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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.

DELEGATION CIRCULATING R&D TAX CREDIT LETTER

Reps. Wally Herger (Marysville) and Bob Matsui (Sacramento) are circulating a letter on behalf of the California delegation supporting extension of the R&D Tax Credit. The letter to Chairman Bill Archer (TX) and Ranking Member Charles Rangel (NY) advocates a permanent extension of the tax credit for increasing research activities, along with a modest one-percent increase in the Alternative Incremental Credit, as proposed in H.R. 835. The credit is set to expire on June 30th of this year. The letter points out that "since Congress first enacted the R&D credit in 1981, two industries important to California's economy, the pharmaceutical and electronics industries, increased their research spending from \$10.5 billion to more than \$64.2 billion. The research conducted by these industries alone has led to the development of many new drugs and medicines and has helped propel us into the Information Age."

Last year, 48 of the 50 members of the delegation (at the time there were two vacancies) signed the letter. Members who wish to sign, should contact Dave Olander (Herger) at 5-3076 or Francis Grab (Matsui) at 5-7163.

HOUSE JUDICIARY REPORTS PATENT AND COPYRIGHT BILLS

During an extended markup on Wednesday, May 26, the House Judiciary Committee favorably reported out three bills changing U.S. intellectual property law. The first, H.R. 1907, the "American Inventors Protection Act" reforms U.S. patent law and brings it into conformity with international patent systems.

The bill reflects a compromise reached with opponents of previous attempts at patent reform, especially on the issue of patent publication. H.R. 1907 calls for the U.S. Patent and Trademark Office (PTO) to publish a patent application 18 months after it is filed, unless one of three exceptions applies: if the application is under a secrecy order; if it is withdrawn; or, if a patent application will not be filed

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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. See, [Bulletin, Vol. 6, No. 17, 5/20/99](#). At the markup, Rep. Bob Goodlatte (VA) complemented California Reps. Dana Rohrabacher (Huntington Beach) and Tom Campbell (Campbell) for their contributions to the compromise.

Rep. Goodlatte offered an en bloc amendment, that was essentially technical in nature. Among other things, it clarifies that during a reexamination proceeding neither the holder nor challenger of the patent can contest any fact previously established in PTO proceedings. The amendment was approved by voice vote, and the bill was reported by voice vote.

The Committee also approved H.R. 1761, the Copyright Damages Improvement Act, and H.R. 354, the Collections of Information Antipiracy Act, both by voice vote. H.R. 1761, introduced by Rep. James Rogan (Glendale), increases the statutory damages for copyright infringers to reflect inflation. Rep. Rogan offered an amendment in the nature of a substitute that, among other things, codifies that the U.S. Sentencing Commission develop sentencing guidelines for infringement using the retail price of the infringed-upon goods and the quantity of items to determine total retail value, not the actual value of the pirated item. Rep. Howard Berman (Valley Village) offered an amendment, which was unanimously agreed to, that struck the provision in the bill making a willful copyright violation a *per se* willful and malicious judgment for purposes of U.S. bankruptcy law, and therefore non-dischargeable in bankruptcy.

Although H.R. 354, which provides a 15-year copyright term to database collections, was also approved by voice vote, Rep. Zoe Lofgren (San Jose) voiced some concerns shared by the Administration. Among them are the treatment of sole source databases, comprised of information originally collected from free government data which no longer exists, and the definitions for several key terms, such as "material harm," "primary market," and "related market." Reps. Howard Coble (NC) and Berman, chair and ranking members on the Courts and Intellectual Property Subcommittee, pledged to keep working on the bill to iron out any remaining issues.

CALIFORNIA DELEGATION SUPPORTS \$95 MILLION FOR BAY-DELTA; SENATE APPROPRIATIONS HOLDS TO \$50 MILLION

On May 18, both California Senators and 42 members of the California House delegation wrote Chairman Ron Packard (Oceanside) of the Energy and Water Appropriations Subcommittee urging that the CALFED/Bay-Delta restoration project receive \$95 million in FY00 funding, as requested in the Administration's budget. The letter cited the significant progress that the program has had in addressing a number of important environmental and water needs, and the importance of the project to California and the nation.

In the Senate, however, the full Appropriations Committee approved its Energy and Water Appropriations bill on Thursday, May 27 with only \$50 million in funding for the program. Of the money, 60 percent is allocated to ecosystem projects and 40 percent to water supply and quality projects. Last year's funding level for the Bay Delta was \$75 million. House Energy and Water has not yet taken action on its bill.

SENATE APPROPRIATIONS BILL LIMITS CALIFORNIA TRANSIT FUNDING SHARE

On Tuesday, the Senate Transportation Appropriations Subcommittee included a so-called "transit equity provision" in its version of the fiscal year 2000 transportation appropriations bill. This provision would place a cap of 12.5 percent on federal transit spending per state, allowing no state to receive more than 12.5 percent of the total amount of money provided for transit formula and discretionary spending.

Governor Gray Davis sent a letter on Wednesday to Senate Appropriations Chairman Ted Stevens (AK) urging him to strike "this discriminatory provision" during the Committee's mark-up, because it substantially, and unfairly, reduces California's share of transit funding." The Governor stated that under this provision, California stands to lose \$117 million in transit funds in FY 2000, or \$468 million over the four remaining years of TEA-21.

Senator Barbara Boxer sent a letter to Chairman Richard Shelby of the Senate Appropriations' Subcommittee on Transportation and Related Agencies stating her objection to the provision, which he proposed, and urging its reconsideration. She notes that while California has historically failed to receive its fair share of allocations from the Highway Trust Fund, it receives more in transit formula funding because of its population and high mass transit ridership.

The Full Committee met Thursday, and passed its \$49 billion transportation bill, including the transit cap, on a vote of 27-1, with Senator Dianne Feinstein the sole opposing vote. She noted that the provision affects two states adversely: California and New York, and that together these states have over half of the transit ridership in the United States, yet would be limited under this proposal to 25% of the funding. Transit is a need-based program, and under TEA-21, transit funding goes to states that have the most invested in transit and who have the most need. She cited Metropolitan Transportation Commission estimates that California's transit agencies will have to absorb a cut of \$112 million out of urban formula funding; Los Angeles could lose \$47.7 million, and San Francisco and Oakland could lose \$27 million. White House budget director Jacob Lew is reported to have also sent a letter to Chairman Shelby stating that the administration strongly opposes the state limits on transit funds.

The House Appropriations transportation subcommittee approved its \$50.7 billion bill today without any similar limits on how mass transit money is distributed. Ultimately, the issue will be fought out in a House-Senate conference.

HOUSE COMMERCE TAKES UP ENCRYPTION BILL

The Telecommunications, Trade, and Consumer Protection Subcommittee of the House Commerce Committee held a hearing on Tuesday, May 25 on H.R. 850 to relax controls on the export of encryption products. The bill was introduced by Reps. Zoe Lofgren (San Jose) and Bob Goodlatte (VA).

Subcommittee Chairman Billy Tauzin (LA), a co-sponsor of the bill, stated that the Administration's policy of attempting to contain encryption is a failure and hamstringing U.S. companies. Citing the Subcommittee's work in the 105th Congress, Rep. Tauzin said it will again make changes to the bill before it is reported. Although he did not specify any expected changes, in the last Congress, during its consideration of the bill, the Committee added provisions establishing a joint government-industry commission to study ways of responding to the need of law enforcement authorities to access encrypted data without stifling the growth of the industry and its dominance by U.S. companies.

As expected the Administration witnesses from the Departments of Commerce and Justice, and National Security Agency continue to oppose the bill. *See, Bulletin, [Vol. 6, Nos 10 \(3/25/99\)](#) & [17 \(5/20/99\)](#).*

On the Senate side, Sen. John McCain (AZ) stated this week that he hopes to markup his encryption export control bill (S. 798) shortly after Congress returns from the Memorial Day Recess on June 8. His bill is narrower in scope than the House bill, allowing non-defense-related encryption to be exported to European and Asian allies, and increasing the encryption strength level for other exports to 64-bit from the current 54-bit level.

SENATE AND HOUSE HOLD HEARINGS ON ELECTRICITY DEREGULATION

On Tuesday, May 25, the Senate Committee on Energy and Natural Resources held an oversight hearing on State progress in retail electricity competition. Testifying before the committee were commissioners of Public Utilities and Public Services from Idaho, Kentucky, Oregon, and New York. Also testifying was Jan Schori, General Manager, Sacramento Municipal Utility District (SMUD).

Many of the witnesses told the committee members that electricity deregulation is going well in states like California and Pennsylvania, and they urged Congress not to step in to further regulate the process. If any congressional action is required, they said, it should be in the form of assisting states that want to deregulate their electricity market, rather than mandating that the states do so, according to the witnesses. Senator Ben Nighthorse Campbell (CO) indicated in his opening statement that his state, for instance, would not be interested in deregulation at this point because it pays much less for electricity than other states.

On the other side of the Hill, the House Subcommittee on Energy and Power met Wednesday, May 26, to hold a hearing on deregulation and competition. The subcommittee's primary focus was on consumer protection issues for individuals and small businesses. Chairman Joe Barton (TX) opened the hearing with a brief statement stressing the importance of consumer protection, and this view set the tone for the hearing. Providing testimony to the subcommittee were Elaine Kolish, Assistant Director, Bureau of Consumer Repairs, Federal Trade Commission; Harvey Michaels, Nexus Software; Jack Brice, American Association of Retired Persons; Mary Ellen Burns, Office of the Attorney General of New York; Blake Casper; and Mark Cooper, Consumer Federation of America.

For more information on the Senate hearing, see <http://www.senate.gov/~energy/>.
For information on the House hearing, see <http://com-notes.house.gov/ccheat/hearings106.nsf/epmain>.

RECOVERY OF ENDANGERED SPECIES AND CRITICAL HABITAT

The Drinking Water, Fisheries and Wildlife Subcommittee of the Senate Environment and Public Works Committee held a hearing on Thursday to discuss S. 1100, which is intended to improve the critical habitat provision of the Endangered Species Act to help aid in the recovery of threatened or endangered species. Witnesses included: Sen. Pete Domenici (NM), author, with Sen. John Chafee (RI) of S.1100; Jamie Clark, U.S. Fish and Wildlife Service; William Murry, American Forest and Paper Association; Charles DuMars, Middle Rio Grande Conservancy; and John Kostyack, National Wildlife Federation.

In his opening statement, Chairman Michael Crapo (ID) referring to the Endangered Species Act (ESA) said, "While written with the best of intentions, the Endangered Species Act simply doesn't work for species or people." One of the provisions of S. 1100 promoted by Sen. Domenici would require greater federal funding to ensure that both endangered and threatened species receive the full protection of the Act as soon as they are listed. Another issue focused on at the hearing was designation of critical habitats. Director Clark testified that the Fish and Wildlife Service recognizes the need to improve the process for designating critical habitats. To that end, the Service has prepared a notice of intent to clarify the role of habitat in endangered species conservation. The notice will solicit public comment on administration of these ESA provisions.

For more information on the hearing, see <http://www.senate.gov/~epw/>

TRADE SUBCOMMITTEE CONSIDERS UNILATERAL SANCTIONS

The House Ways and Means Trade Subcommittee held a hearing on Thursday, May 27 on H.R. 1244, the Enhancement of Trade, Security and Human Rights Through Sanctions Act, sponsored among others by Rep. Cal Dooley (Visalia). The bill would require that before unilateral sanctions are imposed

by the U.S., an analysis be done of the anticipated effectiveness of the sanctions and the cost to American companies and workers. An annual report to Congress on all existing unilateral sanctions and their effectiveness would also be required.

Rep. Dooley testified before the panel and stressed that the legislation would not eliminate the use of unilateral sanctions but would establish a sensible framework for their imposition.

The subcommittee also heard from Stuart Eizenstadt, Undersecretary of State for Economic, Business, and Agricultural Affairs. Mr. Eizenstadt laid out the requirements that the Administration would need clearly addressed in the bill before granting its approval. First, that there be equality in the restraints placed on the Administration and Congress; if one was restrained in a given way, the other must also be equally restrained. Second, that the President be given the authority to waive, if appropriate, some of the procedural requirements in the bill, such as the 45-day notice period before imposition, and the reporting requirement. Third, and most important, that there be a stand alone provision giving the President the authority to waive any future sanctions bill on the basis of national interest; Congress would be given the authority to disapprove the national interest waiver after its issuance.

Other witnesses included representatives of U.S. manufacturing and agricultural interests adversely impacted by past and current unilateral sanctions, and representatives from private think tanks.

FOSTER CARE INDEPENDENCE ACT CONTINUES TO PROGRESS

On Wednesday, May 26, the House Ways and Means Committee passed the Foster Care Independence Act (HR 1802) by voice vote, which would double the annual funding for the post-foster care independence program from \$70 million to \$140 million. Under the measure, states would be granted extra federal funds if their programs meet five goals outlined by the bill: identifying children likely to be in foster care through age 18; providing them with job training and education; preparing foster children for higher education; providing personal help such as mentors; and helping foster children after they leave the system, until they turn 21. The bill contains a provision that would repeal a federal law guaranteeing the government will pay states for existing child support collection programs at 1995 levels or higher.

The measure originally would have decreased the federal share of the cost of paternity tests needed for child support payment collection from 90 percent to 66 percent. Chairman Bill Archer (TX) offered an amendment in the nature of a substitute which was adopted by voice vote striking the provision. The committee also adopted an amendment by Rep. Hayworth (AZ) that would place Indian nations on an equal footing when applying for the additional funding.

The bill includes changes to the Supplemental Security Income program requested by the Social Security Administration, one of which is to grant SSI payments to Filipino veterans of the U.S. armed services who fought in World War II, but returned to the Philippines. Rep. Xavier Becerra (Los Angeles) was successful in presenting an amendment to Mr. Archer's amendment that changed the date from which Filipino veterans would be eligible, thereby expanding the pool of eligible veterans. Rep. Becerra's amendment was approved by a voice vote.

Rep. Pete Stark (Fremont) offered, and withdrew, an amendment that would have required states to provide Medicaid to all former foster children between the ages of 18 and 20. Although bill supporters said they would prefer to have the coverage be mandatory, the cost is reportedly prohibitive and the bill allows states to voluntarily offer Medicaid to teenagers at this point.

HOUSE COMMERCE HEARING ON MEDICAL RECORDS CONFIDENTIALITY

The House Commerce Subcommittee on Health and Environment met today to hear testimony on the subject of Medical Records Confidentiality in the Modern Delivery of Health Care. Witnesses

included Dr. Peggy Hamburg, Assistant Secretary for Planning and Evaluation, from the Department of Health and Human Services, and representatives from The May Foundation, Dartmouth Medical School, Genentech, National Breast Cancer Coalition, Harvard Pilgrim Health Care, National Organization for Rare Disorders, Ritzman Pharmacies, Merck-Medco, Envoy Corporation, Consumer Coalition for Health Privacy, the Montana Department of Insurance, and the American Council of Life Insurance.

Dr. Hamburg presented the Administration's recommendations for federal legislation to protect the privacy of health information, based on five key principles previously presented by Secretary Shalala: boundaries on the collection and disclosure of medical record information, security, consumer control, accountability, and public responsibility. The Administration recommends national standards, but does not recommend outright or overall federal preemption of existing State laws that are more protective of health information.

Dave Stump, Vice President, Clinical Development, and Genentech Fellow for Genentech, Inc. testified in support of enactment of strong, uniform federal standards designed to safeguard the confidentiality of patient health information and limit its use to activities which are appropriate and necessary, including biomedical research. He noted particular concern about Rep. Markey's (MA) bill, H.R. 1057 which would extend federal oversight into private research where the research involved information only, and not the patients themselves. He argued this would directly result in fewer projects being initiated and fewer products being discovered. Conversely, he said, Genentech supports an approach which would impose accountability on their ability to access information, limit their use of such information to bona fide research, and impose penalties on them for its misuse.

On the Senate side, the Senate Health, Education, Labor and Pensions Committee delayed its markup of draft medical privacy legislation this week until June 9, primarily because of a lack of consensus on whether a provision that would allow people to sue if their confidentiality rights had been "willfully and intentionally violated" would remain in the bill. If Congress fails to act by Aug. 21, Department of Health and Human Services regulations on electronically transmitted data will take effect six months later.

SENATE KILLS BASE CLOSURE PROPOSAL

During Wednesday's consideration of S.1059, the Department of Defense Authorization bill for FY2000, the Senate voted 40-60 to reject a proposal to conduct one round of base closures in 2001-2002. The amendment, proposed by Senator John McCain (Arizona) would have required appointment of a Base Realignment and Closure Commission (BRAC) by May 2001, and required the Administration to submit a list of proposed closures by February 2002.

The Senate Armed Services Committee had previously voted 11-9 to reject a single round of base closures, and by a 12-8 vote rejected two base closure rounds.

CALIFORNIA CHOSEN FOR MAGLEV STUDY FUNDING

On Monday, the Department of Transportation announced that California's would be one of the seven state-sponsored projects to receive federal TEA-21 funding for pre-construction study funding for future deployment of a maglev technology program. The seven states will divide \$12.2 million this year, and \$60 million is provided over the next 3 years for initial planning. Last year's massive TEA-21 highway and transit bill authorized \$1 billion for construction of a maglev (or magnetically levitated high-speed) rail system at one of these seven sites. However, while funds for the initial planning study have been appropriated, the construction funding remains subject to future Congressional appropriation.

The California proposal was submitted by the Southern California Association of Governments, which proposes a line from Los Angeles International Airport to March Air Force Base in Riverside, via Union Station in Los Angeles and then the San Gabriel Valley. A second of the seven awards is slated

for Nevada, which would propose to build the first leg of what is ultimately envisioned as a maglev corridor from Las Vegas to Los Angeles.

BERKELEY CHANCELLOR BERDAHL TO ADDRESS NATIONAL PRESS CLUB LUNCH

University of California at Berkeley Chancellor Robert Berdahl is the featured guest at the National Press Club's monthly luncheon series on Wednesday, June 2 from at 12:30-2:00 p.m. and will speak on "The Role of Public Higher Education in the 21st Century." Supporters of the California Institute, California State Society, Golden State Roundtable, etc. who would like to attend may reserve tickets at \$27.50 by calling 202 662-7500, or 202 662-7501. Mention the association with the U.C. Berkeley group to get that discounted (regularly \$35) price.

GOLD RUSH EXPERT TO SPEAK JUNE 10 AT LIBRARY OF CONGRESS

On Thursday, June 10, Californians in Washington will hear from a noted expert on California history and the Gold Rush which helped shaped the state's beginnings. J.S. Holliday, a popular lecturer and the author of *Rush for Riches: Gold Fever and the Making of California* will discuss the world's first gold rush, from 1849 to 1884 in northern California. The event will be held at 6:00 p.m. on June 10 in the Mumford Room on the 6th Floor of the Madison Library of Congress Building, at 101 Independence Avenue, SE.

His lecture, entitled "Failure Be Damned!-- The Origins of California's Risk-Taking Culture 1850-1990" will track with the theme of his new book: that California's gold rush mentality (success today, surely tomorrow!) spurred the formation of a wildly laissez-faire economy, just as the anonymity of life in the masculine world of mining camps and instant cities – far removed from hometown eyes – nurtured a society free from traditional rules and inhibitions.

The lecture, which is free and open to the public, is part of the Center for the Book at the Library of Congress. Mr. Holliday is director emeritus of the California Historical Society and former director of the Oakland Museum of California. A small, informal reception will follow Mr. Holliday's comments.