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## California Capitol Hill Bulletin

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*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.*

### SUPREME COURT RULES IN FAVOR OF SMALL WINERIES IN INTERSTATE SHIPPING CASE

On Monday, May 16, 2005, the U.S. Supreme Court ruled that vintners around the country can sell their wines directly to consumers. The rulings in *Granholm v. Heald*, *Michigan Beer and Wine Wholesalers v. Heald*, and *Sweedburg v. Kelly*, concerned laws in 24 states that prohibit out-of-state producers from selling their libations directly to consumers. Wineries throughout the country, including small and large vineyards in California, filed suit in federal court in an effort to eliminate the discriminatory laws and allow direct shipment of wine to anyone of legal age in any state.

The ruling in the vintners favor could have an immediate dramatic effect on wine sales across the country. In no state will that effect be more profound than California, which according to the Los Angeles Times produces 90 percent of the nation's wines. Small and medium sized wineries, which have difficulty selling through mass retailers, stand to benefit the most

Legally, the case rested on a conflict between the 21st Amendment to the Constitution, which repealed prohibition in 1933 and provided states with the power to tax and control interstate alcohol commerce, and the "dormant" commerce clause of the Constitution (Article I, Section 8, Clause 3), which gives Congress the right to regulate interstate commerce and exclusively prohibits commercial discrimination between states. Generally, in the 24 states at issue, state regulatory laws have given rise to a three-tiered system of alcohol control, which is dominated by large, consolidated beer, wine and liquor wholesalers. Under this system, out-of-state wineries must sell their products to state-licensed wholesalers, who in turn distribute to local state-licensed retailers, who then sell the product to the customer. The states and wholesalers posited that these regulatory controls are justified under the 21st Amendment and necessary for preventing sales of alcohol to minors and for effectively collecting taxes.

The wineries who brought suit against the wholesalers argued that the current system directly violated the commerce clause by discriminating against out-of-state vineyards. First, the nature of the wholesale business favors high volume transactions between large vineyards and wholesalers, and consequently decreases the ability of small wineries to compete. Out-of-state boutique vineyards with expensive merchandise, who are

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unable to strike a deal with wholesalers, were all but prevented from selling their products in the 24 states with restrictive laws. Second and perhaps more importantly, eight of the restrictive states allowed in-state wineries to conduct direct transactions with consumers in that state while explicitly prohibiting out-of-state vintners from engaging in the same activity. With these concerns in mind, the wineries asked the justices to overturn the laws and open the restricted states to direct shipment of wine. The Supreme Court agreed with the vintners.

The bipartisan Congressional Wine Caucus, co-chaired by California Representatives George Radanovich (Mariposa) and Mike Thompson (St. Helena) celebrated the victory. Rep. Radanovich stated "that this is a big victory for the consumer, the small family winery and the free market...It will increase appreciation of wine and consumption overall...Given that California is home to many of our nation's wineries, this will have a huge impact on the economy in my home state, particularly small wineries. This is a big win for the little guy and I am pleased the Supreme Court decided to lift the cork on the current law and promote free trade and competition, among states and those who love grapes." Rep. Thompson added that "This week's ruling is a historic milestone in tearing down the antiquated wall that has long separated hundreds of small and midsize wineries from American consumers. I urge all states to acknowledge the will of the court and adopt interstate shipping laws."

To read the Supreme Court opinion, visit <http://www.supremecourtus.gov/>. For more information regarding the wine industry, which has a \$45 billion impact on the California economy and provides more than 200,000 jobs in the state, visit <http://www.wineinstitute.org>.

## **SENATE APPROVES COMPREHENSIVE TRANSPORTATION REAUTHORIZATION BILL**

By strong margin of 89 to 11, the Senate approved a \$295 billion six-year transportation reauthorization measure on May 17, 2005. After two weeks of floor debate on the highways and transit measure, and conflicts over appropriate funding levels, advocates for higher spending prevailed and the bill now moves to conference. The inclusion of an additional \$11.2 billion in the Senate measure, however, will likely prevent the completion of a bill before the May 31<sup>st</sup> when the latest interim extension runs out. Disagreements between the Senate and the White House and the House, which both support a lower overall funding figure of \$284 billion, halted the progress of last year's transportation reauthorization effort in conference committee.

The bill's floor manager, Sen. James Inhofe (OK), repeatedly urged his colleagues to consider the safety and monetary benefits of completing work on a comprehensive surface transportation bill, rather than approving a seventh temporary extension. Inhofe detailed many advantages of passing a complete (non-temporary) bill -- including increased funding, firewall safeguards, and new safety and border corridor programs -- guaranteed in a multiyear transportation bill (HR 3), that would not be contained in extension language. Nevertheless, another temporary extension appears likely before the end of May.

Last week the Senate endorsed a provision adding \$11 billion to the bill, rejecting efforts by Budget Committee Chair Judd Gregg (NH) to keep transportation spending in line with Congress' Budget Resolution spending plan by eliminating the additional funds. The bill's higher spending total seeks to increase in the minimum guaranteed rate of return to states, above the current 90.5 percent level to a rate of 92 percent by 2009. Even with the minimum guarantee increase proposed in the Inhofe substitute plan, some members from donor states voted against the final measure, asserting that a 92 percent rate of return was still not enough. Among them was Sen. Kay Bailey Hutchison (TX), who stated, "States such as Texas, California, Arizona, Colorado, and Michigan are contributing more and more, and we are the States that need the most new infrastructure to handle the greatest population growth. In addition, most of the donor States are border States with unique needs resulting from trade."

This week, Sen. Inhofe and bill supporters fought off an effort by fiscal hawks to cut transportation funds, this time led by Sen. Jeff Sessions (AL). Sessions' amendment which would have returned spending levels to \$284 billion, would have put the vast majority of the cuts on the back of the Congestion Mitigation and Air Quality Improvement (CMAQ) highway program and the Urbanized Area Formula (UAF) program under transit formula grants and research language. These programs happen to be among the highest yielding formula programs for California: 21.3 percent of CMAQ grants were directed to the state in 2002 and 17.1 percent of UAF national totals benefitted California in the same year. The Sessions amendment was rejected, 16 to 84.

The White House has repeatedly threatened to veto any bill that exceeds the administration's spending limit of \$284 billion, the level achieved by the House bill.

With House-Senate differences still sizeable, staffers to senior transportation-focused Senators reportedly hinted Thursday that another one-month TEA-21 extension is likely, renewing highway and transit programs until the July 4th recess. The current extension expires May 31, 2005.

### **FEINSTEIN ALTERNATIVE TO COLLINS' HOMELAND SECURITY FORMULA WOULD LESSEN UNEVENNESS OF SMALL-STATE GUARANTEE**

On Thursday, May 12, 2005, Senator Dianne Feinstein, along with Sen John Cornyn (TX) introduced legislation to distribute more federal homeland security funding according to risk and threat of terror attack. Cosponsored by Senator Barbara Boxer and other larger-state Senators, S.1013, the "*Homeland Security FORWARD Funding Act of 2005*," contrasts with the current law allocation scheme, which distributes nearly half of formula funding via a widely-criticized formula that vastly favors sparsely-populated states with little relative risk of attack.

Introducing the bill, Sen. Feinstein commented, "Billions of dollars in homeland security funds to states and local communities are being distributed to areas that are not at the greatest risk of terrorist attack." She added, "If we are to improve our nation's security, we absolutely have to direct funding and resources to where there is the most risk." (FORWARD stands for Funding Our Risks with Appropriate Resource Disbursement.) With some differences, S.1013 closely resembles a bill by House Homeland Security Committee Chairman Christopher Cox (Newport Beach) that was approved by the House of Representatives by a 409-10 margin on May 12.

Senator Feinstein's bill would require the Department of Homeland Security to use risk analysis to distribute funding for four major grant programs: the State Homeland Security Grant Program (SHSGP), Urban Area Security Initiative (UASI), Law Enforcement Terrorism Prevention Program (LETPP), and Citizens Corps. For all programs, the bill would require a 0.25 percent minimum for states -- a sharp contrast with the unusually large 0.75 percent minimum contained in current law. That current-law minimum has resulted in small states receiving more than five times as much per person as larger states such as California.

In addition, the 0.25 percent state-level minimum in S.1013 would be well below that proposed in S.21, sponsored by Maine Senator Susan Collins. The Collins bill proposes a minimum of 0.55 percent but applies the minimum to more programs than even current law, thereby yielding no relative improvement over current law in the amount of excess funding funneled to small states with no regard to terrorism risk or threat.

Senator Feinstein commented that, "There are lots of vested interests who will oppose such efforts. But our nation's safety is at stake. It is time to put aside pork-barrel politics and a Cold War mentality and get to work. We can not afford to wait until it is too late."

It is possible that threat-based approach and a more standard minimum, as is proposed by both Sen. Feinstein and Chairman Cox, could increase funding to California by as much as \$100 million per year compared to either the Collins bill or current law. At the introduction of S.1013, Sen. Feinstein distributed letters of support (available on her website) from the Governors of California and Texas, the Cities of Los Angeles and San Francisco, and the League of California Cities.

For additional information, visit <http://www.senate.gov/~feinstein/05releases/r-homeland-intro0512.htm> . In addition, for state-focused information regarding homeland security grant issues, see "*Federal Formula Grants and California: Homeland Security*" -- part of a joint publication series from the Public Policy Institute of California (PPIC) and the California Institute, at <http://www.ppic.org/main/publication.asp?i=481> .

### **HOUSE APPROPRIATIONS REPORTS FY06 ENERGY AND WATER BILL**

On Wednesday, May 18, 2005, the House Appropriations Committee completed action on its FY06 Energy and Water bill (H.R. 2419/H.Rpt. 109-86). The Chairman's mark provides a total of \$29.7 billion in budget authority for the U.S. Army Corps of Engineers-Civil, the Department of Interior including the Bureau of Reclamation, the Department of Energy, and several Independent Agencies. The bill is \$131.7 million below the FY05 funding level and the same as the President's budget request.

Included in the funding is \$35 million for the CALFED water restoration project, almost four times last year's appropriation of \$9 million. Funding for the Bureau of Reclamation is \$977 million, \$7 million above last year's level and \$60 million above the President's budget request. The Corps of Engineers is provided \$4.7 billion for

maintenance and construction projects. The Committee rejected an Administration proposal to allow the Corps to prioritize funding for projects based on a strict cost-benefit analysis. The bill prohibits the Corps from reprogramming from one project to another more than \$2 million or 10 percent of the project's cost. It also directs the Corps to fund individual projects at the amounts specified in the report to accompany the bill.

Fusion energy sciences is funded at \$295,155,000, an increase of \$5,605,000 over the budget request; nevertheless, there is a significant redirection of funds called for in the bill. The Committee report states: "The Committee is concerned that two-thirds of the proposed increase for the International Thermonuclear Experimental Reactor (ITER) would be achieved by reducing domestic fusion research and operating time on domestic use facilities. . . . The Department's proposal to increase support for ITER at the expense of domestic fusion research is unwise and unacceptable. Such an approach is not only short-sighted, but inconsistent with prior Congressional guidance. Therefore, the Committee directs the Department to utilize \$29,900,000 of funding proposed for ITER and the additional \$5,605,000 to restore U.S.-based fusion funding to fiscal year 2005 levels as follows: \$7,300,000 for high performance materials for fusion; \$14,305,000 to restore operation of the three major user facilities to fiscal year 2005 operating levels; \$7,200,000 for intense heavy ion beams and fast ignition studies; \$5,100,000 for compact stellarators and small-scale experiments; and \$1,600,000 for theory. As in previous years, the Committee directs the Department to fund the U.S. share of ITER through additional resources rather than through reductions to domestic fusion research or to other Office of Science programs. If the Department does not follow this guidance in its fiscal year 2007 budget submission, the Committee is prepared to eliminate all U.S. funding for the ITER project in the future."

The bill also recommends \$541,418,000 for the inertial confinement fusion and high yield program, which maintains the program at the current year level and is an increase of \$81,000,000 over the budget request. The Committee's recommendation provides \$141,913,000 for construction of the National Ignition Facility (NIF), the same amount as the budget request.

The California Institute will prepare a more detailed analysis of the appropriations impact on California, which will be available in the near future. Further general information on the bill can be obtained through the Committee's website at: <http://appropriations.house.gov>.

## **BRAC BASE CLOSURE LIST RELEASED, CALIFORNIA ESCAPES RELATIVELY UNSCATHED**

For the first time in recent memory, the Pentagon has announced a list of base closings that does not disproportionately reduce California's bases or personnel. In sharp contrast to the closures in the 1980s and 1990s, where California shouldered more than half of the nation's net cuts, the state would lose barely more than 2,000 personnel under the Pentagon plan released on Friday, May 13, 2005. Compared to early predictions of cuts more than 10-fold as large, the proposed reductions are a relief to many across the nation. Although it is impossible to say why the closures round was less painful for the state, it may be that the unanimous bipartisan solidarity displayed by the California Congressional Delegation, Governor, State Legislature, local officials, and private sector allies from across the state had a substantially positive effect. Some areas of the state did suffer losses, but the statewide experience was relatively mild.

Nationwide, the Pentagon recommends closing 33 major military installations, conducting the major realignment of 29 other bases, and altering more than 775 smaller installations. In total, the recommendations propose cutting 26,187 Department of Defense (DoD) personnel, including military and civilian jobs, although nearly 13,000 of those cuts will come from overseas bases. The closures and realignments figures are much less damaging than the Pentagon's initial estimate of reducing excess force structure capacity by 24 percent. Rather, the 2005 BRAC recommendations appear to only reduce the plant replacement value (a measure used by DoD to quantify the value of bases) of DoD holdings by five percent.

California escaped this first step of the BRAC process without suffering the disproportionate cuts that characterized its experiences in past BRAC rounds. Overall, the Pentagon report reduces personnel in California by 2,018 jobs, approximately 15.9 percent of the nation's total personnel cuts. However, according to the San Diego Economic Development Corporation, about 1,500 of the 2,000 California "cuts" are actually San Diego Naval Hospital students who would cycle out in time, and are not permanent positions. Whereas other states gained significantly in the recommendations, California's result is relatively favorable. The personnel cuts would reduce

the total military presence in the state by just over 1 percent, from 188,104 personnel to 186,086 personnel. In terms of net cuts, California had the 12th largest numeric reduction in personnel of the 50 states and the District of Columbia; as a percentage of its existing personnel (including both net losers and gainers), California's job cuts ranked 25th out of the 50 states and the District of Columbia.

For more information on bases designated for closure and realignment in California, the base closure process in general, and California's historical experience with base closures, visit the California Institute's defense page at <http://www.calinst.org/defense.htm> . From the webpage it is possible to access the Institute's more extensive "Special Report: Pentagon Base Closings List Has Fewer US and California Cuts Than Expected," as well as accompanying data for all of the state's bases' personnel gains and losses. The Department of Defense has established a website for the BRAC process that can be reached at <http://www.defenselink.mil/brac/> . Finally, the nine member BRAC Commission has set up its own website at <http://www.brac.gov/> .

## **RUMSFELD TESTIFIES BEFORE BRAC PANEL**

On Monday, May 16, 2005, Defense Secretary Donald Rumsfeld testified before the Base Realignment and Closure Commission about the Department of Defense's (DoD) list of recommendations for base closures and realignments that was released the previous Friday. Rumsfeld spoke briefly, describing the lengthy and complicated process DoD undertook to analyze its current holdings and systematically decide which bases should remain open. The Pentagon consumed tens of thousands of man hours in examining more than 25 million pieces of data and constructing more than 1000 possible closure and realignment scenarios. Secretary Rumsfeld repeatedly emphasized that military value was DoD's primary concern, but also stated that jointness between the different services was central in the base closure analysis. He cautioned the Commissioners to be careful not to look exclusively at individual recommendations, but take into consideration "the totality of it." General Richard Myers, Chairman of the Joint Chiefs of Staff, and Michal Wynne, the Undersecretary for Acquisitions, Technology and Logistics, also spoke at the hearing.

Questions from the nine Commissioners focused on jointness, changes to the reserve and national guard, DoD processes, and the compilation and availability of data for the Commission. Commission Chairman and San Diego resident Anthony Principi sought assurance from Rumsfeld that, in the context of large organizational reviews being undertaken by the Pentagon, including the Quadrennial Defense Review, BRAC recommendations were not "putting the cart before the horse." Along with at least three other Commissioners, Principi questioned the dramatic changes proposed for the armed services reserve and national guard. The Pentagon announced it wants to shutter around 400 National Guard and Reserve installations, including 211 Army National Guard bases and 176 Army Reserve facilities. Plans call for the military to consolidate those into 125 new Armed Forces Reserve Centers scattered around the country. Commissioners expressed significant concern that the added distance reservists would be forced to travel for weekend drills could be detrimental to future recruiting.

Philip Coyle from California noted that the Pentagon's recommendations only account for 15,000 of the approximately 70,000 DoD personnel that will be returning from overseas. Admiral Harold Gehman, Jr. and James Bilbray both lamented DoD's delays in providing the Commission with crucial information about the DoD recommendations. Finally, James Hansen, James Hill, and General Lloyd Newton, while lauding the Pentagon for including jointness as a key priority, complained that the recommendations did not go far enough in furthering joint fighting capabilities. To all of the questions, Secretary Rumsfeld, General Myers, and Undersecretary Wynne answered that DoD was certain that the recommendations would not harm the armed forces and would make the military stronger, more effective, and less expensive.

Throughout the week, the BRAC Commission held open hearings in Washington featuring testimony by many of the decision makers in the BRAC process, including representatives from each branch of the armed services. Press releases and some written testimony from those hearings are available at <http://www.defenselink.mil/brac/> . A report by the California Institute on the 2005 BRAC and its impact in California is available on the Institute's defense page at <http://www.calinst.org/defense.htm> .

## **BRAC COMMISSION FOCUSES ON NAVY & MARINE CORPS FACILITY SHIFTS**

On Tuesday, May 17, 2005, the Base Realignment and Closure Commission (BRAC) held a hearing in Washington, DC, to focus on issues related to the closure of Navy and Marine Corps facilities. The Pentagon has recommended closure of nine major and 46 minor Navy and Marine Corps facilities nationwide, saving a purported \$1.5 billion annually. In California, the most significant BRAC changes are associated with the Navy, including the closure of Naval Support Activity Corona (NORCO), where nearly 1,000 personnel will be moved out (many moving to Ventura). Also closed will be the Naval Weapons Station in Concord, and Navy-Marine Corps Reserve Centers in Encino and Los Angeles. Job losses will also be associated with facility "realignments," such as at the Naval Medical Center San Diego (where 1,630 positions will be eliminated but most are transitional student positions), Naval Base Ventura City (losing 1,534 positions), Naval Base Coronado (-460 jobs), and Marine Corps Logistics Base Barstow (falling by 419 positions). Some of the state's Naval facilities would experience increases, including Naval Air Weapons Station China Lake, which adds nearly 2,500 jobs, and Naval Station San Diego, which would grow by nearly 1,200 personnel.

Commissioner Philip Coyle, a Californian and a former Assistant Defense Secretary in the Clinton Administration, asked about the advisability of the closure rounds in general, given the increased focus on military and international activities at this time. Secretary England replied that the costs have risen sharply in nearly every spending area, including personnel, health care, transportation, etc., necessitating budgetary savings through closures. Admiral Clark added that the Pentagon has been in a "procurement holiday" for a number of years, leaving a vast unmet need of prospective spending. For example, Clark suggested that a fighter plane should last 14 or 15 years, not the 35 years that have been asked of some of our fighter aircraft.

Commissioner Coyle also asked about whether and what changes were considered for California. Secretary England replied that there had been a long discussion about California-area depot movements, but that the Navy felt it important to keep depots positioned "forward" in the Pacific region, especially considering how much Marine Corps activity already is focused on the west coast. He noted that DoD does propose to move some small engine repair to some other depots, but "we kept our primary depots there."

Commissioner James Bilbray, a former Member of Congress from New Mexico, asked about the decision not to close Marine Corps Air Station Miramar, which has received criticism over noise issues by neighboring residents, arguing that (like El Toro and Tustin) the mission might be at least as well accomplished in Barstow.

Regarding Monterey, and the decision not to close the Naval Postgraduate School or the Defense Language Institute there, Secretary England said the Navy "ended up deciding that professional military education is hugely important." He also stressed the unique cross-pollination benefits of conducting professional military education operations that allow future U.S. military leaders to interact with counterparts from other countries that also participate in these schools, commenting, "this linkage is very important." He said that the unique strengths of NPS and DLI provide "too much value going forward for the nation" to close them, and that the move would be "too long a leap, not worth the money." Admiral Vern Clark concurred, adding that the Pentagon did consider outsourcing educational functions and various other options, but that none compared to keeping the Monterey facilities operational and strong.

BRAC Commissioner Adm. Harold Gehman (Ret.) asked about the decision making structure, particularly focusing on the expected increase in the strategic importance of the Pacific Rim. Marine Corps Commandant Michael Hagee replied that he does "not see us reducing our structure in the Pacific between now and 2020." Commissioner Gehman asked specifically about the Marine Corps Recruitment Depot (MCRD) San Diego, which sits adjacent to San Diego's International Airport and which he argued local community residents might prefer closed. Navy Secretary Gordon England replied that military value assessments were key to keeping MCRD San Diego open, adding, "It is important that we run the Department of the Navy in an efficient manner." England also disagreed with the contention that the community would prefer the facility closed, arguing instead that there is considerable support in the surrounding area.

BRAC Commissioner Samuel Skinner questioned the closure of the New London submarine base, given the 15,000 jobs lost, when (as he argued) an Atlanta facility might have been a more appropriate target. Secretary England replied that the Pentagon "did not consider community economic impact" when considering closures and

added that the New London closure would save \$1.7 billion in future military spending. Skinner also charged that the closure list demonstrated a DoD bias in favor of the Southeastern U.S.

Brig. General Sue Ellen Turner, a BRAC Commissioner, expressed concern about the 4,500-job closure of Maine's Portsmouth Naval Shipyard, querying how a single remaining naval shipyard on the East Coast (Norfolk) can handle all Atlantic fleet needs. Admiral Clark replied that military value was considered, and that nuclear submarines (their key service focus) today need less regular maintenance than in the past, and that they are becoming a smaller portion of the fleet as well -- down from 100 to 50 subs.

For the more California Institute information regarding California's past and present base closure experiences, including two recent reports and accompanying tables, visit <http://www.calinst.org/defense.htm> .

## **HASC AUTHORIZES 2006 DEFENSE SPENDING**

Completing action in the wee hours of Thursday, May 19, 2005, the House Armed Services Committee approved a defense authorization bill that will allow \$441.6 billion in defense expenditures for FY 2006. By a 61-1 vote, HASC approved H.R. 1815, authored by Committee Chairman Duncan Hunter (Alpine). Hunter commented that his committee "has long championed the need to recover from the 'procurement holiday' of the 1990s by steadily increasing the modernization budgets."

Base closing opponents unsuccessfully attempted to throw a monkey wrench into the 2005 base realignment and closure process on May 18, when members of the House Armed Services Committee offered an amendment to end the BRAC process. The Committee rejected two proposals by Rep. Jeb Bradley (NH) -- one to halt the closure process entirely (which failed by voice vote), the other to delay it until the end of Iraqi operations and completion of various internal DoD assessments (which failed by a show of hands). The proposals were supported primarily by Members representing bases where major facilities were listed for closure.

Narrowly failing (27-33) was an amendment by Rep. Ellen Tauscher (Alamo) that would have shifted testing responsibility for ballistic missile defense from the Missile Defense Agency to DoD's Office of Testing and Evaluation, which she argued had more testing experience. By voice vote, the committee agreed to require a study of using a capital budgeting approach for defense spending; the technique would allow for long-term acquisition of weapons systems without the requirement to show all funding up front as budget authority.

Responding to criticism of DoD failures to follow technological maturity guidelines and prematurely move systems to development and deployment, H.R. 1815 requires DoD to evaluate and monitor changes in baseline cost estimates for weapons systems, holds DoD accountable and sets strict standards for accounting and cost management. (For example, acquisition costs exceeding 15% above baseline triggers alternatives analysis.)

Relative to the President's budget request, weapons systems programs changes include \$152 million less for the Joint Strike Fighter program (eliminating the advance procurement portion) and \$30 million for the Global Hawk unmanned aerial vehicle program. JSF would still be permitted \$2.5 billion in Air Force R&D accounts and \$2.4 billion in Navy R&D accounts, but HASC considered the procurement funds premature.

Other major aerospace authorization proposals include \$3 billion for the Air Force's C-17 Globemaster cargo aircraft (\$166 million for R&D and \$2.8 billion for procurement of 15 aircraft), \$3.7 billion for the Air Force's F/A-22 fighter (\$498 million for R&D and \$3.2 billion for procurement), \$2.7 billion for procurement of the Navy's F/A-18E/F fighter, \$864 million for the Evolved Expendable Launch Vehicle (EELV) program, and ongoing Air Force funding of \$364 million for B-2 stealth bombers and \$150 million for the B-1B bomber. The bill would increase ballistic missile defense funding to \$7.9 billion, and overall defense science and technology funding would increase by nearly \$900 million from the President's request, to a 2006 total of \$11.4 billion (\$2.2 billion for the Army, \$2 billion for the Navy, \$2.1 billion for the Air Force, and \$5.2 billion for DARPA).

The Senate Committee on Armed Services reported its bill on May 12, and floor action was expected in both the House and Senate before the Memorial Day recess.

For more information, visit <http://www.armedservices.house.gov> .

## **HOUSE APPROVES HOMELAND SPENDING**

By a vote of 424-1 on Tuesday, May 17, 2005, the House of Representatives approved and reported the FY 2006 Homeland Security spending bill, providing \$30.9 billion for operations of the Department of Homeland

Security and homeland-related activities in other agencies. The bill, H.R. 2360, grows spending by \$1.4 billion from 2005 levels, and provides \$3.6 billion for various first responder grant programs and related funding.

First responder funding has been a primary focus area in recent debates, and the bill proposes \$750 million for the state homeland security formula grant program (SHSGP), \$400 million for State and local law enforcement terrorism prevention grants (LETTP), \$180 million for Emergency Management Performance Grants; and \$200 million for First Responder training. These programs, to receive a total of \$1.4 billion, distribute funds according to a widely-criticized formula that vastly favors small states over large states. (In 2004, California received \$5 per capita from these programs, whereas Wyoming received \$38 per capita that year.) In addition, the bill proposes \$1.215 billion in funding focused on high-density urban areas, including \$850 million for urban area grants, \$150 million for rail security, \$150 million for port security, and \$65 million for other infrastructure protection. The bill proposes that not less than 10 percent of basic formula grants (\$750 million) and urban area grants (\$850 million) be set aside for EMS providers.

The House adopted seven amendments, including a boost of \$50 million for firefighter grants (California received 4% of those funds in 2003) offset by a \$24 million reduction in disaster funding and a \$26 million cut in administration, and in increase of \$50 million for chemical plant security that was also offset by administration cuts. By a 226-198 vote, the House approved shifting \$100 million from various accounts to help states conform with national drivers' license standards contained in the recently-passed REAL ID Act. In addition, the House accepted an amendment offered by Rep. Sheila Jackson-Lee (TX) to prohibit use of federal border patrol funds for private groups, such as the so-called "Minutemen" who currently patrol parts of the Mexican border.

For more details, please see [Bulletin, Vol. 12, No. 12 \(5/6/2005\)](#), which discusses Appropriations Subcommittee actions. For additional information, visit <http://appropriations.house.gov/>.

## **HOUSE HEAD START REAUTHORIZATION BILL CLEARS FULL COMMITTEE UNANIMOUSLY**

On May 18, 2005, the House Education and Workforce committee in a full mark up session kept bipartisan momentum going as the Committee's Head Start reauthorization proposal (HR 2123) was reported to the House floor by a unanimous vote of 48 to 0. The full committee version of the bill continues to exclude a White House-sponsored pilot project that would give more power to the states. However, a contentious faith-based amendment planned to be introduced on the floor could yet generate opposition to the bill.

In his opening remarks, Chair of the Committee John Boehner (OH) outlined some of the key components of the House Head Start bill, including a provision that would spur greater competition among Head Start operators, the strengthening of school readiness and academic performance for Head Start children, protections against abuse and mismanagement of funds, greater Head Start accountability to parents and taxpayers, improved teacher quality, and enhanced integration of and coordination between Head Start center curricula and state administered pre-K programs. The Head Start bill provides \$6.9 billion in authorizations for 2006 and unspecified sums for FYs 2007-2011.

Committee Ranking Member George Miller (Martinez) congratulated the chair and bill co-author Rep. Michael Castle (DE) for taking steps to improve state coordination, strengthen oversight, and increase funding setasides for migrant, seasonal farmworkers (5%) and Indian (3.5%) Head Start children. Rep. Miller, however, said he supported stronger efforts to help Head Start teachers improve professional development and salaries. Rep. Miller spoke out strongly against any effort to revive language included in the prior Head Start House bill from 2003 that would give Head Start administrators the right to make employee hiring decisions based on their religious faith. Chair Boehner indicated that he supported including faith-based language when the Head Start bill was introduced earlier this month. However, he stated that he would wait to attach faith-based language to the bill once it was brought for consideration to the House floor.

House Democrats decried the inclusion of faith-based provisions in the prior Head Start floor debate that culminated with passage of a Head Start bill by a narrow one-vote margin in 2003. In that debate, detractors argued that such language would roll back civil rights protections and would lead to religious discrimination at Head Start facilities. House Republicans retorted that making a Head Start teacher's faith a hiring consideration makes good sense, and that similar faith-based language was signed by President Clinton on several occasions.

Senior committee Democrat Lynn Woolsey (Petaluma) offered an amendment during the markup that would have increased Head Start authorizations by \$16.7 billion through 2011. Expressing concern about the growing number of children in poverty, Rep. Woolsey suggested that an investment in Head Start was the best way to expand Head Start services to the growing number of children who would be eligible for grants but are not being served due to under-funding. Her amendment was rejected by a vote of 22 to 26.

An amendment by Rep. John Tierney (MA) aiming to provide grants for the improvement of Head Start teacher quality failed by a voice vote, although Chairman Boehner expressed interest in working with Rep. Tierney to find ways of incorporating language in a forthcoming Higher Education Act reauthorization measure.

No Senate action on Head Start has occurred so far this year. For more information, visit the Education and Workforce Committee website at: <http://edworkforce.house.gov/markups/109th/fc/hr2123/518main.htm> .

For state-focused information regarding Head Start, see “*Federal Formula Grants and California: Head Start*” -- part of a joint publication series from the Public Policy Institute of California (PPIC) and the California Institute, at <http://www.ppic.org/main/publication.asp?i=469> .

### **BIPARTISAN JOB TRAINING BILL CLEARS SENATE HELP COMMITTEE**

On May 18, 2005, the Senate Health Education Labor and Pensions (HELP) Committee, Chaired by Mike Enzi (WY) approved bipartisan legislation that would reauthorize the 1998 Workforce Investment Act (WIA). The Senate’s job training assistance measure (S 1021) was approved in a brief mark up session by voice vote, paving the way for a smoother and more congenial floor debate than that which came to pass when House companion legislation (HR 27) was considered earlier this year.

Senate WIA language creates a \$250 million program for community colleges, encourages business integration in training programs, requires 10 percent of program funds to be used by states to help job seekers find high paying jobs, establishes spending benchmarks to preserve certain programs, and strengthens Workforce Investment Boards, among other provisions. No specific authorization figures are provided in the bill which would reauthorize job training initiatives through 2011.

The House proposal which was approved on a party line vote of 224 to 200 in March, was met with stiff resistance from Democrats, because of language that would combine funding streams for adult, dislocated workers and employment services initiatives into a consolidated \$3 billion block grant.

Senate language keeps the three programs intact; however it would increase transfer authority between grants to states from 20 percent to 45 percent. The House bill was also criticized by Democrats for containing language that would allow faith-based preferences for those hiring trainees.

The bills approved by the Senate Committee and the full House closely resemble legislation introduced by each body in prior years. WIA reauthorization was held up in the Senate last year when Democrats acted to block conference action.

### **JUDICIARY SUBCOMMITTEE SCRUTINIZES PIRACY IN CHINA AND RUSSIA**

The House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property held back-to-back hearings on Tuesday, May 17, 2005, to investigate the state of piracy in the People’s Republic of China and the Russian Federation.

On the China issue, the Committee heard from a number of witnesses, including: Victoria Espinel, Acting Assistant U.S. Trade Representative for Intellectual Property, Office of the U.S. Trade Representative (USTR); Myron Brilliant, Vice President, East Asia, U.S. Chamber of Commerce; and Eric H. Smith, President, International Intellectual Property Alliance (IIPA).

Ms. Espinel testified that the findings of the USTR’s Special 301 Out-of-Cycle Review on the intellectual property rights (IPR) situation in China, which was released on April 29, showed that China is still allowing rampant piracy and is taking insufficient actions to halt it. As a result, USTR has decided on the following actions: “1) Working with U.S. industry and other stakeholders with an eye toward utilizing WTO procedures to bring China into compliance with its WTO TRIPS obligations. 2) Invoking the transparency provisions of the WTO TRIPS Agreement, which will require China to produce detailed documentation on certain aspects of IPR enforcement that affects U.S. rights under the TRIPS Agreement. 3) Elevating China onto the Priority Watch List

on the basis of serious concerns about China's compliance with its WTO TRIPS obligations and commitments China made at the April 2004 U.S.-China Joint Commission on Commerce and Trade (JCCT) to achieve a significant reduction in IPR infringement throughout China, and make progress in other areas. 4) Continuing to monitor China's commitments under our 1992 and 1995 bilateral agreements, including additional commitments made in 1996. 5) Using the JCCT, including its IPR Working Group, to secure new, specific commitments to significantly improve IPR protection and the enforcement environment in China."

Mr. Brilliant outlined the breadth of the problem of piracy in China, testifying that it now endangers every product from unsafe, substandard airplane parts to dangerous pharmaceuticals, as well as electronic equipment, movies, and recordings. As a result, the Chamber has launched a three-part strategy aimed at halting piracy. First, it is educating U.S. businesses, the media, and lawmakers about the growing threat. Second, the Chamber is committed to bring the pirates to justice, by working with manufacturers, retailers, and law enforcement to disrupt the ability of counterfeiting networks to use legitimate distribution channels. And third, on the international front, the Chamber has launched country-specific initiatives in priority countries, with its initial efforts focused on China, Brazil, Russia, India and Korea.

During questioning of Ms. Espinel, Rep. Howard Berman (North Hollywood), Ranking Member of the Subcommittee, said that it was time for the Administration to confront China and bring a case against it in the World Trade Organization. Both Rep. Berman and Subcommittee Chair Lamar Smith (TX) pushed Ms. Espinel for a time by which the United States would take its case to the WTO if China does not move more aggressively to stop piracy. Reluctantly, Ms. Espinel agreed that six months could be a reasonable time frame. Rep. Adam Schiff (Burbank) also indicated that the WTO is the most powerful leverage the U.S. has with China. Rep. Darrell Issa (Vista) explained the problems his former company had with pirated amplifiers and questioned whether the United States has a tendency to go easy on China with respect to piracy because of concerns over foreign policy relations with North Korea.

At the conclusion of the hearing on China IPR, the Subcommittee took up the question of Russia's increasing piracy. Ms. Espinel again testified for the Administration, in addition to Eric Schwartz of the IIPA, Bonnie J.K. Richardson, Senior Vice President, International Policy, Motion Picture Association of America, and Matt Gerson, Senior Vice President, Public Policy and Government Relations, Universal Music Group.

Noting that the level of piracy in Russia has increased dramatically both for sales of pirated goods in the country and for exports to other countries, Ms. Espinel testified that the U.S. placed the country on the Special 301 Priority Watch List in April. In addition, she said, because of the severity of the problem, the Administration will conduct an out-of-cycle IPR review this year to monitor progress by Russia and will continue the interagency review of a petition filed by the U.S. copyright industries to withdraw some or all of Russia's benefits under the U.S. Generalized System of Preferences (GSP) program.

Ms. Richardson, citing Russia as one of the largest exporters of pirated DVDs in the world, called on the Administration to unambiguously confront Russia and oppose its entry into the WTO until it has taken effective measures to control the rampant piracy of optical disks. She also urged Congress to let the Administration and Russia know that granting Permanent Normal Trade Relations (PNTR) to Russia, a prerequisite to WTO entry, will be withheld if Russia does not make significant progress in halting piracy. Mr. Gerson, testifying on behalf of the Recording Industry Association of America, also supported denying Russia PNTR status and WTO entry until it seriously and effectively addressed the piracy problem.

Again during questioning, Chairman Smith indicated that six months would be a sufficient time period for the Administration to get Russia to deal with the problem effectively, and that the Subcommittee would revisit the issue again in six months. Rep. Berman also suggested, because the decision to elevate Russia from the Priority Watch List to the Country Watch List – a more onerous categorization – is made by an interagency group, Congress may want to put pressure on other federal agencies to allow USTR to move ahead in dealing severely with Russia on the piracy issue.

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

## **HOUSE RESOURCES COMMITTEE REPORTS THREE CALIFORNIA LAND BILLS**

On Wednesday, May 18, 2005, the House Committee on Resources, chaired by Rep. Richard Pombo (Tracy), favorably reported three land bills with ramifications for California: They were:

**H.R. 125** - The bill, introduced by Reps. Darrell Issa (Vista) and Buck McKeon (Santa Clarita) would authorize the Secretary of the Interior to construct facilities to provide water for irrigation, municipal, domestic, military, and other uses from the Santa Margarita River, California, and for other purposes. The Fallbrook Public Utility District in San Diego County would share 40/60 rights to the water with the Department of the Navy.

**H.R. 517** - Secure Rural Schools and Community Self-Determination Reauthorization Act of 2005 - The passage of the bill would extend the Secure Rural Schools and Community Self-Determination Act of 2000 through 2013. The Act provides two main sources of funding to rural areas. Title I funding goes to rural schools to ensure that children in remote areas receive educations comparable to those in more densely populated regions. Title II funding is used to repair roads and local infrastructures in rural areas.

**H.R. 853** - The bill, sponsored by Rep. McKeon, affects the transfer of a parcel of land in the Mammoth County Water District from the federal government to the district. Under the bill, the land can be used "for purposes other than the purpose for which those lands were being used prior to the conveyance to the Mammoth County Water District and such lands may be transferred as authorized under State law."

## **NATIONAL AND STATE ASSOCIATIONS OPPOSE MTBE WAIVER IN ENERGY BILL**

Ten major national and state associations wrote to Republican and Democrat leaders in the Senate on May 17, 2005 opposing the liability waiver for MTBE producers contained in the House passed Energy Policy Act (H.R. 6). The letter was signed by representatives of the U.S. Conference of Mayors, National League of Cities, National Association of Counties, National Association of Towns and Townships, American Water Works Association, Association of Metropolitan Water Agencies, National Water Resources Association, Association of California Water Agencies, Western Coalition of Arid States, and the American Public Works Association.

The letter states that: "As a matter of public policy, the Congress should not circumvent or diminish the rights of states, counties, cities, towns, school districts and public water suppliers to seek relief as a result of the contamination of their drinking water." The organizations argue that inclusion of the provision in the Energy bill "would constitute one of the largest unfunded federal mandates since the Congress overwhelmingly passed the Unfunded Federal Mandates Reform Act of 1995." The letter also argues that creation of an "MTBE cleanup fund" would not be enough to make them give up their recourse to the courts. Noting that the current estimate of the cost of MTBE contamination is \$29 billion, the representatives express skepticism that sufficient money would be put in a cleanup fund, especially if funded by the petrochemical industry.

## **HOUSE APPROPRIATORS REPORT AGRICULTURE BILL**

On Tuesday, the House Appropriations Subcommittee on Agriculture reported its Fiscal Year 2006 spending bill. The bill provides \$16.83 billion in discretionary funding, which is the same as FY05 funding and \$93 million more than the President's budget request. The total bill appropriates \$82.8 billion in discretionary and mandatory spending, which is \$14.5 billion more than FY05 spending and the same as the President's request.

Highlights of the bill include funding: the Animal and Plant Health Inspection Service activities at \$829 million, \$16 million above last year's funding level and \$32 million below the President's request; Food and Drug Administration funding at \$1.480 billion, \$30 million above last year and \$20 million below the President's request; the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) at \$5.3 billion, \$22 million above last year and \$47 million above the recently revised budget estimate; and the Agricultural Research Service at \$1.124 billion, an increase of \$164 million above last year's level and \$63 million above the President's request.

The California Institute will provide an in depth analysis of the appropriations from a California perspective soon after the House report is publicly posted.

## **HOUSE FINANCIAL SERVICES CONTINUES HEARINGS ON SECTION 8 HOUSING VOUCHERS**

On Wednesday, May 18, 2005, the House Financial Services Subcommittee on Housing and Community Development conducted a hearing featuring testimony from twelve stakeholders in the section 8 voucher program, including two Californians. The hearing was part of the Committee's ongoing discussions about HR 1999, the State and Local Housing Flexibility Act of 2005. HR 1999, which is sponsored by Rep. Gary Miller (Diamond Bar), includes a number of reforms to the existing section 8 program that provide more flexibility to local public housing authorities (PHAs). Currently the program requires that 75 percent of available vouchers be distributed to families with incomes below 30 percent of the median income for the area; HR 1999 would change that formula, requiring that 90 percent of vouchers go to families with incomes below 60 percent of the median income for a given area. The bill would provide public housing authorities with the option to institute time limits of no less than five years for how long a voucher recipient could remain in the program. After one year, the bill would eliminate enhanced vouchers, which allow voucher recipients in apartments that drop out of the voucher program to remain in their homes. Additionally, the bill would reduce the transportability of vouchers from one public housing authority to another.

The first panel included testimony from Tarrah J. Leach, a Section 8 voucher recipient from Logan, OH, Margery Austin Turner, the Director of the Metropolitan Housing and Communities Policy Center at the Urban Institute, Jody Geese, the Executive Director of the Belmont Metropolitan Housing Authority in Martins Ferry, OH, Rudy Montiel, the Executive Director for the City of Los Angeles Housing Authority, David Brightbill, the Executive Director of the Washington-Morgan Counties Community Action Agency in Marietta, OH, and Jon Gutzman, the Executive Director, of the Saint Paul Public Housing Agency in St. Paul, MN. The panel's testimony was generally critical of HR 1999, stating that the added flexibility would not necessarily help PHAs reduce costs or help additional families. In particular, Turner and Geese argued the changes might hurt PHAs and that the federal government was "passing the buck" by placing more responsibility for section 8 at the local level without increased funding. Montiel, from Los Angeles, stated that the proposed changes might provide his PHA with more flexibility to reduce fraud and eliminate some disincentives for voucher families to report income. However, without additional funding, he argued, adding additional housing units and redeveloping decayed apartments would be extremely difficult.

The second panel consisted of Renée Lewis Glover, the President and CEO of The Housing Authority of Atlanta, GA, Daniel Nackerman, the Executive Director of the Housing Authority of the County of San Bernardino, Sheila Crowley, the President of the National Low Income Housing Coalition, Philip Tegeler, the Executive Director for the Poverty and Race Research Action Council, Christopher P. Reilly for the National Multi Housing Council/National Apartment Association, and Denise B. Muha, the Executive Director of the National Leased Housing Association. With the exception of Nackerman, the second panel was also leery of the changes proposed in HR 1999. In particular, Mr. Tegeler stated that he has significant civil rights concerns about how HR 1999 might disproportionately impact blacks and Latinos. Mr. Nackerman, who stressed how well his PHA currently operates, said that HR 1999 would ease "the chokehold" that HUD has on PHAs around the country. When it comes to PHAs, Mr. Nackerman insisted that "one size does not fit all" and that local officials need the flexibility included in the bill to devise the most effective program for their areas.

As in last week's hearing featuring testimony from HUD Secretary Alphonso Jackson, questions from members of the Committee were contentious. By and large Republican members of the Committee seemed in agreement that HR 1999 would help improve section 8, while Democratic members of the Committee, a few of whom grew up in public housing programs, felt that the bill was an effort by Republicans and the Administration to dismantle and undermine the section 8 program.

For the full written testimony of all 12 witnesses, visit <http://financialservices.house.gov/>.

## **VILLARAIGOSA WINS L.A. MAYORAL RUNOFF**

On Tuesday, May 17, 2005, Antonio Villaraigosa defeated incumbent Mayor James Hahn in a runoff for the Los Angeles mayor's office. Villaraigosa received 244,779 votes for 58.5 percent, while Hahn garnered 173,423 votes for 41.5 percent. The runoff was required because neither candidate received a majority of votes in the March election. Villaraigosa will become the first Latino mayor of Los Angeles since the city's pioneer days in the late 1800s.

## **PPIC RELEASES STUDY OF SECOND GENERATION IMMIGRANTS IN CALIFORNIA**

A new study by the Public Policy Institute of California (PPIC), authored by S. Karthick Ramakrishnan and Hans P. Johnson, examines the concentration and well-being of second-generation immigrants in California. The researchers found that seven million people living in California have at least one foreign-born parent, constituting 21 percent of the state's population and 41 percent of the state's children. Among all racial and ethnic groups, the second-generation is faring better than the first, with lower poverty rates, higher educational attainment, better English proficiency, and higher family income. However, there are serious disparities between racial and ethnic groups in terms of education and income. Only 10 percent of second-generation Latinos graduate from college, a significantly lower rate than white or Asian second-generation immigrants.

For the full report, visit the PPIC website at <http://www.ppic.org/main/home.asp> .