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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.

SENATE THWARTS TAX PACKAGE WITH R&D AND MINIMUM WAGE

Having stayed in session a week longer than the House to complete business on the pension bill (H.R. 4) and tax package (H.R. 5970), the Senate failed to invoke cloture on the tax package before leaving for its August recess late on August 3, 2006.

Before starting its own summer recess, the House passed the pension bill (279-131) early on July 29, 2006, after passing a separate tax package (230-180) that contained a permanent reduction in the estate/death tax, as well as an increase in the minimum wage and the extension of numerous tax credits, including the R&D tax credit. Congressional leaders hoped that packaging the estate tax reduction with the minimum wage and tax extenders (as the expired tax credits are called) would engender enough Senate support to muster the 60 votes needed for cloture. But that strategy failed on August 4, 2006, with a 56-42 vote. Arguing that the tax provisions must be considered as one package, Majority Leader Bill Frist (TN) promised that the package would be addressed again and changed his vote for cloture to a “no” in order to preserve his options for reconsideration after the August recess.

The R&D tax credit, which expired at the end of last year, is strongly supported by California's technology, defense, biomedical, and other technology-intensive industries. The House bill would extend the credit for two years retroactively through 2007. It would also extend the Welfare-to-Work tax credit for two years. That credit is available to companies that hire individuals off of welfare.

Under the House-passed bill, an increase in the size of estates excluded from taxation would be phased in and the amount of the exemption would also increase to keep pace with inflation. The bill also phases in a \$2.10 increase in the federal hourly minimum wage, which would rise from the current \$5.15 an hour to \$5.85 on Jan. 1, 2007; \$6.55 on June 1, 2008; and \$7.25 on June 1, 2009.

The House minimum wage language contains a controversial provision on the so called “tip credit”. A “tip credit” allows businesses to count tips against the minimum wage, thereby enabling them to pay tipped employees as little as \$2.13 an hour. Currently there are seven states — including California — which prohibit the tip credit and require that all employees receive the full minimum wage amount, regardless of tips.

Controversy arose because the Congressional Research Service and the Congressional Budget Office released reports contending that the language in the bill would pre-empt current law in those seven states

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and therefore result in a possible pay “cut” for workers in those states. An opinion from the Department of Labor, the agency responsible for enforcing the law, however, stated that the Department would not allow workers’ wages to be cut because that would be contradictory to the intent of Congress and the Fair Labor Standards Act. With these opposing interpretations, the effects of this provision remain murky, and should the minimum wage provisions be taken up again, there will most likely be an effort to clarify this language.

For more information on the provisions in H.R. 4 and H.R. 5970, visit the Ways and Means Committee website: <http://www.waysandmeans.house.gov>.

SENATE PASSES OFFSHORE DRILLING MEASURE

Before adjourning for the August recess, the Senate on August 1, 2006, passed its bill on offshore drilling. The vote was a comfortable 71-25. However, it differs substantially from the House-passed Deep Ocean Energy Resources (DOER) Act, H.R. 4761 and reconciling the two bills in conference will be difficult.

Unlike the House bill, which covers federal leasing policy on all U.S. coasts, S. 3711 is limited to the Gulf of Mexico. It will open up over 8 million new acres of the eastern Gulf to drilling, while continuing protections for Florida’s west coastline. The bill also directs that a third of the new drilling revenues generated go to the Gulf Coast states for coastal restoration.

The House bill gives coastal states the power to opt in or out of offshore drilling out to 100 miles off their coasts. Beyond that, all drilling would be allowed. The bill also increases the revenues given to the states from increased drilling.

SENATE BOOSTS BORDER FENCE SPENDING TO \$2 BILLION

By a vote of 94-3, the Senate on August 2, 2006 added an additional \$1.8 billion to the funding appropriated to build a fence along the country’s southern border. The amendment, offered by Sen. Jeff Sessions (AL) was included in the Senate’s version of the FY2007 Defense Appropriations bill. The bill, H.R. 5631, already included \$204 million to build additional fencing and other barriers along the border.

Because the amendment designated the additional money as emergency funding, the Senate did not have to take the money out of other programs in the bill. Earlier efforts to increase appropriations for border fencing had been defeated primarily because they would have required cuts in other accounts.

Sen. Sessions, despite his vociferous opposition to the Senate’s immigration bill (S. 2611), also successfully included language into the bill that authorizes 370 miles of fencing and 500 miles of vehicle barriers along the southern border.

SENATE FINANCE COMMITTEE PROBES BORDER SECURITY AND FAKE IDS

On August 2, 2006, the Senate Finance Committee held a hearing entitled “Border Insecurity, Take Two: Fake IDs Foil the First Line of Defense.” The Committee heard from a number of witnesses, including: Gregory Kutz, Director of Office of Forensic Audits and Special Investigations (FSI), at

Government Accountability Office (GAO), accompanied by John Cooney, Assistant Director of FSI; Jayson Ahern, Assistant Commissioner for Operations, Customs and Border Protection (CBP); Michael Everitt, Unit Chief, Forensic Document Laboratory (FDL) Immigrations and Customs Enforcement (ICE); Janice Kephart, Principal, 9/11 Security Solutions, formerly Counsel to the 9/11 Commission; and David Shepherd, Director of Security for the Venetian Resort Hotel, Las Vegas, NV, formerly with the Federal Bureau of Investigations (FBI).

In his opening remarks, Chairman Charles Grassley (IA) noted that the Committee was following up on a hearing held in 2003 where the GAO testified on how easy it was to create fake identification cards and drivers licenses and enter the United States. He noted that GAO would testify again at this hearing that the situation at the border had not changed, despite passage of the REAL ID Act to set federal standards for drivers licenses. "Frankly, it's hard to believe that there has been so little progress in plugging this gaping security hole," Grassley said.

In his testimony, GAO's Kutz noted that in their 2006 follow-up, "Agents successfully entered the United States using fictitious driver's licenses and other bogus documentation through nine land ports on the northern and southern borders. CBP officers never questioned the authenticity of the counterfeit documents presented at any of the nine crossings. On three occasions – in California, Texas, and Arizona – agents crossed the border on foot. At two of these locations – Texas and Arizona – CBP allowed the agents entry into the United States without asking for or inspecting any identification documents."

In response, Mr. Ahern laid out the steps that CBP will be taking in order to rectify the problems found by GAO. These steps will include:

- Delivery of 16 hours of basic fraudulent document training to all CBP Officers and additional fraudulent document training to Counter-Terrorism Response Teams;
- Installation of card reader technology in all land border primary inspection booths to allow faster and more accurate reads of machine readable documents, including U.S. passports;
- Increase the use of name queries of law enforcement databases by primary inspectors at land border ports of entry;
- Initiation of a program to increase CBP Officer training in state-issued identity document security features and validation processes.
- Delivery of state-of-the-art fraudulent document workstations, which will provide CBP Officers with the latest in fraudulent, altered, and counterfeit document detection capabilities;
- Development of port-of-entry-specific strategic initiatives designed to increase enforcement and improve facilitation, including an initiative that leads to verification of the identity of each applicant for admission and creation of a record of that person's travel;
- Development of targeting operations based on strategic methodologies allowing CBP to focus on specific groups, for example, those individuals who may present state-issued identity documents;
- Development of a web-based reference tool that will be made available to CBP Officers during primary inspection to assist in the verification of identity documents; and
- Development of an enhanced training package on establishment of identity to be delivered as part of the CBP Officer Academy and Post Academy training.

Testimony of all the witnesses can be obtained from the Committee's website at:

<http://www.finance.senate.gov> .

HOUSE CONTINUES FIELD HEARINGS ON IMMIGRATION ISSUES

The Judiciary Committee kicked off the House's strategy of having several committees hold field hearings during the August recess to point out flaws in the Senate-passed immigration reform bill (S. 2611). The Committee met on August 2 in San Diego to ask "How Does Illegal Immigration Impact American Taxpayers and Will the Reid-Kennedy Amnesty Worsen the Blow?" The Committee heard from the following witnesses: Michael D. Antonovich, Supervisor, County of Los Angeles; Leroy Baca, Sheriff of

Los Angeles; Robert Rector, Senior Research Fellow in Domestic Policy Studies, The Heritage Foundation; Kevin J. Burns, Chief Financial Officer, University Medical Center, Tucson, Arizona; and Professor Wayne Cornelius, University of California, San Diego.

Supervisor Antonovich testified that illegal immigrants cost LA County nearly \$1 billion annually in increased public safety, healthcare, social services and education costs. He pointed out that twenty-five percent of inmates in the jail system are undocumented, at a cost to the county of \$150 million dollars a year for incarceration, prosecution, defense and probation. Furthermore, 30 percent of the individuals in the County's health care delivery system are also undocumented, which Antonovich testified costs roughly \$360 million a year.

He also outlined some of the actions that the County has initiated in order to help control the illegal immigration problem, including the High Intensity Criminal Alien Apprehension And Prosecution Program (HI-CAAP), a multijurisdictional program to identify previously deported criminal illegal aliens using fingerprint identification, and a Memorandum of Understanding (MOU) between the Sheriff of Los Angeles County and Immigration and Customs Enforcement.

The MOU was adopted by the County Board of Supervisors in January of 2005 and allows trained and certified Sheriff's personnel to identify criminal illegal aliens in the jail through an interview process, according to the Supervisor.

Sheriff Baca reiterated the financial impact of undocumented immigrants on the County's jail system and outlined several initiatives that his office has taken to coordinate its efforts with federal and state authorities. Sheriff Baca also testified that currently twenty-six percent of the inmates in the custody of the Los Angeles County Sheriff's Department are eligible for State Criminal Alien Assistance Program (SCAAP) funding, "which indicates their illegal presence in the United States. However, SCAAP funding requirements are so stringent that 26 percent is not an accurate assessment of the actual number of immigration status offenders in County custody," according to the Sheriff. He argued that when the SCAAP funding requirements are set aside, the actual percentage is closer to 40 percent.

Professor Cornelius testified on whether heightened border controls have affected the decision-making of unauthorized Mexican migrants to the United States. His research findings, "based on highly detailed, face-to-face interviews with 1,327 migrants and their relatives in Mexico during the last 18 months, support earlier research showing that tightened border enforcement since 1993 has not stopped nor even discouraged unauthorized migrants from entering the United States. Even if apprehended, the vast majority (92-97%) keep trying until they succeed," Cornelius stated. As a result, he argued that "drawing on my more than three decades of fieldwork among Mexican migrants to the U.S., and a large body of research by other immigration specialists, I conclude that a border enforcement-only (or border enforcement-first) approach to immigration control will only produce more of these unintended consequences while failing to construct an effective deterrent to illegal entry." Professor Cornelius continued: "If built, the new physical fortifications and virtual surveillance systems included in the immigration bills approved by Congress since last December will have no discernible effect on the overall flow of illegal migrants from Mexico. But these new layers of protection will give people-smugglers an additional pretext for raising fees; divert clandestine crossings to more remote and dangerous areas, multiplying migrant deaths that are already running at 500-1,000 per year; cause more unauthorized crossings to be made through legal ports-of-entry, using false or borrowed documents; and induce more migrants and their family members to settle permanently in this country, thereby increasing outlays for health care and education."

Testimony of all the witnesses can be found on the Committee's website at:

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

The House Committee on Resources also a field hearing on immigration issues on August 5. The hearing explored "Border security on Federal lands: What can be done to mitigate impacts along the southwestern border." The Committee heard from several witnesses, including: Steve Borchard, District Manager, CA Desert District, Bureau of Land Management; Victor Manjarrez, Deputy Chief Patrol Agent, U.S. Customs and Border Protection; Chris Ingram, Vice President, Gulf South Research Corporation; Carolyn Powers,

Jamul, CA; Judy Keeler, Animas, NM; Jim McGarvie, Vice President, Off-Road Business Association; and Ambassador Thomas A. Nassif, President, Western Growers Association.

Testimony of the witnesses will be available in the near future on the Committee's website at: <http://www.resourcescommittee.house.gov> .

CATO INSTITUTE PROVIDES ANALYSIS OF ELECTRICITY INDUSTRY RESTRUCTURING

The Cato Institute recently released a policy analysis on the restructuring of the U.S. electricity industry. The report's author is Dr. Robert Michaels, a professor in the Department of Economics at California State University, Fullerton, and an adjunct scholar at the Cato Institute.

The report notes that debates on restructuring the U.S. electricity industry are often about the degree to which market relationships should replace transactions that formerly took place within regulated, vertically integrated utilities. The author reviews the electrical utility restructuring in California – the first state to embrace restructuring— to conclude that restructuring is presently off course.

To obtain a full copy of the report go to: <http://www.cato.org> .

MT. SOLEDAD VETERANS MEMORIAL BILL GOES TO PRESIDENT

On August 1, 2006, the Senate by unanimous consent cleared for the President's signature H.R. 5683. The bill will end the legal fight over whether the City of San Diego can allow a cross to stand at the Mt. Soledad Veterans Memorial, a city monument. The U.S. Court of Appeals for the 9th Circuit held that the cross represented an unconstitutional governmental endorsement of religion. The Supreme Court, however, blocked at least temporarily the lower court's order to take the cross down by August 1st.

Rep. Duncan Hunter (Alpine) introduced the bill to provide for the immediate acquisition of the memorial by the United States, thus transforming it into a federal military memorial governed by a different constitutional interpretation of the separation of church and state doctrine.

The House passed the Hunter bill under suspension of the rules by a vote of 349-74 on June 19.

SENATE COMMERCE CONSIDERS STATE OF THE OCEANS

The Senate Commerce Subcommittee on National Ocean Policy Study held a hearing on Thursday, August 3, 2006 to look into the state of the oceans. The Subcommittee heard from several witnesses, including: Honorable Vice Admiral (Ret) Conrad Lautenbacher, Administrator, National Oceanic and Atmospheric Administration (NOAA); Hon. Leon Panetta, Co-Chairman, Joint Ocean Commission Initiative; Mr. Paul Kelly, Commissioner, U.S Commission on Ocean Policy; Mr. Mike Chrisman, Secretary, California Resources Agency; and Mr. Michael Orbach, Director, Duke University Marine Laboratory.

Former Representative Panetta outlined several problems confronting the oceans today, including:

- "Overexploited fisheries that bring economic hardship to fishing communities and businesses and jeopardize the living marine resources held in trust for the benefit of all U.S. citizens;
- Enormous human, environmental, and economic impacts associated with hurricanes and other increasingly frequent and intense storms;
- Increasing frequency and size of harmful algal blooms in many of our coastal areas, including the Northeast and Florida;
- Massive Dead Zones in the Gulf of Mexico, as well as in the Chesapeake Bay and most recently off the coast of Oregon;
- Continued loss of coastal wetlands, despite conservation commitments;
- Growing problems due to introduction of invasive species, and
- Continuing loss of coral reefs.

Panetta argued that many of these problems are exacerbated by "a dysfunctional, out-of-date, and inadequate system of ocean and coastal governance." In response, the Joint Ocean Commission Initiative made several recommendations, including passage of a number of Congressional bills such as the:

Magnuson-Stevens Fishery Conservation and Management Act, the Marine Debris Research, Prevention and Reduction Act, the Tsunami Preparedness Act, the National Ocean Exploration Program Act, the Coastal Estuarine Land Protection Act, and several others. Panetta also laid out other recommendations for congressional action, including increased appropriations in several areas.

Secretary Chrisman outlined steps that Governor Schwarzenegger has taken since the release of his ocean action plan titled, "Protecting Our Ocean: California's Action Strategy." Some of those actions include: enactment of the California Ocean Protection Act, which created the California Ocean Protection Council with \$26.2 million to begin operations; legislation addressing issues such as bottom trawling, prohibiting certain air and water discharges from cruise ships, and water quality monitoring in San Francisco Bay, as well as the California Sustainable Oceans Act to address the impacts of new aquaculture operations off the coast; and approval by the Ocean Protection Council of more than \$17 million in ocean and coastal projects dealing with coastal water quality, marine research, sea floor mapping, new ecosystem-based management pilot projects, invasive species management, market-based fishery approaches, and environmental review of aquaculture practices.

Testimony of all the witnesses can be obtained from the Committee's website at: <http://www.commerce.senate.gov> .

FEDERAL CHEMICAL POLICY REVIEWED

For the first time in a decade the Senate Environment and Public Safety Committee held an oversight hearing to review the effectiveness of the Toxic Substances Control Act (TSCA). Essentially unchanged since it was enacted in 1976, the law guides the Environmental Protection Agency's regulation of 82,000 chemicals. At issue during the hearing held on August 2, 2006 was whether this thirty year law is in need of an overhaul.

During his opening remarks committee Chairman James Inhofe (OK) stated that, "There are many people who come to this hearing with a preconceived notion that the U.S. chemicals management program is broken and that Congress needs to completely rewrite. I do not come into this hearing with that assumption."

The administration's viewpoint, as articulated by panel witness James Guilliford, an assistant administrator at the EPA, is that TSCA is "a very effective statute" that gives the agency "broad authorities" to ensure public safety..

However, many other experts disagree. Dr. Michael Wilson, a researcher at the Center for Occupational and Environmental Health at UC Berkeley, advocated a "modern chemicals policy." He said one of his main concerns was that the EPA had insufficient data on the safety of chemicals and was not able to properly gauge the dangers to people and the environment.

He also pointed to a technology gap due to the outdated policy. He said, the U.S. is "falling behind" in technology innovations that lead to safer chemicals, a concept known as "green chemistry". Earlier this year, Dr. Wilson coauthored a report for the California Legislature that encouraged the state to adopt its own chemicals law because the federal one was weak.

John B. Stephenson, environmental director of the Government Accountability Office, told the Senate Committee that the law set "such a high legal standard" that the EPA was "severely inhibited by its cumbersome authorities." In 2005 the GAO issued a report critical of EPA's ability to manage chemicals and recommended changes to TSCA

To find complete witness testimonies, please go to <http://epw.senate.gov> .

CENSUS BUREAU RELEASES NEW STATE AND COUNTY DATA

The Census Bureau today released annual estimates of state and county populations by age, sex, race and Hispanic origin for 2000 to 2005.

The estimates for each race and Hispanic group are cross-tabulated by single year of age and selected age groups for each state and by five-year age groups for counties. In addition to the estimates for states and counties, this release contains population estimates by age and sex for Puerto Rico and its municipalities.

California is reported to have a Hispanic origin population of 12,722,962 out of a total population of 36,132,147. Data can also be viewed on counties with a total population of 1 million or more. For example, Los Angeles County has a total population of 9,935,475 and an African American population of 1,023,143.

To obtain this newly released data, go to <http://www.census.gov> .

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