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 PASSES “MINIBUS;” SENATE TO ACT SOON

The House passed the conference report on the Fiscal Year 2012 Agriculture, Commerce/Justice/Science (CJS), and Transportation/Housing and Urban Development (THUD) Appropriations bills – also known as the “Minibus” (H.R. 2112/House Report 112-284) – on November 17, 2011, by a vote of 298-121. The Senate is expected to clear the bill for the President’s signature by the end of the week.

The package also contains a Continuing Resolution (CR) to avoid a government shutdown and continue federal operations until December 16, 2011 – or until Congress completes the remaining nine FY 2012 Appropriations bills. The CR is a “clean” extension and includes no new funding provisions. The current CR is set to expire at midnight Friday, November 18th.

The Conference Report upholds the overall regular (base) discretionary level of $1.043 trillion as agreed to in the Budget Control Act (BCA). The legislation also includes $2.3 billion disaster relief funding, which falls under the “disaster designation” cap set by the BCA.

A brief summary of the major funding activities in the bill is set out below. For a detailed summary of the bill, go to:

For a summary graph of funding, go to:

For the conference report on the bill, go to:
http://thomas.loc.gov/cgi-bin/cpquery/R?cp112:FLD010:@1%28hr284%29

AGRICULTURE

The Agriculture agencies and programs will receive a total of $136.6 billion in both discretionary and mandatory funding, a reduction of $4.6 billion from the President’s request based on
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- San Bernardino Valley MWD
- University of Southern California

DEVELOPMENT (THUD)

The THUD section of the Conference report includes a base total of $55.6 billion, an increase of $183 million above last year’s level, and a decrease of $19.4 billion below the President’s request.

**Transportation** – The conference agreement includes $17.8 billion for the Department of Transportation for fiscal year 2012, which is $4.1 billion above last year’s level and $14.7 billion below the President’s request.

**Housing and Urban Development (HUD)** – The legislation includes a total of $37.3 billion for the Department of Housing and Urban Development, a decrease of $3.8 billion below last year’s level and $4.7 billion below the President’s request.

INTELLECTUAL PROPERTY: HOUSE JUDICIARY CONSIDERS STOP PIRACY ACT

The House Judiciary Committee held a hearing on November 16, 2011 on H.R. 3261, the Stop Online Piracy Act (SOPA). The bill was introduced by Judiciary Chair Lamar Smith (TX), Ranking Member John Conyers, Intellectual Property Subcommittee Chairman Bob Goodlatte (VA) and Rep. Howard Berman (North Hollywood).

The bill would authorize the Attorney General to seek injunctive relief against “rogue” websites – foreign websites trafficking in counterfeit goods and services. It would also provide intellectual
property rights holders with a process to seek limited injunctive relief against infringing websites. It
has pitted two of California’s biggest industries – entertainment and information technology – against
each other. The entertainment industry, led by the Motion Picture Association of America, argues that
SOPA builds on the 1998 Digital Millenium Copyright Act (DMCA) and provides a necessary
enforcement tool to halt piracy, which costs the industry $135 billion annually, as well as thousands of
jobs. Several info tech companies, joined by telecommunications and public interest groups, argue,
however, that the bill is too broad and will undermine the limited liability given internet service
providers under the DMCA, and will end up harming consumers and businesses with legitimate
websites.

Witnesses at the hearing were: Maria Pallante, Register of Copyrights, U.S. Library of Congress;
John Clark, Chief Security Officer and VP of Global Security, Pfizer; Michael O’Leary, Senior
Executive Vice President, Global Policy and External Affairs, MPAA; Linda Kirkpatrick, Group Head
Customer Performance Integrity, MasterCard; Katherine Oyama, Policy Counsel, Google; and Paul
Almeida, President, Dept. of Professional Employees, AFL-CIO.

In her testimony, Ms. Pallante stated: “It is my view that if Congress does not continue to
provide serious responses to online piracy, the U.S. copyright system will ultimately fail. The premise
of copyright law is that the author of a creative work owns and can license to others certain exclusive
rights – a premise that has served the nation well since 1790. Congress has repeatedly acted to improve
enforcement provisions in copyright law over the years, including in the online environment. SOPA is
the next step in ensuring that our law keeps pace with infringers.”

All of the other witnesses, with the exception of Ms. Oyama of Google, also fully supported the
bill. During the question and answer period, Rep. Zoe Lofgren (San Jose) noted she was bothered that
only one opposition witness – Google – was invited to testify. She argued that a technical expert, at
least, should be called to discuss the complex technical issues raised by the bill’s enforcement
provisions.

In his remarks, Rep. Berman opined that “the rhetoric on this bill is over the top,” and argued
that Google should provide the Committee with constructive alternatives that could resolve its
objections.

During the question and answer period, Rep. Darrell Issa (Vista) said he would introduce a bill
to give the International Trade Commission jurisdiction over online piracy, noting that it already has an
effective and prompt injunctive relief process in place to deal with pirated imports of patented goods.

Some of the other issues raised at the hearing included:
- where to draw the line on the constitutional protection afforded a site that engages in both legal
and illegal activity;
- whether, and under what circumstances, software should be considered illegal if it has both
legitimate and illegitimate functions;
- whether a way of choking off the sites’ revenue sources – payments and advertisements –
could be implemented that would effectively close down illegal sites without causing collateral damage
to legitimate parties; and
- what standard to use to determine that a site’s primary purpose is illegitimate and thus subject
to being shut down.

For the testimony of the witnesses, go to:
http://judiciary.house.gov/hearings/hear_11162011.html. For additional information on the bill, go to:
**Borders Security: House Subcommittee Explores DHS Use of DoD Technology at the Border**

On November 15, 2011, the House Homeland Security Subcommittee on Border and Maritime Security held a hearing titled *Protecting the Homeland: How Can DHS Use DoD Technology to Secure the Border?*.

Witnesses included: The Honorable Paul N. Stockton, Assistant Secretary of Defense for Homeland Defense and America’s Security Affairs, Office of Undersecretary of Defense for Policy, DoD; Mr. Mark Borkowski, Assistant Commissioner, Office of Technology Innovation and Acquisition, U.S. Customs and Border Protection, DHS; Dr. Adam Cox, Deputy Director (Acting), Homeland Security Advanced Research Projects Agency, DHS; and Mr. Michael Tangora, Deputy Assistant Commandant & Director of Acquisition Services, United States Coast Guard, DHS.

According to Subcommittee Chair Candice Miller (MI), the hearing was to focus on “a historic opportunity” to expand the use of DoD off-the-shelf technology along the border, following the successes of Predator B Unmanned Aerial System currently used at both the northern and southern borders. She suggested that the borders can be more effectively secured by enabling DHS to “forage” and leverage investments already made by the government in personnel, research and development, and equipment.

In order to enable this, Chairman Miller asked if there was a “one stop shop” for DoD partners, including DHS, to seek equipment from DoD. Assistant Secretary Stockton responded that DoD’s Domestic Preparedness Support Initiative serves this function, seeking out the needs of partners and matching those needs to the excess equipment identified within DoD.

Mr. Stockton testified that the Domestic Preparedness Support Initiative has five functions: acquisition programs; excess property programs; equipment loan-lease programs; expertise sharing; and the leveraging of dual-use technologies developed by DoD. These functions enable other federal, state, and local agencies to acquire DoD equipment through purchase, donation, and loans in exchange for feedback on field applicability. In addition to equipment, the initiative includes two-way sharing of best practices and training for application of DoD equipment by other partners.

Mr. Borkowski, in a joint statement with Mr. Benda and Mr. Tangora, testified on the extent of the DHS’s ongoing collaboration with DoD and particularly the role U.S. Customs and Border Protection’s (CBP), the Science and Technology Directorate (S&T) and the U.S. Coast Guard (USCG) have played in those cooperative efforts. He said that although there are further opportunities to refine its partnership with DoD, the four components of the interaction (Joint Development and Demonstration, Test Support, Deployed Systems, and Joint Operations) have resulted in longstanding partnerships that enhance the approach to the “complexity and shared interests of the northern, southern, and coastal borders.”

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

**Health: Senate HELP Committee Holds Hearing on Medical Devices**

The Senate Health, Education, Labor, and Pensions (HELP) Committee held a hearing titled *Medical Devices: Protecting Patients and Promoting Innovation* on Tuesday, November 15, 2011.

Witnesses were included Jeffrey Shuren, M.D., J.D., Director of the Center for Devices and Radiological Health, Food and Drug Administration (FDA); Mr. Ralph Hall, Counsel, Baker & Daniels and Professor of Practice, University of Minnesota; Mr. David R. Challoner, M.D., Vice President (Emeritus) of Health Affairs, University of Florida and Chair, IOM Committee on the Public Health.
Effectiveness of the FDA 510(k) Clearance Process, Gainesville, FL; and Mr. Gregory Curfman, M.D., Executive Editor, New England Journal of Medicine, Boston, MA.

Dr. Shuren testified on the impact of regulation on device innovation, saying that in terms of time to market, the U.S. is on par with other countries in low-risk devices, but slower with high-risk devices. In describing the FDA's new approach, called Smart Regulation, Dr. Shuren stated that it was meant to address the premarket programs' unpredictability and detailed the January 2011 release of 25 action items to address this and other shortcomings. These action items were developed with "extensive" input from stakeholders in order to create a "culture change" in regulation. Dr. Shuren testified that this transition will require a seamless reauthorization of the Medical Device User Fee and Modernization Act (MDUFA II) which is set to expire in September 2012.

Mr. Hall testified on how the medical device regulatory system assesses product safety and effectiveness, including the safety of 510(k) products. He stated that "very few 510(k) medical device submissions – less than 0.5% – become the subject of a Class I safety recall" and "that FDA has a very positive safety record in its 510(k) clearance decisions," clearing only "products with a reasonable assurance of safety and effectiveness."

Dr. Challoner testified on the findings of the Institute of Medicine's (IOM) Committee on the Public Health Effectiveness of the FDA 510(k) Clearance Process, published as a report titled Medical Devices and the Public's Health: The FDA 510(k) Clearance Process at 35 Years. The Committee found that the "process is not intended to evaluate the safety and effectiveness of medical devices with some exceptions. Furthermore, the 510(k) process cannot be transformed into a premarket evaluation of safety and effectiveness as long as the standard for clearance is substantial equivalence to any previously cleared device." Recommended fixes include implementing an "integrated premarket and postmarket regulatory framework that provides a reasonable assurance of device safety and effectiveness throughout the device lifecycle," strengthening postmarketing surveillance, identifying and mitigating limitations in the FDA's use of its postmarket regulatory authorities, and developing and implementing a program of continuous quality improvement. Dr. Curfman agreed with the IOM's findings, urged the Committee to fully fund the FDA, and urged the FDA to implement the IOM's recommendations.

For more information, please see www.help.senate.gov.

**HEALTH: HOUSE SUBCOMMITTEE REPORTS REPEAL OF CLASS BILL**

On November 15, 2011, the House Energy and Commerce Subcommittee on Health held a markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011, which would repeal the Community Living Assistance Services and Supports Act (CLASS) originally enacted in the 2010 Patient Protection and Affordable Care Act. The bill was reported by voice vote.

The CLASS program, was intended to allow workers to pay into a fund which would provide a $50 daily cash benefit for long-term health care services. Originally, the Congressional Budget Office (CBO) estimated that the program would save $70.2 billion over 10 years.

In his opening statement, however, Subcommittee Chairman Joe Pitts (PA) said that even before CLASS was passed, it was made clear by the "Administration's own actuary, the American Academy of Actuaries, members of Congress from both parties, and outside experts" that it "was not sustainable, and it could not be made so." Full Committee Chairman Fred Upton (MI) also stated that the Department of Health and Human Services (HHS) admitted in October that there "was no viable path forward and therefore, [HHS] was halting further implementation" because it could not put a CLASS program in place that would meet the requirements of being voluntary, self-sustaining, and fiscally sound for 75...
years. Reps. Pitts and Upton made clear that the Committee would take up long term care in the future, once CLASS was successfully repealed.

In the Senate, over forty Senators have signed on to a parallel bill, S. 720 sponsored by Sen. John Thune (SD), which would also repeal CLASS.

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

EDUCATION: HOUSE SUBCOMMITTEE HOLDS HEARING ON EDUCATION RESEARCH PROGRAMS

The House Education and the Workforce Subcommittee on Early Childhood, Elementary and Secondary Education held a hearing on November 16, 2011 titled Education Research: Identifying Effective Programs to Support Student and Teachers. The purpose of the hearing was to give Committee members an opportunity to discuss the proper federal role in supporting education research and hear from education leaders about how this research is utilized at the state and local level. The hearing specifically addressed the Institute of Education Sciences (IES), an independent, federally supported education research arm at the U.S. Department of Education (DOE).

Witnesses included: Dr. Grover J. "Russ" Whitehurst, Senior Fellow & Director of the Brown Center on Education Policy, Brookings Institution; Dr. Caroline Hoxby, Scott and Donya Bommer Professor of Economics, Stanford University; Mr. Steve Fleischman, Deputy Executive Officer, Education Northwest, Portland, OR; and Dr. Eric Smith, Former Florida Commissioner of Education, Florida Department of Education.

Subcommittee Chair Duncan Hunter (Lakeside) called the 2001 Education Sciences Reform Act (ESRA) successful in making "great strides in assessing the quality of K-12 schools, protecting taxpayers' investments, and identifying successful educational practices." But he also stated that "as we look toward reauthorization of this law, we must acknowledge the challenges facing education research and the Institute of Education Sciences," including improving translation of research into classrooms through information sharing and improving the collaborative relationship between the Secretary of Education and the Director of the IES.

Dr. Whitehurst stated that the Office of Management and Budget's (OMB) most recent program assessment of the IES concluded that since its creation it has "transformed the quality and rigor of education research within the DOE," and increased the demand for scientifically based evidence of effectiveness in the education field as a whole. Furthermore, the IES has led to significant findings on the following: teachers; organization, choice, and competition in schools; standards, curriculum, and accountability; the effectiveness of federally-funded education programs; and basic learning and instructional processes.

Dr. Hoxby also testified in support of IES, calling it and the ESRA greatly transformative engines that have moved education research closer to the "successful models used by the National Science Foundation and the National Institutes of Health." She spent the majority of her testimony outlining her three main "'big picture' perspectives on ESRA, IES, and – more broadly – the role of the federal government in education research." In her first perspective, she testified that "vigilance and continued improvements are needed to ESRA" and that the Subcommittee cannot afford to relax standards now. Her second main point was that "the federal government, universities, and philanthropic organizations should share the responsibility for supporting education research," creating a mixed model. Finally, her third point emphasized that data collection and research support functions of the U.S. Department of Education should be the functions on which people with diverse political views can
agree because "truly scientific research in education is probably our best hope for improving the skills of Americans quickly, with the expenditures we are already making."


**NATURAL DISASTERS: HOUSE SUBCOMMITTEE APPROVES BILL TO MITIGATE WIND AND EARTHQUAKE HAZARDS**

On November 15, 2011 the House Science, Space, and Technology Subcommittee on Technology and Innovation passed the Natural Hazards Risk Reduction Act of 2011 by a vote of 10-4.

As passed by the Subcommittee, the bill would reauthorize the National Earthquake Hazards Reduction Program (NEHRP) and the National Windstorm Impact Reduction Program (NWIRP), as well as support development of hazard mitigation and reduction measures to help create disaster-resilient communities. Subcommittee Chairman Ben Quayle (AZ) praised the bill's two programs, calling them successful "targeted federal research and development efforts" that "mitigate the loss of life and property due to wind and earthquake related hazards."

Committee Chair, and the bill’s sponsor, Rep. Judy Biggert's (IL) Manager's Amendment made a number of improvements, including ensuring that the two programs complement each other and do not duplicate efforts. It was unanimously approved. An amendment, offered by Rep. Donna Edwards (MD) was defeated by a vote of 10-3. It would have authorized the two programs for five years (compared to three), increasing the cost of the bill by over $600 million.

For more information, visit: [http://science.house.gov/](http://science.house.gov/).

**HOMELAND SECURITY: HOUSE SUBCOMMITTEE EXAMINES SCIENCE AND TECHNOLOGY IN TIGHT FISCAL TIMES**


Witnesses at the hearing included The Honorable Dr. Tara O'Toole, Under Secretary, Science and Technology Directorate, U.S. Department of Homeland Security and Mr. David C. Maurer, Director, Homeland Security and Justice Issues, U.S. Government Accountability Office.

Subcommittee Chair Dan Lungren (Gold River) stated, "In our Subcommittee's ongoing oversight efforts in these difficult fiscal times, I want to encourage smarter and more cost efficient approaches to develop innovative security technologies. Tough decisions need to be made in our S&T investments. The Science and Technology Directorate is critical in our fight against the ongoing terrorist threat and improving their processes and procedures will strengthen our homeland defenses."

Issues discussed included:
- The broad and varied mission of the Department of Homeland Security's Science and Technology Directorate, and the challenge of balancing risk and maximizing benefit in research and development;
- The focus in the last two years by the Science and Technology Directorate to transition research and development into the field, including commercialization of products through partnership with the private sector;
- Revamped project selection processes to ensure projects meet the needs of the customer, and establishment of Apex projects to enable invention and implementation of solutions to large, complex, high-priority problems;
- Improvements to the oversight functions and internal processes in the Science and Technology Directorate, as well as creation of a draft strategic plan.

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

**Banking: House Subcommittees Consider Communities First Act**


Witnesses included: Mr. Salvatore Marranca, President and Chief Executive Officer, Cattaraugus County Bank on behalf of the Independent Community Bankers Association; Mr. O. William Cheney, President and Chief Executive Officer, Credit Union National Association; Mr. John A. Klebba, President and Chief Executive Officer, Legends Bank, on behalf of the Missouri Bankers Association; Mr. Fred Becker, Jr., President and Chief Executive Officer, National Association of Federal Credit Unions; Mr. Arthur E. Wilmarth, Jr., Professor of Law, George Washington University, Executive Director, Center for Law, Economics and Finance; Mr. Damon Silvers, Director, Policy and Special Counsel, American Federation of Labor and Congress of Industrial Organizations; and Mr. Adam J. Levitin, Professor of Law, Georgetown University Law Center.

Issues discussed included:

- The main tenets of the Act, which largely covers smaller community banks with limited assets. Main tenets include the pursual of short form call report for qualifying banks, exemption from escrow requirements for mortgages held in portfolio, elimination of annual privacy notices when no change in policy has occurred, and reimbursement for mandatory production of records.

- Regulatory relief for credit unions and community banks, including provisions from H.R. 1418, which would allow well-capitalized credit unions with business lending experience, which are at or close to the credit union member business lending cap, to lend in excess of the cap.

- Rural lending practices and agricultural lending practices, including the Act’s Section 302 provision, which would allow smaller banks to more effectively compete with credit unions and the Farm Credit System in lending.

- The effect of community banks on small and medium enterprise lending. Community banks serve as an important source of external credit to these enterprises, which account for about half of the total private sector output, employ a majority of the private sector workforce, and account for about two-thirds of net new jobs and more than a third of all private sector innovations.

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

**Tourism: Senate Subcommittee Explores Economic Impact of Travel Industry**

On November 17, 2011, the Senate Commerce, Space, and Transportation Subcommittee on Competitiveness, Innovation, and Export Promotion held a hearing titled *Tourism in America: Moving Our Economy Forward*.

Witnesses were heard in two panels. Panel 1 included Mr. Ken Hyatt, Deputy Assistant for Services, U.S. Department of Commerce and Mr. David T. Donahue, Deputy Assistant Secretary, Visa Services, U.S. Department of State. Panel 2 included Mr. James P. Evans, Chief Executive Officer, Brand USA, Inc.; Mr. John F. Edman, Director, Explore Minnesota Tourism; Mr. Jonathan Zuk, Vice Chairman, Receptive Services Association of America; and Mr. Jonathan Tisch; Co-chair of the Board, Loews Corporation; Chairman and Chief Executive Officer, Loews Hotels.
The hearing focused on the travel industry’s impact on the U.S. economy, especially the impact of increasing the number of visitors from overseas on revenue and high unemployment. The hearing highlighted the work of the Department of Commerce and the State Department, both of which are actively seeking to “attract and welcome increased international visitors” by working in conjunction with Brand USA, Inc. (formerly known as Corporation for Travel Promotion). The first panel of the hearing discussed how the federal government is implementing the Travel Promotion Act. The second panel featured witnesses from the private sector, who testified on the importance of travel and tourism to the U.S. economy and the relatively new use of Brand USA, Inc. to market the U.S. to prospective international visitors.

For more information, please visit: http://commerce.senate.gov/.

STATE: LAO RELEASES REPORT ON CA FISCAL OUTLOOK

The Legislative Analyst’s Office (LAO) released a report titled The 2012-13 Budget: California’s Fiscal Outlook on November 16, 2011. The Report includes the LAO’s projections of state General Fund revenues and expenditures, according to current law, for the period of 2011-12 through 2016-17. In the 50-page Report, the LAO highlights five major observations for the upcoming budget year and beyond. These observations include insights into the economic recovery, unemployment, “trigger cuts” in FY2011-12, budget shortfall in FY2012-13, and ongoing fiscal deficit issues.

According to the Report, the economy is recovering at a slower than expected pace. The LAO notes that it also made this observation last year, and since then the end of the federal fiscal stimulus and declining government employment have increased limitations on economic growth. Despite “export growth and strength in technology-related service sectors (which are important to California),” the LAO predicts “continuation of this slow, arduous recovery, with California’s unemployment rate remaining above 10 percent through mid-2014 and above 8 percent through the end of 2017.”

The LAO also predicts that in FY2011-12, General Fund revenues and transfers will fall $3.7 billion below the level indicated in the 2011-12 budget that was passed in June of this year. As part of the 2011-12 budget package, a shortfall would result in “trigger cuts” to state programs. It is estimated that the anticipated General Fund shortfall will result in implementation of all “Tier 1” and three-fourths of “Tier 2” cuts, representing total cuts of $2 billion. The Report indicates that the Director of Finance will “determine the actual amount of trigger cuts to K-14 education and several other programs next month based on the higher of this 2011-12 revenue forecast and the forecast of the administration.” Furthermore, the Report “assumes that this amount of trigger cuts is implemented in 2011-12 and maintained throughout the forecast period.” Nevertheless, the Report estimates that the net effect of 2011-12 lower revenues, trigger cuts, and “the expected inability of the state to achieve about $1.2 billion of other budget actions” will result in a $3 billion deficit at the end of 2011-12.

Looking forward to FY2012-13, the Report estimates that California will face a total budget problem of approximately $13 billion. This figure represents $3 billion in deficits from FY 2011-12 and an expected FY2012-13 operating shortfall of $9.8 billion. This operating shortfall will “in part” stem from increasing costs (due in part to the expiration of temporary measures). In fact, in 2012-13, the LAO predicts that General Fund Proposition 98 costs and settle-up payments to schools will rise by $6 billion. The state must also repay the Proposition 1A property tax loan - the $2 billion measure that was used as part of the package to balance the budget in 2009.

The Report does offer some hope in that the operating shortfalls of the General Fund are predicted to gradually decline, despite the fact that “the state faced ongoing budget imbalances of around $20 billion per year” as recently as last year. The LAO forecasts that in 2013-14 and 2014-15, the General Fund’s operating shortfalls will be $8-9 billion per year, with a gradual decline to $5 billion
per year in 2016-17. However, the LAO cautions that the state still faces a large “ongoing, multibillion dollar annual deficit,” even as revenues expand and even assuming no inflationary increases for programs, modest budgets, and continuing trigger cuts and program reductions. Additionally, the LAO’s projections assume that billions of dollars of state obligations remain unpaid through 2017.

Overall, the LAO’s Report does acknowledge that the Governor and the Legislature face “a much smaller budget problem than projected one year ago,” but that “there are few easy options left for balancing California’s budget.” It does note, however, that if California “were to eliminate the state’s ongoing annual budget deficit this year or over the course of the next few years . . . . efforts could finally shift away from short-term budget problems and turn to the serious long-term fiscal issues of the state’s accumulated budgetary obligations and unfunded retirement liabilities.”

For more information, please see: http://www.lao.ca.gov/laoapp/PubDetails.aspx?id=2539.