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

**Appropriations: House Reports FY12 Homeland Security Appropriations**

On May 24, 2011, by a vote of 27-20, the House Appropriations Committee reported its FY 2012 Appropriations for the Department of Homeland Security. The bill provides $40.6 billion in discretionary spending, which is $1.1 billion – or 2.6% – below the FY11 funding and $3 billion – or 7% – below the President’s request.

Major funding categories in the bill include:

**Federal Emergency Management Agency** – The bill includes $5.3 billion for FEMA – a decrease of $1.9 billion from last year’s level. This total includes a cut of $2.1 billion to State and Local grants, providing funding of $1 billion. In support of the cut, Committee documents cite a current backlog in spending funds of over $13 billion. The bill requires DHS to engage in increased oversight and better prioritization of funding to address critical needs and high-risk areas. It would allow Homeland Security to distribute the state and local grant funds among the various programs, rather than allocate specific funding levels to each program. It also calls for a report on the expenditure of the current $13 billion in backlogged, unexpended grant funds leftover from previous years. The bill fully funds Emergency Management Performance Grants at $350 million and provides $350 million for firefighting grants.

**U.S. Customs and Border Protection** – The bill contains $11.8 billion for Customs and Border Protection (CBP) – an increase of $443 million over last year’s level. This funding provides for a total of 21,370 border patrol agents and 21,186 CBP officers, as well as additional training and canine units at ports of entry. The bill also contains a total of $500 million for border security fencing, infrastructure, and technology.

**Immigration and Customs Enforcement** – The bill provides $5.8 billion for Immigration and Customs Enforcement (ICE), which is $35 million above last year’s level. This includes $1.7 billion for domestic investigation programs, $32.5 million for the Visa Security Program, and an additional $64 million for continued expansion of the Secure Communities program. In addition, the legislation includes $2.7 billion – an increase of $27 million above the President’s request – for ICE detention bed spaces, raising the total number of beds to 34,000.
During the markup, the Committee rejected an amendment to increase funding for state and local preparedness grants and firefighter grants by $1.6 billion, and an amendment to boost funding for the firefighter program by $460 million. Another amendment that would have provided $725 million for the Urban Area Security Initiative (UASI) was also rejected.

The Committee did add by voice vote an additional $1 billion for FEMA’s disaster relief fund, to respond to the recent tornadoes and other disasters in the Midwest. The additional funding is being offset by using unspent money in a Department of Energy advanced car technology program funded under ARRA in 2009.

For more information on the bill, and a table comparing the Committee’s FY12 funding to the FY11 appropriations and the President’s request, go to: http://republicans.appropriations.house.gov.

APPROPRIATIONS: SUBCOMMITTEE REPORTS AGRICULTURE APPROPRIATIONS

On Tuesday, May 24, 2011, the House Appropriations Subcommittee on Agriculture, Rural Development, FDA, and Related Agencies marked up its draft FY12 appropriations. The legislation contains a total of $17.2 billion in discretionary funding - a cut of over $2.6 billion from last year's level and over $5 billion below the President's budget request.

Bill Highlights: The bill provides a total of $125.5 billion in both discretionary and mandatory funding, a reduction of more than $7 billion from the President's request. Mandatory funding in the bill increases by nearly $3 billion over last year to a total of $108 billion, and equals more than 86% of the total funding in the bill, according to Committee documents.

Department of Agriculture:

Agricultural Research: The bill provides over $2.2 billion for agriculture research programs, including the Agriculture Research Service and the National Institute for Food and Agriculture. This is a reduction of over $354 million from last year's level. The funding provides for research on crop diseases, emerging chemical and biological threats, food safety, and water quality, among other things.

Animal and Plant Health: The legislation includes $790 million - $73 million below last year's level - for the Animal and Plant Health Inspection Service (APHIS). The funding supports 29 programs to enhance control or eradication of plant and animal pest and diseases. The bill also allows the agency access to emergency funding should an unexpected agricultural threat emerge over the course of the year.

Agricultural Marketing: The Committee recommends an appropriation of $78.8 million for the Agricultural Marketing Service. The FY11 appropriation was $87.8 million; the President’s budget requested $97.4 million. The U.S. Department of Agriculture's Agricultural Marketing Service administers programs that facilitate the marketing of U.S. agricultural products, including food, fiber, and specialty crops.

Food and Nutrition Programs: Mandatory food and nutrition programs within the Department of Agriculture - including SNAP (formerly Food Stamps) and child nutrition - are funded at nearly $90 billion,
$2 billion less than the President's request. This funding includes $3 billion in reserve funds in case of unanticipated increases in participation or food price increases.

Child nutrition programs will receive $18.8 billion, which is $1.5 billion over last year's level and $40 million below the President's request. In addition, the Women, Infants, and Children (WIC) nutrition program is funded at $5.9 billion. While this is a reduction of $832 million from last year, the Committee documents state, the bill allows the Secretary to utilize FY2011 carryover funds, $125 million in contingency funds, and other funding options currently authorized in law to allow participants to continue to receive the benefits for which they qualify.

**Food Safety and Inspection Service**: The legislation includes $973 million for food safety and inspection programs - a decrease of $35 million below last year's level.

**Food and Drug Administration (FDA)**: The FDA receives a total of almost $2.2 billion in discretionary funding in the bill, a cut of $285 million or -11.5% below last year's level. Total funding for the FDA, including user fees, is $3.7 billion.

The full Committee is scheduled to mark up the bill on May 31st. For more information and for a table comparing the bill with last year's levels and the President's budget request, please visit:
http://republicans.appropriations.house.gov

**Small Business: Senate Passes Extension of SBIR/STTR**

On Thursday, May 26, 2011, the Senate passed, by voice vote, legislation (S 1082) that would extend small business authorities through July 31 and Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs through Sept. 30, 2011. The House is expect to vote on the bill before the current extension expires on May 31, 2011.

Under the current SBIR program, 11 federal agencies that provide more than $100 billion annually in extramural grants, including the National Institutes of Health (NIH), the National Science Foundation (NSF), the Department of Energy, and the U.S. Department of Agriculture, must devote a minimum of 2.5 percent of their budgets to research funding for small businesses. The SBIR program expired in 2008 and STTR in 2009, but they have been operating under extensions since then.

Efforts to pass a long-term, comprehensive reauthorization bill got bogged down in the Senate earlier this year. The House Science, Space and Technology Committee reported H.R. 1425 on May 4, 2011, which would reauthorize the SBIR and STTR programs for three years.

For more information, visit: http://www.senate.gov or http://science.house.gov.

**Education: House Committee Reports First of ESEA Bills**

On Wednesday, May 25, 2011, the House Committee on Education and the Workforce approved the first in a series of education reform bills amending the Elementary and Secondary Education Act and intended to replace the No Child Left Behind law. The Setting New Priorities in Education Spending Act (H.R. 1891), sponsored by Subcommittee on Early Childhood, Elementary, and Secondary Education Chairman Duncan Hunter (El Cajon), passed by a party-line vote of 23 to 16. The legislation eliminates 43 education programs, cutting the total number of Elementary and Secondary Education Act programs by half.

Rep. Hunter said, "Despite more federal funding for education year after year, students are not reaching their full potential in the classroom. There are far too many unnecessary or redundant programs within the Department of Education to focus on programs that really work. Streamlining the existing patchwork of programs, which this bill accomplishes, will go a long way toward improving the quality of education for every American."

Committee Democrats, however, argued that the bill would eliminate programs for the sake of budget cuts without evaluating the impact of those cuts on students. Rep. George Miller (Martinez), the Ranking Member, argued: “In all my travels across the country, not a single teacher or parent has asked me
to eliminate a program so that their student has a better chance at success. Not a single teacher or parent has told me their student needs fewer programs.”

Several amendments attempting to reinstate programs were offered during the markup, but only an amendment to prevent the elimination of an authorization for parental assistance and local family information centers was adopted. The vote was 20-19.

Among the programs eliminated are:
- Bilingual and Emergency Immigrant Education Program, which provides funding to school districts that experience unexpectedly large increases in student population due to immigration.
- Early Reading First, which provides funding for early childhood centers that focus on basic language, cognitive, and pre-reading skills.
- Safe and Drug-Free Schools and Communities, State Grants, which funds certain drug-abuse and violence prevention activities.
- Early Childhood Educator Professional Development, which offers grants to higher education institutions that provide professional development for early childhood educators who work with low-income families.
- Physical Education: The Carol M. White Physical Education Program provides grants to school districts and community-based organizations to initiate or expand physical education programs.
- Arts in Education: The Arts in Education program funds professional development for arts teachers in high-poverty schools; replication of arts programs across school districts; and provides noncompetitive awards to the John F. Kennedy Center for the Performing Arts.
- Even Start Family Literacy Program, which offers grants to certain low-income family literacy projects.
- Enhancing Education Through Technology (Ed-Tech), which provides grants to State Educational Agencies to help elementary and secondary school students become "technologically literate."
- Reading is Fundamental (RIF), which is a childhood literacy program funded by a combination of federal and private dollars.
- Community Technology Centers program, which was designed to provide residents of economically distressed urban and rural communities with increased access to information technology.

To view the complete list of programs to be eliminated and information on the markup, go to: http://edworkforce.house.gov.

**INTELLECTUAL PROPERTY: SENATE JUDICIARY REPORTS ROGUE WEBSITE ENFORCEMENT BILL**

By voice vote, on May 26, 2011, the Senate Judiciary Committee reported S.968, Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011. The bill is intended to provide the Justice Department and intellectual property rights holders with new tools to crack down on rogue websites dedicated to infringing activities.

So-called “rogue websites” are often foreign-owned and operated, or reside at domain names that are not registered through a U.S.-based registry or registrar. American consumers are deceived into thinking the products they are purchasing at these websites are legitimate because they are easily accessed through their home’s Internet service provider, found through well known search engines, and are complete with corporate advertising, credit card acceptance, and advertising links that make them appear legitimate.

S. 968 authorizes the Justice Department to file a civil action against a rogue website or those controlling it, and can obtain a cease and desist order from a U.S. court to serve on U.S. based third-parties, including Internet service providers, payment processors, online advertising network providers, and search engines. These third parties would then be required to take appropriate action to either prevent access to the
Internet site, in the case of an Internet service provider or search engine, or cease doing business with the Internet site, in the case of a payment processor or advertising network.

The act also authorizes an intellectual property rights holder who is the victim of the infringement from a rogue website to bring a similar action against the rogue site, whether domestic or foreign. If the court issues a cease and desist order, the rights holder is authorized to serve that order on payment processors and online advertising networks, to cut off the financial viability of the criminal activity.

During the markup, the Committee adopted by voice vote an amendment in the nature of a substitute and another amendment allowing federal agencies to share information on seized pirated products with the rights holders of those products.

For more information, go to: http://judiciary.senate.gov.

**Trade: Senate Finance Holds Hearings on Panama and Korea TPAs**

The Senate Finance Committee held two hearings this week on the pending trade promotion agreements with Panama and Korea. The Committee held a hearing on the pending agreement with Colombia on May 12, 2011 (see Bulletin, Vol. 18, No. 14: http://www.calinst.org/bul2/b1814.shtml#TOC1_1.

The Committee heard from representatives of the U.S. Trade Representatives Office, Ms. Thea Lee, Deputy Chief of Staff, AFL-CIO; Mr. Timothy Guertin, President and Chief Executive Officer, Varian Medical Systems, Palo Alto, CA; and other interested parties.

In his remarks, Chairman Max Baucus (MT) insisted that he and the Administration will only move forward on the pending trade agreements in tandem with the reauthorization of trade adjustment assistant benefits. TAA provides benefits to workers displaced by the loss of jobs due to increased foreign imports. The stimulus bill of 2009 expanded TAA benefits to include service workers, and increased the health benefits available, but those provisions expired in February 2011. Ranking Republican Orrin Hatch (UT) argued that holding the agreements hostage to TAA will only cost American workers jobs.

Mr. Guertin testified that Varian, a leading producer of medical devices, technology, and software, strongly supports the pending agreement with Korea. He noted that Varian already has a business relationship with the leading health care provider in Korea and the country as a whole is one of the fastest growing markets for medical technology products. The elimination of Korea’s 8 percent tariff on Varian’s exports will allow Varian to expand in the Korean market and lead to the company’s growth in the United States. He also applauded the Korea agreement for dealing specifically with medical device issues, including outlining processes and procedures related to transparency in both the regulatory approval process and pricing of medical devices.

For the testimony of all the witnesses at both hearings, go to: http://finance.senate.gov.

**Immigration: Senate Judiciary Reviews Immigration Court System**

The Senate Judiciary Committee held a hearing titled "Improving Efficiency and Ensuring Justice in the Immigration Court System" on Wednesday, May 18, 2011. Witnesses included: Juan P. Osuna, Acting Director, Executive Office for Immigration Review, Department of Justice; Julie Myers Wood, President, Consulting LLC; and Karen T. Grisez, Chairwoman, Commission on Immigration, American Bar Association.

In his opening statement, Chairman Patrick Leahy (VT) advocated for comprehensive immigration reform. He said the Department of Justice faces budget cuts across the board, and can no longer hire judges to keep up with the increased immigration caseload. As a result, he said, the case backlog rose 44 percent from the end of fiscal year 2008 to the end of the calendar year 2010. Today, there are an estimated 11 million undocumented immigrants here in the United States.
Mr. Osuna testified on behalf of the Executive Office for Immigration Review (EOIR). The EOIR administers the immigration court system, composed of both trial and appellate tribunals. The immigration courts are high-volume tribunals, Osuna testified, that received more than 2.1 million matters, which include proceedings, bonds and motions, throughout the past six years. Mr. Osuna said the EOIR continues to seek the resources necessary to hire additional immigration judges, BIA attorneys, and other staff. For FY 2012, the President's budget requested funding sufficient to add 21 immigration judge teams and 10 Board of Immigration Appeals attorney positions.

Ms. Julie Myers Wood, Former Assistant Secretary, Immigration and Customs Enforcement, Department of Homeland Security testified on behalf of ICS Consulting, LLC. Ms. Wood testified that in fiscal year 2010, the immigration courts received over 392,000 new cases, but only resolved 353,000. The Department of Justice (DOJ) reported an increase of 12% in new cases from 2006 to 2010, she said. In fiscal year 2010, immigration judges completed an average of 1,300 proceedings per judge, many more than other administrative law judges in other fields and with far fewer law clerk resources to assist them.

Ms. Karen T. Grisez testified on behalf of the American Bar Association (ABA). In 2010, the ABA released a report entitled Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases. The report undertook a examination of the structures and processes of the current removal adjudication system, beginning with the decision to place an individual in removal proceedings through potential federal circuit court review. The findings of the report concluded that the U.S. immigration court system is in crisis, overburdened and underresourced, Ms. Grisez said. Ultimately the report found that the goals of ensuring fairness, efficiency and professionalism would best be served by restructuring the system to create an independent body for adjudicating immigration cases, such as an Article I court or an independent agency. The ABA also recommended a number of incremental reforms that could be made within the current structure, either through policy revision, regulation or legislation.

Senator Chuck Grassley (IA) voiced his concerns with ABA's recommendations for changing the court system. He said, "I don't agree that a wholesale restructuring of the immigration court system is necessary. In particular, I'm hesitant to support creating either a specialized Article I court or a brand new agency to oversee the system to the committee." Senator Grassley said he also has concerns about proposals to change the scope and standards of appellate review by either the Board of Immigration Appeals or the federal courts of appeals.

For more information, visit: http://judiciary.senate.gov/.

E NERGY: S ENATE C OMMITTEE D ISCUSSES A DVANCED V EHICLE T ECHNOLOGIES

On Thursday, May 19, 2011, the Senate Energy and Natural Resources Committee held a hearing on policies to reduce oil consumption through the promotion of advanced vehicle technologies and accelerated deployment of electric-drive vehicles, as proposed in S. 734 (Advanced Vehicle Technology Act of 2011) and S. 948 (A bill to promote the deployment of plug-in electric drive vehicles). Witnesses included: Patrick Davis, Program Manager, U.S. Department of Energy; Seifi Ghasemi, Chairman and CEO, Rockwood Holdings, Inc.; Genevieve Cullen, Vice President, Electric Drive Transportation Association; Bill Van Amburg, Senior Vice President, CALSTART; and David Crane, President & CEO, NRG Energy, Inc.

According to the U.S. Department of Energy, the transportation sector accounts for approximately two-thirds of the United States' oil consumption and contributes to one-third of the Nation's greenhouse gas (GHG) emissions. After housing, transportation is the second biggest monthly expense for most American families. The Administration has outlined a portfolio of actions which, taken together, could cut U.S. oil imports by a third by 2025. The President's plan includes programs that would put one million electric vehicles on the road by 2015. Mr. Davis testified on behalf of The Office of Energy Efficiency and Renewable Energy's (EERE's) Vehicle Technologies Program (VTP). This program develops and promotes
energy-efficient, environmentally-friendly transportation technologies that will reduce petroleum consumption and lower GHG emissions while meeting drivers' expectations of vehicle performance.

Davis explained the major components of The Promoting Electric Vehicles Act of 2011. He explained that the Act authorizes an R&D program focused on advanced batteries, electric drive components, and other technologies supporting the manufacture and deployment of electric drive vehicles and charging infrastructure. Communities are chosen to receive grants that would be used to support integration of electric vehicles through means such as installing charging infrastructure and updating building codes. Davis said the bill includes provisions which would support technical assistance, workforce training, and a targeted communities program to facilitate the rapid deployment of plug-in vehicles. Further, the proposed Act focuses on Federal electric vehicle upgrades and discusses partnership with the private sector surrounding vehicle upgrades.

Mr. Van Amburg testified on behalf of CALSTART, a Pasadena based non-profit organization with more than 150 private industry company, as well as public agency members. Van Amburg said CALSTART works to speed the development and market adoption of high-efficiency, clean transportation technologies, such as hybrid and electric drive, and alternative and clean fuels for the light, medium and heavy-duty vehicle platforms. He stated that there are two main strategies to successfully reduce oil use in transportation, and both are required to be effective: use less fuel to do the same work -- in other words, increase efficiency, such as with hybrid, electric drive and other technologies; and switch to non-petroleum fuels, such as natural gas and bio-based fuels. "Where these strategies can be combined, as in alternative fuel hybrids or other approaches, you can further increase your effectiveness in cutting oil use on a per vehicle basis," Van Amburg said. He testified that the proposed legislation and a federal focus on research and development efforts sends an important longer term signal that is critical to manufacturers and suppliers in the light, medium- and heavy-duty vehicle industry.

CALSTART has identified what is, in their opinion, the following core needs for continuing momentum in technologies and fuels that reduce oil use:

- Need for consistent, targeted funding of research and development in advanced vehicles systems and partnerships to assist manufacturers transition to new technologies;
- Need for funding partnerships with fleets and manufacturers to speed pilot projects and validate performance and reliability; and
- Need for fleet-focused purchase assistance in the early market stage to speed introduction and rapidly increase manufacturing volume.

For more information, visit: [http://energy.senate.gov](http://energy.senate.gov).

**COMMERCE: HEARING HELD ON TAXATION OF DIGITAL GOODS AND SERVICES**


The legislation is focused on state and local taxation of digital goods and services, such as music tracks downloaded off of iTunes, not physical goods and services purchased online, such as CDs ordered from an internet retailer. The bill would restrict taxing authority to the jurisdiction of the customer's tax address. Currently, about 20 states tax digital goods and services.

In 2010, U.S. online retailers sold 1.17 billion digital music tracks totaling $1.5 billion in revenue. Similarly, e-book sales in the United States reached $1 billion and are expected to almost triple by 2015. Amazon carries almost 1 million titles available for download on its Kindle e-book reader and has found that when it carries both a physical and digital edition of a book, it sells six Kindle books for every ten physical
books. On mobile devices, U.S. consumers downloaded almost 1.6 billion free and paid apps in 2010, generating approximately $1.6 billion in paid app revenue.

Mr. Roger Atkinson testified in favor of the bill. "By creating a fairer and more consistent tax system for digital goods, this legislation will promote and sustain our growing digital economy," he said. Atkinson expressed concern that state and local governments are increasingly imposing taxes on the sale of digital goods and services. He urged Congress to create a national framework to ensure consistency and fairness in the tax code, so that digital goods will not be taxed multiple times by different tax jurisdictions.

Mr. Brubaker, National Tax Policy Advisor with the Washington State Department of Revenue, opposed the bill. Brubaker expressed concern that the bill would create the unfairness it intends to stop and limit local taxation activity. "This Act prohibits or preempts perfectly legitimate state taxing authority," said Mr. Brubaker. He said there is virtually no evidence that states are imposing taxes that discriminate against sales of digital goods and services or that the states are imposing multiple taxation on these items. Brubaker argued that the bill would impede interstate commerce.

For more information, visit: http://judiciary.house.gov.

**JUSTICE: SUPREME COURT RULES CALIFORNIA MUST REDUCE PRISON POPULATION**

The United States Supreme Court on May 23, 2011 ruled that the state of California must reduce the number of prisoners held in state prisons. The Court divided 5-4 in upholding a lower court’s holding that the state’s prison conditions are so unacceptable that it amounts to a violation of the U.S. Constitution’s protection against cruel and unusual punishment. The case was based on the lower court’s finding that the state could not adequately provide medical care or mental illness treatment to its prison population.

Under the ruling, California will have to reduce it prison population by about 32,000 prisoners over the next two years. In joining the Court’s four liberal justices in holding against California, Justice Anthony Kennedy laid out various options that the state could use that would avoid releasing into society so many inmates, at least some of whom are dangerous. The California legislature has already approved a measure proposed by Governor Jerry Brown that would eventually transfer about 40,000 prisoners to local jails.

The case has been wending its way through the courts for almost two decades. During some of that time, at least, California’s prison population has been double the 80,000 prisoner beds for which the state prisons were designed. In his opinion, Justice Kennedy went so far as to include pictures showing prisoners jammed into large rooms and stacked up in triple decker bunk beds.

In his dissent, Justice Samuel A. Alito, joined by Chief Justice John Robert, excoriated the decision, and stated: “...the majority is gambling with the safety of the people of California. Before putting public safety at risk, every reasonable precaution should be taken. The decision below should be reversed, and the case should be remanded for this to be done. I fear that today’s decision, like prior prisoner release orders, will lead to a grim roster of victims. I hope that I am wrong. In a few years, we will see.”

The case is Brown v. Plata. The Court’s opinion can be found at: http://www.supremecourt.gov.