



THE CALIFORNIA INSTITUTE FOR FEDERAL POLICY RESEARCH

419 New Jersey Avenue, SE, Washington, D.C. 20003 202-546-3700
fax: 202-546-2390 e-mail: randsell@calinst.org web: <http://www.calinst.org>

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.

PRESIDENT BUSH SIGNS MISSIONS BILL INTO LAW

With President Bush’s signing of the California Missions Preservation Act on December 1, 2004, California is set to receive \$10 million over the next five years for restoration and preservation of its 21 historic Spanish missions. The bill, HR. 1446, was passed by Congress on November 17th, 2004. The appropriation will be released to the California Missions Foundation, which will manage the restoration of the decaying buildings. The law, which was originally sponsored by Sen. Barbara Boxer (CA), includes a dollar for dollar matching requirement for the Foundation, meaning each dollar of federal funds must be matched by a dollar of the Foundation’s monies. Funds will be used to stabilize crumbling walls, repair earthquake damage, protect original artwork, and fix the tourist infrastructure necessary for accommodating the 5.3 million annual visitors.

As discussed in a previous Bulletin article (See, [Bulletin, Vol. 11, No. 34 \(11/19/04\)](#)), the funding is surrounded by constitutional controversy. Despite language in the bill that specifies that funds be used for projects that are “secular, do not promote religion, and seek to protect those qualities that are historically significant,” critics of the appropriation say it violates the constitutionally established separation of church and state. The Roman Catholic Church still owns 19 of the missions and Mass is held regularly at all of them. The advocacy group, Americans United for Separation of Church and State, plans to file a lawsuit on behalf of California taxpayers protesting the constitutionality of the funding in the U.S. District Court for the District of Columbia.

SKILLED IMMIGRANT WORKER PROVISIONS INCLUDED IN OMNIBUS APPROPRIATIONS

The recently enacted FY05 Omnibus Appropriations bill included language making changes to the H-1B and L-1 visa programs.

H-1B visas are available to skilled workers employed by a U.S. company unable to find qualified U.S. employees for the job. The cap on H-1B visas for FY2005 was 65,000, and it was reached on the first day of the fiscal year, October 1, 2004.

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L-1 visas are intended to be used by U.S. companies to transfer foreign employees to the company's United States-based operations. A Senate Judiciary Committee investigation showed, however, that some U.S. companies act as temporary foreign worker agencies, bringing immigrants into the U.S. on L-1 visas and then hiring them out to other companies.

The Omnibus bill incorporates provisions of two previously introduced bills, H.R. 4166 and S. 1635. Under the new language, an additional 20,000 H-1B visas will be available to immigrants who have obtained advanced degrees from U. S. universities. Companies hiring an H-1B employee must pay a \$1,500 fee, which will be used to train U.S. employees for technology fields. In addition, the bill contains labor protections, including the minimum wage that H-1B employees must be paid.

The L-1 visa provisions require that employees entering the U.S. on that visa must be directly supervised by the sponsoring company.

H-1B visas are often used by high technology companies unable to find qualified U.S. workers. Labor groups, however, argue that the availability of the visas impedes U.S. workers from obtaining jobs in these fields, and promotes "outsourcing" of American jobs to foreign workers.

INTERNET TAX MORATORIUM ENACTED

The President signed the Internet Tax Moratorium bill, S. 150, after the House, on November 19, 2004, passed a compromise agreement reached with the Senate. The new law is P.L. 108-435.

The compromise extends the ban on all Internet access and service provider taxes until November 1, 2007. States already taxing dial-up service would continue to be grandfathered in under the new bill. States that tax high-speed DSL would be allowed to continue those taxes for two years. The new changes made to the Senate bill concern Wisconsin's grandfather provision, and Texas's ability to collect franchising and right-of-way fees.

The House's bill, H.R. 49 sponsored by Rep. Christopher Cox (Newport Beach) had permanently banned Internet taxes and eliminated the grandfather provisions for states that already collected Internet taxes. The last moratorium, however, expired on November 1, 2003, and House leaders were concerned that not reinstating the ban soon might lead to more states enacting new Internet taxes.

OMNIBUS APPROPRIATIONS ANALYSIS AVAILABLE ON INSTITUTE WEBSITE

As expected, on December 8, 2004, President Bush signed the Omnibus Appropriations bill for fiscal year 2005, which funds 13 federal departments and numerous agencies. The items in the \$388.4 billion bill will be reduced by a 0.8 percent across-the-board cut required by the Conference Committee. (The bill initially included a 0.83 percent reduction, which was subsequently reduced.)

The California Institute has prepared an analysis of the California implications of the omnibus bill. This 43-page report can be found on the Institute's website at <http://www.calinst.org/pubs/omn05.htm> and in printable (pdf) format at <http://www.calinst.org/pubs/omn05.pdf>.

Of the nine appropriations bills combined in the omnibus, the California Institute report examines seven: Transportation-Treasury, Commerce/Justice/State, Energy & Water, Interior, Agriculture, and VA/HUD/Independent Agencies, and Labor/HHS/Education. The other two bills -- Foreign Operations, and Legislative Branch -- typically contain relatively few California-related provisions. (Earlier this year, Congress completed action on the four other bills: Defense, Homeland Security, Military Construction, and District of Columbia.)

ANTI-PIRACY BILL PASSES SENATE

On November 20th, the Senate passed by unanimous consent S. 3021, the Family Entertainment and Copyright Act, which would strengthen U.S. laws to prevent piracy of motion pictures. The bill contains

provisions similar to legislation (S. 1932) introduced by Sen. Dianne Feinstein. The bill criminalizes the use of a camcorder to record a motion picture in a theater. The entertainment industry has shown that camcorder movies are being shared on peer-to-peer networks almost simultaneously with the movie's theatrical release. The bill also establishes criminal penalties and statutory damage awards for illegal filesharing.

The bill also includes "The Family Movie Act," which creates a safe-harbor clarifying that distributors of "jump and skip" technologies will not face liability for copyright or trademark infringement, provided that they comply with the requirements of the Act. "Jump and skip" technology is intended to be used by parents to block out what they consider to be objectionable content in movies. The entertainment industry has argued that it alters, and thus infringes on, copyrighted works.

The House did not act on S. 3021 before adjournment.

SPECIALTY CROP BILL PASSES SENATE, AWAITS PRESIDENT'S SIGNATURE; OTHER CALIFORNIA BILLS PASS SENATE, DIE WITH END OF CONGRESSIONAL SESSION

On December 7, 2004, the Senate passed the Specialty Crop Competitiveness Act, HR. 3242, by voice vote, authorizing \$270 million in funds over the next five years. The bill passed the House on October 7, 2004 and now awaits the President's signature. Sponsored by Rep. Doug Ose (Sacramento), the bill provides subsidies to aid growers and producers of specialty crops, defined as all agricultural products except wheat, feed grain, oilseeds, cotton, rice, peanuts, sugar and tobacco. For each of the five years of the authorization, \$44.5 million is authorized for block grants to state departments of agriculture to promote the marketing of specialty crop markets. While funds are available to all states, California will likely receive the lion's share of grants as it is by far the largest specialty crop producer in the country. Specialty crops contribute nearly \$60 billion annually to the U.S. economy, and provide 60 percent of America's daily nutritional value.

Also on December 7, the Senate passed a package of public land bills sponsored by Sen. Dianne Feinstein that would benefit Northern California coastal wilderness, Golden Gate National Recreation Area, Redwoods National Park, and Yosemite schools. The House did not pass the bills before adjourning, meaning the bills will have to be re-introduced and reconsidered in the 109th Congress.

CONGRESS APPROVES SWEEPING INTELLIGENCE REORGANIZATION, FORMULA REVISIONS OMITTED

On December 7 and 8, 2004, respectively, the House of Representatives and Senate approved the conference report to accompany S. 2845, a bill making broad changes to the nation's intelligence infrastructure. A compromise was reached after months of negotiation on how to overhaul the intelligence functions of the federal government, and the bill will create a new position, a National Intelligence Director (NID). Unlike some earlier versions, the final compromise measure omitted language to alter the system via which federal funding for first responders is allocated among state and local governments. Instead, the bill includes language urging that the issue of first responder funding be taken up early in the 109th Congress. President Bush, who had lobbied for approval of the intelligence overhaul measure, is expected to sign it into law in the near future.

During late negotiations over the package, House Armed Services Committee Chairman Duncan Hunter (Alpine) worked to ensure that the powers of the NID do not undermine the current chain of command in the U.S. military. The bill was changed to require the Administration to develop guidance that "respects and does not abrogate the statutory responsibilities of the heads of the departments."

(In conjunction with the overhaul package, Congress also approved a smaller bill, S. 4548, to provide budgetary authorization for intelligence agencies. The House version of the bill had been in limbo for

much of the fall because House leaders did not want to bring up a measure that would be bogged down by debate over the larger, then-unfinished counterpart.)

Before considering S. 2845, House and Senate negotiators and the White House were able to persuade Rep. James Sensenbrenner, Chair of the House Judiciary Committee, not to oppose the bill. Sensenbrenner was holding up consideration of the bill because the Senate dropped out the illegal immigration restrictions that were included in the House bill. To gain Sensenbrenner's support, House Republican leaders pledged to consider the immigration provisions early in the 109th Congress.

The immigration provisions dropped from the bill would have prohibited states from issuing driver's licenses to undocumented immigrants. The bill also would have required immigrants seeking U.S. asylum to meet a higher standard of proof in showing persecution in their home country, and eased immigration rules concerning deportation of immigrants without judicial review.

It is possible the immigration provisions may be added to the emergency supplemental appropriations for military operations in Iraq and Afghanistan. The President is expected to send that request to Congress early next year.

Before conference negotiations excised the provisions, both the House- and Senate-passed versions of the bill had addressed formula funding. The House bill had included the "Faster and Smarter Funding for First Responders Act," authored by House Homeland Security Select Committee Chairman Christopher Cox (Newport Beach), that would have alleviated some of the homeland security funding shortfall borne by California and other large states by reducing the formula's unusually large 0.75 percent small state minimum. The Senate version of the bill had included a complicated formula that would have retained the minimum, and the final conference agreement left the formula subject entirely. Last year, California receives less than 8 percent of formula grants, although it receives a larger share - between 17 and 20 percent - of discretionary grants targeted at urban areas. For more information on homeland security grant programs in 2003 and 2004, and on California's share thereof, see "Federal Formula Grants and California: Homeland Security" -- one of a series of joint publications by the Public Policy Institute of California (PPIC) and the California Institute reviewing the state's share of formula funds, available at: <http://www.ppic.org/main/publication.asp?i=481> .

In January, House Speaker Dennis Hastert is expected to decide whether to make permanent the committee that Rep. Cox chairs, and many observers predict that he will do so. The challenge may come as jurisdiction is sorted out between Homeland Security and other House Committees.

CALIFORNIA'S BASE RETENTION COUNCIL HOLDS FIRST MEETING IN PREPARATION FOR 2005 ROUND OF MILITARY FACILITY CLOSURES

California's 18-member Council on Base Support and Retention held its first meeting on Wednesday in an effort to address the upcoming 2005 round of federal base closures. The Council will attempt to develop and maintain a united California front in order to minimize the potential economic and physical damage to California's defense infrastructure. Governor Arnold Schwarzenegger appointed the council and its two co-chairs -- Leon Panetta, President Clinton's former chief of staff and budget director and current head of the Leon & Sylvia Panetta Institute at CSU Monterey Bay, and Donna Tuttle, a Los Angeles businesswoman and former Deputy Secretary at the U.S. Department of Commerce serving in the Reagan and first Bush Administrations. The Council, which includes 10 ex-military officers, will hold public meetings in the upcoming weeks and months in order to listen to Californian's concerns and coordinate local and national action.

After four disastrous rounds of base closures in the late 1980s and early 1990s, the base closure issue is of particular importance to California. From 1988 to 1995, California shouldered more than 60% of the nation's net cuts in DOD personnel and 18% of base closures, accounting for billions in lost

economic revenue for the state. Despite having lost nearly 100,000 personnel and 29 bases, California today still houses 62 military bases and more than 270,000 personnel. Defense Secretary Donald Rumsfeld has indicated that DOD intends to reduce bases and personnel by 25% during the 2005 round of base closures.

According to news reports before the meeting, Panetta urged people throughout the state to be realistic, saying, "Some of our bases are going to make it on the list...My hope is they are not major installations, that they are the kind of minor facility that ultimately would be shut down anyway." However, Panetta stated that there are reasons for some optimism. As quoted by the Associated Press, Panetta said that, "I think we have to recognize if you're talking about future threats, you're talking about North Korea, you're talking about China, you're talking about threats in the Far East that for the future are going to demand that California play a very large role in our defense." Responding to a question about the challenges facing the state as base closures approach, Tuttle stated "Be one voice – that is our mandate."

No specific base closure decisions have been announced. In March 2005, the President transmits a list of nine people to sit on the Base Realignment and Closure (BRAC) Commission. By May, Secretary Rumsfeld, must publish the list of bases proposed for closure. The BRAC Commission then has five months to review the Department of Defense list, make changes (seven votes are needed to add a base not on the list, a simple majority to remove a base from the list) and then sends the revised list to the President for approval. The President must approve the list as is, otherwise the process dies. If he does approve it, the list is transmitted to Congress for up-or-down votes in both houses in December. Finally, if the list is approved by Congress, the base closures are officially authorized, and the Department of Defense will begin the process of eliminating bases and personnel.

For tables showing California's military facility resources in FY 2003, visit the California Institute home page at <http://www.calinst.org> . For additional information, visit the California Office of Military and Aerospace Support, located within the state's Business Transportation and Housing Agency, at <http://www.caquarter.ca.gov> .

SUPREME COURT HEARS ARGUMENTS ON INTERSTATE SALE OF WINE

On Tuesday, December 7, 2004, the U.S. Supreme Court heard a consolidated argument for three cases that have profound ramifications for the ability of California wineries to ship their products to consumers throughout the country. The cases before the court, *Granholt v. Heald*, *Michigan Beer and Wine Wholesalers v. Heald*, and *Sweedburg v. Kelly*, concern laws in 24 states that prohibit out-of-state producers from selling their libations directly to consumers. Wineries throughout the country, including small and large vineyards in California, filed suit in federal court in an effort to eliminate the discriminatory laws and allow direct shipment of wine to anyone of legal age in any state.

Legally, the case rests on a conflict between the 21st Amendment to the Constitution, which repealed prohibition in 1933 and provided states with the power to tax and control interstate alcohol commerce, and the "dormant" commerce clause of the Constitution (Article I, Section 8, Clause 3), which gives Congress the right to regulate interstate commerce and exclusively prohibits commercial discrimination between states. Generally, in the 24 states at issue, state regulatory laws have given rise to a three-tiered system of alcohol control, which is dominated by large, consolidated beer, wine and liquor wholesalers. Under this system, out-of-state wineries must sell their products to state-licensed wholesalers, who in turn distribute to local state-licensed retailers, who then sell the product to the customer. The states and wholesalers posit that these regulatory controls are justified under the 21st Amendment and necessary for preventing sales of alcohol to minors and effectively collecting taxes.

The wineries bringing suit against the wholesalers argue that the current system directly violates the commerce clause by discriminating against out-of-state vineyards. First, the nature of the wholesale business favors high volume transactions between large vineyards and wholesalers, and consequently decreases the ability of small wineries to compete. Out-of-state boutique vineyards with expensive merchandise who are unable to strike a deal with wholesalers, are all but prevented from selling their products in the 24 states with restrictive laws. Second and perhaps more importantly, many of the restrictive states allow in-state wineries to conduct direct transactions with consumers while explicitly prohibiting out-of-state vintners from engaging in the same activity. With these concerns in mind, the wineries have asked the justices to overturn the laws and open the restricted states to direct shipment of wine.

According to Robert P. Koch, President and CEO of the Wine Institute, which represents 821 California wineries, "A favorable decision to end discrimination promoted by wholesalers would be good for wine consumers, regulators and tax collectors in states that pass legalized direct shipping, and a win for America's small family wineries." Addressing the safety arguments of proponents, Koch said, "The case has nothing to do with the serious issue of underage drinking. This is a false argument that the wholesalers are using to protect their monopoly."

Newspaper accounts of the oral argument indicate that the tenor of the justices' questions showed an inclination to rule in favor of the small, out-of-state vineyards. Such a decision would represent an important victory for California wineries. The Supreme Court gave no indication when it would hand down its decision in the case.

For more information regarding the wine industry, which has a \$45 billion impact on the California economy and provides more than 200,000 jobs in the state, visit <http://www.wineinstitute.org>.

DHS RELEASES 2005 FIRST RESPONDER GRANTS ... CALIFORNIA DOLLARS DOWN, PERCENTAGE SHARE UP, AND URBAN GRANTS SHIFT NORTH TO SOUTH

On Friday, December 3, 2004, the Department of Homeland Security (DHS) announced its 2005 allocation of formula and discretionary grants for state and local first responders, with reduced funding compared to 2004 for every state except New York and the District of Columbia. Total funding to California will decline by \$45 million, more than any other state, although relatively less than for the average state.

As expected, California again will receive less than 8 percent of formula grant funding, thanks to the uncommonly large 0.75 percent funding minimum that shifts dollars from large states to small states. In 2005, Wyoming will receive nearly \$28 per capita from the homeland security formula grant programs, whereas California will receive \$3.67 per capita. The programs that use the USA Patriot Act formula include the State Homeland Security Grant Program (SHSGP), the Law Enforcement Terrorism Prevention Program (LETPP), Citizen Corps, and the Emergency Management Performance Grants (EMPG) program.

In October 2004, Congress approved and the President signed the 2005 Homeland Security appropriations bill (P.L. 108-334), sharply reducing total U.S. funding for the largest of these formula grants -- SHSGP and LETPP -- from their 2004 levels. Combined federal spending for the programs declined from \$2.2 billion to \$1.5 billion. (EMPG funding remained flat, at \$180 million.) Of the combined four formula programs, California funds will decline from \$189 million to \$130 million.

On the other hand, Congress increased from \$671 million to \$855 million total federal spending for the Urban Area Security Initiative (UASI), a discretionary grant program to benefit high threat, high density urban areas, of which California had received 20 percent of funding in 2004. The state's

percentage in 2005 will be somewhat less, 17.3 percent, a share still more than twice its formula grant portion. UASI funding to the state will rise from \$135 million to \$148 million.

Importantly, however, DHS has yet to announce funding for \$150 million for port security grants, another \$150 million for rail and transit security grants. Recent DHS allocations for prior years provided California approximately 17% of port security grants and 14% of transit grants.

The urban funding increases in California will flow entirely to Southern California - an extra \$33 million (to a total of \$61 million) for Los Angeles, an extra \$4.4 million (to a total of \$14.8 million) to San Diego, and an extra \$540,648 (to a total of \$10.8 million) for Anaheim. These increases are offset by partial reductions in funding for the 7 other California urban areas that received funds in 2004.

Reductions from 2004 levels will take place in San Francisco (down by \$5.9 million to \$20 million), Santa Ana (down \$6 million to a total of \$9 million), San Jose (down by 3.3 million to \$6.6 million), Sacramento (down \$1.9 million to \$6 million), and Oakland (down by \$1.6 million to \$6.2 million). In California, one metropolitan area -- Fresno -- will have its \$7 million grant eliminated entirely.

Combining urban and formula grants, California's total 2005 receipts are expected to be \$279 million, or \$45 million less than the state's \$324 million from similar programs in 2004. The state's share of the U.S. total for all programs, however, would increase from 10.6 percent in 2004 to 11.2 percent in 2005. As such, California's total per capita receipts would decline from \$9.12 last year to \$7.85 for the current fiscal year.

For more information about homeland security grants and California's share of them, see *Federal Formula Grants and California: Homeland Security*, part of a series of joint publications by the Public Policy Institute of California (PPIC) and the California Institute that reviews the state's share of formula funds, available at: <http://www.ppic.org/main/publication.asp?i=481> .

LEGAL BATTLE BREWING OVER NEW CALIFORNIA EMISSIONS LAW

On Tuesday, the Washington-based Alliance of Automobile Manufacturers and a group of California auto dealers filed suit in federal court in Fresno in an effort to block strict new California automobile emission regulations. The coalition of nine automakers includes General Motors Corp, DaimlerChrysler, Bayerische Motoren Werke, Ford Motor Co., Mazda Motor Corp., Mitsubishi Motors Corp., Porsche, Volkswagen, and Toyota Motor Corp.

The new emissions rules mandate that automobile manufacturers cut greenhouse gas emissions from cars and trucks sold in California, the country's largest automobile market, by about 30 percent. The standards would be phased in from 2009 to 2016. Because of the nature of greenhouse gas-related emissions, many consider the easiest means for accomplishing their reduction to be through increases in the fuel efficiency of vehicles. Currently, California has unique discretion to set its own emission standards under the Clean Air Act. Other states have the option of approving California's standards as their own. Already, Massachusetts and New York have publicly voiced their interest in adopting California's new rules.

The automobile manufacturers contend that California's emissions rules, which received final approval in September, are superseded by the federal government's authority to regulate the fuel economy of cars. Additionally, the industry fears that unless the courts intervene, other states may adopt California's requirements, essentially instituting a nationwide fuel efficiency standard. If so, they argue, the industry would be forced to undertake costly vehicle reengineering, which in turn would drastically increase the cost of cars and trucks in California and the rest of the nation.

Proponents of California's standards, including the state government and environmentalists, and the automobile industry differ over how drastically the change in rules would increase the price of vehicles. State regulators claim that the changes might only increase costs by \$1,000 per automobile, which would

easily be recouped by the consumer through savings on gasoline. Automobile makers contend that the increase could easily exceed \$3,000 per vehicle, which would have much more profound effects on car and truck economy.

Governor Arnold Schwarzenegger promised to defend the California regulations. In an interview with the New York Times, the Governor's cabinet secretary said that the governor "supports the greenhouse gas bill," and that he "intended to fight the expected court challenges."

GOVERNOR OUTLINES LEGISLATIVE PRIORITIES IN LETTER TO PRESIDENT

Governor Arnold Schwarzenegger has sent a letter to President Bush outlining his legislative priorities for next year. The December 8, 2004, letter details several issues of importance to California and asks the President to consider increasing funding for them as he prepares the FY2006 budget request, which will be sent to Congress in February.

The issues noted in the letter, which was also sent to the California Congressional delegation, include:

- Medicaid funding and the state's proposed hospital financing waiver;
- the impact of the Medicare prescription drug bill on California;
- changing the formula for distribution of homeland security funds and providing full funding for state and local preparedness;
- additional funding for the State Criminal Alien Assistance Program;
- funding for the CALFED restoration program;
- additional funding for maintenance in national parks, effective fuels treatment on federal and private land, and the Clean Water State Revolving Fund;
- funding for the Hydrogen Highway through the Department of Energy's million fuel cell vehicle demonstration and validation project and other research;
- additional funding for the National Ignition Facility at Lawrence Livermore National Lab;
- increased funding for the 21st Century Community Learning Centers;
- increased Title I education grants; and
- additional funding for research universities.

PPIC/UCI SURVEY OF ORANGE COUNTY FINDS IMPROVED SATISFACTION WITH COUNTY GOVERNANCE

A new survey by the Public Policy Institute of California (PPIC) in collaboration with the School of Social Ecology at the University of California, Irvine (UCI) identifies that only ten years after Orange County's bankruptcy crisis, county residents are increasingly pleased with the performance and responsiveness of the county's government. Today, 49 percent of those view the county government positively, as opposed to a mere 24 percent in 1996, and 674 percent feel that "county leaders pay attention to what people think when they make policy decisions." Additionally, 81 percent of residents "say they know little or nothing about the crisis." Statewide Survey Director Mark Baldassare stated that, "For years, Orange County residents have had a rocky relationship with government. So to hear residents today saying that government works for them is, frankly, astonishing."

The survey also found that 90 percent of residents say "things are going well today," 69 percent of residents rate the local economy as "excellent or good," 68 percent of residents say they approve of Arnold Schwarzenegger's job performance, that "more residents say that they would prefer a small home with a small backyard over a larger home with a large backyard if it meant a short commute to work."

For the complete survey, visit the PPIC website at <http://www.ppic.org/>.