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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 PASSES SEVENTH CONTINUING RESOLUTION

The House, on Thursday, December 13, passed its seventh continuing resolution to keep the government running and funded through December 21. The measure, H.J.Res. 78, passed by voice vote. The Senate is expected to pass it before the current CR runs out on December 15. Congress still has three appropriations bills – Defense, Labor-HHS-Education, and Foreign Operations – to pass, and is still trying to negotiate an economic stimulus package before it adjourns for the year.

SENATE FINANCE MARKS UP FAST-TRACK; FINAL DETERMINATION HELD UP

The Senate Finance Committee, on Wednesday, December 12, approved a Trade Promotion Authority bill (also known as “fast-track”) by a vote of 18-3. The legislation, which used the House-approved bill, H.R. 3005 (*see, Bulletin, Vol. 8, No. 36 (12/6/01)*), as the starting point, was crafted by Chairman Max Baucus (MT) and Ranking Member Charles Grassley (IA). Because of a parliamentary move by Sen. Robert Byrd (WVA), however, the Committee will return to the bill on Friday to consider further amendments.

Sen. Byrd, who opposes the bill, invoked a point of order that prohibits committees from continuing markups two hours after the Senate convenes, which occurred at 9:30 a.m. on Wednesday. Facing an 11:30 a.m. deadline to complete the markup, Chairman Baucus moved to report the bill “subject to amendment,” and later scheduled consideration of further amendments to the bill for Friday, December 14.

During the Wednesday session, only one amendment, offered by Sen. Kent Conrad (ND) was considered. The amendment, which was defeated by voice vote, would have required the Administration to determine that a trading partner’s currency was stable before fast-track approval by Congress was sought.

The Baucus/Grassley bill modifies the House bill in several ways. It includes as negotiating objectives in trade agreements advancing the core International Labor Organization standards and ensuring compatibility between trade policy and environmental objectives. These objectives follow those set forth in the recently enacted U.S.-Jordan Free Trade Agreement. An additional objective calls for

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proscribing existing labor and environmental standards of U.S. trading partners from being weakened to further trade. The bill gives these objectives equal standing with other negotiating objectives in the bill, and eliminates the requirement that labor and environmental issues be “directly related to trade” in order to be addressed.

The bill also includes specific direction to the President to preserve U.S. antidumping, countervailing duty, and safeguard laws, and directs the President to address and remedy the underlying causes of dumping, such as overcapacity, which depress markets for many industrial products like steel. The President is also directed to report to the House Ways and Means and Senate Finance Committees on any changes contemplated in U.S. trade laws before they are agreed to, and to address concerns raised by those committees. The bill also establishes a congressional oversight group to increase Congress’s involvement in trade negotiations, and allows Congress to withdraw fast-track approval by a majority vote in both Houses.

On Friday’s continuation of consideration, Sen. John Kerry (MA) is expected to offer amendments further addressing environmental and labor negotiations in trade agreements. Sens. Baucus and Grassley have stated that, as part of their agreement on the bill they drafted, they will oppose any amendments to it.

CONGRESS PASSES DEFENSE AUTHORIZATION BILL, SETS NEW BASE CLOSURE ROUND FOR 2005

By a 382-40 vote on Thursday, December 13, the House passed a defense authorization bill, and the Senate voted 97 to 2 to do the same. The National Defense Authorization Act had been stalled for more than a month due to controversy over whether to include additional base closure rounds, language desired by the Administration. The Defense Department had sought a closure round in 2003, and had threatened to veto a bill that did not so provide. The bill passed Thursday afternoon includes one new round of base closings, to take place in 2005.

Under the bill, the President, in consultation with the Senate, is to appoint a nine-member base closure (BRAC) commission in March 2005 to recommend closures. Unlike authorizing statutes from prior closure rounds, the language provides specific guidance regarding what should constitute military value, with some priority placed on (1) training facilities which further readiness, (2) homeland defense staging areas, (3) diversity of climate and terrain for training, (4) joint interservice activities, and (5) “contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training.” The bill also specifies four special considerations for each facility considered, including (1) cost recovery amount and timetable, (2) community economic impact, (3) local infrastructure’s ability to accommodate military needs, and (4) environmental costs.

Agreement of a supermajority of seven commissioners would be required in order to add a facility to the list, while a simple majority of four could remove a proposed base. As in prior closure rounds, neither the President nor Congress would be able to alter the list -- they will only approve or disapprove the entries. Under the bill, closed facilities could be placed on indefinite inactive status.

California shouldered a vastly disproportionate share of the impact from the last four rounds of base closures, which were conducted in 1988, 1991, 1993 and 1995. While California began in 1988 with just 15% of the nation’s DOD personnel, the state suffered 60% of the nation’s net cuts during those base closure rounds.

The \$343 billion defense authorization bill also proposes the full Administration request of \$8.3 billion for missile defense research and development, an increase of \$3.1 billion over FY 2001, though a portion of that increase could be spent instead to combat terrorism. A large portion of missile defense R&D activities reportedly take place in California. It also includes significant pay raises for military

personnel. The bill provides the Navy authority for multi-year procurement of F/A-18E/F fighter aircraft, a substantial portion of which is produced in California. Likewise, multi-year procurement authority is provided for the Air Force's C-17, which is produced in Long Beach. The bill repeals limits on engineering and manufacturing development for the F-22. It also provides for expansion of the Arabic language program at the Defense Language Institute in Monterey, and it authorizes DLI to offer an associate of arts degree. The bill prevents decommissioning of any B1-B bombers until a report after the filing of a report.

The bill includes several naval real estate transfer provisions. It authorizes the transfer of the closed Centerville Beach Naval Station in Humboldt County for the purpose of permitting the Secretary of the Interior to manage the real property as open space. It permits the Navy to transfer an 11-acre fuel transfer and storage facility at the former Long Beach Naval Shipyard to the City of Long Beach in exchange for similar property built by the City elsewhere. The bill allows for a transfer of Pier 11A at the San Diego Naval Base for the San Diego Aircraft Carrier Museum. It also transfers the aviation easements (air overflight rights) from the former Norton Air Force Base in the Inland Empire region to the base's redevelopment authority, with the stipulation that the Air Force must be reimbursed if the easements are sold within 10 years of conveyance. At the Presidio in San Francisco, the bill sets aside 22 housing units to be used for leasing purposes, and it asserts supremacy over state law regarding road construction activities at the USMC's Camp Pendleton in Oceanside.

The defense bill continues the process begun in last winter's agreement to expand Fort Irwin in Southeastern California, including provisions regarding maps, withdrawal and reserved lands, water rights, etc. For the National Ignition Facility at Lawrence Livermore National Laboratory, which is authorized at \$245 million, the bill includes language regarding notification to Congress of the achievement of progress milestones.

On the website of the House Armed Services Committee, <http://www.house.gov/hasc> , a copy of the 609-page bill language of the conference report is available at <http://www.house.gov/hasc/billsandreports/107thcongress/s1438confprtbilllang.pdf> . Also available on the site is a 40 megabyte image copy of report tables.

CONFERENCE COMMITTEE FINALIZES, HOUSE APPROVES SWEEPING K-12 EDUCATION REAUTHORIZATION

On Thursday, December 13, the House completed action on H.R. 1, passing the conference report on the No Child Left Behind Act and reauthorizing the Elementary and Secondary Education Act. The Senate is expected to follow suit in the near future.

The bill makes several changes to Title I grant formulas. While Congress has never appropriated funds for Education Finance Incentive Grants (EFIG), the bill alters the EFIG formula to base whatever funding might be someday allocated according to children in poverty -- a change from the prior formula which was based simply on all children, whether poor or not. Since California has an above-average child poverty rate, this shift would likely benefit California should EFIG funds be appropriated.

The formula for Title I targeted grants (which also have yet to be funded but which are likely to be this year) is adjusted by focusing greater funding on school districts with particularly high concentrations of poverty. California would be expected to receive a relatively large share of targeted grant funding, due to its concentrated child poverty enrollments.

The bill requires that any new funding for Title I programs which exceeds the FY2001 level shall be allocated to the targeted grants program. Due to statistical quirks and California's past Title I funding shortfalls -- attributable to excess "hold harmless" provisions imposed by appropriators -- California

would actually be helped more in the short run by an increase in basic and concentration grants, though the state will receive a relatively large share of targeted grants as well.

In addition, the bill increases the small-state minimum on all Title I programs by providing that any new money above the FY2001 level will be subject to a 0.35% minimum per state, while funds below that level continue to be subject to the previous 0.25% minimum.

The bill also appears to encourage the Census Bureau to switch from biennial to annual updating of poverty data for Title I purposes, stating “[I]f appropriate and reliable data are not available annually, the Secretary [of Education] shall use data which are updated every 2 years.”

The bill consolidates bilingual education and immigrant education into a single formula grant program. Previously, bilingual education funding was distributed via competitive grants -- it will now be distributed to states via a formula based on 80% on number of LEP children, 20% on the number of immigrant children. California has a very high proportion under both formula factors, so the state should receive a large share of the funds. States reserve up to 15% of funds for emergency immigrant education grants to local school districts. The provision, renamed the “English Language Acquisition, Language Enhancement, and Academic Achievement Act”, eliminates the current requirement that 75% of funding be used to support programs using a child’s native language in instruction.

The bill requires that children in grades three through eight be tested in reading and math using a state-designed instrument which reflects the state standards. States must define adequate yearly progress (AYP) so that all children within 12 years reach the proficient level on state assessments. The bill aims to close differentials in achievement levels among varied groups of children, a requirement which may prove challenging in a highly diverse state such as California. It requires that there be a “highly qualified teacher” in every classroom by the end of the 2005-2006 school year.

Unsatisfactory school progress toward meeting its performance goals over time triggers additional provisions. Parents of children attending schools which fail to meet benchmarks may request transfer to other publicly-supported schools, with Title I funds used for transportation, and public or private supplemental tutoring may be requested with funds coming from Title I accounts.

In an effort to increase flexibility for states local education agencies, demonstration program provisions allows seven states and 150 school districts to develop an accountability plan with the Secretary of Education which would provide wide discretion regarding use of funds. In separate transferability language, the bill permits up to 50% the funds in some accounts within certain programs, (including teacher quality, technology, safe and drug free schools, and innovative programs) to be transferred between and among several programs and funds can be shifted into (though not out of) Title I accounts.

A 1200 page (4 meg) pdf file of bill text is available on the Education & Workforce website, <http://edworkforce.house.gov/issues/107th/education/nclb/conference/leglanguage/leglanguage.pdf> . (Our appreciation to Education Legislative Services for Assistance with bill details.)

HOUSE JUDICIARY PANEL EXAMINES DIGITAL MILLENNIUM COPYRIGHT ACT

The House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property began a series of hearings on Thursday, December 13, to examine the impact of the 1998 Digital Millennium Copyright Act (DMCA). The Act called for the Copyright Office to issue a report (known as the “Section 104 Report”), which was released in August 2001, on the implementation of the Act and recommendations for further legislative action. This first hearing by the Subcommittee addressed the legal status of temporary copies. The Report recommends enactment of a narrow exemption from copyright liability for temporary buffer copies of musical compositions made incidentally during audio streams over the Internet.

During his opening remarks, Rep. Howard Berman (Valley Village) stated that he was open-minded about such a legislative exemption. He also indicated he remains concerned that the DCMA will make copyrighted works less accessible and more costly, but that over the three years since enactment of the DCMA it appears that copyright users have not experienced the negative effects they predicted. On the other hand, he noted that copyright piracy has continued to grow and bolsters the argument that passage of the DCMA three years ago was appropriate.

Marybeth Peters, Register of Copyrights, outlined the background of the DCMA and analyzed several different issues pertaining to its implementation. She testified that in public comments received by the Copyright Office webcasters “asserted that the unknown legal status of buffer copies exposes webcasters to demands for additional royalty payments from the owner of the sound recording, as well as potential infringement liability.” These users also expressed concern that a case-by-case fair use defense is too uncertain a basis for making rational business decisions. The Copyright Office agrees with that assessment and, therefore, recommends that Congress enact legislation amending the Copyright Act to “preclude any liability arising from the assertion of a copyright owner’s reproduction right with respect to temporary buffer copies that are incidental to a licensed digital transmission of a public performance of a sound recording and any underlying musical work.”

The Subcommittee also heard from representatives of the National Music Publishers Association, the Recording Industry Association of America, and the Business Software Alliance. Copies of the testimony of all the witnesses may be found at the Subcommittee’s website:

<http://www.house.gov/judiciary/courts.htm> .

CALIFORNIA CONGRESSMEN CRITICIZE LACK OF ACTION ON CROSS-BORDER SEWAGE TREATMENT LAW

In a congressional hearing on Wednesday, December 12, Congressmen Bob Filner (San Diego) and Duncan Hunter (Alpine) charged the International Boundary Water Commission (IBWC) with unnecessarily delaying action on a cross-border sewage treatment law. The Tijuana River Valley Estuary and Beach Cleanup Act of 2000 or Tijuana River Act (P.L. 106-457) passed Congress last year with unanimous consent in both Houses. The act is designed to enhance the environmental quality of raw sewage flowing from Tijuana, Mexico into San Diego County before it is discharged into the Pacific Ocean but has not been implemented in over a year. The Tijuana River Act requests the Secretary of State to initiate negotiations with Mexico for a new or modified binational treaty minute over plans to build a cross-border sewage plant. The hearing was held by the House Transportation Subcommittee on Water Resources and Environment.

Carlos Ramirez, IBWC Commissioner, claimed that the delay in opening negotiations with the Mexican government is due to anticipated negotiation impediments, a lack of funding for environmental impact studies and a State Department holdup of negotiation authority authorization. But Congressman Hunter said that Mexico has been eager to move forward with negotiations and that a comprehensive assessment of sewage treatment technology held in 1999 makes any need for additional funding redundant. John Dawson, representing the Department of State, reported that the U.S. government will be ready to grant negotiating authority to the IBWC by the end of December. “I think we finally made solid progress on this issue,” Congressman Filner said, “We got the IBWC and the State Department to agree to act. Now we must make sure they follow through on their commitments.”

Additional information on the hearing can be obtained through the Transportation Committee’s website at: <http://www.house.gov/transportation> .

REPS. THOMAS AND STARK URGE DELAY IN NEW MEDICARE REGULATION

Reps. William Thomas (Bakersfield) and Pete Stark (Fremont) have signed a letter to the Centers for Medicare and Medicaid Services (CMS) asking that it delay the implementation of a regulation that would reduce by 68.9 percent Medicare payments for innovative medications used in the outpatient hospital setting. Rep. Thomas is Chair of the Ways and Means Committee; Rep. Stark is the Ranking Member on its Health Subcommittee. The letter was also signed by Reps. Charles Rangel (NY), Ranking Member of the full Committee, Nancy Johnson (CT), Chair of the Health Subcommittee, Billy Tauzin (LA) and John Dingell (MI), Chair and Ranking Member of the House Energy and Commerce Committee, respectively, Michael Bilirakis (FL) and Sherrod Brown (OH), Chair and Ranking Member of that Committee's Health Subcommittee, and Senators Max Baucus (MT) and Charles Grassley (IA), Chair and Ranking Member, respectively of the Senate Finance Committee.

The 68.9 percent pro-rata reduction would bring reimbursement for innovative treatments and technology for seniors in the outpatient setting well below true hospital acquisition cost. This, in turn, may severely restrict Medicare patient access to potentially life-saving therapies. The data used by CMS to arrive at the pass-through reduction may be flawed, and delaying implementation of the rule would allow more time to assess the data and correct any errors.

PPIC SURVEY SHOWS THREAT OF TERROR NO LONGER TOP PRIORITY FOR CALIFORNIA RESIDENTS

The latest Public Policy Institute of California (PPIC) *Statewide Survey* cites the economy, electricity, and education as the top three issues facing California. Three months after the events of September 11th, fewer respondents are alarmed the most by terrorism and security now (6%) than they were in October (14%); while the economy (15%), the electricity crisis (14%), and education (12%), are more likely to dominate the minds of California residents, the survey states. Californians are still concerned, nevertheless, and socially and psychologically impacted by the threat of terror. The survey reports that concerns over security are still viewed as a problem and seventy percent of Californians view themselves as more patriotic as a result of the attacks, while Latinos are more likely to experience emotional aftershocks than non-Latinos.

President Bush maintains overwhelming approval ratings among Californians, with 79 percent approving of his job performance, and Governor Davis' approval numbers as well remain higher than before September 11th. The study also presents some data on next year's gubernatorial race. With the March primaries fast approaching, Richard Riordan holds a substantial lead over other Republican gubernatorial contenders Bill Jones and Bill Simon among GOP voters; and, when matched against Gray Davis, Riordan holds a four percent edge among likely voters (44%-40%).

A copy of the report can be obtained from the PPIC website at: <http://www.ppic.org> .

HHS SECRETARY SEEKS STATE GOVERNMENT HELP COUNTERING BIOTERRORISM

Tommy Thompson, US Secretary of Health and Human Services (HHS), pledged the federal government's assistance in establishing better biological terror responses and preventive measures while encouraging states to treat bio-terrorism preparedness as a priority. In an address to state elected officials of the National Council of State Legislatures (NCSL), Secretary Thompson urged a strong and unwavering partnership between state, local, and federal entities to best protect the nation's health. Unprecedented investment in early detection and quick and effective response policies were underscored in Secretary Thompson's speech to signify the Bush administration's commitment to a strong anti bio-terrorism effort since September 11th.

Increasing vaccine stockpiles; expanding the capacities of state and local laboratories; increasing the number and availability of experts; enhancing the frequency and quality of food inspections; and improving coordination and communication to enhance the nation's emergency response infrastructure are examples of measures Secretary Thompson's Department of Health and Human Services has taken or intends to take to more effectively counter bio-terrorism and improve health standards.

Amidst his request for stronger state healthcare partnerships, Secretary Thompson acknowledged the adverse impact of significant declines in state resources, rises in medical costs and potential federal Medicaid budget cuts for many states as a result of recent changes to federal matching payments or FMAP (California would be most severely impacted by recent changes to the Medicaid Upper Payment Limit rates and the FMAP. See, [*Bulletin, Vol. 8, No. 34 \(11/15/01\)*](#)). In response to a question about his reaction, Secretary Thompson said he did not anticipate a large infusion of Medicaid funds to offset changes in the reimbursement system although he is looking at some ways to hopefully assist the states.

In an October letter to President Bush outlining economic stimulus suggestions, NCSL recommended maintaining medicaid FMAPs for states that would experience Medicaid reductions. A similar provision that would provide temporary relief for such states currently exists in the pending Senate version of the economic stimulus bill.

INDICATORS REVEAL MINORITY EDUCATION GAPS IN CALIFORNIA

A recent *California Counts* study published by the Public Policy Institute of California (PPIC) reports discrepancies in educational preparedness among California's major racial/ethnic groups, particularly Latino and African American children. Compared to their white and Asian counterparts, black and Hispanic children generally performed lower in virtually all tested indicators, according to *At Home and in School: Racial and Ethnic Gaps in Educational Preparedness*. Hispanics are farthest behind with Hispanic children more likely to suffer the lowest quality of schooling, the least amount of parental education received, and the least likelihood of home computer access or high school graduation.

The study concludes that its results are of increasing relevance to California as the state's population is expected to continue diversifying and as college education achievement gains further significance and value in securing successful careers.

For a complete copy of the study, go to the PPIC's website at: <http://www.ppic.org> .