. Given the duration of the latest TANF extension (PL 112-78 continues the program through February 29, 2012), Congress will need to extend or reauthorize the TANF program early in the New Year.

PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM

The *PACE Protection Act of 2011* (HR 2599) – sponsored by Representatives Nan Hayworth (R-NY), Mike Thompson (D-CA) and Dan Lungren (R-CA) – continued to gain momentum in the House during the fourth quarter of 2011. The legislation has been cosponsored by 51 members of Congress, including 21 from the California delegation.

If adopted, HR 2599 would prevent federal regulators from adopting policies that contravene established state and local PACE laws, thus allowing counties and other local governments to once again offer the popular program. Other provisions of the bill would limit or, in some cases, eliminate any risk to Fannie Mae and Freddie Mac.

For its part, the Federal Housing Finance Agency (FHFA), which oversees Fannie Mae and Freddie Mac, remains strongly opposed to the legislation and residential PACE programs, in general.

The PACE measure has been referred to the Financial Services Committee's Capital Markets and Government Sponsored Enterprises Subcommittee. Despite the strong bipartisan support behind the proposal, no committee action has yet been scheduled on HR 2599. This is due in large part to objections from Representative Scott Garrett (R-NJ), who chairs the subcommittee. Garrett, like FHFA, remains concerned that the senior lien status of PACE assessments is a threat to the mortgage industry.

Despite Chairman Garrett's concerns, the bill's sponsors are continuing to build support among their colleagues in both chambers of Congress and will seek the endorsement of local governments, home builders, and local chambers of commerce. CSAC, in partnership with RCRC, has endorsed the *PACE Protection Act of 2011*.

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