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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.

CONGRESS SENDS COLLEGE COST REDUCTION ACT TO PRESIDENT, FINALLY ENDING SCOURGE OF “TUITION SENSITIVITY” FOR CALIFORNIA COMMUNITY COLLEGES

On September 7, 2007, the House and Senate passed the conference report to accompany H.R. 2669, the College Cost Reduction and Access Act of 2007. The House vote was 292 to 97; The Senate 79-12. The bill will make the most sweeping changes to federal student aid programs in more than a decade. The legislation would slash roughly \$20 billion from federal subsidies to private lenders and redirect the money to student aid. The House originally passed the bill 273 to 149 on July 11th and the Senate passed its version 78 to 18 on July 20th.

In a major victory for the bipartisan California Congressional delegation, the very first section of the Act eliminates so-called “tuition sensitivity” -- a provision that reduces Pell Grant awards at very low cost schools. While not overtly biased by design, tuition sensitivity in practice has been a great burden on one, and only one, college system in the entire nation: the California Community Colleges. California and the CCC have kept tuition costs lower than at any other like institution in the country, yielding the unwelcome and rather ironic penalty of foregone Pell Grant aid for its students. If signed (as expected), the new law will be effective with respect to determinations of Federal Pell Grant amounts for award years beginning on or after July 1, 2007.”

The bill would increase the maximum Pell Grant award to the neediest students by \$1,090 over five years to \$5,400; cap loan repayments at 15 percent of discretionary income; and create a debt forgiveness program for many public-sector employees with loans from the Education Department's direct loan program. The most controversial provisions, which have prompted veto threats, include: halving interest rates on subsidized student loans over four years, from 6.8 percent to 3.4 percent; creating new mandatory spending programs; auctioning the rights to offer federally-backed PLUS loans for parents, and creating different payment rates for non-profit and for-profit lenders. The legislation also contains provisions that will increase income protection allowance for independent students, extend and enhance the simplified needs test, serve foster and former foster youth, and exclude Combat Pay and Earned Income Credit from income calculations.

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The legislation was sponsored by Representative George Miller (Martinez), Chairman of the House Education and Labor Committee. Senate backers and Rep. Miller were able to move the student loan bill through the Senate by advancing it under budget “reconciliation” rules. The bill included \$750 million in savings which protected it from filibuster, thus requiring only a majority of votes to pass.

Rep. Howard P. “Buck” McKeon (Santa Clarita), the ranking Republican on the Education and Labor Committee, praised the bill’s added investment in Pell grants, which he said accounted for about \$11 billion of the measure’s total spending.

For more information, please visit: <http://www.house.gov> or <http://www.senate.gov> .

SENATE PASSES TRANSPORTATION-HUD SPENDING BILL

On September, 12, 2007, the Senate voted 88 to 7 to pass the fiscal 2008 Transportation-Housing spending bill (HR 3074). The \$104.4 billion measure includes about \$50.7 billion in discretionary spending, exceeding President Bush’s request of \$47.9 billion. The funding levels are a 6.7 percent increase over fiscal 2007 spending levels and 5.8 percent more than President Bush requested.

The Senate also voted 74 to 24 to adopt an amendment barring implementation of a controversial Transportation Department pilot program allowing up to 100 Mexican trucking companies to operate in the United States beyond a 25-mile radius of the border.

A counterproposal offered by Sen. John Cornyn was defeated, 29 to 69. Cornyn's amendment would have required Mexican trucks to be inspected every three months and would have mandated that Mexican truck drivers demonstrate compliance with certain standards, including the ability to speak English. (*See related article in this Bulletin, below*).

For further information, please visit: <http://www.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.

SENATE VOTES TO PROHIBIT MEXICAN TRUCKING RULE

By a vote of 75-23, the Senate adopted an amendment prohibiting the Administration from implementing a pilot program to allow Mexican truck companies to operate beyond the 20-25 mile commercial zones near the Mexican border. The amendment was added to the FY08 Transportation Appropriations bill on September 11, 2007. A counterproposal offered by Rep. John Cornyn (TX) was defeated, 29 to 69. Cornyn's amendment would have required Mexican trucks to be inspected every three months and would have mandated that Mexican truck drivers demonstrate compliance with certain standards, including the ability to speak English.

Under the terms of NAFTA, the United States agreed to allow Mexican-owned and licensed trucks to operate within the United States. Congress authorized the program in 2001, but mandated that 22 safety requirements

had to be in place before it was fully implemented. The program has raised public safety concerns among many legislators, which were recently bolstered by news of a truck explosion in Mexico that killed 29 people.

The Administration argues that U.S. inspection teams in Mexico will ensure that all trucks and drivers meet all U.S. safety and security requirements, including evaluating truck maintenance and driver testing for compliance with U.S. requirements. The teams also will check that drivers have a valid commercial driver's license, have a current medical certificate, and can comply with U.S. hours-of-service rules. The inspection teams will review driving histories for each driver the company plans to use to operate within the U.S. and verify the company is insured by U.S.-licensed firms. Finally, the Administration argues, each inspection team will verify that every U.S.-bound truck has passed a comprehensive safety inspection. Trucks lacking required documentation will be subject to a "hood to tail-lamps" inspection by the teams. Proponents of the program also argue that it will reduce the cost of goods imported from Mexico and Central America, which now must be off-loaded onto U.S. trucks before moving further inland.

The pilot program would consist of about 100 Mexican companies and about 500-600 trucks.

Sen. Byron Dorgan (ND), sponsor of the amendment, countered that the program was implemented too hastily, especially in light of recent findings of numerous problems with Mexican truck safety records. Senators Dianne Feinstein and Barbara Boxer both voted for the amendment. The House passed a similar amendment to its FY08 Transportation-HUD Appropriations bill earlier this year.

HOUSE PASSES COMPREHENSIVE PATENT REFORM BILL

After agreeing to a Manager's Amendment, 263-136, offered by key sponsor Rep. Howard Berman (North Hollywood) and other senior Judiciary Committee members, the House passed H.R. 1908, the Patent Reform Act of 2007, by a vote of 225-175 on September 7, 2007.

The bill makes the most sweeping changes to U.S. patent law in over a half century. Among its many provisions, it would: convert the U.S. patent system from a first-to-invent to a first-inventor-to file system; provide a new formula for calculating damages that would allow courts to apportion damages based on the value of the patented component rather than the value of the entire finished product; defines a more difficult standard that must be met in order to find willful infringement; creates a new, post-grant review procedure; makes changes to venue in order to prevent forum shopping; establishes strict standards both in pleading and proof for inequitable conduct as a defense to the infringement of a patent; and grants the Patent and Trademark Office the authority to make rules regarding the quality and timeliness of the patent application process.

During floor consideration, the House adopted, by voice vote, two amendments offered by Rep. Darrell Issa (Vista), who holds 37 patents. The first permits patent applicants to delay publication of applications until the later of (1) three months after a second PTO decision or (2) 18 months after the filing date. The second gives Congress 60 days to review regulations promulgated by the PTO before they take effect. In addition, two other amendments were agreed to by voice vote: one requires the PTO to conduct a study of patent damage awards in cases from at least 1990 to the present where the awards have been based on the reasonable royalty doctrine; the second prohibits a post-grant review from being instituted based upon the best mode requirement of patent law.

Although everyone agrees patent reform is needed, the breadth of the reform envisioned by the highly complex bill has generated contention among the many stakeholders, including research universities and the biotech and life sciences industries. Rep. Berman, recognizing that some provisions in the bill, especially those on apportionment of damages, are still in some respects a work in progress, committed on the House floor to continue to work with all the parties to try to resolve outstanding

concerns as the bill moves forward. Following passage of the bill, the California Healthcare Institute's Chief Executive Officer David L. Gollaher, Ph.D. stated: "We expect the Senate to take a more deliberative and thoughtful approach to ensure that the legislation lives up to its promise to strengthen patent law, protect patent rights, and promote innovation."

The Senate Judiciary Committee voted 13-5 to report its patent reform bill, S. 1145, in July. Although Senate Majority Leader Harry Reid (NV) had earlier included the bill on the agenda for consideration on the Senate floor by the Columbus Day recess, whether there now will be time on the Senate's schedule is becoming questionable.

EDUCATION AND LABOR HEARS DIVIDED OPINIONS ON NCLB REAUTHORIZATION

On September 10, 2007, the House Committee on Education and Labor held a full committee hearing to discuss the reauthorization of No Child Left Behind (NCLB, PL 107-110). The hearing focused on a discussion draft authored by Committee Chair Rep. George Miller (Martinez) and Ranking Member "Buck" McKeon (Santa Clarita). Introduced in late August and available on the Education & Labor Committee website (at <http://edlabor.house.gov>), the Miller-McKeon draft was offered as a starting-point template upon which to build a broader reauthorization package. (See also, *Bulletin, Vol. 14, No. 28 - 9/7/2007.*)

The hearing featured testimony from seven panels and 44 witnesses spanning teachers, administrators, scholars, data experts, business representatives, civil rights advocates and government officials. David Brewer, the Superintendent of Schools of the Los Angeles Unified School District testified in the "State and Local Administrators" panel. Throughout the seven-hour hearing, the witnesses picked apart the draft reauthorization, with all agreeing the bill required further refinement. However, no one could fully agree on what needed changing in the legislation either.

The following are a few key points from the hearing:

- Supplemental education services need revision
- New testing requirements determine whether each school is making adequate yearly progress (AYP)
 - The draft legislation seems to move away from private education options and tutoring
 - Teachers seem to object to "performance pay" based on a single standard of measurement
 - The most contentious point is a provision calling for multiple measures of student achievement to determine AYP
 - Educators support broadening tools and measures for more flexibility and accounting for individual students while experts warned that adding too many indicators could make the law too complex and weaken accountability
 - NCLB's inflexible "one size fits all" approach to turning around vulnerable schools has not engendered the substantial gains in achievement Congress envisioned, but rather has penalized schools that are making significant gains, according to many local administrators
 - In the Los Angeles Unified School District (LAUSD), the 95% participation requirement caused the "failing" of otherwise successful schools; there is no flexibility for schools in this area
 - NCLB failed to provide the flexibility, room for innovation, resources targeted to those students who need it most, and the proven strategies to assist staff in turning around vulnerable schools, according to David Brewer of LAUSD
 - A few problem areas identified by educators included: English Language Learner (ELL) student policies, growth models, single indicators/assessments, sanctions, labeling as "priority" or "high priority" schools, increased administrative costs and paperwork requirements, and comparability of teacher salaries.

- A few positive areas identified by educators included: better measurement of ELL students, increased focus on secondary schools, increased support to encourage college attendance, statewide longitudinal tracking systems, comprehensive growth models, multiple indicators and assessments, and equitable placement of highly-qualified and effective teachers.

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

SENATE FINANCE COMMITTEE EVALUATES U.S.-PERU TRADE AGREEMENT

The Senate Finance Committee on September 11, 2007 held a hearing on the U.S.-Peru Trade Promotion Agreement. Among the witnesses were: Mickey Kantor, a partner at Mayer Brown and former U.S. Trade Representative; Thea Lee, Policy Director and Chief International Economist, AFL-CIO; and, David Winkles, Jr., President, South Carolina Farm Bureau, representing the American Farm Bureau.

In his opening remarks, Chairman Max Baucus (MT) hailed the agreement: "For the first time in any free trade agreement, the U.S.-Peru Trade Promotion Agreement includes meaningful, and fully enforceable, labor and environmental protections. These protections resulted from the landmark May 10 bipartisan trade deal between Congress and the administration. Despite the hiccups before and since, this agreement is a remarkable achievement. It reflects the hard work and compromise of many groups. I applaud Speaker Pelosi, Senator Grassley, Chairman Rangel, Ambassador Schwab, Mr. McCrery, and all the others who were involved. We should be justifiably proud of what we produced."

Ambassador Kantor, in supporting the agreement, also lauded the labor and environmental protections, as well as the benefits to U.S. trade through the elimination of tariffs on U.S. goods and agriculture products, the increased access to Peruvian government procurements, and the increased protections for intellectual property and investments. Ms. Lee testified that the AFL-CIO "welcome[s] the progress made by the new Democratic leadership in the House of Representatives in negotiating improved provisions in key sections of pending free trade agreements, including the U.S.-Peru TPA. However, more needs to be done." She hoped the new labor provisions would be a starting point for future efforts to strengthen worker rights. She also cautioned the Committee that it would "need to bring to bear strong pressure on the executive branch to ensure that these newly negotiated provisions are effectively implemented and enforced."

Mr. Winkles testified in support of the agreement and also urged Congress to act on the trade agreements with Columbia and Panama. He stated that together with the Peru agreement, the "three agreements provide gains across U.S. agriculture and we estimate that passage of the Peru, Colombia and Panama agreements will increase U.S. agricultural exports by almost \$1.5 billion per year by the time the agreements are fully implemented."

For more information on the hearing, go to: <http://www.finance.senate.gov> .

SCHWARZENEGGER JOINS OTHER GOVERNORS ON H-1B VISA LETTER

Governor Arnold Schwarzenegger in September 2007 joined a bipartisan group of 12 other Governors in urging Congress to deal with the shortage of skilled immigrant workers hired under the H-1B visa program.

The letter stresses that the states are making significant investments in math and science education to train U.S. workers for the education-dependent positions available in the information technology, biotechnology, and other U.S. cutting-edge industries. However, it states: "Today, we and our nation face a critical shortage of highly skilled professionals in math and science to fill the current needs. Until we are able to address this workforce shortage, we must recognize that foreign talent has a role to play in

our ability to keep companies located in our states and country; and, therefore, need to ensure the increased availability of temporary H1-B visas, and permanent resident visas (green cards)."

The letter also notes that the current annual cap of 65,000 H-1B visas was arbitrarily set by Congress and bears no relation to workplace needs. Allowing that comprehensive immigration reform may be dead for this year, the Governors urge Congress to increase the H-1B cap this year. The letter, however, does not ask for a specific increase in the number of visas.

The annual cap on H-1B visas for FY 2008 was reached on April 2, 2007. USCIS received more valid applications on that day -- the first day filing was permitted for the upcoming fiscal year -- than were allotted for the entire year.

PPIC REVIEWS SUCCESSES AND FAILURES OF OF CALIFORNIA'S "ZERO-EMISSION VEHICLE" PROGRAM

On September 14, 2007, the Public Policy Institute of California (PPIC), released a new report entitled: *Learning from California's Zero-Emission Vehicle Program*, authored by Louise Wells Bedsworth and Margaret R. Taylor. The report analyzed the California Air Resources Board's (CARB) Zero Emission Vehicle (ZEV) Program from the 1990s. The sales mandate of the ZEV program created an assured market for a particular technology and was intended to overcome obstacles to the deployment of advanced-technology vehicles. The program failed when it became clear that battery-electric vehicles were not meeting necessary cost and performance goals. The report studies the history of the ZEV program and CARB's overestimation of the potential of advanced technology in order to apply the lessons learned to the present economic situation. The report asserts that CARB would be better served by a technology-neutral program, such as an updated version of the original Low-Emission Vehicle program, which capitalizes on the significant advances in conventional technology that have been made under the ZEV program and includes upstream emissions.

A few key points from the report include:

- Since 1970, California has achieved significant success in reducing emissions from new passenger vehicles -- even as the state's vehicle population, vehicle miles traveled, and amount of driving have increased, smog forming emissions from California's passenger vehicle fleet have decreased
- California has led the nation in setting more stringent standards resulting in federal emission standards for passenger vehicles becoming progressively more stringent as well
- A focus on advanced technology that provides environmental benefits should be maintained through mechanisms that are less prone to the volatility associated with a changing mandate such as ZEV approach

To view the study, visit <http://www.ppic.org> .

NEW CENSUS BUREAU DATA RELEASED THIS WEEK REVEAL POPULATION AND HOMEOWNERSHIP CHANGES

On September 12, 2007, the U.S. Census Bureau released annual data on U.S. demographics in areas with populations of 65,000 or more. The data covers a wide range of topics and is provided by the American Community Survey (ACS) in order to help decision makers better respond to change.

A few key points from the data include:

- 23.2% of the labor force is comprised of individuals ages 65 to 74 in 2006, an increase from 19.6% in 2000
- 67.3% of all occupied homes are currently owned by the occupant, compared to 66.2% in 2000
- In 2006, 8 million more people spoke a foreign language at home than in 2000. 19.7% of people over the age of 5 spoke a language other than English at home, compared to 17.9% in 2000

- California had the highest percentage in this category (42.5%) followed by New Mexico (36.5%) and Texas (33.8%)
 - In California, one in 10 households were linguistically isolated - meaning that everyone 14 or older in the household had at least some difficulty speaking English
 - The percentage of households that were married-couple families with children under 18 decreased from 23.5% in 2000 to 21.6% in 2006
 - All states, except Connecticut saw a percentage point decrease in the “married with children” household category - Utah had the greatest percentage at 32.3%, California was third with 24.8%
 - Among the 20 largest metro areas, Riverside, California had the highest percentage of households that were married-couple families with children under 18 (29.6%)
 - California and Hawaii were the two states with the highest median value of owner-occupied homes (more than \$500,000)
 - California cities of Newport Beach and Santa Barbara had median home values of about \$1 million
 - More than half of California homeowners with a mortgage spent 30% or more of their household incomes on mortgage payments and other owner costs
- To view the study, visit <http://www.census.gov> .

CALIFORNIA “BACK TO COLLEGE NIGHT” IN RAYBURN ON SEPTEMBER 26

The California State Society’s annual “Back to College Night” will be held on Wednesday, September 26, 2007, from 5:30 p.m. to 7:30 p.m. Dubbed an opportunity to “renew old rivalries and forge new friendships,” the reception is open to all Californians (whether CSS members or not) and will take place in the Rayburn Cafeteria, which is on the basement level of the Rayburn House Office Building in Washington -- on Independence Avenue across from the Capitol Building between South Capitol and First Streets, SW (the closest Metro stop is Capitol South).

In addition to all 23 California State University Campuses and all 10 University of California campuses, the impressive list of 2007 participants includes the California Institute of Technology, Claremont Graduate University, Claremont McKenna College, Keck Graduate Institute, Loyola Marymount University, Monterey Institute of International Studies, Occidental College, Pepperdine University, Santa Clara University, Scripps College, Stanford University, University of Redlands, University of San Diego, and University of Southern California.

The honorary Congressional host committee for the Back to College Night event includes Rep. Doris Matsui, an alumna of UC Berkeley; Rep. David Dreier, alumnus of Claremont McKenna College and Claremont Graduate University; Rep. Xavier Becerra, alumnus of Stanford University and Stanford Law School; and Rep. Kevin McCarthy, alumnus of CSU Bakersfield.

To attend, reply by September 19 to rsvpforcssevents@yahoo.com . For more information regarding the event, visit <http://www.californiastatesociety.org> .