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## California Capitol Hill Bulletin

### Volume 16, Bulletin 8 – March 13, 2009

*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.*

#### APPROPRIATIONS: PRESIDENT SIGNS FY09 OMNIBUS APPROPRIATIONS

The FY 2009 funding process is complete. By a vote of 245-178, the House on Wednesday, February 25, 2009, passed the FY09 omnibus appropriations bill (H.R.1105). The \$410 billion package was then considered by the Senate over the first two weeks of March. On March 10, 2009, the Senate passed the bill by voice vote shortly after voting, 62-35, to invoke cloture. During its consideration of the bill, the Senate was able to hold off numerous efforts to amend the bill, thus eliminating the need for a conference with the House. President Barack Obama, despite concerns over the \$7.7 billion in congressionally-designated projects (“earmarks”) contained in the bill, signed it into law on Wednesday, March 11<sup>th</sup>. The bill funds government agencies through September 30 of this year, and it includes the nine appropriations bill that were not completed in 2008 (all bills other than Defense and Homeland Security).

The Institute has prepared an analysis of the bill, including earmarks for California. It is available on the California Institute website, at <http://www.calinst.org/pubs/omn09.shtml>.

#### ENTERTAINMENT: HOUSE JUDICIARY EXAMINES PERFORMANCE RIGHTS ACT

On Tuesday, March 10, 2009, the House Judiciary Committee held a hearing on H.R. 848, the "Performance Rights Act." Witnesses were: Billy Corgan, Vocalist and Lead Guitarist, The Smashing Pumpkins; Mitch Bainwol, Chairman and Chief Executive Officer, Recording Industry Artist Association; Paul Almeida, President, Department for Professional Employees, AFL-CIO; W. Lawrence Patrick, President, Patrick Communications, Stan Liebowitz, Ph.D., Ashbel Smith Distinguished Professor of Managerial Economics, University of Texas at Dallas; and Steve Newberry, Chairman of the Radio Board, National Association of Broadcasters.

The major intent of H.R. 848 is to amend federal copyright law to ensure performance artists are compensated when their works are played on radio stations, Currently, stations pay songwriters for a license

#### CONTENTS:

Appropriations: President Signs FY09 Omnibus Appropriations. ....	1
Entertainment: House Judiciary Examines Performance Rights Act. ....	1
Homeland Security: Subcommittee Looks At U.S.-Mexico Border Violence. ....	2
Energy: Committee Explores Relationship Between Water and Energy ....	3
Energy: ENR Considers Pending Legislation Regarding Transmission Lines. ....	3
Education: Joint Subcommittee Hearing Considers Lost Educational Opportunities in Alternative Settings ....	4
Intellectual Property: Senate Judiciary Considers Patent Reform. ....	4
Immigration: Royce Leads Letter Urging Resumption of Border Protection Under Operation Jump Start. .	5
Demographics: Latinos and Asians Indispensable to California's Economy ....	5
Economy: California's Future Economy Depends On The Application of Creativity. ....	6
Economy: California Unemployment to Reach 10.5 Percent in 2009. ....	6
Education: UCLA Institute Investigates Conditions of CA Public Schools. ....	6
Education: Study Finds Two-Year College Students More Likely to Be Part Time, Less Prepared, and from Lower Socio-Economic Status. ....	7
Education: California Aligned High School Standards with College, Workplace Expectations. ....	7

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to broadcast the music they have composed, but the performing artist is not compensated.

Mr. Corgan and Mr. Bainwol spoke in strong support of the legislation, stating that it would correct an unfairness that allows radio stations (“terrestrial,” over-the-air stations) to play songs without compensating the performers. Mr. Bainwol argued that the current system is “a government subsidy to the broadcasters, allowing them to use property for free in an anticompetitive manner. . . . No, what’s going on here is entirely different. It’s effectively a taking. The broadcasters use music to build their business. But investors, artists and musicians don’t get paid when our music is broadcast over the air. And we don’t have the ability to tell broadcasters not to use our property. That’s a taking.”

Dr. Liebowitz defended his research that shows that there is no evidence to support the argument that radio broadcasting has increased the overall sales of sound recordings. He stressed, however, that the distinction must be made between radio’s impact on the sale of individual sound recordings that are frequently broadcast, versus its impact on the entire market for sound recordings.

Mr. Newberry was firmly opposed to the bill. He argued that as the recording industry has watched its revenues decrease because of the effects of the Internet and technology, it is searching for new sources of revenue, and has targeted radio stations.

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

## **HOMELAND SECURITY: SUBCOMMITTEE LOOKS AT U.S.-MEXICO BORDER VIOLENCE**

The House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism, chaired by Rep. Loretta Sanchez (Anaheim) held a hearing on “Border Violence: An Examination of DHS Strategies and Resources” on Thursday, March 12, 2009.

Witnesses were several representatives from the Department of Homeland Security, including: Vice Admiral Roger T. Rufe Jr. (USCG Ret), Director, Office of Operations Coordination, Department of Homeland Security; and John Leech, Acting Director, Office of Counternarcotics Enforcement, Department of Homeland Security.

In her opening remarks, Chairwoman Sanchez stated: “With the Mexican government engaged in a violent struggle against well armed drug cartels that frequently resemble advanced military units, the United States and this Congress cannot ignore our role in assisting our neighbor and ally in this fight, and preventing this violence from spreading across our border.”

Adm. Rufe detailed the four phase system that DHS developed to execute its plan to scale the U.S. response to the level of violence in the southwest boarder area of operations. Phase 1 constitutes “steady state” operations, with coordination, monitoring, situational awareness, and response based on existing resources. Phase 2 and greater would be implemented at the direction of the President or the Secretary of Homeland Security. It would call for a greater federal response to escalating violence along the border with follow-on phases increasing the magnitude of response as necessary to deal with the

violence. In conclusion, he stated that: "This broader plan provides the DHS Secretary a graduated, flexible, and scalable response, using fully integrated Department and interagency resources, to address the myriad of threats and events that could occur along the U.S. SWB."

During questioning, Rep. Lofgren stressed that the U.S. must do everything it can to stem the flow of guns into Mexico from the United States and also to stop the drug cartels from laundering money in the U.S. She commented that she believes the Mexican government has fully committed itself to the task of eliminating the cartels and violence, and that it is a substantial responsibility of the United States to make assisting Mexico its top priority.

Chair Sanchez asked the panel to provide the subcommittee with a list of needed legislative proposals to ensure that the full resources and authority of the United States can be brought to bear to stop the problem.

The testimony of all the witnesses can be found at: <http://homeland.house.gov> .

### **ENERGY: COMMITTEE EXPLORES RELATIONSHIP BETWEEN WATER AND ENERGY**

The Senate Energy and Natural Resources Committee held a hearing on March 10, 2009 to discuss the Energy and Water Integration Act and the relationship between energy and water.

The Energy and Water Integration Act, introduced earlier this month by Chairman Jeff Bingaman (NM) and Ranking Member Lisa Murkowski (AK), would require the Department of Energy and other agencies to study the relationship between water and energy, and to develop a roadmap for addressing linkages. The Interior Department's Bureau of Reclamation would be required to reduce energy use, and the Energy Information Administration would be required to report on energy use in water treatment and delivery.

In California, one of the largest consumers of energy is the CA Water Project; almost 20 percent of California's energy use is tied to the treatment and transportation of water. But California's water resources are also crucial to the State's energy production; northern California utilities -- particularly the Municipal Utilities -- depend on hydroelectric power to make up large parts of their energy production portfolios.

According to Peter Gleick, President of the California based Pacific Institute, "water is used in every phase of the energy cycle. A substantial fraction -- nearly 40% -- of the nation's water withdrawals are used in the generation phase to cool power plants and produce energy. This is the largest single withdrawal of water in the United States. While most cooling water is not 'consumed,' this level of water use is putting more and more pressure on regional supplies, and it may not be possible to satisfy all of the expected water needs of newly proposed power plants. In arid and semi-arid regions, power-plant water demand can be a substantial fraction of limited regional supplies." He claimed that more water is needed for nuclear and fossil-fuel energy systems than for most renewable energy systems, depending on the cooling system.

Other witnesses included Carl Bauer, Director of the Department of Energy's National Energy Laboratory; Stephen Bolze, President of General Electric's Power and Water Group; Dr. Michael Webber, University of Texas at Austin; and, Dr. Lon House from Water and Energy Consulting.

Full witness testimony can be found at <http://energy.senate.gov/public/> . Information about the relationship between energy and water use in California is available at <http://www.energy.ca.gov/>

### **ENERGY: ENR CONSIDERS PENDING LEGISLATION REGARDING TRANSMISSION LINES**

On Thursday, March 12, 2009, the Senate Energy and Natural Resources Committee met to hear testimony on the topic of "Electricity Transmission Lines", and a recently introduced transmission bill, S. 539, introduced by Majority Leader Harry Reid (NV). The Committee heard testimony from Jon Wellinghoff, Acting Chairman of the Federal Energy Regulatory Commission; Tony Clark, Commissioner, North Dakota Public Service Commission; Reid Detchon, Executive Director of Energy Future Coalition; James Dickenson, Managing Director of JEA; Joseph Welch, President of ITC Holding Corp; Michael Morris, Chairman of American Electric Power; and Graham Edwards, Acting President of the Midwest Independent Transmission System Operator, Inc.

According to the Electric Power Research Institute, making the grid smarter with modern control technology could reduce electricity consumption by 5-10%, carbon dioxide emissions by 13-25%, and the cost of power-related disturbances to business (estimated to be more than \$100 billion per year) by 87%. But the benefits seem to extend beyond greater efficiency and a higher quality system; a new smart grid has been connected to the nation's ability to bring renewable energy online. According to the DOE, if the nation were to get 20 percent of its energy from wind by 2030, it would reduce the electric power sector's CO2 emissions by 25% - the equivalent of taking 140 million cars off the road - while creating 500,000 jobs and \$450 billion in economic impact. The witnesses at the hearing generally agreed that without significant investment in the nation's transmission infrastructure, efforts to incorporate renewable energy resources like wind would be a serious challenge.

FERC Chairman Jon Wellinohoff articulated the need for a comprehensive national commitment to transmission issues, saying "Without a national commitment, we will not be able to take full advantage of our capacity to develop clean power." Some observers have expressed concern that smart grid technology that allows centralized access to electricity flows could make the nation's grid vulnerable to tampering by terror groups or other criminals.

For witness testimony and an archived webcast of the hearing, see <http://energy.senate.gov/public/> .

### **EDUCATION: JOINT SUBCOMMITTEE HEARING CONSIDERS LOST EDUCATIONAL OPPORTUNITIES IN ALTERNATIVE SETTINGS**

On March 12, 2009 the Healthy Families and Communities Subcommittee (Chaired by Rep. Carolyn McCarthy (NY)) and the Crime, Terrorism and Homeland Security Subcommittee (Chaired by Rep. Bobby Scott (VA)) joined together for a hearing to discuss the lost educational opportunities in alternative settings like foster care, juvenile justice facilities and alternative education settings.

Witnesses included: Thomas Blomberg - Professor of Criminology, Florida State University; Linda Brooke - Director, Government Relations and Education Services, Texas Juvenile Probation Commission; Cynthia Cave - Director, VA Office of Student Services; Leonard Dixon - Executive Director, Wayne County Juvenile Detention Facility, Detroit; Janeen Steel - Executive Director, Learning Rights Law Center, Los Angeles; and Dr. Robert Whitmore - CEO Manito Incorporated, Chambersburg, Pennsylvania.

"There is a whole population of students not receiving adequate education services, and there is little to no accountability," said Chairwoman McCarthy in her opening remarks.

Janeen Steel of the Learning Rights Law Center in Los Angeles discussed the experience of foster youth and youth in juvenile justice facilities, citing concerns that California laws that require all youth in foster care have the right to attend school and participate in extracurricular, cultural and personal enrichment activities are not being adequately followed. She also cited a March 2008 Stanford University Study ("Alternative Education Options in California: A View from Counties and Districts"), which found that 71 percent of students in alternative settings are students of color, and indicated that 35-percent of youth in juvenile halls should be in special education.

Steel concluded that "there certainly must be more oversight to alternative education settings, (but) our priority should be to prevent the placement of students in harmful alternative school settings. We should not use public money to warehouse foster or at-risk youth with disabilities in nonpublic school settings."

More information and witness testimony can be found at <http://edworkforce.house.gov/> .

### **INTELLECTUAL PROPERTY: SENATE JUDICIARY CONSIDERS PATENT REFORM**

The Senate Judiciary Committee on March 10, 2009 held a hearing entitled "Patent Reform in the 111th Congress: Legislation and Recent Court Decisions." Witnesses included: David J. Kappos, Vice President and Assistant General Counsel, Intellectual Property Law and Strategy, International Business Machines Corporation; Taraneh Maghame, Vice President, Tessera, Inc., San Jose, CA; and Mark A. Lemley, William H. Neukom Professor of Law, Stanford Law School, Stanford, CA.

In his opening remarks, Chair Patrick Leahy (VT) noted that last week, he, Ranking Member Orrin Hatch (UT), House Judiciary Chairman John Conyers (MI) and Ranking Member Lamar Smith (TX) had reintroduced a bipartisan, bicameral Patent Reform Act of 2009 (S.515). He noted that in the last Congress, the House passed patent law reform, and the Senate Judiciary Committee was able to report a bill, and he called on enacting patent reform legislation this year in order “to help bolster our economy.”

Mr. Maghame explained that Tessera has become a leader in semiconductor chip-scale packaging, which allows the packaging of a chip to be about the same size as the chip itself. Through this technology, electronic devices, such as cell phones, are able to become as small as they are today. Tessera holds over 900 U.S. patents or patent applications. Although supporting patent reform that would strengthen the patent system, Mr. Maghame testified that Tessera opposes changes to the calculation of damages in the Senate bill. Under the bill, the value of the specific infringed component would govern the calculation of damages, rather than the entire market value of the entire device. Mr. Maghame argued that this change would cause a “massive and irresistible transfer of wealth” from U.S. manufacturers to foreign companies. In response to the argument that changes the damages calculation will prevent frivolous cases, he countered that there has been no evidence to suggest “runaway jury verdicts” in patent cases and judges routinely set aside damages awards that are excessively high.

Mr. Maghame also opposed establishing a post-grant opposition procedure, arguing that it would add to number and cost of litigation.

Professor Lemley testified in detail regarding each significant proposal in the bill. As opposed to Mr. Maghame, he supports limiting awards to the value of the infringed component to the whole product. Among his other comments were:

- creating a post-grant opposition process would strengthen the patent system
  - he supports the first inventor to file rule, but stresses that it should be accompanied by language requiring the publication of all applications and expansion of prior user rights.
  - interlocutory appeals are likely to prolong litigation, but disincentives to forum shopping are beneficial.
- Testimony of all the witnesses can be obtained at: <http://judiciary.senate.gov> .

## **IMMIGRATION: ROYCE LEADS LETTER URGING RESUMPTION OF BORDER PROTECTION UNDER OPERATION JUMP START**

On Wednesday, March 11, 2009, a group of 11 Republican lawmakers wrote to President Barack Obama asking the Administration to restart a program that -- until last July -- had deployed National Guard troops along the United States border with Mexico.

The letter was led by Rep. Ed Royce (Fullerton) and joined by Reps. Brian Bilbray (Imperial Beach), Gary Miller (Diamond Bar), and Dana Rohrabacher (Huntington Beach). They expressed concern about violence and instability in Mexico, noting that the State Department issued a February 20 alert warning travelers about escalating conflicts among warring drug cartels and increased tension between the Mexican military and cartels over border trafficking routes.

While it was active, Operation Jump Start yielded new fencing and roadway repairs, and the National Guardsmen assisted in arrests, rescues, and drug confiscation. “At a time when drug violence from Mexico threatens to spill over the border and expose our communities and families to the consequences,” the authors wrote the President, “we strongly urge you resume Operation Jump Start.”

The full text of the letter is available on Rep. Royce’s website, at <http://royce.house.gov/News/> .

## **DEMOGRAPHICS: LATINOS AND ASIANS INDISPENSABLE TO CALIFORNIA'S ECONOMY**

"New Americans in the Golden State: Immigrants, Latinos and Asians Indispensable to California Economy," was released by the Immigration Policy Center (February 2009). Some of the major highlights and findings include:

- Latinos and Asians account for more than one-quarter of California's businesses and buying power (\$249 billion and \$162.8 billion, respectively). This is the highest of any state in the nation, and represents about 30% of the state's total consumer purchasing power.
- Businesses owned by Latinos and Asians comprised more than one-quarter of all businesses in the state, according to the U.S. Census Bureau's 2002 Survey of Business Owners. California's 427,678 Latino-owned businesses had sales and receipts of \$57.2 billion and employed 445,820 people in 2002. The state's 371,530 Asian-owned businesses had sales and receipts of \$125.8 billion and employed 745,874 people.
- Immigrants comprise more than one-third of the California labor force.
- Immigrants in California pay roughly \$30 billion in federal taxes, \$5.2 billion in state income taxes, and \$4.6 billion in sales taxes each year. In California, "the average immigrant-headed household contributes a net \$2,679 annually to Social Security, which is \$539 more than the average US-born household."

The full text can be found at <http://www.immigrationpolicy.org/> .

### **ECONOMY: CALIFORNIA'S FUTURE ECONOMY DEPENDS ON THE APPLICATION OF CREATIVITY**

In February, 2009, the Center for Continuing Study of the California Economy released "California's Future Economy and Population: Implications for a Fiscal Policy Agenda," authored by Stephen Levy. The major trends identified by the Palo Alto-based CCSCE are:

- California's economic growth opportunities will be increasingly concentrated in the application of creativity to developing new goods and services and in our connections to the rest of the world through foreign trade, immigration and access to capital
- California's population growth will be concentrated in the 55+ age groups, in young adults, in Latino and Asian population groups and in the children and grandchildren of recent immigrants
- A tidal wave of baby boomer retirements will create millions of replacement job openings in the years ahead. Replacement job openings will outnumber new jobs, will occur in high, medium and low wage sectors and are critical for making California communities great places to live and work.

The full report can be found at: <http://www.ccsc.com/>

### **ECONOMY: CALIFORNIA UNEMPLOYMENT TO REACH 10.5 PERCENT IN 2009**

On February 20, 2009, the Los Angeles Economic Development Corporation (LAEDC) released their "2009-2010 Economic Forecast and Industry Outlook." The lead author of the report was LAEDC Chief Economist Jack Kyser. Major findings and conclusions include:

- During 2009, employment in California will fall by -3.0% or by 447,500 jobs
- Unemployment will reach 10.5% in California, but the economic downturn should bottom out by the end of 2009
- Employment losses in California have spread from housing and finance to retail trade, manufacturing, business services, and goods movement.
- The largest job losses in 2009 will occur in manufacturing, retail and construction.

The full report is available at: <http://www.laedc.org> .

### **EDUCATION: UCLA INSTITUTE INVESTIGATES CONDITIONS OF CA PUBLIC SCHOOLS**

"California Educational Opportunity Report: Listening to Public School Parents," by John Rogers and the UCLA's Institute for Democracy, Education, and Access was released in February 2009.

This report:

- Documents California's racially disparate public school system
- Investigates the conditions of California's public schools, highlighting both a lack of quality overall and inequality between different groups of schools
- Identifies the increased likelihood that California schools will fail to meet federal accountability standards

- Explores the gap between achievement in California schools and a) the aspirations of California's students and parents, as well as b) the future demands of California's economy
- Concludes by pointing to the need for alignment among California's educational finance system, the aspirations of the public, the conditions of the schools, and the demands of the accountability system.

The full report can be found at: <http://www.idea.gseis.ucla.edu/>.

### **EDUCATION: STUDY FINDS TWO-YEAR COLLEGE STUDENTS MORE LIKELY TO BE PART TIME, LESS PREPARED, AND FROM LOWER SOCIO-ECONOMIC STATUS**

In February 2009, a report entitled "The Other College: Retention and Completion Rates among Two-Year College Students," was released by Princeton University and the Center for American Progress.

Major findings include:

- In 2005, two-year college enrollment was almost 40-percent of total college enrollment, but these 6.5 million students fare far worse than their four-year peers in persisting through postsecondary education until receiving a credential
- Among first-time students who start at a four-year college, approximately three-quarters persist to the second year, compared to roughly half of first-time students who start at a two-year college.
- Within six years, students who begin at a four-year college are twice as likely as those who begin at a two-year college to earn a degree
- Those students who have not yet completed a degree are much more likely to still be enrolled in college if they started at a four-year college than if they started at a two-year college
- Two-year college students are more than twice as likely to be enrolled part-time, and more than half of two-year college students are employed, compared to only 38 percent of four-year college students.
- Two-year college students are far less likely to be of traditional college-going age (18 to 24) than four-year college students, and they are also more likely to be of minority descent and from families of lower socioeconomic status, and students who first attend two-year colleges are less academically prepared than students who first attend four-year colleges, whether this is measured by standardized test score, highest math course taken in high school, or participation in remedial education
- This report looks at the availability of financial aid to two-year college students, which may take the form of grants or loans, and the two-year college institutional environment, which includes remedial education, student support services, learning communities, and transfer agreements.

The full report can be found at: <http://www.americanprogress.org/>.

### **EDUCATION: CALIFORNIA ALIGNED HIGH SCHOOL STANDARDS WITH COLLEGE, WORKPLACE EXPECTATIONS**

The report "Closing the Expectations Gap: Fourth Annual 50-State Progress Report on the Alignment of High School Policies with the Demand of College and Careers," was released by Achieve in February 2009. Achieve is a Washington D.C.-based nonprofit that seeks to help states raise academic standards and graduation requirements, improve assessments and strengthen accountability.

California specific findings include:

- California has aligned high school standards with the expectations of college and the workplace
- California has not aligned high school graduation requirements with college and career ready expectations
- California has developed college and career ready assessment systems
- California is in the process of developing a P-20 longitudinal data systems

The full report is available at <http://www.achieve.org/>.