



CSAC

WASHINGTON BRIEFS

SECOND QUARTER 2009

With half of 2009 in the books, Democratic congressional leaders have marshaled a significant portion of their agenda through various stages of the legislative process. To date, committee and/or floor action has been completed on a number of high-profile issues, including climate change and renewable energy legislation, transportation reauthorization, and the fiscal year 2010 budget.

Negotiations on other issues also have advanced, including progress on health care reform. Although major legislative action has yet to take place, Democratic leaders have readied key proposals that would significantly alter the nation's health care system.

On the budget front, Congress adopted this past quarter the fiscal year 2010 budget resolution (S Con Res 13) without one Republican in either chamber voting for the measure. A handful of conservative Democrats joined their GOP colleagues in voting against the budget blueprint.

The \$3.56 trillion budget resolution sets the framework for the 12 annual appropriations measures for the fiscal year that begins October 1. It also includes reconciliation instructions, which could allow a number of President Obama's initiatives to pass through Congress without the threat of a Senate filibuster. Notably, health care reform is among the issues that could be considered under the budget reconciliation process if Democratic congressional leaders choose to employ such an option.

To date, appropriators in the House and Senate have made significant strides toward approving a new budget. In the House, the Appropriations Committee has cleared nine fiscal year 2010 appropriations bills, with floor action completed on four of the measures. In the upper chamber, the Appropriations Committee has cleared six of next year's spending bills. Based on their progress thus far, appropriators have expressed optimism that Congress will be able to pass all 12 spending measures separately, thus avoiding the need for a massive catch-all omnibus spending package later this year.

MEDICAID/HEALTH REFORM

Health system reform continues to dominate the domestic health and human services agenda. Two Senate and three House committees have conducted numerous hearings, but only one – the Senate Health, Education, Labor and Pensions (HELP) Committee – has begun marking up legislation. Of note to county systems, the HELP draft contains a substantial new investment of \$10 billion over ten years for public health and prevention efforts.

Medicaid would be expanded to individuals in drafts of both the House and Senate initiatives. However, income eligibility levels and the number of years the federal government would fully assume the costs are key unresolved issues. Additionally, the continued role of Medicaid disproportionate share hospital (DSH) payments to facilities serving large numbers of uninsured patients remains unsettled. While there is a general understanding that DSH payments would no longer need to continue at current levels in a system where millions of additional individuals are insured, paring back payments before reform is achieved would place safety net financing at risk.

Committees in the House and Senate are expected to mark up their reform bills in July. Floor action would follow, with congressional leaders hoping to send a reconciled bill to President Obama this fall. The timetable continues to be ambitious, with a number of major issues unresolved, including how to pay for the trillion dollar effort over the next ten years and whether there should be a new public health insurance option launched by government and sustained by the premiums paid into it.

In a related development, and marking a major victory for counties and states, the Obama administration rescinded or otherwise tabled the implementation of seven Medicaid regulations issued by the Bush administration that would have restricted or eliminated federal reimbursement for certain services provided to Medicaid beneficiaries. Eliminating federal reimbursement for services such as case management for child welfare or behavioral health populations would have shifted significant costs to counties.

CLIMATE CHANGE-RENEWABLE ENERGY

In late June, the House narrowly approved comprehensive global warming legislation (HR 2454), handing President Obama and House Democratic leaders a key victory. The final vote on the bill was 219-212, with eight Republicans voting for the measure and 44 Democrats opposing it.

The centerpiece of the House legislation is a proposal that would cap the emissions of greenhouse gases (GHGs) at 17 percent below current levels by 2020. The emissions cap would increase to 42 percent in 2020 and 83 percent in 2050.

To achieve the emissions reduction targets, HR 2454 would implement a cap-and-trade system whereby companies that emit GHGs – such as electric utilities and refineries – would have to reduce their pollution output or buy allowances. The emissions allowances would be traded on an open market.

The bill also would require utilities to produce 15 percent of the nation’s electricity from renewable energy sources by 2020, with another five percent of energy savings coming from improved efficiency. Under the measure, states could petition to bring the renewable energy standard down to 12 percent, with eight percent achieved through efficiency measures.

As passed by the House, the bill includes a broadened definition of “renewable biomass.” With regard to non-federal lands, the legislation would classify as renewable biomass residues and byproducts from wood, pulp, and paper products facilities. The measure also expands the types of biomass eligible from federal lands, including dead, severely damaged, and badly infested trees from late successional stands.

On a related matter, the House measure would arrange for a National Academy of Sciences study to evaluate how sources of renewable biomass contribute to energy independence and environmental protection goals. In turn, and if deemed appropriate by the Department of Agriculture, the bill would allow the definition of renewable biomass to be revised for the Renewable Fuels Standard and the Combined Efficiency and Renewable Electricity Standard. In addition, federal agencies would be allowed to promulgate a rule to modify the definition of renewable biomass from federal lands.

Now that HR 2454 has cleared the House, attention has turned to the upper chamber where Senator Barbara Boxer (D-CA) – the chairwoman of the Environment & Public Works (EPW) Committee – is working with moderate Democrats in an effort to forge a compromise cap-and-trade measure. Boxer’s committee is holding a series of climate change hearings in early July, and could markup a bill prior to the August recess.

It should be noted that Senate Majority Leader Harry Reid (D-NV) has indicated his intention to combine the Senate’s cap-and-trade bill with the draft renewable energy package that was recently approved by the Senate Energy and Natural Resources Committee. The Senate’s renewable energy title would mandate that 15 percent of the nation’s power come from renewable sources by 2021, including up to four percent from improved efficiency. The measure also would allow the federal government to use the authority of eminent domain, if necessary, to overrule local authorities in choosing the location of new power lines for renewable energy.

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

In a major victory for California’s counties, the House of Representatives approved on June 16 an amendment to the fiscal year 2010 Commerce-Justice-Science (CJS) Appropriations bill (HR 2847) that restored the legislation’s funding for the State Criminal Alien Assistance Program

(SCAAP). The amendment – championed Congressman Mike Honda (D-CA) and cosponsored by several other key members of the California congressional delegation – added \$100 million in SCAAP funding to HR 2847. As passed by the House, the bill would fund SCAAP at \$400 million, or the same amount of funding appropriated by Congress in the current year.

For its part, CSAC worked closely with Congressman Honda's office during the development of the SCAAP amendment. The association also worked to generate sufficient floor support for the restoration effort.

Across Capitol Hill, the Senate Appropriations Committee approved its version of the fiscal year 2010 CJS spending measure on June 25. The bill includes \$228 million for SCAAP, or a proposed \$172 million reduction. Notably, the Senate, due to a variety of factors, has traditionally approved a lower funding figure for SCAAP.

Differences over the House and Senate CJS spending bills will be reconciled in a conference committee later this year.

On a related matter, Senator Dianne Feinstein (D-CA) and Representative Linda Sánchez (D-CA) reintroduced their SCAAP reimbursement criteria bills earlier this year. 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.

REAUTHORIZATION OF SAFETEA-LU

In late June, the House Transportation & Infrastructure (T&I) Committee's Highways and Transit Subcommittee approved by voice vote a draft version of a bipartisan, six-year surface transportation authorization bill. Although full committee consideration of the measure has not yet been officially scheduled, committee leaders are planning to conduct a markup session in late July.

In a victory for CSAC, the draft bill includes language that would allow California to continue to participate in the Surface Transportation Project Delivery Pilot Program. Specifically, the draft enumerates that any state that is participating in the program on September 30, 2009 does not need to reapply in order to participate in future years.

It should be noted Congressman Gary Miller (R-CA) – a key champion of the program and one of the original architects of the initiative – noted at the subcommittee markup of the House draft that the pilot program language needs to be clarified. Mr. Miller pointed out that the pilot program is slated to terminate in 2011 pursuant to the U.S. Code but that the draft bill does not include language addressing the termination clause. In response, T&I Committee Chairman James Oberstar (D-MN) indicated that the intent of the bill is to allow states to participate through the life of the new authorization period and that he would work with Mr. Miller to

ensure that the language of the bill satisfies the committee's intent. Additionally, Chairman Oberstar stated his intention to work with Mr. Miller to expand the program to allow projects that are partially funded with Federal Transit Administration dollars to also be eligible under the rules of the pilot program.

Overall, the House bill proposes spending \$500 billion on surface transportation programs, including \$450 billion for highway, highway safety, and transit investment. The proposed spending represents a 38 percent increase over the current funding level of \$326 billion. The bill leaves unanswered, however, the question of how to finance the increases in transportation investment.

In contrast to House transportation leaders, the Obama administration is calling for an 18-month extension of SAFETEA-LU. The White House's rationale for proposing the short-term extension is to provide Congress and the administration with sufficient time to address the impending revenue shortfall in the Highway Trust Fund (projected to be in the \$5 billion to \$7 billion range by this summer).

For her part, Chairwoman Boxer – whose EPW panel has jurisdiction over highways – has endorsed the administration's calls for an 18-month extension of SAFETEA-LU. EPW staff is currently drafting an extension bill.

INDIAN GAMING

Both the House Natural Resources Committee and the Senate Indian Affairs Committee have held hearings to review the legal implications of the recent U.S. Supreme Court decision in *Carcieri v. Salazar*. Under the Court's holding, the authority of the Secretary of Interior to take land into trust for tribes extends only to those tribes under federal jurisdiction in 1934, when the Indian Reorganization Act was enacted.

Because the Court did not define the term "under federal jurisdiction," observers expect Congress to consider legislation that would clarify the *Carcieri* decision. While some tribes favor legislative intervention, others oppose any congressional action on this matter.

For its part, CSAC is urging key lawmakers to take into account the interests of local governments if *Carcieri*-related legislation is considered. At this point, it is unclear if the Natural Resources Committee/Indian Affairs Committee will take up such a bill.

SHORT-TERM CASH FLOW BORROWING PROGRAM

With the financial crisis severely limiting local government access to traditional short-term capital markets, CSAC aggressively worked this past quarter to urge federal policymakers to create a local government credit market stabilization program. The association, along with the League of California Cities and the State of California, continued to advocate that a portion of

remaining funds under the Troubled Asset Relief Program (TARP) be used to back financial institutions that agree to provide credit enhancement for state and local cash flow borrowings, such as California's 2009 Tax and Revenue Anticipation Notes (TRANS) program.

Although support for such a proposal gained some traction – including a letter from key members of the California congressional delegation to House Financial Services Committee Chairman Barney Frank (D-MA) urging him to meet with Treasury Secretary Timothy Geithner to investigate whether TARP funds could be made available to guarantee short-term cash flow borrowings – efforts to advance the proposal fell short.

In late May, Secretary Geithner stated in congressional testimony that TARP was not the appropriate vehicle to assist state and local governments. According to Geithner, the program should be reserved for financial companies. The secretary suggested that Congress might provide a solution to assist states, but that state fiscal responsibility was a major key to addressing current budgetary deficits.

On a related matter, earlier this year Representative Gerry Connolly (D-VA) introduced legislation (HR 1669) that would allow the federal government to aid the municipal bond market. Under the legislation, the Department of the Treasury, the Federal Reserve, and the Federal Financial Bank would be given new authority to guarantee and purchase municipal securities. The bill also would establish a program to pool municipal bonds as Treasury securities and provide credit enhancement for the bonds.

The legislation has been referred to the House Financial Services Committee, which has sole jurisdiction over the measure. The committee is expected to consider a package of municipal bond-related legislation sometime later this year.

FUELS MANAGEMENT

Earlier this year, Senator Dianne Feinstein (D-CA) introduced legislation (S 762) that would establish new fire-prevention incentives for communities that are at risk of wildfires. Under the bill, communities located in fire hazard areas that implement a nationally recognized wildland fire code – or have mandated the retrofit of structures known to be vulnerable to wildfire – would be eligible for 90 percent reimbursement of their firefighting and emergency expenses covered by the Federal Emergency Management Agency (FEMA). Currently, states and local communities can be reimbursed for 75 percent of their firefighting and emergency service expenses if FEMA determines that a fire threatens a significant number of homes and structures.

The legislation also would create a \$25 million grant program to assist local communities in implementing activities and policies of nationally recognized wildland fire codes and standards. The grants, administered by FEMA, could be used to enforce local ordinances, develop incentive programs to retrofit hazardous structures, create defensible space, and reduce hazardous fuel

loads near communities. Additionally, the bill would authorize the U.S. Forest Service and the Department of the Interior to offer grants to local communities for fire safe practices.

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