



THE CALIFORNIA INSTITUTE FOR FEDERAL POLICY RESEARCH
 1608 Rhode Island Avenue, NW, Suite 213, Washington, D.C. 20036
 202-974-6384 fax:202-223-2330 e-mail: randsell@calinst.org web: <http://www.calinst.org>

California Capitol Hill Bulletin

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To expand communications between Washington and California, the California Institute provides periodic 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.

HOUSE AND SENATE JUDICIARY REPORT PATENT LAW REFORM MEASURES

By voice vote, the House Judiciary Committee reported its Patent Law Reform Act, H.R. 1908, on Wednesday, July 18, 2007. And after weeks of stalled attempts -- and three sessions convened on Thursday -- the Senate Judiciary Committee also was able to finally report out its bill, S. 1145, by a 13-5 vote on July 19th.

Rep. Howard Berman (North Hollywood), Chair of the Courts, the Internet, and Intellectual Property Subcommittee, offered a Manager’s Amendment co-sponsored by the bipartisan leadership of the Committee and Subcommittee. The Amendment addressed several issues that had raised concerns with the various stakeholders in the process. The bill will still shift U.S. patent law from the current first-to-invent rule to a first-to-file rule. But to assuage universities concerned that collaboration would be stymied by the change, the Substitute includes provisions that will allow the Administration to negotiate an international grace period between invention and filing before the first-to-file system is triggered. The Substitute also changed the provisions regarding apportionment of damages. These provisions were further fine-tuned during the markup when the Committee accepted an amendment that will give the trial judge, after finding that awarding royalty payments is the appropriate remedy, the discretion to decide based on the specifics of the case whether an apportionment analysis or a full market analysis is more appropriate in determining damages. The new provisions respond to the criticism that awarding damages based only on the patented component and not on the value of the entire product of which it is a part would reduce the value of patents.

Additionally, instead of creating a second window for post-grant review of a patent, which had raised concerns as possibly encouraging frivolous challenges, the Substitute included a provision proposed by Rep. Darrell Issa (Vista) which will beef up the current reexamination procedures. During the markup,

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1608 Rhode Island Ave, NW, Suite 213
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Rep. Adam Schiff offered an amendment which was approved by voice vote that will make it harder to use the “inequitable conduct” defense in patent cases.

Rep. Brad Sherman (Sherman Oaks) offered an amendment that would have allowed the award of treble damages for intentional infringement if the infringer would have known of the infringement if a patent search had been done before the infringement. Sherman offered the amendment to eliminate the incentive for not doing a patent search. After Rep. Berman, noting that it was a “very interesting idea,” asked for more time to consider the amendment, Sherman withdrew it pending further study.

The Manager’s Amendment and the other amendments were adopted by voice vote, and the bill was favorably reported by voice vote.

On the Senate side, Chairman Patrick Leahy (VT), with the help of co-sponsor Sen. Orrin Hatch (UT) was able to defeat amendments that would have drastically altered the bill. Sen. Jon Kyl (AZ) offered the two most significant amendments. The first would have eliminated the new post-grant review process established by the bill. It was defeated by a vote of 7-11. A second Kyl amendment would have apportioned damages on the contribution of the patent to the overall value of the final product, rather than on the value of the patented component standing alone. That amendment was defeated 7-10.

The Committee adopted a second degree amendment offered by Chair Patrick Leahy that will raise the standard of proof required in an “inequitable conduct” defense, but not to the level of the “clear and convincing” standard that was initially sought in the underlying amendment offered by Sen. Arlen Specter (PA). Leahy’s amendment was adopted by a vote of 10-9. Specter also lost, 9-10, on an amendment to ease the requirement that patent filers reveal the “best mode” contemplated by inventors for carrying out their inventions.

The House and Senate sponsors of the bills hope to complete floor action in the fall and move to conference, where, as a result of the amendments adopted, the different approaches taken by the bill in several key areas will have to be resolved.

SENATE APPROVES SCHIP RENEWAL

On July 19, 2007, the Senate Finance Committee, by a 17-4 vote, approved the Children’s Health Insurance Program Reauthorization Act. Drafted by Senators Max Baucus (MT), Chuck Grassley (IA), Jay Rockefeller (WA) and Orrin Hatch (UT), the bipartisan legislation has already encountered many obstacles. Two scheduled hearings on the bill were delayed until Thursday morning, and the threat of a White House veto still strongly resonates on the Hill.

The 10 year-old plan will expire on September 30, and the Reauthorization Act marks the first of many steps taken to ensure that health care is provided to all children. The bill seeks to increase SCHIP spending by \$35 billion over the next five years. The increased funding would provide coverage for the 6.6 million children currently enrolled and would also provide for an additional 3.2 million children. The increased revenue is to be generated from a 61 cent increase on the cigarette tax, to \$1 a pack.

New elements included in the bill include \$200 million in grants for states to improve access to dental coverage for children and also a provision that allows states to use information from food stamp programs and other publicly funded

programs to find and enroll eligible children. The bill would cover families up to 300% of the federal poverty level, provide premium assistance, and expand coverage options for pregnant women.

The President proposes only a \$5 billion increase and opposes the idea of increasing the tax on cigarettes. For further information, go to: <http://www.finance.senate.gov> .

SCIENCE & TECH SUBCOMMITTEE HOLDS HEARING ON BAYH-DOLE ACT

The Science and Technology Subcommittee on Technology and Innovation held a hearing on July 17 on "Bayh-Dole – The Next 25 Years." Bayh-Dole was enacted to promote the utilization of inventions arising from federally supported research and development, particularly federally-funded university research, and the technology transfer and commercialization of that research. Among the witnesses at the hearing were: Wayne C. Johnson, Vice President, Worldwide University Relations, Hewlett-Packard Company; and Mark A. Lemley, Professor of Law, Stanford Law School, and Director of the Stanford Program in Law, Science and Technology.

Mr. Johnson testified that while one of the key goals of the Bayh-Dole Act was to promote collaboration between industry and universities, it unfortunately has had the opposite effect. It "has contributed to shifting the focus and attention of joint research towards rights, ownership, and the licensing of intellectual property, and away from collaboration, partnership, and innovation." Nevertheless, Hewlett-Packard does not recommend changing Bayh-Dole at this time, as it provides IP protection with a better system than that it replaced.

Prof. Lemley stated that the effects of the surge in university patenting, which Bayh-Dole generated, have been both good and bad. "On the positive side, it seems clear that the Act has achieved its goal of encouraging university inventors to patent those inventions and to license those patents to private companies that can make use of them. . . . On the negative side, universities have too often looked to the short-run bottom line in setting their licensing priorities, granting exclusive rights to breakthrough technologies to businesses that may not be best suited to exploit them for the benefit of society as a whole. Particularly in the information technology (IT) industries, there is a sense that university patents are interfering with rather than promoting the dissemination of technical knowledge to the world at large."

For the testimony of all the witnesses, go to: <http://www.democrats.science.house.gov> .

HOUSE PASSES EARMARKS TO ENERGY & WATER APPROPRIATIONS

By a vote of 312-112, the House passed the FY 2008 Energy & Water Appropriations bill after filing a separate report identifying the members requesting about \$1.1 billion in congressionally directed projects. Three-fourths of the earmarks, many of which were also requested by the Administration in its budget, go to water and development projects under the Interior Department Bureau of Reclamation and the U.S. Army Corps of Engineers. The overall bill provides \$31.6 billion in funding for the Departments of the Interior and Energy and related agencies.

Among the major California programs funded in the bill are:

- Salton Sea Research Project - provides \$2,000,000 for the Salton Sea research project, including \$1,000,000 to continue environmental restoration efforts at the Alamo and New Rivers, and for other authorized pilot projects.

- California Bay-Delta Restoration - provides \$40,750,000 for California Bay-Delta Restoration. Within the funds provided, \$2,000,000 is available for the Inland Empire regional water recycling project. In addition, \$1,000,000 is provided, instead of \$500,000 as requested in the Administration's budget, for the Contra Costa Water District alternative intake project.

- Central Valley Project Restoration Fund - among the funds provided, not less than \$7,432,000 is available for Sacramento Fish Screen Projects, instead of \$4,432,000 as requested in the Administration's budget.

During floor consideration, the House rejected, 39-388, an amendment by Rep. John Campbell (Irvine) which would have eliminated all of the earmarks in the bill.

The two reports on the Energy & Water Appropriations can be obtained through the Committee's website at: <http://www.appropriations.house.gov> . The California Institute will prepare a more detailed analysis of the California implications of the bill which will be available in the near future.

HOUSE PASSES LABOR-H APPROPRIATIONS

On July 19, 2007, the House passed by a vote of 276-140 the largest fiscal 2008 domestic spending bill Congress will consider this year. The measure for the Departments of Labor, Health and Human Services and Education totals \$607 billion. Several amendments were offered to try to trim the bill's discretionary spending, which totals \$151.5 billion — about \$7 billion more than in fiscal 2007 and \$10.6 billion more than President Bush has requested for programs under the bill. The President has threatened to veto the bill.

Three amendments were adopted by voice vote:

- To increase spending on voter assistance programs by \$21 million
- To cut a reading program called Reading First by \$46.5 million — on top of a \$629 million cut already included in the bill — and direct the money to programs aimed at reducing drugs and crime in schools
- To increase spending for historically black colleges by \$125 million; it would cut the Education Department's \$394 million administrative account by the same amount
- To increase by \$50 million the amount provided for special education, also offset by a reduction from the Education Department's program administration account, passed 419-11
- To eliminate funding for the Social Security deputy administrator's salary until the Senate confirms him, adopted 231-199

For more information, please visit: www.house.gov .

SENATE APPROPRIATIONS APPROVES INCREASED FOOD AND DRUG SAFETY SPENDING IN DRAFT AGRICULTURE BILL

On July 17, 2007, the Senate Appropriations Committee approved a \$91.3 billion FY2008 Agriculture spending bill. The bill contains \$18.7 billion in discretionary spending and \$72.6 billion in mandatory spending. The bill also funds the Food and Drug Administration (FDA), which is responsible for food and drug safety. The FDA was allotted \$1.75 billion — about \$186 million more than was allocated last year. Food safety activities at the agency would get an extra \$48 million, with \$11 million dedicated to a rapid response team to deal with food contamination outbreaks, like the E.coli outbreak in Spinach crops earlier this year.

Tainted products from China also have been found in the United States. The Department of Agriculture (USDA) would see a funding boost for agencies that are responsible for inspecting meat and keeping crop-damaging pests out of the country. The Food Safety and Inspection Service would get \$38 million, in line with President Bush's request.

For nutrition programs, the subcommittee added about \$500 million over the fiscal 2007 level to keep up with the rising cost of food and increased enrollment that has made the Women, Infants, and Children nutrition program more expensive. The program, which provides healthy food for low-income women and children, would get roughly \$5.7 billion in fiscal 2008. The funding increases were made at the expense of some rural development and conservation programs.

Among the California-oriented items in the Senate agriculture bill, according to information provided by Senator Dianne Feinstein, are \$990,000 for the California County Agricultural Commissioners Import Inspection Program and \$831,000 for California County Agricultural Commissioners Pest Detection Program; \$700,000 for Fresh Produce Food Safety Research at the University of California and \$2 million for the Western Region FDA Center of Excellence at UC Davis; plus \$1.5 million for Pierce's Disease Research at the University of California and \$250,000 for the California State University's Agriculture Research Initiative. From research spending accounts, the bill includes \$23.2 million for the Glassy-Winged Sharpshooter / Pierce's Disease Control Program, \$4.1 million for Sudden Oak Death Control, \$62.6 million for Fruit Fly Exclusion and Detection, and \$1 million for Light Brown Apple Moth Control. And the Agricultural

Marketing account -- of which California takes particular advantage -- the Senate bill includes \$200 million for the Market Access Program, \$7 million for the Specialty Crop Block Grant, \$2 million for Technical Assistance for Specialty Crops, and \$3.2 million for Organic Standards/National Organic Program.

For further information, visit the Committee's website at: <http://appropriations.senate.gov>

The Institute will prepare a more detailed analysis of the California implications of the bill, which will be available in the near future.

HOUSE APPROPRIATIONS PASSES AGRICULTURE SPENDING BILL

On July 19, 2007, the House Appropriations Committee approved an \$18.8 billion FY2008 Agriculture spending bill. The bill contains about \$1 billion more than President Bush requested. The bill reinvests in rural America, protects public health, improves nutrition, transforms the energy future, supporting conservation, invests in research, and strengthens oversight.

A few key targeted increases in funding follow:

- Rural Housing Loans: \$212.2 million, \$176.3 million above the President's request, to fund \$5.1 billion in affordable loans to provide housing to low-income families in rural areas, with no increase in fees
- Housing for Farm Laborers: \$46.6 million, \$14.5 million above 2007 and \$36.8 million above the President's request, to fund \$75 million in affordable loans and grants for housing for farm laborers, nearly doubling the 2007 target of financing or constructing approximately 2000 units
- Rural Community Advancement Programs: \$728.8 million, \$158.3 million above the President's request, to support Community Facilities, Clean Water, and Business Loans and Grants
- Food Safety and Inspection Service: \$930.1 million, \$38 million above 2007 and matching the President's request, addressing vacancies in federal meat inspector positions
- Food and Drug Administration (FDA): \$1.69 billion, \$128.5 million above 2007 and \$62 million above the President's request, including increases to begin a transformation of food safety regulation, improve drug safety, monitor prescription drug advertisements and review generic drug applications
- Commodity Supplemental Food Program: \$150 million, \$43 million above 2007 and eliminated in the President's request, for food aid for women, infants, children, and the elderly
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): \$5.6 billion, \$415.6 million above 2007 and \$233.4 million above the President's request, including \$145 million to restore the President's proposed cuts to grants that help states administer the program
- Renewable Energy: \$1.2 billion, \$955.3 million above 2007 and \$810.4 million above the President's request, for bio-energy and renewable energy research and development, including loans, wind energy, business and industry loans, and grants in rural areas
- Conservation Programs: \$979.4 million, \$127.6 million above 2007 and \$154.7 million above the President's request, for conservation efforts and community development
- Animal and Plant Health: \$874.6 million, \$28.4 million above 2007 and \$70.9 million below the President's request, to fund programs that protect American agriculture against animal and plant diseases, such as avian influenza
- Crop Insurance Integrity: \$11.2 million, \$5.4 million above 2007 and matching the President's request, for a system to detect potential waste, fraud and abuse in crop insurance and farm loan programs, and an additional \$1 million for Inspector General oversight in this area

For further information, visit the Committee's website at: <http://appropriations.house.gov>

The Institute will prepare a more detailed analysis of the California implications of the bill, which will be available in the near future.

HOUSE AGRICULTURE MARKS UP 2007 FARM BILL

On July 17, 18, and 19, 2007, the House Agriculture Committee marked up the massive 2007 Farm Bill (H.R. 2419), reporting it favorably by voice vote late in the evening on July 19th. The Congressional Budget Resolution for FY 2008 includes a reserve fund for agriculture. Under the terms of the resolution, up to \$20

billion in additional budget authority over 5 years may be allocated to the farm bill to the extent that other legislation is passed to offset the additional amount. The Reserve Fund En Bloc amendment includes proposals that will be presented for consideration by the House as offsets are identified.

During the marathon markup, an amendment, offered by committee Chairman Peterson was adopted by voice vote, and will bar subsidies for farmers making more than \$1 million in adjusted gross income annually. Furthermore, farmers would no longer be able to collect cash on more than one property. The limits include conservation program subsidies and are likely to affect very rich farmers and very large farming operations. While the bill would bar the wealthy from collecting subsidies, it would increase the individual payments that qualified farmers could collect to a maximum of \$60,000 a year in direct payments from \$40,000.

The committee adopted another amendment that would eliminate farmer subsidy checks smaller than \$25. Currently, the smallest check farmers can get is \$10. It costs USDA \$15 to process each check, so raising the minimum payment would help the Department and Congress save money.

The manager's amendment lifted limits on marketing loans, which provide short-term loans so farmers can pay their bills until they sell their harvested crops. Farmers who earn too much to qualify for payments under the bill also would be barred from receiving payments under farmland conservation programs, which worries environmentalists. California lawmakers complained there was not enough funding for fruit and vegetable growers who dominate the state's agriculture industry. Peterson was able to make concessions that appealed most committee members, including a total of \$1.6 billion for fruit and vegetable grants and marketing programs.

New enrollments in the Conservation Reserve Program, which pays farmers to employ environmentally friendly practices on their land, would be allowed starting in 2009. An earlier draft would have blocked new enrollments until 2012 to save money. Under the bill, dairy farmers would be able to sell milk stocks in advance to processors, reflecting a deal between dairy producers, who worried they would be forced into unfair contracts, and processors, who hope to ensure a more stable milk supply. The Agriculture Department would also be allowed to buy surplus Mexican sugar for ethanol production and funding for federally supported food programs would be boosted, with help from \$4 billion in offsets identified by the Ways and Means Committee. Farmers will be given the choice between the current form of counter-cyclical payments, which kick in when the price of a crop falls below a government set target, and payments based on a national revenue target. The plan is similar to one backed by corn growers and the Bush administration.

Other proposals the committee approved by voice vote included:

- An amendment that would make it easier for farmers growing organic crops to enroll in the Conservation Security Program

- An amendment that would create a one-time incentive program to encourage the market growth of oilseeds, which are lower in trans-fats

- An amendment that would bar farmers or companies defrauding the Agriculture Department from participating in the agency's programs

- An amendment by Rep. Jim Costa (Fresno) that would require 50 percent of funding in the Regional Water Enhancement Program to be spent on new water preservation projects. Waterways in California and elsewhere could benefit from those federal dollars

- An amendment that would create a preference within USDA loan programs for projects that process and distribute locally

- An amendment that would set aside federal dollars to help public television stations in rural areas upgrade equipment

- An amendment that would include ethanol by-product utilization as an objective of USDA alternative energy research.

- An amendment that would add goat meat to the list of products that should be included under the country-of-origin labeling law

The Committee defeated, 20-25, a provision that would have allowed states to hire outside contractors to administer food stamp programs.

Votes on many other amendments were postponed until recorded votes were stacked at the end of the mark-up, which concluded late on January 19. The full House is expected to consider the spending bill the week of July 30. An update regarding additional details from the markup will follow in next week's *Bulletin*.

For more information, please visit: <http://agriculture.house.gov> .

CALIFORNIA WATER SUPPLY COULD BE CUT DRASTICALLY

Under a plan submitted by the U.S. Fish and Wildlife Service in July 2007, the state's water supply from the Delta could be cut by as much as one-third, according to the California Department of Water Resources. Although the federal plan calls for reducing Delta water deliveries by about 500,000 acre-feet a year from the current pumping level of about 6 million acre-feet per year, the state estimates the actual reduction could be 800,000 to more than 2 million acre-feet per year. A half million acre-feet represents the water needed to supply about 1 million households. In southern California, the Metropolitan Water District estimated that its water from the Delta might be reduced by as much as 40 percent, resulting in a total water supply loss of about 25 percent. MWD is drafting contingency rationing plans if the plan takes effect.

The plan was filed in the U.S. District Court in response to a court ruling that the federal permit governing the pumping of water at both California's pumps and the federal government's pumps was legally insufficient to protect Delta smelt, whose population has been declining precipitously. The mandated water cutback plan was filed as an alternative to the government's preferred response of keeping the defective pumping permit in place until a new one is issued in 2008 and allowing water agencies to take voluntary steps to protect the Delta smelt.

Environmental groups, who sued the agencies, will also submit their proposal, which is likely to call for even greater pumping cutbacks. The judge may rule on how to handle the water supply issue pending the new permit as early as August.

Governor Arnold Schwarzenegger spent the week of July 16, 2007 visiting water sites in the state, his second week of doing so. He is using the opportunity to advance a comprehensive water infrastructure package and promote a bond package this year to go on the 2008 ballot. The Governor's proposal calls for \$5.9 billion in water bonds, which includes \$4.5 billion for above ground and below ground water storage, \$1 billion to fix the Delta, and \$450 million for conservation and restoration. The Governor also promoted the idea of building a conveyance system, perhaps like the once proposed peripheral canal, to move water around the Delta. Some California legislators caution that a water package should not be drafted until the Governor's Delta Vision Task Force presents its recommendations for actions to protect the Delta's environment and ensure sufficient water supply. That report is expected in October 2007.

Association of California Water Agencies President Randy Fiorini accompanied the Governor for some of the week's events and spoke at events at the San Luis Reservoir on July 16 and at Twitchell Island in the Delta on July 17.

In addition, on Thursday, July 19, 2007, Gov. Schwarzenegger declared a state of emergency for Riverside County, several weeks after declaring a similar situation in Kings County. Severe drought conditions have sharply reduced water supplies and have yielded \$4 million in crop losses so far. Under the emergency declaration, the state will help Riverside County water agencies drill new wells and existing wells.

For additional information, visit the Governor's website, at <http://gov.ca.gov> .

SELECT ENERGY COMMITTEE HOLDS HEARING ON VOLUNTARY CARBON OFFSETS

On Wednesday, July 18, 2007, the Select Committee on Energy Independence and Global Warming held a hearing titled: "Voluntary Carbon Offsets - Getting What You Pay For." The Committee heard testimony from Derik Broekhoff, Senior Associate, World Resources Institute, Joseph Romm, Senior Fellow, Center for American Progress, Erik Blachford, CEO, TerraPass Inc., Thomas Boucher, President and Chief Executive Officer, NativeEnergy LLC, and Russ George, President and Chief Executive Officer, Planktos, Inc.

Eager to be part of the solution to global warming, many consumers, businesses and government agencies have turned to carbon pollution offsets to help reduce or eliminate their "carbon footprint." While these offsets

represent a promising way to engage consumers in global warming solutions, there are many unanswered questions as to the efficacy and accounting of these unregulated commodities. Some of the main topics discussed in the hearing included:

The committee raised concern about the efficiency of the offsets. Firms could be paid for an offset that would produce the same outcome as if the transaction never took place. For example, if a lumber company is paid to not cut down trees in a certain area, there is no assurance that they will not go somewhere else and cut the same amount.

The offsets market is not a regulated market and many of the panelists believe that the government should intervene. Protecting the consumer on carbon offsets also protects the planet. Broekhoff proposed establishing verification standards and a renewable registry system to be available to the public so consumers will know they are getting what they pay for.

While most panelists agreed that offsets help reduce carbon emissions at some level, some believe the main focus should be on reducing emissions.

For witness testimony, go to: <http://globalwarming.house.gov/> .

FINANCIAL SERVICES COMMITTEE HOLDS AFFORDABLE HOUSING HEARING

On July 19, 2007, the House Committee on Financial Services held a hearing on the National Affordable Housing Trust Fund Act of 2007, H.R. 2895. Witnesses included: The Honorable Brian Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner, U.S. Department of Housing and Urban Development; Sheila Crowley, President, National Low Income Housing Coalition; William D. Euille, Mayor, Alexandria, Virginia, on behalf of the U.S. Conference of Mayors; and JoAnne Poole, Broker/Owner, Poole Realty, on behalf of the National Association of Realtors. H.R. 2895 would establish a new federal housing program - the National Affordable Housing Trust Fund - to be administered by the Department of Housing and Urban Development, for the purpose of providing funding for the construction, rehabilitation, and preservation of affordable housing for low-income and very low-income families.

Secretary Montgomery reiterated the Administration's commitment to providing families with safe, decent, and affordable housing but, he argued, there are other tools that would better achieve this goal. One way to immediately help millions of people without any additional costs to taxpayers is through FHA Modernization. He called for raising loan limits, allowing FHA to price premiums according to risk, eliminating the statutory 3-percent minimum down payment requirement, making it easier for FHA to insure mortgages on condominiums, and lifting the statutory cap on reverse mortgages. California's housing values far exceed national averages, giving these issues particular significance for the state.

Ms. Crowley, on the other hand, supports H.R. 2895. She also noted that the goal of the National Housing Trust fund campaign is to produce or preserve 1.5 million homes over 10 years. Ms. Poole said that access to safe, decent and affordable housing of all types needs to be one of the nation's highest priorities, and she noted that the National Association of Realtors strongly supports the goals of the National Housing Trust Fund.

For the testimony of the witnesses, go to: <http://www.financialservices.house.gov> .

HOUSE WATER RESOURCES SUBCOMMITTEE HOLDS HEARING ON BEACH ACT

On Thursday, July 12, 2007, the House Transportation and Infrastructure Subcommittee on Water Resources and Environment held a hearing titled "The Preauthorization of the Beaches Environmental Assessment and Coastal Health Act." Witnesses included the Rep. Brian Bilbray (San Diego); Benjamin H. Grumbles, Assistant Administrator for Office of Water, U.S. Environmental Protection Agency; Lisa Jackson, Commissioner, New Jersey Department of Environmental Protection; and Patrick Heaney, Southampton Town Board. The hearing was held to discuss the preauthorization of the Beaches Environmental Assessment and Coastal Health Act also know as the BEACH Act. In 2000 the original BEACH act was enacted and provided \$30 million annually to state and local governments for beach monitoring, assessment, and public notification systems. It also required the EPA to conduct studies associated with pathogens and human health, and to publish new water quality criteria indicators. Some of the main points made at the hearing included:

The new bill will double annual funding from \$30 million to \$60 million. The main goals of the new legislation are to develop pollution source tracking, create a water pollution test with rapid results, and increase public awareness of the water quality.

Rep. Bilbray stressed the need for real-time testing. The EPA aims to develop a testing method that will provide results within 2 hours, whereas current quality tests take 2-3 days. Rapid test methods will prevent unnecessary closures, avoid other beaches (primarily in other states) from being left open despite hazardous conditions, and give credibility to warning signs posted at beaches, Bilbray argued.

While the EPA has made substantial progress in their efforts since the 2000 bill, their shortcomings were a hot topic of discussion at the hearing. EPA was supposed to have developed real time rapid testing methods by 2004. They now estimate the desired testing methods will not be available until 2012.

For more information, go to: <http://transportation.house.gov> .

CONFERENCE ON 9/11 RECS: BACKS 100% CARGO SCREENING, REDUCES HOMELAND GRANT FORMULA MINIMUM

On Thursday, July 19, 2007, a House-Senate conference committee appointed to resolve differences between versions of a bill to implement many of the recommendations of the September 11 Commission made substantial progress toward a final compromise measure, with two major sticking points apparently resolved.

A statement by Sen. Joseph Lieberman (CT) indicates that, "The most contentious issue - whether or not to require 100 percent screening of incoming maritime cargo - was resolved when conferees agreed to an amendment by House Homeland Security Committee Chairman Bennie Thompson (MS). That amendment would establish a five-year deadline for 100 percent scanning of all containers before they are loaded onto ships bound for U.S. ports, but it also would allow the Department of Homeland Security Secretary to waive that deadline as necessary." The Thompson cargo screening amendment was agreed to by a 13-10 vote of House conferees and an 8-7 vote of the Senate conferees. There was concern that the bill's safety-valve provision allowing DHS to extend the deadline by two-year increments was inadequate to ensure the efficient processing of cargo. The amendment allows postponement of that deadline if the Secretary finds at least two technological and/or logistical requirements are lacking; critics were concerned that, say, a major disruption in freight traffic would only constitute "one" system inadequacy, and thus the bill would not allow DHS to remedy such a problem if it were freestanding.

The conference committee was not able to agree on an amendment by House Transportation & Infrastructure Chairman James Oberstar (MN) that sought to move authority for distributing rail and transit security grants from DHS to the Department of Transportation. After a split vote on the issue -- House conferees supported the amendment by a 14-10 margin, whereas Senate conferees turned it down on a 5-9 vote -- conference leaders indicated negotiations will continue.

In addition, according to press reports, a second major difference has been resolved as well. Conference committee report language apparently will establish a state minimum guarantee of 0.375 percent of total state homeland security grant spending. This percentage level would be half as large as the longstanding 0.75 percent minimum that has been widely criticized for disproportionately favoring small states.

The change in the minimum would be highly beneficial to California and other large states who have complained about the funding inequities caused by the unusually large 0.75 percent minimum. (In one frequently-cited statistic, California received just \$5 per capita from the initial years of the nation's primary homeland security grant, whereas Wyoming had received \$38 per capita for those same years.) Further, the 0.375 percent base minimum would reportedly decrease to 0.35 percent by 2012.

HOUSE SUBCOMMITTEE ADDRESSES FIRST RESPONDERS IN BORDER COMMUNITIES

On July 12, 2007, the House Committee on Homeland Security, Subcommittee on Border, Maritime, and Global Counterterrorism held a hearing entitled "Challenges Facing First Responders in Border Communities." Recently, a State or urban area's proximity to the border became a major factor used by the Department to determine risk as part of the homeland security grants process. The hearing addressed funding

changes, cooperation with public safety agencies on the other side of the border, and tribal lands on the border and their security and funding needs.

A few key points from the hearing:

- On average, about 600 person a month seeking admission into Canada or seeking passage to Alaska are denied entry because of criminal records, mental illness, or indigence

- Most federal agencies operate on VHF band. State and local governments, however, operate on both VHF and UHF bands. There is no common frequency that brings all the agencies together for true interoperability - the closest thing is the Law Enforcement Radio Network (LERN) frequency.

- SAFECOM is a communications program that provides research, development, testing and evaluation, guidance, tools, and templates on communications-related issues to local, tribal, state, and Federal emergency response agencies

- As a part of implementing some of the 9/11 Commission's findings, Congress is considering legislation that would provide additional grants, on the order of \$3.3 billion, for communications related equipment and efforts. Some witnesses encouraged including provisions for simple operability in the grants (not only the purchase of radios, but basic supporting infrastructure, local training, planning and governance too) as well as interoperability

- The Port Security initiative was encouraged to be modified to include all major ports, not simply water ports

- International Bridges should be included in the protected class of infrastructure of national significance, since their losses would have a major impact on the nation's economy

For more information about the hearing, please visit: <http://hsc.house.gov> .

CHCF REPORT EXAMINES EFFECTS OF SCHIP'S RENEWAL FOR CALIFORNIA

In a report for the California HealthCare Foundation, authors Peter Harbage, Jennifer Ryan and Lisa Chan examine how the reauthorization of SCHIP (the State Children's Health Insurance Program) will affect California.

California currently has the largest SCHIP program in the country, known by many Californians as Healthy Families. In the past ten years, the state has spent more than \$5 billion dollars to provide health insurance coverage for children. SCHIP has been successful in decreasing the number of uninsured children, with data showing that California's population of uninsured children decreased from 21 percent in 1998 to 14 percent in 2005.

With an SCHIP renewal bill currently in the Senate (see related Bulletin article above), the authors look at areas where changes might happen: 1) eligibility rules, 2) benefits and cost sharing requirements, and 3) the financing structure. The authors compare two proposed SCHIP renewal plans: the CHIP Reauthorization Act, the Rockefeller-Snowe bill (currently in the Senate) and the Children's Health First Act.

With the Rockefeller-Snowe bill, states can expand eligibility to cover children from families with incomes up to 300 percent of federal poverty level. The president wants a cap at 200%; however, California today covers 190,000 children from families between the 200 % and 250% level. By placing a cap, the president's policy will put many children at risk, the report finds. CA can also expedite eligibility by using information collected from public funded programs like the school lunch program to provide coverage for the 6 million children who are eligible but not currently enrolled. The increase in funding for the bill, from the \$25 billion outlined in the 1997 SCHIP bill to a possible \$60 billion fund in five years, would allow California to expand coverage, as well.

In terms of the financing structure, the authors discussed how the SCHIP block grant formula has led to some poor distribution of funds across the states in the past ten years. Some states received more money than needed while others spent only 10 percent of their annual allotment. The authors state that California would benefit more from a state SCHIP entitlement. With the issue of calculation of base spending, the Rockefeller-Snowe bill's method raises concerns about how accurate the initial allotments would be, the report concludes.

To view the detailed report, visit the California HealthCare Foundation <http://www.chcf.org> .

CBO CHIEF ON FEDERAL HEALTH CARE SPENDING

On July 18, 2007, the National Economists Club hosted a presentation titled "The Federal Burden for Health Care Spending" presented by Peter R. Orszag, Director, Congressional Budget Office. The speaker raised concerns about the extremely high rates of the nation's health care expenditures and explained possible positive effects of increased cost sharing plans.

U.S. spending on Medicare and Medicaid currently accounts for 5% of the nation's GDP and if it continues along its current track, costs are projected to account for 20% of the GDP by 2050. These excess costs are spread out in a variety of components within the system, Orszag said, which makes it difficult to track the areas which need improvement. For example, while prescription drugs are expensive, they only account for 10% of the total health expenditures and cutting prices will have a minuscule effect on complete allocation. Public funds account for roughly half of the national health expenditures, but reducing costs would have a large impact on the quality of the health care system.

The share of health care expenditures paid "out of pocket" has decreased from 33% in 1975 to 15% in 2005. If people are paying less for treatment they are more likely to go ahead with procedures that have marginally beneficial outcomes, Orszag argued, thus increasing the amount of treatments and expenditures. The reduction in "out of pocket" money, however, is offset by higher premiums and lower wages.

Orszag also discussed how spending on Medicare per capita fluctuates in regions throughout the country, but that those areas with the highest spending have not proven to provide better care or outcomes. He said that finding a way to spread healthcare spending out to the less expensive regions could knock off spending by up to 30%.

BROOKINGS FORUM RE UNIVERSAL HEALTH COVERAGE

On Tuesday, July 17, the Hamilton Project at the Brookings Institution held a forum on health care reform titled "Who's Got the Cure? Four Options for Achieving Universal Coverage." Addressing the fact that 45 million Americans are uninsured and 18,000 of them will die prematurely each year, the authors of four discussion papers, released last April, discussed their proposed solutions to achieving universal health care.

Gerald Anderson, co-author of "Achieving Universal Coverage Through Medicare Part E" proposes expanding an already existing health insurance program - Medicare. Individuals who have public or private insurance can still keep their coverage while those without can buy into Medicare Part E. Medicare Part E would follow the same rules and payment options as Medicare. Subsidies are available to individuals with income of less than 400 percent of the poverty level.

Stuart Butler, author of "Evolving Beyond Traditional Employer-Sponsored Health Insurance," proposes creating, what he terms, state-chartered health insurance exchanges - an alternative to employer-sponsored options. Butler wants employers to be facilitators, only providing administrative support for their employees' insurance choices. He also wants the federal government to reform the tax treatment of health insurance. He suggests placing a cap on the tax exclusion for employer-sponsored health insurance and granting tax credits for low income families.

Ezekiel Emanuel and Victor Fuchs, authors of "A Comprehensive Cure: Universal Health Care Vouchers" want to give vouchers to every American to purchase a benefit package through private insurance. To fund the voucher system, the authors suggest a value-added tax (VAT) of 10 to 12 percent.

Jonathan Gruber, author of "Achieving Universal Health Care Coverage through Nationwide Adoption of the Massachusetts Model" proposes a nationwide Massachusetts model that would provide universal coverage through mandates, subsidies, and alternative insurance risk pools.

To read the authors' proposals, visit <http://www.hamiltonproject.org> .

INSTITUTE BREAKFAST FEATURES REP. BRIAN BILBRAY

On July 17, 2007, the California Institute held another in its 2007 series of Advisory Board Member breakfasts with special guest speaker Rep. Brian Bilbray. These bipartisan delegation breakfasts are a forum for members of the California Institute Advisory Board of supporters and colleagues to hear the perspectives of members of the California Congressional delegation and discuss current issues.

Congressman Bilbray is a native San Diegan with extensive experience serving the people of San Diego County as Mayor, County Supervisor, and Member of Congress. The Congressman's first tenure in Congress began in 1994 representing California's 50th district and lasted through 2000. Rep. Bilbray returned to Congress in 2006 and now serves on the House Committee on Oversight and Government Reform, the Committee on Veterans Affairs, and the Science and Technology Committee. He is also a member of the House Republican Policy Committee and the Chairman of the Immigration Reform Caucus.

Bilbray discussed the immigration issue, reforming the tax code to eliminate incentives to keeping jobs in the United States, and the environment, especially real-time testing for beach pollution. He also emphasized the importance of veterans' policies, encouraging career options in education for veterans and promoting a new era for the GI Bill.

For more information about Congressman Bilbray, visit his website at: <http://www.house.gov/bilbray> . For more information about the California Institute, visit: <http://www.calinst.org> .

DHS ALLOCATES HOMELAND SECURITY GRANTS AND INTEROPERABLE COMMUNICATIONS FUNDS

On Wednesday, July 18, 2007, the Department of Homeland Security announced allocations of FY 2007 grant funding to states and urban areas for several programs.

In addition to providing its annual announcement of allocations to states for the State Homeland Security Grant Program (SHSGP) and to urban areas for the Urban Area Security Initiative (UASI), the Department also announced new one-time grants for improving the communications infrastructure that seeks to help local jurisdictions' first responders to coordinate among one another during an emergency situation. Entitled the Public Safety Interoperable Communications (PSIC) program, these grants were made to all states and territories, plus to seven large ("Tier 1") UASI urban areas.

Somewhat surprisingly, DHS allocated only 9.7 percent of total PSIC funds to California. These funds included 28 percent of total urban area PSIC funds (\$22.3 million to L.A./Long Beach and \$14.5 million to the Bay Area, for a \$36.8 million total), but that large share was more than offset by the fact that the non-UASI portion of the allocation to states yielded only \$57.2 million (6.8 percent of the US total) for the rest of the State of California. The state total funding was \$94 million, out of the national total of \$968 million.

The state's share of other grants were relatively flat compared to the year before, with California receiving \$55.8 million (of the \$509.2 million U.S. total) for SHSGP, \$39.9 million (out of \$363.8 million) for the Law Enforcement Terrorism Prevention Program (LETPP), \$4.6 million (out of a \$32 million total) for Metropolitan Medical Response System (MMRS), and \$1.2 million (out of \$14.5 million total) for the Citizen Corps program.

For the UASI program, DHS allocated a U.S. total of 746.9 million nationwide. California jurisdictions receiving a portion of those funds were L.A./Long Beach (\$72.6 million), the Bay Area (\$34.1 million), Anaheim/Santa Ana (\$13.8 million), San Diego (\$16 million), and Sacramento (\$4.2 million). The state's urban areas thus will receive approximately \$140.6 million or 18.8% of total UASI funding for 2007.

For more grant details, visit DHS at <http://www.dhs.gov> . A state-by-state table of PSIC funding is provided on the California Institute website at <http://www.calinst.org/datapages/dhs/psic07.htm> .