



**THE CALIFORNIA INSTITUTE FOR FEDERAL POLICY RESEARCH**  
419 New Jersey Avenue, SE, Washington, D.C. 20003 202-546-3700  
fax: 202-546-2390 e-mail: [ransdell@calinst.org](mailto:ransdell@calinst.org) web: <http://www.calinst.org>

# California Capitol Hill Bulletin

**Volume 10, Bulletin 9 – April 4, 2003**

*To expand communications between Washington and California, the California Institute provides periodic faxed bulletins regarding current activity on Capitol Hill which directly impacts our state. Bulletins are published weekly during sessions of Congress, and occasionally during other periods. The e-mail edition is made possible in part by in-kind contributions from Sun Microsystems and IBM Corp.*

## **SOCIAL SECURITY LOOPHOLE FIX HIGHLIGHTS OFFSET ISSUE THAT REDUCES CALIFORNIA TEACHER PENSIONS**

On Wednesday, April 2, by a vote of 396-28, the House passed a bill that includes an amendment to close a loophole that had allowed teachers in Texas to increase their retirement benefits by working a different job for their last day before retiring. The debate highlights a provision that has cut California teacher pensions for decades.

Normally, spouses of retired, disabled or deceased employees are entitled to Social Security benefits. However, those benefits are reduced for employees of some state and local governments who do not pay into the Social Security system and are covered by their own retirement systems (such as California's teachers, who pay into the State Teachers Retirement System or STRS). Social Security benefits for spouses are reduced by two-thirds, regardless of whether the employee had previously paid into the Social Security system for many years. The benefit reduction is called the government pension offset (GPO).

Texas teachers found and exploited a provision that allows full Social Security benefit collections if an employee's last job paid into the system, even if a life-long teacher only worked his or her last day as a cafeteria worker or janitor. The House bill closes that loophole. In testimony on February 27, entitled *Social Security: Congress Should Consider Revising the Government Pension Offset "Loophole"* (GAO-03-498T), General Accounting Office officials stated that nearly 5,000 individuals had taken advantage of the system, and that number could grow significantly if the opportunity were publicized. GAO suggested alternatives, including a longer minimum time period or else "using a proportional approach based on the number of working years spent in covered and noncovered employment".

The bill would require workers to pay into Social Security for a minimum of five years -- the same length of time required for federal workers to be exempted from the reduction.

### CONTENTS:

Social Security Loophole Fix Highlights Offset Issue That Reduces California Teacher Pensions .....	1
Judiciary Subcommittee Examines Internet Tax Moratorium .....	2
Capps Circulating Coastal Impact Letter ..	3
Omnibus Energy Bill To House Floor Next Week, Includes Electricity Market Shifts .....	3
Science Committee Fusion Provisions to Merge With Energy Package .....	4
Energy Bill Contains Oxygenate Elimination; Amendment to Strip MTBE Safe Harbor Provision Fails .....	4
U. S. Treasurer Marin Addresses Golden State Roundtable Luncheon .....	5
House Immigration Subcommittee Revisits Student Tracking Issue .....	5
Report Shows Sharp Decline In Medicare HMO Benefits .....	6
Water and Power Panel Reports Folsom Dam and San Gabriel Bills .....	6
PPIC Poll Finds Discontent Growing in Southern California .....	6
New Report Points to an Increase in Wine Sales Volume .....	7
Appeals Court Upholds Lower Court Ruling Against CA Developer .....	7
PRC, Northeast-Midwest Institute, and California Institute To Host Housing Briefing on Friday, April 11 .....	8

During a Ways & Means Committee markup of the bill on March 13, 2003, the committee rejected an amendment by Rep. Pete Stark (Hayward) that would have reduced the GPO offset from two-thirds to one-third of an employee's pension. The committee also rejected an amendment by Rep. William Jefferson (LA) to exempt the first \$2,000 of a worker's combined pension and Social Security benefit.

Reps. Howard P. "Buck" McKeon (Santa Clarita) and Howard Berman (Valley Village) have introduced the Social Security Fairness Act (H.R. 594), which would completely repeal the GPO, as well as a parallel penalty entitled the Windfall Elimination Provision (WEP). The bipartisan bill is cosponsored by 176 members of Congress, and nearly three-fourths of California members have signed on. In the Senate, Senator Dianne Feinstein introduced an identical measure, S. 329, also with bipartisan support.

In a statement, Rep. McKeon said, "Great efforts are being made to recruit teachers who have work experience that would benefit America's students. These professionals are far less likely to leave the boardroom for the classroom if their retirement benefits are reduced."

Rep. Berman noted, "Employees in the private sector can contribute both to Social Security and their company's pension plan. When they retire, their Social Security benefits are not offset just because they also receive a pension. It is unfair to hold public employees, whose salaries are often lower than private sector employees, to a different standard."

In addition to teachers, firefighters, police officers and other government employees in 13 states also receive reduced benefits. The House-passed provision is part of a bill intended to prevent fugitives, felons and parole violators from receiving Social Security benefits and strengthens program protections for minors and the disabled.

## **JUDICIARY SUBCOMMITTEE EXAMINES INTERNET TAX MORATORIUM**

On Tuesday, April 1, 2003, the House Judiciary Subcommittee on Commercial and Administrative Law held a hearing on H.R. 49, introduced by Rep. Christopher Cox (Newport Beach). The bill would permanently extend the current moratorium on Internet taxes. Rep. Cox was the author of the Internet Tax Freedom Act (ITFA) of 1998, which imposed a moratorium on Internet access taxes, as well as multiple and/or discriminatory taxes imposed by state or local governments. The ITFA is set to expire on November 1, 2003.

During his opening remarks, Rep. Cox, who joined the Subcommittee members to receive testimony although he is not a member of the Judiciary Committee, pointed out the importance of the Internet to the U.S. economy. He stated that because of the expansion of highspeed access to the Internet, \$500 million per year for each of the next ten years is expected to be added to the U.S. economy. He argued that his legislation is not a subsidization of Internet services and businesses, but is instead to prevent its growth potential and concomitant benefits from being destroyed through taxation.

The Committee heard testimony from the following witnesses: Former Virginia Governor James Gilmore III, former Chairman, Congressional Advisory Commission on Electronic Commerce; former Rep. Jack Kemp, Co-Director, Empower America; Harley Duncan, Exec. Director, Federation of Tax Administrators (FTA); and Harris N. Miller, President, Information Technology Association of America.

Gov. Gilmore, Rep. Kemp, and Mr. Miller all testified in strong support of H.R. 49 and permanently banning Internet access, multiple and discriminatory taxes. Governor Gilmore testified that there was no controversy surrounding banning these categories of taxes and urged the Subcommittee to move the legislation. However, the issue of states' rights to tax Internet sales, he said, is controversial, and should not be tied to H.R. 49.

Mr. Duncan, representing state tax administrators, stated that they have no intention of impeding Internet growth and do not support multiple or discriminatory taxes. However, the FTA supports only extending the moratorium for a defined period – five years – so that its effect on state and local revenues

can be examined periodically. He also testified that FTA opposes the repeal of the grandfather clause included in the 1998 Act, and supports redefining the term Internet access so that it does not allow bundling of otherwise taxable content or services.

Testimony of all the witnesses can be obtained on the Committee's website at: <http://www.house.gov/judiciary> .

### **CAPPS CIRCULATING COASTAL IMPACT LETTER**

Rep. Lois Capps (Santa Barbara), joined by Reps. Mark Foley (FL) and Nick Lampson (TX) are circulating a Dear Colleague asking for signatures to a letter on the Coastal Impact Assistance Program (CIAP). CIAP was established in FY2001 in recognition that the costs of OCS oil and gas activities fall disproportionately on seven coastal states and their 150 coastal political subdivisions adjacent to the development.

The letter is addressed to Chair and Ranking Member of the Commerce, Justice, State Appropriations Subcommittee, Frank Wolf (VA) and Jose Serrano (NY) respectively. It urges them to appropriate \$150 million in FY2004 funding for CIAP to provide resources to coastal states and localities to mitigate the impacts of Outer Continental Shelf (OCS) oil and gas development. According to the letter, "the coastal states and their political subdivisions are being treated differently than states in which onshore federal oil and gas development occurs. Under the Mineral Leasing Act, states receive 50 percent of the revenues from onshore oil and gas development, in recognition that they serve as a platform for development and related infrastructure. This sharing does not apply to federal oil and gas developed on the Outer Continental Shelf. CIAP funding would establish a measure of equity for coastal states and localities in this regard."

Members of the California Delegation wishing to sign the letter should contact Jonathan Levenshus in Rep. Capps' office (x5-3601).

### **OMNIBUS ENERGY BILL TO HOUSE FLOOR NEXT WEEK, INCLUDES ELECTRICITY MARKET SHIFTS**

By a vote of 36 to 17 in the early morning hours of Thursday, April 3, the House Energy and Commerce approved a comprehensive energy bill that will be combined with legislation moved by other committees and is expected to reach the House floor next week. The Senate is also moving toward passage of a major energy package, with a markup slated for next week in the Energy and Natural Resources Committee.

The bill encompasses much of the energy bill proposed during the 107th Congress, with the addition of electricity market restructuring provisions. It seeks to expand power supplies and encourage competition, and FERC's authority would be adjusted in furtherance of those goals, but FERC would not be permitted to override states in implementing a standard market design for wholesale power market intervention. The bill would also retain transmission contract rights signed by regional electric power networks in several regions, including California, and it protects existing long-term contracts.

The bill expands FERC authority to cover public and municipal utilities, and it gives the Commission authority over siting of transmission lines on federal lands and across state borders.. It also repeals the Public Utility Holding Company Act, a 1935 law restricting ownership and operation of utility companies and requiring complete separation of regulated business activities from other business ventures undertaken by utilities.

The Committee rejected, 21-30, an attempt by Rep Anna Eshoo (Atherton) to require FERC to issue refunds when it finds that actions by power marketers have resulted in unjust and unreasonable prices in an exercise of market power. Rep Lois Capps (Santa Barbara) offered an amendment, defeated 16-29, to allow states to opt out of FERC's standard market design, and another, also defeated, would have strip a

provision affecting a state's ability to object to the location of natural gas pipelines under the Coastal Zone Management Act.

The bill will be merged with energy production tax provisions approved by the Ways & Means Committee, exploration provisions approved by the Resources Committee, and energy research provisions approved by the Science Committee.

In other FERC-related news, Senator Barbara Boxer laced a hold on the nomination of Joseph T. Kelliher for the position of Commissioner to the Federal Energy Regulatory Commission (FERC), asking FERC to order refunds for excess power costs overcharged to California during the state's energy crisis, as well as renegotiation of long-term electricity contracts signed at high prices during the crisis.

## **SCIENCE COMMITTEE FUSION PROVISIONS TO MERGE WITH ENERGY PACKAGE**

On April 1, the House Science Committee completed their work on H.R. 238, the "Energy Research, Development, Demonstration, and Commercial Application Act of 2003," which will be incorporated into the omnibus energy legislation expected to reach the House floor next week. During markup, the Committee adopted an amendment which incorporated a compromise version of H.R. 1282, the "Fueling the U.S.A. Through Unlimited Reliable Energy (FUTURE) Act of 2003", sponsored by Reps. Zoe Lofgren (San Jose) and Randy "Duke" Cunningham (San Diego), and a bipartisan cross-section of other members.

The Committee's bill reduces authorized funding levels for the domestic fusion energy science program and places some limits and instructions for U.S. participation in the International Thermonuclear Experimental Reactor (ITER) project. On a positive note for fusion supporters, the Committee bill retains separate authorization numbers for ITER and the Committee report on the bill is expected to emphasize that ITER funding should not come out of domestic fusion funding.

For the Fusion Energy Sciences Program, the bill would authorize \$276 million for FY2004, \$300 million for FY 2005, \$340 million for FY 2006 and \$350 million for FY 2007, and it would provide \$157 million over those four years for ITER (or FIRE) participation.

California is a perennial winner of a large share of federal expenditures on fusion energy sciences as well as for the inertial confinement fusion program. For additional information regarding H.R. 1282, *see [Bulletin, Vol. 10, No. 7 \(3/20/2003\)](#)*.

## **ENERGY BILL CONTAINS OXYGENATE ELIMINATION; AMENDMENT TO STRIP MTBE SAFE HARBOR PROVISION FAILS**

Several amendments related to MTBE use as a fuel additive were considered and defeated during the House Energy and Commerce Committee's markup of The Energy Policy Act of 2003 on Wednesday, April 2. The Chairman's Mark contains a provision eliminating the two-percent oxygenate requirement under the Clean Air Act, a provision that California has fought for over the last several years. The bill also mandates the use of 2.7 billion gallons of ethanol in 2005, rising to 5 billion gallons in 2015.

The mark also contains a provision that would protect the manufacturers of MTBE and renewable fuel additives, including ethanol, from liability for a defect in design or manufacture of the additive or the motor vehicle fuel containing those substances. Rep. Lois Capps (Santa Barbara) offered an amendment to strip this "safe harbor" provision from the bill during the markup, which was defeated by a vote of 19-31. She also offered two amendments dealing with a nationwide ban on MTBE. The first included a repeal on the ethanol mandate contained in the bill, as well as banning the use of MTBE nationwide. That amendment failed by a vote of 18-32. Rep. Capps then offered an amendment limited to banning MTBE nationwide. It also failed, but by a closer margin of 23-25.

## **U. S. TREASURER MARIN ADDRESSES GOLDEN STATE ROUNDTABLE LUNCHEON**

On April 11, 2003, the California State Society held a Golden State Roundtable Luncheon with the Hon. Rosario Marin as the featured speaker. Ms. Marin is the United States Treasurer. After being introduced by Rep. George Radanovich (Mariposa), Ms. Marin expressed her gratitude for being given a chance to serve as the U.S. Treasurer. She relayed to her audience that she is proud to be an American and is grateful for the opportunities that her new homeland has afforded her thus far.

Ms. Marin, a native of Mexico and resident of Huntington Park, California, is the highest-ranking Latina in the George W. Bush Administration. Before taking office, Ms. Marin served as mayor and councilwoman of Huntington Park, a city of 85,000 residents, of whom 99 percent are Hispanic. Previously she served in the administration of Governor Pete Wilson and as Chair of the State Council on Developmental disabilities.

## **HOUSE IMMIGRATION SUBCOMMITTEE REVISITS STUDENT TRACKING ISSUE**

The House Judiciary Subcommittee on Immigration, Border Security, and Claims held a hearing on Wednesday, April 2, to examine "Immigration Student Tracking: Implementation and Proposed Modifications." The purpose of the hearing was to determine how successfully the Immigration and Naturalization Service (now the Department of Homeland Security's (DHS) Bureau of Citizenship and Immigration Services (BCIS)) has implemented the Student and Exchange Visitor Information System (SEVIS) program. (On March 1, implementation and management of SEVIS was transferred to DHS's Bureau of Immigration and Customs Enforcement (ICE). Information regarding a student's school admission status, visa status, date of entry, address, program of study, etc. are entered into the Internet-based SEVIS system either by the Government or by the student's school. The Government can then monitor foreign students and exchange program visitors while they are in the United States.

At a September 18, 2002 hearing on SEVIS implementation, the Justice Department's Inspector General testified that it was unlikely that INS could meet its January 1, 2003 deadline for the full implementation of SEVIS, despite INS's assurances to the Subcommittee that it was on track to do so. See, [\*Bulletin, Vol. 9, No. 25 \(9/19/02\)\*](#).

At Wednesday's hearing, as well, Inspector General Glenn Fine testified that although INS/BCIS/ICE has made significant progress in implementing SEVIS, it is not yet fully implemented and "significant deficiencies remain in its implementation." The IG's latest report from March 2003 found that BCIS has required previously approved schools to reapply for certification and required non-accredited vocational, language, and flight schools to undergo on-site reviews prior to providing them access to SEVIS. Nevertheless, IG Fine stated that full implementation of SEVIS requires not just access to the system, but also "ensuring that sufficient resources are devoted to the foreign student program; ensuring that only bona fide schools are provided access to SEVIS; ensuring that schools are completely and accurately entering information on their foreign students into SEVIS in a timely manner; providing adequate training for DHS employees and school representatives; and establishing procedures for using SEVIS data to identify noncompliant and fraudulent operations as well as following up when SEVIS data indicates fraud in a school's program." Most of these activities have not taken place, according to IG Fine. In addition, he pointed out that while the SEVIS database contains information on newly enrolled foreign students, it will not contain information on all continuing foreign students until August 1, 2003.

Johnny N. Williams, Interim Director for Immigration Interior Enforcement, Bureau of Immigration and Customs Enforcement (ICE), DHS, argued that SEVIS was fully deployed and operational by January 1, and, as of February 15, all DHS-approved schools and DOS-approved exchange programs were required to use SEVIS for all new foreign students and visitors. Director Williams acknowledged that SEVIS, because it is a new system, has bugs and anomalies that must be addressed. He pledged, however, that any problems will be addressed "immediately, aggressively, and professionally."

Mr. Williams also addressed a concern that has been raised by schools that SEVIS data errors have been responsible for unwarranted enforcement actions against students. Mr. Williams assured the subcommittee that “ICE can assure the public that it does not rely solely on information in SEVIS. Prior to taking an enforcement action, ICE agents review each individual case, including interviewing potential violators, to confirm that action is warranted.”

For testimony of all the witnesses, visit the Committee’s website at: <http://www.house.gov/judiciary>.

## **REPORT SHOWS SHARP DECLINE IN MEDICARE HMO BENEFITS**

According to a newly released 2003 Guide to California Medicare HMOs, the value of Medicare HMO benefits declined significantly in 2002 in almost all parts of California. The report, published annually by the California HealthCare Foundation and Consumers Union’s Center for Consumer Health Choices, rated each Medicare HMO on a scale of one to five stars for financial and prescription drug coverage values, and compared several elements including member satisfaction and the HMO’s financial health.

The report found that the number of top-rated plans has dropped by 86 percent over the 2000-2002 period. The guide states that 95 percent of Medicare HMOs now offer some kind of prescription drug coverage, though such drug benefits are less comprehensive than consumers have ever seen before.

The guide reveals that, of the HMOs that are offering prescription drug coverage, a majority (65 percent) were only rated one or two stars out of the five possible, while two years ago only 24 percent of the plans received such low ratings. In addition, only 11% of Medicare HMOs statewide received four of five stars in 2002, in comparison to 44 % of such plans receiving four stars in 2001.

For a full copy of this guide, please visit the California HealthCare Foundation website: [www.chcf.org](http://www.chcf.org).

## **WATER AND POWER PANEL REPORTS FOLSOM DAM AND SAN GABRIEL BILLS**

The House Resources Subcommittee on Water and Power reported two California-related bills on Thursday, April 3 by voice vote.

The first, H.R. 901, introduced by Rep. Doug Ose (Sacramento) and Rep. John Doolittle (Rocklin), authorizes a new four-lane bridge over the American River to replace the Folsom Dam Road and ease traffic concerns for commuters in the area. The Folsom Dam Road was closed on February 28 by the U.S. Bureau of Reclamation because of homeland security concerns. Ose's bill authorizes \$66.5 million for the Bureau to design and construct a four-lane commuter bridge across the American River near Folsom Dam.

The second bill, H.R. 1284, is authored by Rep. Grace Napolitano (Norwalk) and co-sponsored by Reps. David Dreier (San Dimas) and Hilda Solis (El Monte). It increases the Federal share of the costs of the San Gabriel Basin demonstration project by \$12.5 million. Under the project, local governments, water agencies, and business groups have joined together to clean up contaminated groundwater sites.

The Subcommittee held a hearing on the bills on Tuesday, April 1.

## **PPIC POLL FINDS DISCONTENT GROWING IN SOUTHERN CALIFORNIA**

According to new poll results on Los Angeles County residents, conducted by the Public Policy Institute of California (PPIC) in conjunction with the University of Southern California (USC), respondents expressed anxiety about current social and economic conditions, and were most concerned about issues of local importance, chief among them being public safety.

Of 2,000 respondents surveyed, 26 percent viewed crime and gangs as the gravest issue facing the region, followed by the condition of public schools and education (15%), the economy(9%), and traffic congestion (6%). Seventy-six percent expressed concern over being victims of crime and half of those surveyed believe the region is suffering from economic depression.

The results of the survey suggest a not altogether positive outlook among LA County residents with mild support voiced for local government performance, concern over rising healthcare costs, and alarm over the current state of race relations in the city expressed by respondents. Furthermore, Angelenos may not be expecting good times ahead, with 17 percent of residents saying they intend to leave the area in the next five years.

The PPIC is a private non-profit organization dedicated to improving public policy through objective, non-partisan research on the economic social and political issues affecting Californians. To view a copy of The Special Survey of Los Angeles County, visit the PPIC website at [www.ppic.org](http://www.ppic.org).

## **NEW REPORT POINTS TO AN INCREASE IN WINE SALES VOLUME**

Despite the economic slowdown, an oversupply of wine, and intense foreign competition, California's wine sales volume enjoyed an overall 3 percent increase in 2002, according to a newly released report from Gomberg-Fredrikson. With respect to table wine, premium wine of \$7 and more per bottle shipments, which account for 62 percent of winery revenues, increased 8 percent while "everyday" value-priced wines below \$7 per bottle increased 1.5 percent. California enjoys 70 percent of the table wine market, representing 38 percent of its value.

California wineries shipped 463 million gallons during last year to all markets in the U.S. and abroad, with the retail value of this volume at \$14 billion, the Wine Institute estimated. Total shipments to the U.S. from all states and foreign countries increased 6 percent during the same period, with two-thirds of the wine that was sold last year coming from California. As a result, the state's wineries accounted for a 67 percent share of the U.S. wine market, far outpacing the 25 percent share held by foreign wines and the combined 8 percent share of other states. The Wine Institute estimates that the retail value of all wine sold in the U.S. was \$21.1 billion, an increase of 7 percent.

The report also found that white wine accounted for 40 percent of the volume, red wine for 39 percent, and blush wine sales were 21 percent of the shipments. After waning sales figures in 2000 and 2001, champagne and sparkling wine sales also saw an increase of 9 percent in 2002.

For more information about the Gomberg-Fredrikson Report, please visit the Wine Institute's website at: [www.wineinstitute.org](http://www.wineinstitute.org).

## **APPEALS COURT UPHOLDS LOWER COURT RULING AGAINST CA DEVELOPER**

On April 2, 2003, the U.S. Court of Appeals for the District of Columbia Circuit upheld a section of the Endangered Species Act (ESA) that was challenged by the California developer. The court ruled that the planned residential development in San Diego County cannot be completed without changes or other necessary modifications suggested by the U.S. Fish and Wildlife Service to accommodate the preservation of an endangered southwestern arroyo toad habitat in the area.

The Interior Department listed the southwestern arroyo toad as an endangered species in 1994, after 75 percent of its natural habitat in a handful of places in California and southwestern Mexico had been destroyed over the years. The U.S. Fish and Wildlife Service filed objections to the development construction in part of the specie's habitat that began in 2000. The California developer countered with a suit that alleged that the federal government was transgressing constitutional commerce clause boundaries.

The court unanimously disagreed with the developer's argument and instead decreed that the interstate commerce clause of the ESA law applies to the 202-acre project even though it would not cross the state's borders, because according to the opinion, "[the development] is located near a major interstate highway, [and] is likewise one that 'is presumably being constructed using materials and people from outside the state, and which will attract construction workers and purchasers 'from both inside and

outside the state.” In thus holding, the court reasserted preservation of endangered species as a federal function.

### **PRC, NORTHEAST-MIDWEST INSTITUTE, AND CALIFORNIA INSTITUTE TO HOST HOUSING BRIEFING ON FRIDAY, APRIL 11**

The Population Resource Center in collaboration with the Northeast-Midwest Institute and the California Institute for Federal Policy Research will host a briefing on Friday, April 11, 2003 titled “Housing America: Opportunity, Access and Critical Needs”.

The briefing will be held from 10:00-11:30 a.m. in Room SD-538 of the Dirksen Senate Office Building. Discussing the issues of housing and poverty will be Peter Fronczek, Assistant Division Chief, Labor Force and Outreach, U.S. Census Bureau; David Ledford, Vice President, Housing Policy & Finance, National Association of Home Builders; Barbara Sard, Director of Housing Policy, Center for Budget and Policy Priorities; and Mark Calabria, Majority Staff and Jonathan Miller, Minority Staff, Senate Banking Committee. William A. Davis, President, Davis Developments, Inc., will be moderating the discussion.

If you have questions about this briefing, please contact Kevin Moriarty at (202) 467-5030 or Tim Ransdell at (202) 546-3700 or visit <http://www.prcdc.org> .