NACo Legislative Bulletin

ACTION NEEDED!

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November 14, 2011

A NACo Victory – Senate Passes 3 Percent Withholding Repeal – Key 2011 Legislative Priority

After a resounding victory in the House, last week the Senate quickly began consideration of H.R. 674, legislation to repeal the three percent withholding requirement. On Nov. 7, early indication that H.R. 674 could pass the Senate showed when Majority Leader Reid scheduled a test vote by filing a cloture motion. By a vote of 94-1, Senators overwhelmingly voted to invoke cloture so that the chamber could proceed to the bill. As the week progressed, NACo received reports of possible amendments to the bill, two were ultimately voted on.

The first amendment, offered by Sen. John McCain (R-Ariz.), included several provisions that are also found in S.1720, the GOP-backed Jobs for Growth Act. Among the provisions are: a balanced budget amendment to the Constitution, a reduced corporate income tax and line-item veto power for the president. This amendment was taken up first and needed 60 votes to succeed. In the end, the amendment failed to be adopted largely along party lines, 40-46.

Immediately after, the next amendment, offered by Senator Jon Tester (D-Mont.) was taken up and also needed 60 votes to succeed. The Tester amendment provides tax credits to businesses for hiring veterans. The veterans' measure enjoys bipartisan support as it combines elements of President Obama's jobs plan with bipartisan bills sponsored by Senate Veterans' Affairs Chairwoman Patty Murray (D-Wash.) and House Veterans' Affairs Chairman Jeff Miller (R-Fla.). The amendment was successfully adopted by a bipartisan vote of 94-1.

Upon completion of those votes, the Senate moved right into the vote to repeal the three percent withholding requirement. In another overwhelming show of support, the Senate voted to repeal the requirement by a vote of 95-0.

Given that the Senate passed an amended version of H.R. 674, due to the requirement that both chambers must pass identical bills before it can be sent to the President for signing, the bill now goes back to the House where it is expected to be taken up immediately and pass as amended. A House vote could occur as early as November 15.

The three percent withholding requirement was enacted when TIPRA was passed in 2005. NACo has strongly opposed the requirement ever since. It mandated many county governments, beginning in 2013, to start withholding 3 percent from certain payments for goods and services and then remit the withholdings to the U.S. Treasury.

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Appropriations: Amendment to Eliminate Funding for Election Assistance Commission — *Action Needed!*
Lawmakers are hoping to clear the first minibus this week, which it is expected to include continued funding for government operations until December 19, as the expiration of the current continuing resolution (Nov. 18) approaches.

This week, the Senate begins work on the second "minibus" (H.R. 2354) after the chamber voted to invoke cloture on November 10. The three appropriations bills included in H.R. 2354 are Energy-Water, Financial Services and State-Foreign Operations. NACo has received reports that an amendment to H.R. 2354 is expected to zero out funding for the U.S. Elections Assistance Commission (EAC). Funding for the commission is provided in the Financial Services spending bill. The U.S. EAC was established under the Help America Vote Act (HAVA) to perform multiple functions relating to federal involvement in election administration. The establishment of a dedicated federal agency, outside of the Federal Elections Commission, whose sole function was to focus on the improvement of the election process, was supported by NACo along with other election reform stakeholders. NACo opposes efforts that would effectively eliminate the EAC.

Action Needed: Please call your Senators and urge them to oppose efforts to eliminate funding for the EAC. For more information, NACo's policy on efforts to eliminate the EAC can be found here in the FIGA Steering Committee Platform. To call your Senator, dial the Capitol switchboard at 202/224-3121 and ask for their office.
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Senate Approves Veterans Tax Credits
The Senate on November 10 passed the Veterans Opportunities Work (VOW) to Hire Heroes Act, which would provide up to $9600 in tax credits to businesses who hire unemployed disabled veterans. The Senate voted (94-1) to add the Act as amended language put forth by Majority Leader Harry Reid (D-Nev.) on behalf of Sen. Daniel Tester, to the three percent withholding bill. The amendment combines elements of President Obama's jobs plan, and veterans' assistance bills sponsored by Senate Veterans Affairs Chairwoman Senator Patty Murray (D-Wash.) and House Veterans Affairs Chairman Jeff Miller (R-Fla.).

The Act will provide up to $9,600 in tax credits to companies that hire unemployed veterans with a service connected disability actively searching for employment for at least six months, and strengthens employment counseling and training programs for veterans and troops about to leave the military. The tax credits are offset by an extension of current fees on Veterans Affairs home loans and a reduction of payments to some VA service providers.

The Obama Administration has also announced plans to set up an online jobs bank for veterans seeking employment, and will provide access to six months of personalized case management and employment counseling for unemployed veterans.

The House is expected to vote on the amended bill this week.
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Senate Committee Approves Highway Bill
The Senate Environment and Public Works (EPW) Committee on November 9 approved a two-year $109 billion bipartisan highway bill by a vote of 18-0. The $109 billion funding level reflects current funding plus inflation. While NACo is pleased that progress is being made on reauthorization, we are concerned about changes in the highway program that may not help counties. Moving Ahead for Progress in the 21st Century (MAP-21) consolidates a number of federal-aid highway programs by going from 90 programs to less than 30. There are no earmarks in the legislation and there are provisions to accelerate project delivery and performance measures to hold states and MPOs accountable for improving the conditions and performance of their transportation assets.

A major reform is the dramatic increase in the TIFIA program. The federal bridge program is eliminated along with the off-system bridge set aside, although under certain circumstances off-system bridge funding may be available. The same is true for the rural road safety program and the railroad grade crossing programs. MPOs between 50,000-200,000 population would face an uncertain future and are no longer guaranteed a role in the planning process. Efforts to enhance the

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planning role for rural regions under 50,000 population were not successful. The Surface Transportation Program underwent some changes that may not be beneficial to local governments and funding for the Transportation Enhancement program appears to be no longer mandatory. Several major steps remain before MAP-21, goes before the full Senate for a vote. The Senate Finance Committee has to identify $12 billion in new revenue to fully fund this bill and the Senate Banking (transit section) and Senate Commerce (safety section) committees need to draft and approve their sections of the bill.
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Marketplace Fairness Act Introduced in Senate
On November 9, Senators Mike Enzi (R-Wyo.), Richard Durbin (D-Ill.) and Lamar Alexander (R-Tenn.) engaged in a colloquy on the Senate floor to formally announce the introduction of the Marketplace Fairness Act (S. 1832). The bill closely resembles the Main Street Fairness Act, introduced earlier this year by Senator Durbin. One major difference with the new bill is it is clearly enjoys bipartisan support as five Republicans and five Democrats have signed on to be original cosponsors.

Other differences between the Marketplace and Main Street bills include: the Marketplace bill creates two systems for states to collect sales and use taxes whereas Main Street's only option is through the Streamlined Sales Tax Agreement (SSTA); the Marketplace bill exempts small sellers with less than $500,000 in gross annual remote sales from collection requirements while Main Street did not specify a small-seller exception and left setting the amount up to the SSTA Governing Board; and the Marketplace bill does not include vendor compensation while Main Street does.

For years, NACo has advocated for the collection of remote sales tax and legislation that would allow states and local governments to do so, emphasizing that the tax is not new; it simply calls for the same rules to apply to retailers whether they conduct business completely online or in a brick-and-mortar setting.

Additionally, at a time when online sales continue to experience significant growth while state and local governments struggle to rebound from the Great Recession, the potential revenue could alleviate some of the fiscal pressure.

To review the press release, bill text and section-by-section analysis, click here.
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Waters of the U.S. Update: EPA Federalism Consultation
On November 9, NACo attended the EPA's Executive Order 13132: Federalism Consultation on the upcoming "Waters of the U.S." rulemaking. This consultation is a prelude to the official publication of the proposed regulation in the Federal Register. Comments from state and local governments are due on December 15.

The EPA has worked with the Army Corps of Engineers to develop a proposed regulatory change, based on the previously proposed draft "Waters of the U.S." guidance. As the EPA works to craft a regulatory proposal, they are requesting comments from state and local government groups (and their members) on several topics. These include:

- Current practices governing "Waters of the U.S." – if a water is considered a "Waters of the U.S.," what are some of the costs associated with it? Has your county been required to get a 404 permit for maintenance of ditches? If so, why and what are some of the conditions attached to the permit? What are the associated costs?

- How can the EPA clarify key terms used within the Guidance? For example, adjacency, point of entry (into a watershed), ordinary high water mark, similarly situated, etc.

- Effect of "Waters of the U.S." definitional changes on other Clean Water Act (CWA) programs – For example, how will the changes impact the National Pollution Discharge Elimination System programs for stormwater and pesticides general permit? How will the changes impact Total Maximum Daily Load (TMDL)/Water Quality Standards? How will the definitional changes within these programs affect your county?

- How would requiring Section 404 permitting for some "other waters" (i.e. isolated waters) affect your state? How would including these waters as jurisdictional impact other CWA program requirements?

- Are there scientific descriptions that could better clarify which wetlands could be considered neighboring, and why?

Comments are due by December 15, 2011. Please send the comments to: Kathy Hurld, Wetlands Division, U.S. EPA, Hurld.Kathy@epa.gov.
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"Super Committee" Dems Propose Medicare, Medicaid Cuts
A proposal to reduce the deficit by $2.3 trillion was sent to members of the Select Committee on Deficit Reduction last week which included $400 billion in cuts to Medicare and Medicaid .

Identified as a Democratic plan, the $50 billion in Medicaid cuts include $4 billion from payments to hospitals that treat large numbers of Medicaid beneficiaries and uninsured, known as Medicaid disproportionate share hospital (DSH) payments. $13 billion come from tighter restrictions on the states' ability to levy health care provider taxes to draw down additional federal Medicaid funds and an additional $5 billion are cut from Medicaid reimbursements for durable medical equipment. $20 billion in savings is called for by changing the rebates pharmaceutical companies pay for prescription drugs provided to Medicaid patients.

It would also cut $8 billion from the Prevention and Public Health Fund, essentially cutting it in half.

Medicare providers would have to give up $250 billion and Medicare beneficiaries $100 billion.

The plan's reception seems to have been cool on both sides of the aisle, but the scale of the cuts – and the fact that they have been put on the table should, according to an aide to a senior senate aide, put Medicaid advocates on notice that significant cuts are not unthinkable. NACo opposes any additional cuts to Medicaid because of the inevitability of cost shifting to counties.
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Older Americans Act Bill May be Introduced This Month
Senate Health, Education, Labor and Pensions Committee Chairman Tom Harkin (D-Iowa) announced recently that he plans to introduce a bipartisan bill to reauthorize the Older Americans Act (OAA) soon. He may issue a set of principles before the Thanksgiving recess, and a comprehensive bill by the end of the month. The House is not on the same time table as the Senate. The OAA expired September 30.

The Administration on Aging issued a set of principles for reauthorization November 1. Among the principles of interest to counties is a proposed consolidation of the congregate and home-delivered meals programs. The consolidation would have a hold harmless provision so that no state receives less funding than in the previous separate allocations. NACo policy supports greater flexibility in the use of the OAA nutrition programs by increasing the percentage that can be transferred among programs. Clearly, the proposed consolidation goes beyond simple transfer authority, which is currently set at 40 percent.
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About NACo

National Association of Counties (NACo) is the only national organization that represents county governments in the U. S. NACo provides essential services to the nation' s 3,068 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, assists counties in finding and sharing innovative solutions through education and research and provides value-added services to save counties and taxpayers money.

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