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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.

SENATE AND HOUSE CONSIDERATION OF Y2K LIABILITY BILLS STALL

After voting 94-0 on Monday to take up the Year 2000 liability bill (S. 96), the Senate on Thursday, April 29, narrowly rejected, by a vote of 52-47, a motion to invoke cloture and move forward on the legislation. The eight-vote failure to invoke cloture came as a result of the efforts of Sen. Edward Kennedy (MA) to force the Senate to vote on a proposal to increase the minimum wage. He has vowed to hold the Y2K bill hostage until the Senate leadership agrees to a minimum wage vote. In response to the failed cloture motion, Senate Majority Leader Trent Lott (LA) pulled S. 96 from further consideration for the time being.

In the meantime, on Wednesday, the Clinton Administration announced that it opposed S. 96, as well as the compromise substitute being offered by Sens. John McCain (AZ) and Ron Wyden (OR). Later in the day, however, those sponsors agreed to a further compromise proposed by Sens. Chris Dodd (CT) and Dianne Feinstein, among others, which they hope will dampen the Administration's opposition. The Dodd language would cap punitive damages only for small business defendants, with net assets of less than \$500,000 or fewer than 50 employees, and for governmental entities. The damages would be capped at three times actual damages or \$250,000, whichever is less. The McCain-Wyden version had placed that cap on all punitive damage awards regardless of the defendant's size or financial worth. The bill also eliminates the personal liability caps for officers and directors of corporations and retains state evidentiary standards for fraud claims.

When further consideration of the bill in the Senate will resume is unknown, pending a resolution to the minimum wage and other issues holding back the bill.

On the House side, the Judiciary Committee began its markup of H.R. 775 on April 29, but after a few hours postponed further consideration until next Tuesday, May 4. The Committee had two amendments in the nature of a substitute pending, prior to adjourning.

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The first, offered by Rep. Bob Goodlatte (VA), retains the 90 day cooling off period, and requires pleading with specificity material defects and state of mind, where relevant. It also retains a complete "reasonable efforts" defense in tort actions, and limits it to instances where the defendant has raised the defenses of impossibility or impracticability in contract actions.

The second substitute was offered by Rep. Zoe Lofgren (San Jose). It would strip out some of the more controversial provisions of the bill, such as limits on attorneys' fees. However, it too retains the 90 day cooling off period, and pleading with particularity with regard to material defects. It also contains a provision allowing for injunctive relief in cases where there is catastrophic failure because of the Y2K glitch. On the contentious issue of joint and several liability, Rep. Lofgren's substitute would limit several liability to cases where a finding of material fault is made.

During the markup on Thursday, Rep. Asa Hutchinson (AR) offered an amendment to the Goodlatte substitute to strike some of the limits on attorneys' fees, such as those limiting the maximum hourly rate to \$1,000 per hour and contingency fee arrangements to three times the attorney's hourly rate. During discussion of the amendment, Reps. Goodlatte and Hutchinson indicated they would support further striking the limits on attorney-client fee arrangements. As a result, Rep. Barney Frank (MA) successfully moved for unanimous consent to strike the provision limiting contingency fees to one-third of the judgment, and Rep. Goodlatte received unanimous consent to strike the provision prohibiting any contingency fee payment to an attorney in cases where settlement or judgment is reached within 90 days of filing suit. During debate on the Hutchinson amendment, the Committee rejected, by a vote of 14-17, an amendment to the amendment proposed by Rep. Mel Watt (NC) that would have struck all of the attorney-client fee and disclosure provisions.

When the Committee adjourned for the day, the Hutchinson amendment to the Goodlatte substitute, as well as the Goodlatte and Lofgren substitutes were pending.

BIPARTISAN BAY-DELTA DELEGATION LETTER CIRCULATING

Reps. George Radanovich (Mariposa) and Cal Dooley (Visalia) are circulating a delegation letter supporting Bay-Delta funding. The letter to the Chair and Ranking Member of the House Energy and Water Appropriations Subcommittee, Ron Packard (Oceanside) and Peter Visclosky (IN), respectively, urges their support for the \$95 million funding level requested in the President's budget. The letter cites the importance of the Bay-Delta restoration project not only to California's future water supply and quality, but to the entire West, as it will ease the pressure on increasing water needs. Last year, Congress appropriated only \$75 million for the project.

Please contact Mark Kramer in Rep. Dooley's office at x53341 or Tricia Geringer in Rep. Radanovich's office at x54540 to sign. The deadline to sign the letter is next Friday, May 7.

HOUSE PASSES WATER BILL AFTER DROPPING DOOLITTLE-MATSUI PROVISIONS

On Thursday, April 29, the House passed by a vote of 418-5, the Water Resources Development Act, after the House Rules Committee on Wednesday stripped from the bill the controversial provisions on flood control and water supply worked out by Reps. Bob Matsui (Sacramento) and John Doolittle (Rocklin). *See, Bulletin, Vol. 6, No. 13 (4/22/99).*

Rep. Ellen Tauscher (Pleasanton) had opposed the water supply provisions, because they would have allowed the diversion of up to 200,000 acre-feet of water from the American and Sacramento Rivers. The Rules Committee dropped the provisions because Tauscher had garnered enough votes to strike them from the bill on the House floor. The final bill instead contains provisions to increase flood protection by building additional flood gates into the Folsom Dam, equalizing the height of levees on the American River, and funding a feasibility study on raising the Folsom Dam and increasing the American River levee heights.

The final bill provides \$2.4 billion for over 150 national water projects. The Senate has also passed a similar bill, which does not contain the controversial water diversion provisions, but does include funding for raising the American River levees.

The Doolittle-Matsui agreement would have provided for increasing the height of the Folsom Dam by six and a half feet, adding and widening flood gates, and raising the levees. The water supply provisions would have increased water deliveries to Placer, El Dorado, San Joaquin, and Sacramento counties by constructing diversions from the American and Sacramento rivers. The estimated cost was about \$288 million, with 65 percent of the cost financed by the U.S. government. The provisions also would have allowed suppliers in the four counties to divert up to 200,000 acre-feet of water annually, and provide a 40 year, interest-free loan, to extend the Folsom South Canal.

STATE LEGISLATORS TO VISIT WASHINGTON

Next week, 45 members of the California State Legislature will visit Washington D.C. to discuss issues of importance with their counterparts in the California Congressional delegation as well as to press their case on federal matters with officials of the Clinton Administration. Among the topics to be addressed at various roundtable sessions with Members of Congress will be education, environment, transportation, the automated child support system, the Workforce Investment Act, and technology issues. Next week's *Bulletin* will provide detailed coverage.

Next week will be a busy one for Californians in Washington, with visits by, among others, the California-DC Education Alliance, focusing on Title I, special education and Social Security issues; the Los Angeles County Board of Supervisors, regarding Medicaid, OBRA, SCAAP and drainage issues; and the California Farm Bureau Federation, focused on various agriculture and environment matters.

HOUSE SUBCOMMITTEE LOOKS AT NATURAL DISASTERS AND THEIR IMPACT ON HOMEOWNERS' INSURANCE AVAILABILITY

The House Banking Committee's Subcommittee on Housing and Community Opportunity, chaired by Rep. Rick Lazio (NY), held a hearing on Wednesday, April 28, to examine the growing threats of natural disasters and the impact on homeowners' insurance availability. Testifying before the subcommittee were: Dr. Bill Gray, Professor of Atmospheric Science, Colorado State University; Mr. W. Cloyce Anders, President and Regional Director, Volunteer Firemen's Insurance Service of North Carolina; Mr. Roger M. Singer, Senior Vice President and General Counsel of the GGU Insurance Companies; and Mr. Arthur Sterbcow, President, Latter and Blum.

The hearing focused on concerns involving disasters along the Atlantic Coast. All of the members testifying stressed the importance of the passage of H.R. 21, to establish a national disaster insurance program. The bill is sponsored by Rep. Lazio, and cosponsored by fourteen members of the California Delegation.

Testimony from the hearing can be obtained from the Committee's website:

<http://www.house.gov/banking/> .

SENATE SUBCOMMITTEE HOLDS HEARING ON INTERNATIONAL PIRACY

The Senate Subcommittee on International Economic Policy, Export and Trade Promotion, chaired by Sen. Chuck Hagel (NE), held a hearing on Thursday, April 29, to discuss international software piracy, and the impact piracy has on the software industry and the U.S. economy. Testifying before the committee were: Stuart E. Eizenstat, Under Secretary of State for Economic, Business and Agricultural Affairs; Richard W. Fisher, Deputy United States Trade Representative; Colleen M. Pouliot, Senior Vice President and General Counsel, Adobe Systems Inc.; Bradford L. Smith, Associate General

Counsel, International, Microsoft Corporation; and Robert E. Lohfeld, Vice Chair for Information Technology, High Technology Council of Maryland.

Mr. Eizenstat and Mr. Fisher focused on the government's role in preventing piracy in other countries. Both said that protecting intellectual property rights internationally is critical to the United States competitiveness in the twenty-first century, and, therefore, is one of the highest priorities of U.S. international economic policy. They also pointed out that the software industry is vital to the continued economic development of the United States. Mr. Eizenstat spoke of many instance where U.S. ambassadors have witnessed the sale of pirated goods first hand on foreign streets and in various technology market places. Based on this first-hand evidence, the U.S. can better negotiate with those foreign countries about developing better "policing" methods to prevent further offenses, according to Secretary Eizenstat.

Ms. Pouliot reported on the financial affects that piracy has had on the software industry and the Unites States economy. She testified that a recent study confirms that the software industry has only been operating at 60 percent of its potential, because of the devastation caused by rampant software piracy. The study, released on Thursday, and entitled *Contributions of the Packages Software Industry to the Global Economy* was conducted for the Business Software Alliance. It demonstrates the huge economic impact of the software industry worldwide and shows that software piracy translates directly into lost jobs, lost wages, reduced tax revenues, and diminished investment in new product development around the world. Both Ms. Pouliot and Mr. Smith emphasized that in order for the software industry to realize its full economic potential, global piracy levels must be reduced. They urged the U.S. Government to continue pursuing the following policy initiatives: ensure that developing nations meet the January 1, 2000 deadline for upholding their obligations under the WTO's Agreement on Trade-Related Intellectual Property Rights (TRIPS); press governments around the world to ensure the legal use of their own software use, as the U.S. is doing through the President's Executive Order on computer software piracy; and encourage nations to ratify and implement the World Intellectual Property Organization (WIPO) Copyright Treaties to battle theft of creative works in the digital age.

The testimony can be obtained from the Committee's website at:

<http://www.senate.gov/committee/foreign.html> .

CAL-DC ALLIANCE TO HOLD BRIEFING ON K-12 EDUCATION

On Tuesday, May 4th, the California-DC Education Alliance will brief California delegation staff members regarding K-12 education issues, including California's share of funding from the Title I formula grant program, as well as special education issues and mandatory coverage of state and local employees under the Social Security system. The briefing will be held in Room 311 of the Cannon House Office Building in Washington at 12:00 noon. Our thanks to the office of Rep. Mary Bono for their assistance securing the room. For more information about the alliance, see <http://www.caldc.org> .

REP. FARR CIRCULATING SBDC LETTER TO COMMERCE, JUSTICE, STATE APPROPRIATIONS SUBCOMMITTEE

Rep. Sam Farr (Carmel) is circulating a letter to Chairman Harold Rogers and Ranking Member Jose Serrano of the Commerce, Justice, State Appropriations Subcommittee, seeking to preserve level funding for the Small Business Development Centers (SBDC) network. The letter opposes the Administration's proposal to cut funding to the Centers by 24 percent. It cites successes of the SBDC in California, which was able to create or retain 4,200 jobs in 1998, and leverage its federal funding with \$6,574,509 in non-federal funding to assist small business.

Members wishing to sign the letter should contact Sherry Greenberg in Rep. Farr's office at x52861. The deadline for signing the letter is Wednesday, May 4.

GAS PRICE LETTER CIRCULATING

Rep. Xavier Becerra (Los Angeles) is circulating a pair of letters regarding gas prices in California among the Delegation for signatures. The letter states that the recent dramatic gas price increase in California far exceeds the increase in other states, and that during the past month, the supply of oil in California has decreased 15 percent and prices have increased by more than 40 percent, suggesting that there may be other factors, including recent consolidations in the oil industry, that could be interfering with the establishment of retail gasoline prices in the state of California. The letters to Attorney General Janet Reno and Federal Trade Commission Chairman Robert Pitofsky request that their agencies initiate an investigation of the reasons for these sustained price increases and determine whether the oil industry has violated antitrust laws.

Members wishing to sign-on may contact Lisa in Rep. Becerra's office at x56235. The deadline is Friday, April 30, at noon.

LETTER SEEKS LAND ACQUISITION FUNDS FOR PACIFIC CREST TRAIL

A letter now being circulated among California members of Congress seeks funding for land acquisition for the Pacific Crest Trail, which runs through California, Oregon and Washington, and passes through roughly one in four California Congressional districts.

As the letter notes, Congress last year completed its final installment on more than \$200 million for Appalachian Trail land acquisition. This letter, addressed to leaders of the House and Senate Appropriations Subcommittees on Interior, urges a similar line item for the Pacific Crest Trail as a replacement.

Offices of members wishing to sign the letter should contact Greg Campbell or Harry Henderson with the office of Rep. Buck McKeon at x5-1956.

STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Senate Committee on Finance held an oversight hearing Thursday on the implementation to date of the State Children's Health Insurance Program (CHIP). Nancy-Ann Min DeParle, Administrator, Health Care Financing Administration, told the Committee that the CHIP program is strong and growing, with 52 plans now approved throughout the states and territories that are expected to cover up to 2.5 million children by September 2000. She outlined the primary challenge now to increase and improve outreach efforts and get more eligible children enrolled in both CHIP and Medicaid. The President's fiscal year 2000 budget proposal includes increased flexibility so States can use more of the funding available to them for outreach, and expand the use of a special \$500 million Medicaid fund currently aimed at outreach only to children losing welfare benefits to fund outreach to all eligible children.

CSTA BRIEFS DELEGATION, STAFF ON COMMERCIAL SPACE

The California Space Technology Alliance, the California Spaceport Authority, briefed California Congressional delegation members and staff this week regarding their activities and the commercial space industry in California generally, and hosted a reception as well. At the briefings, CSTA's Executive Director, the Hon. Andrea Seastrand, noted that California is a preeminent force in the global space industry, with its extensive satellite industry and launch ranges making it the only state offering end-to-end space capabilities. (Only the nations of France, Russia, Japan, and China can match California's capabilities.) However, the state faces significant competition, both nationally and internationally, that threatens the state's space industry.

CSTA seeks to foster the development of activities in California related to space flight including, but not limited to, space vehicle launches, space education and job training infrastructure and research

launches, manufacturing, academic research, applied research, economic diversification, business development, tourism, and education and function as The California Spaceport Authority.

For additional information, contact CSTA at (805) 349-2633 or visit their website at <http://www.csta.net>. Thanks go to Rep. Elton Gallegly for securing the room for the briefing, and to Reps. Jerry Lewis and Sam Farr for hosting the reception.

CALIFORNIA GLOBAL CLIMATE CHANGE BRIEFINGS

On Monday, May 10, the University of California Institute on Global Conflict and Cooperation (IGCC) and Scripps Institution of Oceanography (SIO) are hosting a policy seminar from 12:00 noon to 2:00 p.m. on "Global Climate Change: Recent Developments in the Science" at the IGCC Washington Office. On Tuesday, May 11, Senator Dianne Feinstein will sponsor a separate briefing with the UC scientists to discuss these issues with all interested Members and congressional staff. The briefing will be from 10:30 a.m.-12:00 noon. in 216 Hart Senate Office Building.

The seminar and Senate briefing will feature leading scientists from the University of California, who will provide current information and answer questions on a range of science issues directly related to important national and international climate change policy debates. Topics include abrupt climate change, recent developments in climate modeling, the use of forests and soils to offset industrial greenhouse gas emissions, and recent measurements of emissions from China and India. The presenters all participated on the IGCC/SIO Delegation that hosted several climate science presentations at the Buenos Aires meeting of the United Nations Framework Convention on Climate Change last November.

For an invitation to the IGCC event or more information on the Senate briefing, contact Monique Kovacs, IGCC International Affairs Program Coordinator, at 202-296-8183 or e-mail to mkovacs@ucsd.edu. For more information on IGCC's Climate Change Program, see the website at <http://www.igcc.ucsd.edu/igcc2/environment/Climatechange.htm>.

BIPARTISAN LETTER SENT ON MULTI-YEAR FUNDS FOR F/A-18 E/F

On Thursday, April 29, a bipartisan group of California Members of Congress, led by Reps. Loretta Sanchez (Anaheim) and Steve Kuykendall (Rancho Palos Verdes) prepared and sent a letter supporting multi-year procurement authorization of the F/A-18E/F Super Hornet fighter. In 1998, the Hornet program supported more than 5,000 jobs in California at 747 companies with \$465 million in annual revenue. Nearly half of the F/A-18 E/F program is in California.

MEDICAL RECORDS CONFIDENTIALITY HEARING IN THE SENATE

The Senate Committee on Health, Education, Labor, and Pensions heard testimony from a number of witnesses Tuesday, April 27, at a hearing on "Medical Records Confidentiality in a Changing Health Care Environment." This was the Committee's seventh hearing on the subject, with the specific focus on Tuesday on law enforcement, authorization, and preemption as they pertain to patient confidentiality. Three bills concerning medical privacy were discussed: S. 578, the Health Care Personal Information Nondisclosure Act (Jeffords/Dodd); S. 573, the Medical Information Privacy and Security Act (Leahy/Kennedy); and the Medical Information Protection Act, introduced this week by Sen. Robert Bennett.

Senator Bennett (UT) and Senator Leahy (VT) each testified before the committee on their legislation. Senator Bennett called full and complete federal preemption of state law in this arena "logical" to remedy the current situation in which a patchwork of state laws has led to confusion, especially for the large numbers of people who live near state lines and travel between states for care, and for information that is transmitted between states. Senator Leahy testified that his bill favors preemption of weaker state laws, but not full preemption that establishes a federal ceiling.

Representatives of the Department of Justice and the Federal Bureau of Investigation also testified in support of federal legislation to protect the confidentiality of patient health information, but urged the Committee to recognize and accommodate the needs of the law enforcement community to investigate and prosecute civil and criminal offenses. They cited examples involving violent crime and health care fraud, in which the ability of law enforcement to investigate and prosecute serious crimes depends on their ability to obtain individually identifiable health information in a timely manner. Concerns were raised during questioning of these witnesses about the proposed legislation limiting state mandatory reporting of certain health related information, such as gun shot wounds. As currently drafted, the Bennett and Leahy measures would both preempt mandatory reporting, and the Jeffords bill contains an exemption that would allow mandatory reporting to remain in effect.

Ronald Weich, of the American Civil Liberties Union, endorsed the Leahy-Kennedy medical records privacy bill, touting "privacy safeguards superior to those contained in the other bills" and proposed some additional protections. Professor Robyn Shapiro testified that the American Bar Association (ABA) supports the Leahy-Kennedy bill because it limits disclosure of health information to investigative or law enforcement officials, prohibits use of disclosed protected health information in subsequent, unrelated legal actions or investigations, and requires the destruction or return of disclosed health information at the conclusion of the matter for which it was disclosed.

LaDonna Shedor, on behalf of the Health Care Leadership Council, argued for flexibility in standards and accountability, and for consolidated authorization mechanisms, opposing proposals (such as that included in Leahy-Kennedy) that would extend authorization to treatment and payment only, requiring separate authorizations for the use of information to conduct crucial health care operations, saying such a scheme is "unworkable in our highly integrated health care delivery system." The Council favors the overall approach, and specific authorization procedures, proposed in Senator Bennett's bill.

Dr. John Curd, Vice President for Clinical Development of Genentech testified that Genentech has been working with the Pharmaceutical Research and Manufacturers of America, the Biotechnology Industry Organization and the Healthcare Leadership Council in support of enacting strong, uniform federal standards to safeguard confidentiality and limit its use to appropriate activities, including biomedical research. Genentech supports the Bennett bill because it provides for very thorough preemption of state law, creating a uniform, predictable environment for the research community while replacing current state law with a rational, comprehensive system of federal safeguards, responsibilities, limits and penalties. He argued that the Jeffords-Dodd and Leahy-Kennedy bills would undermine research using patient data by subjecting Genentech to not only a new federal standard, but several conflicting state law standards as well. He also mentioned six pending California State law proposals that if enacted would seriously undermine Genentech research abilities.

Chris Koyanagi testified on behalf of the Consumer Coalition for Health Privacy. He discussed the California Health Care Foundation January 1999 report on public sentiment about medical records privacy, and discussed the Coalition's consensus that "federal legislation should provide a floor for the protection of individual privacy rights, not a ceiling." The Coalition supports the Leahy-Kennedy bill.

Chairman Jim Jeffords (VT) stated that he plans to hold a Committee markup on health information confidentiality legislation during May.