Appropriations: House Appropriations Committee Approves FY 2013 Transportation/HUD Funding

The House Appropriations Committee reported its Fiscal Year 2013 Transportation, Housing and Urban Development funding bill by voice vote on June 19, 2012. The bill funds the Department of Transportation (DOT), the Department of Housing and Urban Development (HUD), and other related agencies. The bill includes $51.6 billion in discretionary spending, $3.9 billion below the 2012 enacted level and $1.9 billion under the 2013 budget request.

A few highlights of the bill include:
- Funding for highway and transit programs consistent with 2012 enacted levels, contingent upon reauthorization.
- Cuts to Amtrak's operating subsidy ($116 million below 2012). The Committee did not fund the budget request for high speed rail funding. California has been a recipient of federal funding for its high speed rail project. $500 million was approved to fix problems with existing passenger rail lines.
- Full funding for the Federal Aviation Administration (FAA) safety programs, including $1 billion for next generation air traffic control and support for growth in commercial space and unmanned aerial systems.
- Full funding for Section 8 vouchers to serve 2.2 million families, in addition to $75 million for VASH vouchers. The bill also matches the budget request of $8.7 billion for Project Based Rental Assistance.
- CDBG is funded at $3.4 billion and HOME is funded at $1.2 billion.

Few changes were made to the bill during the markup; a total of three amendments were passed. One was an amendment sponsored by Rep. David E. Price (NC), which transfers unobligated and unused MAGLEV highway funding to a railroad crossing safety grant program. The amendment was adopted on a voice vote.

The California Institute will prepare a more detailed report on the bill from a California perspective, which will be available on its website in the near future.

The California Institute wishes to express its gratitude to the following donors for their generous support, without which our work would not be possible.

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For more information on the full Committee's actions, see:

For the draft text of the legislation, please visit:

For the Committee report, please visit:

A P P R O P R I AT I O N S :  H O U S E  C O M M I T T E E  R E P O R T S  F Y  2 0 1 3

A G R I C U L T U R E  A P P R O P R I AT I O N S  B I L L

On June 19, 2012, the House Appropriations Committee gave voice vote approval to the fiscal year 2013 Agriculture Appropriations bill. Included in the bill are funding proposals for government programs and services such as food safety, rural development, animal health, plant health, nutrition programs, and farm services. The legislation includes a total of $19.4 billion in discretionary funding. This number falls $365 million below the enacted level for 2012 and about $1.7 billion below the budget request.

The bill, as passed by the Subcommittee, saw only a few changes before being adopted by the full Appropriations Committee. Six amendments were adopted. These included:

- An amendment sponsored by Rep. Jeff Flake (AZ), which makes individuals or entities with adjusted gross incomes of more than $250,000 ineligible for farm program benefits. The amendment was adopted by voice vote.

- An amendment by Rep. Mike Simpson (ID), which makes changes to Women, Infants, and Children (WIC) nutrition program food packages, allowing white potatoes to be eligible for purchase. The amendment was adopted by voice vote.

- The amendment by Rep. James P. Moran (VA), which mandates that no funding be used for any horse inspection activity necessary to transport and slaughter horses in the U.S. The amendment was adopted by voice vote.

- An amendment by Rep. Mike Simpson (ID) that provides a $1.5 million increase in the Rural Rental Assistance Program, offset by a cut to the Office of the Secretary of Agriculture. The amendment was adopted by voice vote.

The Institute previously published an article on the bill as it was approved by the Subcommittee. For that article, go to: http://www.calinst.org/bul2/b1918.shtml .

For more information on the full Committee mark up, go to:


On June 20, 2012, the House Appropriations Committee approved its FY 2013 funding for the Interior and Environment. The legislation includes funding for the Department of the Interior, the Environmental Protection Agency (EPA), the Forest Service, and various independent and related agencies.
In total, the bill includes $28 billion in funding – a cut of $1.2 billion below last year’s level and $1.7 billion below the President’s budget request.

Highlights of the funding include:

**Department of the Interior (DOI)** – The Department of the Interior is funded at $10.3 billion, which is $57 million – or less than 1% – over last year’s level and $79 million below the President’s request.

**Bureau of Land Management (BLM)** – The bill includes $1 billion for BLM – a cut of $57 million below last year’s level. The legislation does not include a proposal by the President to increase oil and gas fees by $48 million, nor a proposal for a new livestock grazing fee. In addition, the bill includes several provisions regarding livestock grazing issues within the BLM.

**U.S. Fish and Wildlife Service (FWS)** – The FWS is funded at $1.2 billion in the bill, a cut of $317 million – or 21% – below last year’s level. The priorities detailed in the bill call for cutting the Resource Management (operations) account by 15%, and maintaining funding for programs such as invasive species and mitigation fish hatcheries. The bill also cuts several unauthorized FWS programs by up to 50%.

**National Park Service (NPS)** – The legislation contains $2.4 billion for the NPS, which is $134 million – or 5% – below last year’s level. This level includes reductions to the land acquisition account, but provides sufficient funding to ensure every NPS unit will remain operational next year without furloughs or Reductions in Force of full-time and seasonal employees.

**Environmental Protection Agency (EPA)** – The Committee documents state: “The legislation reflects significant efforts to rein in the EPA – an agency that has been rife with governmental overreach, overspending on ineffective and unnecessary programs, and costly and questionable regulations.”

The bill funds the EPA at $7 billion, which is $1.4 billion – or 17% – below last year’s level. In total, EPA funding in the bill is below the fiscal year 1998 level.

The bill continues a cap on EPA’s personnel at the lowest number since 1992, cuts the office of the EPA Administrator by more than 30%, cuts the EPA Congressional Affairs office by 50%, rescinds certain unobligated grant and contract funding, and makes other cuts and reductions to programs within the agency.

The legislation also includes provisions to rein in various EPA actions, including provisions related to the “stream buffer rule,” changes to the definition of “navigable waters” under the Clean Air Act, and “silviculture” regulations.

**U.S. Forest Service** – The bill includes $4.7 billion for the Forest Service, which is $86 million above last year’s level and $169 million below the President’s request. The bill also includes a provision prohibiting the Forest Service or BLM from issuing new closures of public lands to hunting and recreational shooting, except in the case of public safety or extreme weather.

Climate Change Funding – Bill wide, climate change funding is reduced by $101 million – or 29% – from last year’s level.

**Land and Water Conservation Funding** – Bill wide, Land and Water Conservation Fund accounts (land acquisition) are funded at $66 million, which is an 80% cut from the FY 2012 enacted level.

**Wildfire Fighting and Prevention** – In total, the bill funds wildfire fighting and prevention programs at $3.2 billion, which is $6 million above last year’s level. This includes fully funding the 10-year average wildland fire suppression costs for both the DOI and the Forest Service. Total funding for Wildland Fire Management within both DOI and the Forest Service is $2.8 billion, and the total funding for the FLAME program – a reserve fund for fighting large scale fires – is $407 million.

**Payments-in-lieu-of taxes (PILT)** – The bill includes a one-year authorization extension for the mandatory PILT program. This program provides funds for rural local governments to help offset losses in property taxes due to nontaxable federal lands within their areas. The authorization for PILT is set to expire on September 30, 2012. The Committee documents note that without Congressional action, many rural communities will be left with huge budget shortfalls that could impact public safety, education, and other local government responsibilities.
National Ocean Policy – The bill includes a provision prohibiting funds regarding the President’s National Ocean Policy, and requires a report on previous funding for the policy. According to Committee documents, “This Presidential mandate greatly expands government regulatory control over U.S. oceans, potentially killing jobs and damaging the economies of coastal communities.”

The California Institute will prepare a more detailed report on the appropriations from a California perspective which will be available in the near future.

For further information on the bill go to: http://appropriations.house.gov.

Appropriations: Institute Report on Senate Labor/HHS/Education Appropriations Available On Website


Agriculture: Senate Passes Farm Bill

On Thursday, June 21, 2012, the Senate approved the Agriculture Reform, Food and Jobs Act of 2012 (the Farm Bill), S. 3240, by a vote of 64-35, after ending the bill's three-day debate and “vote-a-rama” late Wednesday afternoon. The bill would govern farm and agricultural spending for most related programs from 2013 through the 2017 crop year.

The cost of the bill is approximately $500 billion over that five-year period. The Congressional Budget Office estimates that over the same period, the new farm bill - which cuts several programs, such as direct payments - would save approximately $11.8 billion.

While the Senate considered over 70 amendments, the three days of proceedings were largely bipartisan. Sen. Barbara Boxer offered an amendment that narrowly failed by a vote of 47-48. The amendment would have allowed the Environmental Protection Agency to utilize aircraft to monitor agricultural feedlots' adherence to the Clean Water Act, as long as state authorities were made aware, and as long as air surveillance was deemed cost efficient. The amendments that were approved made little substantive change to the fundamental structure of the bill as it was reported by the Agriculture Committee.

The House will take up its version of the Farm Bill after both chambers return from their weeklong recess for Independence Day. House Agriculture Chairman Frank D. Lucas (OK) said that his committee would begin mark up of its bill on July 11.

For the legislative text and section-by-section overview of the bill, as reported, go to: http://www.ag.senate.gov/issues/farm-bill. A very detailed summary of the bill’s provisions is also available at that link.


The Senate Judiciary Committee on June 20, 2012, held an oversight hearing on the “United States Patent and Trademark Office: Implementation of the Leahy-Smith America Invents Act (AIA) and International Harmonization Efforts.” The Honorable David J. Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, was the only witness.

The Leahy-Smith America Invents Act, which was the product of more than six years of congressional hearings and markups, was signed by the President in September 2011.

In his opening remarks, Committee Chairman Patrick Leahy (VT) said he was “pleased that even before the Act is fully implemented the PTO has focused on reducing the backlog of patent applications.
Over the last two years, the backlog has been reduced roughly 12 percent even as the number of incoming applications has increased. These numbers need to continue to improve, however. There are still over 640,000 applications that have not yet received a first action from the PTO.”

He also noted that the Act did not include everything he would have wanted, and called on the PTO in continuing to implement the Act to incentivize the use of its reexamination processes in order to weed out poor quality patents, and to do more to protect American inventors in overseas markets, with international harmonization as one element of that protection. He stated: “The Leahy-Smith America Invents Act includes a very important grace period protection, which will particularly benefit inventors at universities and startups. We need to encourage other Nations to adopt a similar grace period, without which some American inventors may be unable to seek patent protection abroad.”

Director Kappos detailed the status of the implementation of the AIA. Among other measures, the PTO has initiated more than 10 different rulemakings and hired more than 800 examiners and 40 Administrative Patent Judges. The PTO has also conducted seven road-shows across the country to explain and receive feedback on proposed rules.

He also noted that the USPTO published in February its initial proposed fees for all of the patent services it provides. He stressed that the fee schedule is only an initial proposal, and USPTO has invited feedback and recommendations from the public.

On international harmonization, Kappos stated that passage of the Act “has provided an opportunity to restart long-stalled discussions with our foreign counterparts toward substantive harmonization that will help U.S. businesses succeed in the global business environment.” To this end, the USPTO hosted an “Asia-Pacific Patent Cooperation (APPC) Forum for the 21st Century.” He also detailed the efforts of the “Tegernsee Group,” which is comprised of the heads of the European, Danish, French, German, UK, Japanese and United States patent offices. Patent law experts from these offices are engaged in preparing a comparative analysis of substantive law applied in each jurisdiction, with the intention of identifying and studying issues for convergence, including the grace period.

For further information, go to:
http://www.judiciary.senate.gov/hearings/hearing.cfm?id=d1d944e8c0b3e2a582633afaeb6ba43a

**HEALTH: HOUSE APPROVES AMENDED FDA USER FEE BILL**

By voice vote on June 20, 2012, the House passed S. 3187, the Food and Drug Administration Reform Act, after including changes agreed to by House and Senate negotiators. The Senate is expected to approve the bill, sending it to the President, before the Fourth of July recess. The bill is the culmination of more than a year of bipartisan work and negotiations in the House and Senate, that also included the FDA and private stakeholders.

The legislation reauthorizes various FDA programs for five years, including the Prescription Drug User Fee Act and Medical Device User Fee Act, and authorizes new user fee programs - the Generic Drug User Fee Act and Biosimilars User Fee Act - to facilitate the review and approval of drugs and medical devices. Performance goals and reforms to ensure patients receive quality care and timely access to new therapies are included in the bill, as well as provisions to improve the drug approval process for drugs that treat rare diseases.

Additionally, the Best Pharmaceuticals for Children Act (BPCA) and Pediatric Research Equity Act (PREA) are permanently authorized. They are aimed at incentivizing testing to allow for the safe use of prescription drugs by children.

To address current drug shortages, the legislation requires the FDA to inform the public through a drug shortages list, alleviate shortages by modifying current reporting requirements and expediting the approval of drugs in need, and authorize GAO to conduct a study to examine the causes and make recommendations to prevent a shortage. The bill also provides FDA with greater flexibility to investigate
drug manufacturing facilities overseas to ensure that drugs and ingredients entering the United States are safe.

For further information, go to: http://thomas.loc.gov/cgi-bin/query/D?c112:3:. /temp/~c112PnTSPA::

**RESOURCES: HOUSE SUBCOMMITTEE HOLDS HEARING ON PENDING LEGISLATION**

On Friday, June 8, 2012, the House Natural Resources Subcommittee on National Parks, Forests and Public Lands held a hearing to review pending legislation. Bills discussed at the hearing included: Among the bills addressed was H.R. 3641, introduced by Rep. Sam Farr (Carmel) to establish Pinnacles National Park in the State of California as a unit of the National Park System.

Rep. Farr testified in support of his bill. Also testifying on H.R. 3641 were: Victor Knox, Associate Director for Park Planning, Facilities and Lands, National Park Service; and Jerry Muenzer, Supervisor, District Four, San Benito County Board of Supervisors. Mr. Knox expressed the Department of the Interior's support for HR 3641, with amendments. He said that the bill would "redesignate Pinnacles National Monument as Pinnacles National Park, expand existing park wilderness, and rename the wilderness in honor of an early park proponent" as well as allow the area to continue to serve as an import habitat for the endangered California condor. Suggested amendments included one "to provide consistency between the referenced maps and the legislation" and another to "provide language typically used for wilderness designation bills for the submission and filing of the wilderness map and legal description." Mr. Muenzer expressed much of the same sentiment as Mr. Knox, while also testifying that the bill has strong support in his home county, as well as the neighboring county of Monterey.

For more information:

**SCIENCE: HOUSE SUBCOMMITTEE HOLDS HEARING ON THE BAYH-DOLE ACT**

The House Science, Space and Technology Subcommittee on Technology and Innovation held a hearing on Tuesday, June 19, 2013. The hearing was titled *Best Practices in Transforming Research into Innovation: Creative Approaches to the Bayh-Dole Act.*

Witnesses included: Dr. Todd T. Sherer, President, The Association of University Technology Managers; Ms. Catherine Innes, Director, Office of Technology Development, University of North Carolina at Chapel Hill; Mr. Ken Nisbet, Executive Director, University of Michigan Technology Transfer; and, Mr. Robert Rosenbaum, President and Executive Director, Maryland Technology Development Corporation.

Issues discussed included:
- The Act, which governs how the government funds and supports the transfer of university research and small business research inventions to the commercial sphere.
- The Act's unique structure, which allows the inventor or researcher (or their respective institution) to retain the intellectual property rights to inventions developed with federal funding.
- The process by which research progresses from the research phase to public use (i.e., in the case of biomedical inventions, from the lab bench to commercial partners, who then take inventions through development programs that require extensive capital and complicated regulatory processes, then to the patients).
- The lack of commercialization of government-owned patents before 1980 (fewer than 5 percent went to production).
- The increase in technology transfer offices (TTOs) at universities. Just 23 universities had such offices before the Act passed; today, all major research universities in the U.S. have offices.
- The Act's impact on jobs and business, including directly contributing to the creation of about 5,000 companies related to university research since 1980, and in 2010 the creation of about 657 new products. The Act has also spurred new industries, such as the biotechnology industry, which enjoys an
employment impact of 8 million jobs, and for which 76 percent of its companies have a license from a university.

- Breakthroughs attributed to projects completed under the Act, including: HIV medications, synthetic penicillin, cisplatin and carboplatin (cancer therapeutics), human growth hormones, treatments for Crohn's disease, and the Hepatitis B, HPV, and Avian Flu vaccines.

- Improvements that could be made to technology transfer and the Act, including changes made at the University of Michigan. These changes include investments made within the TTO and the university to improve operational effectiveness, using early-stage development funding to further develop and reduce the technical and market risk of our early stage innovations, and enhancing our access to talent to more fully understand market needs and speed the deployment of our technologies and formation of our start-ups.


**Technology: House Subcommittee Holds Hearing on Innovations in Mobile and Online Space**

The House Judiciary Subcommittee on Intellectual Property, Competition and the Internet held a hearing titled New Technologies and Innovations in the Mobile and Online space, and the Implications for Public Policy.

Witnesses included: Mr. Scott Shipman, Associate General Counsel, Global Privacy Leader, eBay Inc.; Mr. Morgan Reed, Executive Director, Association for Competitive Technology; Mr. Chris Babel, Chief Executive Officer, TRUSTe; and Professor James Grimmelmann, Associate Professor of Law, New York Law School.

Subcommittee Chair Lamar Smith (TX) said the hearing would focus on privacy breaches, over-collection of privacy data, and how "the internet economy runs on data" and what that means for public policy. Calling the interaction between consumer and Internet services "an implicit bargain … that includes an exchange of information or data, instead of cash," he said that privacy is a top concern.

Mr. Shipman echoed the Chairman's concerns, and spent his testimony explaining what eBay is doing to "enable commerce and engender trust through the use of innovative consumer privacy protections." He explained some of the company's most successful and innovative privacy programs, including but not limited to AdChoice, which "allows eBay users to choose whether to receive behaviorally targeted third party advertising on eBay and on the websites of our advertising partners," and PayPal, its secure payment service.

Other issues discussed included:
- The app marketplace and how it is still in a very early growth stage and is thus continually evolving.
- How the app industry is working to expand into new fields, including mobile health, and into new geographical areas of the globe.
- Public policy challenges that the app industry faces, including inadequate intellectual property (IP) protections abroad, regulatory clarity for new markets, and proper consumer data privacy protection.
- A consumer's perspective on privacy, including the fact that 90 percent of U.S. adults worry about their privacy online and 85 percent of consumers want to be able to opt-in or -out of targeted mobile ads.
- New privacy challenges, including those brought on by the industry shift to mobile devices and the cloud, the growth of online behavioral advertising, and changing global standards, particularly given the underlying reality that data is easier to collect, cheaper to store and faster to analyze (often referred to as "Big Data") than ever before.
- How and why some industry experts believe that self-regulation has been successful in protecting consumers online.

For more information: http://judiciary.house.gov/hearings/Hearings%202012/hear_06192012.html.

SPACE: SENATE SUBCOMMITTEE HOLDS HEARING ON COMMERCIALIZATION OF SPACE

The Senate Commerce, Science, and Transportation Subcommittee on Science and Space held a hearing on the Risks, Opportunities, and Oversight of Commercial Space on June 20, 2012. According to the Subcommittee, the hearing examined the commercial space industry, its role in the nation's space program, and its contribution to U.S. global competitiveness. The hearing also reviewed progress of commercial efforts to transport cargo and crew to the International Space Station, which are key components of the overall approach to U.S. human space flight established by the NASA Authorization Act of 2010.

Witnesses included: Mr. William H. Gerstenmaier, Associate Administrator, Human Exploration and Operations, National Aeronautics and Space Administration (NASA); Col. Pamela A. Melroy USAF (ret.), Senior Technical Advisor, Office of Commercial Space Transportation, Federal Aviation Administration (FAA); Dr. Gerald L. Dillingham, Director of Civil Aviation Issues, U.S. Government Accountability Office (GAO); Mr. Michael N. Gold, Director, D.C. Operations and Business Growth, Bigelow Aerospace, LLC; and, Capt. Michael Lopez-Alegria USN (ret.), President, Commercial Spaceflight Federation.

Issues discussed at the hearing included:

- NASA's historical and current interaction with the commercial space flight industry, including the fact that NASA is "committed to launching our crew from U.S. soil on spacecraft built by American companies as soon as possible."

- The recent success of the Space Exploration Technologies, Inc. (SpaceX) Dragon Cargo Capsule, the first civilian commercial cargo vessel to dock with the International Space Station (ISS).

- The recent cooperative agreement that NASA completed with the Center for the Advancement of Science in Space (CASIS), which signs over management duties of the part of the ISS that functions as a U.S. National Lab to CASIS (and what this means for US research and development conducted on the ISS).

- NASA's partnerships with SpaceX and Orbital Sciences Corporation (Orbital) for Commercial Orbital Transportation Services.

- The development of the Commercial Crew Program to incentivize companies to build and operate safe, reliable, and cost-effective commercial human space transportation systems.

- NASA's oversight and contract awarding processes, its long term plan, and its coordination with the FAA in regards to commercial flight crew transportation.

- The FAA's efforts to grow their regulatory infrastructure, including public safety elements, with the growth of the commercial space industry.

- The FAA's involvement in risk structure for private space companies, as part of its licensing and permitting mission, allows the FAA to administer financial responsibility and risk-sharing requirements for commercial launch and reentry operators.

- The importance of extending the "Indemnification" provision for five years beyond its current statutory expiration date of December 31, 2012. This support is in line with the 2011 Commercial Space Transportation Advisory Committee (COMSTAC) finding that extension of indemnification past December of 2012 would be "critical to the viability of the commercial launch industry in the US."

- Industry trends, government challenges, and international competitiveness issues within the commercial space industry, according to the GAO.

For more information: http://commerce.senate.gov.
**RESOURCES: HOUSE COMMITTEE EXAMINES ENDANGERED SPECIES ACT IMPACTS**

On June 19, 2012, the House Natural Resources Committee held a hearing entitled: “Taxpayer-Funded Litigation: Benefitting Lawyers and Harming Species, Jobs and Schools,” aimed at examining the impacts of the Endangered Species Act. Witnesses included: The Honorable Jeff Sessions, U.S. Senator, Alabama; The Honorable Cynthia Lummis, Member, House of Representatives, Wyoming (At-Large); The Honorable Jerry Patterson, Commissioner, Texas General Land Office, Austin, Texas; and John Stokes, Facilities Development Project Coordinator, San Diego Unified School District, San Diego, California.

Mr. Stokes gave a very detailed history of the Salk Elementary School in the San Diego USD beginning with the identification of the San Diego Fairy Shrimp during a 1997 environmental assessment of the site. For instance, concerns raised by the US Fish and Wildlife Service (Service) by 2005 regarding the USD’s onsite mitigation; negotiations between the USD and the City of San Diego to develop a mitigation plan at an open space site; a 2006 injunction that ultimately caused a four year delay, despite the fact that the Salk site was mistakenly included in the lawsuit. Only this year has the USD been able to complete the final Habitat Conservation Plan (HCP) and Environmental Assessment (EA) process. It now expects them to be published in the Federal Register for public review sometime within the next 30 days. Mr. Stokes concluded his testimony by saying: “It is hoped that necessary permits will be issued to the [USD] by the end of September, 2012 and that actual construction can begin by no later than mid 2013.”

For the testimony of all the witnesses, go to: [http://resources.house.gov](http://resources.house.gov).