



## THE CALIFORNIA INSTITUTE FOR FEDERAL POLICY RESEARCH

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# California Capitol Hill Bulletin

**Volume 10, Bulletin 26 – September 18, 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.*

### CONGRESS DEPARTS AS HURRICANE APPROACHES

With the path of Hurricane Isabel expected to include the Washington DC area in the near future, the Senate adjourned at 11:00 a.m. on Thursday, September 18, 2003. The House had left town after completing business for the week the night before.

The Thursday morning closure of the entrances to the Rayburn House Office Building and the departure of the House Catering staff forced the California Institute to cancel a Thursday luncheon briefing regarding federal formula grant programs that provide fund education programs for disabled children. We apologize for any inconvenience the change may have caused.

### HOUSE PASSES PERMANENT INTERNET TAX BAN

On Wednesday, September 17, the House passed by voice vote H.R. 49, the Internet Non-Discrimination Act, sponsored by Rep. Chris Cox (Newport Beach). The bill makes permanent the ban on collecting Internet access, multiple, and discriminatory taxes. Currently, legislation imposing a moratorium on the taxes is set to expire on November 1. The bill eliminates the “grandfather” clause contained in the previous legislation, which exempted states that had already imposed Internet access taxes from the moratorium. The Senate’s bill, S. 150, reported by the Commerce, Science and Transportation Committee in July, does not eliminate the grandfather clause.

H.R. 49 was amended during the Judiciary Committee’s July mark-up to clarify that the ban on Internet taxes applied regardless of the manner in which the Internet service was provided or packaged. The amendment, adopted by voice vote, effectively overturned some court decisions holding that if the service was bundled with traditional telephone service, it was not covered by the moratorium. *See, [Bulletin, Vol. 10, No. 21 \(7/17/03\)](#).*

### NEW PPIC/CALIFORNIA INSTITUTE REPORT ON SPECIAL EDUCATION FORMULAS

On September 30, 2003, the federal law governing special education - the Individuals with Disabilities Act (IDEA) - is set to expire. Congress is currently working to revise this nearly \$10 billion law. IDEA funding is important to California: In fiscal year 2003, the state will receive nearly 10.5 percent of IDEA grant funding - a total of more than \$1 billion. And funds have been growing rapidly.

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*Federal Formula Grants and California: Education Programs for Disabled Children* examines the mechanics of the IDEA formulas that determine funding levels for California and other states, and it analyzes the state-by-state effects of formula-change scenarios. For example, California guarantees education services for disabled children through age 18, while some other states provide services through later ages. Because the law provides an incentive for states to revise the age level upward, California's funding growth will soon begin to slow relative to that of other states.

This report is the fifth in an ongoing series reviewing California's share of federal formula grant programs. It is available on the PPIC website, at <http://www.ppic.org>, via direct link to the report at <http://www.ppic.org/content/other/903DisabledEd.pdf>, or on the California Institute's web page for the formula grant project, at <http://www.calinst.org/formulas.htm>. The next report in the series, scheduled for release in October, will examine the Head Start program.

California's receipts from the Special Education Grants to States formula grant program increased from \$200 million in 1992 to \$933 million in 2003. The nation's total grants during the same period rose from \$2 billion to \$8.9 billion.

After remaining stable at 10 percent for most of the 1990s, California's share of total grants began rising in 2000. The state's share in 2003 was 10.5 percent. Although a final appropriation figure has not yet been set, the state's share in 2004 is likely to exceed 10.6 percent.

The reason for the increase in California's share is a 1997 change in the allocation formula -- supported by California Members of Congress and others. The change phased out use of state-reported counts of disabled children, which critics charged were arbitrary and created an incentive to over-identify children, replacing it with objective standards based on census counts of children and children in poverty. The formula includes growth caps, growth floors, and hold harmless provisions to slow state's funding share change from year to year.

The report discusses these changes, as well as formula nuances that affect California's share of funding. It notes that California's share has been at the maximum level (the "growth cap") for several years, but it soon will not be because of the age range for which the state guarantees services. Because it is one of just two states to end at age 18 the guarantee of a "free and appropriate public education" (FAPE) for disabled children, California represents only 11 percent of the total child count upon which funding is based. Thus, the state cannot expect to receive more than that share of grant funds. On the other hand, if the state were to guarantee FAPE through age 21, for example, California's share might eventually grow to nearly 13 percent -- a difference that could ultimately mean annual differences of hundreds of millions of dollars.

The *Federal Formula Grants and California* series was developed at the request of the bipartisan leadership of California's congressional delegation and is produced by PPIC in collaboration with the California Institute. For more information regarding the report, or the whole series, contact Tim Ransdell, Executive Director of the California Institute, at 202/546-3700 or [ransdell@calinst.org](mailto:ransdell@calinst.org).

The Public Policy Institute of California is a private, nonprofit organization dedicated to improving public policy in California through independent, objective, nonpartisan research on major economic, social, and political issues. The institute was established in 1994 with an endowment from William R. Hewlett. PPIC does not take or support positions on any ballot measure or on any local, state, or federal legislation, nor does it endorse, support, or oppose any political parties or candidates for public office.

## **CONFERENCE COMMITTEE FINALIZES HOMELAND SECURITY SPENDING BILL**

On Wednesday, September 13, 2003, a House/Senate Conference committee agreed on the \$29.4 billion Homeland Security Appropriations bill for fiscal year 2004. Although the report is not yet available, some details include the following.

For border protection and enforcement, the conferenced bill includes a total of \$8.6 billion, including \$4.9 billion for the Bureau of Customs and Border Protection and \$3.4 billion for the Bureau of Immigration and Customs Enforcement.

The bill includes \$4.6 billion for the Transportation Security Administration (TSA), including: \$150 million for the procurement of explosive detection systems; \$250 million for installation of explosive detection systems; \$125 million for port security grants; \$17 million for operation safe commerce; \$85 million for cargo security screening and cargo security research and development; \$22 million for trucking industry grants; and \$10 million for intercity bus security.

For the Office for Domestic Preparedness (ODP) -- source of the bulk of homeland security grants to state and local governments -- the bill includes a total of \$4.1 billion. Of this amount, \$1.7 billion is provided for State and local basic formula grants and \$500 million is provided for a new State and local law enforcement terrorism prevention grant program. All of these funds are to be distributed using a formula outlined in the USA Patriot Act that greatly disadvantages California and other large states and benefits small states. The formula includes a three-fourths percent small-state minimum (typical minimums, if used at all, are one quarter to one half). Because of the unusual formula, California receives just 8 percent of funds, despite the fact that the state houses more than 12 percent of the nation's population. In 2003, California received \$4.68 per capita from ODP grants using this formula, whereas Wyoming received \$35.31 per capita. For more information regarding the USA Patriot Act formula issue, review 2003 state tables at <http://www.calinst.org/datapages/DHS.htm> .

Also within the ODP budget is \$725 million for high-threat urban area discretionary grants and \$750 million for firefighter assistance grants.

For the Emergency Preparedness and Response Directorate (primarily comprised of the Federal Emergency Management Agency - FEMA), the bill includes a total of \$9.1 billion, including \$1.8 billion for disaster relief, \$180 million for the Emergency Management Performance Grants, and up to \$890 million for biodefense countermeasures (Bioshield).

The California Institute will prepare an analysis of the conference report when it is made available. For now, some detail is available from our prior analysis of H.R. 2555, the House version of the Homeland Security appropriations bill, available at <http://www.calinst.org/pubs/hs04h.htm> (printable version in pdf format at <http://www.calinst.org/pubs/hs04h.pdf> ) and of the Senate version of the bill, available at <http://www.calinst.org/pubs/hs04s.htm> (pdf format version at <http://www.calinst.org/pubs/hs04s.pdf> ).

## **SENATE JUDICIARY EXAMINES H-1B VISA IMPACT**

On Tuesday, September 16, the Senate Judiciary held a hearing entitled "Examining the Importance of the H-1 Visa to the American Economy." H-1B visas allowed U.S. companies to hire skilled foreign workers when comparably skilled U.S. workers are not available. Currently, 195,000 H-1B visas per year are allowed to be issued, but the number will drop to 65,000 as of October 1, absent Congressional action.

The Committee heard from the following panel of witnesses: Stephen Yale-Loehr, Business Committee Chair, American Immigration Lawyers Association, and Adjunct Professor, Cornell University Law School; Elizabeth Dickson, Advisor, Immigration Services, Ingersoll-Rand Corporation; John Steadman, President-Elect, IEEE-USA; and Patrick Duffy, Human Resources Attorney, Intel Corporation.

In her opening remarks, Senator Feinstein expressed concerns over misuse of H-1B visas by some employers and stated that the Committee must find ways to prevent employers from using the program to replace higher-paid U.S. workers and to stop the movement of U.S. jobs to other countries.

Professor Yale-Loehr explained that there is currently a backlog of about 22,000 H-1B applicants, as well as about an additional 11,000 visas that will be allocated to Singapore and Chile under the recently enacted U.S. trade agreements with those companies. Therefore, in effect if the H-1B cap does revert to 65,000, there will be in effect only about 32,000 new visas available. He also pointed out that about 60 percent of H-1B visas are held by non-information technology workers and, therefore, are very important to many other U.S. industries.

Mr. Duffy testified that Intel supports the H-1B fee paid by employers, which is dedicated to the education American students in math and science programs. He also stressed that, in its attempt to stop misuse of the program, the Committee should not impede U.S. companies that legitimately use H-1B visas to remain competitive in the global marketplace.

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

## **SENATE PASSES ENERGY & WATER APPROPRIATIONS**

By a vote of 99-0, the Senate on Tuesday, September 16, passed its FY04 Energy and Water Appropriations bill (H.R. 2754). The House passed its bill on July 18. Difficult conference negotiations are expected because the Senate bill provides \$300 million more than the House version, and the bills have widely different funding priorities in some areas.

The \$27.4 billion bill provides \$4.5 billion for Army Corps of Engineers' water projects, including numerous California projects. The bill does not include funding specifically for the California Bay-Delta restoration project within the Department of the Interior's Bureau of Reclamation funding, because the authorizing legislation has expired. However, it provides \$7.5 million over the President's budget request for Central Valley Project funding to support the goals of the CALFED restoration. \$3 million is included for storage activities in the Delta, Friant, Sacramento River, and Shasta Divisions.

The appropriation for fusion energy sciences is \$257,310,000, an amount that is equal to the budget request. \$1,990,000 million is provided to allow the Department of Energy to enter multilateral international negotiations aimed at building the International Thermonuclear Experimental Reactor (ITER), a burning plasma physics experiment many view as an essential next step toward eventually developing fusion as a commercially viable energy source. The bill also includes \$150,000,000 for construction and \$96,300,000 for the National Ignition Facility (NIF) demonstration program

A full analysis of both the House and Senate bills will be prepared and distributed by the California Institute in the near future.

## **SENATE COMMERCE COMMITTEE ADDRESSES DIGITAL COPYRIGHT ISSUES**

The Senate Commerce Committee held a hearing on Wednesday, September 17 entitled "Consumer Privacy and Government Technology Mandates in the Digital Media Marketplace." The hearing examined the consumer privacy implications of the use of subpoena powers by copyright holders (primarily the recording industry) to obtain from Internet service providers the identities of Internet subscribers who are allegedly infringing on copyrights, and whether the government can mandate content protection technologies without limiting consumers' legal uses of digital media products.

The Committee heard from a number of witnesses, including: James Ellis, Sr. Exec. Vice President and General Counsel, SBC Corporation; Cary Sherman, President, Recording Industry Association of America (RIAA); Allan Davidson, Associate Director, Center for Democracy and Technology; Jack Valenti, Chairman and CEO, Motion Picture Association of America (MPAA); and Christopher Murray, Legislative Counsel, Consumers Union.

Mr. Ellis asserted that it is a misapplication of the Digital Millennium Copyright Act (DMCA) to create a “private and limitless right of subpoena -- devoid of all rules and procedures. The recording industry has legitimate rights and concerns -- but the answer is not to create a private right of subpoena that completely ignores the safety and privacy of America’s 100 million Internet users.” Mr. Sherman, on the other hand, outlined the billions of dollars lost by recording artists and the industry by piracy and stated that: “Although there is no easy solution to these problems, one thing is clear: Verizon and SBC have little or no economic incentive to combat piracy. SBC and Verizon combined have over 6 million DSL subscribers, more than 65% of all DSL subscribers in the United States. That’s over \$2.1 billion in revenues per year just from their consumer DSL business. And music downloading is driving the business.” This “benign neglect” of piracy helps explain why RIAA decided to subpoena Internet Service Providers (ISPs) for the identities of alleged infringers. He defended the industry’s use of the DCMA to justify the subpoenas and argued that an infringer should have no expectation of privacy.

Mr. Valenti argued against prohibiting the Federal Communications Commission from imposing technology mandates for access control or redistribution control technologies, pointing out that future needs cannot be foreseeable in a fast-paced, ever-changing technological world. He cited the “Broadcast Flag” as a good example of a technological mandate that will serve consumers. The Broadcast Flag regulation, pending before the FCC, would stop digital over-the-air broadcasts from being re-directed to the Internet for anyone to download, and consumers would not know there is a Broadcast Flag on a digital program unless they tried to re-distribute it to the Internet. Mr. Murray of Consumers Union, on the other hand, argued that the broadcast flag presents “the possibility that a small set of companies will be given a de facto veto on new business models based on political criteria. A much better approach would be to develop, collectively, a set of neutral technological criteria for standards that protect broadcast and cable-carried content....”

Testimony of all the witnesses is available from the Committee’s website at:

<http://www.commerce.senate.gov> .

## **HOUSE EDUCATION & WORKFORCE COMMITTEE MARKS UP HIGHER ED BILLS**

At a September 17th, 2003, markup session characterized by bipartisan cooperation, the House Education and Workforce’s Subcommittee on Select Education approved two higher education bills concerning graduate education opportunities and international and foreign language programs. After substitute amendments were issued, the Subcommittee favorably reported both bills, HR 3076, The Graduate Opportunities in Higher Education Act and HR 3077, the International Studies in Higher Education Act, to the full committee by a voice vote in a little less than half an hour.

HR 3076, a bill that authorizes federal support for three graduate fellowship programs with an emphasis on elementary and high school teacher training, was touted by Subcommittee Chairman Pete Hoekstra (MI) as an investment that promises to positively impact higher education campuses as well as K-12 classrooms across the country. HR3076 also provides assistance to adult student learners and military personnel. Committee Member Tim Ryan (OH), a supporter of the bill, encouraged the Chair to identify more opportunities for institutions of higher learning to help inner cities and surrounding communities. Mr. Hoekstra acknowledged the link between higher education and community advancement, adding that such opportunities also provided great benefit to students.

The bill visits Title VI of the Higher Education Act concerning the study of foreign languages, area studies, and international expertise. It calls for creation of a new advisory panel of international studies experts to provide recommendations to Congress in response to the changing national security needs and the international climate in the post 9/11 era. The bill also facilitates international study programs and

includes a provision evaluating the degree to which higher education operations advance American interests.

For additional information regarding these bills, visit the House Education and Workforce Committee's website at <http://edworkforce.house.gov>.

### **EFFORT SEEKS TO IMPROVE HIGH SCHOOL GRADUATION RATES**

On September 17, 2003, Rep. Susan Davis (San Diego) was joined by Rep. Ruben Hinojosa (TX) and education experts to announce a bill she is coauthoring that would help struggling high school students across America. The announcement coincided with the release of a report from the Manhattan Institute showing that just over half of minority students received an high school diploma in 1998.

HR 3085 otherwise known as the Graduation for All Act seeks to improve graduation rates in high schools by providing schools and districts with resources and tools to increase high school achievement. It authorizes \$1 billion in 2004 to specifically target schools with the lowest graduation rates to: promote adolescent literacy training, provide diagnostic reading assessments and help school districts develop individual graduation plans for the neediest students.

According to Rep. Davis, a member of the House Education and Workforce Committee, the bill will help middle school or high school students who do not have adequate reading skills to achieve academic success. The bill is a national version of a pilot program used in her district to assist teachers with special literacy techniques. At the briefing, San Diego State University Professor Jim Flood reported dramatic improvements in student performance after such techniques were used among schools in San Diego's City Heights community.

### **SEPTEMBER 24 LUNCHEON BRIEFING ON RECALL POLL**

Fabiani and Company will be holding a bipartisan policy luncheon on Wednesday, September 24 at 12 noon, at Charlie Palmer's (101 Constitution Avenue. This luncheon will feature Ed Goeas who will be providing an early look at his battleground poll for the California Recall Election. Mr. Goeas is President and CEO of The Tarrance Group, a political survey research and strategy firm. For further information, or to RSVP to the lunch, contact Harry Henderson of Fabiani and Company at: [hhenderson@fabiani-co.com](mailto:hhenderson@fabiani-co.com).

### **AUGUST UNEMPLOYMENT RATES RELEASED**

On September 12, 2003, the California Employment Development Department (EDD) released its monthly statewide unemployment statistics, indicating that the unemployment rate was 6.6% in August, 0.1 percentage point down from the 6.7% mark in July. The August 2003 rate was a bit lower than it was during the same period last year, when the state's jobless rate was at 6.7%. According to the Los Angeles County Economic Development Corporation, California has fared somewhat better than the U.S., as the nation's unemployment rate increased from 5.8% to 6.1% in August 2003.

Regionally, Southern California's 5-county (Los Angeles, Riverside, Ventura, Orange, and San Bernardino) unemployment rate was 6.2% in August, below last year's reading of 6.3%. In the Bay Area, the jobless rate in San Francisco (which includes Marin and San Mateo) was 5.6%, down from July's 6.0% rate. Similarly, Oakland's unemployment rate (which includes Alameda and Contra Costa counties) declined from 6.7% in July to a current rate of 6.2%, and Santa Clara had an unemployment rate of 7.9%, down from 8.5% in July.

For additional information on California's employment market, please visit California's Employment Development Department website: <http://www.edd.ca.gov>.