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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. The e-mail edition is made possible in part by in kind donations from Sun Microsystems and Qualcomm, Inc.

Y2K LIABILITY BILLS MOVING IN SENATE, DESPITE OPPOSITION

On March 3, the Senate Commerce Committee reported its Y2K litigation legislation, S. 96, by a vote of 11-9, after substituting a manager's amendment offered by Chairman John McCain (AZ). McCain's amendment brings the bill closer in line with S. 461, the bill introduced last week by Sens. Orrin Hatch (UT), Mitch McConnell (KY), and Dianne Feinstein to discourage lawsuits as a result of Year 2000 computer glitches. S. 96 now includes a 90-day "cooling off" period before litigation can be initiated, and sets limits on punitive damages. See, [Bulletin, Vol. 6, No. 6 \(2/25/99\)](#). Sen. McCain stated that it was his intention to continue to work with opponents of the legislation in the hope of resolving differences before floor action on the bill.

Earlier in the week, on March 1, the Senate Judiciary Committee held a hearing on S. 461. The Subcommittee heard from Eleanor Acheson, Assistant Attorney General, Office of Policy Department on behalf of the Administration. Ms. Acheson testified that, although the Administration supported the intent of deterring frivolous lawsuits from being filed over Y2K problems, it believes that S. 461 is too broad and may prevent small businesses and consumers from justified legal recourse in some situations, and undermine efforts to encourage technology companies to fix their Y2K problems.

Harris Miller, President of the Information Technology Association of America testified, however, that the responsibility placed on companies in the bill to take reasonable efforts to anticipate and mitigate potential contractual and tort claims creates clear incentives for a company to continue to address Y2K problems in a timely fashion.

Testimony from both Committees' hearings can be obtained through their respective websites at: <http://www.senate.gov/~commerce>, and <http://www.senate.gov/~judiciary>.

The Judiciary Committee scheduled a mark-up for S. 4611 on Thursday, March 4, but had to postpone consideration due to opposition from Committee members.

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ENCRYPTION BILL SUBJECT OF JUDICIARY SUBCOMMITTEE HEARING

The House Judiciary Committee's Courts and Intellectual Property Subcommittee held a hearing on March 4 on H.R. 850, the Security and Freedom Through Encryption (SAFE) Act. The bill, authored again this year by Reps. Bill Goodlatte (VA) and Zoe Lofgren (San Jose), was introduced with 205 original co-sponsors. It would substantially eliminate all export controls on encryption products and software that are generally available in the global market.

The panel heard from the following three Administration witnesses: Undersecretary of Commerce for Export Administration William Reinsch; Associate Deputy Attorney General Ronald Lee; and, Deputy Director of the National Security Agency Barbara McNamara. As expected, the Administration continues to oppose the bill. Director McNamara admitted that NSA cannot stop the use of encryption, but contended that eliminating export controls would result in a widespread use of encryption than is not currently seen and consequently impede NSA's ability to intercept and interpret international communications. Mr. Reinsch and Mr. Lee, on the other hand, testified that the Administration eventually wants to see the widespread use of encryption to protect consumer rights and facilitate electronic commerce, but nevertheless continues to want encryption controls that require a key recovery system.

The witnesses did testify that the Administration no longer is seeking any controls on the domestic use of encryption, although they would not state outright that they would oppose any amendment to the bill that included such controls.

Rep. Lofgren, and other members of the subcommittee, called on the Administration to continue to work with them to find ways to improve the specific provisions of H.R. 850, despite its continuing opposition to the bill as a whole.

The subcommittee also heard from several organizations that support the legislation, including the Americans for Computer Privacy, the Business Software Alliance, the Americans for Tax Reform, the Electronic Industries Alliance, and the Software & Information Industry Association.

Complete copies of the testimony of all witnesses can be obtained through the Committee's website at: <http://www.house.gov/~judiciary>.

GAO SAYS 1990 CENSUS COST STATE \$2.2 BILLION

According to a report released this week by Congress' General Accounting Office (GAO), the decision not to use adjusted census data for formula grant allocations after the discovery of an undercount in the 1990 census caused California to lose more than \$2.2 billion over the decade of the 1990s.

The report, entitled "Formula Grants: Effects of Adjusted Population Counts on Federal Funding to States" (GAO/HEHS-99-69), estimates that 27 states plus the District of Columbia were net losers of \$4.5 billion over the decade, while 23 states were gainers. California's loss was the largest, with five other states losing \$100 million or more: Texas (\$934 million), Florida (\$226 million), Georgia (\$161 million), Louisiana (\$117 million), and Arizona (\$109 million).

On the other side of the ledger, Pennsylvania was the least undercounted state and was the largest winner due to the failure to use adjusted data, with a gain of \$1.1 billion. Other states which also gained at the expense of California and other undercounted states included Ohio (\$532 million), Michigan (\$506 million), Minnesota (\$319 million), Missouri (\$270 million), Wisconsin (\$241 million), and Indiana (\$237 million).

The report was requested by Census Subcommittee Chair Dan Miller (FL) and Government Reform full committee ranking member Henry Waxman (Los Angeles). A committee summary of the report quotes the report as estimating that California lost \$2,660 for each person missed in the 1990 census. California was estimated to have been undercounted by 834,000 persons in 1990.

The GAO report will probably be made available in the near future on the GAO website at <http://www.gao.gov>, and the report itself will likely be found ultimately at <http://www.gao.gov/new.items/he99069.pdf>, although there was no such document available as of this writing.

INSTITUTE, STATE DEMOGRAPHER BRIEF DELEGATION ON POPULATION SHIFTS

On Friday, California State Demographer Linda Gage and California Institute Executive Director Tim Ransdell briefed California Congressional delegation staff regarding the state's changing population and how those changes may impact federal funding distributed through formula grant programs. The briefing was jointly sponsored by the Institute and the Population Resource Center.

Ms. Gage noted the rapid growth in several key components of California demographics, including predicting rapid growth in school age population and postsecondary enrollment. She also noted that the state is home to one-third of the nation's foreign born population, and predicted 90% growth in the state's Hispanic population, 87% among Asians, 23% among African Americans, and 6% among white Californians.

Mr. Ransdell described several key factors used in federal funding formulas, including poverty, income, employment and other data points, and he noted that several provisions which are sometimes added to formula funding legislation serve to curtail California's share of funds, including hold harmless, phase-in periods, and small-state minimums. He also described the mechanisms and California's share of funding for the largest federal grant programs. Particular attention was paid to Title I and other elementary and secondary education programs which are up for reauthorization this year. Mr. Ransdell's report, entitled "Federal Formula Grant Program Elements: California Implications, February 1999 Update" is available on the California Institute website in text (html) form at <http://www.calinst.org/pubs/formula99.htm> or in Adobe Acrobat (pdf) form at <http://www.calinst.org/pubs/formula99.pdf>.

CAMPBELL CIRCULATING TOBACCO SETTLEMENT FUNDING LETTER

Rep. Tom Campbell (Campbell) is circulating a letter for signatures by California members of Congress asking Office of Management and Budget Director Jacob Lew urging the Administration to cease efforts to recoup a portion of the funding due state and local governments from the recent tobacco settlement. The letter notes that California is slated to receive \$25 billion over the next 26 years, to be divided equally between state and local governments, but also notes that the federal government was not a party to the lawsuit nor to the subsequent settlement agreement and thus does not deserve to participate in the proceeds from the settlement. The State of California and the participating cities and counties agree with this position. The Administration has argued that a portion of the settlement represents Medicaid-related claims which have been paid for in part by the federal government. The letter counters that a MediCal services claim was dismissed by the court before settlement.

Offices of members wishing to sign the letter should contact Suhail Khan with Rep. Campbell at x5-2631.

In a related matter, during debate on a supplemental appropriations measure in the Senate on Thursday, an amendment by Kay Bailey Hutchison (TX) to block federal government recoupment of tobacco settlement funding was approved by voice vote.

HEADWATERS DEAL

An agreement was reached late Monday night between Pacific Lumber Co. and government negotiators to purchase ancient redwood groves and restrict logging activities on Pacific's remaining land. Senator Dianne Feinstein, a participant in the negotiations over the past five years, commented Tuesday

that, "The end result is a strong plan on which all of us will have to work closely together to implement satisfactorily." Following are the key provisions of the agreement:

-Pacific Lumber and its parent firm, the Houston-based Maxxam Inc., are paid \$380 million by the federal and state governments for the purchase of the Headwaters Forest. Over the next five years another \$100 million will be paid for two additional ancient redwood groves.

- The 7,500-acre Headwaters Forest (3,000 acres of virgin timber and a 4,500 acre buffer zone) along with two smaller groves (2,500 acres) is immediately transferred to the public and will be co-managed by the U.S. Bureau of Land Management and the state of California as a protected preserve.

- Pacific Lumber agrees to a new Habitat Conservation Plan covering wildlife protection and timber harvesting through 2049 on the other 211,000 acres of its timber land.

-The Conservation plan also prohibits logging for fifty years in twelve "lesser cathedral" groves (8,000 acres) to protect the nesting territory of endangered marbled murrelets.

- Additional "no-logging" locations include buffer zones on streams to protect threatened coho salmon.

- Environmental protections remain active even if the property is sold.

DISASTER MITIGATION UPDATE

States currently spend equal amounts of money on pre-disaster preparation and on post-disaster assistance, while the federal government spends three times more on post-disaster assistance than on prevention. The House took a step toward reversing this trend when it passed the Disaster Mitigation and Cost Reduction Act of 1999 (H.R. 707) Thursday by a 415-2 vote. The bill would authorize \$25 million in fiscal 1999 and \$80 million in fiscal 2000 for a pre-disaster mitigation program, under which the Federal Emergency Management Agency (FEMA) could make grants to states and localities for programs that reinforce buildings and other infrastructure from damage from natural disasters. The bill would give preference for aid to states that developed potential disaster damage plans, making them eligible for FEMA grants of at least \$500,000 or 1 percent of the funds appropriated for the program each year. It would also streamline post-disaster aid distribution, increasing the portion of funding states can use for mitigation activities from 10 to 15 percent and allowing FEMA repair and replacement assistance to come to bear faster through the use of cost estimates for determining aid levels. The bill also allows small businesses to apply directly to FEMA for temporary housing assistance without going through the Small Business Administration. Representatives McKeon (Santa Clarita), Horn (Long Beach), Millender-McDonald (Carson), and other California members of the Transportation and Infrastructure Committee were instrumental in getting language adopted that provides communities 'due process' with respect to FEMA programs, including public comment before adopting important disaster assistance policies and prohibiting retroactive adoption or modification of policies to reduce assistance to states and local governments after a natural disaster.

On Tuesday, the House also passed by voice-vote H.R. 818, a bill that would establish a five-year pilot program to help small companies better prepare for natural disasters. The measure would authorize the Small Business Administration (SBA) to lend up to \$15 million a year from FY00 through FY04 to support programs that help mitigate disasters. The SBA would work with the Federal Emergency Management Agency to structure the programs. The administration would be required to report to Congress one-year before the 2004 expiration date on the number and dollar value of loans made under it and the estimated savings as a result.

REAUTHORIZATION OF EXPORT ADMINISTRATION ACT CONSIDERED

The International Relations' Subcommittee on International Economic Policy and Trade met on March 3 to consider reauthorization of the Export Administration Act (EAA), which expired in 1990.

Since that time, U.S. export controls have been implemented under the emergency authority of the International Emergency Economic Powers Act (IEEPA).

The panel first heard from Reps. Chris Cox (Newport Beach) and Norman Dicks (WA), Chair and Ranking Member of the Select Committee established to examine the acquisition of U.S. high technology by the Chinese. Although that report remains classified, Reps. Cox and Dicks testified on the Committee's recommendation that the EAA be reauthorized. Primarily, the Select Committee recommended that action because the penalties allowed under IEEPA are not as strong as though previously authorized under the EAA. Also, the Select Committee recommended that under a revised EAA the review period for export license applications should be longer in those cases where national security is of concern, and streamlined where national security is not at issue. Both members acknowledged that the Subcommittee's primary concern in drafting new EAA legislation will be to balance the competing concerns of encouraging U.S. exports and protecting U.S. national security.

The Subcommittee also heard from William Reinsch, Undersecretary of Commerce for Export Administration, and Richard Hogle, Deputy Assistance Commissioner of the U.S. Customs Service. Both witnesses testified in support of enacting a new version of the EAA. Mr. Reinsch reiterated the lesser penalties available under IEEPA, as well as less enforcement authority for Department of Commerce agents. Mr. Reinsch and Mr. Hogle also voiced general support for the 1996 EAA bill, which the Committee reported but which was not enacted. Nevertheless, Mr. Reinsch stated that Commerce had concerns with some of the provisions in the bill, including the unfair impact provision that limited U.S. exporters' rights to petition for relief because it did not include ineffective controls and competitive disadvantage as grounds for such petitions.

The Subcommittee also heard from private sector witnesses, including: the Electronic Industries Alliance; the Aerospace Industries Association; and, the Association for Manufacturing Technology.

TRADE SUBCOMMITTEE CONTINUES HEARINGS ON TRADE EXPANSION

The Trade Subcommittee of the House Ways and Means Committee, on Thursday, March 4, continued its series of hearings on trade expansion, this time focusing on the importance of trade negotiations in fighting foreign protectionism. *See, Bulletin*, Vol. 6, No. 5 (2/11/99).

Among other witnesses, the Subcommittee heard from Philip M. Condit, Chairman and Chief Executive Officer of The Boeing Company, representing the Business Roundtable Task Force on International Trade and Investment, and Dean Kleckner, President of the American Farm Bureau Federation. Mr. Condit testified that there are two critical issues that need to be at the centerpiece of America's trade agenda: (1) launching a new round of trade negotiations at the WTO Ministerial meeting this fall in Seattle; and (2) bringing China into the WTO trading system on commercially meaningful terms.

Mr. Kleckner testified that renewed trade negotiating authority was critical for the U.S. to have before the WTO ministerial meeting, in order to show the world that the U.S. is committed to increasing trade liberalization and opening new markets for agriculture. Mr. Kleckner also stated that the American Farm Bureau supports expediting action on the next round of negotiations on agriculture in the WTO, in order to put U.S. producers on a level playing field with the rest of the world.

Copies of the testimony of all witnesses can be obtained through the Ways and Means Committee at 202-225-3625.

CITRUS FREEZE UPDATE

Governor Gray Davis declared a state of emergency Wednesday in Ventura County, where farmers and agricultural workers are still recovering from December's freeze. The declaration will make emergency loans available to farmers, and federal officials will begin to evaluate the economic damage to

businesses in the county. The California Department of Employment Development will also consider unemployment claims. Davis and Vice President Al Gore have announced aid to workers and farmers on four separate occasions, but most of the aid was directed to the Central Valley. For more background on a broad range of freeze aid, *see Bulletin*, Vol. 6, [Nos. 1 \(1/21/99\)](#), [2 \(1/28/99\)](#), [5 \(2/11/99\)](#), & [6 \(2/25/99\)](#).

On Friday, February 26, the U.S. Department of Agriculture announced that the filing deadline for the 1998 Crop Loss Disaster Assistance Program has been extended to April 9, 1999, from the original date of March 12. This will allow growers of winter crops more time to calculate their losses from December's freeze, and give staff in local Farm Service Agency offices more time to process the thousands of resulting applications. Current estimate of crop losses statewide from the four-day freeze are \$656 million, mostly in citrus.

FILMING FEES

The House Resources Committee gave voice-vote approval to a measure (H.R. 154) that will require companies that produce commercial footage of national park scenery to first purchase a permit. The bill would give the Secretary of the Interior the authority to set fees based on factors such as the duration of a project, and the number of people involved. The permit would also have to generate at least enough revenue to compensate for associated costs of the production, such as cleanup and restoration. The measure mirrors a U.S. Forest Service fee-based filming policy. Eighty percent of the fees collected would go directly to the park where filming occurs. The bill has support from both sides of the aisle, and Jack Valenti, President and Chief Executive Officer of the Motion Picture Association of American (MPAA) testified in support of the measure before a subcommittee considering it in February.

BASE CLOSURE PLAYERS TALK COMPROMISE

After months of standing their ground, some participants in the discussion about future rounds of base closures have begun to discuss compromising in order to shutter military facilities. Sen. James Inhofe (OK), a leading opponent of base closures, and Secretary of Defense William Cohen, a closure advocate this week discussed limiting the scope of base closure rounds in order to narrow the field of potentially threatened facilities. Under the base closure process implemented in 1988, 1991, 1993 and 1995 -- closure rounds which disproportionately impacted California bases -- every base was considered fair game for shutdown. Cohen and Inhofe discussed limiting closure prospects to those bases for which there is a significant overabundance, thereby reducing concern at other facilities.

1998 EXPORT FIGURES FOR CALIFORNIA TOP \$100 BILLION AGAIN

For the third year in a row, California's total exports exceeded \$100 billion, topping out at \$104.97 billion for 1998, according to California Trade and Commerce Agency figures released on March 1. Although, because of the Asian crisis, the total is down from the \$109.54 California posted in 1997, growth in trade to Mexico, Canada, and Europe helped offset the decrease. Mexico remains California's number two export market with \$13.3 billion in exports, up 10.4 percent. Canada trade also rose 10.9 percent to a total of \$12.7 billion. Japan, nevertheless, remains the state's top market with \$14.6 billion in trade in 1998.

Exports to Mexico have more than doubled in the 1994-98 period, increasing 104 percent, with exports to Number 3 Canada rising 66.3 percent over the same time frame.

California retains its dominant position as compared to the other states, easily outdistancing Number 2 Texas' \$86.8 billion in exports.