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California Capitol Hill Bulletin

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To expand communications between Washington and California, the California Institute provides periodic faxed bulletins regarding current activity on Capitol Hill which directly impacts our state. Bulletins are published weekly during sessions of Congress, and occasionally during other periods. The e-mail edition is made possible in part by in-kind contributions from Sun Microsystems and IBM Corp.

DHS RELEASES HOMELAND SECURITY FUNDS, FORMULA SKEWED TO BENEFIT SMALL STATES

On April 30, 2003, the Department of Homeland Security (DHS) formally decided on a formula method to allocate \$1.5 billion in grant funds to states. California will receive \$119.3 million of these funds, the most for any state in total dollars but the least amount for any state on a per capita basis.

Despite recent comments by DHS Secretary Tom Ridge that he intended to find a more equitable allocation method -- and one that bore some relationship to the threat levels by the grantee jurisdictions -- Ridge elected to use the same unorthodox formula that DHS used in March to allocate \$566 million in homeland security grants from the FY 2003 omnibus spending bill.

At issue is \$1.3 billion in first responder grants and \$200 million for a new "critical infrastructure protection" grant program. These funds were provided by the FY 2003 supplemental appropriations bill signed on April 17, 2003. California will receive \$15.9 million in critical infrastructure protection funds, and \$103.4 million in additional first responder grants. When combined with the March funds, California's total receipts will be \$164.3 million of the nation's \$2.1 billion grand total.

California will receive 7.95 percent of the nation's funds for Homeland Security State Grants, despite the fact that the state houses more than 12 percent of the nation's population. Some California advocates also note that the state's coastal and border location might justify an even greater share of homeland security funds, as compared to states further inland.

Comparing receipts per capita, California will receive \$4.68 in total funding for every person in the state, whereas Wyoming will receive \$35.31, Vermont will receive \$29.37, North Dakota will receive \$28.68, Alaska will receive \$28.31, Delaware will receive \$23.43, and Montana will receive \$21.28 per capita. While small-state minimums are common in federal formulas, DHS constructed a formula that expanded the operation of the minimum considerably. For an

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explanation of the DHS methodology, and how it differs from the norm, see [Bulletin, Vol. 10, No. 11 \(4/25/2003\)](#).

According to figures from the California Institute, using capabilities developed pursuant to the Federal Funds and California project -- a joint venture with the Public Policy Institute of California (PPIC) -- the state would have received \$229.2 million (or \$6.53 per capita) if DHS had used a more common allocation method. That level is approximately \$65 million more than DHS allocated.

Because Congress set an unusually high small state minimum percentage for the program (three-fourths of one percent), small states would still have received a large share under even the more traditional minimum approach. For example, California's per capita allocation would have risen to \$6.53, whereas Wyoming's would have declined to \$31.08 and Vermont's to \$25.13.

For a full state-by-state breakout of formula grant spending, comparing actual allocations with the more common approach, see <http://www.calinst.org/datapages/DHS.htm>.

On Wednesday, April 30, 2003, Secretary Ridge testified before the Senate Appropriations Subcommittee on Homeland Security in support of changing the formula for FY2004 (all the grants announced recently have been for 2003). President Bush has proposed \$3.5 billion in first responder grant funding for 2004, and Ridge said that better targeting of the funds to areas with higher threat levels is "one of the most important things we can do in the 2004 budget."

PPIC RESEARCH FINDS SOME GOODS MOVEMENT BURDEN ON CALIFORNIA ROADS

The Public Policy Institute of California (PPIC) conducted a May 29, 2003 briefing on Capitol Hill to mark the release of their latest publication, *"Imports, Exports and Shipping Services: The Balance Between California and Other States."* The briefing, held in conjunction with the California Institute, discussed the flow of goods in, out and through the Golden State and the potential impact of goods movement on California's roads and highways infrastructure. The report author, Jon Haveman, focused on two variables to determine the burden of goods movement activity on California roads: value and weight.

According to the report, California facilitated international trade in the amount of \$440 billion worth of goods in 2000. As well, imports valued at \$248 billion entered the U.S. via California, later to be transported to destinations in other parts of the country. Haveman stated that the goods movement surplus in California totaled about \$177 billion worth of goods in 2000, weighing in excess of 32 billion kilograms. These totals account for 9.3 percent of the value of all freight shipments in and through California and 1.8 percent of an extra weight burden applied to California infrastructure. Not only do California highways service most of the surplus in trade compared to other modes of transportation, but California bears the highest freight surplus of any state when observing economic value as a variable, according to the report. Furthermore, California ranks as the sixth highest weight surplus state in the nation after New York, Texas, Louisiana, Michigan and Washington. Each of the aforementioned are coastal or border states that serve as important international gateways.

Although Haveman conceded the relatively small percentage of extra transshipment activity in California, he argued that most of this activity is concentrated in urban areas (e.g. Los Angeles/Long Beach), which are rife with pollution and congestion, while the balance of goods movement through inland states is, by and large, conducted through open land and rural highways making for a much smaller impact on air quality and livability of the surrounding area. The information presented at the briefing also implies additional burdens on California roads -- although the proportionality of the weight factor is not strikingly significant, numerically the amount is still a factor due to the extra wear and tear created by trucked goods movement. The importance of maintaining quality roads is also heightened when

considering the high value of goods being transported through California.

PPIC is a private foundation dedicated to improving public policy in California through independent, objective and non-partisan research. The goods movement report was produced at the request of the California Congressional Delegation.

To view a copy of this report visit the PPIC website at <http://www.ppic.org> . The 34-page report is available, in Adobe Acrobat (pdf) format, on the PPIC website at http://www.ppic.org/content/pubs/OP_403JHOP.pdf .

FREIGHT ISSUES CONSIDERED BY GOODS MOVEMENT CAUCUS

The Goods Movement Caucus, formed and led by Rep. Juanita Millender-McDonald (Carson) and Rep. Lincoln Diaz-Balart (FL), held a Freight Forum on Thursday, May 1, 2003. Caucus membership currently consists of sixteen House members, including California Reps. Mike Honda (San Jose), Bob Filner (San Diego), Gary Miller (Diamond Bar), Grace Napolitano (Norwalk), Ellen Tauscher (Alamo), and Diane Watson (Los Angeles). Caucus membership is expected to increase as the legislative year progresses.

Speaking on behalf of the Caucus members, Rep. Millender-McDonald related that the Caucus came into being as a result of the need to better manage the traffic and goods that move through the nation. Reminding the attendees of the grim reality of national economic gridlock that could follow any form of disruption in an ever-connected transportation system, Rep. Millender-McDonald called for a bipartisan effort as the Congress considers reauthorizing the Transportation Equity Act for the 21st Century (TEA-21). Using Southern California's mammoth trade hub -- the Ports of Long Beach and Los Angeles -- as an example, Rep. Millender-McDonald also commented that businesses are making greater use of "just in time delivery" to maximize efficiency, but that doing so places greater emphasis on the need for precision timing in the movement of goods.

Dozens of industry stakeholders attending the Forum voiced strong support for the creation of the Caucus and offered their assistance and expertise. U.S. imports and exports have doubled every ten years and freight traffic within the U.S. is expected to increase 100 percent by 2020. Foreign trade moving through U.S. ports is projected to grow 187 percent, while containerized cargo is expected to increase 350 percent. California may be even more impacted, with trade tripling over the next 20 years.

HOUSE APPROVES DISABLED EDUCATION ACT RENEWAL

On Wednesday, April 30, 2003, the House of Representatives approved H.R. 1350, a bill reauthorizing the Individuals with Disabilities Education Act (IDEA). The bill had been approved by the House Education and Workforce Committee on April 10, 2003.

Earlier in the day, the House approved (by a 211-195 vote) a rule on the bill that prevented consideration of an amendment that would have converted the program from discretionary to mandatory, requiring entitlement funding rather than annual appropriations. A number of Democrats had sought mandatory status in an effort to force the federal share of disabled education spending (currently about 18 percent) to rise to the 40 percent level in the near future. Many Republicans countered that the same goal could be achieved with increased discretionary spending (which has moved steadily upward in recent years), and that periodic reauthorization forced Congress to regularly assess the program and its efficiency.

In FY2003, Congress appropriated \$8.9 billion in direct IDEA grants to states and school districts. H.R. 1350 authorizes \$11.1 billion for FY2004 and \$13.6 billion for fiscal 2005, though appropriations will be required. The bill's proponents state that the bill's funding trajectory would raise the federal share

of IDEA spending to 40 percent by FY2010. More than 6 million students nationwide are provided disabled education services.

Much of the debate over the bill centered around provisions changing the ways that disabled children may be disciplined. The bill makes it easier for schools to expel disabled children for severe disciplinary violations, allows schools to hold disabled and non-disabled students to similar discipline standards, and permits limiting of attorneys fees awards. The bill also attempts to reduce the clerical burden on teachers, administrators and parents via a 10-state pilot project.

In floor debate, Democrats helped defeat (182-240) an amendment by Rep. Jim DeMint (SC) to permit the use of federal funds for disabled children to attend private schools. A second unsuccessful amendment would have given approximately \$1,400 for disabled children enrolled in private schools to obtain additional services.

A successful amendment sponsored by Reps. Buck McKeon (Santa Clarita) and Lynn Woolsey (Petaluma) requires that all new money in the bill above each state's total for FY2003 be passed on directly to school districts rather than retained at the state level. Rep. McKeon noted that California had retained IDEA funds to deal with state budget problems, and that Kansas, Iowa and Oregon were contemplating doing the same. Rep. Woolsey commented that the McKeon-Woolsey amendment would ensure that "all increases in Federal IDEA funds go to local schools where they belong." The amendment was agreed to by voice vote.

For information regarding action taken at the Committee and Subcommittee level, see [Bulletin, Vol. 10, No. 11 \(4/25/2003\)](#).

The House bill makes no change to the existing formula for allocating IDEA's primary grant. Funds are distributed first based on each state's FY1999 funding level, with any funding above that level then based 85 percent on population age 3-21 and 15 percent on child poverty.

CALIFORNIA FARM BUREAU PRESIDENT FRAMES FOOD SAFETY AS A NATIONAL SECURITY PRIORITY

A delegation of California Farm Bureau Federation (CFBF) representatives visited Capitol Hill this week, sponsoring a lunch briefing and presenting their legislative priorities to California Congressional Delegation members and staff. The briefing, cosponsored by the California Institute, featured Bill Pauli, President of the CFBF as the keynote speaker.

Mr. Pauli's presentation focused on the issue of food safety as the chief priority of his organization and included several reminders to the audience of the need to strengthen such programs, strategies and monitoring systems so that Americans can continue to rely on a safe food supply while boosting homeland security protections.

Propounding the staggering costs and consequences of recent cross-border disease outbreaks among California producers, Pauli identified Bovine Tuberculosis, Exotic Newcastle's disease and the Mexican Fruit Fly as examples of damaging agricultural threats imported from south of the border, unveiling a potential security weakness that could be exploited by enemies of the state.

Mr. Pauli mentioned the California budget deficit as a source of increased pressure on agricultural interests and appealed for sufficient resources and funds to make prevention of disease outbreaks and risks a priority, "prevention is cheaper than eradication or control" he said, "the implication on agriculture is immeasurable."

Other issues important to the CFBF include a review of the Methyl Bromide provision of the Montreal Protocol, packer concentration regulations, product country of origin labels, labor and immigration concerns, land conversion, budget and tax policy, full funding of the Farm Bill, fair trade, and energy and renewable resources.

For more information on the California Farm Bureau please visit the CFBF website at <http://www.cfbf.org> .

CALIFORNIANS CONCERNED ABOUT PERCHLORATE CONTAMINATION

Perchlorate, a rocket fuel component, was found in lettuce samples purchased from Northern California grocery stores, according to a report released on April 28, 2003 by the Environmental Working Group (EWG), which paid Texas Tech University to do the testing. Four of 22 samples found that an average serving of the lettuce contained more than four times the perchlorate that EPA proposed as safe in drinking water in 2002. The EWG report concluded that more than 1.6 million women per day were exceeding the EPA's proposed reference dose for perchlorate from eating lettuce. Although the sample and the positive results were relatively small, several California representatives and organizations have voiced concern over the implications of the findings.

Perchlorate is an explosive salt widely used as an oxidizer for solid rocket fuel, ammunition, and fireworks. It has been found to contaminate water supplies in 19 states, and may be present in as many as 36 states where rocket fuel has been made. Perchlorate is a hormone disruptor that can depress thyroid function, cause thyroid tumors, and disrupt physical and intellectual development in fetuses and newborn babies.

Senator Barbara Boxer wrote to the Food and Drug Administration on April 28, calling for an "immediate investigation in consultation with the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Agriculture (USDA) into the amounts and sources of perchlorate contamination in food grown within the United States." Her letter stated: "We need to know if our food is contaminated with this toxic substance and from where this contamination is emanating."

Perchlorate has already been found to contaminate several drinking supplies across the country, including the Colorado River and sites in California. EPA and the State of California are working on rules to control the amount of perchlorate allowed in drinking water. The California rule is expected out in about a year, whereas the EPA rule may not come out until 2006.

In other action on the perchlorate contamination issue, drinking water suppliers expressed their concerns about a Department of Defense proposal in an April 25, 2003 letter to the House and Senate Armed Services Committees and other Congressional leaders. The letter was signed by the Association of California Water Agencies, the Association of Metropolitan Water Agencies, the American Water Works Association, and the National Association of Water Companies.

The letter opposes provisions in the Department of Defense's Readiness and Range Preservation Initiative, legislation that is currently working its way through Congress. Under new proposed definitions in the legislation, the suppliers argue that DOD would be exempt from key provisions of the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The exemptions would absolve DOD from responsibility for cleaning up drinking water contaminated by perchlorate, they argue. The letter also posits that states and water suppliers would be less able to prevent contamination and the loss of drinking water supplies, if the exemptions go through.

ENTERTAINMENT INDUSTRY LOSES PIRACY CASE

A U. S. District Court in California ruled against the Recording Industry Association of America and the Motion Picture Association of America on April 25, holding that Internet music-swapping services, Grokster and Morpheus (owned by StreamCast Networks), could not be held liable for copyright infringement practiced by its users. The ruling represents at least a temporary setback in the music and movie industries' fight against piracy.

In granting summary judgment against the plaintiff, Judge Stephen V. Wilson compared the sharing services to companies that sell VCRs, which are not liable for what consumers do with their products. The defendants had also argued that, although their services may have been used for copyright infringing file-sharing, there were also legitimate uses for their services and holding for the plaintiffs would harm useful and important technology advances.

Before last week's finding, the entertainment industry had been winning in its fight against organizations that facilitate piracy. In 2001, the groups were successful in shutting down Napster, the biggest file-swapping system at the time. Napster, however, used a centralized server system that meant it could be held directly liable for the songs and movie swapped over its network. Grokster and Morpheus use a decentralized system that hunts down other computers that have the copyrighted material stored on them.

After the decision, RIAA and MPAA stated that they would appeal the Court's decision.

CALIFORNIA INSTITUTE TO COSPONSOR UPCOMING BREAKFAST BRIEFING WITH NORTHEAST-MIDWEST INSTITUTE ON THE FUTURE OF SEMICONDUCTORS

The Senate Task Force on Manufacturing, the Northeast-Midwest Senate Coalition, and the California Institute are sponsoring a Congressional staff breakfast briefing on Thursday, May 8 to present the findings of a new report by the National Academy of Sciences on the impacts of the semiconductor industry on the U.S. economy. The briefing will be at 8:30 a.m. in Room 432 of the Dirksen Senate Office Building.

The new report, entitled "*Securing the Future: Regional and National Programs to Support the Semiconductor Industry*", suggests the American semiconductor sector is on the verge of losing investments to emerging markets in China. A panel of experts consisting of academicians and business leaders will be on hand to discuss the following issues: importance of semiconductors; the implications of global competition; and the consequences of industry relocation. The last segment of the panel discussion will involve the submission of policy recommendations to help maintain America's semiconductor competitiveness.

For more information on this briefing, please contact Kris Sarri with the Senate Manufacturing Task Force at 202-224-0606.

SUPREME COURT UPHOLDS CRIMINAL IMMIGRANT DETENTION

The U.S. Supreme Court ruled on Tuesday, April 29, that legal criminal immigrants may be held for deportation without a hearing, regardless of whether they are considered dangerous or a flight risk. The ruling upholds provisions of the 1996 immigration reform law. The law requires mandatory detention and deportation of all immigrants, even longtime U.S. legal residents, if they have committed a crime punishable by at least a year in prison.

The 5-4 decision rejected the argument that those immigrants have a constitutional right to a hearing under the due process clause prior to detention. Chief Justice William Rehnquist stated that "This court has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens."

The case before the Court centered on a 25-year old South Korean, Hyung Joon Kim, who emigrated to the United States at the age of 6 and became a legal resident. He was first convicted of burglary for breaking into a tool shed and a year later of petty theft, for which he received a three-year sentence. After being released from prison, the INS detained Kim without a hearing while he awaited deportation. Kim sued and the U.S. District Court and the Ninth Circuit held he was entitled to a hearing.

Under the 1996 law, immigrants can be detained without a hearing pending deportation, if they have committed “aggravated” offenses or offenses involving “moral turpitude.” The Court’s ruling did not address which crimes would fit into these categories, and immigration lawyers expect that a round of lawsuits will be needed to hash out what crimes will trigger the detention and deportation provision.

GOVERNOR DAVIS SEEKS SCHIP WAIVER

Governor Gray Davis has petitioned the federal Center for Medicaid and Medicare Services (CMS) to allow counties to use local funds as a match for federal dollars under the State Children’s Health Insurance Program, which covers health services to uninsured children.

Currently, such funding goes directly to a state plan providing health coverage to working low-income families earning up to 250 percent of the federal poverty level. The state spends \$1 for every \$2 of federal funds it receives for providing health programs. Under the proposal, California counties that opt to expand the Healthy Families program to include families with incomes up to 300 percent of the federal poverty line, or \$51,000 of annual income for a family of four, will be able to use county funds to match the federal dollars, rather than state funds. Santa Clara, San Mateo, San Francisco, Alameda, and other counties already provide coverage of up to 300 percent using county-only funds.

If approved, the petition will allow implementation of AB 495 signed by Governor Davis last year, which permits county agencies to use local funds to draw federal SCHIP available money to expand access to health care for poor children. The state would act as an intermediary between the local and federal governments, helping counties prepare paperwork and meet eligibility guidelines and funneling federal money back to the counties. State officials estimate that the petition would bring health coverage to about 50,000 children statewide whose families don’t have private insurance and are not covered by government programs for low-income earners.

WHITE HOUSE PROPOSES TO REVAMP SECTION 8 HOUSING PROGRAM

The Bush administration has announced a housing proposal called the Housing Assistance for Needy Families (HANF) that would eliminate the Section 8 voucher program and replace it with block grants to the states and indirectly to local governments. The initiative will shift control over housing assistance to the poor from the federal government and to the states, giving states more flexibility in using federal housing dollars and removing some federal rules.

The Section 8 program, which provides vouchers to poor families, disabled people, and the elderly for lease or purchase of affordable privately-owned rental housing, has been the centerpiece of federal housing policy for nearly 30 years. The program allows its participants to pay no more than 30 percent of their income in rent up to a certain limit, while the federal government matches the rest of the cost.

Under the plan, unveiled on Wednesday, April 30, 2003, the states will be required to serve at least as many families as they presently serve, picking up additional cost they incur beyond the federal funding. Also, the state could change eligibility rules combine housing and welfare policies, or provide shorter subsidies. The White House officials said that the Section 8 program is “fundamentally flawed” as it is currently administered, and that it makes better sense to distribute grants to 50 states in place of current system of managing contracts with 2,500 housing agencies.

As it has been introduced by Rep. Robert Hey (Ohio) and Sen. Wayne Allard (Colorado), the initiative would allocate in FY 2005 the same amount to each state as the total allocated in FY 2004 to public housing agencies within the state. Beyond FY 2005, however, the money will be distributed according to a forthcoming regulation by the Department of Housing and Urban Development (HUD). HUD’s formula for distribution of such block grants would depend on several factors like:

- the number of families receiving housing assistance under the Act in each state

- the extent of poverty within the state
- the cost of housing in the state or areas of the state
- the performance of the state in administering grant amounts under the Act
- the extent to which the state has available any HANF funds previously appropriated
- other objectively measurable conditions as HUD may specify

With respect to the eligibility, the proposal does not change a requirement that a family have an income that does not exceed 80 percent of the median income for the area in order to qualify for housing assistance vouchers under Section 8 program.

For more information about the Section 8 program, please visit Department of Housing and Urban Development website at: <http://www.hud.gov> .

HEADWAY IN STATE AND FEDERAL FIGHT AGAINST EXOTIC NEWCASTLE DISEASE

Exotic Newcastle Disease (END) a deadly and contagious virus in birds spreading throughout southern California and other Western States is, after six months, receding, according to the California Department of Food and Agriculture.

After Governor Davis declared a State of Emergency and U.S. Department of Agriculture Secretary Ann Veneman issued an Extraordinary Emergency in response to the outbreak, state and federal forces partnered to form the Exotic Newcastle Disease Task Force. The task force, consisting of 1,600 state and federal staff, was mobilized to locate and destroy diseased birds and decontaminate infected sites. Thus far, task force efforts to control the outbreak have been met with success: CDFA sources say that in the last month no new cases of infected commercial poultry have been reported.

END, infecting close to 3.5 million commercial poultry to date and disrupting the operations of producers in eight Southern California counties, cost \$102 million to fight. The USDA and CDFA quarantine remains in effect while authorities continue to respond to isolated backyard cases and compensate producers for the cost of destroyed domestic fowl.

It is thought the disease may have originated from the illegal smuggling of fighting gamecocks into the country. Though deadly to poultry, END poses no human public health risks. For more information on the state's efforts to combat END visit the California Department of Food and Agriculture's Animal Health Branch on the web at: www.cdfa.ca.gov/ahfss/ah .

U.S. SUPREME COURT HEARS ARGUMENTS IN CALIFORNIA MILK CASE

On Tuesday, April 22, 2003, the U.S. Supreme Court heard arguments in a case that involves California's milk regulatory program. Oral arguments were presented for two consolidated cases, both of which challenge a 1997 amendment to the milk pooling regulations. The 1997 amendment in question closed a regulatory loophole that allowed practice of a "round-tripping" procedure, which created substantial inequities in the market place.

The cases are *Hillside Dairy, Inc. v. Lyons* and *Ponderosa Dairy v. Lyons*.

NEMW REPORT CRITICIZES BPA FOR ROLE IN CALIFORNIA ENERGY CRISIS

On Friday, April 25, 2003, the Northeast-Midwest Institute issued a report blaming mismanagement at the Bonneville Power Administration (BPA) for the financial problems it currently faces, and, in a chapter entitled, "Bonneville Sticks It To Californians," it alleges that BPA continues to gouge California with its federally-subsidized electricity.

The report states that "Bonneville sells federal electricity in the Pacific Northwest at low rates and offers the very same federal electricity in the Golden State at high rates. Northwest officials, of course, love the arrangement, since sales to California account for roughly 20-25 percent of BPA's total revenue.

By paying to keep Northwest rates low, Californians unwittingly provide their northern neighbors with a significant economic advantage.”

The NEMW report’s authors state that BPA Administrator Steve Wright admits that it benefits greatly from profits in the state. California, he reportedly says, “is far and away the key variable in determining our financial fate.” He reportedly adds, “This (high-priced sales to California) is what helps keep (Northwest) firm power rates down.”

The House Committee on Government Reform found that, during 2000, BPA sold power to California at a 300-percent markup. In October 2000, BPA Vice President Steve Oliver said that BPA’s sales to California produce “more than \$400 million in net revenues per year to help keep rates in the Pacific Northwest low.” The NEMW report says, “Logic might suggest that BPA’s California profits go to the U.S. Treasury since Bonneville is a federal agency selling federal property. In reality, BPA uses those profits to cover its costs and maintain artificially low rates for its northwest customers.” The report’s authors later ask “if BPA sells federal power at market rates in California, shouldn’t it sell the same government electricity at market rates in the Northwest?”

For information, visit <http://www.nemw.org> or call 202/544-5200.