



# THE CALIFORNIA INSTITUTE FOR FEDERAL POLICY RESEARCH

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## *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.*

#### **IMMIGRATION: SENATE HOMELAND SECURITY EXAMINES FENCING ISSUE**

On Tuesday, April 4, 2017, the Senate Homeland Security and Governmental Affairs Committee held a hearing on "Fencing Along the Southwest Border." Witnesses included: David Aguilar, Former Acting Commissioner of U.S. Customs and Border Protection; Ronald Colburn, Former Deputy Chief of the U.S. Border Patrol at U.S. Customs and Border Protection; and Terence Garrett, Professor and Chairman of the University of Texas Rio Grande Valley's Public Affairs and Security Studies Department.

Mr. Aguilar spoke about his vast experience as a Border Enforcement Officer and former Acting Commissioner of the U.S. Border Patrol. He stated that illegal border crossings have dropped dramatically, border communities are some of the safest cities and communities in the United States, and trade between the U.S. and Mexico is thriving. He believes the barriers and infrastructure built and expanded between 2005 and 2011 along the border played a large part in the enhanced control of our southwest border that he described. However, he also said that borders are dynamic and significant challenges remain. Drug trafficking into the U.S. is still a major problem, he noted, as is the illegal flow of bulk cash and firearms from Mexico into the country. Border Patrol Agents and the Border Patrol as an organization agree that properly constructed, placed, and supported physical infrastructure is essential to border security, he said.

Aguilar also described the challenges to the construction of the physical wall proposed along the southern border. He stated that there are a number of federally endangered or threatened species living along the southern border. In Arizona for example, 85 percent of the land along the border are federal lands set aside to protect wilderness and wildlife, such as Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge. Aguilar also described a challenge with acquisition of land along the border. Most of the land along the Texas border is privately owned, he said, and therefore eminent domain will need to be exercised in order to build a wall. As an additional challenge, Aguilar explained that the Tohono O'odham Nation occupies 75 miles of the

CONTENTS:	
Immigration: Senate Homeland Security Examines Fencing Issue. ....	1
Energy: Senate Committee Addresses Protecting Delivery Systems From Cybersecurity Threats .....	2
Transportation: House Subcommittee Examines FAST Act.....	3
Environment: House Energy Subcommittee Examines Brownfields Reauthorization.....	4
Health: Senate HELP Committee Reviews FDA User Fee Agreements.....	5
Homeland Security: Senate Committee Assesses Border Security. ....	6

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U.S.-Mexico border in Arizona. The U.S. government would need to reach an agreement with this Native American Nation to construct barriers on their land.

Mr. Colburn testified about his experience at the Yuma Border Patrol Sector, which spans southwestern Arizona and southeastern California. He stated that the sector was the most violent stretch of the border in 2005. To combat this, the Secretary of Homeland Security enacted Operation Jump Start, which included sending in the National Guard, doubling the Border Patrol Agents, constructing border fencing, and installing sensor and communications technology. He described the impressive results as a "proof of concept," stating that the strategy could work along the full border. Colburn believes that a fence persistently impedes the entry of transnational criminal organizations and gives border control authorities time to detect and respond to illegal activity.

Dr. Garrett discussed at length his belief that the wall is largely unwanted by the American public and will be highly ineffective at stopping undocumented border crossers from entering the U.S. He also stated that private landowners, farmers, ranchers, national parks and refuges, and other sensitive environmental areas will suffer during implementation of the proposed border wall. Additionally, Dr. Garrett emphasized that, despite campaign rhetoric, the Mexican government will not pay for the wall. He stated, "Any taxes imposed, whether 20 percent or some other amount, will be passed along to U.S. consumers who will pay for the projects. Trade agreements such as the North American Free Trade Agreement (NAFTA) will be placed in jeopardy and perhaps rendered moot. The economics of the wall construction may have a permanent detrimental effect on the U.S. and Mexican relations." Garrett believes the cost to the U.S. will be between \$21 billion and \$25 billion for construction, while policy objectives will not be achieved.

For the full committee hearing and witness testimony, visit:  
<https://www.hsgac.senate.gov/hearings/03/27/2017/fencing-along-the-southwest-border> .

## **ENERGY: SENATE COMMITTEE ADDRESSES PROTECTING DELIVERY SYSTEMS FROM CYBERSECURITY THREATS**

On Tuesday, April 4, 2017, the Senate Energy and Natural Resources Committee held a hearing on efforts to protect U.S. energy delivery systems from cybersecurity threats. Witnesses at the hearing included: Ms. Patricia Hoffman, Acting Assistant Secretary of the Office of Electricity Delivery and Energy Reliability at the U.S. Department of Energy (DOE); Mr. Andrew Bochman, Senior Cyber and Energy Security Strategist at the Idaho National Laboratory; Mr. Gerry Cauley, President and CEO of the North American Electric Reliability Corporation; Colonel Gent Welsh, Commander of the 194th Wing for the Washington National Guard; Mr. Duane D. Highley, President and CEO of the Arkansas Electric Cooperative Corporation; and the Honorable Dave McCurdy, President and CEO of the American Gas Association.

Ms. Hoffman gave an overview of the Department of Energy's role as both a direct responder to cybersecurity threats and a coordinator of cybersecurity preparedness systems. Given the rapidly

evolving nature of cybersecurity threats and their "frequency, scale, and sophistication," Ms. Hoffman stressed the importance of building an "ecosystem of resilience" with a wide variety of both industry and governmental partners. The DOE provides partnership mechanisms and helps foster the necessary collaboration and trust to make this ecosystem function. Ms. Hoffman also highlighted the DOE's role in research and development to help detect and prevent future cyber-attacks.

Mr. Bochman discussed previous energy system cyber-attacks that occurred in Eastern Europe as examples of the types of attacks for which the United States needs to be prepared and stated that increased attention to cybersecurity risks is appropriate given both the global climate and the expanding "Industrial Internet of Things." Specifically mentioning increased technology use in manufacturing and automation, Mr. Bochman spoke about current efforts to improve Machine-to-Machine Automated Threat Response. He also highlighted recent DOE investments in testing and researching electrical grid, nuclear energy, smart infrastructure, and vehicle security, all of which focus on removing future risk factors.

Mr. Cauley testified regarding the North American Electric Reliability Corporation's (NERC) function as a facilitator of public-private partnerships in enhancing grid security. "NERC's mandatory critical infrastructure protection standards (CIP standards) are a foundation for security practices," he said. Not satisfied on simply relying on protocol, he further explained, "Vigilance also requires the agility to respond to new and rapidly changing events." Despite no loss of load caused by a cyber-attack occurring in the United States, Mr. Cauley used examples of incidents in Ukraine to highlight the importance of situational awareness and constant information sharing with industry and government within the energy sector and also across sectors.

Mr. Highley discussed broader grid resiliency and the vast array of resources and programs designed to protect energy systems from cyber-attacks. Because of built in redundancy, he believes the electrical grid is well suited to withstand attacks with minimal loss of service. Similar to the previous witnesses, Mr. Highley stressed the importance of cooperation and multi-level information sharing across the energy sector. He also testified that Congress could help resolve some of the liability concerns regarding the negative consequences of an attack that could cost companies and agencies millions of dollars through lawsuits.

Mr. McCurdy stated that industry operators recognize the application of industrial control systems has inherent cyber vulnerabilities, and they identify, evaluate, and manage these risks accordingly. Security awareness is woven into the natural gas utility culture, he said, and natural gas utilities and pipelines apply a portfolio of tools, policies, procedures, and practices to manage cybersecurity vulnerabilities and stay ahead of threats. Of these, Mr. McCurdy believes the most important cybersecurity mechanism is the existing cybersecurity partnership between the federal government and industry operators.

To view the hearing, please click:

<https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=36559AB8-2C94-44DF-8A90-6F03C8393038> .

## **TRANSPORTATION: HOUSE SUBCOMMITTEE EXAMINES FAST ACT**

On Wednesday, April 5, 2017, the Highways and Transit Subcommittee of the House Transportation and Infrastructure Committee hearing on "FAST (Fixing America's Surface Transportation) Act Implementation: State and Local Perspectives." Witnesses at the hearing included: J. Michael Patterson, Executive Director of the Oklahoma Department of Transportation testifying on behalf of the American Association of State Highway Transportation Officials; Gary

Thomas, President and Executive Director of the Dallas Area Rapid Transit testifying on behalf of the American Public Transportation Association; and Mayor Kasim Reed of Atlanta, Georgia testifying on behalf of the United States Conference of Mayors.

Mr. Patterson stated that, while progress is being made in FAST Act implementation, concerns remain. He argued that funding levels need to be honored until a long-term revenue solution to the Highway Trust Fund is identified. Patterson noted that the President's budget released on March 16, 2017 proposed a 13 percent reduction in discretionary funding for the U.S. Department of Transportation. He stated that any action that results in a reduction to our nation's transportation system investment raises concerns for state Departments of Transportation. He also believes that the federal surface transportation program must prepare for and harness significant technological advancements. For example, he said, governments will need to build, redesign, and adapt transportation infrastructure to accommodate autonomous and connected vehicles.

Mr. Thomas testified that the passage of the FAST Act in 2015 was a significant step forward for the transit industry and the communities they serve. He said, like many transit systems, the Dallas Area Rapid Transit (DART) faces limited funding, workforce challenges, regulatory requirements, and the potential changes that accompany social and technological changes. The FAST Act, he said, retained much of the existing federal transit program structure, but also provided additional financial resources and made several important program improvements. Thomas also testified that the Act preserved and improved the primary transit capital assistance programs, which are critical to every transit agency in the country and funded through the Mass Transit Account. Unfortunately, he stated, some of these programs are now at risk due to budgetary restrictions outlined in the President's budget. Thomas believes that successfully implementing the FAST Act means rejecting the budget proposal and fulfilling the commitments made to invest in public transportation.

Mayor Reed advocated for policy reforms that ensure local elected officials have more say over how available federal resources are invested. The FAST Act, he said, strongly affirmed the importance of a balanced federal partnership that mostly empowers local and state officials. It also balances investment in highways, transit, and other travel alternatives. According to his testimony, the FAST Act includes commitments to emerging transportation challenges such as growing freight demands and technology bottlenecks. Mayor Reed stated that, from the vantage point of mayors, the core FAST Act programming activities are working well and projects are moving forward with predictability. He provided several examples of infrastructure investments in his city as examples of success.

The full subcommittee hearing can be found at:  
<http://transportation.house.gov/calendar/eventsingle.aspx?EventID=401290> .

## **ENVIRONMENT: HOUSE ENERGY SUBCOMMITTEE EXAMINES BROWNFIELDS REAUTHORIZATION**

On Tuesday, April 4, 2017, the Environment Subcommittee of the House Energy and Commerce Committee convened a hearing called, "Discussion Draft: Brownfields Reauthorization." Witnesses included: Robert Martineau, Commissioner of the Tennessee Department of Environment and Conservation testifying on behalf of the Environmental Council of States; Meade Anderson, Brownfields Program Manager at the Virginia Department of Environmental Quality testifying on behalf of the Association of State and Territorial Solid Waste Management Officials; J. Christian Bollwage, Mayor of the City of Elizabeth, New Jersey testifying on behalf of the U.S. Conference of

Mayors; Salvatore J. Panto, Mayor of the City of Easton, Pennsylvania testifying on behalf of the National League of Cities; and Parris Glendening, President of the Smart Growth America's Leadership Institute. The testimony indicated broad support from witnesses.

Mayor Bollwage testified that redeveloping brownfields is "a win-win for everyone involved." He also provided a history of the Brownfield Program, stating that "since the inception of the program, over 26,000 brownfield sites have been assessed and over 5,700 properties and 66,000 acres [have been] made ready for reuse. As of March 1, 2017, the program has leveraged over 123,000 jobs and over \$23.6 billion dollars. In fact, every EPA dollar spent leverages approximately \$16 in other investments."

Mr. Anderson believes a robust brownfields program, at all levels of government and working in concert with the private sector, is essential to the nation's environmental, economic, and social health. He stated that, since 2002, federal brownfields funding has remained constant, while the number of applicants has doubled. Anderson said, "The awards in FY 2003 averaged \$618,000. However, by FY 2016, the average award had dropped to approximately \$293,000, less than half of what had been awarded in FY 2003." He believes current funding levels are inadequate for brownfields redevelopment to reach its potential in helping communities.

Mayor Panto spoke in support of the Brownfields Program, stating that it has a proven track record of leveraging investments, creating new jobs, and creating additional tax revenue. He specifically praised the crucial assistance the program provides to local governments to correct the environmental injustices that disproportionately affect impoverished neighborhoods.

Mr. Martineau stated that investment in the brownfield redevelopment program provides opportunities to implement innovative and sustainable solutions to problems faced by communities. He said, "Removing statutory barriers to brownfield revitalization, as the Discussion Draft would do, is an important step forward. For example, increasing the funding limit for cleanup grants to \$500,000 per site would be beneficial for redevelopment if accompanied by an increase in the level of overall funding availability."

Mr. Glendening also described brownfield redevelopment as a "win-win" development strategy. He stated that Americans are demanding economically vibrant and fiscally responsible communities with a great sense of place. Brownfield redevelopment, he said, saves taxpayer money while creating the type of development the market demands. He concluded by stating, "This discussion draft, if enacted into law, stands to benefit hundreds of communities-big and small, urban and rural-across the nation looking to transform their vacant properties to create new engines of economic growth."

For the full hearing or to view the Discussion Draft document, please see:  
<https://energycommerce.house.gov/hearings-and-votes/hearings/discussion-draft-brownfields-reauthorization> .

## **HEALTH: SENATE HELP COMMITTEE REVIEWS FDA USER FEE AGREEMENTS**

The Senate Health, Education, Labor and Pensions Committee held a hearing on Tuesday, April 4, 2017 entitled, "FDA User Fee Agreements: Improving Medical Product Regulation and Innovation for Patients Part II." Witnesses included: Kay Holcombe, Senior Vice President for Science Policy at the Biotechnology Innovation Organization; David Gaugh, Senior Vice President of Sciences and Regulatory Affairs at the Association for Accessible Medicines; Scott Whitaker, President and CEO of the Advanced Medical Technology Association; and Cynthia Bens, Vice President of Public Policy at the Alliance for Aging Research. The hearing was held to continue the

discussion regarding the reauthorization of user fee agreements under the U.S. Food and Drug Administration (FDA).

Ms. Holcombe believes that the Prescription Drug User Fee Act (PDUFA) and the Biosimilars User Fee Act (BsUFA) are critical for the FDA to operate efficiently. Her company strongly supports both PDUFA and BsUFA. She stated that the modifications to both programs were negotiated by the FDA and the biopharmaceutical industry with input from patient, consumer, and healthcare provider organizations. Holcombe believes these changes will "improve efficiency, reduce administrative burdens, enhance program long-term sustainability, and ensure that 21st century tools are used to the greatest advantage in the review of new drugs and biologics and of biosimilars - while maintaining the U.S. gold standard of safety and efficacy."

Mr. Gaugh testified about the Generic Drug User Fee Amendment (GDUFA) and BsUFA. He stated that, by designing the user fee programs to spread fees across multiple stakeholders and sources to keep individual amounts as low as possible, the programs will help assure that patients continue to receive the significant cost savings from generics and biosimilars. He also emphasized that user fees are not meant to substitute for Congressional appropriations. Gaugh concluded by stating that the user fee proposals are the final product of months of negotiations and that they reflect a careful balance of stakeholder interests. He urged the Committee to approve them without any changes to the underlying agreements.

Mr. Whitaker spoke in support of the Medical Device User Fee Amendment (MDUFA) proposal. He believes the changes proposed in MDUFA reauthorization will create significant improvements for total review time goals, increase patient input in the regulatory process, enhance review process consistency, provide greater accountability and transparency, and provide the FDA with additional resources to meet performance goals.

Ms. Bens testified in support of the PDUFA and MDUFA program reauthorizations. She stated that the need for innovative treatments and medical devices is great as a large segment of the population ages, but that the FDA needs the resources of these user fee agreements in order for the benefits of these treatments and devices to be realized. Bens stated that the size and scope of the proposed fees under the PDUFA and MDUFA reauthorizations are appropriate and necessary. She also stated that not all FDA activities can or should be supported by user fees and that the Alliance for Aging Research supports increased overall funding of the FDA.

For the full committee hearing, see:

<https://www.help.senate.gov/hearings/fda-user-fee-agreements-improving-medical-product-regulation-and-innovation-for-patients-part-ii> .

## **HOMELAND SECURITY: SENATE COMMITTEE ASSESSES BORDER SECURITY**

On Wednesday, April 5, 2017, the Senate Homeland Security and Governmental Affairs Committee held a hearing on "Improving Border Security and Public Safety." Secretary John F. Kelly of the U.S. Department of Homeland Security testified.

In his testimony, Secretary Kelly discussed the Department of Homeland Security's (DHS) border security mission, the President's immigration-related Executive Orders, and the President's recently released budget proposal. He explained that Executive Order 13767, "Border Security and Immigration Enforcement Improvements," directs executive departments and agencies to deploy all lawful means to secure the nation's southern border, prevent further illegal immigration into the United States, and repatriate aliens with final orders of removal swiftly, consistently, and humanely. Executive Order 13768, "Enhancing Public Safety in the Interior of the United States," provides DHS with the tools it needs to enforce federal immigration laws within the U.S., according to

Secretary Kelly. He stated that it removes obstacles that had been making it more difficult for U.S. Immigration and Customs Enforcement (ICE) to carry out their mission, which includes arresting, detaining, and removing undocumented immigrants from the United States. Secretary Kelly testified about a decline in apprehensions along the southwestern border since the beginning of the year, which he believes is indicative of a recent decline in illegal immigration as a result of these Executive Orders.

Secretary Kelly also testified about the plans to utilize the \$2.6 billion for high priority border security technology and tactical infrastructure (including the design and construction of the border wall) that was included in President Trump's FY 2018 Budget Blueprint. While he said that specific details will accompany the release of the complete Budget in mid-May, Secretary Kelly plans to use the funds to invest in new border barriers, replacing sub-standard existing fence, constructing or improving hundreds of miles of border roads, and adding border security technology and equipment in the highest risk operational areas.

Secretary Kelly also spoke about the need for interagency and international cooperation. He stated that interagency relationships and bilateral cooperation are critical to identifying, monitoring, and countering threats to U.S. national security and regional stability. While DHS possesses unique authorities and capabilities, he believes the Department must also enhance coordination with state, local, tribal, and regional partners. As an example of international cooperation, he described the efforts in Colombia to combat cartels and criminal networks, which he believes illustrates the potential success of a cooperative international strategy.

To watch the full hearing, visit:  
<https://www.hsgac.senate.gov/hearings/improving-border-security-and-public-safety> .