



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

## California Capitol Hill Bulletin

**Volume 6, Bulletin 17 -- May 20, 1999**

*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 FINANCE APPROVES SECTION 127 EDUCATION CREDIT AS PART OF EDUCATION INCENTIVE BILL**

On Wednesday, May 19, the Senate Finance Committee approved, by a vote of 12-8, the Affordable Education Act, which includes as part of a much broader bill an extension of the tax-free treatment of employer-provided education assistance for graduate students ("section 127"). Currently, section 127 allows the exclusion of up to \$5,250 annually in employer-provided education assistance, but only for undergraduates. The new provision extends the exemption to graduate students as well, and would be effective January 1, 2000 through January 1, 2004. The undergraduate exemption is also extended until January 1, 2004.

The bill would also expand tax-exempt financing rules for school construction. First, it would increase the amount of governmental bonds that may be issued by governments qualifying for the "small governmental unit" arbitrage rebate exception. Second, it would allow the issuance of tax-exempt private activity bonds for elementary and secondary school facilities owned by private, for-profit corporations pursuant to public-private agreements with a State or local educational agency. Third, it would permit the Federal Housing Finance Board to guarantee up to \$500 million per year of governmental bonds where 95 percent or more of the proceeds of which are used for public school construction.

Prior to approving the \$7.6 billion dollar bill, the Committee defeated a Democrat substitute, which would have substituted many of the Administration's proposed education initiatives. The vote was 8-12.

### **SENATE AGAIN FAILS TO INVOKE CLOTURE ON Y2K BILL**

On Tuesday, May 19, the Senate failed to gain the 60 votes needed to continue the debate on S. 96, Sen. John McCain's (AZ) bill to limit liability in Year 2000 lawsuits. *See, Bulletin, Vol. 6, Nos. 14 (4/29/99), 15 (5/6/99), & 16 (5/13/99).* The attempt failed 53-45 (60 votes are needed to invoke

#### CONTENTS:

Senate Finance Approves Section 127	1
Senate Again Fails to Move Y2K Bill	1
House Panel Reports Patent Reform	2
Supplemental Includes Tobacco, Census, Education Provisions	2
Review of California Water	3
Panel Examines Encryption Controls	4
Foster Care Further Considered	4
Reports on the Regional Civic Entrepreneur Movement	5
Welfare Residency Struck Down	6
State's May Budget Revision Released	6
Motion Picture Filming Fees	6

cloture). The bill is currently embroiled in a dispute over consideration of the juvenile justice crime bill, and is expected to garner the 60 votes needed when that debate is over.

A compromise with the Administration appeared to be moving forward and Senate Majority Leader Trent Lott had indicated earlier in the week that he would allow a substitute amendment backed by the Clinton Administration to be offered to the bill. The substitute, authored by Sen. John Kerry (MA), would retain the 90-day waiting period and proportional liability provisions, but instead of capping punitive damages would prohibit the recovery of economic damages, unless provided for by contract. However, on Thursday, Sen. Lott indicated that even if there are 60 votes to continue debate, he may not reschedule debate on the Y2K legislation until later this summer, in order to accommodate other issues on the agenda.

## **HOUSE JUDICIARY SUBCOMMITTEE REPORTS PATENT REFORM BILL**

The House Judiciary's Subcommittee on Courts and Intellectual Property favorably reported by voice vote the "American Inventors Protection Act" on Thursday, May 20, after reaching an agreement with parties that had previously opposed the bill. The Act reforms U.S. patent law and brings it into conformity with international patent systems.

The new bill reflects compromises on several issues, particularly that of patent publication. Under the approved Chairman's Mark, the U.S. Patent and Trademark Office (PTO) will publish a patent application 18 months after it is filed, unless one of three exceptions applies: one, if the application is under a secrecy order; two, if it is withdrawn; or, three, if a patent application will not be filed abroad in a country requiring 18 month publication. Additionally, an application will not be published in the U.S. before publication abroad, and the scope of the application material published will not be greater than that of the foreign publication. These new provisions are supported by both those who had previously opposed pre-issuance publication on the grounds that it would allow an inventor's technology to be stolen, and those who argued that delaying publication until patent issuance failed to deter "submarining." ("Submarine" patents are cases where an erstwhile inventor fails to prosecute an application filed with the PTO until such time as another entity has begun to develop the technology. The applicant then prosecutes the previously filed patent and sues the later party for infringement.) The bill also establishes a new defense for a first inventor who has made a good faith use of his or her technology prior to the filing of an application for the technology by a third-party, and allows for the extension of patent term in cases of delay.

During the same markup session, the Subcommittee also reported H.R. 354, the "Collections of Information Antipiracy Act," which would extend copyright protection to database collection. A substitute amendment, worked out by Chairman Howard Coble (NC), Howard Berman (Valley Village) and interested parties, was approved by voice vote. It made several changes aimed at addressing some industry concerns. Rep. Zoe Lofgren (San Jose), while supporting the bill, expressed interest in working on further changes before the full Committee markup.

## **SUPPLEMENTAL FUNDS BILL INCLUDES TOBACCO, CENSUS, EDUCATION PROVISIONS**

In addition to the \$15 billion in spending contained in the Supplemental Appropriations measure sent to the White House on Thursday, Congress also added several policy provisions, including one to ensure that the federal government will not share in funding won by states in a settlement with the tobacco industry. The bill will ensure that the \$246 billion in tobacco settlement funds will stay with states. The White House had sought to recoup \$4.6 billion per year in settlement funds for use in anti-tobacco advertising, on the grounds that the government has incurred smoking-related costs under

Medicaid (courts have rejected that argument). Governor Davis' FY 1999-2000 budget assumes \$562 million in revenue from the tobacco settlement. California is in the unique position of having already passed and implemented a comprehensive tobacco usage prevention campaign.

The bill releases funds for the Departments of Commerce, Justice and State for the remainder of the 1999 fiscal year. Funding for the three agencies had been slated to freeze up on June 15 if Congress and the Administration could not work out a compromise over uses of funds for the Census Bureau, which is part of the Commerce Department. The bill provides an additional \$45 million for Census activities, beyond the previously allotted \$1 billion, which would enhance the Bureau's ability to conduct follow-up visits to households which fail to return a mailed census survey form.

Also tucked away in the bill was a \$56 million provision to reimburse school districts which would have lost funding from so-called "concentration grants" under the Title I education program, which is targeted at poor children. In 1994, California members of Congress won language to update poverty data for Title I every two years, thereby ensuring that funding flows to states which see rapid growth. The funds in the supplemental would compensate slow-growth states which would otherwise become ineligible for concentration grant funds.

The conference agreement provides \$20 million for emergency grants to assist low-income migrant and seasonal farmworkers, a provision included by the Senate. According to the conference report, the program will provide assistance to farmworkers in areas of California and Florida impacted by natural disasters.

President Clinton signaled that he would sign the bill, despite the presence of several provisions with which the Administration disagreed.

The full text of the conference report is available on the Library of Congress' Thomas website at <ftp://ftp.loc.gov/pub/thomas/cp106/hr143.txt>.

## **HOUSE WATER SUBCOMMITTEE REVIEWS CALIFORNIA WATER**

The House Resources' Water and Power Subcommittee held a hearing on Thursday, May 20 to review the status of California's water management initiatives. The Subcommittee is chaired by Rep. John Doolittle (Rocklin). Five other California members of the subcommittee were also in attendance: Reps. Cal Dooley (Visalia), ranking member, Ken Calvert (Corona), Richard Pombo (Tracy), George Radanovich (Mariposa), and George Miller (Martinez).

The Subcommittee heard from Secretary of the Interior Bruce Babbitt, and California's Secretary for Resources Mary Nichols. Secretary Babbitt and Secretary Nichols brought the subcommittee members up to date on the status of the CALFED Bay-Delta program and the Central Valley Project (CVP) and implementation of the Central Valley Project Improvement Act (CVPIA).

Secretary Nichols emphasized the importance of the Bay-Delta program to Governor Davis and his administration. She also outlined several steps that have been taken since December to move forward on the program, including development of an integrated storage investigation program to determine how groundwater and /or surface storage projects will be evaluated and constructed.

Secretary Babbitt stressed that the collaborative Bay-Delta project was proceeding successfully and emphasized the Department's awareness of the need to interface Bay-Delta and CVPIA efforts to ensure fair and effective water management in California. He testified that over the last three years, CALFED has funded all or portions of ecosystem restoration projects totaling \$228 million. Projects included fish screens and ladders, land acquisition, habitat restoration, research and monitoring. Secretary Nichols reiterated Secretary Babbitt's view that the effort was succeeding. Rep. Doolittle stressed the need for additional water storage, stating that the annual deficit may reach 3-7 million acre feet annually by the year 2020. Secretary Nichols testified that Governor Davis recognized that additional water storage was needed, but that the type and method has not as yet been determined.

During questioning, there was a thorough discussion of several issues, including the efficacy of groundwater recharge projects, fish ladders, land retirements, and renewal of long-term water contracts. Rep. Pombo expressed concern over estimates that implementing CALFED might require that 400,000 acres be retired over several years, most of which would be located in his district, which only comprises 650,000 acres.

Secretary Babbitt also testified that the Programmatic Environmental Impact Statement (PEIS), required under the CVPIA and currently three years overdue, will be out by November, and he hopes to make decisions on long-term water contract rights in the beginning of 2000.

Other witnesses before the subcommittee included: Stan Sprague, General Manager, Orange County Municipal Water District, on behalf of the Bay-Delta Urban Coalition; Peter Gleick, President, Pacific Institute; David Guy, Exec. Dir., Northern California Water Association; Barry Nelson, Sr. Fellow, Save the San Francisco Bay Assoc.; Dan Nelson, Exec. Dir., San Luis and Delta Mendota Water Authority; and, Merv George, Chairman, Hoopa Tribe.

Mr. Sprague reiterated the Urban Coalition's support for the CALFED project. However, he expressed concern that water quality issues would not be adequately addressed in the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) due to be released in June, and made several suggestions on elements that should be included in the report.

The California Bay-Delta Water Coalition also submitted a statement for the record. It urges support of the Administration's request for \$95 million for the restoration project, of which it recommends \$60 million be allocated to Ecosystem Restoration Coordination Program activities, and \$35 million to activities addressing water quality, levee system integrity, and water supply reliability issues.

## **INTERNATIONAL RELATIONS SUBCOMMITTEE EXAMINES ENCRYPTION CONTROLS**

The House International Relations' Subcommittee on International Economic Policy and Trade held a hearing on Tuesday, May 18 on H.R. 850, the encryption export control bill, authored by Reps. Zoe Lofgren (San Jose) and Bob Goodlatte (VA). As expected, the Administration testified that it continued to oppose the legislation. Under Secretary for Export Administration William Reinsch testified that the bill would not maintain the balance between commercial interests and law enforcement interests supported by the Administration and would also put the U.S. in violation of the Wassenaar Arrangement's cryptography note – an international agreement aimed at controlling the export of encryption technology. Under questioning, however, several members of the Subcommittee took exception with the Administration's view -- stressing that with high-level encryption becoming more and more readily available throughout the world, U.S. attempts to place restrictions on U.S. manufacturers are ineffective because wrongdoers will obtain their encryption technology from other sources.

The Subcommittee also heard from several witnesses endorsing enactment of H.R. 850, including: Edward Black, President & CEO, Computer & Communications Industry Association; Ira Rubinstein, Sr. Corp. Attorney, Microsoft Corp., on behalf of the Business Software Alliance; Jeffrey Smith, Counsel, Americans for Computer Privacy; Alan Davidson, Staff Counsel, Center for Democracy and Technology; and Dinah PoKempner, Dep. General Counsel, Human Rights Watch.

H.R. 850 was successfully reported by the House Judiciary Committee on March 25. *See, [Bulletin, Vol. 6, No. 10 \(3/25/99\)](#).*

## **FOSTER CARE FURTHER CONSIDERED**

The House Ways and Means Committee's Subcommittee on Human Resources held a markup of the Foster Care Independence Act of '99 (HR1802) on Thursday, May 20. The bill is designed to help

children in foster care once they turn 18 as they transition further into adulthood. Subcommittee Chairwoman and bill sponsor Rep. Nancy Johnson (CT) offered an amendment in the nature of a substitute which turned a mandatory Medicaid provision providing continued Medicaid public health insurance for foster children into an optional Medicaid provision, as well as several minor changes. The measure passed by voice vote with no additional amendments. The bill would authorize \$140 million annually for resources such as housing, education, health care and employment, doubling the amount that is presently available for foster care programs to states. California is home to a large number of foster children and receives roughly one-fourth of federal foster care spending. The measure is expected to be considered on the Floor of the House in early June, and subcommittee staff report there is interest in Senate action.

### **THREE REPORTS ON THE REGIONAL CIVIC ENTREPRENEUR MOVEMENT**

The James Irvine Foundation has produced a series of publications for and about California's regional civic entrepreneur movement: *Linking the New Economy to the Livable Community* (April 1998); *California Regions Take Action: The Emergence of California Civic Entrepreneurs* (May 1998); and *Getting Results and Facing New Challenges: California's Civic Entrepreneur Movement* (January 1999). Authors of the reports include Doug Henton, Kim Welsh, and John Melville of Palo Alto-based Collaborative Economics.

In *Linking the New Economy to the Livable Community*, the authors discuss the relationship between the information based New Economy and the New Urbanist/ Livable Community movements. The New Economy, they offer, is not about high tech, or a set of new industries; "rather, it is a set of new sources of competitive advantage faced by all industries." The New Economy is based on new ways that business operates and new ways that people work. Features of this New Economy include: speed -- "time is market"; quality as the goal in every aspect of the process and product as well as the basis of competition; flexibility; knowledge as the new raw material; and networks providing collaborative advantage. Portfolio workers are increasingly common in this "knowledge era" and the reintegration of work and home are reminiscent of the early industrial era, with knowledge workers taking their intellectual capital and skills to different projects in a similar fashion to craftspeople taking tools and know how to different jobs. The New Economy contrasts with the industrial era in that the means of production is the personal computer. This economy values the following qualities: economic regions, distinctive quality of life, vital centers -- including amenities and opportunities for interaction, choice for living and working, speed and adaptability, and the natural environment. These are a good match with what the New Urbanist/Livable community movement calls for: more walkable town centers and neighborhoods, easier access to public transit, and a mix of civic buildings, housing and shops. This meeting of values is described by Irvine Program Officer Nick Bollman: "Rather than isolating us on mountaintops and sprawling subdivisions, as is often predicted, Henton and Welsh believe the digital economy may actually bring us closer together in vital center and work environments."

In September of 1997, the Irvine Foundation hosted the first annual Civic Entrepreneur Summit in Santa Barbara, California, with more than 80 participants from 11 regions participating. In *California Regions Take Action: The Emergence of California Civic Entrepreneurs*, the work of Civic Entrepreneurs throughout the State and the values, beliefs, and experiential knowledge of these participants is laid out. "Civic entrepreneurs" are described as individuals who are helping lead collaborative initiatives that promote economic vitality and improve quality of life in their regions through entrepreneurial methodologies; "finding new ways to bridge political jurisdictions, build public-private coalitions, rethink complex issues, and get results."

The September, 1998, Civic Entrepreneur Summit sponsored by the Foundation included more than 130 people and is reported on in *Getting Results and Facing New Challenges; California's Civic*

*Entrepreneur Movement.* Participants included teams of civic entrepreneurs from 14 collaborative regional initiatives (CRIs) across California, ranging from the Institute of the North Coast, to San Diego Dialogue, and including Joint Venture: Silicon Valley Network, which has been viewed as a model initiative.

Copies may be obtained by contacting Collaborative Economics at 650-614-0230.

## **WELFARE RESIDENCY REQUIREMENTS STRUCK DOWN**

On Monday May 17, by a vote of 7-2, the US Supreme Court struck down a 1992 California law that had planned to pay newcomers lower welfare benefits than those who had lived in the State for more than one year. The 1992 law, which was never enacted, intended to give newcomers only the amount of welfare they would have received in their home states during their first year in California, potentially serving as both a cost savings measure and a deterrent to California functioning as a "welfare magnet." Fourteen other states have different welfare benefits for newcomers, several of which had also been barred from taking effect by legal challenges. The 1996 federal welfare law specifically allowed states to pay lower benefits to new residents, but the high court said that this proposal violates the constitutional right to free movement between the states.

California currently spends \$6 billion annually on welfare, roughly half in state money and half Federal. The welfare caseload is currently around 667,000 families, or 2.6 million people.

## **STATE'S MAY BUDGET REVISION RELEASED**

Governor Gray Davis released his May Revise on Friday, May 14, providing updated economic and revenue forecasts, as well as the latest caseload, enrollment and population information resulting in a revised \$80.8 billion budget proposal for the 1999-2000 fiscal year. The revenues are forecast to be \$1.634 billion above the levels forecast in January for the 1998-99 fiscal year, and \$2.713 billion above the January forecasts for FY99-00. In spending plans for the new revenue, the Governor laid out \$1.2 billion in new funding for public education, a \$1 billion investment in the state's infrastructure, an additional \$570 million reserve, along with several public safety, environment, health care, and tax relief items. State Legislative Analyst Elizabeth Hill said that due to continued growth in personal income, the state may even collect \$360 million more in tax revenues than the budget has projected. Additionally, she believes that there are savings the state may realize in several areas, primarily school expenditures, because the Governor probably overestimated school enrollment by about 30,000 students. The entire May Revise is available on the web at [http://www.dof.ca.gov/html/bud\\_docs/bud\\_link.htm](http://www.dof.ca.gov/html/bud_docs/bud_link.htm).

## **MOTION PICTURE FILMING FEES FOR NATIONAL PARKS**

On Wednesday the Senate Committee on Energy and Natural Resources passed H.R. 154, a measure 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 bill has broad support from both sides of the aisle, and Motion Picture Association of American (MPAA) President Jack Valenti testified in support of the measure before a House subcommittee considering it in February. This measure passed the House on April 12, 1999.