



## CSAC WASHINGTON BRIEFS

FOURTH QUARTER 2012

Following the most expensive election in U.S. history, lawmakers returned to Capitol Hill in mid-November for a high stakes lame-duck session of Congress. Although there were several major items remaining on the congressional agenda, no single issue loomed larger than the "fiscal cliff."

With all eyes focused initially on President Obama and House Speaker John Boehner (R-OH), the nation watched as the two leaders were unable to agree on a plan to address the expiring Bush-era tax cuts or the impending across-the-board spending cuts prescribed by the *Budget Control Act* (PL 112-25). In the absence of a deal with the White House, Speaker Boehner attempted to advance a so-called "Plan-B" approach, which would have preserved most of the Bush tax cuts while allowing tax rates to rise on the wealthiest Americans. In the end, Boehner was forced to pull the Plan B proposal due to a lack of votes within the GOP conference.

With Boehner's position weakened by the failure of his backup plan, the White House, through Vice President Joe Biden, began negotiating directly with Senate Minority Leader Mitch McConnell (R-KY). On December 31, Senate leaders announced that they had reached a deal under which income tax rates would increase for families earning more than \$450,000 and sequestration would be delayed for two months. The deal also included, among other things, provisions to extend most farm bill programs for the remainder of fiscal year 2013.

The full Senate subsequently voted to pass the measure - the *American Taxpayer Relief Act* (HR 8) - by a vote of 89 to 8. Across Capitol Hill, the House approved the measure by a vote of 257-167, with 172 Democratic votes and only 85 Republicans.

In related news, Treasury Secretary Timothy Geithner informed lawmakers in late December that the federal government had reached its statutory debt limit. It should be noted that the Treasury Department can undertake "extraordinary measures" to extend the nation's borrowing authority for a short time, though there is considerable uncertainty about how long the deadline can be extended. For his part, Boehner has vowed to seek cuts commensurate to the amount the debt limit is increased. Additionally, a number of House conservatives believe they can use the debt ceiling as leverage in early 2013 to obtain more spending concessions from Democrats.

Congress also grappled this past quarter with how to advance an emergency supplemental spending bill for communities hit hard by Superstorm Sandy. In late December, the Senate cleared legislation (HR 1) that would provide \$60.4 billion, as requested by the White House, for Sandy relief efforts. House Republicans, however, questioned the size of the request and did not act on the measure. GOP leaders have expressed support for a scaled-back bill to meet immediate needs and have indicated a willingness to provide more money once Congress receives additional information regarding storm damage estimates.

Meanwhile, the tragedy at Sandy Hook Elementary has renewed a nationwide debate over gun control. As the country mourned the victims of the deadly shooting, a number of lawmakers promised to pursue gun control legislation in the 113th Congress. While similar calls have taken place after other mass shootings, there seems to be a growing consensus, among even gun enthusiasts, that something must be done.

For his part, President Obama on December 19 announced the creation of an interagency commission that will be tasked with finding solutions to reduce gun violence. Recommendations from the group, which will be headed by Vice President Biden, are expected sometime in January. The president also outlined several measures he wants to see move through Congress early in 2013, including a ban on assault weapons and high-capacity clips, as well as mandatory background checks for all gun sales.

In other news, lawmakers used the year-end session to conduct organizational meetings, including the selection of party leaders and committee chairmen. There will be a number of new faces in Washington next year as the 113th Congress will welcome eight new senators and 84 new House members.

In the Senate, Democrats voted to return Senator Harry Reid (D-NV) to his position as majority leader and Senator Richard Durbin (D-IL) as majority whip. For their part, Republicans voted to stick with Senator McConnell as minority leader. Senator John Cornyn (R-TX) was elected minority whip, replacing the retiring Senator John Kyl (R-AZ).

There were no surprises in the lower chamber, where Speaker Boehner and Majority Leader Eric Cantor (R-VA) retained their posts. There was some speculation that Representative Nancy Pelosi (D-CA) would step down as minority leader, but she ultimately decided to seek another term and was reelected. Representative Steny Hoyer (D-MD) will stay on as minority whip, with Representative James Clyburn (D-SC) continuing in his role as assistant minority leader.

## **NATIVE AMERICAN AFFAIRS**

In late November, there was an attempt by the chairman of the Senate Indian Affairs Committee, Daniel Akaka (D-HI), to move legislation to the floor of the Senate that would have overturned the Supreme Court's *Carcieri v Salazar* decision. In *Carcieri*, the Court ruled that the secretary of the 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.

Akaka's move, which was strongly supported by the National Congress of American Indians and most tribes, was turned back after it was clear that there were not enough votes in the Senate to approve the bill. CSAC, in coordination with Senator Dianne Feinstein (D-CA), worked to oppose Akaka's effort, which did not include any reforms to the Indian fee-to-trust process.

On a related matter, key senators conducted a series of intense negotiations in late December aimed at producing a compromise *Carciari* "fix" bill that would restore the secretary of Interior's trust land acquisition authority while also providing for several key fee-to-trust reforms. Despite considerable progress at the negotiating table, the Senate ultimately ran out of time and was unable to consider the package of amendments to the IRA. It should be noted that the compromise language also would have made changes to the Indian Gaming Regulatory Act.

For its part, CSAC worked very closely with Senator Feinstein as the negotiations progressed on the *Carciari* package. Although a final bill was not considered in the upper chamber, the compromise language represents a good starting point for discussions once the 113th Congress convenes in the new year.

#### STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

Congressional appropriators continued this past quarter their discussions aimed at finalizing the fiscal year 2013 budget. Despite some progress, lawmakers failed to advance a budget deal, choosing instead to allow the current Continuing Resolution (CR) to fund programs at fiscal year 2012 levels. Under the CR, which extends through March 27, the State Criminal Alien Assistance Program (SCAAP) is funded at a rate of \$240 million annually.

It should be noted that the *Budget Control Act* stipulates that SCAAP is subject to an 8.2 percent budget cut. As reported above, Congress voted to delay sequestration until March 1. If lawmakers fail to further modify the sequester, the SCAAP program is slated to be reduced by roughly \$17 million in 2013.

In other news, the U.S. Department of Justice (DOJ) announced last quarter that it was postponing for one year a recent policy change aimed at eliminating SCAAP payments to jurisdictions for the costs of incarcerating inmates whose immigration statuses are "unknown." The decision marked a major victory for CSAC, which lobbied heavily to prevent the policy change from being implemented. A number of key members of the California congressional delegation joined CSAC in advocating against the policy.

Pursuant to DOJ's announcement, the Agency will continue in fiscal year 2012 the practice of providing payments to jurisdictions for the cost of detaining individuals whose immigration statuses are unable to be confirmed by the Department of Homeland Security (DHS). It should be noted that so-called "unknown" inmates are classified as such because they have not had

prior contact with federal immigration authorities and therefore are not included in the DHS database.

If DOJ's policy had been implemented in 2012, California's counties likely would have seen their SCAAP payments cut by roughly half. For the 2010 Solicitation Year (the year for which the most recent DOJ vetting data is available), California counties' SCAAP allocations would have been reduced from \$40.8 million to \$21.9 million, a decrease of over 46 percent. Conversely, the state of California and most other states would have seen their SCAAP allocations significantly increase under the policy shift. The reason for the state-county discrepancy is that states house a much lower percentage of "unknown" inmates in their correctional facilities in relation to county jails.

Because DOJ is expected to reissue the policy of eliminating reimbursements for the unknown category of SCAAP inmates in 2013, CSAC is once again poised to oppose it. The association will be closely monitoring the Agency's actions and will continue to work with its congressional delegation on this issue.

## REMOTE SALES TAX

This past quarter, there was renewed interest from key lawmakers to advance legislation that would authorize the collection of sales taxes from remote purchases. As a result of a 1992 Supreme Court ruling (*Quill Corp v. North Dakota*), online retailers have been exempt from collecting sales taxes in states where they have no physical presence. Generally, when a purchase is made from an out-of-state retailer, the consumer is still responsible for calculating the sales tax and remitting the payment to the relevant jurisdiction(s). However, compliance is low, and as more purchases are made online, state and local governments continue to lose billions in uncollected sales tax revenue.

Three major pieces of legislation have been pending before Congress – the *Main Street Fairness Act* (S 1452; HR 2701), the *Marketplace Fairness Act* (S 1832), and the *Marketplace Equity Act* (HR 3179) – that would authorize states to collect sales taxes from online retailers. While the proposals are all similar, they are not identical.

The *Main Street Fairness Act* would allow states to require internet and mail-order retailers to collect state and local sales taxes. In order to benefit from the Act, however, a state must sign onto the Streamlined Sales and Use Tax Agreement (SSUTA) and adopt legislation implementing its provisions. The SSUTA is a multistate agreement that requires states to simplify and make more uniform their sales and use tax administration to reduce the compliance burden on businesses. It should be noted that there are only 24 states that have signed onto the SSUTA, and California is not among them. The measure also exempts any online business with less than \$500,000 in gross revenue from tax collection requirements.

The *Marketplace Equity Act*, on the other hand, would give states flexibility in how they craft their tax systems to conform with the law. Online merchants with less than \$1 million in

remote sales annually, or less than \$100,000 in remote sales in a specific state, would be exempt from sales tax collection requirements. Finally, the *Marketplace Fairness Act* would give states the option of joining the SSUTA or simplifying their sales tax code based on a set of prescribed guidelines. Online merchants with less than \$500,000 in remote sales annually would be exempt from collection requirements.

CSAC, in conjunction with the League of California Cities, sent a joint letter earlier this quarter to key bill sponsors and members of the California congressional delegation, encouraging them to work toward a compromise package during the lame-duck session. The correspondence also raised some concerns with the bills as currently drafted. Specifically, CSAC and the League would like to work with lawmakers to ensure that remote sales tax legislation does not inadvertently impact other local revenue sources.

Finally, in late November, Senators Durbin, Michael Enzi (R-WY), and Lamar Alexander (R-TN) proposed a version of the *Marketplace Fairness Act* as an amendment to the *National Defense Authorization Act* (S 3254). However, the Senate opted to close debate and proceed to a final vote without considering the sales tax amendment. The Senate Finance Committee is likely to consider a remote sales tax measure early in 2013 in the context of wide-ranging, comprehensive tax reform.

#### REAUTHORIZATION OF THE SECURE RURAL SCHOOLS ACT

As fiscal cliff negotiations continued this past quarter, key members of Congress pushed to include an extension or reauthorization of the Secure Rural Schools Act (SRS) as part of any fiscal cliff package. It should be noted that an extension of the Act would require lawmakers to find additional revenue to pay for the SRS spending. Congressional leaders, however, were searching for areas where they could reduce spending or bring in additional revenue; accordingly, inclusion of an SRS extension in a fiscal cliff package was seen as highly unlikely.

Looking ahead, Senator Ron Wyden (D-OR) is set to replace the retiring Senator Jeff Bingaman (D-NM) as chairman of the Senate Energy and Natural Resources Committee. With federal lands comprising over 50 percent of Oregon's land base, Wyden's home state has been the largest beneficiary of SRS payments. Saying that, Wyden has pledged that forestry issues will be among his top priorities in the new Congress. It is also worth noting that Wyden authored the original SRS legislation in 2000 (PL 106-393) and sponsored legislation - the *County Payments Reauthorization Act of 2011* (S 1692) - in the 112th Congress that would provide for a multi-year reauthorization of the program.

Across Capitol Hill, there will be no change in leadership on the Natural Resources Committee, as Representative Doc Hastings (R-WA) will continue in his role as chairman. Hastings supports legislation that would return the SRS program to one based on active forest management. However, the reforms proposed in legislation he has sponsored - the *Federal Forests County Revenue, Schools, and Jobs Act* (HR 4019) - would be accomplished largely by rolling back

environmental laws and other legal protections. For the most part, Democrats in the House and Senate would oppose this approach.

Finally, it should be noted that Representative-Elect Doug LaMalfa (R-CA), who will represent a vast congressional district in northeastern California, has been appointed by House GOP leaders to serve on the Natural Resources Committee in the 113th Congress. His stated preference would be to move away from the current system of direct SRS payments. Instead, he argues that Congress should lift restrictions on the logging industry and focus on active forest management.

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

This past quarter, the chairman of the Senate Environment and Public Works Committee, Senator Barbara Boxer (D-CA), released a draft Water Resources Development Act (WRDA) reauthorization bill. Among other things, and in a positive development for California's counties, the draft legislation includes a section on levee vegetation.

It should be noted that the levee vegetation provisions largely mirror legislative language developed by CSAC, which would require the secretary of the Army to undertake a comprehensive review of the Corps' policy guidelines on vegetation management for levees. The draft bill also would require the secretary to consider factors that promote and allow for variances from the national guidelines on a regional or watershed basis. Additionally, the draft would require the secretary to solicit and consider the views of the National Academy of Engineering as part of the review process.

The impetus for the WRDA language on vegetation management stems from the Corps' levee vegetation removal policy, which generally requires local flood control agencies to remove woody vegetation from levees in order to allow for easier inspections and to reduce any potential weakening of, or damage to, levees from root growth and overturned trees. Levees that the Corps deems to be out of compliance with its vegetation standards would no longer be eligible for federal disaster assistance. Incidentally, in advancing its policy, the Corps cites no documentation that links actual levee failures to the presence of woody vegetation.

Looking ahead, Senator Boxer has indicated that WRDA reauthorization will be a top priority for the EPW Committee in 2013. Accordingly, the committee is expected to consider the bill early in the new Congress. Likewise, in the House, the incoming chairman of the House Transportation & Infrastructure (T&I) Committee, Representative Bill Shuster (R-PA), has stated that a WRDA bill will be one of the first items the T&I panel will deal with in 2013.

#### **CLEAN WATER ACT – SECTION 404 PERMITTING**

While there was no movement in the fourth quarter on the *Flood Control Facility Maintenance Clarification Act* (HR 2427), discussions continued regarding how to build support for the legislation within the House T&I Committee. HR 2427, which is sponsored by Representative

Gary Miller (R-CA), would provide a narrow permitting exemption for maintenance removal of sediment, debris, and vegetation from flood control channels and basins.

For its part, CSAC worked with the National Association of Flood and Stormwater Management Agencies (NAFSMA), as well as NACo, in an effort to broaden support for the bill. In response to a request from CSAC, the NAFSMA Board of Directors voted to officially endorse HR 2427. NACo, on the other hand, has agreed to write a letter expressing support for the goals and objectives embodied in the legislation.

On a related matter, the National Governors Association (NGA) appointed this past quarter Governor Jerry Brown to serve as vice chair of the association's Natural Resources Committee. The Natural Resources Committee has jurisdiction over agriculture, energy, the environment, and other natural resources issues. CSAC has met with the governor's office regarding county concerns related to Section 404 of the Clean Water Act. The governor's staff expressed an interest in working collaboratively to promote legislation that would streamline the permitting process.

#### **PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM**

Legislation to restart stalled Property Assessed Clean Energy (PACE) programs, specifically the *PACE Assessment Protection Act of 2011* (HR 2599), did not see action in the fourth quarter as lawmakers awaited a decision from the Federal Housing Finance Agency (FHFA). FHFA was required to proceed through a formal rulemaking process after a California court ruled that the agency had violated the *Administrative Procedure Act* in its decision to block Fannie Mae and Freddie Mac from purchasing residential mortgages with PACE assessments.

As required, FHFA issued a proposed rule in June that essentially maintained the status quo with regard to PACE programs. CSAC, as well as other PACE advocates, opposed the proposal in formal comments to the agency. The comment period ended in mid-September, and FHFA is expected to issue a final rule soon. While PACE advocates remain optimistic regarding the prospects of a positive outcome, FHFA is not likely to considerably shift its position on residential PACE programs.

The outcome of the agency's final rule will likely determine the fate of PACE legislation in the new Congress. Because HR 2599 has expired, it will need to be reintroduced in 2013 to be eligible for consideration. Representative Mike Thompson (D-CA), one of the primary champions of the legislation, has indicated a willingness to sponsor the measure in the 113th Congress. However, as a result of the November elections, the bill will be losing its two primary Republican sponsors, namely Representatives Dan Lungren (R-CA) and Nan Hayworth (R-NY). Once FHFA issues its final regulations, Thompson's staff plans to touch base with stakeholder groups, including CSAC, to discuss next steps.

In other news, PACENow recently released a study, entitled *Lender Support Study: Enhancing the Commercial Real Estate Lender Consent Process for PACE Transactions*, which surveyed

national mortgage lenders whose interests in commercial properties could be affected by PACE programs. Among other things, the study found that lenders generally were not opposed to PACE programs. In fact, most would be open to approving projects that benefit their customers and improving the value of their collateral. The full study can be accessed [here](#).

#### **TEMPORARY ASSISTANCE FOR NEEDY FAMILIES REAUTHORIZATION**

Earlier in 2012, Congress extended funding for the Temporary Assistance for Needy Families (TANF) program through March 27, 2013. Exempt from sequestration, TANF's six-month extension was part of the fiscal year 2013 Continuing Resolution. Given the lack of a TANF reauthorization bill in either the House or Senate and the anticipated focus on debt reduction early in the new Congress by the Senate Finance and House Ways and Means Committees, TANF is likely to be extended once again through September 30, 2013. That extension will give the committees time to review the program and make changes to it before the end of the federal fiscal year.

Given the reelection of President Obama, Republican efforts to block the administration's guidance to states to allow waivers of work participation requirements have died. While no state has applied to date, the U.S. Department of Health and Human Services has signaled that it would consider state or county applications to waive certain federal work participation requirements if such alternative programs achieved TANF's goals of moving families into self-sufficiency. As is the case with all federal waivers, counties would have to go through the state to apply for a sub-state waiver.

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