



CALIFORNIA STATE ASSOCIATION OF COUNTIES

## Federal Issues Update

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April 22, 2016

Lawmakers continued the week of April 18 to devote significant time and attention to the advancement of the fiscal year 2017 appropriations process. In the House, the Appropriations Committee cleared on April 19 its Energy & Water (E&W) and Agriculture spending bills. Approval of the legislation comes on the heels of last week's committee action on the Military Construction-Veterans Affairs (MilCon-VA) funding measure.

Across Capitol Hill, the Senate Appropriations Committee recently passed their respective versions of the fiscal year Commerce-Justice-Science (CJS), E&W, Milcon-VA, and Transportation-Housing and Urban Development (T-HUD) spending legislation. Additionally, the full Senate this week began floor consideration of the E&W appropriations measure, which provides funding for, among other agencies, the Bureau of Reclamation and the U.S. Army Corps of Engineers.

Separately, Senate appropriators – along with their House counterparts – are working on an emergency supplemental spending bill to help combat the Zika virus. Funding to address the public health threat has remained highly contentious, as Republicans have charged that the Obama administration has not supplied Congress with sufficient information about how the emergency funding would be allocated. According to Senate leaders, a Zika spending deal is in the works and will likely be offered as an amendment to one of the pending appropriations measures.

It should be noted that this year's appropriations process is advancing in the absence of a final budget resolution. In the House, the Budget Committee-approved resolution (H Con Res 125) remains stalled amid internal Republican disputes over topline spending in fiscal year 2017 and beyond. Due to the ongoing standoff, House GOP leaders appear likely to abandon efforts to adopt a formal budget resolution.

## Energy and Water Development Appropriations

As reported above, the upper chamber began debating this past week its E&W appropriations legislation. Although the popular spending bill was cleared on a 30-0 committee vote, the measure is facing opposition from a number of Senate conservatives who want to pare down the bill's \$37.5 billion price tag.

In addition to GOP conservatives, the Obama administration opposes the Senate measure, but for different reasons. According to a recently released Statement of Administration Policy (SAP), the White House objects to a number of policy riders that GOP appropriators have included in the spending bill, including language that would prohibit the Army Corps from making any changes to the definition of "fill material" and "discharge of fill material" for the purposes of the Clean Water Act (CWA).

On a related matter, and during floor consideration of the bill, Senator John Hoeven (R-ND) offered an amendment designed to prevent the Corps from spending any funds to implement the Obama administration's controversial Waters of the United States (WOTUS) rule. The amendment failed on a 56-42 vote. The WOTUS rule, which was finalized by the Environmental Protection Agency and the Corps in 2015, has been tied up in the courts and is awaiting further legal action.

It should be noted that the E&W spending legislation includes \$100 million for various Western drought-relief programs and activities. Championed by Senator Dianne Feinstein (D-CA), the funds would build upon the \$100 million that was included for various drought-response programs as part of the fiscal year 2016 omnibus spending law.

The bill also directs the Bureau of Reclamation and the Department of the Interior to use all of the flexibility at their disposal to mitigate the impacts of the drought. Specifically, the Committee Report accompanying the E&W legislation (S Rept. 114-236) directs Reclamation to work with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and relevant state agencies to undertake comprehensive, real-time monitoring of drought conditions and their impact on endangered species and rely upon the best available science when managing export pumping rates. The Report also instructs Reclamation to work with the U.S. Department of Agriculture to expand efforts to supply small rural communities with water during the current drought.

In the House, the Appropriations Committee approved earlier this week its fiscal year 2017 E&W spending legislation. As expected, Republican appropriators have included in the bill several legislative provisions designed to send additional water deliveries to California's Central Valley. The language – which largely tracks drought legislation passed by the lower chamber in 2015 (HR 2898) – would require the Department of the Interior to increase Delta pumping under certain conditions. The provisions are strongly supported by Central Valley Republicans but have drawn fire from members of the state's Democratic congressional delegation.

The House bill also includes several policy riders, including language that would prohibit the Army Corps from spending any funds to implement the Obama administration's WOTUS regulation. Like the Senate bill, the House measure also includes language that would prevent any changes to the definition of "fill material" for purposes of the CWA.

Looking ahead, it is unclear when, or if, the full House will take up the E&W spending package.

### **CJS Appropriations**

On April 21, the Senate Appropriations Committee approved its fiscal year 2017 CJS funding bill. All told, the legislation would spend \$56.3 billion, or \$563 million more than the fiscal year 2016 enacted level.

With regard to funding for state and local law enforcement assistance, the Senate bill would provide nearly \$1.2 billion in fiscal year 2017. The proposed funding is roughly \$227 million below current spending and \$83 million more than President Obama's budget request.

Of the aforementioned total, \$100 million would be provided for the State Criminal Alien Assistance Program (SCAAP), a cut of \$110 million. It should be noted that the upper chamber typically provides limited funding for SCAAP, with senators dedicating resources to other local justice programs. However, the House has consistently endorsed higher SCAAP funding levels, resulting in a more favorable appropriation.

Additionally, the Senate bill includes \$384 million for Byrne Justice Assistance Grants (Byrne-JAG), an \$8 million increase. The measure also would provide \$215 million – a proposed \$3 million boost – for the Community Oriented Policing Services (COPS) program. Of that total, \$187 million would be set aside for COPS hiring grants.

It should be noted that the Senate legislation includes language directing the Department of Justice to ensure that all SCAAP, Byrne-JAG, and COPS program applicants are required to certify that they are in compliance with all applicable federal laws – and that they will continue to

remain in compliance throughout the duration of their grant award period. The language is designed to prevent so-called "sanctuary cities" from receiving federal justice grant funding in fiscal year 2017.

The Senate CJS measure also would dedicate \$2.95 billion for the Crime Victims Fund (CVF), which is \$85 million shy of current spending but \$957 million above the Obama administration's budget request. As occurred in fiscal year 2016, the committee voted to transfer \$379 million from the CVF to the Office on Violence Against Women. Additionally, the panel adopted an amendment that would carve out five percent of CVF funds for grants to Indian tribal governments to improve services and justice for victims of crime.

While the committee estimates that nearly \$2.6 billion would be disbursed to States for programs funded under the Victims of Crime Act (VOCA) statute, the aforementioned tribal carve out – along with several other set-asides – would leave roughly \$2.14 billion for VOCA assistance grants. If enacted, fiscal year 2017 VOCA program funding would be roughly 9 percent less than current levels.

Finally, the Senate Appropriations Committee adopted an amendment to the CJS spending bill clarifying that no DOJ funds can be used to prevent any state from implementing its own laws that authorize the use, distribution or cultivation of medical marijuana.

### **Transportation – Housing and Urban Development Appropriations**

On April 21, the Senate Appropriations Committee unanimously approved its fiscal year 2017 T-HUD spending bill. The \$56.5 billion measure, which funds a number of key local government programs, is \$827 million below current spending levels and nearly \$3 billion less than the president's budget request. However, the panel was able to cancel unspent funds from past years and make use of higher estimated revenue from the Federal Housing Administration, so the bill would actually increase net funding by approximately \$1.4 billion.

Among other things, the T-HUD bill would provide approximately \$43.3 billion for highway programs and just over \$9.3 billion for transit programs, both of which are consistent with the recently enacted surface transportation law (FAST Act; PL 114-94). The bill also would increase funding by \$25 million for the Department of Transportation's (DOT) popular TIGER grant program. With regard to housing programs, the legislation would provide level funding for the Community Development Block Grant (CDBG) and the HOME Investment Partnerships program. The measure also includes a slight boost in funding for Homeless Assistance Grants.

## FAA Reauthorization

After more than two weeks of debate, the Senate approved on April 19 legislation (HR 636) that would reauthorize the Federal Aviation Administration (FAA). The bill, which was cleared by the upper chamber on a 95-3 vote, would renew FAA programs and aviation-related excise taxes through September of 2017.

Of particular interest to counties, the legislation would increase funding for the Airport Improvement Program (AIP) by \$400 million to an annual amount of \$3.75 billion. AIP provides grants to public agencies for the planning and development of public-use airports. The legislation also would fund the Essential Air Services (EAS) program – which provides subsidies for air service to small and remote airports – at current levels. In addition, the measure would provide \$10 million for the Small Community Air Service Development Program (SCASDP), which is \$4 million more than the currently authorized level. Similar to EAS, SCASDP grants are designed to help rural counties address issues involving air service and airfare.

It should be noted that lawmakers on the Senate Finance Committee were hoping to use the FAA bill as a vehicle to advance a variety of tax-related add-ons. For example, one provision would have provided a five-year extension of tax credits for renewable energy, including fuel cells, geothermal, and wind. The proposed package also included incentives for carbon dioxide sequestration projects, as well as a number of tax breaks for brewers of beer, wine, and spirits. After facing criticism from both parties, Senate leaders agreed to move forward with a “clean” bill instead.

In the House, a six-year FAA renewal bill (HR 4441) is currently awaiting floor action. Entitled the Aviation Innovation, Reform, and Reauthorization (AIRR) Act, the legislation includes a number of major aviation reforms, including a controversial proposal to reform the air traffic control (ATC) system by removing it from the FAA and placing it in a federally-chartered non-profit corporation. The proposal faces stiff opposition from congressional Democrats, as well as some Republican members of the Appropriations and Ways and Means Committees.

It should be noted that Representative Grace Napolitano (D-CA) is expected to offer a floor amendment that would clarify that local sales tax measures of general application are not subject to provisions of federal law that require the proceeds of certain taxes to be spent for aviation purposes. The amendment, which was initially offered during the Transportation & Infrastructure Committee’s consideration of the FAA rewrite, was defeated on a voice vote and subsequently withdrawn prior to a recorded vote.

The impetus for the Napolitano amendment is a 2014 FAA ruling (79 FR 66282) that requires States and local governments to spend the proceeds of any aviation-related tax – those derived from excise taxes and local sales taxes – on airport uses only. According to the FAA, “the agency interpreted the provisions of Sections 47107(b) and 47133 [49 USC] to apply to any state or local tax on aviation fuel, whether the tax was specifically targeted at aviation fuel or was a general sales tax on products that included aviation fuel without exemption.” Incidentally, the Conference Report to the Airport and Airway Improvement Act (PL 100-223), which houses the statute in question, states that the requirement was “intended to apply to local fuel taxes only, and not to other taxes imposed by local governments, or to state taxes” (Conf. Rept. No. 484, 100th Cong., 1st Sess. 1987 accompanying PL 100-223).

It is estimated that the FAA’s policy amendment will mean a loss of over \$100 million for the State of California and its local governments. Nationwide, a recent study suggests that state and local governments will lose roughly \$190 million a year under the FAA rule change.

Furthermore, because sales taxes on aviation fuel are not segregated from other taxable sources, state and local governments will need to implement an extensive new tracking system(s) in order to comply with the FAA’s policy.

Looking ahead, Senate leaders are urging their House counterparts to take up and pass the upper chamber’s aviation renewal measure. House committee leaders, however, are resisting those calls and have indicated their preference for moving their own FAA renewal bill.