



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: ransdell@calinst.org Web: <http://www.calinst.org>

California Capitol Hill Bulletin

Volume 6, Bulletin 19 -- June 10, 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.

51 CALIFORNIANS URGE FEMA TO DELAY PROPOSED INSURANCE REQUIREMENTS; GOVERNOR, COUNTIES, CITIES, SCHOOLS AND UNIVERSITIES ALSO WEIGH IN

Fifty-one members of the California Congressional Delegation signed a letter this week to James Lee Witt, Director of the Federal Emergency Management Agency, urging the agency to delay publication of its proposed rule on Public Assistance Insurance Requirements.

Under the expected proposed rule, public entities would be required to obtain private insurance, or to self-insure, the buildings they own against damage from natural disasters. The entities affected would include not only state and local government buildings, but also schools, public hospitals, and the universities. In order to be eligible for any public assistance grants from FEMA, public buildings covered by the rule would have to have "adequate insurance" against the peril that caused the damage. In the case of damage caused by earthquakes, the insurance coverage deemed adequate by FEMA could be as high as \$125 million per building. Under current law and regulations, there is no insurance requirement placed on public entities and generally FEMA pays 75 percent of the cost to repair or rebuild a public building damaged by a natural disaster. California's public agencies and jurisdictions are extremely concerned about the deleterious financial impact of the new rule. One large California school district estimated that providing the required insurance coverage under the proposed rule would require increasing its annual budget by 27 percent.

Citing concerns that FEMA has not adequately examined the financial impact the new rule would have on public entities, the delegation letter urges FEMA to postpone publication of the new rule, which could come as early as June 15. The letter also calls on FEMA to ensure adequate input from a broad range of public entities, including school districts, local governments, and independent public institutions, before proceeding with the proposed rule.

Governor Gray Davis also sent a letter to Director Witt on June 9 urging that publication be delayed. While emphasizing that California does not oppose reasonable insurance requirements, the letter lays out several concerns with the rule as drafted. Among the concerns are that the rule does not

CONTENTS:

51 Californians Urge FEMA To Delay Proposed Insurance Requirements	1
Most Californians on R&D Tax Credit Letter; Deadline June 15	2
Unanimous California Delegation Fighting Transit Caps	2
Senate Moving Y2K Liability Bill	2
China-NTR and WTO Accession	3
Export Administration Act	3
Committees Hold Hearings on Encryption Technology Policy	4
Transportation Environmental Review	5
Superfund/Brownfields Legislation Clears Subcommittee	5
Davis Administration Seeks Further Reductions in Off-Shore Drilling	6
Urban Institute Study of Welfare Benefits and Immigrants	6

take into account the availability of the insurance coverage envisioned; presupposes that a local agency can obtain "all hazard" insurance coverage as a single policy; does not consider that state insurance commissioners may not have the ability or resources to approve case-by-case waivers as proposed in the rule; ignores the impact of post-disaster litigation for insufficient coverage or failure to cover; and allows for public safety to be undermined when essential facilities go unrepaired.

In a briefing on Wednesday, June 9, FEMA reiterated that it is committed to publishing a proposed rule; it allowed, however, that the publication date may slip into July. Several California organizations are working with the California congressional delegation to delay the proposed rule until adequate information addressing financial and other concerns can be factored into the rule.

MOST CALIFORNIANS ON R&D TAX CREDIT LETTER; DEADLINE JUNE 15

To date, a bipartisan majority of 31 members of the California delegation have signed a letter to Chairman Bill Archer (TX) and Ranking Member Charles Rangel (NY) of the Ways and Means Committee advocating a permanent extension of the Research and Development tax credit, and 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." In addition to the full delegation letter, the California Democrats sent a letter to President Clinton on May 26 asking Administration support for a permanent credit.

Reps. Wally Herger (Marysville) and Bob Matsui (Sacramento) are circulating the letter on behalf of the bipartisan California delegation. The deadline for signing the letter is close of business Tuesday, June 15. Last year, 48 of the 50 members of the delegation (at the time there were two vacancies) signed the letter. Members who have not yet signed on should contact Dave Olander (Herger) at 5-3076 or Francis Grab (Matsui) at 5-7163.

UNANIMOUS CALIFORNIA DELEGATION FIGHTING TRANSIT CAPS

In a letter sent Thursday, a unanimous California Congressional delegation is protesting a provision attached to the Senate's version of transportation appropriations legislation which would sharply curtail transit funding to the state. The language would permanently limit any state's receipts to 12.5% of federal transit funds -- which would hurt only California and New York. Currently, without the cap, California would receive 14.6% of FY2000 transit funds. Imposing the 12.5% cap would cost the state \$120 million next year alone.

The joint California-New York letter, circulated by Reps. Steve Kuykendall (Rancho Palos Verdes) and Ellen Tauscher (Pleasanton), as well as delegation chairs Jerry Lewis (Redlands) and Sam Farr (Carmel), garnered the signature of every California member, except Ron Packard (Oceanside) who serves on the Transportation Appropriations subcommittee and thus did not need to sign. The letter noted that "New York and California account for roughly one-half of the nation's transit users, yet they receive only about 30% of the federal transit funding."

If the Senate provision were to prevail, 40 California transit funds would be reduced. In addition to funds for non-urbanized areas and elderly/disabled funds, reductions would be made for: Antioch-Pittsburg, Bakersfield, Chico, Davis, Fairfield, Fresno, Hemet-San Jacinto, Hesperia-Apple Valley-Victorville, Indio-Coachella, Lancaster-Palmdale, Lodi, Lompoc, Los Angeles, Merced, Modesto, Napa, Oxnard-Ventura, Palm Springs, Redding, Riverside-San Bernardino, Sacramento, Salinas, San Diego,

San Francisco-Oakland, San Jose, San Luis Obispo, Santa Barbara, Santa Cruz, Santa Maria, Santa Rosa, Seaside-Monterey, Simi Valley, Stockton, Vacaville, Visalia, Watsonville, Yuba City, and Yuma.

SENATE MOVING ON Y2K LIABILITY LEGISLATION

After several fits and starts, the Senate again took up S. 96, which limits liability due to computer glitches concerning the year 2000. See, *Bulletin*, [Vol. 6, Nos. 14 \(4/29/99\)](#), [15 \(5/6/99\)](#), [16 \(5/13/99\)](#), & [17 \(5/20/99\)](#). The underlying legislation now being considered is a compromise worked out by Sens. John McCain (AZ), Christopher Dodd (CT), and Dianne Feinstein. On Wednesday, the Senate tabled, 57-41, an alternative to the McCain/Dodd/Feinstein proposal offered by Sen. John Kerry (MA) that would have eliminated punitive damage caps in favor of limiting economic damages to cases where they were contractually imposed. The Kerry amendment also would have conditioned proportionate liability on cases where the defendants had taken action to inform customers of potential problems and remedies.

The Senate also defeated, 32-65, an amendment by Sen. Patrick Leahy (VT) that would have made it easier for plaintiffs to sue in state courts. It accepted by voice vote, however, an amendment by Sen. Wayne Allard (CO) that clarifies that federal law will not preempt stronger state liability laws.

On Thursday, two amendments offered by Sen. John Edwards (NC) were defeated. One, defeated, 41-57, would have allowed a plaintiff to seek economic damages for Y2K-induced losses. The second amendment would have subjected a company to full liability if it sold non-Y2K compliant equipment after January 1, 1999.

With the wide-margin by which the Kerry substitute was defeated, the Senate is expected to pass the McCain compromise, perhaps by the end of the week. A House-Senate Conference will be needed to iron out the differences with the House-passed bill, and the Administration is expected to weigh in heavily during conference in an attempt to narrow the scope of the bill.

TRADE SUBCOMMITTEE CONSIDERS CHINA-NTR AND WTO ACCESSION

The House Ways and Means Trade Subcommittee held a hearing on Tuesday, June 8 on extension of China's Normal Trade Relations (NTR; formerly Most-Favored Nation) status with the United States and its accession into the World Trade Organization (WTO). On June 3, 1999, the President submitted a formal waiver to Congress extending NTR status to China for an additional year. Congress has 90 days to overrule the President's waiver by passing a resolution of disagreement by an up or down vote, without amendment.

The Subcommittee heard from several members of Congress, including: Reps. Dana Rohrabacher (Huntington Beach); Nancy Pelosi (San Francisco); and Cal Dooley (Visalia). Reps. Rohrabacher and Pelosi opposed extension of NTR to China. Rep. Rohrabacher has sponsored the resolution disapproving NTR extension, arguing that China has not liberalized its commercial policies and continues to proliferate weapons of mass destruction. Rep. Pelosi also argued that U.S. policy has failed to increase either political or economic reform in China. Rep. Dooley, on the other hand, strongly supported extending NTR, arguing that it promotes trade with China, and encourages economic, political, and humanitarian reform. Rep. Dooley also urged support for the expeditious accession of China to the WTO, arguing that it would bring China into a rules-based international system and legal framework, and open up tremendous opportunities for U.S. workers and businesses.

Ambassador Richard Fisher, Deputy U.S. Trade Representative, and Stanley Roth, Assistant Secretary of State for East Asian and Pacific Affairs appeared on behalf of the Administration to defend the President's extension of NTR and update the Subcommittee on the trade negotiations with China forming the basis for its accession to the WTO on commercially viable terms.

The Subcommittee also heard from several witnesses from the private sector, including Jack Valenti, President and CEO of the Motion Picture Association. Mr. Valenti testified in support of extending NTR to China, ideally on a permanent basis effective on the President's certification that an acceptable WTO accession package has been completed with China.

SENATE BANKING CONSIDERS EXPORT ADMINISTRATION ACT

The Senate Banking Committee held a hearing on the reauthorization of the Export Administration Act (EAA) on Thursday, June 10. Committee Chairman Phil Gramm (TX) stated that he and Sen. Michael Enzi (WY), Chair of the International Trade and Finance Subcommittee, hope to have a reauthorization bill drafted by early next week. The Committee will then hold a few more days of hearings, and intends to mark up the reauthorization bill on June 29, according to Sen. Gramm.

The only witnesses before the Committee were Rep. Chris Cox (Newport Beach) and Norm Dicks (WA), Chair and Ranking Member of the House's Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China. The Select Committee investigated Chinese espionage of U.S. high technology. Its report, known as the Cox Report, makes several recommendations concerning the Export Administration Act. Notably, it calls for the immediate reauthorization of the Act, which lapsed in 1994, and has been implemented in the interim through the President's authority under the International Emergency Economic Powers Act (IEEPA). In addition, Rep. Cox testified that pending a complete overhaul of the EAA, he would support bringing a clean bill to the floor that just reinstates the penalties affordable under the EAA, because they are substantially higher and more in keeping with the gravity of export control violations than IEEPA.

Additionally, Reps. Cox and Dicks testified that the report supports the sale of high performance computers to China, as long as there is in place a comprehensive program for ensuring that they will only be used for commercial purposes. Rep. Cox stated this would require imposing reasonable terms on the buyer and seller to the transaction, as well as involvement and agreement by China to allow verification of commercial use.

Another conclusion of the report, according to the testimony, is that the U.S. must prioritize technology hardware and software in terms of national security concerns and develop its export controls to put more focus on controlling highly sensitive technology and less focus on controlling technology that does not have serious potential consequences on U.S. national security.

On a related issue, there are reports that the Administration is close to increasing the strength of high performance computers that are eligible for export under a general license. The latest generation of personal computers are becoming so fast that by the end of this year any sale of a home computer may require a separate export license from the Administration. Indications are that the U.S. will allow the export of computers with up to 10,000 MTOPS (millions of theoretical operations per second) strength to about 100 of the United States' major trading partners, while continuing stricter controls on China and about 50 other countries.

SENATE COMMERCE AND HOUSE INTELLIGENCE COMMITTEES HOLD HEARINGS ON ENCRYPTION TECHNOLOGY POLICY

The Senate Commerce Committee held a hearing on S. 798, the PROTECT Act, on Thursday, June 10 and the House Select Committee on Intelligence held a hearing on H.R. 850, the SAFE Act, on Wednesday, June 9. Both bills would ease export controls on the export of encryption products, although they differ in several substantive ways. The committees heard from Administration witnesses, as well as private sector interests. As expected, the Administration continues to oppose both pieces of legislation. Testifying before the Commerce Committee, William Reinsch, Under Secretary for Export

Administration, Department of Commerce (DOC) cited several provisions of S. 798 to which the Administration objected. Among them are, leaving to a private-public advisory board decisions on removing controls from generally available encryption; removing the Department of Justice from the license consultation process; decontrolling all encryption up to 64-bit length; and the automatic approval of a license if the government fails to make a decision within 15 days.

In his testimony, Secretary Reinsch also allowed that the Administration is reviewing current export controls and may further ease the rules sometime this year.

For more information on the Senate Commerce hearing and for individual witness testimony, see: <http://www.senate.gov/~commerce>. Testimony from the Intelligence Committee hearing can be obtained from the Committee at 202-225-4121.

TRANSPORTATION COMMITTEE EXAMINES ENVIRONMENTAL REVIEW PROVISION

The Subcommittee on Transportation and Infrastructure held a hearing on Wednesday to examine look into section 1309 of the Transportation Equity Act (TEA-21), which sought to streamline the environmental review process for projects and thereby to quicken the pace on the approval of new projects. Testifying before the subcommittee were George T. Frampton, Jr., Council on Environmental and Public Works; and Eugene A. Conti, Jr., Assistant Secretary for Transportation Policy, Department of Transportation.

Mr. Frampton testified regarding the issue of the timelines mandated in section 1309. The statutory timeline incorporates the criteria set by the Council on Environmental Quality (CEQ) that put forth regulations for determining appropriate time limits for projects. Mr. Frampton said that he believed this mandated policy for individual projects was a "much wiser approach than attempting to mandate one timeline for all highway and mass transit proposals." Nevertheless, Mr. Frampton allowed that implementing the provision could be slow and difficult.

Mr. Conti addressed another aspect of the timeline issue. He expressed that there is a need for better baseline performance information so that the Department of Transportation (DOT) could gauge the progress made in eliminating delays, while remaining "good environmental stewards." Mr. Conti went on to say that this was a difficult process at best, and the issue of timelines and streamlining would not be solved overnight. He indicated that DOT was actively working with all the agencies involved and they would have a proposal to meet the needs of section 1309 soon.

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

SUPERFUND/BROWNFIELDS LEGISLATION CLEARS SUBCOMMITTEE

The House Committee on Transportation and Infrastructure's Subcommittee on Water Resources and Environment convened to mark up Chairman Sherwood Boehlert's (NY) H.R. 1300, the "Recycle America's Land Act of 1999." The measure is intended to encourage the redevelopment of brownfields by eliminating barriers caused by the fear of Superfund liability; provide small businesses, recyclers and municipalities with immediate Superfund relief; protect innocent landowners from Superfund liability; reauthorize \$1.5 billion through FY04 in funding to ensure that Superfund meets the needs of the program and covers liability relief; greatly increase information to the public on the Superfund cleanup process; and encourage the cleanup of over 500,000 brownfields across the country. This includes \$25 million annually for state-run, voluntary clean-up programs that target brownfields. Californian co-sponsors of the bill include Reps. Cal Dooley, Steve Horn, Ellen Tauscher, and Bob Matsui.

Rep. Boehlert presented an *en bloc* amendment, that expands state grants, defines the scope of the allocation of responsibility process, and makes clarifications within the section concerned with remedies at brownfields sites, codifying current agency regulations in some instances. The amendment was adopted. One concern previously expressed by EPA Administrator Carol Browner was that the

language in the bill would lead to increased litigation and potentially slow clean-ups because it immediately bucked allotment decisions to the Court. Rep. Ellen Tauscher introduced an amendment aimed at allowing the Administrator to ensure an equitable and fair allocation of liability by a mutually agreeable, neutral allocator; therefore, asking parties to work together to determine culpability rather than sending them immediately to the courts. It was adopted by voice vote.

Rep. Mike Simpson (ID) presented and withdrew amendments concerning lead in soil policy and natural resource damages claims. Rep. Earl Blumenauer (OR) presented two amendments which were adopted by voice vote -- the first clarifying word definitions and volume specifications of concern to Administrator Browner, and the second releasing municipal sewage operations from liability of polluters who illegally dump into the sewage system. Rep. James Barcia (MI) successfully presented an amendment that was adopted by voice vote which expanded a list of recyclable products removed from liability to include copper, and Rep. Steven LaTourette (OH) was similarly successful in an amendment to allow whole tires the same protection in recycling as tire parts.

Rep. Steve Kuykendall presented an amendment which was approved by voice vote authorizing up to 20% of grants to states for brownfields site assessments and the clean-up revolving loan fund to go to local public health officials for continued assessments of health effects, a request for which had been made by the National Association of County and City Health Officials. Rep. Robert Menendez (NJ) withdrew an amendment concerning contaminated sediments and natural resource damages.

The bill was passed 22 ayes, 9 nos, and 2 voting present. Reps. Doolittle, Horn, Kuykendall and Tauscher voted aye. It is expected to be two weeks before the full committee considers the bill. Testimony from a May 12 hearing on the subject is available on the subcommittee website, at <http://www.house.gov/transportation/water/05-12-99/05-12-99memo.html> or see *Bulletin, Vol. 6, No. 16 (5/13/99)*.

DAVIS ADMINISTRATION SEEKS FURTHER REDUCTIONS IN OFF-SHORE DRILLING

Governor Davis this week expressed concern that the Department of Interior's Mineral Management Service appears to be moving to extend the lease terms for 40 as yet undeveloped tracts on the Outer Continental Shelf, which could be used in the future for oil exploration, production and transportation. In a June 7 letter, the Governor asked his Resources Agency to coordinate Administration efforts to pursue cumulative impact analyses of any such proposals by Interior. He also repeated his call for a moratorium on offshore oil drilling on California's share of the OCS, and urged the California Coastal Commission not to renew any of the 40 leases "absent a thorough cumulative impact analysis of both onshore and offshore impacts of potential development activity." Davis concluded that he will convey similar comments to Interior Secretary Bruce Babbitt and Vice President Al Gore.

URBAN INSTITUTE STUDY OF WELFARE BENEFITS AND IMMIGRANTS

A new report from the Urban Institute concludes that many federal and state policies leave some legal immigrants without the "safety net" programs they once had before the passage of the 1996 welfare law, and that very few states have fully replaced the benefits lost. California, according to the report, is among the most generous states, providing food, cash, and health care to many legal immigrants entering after enactment of the welfare reform bill and providing more assistance to legal immigrants than almost every other state. At the same time, however, the report found that California actively pursues cutting off illegal immigrants from state and local benefits.

The report states, "Perhaps our most surprising finding is that, despite its anti-immigrant reputation, California provides substantial benefits to its qualified immigrant population. At the same time that California is one of the most generous states in providing assistance to qualified immigrants, it is the most aggressive in trying to bar the unqualified from state public benefits. This dichotomy is in keeping

with the state's history of attempting to control illegal immigration (with Proposition 187, e.g.) while maintaining its tradition of providing one of the more extensive state safety nets in the country. The state's immigrant eligibility decisions can be partly attributed to the unique and changing politics of immigration in California. Despite the success of ballot initiatives limiting affirmative action and bilingual education, the state has succeeded in putting in place some of the most comprehensive state-funded benefits for immigrants. The state's large and increasingly powerful immigrant community and advocacy network may not yet be affecting voter initiatives, but they are clearly being heard by the state legislature and other policymakers." The report added, "California may also be a trendsetter. Its decision to provide food stamps and SSI to post-enactment immigrants whose sponsor is deceased, disabled, or abusive may provide a model for other states that have yet to feel the impact of restrictions on the still relatively small number of post-enactment immigrants."

The report estimated that California accounts for 32.6% of the nation's foreign born population and 35.6% of the nation's noncitizens (6 million of the nation's 17 million noncitizens). The report found that 31% of the state's noncitizens live in poverty -- a figure somewhat above the nation's 27.7% average. Figures cited in the report placed California's maximum monthly TANF and General Assistance (GA) grants at the median among states for three-person families, at \$565 and \$431 respectively.

To obtain a copy of the Urban Institute's *Assessing the New Federalism* report, "Patchwork Policies: State Assistance for Immigrants under Welfare Reform," by Wendy Zimmermann and Karen Tumlin, call the Urban Institute's order line at (877) 847-7377 or see their website at: <http://newfederalism.urban.org/html/occa24.html> for a summary of the report, or <http://newfederalism.urban.org/pdf/occ24.pdf> , where the entire 120-page document may be downloaded free of charge in Adobe Acrobat "pdf" format.