BUDGET: SENATE APPROVES BUDGET DEAL; ADJOURNS FOR THE YEAR

The Senate on December 18, 2013 passed the two year budget agreement, H.J. Res. 59, approved by the House last week. The vote on final passage was 64-36. The President is expected to sign the agreement immediately. The Senate had easily invoked cloture on the bill on December 17th with a vote of 67-33, clearing any hurdle to passage.

Total funding for FY 2014 is set at $1.012 trillion, and FY 15 funding will be $1.014 trillion. The current continuing resolution set overall funding at $986 billion because of mandatory sequestration cuts. Under the new deal, $62 billion in sequestration cuts are being eliminated, and $23 billion more will be applied to deficit reduction. The additional funding is raised through a series of measures, such as raising airline travel fees, changing pension contribution levels for new federal employees, and trimming cost of living adjustments for military retirees. Several Senators are opposed to the cuts in military pensions, which would not take effect immediately. Sen. Patty Murray (WA) Chair of the Senate Budget Committee has indicated the Senate may revisit the issue next year and try to find another way of raising revenue, sparing the military pensions.

The bill also includes a three-month extension of the sustainable growth rate (SGR), the so-called “doc fix,” to prevent cuts in the payments made to Medicare providers set to take effect January 1.

Legislation, however, to extend federal emergency unemployment benefits was not included in the bill. Those benefits are set to expire December 28th. Governor Jerry Brown sent a letter to House and Senate leaders calling for extension of the benefits. “When these benefits were first authorized, the national unemployment rate was only 5.6 percent. The national rate is still 7 percent and 36 states, including California, have even higher unemployment rates than when the extension benefits were originally authorized." He said that more than 214,000 Californians are currently getting the federal extension benefits and that they "will suffer irreparable harm if these federal benefits are allowed to expire." Senate Majority Leader Harry Reid has vowed to take up an extension early in the new year.
The House voted overwhelmingly, 332-94, to pass the bill on December 12th after a deal was negotiated by House Budget Chairman Paul Ryan (WI) and Senate Budget Chairwoman Patty Murray (WA).

Final passage opens the way for House and Senate appropriators to divvy up the $1 trillion plus in discretionary spending among the individual appropriations accounts and pass an omnibus FY14 funding bill by January 15, 2014 when the current continuing resolution (PL 113-46) expires. The new budget will allow about $45 billion more in federal spending across the agencies.

For more information, go to: www.budget.senate.gov and http://www.budget.senate.gov/democratic/index.cfm/files/serve?File_id=9d3728aa-cf0a-4ddf-bfd4-d02ed4de570f

The Senate will reconvene on January 6, 2014, and the House on January 7th.

**DEFENSE: SENATE EXPECTED TO PASS DEFENSE AUTHORIZATION BEFORE ADJOURNMENT**

The Senate was working through 30 hours of debate on the Department of Defense Authorization bill, H.R. 3304, on December 19, 2013. It was expected to end debate and approve the bill before adjourning for the year at the end of the week. The House passed its DoD bill by a vote of 350-69 before adjourning for the holidays last week. On Wednesday, the Senate invoked cloture on the bill by a vote of 71-29, setting the time limits for debate and final passage.

The FY 2014 bill authorizes $607 billion for defense spending, including $526.8 billion for military bases and $80.7 billion for the war in Afghanistan. National security programs under the Department of Energy are funded at $17.6 billion. Total funding is about $3.1 billion less than FY 13 funding.

The bill also contains provisions regarding the handling of sexual assault. Although it does not take these cases out of the chain of command, it does not allow commanders to overturn guilty verdicts, and convicted military personnel are required to be discharged.

H.R. 3304 also prohibits detainees at Guantanamo from being transferred to the United States.

For more information on the bill, go to: http://www.armed-services.senate.gov/fy-2014-ndaa

**INTELLECTUAL PROPERTY: SENATE JUDICIARY EXAMINES PATENT ABUSE AND SMALL BUSINESSES**

The Senate Judiciary Committee held a hearing on December 17, 2013 entitled: “Protecting Small Businesses and Promoting Innovation by Limiting Patent Troll Abuse.”

Witnesses were: John J. Dwyer, Jr., President & CEO, New England Federal Credit Union, Williston, VT; Michael Makin, President & CEO, Printing Industries of America, Sewickley, PA; Dana Rao, Vice President and Associate General Counsel for Intellectual Property Litigation, Adobe Systems, Inc., San Jose, CA; Philip S. Johnson, Senior Vice President and Chief Intellectual Property Counsel, Johnson & Johnson Coalition for 21st Century Patent Reform, New Brunswick, NJ; Steve Bossone, Ph.D., Vice President, Intellectual Property, Alnylam Pharmaceuticals, Cambridge, MA; Harry A. Wolin, Senior Vice President, General Counsel and Secretary, AMD, Austin, TX; and The

Mr. Rao pointed out several examples of how the current patent system makes it “quite easy” for predatory litigants to exploit. Among other things, he said, the current fee-shifting standard is too high to provide any real disincentive for bad actors to bring questionable patent lawsuits. Also, the pleading standard is lower than many other areas of the law, making it easy to file a vague complaint without performing any due diligence. The minimal information required in the current pleading standard allows broad discovery on any product a defendant sells, which drives up the cost of defense for the defendant, and courts often do not decide dispositive motions or hearings early in a patent case, thus lengthening the time a defendant must pay legal fees before being able to prove that the asserted patent has no merit. Finally, patent trolls have now chosen to target end users, who have the least knowledge of the infringing technology.

He urged that the final legislative package to reform the system should include the following elements:
- Strong fee shifting to address the imbalance in financial incentives that encourage opportunists to adopt predatory patent litigation as a business model;
- Bonding to render the tactic of setting up judgment-proof shell companies ineffective.
- Customer stays to protect end users from being sued directly and improve judicial economy by reducing the number of cases in the court system.
- Heightened pleading to require patent plaintiffs to perform some minimal amount of pre-suit investigation before launching a patent suit, so fewer meritless cases are initiated;
- Discovery cost shifting and sequencing to control the cost of discovery in patent cases, which trolls can now use to exert pressure on defendants; and
- Demand letter reform to deprive patent trolls of another tool in their chest: the use of vague and misleading threats to convince businesses to pay a settlement before being sued.

Mr. Wolin also urged the committee to reform the current system, stating that years of worsening abuse have shown that the courts do not have the tools necessary to deal with the problems. He described cases in which AMD was forced to spend millions of dollars to defend against obviously specious claims, and settling with the plaintiff only to save millions of dollars more in costs.

In addition to the reforms contained in Chairman Patrick Leahy’s (VT) and Mike Lee’s (UT) bill, he also called on the committee to include the provisions advocated by Sens. John Cornyn (TX) and Charles Grassley (IA) regarding heightened pleading requirements, discovery reforms, and attorney-fee shifting, noting that versions of those provisions are included in the House bill, H.R. 3309.

For more information, go to: http://www.judiciary.senate.gov/hearings/hearing.cfm?id=32caee8082f9297f0e7df6280b03ff1f

**Agriculture/Nutrition: Institute Releases Report On California Implications of Farm and Nutrition Bill**

The California Institute has prepared a report that contains a summary of the most pressing issues in the current farm bill reauthorization debate as well as a bipartisan sampling of recent research reports and papers that congressional staff and other interested parties may find helpful. To the extent possible, the sources were selected in the context of current research from a California perspective.
The report has seven sections: (I) Introduction; (II) Importance to California; (III) Specialty Crops, Market Access Program, and Foreign Market Development; (IV) Dairy; (V) Other Commodities; (VI) Supplemental Nutrition Assistance Program; and (VII) Additional Resources on Farm Bill Issues.

Prior to adjourning for the year, Congress passed a one-month extension of the farm bill, in order to give the House and Senate Conference Committee additional time to reach an agreement in early January 2014.

The Institute will continue to monitor the farm bill reauthorization process and update this resource as appropriate. Individuals are welcome to contact the California Institute with any follow up inquiries or requests for additional information.

The report can be obtained at: http://www.calinst.org/pubs/FarmBill2013Report.pdf

**REPORT: NSF HIGHER EDUCATION R&D SURVEY RELEASED**

The National Science Foundation recently reported the results of their Higher Education Research and Development (HERD) Survey (the successor to the Survey of Research and Development Expenditures at Universities and Colleges), which serves as the primary source of information on R&D expenditures at U.S. colleges and universities. The survey collects information on R&D expenditures by field of research and source of funds and also gathers information on types of research and expenses and headcounts of R&D personnel. The survey is an annual census of institutions that expended at least $150,000 in separately budgeted R&D in the fiscal year.

According to survey results, university spending on research and development in all fields totaled $65.8 billion in FY 2012. When adjusted for inflation, higher education R&D declined by 1.1% in FY 2012, which is the first constant-dollar decline since FY 1974 and ends a period of modest growth during fiscal years 2009-11, when R&D expenditures increased an average of 5% each year. Although there was an overall decline in spending, six out of the seven California universities listed in the top 30 institutions for R&D expenditure actually showed an increase in spending from FY 2011 to FY 2012.

Of the 907 institutions surveyed, the top 30 in terms of R&D expenditures in all fields accounted for 40% of total academic R&D spending. Out of these top 30 institutions, seven are California universities (listed with approximate expenditures): University of California (UC) San Diego ($1.074 billion), UC San Francisco ($1.033 billion), UC Los Angeles ($1.003 billion), Stanford University ($903 million), UC Berkeley ($730 million), UC Davis ($713 million), and University of Southern California ($624 million).

Although 12 of the top 30 reported expenditure declines in FY 2012, only California’s Stanford reported at 0.5% decrease from FY 2011 to FY 2012. The other six California universities reported a positive percentage change from FY 2011 to FY 2012 in R&D expenditures: UC San Diego (+6.4%), UC San Francisco (+3.8%), UC Los Angeles (+2.1%), UC Berkeley (+3.2%), UC Davis (+0.8%), and USC (+3.4%).

The National Science Foundation provides the following brief on funding sources for R&D utilized by the universities surveyed:

The expenditures funded by the one-time American Recovery and Reinvestment Act of 2009 (ARRA) decreased from $4.2 billion in FY 2011 to $2.4 billion in FY 2012. ARRA funding represented 6.1% of the federally funded R&D expenditures for FY 2012. Including ARRA funding, the total federal funding for higher education R&D declined from $40.8 billion in FY 2011 to $40.1 billion in FY 2012, falling from 62.5% to 61.0% of total R&D expenditures. In constant dollars, federally funded R&D expenditures declined 3.3% in FY 2012.

Most nongovernmental funding sources showed increases between FY 2011 and FY 2012. Institution-funded R&D showed the most significant growth and rose by over $1 billion to $13.7 billion
in FY 2012. Institution funds include three components: institutionally financed research ($7.7 billion), cost sharing on sponsored projects ($1.3 billion), and unrecovered indirect costs on sponsored projects ($4.6 billion). Expenditures funded by nonprofit organizations increased by $180 million to $4.0 billion, and business-funded R&D increased by $101 million to $3.3 billion in FY 2012. By contrast, expenditures funded by state and local governments showed a modest decline for the second year in a row. R&D expenditures funded by state and local governments decreased from $3.9 billion in FY 2010 to $3.7 billion in FY 2012.

Among the federal agencies, the Department of Health and Human Services (HHS) and the National Aeronautics and Space Administration (NASA) accounted for all of the drop in the federally funded total, showing declines of 4.7% and 6.5%, respectively, from 2011 to 2012. HHS-funded expenditures declined by almost $1.1 billion to $21.9 billion in FY 2012; that total comprises 54.5% of the total R&D expenditures funded by the federal government.

The largest broad field, life sciences, declined slightly from $37.3 billion in FY 2011 to $37.2 billion in FY 2012. The majority of the funding was spent within the subfields of medical sciences ($20.4 billion) and biological sciences ($11.6 billion), both of which experienced small declines in FY 2012. Engineering was the next largest broad field and increased 2.6% to $10.3 billion in reported R&D expenditures in FY 2012. Bioengineering/biomedical engineering experienced the largest percentage growth of the engineering subfields, rising 7.4% to $879 million. R&D within non-science and engineering (non-S&E) fields also grew, showing a 7.0% increase to $3.5 billion in FY 2012. Within the non-S&E fields, education continues to be the largest subfield, and R&D expenditures within this discipline rose 10.2% to $1.2 billion in FY 2012.

For more information, please visit: http://www.nsf.gov/statistics/srvyherd/