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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.*

### HOUSE APPROPRIATIONS PASSES COMMERCE, JUSTICE, STATE FUNDING; SCAAP SLATED TO RECEIVE \$565 MILLION

On July 10, the House Appropriations Committee approved the FY02 funding bill for the Departments of Commerce, Justice, State & the Judiciary. The total funding level of \$37.9 billion, includes 21.5 billion for the Department of Justice, \$672 million more than FY01 and \$623 million above the President's request. The Department of Commerce and related agencies receives \$5.19 billion under the bill, \$48 million below last year but \$21 million above the President's request. The State Department is slated to receive \$7.7 billion, which is \$837 million more than FY01 and \$94 million below the President's request.

The Committee followed the CJS Subcommittee in approving \$565 million in funding for the State Criminal Alien Assistance Program (SCAAP), \$300 million over the President's request. See, [Bulletin, Vol. 8, No. 21 \(6/29/01\)](#). Justice Department funding also includes: \$522 million for the Local Law Enforcement Block Grant program; \$570 million for the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant program; and \$250 million for Juvenile Accountability Block Grant programs. Also included is: \$1.01 billion for the Community Oriented Policing Services (COPS) program (including \$150 million to provide local law enforcement with cutting edge technologies that help reduce crime and \$48 million to fight the methamphetamine problem), \$158 million more than the President's request and \$17 million less than last year. The total funding for state and local enforcement efforts is \$4.3 billion, an increase of \$661 million over the President's request and a decrease of \$324 million from FY01.

The Immigration and Naturalization Service received a \$252 million increase to enforce immigration laws, which provides funding for additional border patrol agents, increased detention and removal capacity, and continuation of the interior

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enforcement, naturalization, and other application backlog reduction program -- an initiative that started back in FY99. Total INS budgetary resources are \$5.6 billion, \$130 million above the President's request.

The Institute will release a detailed analysis of the CJS appropriations bill and its impact on California in the near future, once the report becomes publicly available.

## **DAVIS AND OTHER GOVERNORS URGE SCAAP REAUTHORIZATION**

Governor Gray Davis, joined by six other state Governor's, wrote to Senators Dianne Feinstein and Jon Kyl (AZ) expressing strong support for S. 862, to reauthorize the State Criminal Alien Assistance program (SCAAP). The other Governors are: Gary Locke (WA), John Kitzhaber (OR), George Pataki (NY), Jane Dee Hull (AZ), George Ryan (IL), and Thomas Vilsack (IA). SCAAP funds are provided to the states to partially offset the cost of incarcerating illegal criminal aliens.

The letter, dated June 27, 2001, in addition to supporting reauthorization of the program, also supports the increase in the SCAAP funding level to \$750 million, as contained in S. 862. Feinstein and Kyl are the primary sponsors of the bill, which is co-sponsored by several Senators from states heavily impacted by immigration.

The President's budget recommended slashing SCAAP funding by \$300 million to \$265 million. However, the House Appropriations Committee in the FY02 Commerce, Justice, State Appropriations restored funding to \$565 million, the same level as last year. See, [Bulletin, Vol. 8, No. 21 \(6/29/01\)](#) and *article above*. Historically, California has received about 40 percent of the SCAAP funding. In 2000, California state and local governments received about \$241 million. The next highest recipient was New York with a total funding level of \$114 million.

## **ELECTRICITY OVERCHARGE REFUND TALKS END WITHOUT ACCORD, LEAVING DECISION TO FERC; COURT ACTION POSSIBLE**

Monday, July 9 marked the end of the 15-day negotiation period which California officials and energy marketers were given in order to settle the amount by which the state should be repaid for electricity overcharges since last fall. The date passed without an accord. The deadline had been ordered by the Federal Energy Regulatory Commission, and FERC's chief administrative law judge, Curtis L. Wagner, will now be given the job of recommending a refund amount to the full Commission by next week.

California officials estimate overcharges at \$8.9 billion, while power producers and wholesale marketers argue that the total is less than one billion. During negotiations, state representatives rejected the generators' offer of \$716 million in refunds. Judge Wagner will propose a multi-factored formula for calculating a final figure. While he has not devised or operated a formula yet, he hinted that the total amount might be less than \$1 billion.

Once Judge Wagner recommends a formula and a figure, FERC is expected to hold an expedited 60-day hearing on the subject. Moreover, any party may elect to take the question to the courts, and many feel that litigation regarding FERC actions and recommendations is likely. The issue could be tied up in courts for years.

In a statement, Assembly Speaker Robert M. Hertzberg said, "California spoke with one voice in these proceedings, adamant that we receive substantial refunds, while taking seriously our responsibility to negotiate in good faith. Regrettably, our counterparts refused to even acknowledge the inescapable fact that they have profited enormously by exploiting a dysfunctional market - at California's expense." State Senate President pro Tem John Burton called the offer from the generators, "barely better than a jab in the eye with a sharp stick."

Governor Davis commented, "I am pleased that Judge Wagner accepted our methodology for calculating refunds and rejected the generators' position that no refunds are due. Not surprisingly, the energy pirates that bilked ratepayers out of billions of dollars stonewalled and refused to negotiate in good faith with our team in Washington, DC." Later he said, "It has been eight months since the FERC determined that California's marketplace is dysfunctional, yet not one penny has made its way back to the state. 34 million California consumers are counting on the FERC to do its job."

Power marketers counter that the state's estimate of nearly \$9 billion is unrealistic and excessive.

## **SENATE APPROPRIATIONS INCLUDES FUNDING FOR CALIFORNIA WATER**

The Senate Appropriations Committee included \$145 million in funding for California water projects in its FY02 Energy and Water Appropriations, marked up on Thursday, July 12. Of that money, \$40 million is slated for CALFED water projects.

Rather than directly fund the CALFED program, because its authorization has lapsed, the bill earmarks money for water storage, water conveyance, water quality, water efficiency and ecosystem restoration projects. The earmarks include:

- \$14.25 million on the Environmental Water Account;
- \$7.5 million for administration, coordination and science activities associated, with CALFED implementation;
- \$1 million for the preconstruction activities of Los Vaqueros Reservoir;
- \$5.25 million for the preconstruction activities associated with Shasta Dam;
- \$250,000 for the study of the Delta Islands;
- \$2.5 million for storage at Friant (in the Upper San Joaquin);
- \$500,000 for Sites Reservoir;
- \$250,000 for the intertie between the State Water Project and the Central Valley project in the Delta and \$250,000 for the operation of the Delta Cross Channel;
- \$1 million for water efficiency studies;
- \$500,000 for water transfer (NEPA) analyses;
- \$6 million for the Tracy fish screen, which allows for increased pumping by providing improved screens and protections for the fish;
- \$500,000 Engineering and design at Red Bluff for Fish Passage (on the Sacramento River); and
- \$250,000 for Santa Clara to do technical assistance on the San Felipe Division.

The bill also includes Army Corps of Engineers funding of \$22.13 million for Oakland Harbor renovation and dredging and \$22.5 million for Sacramento Flood Control. Lake Tahoe Wetlands development in South Lake Tahoe received \$2 million in funding and \$800,000 was provided for the Salton Sea and the All-American Canal.

In addition to the \$40 million in earmarked funds, \$95 million was provided for California water projects within the Bureau of Reclamation's budget.

## **WAYS AND MEANS CONSIDERS ANNUAL NTR FOR CHINA**

The House Ways and Means Trade Subcommittee met on Tuesday, July 10, to consider H.J.Res. 50, which would bar the President from extending Normal Trade Relations (NTR) status to China for another year. Even though Congress approved permanent NTR (PNTR) for China last year, the annual extension is needed because China has not acceded to the World Trade Organization, a condition of the PNTR approval.

During the hearing the Subcommittee heard from several witnesses both supporting and opposing the extension. Reps. Dana Rohrabacher (Huntington Beach), the sponsor of the resolution, and Nancy

Pelosi (San Francisco) testified in support of denying NTR to China. Both decried China's atrocious human rights record, with Rep. Rohrabacher also stressing China's military and nuclear build-up. The Subcommittee also heard from Bob Stallman, President of the American Farm Bureau Federation, who opposed H.J.Res. 50 and supported the extension of NTR.

The full Ways and Means Committee is expected to vote to disapprove the resolution this week, thus lending its support for another one year extension of NTR for China

### **CALIFORNIA MEMBERS SEEK SUPPORT OF LEGISLATION RESTORING NON-STOP SERVICE BETWEEN REAGAN NATIONAL AND LAX**

California Representatives Jane Harman (Rolling Hills), Jerry Lewis (Redlands), Gary Miller (Diamond Bar) and Brad Sherman (Sherman Oaks) recently circulated a letter seeking co-sponsors and support for legislation to restore non-stop air service between Washington Reagan National Airport (DCA) and Los Angeles International Airport (LAX). On Friday, June 22, the Department of Transportation eliminated the direct route by allocating slots to Alaska Airlines for services between DCA and Seattle.

Without the route Los Angeles is the largest U.S. city without non-stop air service to National and as a result the entire state of California would have no direct connection to DCA. The legislation introduced by Harman, Lewis, Miller and Sherman allows American Airlines to use two of its existing slots to provide service between DCA and LAX. The bill not only preserves the LAX -DCA flight, but it also allows Alaska Airlines to fly direct to Seattle. Senator Barbara Boxer is also sponsoring a bill in the Senate to put the LAX non-stop back on American Airlines schedule.

### **REP. SCHIFF TO INTRODUCE ACCESS TO HIGHER EDUCATION ACT OF 2001; CALIFORNIA COLLEGES WOULD BE PRIME BENEFICIARY**

California Rep. Adam Schiff (Burbank) will introduce legislation to aid students who attend low-cost community colleges and state university like those in California. Through the Access to Higher Education Act of 2001, Schiff seeks to repeal the Pell Grant tuition sensitivity rule, which limits the award based on the cost of tuition. Because of the rule, students who attend low cost colleges do not receive the maximum Pell Grant, though the cost of attending college remains high when cost for books, transportation, and room and board are factored in. California's costs are among the nation's lowest.

The legislation also seeks to expand expenses qualifying for education tax credits under the Hope Scholarship and Lifetime Learning Credits to include books, supplies, transportation, child care, and room and board. As it stand currently, tax-based education assistance programs are only applicable to tuition and fees, so their greatest value is for students attending high-cost schools. California Community Colleges have one of the lowest tuitions available so students cannot take full advantage of the Hope Scholarship and Lifetime Learning Credit.

For more information on the legislation or for information on co-sponsoring the legislation contact Aviva Klein or Gail Ravnitski in Rep. Schiff's office at 202-225-4176.

### **SENATE APPROPRIATORS EASE MEXICO TRUCK BAN**

The Senate Transportation Appropriations Subcommittee, on Thursday, July 12, approved an amendment that would ease the ban on Mexican trucks operating in the United States. Under NAFTA provisions supported by the Administration, Mexican trucks would be allowed to operate in the U.S. beginning next January. The House, however, adopted an amendment to the Transportation Appropriations's bill that restricts Mexican registered trucks to a 20-mile commercial zone inside U.S. borders. See, [\*Bulletin, Vol. 8, No. 21 \(6/29/01\)\*](#).

Under the Senate amendment, authored by Subcommittee Chair Patty Murray (WA), Mexican-registered trucks would be allowed to operate beyond the 20-mile limit, if they have received a safety certification from the Department of Transportation. The amendment is an attempt to stave off a veto, threatened by President Bush if the House language is included in the bill. More amendments to the bill on the trucking issue are expected during the full Committee's markup this week.

In the meantime, Senator Barbara Boxer announced that the Senate Commerce Committee will hold a hearing at her request on the highway safety issues associated with granting the trucks access. Witnesses at the hearing, to be held on July 18, are expected to include Secretary of Transportation Norman Y. Mineta and Teamsters Union President James P. Hoffa, Jr.

### **HOUSE COMMITTEE HEARS TESTIMONY ON EXPORT ADMINISTRATION ACT**

On Wednesday, July 11, the House Committee on International Relations held a full committee hearing on the Export Administration Act (EAA). The main focus of the hearing, the third in a series of three hearings on renewal of the act, was S.149, sponsored by Senator Michael Enzi (WY). The committee heard from Senator Enzi, the Honorable John Bolton, Under Secretary for Arms Control and International Security in the U.S. Department of State, and Mr. David Tarbell, Deputy Under Secretary for Technology Security Policy, U.S. Department of Defense.

In his testimony, Senator Enzi stressed that the modernization and reauthorization of the EAA are "essential to the national security interest of the United States." He indicated support of S.149 from the Bush administration, including strong support from Secretaries Donald Rumsfeld (Defense), Colin Powell (State) and Donald Evans (Commerce), as well as Assistant to the President for National Security Affairs Condoleezza Rice. He pointed out that S.149 builds on the framework of current law while modernizing, simplifying and streamlining the Act and the export control process. Both Bolton and Tarbell in their testimony reiterated the Administration's support for S.149, with Bolton stressing that the legislation protects the President's prerogative to make critical decisions regarding export controls.

Also testifying at the hearing were Dr. Stephen Bryen, President of Jefferson Partners, and Mr. Larry Christensen, Vice President International Trade Content, Vastera, Inc. Mr. Christensen appearing on behalf of AeA (formerly the American Electronics Association) and the American Association of Exporters and Importers, indicated both organizations support the creation of a new Export Administration Act. He outlined specific recommendations in two key areas: the controls on transfer of technology and software within U.S. enterprises, and the open-ended nature of the Enhanced Proliferation Control Initiative catch-all controls on decontrolled and uncontrollable products, in light of the order of magnitude of the civil penalties found in S.149. To view the testimony of the witnesses appearing before the committee please visit the committee website at [http://www.house.gov/international\\_relations](http://www.house.gov/international_relations) .

### **SENATE SUPPLEMENTAL INCLUDES KLAMATH BASIN FUNDING**

The FY01 Supplemental Appropriations Bill passed on Tuesday, July 10, by the Senate includes \$20 million to aid farmers harmed by the drought in the Klamath Basin in Northern California and Oregon. Under federal law, water must first be used to meet Tribal Treaty obligations and then to minimize loss of endangered fish. Because of the drought, about 85 percent of Klamath Basin Project farmers have gotten no water. Recognizing the lack of water, they did not plant crops, which made them ineligible for disaster assistance loans because they are only available for crop losses. The farmer will be eligible to receive assistance under the supplemental funding because they were adversely affected by the drought and unable to plant crops.

For additional items in the FY01 supplemental appropriations bill, and for actions taken in the House, see [Bulletin, Vol. 8, No. 21 \(6/29/2001\)](#).

## **GAO FINDS FERC STUDY INSUFFICIENT TO JUSTIFY CONCLUSIONS**

The General Accounting Office in June released its audit of the methodologies of and results found by the Federal Energy Regulatory Commission in its February 2001 study of whether power outages were being used to drive up prices of electricity in California. The FERC report had found no abuse of market power and found that outages were simply for needed maintenance. GAO concluded that FERC had not conducted a sufficiently thorough review to justify its conclusion that there had not been an exercise of market power in the state.

FERC studied only whether physical engineering problems and maintenance activities were manipulated to maximize generator profits. GAO contends that a “thorough study of market power” should also examine economic forces, “with a quantification of the extent to which outages, or other supply disruptions, were caused by factors other than companies’ attempts to drive up prices.” The report quoted industry experts as generally agreeing that “it is practically impossible to accurately determine whether such physical outages are legitimate or not because plants frequently run with physical problems, and the timing of maintenance or repairs is often a judgment call on the part of plant owners or operators.”

GAO also criticized FERC’s use of a case study methodology as opposed to a more comprehensive review, and it expressed concern about the general lack of data for past outages to compare with those of the study period. It also noted that there are other methods of exercising market power beyond simply withholding generation, such as not offering bids to sell some capacity or bidding artificially high prices which would practically ensure exclusion from the market. In weighing the FERC report, GAO compared it with the more thorough approaches taken in two previous studies. An August 2000 report entitled “Diagnosing Market Power in California’s Restructured Wholesale Electricity Market,” was prepared by Severin Borenstein and James Bushnell, both of the Haas School of Business at University of California Berkeley, and Frank Wolak, of Stanford University and chairman of the Market Surveillance Committee of the California Independent System Operator. The second report referenced by GAO was “A Quantitative Analysis of Pricing Behavior in California’s Wholesale Electricity Market During Summer 2000,” Paul Joskow of MIT and Edward Kahn of the Analysis Group, released in January 2001.

The GAO report, numbered GAO-01-857, is available in Adobe Acrobat (pdf) format on the web at <http://www.gao.gov/cgi-bin/getrpt?rptno=GAO-01-857> .

## **STUDY SHOWS CALIFORNIA AIR QUALITY IMPROVING**

A study by The Road Information Program (TRIP) and released this week by Transportation California finds that air quality in California is improving. The study entitled *Breathing Cleaner Air in California: Why air quality is improving and what can be done to achieve further progress*, is based on data from the U.S. Environmental Protection Agency and examines recent air quality trends in the state as well as trends in travel, population and economic output.

The report indicates that while California’s population increased by 25% between 1985 and 1999 and vehicle travel increased by 45%, emissions of smog-forming pollutants decreased 30% in the same time period. The San Francisco Bay Area experienced the largest reduction of smog-forming emissions with a 39% decrease between 1985 and 1999. California’s other major urban areas, Los Angeles, San Diego and Sacramento experienced decreases of 30%, 30%, and 24% respectively.

The report attributes the decrease in smog-forming emissions to a reduction of emissions from highway vehicles, for which the authors credit use of lower-emitting vehicles, cleaner fuels and the increased inspection and maintenance of vehicles.

The report does point out that despite improvements seven of the states areas, Los Angeles, Southeast Desert, Sacramento, Ventura County, San Diego, San Joaquin and the Santa Barbara area, do not yet meet federal air quality standards for ozone. In light of continued poor air quality the study outlines ways Californians can contribute to cleaner air, such as driving a low emission vehicle and traveling efficiently, meaning participating in ride share or taking public transportation. For more information on the report please visit: <http://www.transportationca.com> .

### **APPROPRIATIONS REPORTS AVAILABLE ON INSTITUTE WEBSITE**

An examination of the California aspects and implications of the House versions of both the Transportation and the Energy & Water appropriations measures for FY 2002 is available on the California Institute website. As other appropriations measures move and reports become public, the Institute will prepare additional reports. Examinations of the funding bills for Interior and Agriculture will be made available in the near future. We will review the Commerce-Justice-State bill once the report is publicly available.

The report on the House FY2002 Energy & Water funding bill is available at <http://www.calinst.org/pubs/ew02.htm> . There is also a link to an Adobe Acrobat (pdf) version of the report. The House transportation bill is at <http://www.calinst.org/pubs/trap02.htm> .