

Summary of Federal Legislative Report – May 22, 2019 Legislative Committee Meeting

Budget and Appropriations Update

Despite the absence of a bipartisan, bicameral agreement on a topline budget number for fiscal year 2020, Democratic leaders of the House Appropriations Committee have continued to advance several key funding measures. To date, appropriators have taken action on 10 of the 12 annual spending bills for the fiscal year that begins October 1.

Across Capitol Hill, the Republican leaders of the Senate Appropriations Committee have indicated that they will not take up any fiscal year 2020 spending legislation until lawmakers reach a deal on a new budgetary framework.

Commerce-Justice-Science

On May 22, the House Appropriations Committee cleared the fiscal year 2020 Commerce-Justice-Science (CJS) spending bill. The legislation, which would provide \$73.9 billion in total discretionary funding to the Departments of Commerce and Justice, NASA, and related agencies, was approved on a 30-22 vote. All told, the proposed spending represents a \$9.8 billion increase over the fiscal year 2019 enacted level.

While Democrats touted the bill's investment in a variety of areas, including programs that would address climate change, committee Republicans were critical of the legislation's overall funding level. Additionally, Republicans expressed opposition to a number of policy add-ons, including a rider that would bar the Census Bureau from including a question about citizenship status in the 2020 census.

With regard to state and local law enforcement assistance, the bill would provide \$3.4 billion for a variety of key programs in fiscal year 2020. This includes \$260 million for the State Criminal Alien Assistance Program (SCAAP), an increase of roughly \$16 million. In addition, the bill would boost funding for the Byrne-Justice Assistance Grant program (+\$106 million), as well as *Violence Against Women Act* programs (+\$85 million). The legislation also includes additional funding (\$11 million) for the COPS hiring grant program.

With regard to the *Victims of Crime Act* (VOCA), the measure would provide \$2.8 billion for programs authorized under the law, or a \$515 million decrease. It should be noted, however, that the House bill's funding level for VOCA is approximately \$500 million more than the cap recommended by the Trump administration in its fiscal year 2020 budget proposal.

Finally, the legislation includes language – often referred to as the Rohrabacher-Farr amendment – that would prohibit federal funding from being used to prosecute individuals or businesses acting in compliance with state-legal medical cannabis laws.

Interior-Environment

Along with the CJS bill, the House Appropriations Committee approved the fiscal year 2020 Interior spending measure. The legislation would provide roughly \$37.3 billion in funding for the Department of the Interior (excluding the Bureau of Reclamation), the Environmental Protection Agency, and a number of related agencies. The proposed spending is \$1.73 billion more than the fiscal year 2019 enacted level and \$7.24 billion more than President Trump's budget request.

Similar to the CJS measure, Republicans expressed opposition to the Interior bill's proposed spending increases. Additionally, GOP members were critical of the removal of several policy provisions that have been enacted as part of previous spending measures for the Department of the Interior. Accordingly, no Republicans on the panel voted to advance the bill.

Among other things, the legislation includes \$3.11 billion for Clean Water and Drinking Water State Revolving Funds, an increase of \$345 million above the 2019 enacted level and \$1.13 billion above the president's budget request.

With regard to wildfires, the measure would provide over \$5.2 billion for management and suppression activities, or a \$1.6 billion increase over current spending. The legislation also includes a \$2.25 billion budget-cap adjustment that would provide additional spending authority to meet suppression costs that exceed the 10-year average.

Energy-Water Development

On May 21, the full House Appropriations cleared the fiscal year 2019 Energy-Water spending bill, which funds the Department of Energy (DOE), the U.S. Army Corps of Engineers, the Bureau of Reclamation, and several independent agencies. The legislation was passed on a 31-21 vote.

The measure would spend \$46.4 billion, or \$1.8 billion above the fiscal year 2019 enacted level. Notably, the Energy Department would see its budget increase by \$1.4 billion, while an extra \$82.8 million would be set-aside for the Bureau of Reclamation. In addition, the Army Corps would be in line for an additional \$357 million that would help provide for six new construction projects and six new feasibility studies.

For Army Corps dredging activities, the bill includes nearly \$2.9 million for San Pablo Bay and Mare Island Strait and \$5.8 million for the Suisun Bay Channel. In addition, the legislation includes \$3.4 million for the Bureau of Reclamation's Solano Project.

House Approves *Carcieri* Fix Legislation

A week after being pulled from the House floor, legislation that would reverse the U.S. Supreme Court's *Carcieri v. Salazar* decision was approved by the chamber on May 15 by a vote of 323 to 96. Championed by Representative Tom Cole (R-OK), the so-called "clean *Carcieri* fix" (HR 375) was cleared earlier this month by the House Natural Resources Committee on a 29 to seven vote.

In *Carcieri*, the Supreme Court determined 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. The effect of the landmark ruling was the creation of two classes of Indian tribes: those that can have land taken into trust on their behalf by the U.S. Department of the Interior (pre-1934 tribes) and those that cannot (post-1934 tribes).

Since the Court's decision, many Indian tribes have demanded that Congress pass a clean *Carcieri* fix, which would simply reverse the now decade-old ruling. In contrast, California's counties have urged lawmakers to include comprehensive legislative reforms in the Interior Department's deeply flawed fee-to-trust process as part of any legislation that addresses *Carcieri*.

Looking ahead, HR 375 will face very uncertain prospects in the upper chamber. In past years, Senate opposition has thwarted *Carceri* clean-fix bills, with various senators calling for the inclusion of provisions that would overhaul the fee-to-trust process. Additionally, a number of senators have attempted to include as part of previous *Carceri* legislation controversial amendments to the *Indian Gaming Regulatory Act* (IGRA), further complicating any potential legislative solution.

SCAAP Reauthorization Bill Introduced in the Senate

On May 14, Senator Martha McSally (R-AZ) introduced legislation (S 1470) that would reauthorize the State Criminal Alien Assistance Program (SCAAP). Although Congress has continued to fund SCAAP through the annual appropriations process, the program has been without a formal authorization since fiscal year 2011.

The McSally bill would do the following:

- Reauthorize SCAAP at \$950 million annually through fiscal year 2024 (SCAAP is currently funded at \$243.5 million).
- Require the Department of Justice to distribute SCAAP funds to eligible jurisdictions within four months of closing the program's application period in any given fiscal year.
- Expand the allowable uses of SCAAP. Currently, jurisdictions may only be reimbursed for eligible incarceration costs for individuals who have been convicted of a felony or two or more misdemeanors. The bill would allow counties and States to be reimbursed for the following expenses:
 - Incarceration costs for undocumented individuals who have been *charged with a felony or two or more misdemeanors*.
 - Incarceration costs for individuals with an "unknown" (or unverified) immigration status.
 - Medical expenses.

Looking ahead, the McSally bill may be the subject of a hearing or a markup in the Senate Judiciary Committee.

Water Infrastructure Update

Key members of the Senate Energy and Natural Resources Committee, in consultation with Senator Dianne Feinstein and others, are in the process of developing a broad water infrastructure bill. Among other things, the draft legislation would authorize support for water reuse and desalination projects, surface and groundwater storage projects, and a new Reclamation Infrastructure Financing and Innovation Act (RIFIA) program.

For its part, the Delta Counties Coalition (DCC) has conveyed to Senator Feinstein that any potential DCC support for the bill would be predicated upon the inclusion of language barring any funds or new authorities to support conveyance/a Delta tunnel(s).

While the new Senate bill could move as a stand-alone measure, committee leaders may look to add the text of the legislation to the infrastructure package that congressional leaders are hoping to develop later this year.

HUD Issues Proposal to Bar Federal Housing for Some Immigrants

On May 10, the U.S. Department of Housing and Urban Development (HUD) published a proposed rule that, if finalized, would no longer allow legal-status families with undocumented or other ineligible relatives living with them to live in public housing. It should be noted that ineligible individuals currently living in those arrangements do not receive any federal subsidy.

Pursuant to the new HUD proposal, all subsidized housing residents (who are not elderly) would be required to have their immigration status verified. If it is determined that an “ineligible” individual resides in the home, the entire family would be evicted from subsidized housing within 18 months. According to HUD estimates, approximately 25,000 households – or about 108,000 people – would lose their housing under this proposal. Of those individuals, 76,000 are legally eligible for benefits, including 55,000 citizen children.

Congressional Democrats are in the process of devising legislative strategies that would block implementation of the controversial HUD proposal.