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California Capitol Hill Bulletin

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To expand communications between Washington and California, the California Institute provides periodic news bulletins regarding current activity on Capitol Hill that directly impacts the state. Bulletins are published weekly during sessions of Congress, and occasionally during other periods.

PROTRACTED SENATE DEBATE CULMINATES IN IMMIGRATION BILL’S PASSAGE; CHALLENGING CONFERENCE LIKELY TO FOLLOW

After two weeks of debate and the consideration of numerous amendments, the U.S. Senate passed its immigration reform bill, S. 2611, on Thursday, May 25, 2006, by a vote of 62 to 36. The final vote came one day after the Senate voted 73-25 on Wednesday to invoke cloture and waived a point of order passed on the Budget Act by a vote of 67-31. A sixty-vote majority was required for both Wednesday actions.

The Senate bill includes measures that strengthen border security, but by far its most controversial provisions deal with establishing a temporary guestworker program and providing a way for illegal immigrants currently in the United States to eventually become citizens. The next step will be a complex conference negotiation, given the Senate bill’s many differences with a stricter House measure passed several months ago. Importantly, the House’s version includes a guestworker provision of any kind.

Before final passage this week, the Senate dealt with a number of amendments, with proponents beating back all attempts to rewrite the delicately negotiated compromise.

On Monday, an amendment by Sen. Saxby Chambliss (GA) to change the wage-setting formula in the bill for agricultural workers was tabled by a vote of 50-43. Sen. Larry Craig (ID), who negotiated the agricultural wage provisions in the bill with immigration and agricultural interests, led the fight against the amendment. The bill sets up a formula to determine wages for the estimated 1.5 million currently undocumented workers who are expected to legalize their status, and the 40,000 temporary agricultural guestworkers with H-2A visas. The formula sets an average wages equal to the 2002 pay for that particular job and skill level, regardless of the location of the job. Chambliss’ amendment would have established a prevailing wage rate for a particular area or location.

Another amendment, offered by Sen. John Ensign (NV), dovetails with President Bush’s decision to send the National Guard to the border. The Ensign amendment, approved 83-10, authorizes Governors to send troops to the border for no more than 21 day tours. They would be excluded from “search, seizure, arrest or similar activity,” while on duty at the border, in keeping with the President’s intention.

The Senate also defeated an amendment, offered by Sen. Dianne Feinstein, which would have revamped the three-tier legalization proposal negotiated by Sens. Chuck Hagel (NE) and Mel Martinez (FL). Under

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Feinstein's amendment, illegal immigrants would have been eligible to get a tamper-proof "orange" card and regularize status in the United States, regardless of how long they had been in the United States. Under the Hagel-Martinez proposal, the estimated 1.6 million undocumented workers who have been in the U.S. less than two years would not be eligible to stay in the U.S., while those here 2-5 years would be required to return to their home countries before receiving a legal visa into the United States. The Senate also defeated a Hutchinson amendment that would have established a separate guestworker program that would have given temporary visas limited to ten months per year to immigrant workers. The vote was 31-67.

In a successful effort to limit the scope of the bill, the Senate adopted an amendment by Sen. Jeff Bingaman (NM) that reduced the number of guestworker visas available annually from 325,000 to 200,000. On Wednesday, an amendment offered by Sen. Robert Byrd (WVA) was also adopted, 73-25. It adds an additional \$500 fee to the price that an undocumented immigrant must pay when applying for a visa. The fee is expected to raise an additional \$2.8 billion, which will be targeted at border security. In addition to the Byrd amendment, the other fees included in the bill are expected to raise over \$20 billion.

An amendment offered by Sens. Judd Gregg (NH) and Maria Cantwell (WA) was adopted on Wednesday by a vote of 56-42. The amendment would amend the diversity visa program to require that 2/3rds of those visas (roughly 33,000) would go to individuals with advanced degrees in technology, math, and science fields. The Senate also agreed by voice vote to an amendment introduced by Sen. Landrieu (LA) which is aimed at streamlining and expediting foreign adoption procedures.

Before the bill's final passage on Thursday, the Senate agreed to another Bingaman amendment, this one to limit the total number of employment-based green cards to 650,000 per year. (This total number is to include spouses and children of prospective employees, not just the employees themselves.)

COUNTIES FROM 15 STATES CALL FOR INCREASED FUNDING FOR SCAAP PROGRAM

Led by the California State Association of Counties (CSAC), associations of counties in 15 states sent a letter to Congress the week of May 15, 2006 urging lawmakers to fund the State Criminal Alien Assistance Program (SCAAP) at the fully authorized level of \$850 million in fiscal year 2007. After sustaining a significant cut back in fiscal year 2003, the program has been increased over the last several years, including a roughly \$100 million boost in fiscal year 2006 to about \$400 million.

SCAAP funding has never been provided at its fully authorized level, although in the early years of the decade funding did reach \$585 million. In FY2003, however, funding was significantly reduced, and only recently has it increased again. In FY06, SCAAP was appropriated \$400 million. Of appropriated funds, California receives over 40 percent. The state and local governments received a total of \$121 million in FY2005, the last year for which figures are available.

The counties' letter, sent to Appropriations Chair Jerry Lewis (Redlands) argues that "Despite a \$100 million increase in SCAAP in the last appropriations cycle, the program's funding is approximately \$185 million less than what it was back in fiscal year 1998. Moreover, the program's current funding level of roughly

\$400 million falls far short of providing full reimbursement for the actual costs incurred by eligible jurisdictions nationwide.”

In addition to James Keene, Executive Director of CSAC, the letter was signed by county representatives for the following states: Arizona, Florida, Idaho, Indiana, Michigan, North Carolina, New York, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Washington, and Wisconsin.

HOUSE CONSIDERS 2007 HOMELAND APPROPRIATIONS; LENGTHY AGENDA DELAYS FINAL PASSAGE UNTIL AFTER MEMORIAL DAY RECESS

Despite working late into the evening on Thursday, May 25, 2006, the House of Representatives was forced to recess leaving unfinished its FY 2007 appropriations measure for the Department of Homeland Security and related agencies. Congress adjourned at midnight Thursday night for the Memorial Day recess and will return at 6:30 pm on June 6.

Congress took up the Homeland Security Appropriations bill, H.R. 5441, on Thursday afternoon after a procedural motion was adopted by a vote of 217 to 195. During floor action, the House agreed by voice vote to an amendment by Rep. Martin Sabo (WI) to add \$112 million to the Fire Grant program (which returns a low share of funding to California).

Also agreed to were amendments by Rep. Bart Stupak (MI) to shift \$5 million to Immigration & Customs Enforcement (ICE), as well as an amendment by Rep. Stephen Lynch (MA) to shift \$50 million to provide security grant funding for intercity passenger rail, freight rail, and transit security. Whereas the Stupak amendment passed by a 4-to-1 margin, the Lynch amendment was closer, with 41 Republicans joining 183 Democrats to give the 225-197 affirmative result. Later, the House agreed to a Marshall amendment to increase USCIS employment verification program funding by \$20 million. (All of these amendments were offset by reductions elsewhere in the bill, so they were revenue-neutral.) Many other amendments to the bill were rejected.

For further information about the bill as approved at the Committee level, including references to port security and first responder grant funding, refer to the Institute's article in the prior week's edition of the California Capitol Hill Bulletin, at [Bulletin, Vol.13, No. 14 \(5/19/2006\)](#).

SENATE PANEL MARKS UP AMERICAN INNOVATION AND COMPETITIVENESS ACT OF 2006

On May 18, 2006 the Senate Commerce, Science, and Transportation Committee marked up S. 2802, the American Innovation and Competitiveness Act. Senator John Ensign (NV), Chair of the Subcommittee on Technology, Innovation, and Competitiveness, sponsored the bill. It responds to recommendations contained in the Council on Competitiveness' *Innovate America Report* and the National Academies' *Rising Above the Gathering Storm Report*.

The legislation focuses on increasing research investment, increasing science and technology talent, and developing innovation infrastructure. The bill increases authorized funding for NSF from \$6.4 billion in Fiscal Year 2007 to \$11.4 billion in Fiscal Year 2011. NIST funding would increase from approximately \$640 million in Fiscal Year 2007 to \$937 million by Fiscal Year 2011. The bill would also establish a Fiscal Year 2007 level of approximately \$110 million for the Hollings Manufacturing Extension Partnership program (MEP), which increases to \$130 million in fiscal years 2008 through 2011.

In addition, the bill requires the National Academy of Sciences to conduct a study to identify forms of risk that create barriers to innovation one year after enactment of the bill and every four years thereafter. The study is intended to support research on the long-term value of innovation to the business community and to identify means to mitigate legal or practical risks presently associated with such innovation activities.

Finally, the bill establishes a research and development program within the National Oceanic and Atmospheric Administration (NOAA), in coordination with NSF and National Aeronautics and Space Administration (NASA), specifically dedicated to ocean and atmospheric science and technology. The bill also establishes related ocean and atmospheric science education programs.

The subcommittee reported the bill by a vote of 21-0. Further information is available from the Senate Commerce Committee at <http://commerce.senate.gov>, and a copy of the bill as reported is available at http://commerce.senate.gov/public/_files/innovationasreported.PDF.

HOUSE SUBCOMMITTEE CONSIDERS PRIVATE SECTOR INVOLVEMENT IN COLLEGE AID

The House Education and the Workforce Subcommittee on 21st Century Competitiveness, chaired by Rep. Ric Keller (FL), held a hearing on federal and corporate financial aid for higher education on Tuesday, May 23, 2006. The focus of the hearing was the potential role of the private sector in alleviating some of the government's investment in student aid and the costs of higher education. Chairman Keller and Ranking Member Dale Kildee (MN), joined by Reps. Vu, Holt, Ehlers, Drake and Osbourne, heard from a panel of witnesses with diverse opinions and experiences in regard to student aid, including: Mr. Tom Davis, Owner of Davis Brothers Construction; Mr. Allison Jones, Asst. Vice Chancellor of Academic Affairs and Student Academic Support for the California State University system; Mr. Jamie Meisotis, President of the Institute for Higher Education Policy; and Mr. Rasan Salandy, Director of University Recruitment and Public Relations at the Posse Foundation.

Each witness acknowledged the positive, if limited, role the private sector can and should have in alleviating the huge financial burden resulting from the ever-increasing costs of higher education. However, each also emphasized the premier importance of federal funds in the effort. Mr. Davis testified on the program he has implemented in his own company to provide financial support to his employees' *children* who want to attend college. In his remarks, Mr. Jones noted the traditional attention that has been paid to corporate sponsors who pay for the higher education of their employees. He argued that there must be a paradigm shift to encourage educational support for employees' children in those industries where the majority of employees are recent immigrants. In these situations, college may not be realistic or desirable for the foreign-born employees, but a perfect opportunity for their children, Davis said.

Mr. Jones, speaking on behalf on the California State University system, supported the need for an early assessment program, such as the EAP that the 23 Cal State campuses have employed, that would maximize current state and federal aid and better bridge the gap between K-12 and higher education that financial aid alone can't do. Such a system would identify those students entering their senior year in high school still lacking the skills and requisites that make them either eligible to enter a university or competent to compete in the workforce. Mr. Jones explained the success of this kind of program, implemented through collaboration with California's Governor and the first of its kind in the nation. He also noted that, although the EAP is voluntary, more than 186,000 students took its test last year.

Jones's testimony a number of other issues, including community partnerships, foster youth, outreach to military veterans, the TRIO and GEAR UP programs, federal and state support for financial aid, and math/engineering/science encouragement for disadvantage students. He also testified that the California State University system is now responsible for one half of the Bachelors degrees awarded in the state, and he called this a remarkable accomplishment given that 40 percent of CSU's student body comes from a household where English is not the first language.

For more information, to download full witness testimony, or to view a webcast of this hearing, please visit the House Education & Workforce Committee's website at: <http://edworkforce.house.gov>.

VOTING RIGHTS ACT HEARINGS CONTINUE

The Senate Judiciary Committee held two more days of hearings on the Voting Rights Act last week. On the May 16, 2006, the hearing was an in-depth analysis for "The Continuing Need for Section 5 Pre-Clearance." The hearing addressed the required pre-clearance by the Department of Justice for nine states, and certain jurisdictions, under Section 5. One side of the discussion argues that Section 5 is now outdated and even unconstitutional in regards to states' rights, due to the current progress states' have made in protecting minority voting rights. Others, however, support the continuation of Section 5, arguing that it acts as a strong deterrent against voting discrimination and prevents regression and backsliding by states' and jurisdictions known for voting discrimination.

Pamela S. Karlan, Kenneth and Harle Montgomery Professor of Public Interest Law and Associate Dean for Research and Academics at Stanford University School of Law, supported renewal of Section 5, as an important deterrent. Karlan pointed out that even though there is a decrease in the number of objections that the Department of Justice has made to changes requested by jurisdictions, the fact that DOJ still objects to some requests indicates that there are still some discriminatory voting acts taking place.

On May 17, 2006, at the Committee's second day of hearings, Abigail Thernstrom, Senior Fellow of the Manhattan Institute, presented the other side of the debate. She felt that great improvement has been made in voting discrimination, so it is no longer needed in those states and counties covered by Section 5, especially because it is just as possible that voting discrimination can occur in areas not restricted by the pre-clearance. Thernstrom stated "as said by Justice Sandra Day O'Connor, political apartheid" has been created by the "pernicious impact of pre-clearance as it has come to be interpreted and enforced." Thernstrom went on to liken "race-based" redistricting to segregation and said, "segregation is morally wrong, regardless of who advocates it." She argued that these "race-based" districts amount to a form of "political exclusion." She opined that current "race-based" districts force blacks and Latinos into voting for candidates of their same race, even if their views are different. She claimed that there is the "offensive and demeaning assumption that voters of the same race think alike and are to elect only people of their same race." Thernstrom argued that minority voters should be free to vote for which ever officials they desired. She considered current districts as "racist-maps" that send the wrong message that "blacks are different from whites." Finally, Thernstrom felt that African Americans would have a "greater voice is racial gerrymandering were not taking place."

Further information on the hearings, including witness testimony, may be obtained from the Committee's website at: <http://www.judiciary.senate.gov> .

REPS. ISSA AND SCHIFF INTRODUCE PATENT BILL

Representatives Darrel Issa (Vista) and Adam Schiff (Burbank) introduced a bill, H.R. 5418 on May 19, 2006, to establish a pilot program to enhance the expertise of district court judges hearing patent cases. Issa and Schiff are both members of the House Judiciary Subcommittee on Intellectual Property.

Roughly forty percent of all patent case appeals of federal district court decisions are reversed and ultimately decided by the Federal Circuit Court of Appeals," said Rep. Issa. "This legislation is designed to help courts reduce errors that lead to appeals." A pilot program would be tested in at least five district courts, which would be assigned a clerk with expertise in patent law or with the technical issues arising in patent cases. Judges would be allowed to "opt-in" to hear patent cases under the program and to receive educational support in patent law if they did so. If a patent case is randomly assigned to a judge that has not opted into the pilot program, that judge could pass the case along to a judge that has done so.

The intent of the bill is to steer patent cases to judges with the desire and aptitude to hear them, while retaining the random assignment practice to help avoid forum shopping. The pilot project would last no longer than 10 years under the bill, and periodic studies would be done to evaluate its performance.

EASTERN SIERRA RURAL HERITAGE AND ECONOMIC ENHANCEMENT ACT

On May 24, 2006 the Senate Energy and Natural Resources Public Land and Forests Subcommittee held a hearing to discuss S. 2567, the Eastern Sierra Rural Heritage and Economic Enhancement Act, introduced by Senators Barbara Boxer and Dianne Feinstein. Representative Howard "Buck" McKeon (Santa Clarita) has introduced a similar bill in the House: H.R. 5149.

Senator Boxer testified on S. 2567. She noted the beauty of the Sierra wilderness and the need for its preservation. She also cited the bipartisan support for the bill and testified that it also enjoys widespread community support. Under S. 2567, the government would ensure the protection and maintenance of the rural heritage of the Eastern Sierra while improving tourism to the area. Joel Holtrop, Deputy Chief of the National Forest System, Department of Agriculture, testified that he believed many tourists would be drawn to the region if it were given a wilderness designation.

The Eastern Sierra Act would add land to the already existing Hoover Wilderness Area. Hoover Wilderness would acquire 39,680 acres from certain lands in the Humboldt-Toiyabe National Forest. And an additional

640 acres taken from the National Forest would now become part of the Emigrant Wilderness. The Eastern Sierra Act would also preserve 24 miles along the Amargosa River as a scenic route.

REPORT ON MODES OF ENTRY FOR UNAUTHORIZED MIGRANT POPULATION RELEASED

The Pew Hispanic Center has published a report sheet on the way in which undocumented persons residing in the United States entered the country. The fact sheet, released May 22, 2006, focused on the 11.5 to 12 million illegal immigrants currently estimated to be living in the U.S. The Center divided that population into two groups, those who originally entered the U.S. legally by going through inspection, or those who entered illegally, avoiding inspection.

According to Pew, an estimated 4.5-6 million immigrants, about 40-50% of the total illegal immigrant population, legally entered the U.S. through "ports of entry," such as airports or being checked at the border. Of that number most are "Visa overstayers," who received a visa limiting the amount of time they could stay in the U.S. and did not return home when that visa expired. The remaining 250,000 to 500,000 in that population, according to Pew, came to the United States with Border Crossing Cards, which allow short visits limited to the border region, but did not return home.

The remaining undocumented immigrants, about 6 to 7 million, entered the United States illegally by avoiding border patrol and immigration inspectors as they entered the United States.

For further information, visit the Pew Hispanic Center website at <http://pewhispanic.org> and to see the fact sheet: <http://pewhispanic.org/factsheets/factsheet.php?FactsheetID=19>.

LATEST PPIC SURVEY SHOWS VOTERS UNDECIDED ABOUT LEADERSHIP

On Thursday, May 25, 2006, the Public Policy Institute of California released a statewide survey, directed by Mark Baldassare, research director at PPIC, where he holds the Arjay and Frances Fearing Miller Chair in Public Policy. This latest Survey found that Californians' growing economic angst and chronic doubts about the quality and probity of state government are bringing less, not more, clarity to the final weeks of the primary campaign.

Californian consumers are troubled by the high gas prices, a declining stock market, and inflation. Concerns like these have left voters unsure of who would best lead California. With the Democratic gubernatorial primary just two weeks away, the Survey found one third of Democratic primary likely voters (33%) are still undecided between State Treasurer Phil Angelides and State Controller Steve Westly. But regardless of who wins the June Democratic primary, the Survey indicates that Governor Arnold Schwarzenegger appears to be headed for a close race come fall, with the race a toss-up in hypothetical contests between Schwarzenegger and Angelides (38% each) and Schwarzenegger and Westly (36% each).

In other findings, of statewide residents 52 percent worry that California will get worse before it gets better, financially, and 57 percent believe that the state is moving in the wrong direction at the hands of its leaders. Over 50% of residents disapprove of the job performance of both the governor and state legislature.

The Survey also found that likely voters rank immigration (24%) as the top issue they want candidates for governor to discuss, followed by education and schools (23%). Republicans (32%) and independents (29%) are more likely than Democrats (15%) to name immigration as their top issue.

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

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