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 and other information that directly impacts the state. Bulletins are published weekly during sessions of Congress, and occasionally during other periods.

**APPROPRIATIONS: INSTITUTE ANALYSIS OF HOUSE FY12 ENERGY & WATER APPROPRIATIONS AVAILABLE**

On June 15, 2011, the House Appropriations Committee approved the fiscal year 2012 Energy and Water Appropriations bill, by a vote of 26-20 (H.R. 2354/H.Rpt. 112-118). The legislation totals $30.6 billion, $5.9 billion below the President's request and $1 billion below last year. The legislation provides the annual funding for the Department of Energy, as well as the Army Corps of Engineers, the Interior Department's Bureau of Reclamation, the Nuclear Regulatory Commission, and various regional water and power authorities.


**APPROPRIATIONS: HOUSE SUBCOMMITTEE REPORTS FY12 COMMERCE, JUSTICE, SCIENCE APPROPRIATIONS**

On July 7, 2011, the House Appropriations Commerce, Justice, Science Subcommittee reported its appropriations for Fiscal Year 2012 to the full Committee by voice vote. The bill funds the Department of Commerce, the Department of Justice, the National Aeronautics and Space Administration (NASA), the National Science Foundation (NSF), and other related agencies. In total, the legislation contains $50.2 billion in funding. This is a reduction of $3.1 billion or 6% below last year’s level, and $7.4 billion or 13% below the President’s request for these programs.

Among the major provisions of the bill are the following:

**Department of Commerce**

The bill contains $7.1 billion for the Commerce Department – a reduction of $464 million or 6% below last year’s level, and $1.7 billion or 19% below the President’s request. This includes funding for the following agencies:

- **Patent and Trademark Office (PTO)** – The bill provides $2.7 billion for the PTO – the full requested level. This funding is equal to the estimated amount of fees to be collected by the PTO during...
fiscal year 2012, and is an increase of $588 million or 28% above last year’s level. The bill also includes language that allows PTO to keep and use any fees in excess of the estimated collected amount, subject to standard Congressional approval, and includes language requiring PTO to report on efforts to reduce the patent application backlog.

**National Oceanic and Atmospheric Administration (NOAA)** – The legislation contains $4.5 billion for NOAA, which is a cut of $103 million below last year’s level and $1 billion below the President’s request. Within this total, National Weather Service operations and systems are fully funded at the requested level, and an increase of $430 million is included for the Joint Polar Satellite System weather satellite program to ensure the continuation of weather data collection.

**Economic Development Administration (EDA)** – The bill includes $258 million in funding for the EDA – $26 million below last year’s level and $67 million below the President’s request. This includes $5 million in grant funding to attract U.S. jobs that have gone to other countries back into the U.S., and $5 million in loan guarantees to help advance innovative manufacturing technologies.

**Department of Justice (DOJ)**

The bill funds DOJ at $26 billion, a decrease of $1 billion below last year’s level and $2.4 billion below the President’s request. Committee documents state that the funding level will provide for the continuation of critical legal and security activities at DOJ, while trimming spending in lower priority and non-essential areas. "For example, administrative activities at DOJ are funded at $72 million – a cut of $46 million below last year and $62 million below the President’s request," according to the Committee.

**Federal Prison System** – The Bureau of Prisons is funded at $6.4 billion, which is an increase of $30 million over last year’s level and $412 million below the request. The funding is intended to help activate completed prisons to ensure safe and adequate facilities to house the nation’s criminal population, according to the Committee.

**Grant Programs** – The bill includes a total of $1.7 billion for various grant programs, which is $1.1 billion (39%) below last year’s level and $1.3 billion below the President's FY12 request. The Committee documents state: "In this time of fiscal crisis, the Committee made the tough choice to fund only the highest priority programs with national reach and broad purposes. Within the total, Violence Against Women programs and Missing and Exploited Children programs are funded at last year’s levels. Byrne Justice Assistance Grants are funded at $357 million – a decrease of $73 million below last year."

Within the grant program funding, $25,730,000 is included for the Southwest Border Prosecutor Initiative to reimburse State, county, parish, tribal, or municipal governments for costs associated with the prosecution of criminal cases declined by local offices of the United States Attorneys; $40,000,000 is included for drug courts; and $15,000,000 for anti-methamphetamine related activities. No funding level is included for the State Criminal Alien Assistance Program (SCAAP).

**National Aeronautics and Space Administration (NASA)**

NASA is funded at $16.8 billion in the bill, which is $1.6 billion below last year’s level and $1.9 billion below the President’s request. This funding includes:
-$3.65 billion for Space Exploration which is $152 million below last year. This includes funding above the request for NASA to meet Congressionally mandated program deadlines for the newly authorized crew vehicle and launch system.
- $4.1 billion for Space Operations which is $1.4 billion below last year’s level. The legislation will continue the closeout of the Space Shuttle program for a savings of $1 billion.
- $4.5 billion for NASA Science programs, which is $431 million below last year’s level. The bill also terminates funding for the James Webb Space Telescope, which is billions of dollars over budget and plagued by poor management, according to the Committee.

National Science Foundation (NSF)
The legislation funds NSF at $6.9 billion, the same as last year’s level and $907 million below the President’s request. Within this funding, NSF’s core research is increased by $43 million to enhance basic research that is critical to innovation and U.S. economic competitiveness, the Committee states.

The full Appropriations Committee is expected to mark up the bill the week of July 11th. For the subcommittee draft text of the legislation, and a summary table comparing the bill with last year’s level and the President’s request please visit: http://appropriations.house.gov.

Appropriations: House FY12 Interior and Environment Appropriations Bill Approved By Subcommittee
The House Appropriations Subcommittee on Interior and Environment marked up its FY12 Appropriations bill on July 7, 2011, reporting the bill to the full Committee by a vote of 8-5. The legislation includes funding for the Department of the Interior, the Environment Protection Agency (EPA), the Forest Service, and various independent and related agencies. The full Appropriations Committee has scheduled its markup of the bill for July 12, 2011.

In total, the bill includes $27.5 billion in spending – a reduction of $2.1 billion below last year’s level and $3.8 billion below the President’s budget request. Overall, this funding level is $106 million below fiscal year 2009 spending levels. The legislation also includes a total cut to climate change programs of $83 million – or 22% – from last year, and decreases land acquisition funding by $239 million – or 79%.

Major provisions in the bill include:
Department of the Interior (DoI)
The Department of the Interior is funded at $9.9 billion, which is $720 million – or 7% – below last year’s level and $1.2 billion below the President’s request. Within this funding, the Committee directs the use of $189 million in emergency suppression carry-over dollars to fully fund the 10-year fire cost average at $763 million, with an additional $92 million – $31 million above last year – for the FLAME fire suppression fund. Also included in DoI:

Bureau of Land Management (BLM) – The bill includes $1 billion for BLM – a decrease of $63 million below last year’s level and a decrease of $60 million below the budget request. The bill does not include a proposal by the President to increase oil and gas fees by $38 million.

U.S. Fish and Wildlife Service (FWS) – The FWS is funded at $1.2 billion in the bill, a cut of $315 million – or 21% – below last year’s level. Within this funding, important programs such as endangered species recovery are prioritized, while land acquisition and grants make up the bulk of the funding reductions, according to Committee documents.

National Park Service (NPS) – The legislation contains $2.5 billion for the NPS, which is $129 million below last year’s level. Operation of the National Park System is funded at $2.2 billion, which is $7 million below FY11 enacted levels. The Committee documents state that the funding will allow all National Parks to remain open and NPS activities to continue through the next year without furloughs or reductions in full time or seasonal employees.
Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) – The legislation contains $154 million for BOEMRE, which is $72 million below last year’s level (due to a transfer of royalty fee management to the Office of the Secretary). The Committee states that the funding is adequate to allow the hiring of new safety and environmental inspectors. The bill also does not include the President’s proposal to increase offshore oil and gas fees by $55 million, which the Committee believes "could harm American businesses during the economic downturn, and put brakes on future domestic energy sources that could help lessen the nation’s dependence on foreign oil."

Environmental Protection Agency (EPA) – The Committee documents state: "The EPA has been funded at unparalleled high levels over the past several years, leading to wasteful and unnecessary spending within the agency, as well as contributing to the agency’s regulatory over-reach, which has a detrimental effect on American businesses and the recovering economy."

The EPA is funded at $7.1 billion in the legislation, which is $1.5 billion – or 18% – below last year’s level, and $1.8 billion – or 20% – below the President’s request. In total, this funding level is below the fiscal year 2006 level by $468 million. The bill also caps EPA’s personnel at the 2010 level (the lowest since 1992), and rescinds certain unobligated grant and contract funding. Some of the other EPA cuts include:

- $967 million cut in the Clean Water and Drinking Water State Revolving Fund. These funds received $6 billion in the “stimulus” legislation, and this cut brings these accounts to the fiscal year 2008 level, according to the Committee;
- $102 million cut in grants for state implementation of environmental programs;
- $46 million cut in requested funding to regulate greenhouse gases;
- $422 million cut in EPA operations/administration; and
- $76 million cut in EPA regulatory programs.

U.S. Forest Service – The bill includes $4.5 billion for the Forest Service, a reduction of $164 million below last year’s level and $412 million below the President’s request. After directing the agency to utilize $200 million in emergency suppression carry-over funds, the bill fully funds Forest Service Wildland Fire Management at $1.8 and includes an additional $290 million for the FLAME fire suppression fund (in addition to the DoI fire management funding).

Other Provisions – Several additional provisions are contained in the legislation. Some of these are:

- A provision clarifying current permitting activities for the Outer Continental Shelf, and setting parameters for EPA approval of exploration permits. A similar legislative provision passed the full House in June;
- A provision instituting a one-year prohibition on the regulation of greenhouse gas emissions from stationary sources;
- A provision providing exemptions from greenhouse gas reporting for certain agricultural activities;
- A provision prohibiting funds for the EPA from expanding storm water discharge requirements.

The bill also includes the House-passed “Reducing Regulatory Burdens Act of 2011,” which was approved by the House in March. The bill clarifies Congressional intent on the dual regulation of pesticides near navigable waterways.

For the Subcommittee's draft text of the legislation and for a table comparing the FY 2012 Interior Appropriations bill with last year’s levels and the President’s request, please visit: [http://appropriations.house.gov](http://appropriations.house.gov).

**Trade: Finance and Ways and Means Committees Hold Mock Markups Of Free Trade Agreements**

On July 7, 2011, the Senate Finance Committee and the House Ways and Means Committee each held "mock" markups of the pending Free Trade Agreements with South Korea, Panama, and Colombia. The
Finance Committee favorably reported each of the agreements -- South Korea by a vote of 14-11; Panama, 22-2; and Colombia, 17-6. The Ways and Means Committee also approved the agreements – by a vote of 22-15 along party lines on the South Korea agreement; 22-15 on Panama; and 22-14 on the Colombia agreement.

The South Korea Agreement received the most attention during the Finance Committee markup, as it contains an extension of Trade Adjustment Assistance provisions. Whether to tie the three FTAs to TAA extension has been a continuing problem with moving the agreements. The White House, Finance Chair Max Baucus (MT) and Ways and Means Chair Dave Camp (MI) have reached an agreement on renewing, with changes, some TAA provisions originally contained in the 2009 economic stimulus package which have since expired. There was no agreement, however, on including the extension in the implementing legislation on the FTAs. Chairman Camp has said he will leave the decision on how to handle the procedural issues to Speaker of the House Boehner (OH). Finance Ranking Member Orrin Hatch (UT) continues to oppose linking TAA to the trade agreements, but an amendment to strike the TAA provisions from the South Korea agreement failed during the Finance markup. As a result, no Committee Republican voted for that agreement on final passage. Conversely, on the House side, every Ways and Means Democrat voted against the South Korea agreement, because their version does not contain TAA. An attempt to attach the program to the Panama agreement failed on a party line vote of 22-15.

During the Senate Finance Committee markup Chairman Baucus left open the possibility of other options to packaging the trade agreements and TAA, "as long as [those options] provide certainty that the bipartisan deal on the assistance program will be enacted in tandem" with the free trade agreements. Ways and Means Chairman Camp also held out hope for a solution, saying at the House markup that he would hold a vote on a separate TAA bill on the same day as the FTAs, if the White House were to send the trade agreements to Congress without the assistance program included.

Under the compromise reached on the substance of the TAA program between the White House and Congress, financial payments to assistance recipients would be reduced from 156 weeks to 117 weeks, plus 13 weeks for those needing extra training. The health coverage tax credit also would be cut from the 80 percent allowed under the stimulus to 72.5 percent and would be eliminated at the end of 2013. Prior to the economic stimulus package, the credit was 65 percent. Also, public sector workers would no longer be eligible for TAA under the compromise. Last year more than 200,000 workers made use of the program at a cost of almost $1 billion.

Under the unique “fast track” legislative procedures governing trade agreements, neither the House nor Senate can officially amend the packages negotiated with the foreign country by the Administration. The mock markups are used to signal to the White House changes that the legislative bodies would like to see before the implementing legislation for the agreements is sent to the Hill for approval. Fast track requires that the House and Senate must each take an up or down vote on a trade agreement, with no amendments, within 90 days of the Administration's submitting the formal agreement.

Many economists have estimated that implementation of the three agreements could increase U.S. trade by $13 billion annually and create tens of thousands of jobs.


**TAXES: HOUSE JUDICIARY EXTENDS PROHIBITIONS ON STATE TAXES ON INTERSTATE COMMERCE**

The House Judiciary Committee approved on July 7, 2011 a bill that would expand the federal prohibition against state taxation of interstate commerce to include taxation of out-of-state transactions involving intangible personal property and services. Under previously enacted federal law, only sales of tangible personal property are protected from state taxation. The bill, H.R. 1439, also prohibits state taxation
of an out-of-state entity that does not have a physical presence in the taxing state. The bill was approved by voice vote.

The bill also sets forth the criteria for: (1) determining that a person has a physical presence in a state, and (2) the computation of the tax liability of affiliated businesses operating in a state.

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

TRADE: DOT REACHES AGREEMENT WITH MEXICO ON CROSS BORDER TRUCKING

The U.S. Department of Transportation announced on July 6, 2011 that it has reached an agreement with Mexico to settle the long-running dispute over the conditions under which Mexico can operate trucks in the United States. The issue dates to the 1990's NAFTA trade agreement, which was to open up U.S. roads to Mexican trucks. Since that time, however, long-haul trucking by Mexican companies has been stalled by concerns over safety and environmental concerns.

Under the new agreement, Mexican trucks operating on U.S. highways must comply with all U.S. motor vehicle safety standards and must be equipped with electronic data recorders, which will allow DOT to monitor the truckers compliance with such things as hours of service requirements. DOT has agreed to purchase and install the electronic boxes in the trucks, in order to ensure Mexican compliance. Some members of the House Transportation and Infrastructure, including Rep. Duncan Hunter (Lakeside), however, have said they will introduce legislation preventing Highway Trust Fund dollars from being used to equip the trucks.

The agreement also requires each trucker to have his driving record evaluated by DOT and submit to drug-testing analyzed in U.S. labs. The truckers must also have some fluency in English and understand U.S. traffic signs.

For its part, Mexico will eliminate the tariffs it has imposed on over $2 billion in U.S. trade because of the U.S. failure to comply with NAFTA. Fifty percent of the tariffs will be lifted right away, with the remainder being eliminated after Mexican trucks are actually approved for U.S. operations.

The new agreement also ensures that Mexico will provide reciprocal authority for U.S. carriers to engage in cross-border long-haul operations into that country.

For more information, go to: http://www.dot.gov/affairs/2011/dot7911a.html.

HEALTH: HOUSE SUBCOMMITTEE DISCUSSES PRESCRIPTION DRUG USER FEE ACT REAUTHORIZATION

On Thursday, July 7, 2011, the House Energy and Commerce Subcommittee on Health held a hearing titled "PDUFA [Prescription Drug User Fee Act] V: Medical Innovation, Jobs and Patients." The PDUFA, originally enacted in 1992 and subsequently renewed, authorized the FDA to collect fees from companies that produce certain human drug and biological products. Those user fees have helped to expedite the drug approval process. The current PDUFA authorization expires September 30, 2012. Witnesses included: Janet Woodcock, Director, Center for Drug Evaluation and Research, Food and Drug Administration; Paul J. Hastings, President and CEO, OncoMed Pharmaceuticals Inc.; Jonathan Leff, Managing Director, Warburg Pincus LLC; Marc Boutin, Executive Vice President and Chief Operating Officer, National Health Council; Ellen Sigal, Chairwoman and Founder, Friends of Cancer Research; and Allan Coukell, Director of Medical Programs, Pew Health Group, Pew Charitable Trusts.

Congress first authorized PDUFA in 1992 and last reauthorized the user fee in the Food and Drug Administration Amendments Act of 2007. Under the user fee authority, FDA collects funds from drug sponsors to help expedite the human drug approval process. In FY 2009, FDA spent a total of $855 million on the review of human drug applications – $512 million of that total came from user fees. As part of its agreement with industry on these fees, FDA committed to attain certain performance goals, including
reviewing 90 percent of priority new human drug applications within 6 months and standard new human
drug applications within 10 months.

The funds collected come from the following three basic types of user fees: application review fees,establishment fees and product fees. Under the application review fee, drug manufacturers pay fees for FDA’s review of new or supplemental drug approval applications and biologic license applications. For FY 2011, the fees are $1,542,000 for each application requiring clinical data, $771,000 for applications not requiring clinical data and $771,000 for supplements requiring clinical data. Another user fee is the establishment fee under which a manufacturer must pay an annual fee for each manufacturing establishment. This fee is just under $500,000 for each establishment. The third fee is the product fee. Under this fee, the manufacturer must pay an annual fee of approximately $87,000 for certain products.

Following the process prescribed by statute, FDA and industry recently negotiated an agreement regarding the size and scope of the user fee for FY 2013-2017. On September 1, 2011, FDA will publish the details of the agreement recommendations on its website. A public meeting on the recommendations will follow in October 2011. By January 15, 2012, FDA must send its final recommendations to the House Energy and Commerce Committee and the Senate Health, Education, Labor & Pensions Committee as required by statute.

The hearing focused on issues that the Committee would be considering in reauthorizing PDUFA. Ms. Woodcock testified that PDUFA has produced significant benefits for public health, providing patients faster access to over 1,500 new drugs and biologics since enactment in 1992, including treatments for cancer, infectious diseases, neurological and psychiatric disorders, and cardiovascular diseases. According to researchers at Tufts Center for the Study of Drug Development, the time required for the FDA approval phase of new drug development has been cut by 60 percent since the enactment of PDUFA, from an average of 2.0 years for the approval phase at the start of PDUFA to an average of 1.1 years today. Ms. Woodcock said that in FY 2009, more than half of the meetings FDA held with companies at the early investigational stage and midway through the clinical trial process were with companies that had no approved product on the U.S. market.

“The U.S. biotechnology industry is poised to be a major driver in an innovation-driven economy,” Mr. Hastings testified on behalf of OncoMed Pharmaceuticals. “And while we are currently the global leader in the development of biotechnology treatments and therapies, intense competition from China and India means this is a position we have to fight to keep.” Mr. Hastings then explained the public benefit of medical innovation:

- Medicines can help offset overall medical costs by preventing or delaying the need for other costly services, such as emergency room visits and hospitalizations.
- Medicare ultimately saves $2.06 for every additional dollar it spends on drugs.
- Reducing cancer deaths by 10% would be worth approximately $4 trillion in economic value.
- Medicare spends $91 billion each year caring for individuals suffering from Alzheimer’s disease and delaying the onset of Alzheimer’s by just five years would save $50 billion per year.

For more information and full witness testimony: visit: http://energycommerce.house.gov/.

REPORT: PPIC EXAMINES CALIFORNIA CONGRESSIONAL REDISTRICTING

On July 6, 2011, the Public Policy Institute of California (PPIC) released an analysis of California’s proposed congressional districts. For the first time, district lines were drawn by an independent citizens commission established by California voters. The PPIC analysis finds that, at this stage, the commission has created districts that are more competitive than in the past. After every new census, California is legally required to adjust its district boundaries to make them equal in population and to meet certain requirements for minority representation under the Federal Voting Rights Act. Until recently, the state legislature has had primary initial responsibility for every redistricting. Seven
seats have changed partisan control in the last four general election cycles, despite high turnover nationally in several of those years.

California voters passed Propositions 11 in 2008 and 20 in 2010, placing responsibility for drawing districts in the hands of an independent citizens commission. The citizens were chosen through a complex process designed to encourage impartiality and independence from the political establishment. The commission has been working since December 2010 to fulfill its mandate and has just released a set of draft plans. According to the PPIC report, the commission's draft plans provide greater competition within districts.

For more information, visit: http://www.ppic.org.

**REPORT: COVERAGE OPTIONS REVIEWED UNDER HEALTH REFORM FOR LOW-INCOME CALIFORNIANS**

On June 5, 2011, the California HealthCare Foundation released a report titled, *State of California Financial Feasibility of a Basic Health Program*. According to the report, in 2014, the Affordable Care Act (ACA) will significantly expand coverage options for uninsured, low-income Californians. The California HealthCare Foundation reports that people with incomes above 138% of the federal poverty level (about $11,000 for an individual) earn too much to qualify for Medi-Cal. Instead, the federal law provides tax credits to help them afford commercial coverage through the California Health Benefit Exchange, the report says. It also offers states an alternative option: to create a basic health program for adults up to 200% of the federal poverty level, about $22,000 for an individual.

Two new California HealthCare Foundation supported reports present policy approaches for extending coverage and maintaining continuity of care for low-income Californians.

The first, by Mercer, addresses the financial impact that the basic health program option would have on California's general fund if it were implemented at existing Medi-Cal managed care payment rates. It finds California may be able to implement a basic health plan at no cost to the general fund (that is, entirely funded by federal subsidies). Mercer notes that these estimates are speculative as so many provisions of the ACA and basic health program are yet to be determined.

The second, by the Institute for Health Policy Solutions, examines policy design options to preserve continuity of care when people's incomes change. It includes a brief assessment of the basic health plan and potential fiscal risks that cannot yet be quantified. Since provider networks in Medi-Cal and private-market health plans are often very different, those whose incomes drop below (or rise above) 138% of the federal poverty level could experience disruptions in care. To improve continuity of care, the authors propose offering Medi-Cal plans, under specified conditions, through the Exchange.

To read the reports online, visit: [www.chcf.org](http://www.chcf.org).

**BRIEFING: INSTITUTE TO HOST BRIEFING ON SANTA ANA SUCKER CRITICAL HABITAT ISSUE**

On Monday, July 11, 2011, the California Institute will host a Capitol Hill Lunch Briefing on the *Status of the Santa Ana Sucker Critical Habitat Issue*. This event will take place from Noon to 1:00 P.M. in Room B-369 Rayburn House Office Building, in Washington.

The briefing is sponsored by the Santa Ana Sucker Task Force and the San Gabriel Valley Water Association. Robert Martin of the East Valley Water District, San Bernardino, will present on behalf of the Santa Ana Sucker Task Force and Carol Williams on behalf of the San Gabriel Valley Water Association. They will provide an update on the impact of the Santa Ana Sucker Critical Habitat designation on the Santa Ana and San Gabriel Rivers including water supply, economic development, and an increased dependence on water supply from the California Delta.

The Santa Ana Sucker Task Force is a collaborative group of 12 cities, water districts, and flood control districts in the Inland Empire serving the water supply and flood control needs of over 1 million
people. The San Gabriel Valley Water Association represents almost 50 cities, public water districts, public utilities, mutual water companies, and private and industrial producers also serving a population of over 1 million.

For assessing compliance with Congressional gift ban rules, note that the California Institute is a 501(c)(3) charitable nonprofit organization that employs no lobbyists, and we anticipate this will be a widely attended event.

To attend, please RSVP to the California Institute at 202-785-5456 or sullivan@calinst.org.