



**THE CALIFORNIA INSTITUTE
FOR FEDERAL POLICY RESEARCH**

FEDERAL REPORT

PREPARED FOR

**THE CALIFORNIA INSTITUTE
SPRING MEETING**

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Executive Summary

The Federal Report is prepared by the California Institute annually. It details legislative issues the Institute has worked on recently and the products and services that the Institute provides to its Advisory Board, the California Congressional delegation, and others.

LEGISLATIVE ACTIVITY

Since January 1999, the Institute has engaged in activities regarding a number of significant legislative matters, including:

- **Information Technology Issues** - The Institute continues to analyze the impact of federal legislation on the state's information technology industry, because of its significant importance to the state's economic health. Among the issues followed this year were: Year 2000 technology liability protection; and exports of encryption products and high performance computers.
- **Intellectual Property Issues** - Because of its importance to the state's entertainment and information technology industries, the Institute worked with the delegation and California organizations regarding several intellectual property issues, including increasing copyright damages and stemming international piracy.
- **Immigration** - The Institute continues to follow key issues in this area, including: increasing H-1B visas, and reimbursing states for certain costs of illegal immigrants.
- **Tax Policy** - The Institute continues to advise the delegation regarding tax issues important to the state's technology community and other interests, including a permanent research and development tax credit and exclusion from income of employee education assistance.
- **Disaster Insurance** - The Institute continues to work with the delegation and several California public entities to ensure that California's unique needs will be recognized as FEMA promulgates a rule requiring all public buildings to carry insurance against earthquakes and other natural disasters.
- **Federal Formula Grants** - The Institute advises the delegation and others regarding the formula grant programs and the fairness of funding allocations to the state.
- **Education** - The Institute continues to play an assistive role as the delegation seeks the state's fair share of funding under federal K-12 education programs, many of which are due to be

- **Housing** - With home prices continuing to rise faster than incomes in many areas, and with transportation and other infrastructure needs outstripping the abilities of these areas to maintain services, the Institute monitors federal developments regarding housing.
- **Utility Industry Restructuring** - California has led the nation in implementing broad restructuring in the electric utility industry, and the Institute continues to monitor federal activities in order that the state's progress can be maintained.

INSTITUTE PRODUCTS AND SERVICES

To promote the exchange of policy views among the Congressional delegation, the Institute's Advisory Board members and others, the Institute provides timely information on legislative issues of importance to California through the following products and services:

- **Member Breakfasts** - Advisory Board members are invited to attend regular breakfasts hosted by the Institute featuring one or two members of the delegation.
- **Briefings** - The Institute has sponsored briefings on a variety of issues, including medical records privacy, population and demographic trends, and education formula grants.
- **Capitol Hill Bulletins** - The Institute continues to monitor and report on federal issues of significance to California in its weekly *California Capitol Hill Bulletin*.
- **Other Events and Products** - The Institute from time to time sponsors or cosponsors other events, such as receptions, luncheons and forums, and it produces special reports on topics such as California's balance of payments with the federal treasury, the state's share of federal spending, and formula grant factors.

California Institute Spring 2000 Federal Report

In conjunction with its 2000 Spring Meeting, the California Institute has prepared the following Spring 2000 Federal Report which reviews recent federal activities with significant impacts on California.

I. Institute Issues Coverage

INFORMATION TECHNOLOGY

Y2K Liability

Three bills dealing with the issue of liability for Y2K related computer problems were introduced in the House and Senate early in 1999. The "Year 2000 Readiness and Responsibility Act" was introduced in both the House (H.R. 775) and Senate (S. 461) in February 1999. Also, S. 96, a similar bill, was introduced by Sen. John McCain (AZ). The bills encouraged private companies to resolve Year 2000 computer problems through remediation and not litigation. The House bill, H.R. 775, was introduced on February 23 by Reps. Tom Davis (VA) and Jim Moran (VA). California Reps. David Dreier (Covina), Cal Dooley (Visalia) and Chris Cox (Huntington Beach) were original co-sponsors of the bill, and a broad bipartisan cross-section of other California delegation members also co-sponsored. The Senate bill, substantially similar to the House bill, was introduced by Sens. Orrin Hatch (UT) and Dianne Feinstein on February 24.

Among other provisions, both H.R. 775 and S. 461 called for a 90-day "cooling off" period if a company has a Y2K complaint against an information technology company. The aggrieved company must give written notice to the other business within 30 days, and then the prospective defendant has 60 days to resolve the problem before suit can be filed. Lawsuit pleadings, under the bills, must contain specific facts regarding the amount and nature of money damages and the basis for calculating damages, and must show specific facts demonstrating material Y2K defects. The bills also limited punitive damages to either: (1) the lesser of three times actual damages or \$250,000 for individuals whose net worth is \$500,000 or less and for any small businesses; or (2) the greater of three times actual damages of \$250,000 for all other defendants.

On March 3, the Senate Commerce Committee reported its Y2K litigation legislation, S. 96, by a vote of 11-9, after substituting a manager's amendment offered by Chairman John McCain (AZ). McCain's amendment brought the bill closer in line with S. 461, including the 90 day cooling off period before litigation could be initiated, and setting limits on punitive damages. Earlier, on March 1, the

other witnesses, the Subcommittees heard from Tom Donohue, President and CEO of the U.S. Chamber of Commerce. Mr. Donohue pointed out the Chamber represents business interests on both sides of the Y2K problem -- those likely to be plaintiffs, as well as defendants in any litigation. Nevertheless, the Chamber supported expeditious passage of H.R. 775, as an effective way to encourage businesses to remediate Y2K problems, rather than spend tremendous resources litigating them. Mr. Donohue also testified that the Giga Information Group, a technology-consulting firm, estimated that Y2K litigation may cost \$2 to \$3 for every dollar spent fixing the problem.

In the Senate, the Special Committee on the Year 2000 Technology Problem, met on March 11, 1999 to consider the liability issue. Among other witnesses, the Committee heard from George Scalise, President of the Semiconductor Industry Association (SIA). Mr. Scalise pointed out that there are a myriad number of issues to consider when evaluating the semiconductor industries Y2K readiness, because of the thousands of different kinds of semiconductors, and the fact that in many cases the date processing software is either owned by the customer or is manufactured to the customer's specifications. Nevertheless, the industry is cooperating fully with its customers to provide information so that the manufacturer of the finished electronic product can determine how the elements of the system function together as an integral unit and whether the product is Y2K ready.

John McGuckin, Exec. Vice President on Union Bank of California, testified on behalf of the American Bankers Association (ABA) and stated that the banking industry is on track to resolve any Y2K problems before January 1, 2000. Nevertheless, the ABA supported passage of legislation, such as H.R. 775, to allow businesses to remediate any Y2K problem before litigation is filed.

On March 25, the Senate Judiciary Committee, by a vote of 10-7, favorably reported out an amendment in the nature of a substitute to S. 461. During the markup, the Committee rejected two amendments. The first, offered by Sen. Patrick Leahy (VT), would have exempted individual consumers from the requirements of the bill. It was defeated by a vote of 7-10. The second, offered by Sen. Russ Feingold (WI), would have prohibited state law preemption on punitive damage awards and the liability of company officers and directors. It was defeated, 8-9.

The Committee's substitute left intact the major provisions of the bill, including the 90-day cooling off period, and proportionate, rather than joint and several liability. It changed the cap on punitive damages to three times compensatory losses, rather than actual losses, and clarified that the doctrine of comparative, not contributory, negligence would govern suits.

On March 26, Rep. Anna Eshoo (Atherton) (joined by Sen. Chris Dodd (CT) on the Senate side) introduced another Y2K bill. Rep. Eshoo's bill, H.R. 1319, the "Y2K Fairness and Litigation Act," retained the 90-day cooling off period and proportional, rather than joint and several, liability. However, unlike H.R. 775 and S. 461, it did not put a cap on attorneys' fees and contained no

principles that would form the basis for a needed, targeted, responsible, and balanced approach to Y2K litigation reform."

After voting 94-0 on April 26, to take up the Year 2000 liability bill (S. 96), the Senate 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 had vowed to hold the Y2K bill hostage until the Senate leadership agreed 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 April 28, 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 hoped would dampen the Administration's opposition. The Dodd language called for capping 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 new bill also eliminated the personal liability caps for officers and directors of corporations and retained state evidentiary standards for fraud claims.

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 May 4. The Committee had two amendments in the nature of a substitute pending, prior to adjourning. The first, offered by Rep. Bob Goodlatte (VA), retained the 90-day cooling off period, and required that material defects and state of mind be pled with specificity, where relevant. It also retained a complete "reasonable efforts" defense in tort actions, and limited it to instances where the defendant raised the defenses of impossibility or impracticability in contract actions.

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

During the markup, 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

On May 4, by a vote of 15-14, the House Judiciary Committee reported H.R. 775, after accepting the amendment in the nature of a substitute offered by Rep. Bob Goodlatte (VA). Before approving the substitute, the Committee considered several amendments. The Committee defeated by voice vote an amendment by Rep. Jerry Nadler (NY) to strike the provisions regarding certification of class actions and removal of such actions to federal court, and defeated another Nadler amendment, by a vote of 4-13, that would have struck the provision requiring individual notification to each member of a class.

An amendment offered by Rep. Bobby Scott (VA) to delete the provisions limiting the liability of officers and directors was defeated by voice vote, as was another Scott amendment to make the individualized notice requirements in a class action suit voluntary, rather than mandatory. The Committee approved by voice vote two other Scott amendments clarifying provisions of the bill on staying discovery and dismissal without prejudice where the requisite specificity is not contained in the pleadings.

Before reporting the bill, the Committee defeated the Lofgren substitute by a vote of 9-15, and approved the Goodlatte substitute by a vote of 15-13, with one member voting present.

By a vote of 236-190, the House on May 12, 1999, passed H.R. 775. Prior to passage, the full House defeated a more narrowly drawn substitute amendment offered by Reps. Zoe Lofgren (San Jose), John Conyers (MI), and Rick Boucher (VA). The Lofgren substitute would have retained the 90-day cooling off period, specificity of pleadings, and proportional liability, but would have struck the provisions limiting punitive damages and class action lawsuits. The substitute was defeated by a vote of 190-236. The House also rejected an amendment by Rep. Robert Scott (VA), by a vote of 192-235, that would have stripped the bill of the punitive damage limits, and an amendment by Rep. Jerrold Nadler (NY), by a vote of 180-244, that would have stripped the class action provisions from the bill.

Three minor amendments were added to the bill by voice votes. The first, offered by Rep. Tom Davis (VA), included restitution in the definition of awards capped under the bill and made the bill applicable to suits filed by January 1, 1999. The second, offered by Rep. Jim Moran (VA), exempted from the bill all third-party claims in personal injury cases. The final amendment, offered by Rep. Sheila Jackson-Lee (TX), clarified that class action notices to individuals should be written in laymen's terms.

An attempt to recommit the bill with instructions to include an amendment granting U.S. jurisdiction over foreign manufacturers of non-Y2K compliant products was defeated 184-246.

On May 18, the Senate again failed to gain the 60 votes needed to continue the debate on S. 96, Sen. John McCain's bill. The attempt failed 53-45 (seven votes short of the 60 needed to invoke cloture). The bill was ensnared in a dispute over consideration of the juvenile justice crime bill, and

On June 10, 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.

On June 15, the Senate finally passed the legislation, after substituting a compromise version for the House-passed H.R. 775. The substitute was authored by Sens. John McCain (AZ), Dianne Feinstein, Christopher Dodd (CT), and Orrin Hatch (UT). The substitute retained the 90-day cooling off period and eliminated joint and several liability in favor of proportional liability, following the House bill provisions. However, it only capped punitive damages in cases where the defendant has 50 or less employees, or a net worth of \$500,000 or less. In those cases, the punitive damages may not exceed \$250,000 or three times the compensatory damages, whichever is less.

The White House had threatened a veto of the bill, but after a flurry of negotiations, it reached an agreement with Congress limiting liability for potential Y2K glitches. The compromise contained in the conference report on H.R. 775 was approved by the House July 1, by a vote of 404-24, and by the Senate, 81-18, later in the day. Although it narrowed the scope of the liability limits in the bill, it was still strongly supported by the information technology industry.

Under the agreement, the 90-day cooling off period before suing is retained, and caps on punitive damages continue to be limited to small businesses. The degree of proportional liability was changed, however, and defendants may have to pay more than their share of the damages, if another defendant is insolvent or cannot be found. Also, willful failure to fix a Y2K problem subjects a defendant to treble damages. The compromise will allow most class action suits to continue to be filed in state court, with only suits involving over 100 plaintiffs or \$10 million in damages required to be filed in federal court. The President signed the bill into law in July.

Passage of legislation encouraging remediation rather than litigation relating to Y2K problems was very strongly supported by California's information technology community. Some industry studies estimated that the cost of litigation associated with Y2K problems could have reached \$1 trillion.

Y2K Small Business Loan Bill

On a related measure, Congress also passed a bill, which was signed by the President, to assist small businesses in preparing for the Y2K computer transition. The legislation authorizes the Small Business Administration (SBA) to establish a program guaranteeing loans for small businesses attempting to either fix their computers or cope with economic losses resulting from its own or supplier computer breakdowns as a result of the Year 2000 problem. Current law limits loan guarantees by the SBA to \$750,000, but S. 314 allows the SBA to guarantee loans of up to \$1 million for Y2K readiness.

Whip David Bonior (MI), House Republican Conference Chair J.C. Watts (OK), and Democratic Caucus Chair Martin Frost (TX), among others. The co-sponsors also included a strong, bipartisan, cross-section of 35 California members.

The bill would codify that it is legal for any person in the United States or any U.S. citizen in a foreign country to use or sell any form of encryption. It would also prohibit the federal government from requiring a key recovery system to provide access to the system through a third-party. Finally, it would allow the export of very strong, generally available, encryption technology after a one-time, 15-day technical review by the government. The bill was referred jointly to the Judiciary Committee and the International Relations Committee; sequential referrals were made to the Commerce, Armed Services, and Intelligence Committees.

The House Judiciary Subcommittee on Courts and Intellectual Property reported out H.R. 850 on March 11, 1999. The bill was approved by voice vote without amendment. The full Judiciary Committee marked up the bill on March 24, 1999, and again was approved by voice vote without amendment. During consideration in the Judiciary Committee, Rep. Bill McCollum (FL) offered an amendment that would have required all exported encryption products to contain the capability to make plain text accessible to law enforcement authorities under a court order. The amendment, in effect, would have required that a key recovery, or comparable system, be contained in encryption products. The amendment, however, was ruled non-germane and, thus out of order, because it fell within the provisions of the bill under the jurisdiction of the International Relations Committee, not the Judiciary Committee.

The House International Relations' Subcommittee on International Economic Policy and Trade held a hearing on May 18 on H.R. 850. 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 United States 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, United States' 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

they also differ in several substantive ways. The committees heard from Administration witnesses, which continued to oppose both bills, as well as private sector interests. 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, however, Secretary Reinsch stated that the Administration was once again reviewing its current export controls and could further ease the rules sometime later in the year.

On June 16, 1999, the House Commerce Committee's Telecommunications Subcommittee reported H.R. 850, by voice vote, after amending it with a substitute offered by Chairman Tauzin. The substitute retained the major provisions of the bill easing the export of encryption products of any strength that are generally available on the world market. However, it would require the Secretary of Commerce to relinquish control over encryption exports to the National Telecommunications and Information Administration (NTIA), within the Department of Commerce, within two years of the bill's enactment. It also would establish within NTIA, the National Electronic Technologies Center ("NET Center") to bring together federal national security and law enforcement agencies with the private sector to help the agencies develop state-of-the-art decrypting capabilities. The substitute would also prohibit the federal government from requiring that a government contractor must use encryption products that contain a key recovery system. The substitute was adopted by voice vote.

The subcommittee adopted an amendment, by a vote of 19-4, offered by Rep. Michael Oxley (OH). The amendment allows the Department of Commerce to deny a license in cases where it believes the encryption product will be used by drug traffickers, child pornographers, or organized crime. It also accepted by voice vote an amendment offered by Rep. Heather Wilson (NM) that increases the 15 calendar-day license review period contained in the substitute to 30 working days. The subcommittee defeated by voice vote two amendments offered by Rep. Cliff Stearns (FL). The first would have prohibited the export of any encryption products to China. The second would have required any third party in possession of encrypted information to provide a plain text translation of the material to law enforcement authorities under a court order. Opponents of the amendment argued that it would have, in effect, mandated a key recovery system by requiring unrelated third parties, such as Internet service providers, to have some method of decrypting its users' data.

On June 23, both the Senate Commerce, Science, and Transportation Committee and the House Commerce Committee reported differing versions of the encryption legislation. The Senate

Committee also approved several amendments by voice vote. Two, offered by Rep. Michael Oxley (OH), would grant the Departments of Defense (DOD), State, and Justice, and the CIA, a role in reviewing encryption exports, and clarify that encryption exports are not exempt from U.S. sanctions. A Dingell amendment required that countries importing U.S. encryption products must be able to obtain the equivalent products from other foreign suppliers. Rep. Cliff Stearns (FL) also was successful in adding two amendments to the bill. The first made it illegal to knowingly export encryption over 54-bits to the Chinese army or a military company. The second required that encryption data subpoenaed by a court must be decrypted into plain text. Rep. Oxley also withdrew his version of an amendment to allow the federal government to require a contractor to use encryption with a key-recovery system.

On July 1, 1999, the House Armed Services Committee held a hearing on H.R. 850. The Committee heard from Deputy Secretary of Defense John Hamre, and Barbara A. McNamara, Deputy Director, National Security Agency. The witnesses continued to oppose the bill because of national security and law enforcement concerns. Secretary Hamre testified that the bill's provision prohibiting DOD or any other federal agency from requiring a key recovery system in encryption products it purchased from U.S. companies was highly onerous, because it would deny DOD the ability to investigate any employees suspected of spying. During his opening remarks Chairman Floyd Spence noted his continuing opposition to the bill, which was echoed by several other members of the committee.

The House International Relations Committee then marked up the SAFE Act, and the House Armed Services Committee held another hearing on the bill on July 13, while the Select Intelligence Committee held a hearing on the bill on July 14, and marked it up in closed door session on the 15th.

The International Relations Committee reported the bill by a vote of 33-5, despite the opposition of Chairman Ben Gilman (NY). During the markup, several amendments were agreed to, although ones that would have effectively gutted the bill were defeated. The committee accepted a Gejdenson (CT) amendment that requires the Secretary of Commerce to consult with the Department of Justice and other law enforcement agencies to ensure that exports are not going to U.S. designated, drug-transit countries. They also agreed to an amendment clarifying that supercomputers were not excluded from export restrictions merely because they contained excluded encryption software. Both were accepted by voice.

Rep. Howard Berman (Valley Village) offered several amendments. One, which was agreed to by voice vote, amended the definition of "generally available" to ensure that it did not include instances of the limited transmittal of encryption software over the Internet. Another would allow the U.S. government to require that its government contractors use encryption containing a key recovery system.

oppose U.S. exports of that strength on the grounds that it speed up the pace at which criminals and terrorists around the world begin to utilize encryption. Nevertheless, Thomas Constantine, former Administrator of the Drug Enforcement Administration, conceded in his testimony that drug lords have been increasingly relying on encryption to encode conversations since 1995. Select Intelligence then marked up the in closed door session on the 15th.

After its hearing, the Select Intelligence Committee marked up H.R. 850 on July 15 in a closed door session. It reported the bill by voice vote after approving several substantive changes. Among other things, the Committee adopted an amendment that would give the President broad-based authority to ban encryption exports on national security grounds, and would give law enforcement authorities the right to seek court orders to gain access to decrypted information or plaintext, where available. The Committee, like the International Relations Committee, also amended H.R. 850 to allow the U.S. government to require its contractors to use encryption products that contain a key recovery system. Finally, it authorized funding to assist law enforcement agencies in improving their technical capabilities in decrypting data. Proponents of the SAFE Act argued that the national security amendment was too broad, and the amendment authorizing access to decrypted or plaintext data would effectively require companies to include a key recovery system in their products.

On July 21, 1999, the House Armed Services Committee (HAS) marked up its encryption bill, adopting a substitute amendment by Rep. Curt Walden (PA) which was vastly different from the versions approved by Judiciary, Commerce, and International Relations. The Walden substitute, approved 46-6, would allow the President to limit the export level of encryption strength on a broad-based national security basis. The substitute also would create an Encryption Advisory Board with public and private sector members, require semi-annual presidential declarations regarding permissible export strengths for encryption products, and place requirements on end-user and end-use disclosure.

The Armed Services Action ended consideration of H.R. 850 by the five House committees with jurisdiction, but the versions reported out of the committees differed so significantly that extensive negotiations would have been required to agree on a vehicle to bring to the House floor. So the issue languished as Congress turned its attention to appropriations issues.

The impasse in Congress eased somewhat when the Administration announced on September 16, 1999, that it would ease export control regulations on encryption policy. At the time, the details remained vague, but the new regulations were to have three prongs aimed at reaching a balance between information technology realities and law enforcement needs. First, under the plan, the Administration announced it would request \$500 million in funding over three years to increase the Defense Department's information technology security.

Second, exporters of strong encryption, even with 128 bit levels, would only need a one-time

representatives, concerns were raised over several issues. Rep. Zoe Lofgren (San Jose), a leading proponent of easing outdated encryption controls, wrote a letter to President Clinton noting that the regulations made a distinction between “retail” outlets sales and Internet sales. The regulations would have prohibited the sale of encryption online, except for that “specifically designed for individual consumer use which are sold directly by the manufacturer.” Therefore, retail stores would have had no proscription on selling another’s encryption, but only the actual encryption manufacturer could sell the product online. The draft also raised the issue of whether encryption could be distributed for free by the manufacturer; as the regulations state it must be “sold” by the manufacturer directly.

Action in 2000

After listening to the concerns expressed by members of Congress and the industry, the Commerce Department issued its final regulations on January 12, 2000. The new regulations eliminate artificial limits placed on the strength of encryption products that may be exported, and instead will allow exports of all readily available retail products, whether online or by retail sale. The products can be exported to any foreign user, including foreign governments, with the exception of the so-called rogue nations, which support terrorism. Although some concerns remain that the regulations are complex and cumbersome, most industry parties agree that they are substantially better than the regime previously in place.

The new regulations mark a significant victory for encryption product manufacturers and the information technology industry, which has been fighting for several years to bring U.S. policy in line with the realities of increased encryption abilities on a wide-scale commercial basis.

Electronic Signatures

On October 7, 1999, the Judiciary Committee’s Courts and Intellectual Property Subcommittee reported by voice vote H.R. 1714, the Electronic Signatures in Global and National Commerce Act, establishing the validity of electronic signatures, after endorsing an amendment in the nature of a substitute offered by Chairman Howard Coble (NC). The bill establishes that signatures executed electronically have the same binding, legal effect as handwritten signatures on paper documents. The Coble substitute was adopted by voice vote as a substitute for H.R. 1714 as it was reported by the House Commerce Committee. The substitute is designed to ensure that state laws are preempted by the federal legislation only until a state adopts either the Uniform Electronic Transactions Act (UETA) or a similar electronic signatures statute.

During consideration of the substitute, Reps. Howard Berman (Valley Village), John Conyers (MI), and Zoe Lofgren (San Jose) offered an amendment to further limit the scope of the bill’s preemption provisions, and ensure that federal and state entities have the flexibility to determine that

state decides that certain written documents or records continue to be necessary. H.R. 1714, as amended, was then reported out favorably by voice vote.

On November 1, the House failed under suspension of the rules to pass H.R. 1714. The vote, 122-234, was mostly along party lines and fell four votes short of the two-thirds vote needed under the expedited procedure. Opponents of the bill are concerned that it does not establish sufficient safeguards to protect consumers from fraud.

After the failure under suspension, the House leadership decided to bring the bill to the floor under a modified rule, where only a majority vote was needed. Thus, the House voted 356-66 to pass H.R. 1714, on November 9, after amending the bill to include protections for consumers. In addition to establishing the validity of electronic signatures for contracts, the bill would allow businesses to send out notices and records electronically, and preempts state contract laws, except those governing health and safety protections.

The consumer protection amendment was offered on the floor by Reps. Jay Inslee (WA), Anna Eshoo (Atherton), and Zoe Lofgren (San Jose). It requires that consumers be allowed to “separately and affirmatively” consent to accept electronic records and requires that the consent be “conspicuous and visually separate” from the other terms of the contract. It also ensures that federal and state consumer protection laws are not preempted by the bill. The amendment passed overwhelmingly by a vote of 418-2. An amendment that would have limited the validity of electronic signatures to commercial transactions affecting interstate commerce was defeated 126-278.

On November 19, the Senate passed by unanimous consent its version of the bill, S. 761.

Action in 2000

House conferees were appointed in February and Senate conferees in March 2000. The conference committee has not completed its report on the bill.

MTOPS Rule For Computers

The International Trade and Finance Subcommittee of the Senate Banking Committee held a hearing on April 14, 1999 on *"Export Licensing -- Bottleneck or Rubber Stamp"*. Sen. Mike Enzi (WY), the Chairman of the Subcommittee, examined various export control issues prior to introducing legislation to reauthorize the Export Administration Act. In his opening remarks, Sen. Enzi stated that, among other issues, he was concerned about the utility of wholesale end use checks, as required by the 1998 National Defense Reauthorization Act. He hoped that the hearing would at least highlight some of the problems and difficulties in producing a system that must balance both business interests and national security.

For the Administration, the Subcommittee heard from Roger Majak, Asst. Secretary for Export

million microprocessors every week, had to file numerous applications for civilian end-use exports to countries such as China and the Soviet Union. Only one of those applications was granted before the government raised the MTOPS level to 1,200, thereby allowing license-free exports.

Rather than try and stay ahead of the rapidly accelerating MTOPS levels for PCs, Mr. Jarrett argued that a license exemption for commodity information products would be a significant improvement. He offered that eligibility for the exemption could be based on the following indices: high volume; general purpose application; wide availability; and commodity-like characteristics (e.g., no particular installation or maintenance required). Mr. Jarrett stated that this concept is also supported by the American Electronics Association, the Semiconductor Industry Association, and the Computer Coalition for Responsible Exports.

Based on the concerns raised by the information technology industry, the Clinton Administration announced on July 1, 1999 that it would again ease export controls on computers. Prior to the Administration's announcement, individual export licenses were required for so-called Tier II countries (most of Southeast Asia, South America, and South Africa) in order to sell computers with speeds over 10,000 MTOPs. Exports to Tier III countries (e.g. China and most Middle East countries) are limited to computers with 2,000 MTOPs or less to military users, and 7,000 MTOPs or less to civilian users. Today's mass-marketed, personal computer technology, however, was in imminent striking distance of those limits. For instance, Intel expects to unveil a new microprocessor chip for use in personal computers that will have a speed exceeding the 2,000 MTOPs level; and the next general Sony PlayStation will also have a speed greater than 2,000 MTOPs.

Under the 1999 regulations, exports to Tier II countries would not require individual licenses unless the computers exceed 20,000 MTOPs. Tier III country exports would be raised to 12,300 MTOPs for civilian use, and 6,500 MTOPs for military use. The Administration also said it would review the Tier II 20,000 MTOPs level before the end of the year, and expected to raise it to somewhere between 32,000 and 36,000 MTOPs.

In addition, the Administration moved Brazil, the Czech Republic, Hungary, and Poland from the Tier II country list to Tier I (where the United States' closest allies are listed), thus, removing all restrictions on the speed of computers that can be exported to them.

The House Armed Services Committee held a hearing on October 28 to review the Administration's proposal. Under the 1998 National Defense Authorization Act, Congress has 180 days to review the proposed rule change before it can take effect.

The General Accounting Office (GAO) briefed the committee on its report, *Export Controls 1998 Legislative Mandate for High Performance Computers* (GAO/NSAID 99-209). The report concluded that the current restrictions have limited the export of high-performance computers (HPCs)

Because the Committee did not take legislative action against the rule change, in January, it went into effect as proposed by the Administration.

Action in 2000

Recognizing the speed with which computer capabilities are outstripping federal regulations, the Administration announced at the beginning of February 2000 that it would again increase the MTOP strength allowable for export. Under the proposal, exports to Tier II countries would rise from 20,000 MTOPS to 30,000, and exports to Tier III countries would go to 20,000 MTOPS for civilian use and 12,300 MTOPs for military use.

The House International Relations Subcommittee on International Economic Policy and Trade reported H.R. 3680 on April 6, 2000. The bill, introduced by Reps. David Dreier (Covina) and Zoe Lofgren (San Jose), reduces from 180 days to 30 days the congressional review period for adjustments made in the allowable strength of high performance computers. The subcommittee's voice vote to report the bill was unanimous. On April 13, the full International Relations Committee followed suit and favorably reported the bill with two technical amendments. Further action is pending.

Internet Tax Moratorium

By a vote of 423-1, the House passed H.Con.Res. 190 on October 26, 1999. The resolution, authored by Rep. Chris Cox (Newport Beach) urges the President to seek a global consensus in support of a permanent international ban on tariffs on electronic commerce and on certain e-commerce taxes. Currently, the World Trade Organization has agreed to a moratorium on the imposition of duties on electronic transmissions. H.Con.Res.190 applies to the international arena the principle of the Internet Tax Freedom Act -- that taxes that discriminate against electronic commerce and the Internet should not be levied.

The resolution had three main elements. First, it called on the World Trade Organization, during its December Ministerial meeting in Seattle to enact a permanent moratorium on e-commerce tariffs. Second, it established the principle of no multiple or discriminatory foreign taxes on electronic commerce and urges the Organization for Economic Cooperation and Development and its 29 member countries to subscribe to the principle of no multiple discriminatory or special Internet taxes. Third, it condemned the bit tax proposal of the United Nations and calls for a permanent ban on such Internet specific taxes. A bit tax is a tax on every bit of information, all the digital 0s and 1s. The more 0s and 1s, the greater the file size, and therefore the greater the tax.

The Senate agreed to H.Con.Res. 190 by unanimous consent on November 19, 1999 before adjourning for the year.

Action in 2000

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, made several recommendations concerning the Export Administration Act. Notably, it called 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 allowable under the EAA, because they are substantially higher and more in keeping with the gravity of export control violations than those contained in 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 their testimony, is that the United States 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.

The Committee held a second hearing on the EAA reauthorization on June 17. A panel of industry experts testified, including: Michael Maibach, Vice President, Intel; Tom Arnold, Chief Technology Officer, Cybersource; and, Eric Hirschhorn, Exec. Sec., Industry Coalition on Technology Transfer. Mr. Maibach, as well as several other witnesses, urged the adoption of an export control system for computers based on the world-wide availability of comparable machines, rather than on a definition based on technical performance. Mr. Maibach testified that Intel's current Pentium III performs at about 1,200 MTOPS, but by next year, its Merced microprocessor will perform at 5,622 MTOPS, almost three times the 2,000 MTOPS cap to Tier III countries allowed by the Administration prior to the July 1999 rule change (see article above). Because of the rapid advances in computer performance, Intel argued that the U.S. export control system should not limit the export of computers or components that are available on the worldwide market. Moreover, assessments of foreign availability by the Department of Commerce should be based on a prospective look at the products that will be available several months down the road. Otherwise, any limits set will be quickly overtaken by the rapid advances in the technology available.

The Committee again met on June 23 and 24. On the 23rd, several officials representing the Departments of Commerce, Defense, Agriculture, Energy, and State testified for the Administration.

only be imposed as an interim measure leading to multilateral controls.

Karen Murphy of Applied Materials testified on behalf of Semiconductor Equipment and Materials International. She stressed that export controls should be multilateral, and only imposed on technologies that can and should be controlled. She stated that although semiconductor manufacturing equipment is inherently generic in nature, it is often subjected to controls merely because it is advanced technology. She also urged that export controls be flexible enough to respond quickly to evolving technological and commercial realities, to avoid the problem now faced because the industry's ability to produce high-speed mass-market computers is outpacing the Administration's control levels.

Three months later, on September 23, after extensive negotiations with interested parties, the Senate Banking Committee, by a vote of 20-0, reported the Export Administration Act of 1999 (S. 1712), streamlining export licensing procedures and establishing the legal framework for the Department of Commerce to implement export controls for both national security and foreign policy reasons.

Under the bill, the Department of Commerce would have nine days to review an export application and refer it to other appropriate agencies, such as the Departments of Defense and State. With limited exceptions, if the agency did not provide a recommendation within 25 days to approve or deny the license, it would be deemed consent.

The bill also provides a "mass market" exemption, as well as a foreign availability exemption. If a product meets the criteria for either of these exemptions, it would be removed from the National Security Control List, and a specific license to export would not be required. The criteria for mass market status are that the item is: 1) produced and available for sale in large volumes; 2) widely distributed through marketing channels; 3) conducive to shipping by generally accepted commercial means; and 4) usable for its intended purpose without substantial or specialized service. The foreign availability criteria are that the product is: 1) available from sources outside the U.S.; 2) sold at a comparable price to the controlled item; and 3) available in such quantity that the control would be ineffective.

Of great importance to the agriculture industry and others are the provisions in the bill forbidding the use of foreign policy sanctions on the export of agricultural commodities, medicine, and medical supplies. Additionally, all current foreign policy sanctions on those goods would be terminated on the date of enactment. These exemptions, however, do not apply to Cuba or North Korea.

The bill also includes 17 recommendations made by the Cox report on China, including substantial increases in criminal and civil penalties for violating U.S. export laws.

During the markup, the committee accepted an amendment to require the Commerce Department to report to Congress on the effectiveness of tracking the end use of dual-use technology.

Second, it allowed the committee to begin a dialogue with those interested in the privacy issue, in order to develop policy that takes into account both private and public interests.

Testifying before the committee were: Katherine Borsechnik, Senior Vice President of Networks, America Online, Inc.; Michael Sheridan, Vice President for Strategic Businesses, Novell, Inc.; Irving Wladawsky-Berger, General Manager-Internet Division, IBM; Jerry Berman, Executive Director, Center for Democracy and Technology; Russell Bodoff, Senior Vice President and Chief Operating Officer, BBB Online; and Greg Fischbach, Chairman and CEO, Acclaim Entertainment, Inc.

All members of the panel agreed that the Internet has not evolved enough for the imposition of government regulations at this point. They believe self-imposed regulations are the best way to proceed for the time being. Many of the panelists pointed to the establishment of groups, such as the Online Privacy Alliance (OPA), and BBB Online, that are dedicated to promoting privacy online. The panelists also talked about larger companies setting the standard of privacy for new and expanding Internet companies. Many members on the panel agreed that it is the responsibility of the larger companies to develop standards for others to follow, and only if the standards are not followed would it be appropriate for the government to step in and set basic boundaries.

Senator Diane Feinstein had two areas that primarily concerned her: privacy -- giving out personal information over the Internet and then having that information brought into the public arena without consent; and, information -- undesirable people, such as pedophiles, or terrorists, getting access to or transmitting information that is not in the public's interest. The panelists agreed that these were important areas, and with continued policing by the private sector, they would eventually weed out these problem areas.

Stock Options

An advisory letter released in January 2000 by the Department of Labor's Wage and Hour Division raised concerns about its potential impact on the stock options paid to lower-wage employees. Under the advisory, employers would have to include the options' profits in the wage base for hourly employees when calculating overtime pay. Although this would result in higher overtime wages for the employees, it may discourage employers from offering stock options to hourly workers. Because overtime pay is a factor of base pay, such as "time and a half," the employers would have to track the profits realized on exercised stock options by their hourly employees and add that into the base pay before calculating overtime.

Stock options have been gaining popularity with companies, especially high technology companies, as part of the overall package of benefits provided an employee. A 1997 survey reported that 6 million non-executives received stock options, and average option grant values were \$37,000 for

employers would offer the opportunity afforded by stock and equity options to their employees.”

Witnesses at the hearing included T. Michael Kerr, Administrator of DOL’s Wage & Hour Division; J. Randall MacDonald, an Executive Vice President at GTE; Beth Martinko, a Vice President at Merant and a representative of the Information Technology Association of America; Alan Nadel with Arthur Andersen; Patricia Nazemetz, a Vice President of Xerox Corporation and a representative of the U.S. Chamber; and Abigail Rosa, representing San Jose-based Xilinx, Inc.

On April 12, the Senate unanimously passed S. 2323, providing that stock options do not have to be factored into an employee’s wages when determining overtime pay. The bill is identical to H.R. 4182, the Worker Economic Opportunity Act, introduced in the House by Rep. Cunningham and other Californians. S. 2323 had such overwhelming support in the Senate that the leadership took it up on the floor without referring it to committee. The Administration also supports the legislation. House action is pending.

INTELLECTUAL PROPERTY

Database Copyright

On May 20, the House Judiciary's Subcommittee on Courts and Intellectual Property favorably reported by voice vote 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.

On May 26, the Judiciary Committee reported H.R. 354, providing a 15-year copyright term to database collections. Although the bill was approved by voice vote, Rep. Zoe Lofgren (San Jose) voiced some concerns, which were also 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 Howard 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.

Following the Judiciary Committee action, on June 15, 1999 the House Commerce Committee's Telecommunications, Trade, and Consumer Protection Subcommittee held a hearing on its version of the bill, H.R. 1858, the Consumer and Investor Access to Information Act of 1999. The bill would grant some copyright protection to database compilations, such as stock quotes, but is

between preserving protection for the database compiling community and promoting the growth of databases and innovation generally.

On July 21, 1999, the Finance and Hazardous Materials Subcommittee favorably reported the bill, followed by the Telecommunications Subcommittee on July 29. On August 5, 1999, the full Commerce Committee favorably reported the bill. No further action was taken on either bill in 1999.

Copyright Damages

On May 26, the Judiciary Committee approved H.R. 1761, the Copyright Damages Improvement Act, by voice vote. The bill, introduced by Rep. James Rogan (Glendale), increases the statutory damages for copyright infringers to reflect inflation. At the markup, 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.

On July 1, 1999, S. 1257, a similar measure, was reported by the Senate Judiciary Committee, and was unanimously approved by the full Senate later that same day. No further action was taken in 1999.

Patent Reform

The Courts and Intellectual Property Subcommittee of the House Judiciary Committee held a hearing on March 25, 1999 on proposed legislation to reform U.S. patent laws to bring them into harmony with those of other countries. The bill, H.R. 1907, the American Inventors Protection Act, had not yet been introduced by Rep. Howard Coble (NC), Chair of the Subcommittee. Congress considered similar legislation in 1997, but did not complete action on the bill because of controversy over several provisions, including the length and start date of the patent term, how to reform the U.S. Patent and Trademark Office's re-exam process, the prior domestic commercial use defense, and when a patent application should be published.

At the March hearing, the Subcommittee heard from two California members: Reps. Tom Campbell (Campbell) and Dana Rohrabacher (Huntington Beach). Rep. Campbell testified that he continued to have concerns with the bill's provisions concerning the re-exam process, prior domestic commercial use, and the requirement that applications be published 18 months after filing. Rep. Rohrabacher thanked the Chair for working with him on his concerns, such as the length of the patent,

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 United States before publication abroad, and the scope of the application material published will not be greater than that of the foreign publication. The compromise also calls for a patent term of 20 years from initial filing, as opposed to the standard U.S. term of 17 years from issuance of the patent. However, the bill ensures that any delays in issuing a patent that are not attributable to dilatory practices on the part of the applicant will not count against the 20-year term.

These provisions were 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 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 an extended markup on May 26, the House Judiciary Committee favorably reported the bill. At the markup, Rep. Bob Goodlatte (VA) complemented California Reps. Dana Rohrabacher (Huntington Beach) and Tom Campbell (Campbell) for their contributions to the compromise reflected in H.R. 1907. Rep. Goodlatte then offered an *en bloc* amendment that was essentially technical in nature. Among other things, it clarified 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.

On August 4, the House passed H.R. 1907 under suspension of the rules by a vote of 376-43.

On the Senate side, by a unanimous vote of 18-0 on November 2, the Senate Judiciary Committee reported both S. 1798, its version of the patent bill, and H.R.1907, the House version substituted with the language of S. 1798. Although the Senate bill differs slightly from the version passed by the House in August, the major intent of the bill remains the same: to bring U.S. patent laws in line with those of other countries. The bill guarantees a patent term of 17 years from issuance, by tolling the time period during any delays in the application process. It also requires publishing the patent application within 18 months of the file date in cases where the patent is also filed abroad, but insures that the published material will not disclose more information than the foreign application, and will not disclose information subject to secrecy orders or national security rules. It also requires that royalties be paid by anyone using or selling the invention until the patent is issued.

digital environment by preventing circumvention of technological measures. The DCMA seeks to foster electronic commerce while protecting intellectual property rights.

Although DCMA has made strides in protecting copyright owners, committee members and some witnesses focused on concerns that have arisen in the past year. One concern was the confusion between home recording and what is considered commercial piracy. While pirates compete with authorized program distributors, consumers are allowed to record for time shift benefit. Due to the increase in Internet piracy, however, copyright owners are seeking technologies, such as 5C technology, which would prevent all copying capabilities by temporarily disabling VCR record buttons. With 5C technology, consumers would have no way of recording a particular TV show or movie. High definition sales and technologies have been delayed as a result of this conflict, according to several witnesses.

In his testimony, Michael Moradzadeh from Intel Corporation, outlined some of the objections to 5C technology, which was developed by Intel, Hitachi Ltd., Matsushita Electrical Industrial Co., Ltd., Sony Corporation, and Toshiba Corporation. While the technology was formed to protect the motion picture industry, he noted that many studio representatives object to adoption of 5C, partially because studios would have the power to block all consumer copying, including the single copy used by a consumer for time shifting. Mr. Moradzadeh also stated that other objections to the technology include 5Cs ability to encrypt all programming, including broadcast television, so that such programs can not be sent over the Internet.

Rhett B. Dawson, President of the Information Technology Industry Council (ITI) testified in support of 5C technology and the content scrambling system (CSS). CSS allows licensed manufacturers to descramble a video (and therefore allow it to be viewed) under terms that require the licensed device to obey embedded copy control information. The CSS technology and 5C work hand in hand because 5C contains necessary embedded copy control information, according to Dawson.

Another witness, Jack Valenti, President and CEO of the Motion Picture Association of America praised DCMA for its strong legal protection in an industry that faced \$18-\$20 billion in worldwide losses in 1995. He defined the newest form of Internet piracy as downloadable media, whereby a pirate can load a single copy of a motion picture onto a computer, act as a server and make it available for others to copy onto their own computers. Valenti believes that as a result of DCMA and its enforcement, the federal government has strengthened its fight against this type of piracy, as well as other types.

Peter Harter, Vice President of Redwood City-based Emusic.com Incorporated testified about unintended consequences of the DCMA. He noted that while the anti-circumvention provision in the DCMA has good intentions, it actually fosters an environment that protects circumvention, rather than

copyright royalty collecting. However, Moore commended the Committee on the strides taken in securing copyright owners' rights, providing more consumer choice, and assuring predictable legal requirements for online distributors.

Cybersquatting

On October 7, 1999, the Judiciary Committee's Courts and Intellectual Property Subcommittee reported H.R. 3028, the Trademark Cyberprivacy Prevention Act by voice vote. The bill, authored by Reps. Jim Rogan (Glendale) and Rick Boucher (VA), would prevent "cybersquatting."

Cybersquatting is the practice of registering, in bad faith, an Internet domain name or a website using the same or confusingly similar trademark of another entity. The cybersquatter then may offer its registered name for sale to the rightful trademark holder at an exorbitant price, or use the name or site in such a way as to exploit or dilute the rightful trademark. Often, rightful trademark holders are unable to identify the cybersquatter, because of misinformation used when registering the mark, and therefore, using current trademark enforcement law and procedures is not effective.

H.R. 3028 grants trademark holders more accessible remedies against Internet infringers without substantively changing current trademark law. It prohibits the registration, use, or trafficking in a domain name that is identical or confusingly similar to, or dilutive of, a distinctive trademark. It establishes: (1) a civil cause of action against an infringer who acts with the bad faith intent to profit from the rightful trademark; and (2) an *in rem* civil action through which the infringing mark can be forfeited or canceled. It also sets civil damages of up to \$100,000 per Internet address. The bill was unanimously supported by the Subcommittee and approved without amendment.

On October 13, the Judiciary Committee reported the bill by voice vote, after approving, also by voice vote, a technical amendment offered by Reps. Rogan and Coble (NC). Then, by voice vote on October 26, 1999, the House passed S. 1255, the Trademark Cyberprivacy Protection Act, after inserting the language of the House bill, H.R. 3028. Then, as the session wore down, Congress included the language of H.R. 3028 in the omnibus FY00 appropriations bill, which was passed and signed by the President.

Penalties For Copyright Violations

On November 18 and 19, 1999, just before adjourning for the year, the House and Senate respectively passed by unanimous consent H.R. 3456, which increases the minimum statutory damages for copyright infringement and toughens sentencing guidelines. Weak enforcement provisions have discouraged prosecutors from pursuing infringement cases in the past. Also included in the bill is a provision that, among other things, codifies that the U.S. Sentencing Commission develop sentencing

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 21st 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 instances 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 United States 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 U.S. 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. 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 needs, 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 International Relations Committee's International Economic Policy and Trade Subcommittee held a hearing on October 13 to address the issue of intellectual property rights (IPR) piracy and its impact on the US and world economy. The Subcommittee estimated that 1998 losses incurred due to piracy amounted to about \$5 billion for business applications; over \$3 billion for entertainment software; almost \$2 billion for the motion picture industry; and close to \$2 billion for the music industry.

Witnesses in attendance at the IPR hearing included Hon. Raymond Kelly, Commissioner of the U.S. Customs Service; Deputy U.S. Trade Representative Richard Fisher; and, Jeremy Salesin, General Counsel and Director of Business Affairs for LucasArts Entertainment Company LLC. While

encouraging Congress to take a more direct role in persuading other countries to implement intellectual property protection.

TRADE

China Normal Trade Relations Status

The International Relations' Subcommittees on Asia and the Pacific and International Economic Policy and Trade held a joint hearing on April 21 to review the state of U.S.-China relations following the U.S. visit of Chinese Premier Zhu Rongji and the status of negotiations on China's accession to the World Trade Organization (WTO). Asia-Pacific Chair Doug Bereuter (NE) stated that he thought good progress had been made on the negotiations and felt confident that a final agreement could be reached before the end of the year. He also said that granting China permanent Normal Trade Relations (PNTR) status was also possible, but called on the Administration to commit to pushing for it. NTR (formerly known as most-favored nation status) grants China the same trade and tariff rules that apply to the United States' allies and most other countries.

The Subcommittees heard from Stanley Roth, Assistant Secretary for East Asian and Pacific Affairs at the State Department. He testified that the Administration was pleased with the status of the negotiations and assured members that a final agreement was not reached during the Premier's visit only because there were too many areas left to resolve. He stressed that U.S. negotiators were already back in China continuing negotiations and he, too, was optimistic that a deal would be reached soon.

In response to concerns from Members that granting PNTR to China would leave Congress without a role in Chinese relations, Sec. Roth attempted to assure the subcommittee that the Administration would continue to listen to Congress' concerns. During questioning, Rep. Howard Berman (Valley Village) stressed that an intellectual property agreement should not be dropped from the negotiations at the last minute, as had been done with other agreements like the Uruguay Round of GATT and NAFTA. Rep. Brad Sherman (Sherman Oaks) reiterated this admonishment.

The subcommittees also heard from: Robert Kapp, President, U.S.-China Business Council; Sandra Kristoff, Sr. Vice Pres., New York Life; and Nicholas Giordano, International Trade Counsel for the National Pork Producers Council.

The House Ways and Means Trade Subcommittee also held a hearing on June 8 on extension of China NTR and its accession into the World Trade Organization (WTO). On June 3, 1999, the President had again submitted the formal waiver to Congress extending NTR status to China for an additional year. Under the expedited procedures for the resolution, Congress is given 90 days from June 3 to disapprove the NTR extension or it automatically goes into effect. The Subcommittee heard from several members of Congress, including: Reps. Dana Rohrabacher (Huntington Beach); Nancy

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 had been completed with China.

On July 1, the full Ways and Means Committee reported to the House adversely H.J.Res. 57, which would have disapproved the President's decision to extend normal trade relations (NTR) to the People's Republic of China for another year. Approval of the motion to report adversely was by voice vote.

On July 27, the House voted 260-170 to support the President's request to extend Normal Trade Relations with the People's Republic of China for another year. The vote came after a contentious debate triggered by a freeze in U.S./China relations because of Chinese espionage at U.S. labs, the bombing of the Chinese Embassy in Belgrade, and continued instances of Chinese violations of human rights. Nevertheless, in the final analysis, the vote for NTR extension in 1999 was only four votes short of 1998's extension.

The United States exports \$14 billion in goods and \$4 billion in services to China each year. In 1998, California exports to China hit \$2.47 billion.

The World Trade Organization

Both the Senate Agriculture, Nutrition and Forestry Committee and the House Agriculture Committee held hearings during the week of June 24 on agricultural trade issues, focusing on the Administration's preparations for the upcoming World Trade Organization (WTO) Ministerial negotiations in Seattle in December. WTO negotiations with China, and conflicts with the European Union about genetically-modified agricultural products were also on the agenda. Agriculture Secretary Dan Glickman reiterated the US agricultural agenda for the WTO millennium round of negotiations including: 1) eliminating export subsidies; 2) further reducing worldwide tariffs; 3) raising the ceilings on tariff-rate quotas, and phasing them out over the long run; 4) opening up operations of State Trading Enterprises to marketplace risks; 5) facilitating trade in new technology products, including biotechnology; and 6) making sure the rules governing sanitary and phytosanitary measures continue to be effective. He supported China's accession to the WTO, and stated that while the United States will work to build a strong trade partnership with China, the timing of China's accession is up to China.

United States Trade Representative (USTR) Charlene Barshefsky told both Committees that agriculture would be at the heart of the Seattle Round's agenda, and that the USTR was developing

Growers Association, California Asparagus Commission, California Pistachio Commission, and California Olive Association all submitted testimony for the record that unanimously supported the elimination of subsidies.

On August 5, 1999, the Ways and Means Trade Subcommittee held a hearing on the U.S. negotiating objectives for WTO Ministerial meeting. The subcommittee heard from a number of private sector groups, including: the Information Technology Industry (ITI) Council; the American Farm Bureau Federation (AFB); the U.S. Chamber of Commerce; AFLAC Japan representing several U.S. insurance organizations; and the AFL-CIO. The Semiconductor Industry Association (SIA) also submitted testimony for the record.

Rhett Dawson of ITI stressed the benefits that have resulted from increased markets in the information technology industry, especially as a result of the successfully negotiated 1996 Information Technology Agreement (ITA). He called on the WTO Ministers to make several specific commitments to keep electronic commerce barrier-free, including the continuation of the May 20, 1998 Moratorium on Customs Duties on Electronic Commerce.

Dean Kleckner, President of the American Farm Bureau, testified that AFB strongly supports expediting action on the next round of negotiations for agriculture in the WTO, and has set a goal of concluding negotiations by the end of 2002. He also laid out several goals for the December meeting, including the elimination of export subsidies by all WTO member countries, and a recommitment to binding agreements on sanitary and phytosanitary issues.

In his statement for the record, Daryl Hatano, Vice President of SIA, urged any new multilateral negotiations to make participation in the ITA mandatory for all WTO member countries, and that WTO members should commit to tax-free treatment of electronic transmissions.

On September 2, 1999, U.S. Trade Ambassador Richard Fisher announced that the United States and China would resume talks on a U.S.-China trade agreement and China's accession to the WTO. The discussions would be aimed at laying the groundwork for more formal negotiations on China's bid to join the 134-member trade organization. Fisher said that China had requested the meeting of trade experts to review the status of the negotiations between the two nations. China had suspended the talks after the May NATO bombing of its embassy in Belgrade.

The House Committee on Agriculture on October 20 also held a hearing on the upcoming WTO Ministerial. Witnesses in attendance included Ambassador Charlene Barsehfsky, U.S. Trade Representative, and Dan Glickman, Secretary of Agriculture. Ambassador Barsehfsky noted that while the Uruguay Round in 1994 created a foundation of commitments to open markets, fair trade, respect for science and an enforceable rule of law, the United States must expand this foundation to increase opportunities for U.S. and worldwide farmers. She outlined major U.S. goals some of which include

hearing, Joseph Papovich, Assistant U.S. Trade Representative for Services, Investment and Intellectual Property testified on the importance of services industries, which provide over 75% of America's private-sector economic production and contribute 2.1% of GDP in the form of construction. Service sector industries include finance, construction, telecommunications, distribution, health, education, travel, tourism, law and engineering. Papovich commented that services trade remains highly restricted in many areas, severely inhibiting American exports. He suggested that the United States will lead the WTO talks to liberalize service sectors by establishing sectoral agreements, examining cross-sectoral or horizontal methods of service liberalization, and requesting talks with certain trading partners to liberalize services in the economies of those particular countries.

Another witness, Mark C. Brickell, Managing Director of J.P. Morgan and Company, also stressed the importance of free trade and capital mobility. Brickell pointed out that as trade partners, WTO countries need consistent trade standards that neither favor domestic competitors, nor exclude foreign goods and services. He concluded his testimony by supporting a ban on tariffs on the Internet.

On November 15, the Administration announced that it had reached an historic agreement with the People's Republic of China, which paves its way to full membership in the World Trade Organization. The agreement, if fully implemented and enforced by China, would open up its markets to a broad range of American business sectors, including entertainment, Internet services, telecommunications, agriculture, finance, and manufacturing.

Under the agreement, China pledged to reduce import tariffs from an average of 22 percent to 17 percent. It will double its import of U.S. films to 40 annually, increasing to 50 by the third year. Additionally, film and music companies will be allowed to share in the distribution revenues for half of the films. With China's inclusion in the WTO, telecommunications and Internet service companies will be able to purchase up to 49 percent of Chinese businesses in these sectors, increasing to 50 percent after two years. Agriculture interests will be able to sell substantially larger amounts of agricultural commodities, such as rice and corn, to China, and make the sales to individually owned companies, rather than just state-run entities.

U.S. financial institutions and insurance companies will also have greater access to China's markets. Banks will be able to make commercial loans in the local currency within two years of China's membership in the WTO, and to individuals within five years. Insurance companies will be able to offer property and casualty insurance coverage to Chinese entities and individuals. Before the deal can be fully implemented, Congress would have to pass implementing legislation, including permanent normal trade relations (PNTR) status for China.

After the U.S.-China agreement was announced, the World Trade Organization held its Ministerial meeting in Seattle in the first week of December. After several days of negotiations in the

China permanent normal trade relations (PNTR), as a condition of the trade agreement reached in December and a precursor of China's accession to the World Trade Organization. On February 16, 2000, the House Ways and Means Committee held its first hearing.

During the hearing, Rep. Sander Levin (MI) offered a five-prong proposal that would allow Congress a continued say in China trade relations. The five-prongs are: 1) a congressional-executive branch committee to keep the pressure on China to improve human rights, labor standards, and trade laws; 2) an annual WTO review process to monitor China's compliance with trade laws; 3) urging the establishment of a WTO working group on labor standards; 4) greater transparency and public disclosure by the WTO; and 5) stand alone congressional legislation to enact protections against dramatic upswings in imports from China. Several members of the Committee, including Rep. Bill Thomas (Bakersfield) and Bob Matsui (Sacramento) indicated that at least some, if not all of the five prongs, should be given serious consideration.

The Committee heard from several witnesses, including: Rep. Nancy Pelosi (San Francisco); Charlene Barshefsky, U.S. Trade Representative; Steve Appel, American Farm Bureau; Leon Trammell, U.S. Chamber of Commerce; Chuck Mack, International Brotherhood of Teamsters (who also heads Teamsters Local 70 in Oakland); and John Chen, Business Software Alliance.

Rep. Pelosi opposed granting China PNTR at this point. She argued that Congress should wait to see if China takes steps to implement the bilateral agreement, pointing out that it will be phased in over five years. Ambassador Barshefsky reiterated the Administration's position that the bilateral agreement is a "clear economic win" for the U.S., granting substantially greater market access across the spectrum of industrial goods, services, and agriculture. In return, she stated the U.S. agrees only to maintain its current market access policies toward China, and grant it PNTR.

Mr. Appel testified in support of PNTR for China and its accession to the WTO. He pointed out that many of the commitments China makes in the U.S.-China agreement go beyond those currently mandated by the WTO for agriculture. He stated that "even the more conservative estimates point to these commitments as placing China in the 'top five' of U.S. agricultural export markets by the close of the decade." Mr. Trammell representing the U.S. Chamber also testified in strong support for PNTR. He pointed out that 96 percent of the Chamber's business members employ fewer than 100 workers and the U.S.-China agreement and PNTR will give "an enormous boost" to small businesses dealing with China.

Mr. Mack of the Teamsters testified in opposition to the bilateral agreement and granting PNTR to China. He pointed out that since 1980, the "U.S. has gone from enjoying a small trade surplus with China to suffering an enormous \$60 billion trade deficit." He also argued that China has never upheld the commitments it has made to the U.S. in other trade agreements, and granting it

practices. Mr. Trumka, on the other hand, opposed granting PNTR to China. He argued that it would only reward China's grim human rights record and would reduce the United States' ability to insist that China live up to trade agreements that it has already made.

At the Committee's March 7 hearing, Agriculture Secretary Dan Glickman also testified for the Administration. Senate Majority Leader Trent Lott chastised the Administration for not working hard enough to secure the votes necessary to pass PNTR. He warned Barshefsky and Glickman that he was not going to take up the Senate's time debating the issue, unless the Administration went all out to ensure that the votes would be there to grant PNTR.

The Committee also heard testimony from the General Accounting Office indicating that although trade negotiations with the WTO will continue despite the failure of the Seattle talks, it does not expect these talks to liberalize U.S. agricultural trade in the near future. It cited three major reasons for this conclusion: "First, the failure to issue a ministerial declaration may make it difficult for negotiators in Geneva to build on the progress made in Seattle. Second, there is some concern whether countries will be willing to make concessions on agriculture without trade-offs in other areas, as would have been the case in a trade round with a broader negotiating agenda. Third, not much progress should be expected this year, since groundwork must be laid before substantive negotiations can begin. For example, WTO members have yet to submit proposals as to what should be on the negotiating agenda for agriculture." GAO's report is entitled *World Trade Organization: Progress in Agricultural Trade Negotiations May Be Slow*, T-NSIAD-00-122, March 07, 2000.

On March 8, President Clinton sent Congress legislation granting PNTR to China, and made a major speech calling for passage of the initiative. Clinton called on Congress to act on PNTR by June, although Administration officials concede that they do not have enough votes at this time to pass PNTR. Clinton's letter accompanying the legislation assures Congress that it will ensure China's compliance with the bilateral agreement through WTO procedures and stronger U.S. monitoring.

The House Ways and Means Committee held another hearing on March 30 to consider H.J.Res. 90, a resolution to withdraw the United States from membership in the World Trade Organization (WTO). The Committee heard from numerous witnesses, including: the Governor of Minnesota, Jesse Ventura; Clayton Yeutter, former U.S. Trade Representative and former Secretary of Agriculture; William Weiller on behalf of the U.S. Alliance for Trade Expansion and National Association of Manufacturers; Charles P. Schroeder of the National Cattlemen's Beef Association; Dale Grogan on behalf of the U.S. Chamber of Commerce; and Peter Lichtenbaum on behalf of the International Law and Practice Session, American Bar Association.

All of the witnesses testifying before the Committee opposed U.S. withdrawal from the WTO. However, the American Textile Manufacturers Institute, which submitted testimony for the record,

House Ways and Means Committee; Robert D. Hormats, Vice Chairman, Goldman Sachs International; Dr. Nicholas R. Lardy, Senior Fellow in Foreign Policy Studies, The Brookings Institution; Hon. Ira Shapiro, Long, Aldridge & Norman and Former USTR Ambassador and Chief Negotiator for Japan and Canada; Dr. Dermot J. Hayes, Pioneer Hi-Bred International Chair in Agri Business, Iowa State University; and Douglas Lowenstein, President, Interactive Digital Software Association.

Supporters of granting China permanent normal trade relations (PNTR) cited greater access to Chinese markets, an accelerated reform process in China, and an increased enforceability of existing trade agreements. Witnesses stressed that failing to grant PNTR does not mean that China will be prevented from accession into the WTO. The United States accounts for just one out of the 45 WTO countries voting on this issue. Those in opposition to PNTR point to China's history of human rights and environmental violations and its breaching of other trade agreements.

The Senate Foreign Relations Committee also heard from several witnesses, including: Hon. Stuart Eizenstat, Deputy Secretary of Treasury; Hon. Frank Carlucci, Chairman, Board of Directors, Nortel Networks; and Richard Younts, Executive Vice President and Senior Advisor to the CEO of the Office on Asian Pacific Affairs, Motorola Inc. The Committee focused on the economic impact of granting PNTR to China, specifically how it will affect the U.S. high tech industry. All witnesses testified in support of PNTR, stating that the provision will protect American workers from unfair pricing, abusive investment practices, and import surges through the "product-specific" safeguard. As the leading U.S. investor in China, Motorola Inc. has already witnessed market reform and changes in China which Mr. Younts attributes to the economic progression already underway.

At a speech at the Tech Museum of Innovation in San Jose in early April, President Clinton and Governor Gray Davis announced that a bipartisan group of over 40 of the nation's governors have signed a letter supporting granting permanent normal trade relations with China. The governors cite the opportunities that will be created for their companies and farmers and the increase it will bring in high-wage American workers.

Then, on April 11, the Senate Commerce Committee and the Foreign Relations Committee held hearings on PNTR for China. The Commerce Committee heard from a number of witnesses, including Secretary of Commerce William Daley, and Jack Valenti, President and CEO of the Motion Picture Association of America (MPAA). Secretary Daley, reiterating the Administration's strong support for granting PNTR, pointed out that just in the last few years a nascent market-based economy has been evolving in China. Today, there are 40 million cell phones in China, for instance; but, that number remains only a small fraction of the potential market for cell phones. He stressed the benefits that will accrue to American businesses and workers, and the enforcement tools that the U.S. will be

As the debate in Congress heats up, the House leadership has announced it plans to take up the PNTR vote during the week of May 22nd. The vote in the House is expected to be very close; if it passes the House, the Senate is expected to pass the proposal by a wider margin.

Wine Sales

Despite the formation of the Congressional Wine Caucus by Reps. Mike Thompson (St. Helena) and George Radanovich (Mariposa), and the California Congressional delegation's efforts to protect small wineries, on August 3, the House passed H.R. 2031, proposed by Rep. Joe Scarborough (FL) to restrict the sale of wine and beer via the Internet. States would be able to sue in federal court out of state alcohol merchants who violate a state's laws. Liquor remains the only consumer product exempt from the Interstate Commerce Clause in the Constitution, thereby allowing the majority of states to prohibit alcohol sales from out of state companies, except when sold by approved wholesalers. Although proponents of the legislation argue that Internet sales of liquor to minors will rise without the legislation, the wholesalers and distributors industry, which benefits from the current system of distribution, has been lobbying hard for passage of the bill. During the House Judiciary Committee markup of the bill on July 20, an amendment by Rep. Zoe Lofgren (San Jose) to limit the restrictions of H.R. 2031 to sales to minors was defeated.

Small wineries, who often can not find wholesalers and distributors for their products, rely more and more on direct sales over the Internet. California contains 40% of the nation's 1800 wineries, and the California wine industry contributes over \$45 billion to the U.S. economy, along with 556,000 jobs, accounting for \$12.8 billion in wages and \$3.3 billion in state and local tax revenue. Additionally, wine is the third largest horticulture export in the nation.

The California Congressional Delegation and the Wine Caucus will continue its efforts to limit the focus of any restrictions to sales to minors.

On another issue, Reps. Mike Thompson (St. Helena) and George Radanovich (Mariposa) circulated a letter in the fall of 1999 calling for the inclusion of greater information on wine labels. The letter argues that some wine producers add water, sugar, fruit juices, alcohol, or other natural or artificial flavors to wine, yet still use varietal names such as Merlot and Cabernet Sauvignon on their labels. The letter contends that the labels on these products "mislead customers and create unfair competition for the rest of the wine business," and asks the Bureau of Alcohol, Tobacco and Firearms to require more accurate labeling. A similar letter sent in 1998 was signed by 28 Members of the California Congressional Delegation. Action on the letter has not been taken .

A measure similar to H.R. 2031 awaits action in the Senate.

Action in 2000

In related news, on March 29, twenty-nine California Members sent a letter to the Bureau of Alcohol, Tobacco and Firearms (ATF) in support of the California Association of Winegrape Growers' concerns with the Bureau's creation of a new wine, "Flavored Wine Product" class that is, according to CAWG, too broad.

Unilateral Sanctions

The Senate Committee on Agriculture, Nutrition, and Forestry held a hearing on May 13, 1999 regarding agricultural sanctions, specifically on the Agriculture Trade Freedom Act (S. 566), authored by Senator Richard Lugar (IN). The bill would exempt commercial exports of agricultural products from future unilateral sanctions unless the President makes an affirmative determination that the application of sanctions on commercial exports is required to achieve a foreign policy or national security purpose. Lugar argued that unilateral sanctions on food - and on medicines - serve more to punish innocent victims in the sanctioned countries than the offending leadership and, at the same time, fail to alter the behavior of the sanctioned country. Further, he said that suppliers in competitor countries quickly fill the void when the United States has removed itself from a sanctioned market. Stuart Eizenstat, Undersecretary of State for Economic, Business and Agricultural Affairs, U.S. Department of State, and August Shumacher, Undersecretary for Farm and Foreign Agricultural Services, U.S. Department of Agriculture, each discussed the meaning of, and rationale behind, the President's 1998 directive that "food should not be used as a tool of foreign policy except under the most compelling circumstances" and the April 28, 1999 statement that the Administration will generally exempt commercial sales of agricultural commodities and products, medicine and medical equipment from further unilateral sanctions, when the discretion to do so exists. The Administration will also extend this policy to allow commercial sales of food, medicine, and medical equipment to currently embargoed countries where such sales are not permitted. Undersecretary Shumacher stated that the Administration's important step toward sanctions reform should help boost U.S. agricultural exports of bulk commodities such as wheat, corn, rice, and vegetable oil. They estimate that US producers may sell an additional 500,000 to 1 million tons in exports of both wheat and corn as a result of this change in policy, mainly to Iran.

California grows 1.8 million tons of rice annually, almost all of which is produced between Chico and northern Sacramento. The state is the second largest exporter of rice among the states, after Arkansas, and produces one-fourth of the nation's rice.

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

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. No further action was taken on the bill in 1999.

TAX ISSUES

Research and Experimentation (R&D) Tax Credit

On June 23, the House Ways and Means Committee held a hearing on myriad tax cut provisions, including the permanent extension of the research and experimentation (R&D) tax credit. Testifying in support of permanently extending the R&D Tax Credit were R. Randall Capps, Corporate Tax Director and General Tax Counsel for Electronic Data Systems (EDS) on behalf of the R&D Credit Coalition and Michael Baroody, Sr. Vice President, National Association of Manufacturers. Mr. Capps cited economic findings that a one-dollar reduction in the after-tax price of R&D stimulates approximately one dollar of additional private R&D spending in the short-run and two dollars additional in the long run.

In June, forty-nine members of the California delegation signed a letter circulated by Reps. Wally Herger (Marysville) and Bob Matsui (Sacramento) supporting extension of the research and experimentation (known as "R&D") Tax Credit. The June 28 letter to Chairman Bill Archer (TX) and Ranking Member Charles Rangel (NY) advocated 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 expired on June 30, 1999. The letter pointed 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 the Administration to support a permanent credit.

During July, as part of a massive \$864 billion tax cut, the House Ways and Means Committee extended the R&D tax credit by five years to June 30, 2004, and retroactive to July 1, 1999, when the credit expired. It also increased by one percentage point the alternative incremental credit rate (AICR). On July 22, 1999, by a 223-208 largely party-line vote, the House of Representatives passed a \$792 billion tax reduction package. The retroactive five-year extension of the R&D tax credit was included

R&D tax credit extension. On July 30, the Senate substituted S. 1429 for the text of the House bill, H.R. 2488, and passed the bill 57-43.

House and Senate conferees agreed to include in the \$792 billion, 10-year Republican tax bill, a five-year extension of the Research and Development tax credit, along with an increase in the alternative incremental credit rate (AICR). The House passed the conference report on August 5, along party lines by a vote of 221-206; the Senate passed the following month by a 50-49 margin. The President, however, vetoed the bill on September 23.

The following day, September 24, the House Ways and Means Committee, by a party-line vote of vote of 23-14, reported a \$24 billion tax bill, H.R. 2923, which also contained a five-year extension of the R&D tax credit. However, tax credits earned by taxpayers for expenditures incurred after June 30th, 1999 could not be claimed, or taken into account for estimated tax purposes, prior to October 1, 2000. During consideration of the bill, the Committee defeated a substitute amendment offered by Rep. Charles Rangel (NY) that would have extended the R&D credit for only 18 months.

The week of October 17, after lengthy negotiations, the Senate Finance Committee reported by voice vote an \$8.5 billion tax package, including the R&D credit. The Senate bill only extended the credit through the end of the year 2000. The full Senate, by unanimous consent, agreed to the bill, S. 1792, on October 29. The bill, introduced by Finance Chairman William Roth (DE) extended the R&D tax credit, as well as several other important credits, but for shorter periods than the House Ways and Means Committee bill. The R&D credit would be extended for 18 months through December 31, 2000.

On November 18, the House overwhelmingly passed, 418-2, a negotiated tax package (included in H.R. 1180) limited to extending various tax credits, including R&D. A five year extension of the R&D credit was included in the bill. Retroactive to its expiration on June 30, 1999, the credit runs until June 30, 2004. A one percent increase in the alternative incremental credit rate (AICR) was also included. The five-year extension is the longest period for which the credit has been authorized and represents a significant victory for the California congressional delegation and the state's high technology companies, which have long fought for a permanent extension of the credit. The Senate then passed the conference report on November 19, by a vote of 95-1, and the President signed the bill on December 17.

Section 127 Education Credit

On May 19, 1999, the Senate Finance Committee approved, by a vote of 12-8, the Affordable Education Act, which included 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

Semiconductor Depreciation

Reps. Bob Matsui (Sacramento) and Nancy Johnson (CT) introduced their semiconductor tax depreciation bill on March 11, 1999. The bill would bring the tax depreciation life on semiconductor manufacturing equipment more in line with its actual useful life by reducing the tax depreciation period from the current five years to three years.

The bill was co-sponsored by about 45 members, including a bipartisan group of 27 California members, including Reps. Mary Bono, Tom Campbell, Gary Condit, Chris Cox, Duke Cunningham, Anna Eshoo, Wally Herger, Steve Kuykendall, Jerry Lewis, Zoe Lofgren, Grace Napolitano, Ellen Tauscher, and Mike Thompson. In addition to the Dear Colleague circulated by Reps. Matsui and Johnson, Rep. Campbell sent a letter urging his California colleagues to co-sponsor the bill. A three-year semiconductor depreciation bill is strongly supported by California's semiconductor industry, which employs 70,000 persons in high-wage jobs in California, as well as the semiconductor equipment manufacturing industry, which employs another 30,000 Californians.

On the Senate side, Sens. Orrin Hatch (UT) and Max Baucus (MT) introduced an identical bill, S. 1150, the Semiconductor Equipment Investment Act of 1999. Sens. Dianne Feinstein and Barbara Boxer co-sponsored the legislation.

No further action on the bill was taken in 1999.

Tax Credit To Stop Runaway Film Production

A provision to allow tax credits to small film producers was initially included in the minimum wage tax bill considered by the House Ways and Means Committee on November 9. Although it was dropped before the Committee reported the bill, 23-14, the provision has been gaining support on the Hill and is expected to remain a viable issue. Several California members, including Reps. Xavier Becerra (Los Angeles), Howard Berman (Valley Village), Gary Condit (Ceres), and Bob Matsui (Sacramento), are fighting for its passage.

The credit is aimed at stopping the practice of “runaway production” by film companies. More and more, U.S. companies are producing movies and television shows in other countries, especially Canada, to take advantage of large subsidies. Canada and several of its provinces offer tax credits of up to 30 percent to production companies. Proponents of the runaway production measure estimate that the United States has already lost 20,000 jobs to these productions, with the number of lost projects growing from 100 in 1990 to 285 in 1998. The Ways and Means Committee provision would have applied to production projects of \$10 million or less, and allowed a tax credit of 20 percent on the first \$20,000 in wages paid annually to individuals working on motion pictures, miniseries, and pilots. The measure also contained safeguards to prevent the credit from benefitting adult film productions.

NATURAL DISASTER ISSUES

FEMA Public Assistance Rule

On June 4, 1999, 51 members (one vacancy) of the California Congressional Delegation signed a letter to James Lee Witt, Director of the Federal Emergency Management Agency (FEMA), urging the agency to delay publication of its proposed rule on Public Assistance Insurance Requirements.

The rule proposed by FEMA would require public entities to obtain private insurance to cover 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 required 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. 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 had not adequately examined the financial impact the new rule would have on public entities, the delegation letter urged FEMA to postpone publication of the new rule. The letter also called 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 laid out several concerns with the rule as drafted. Among those concerns were: the rule does not 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 June 9, FEMA reiterated that it is committed to promulgating a proposed rule, but would not rush to publish it. Several California organizations formed a coalition to work with the California congressional delegation to delay the proposed rule until adequate information addressing

The California delegation and coalition prevailed in the final VA-HUD Appropriations conference report. FEMA was instructed to delay finalizing a rule until GAO studied the issue. The VA-HUD language recognized the “significant financial implications for states, municipalities, and private non-profit hospitals and universities,” and required GAO to report to the House and Senate Appropriations Committees on the fiscal impact within 120 days of enactment. Importantly, the report instructed FEMA not to finalize a rule until the GAO report was finished and to “fully consider the GAO findings.”

Action in 2000

GAO released its report in February 2000 finding that FEMA had failed to follow federal guidelines required for “economically significant regulatory actions.” Specifically, FEMA should have provided the Office of Management and Budget with a detailed cost-benefit analysis of the proposed regulation, and an evaluation of alternative proposals and the reason why the chosen proposal is preferable. FEMA announced that it had hired an outside contractor to do the cost-benefit analysis. Nevertheless, without waiting for the economic analysis FEMA published an Advanced Notice of Proposed Rulemaking (ANPR) on February 23. The ANPR would set up a sliding scale establishing a percentage of insurance coverage required based on the building’s value. Comments on the APR. were due by April 10, and many California entities submitted comments.

Sens. Dianne Feinstein and Barbara Boxer, and Reps. Jerry Lewis (Redlands) and Sam Farr (Carmel), chairs of the California House delegation, sent a letter to FEMA’s Director James Lee Witt urging that he carefully consider the comments on the ANPR from California entities and draft a new proposal that “avoids the defects of the current plan.” The letter also points out that because disaster-resistant buildings have a higher valuation and would be more costly to insure, the proposed rule would penalize state and local governments with tougher building standards, such as California, and act as a disincentive to mitigation measures.

The Governor’s Office of Emergency Services (OES), Los Angeles County, the League of California Cities, the California State Association of Counties, the Association of California Water Agencies (ACWA), the University of California, the City of Los Angeles, and the California Healthcare Association are among the many organizations that filed comments with FEMA this week.

Several of the comments make the legal argument that FEMA has no statutory authority to mandate insurance coverage for public buildings. The comments argue that the Stafford Act makes insurance a condition for federal assistance only after a building has previously received federal assistance for disaster damage. In its comments, OES states that in 1999 it and Los Angeles City encouraged FEMA to adopt a proposal that *rewards* entities for undertaking disaster mitigation measures rather than punish public agencies. The California Healthcare Association points out that

effective strategy than merely “risk-shifting” as envisioned in FEMA’s proposal. The University of California questions FEMA’s assumption that earthquake insurance will be available, and at reasonable rates. It states that its insurance costs could run between \$12 million and \$36 million annually. Additionally, it points out that UC suffered no major earthquake damage between 1971 and 1989, but insurance premiums at the levels proposed by FEMA would have totaled \$600 million over that time period.

The City of Los Angeles raised the issues of availability and affordability of insurance, and urged that a federally directed re-insurance program would be critical to ensuring stable, affordable, and available coverage for the public sector. The California State University (CSU) stated in its comments that it has surveyed the insurance and reinsurance markets to determine availability. Although it found that all risk (excluding flood and earthquake) insurance is commercially available, the premiums for coverage would be three times higher than its current premiums. It also questions the feasibility of an organization self-insuring, because of the requirement that the entire \$125 million maximum coverage limit would have to be placed in a non-discretionary fund approved by FEMA. As for earthquake insurance, CSU states that it would be the most expensive and least available in California (as compared to other states), and FEMA’s proposed cap of \$.30/\$100 coverage would reduce the University’s ability to negotiate the broadest coverage at the least cost.

In addition to several other proposals, CSU recommends that a national study be conducted to determine the insurance market’s capacity to absorb the risk of earthquakes, not only in California, but in other states as well. It also points out that the proposal does not acknowledge the mitigation efforts taken to reduce future earthquake damage and, in fact, may act as a disincentive to further mitigation efforts, due to the fact that significant funding will have to be diverted instead to insurance coverage.

FEMA has not indicated when it will complete its review of the comments and file a Notice of Proposed Rulemaking. The California delegation and the FEMA insurance coalition will continue to work to ensure that any final rule takes into account the unique nature of earthquake insurance in California.

Homeowners’ Natural Disaster Insurance Bill

The House Banking Committee’s Subcommittee on Housing and Community Opportunity, chaired by Rep. Rick Lazio (NY), held a hearing on 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. Klick 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 GNU Insurance Companies;

throughout the legislative process. However he voiced some concerns which include: the \$25 billion cap on annual payouts; the requirement that all payouts be appropriated by Congress; and the continued purchase requirements in the bill.

Roger Joslin, Chairman of the Board for State Farm Fire and Casualty Company, and Jack F. Weber, President of the Home Insurance Federation of America, both voiced their support for the bill. Although they mentioned some minor concerns, they believe that a federal reinsurance program is badly needed and the bill is a substantial step in the right direction.

The House Banking Committee reported H.R. 21 after a two-day markup on November 9-10. During the markup, the Committee considered a plethora of amendments to the bill. It rejected an amendment offered by the sponsor of H.R. 21, Rep. Rick Lazio (NY), that would have reinstated a hard cap of \$25 billion on the federal government's annual exposure from all disasters. The committee print, which served as the markup vehicle, limits the government's liability based on a formula negotiated by the Committee and the Treasury Department, which factors in the estimated damages from once in 100 years and once in 500 years catastrophic disasters. The Lazio amendment was defeated 18-27.

Among other amendments considered, the Committee approved by voice vote an amendment offered by Rep. Ed Royce (Fullerton). The amendment would require Treasury to track the resale of the insurance contracts, so that it would be able to measure and sell them at their true market value, ensuring that resales do not provide a windfall for other parties. Another Royce amendment was rejected, by a vote of 19-22, which would have allowed the government to auction off coverage programs on a regional basis, but would have stripped the provisions allowing the sale of policies to state programs.

By a vote of 25-22, the Committee approved an anti-redlining amendment. Redlining is the practice of discriminating against low income homeowners by refusing to sell them insurance policies; it is prohibited under the federal Fair Housing Act. The amendment prevents Treasury from selling reinsurance to any entity that has been adjudicated in violation of the Fair Housing Act, or has entered into a consent decree or settlement concerning redlining. Before accepting the amendment, the committee agreed to a unanimous consent request made by Rep. Tom Campbell (Campbell) to clarify that only consent decrees and settlements entered into after the effective date of the Act would be considered in applying the anti-redlining language. The committee also indicated that it would draft report language to prevent the operation of the amendment in cases where the decree or settlement reflects more of a decision not to pursue expensive litigation rather than an admission of guilt.

By a vote of 23-31, the Committee defeated a substitute amendment offered by Reps. Bernie Sanders (VT), Ed Royce, Rick Hill (MT), and Janice Schakowsky (IL). The amendment would have

MTBE as a fuel additive.

On March 25, Governor Gray Davis announced that “there is, on balance, a significant risk to California's environment associated with the continued use of MTBE in gasoline.” Pursuant to that finding, he therefore directed state regulatory agencies to immediately begin a phase out of MTBE from California gasoline, with 100% removal achieved no later than December 31, 2002. Governor Davis was obligated by law to make the decision by the end of March.

Davis also announced that he would ask the US Environmental Protection Agency (EPA) for an immediate waiver from the oxygen mandate in the Clean Air Act, with the understanding that California will still fully meet the air quality emission standards of the Act. Davis' Executive Order (D-5-99) on the issue called for the California Energy Commission (CEC), in consultation with the California Air Resources Board, to develop a timetable by July 1, 1999 for the removal of MTBE from gasoline at the earliest possible date, but not later than December 31, 2002. The Order also called for the California Air Resources Board, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment to study ethanol as a potential replacement to MTBE in gasoline and to present the findings to the Environmental Policy Council by December 31, 1999.

Governor Davis' announcement also ordered the California Environmental Protection Agency to work with Senator Feinstein and the California Congressional Delegation to gain passage of Feinstein's bill, S. 645, which would give EPA the authority to permanently waive the Clean Air Act requirements for oxygen content in reformulated gasoline to states that meet federal air pollution standards without the use of an oxygenate. Additionally, the Order directs the State Water Resources Control Board to seek legislation to extend the sunset date of the Underground Storage Tank Cleanup Fund to December 31, 2010 and increase the reimbursable limits for MTBE groundwater cleanups from \$1 million to \$1.5 million.

The Governor's Order stated that the Air Resources Board and the California Energy Commission will “work with the petroleum industry to supply MTBE-free California-compliant gasoline year round to the Lake Tahoe region at the earliest possible date.” The region has been significantly impacted by MTBE contamination, and officials there criticized Davis' decision to phase out the fuel additive, saying they plan to move forward with an immediate ban of their own.

Oil refiners had lobbied the governor for a four-year phaseout, and executive director of the Western States Petroleum Association Douglas Henderson said in response to the decision that “[w]e applaud his recognition that an immediate ban on MTBE would have a devastating impact on California's consumers and economy.” A report produced by the California Energy Commission had estimated gas prices would climb 30 cents per gallon if MTBE is banished without giving refineries enough time to find ample supplies of alternatives, such as ethanol. The Oxygenated Fuels Association

MTBE. Currently, approximately 70 percent of all gasoline in California is subject to the federal reformulated gasoline (RFG) program and must contain at least 2.0 percent oxygen year-round. The letter summarizes the research to date on hazards of MTBE, and water sources that have been contaminated. Davis stressed the fact that many California refineries have the ability to produce gas that meets emission reductions without using MTBE or any other oxygenate. Under current EPA requirements, once MTBE is phased out, gas sold in geographic areas subject to the federal RFG program would need to be oxygenated with ethanol, which would make the phase-out period of MTBE longer and result in higher fuel costs. The letter also discussed the needs of refineries in their planning and retooling processes in eliminating the current reliance on MTBE, and how critical it will be for their planning to know whether or not after phasing out MTBE they will still be subject to RFG requirements. If they will no longer be subject to RFG requirements, they can have more flexibility and less costly processes.

Davis also sent a separate letter to each member of the California delegation stating his support for Bilbray's and Feinstein's federal legislation (H.R. 11, S. 266 and S. 645) that would enable California to phase out the use of MTBE from reformulated gasoline.

On May 6, 1999, H.R. 11 was the focus of a hearing by the Health and Environment Subcommittee of the House Commerce Committee. Californians on the Subcommittee participating in the hearing were Reps. Brian Bilbray (Imperial Beach), Henry Waxman (Los Angeles), Lois Capps (Santa Barbara), and Anna Eshoo (Atherton). The Subcommittee heard testimony from Senator Dianne Feinstein, Reps. Ellen Tauscher (Pleasanton) and Bob Franks (NJ) and City of Santa Monica Mayor Pam O'Conner. The Subcommittee also heard from EPA Assistant Administrator Robert Perciasepe, and California EPA Secretary for Environmental Protection Winston Hickox. The final panel included Duane Bordvick, Vice President of Tosco Corporation; Robinson Oil President Thomas Robinson on behalf of the Society of Independent Gasoline Marketers of America, the National Association of Convenience Stores, and the California Independent Oil Marketers Association; Mark Beuhler, Director of Water Quality for the Metropolitan Water District of Southern California on behalf of the Association of California Water Agencies; Gregory King, Vice President and General Counsel of Valero Energy Corporation of San Antonio, and Eric Vaughn, President and CEO of the Renewable Fuels Association, the trade association for the ethanol industry.

In his opening statement, Rep. Bilbray addressed the concern that has been raised about "opening up the Clean Air Act" by stating that California is addressed specifically in a separate section of the Act, and that his bill would only open up that section. Senator Feinstein expressed her ongoing support of the measure, and pointed to a number of "catch-22s" related to the legislation that need to be resolved: the desire by some not to open up the Act, a desire to not have a just California specific

reformulated gasoline, the Governor's Executive Order phasing out MTBE, and the Governor's request to EPA for a waiver of the federal oxygenate requirement. Mr. Beuhler testified that the bill is needed to make the Governor's plan work. In contrast, Mr. King testified that because H.R. 11 facilitates the ability of the Governor's plan to eliminate MTBE, Valero Energy Corporation is opposed to the bill, and the solution to the problem is to focus on the need to fix leaking tanks.

On July 27, a blue ribbon panel appointed in 1998 by EPA head Carol Browner presented its findings that MTBE is polluting groundwater and that the current two percent requirement for oxygenates in clean-burning gasoline was not needed to meet clean air standards. Upon releasing the report, Browner stated that she would urge Congress to change the current oxygenate requirement and that the Administration would support current legislative proposals supported by California officials facilitating the development of low-polluting fuel with small amounts or no MTBE. The panel's chair, Dan Greenbaum of the Health Effects Institute in Boston, said that Governor Gray Davis' executive order for the phase out of MTBE in California by 2002 will be much easier to implement if Congress acts on the panel's guidance.

The Senate on August 4, 1999, approved a Boxer-Fitzgerald (IL) resolution as an amendment to the Agriculture appropriations bill. The resolution established the sense of the Senate that: the United States should phase out the gasoline additive MTBE to address threats to public health and the environment; the federal government should provide assistance to local and state governments to treat MTBE-contaminated drinking water supplies and to protect lakes and reservoirs from MTBE contamination; and the United States should promote corn-based renewable ethanol

In early September, Reps. Brian Bilbray (Imperial Beach) and Ellen Tauscher (Pleasanton) circulated among the delegation a letter to Commerce Committee Chairman Thomas Bliley (VA) and Subcommittee on Health and the Environment Chairman Michael Bilirakis (FL) supporting the Chairmen's commitment to mark up H.R. 11 in September. In addition, the letter called on the Committee to maintain the California-specific and content-neutral focus of the bill. It reiterated that California alone has a strong and reliable history of fuels regulation at the state level (with specific and singular Clean Air Act authority to do so), a robust and stringent regulatory infrastructure already in place to ensure it, and strong consensus in support of H.R. 11 among business, environmental, and governmental communities.

H.R. 11 was reported out of the House Commerce Subcommittee on Health and the Environment on September 30 by voice vote. During the markup an amendment offered by Rep. Gene Green (TX) was approved by voice vote. The amendment requires EPA to determine that California's reformulated gasoline meets or exceeds federal emissions standards before the state's exemption can take effect. Reps. Bilbray and Anna Eshoo (Atherton) opposed the amendment, stating that EPA had

During her opening statement, Sen. Barbara Boxer cited the devastating effects that MTBE has had on water supplies in California. Passing around a bottle of MTBE contaminated water from Santa Monica, Sen. Boxer made the point that the city has had to shut down 71 percent of its water supply because of MTBE, and must now buy Colorado River water. Dan Greenbaum, President of Health Effects Institute and Chair of the BRP, testified on the panel's findings. Although reformulated gasoline with MTBE has produced substantial reductions in pollution emissions, the panel found that it has seeped into drinking water supplies. As a result the panel agreed that use of MTBE should be reduced "substantially," with some members of the panel supporting its complete phase out. The panel also recommended that Congress eliminate the current Clean Air Act provision requiring that two percent of RFG by weight consist of oxygen, "to ensure that adequate fuel supplies can be blended in a cost-effective manner while reducing usage of MTBE."

Michael P. Kenny, Executive Officer of the California Air Resources Board, also testified. He stated that California's RFG program has been an unqualified success, and does not mandate the use of oxygenates, such as MTBE, to meet the state's strict emissions control standards. Because of the possible market disruptions that could occur if MTBE is banned without also lifting the two percent oxygenate requirement, Mr. Kenny stated that the Governor, the California Environmental Protection Agency and the Air Resources Board support lifting the oxygenate requirement.

In December 1999, Tosco Corporation, the owner of Union 76 and Circle K branded retail gas outlets in California, announced that it will sell MTBE-free gasoline in the state by December 15, 2000. The gas will be available at its outlets, as well as at its independent gasoline retail customers. Tosco stated, however, that its plan is contingent on EPA giving California a waiver of the oxygenate mandate before the summer of 2000. The California's congressional delegation, as well as the Governor, continued to push EPA throughout the year to grant the waiver, but to no avail.

In the meantime, California's Air Resources Board (ARB) considered a proposal on December 9, to require a reformulation of gasoline that eliminates MTBE but requires other octane boosters aimed at ensuring California's air quality does not suffer. Although all gasoline companies operating in California have agreed to remove MTBE from their products within three years, they opposed the ARB decision, arguing that it would add other formula mandates that are too costly and could result in gas shortages in the state. ARB admitted the reformulation would be expensive, costing about \$1 billion in capital outlays and another \$360 million annually. ARB's action was designed to implement an executive order signed by the Governor that requires MTBE-free gasoline by December 31, 2002.

In December, Governor Gray Davis and Sen. Barbara Boxer sent separate letters to Administrator Carol Browner, urging EPA to grant California a waiver from the two percent oxygenate requirement.

On April 11, the Senate Agriculture, Nutrition and Forestry Committee held a hearing to discuss the future of renewable fuels in light of the MTBE phase out process. Specifically, the committee heard from several witnesses, some of which discussed Sen. Tom Daschle's (SD) proposal that would waive the minimum 2 percent oxygenate requirement in certain instances, and direct the Environmental Protection Agency (EPA) to regulate MTBE, but also establish renewable fuels standards.

Bay-Delta

On May 18, 1999, both California Senators and 42 members of the California House delegation wrote Chairman Ron Packard (Oceanside) of the House 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.

The House Resources' Water and Power Subcommittee held a hearing on May 20, 1999 to review the status of California's water management initiatives. The Subcommittee was 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

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, 1999 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 urged support of the Administration's fiscal year 2000 request for \$95 million for the restoration project, of which it recommended that \$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.

On the Senate side, the full Appropriations Committee approved its Energy and Water Appropriations bill on May 27 with only \$50 million in funding for Bay-Delta. Of the money, 60 percent was allocated to ecosystem projects and 40 percent to water supply and quality projects.

The Senate, by a vote of 97-2, then approved its FY00 Energy and Water Appropriations, S. 1186, with the \$50 million figure -- \$15 million less than the Senate's \$65 million from FY99, and \$25 million lower than the \$75 million that was ultimately funded by Congress in FY99.

The bill, however, did contain a modest increase in Central Valley Project Restoration Funds, funding \$37.3 million for the CVP, \$4 million more than last year, but still \$10 million less than requested in the President's FY00 budget.

Then on June 25, the CALFED state and federal agencies assigned to develop a restoration plan for the Bay-Delta Estuary released their Draft Programmatic Environmental Impact Statement/Environmental Impact Report. The report analyzed the environmental impacts of a Preferred Program Alternative identified by CALFED and compared that to each of three other alternatives to dealing with the restoration project. The Preferred Alternative, as well as each of the other alternatives, includes core programs to address issues of ecosystem restoration, water use efficiency, water quality, Delta levee and channel integrity, water transfers, and watershed management coordination, as well as a range of storage and conveyance options. The Preferred Alternative opts for water conveyance solely through the Delta, rather than a dual system, with one conveyance moving water around the Delta and another moving it through the Delta.

Interested parties had 90 days to comment on the EIR/EIS, and CALFED held 15 public hearings throughout the state in August and September 1999. The final EIS/EIR is expected to be released in the late spring or early summer of 2000, with the final decision on the plan following in

water quality, groundwater and surface storage, levees, conveyance and watershed management. The conference report also prohibits more than \$5 million being used for planning and management functions. The final figure is \$15 million less than FY99's \$75 million appropriation, and far below the full authorization level of \$143 million. Nevertheless, over the previous three years a total of \$220 million in federal funding has been appropriated for the project.

The Energy and Water bill also included \$42 million for the Central Valley Project (CVP) Restoration Fund, as well as smaller amounts for several other California projects.

Action in 2000

The Bay-Delta program authorization terminates on September 30, 2000. Rep. John Doolittle (Rocklin), Chair of the Water and Power Subcommittee which has jurisdiction over the authorization stated in a hearing on March 30, 2000 that CALFED officials would have to meet several conditions in order to secure an extension of the program. Rep. Ron Packard (Oceanside), Chair of the House Energy and Water Appropriations Subcommittee, has also stated that additional appropriations will not be provided for FY01 unless a new authorization is passed.

Safe Drinking Water Act

On October 20, the House Commerce Subcommittee on Health and Environment held a hearing on the implementation of the 1996 Safe Drinking Water Act, which is aimed at protecting the public from contaminated drinking water. The focus of the hearing was a study of the Act's implementation reported by the General Accounting Office. GAO found that, although the Environmental Protection Agency and the states had made "important strides" in complying with the statutory requirements, the long-term implementation of the Act by EPA and the states will require "continuous oversight" by Congress.

Several members of the Committee expressed concern that in the last several budget requests EPA requested less funding for drinking water research than its fully authorized level. As a consequence, GAO found that stakeholders were concerned that the research underlying upcoming regulations on arsenic and microbial pathogens was inadequate. Dr. Norine Noonan, EPA's Assistant Administrator for the Office of Research and Development defended EPA's research strategy and its adequacy.

Also testifying before the Subcommittee was Stephen K. Hall, Executive Director of the Association of California Water Agencies. Mr. Hall testified that EPA and the state have worked effectively to move the State Revolving Fund money under the Act into the communities that need to improve their water systems. As for research, however, Mr. Hall was concerned that EPA's lack of sufficient resources might result in its making regulatory decisions before getting the benefit of sound

provided, with \$24.3 million in non-federal funds. The bill also provided \$126 million for a flood damage reduction project on the Upper Guadalupe River and \$26.6 million for the Yuba River Basin flood damage reduction project. The Senate passed the bill by unanimous consent on April 19, 1999.

On the House side, Reps. John Doolittle (Rocklin) and Bob Matsui (Sacramento) negotiated a compromise solution to the problem of controlling flooding in the Sacramento area. The House Transportation and Infrastructure Committee reported out H.R. 1480, their Water Resources Development Act (WRDA) on April 22, following a heated markup by the Water Resources and Environment Subcommittee on April 21. On the 21st, the subcommittee chairman's mark, offered by Rep. Sherwood Boehlert (NY), contained a compromise on flood control and water supply for the Sacramento and American Rivers, worked out between Reps. John Doolittle (Rocklin), Bob Matsui (Sacramento), Richard Pombo (Tracy), Wally Herger (Marysville), and Doug Ose (West Sacramento). The agreement provided for increasing the height of the Folsom Dam by six and a half feet, adding and widening flood gates, and raising and strengthening levees on the rivers. The new construction, costing about \$345 million, would raise Sacramento's flood protection from a 77 year level to about 150 years. The compromise, however, also contained provisions concerning water supply in California that 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 of equipment 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.

At the subcommittee markup, Rep. Ellen Tauscher (Pleasanton) objected strongly to the provisions, claiming that they would force the diversion of 200,000 acre-feet annually and seriously undermine CALFED's ability to come up with a comprehensive water management plan for the state. Chairman Boehlert attempted to accommodate Rep. Tauscher's concerns by offering an amendment stripping the bill of the water rights provisions and clarifying that nothing in the bill was to affect water rights in California. The Boehlert amendment also required that all appropriate environmental assessments and feasibility studies must be completed before the project was approved. Tauscher, nevertheless, continued to oppose the construction provisions, arguing that under California law any new construction automatically granted junior rights to prior water rights' holders.

Boehlert's amendment passed by a recorded vote of 20-16. Ms. Tauscher then offered an amendment to strip the water project provisions, but retain the Sacramento flood control provisions. Her amendment was defeated 16-20.

At the full Committee markup on April 22, Rep. Tauscher continued to object to the diversion provisions and submitted a letter from Gov. Gray Davis asking the committee to refrain from acting on

In early August, House and Senate negotiators reached agreement on the Water Resource Development Act (WRDA), clearing the bill for final approval on August 5 by both bodies. The Senate agreed to the conference report by unanimous consent; the House by voice vote. Under the conference agreement, Sacramento's flood protection will be boosted to about the 140-year level, which is less than Rep. Matsui and Sen. Barbara Boxer had sought. The report also requires a new study of the Folsom Dam, because the last study was done before the 1997 floods. Rep. Doolittle pushed throughout the negotiations to get language added to allow water diversion from the American River. In the end, however, the conferees did not reinsert those provisions.

Central Valley Project Water Transfers

On November 8, by voice vote, the House passed H.R. 3077, to facilitate water transfers in the Central Valley Project (CVP). The bill amends the San Luis Act of 1960, so that users of the San Luis Unit of the CVP may purchase water from the State Water Project (SWP).

The Central Valley Project has traditionally relied on exported water supplies from the Sacramento-San Joaquin River Delta. In the past few years, however, federal water supplies to the CVP have been reduced, adding to water management's demand for water transfers. This demand, coupled with the increased awareness of maintaining reliable water supplies, has encouraged integration of federal and state laws to facilitate water transfers.

Governor Davis sent a letter to Rep. Cal Dooley (Visalia) in support of H.R. 3077, arguing that the bill "is appropriate to remove barriers that might otherwise restrict transfers between the two projects." Davis also voiced his support of a recent amendment to the bill, which would prevent irrigation drainage problems or degradation of water quality in the transfer of water between the SWP and CVP.

Action in 2000

On March 22, the Senate Energy and Natural Resources' Water and Power Subcommittee held a hearing on H.R. 3077. Rep. John Doolittle (Rocklin) testified in support of H.R. 3077 and stated that Sen. Feinstein and Governor Davis have also written letters in support of the measure. Rep. Doolittle explained that while California enjoyed a relatively wet year in 1999, 60% of that water went to federal contractors. He stated that H.R. 3077 would allow greater flexibility so that farmers and their regional economies can survive.

Lake Tahoe

A bipartisan effort began in 1999 to improve Lake Tahoe's water quality and protect its forests. Rep. John Doolittle (Roseville) and Sen. Dianne Feinstein introduced H.R.3388 and S.1925 which

and Water Quality Coalition, comprised of eighteen environmental and business groups committed to cleaning and preserving the region.

Action in 2000

The Senate Energy and Natural Resources Committee held a hearing on S. 1925 on February 10, 2000. Both Sens. Dianne Feinstein and Barbara Boxer testified, as did the House sponsor of the companion bill, Rep. John Doolittle (Rocklin).

RESOURCES AND ENVIRONMENT

Otay Wilderness Act

The Otay Wilderness Act of 1999 (H.R. 15), introduced by Rep. Brian Bilbray (Imperial Beach), was unanimously approved by the House of Representatives on April 12, 1999 by voice vote. The bipartisan effort calls for the federal protection of Otay Mountain, which sits along the U.S.-Mexico border in southern San Diego County, by designating 18,500 acres as wilderness. Both the Departments of Justice and Interior supported the passage of this legislation because it is a core reserve of riparian woodlands, the only known stand of Tecate Cypress in the United States. The area also includes 15-20 other sensitive vegetative species. Another reason why the bill received widespread support was the proximity of the Otay Mountain area to the border. This area has historically experienced extensive damage due to the illegal immigrant and drug smuggling activity in the region. To alleviate this problem, Senator Dianne Feinstein helped facilitate access by the Border Patrol to Otay Mountain, which resulted in reductions in illegal activity in this region.

The Senate passed the bill by unanimous consent on November 19, 1999, and it was signed by the President on December 9, 1999.

Endangered Species Act

On June 29, 1999, the Senate Committee on Environment and Public Works approved S. 1100, revising the process followed under the Endangered Species Act (ESA) in "critical habitat" designation. Senator John Chafee (RI) authored the measure which would allow federal agencies to research and develop plans of recovery before actually having to designate an area as a "critical habitat." The measure was designed to reduce law suits filed against the Department of Interior for not declaring "critical habitats."

Senator Chafee offered a substitute amendment, approved by voice vote, that would increase the time allowed for a species recovery team to be appointed from 60 days to 120 days. The amendment also decreased the time allotted, from 36 months to 30 months, for a final recovery plan. Under the amendment a priority ranking system would be established in case of insufficient funds.

Although there were several bills introduced during the 106th Congress on Superfund liability, no bill was acted on by the end of the first session.

On May 12, 1999, the House Committee on Transportation and Infrastructure's Subcommittee on Water Resources and Environment held a hearing to discuss 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 (former industrial and military sites in need of major environmental restoration) 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 in funding to ensure that Superfund 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. Californian co-sponsors of the bill include Reps. Cal Dooley (Visalia), Steve Horn (Long Beach), Ellen Tauscher (Pleasanton) and Bob Matsui (Sacramento).

The Subcommittee heard from Environmental Protection Agency Administrator Carol Browner who stated that the Administration supports narrowly targeted Superfund legislation and that H.R. 1300 would increase litigation and exempt many parties who should pay for clean up, delay cleanups, lower the standard on groundwater protection, and restrict EPA's enforcement authority. The Subcommittee also heard testimony from the U.S. Conference of Mayors, the National Automobile Dealers Association, the National Federation of Independent Businesses, the Superfund Settlements Project, the Chemical Manufacturers Association, Friends of the Earth, the National Governors' Association, the City of Rockford, Illinois, the National Association of Realtors, the National Association of Industrial and Office Properties and the National Association of County and City Health Officials. Most agreed that the measure represents forward progress on the topic of Superfund reforms, and many were able to offer specific suggestions with respect to the continuing evolution of the bill.

On June 10, at the subcommittee's markup of H.R. 1300, Rep. Boehlert's *en bloc* amendment to expand state grants, define the scope of the allocation of responsibility process, make clarifications concerning remedies at brownfields sites, and codify some current agency regulations was adopted. Rep. Ellen Tauscher (Pleasanton) also introduced an amendment aimed at allowing the EPA 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. Steve Kuykendall (Rancho Palos Verdes) presented an amendment which was approved by voice vote authorizing up to 20 percent of grants to states for brownfields site assessments and the clean-up revolving loan fund to go to local public health officials for continued

including a grant program for up to \$200,000 per site; include liability relief to businesses with 75 or fewer employees and less than \$3 million in revenues, as well as municipalities, innocent landowners and prospective purchasers of contaminated property who exercised "appropriate care;" institute a mandatory liability allocation system; exempt owners and operators of municipal solid waste companies that contribute less than 200 pounds of waste to a site; include a reinstatement of the superfund tax for the next eight years with a decrease as more cleanups are completed; contain funding for the program at \$1.5 billion from 2000 through 2003 and decrease it to \$975 million by 2007; and provide an additional \$25 million per year for state cleanup efforts. The Ways and Means and Commerce Committees also have jurisdiction over the bill and further action was not taken in 1999.

Another brownfields bill considered in 1999 was H.R. 2580, the "Land Recycling Act of 1999." On August 14, the House Commerce Committee heard testimony from Tim Fields, Assistant Administrator of the Office of Solid Waste and Emergency Response, EPA, as well as a panel of business, local government and environmental stake holders. Mr. Fields indicated that the Administration opposes H.R. 2580 in large part because it restricts EPA's enforcement authority. Considerable discussion between members and witnesses occurred on various issues, including: whether stand-alone brownfields legislation, separate from Superfund legislation, should proceed; the level at which the federal government should be allowed to "re-open" State sites (at the historical standard of "imminent and substantial endangerment", or a new proposed "emergency" state); and the issue of liability.

On September 30, the Commerce Committee's Finance and Hazardous Materials Subcommittee marked up H.R. 2580 and passed a substitute amendment, offered by panel Chair Michael Oxley (OH) making substantial changes to the federal superfund law, while also addressing brownfields concerns. The measure would promote reuse of brownfields by limiting some cleanup liability for owners, buyers and sellers. The bill would also change superfund laws by limiting liability for municipal landfill owners and relatively small businesses (below 75 employees and \$3 million in revenues) and by requiring future reductions in the program. The bill does not propose reinstatement of the superfund tax.

On October 13, 1999, the House Commerce Committee reported an amendment by Rep. Michael Oxley (OH) in the nature of a substitute to H.R. 2580. The Oxley substitute encourages the redevelopment of brownfields and establishes a remediation program to provide grants of up to \$1 million. It also includes provisions limiting the liability of buyers, sellers, and others, and exempts small businesses (fewer than 75 employees and \$3 million in revenues) from the Superfund law. The bill also reauthorizes Superfund for five years, with \$1.5 billion annually for three years, decreasing in years four and five to \$1.4 billion and \$1.35 billion, respectively.

CAPF, and to answer questions relating to the design of the program. CAPF is currently still awaiting authorization and funding by Congress.

Clean Air Act Amendment

In related news, in early September, Rep. Chris Cox (Newport Beach) sent out a Dear Colleague letter to California members urging their cosponsorship of H.R. 2427, to amend a provision in the Clean Air Act. The bill would remove the 10 percent limit on the amount of funding any state can receive in federal air pollution planning and control grants. Instead the grant amounts would be determined based on other criteria in the law, such as population, local agency needs, and the extent of air pollution in the area.

According to 1998 EPA figures, Californians account for 27 percent of the nation's population living in ozone non-attainment areas, 38 percent of the nation's population living in carbon monoxide non-attainment areas, and 58 percent of the population living in particulate matter non-attainment areas. Nevertheless, its planning and control grants are limited to 10 percent of the total grants awarded. Action on H.R. 2427 was not taken in 1999.

The first session of the 106th Congress considered several clean air issues in 1999, but no bills were acted on by the end of the session.

Interior Appropriations

In November 1999, the omnibus appropriations conference agreement provided \$15 million for the first of two installments to acquire an additional 487,000 acres in and around the Mojave National Preserve and Joshua Tree National Park, touted as the largest preservation acquisition in state history. (Future funds, up to another \$15 million, will be considered if issues are resolved regarding desert tortoise migration and land acquisition for Fort Irwin.) The bill provided \$99.2 million for management, protection, and development of Oregon and California Railroad grant lands. It provided \$2 million to local governments in Southern California for planning associated with the Natural Communities Conservation Planning (NCCP) program under the Water Resources Development Act of 1976, \$1.85 million for upgrading the Mariposa County municipal solid waste disposal system, \$1.7 million for the Don Edwards San Francisco Bay National Wildlife Reserve, \$3.1 million for the San Diego National Wildlife Reserve, \$6.3 million for the Death Valley National Park, \$5.6 million for Sequoia & Kings Canyon National Park, \$1.85 million for Yosemite National Park, \$1.1 million for the Golden Gate National Recreation Area, \$1.2 million for toilet and water system rehabilitation in the Angeles National Forest, \$1.5 million for Pacific Crest Trail land acquisition in the Angeles National Forest, \$4 million for the Big Sur Ecosystem in the Los Padres National Forest, \$44.4 million for the Presidio

allocation. Los Angeles County alone would see its \$19 million grant dropped to only \$3.25 million.

On the House side, all 52 members of the California Congressional Delegation signed a letter in March to Chairman Hal Rogers of the Commerce, Justice, State (CJS) Appropriations Subcommittee, calling for the full \$650 million authorized under the Program. Then, on June 21, Gov. Gray Davis in conjunction with the Governors of Arizona, Illinois, New Jersey, and New York wrote urging the Senate to fund SCAAP at its maximum \$650 million level. The letter to Majority Leader Trent Lott (MS) and Minority Leader Tom Daschle (SD) pointed out that although immigration is a fully federal responsibility, the states bear the brunt of the costs of illegal immigration.

On July 22, 1999, the House Appropriations Subcommittee on Commerce-Justice-State approved its FY2000 spending measure and included \$585 million for the State Criminal Alien Assistance Program (SCAAP), the same level appropriated for FY1999. On the same day, the Senate passed its version of the bill (S.1217) by voice vote. The full House Committee then reported the House bill on July 30, by voice vote, and the House passed the bill with the \$585 million funding figure on August 5, by a vote of 217-210. The Senate on September 8, took up the House-passed bill (H.R. 2670) and substituted S. 1217 and passed the amended bill again by voice vote.

In September, all 51 members (one vacancy) of the California Congressional Delegation signed a letter to House conferees on the CJS Appropriations bill urging the House SCAAP funding level of \$585 million, rather than the \$100 million in the Senate version. Key California conferees on the measure were Rep. Julian Dixon and Lucille Roybal-Allard (both from Los Angeles). Governor Gray Davis again added his voice in support, as well. In letters dated September 9, 1999 to the Chairs and Ranking Members of the Senate and House CJS Appropriations Subcommittee, the Governor urged them to support “the maximum possible level of funding.” Senators Dianne Feinstein and Barbara Boxer took the lead in the Senate to convince their colleagues to accept the House position.

The delegation’s and Governor’s efforts were successful, and the conferees agreed to \$585 million. The conference report was approved by the House on October 20, 1999, by a vote of 215-213. The Senate followed later in the day, approving the report by unanimous consent. The President, however, vetoed the bill on October 25, citing provisions other than SCAAP.

The CJS appropriations were then added to the omnibus appropriations bill (H.R. 3194), retaining the \$585 million. The omnibus bill was approved by the House on November 18, by a vote of 296-135, and by the Senate the next day, November 19, by a vote of 74-24.

In fiscal year 98-99, California received about \$244 million under the program.

H1-B Visas

The Immigration and Naturalization Service announced that the H1-B visa cap for FY 1999

electrical, mechanical, industrial, and software engineering. She noted that TRW received only three resumes for an ad that ran in the *New York Times* for a chemical engineer with expertise in injection molding. In terms of the implementation of the H-1B program itself, Ms. Neiswonger cited several areas where the Department of Labor and the Immigration and Naturalization Service could reform their processing system to make the application and issuance program more efficient.

Ms. Cleveland estimated that there may be as many as 43,000 H-1B petitions pending by the beginning of FY2000 with its new cap. This backlog may result in the 2000 cap of 115,000 being reached as early as March 2000. Citing the difficulty in finding qualified Americans for highly-skilled positions, Ms. Cleveland testified that the Chamber will continue to support expansion and streamlining of the H-1B program.

In response to the continuing shortage of skilled workers, several bills were introduced in 1999. Senate Majority Leader Trent Lott (MS), Senate Banking Chairman Phil Gramm (TX), and Sen. Mitch McConnell (KY), Chair of the Republican Senatorial Committee introduced S. 1440, which would increase the H-1B cap for three years to 200,000. On the House side, Rep. Zoe Lofgren (San Jose) introduced a bill creating a new category of visa, T (for Tech) visas, for professionals in high technology industries. H.R. 2867 would establish a five-year pilot program to allow U.S. companies to hire an unlimited number of foreign nationals graduating from American universities with degrees in engineering and the sciences. To qualify for the T visa, the salary level for the immigrant employee would have to exceed \$60,000 per year.

The Senate Judiciary Subcommittee on Immigration held a hearing on October 21 to explore the current and future workforce needs of America's high tech industries. The Subcommittee heard from Roberta Katz, Chief Executive Officer of the Technology Network (TechNet). TechNet is a network of senior executives in leading technology companies, headquartered in Palo Alto.

Ms. Katz testified that the serious shortage of skilled U.S. professionals requires companies to continue to use the H-1B visa program to fill job shortfalls, and supported increasing the current H-1B caps even more. She also emphasized, however, that information technology companies spend about \$210 billion annually on the formal and informal training of its workforce, as well as providing an additional \$4 billion in support to K-12 schools, colleges and universities. The companies see the workforce problems not as an immigration issue, but as one of competitiveness, and they must have the flexibility to hire the skilled workers they need in order to compete globally. Ms. Katz stated.

Action in 2000

The Immigration and Naturalization Service announced that the caps for 2000 may be reached as early as March of this year. In February, 2000, Sen. Dianne Feinstein joined Sen. Orrin Hatch (UT), Chairman of the Senate Judiciary Committee, in introducing a bill, S. 2045, to again increase the

about \$54.3 million for workforce training and \$46.1 million for scholarships to low-income and disadvantaged students. The amendment has the support of the information and biotechnology industries and those companies would match the NSF education grants dollar for dollar.

The Committee defeated an amendment offered by Sen. Edward Kennedy (MA) that also would have earmarked funds for worker training programs, but would have increased the \$500 H-1B visa fee to \$1,000 - \$3,000 depending on the size of the employer. The vote against the amendment was 8-10. An amendment by Sen. Joseph Biden (DE) was approved by voice vote; it authorizes \$20 million annually to the Boys and Girls Clubs of America to provide computers, teachers, and facilities to bridge the digital divide separating at-risk youth from computer and Internet access. The bill was then reported out by a vote of 15-3.

On March 15, a bipartisan cross-section of the California congressional delegation, led by Reps. David Dreier (Covina) and Zoe Lofgren (San Jose) introduced H.R. 3983 to increase to 200,000 the number of H-1B visas available for skilled foreign workers. Reps. Cal Dooley (Visalia), Anna Eshoo (Atherton), Nancy Pelosi (San Francisco) and 17 other members of the House were also original co-sponsors.

In addition to raising the number of visas to 200,000 for the next three years, the bill sets aside 70,000 H-1B visas for aliens with a Master's degree or higher and specifies that 10,000 visas are to be used by institutions of higher education. H.R. 3983 would increase the fee paid by employers from \$500 to \$1,000, and earmark revenues from this fee to education and training projects to increase the number of U.S. workers available for high technology jobs.

Then, on April 12, the House Judiciary Committee's Immigration Subcommittee marked up H.R. 4227. The bill was introduced on April 11 by Subcommittee Chair Lamar Smith (TX) and co-sponsored by Reps. Tom Campbell (Campbell) and Robert Goodlatte (VA). H.R. 4227 would eliminate the cap on the number of H1-B visas for skilled workers over the next three years. In exchange, however, the bill places significant eligibility criteria on the employers who apply for visas for their employees. In order to apply for a visa, an employer would have to show that the number of its U.S. workers had increased over the past year, and that the average wage paid to U.S. workers had increased. Employers would also be required to file detailed information with the Immigration and Naturalization Service on the employee and his or her education and wages. The bill would require companies with less than \$250,000 in assets to file additional documentation to show legitimate need for the employee. Additionally, it would add \$100 to the current \$500 application fee, to be used to combat fraud in the program.

During consideration of the bill, Reps. Barbara Jackson Lee (TX) and Zoe Lofgren (San Jose) raised amendments that they subsequently withdrew, because they would have necessitated sequential

workers in this registry would be established. Workers would be required to work for a specific period, and green cards would be provided to those that have been in the United States for several years.

Rep. Howard Berman (Valley Village) testified that an agriculture worker shortage does not exist in the United States and cited a 1997 GAO report supporting this contention. He argued that an expanded guestworker program would only bring in more immigrants who would eventually overstay their visas and add to the undocumented immigrant population. He proposed instead an approach (previously enacted but never implemented as the Replenishment Agricultural Workers (RAW) program). Under that approach, if a shortage of farm laborers arose, workers from other countries would be allowed to apply to work in agriculture, accrue credits and, after three years of working at least 90 days a year in agriculture, become permanent residents. Both Senator Feinstein and Rep. Berman stressed that wage rates were key, with Berman stating that average wages would rise if agricultural workers were increasingly legal.

Among the other witnesses was Josh Wunsch, representing the American Farm Bureau and Michigan Farm Bureau. Mr. Wunsch contended that there is a worker shortage in some areas, because of stepped-up enforcement by the Immigration and Naturalization Service to apprehend undocumented workers. He argued that the current H-2A agriculture guestworker program should be reformed. He also testified that the currently-required Adverse Effect Wage Rate is excessively high, and should be replaced with the prevailing wage standard with a ten percent premium to ensure domestic workers are not displaced. Mr. Wunsch also supported Agricultural Worker Registries to act as repositories for workers and farmers looking to find one another.

No further action was taken on the guestworker program in 1999.

CALIFORNIA FAIR SHARE

Federal Formula Grant Programs and Census Counts

An array of federal programs distribute funding to states and local governments via formula. Some federal programs distribute funding according to simple census figures for all or certain persons, while other formulas employ more complex factors. In many cases, the greater the target population, the larger the federal funds allocation to the receiving jurisdiction. The Institute advises California Congressional staff and members, the news media and others regarding the factors employed when distributing federal funding via formula and how the factors operate, specifically with respect to California. As the crudest benchmark for measuring alternate formula allocations and federal funds distributions generally, California's population currently represents slightly more than 12% of the U.S. population.

In January 1999, the U.S. Supreme Court ruled that the Census Act of 1976 prohibits the use

Accuracy of census data has been a key issue during the 106th Congress. A February 1999 report by the General Accounting Office (GAO) estimated that the decision not to use adjusted (or sampled) census data for formula grant allocations after the discovery of an undercount in the 1990 census caused California to lose more than \$2.2 billion over the 10-year period from 1990 to 2000, amounting to \$2,660 per capita. The report, entitled *Formula Grants: Effects of Adjusted Population Counts on Federal Funding to States*, estimated that 27 states plus the District of Columbia were net losers of \$4.5 billion over the decade, while 23 states were gainers. California's loss was the largest, and other losing states included Texas, Florida, Georgia, Louisiana, and Arizona. On the other side of the ledger, Pennsylvania was the largest winner due to the failure to use adjusted data, with a gain of \$1.1 billion. Other states which also gained included Ohio, Michigan, Minnesota, Missouri, Wisconsin and Indiana. The report was requested by Census Subcommittee Chair Dan Miller (FL) and Government Reform full committee ranking member Henry Waxman (Los Angeles). California was estimated to have been undercounted by 834,000 persons in 1990, or 1.6% of the state's population.

In 1999, the California Institute prepared and delivered a report entitled *Federal Formula Grant Elements: California Implications*. For further information, see the Institute Products section below.

Action in 2000

On March 9, 2000, the U.S. Census Monitoring Board released a report prepared by the consulting firm of PriceWaterhouseCoopers (PWC) which estimated that California stands to lose as much as \$5 billion in federal funding due to undercounting if formula funding programs do not allocate federal dollars based on a corrected 2000 census. The study found that 26 states plus the District of Columbia would be adversely impacted by an undercount, while 24 states would gain. California would be the biggest loser, according to PWC, with its \$5.05 billion loss far outdistancing the \$1.91 billion prospective loss by second-ranked Texas. Reaping gains from an undercount would be Pennsylvania (\$2 billion) and Michigan (\$1 billion). When PWC examined metropolitan areas, it found that 169 metro areas stand to lose \$11.1 billion, and six metropolitan areas (three of which are in California) would each lose more than \$300 million in federal funds. These include Los Angeles-Long Beach, Riverside-San Bernardino, and San Diego, as well as New York City, Houston, and Miami. Examining counties, PWC estimated that Los Angeles County would lose \$1.8 billion, followed by the Counties of San Diego (\$372 million), Orange (\$296 million), San Bernardino (\$235 million), Alameda (\$233 million), Riverside (\$207 million), Santa Clara (\$188 million), Fresno (\$181 million), Sacramento (\$133 million), and San Francisco (\$113 million).

Approximately \$185 billion in Federal funds (more than 80% of total formula funds) are allocated each year based on each state's respective share of the U.S. population, as determined by the

Education.

Federal Spending in California, and “Balance of Payments”

In Fiscal Year 1999, California and its residents received \$166 billion in federal expenditures, according to census data released on April 14, 2000, an increase of \$4.5 billion from the prior year. However, the rise did not keep pace with the relative growth in total U.S. spending, meaning that California slipped from 11.2% of federal dollars in 1998 to 11.1% in 1999. While the precise impact on California’s taxes-vs.-spending deficit will not be known until tax figures are available in late summer, it is likely that California’s record deficit of \$19.4 billion will have been exceeded considerably. The strong economy is likely to produce continued upward movement in California residents’ share of the nation’s tax bill, and the downward movement in federal spending in the state will accelerate the effect.

California’s share of funding from federal formula grant programs and other grants to state and local governments experienced a very significant increase from 1998 to 1999, climbing from 12.1% to 12.6% of the nation’s grants, and from \$32 billion to \$36.4 billion in raw numbers. The state’s share of grants thus exceeded the state’s share of the nation’s population for the first time in nearly two decades. Roughly half of these grant dollars flowed from the Health and Human Services Department, which includes Medicaid (of which the state received just over 10%) and the Temporary Assistance for Needy Families or TANF program (of which California received 24%). The state’s \$2.1 billion in highway trust fund spending was 9.5% of the U.S. total, while California’s \$764 million from the Federal Transit Administration was 16.7% of that total.

Still, California’s federal grant receipts growth was overshadowed by a substantial decline in the state’s share of procurement spending, federal employee salaries, and direct payments such as Social Security and Medicare. In procurement, from 1998 to 1999, California’s share of the nation’s spending declined from 13.8% to 13.6%. Total procurement contract spending in the state grew slightly, from \$25.4 billion to \$25.8 billion, while the nation’s procurement expenditures increased more rapidly, from \$183.6 billion to \$189.9 billion. The slight increase did reverse what had otherwise been a six-year slide in the state’s contract spending receipts.

Two-thirds of procurement dollars are spent by the Defense Department, and there too California’s share eroded, slipping from 16.0% to 15.2% of total federal DOD contract dollars spent nationwide. Total DOD contract dollars rose by barely \$70 million from 1998 to 1999, while the nationwide figure leapt by \$6.2 billion. After peaking at 23% in 1984, California’s share of DOD contracts funding hovered around the 20% mark until 1995, when that share dropped to the high teens.

Residents of California received \$619 million fewer federal transfer payment dollars in 1999 than in 1998, while U.S. payments rose by nearly \$16 billion. Roughly half of these direct payments to

K-12 EDUCATION

Most federal elementary and secondary education programs are up for their every-six-years reauthorization during 2000. A bipartisan team of California members of Congress and Senators with seats on the education authorizing and appropriating committees have been working together to further the state's K-12 education interests. Leading collaborators include Reps. Duke Cunningham (San Diego), Buck McKeon (Santa Clarita), Lynn Woolsey (Novato), George Miller (Vallejo), Nancy Pelosi (San Francisco), Marty Martinez (Monterey Park), and Loretta Sanchez (Santa Ana), Senator Feinstein, Governor Davis, and delegation chairs Jerry Lewis (Redlands) and Sam Farr (Carmel).

The Title I program, the largest federal K-12 education program and the fourth largest formula grant of any kind, is intended to help schools educate poor and disadvantaged children. Title I was initially created to assist children in overcoming learning disadvantages that can be attributed to their economic status or associated with home, school, or community experiences. A longstanding problem of distributing Title I money using outdated counts of poor children, was ostensibly remedied in 1994 when California delegation members won passage of language creating an update of poor child counts every two years. Unfortunately, Senators from states which have less acute needs than does California (and thus would lose funds) have successfully inserted language, known as the "100% special hold harmless," into education appropriations bills, which effectively prevents the use of these updated counts for distributing most of the Title I dollars.

Because Title I is focused on poor K-12 children, California's high child poverty figures would lead one to expect a high Title I funding share for the state. In 1994, the state's child poverty rate of 24.1% was well above the national rate of 20.4%. Yet California receives fewer Title I dollars than its share of eligible children. With nearly 15% of the nation's eligible children, the state receives less than 12% of the Title I dollars. California receives about \$600 in Title I funds per poor child, below the national average of \$717 and well below the highest states, whose receipts exceed \$1,300 per poor child. Hold harmless contribute to California's shortfall, as does the fact that the formula reduces funding to states with relatively low state per-pupil spending, such as California.

ESEA Hearings and Review

The House Committee on Education and the Workforce met on April 14, 1999 for a preliminary hearing on Title I. Four panelists testified before the committee: Dr. Alan L. Ginsburg, Director of Planning and Evaluation Service, Office of the Under Secretary, U.S. Department of Education; Dr. Maris Vinovskis, Senior Research Scientist, Center for Political Studies, University of Michigan; Dr. Michael D. Casserly, Executive Director, Council of Great City Schools; and Dr. Diane Ravitch. Dr. Ginsburg discussed two recent reports mandated by Congress to advise on evaluation

funds for which they qualified.

In May, 1999, the Senate Committee on Health, Education, Labor and Pensions held a reauthorization hearing dealing with the Title I program. Testifying before the committee were: Christopher Cross, Chair, Independent Review Panel; Lis Graham Keegan, Superintendent of Public Instruction, Arizona Department of Education; and Iris T. Metts, Secretary of Education, State of Delaware. All three witnesses told the committee that Congress should make Title I funds portable. Mr. Cross pointed out that Congress should first and foremost fully fund Title I, increasing its current budget of \$8 billion a year to \$24 billion a year. According to Mr. Cross, fully funding Title I would reduce the prevalence of aides replacing teachers in classrooms. He added that if Title I is fully funded, half should be spent on evaluation and research and the other half on investment for continuing education for teachers. Ms. Keegan addressed the issue of making Title I funds portable, and cited legislation passed in Florida which allows students who attended failing schools to use state funds to change schools. Ms. Keegan said making state funds available to these students is a step in the right direction, but she stressed that they should also receive federal funds.

Also in May, the Subcommittee on Postsecondary Education, Training and Life Long Learning, chaired by Rep. Buck McKeon, held a hearing on methods of developing and maintaining a high-quality teaching force. Testifying before the committee were: Dr. Emily Feistritzer, Executive Director, Center for Educational Information; Ms. Katrina Robertson Reed, Associate Superintendent for Administrative Services, District of Columbia Public Schools; Dr. Robert Strauss, Professor of Economics and Public Policy and Management, Carnegie-Mellon University; Dr. Beverly Young, Associate Director for Teacher Education and K-12 Programs, California State University; and Dr. Marci Kanstoroom, Research Director, Thomas B. Fordham Foundation. Chairman McKeon and Rep. Martinez both noted in their opening statements that there is a growing need for the recruitment and retention of high caliber teachers across the nation. Dr. Feistritzer told the subcommittee members that alternative routes for certifying teachers were needed to continue with the current pace of new teaching slots. And these alternative programs could not and should not be emergency credentials, which many states are considering as an alternative to the traditional college level programs now in place. She singled out three states that have created successful alternative certification programs: Texas, New Jersey and California. These programs are more efficient than traditional programs for granting credentials because of their ability to identify individuals who are likely to quit within the first three years. She also noted that the programs place prospective teachers directly into the schools so they receive first-hand experience. During questioning, Dr. Feistritzer stated that these state programs could be duplicated in other states. Dr. Young spoke of the California State University program that currently prepares 12,000, or 60%, of California's new teachers. The Beginning Teacher Support and

teachers to customize their individual learning plans for each student as needed. Many witnesses suggested, however, that the Federal Government needed to play a lesser role in the regulations placed on the states in the use of funds for technology.

On July 13, the Senate Committee on Health, Education, Labor and Pensions held a hearing on the Safe and Drug Free Schools program. General Barry McCaffrey was among the witnesses, and he outlined the Administration's proposal to make changes to the program. The State-by-State formula allocation of funds would remain the same. Within each state, however, the money would be distributed via a competitive grant method, with funds being distributed to no more than 50% of the local education agencies (LEA) within the State, targeted on risk factors for alcohol and drug abuse.

On July 22, the House Committee on Education and the Workforce met to discuss "Helping Migrant, Neglected, and Delinquent Children Succeed in School" addressed under Title I of the Act. Mr. Francisco Garcia, Director of the Office of Migrant Education, Department of Education, described the background and rationale for the program, what the program does, the current status of the program, and the Administration's suggestions for improving the Migrant Education Program (MEP). The Administration proposed simplifying the funding formula including: 1) replacing current reliance on estimates and full-time equivalents (FTE) of migrant children to a system basing a State's child count on the number of eligible children residing in the State in the previous year, plus those who received services under the program in summer or intersession programs provided by the State, and double-counting the second category because of the greater cost of those programs; and 2) establishing minimums and maximums for annual State allocations whereby no state would be allocated less than 80 percent or more than 120 percent of its allocation from the previous year. The proposal also includes streamlining planning and implementation and improving interstate coordination activities. Also testifying before the Committee on behalf of the National Association for Migrant Education (NAME) was Oscar Guzman, a student at California State University, Sacramento. Mr. Guzman discussed his experience with the Migrant Head Start, the Migrant Education Program, and the College Assistance Migrant Program (CAMP). Other witnesses included a student support specialist from a migrant child development project in Pennsylvania, a representative of the Interstate Migrant Education Council, and a consultant with the Kentucky Department of Education. When asked what would happen if these program monies were made into a block grant, all witnesses responded that it would be detrimental to migrant and delinquent children.

On July 27, the Committee on Education and the Workforce held a hearing on Title I of the Elementary and Secondary Education Act (ESEA). Five individuals testified before the Committee. The general consensus among the witnesses was that Title I was an asset to the school system but there are some changes that could be made that would increase the benefit of the program. Some of these

Secondary Education Act occurred on May 12, 1999, when the House Education and the Workforce Committee met to mark-up The Teacher Empowerment Act (H.R. 1995). The legislation would combine the funding of the current Eisenhower Professional Development Title II program, the Goals 2000 program, and the class size reduction program monies to provide a teacher training and classroom reduction block grant totaling \$10 billion over the next five years. Subcommittee Chairman Buck McKeon said the Act was developed around three principles: teacher excellence, smaller classes, and local choices. Unlike the President's proposal to hire 100,000 new teachers in the next seven years, H.R. 1995 does not set a dollar amount required for the hiring of new teachers; instead, it allows States, local school districts and schools the flexibility to balance resources for increasing student achievement and teacher development. The bill prohibits national certification of teachers. California was cited as an example of implementation of class size reduction without regard to teacher quality. Rep. Martinez proposed a Democratic substitute, the "Smart Classrooms Act," which would have established separate funding streams for monies to reduce class size and to develop teacher skills. The amendment was defeated 21-23. Opponents of the bill argued that it reneges on a Congressional promise to support Clinton's new teachers program, doesn't appropriately target funding to the neediest areas, and doesn't significantly differentiate between certified and qualified teachers. Rep. George Miller argued strongly for the need to require teachers to have either a college major in the subject they are teaching or pass a rigorous State exam in that subject area.

Chairman William Goodling (PA) authored an amendment in the nature of a substitute which was approved 27-19, under which States would continue to receive the same amount of funding they received in FY99 under the Eisenhower, Goals 2000 and Class Size reduction programs combined. New money over and above those FY99 Appropriations figures would be allocated to States based on a formula weighted 50% on populations of individuals aged 5-17, and 50% based on poverty among children 5-17 in that State. Within the grants to each State, 95% of the money must be passed on to local educational entities (LEAs). Eighty percent of the amount given in subgrants to LEAs would be allocated by formula: 50% based on enrollment, and 50% based on poverty. The remaining 20% would be distributed through a competitive grant process.

On July 20, the House passed the Teacher Empowerment Act (HR 1995), by a vote of 239-185, allowing local school districts to decide how to spend grant money (by hiring more teachers or by funding teacher training programs) and allowing school districts to offer incentives, such as signing bonuses, in an effort to better recruit and retain teachers. Rep. Martinez proposed an alternative that would have retained class size reduction funding as a stand-alone program, allocating more money to schools in poorer communities, which was defeated 217-207. The package retained the hold harmless, included in the Committee's substitute, on funds for combined grant dollars.

approved by a vote of 24-21. However, several days later, the Committee voted narrowly to reverse itself and lower the threshold from 50% to 40%. Several other amendments were offered to broaden school and parental choice. Rep. Tom Petri (WI) offered an amendment to allow a student to retain Title I aid when transferring public schools, regardless of whether or not the new school was “failing,” as required under the program. The amendment was rejected 13-28. Other provisions in the bill would hold all Title I students to the same educational standards as other students, require schools and districts receiving Title I funding to demonstrate improvement through annual report cards, mandate that students obtain parental permission before being placed in English language instruction programs using Title I funds, and require students who have attended school in the United States for three or more years to be tested in reading and language arts in English.

During Committee consideration on October 7, Reps. Lynn Woolsey and John Tierney (MA) offered an amendment to develop a formula factor to compensate school districts located in states forced to spend more to educate children because of high costs of living. Due to variances in costs of living among states, Woolsey argued that some disadvantaged students are denied adequate Title I funding relative to children in low-cost areas. Consequently, she proposed to add a state-level Cost Of Living Adjustment (COLA) factor for allocating Title I dollars. While no state-level COLA index presently exists, Rep. Woolsey argued that the federal government should develop such a measure. Woolsey agreed to withdraw the amendment after Chairman Goodling agreed to support a study of the issue. Developing a cost-of-living index could increase California’s funding, thereby ameliorating a portion of the state’s longstanding Title I shortfall. Such a factor could be used to allocate new funds or existing ones, and nearly half of the states would benefit.

On October 21, the House voted 358 to 67 to pass H.R. 2. While Title I program revisions had been discussed widely over the preceding weeks, provisions regarding bilingual and immigrant education were examined for the first time in a manager’s amendment on the House floor. A major change in these programs would be that bilingual education would be shifted from the current competitive grant program into a formula grant program to the States after appropriations reach \$220 million. Funding would be based on each state’s relative share of limited English proficient (LEP) students. A recent study of funding alternatives run by the Congressional Research Service estimated that California’s share of bilingual education grants would increase if funding were allocated according to a formula based on LEP numbers. However, the bill also provides that no state will receive less under this program during the period from 2000 to 2004 than the state received in 2000. States would be directed to distribute half of its funds according to high concentrations of eligible children and half by competitive grant.

Action in 2000

controversial amendment to allow a 10-state pilot program linking federal aid directly to students, whereby parents would decide whether to spend funds at the school or elsewhere.

Action by the full Senate is expected during May 2000. Later in the Spring, the House is expected to consider a bill to reauthorize the remaining K-12 programs with which it has not yet dealt.

Education Appropriations

The conference agreement on omnibus appropriations, passed by Congress and signed by the President in late November 1999, provided \$8.7 billion for total Education for the Disadvantaged programs (Title I), of which \$7.94 billion is to be used for grants to Local Education Agencies, (\$6.783 billion for basic state grants and \$1.158 billion for concentration grants), and of which \$5 billion would become available on October 1, 2000 for the 2000-2001 school year. California's \$816 million share of these funds represented 11.3% of the national total in FY1998.

During final negotiations, Congressional and Administration negotiators agreed on a plan to provide additional funding for a program to hire teachers, an issue which had stalled talks on the FY 2000 federal budget. The compromise provided \$1.325 billion in so-called "class size reduction" funds, slightly less than the \$1.4 billion that the Administration had sought. The compromise increased from 15% to 25% the amount that may be used for professional development and teacher certification rather than solely for teacher hiring. In addition, schools with more than 10% of their teachers uncertified would be allowed a waiver to use funds for training rather than hiring. The program provides funds for reducing class sizes in grades 1-3 by moving toward a goal of hiring 100,000 new teachers. The number actually hired with these funds may be considerably lower in the first years of the program, which had been intended to be a seven-year effort. The allocation formula for these funds is based on the higher of the share of two existing federal education programs – the Title I program for disadvantaged students or the Eisenhower Professional Development Grant program. (The Eisenhower program, in turn, is 50% based on Title I grants.) California has received roughly 11% of the nation's funds from each program, though our Title I share has been slowly increasing.

For FY2000, the omnibus conference agreement provided \$406 million for bilingual and immigrant education (above both the House and Senate passed levels), including \$162.5 million for instructional services, and major growth to \$71.5 million for professional services. For immigrant education, of which California typically receives more than one-fourth, \$150 million is again appropriated. The conference agreement includes \$6.037 billion for Special Education (\$2.3 billion in FY 2000 and \$3.7 in 2001), including \$4.989 billion for Grants to the States. Importantly, the \$4.9 billion mark that has now been reached was a "trigger" level set during reauthorization of the Individuals with Disabilities Education Act in 1997. Funds above the \$4.9 billion mark will now be

provided a program level of \$7.7 billion for current law Pell Grants. It funded Federal Supplemental Educational Opportunity Grants (SEOG) program for low-income college students at \$621 million, and loosened rules for students that live in the path of Hurricane Floyd. Work study funding was set at \$934 million. Higher education program funds for FY00 will be \$1.534 billion, higher than either the House or Senate number, including \$645 million for the TRIO program, \$200 million for GEAR UP (Gaining Early Awareness and Readiness for Undergraduate Programs), \$40 million for Byrd Scholarships, \$51 million for GAANN (Graduate Assistance in Areas of National Need), and \$42 million for Hispanic Serving Institutions. The bill increased funds to \$98 million for Teacher Quality Enhancement Grants while recommending higher standards for evaluating training programs, including performance improvement, more and harder coursework, increased entry of graduates into teaching, and higher entrance and graduation standards.

Title I “100% Hold Harmless”

In October 1999, the Senate included in the Title I education program section of its version of the omnibus appropriations bill for FY 2000 a “100% hold harmless” provision, which would in effect nullify funding increases due California and other states that have been strained by rapid growth in poor children. The hold harmless provision stated that no state shall receive fewer funds than it did in the prior year. The House version, which passed the House Appropriations Committee on September 30, contained no such provision. In fact, the House Committee Report explicitly opposed the Senate action, stating, “The Committee notes that the Administration's budget request rejects the ‘100 percent hold harmless’ legislative rider for the Title I program. The Committee bill does not include this provision either. The Committee believes that such legislative riders unfairly penalize schools and states that educate a growing number of disadvantaged children.” The report favorably quotes a Department of Education document also opposing the 100% hold harmless usage, stating “A basic principle in targeting should be to drive funds to where the poor children are, not to where they were a decade ago.” California delegation members have been instrumental in ensuring the House Committee’s focus. In addition, the House bill expressed opposition to the past practice of applying the 100% hold harmless scheme to fund programs other than Title I, but which use Title I data as a formula element.

Unfortunately, the final conference version of the omnibus FY 2000 appropriations, passed in November, imposed a 100% special hold harmless on all Title I dollars - both on basic grants (which have had a hold harmless provision applied previously) and on concentration grants (which until now had been free from such restraints). Hold harmless provisions cut California’s funding share by taking funds from California and other states with rapid growth in poor children and shifting them to states with slow or no growth. Senators from slow-growth states have ensured that they get all the money

under several other programs which rely on the Title I formula. This language was pushed by Senator Dianne Feinstein, with the strong support of the state's House delegation. In March, Reps. Duke Cunningham, Lynn Woolsey, Buck McKeon and Nancy Pelosi wrote to oppose the application of the hold harmless to other programs, such as the Eisenhower Professional Development and Safe and Drug Free Schools State Grants. In addition to working against the overall 100% hold harmless, the delegation, both Senators, and Governor Davis actively opposed the Title I hold harmless extension to these other programs.

Also within the Title I section of the FY 2000 conference report was language specifying that \$134 million must be used for program improvement activities at underachieving Title I schools. The language requires school districts to give students in failing schools the option to transfer to another public school in the district. Depending on interpretation, these funds could be skimmed from the increase in Title I dollars and then subjected to the 100% hold harmless, thus eliminating as much as two-thirds of California's potential accelerated increase in Title I dollars.

In addition, tucked away in a \$15 billion supplemental appropriations measure enacted in May 1999 was a \$56 million provision to reimburse school districts which otherwise would have lost funding from so-called "concentration grants" under the Title I education program. 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; thus they do not particularly benefit California.

Class Size Reduction Waiver

A collaborative effort was begun in early 1999 by Governor Gray Davis, Reps. Duke Cunningham and Lynn Woolsey and other education-focused Californians. Working with the bipartisan Congressional delegation, they sought flexibility for the state in the use of education funds. California is in its fourth year of a class size reduction program for children in grades K-3, and the statewide average class size has declined to 19 pupils from nearly 29 before the initiative was undertaken. The Federal Class Size Reduction (CSR) program provides funds to states, and Governor Davis is seeking to use the federal CSR program funds to reduce class sizes in middle-school grades, in addition to continuing class size reduction in the early grades. He has requested a waiver to permit school districts this flexibility if their early grade class size average is under 20, rather than under 18 as a provision in last fall's Labor-HHS-Education Appropriations bill now requires. Recent appropriations bills have provided an additional \$1.2 billion for reducing class sizes in grades 1-3 by moving toward a goal of hiring 100,000 new teachers, though the number actually hired so far has been considerably less.(The

\$25 billion school construction bonds measure to the bill, and House leaders elected to hold consideration of the measures until a later date. The Johnson-Rangel proposal, which resembles an Administration proposal, would provide federal tax credits to bond purchasers in order to pay interest costs on bonds for constructing or renovating schools. It would propose that 60% of funds be allocated to states according to their share of the nation's school age population, while the remaining 40% would go directly to school districts based on their Title I receipts. California receives about 12.3% of Title I funds and houses 12.5% of school age children. While the President had threatened to veto the ESA legislation, some predict that a compromise which includes school construction funding might prove acceptable.

HOUSING

Low-Income Housing Shortage

Last year's push by Sen Barbara Boxer and Rep. Zoe Lofgren (San Jose) to prohibit standardizing loan limits nationwide for low-income housing gave way to the US Department of Housing and Urban Development's (HUD) March report revealing the growing waiting lists for low-income housing in California. Between 1990 and 1998, the housing need in Los Angeles was so great that federal officials considered the list full and would not allow additional people to sign up for housing vouchers. The list was reopened in 1998 with 8,000 applicants. The *Los Angeles Times* quoted a HUD source as saying that by the beginning of 1999, the number of applicants in Los Angeles waiting for a Section 8 rent assistance voucher had climbed to 153,000. In the city and county combined, 342,000 Los Angeles families were awaiting section 8 assistance and 38,000 in San Francisco. Nationally, the wait averages about 28 months, up from 26 months in 1996. The HUD report states that the Los Angeles list currently entails a 10-year wait for these federal subsidies.

With respect to public housing, Los Angeles city residents are better off than others around the country. Nationwide, the average wait is 33 months, up from 22 months in 1996, for the largest public housing authority. In the city of Los Angeles, the wait is about a year; however, it jumps to three years for public housing applicants in Los Angeles County. The report estimates 47,000 families are on the waiting list in L.A. County, and 14,000 in San Francisco. In Oakland, the wait has now risen to six years. Public housing waiting times have increased by 17 percent in San Francisco and 24 percent in Los Angeles County. Rents nationwide increased 6.3 percent from 1995 to 1997. Incomes for the lowest 20 percent of households increased 6.0 percent.

The report also noted that private landlords are "opting-out" of HUD-assisted subsidy contracts, threatening to worsen the low-income housing situation. As a result, the Administration sought a \$2.5 billion increase in the HUD budget, to \$28 billion. In May, 1999, HUD announced its

share of the funding based on the problems of that state with respect to the loss of affordable housing. States would then qualify for money up to their share based on the ability to raise matching funds, and then would fund projects.

Later that same month, the House considered a resolution (H.Con.Res. 208) stating that access to affordable housing should be a national priority. The House passed the resolution by a vote of 390-0, before referring it to the Senate Committee on Banking for consideration. The House resolution, sponsored by Rep. Rick Lazio (NY) and 169 co-sponsors, states that the goal of providing access to affordable housing should be pursued with several policy objectives, including: "the ability of the private sector to produce affordable housing without excessive government regulation," encouraging certain tax incentives, and facilitating home ownership by making loans and mortgages more accessible.

Action in 2000

After its markup in the House Banking and Financial Services Housing and Community Opportunity Subcommittee in February, H.R. 1776 passed the House of Representatives by a 417-8 vote on April 6, 2000. H.R. 1776 would revise and reauthorize several federal housing programs, including Community Development Block Grants, the Home Investment Partnership Program, section 8 home ownership subsidies, Local Home Ownership Initiatives and the Indian Housing Home Ownership Program. It would further allow cities to use federal grants to help teachers and municipal employees to be eligible for a one percent down payment on homes insured by the Federal Housing Administration in certain instances.

Housing for Seniors

On May 4, 1999, the House Committee on Banking and Financial Services' held a hearing on HR 1336, and Chairman Jim Leach (IA) predicted that Congress and the Administration would work out a bipartisan solution to the problem of the displacement of elderly and disabled persons due to opt-outs. The opting-out problem was a key topic during HUD Secretary Cuomo's remarks to the California State Legislative delegation meeting at the White House earlier that week.

In related news, on July 14, the House Committee on Banking and Financial Services' Subcommittee on Housing and Community Opportunity heard testimony on Chairman Lazio's H.R. 202, "Preserving Affordable Housing for Senior Citizens into the 21st Century." The bill would authorize appropriations annually of \$700 million for supporting housing for the elderly (section 202), \$225 million annually for supporting housing for the disabled (FY 2000-02), convert older section 202 financing mechanisms to more modern ones, and allow a broader range of financing for upgrading and new construction of affordable housing for seniors and expanding income eligibility for developments

was defeated 10-11. The bill was reported favorably to the full committee, but no further action was taken.

SOCIAL SERVICES, HEALTH AND WELFARE

Child Support

The 1988 Family Support Act provided that states would have to centralize their child support collection and distribution computer systems by 1997. California and other states missed the October 1997 deadline to have an automated tracking system in place, and faced penalties that covered 90 percent of federal funds to administer the system and up to 100 percent of the state's welfare block grant.

On July 16, 1998, President Clinton signed into law H.R. 3130, the Child Support Performance and Incentive Act of 1998, which provided an alternative penalty procedure for the states that had failed to establish a statewide, automated system to track child-support payments. Under the penalty schedule in the bill, a state would lose four percent of its funds in FY98, increasing to eight percent for the second year, 16 percent for the third, 25 percent for the fourth, and 30 percent for the fifth and every year thereafter. The legislation saved California from losing all of its TANF money and Title IV-D (of the Social Security Act) child support funding.

Additionally, the 1996 welfare reform law dictated that all states must have a centralized computer system for child support disbursement (known as a child support disbursement unit (SDU)). States that failed to meet the SDU requirement were in jeopardy of losing TANF funds – a \$4 billion total for California. In May 1999, Senator Dianne Feinstein introduced a bill to coordinate the penalty for the failure of a State to operate an SDU with the 1998 alternative penalty procedure for failures to meet the automated tracking requirements. Rep. Robert Matsui (Sacramento), introduced the companion bill, H.R. 2877 on the House side in September 1999. Because California did not have a statewide tracking system, and therefore did not have the centralized resources for an SDU, the Feinstein and Matsui legislation provided that states which had already incurred penalties under the 1998 Act would not be subjected to a double penalty.

As the 1999 congressional session ended, the provisions of H.R. 2877 were added to FY 2000 Omnibus Appropriations bill, which was signed into law.

Medicaid DSH

The November 1999 omnibus appropriations bill for FY 2000 continued a special rule for California which allows the state to calculate payments to so-called disproportionate share hospitals (facilities treating an unusually large number of low-income and Medicaid patients) at up to 175% of

would also provide resources for housing, education, health care and employment, requires that states meet five outlined goals concerning job training, education, and preparation of foster children. Rep. Xavier Becerra's (Los Angeles) amendment was adopted which would expand the pool of eligible Filipino veterans in the Supplemental Security Income program, which otherwise would have been altered by the bill. 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. The proposal could have benefitted California disproportionately as the state has a large number of foster children and receives roughly one-fourth of federal foster care spending.

No further action was taken by the 106th Congress in 1999.

Welfare

California is home to 21% of the nation's adult welfare recipients, and the percentage grows further if children are factored in.

In fiscal year 1998 California for the first time met stiff federal welfare-to-work requirements in all categories. Rules established by Congress in the 1996 welfare reform legislation require states to meet specific work participation rates for all families, as well as a higher rate for two-parent families. In fiscal 1997, California met the overall standard, but failed to reach the higher rate for two-parent families. By meeting federal requirements for FY 1998, any penalties for FY1997 non-compliance for California would be waived.

On May 17, 1999 by a vote of 7-2, the U.S. 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 implemented, 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 of free movement between the states. California currently spends \$6 billion annually on welfare, roughly half state money and half federal. The welfare caseload is currently around 667,000 families, or 2.6 million people.

In November, the House Education and Workforce Committee passed H.R. 3172, which would increase flexibility to states and local communities in administering the welfare-to-work program. The program was established as part of the 1997 balanced budget law in order to move hard-to-employ welfare recipients into the workforce, but because of strict eligibility guidelines, only \$283

inadequate to obtain the skills necessary to maintain a liveable wage. The six month threshold attempts to strike a balance between current law, which provides no vocational training at all, with the potential benefits of vocational educational job training. The bill also reduces from \$100 million to \$35 million the amount of funding set aside for performance bonuses to states which are successful in transitioning welfare recipients into the workforce.

Medical Research and Confidentiality

In 1999, the 106th Congress considered the issues surrounding patient privacy and medical research confidentiality but did not pass legislation during the session.

The House Commerce Subcommittee on Health and Environment met on May 27, 1999 to hear testimony on the subject of ensuring the confidentiality of patients' medical records while not undermining legitimate medical research. 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 recommended national standards, but did 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 said that Genentech supports an approach which would impose accountability on its ability to access information, limit its use of such information to bona fide research, and impose penalties on it for misuse.

In the same week, the Senate Health, Education, Labor and Pensions Committee delayed its markup of draft medical privacy legislation 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

preempting state laws providing a greater degree of protection. Others, including Rep. Henry Waxman (Los Angeles) and the representative of the American Psychiatric Association, argued in favor of a federal floor, with stronger state provisions allowed to stand that provide privacy protection above the federal level.

The second major policy division among attendees was the issue of a private right of action when personal medical information is misused. H.R. 2470 does not allow for a private right of action, while other alternatives do. Rep. Anna Eshoo (Atherton) urged the inclusion of such a right. Several other issues were addressed including: the definitions of "health care operations" for which information may be released; and the intersection between laws regarding "disclosure" limitations on medical information and separately defined "use" limitations.

The discussion of medical confidentiality then continued on July 20, 1999 when the Health Subcommittee of the House Ways and Means Committee met to hear testimony on the need for federal legislation, the best form for legislation, and the current state of medical confidentiality in the Medicare program. In the first panel, the Committee heard from Administration witnesses from the Department of Health and Human Services as well as the General Accounting Office (GAO). The HHS witnesses stated that an interagency team has been assembled to prepare the regulations described by Health Insurance Portability and Accountability Act (HIPAA), and detailed the Health Care Financing Administration's (HCFA) efforts to improve protections for personally identifiable beneficiary information. The GAO outlined a number of weaknesses in HCFA's confidentiality practices relating to the identifiable information it keeps on Medicare beneficiaries which could lead to unauthorized individuals reading, disclosing or altering confidential information.

A second panel included medical confidentiality specialists and providers, who all argued for the need for strong federal legislation, but disagreed on the advisability of instituting a federal floor of protections or preempting state laws with a federal ceiling.

During the same week, a hearing of House Banking's Financial Institutions and Consumer Credit Subcommittee was held on the House financial services overhaul bill (H.R. 10). Provisions, added by Rep. Greg Ganske (IA), which seek to limit the sharing of medical information as affiliations develop among insurers, banks and brokerages were criticized for loopholes by officials of the American Medical Association. The Clinton administration urged that the language be stricken.

By August 21, despite several examinations of medical records confidentiality issues, Congress had not passed legislation. Because Congress failed to act by Aug. 21, under HIPAA, HHS can implement its own regulations on medical confidentiality of electronic medical records by February 2000. On October 28, the Administration began drafting its guidelines based on its authority to propose rules governing electronic records, not paper versions.

health information necessary to accomplish the intended purpose."

Action in 2000

On February 17, 2000, the Health Subcommittee of the House Ways and Means Committee held its final hearing regarding HHS's proposed regulation on medical records confidentiality. Subcommittee Chairman Bill Thomas (Bakersfield) pointed out that the only entities covered by the HHS proposed rule are health plans and clearinghouses. In addition, only electronic transmissions of medical information (not written transmissions) are covered.

The Health Subcommittee heard from a number of witnesses discussing the HHS proposal and their concerns with that proposal, primarily from the private sector including Janlori Goldman, Director of the Health Privacy Project at the Institute for Health Care Research and Policy, and Mary R. Grealy of the Healthcare Leadership Council. This issue is of considerable concern to the biomedical industry, one-third of which is housed in California. While no legislative decision on medical confidentiality has occurred, some members, including Chairman Thomas, have expressed strong interest in continuing to pursue a legislative solution in the future.

SCIENCE, RESEARCH AND DEVELOPMENT

While the state's percentage share has declined somewhat in recent years, California remains a perennial winner of federal expenditures on research and development. A study by the National Science Foundation (NSF) estimated that more than 22% of federal R&D is spent in the state. California is particularly successful in winning federal funds spent by the NSF, the National Aeronautics and Space Administration (NASA), and the federal Departments of Defense and Energy.

A \$91 billion conference report on FY2000 appropriations for the Veterans Administration, Housing and Urban Development and Independent Agencies was approved in October 1999. It rejected a previously-proposed \$1 billion cut in NASA, ultimately funding the space agency at \$13.7 billion, or \$25 million below the FY 1999 level. NASA had received a small (1.5%) increase of \$200 million from FY1998 to FY1999. NSF was funded at \$3.9 billion, an increase of \$240 million (6.5%) above the FY99 amount. Congress had boosted the NSF budget by a nearly identical amount the year before.

Fusion and NIF

California is the nation's prime recipient of federal expenditures on fusion energy research, winning as much as one-third of the nation's fusion dollars. Combined military and civilian fusion energy funding of \$270 million per year supports roughly 1,400 direct jobs in the state at companies such as General Atomics and SAIC, universities (including U.C. campuses at Berkeley, Davis, Irvine,

energy spending. The bill passed by the House Energy Appropriations Subcommittee, shepherded by Subcommittee Chairman Ron Packard (Oceanside), allocated \$250 million for the Fusion Energy Sciences program and \$476 million for Inertial Confinement Fusion (ICF) programs. Both House figures represented increases over the Administration's budget request and also over the Senate-passed FY2000 bill, which proposed only \$220 million for Fusion Energy Sciences. The House-approved fusion figure was a \$27 million increase above the FY1999 levels. Within the ICF budget, the House bill provided full funding of \$254 million for the National Ignition Facility (NIF), a high-energy laser facility currently under construction at the Lawrence Livermore National Laboratory, while the Senate bill provided only \$248 million for NIF construction.

After conference, the appropriations bill sent to the President in late September 1999 included the House's \$250 million level for fusion energy research funding. The measure's report also praised a recent report on fusion from the Secretary of Energy's Advisory Board and a comprehensive scientific plan developed by the Fusion Energy Sciences Advisory Committee (FESAC).

The conferenced bill provided \$475 million for inertial confinement fusion, which includes \$248 million for the NIF. The bill's report language directed the Secretary of Energy to "complete and certify a new cost and schedule baseline for the National Ignition Facility and submit that certification to the Committees by June 1, 2000," in order to ensure continued funding.

Action in 2000

On March 9, 2000, experts from the fusion energy sciences community visited Capitol Hill to describe activities in the field and urge ongoing and expanded federal support. They noted that this community and its federal oversight panels have agreed on long-term plans for fusion research, but there is widespread agreement that fusion is currently under-funded and that funding of at least \$300 million is required. To put this proposed level of spending in perspective, if funding were adjusted for inflation, the FY95 fusion energy sciences budget was \$400 million.

High Energy Physics and the NLC

In July 1999, the House Energy and Water Appropriations bill provided \$715 million for High Energy Physics (HEP) programs, an increase of \$19 million above 1999 levels and \$24 million above the Senate-passed level. Importantly, unlike the Senate version, the House bill did not set a \$6 million limit on research and development for the next generation linear collider. This restriction in the Senate bill would have had a significant adverse affect on Stanford's R&D team which has been working on the Next Linear Collider (NLC) for the past decade. FY 1999 NLC funding was \$17 million, so the Senate's \$6 million limit would have cut the program at the Stanford Linear Accelerator Center (SLAC) by two-thirds. The California Council on Science and Technology (CCST) recently endorsed

NASA Aircraft

California's Congressional delegation won a victory in September 1999 with the decision to test an experimental NASA flight demonstrator in part at the Dryden Flight Research Center at Edwards Air Force Base. The California delegation, led by Rep. Buck McKeon (Santa Clarita), and other California advocates had sought a reversal of a prior decision to conduct test flights in New Mexico. In April 1999, California members of Congress sent a letter to NASA Administrator Dan Goldin supporting efforts to conduct flight testing in California for the X-34, which is designed to demonstrate Reusable Launch Vehicle technologies. The Air Force had raised concerns about the testing environment in New Mexico and had sought to conduct the flights at Dryden. With the decision, some flights will take place in both California and Florida. The plane was originally budgeted for just two flights, but NASA has moved that number up to 25. In their April letter, the Californians noted "the long history of experimental aircraft testing and hypersonics research at Edwards and NASA-Dryden is the optimal environment for the X-34." According to NASA, following a series of tow tests on the ground at Dryden, the first vehicle (A-1A) will be used to conduct unpowered test flights from an aircraft carrier in New Mexico. At the same time, the contractor for X-34 will complete assembly of the second X-34, designated A-2. Its engine will be test fired on the ground in New Mexico, after which the first series of powered flight tests of the X-34 will take place at Dryden. The A-2 vehicle will then be shipped to NASA's Kennedy Space Center, FL, for a second series of flight tests, which will reach speeds of up to Mach 4.5, demonstrating rapid turnaround flight operations. Dryden and contractor Orbital Sciences Corporation will complete the remainder of the test program, which involves the third X-34 (A-3). These test flights will expand the maximum capability of speeds up to Mach 8 and altitudes up to 250,000 feet, while also testing additional reusable launch vehicle technologies as carry-on experiments.

Action in 2000

In February 2000, NASA Administrator Daniel Goldin stated that the U.S. will be ready this year to launch its own service module for the International Space Station if Russia is unable to do so. Goldin was quoted as saying that if Russia misses its July target date, NASA will finish work on its module in time for a December launch. As originally envisioned, the 42,000 pound service module would provide the early station living and sleeping quarters, life support, electrical power distribution, data processing, flight control, and propulsion. It also will provide a communications system that includes remote command capabilities from ground flight controllers. Much of the contract work on the space station takes place in California.

On April 20, 2000, the California Department of Trade and Commerce announced that the Harper Dry Lake area of San Bernardino County is California's choice to be the primary launch site in

the President in November 1999, funding for the National Institutes of Health (NIH) will rise 15% from \$15.6 billion in FY 1999 to \$17.9 billion in FY 2000. The bill delays spending \$3 billion of the NIH funding until September 29, 2000 for budget balancing purposes. It also provides \$337 million for the National Human Genome Research Institute; California research universities and private sector entities based in the state are central figures in the effort to map human genetic structures. The FY 2001 Administration Budget Request would increase funding for NIH by 14%, from \$17.8 billion in FY00 to \$18.8 billion. The majority of NIH funding is distributed as research project grants, and the President's budget suggests raising these funds from \$9.74 billion to \$10.33 billion. NIH funding for 66 biotechnology research centers would rise \$8 million to \$82.3 million, while funding at the 81 clinical medicine research centers would increase \$14 million to \$221 million. Funding for NIH research and development contracts would also rise \$100 million to \$1.2 billion, permitting funding for an additional 15 projects. One third of the nation's biomedical industry is based in California.

DEFENSE PROCUREMENT

National defense continues to be an important component of the state's economy. While the state's share of federal defense expenditures has declined significantly over the past decade, California continues to win a substantial share of DOD procurement funds.

Two-thirds of federal procurement dollars are spent by the Defense Department. From 1998 to 1999, California's share of defense procurement eroded from 16.0% to 15.2% of total DOD contract dollars spent. Total DOD contract spending in California rose by barely \$70 million from 1998 to 1999, while the nationwide figure leapt by \$6.2 billion. (After peaking at 23% in 1984, California's share of the nation's DOD contracts funding hovered around the 20% mark until 1995, after which the share dropped through the high teens.) The slight increase from 1998 to 1999 in the state's contract spending receipts did reverse what would have otherwise been a seven-year slide, but the small boost still failed even to keep pace with inflation.

Pentagon leaders have estimated that they will need roughly \$10 billion to \$15 billion per year in additional revenues above balanced budget caps to improve readiness of the nation's armed forces. Federal defense accounts have suffered after more than a decade of spending reductions. Administration officials have warmed to the idea of increased defense spending recently, after years of reluctance.

Joint Strike Fighter

The Joint Strike Fighter (JSF) would be the largest DOD project ever, totaling approximately \$750 billion. A recent study found that building the JSF in California would save the federal

Machinists Executive Secretary-Treasurer Matthew McKinnon briefed California Congressional delegation members and staff regarding the JSF program and a July 1999 study which highlighted California's advantages as a production site for the fighter. Secretary Hatamiya pointed out that the study, released in July by the State Trade and Commerce Agency and the City of Palmdale, determined that using Air Force Plant 42, the formerly classified B-2 production facility in Palmdale, would generate savings of \$2.2 billion -- the equivalent of 55 additional aircraft -- compared to alternative sites under consideration by the competing JSF contractors. Mr. McKinnon noted that California's aerospace industry had lost 220,000 jobs since the beginning of this decade's recession, and he added that 60% of the nation's defense cuts took place in the state. Also providing information at the briefings in addition to Secretary Hatamiya and Mr. McKinnon were: State Assemblyman George Runner (Lancaster); Phil Brady, Director of the Aerospace Office Inc.; and Danny Roberts, Assistant Executive Director of the City of Palmdale's Community Redevelopment Agency. Mr. Brady highlighted the technical superiority of the California site over the alternate sites, noting that the nation's stealth technology is headquartered at Plant 42, the area's workforce is skilled in handling stealth materials, specialized environmental controls and permits are in place, and a deep supplier base is available. Moreover, the workforce in California has the necessary security clearances to take over production in a turn-key fashion, whereas new security clearances can cost many thousands of dollars, take up to a full year to complete, and have an 80% failure rate. Mr. Roberts outlined the myriad incentives offered by the State and local governments to encourage production, including a specific State tax credit focused exclusively on the JSF, as well as property tax credits, a manufacturing credit, an R&D tax credit, the Antelope Valley's enterprise zone incentives, and a foreign trade zone designation. McKeon later commented that the State of California is "making the Pentagon an offer it can't refuse." Secretary Hatamiya concluded by referring to a list of aerospace suppliers in every Congressional district in the state and noting that 10,000 direct jobs and 30,000 indirect jobs are at stake in the JSF production decision.

The July 1999 study, conducted by Arlington, Virginia-based SDS International, concluded that the "tremendous economic advantages of using Air Force Plant 42 for the JSF Program are irrefutable. No other potential JSF production location can claim the availability of 'turn-key' Stealth manufacturing facilities." The report added that "California's multiple tax credits, state and local incentives, skilled resident workforce, and supplier and technical support bases are superior to any in the nation." The report urged that the U.S. "conduct a comparative market analysis of production costs and benefits at the three potential JSF production locations under consideration." In conjunction with the report's release, Governor Gray Davis wrote to Defense Secretary William Cohen strongly urging him to use the study as a template for conducting a comparative market analysis of the proposed sites.

of the House Appropriations Subcommittee on Defense to express support for the F/A-18E/F “Hornet” fighter. Led by Reps. Steve Kuykendall (Rancho Palos Verdes) and Loretta Sanchez (Anaheim), the letter expressed appreciation that the Committee provides funding for the planes, and urged that it agree to the Navy’s request for a multi-year procurement of the aircraft. The letter noted that, “while total program costs to date remain below \$5 billion, a multi-year procurement contract would save the Navy an additional \$500 million. These savings would allow the purchase of an additional 22 aircraft.” Nearly half of the F/A-18 E/F program is in California. In 1998, the Hornet program supported nearly 11,000 jobs in California at 747 companies with \$465 million in annual revenue.

MILITARY INSTALLATIONS

In 1988, the Department of Defense began shuttering military installations nationwide, doing so in four selection rounds over eight years. California suffered a disproportionate share of the nation’s base closures during the 1988, 1991, 1993 and 1995 closure rounds, shouldering 60% of the net cuts despite housing only 15% of the nation's military personnel before the closure rounds began.

Re-Use of Closed Military Bases

In July, 1999, a majority of the bipartisan California Congressional delegation, led by Reps. Jerry Lewis (Redlands) and Sam Farr (Carmel) wrote House Armed Services Committee leaders urging that DOD be allowed to transfer unused base properties to qualified local reuse authorities without cost, thereby streamlining the base closure process and moving surplus property more rapidly into productive use. Lewis and Farr testified before an Armed Services panel, and Rep. Gary Condit (Ceres) was also active on the issue.

The letter sought support for extending no-cost economic development conveyances (EDCs) to all base closure communities. Specifically, the Californians urged that, during what was then an upcoming conference, the House agree to a provision in the Senate version of the Department of Defense authorization bill that would allow DOD to transfer unused base properties to qualified local reuse authorities without cost, thereby streamlining the base closure process and moving surplus property more rapidly into productive use.

The letter noted that “California was saddled with a greatly disproportionate share of the nation’s base closures during the 1988, 1991, 1993 and 1995 base closure rounds. Current law leaves those shuttered facilities, and the closure-scarred communities that surround them, largely ineligible for no-cost conveyance” which was then reserved primarily for rural areas. (California is the second most urban state in the nation and was thus limited in its ability to employ the method.) The letter added that “No-cost conveyance would in no means be a federal giveaway.... The unused taxpayer-owned federal

not received title to any of the existing property.” Rep. Lewis described a similar situation at the George Air Force Base site, noting that estimated costs to bring infrastructure into compliance is \$110 million, and lead and asbestos disposal and abatement cost another \$17 million.

Rep. Farr represents Fort Ord, the largest military base closed in all the BRAC rounds, which covered 17,000 acres and supported 20,000 troops. Testifying in support of no-cost EDCs at the July 1999 hearing, Farr commented that “the American taxpayer has already paid for those bases. They paid for them once in forfeiting the land and its potential for development so the base could be sited there. They paid for them again to develop the infrastructure within the base (infrastructure which would later turn out to be useless because it never is built to local building codes). They pay for them a third time when they pick up the cost of toxic and hazardous waste cleanup, water decontamination and unexploded ordinance removal. Then, after all that, the military asks the taxpayer to pay for this land *again* just so they can have it back and use their own money to redevelop it.” In response to a question about whether DOD should not try to squeeze revenue from the value of base properties, Rep. Farr suggested that DOD might retain an equity interest in the property via provisions of a conveyance agreement. For example, Farr suggested, if the property becomes or houses a money-making venture in the future, the federal government could reap a percentage of the profit.

Also testifying at the hearing was Deputy Undersecretary of Defense for Installations Randall Yim, who expressed the Administration’s strong support for the no-cost EDC provision and noted that the base closure process resulted in \$3 billion in savings for 1998 alone and will save \$5.7 billion annually, greatly overshadowing the revenues generated through sale and leases of military property, approximately \$244 million in receipts so far and a similar amount (in net present value) to be paid over the next 40 years. David Warren and Barry Holman of the General Accounting Office testified that DOD would lose revenues, and some previously negotiated agreements could be re-opened. They estimated a maximum of \$218 million would be foregone between 2000 and 2043, though they noted that various cost savings would be realized as well, thereby counterbalancing losses. Michael Houlemard, Jr., Executive Officer of the Fort Ord Reuse Authority, testified that “the cost and investment required to redevelop the Fort Ord Military Installation substantially outweighed (or at least reduced) the perceived underlying value of the property.... We estimate that it will cost approximately \$500 million just to redevelop the infrastructure of the Installation.”

Ultimately, Congress agreed with the Californians and a no-cost conveyance provision was incorporated in a year-end legislative package.

Action in 2000

The effort bore fruit on April 13, 2000, when the federal government agreed to transfer 600 acres of property at Norton Air Force Base without cost to the Inland Valley Development Agency. In

discussed compromises. Sen. James Inhofe (OK), a leading opponent of base closures, and Secretary Cohen, a closure advocate, discussed limiting the scope of base closure rounds in order to narrow the field of potentially threatened facilities. Under the prior base closure process, every base was considered fair game for shutdown. Cohen and Inhofe discussed limiting closure prospects to those types of bases for which there is a significant overabundance, thereby reducing concern at other facilities.

While it had been feared that these developments could have increased the likelihood of another round of closures, and several bills in the Senate would have authorized new rounds of base closings in 2001 and 2003, no closure rounds were ultimately scheduled.

During consideration of 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 (AZ) 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.

It is considered unlikely that additional closure rounds will be authorized during the remainder of the 106th Congress.

ENERGY

Electric Utility Restructuring

Several committees considered the issue of electricity deregulation during the 106th Congress, and several bills were introduced. Action on the issue has continued in the spring of 2000.

Slightly more than three years ago, the California Congressional delegation sent the first of what would become an impressive series of letters signed by the entire 52-member House delegation. That letter dealt with the restructuring of the electric utility industry and the desire to allow landmark legislation passed by the California State Legislature, AB 1890, to proceed without federal interference.

On April 26, 1999, all new California delegation members elected since that letter was sent -- Steve Kuykendall (Rancho Palos Verdes), Gary Miller (Diamond Bar), Barbara Lee (Oakland), Lois Capps (Santa Barbara), Mike Thompson (St. Helena), Grace Napolitano (Norwalk), Doug Ose (Sacramento) and Mary Bono (Palm Springs) -- signed a letter to House Commerce Committee Chairman Tom Bliley (VA) to add their voices to their colleagues' who had written to Bliley two years before. The letter informed the Chairman that the implementation of the state electricity restructuring law has been a success and urged that "any federal legislation that might be developed must recognize

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.

Then, the Senate Energy and Natural Resources Committee met on June 29 for the first of two hearings to discuss federal legislative proposals to restructure the electricity industry. The Committee heard from witnesses including Senator Charles Schumer (NY) and Energy Secretary Bill Richardson. Chairman Frank Murkowski (AK) indicated that federal legislation should make energy cheaper and more reliable, deregulate as broadly as possible so more retail competition will occur, and eliminate Public Utility Holding Company Act (PUHCA) and PURPA. Secretary Richardson announced the Administration's Comprehensive Electricity Competition Act, which would motivate competition and enable states that have already enacted deregulation to reach their potential by ensuring the reliability of the interstate power grid.

Three similar hearings occurred on the House side in July and October 1999. The Subcommittee on Energy and Power of the House Committee on Commerce held a hearing on July 15 with testimony from individuals representing various companies in the private sector with products, inventions and approaches which might afford the possibility of decreasing the overall cost of electricity to consumers. One innovation, outlined by Gary Mittleman of Plug Power, would produce electricity through an electrochemical process, thereby lowering costs of electricity and also "contribute to the abatement of environmental effects from combustion-based power generation by reducing emissions to near zero."

The House Judiciary Committee held another hearing on competitive issues in electricity deregulation on July 28. In addition to several Administration and private witnesses, the Committee also heard from Kellan Fluckiger, Vice President for Operations of the California Independent System Operator (ISO) who testified as to the benefits of ISOs and their role in the operating the high voltage power lines that deliver electricity throughout California and between neighboring states, Mexico, and British Columbia.

The House Committee on Commerce held two days of hearings on October 5 and 6 to examine H.R. 2944, authored by Rep. Joe Barton (Texas), which is designed to deregulate electricity markets without disrupting reliable sources of electricity for consumers. A third day of hearings on October 7 discussed the repeal of PUHCA. Witnesses in attendance at the electricity deregulation hearing included Vicky A. Bailey, Commissioner of the Federal Energy Regulatory Commission who supported the measure with some concerns. T.J. Glauthier, Deputy Secretary for the U.S. Department of Energy, stated that while the Clinton Administration supports a comprehensive restructuring of electricity, a lack of federal action has already led to confusion, uncertainty, and unreliability in states

by voice vote. No further action was taken on H.R. 2944 in 1999.

Action in 2000

On April 11 and 13, the Senate Energy and Natural Resources Committee held a hearing regarding several bills relating to electricity competition. In light of the fact that all states are moving towards electricity restructuring programs of some sort, the bills before the committee discussed the role that the federal government should play in retailer competition. Throughout the week, 14 witnesses testified.

Secretary of Energy Bill Richardson discussed his recommendations on how the federal government may be able to help promote competition without being overly market intrusive. The Department of Energy received recommendations from the Power Outage Study Team (POST) which studied the transition from state control to open competition and its affects on reliability. Secretary Richardson argued in for comprehensive legislation to improve efficiency and effectiveness of the interstate transmission system; promote regional transmissions organizations; prevent abuse of market power; establish mandatory bulk power reliability standards; ensure that renewable energy and other public benefits are not left behind; and remove Federal impediments to the development of competitive wholesale and retail electric markets. The Administration's legislation, S. 1047, he argued, would repeal the Public Utility Hold Company Act (PUHCA) and the Public Utilities Regulatory Policy Act (PURPA), and at a different rate than some of the bills examined at the hearing.

TRANSPORTATION

Transit Equity Provision

On May 27, the Senate Transportation Appropriations Subcommittee included a “transit equity provision” in its \$49 billion version of the fiscal year 2000 transportation appropriations bill (passed by a vote of 27-1). This provision placed 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. Transit is a need-based program, and under TEA-21, transit funding goes to states that have the most invested in transit and which have the most need.

The following day, Governor Gray Davis and Senator Barbara Boxer sent letters voicing their objections to the provision, arguing that California would lose \$120 million in transit funds in FY 2000, or \$468 million over the four remaining years of TEA-21. Sen. Boxer noted 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. She noted that the provision would affect only 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

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. San Francisco Mayor Willie Brown also secured nationwide opposition to the provision from the U.S. Conference of Mayors.

By the first week in July, letters to Sens. Phil Gramm (TX) and Paul Sarbanes (MD), Chair and Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs, were sent from a number of national organizations, including The Surface Transportation Policy Project, National League of Cities, National Association of Counties, and United States Conference of Mayors. Further, letters to key U.S. Senators were sent by California State legislative leaders, including State Senate President Pro Tempore John Burton, Assembly Speaker Antonio Villaraigosa, State Senate Transportation Committee Chair Betty Karnette, and State Assembly Transportation Committee Chair Tom Torlakson.

Due to the overwhelming opposition to the provision, in early September 1999, Sen. Shelby agreed to delete the provision from the bill.

Action in 2000

On April 6, Governor Davis announced his transportation initiative to decrease traffic congestion and increase the speed of transportation of goods and people. The initiative aims at leveraging other federal, state and local transportation funds including the state and regional share for the State Transportation Improvement Plans (STIP). Specifically, the plan calls for \$2.8 billion in state budget surplus funds and \$2.2 billion in bonds which are subject to voter approval. Under Davis's initiative, \$10 billion in federal and local funds would be used to match state funds. Most of the state's money, \$4.5 billion, would be used towards construction projects. The initiative will fund close to 100 high-priority transportation projects.

AGRICULTURE

Pierce's Disease

To date, Pierce's Disease, carried by the Glassy-winged Sharpshooter (GWSS), has caused over \$46 million in damages to Napa, Sonoma, and Mendocino Counties. A 1997-2000 survey predicts \$50 million in damages to California. Due to the unlimited flight range of the Sharpshooter, the disease has already spread to the Central Valley, southern California (\$12 million in damage) and the coastal regions. The pest, which originated in the Gulf Coast, attacks 73 plant species and kills a plant by

\$2 million of next year's budget towards the fight against Pierce's Disease. The letter, circulated by co-chairman of the Congressional Wine Caucus Rep. Mike Thompson, hopes to control the disease, which has destroyed vineyards in southern California and is spreading to vines in the state's Central Valley, the coastal regions, and Northern California. Senator Boxer sent a similar letter to OMB requesting \$2 million for the fight against Pierce's Disease.

Partially as a result of the efforts of Reps. Mike Thompson, Ken Calvert, Richard Pombo (Tracy) and others, the U.S. Department of Agriculture (USDA) drew upon the APHIS contingency fund to fight the disease, in addition to the provision of \$100,000 from the Agriculture Research Service fund. Another \$360,000 from the USDA contingency fund was provided to apply pesticides on two occasions to Temecula. At the local level, California has made available \$750,000 towards the fight against Pierce's Disease.

Moreover the Administration's FY2001 Budget Request (February 7, 2000) calls for total APHIS budget authority of \$517 million with obligations of \$627 million including: \$352 million for pests and disease exclusion; \$88 million for animal and plant health monitoring; \$104 for pests and disease management programs. The Administration also proposes a total of \$2.2 billion towards the Agricultural Research Service (ARS), used for research on animal science to develop methods of controlling diseases, parasites, and insect pests. California's share of the funds has yet to be determined.

Then on February 22, the House Agriculture's Subcommittee on Livestock and Horticulture met at St. Supery Vineyards and Winery in Rutherford. Chaired by Rep. Richard Pombo, the Committee evaluated federal, state, and local efforts to fight the disease. The panel heard testimony from California researchers, industry leaders and government officials.

Attending the hearing, in addition to Rep. Richard Pombo were Reps. Ken Calvert, Mike Thompson, and George Radanovich (Mariposa). By unanimous consent, Chairman Pombo included Rep. Lynn Woolsey (Petaluma) as a member of the panel for the purposes of the field hearing. Rep. Thompson, in whose district the event was held, commented that the GWSS represents "the most serious threat ever to California viticulture." Rep. Calvert noted that at the turn of the century, Pierce's Disease was called Anaheim Disease, because there was once a thriving 50,000 - 60,000 acre wine grape industry in Anaheim, California. The industry was wiped out by the disease. He highlighted the spreading fear that the same may already be happening in the hard-hit Temecula region, which he represents, and could also devastate the entire state's industry.

One of the witnesses, John DeLuca, President of the Wine Institute spoke extensively about a recent report established by the University of California's Pierce's Disease Research and Emergency Response Task Force recommending the implementation of a statewide research, containment,

Florida.

Then on March 23, Governor Davis announced his endorsement of SB 671, a state bill seeking \$14 million over two years for the "eradication and prevention of Pierce's Disease." Jointly authored by Senator Wesley Chesboro (Arcata) and Assemblyman Dennis Cardoza (City of Industry), the legislation would require an industry match of 25 percent for research funds and a dollar for dollar match by the federal government.

Pest Research

In related news, on October 27, 1999 the House Committee on International Relations's International and Economic Policy and Trade Subcommittee discussed agricultural diseases and their impact on U.S. trade. Outbreaks of the Mediterranean fruit fly, Newcastle disease and Pierce's Disease threaten to devastate the industry. Last year, California alone suffered 26 separate exotic and destructive fruit fly infestations. Extensive quarantines and expensive pest eradication efforts are now becoming more prevalent in the industry

In attendance at the hearing, Rep. George Radanovich (Mariposa) testified in support of equitable and mutually beneficial international trade. He stressed the need for more reciprocity between the United States and Argentina trade policies concerning fresh citrus fruit. Rep. Radanovich also urged support of the FY2000 Agricultural Appropriations measure, which asks the Animal and Plant Health Inspection Service to use contingency funds towards the multi-million dollar devastation in Napa, Sonoma, and Mendocino counties due to Pierce's Disease.

Citrus Freeze

In January 1999, a federal emergency was declared in four California counties, and a separate delegation letter, signed by 35 Californians was sent to Agriculture Secretary Glickman concerning the loss of \$656 million in agricultural capital due to the citrus freeze in December of 1998. The letter requested 1998 disaster appropriations for citrus farmers affected by the freeze. On March 3, Governor Gray Davis declared a state of emergency in Ventura County, where farmers and agricultural workers were still recovering from the December freeze. The declaration made emergency loans available to farmers in that area, in addition to the aid that Central Valley workers and farmers received on four separate occasions. Other state efforts included the passage of SB 1303 by Sen. Hilda Solis (El Monte) and AB 542 by Asm. Sarah Reyes (Fresno). SB 1303 helps farm workers living on a combination of unemployment benefits and part-time work as a result of the freeze by allowing them to earn up to \$200 a week without losing any unemployment benefits. AB 542 would allow \$1.867 million in federal funds to be distributed to nonprofit community groups to hire displaced workers

Almonds

In September, due to plummeting almond prices from \$1.85 per pound (1998) to as little as \$.74 per pound (1999), the Almond Board of California requested that the Department of Agriculture purchase 40-50 million pounds to help lessen the enormous surplus of almonds.

Tobacco

In May 1999, the dispute over tobacco settlement funds was settled as Congress sent a Supplemental Appropriations measure to the White House, including a provision that the federal government would not share in funding won by states in the settlement with the tobacco industry. 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.

Avocados

Named as the Hass Avocado Promotion Research and Information Act of 1999, H.R. 2962, co-authored by Reps. Ken Calvert (Corona) and Gary Condit (Ceres) was reported by out of the House Agriculture's Livestock and Horticulture Subcommittee by voice vote on April 13, 2000. The Act addresses concerns over the increasing number of imported avocados and California's responsibility as the only party that has to pay for assessments.

OTHER IMPORTANT ISSUES

Methamphetamine Lab Proliferation

The 106th Congress made strides against the rise of methamphetamine labs across the United States, particularly in California. A unified, bipartisan California Congressional delegation worked throughout the year to fund the meth cleanup process.

July 1999 saw the introduction of the Hatch-Feinstein Methamphetamine Anti-Proliferation Act of 1999 which would, among other elements, increase penalties for dealing in amphetamine, require criminals to pay lab cleanup costs, prohibit distribution of drug-making information, including Internet transmissions, and authorize funding for 50 new Drug Enforcement Administration (DEA) positions to focus on meth. Additionally, on July 28, the Senate Judiciary Committee met on the methamphetamine proliferation in the United States. Donnie R. Marshall, Acting Administrator of the DEA, Paul Warner, United States Attorney in Salt Lake City, UT, and Katina Kypridakas, Manager, Precursor Compliance Unit of the California Bureau of Narcotics Enforcement in Sacramento were among those testifying. Ms. Kypridakas provided a history of methamphetamine in California, the current status of the production and distribution of the drug, the exceptional violence associated with meth usage, including

Then on August 5, the Senate Judiciary Committee passed Senator John Ashcroft's (MO) S. 486 the "Methamphetamine Anti-Proliferation Act of 1999." Similar to the Hatch-Feinstein bill, the measure increases funding authorizations for law enforcement to prevent the spread of amphetamine and methamphetamine manufacturing (\$30 million for DEA through 2004 for deployment, training and assistance to agents and \$25 million for law enforcement in high-intensity trafficking regions), prohibits posting instructions for making illegal drugs and advertising illegal drug paraphernalia on the Internet, and imposes stiff penalties for manufacturing amphetamine or methamphetamine when it causes a risk of harm to human life or the environment. The bill also authorizes \$25 million per year for illegal drug prevention programs, research, and treatment.

While no further action was taken on these bills, in November, the Commerce-Justice-State portion of the FY 2000 Omnibus Appropriations bill included \$18.2 million to continue a California program to shut down methamphetamine labs. The program has allowed the Bureau of Narcotics Enforcement to hire 81 meth enforcement officers, and has increased the number of meth labs that have been shut down to 1,600 statewide.

Action in 2000

On April 12, Rep. Ken Calvert (Corona) introduced the Working and Reacting Against Methamphetamine Act of 2000 – WAR Against Meth. The bill aims at tougher penalties for methamphetamine producers and would help police to better locate and shut down meth labs. WAR Against Meth has received 64 co-sponsors, so far, with a bipartisan group of 27 California Members signing on.

Ninth Circuit Court of Appeals

In December 1998 the Commission On Structural Alternatives for the Federal Courts of Appeals (also known as the White Commission) presented its final report to the President and Congress recommending that the U.S. Court of Appeals for the Ninth Circuit itself remain intact as an administrative entity, but that Congress should restructure it into smaller, regionally based adjudicative divisions to decide appeals from within each region. Regional divisions are recommended to have from seven to eleven active circuit judges, with a majority residing in the division. Divisions should perform an *en banc* function, and the circuit wide *en banc* process should be abolished. A "Circuit Division" with 13 judges from all the divisions would resolve conflicts between regional divisions. The Commission also made suggestions about the circuits and courts of appeals in general, recommending against circuit-splitting, proposing authorization of courts with more than 15 judgeships to restructure into adjudicative divisions, and emphasizing the need for restructuring when courts reach 18 to 20 judgeships.

The House heard testimony from Senator Feinstein and Rep. Tom Campbell (Campbell), and both received testimony from Senators Jon Kyl(AZ), Frank Murkowski (AK), Harry Reid (NV), and Slade Gorton(WA). The Committees also heard from judges including Procter Hug, Jr., Chief Judge of the Ninth Circuit as well as Circuit Judges Rymer (a member of the Commission), O'Scannlain and Senior Judge Wiggins, Senior Judge of the Ninth Circuit. Assistant Attorney General Eleanor Acheson, Ronald Olson of Munger, Tolles & Olson LLP and other legal professionals also testified.

There remain ongoing differences of opinion between parties about several aspects of the historically contentious debate that break into three main positions: following the recommendations of the Commission; completely splitting the 9th Circuit and creating a 12th Circuit; or continuing with the status quo with some administrative changes. Sen. Murkowski argued that the size of the Circuit, its case load and reversal rate by the Supreme Court demand reform such as outlined in his bill, whereas Rep. Campbell argued for more data to be gathered before a decision of the need for reform can be known, citing especially the need to compare the reversal rate with the *certiorari* rate. If the Circuit is sub-divided, divergence of opinion remains on whether California should be split into two of the divisions or remain as its own. Sen. Murkowski said that what matters is not what is good for California, but what is good for the people of the 9th circuit, though he also said he would be willing to consider leaving California as a division all to itself. Senator Feinstein has said that she will continue to do everything she can to prevent the division of the state of California. Ranking House Subcommittee member Howard Berman (Valley Village) said that he continues to oppose the proposals to split or reorganize the Ninth Circuit while he remains ready to entertain innovations such as *en banc* reforms, including those in Senator Feinstein's bill.

Governor Davis, and Governor Wilson before him, have both been strong opponents of the strategy proposed in S. 253 to divide California into two of the three sub-divisions. In a July 7, 1999 letter to Senator Feinstein, Governor Davis urged her to reject S. 253 because it creates a separation between Northern and Southern California and because splitting California would likely "result in inconsistent federal rulings on important California laws... [and] as a result businesses operating in California would be subject to conflicting state laws, making it more costly to do business in California."

No further action was taken on the recommendations in 1999.

Institute Products and Services

ADVISORY BOARD MEMBER BREAKFASTS

During the 106th Congress, the Institute has continued its popular breakfast series with members of the California congressional delegation. For these events, the Institute invites its Washington-based Advisory Board representatives to attend a breakfast at which one or two members of the delegation brief the attendees on federal issues of importance to California. Since its inception, over 20 members of the House, as well as both Senators have been guests of the Institute. Recent speakers included Rep. Chris Cox, making his second appearance before the Institute's Advisory Board, and Reps. Howard Berman and Ellen Tauscher speaking for the first time. The breakfast with Rep. Cox was sponsored by State Farm Insurance; Rep. Berman's event was hosted by Advanced Micro Devices, Inc., and the breakfast with Rep. Tauscher was sponsored by PG&E. Guests to date have included Reps. Jerry Lewis, Vic Fazio, David Dreier, Brian Bilbray, Anna Eshoo, Howard Berman, Ellen Tauscher, Gary Condit, Tom Campbell, Bob Filner, Zoe Lofgren, James Rogan, Chris Cox, Bob Matsui, George Radanovich, Calvin Dooley, Mary Bono, Nancy Pelosi, Sam Farr, Buck McKeon, and Sens. Dianne Feinstein and Barbara Boxer.

The breakfasts provide an excellent forum for the members and the Institute's supporters to exchange information and views on federal policy issues under consideration by the Congress. The member breakfasts have been a great success and are strongly supported by our contributors.

BRIEFINGS

The Institute has participated in a number of briefings for the state's Congressional delegation during the 106th Congress. The briefings provide the members with up-to-the minute information on legislative topics, as well as other policy matters. In addition to briefings that it sponsors outright, the Institute also helps inform delegation members, the news media, and colleagues about other briefings of interest. Over the last several months, the Institute has organized briefings on the following subjects.

1. Population Shifts

On February 26, 1999 California State Demographer Linda Gage and California Institute Executive Director Tim Ransdell briefed California Congressional delegation staff regarding the state's changing population and how those changes may impact federal funding distributed through formula grant programs. The briefing was jointly sponsored by the Institute and the Population Resource

2. Welfare Transition

On April 13, 1999, the Public Policy Institute of California (PPIC) held a briefing for California Delegation staff members on a recent study it conducted on job prospects for welfare recipients. PPIC found that many welfare recipients lack the basic skills needed to succeed in the labor markets, and that job prospects are not promising. Sharp reductions in caseloads have led many to pronounce welfare reform a success, but can it last is the question. The report estimates that 40 percent of California's welfare recipients face an uphill battle finding work, and those who do find work may not earn enough to pull themselves out of poverty. This number is twice what the state can exempt from time limits under welfare legislation passed in 1996, raising concerns about the long-term success of reform efforts in California.

The study, authored by demographer Hans Johnson and research associate Sonya Tafoya, reveals that many people receiving assistance in California lack basic skills. Johnson and Tafoya found that almost 80 percent of welfare recipients have either low or very low basic skills, compared to 34 percent of full-time workers in the state in the Adult Literacy Study. And California faces a greater challenge than most other states: the basic skills of welfare recipients are lower than those in the rest of the nation, and the skills gap between workers and welfare recipients is greater than in the rest of the nation. The report also looked at whether lack of education is the problem. In the past, researchers and policymakers have used years of education as a proxy for skills and employability because they had little data on the basic skills of welfare recipients. However, the study found that welfare recipients with the same levels of education as other adults tend to have substantially lower basic skills. Indeed, less than half of the difference in basic skills scores between welfare recipients and other adults can be attributed to lower educational attainment. To assess the potential employment outcomes of welfare recipients, the authors compared them to a group of adults with similar basic skills and demographic characteristics who were not receiving assistance. They found that a majority (58 percent) of these welfare "counterparts" were working, but 23 percent were employed only part-time or semi-permanently. And, almost 40 percent were not employed at all. And when the counterparts did find work, their earnings were meager -- \$12,400 per year.

3. Medical Privacy and Medical Research

On April 20, 1999, in conjunction with the California Health Care Foundation (CHCF), the California Institute co-sponsored an overview and discussion of medical privacy and confidentiality and the need to balance those important concerns with the equally important needs of medical research. Mark Smith, President and CEO of the CHCF, described the Foundation, its work in the field, an overview of the federal policy issues related to medical privacy, and stakeholder perspectives. Mr.

Regarding authorization, an important issue is whether patient authorization should be omitted when data is non-identifying, i.e. does not indicate the identity of the patient. Further, the need for authorization may be less for retrospective or observational research than for ongoing clinical trials.

4. Commercial Space

The California Space Technology Alliance and the California Spaceport Authority briefed California Congressional delegation members and staff the week of April 29 regarding their activities and the commercial space industry in California generally, and hosted a reception as well. At the briefing, 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, and research.

5. Housing

The California Housing Finance Agency (CHFA) held a briefing for Congressional staff on April 30, 1999 regarding the state's shortage of affordable housing units. The briefing, cosponsored by the California Institute, began with comments from CHFA Executive Director Theresa Parker, and consisted of a presentation by Dick Schermerhorn, CHFA Director of Programs. Mr. Schermerhorn explained the causal factors of the current situation, an explanation of how this current housing shortage differs from those in the past, and projections of the housing supply for the upcoming decades. Demand for housing in California is up - California contains 12 percent of the U.S. population and is expected to grow by an additional 6 million people over the current 33 million in the next decade. Rate of production of housing is down: while in the late 1980s Californians built one new house for every 1.6 new workers, since 1995 the ratio is one new house for every 5.4 new workers. California contains 11 of the top 25 least affordable metro areas in the US, and the home ownership rate is 47th of the 50 states. Preservation of current public housing units is also a major challenge because many Section 8 project based subsidy contracts are expiring and building owners are choosing not to renew, but instead take units into the competitive rental market. Federal subsidies are ending or coming up for renewal for more than 100,000 units in California this year.

6. K-12 Education

impact on the California teachers' and other state and local employees' future retirement benefits if Social Security coverage were mandated. California is one of only seven states whose public employees are largely outside the system.

7. Next Generation Internet

In July 1999, representatives from the Corporation for Education Network Initiatives in California (CENIC) briefed 35 California Congressional delegation staff members regarding their efforts to build a high-bandwidth successor to the current Internet, and demonstrated an application that could be accessed remotely, but only over such a high-speed link. At the briefing, researchers from UCLA demonstrated the Urban Simulation Laboratory, an interactive exploration of Los Angeles. The presenters showed how one can use the system to fly (or drive) through various neighborhoods, inspect realistic architectural models of buildings, make queries about aspects of the buildings, etc. The system has a number of uses in urban planning, including aiding in the rebuilding of earthquake, fire, riot and flood damaged areas of Los Angeles. It is generally useful in education, emergency response, health care delivery, and environmental research. CENIC is developing and implementing CalREN-2, one of the nation's most advanced computing and communications network infrastructures to advance research and education. CalREN-2 is California's segment of the national Internet2 initiative that links over 100 of the nation's leading universities. CalREN-2 is partially funded by the National Science Foundation, with cost sharing from university and industry partners. CENIC is a not-for-profit corporation formed by the California Institute of Technology, the California State University, Stanford University, the University of California, and the University of Southern California to advance the use of communications technology in research and education at California's universities. Industrial partners include Cisco Systems, IBM, Pacific Bell, and Sun Microsystems.

8. Demographic Changes

On April 13, 2000, the California Institute and the Population Resource Center co-sponsored a briefing entitled "America's Demography in the New Century: Aging Baby Boomers and New Immigrants as Major Players." The Briefing featured an introduction by former California Representative Anthony Beilenson and remarks by Dr. William H. Frey, Senior Fellow of Demographic Studies at the Milken Institute in Santa Monica.

Much demographic research has looked at two major population trends facing the nation -- the aging of the baby boom generation and the influx of new immigrants. Some have concluded that the nation will either be a "Nation of Floridas" (with all states having increased elderly populations) or a "Nation of Californias" (with all states broadening in ethnic and cultural diversity).

consumer items" to its neighboring Western states. He highlighted significant consumer business implications of the shifts, noting "one of the most under-appreciated market segments," is the Hispanic community, which he calls the fastest growing market in absolute numbers and one of the most profitable because they "spend more on food, utilities and shelter, even after adjusting for income and family size."

Frey also cited the difference between the aging "yuppie" boomers with greater education, and those who come from backgrounds of divorce, broken families and less stable employment. California's younger elderly, made up of Hispanic and Asian immigrants with higher fertility rates, will lead to higher levels of dependency, government support and bigger schools. Diversity among the elderly, Frey predicts should make "mass marketed retiree products less attractive to seniors in decades ahead." The report notes that targeted politics and specific social programs will need to replace broad programs in an effort to address the needs of all people in the ensuing demographic divide.

CALIFORNIA CAPITOL HILL BULLETIN

Since 1994, the Institute has prepared a weekly report of current activity on Capitol Hill which directly impacts our state. The *California Capitol Hill Bulletin* is published weekly during sessions of Congress, and occasionally during other periods. Over the last two years, the Institute's staff has significantly increased the coverage and quality of reporting in the *Bulletin*.

We view the *Bulletin* as an opportunity to learn, translate and relay California's federal priorities within the California-Washington community. The Institute welcomes suggestions on input. The *Bulletin* is faxed to roughly 700 recipients, and more than 1,300 readers receive it by electronic mail.

SUPPORT FOR BIPARTISAN ACTIVITIES

From time to time the Institute is called upon to support bipartisan efforts by the California Congressional delegation and others. The Institute provided considerable resource material to the organizers of the 1999 and 2000 State legislative visits to Washington D.C., and worked with the organizers and members of Congress to coordinate subject matter agendas.

State Legislative Visit 1999

In May, 1999, California Congressional members met in various roundtable discussion sessions with members of the California State Legislature. In a roundtable on education, key issues included Title I Education Funding, gaining equity for California through funding formulas, an update on the mandated Social Security coverage for school district and local government employees, and

extended discussion on the necessity of more water storage in California. California has been receiving more than its share of Colorado River water, and roundtable participants discussed potential solutions to this situation. An electric restructuring discussion revealed a general sense from participants that the California restructuring, while not problem-free, was generally going well, and a concern that federal regulation allow California choices to be respected. Park funding mechanisms were also discussed, and a \$800 million-\$1 billion dollar park bond was reported as likely to be on the California 2000 ballot.

During a transportation event, the delegation members and legislators discussed the need for California goods movement infrastructure, airports and ports, and funding under the Transportation Equity Act for the 21st Century (TEA-21). Within the discussion of TEA-21, Members discussed the need for flexibility of funding. TEA-21 “corridors of national significance” were discussed, and found to be mainly north-south interstates that don’t currently carry the majority of goods flow. Members discussed how to work with other neighboring states along west-east routes to increase the recognition of these routes as nationally significant.

During a roundtable on automated child support systems, California’s historical approach to child support enforcement, recent efforts to unsuccessfully create a centralized system, and resulting fines were detailed. Implementation plans and hurdles within the state were also discussed, as were interactions between the State and Federal Administrations.

The legislators also discussed policy issues and problems affecting the implementation of the Workforce Investment Act; how much flexibility is available to reconcile policy differences and priorities; and the working relationship in implementing federal accountability standards between the federal government and states such as California, where there has already been movement in the direction of requiring accountability.

Three primary topic areas during a technology-focused roundtable were taxes, Year 2000 liability, and encryption. Participants detailed the R&D tax credit, 3-year semiconductor equipment depreciation, employer-assisted graduate education exclusion (section 127), and Internet taxes and discussed federal legislation to impose a tax moratorium while the Internet Tax Commission studies the issue of whether and how to tax Internet commerce.

State Legislative Visit 2000

When a bipartisan cross-section of the California State Legislature made their annual visit to Washington in March, 2000, the California Institute provided background research assistance to the organizers of the trip. In meetings with the Administration and members of the California Congressional Delegation, the State Legislators pressed the case for the state’s share of federal funding as well as fair treatment by the federal government. The trip was led by Assembly Speaker-elect

avoiding a hasty move by the Federal Emergency Management Agency to require disaster insurance for public buildings. Rep. Jerry Lewis, chair of the California House Republicans, spoke about the pending supplemental appropriations measure, the federal role in supporting education, and the importance of encouraging that the Joint Strike Fighter (JSF) aircraft be at least partly built in California. Both Reps. Farr and Lewis noted the ongoing collaboration between the Congressional delegation and Governor Gray Davis to seek funding equity for the state. Senator Dianne Feinstein noted the state's formula funding needs, focusing in part on efforts to repair "hold harmless" language imposed by opportunistic Congressional members from other states and which unreasonably reduces California's share of funds from the Title I education for the disadvantaged program. Feinstein also discussed exotic pest quarantines, the closure of hospitals due to reduced provider payments, restoration of Lake Tahoe, privacy issues, and the elimination of MTBE as a gasoline additive. Speaker-elect Hertzberg noted the state's shortfall in federal receipts, and Senator Costa and Rep. Farr noted the growing consensus that infestations of exotic species are becoming a problem for the state's vast agricultural industry, as evidenced by the fear that an imported pest may spread deadly Pierce's Disease widely throughout the state's wine growing regions.

At various points during their three-day stay, the legislators heard from several executive and congressional officials on a range of issues:

- **Census** - At a session convened by Speaker-elect Hertzberg, legislators discussed progress on census counting efforts with Robert Shapiro, Undersecretary for Economic Affairs at the Department of Commerce, which houses the Census Bureau. The discussion focused on efforts to increase the participation of California in the 2000 census and maximize the returns of census forms. Shapiro noted various outreach methods being employed by the Bureau, and he expressed his thanks to the State for its supplementary support to encourage participation. An additional focus was on the use of census data to distribute federal formula dollars, and both Hertzberg and Shapiro noted a recent report from PriceWaterhouse Coopers stating that California could lose \$5 billion during the upcoming decade in federal funding if undercounting is left uncorrected in the 2000 census.

- **FEMA Disaster Insurance Rule** - Lacy Suitor and Curtis Carleton of FEMA addressed the legislators, and Mr. Suitor briefed the group on the Advanced Notice of Proposed Rulemaking on Public Assistance Insurance, which will require all public buildings to carry some insurance against natural disasters, such as earthquakes. While stating that FEMA will consider carefully the comments received from California officials, Mr. Suitor stressed that FEMA does intend to pursue a final rule on this issue.

- **Electronic Commerce** - During a workshop on Electronic Commerce, Neil Osten of the NCSL stated that although he did not believe that Congress would take any action this year on the issue

highway laws should already be encouraging collaboration. Senator Karnette, Assemblywoman Virginia Strom-Martin and Speaker-elect Hertzberg raised the issue of streamlining the permitting processes, and several members focused on funding for airport modernization and development.

- Child Support - The State Legislators discussed child support enforcement penalties, mandates and funding at a child support enforcement roundtable. Assemblywoman Dion Aroner (Berkeley) presided over the discussion, which included presenter Judge David Ross, Commissioner, Office of Child Support Enforcement, U.S. Department of Health and Human Services (HHS). Judge Ross outlined HHS priorities for the year 2000. First, he would like a deduction of undistributed collections, and second, he wants to improve the Interstate Collection System. Judge Ross described his third priority as helping California improve its system. He complimented California on its strategic plan and mentioned that California has received a \$20 million federal funds bonus for reducing its pregnancy rate. Judge Ross also answered an important question explaining different funding streams that could be made available to California, such as special improvement grants.

- Education - The legislators heard comments by, and engaged in a discussion with, two key California Congressional members on education issues: Rep. Buck McKeon (Santa Clarita) and George Miller (Martinez). Chairman McKeon gave a status report regarding various education issues facing Congress this year, including the reauthorization of the Elementary and Secondary Education Act, which recently passed the House and is pending in the Senate. Rep. Miller focused on accountability and testing provisions included in some of the bills. Also discussed were the education for the disabled issue, particularly the fact that the federal government is providing a far smaller share of the funds, and the need to attract and encourage quality candidates to the teaching profession.

- Health Care - Congressman Henry Waxman (Los Angeles) spoke about pertinent federal issues. Topics included health care for the uninsured, Medicare prescription drug benefits, managed care reform, and medical records privacy. Assemblymember Martin Gallegos (Merced) opened the discussion by describing last session's actions at the state level, including greater flexibility in the maintenance need income level, Medicare prescription benefits, and the state's work on medical records confidentiality. Rep. Waxman expects that in 2000 the patients' bill of rights and medical privacy issues will have a fair chance of passing. Rep. Waxman further expressed his concern over the lack of action on the state level to use money secured by Congress for enhancement of CHIP.

Also during March 2000 more than 50 California County officials, including the leaders of the California State Association of Counties (CSAC) visited Washington, meeting with key congressional aides to discuss federal priorities, such as Title XX (the Social Services Block Grant), the State Criminal Alien Assistance Program (SCAAP), the Local Law Enforcement Block Grant, and other county-related issues. The CSAC contingent met with Rep. Wally Herger (Marysville) with regard to

average FEMA spends \$2.5 billion annually in federal assistance for disasters, and state and local governments must now begin to pay some portion of that cost through public building insurance.

OTHER EVENTS AND PRODUCTS

The Institute sponsors, cosponsors and collaborates regarding other social events to bring Californians together.

In April 1999, the Institute held its annual spring meeting at the Boeing C-17 facility in Long Beach, CA. The event included a tour of the aircraft production facility, a general membership meeting, and a luncheon featuring comments by Rep. Jerry Lewis, chair of the Defense Appropriations Subcommittee in the House and the leader of the California Republican Congressional delegation.

In September, in conjunction with its fall meeting in Washington, the Institute held a California Congressional delegation reception. The event, marking the close of the first session of the 106th Congress, was underwritten by IBM Corporation, Southern California Edison, and the California State University.

On May 1, 2000, the Institute will hold its annual spring meeting at Advanced Micro Devices in Sunnyvale, CA. The event will include a luncheon featuring comments by California Democratic Congressional Delegation Chair Rep. Sam Farr, and will be followed by a tour of the nearby Intel museum. The event is being underwritten by AMD.

The Institute from time to time also sends invitations to appropriate events developed by other organizations, such as the California State Society (a social organization of Californians in Washington) and various associations, government entities, companies and universities connected to the state.

Annual Balance of Payments Report

In September 1999, the California Institute released its annual examination of the relationship between federal taxes paid by Californians and federal spending in the state, Entitled *California's Balance of Payments with the Federal Treasury FY 1981-98*, it shows the extent to which California continues to be a donor state. Last year, Californians sent nearly \$20 billion more to Washington in federal taxes than the state received back in federal spending. The state's 1998 deficit of \$19.4 billion marked the largest such imbalance for any single state in the history of the nation, eclipsing the previous record of \$14.3 billion, set also by California in 1997.

California's shortfall has now grown for four consecutive years, and 1998 represents the 12th year in a row in which California has sent more federal dollars to Washington than it has seen in federal expenditures. During the defense spending buildup in Ronald Reagan's first Presidential term in the early 1980s, California's federal balance of payments was in the black for six straight years, peaking at

California ranks 39th among all states in balance of payments. New Mexico ranks first with a balance of \$1.94 in return for every dollar paid to Washington, while New Jersey ranks 50th with a balance of just 68 cents for every dollar paid in. In 1998, California housed 12.3% of the nation's residents, but it paid 12.5% of federal taxes and received back just 11.2% of federal payments and expenditures. California's share of the nation's \$1.69 trillion tax burden increased to 12.5% in fiscal year 1998 from 12.4% in 1997 and 12.1% in 1995. The state's increasing share of the nation's federal tax burden is due in part to a rebounding economy in California relative to other states. The share remains below the peak in 1991, when California shouldered 13.4% of the nation's federal tax burden. Between 1991 and 1995, a debilitating recession -- worse in California than in other states -- served to reduce the relative share of federal contributions from our state's taxpayers.

Several factors contribute to the state's taxes-versus-spending disparity. First, happily, California remains a relatively prosperous state. Despite a debilitating economic downturn early in this decade, the likes of which had not gripped the state for half a century, incomes of California's residents nevertheless remain above the national average. Thus, the state's residents pay relatively more in federal income taxes. Second, California is a relatively young state and thus has fewer residents receiving payments under Social Security and Medicare, an increasingly large slice of the federal budget pie. In 1997, 11% of Californians were age 65 or older, compared to 12.7% of all U.S. residents. A third key factor in California's ongoing funding disparity is continued slippage in federal procurement spending, both total spending and the state's share thereof. Defense contract spending fell from \$123 billion in 1991 to \$108 billion in 1998, even before accounting for inflation. While the early 1980s saw nearly one-fourth of defense contract dollars spent in California, the state's 1998 share fell below 16%, the lowest level on record.

Formula Factors Report

In 1999, the California Institute prepared and delivered a report entitled *Federal Formula Grant Elements: California Implications*, providing a general review of primary data elements used to determine federal formula grant allocations by state, with a focus on factors which either increase or decrease funds to California.

The report noted that one oversimplified benchmark for California's success in obtaining funds from formula grant programs is to note that the state represents slightly more than 12% of the nation's population. While a handful of programs distribute funds purely based on relative population share, most formula grants are considerably more complex, and other important factors are used in funds distribution. One key factor which when used typically boosts California's share of formula funding is poverty -- 17% of Californians lived below the poverty line, compared to 14% of all Americans; and

Workforce Investment Act (formerly JTPA), and California's extremely high unemployment rates over the preceding decade have boosted state funding under these programs. Other factors used in various formula grants include urban vs. rural populations (California is the second most urbanized state in the nation), age range populations (California has a high concentration of young persons and a below-average share of the population over the age of 65), welfare recipients (California has nearly one fourth of the nation's recipients), and crime rates (which run somewhat above the national average in California).

Finally, and very significantly for California, the state is home to more than a third of the nation's legal immigrants and roughly 43% of the nation's undocumented immigrants, thus boosting the share of funds under programs so targeted (for instance, the state receives the lion's share of funds from the State Criminal Alien Assistance Program (SCAAP), described above).

Analyses of Budget and Appropriations Measures

Every year, the President submits a budget request to Congress during the first week of February. The Institute analyzes the 2000-page request as soon as it is available to the public, assessing potential funding implications for California. The comprehensive analysis is delivered to Congressional delegation members and staff, the news media and other interested parties by late that evening.

As Congress completes work on appropriations measures, the Institute analyzes many from a California perspective, highlighting programs and projects important to the state and identifying earmarked items.

California Institute Internet Website

In 1997, the Institute formally launched a web page at <http://www.calinst.org/>. Since then, the Institute has continued to update the page on a regular basis. It contains word-searchable versions of all publications from the Institute, including the weekly *California Capitol Hill Bulletin*, policy papers, special issue reports, and economic assessments. From the web page, users can access a unique searchable database with varied data on population, employment and labor, construction and real estate, prices, and wages and income. All previous Bulletins and other publications from the Institute are also fully indexed and word-searchable. In addition, the Institute's web page provides links to members of Congress, Institute advisors and sponsors, California state and local government sources, and other California-oriented public policy organizations. The Institute website is being accessed on an increasingly frequent basis; it received 26,493 hits during March 2000, an average of 881 hits per day.

- *Federal Education Funding* (March 5, 1999) - Letter to Education Secretary Riley concerning the misapplication of Title I hold-harmless provisions to other ESEA programs. Thirty-eight signatures. (Rep. Woolsey).
- *Internet Wine Commerce* (March 5, 1999) - Letter to Virginia Governor James Gilmore, Chair of Advisory Committee on Electronic Commerce requesting an investigation of the barriers to remote and Internet wine commerce imposed by many states. Forty-three signatures. (Rep. Thompson).
- *CUEREC Expansion* (March 13, 1999) - Letter seeking appropriations of \$1.9 million for the California Urban Environmental Research and Education Center (CUEREC) to expand its program to include all California universities, both public and private. Twenty-two signatures. (Rep. Stark)
- *Class Size Reduction* (March 17, 1999) - Letter to Education Secretary Riley for a waiver to permit school districts flexibility to reduce class size where the needs are greatest. Twenty-seven signatures. (Reps. Cunningham and Farr).
- *FY2000 SCAAP Funding* (March 26, 1999) - Letter to Commerce, Justice, State Appropriations Subcommittee Chairman Hal Rodgers to include the full \$650 million authorized for the State Criminal Alien Assistance Program (SCAAP) in its FY2000 appropriations for partial reimbursement of the costs of incarcerating illegal criminal aliens. Fifty-two signatures. (Reps. Farr and Lewis)
- *Multi Year Funds for F/A-18 E/F* (April 23, 1999) - Letter supporting multi-year procurement authorization of the F/A-18E/F Super Hornet fighter. Eighteen signatures. (Reps. Sanchez and Kuykendall)
- *Restructuring of Electricity Industry* (April 26, 1999) - Letter to Rep. Thomas Bliley, Commerce Committee Chair, urging that no federal legislation interrupt AB 1890 (electricity power restructuring bill) implementation. Eight signatures. Reps. Kuykendall, Miller, Lee, Capps, Thompson, Napolitano, Ose, and Bono)

Forty-four signatures, including Senators Boxer and Feinstein. (Reps. Radanovich and Dooley)

- *FEMA: Delay Insurance Requirements* (June 10, 1999) - Letter to the Director of the Federal Emergency Management Agency, James Lee Witt, urging FEMA to delay publication of its proposed rule on Public Assistance Insurance Requirements, requiring public entities to obtain private insurance or to self insure their buildings. Fifty-one signatures, one vacancy. (Reps. Farr and Lewis)
- *Transit Funding Cap* (June 10, 1999) - Joint California-New York letter protesting a provision attached to the Senate's version of transportation appropriations legislation intended to curtail transit funding to California and New York by imposing a 12.5 percent cap on any state's receipts of federal transit funds. Fifty-one signatures, one vacancy. (Reps. Farr and Lewis)
- *Methamphetamine Clean-Up* (June 18, 1999) - Letter to the Commerce, Justice, State Appropriations Subcommittee to back \$18.2 million in federal funding to allow the State's Bureau of Narcotics Enforcement (BNE) to continue its Methamphetamine Strategy. Fifty-one signatures, one vacancy. (Reps. Farr and Lewis)
- *R & D Tax Credit Extension* (June 28, 1999) - Letter to Chairman Bill Archer (TX) and Ranking Member Charles Rangel (NY) advocating the permanent extension of the R & D tax credit for increasing research activities, along with a one-percent increase in the Alternative Incremental Credit. Forty-nine signatures. (Reps. Matsui and Herger)
- *Title I Funding Formula* (July 1, 1999) - Letter to House and Senate Labor-HHS-Education Appropriators urging them to resist efforts to include a "hold harmless" provision for the Elementary and Secondary Education Act (ESEA) Title I Funding in the FY2000 spending measure. Fifty-two signatures. (Reps. Cunningham and Woolsey)
- *No Cost Transfer of Surplus Bases* (July 1, 1999) - Letter to the Chair and Ranking Member of the House Armed Services Subcommittee on Military Installations and Facilities urging support for extending no-cost economic development conveyances (EDCs) to all base closure communities. Twenty-four signatures. (Reps. Farr and Lewis).
- *Geothermal Valuation Regulations* (August 6, 1999) - Letter to the Secretary of the

Union subsidies that culminated with market losses and the removal of canned peaches from the final beef hormone retaliation list issued by the U.S. against the E.U. Eleven signatures. (Reps. Condit and Herger)

- *Multi Year Funds for F/A-18 E/F* (September 16, 1999) - Letter supporting multi-year procurement authorization of the F/A-18E/F Super Hornet Fighter. Fifteen signatures.(Reps. Sanchez and Kuykendall)
- *SCAAP Funding* (September 16, 1999) - Letter to House conferees on the Commerce, State, Justice (CJS) Appropriations Bill urging the House level of \$585 million, rather than the cut to \$100 million in the Senate version. Fifty-one signatures, one vacancy.
- *Title XX , Social Security Act Funding* (September 16, 1999) - Letter to House Labor-HHS-Education Appropriations Subcommittee Chair John Porter (IL) urging full funding for Title XX of the Social Security Act, known as the Social Services Block Grant (SSBG) which includes home based services for seniors and the disabled. Twenty-six signatures. (Reps. Matsui and Miller)
- *San Francisco Shanghai Aviation Route* (October 1, 1999) - Letter to Secretary of Transportation, Rodney Slater, supporting UPS's application to provide daily service to China and United Airline's request to provide daily service for Shanghai-San Francisco. Forty-nine signatures. (Reps. Farr and Lewis)
- *Pierce's Disease Relief* (October 22, 1999) - Letter to Agriculture Secretary Dan Glickman requesting funding from the APHIS contingency fund towards the research and mitigation of Pierce's Disease. Thirty-four signatures. (Rep. Calvert)
- *Citrus Freeze Relief Funds* (October 18, 1999) - Letter to Secretary of Agriculture Dan Glickman requesting that \$90 million of the \$1.2 billion Agriculture Disaster Appropriations be made available to California citrus growers. Thirty-two signatures. (Rep. Thomas)
- *Land and Water Conservation Fund* (November 2, 1999) - Letter to Chair and Ranking Member of the House Resources Committee, Reps. Don Young (AK) and George Miler (Martinez) urging the Committee to pass legislation this year to fully fund the Land and Water

Summers, to support greater information in wine labeling, and discourage wine producers who may add water, sugar, fruit juices, alcohol, and natural or artificial flavors to wine while still using varietal names such as Merlot and Cabernet Sauvignon on their labels. Forty-three signatures. (Reps. Thompson and Radanovich)

- *Focus on Southern California in Air Usage Study* (November 30, 1999) - Letter to the Federal Aviation Administration (FAA) urging it to make southern California a priority in their national study of air space utilization. Twenty signatures. (Rep. Kuykendall)

2000 Letters

- *Nonstop Flights to South America* (February 3, 2000) - Letter to Secretary of Transportation Rodney Slater supporting the application of United Airlines for authority to operate daily nonstop service between Los Angeles and Buenos Aires, Argentina and LAX and Sao Paulo, Brazil. (Reps. Lewis and Farr)
 - *West Coast Groundfish Fisherman* (February 7, 2000) - Letter to President Clinton requesting funding for groundfish relief in the supplemental appropriations request. Fourteen signatures. (Reps. Capps and Gallegly)
 - *Pierce's Disease Funds* (March 3, 2000) - Letter to Appropriations Committee Chairman Bill Young requesting \$7.147 million in emergency supplemental funds. Twenty-seven signatures. (Reps. Thompson and Calvert)
 - *Greater Wine Labeling* (March 30, 2000) - Letter to the Bureau of Alcohol, Tobacco and Firearms (ATF) in support of the California Association of Winegrape Growers' concerns with the creation of the "Flavored Wine Product" class. Twenty-nine signatures. (Reps. Lewis and Farr).
 - *Title I Hold Harmless* (May, 2000) - Letter to House and Senate Labor-HHS-Education Appropriators urging them to resist efforts to include a "hold harmless" provision for the Elementary and Secondary Education Act (ESEA) Title I Funding in the FY2001 spending measure. Circulating at press time. (Reps. Cunningham, Woolsey, McKeon, Miller)
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affect the economic viability of the state;

- Explore federal approaches to strengthening of the state's leading industries and methods of cooperation with regional partners;
- Facilitate and manage the flow of valuable strategic research and recommendations about priority federal policy issues;
- Design strategies for effectively using new or forthcoming studies by institutions or analysts which propose boosts to the California economy;
- Provide a nonpartisan ground for discussion among various state interests to work through problems and help develop appropriate solutions at the request of policy makers; and
- Maximize interaction and exchange of information and ideas among groups with a California-based perspective on federal policy.

PERSONNEL: BOARD AND STAFF

Three Boards govern Institute activities: a Public Officials Executive Board, (composed of the Governor, US Senators, and ranking Republican and Democratic House Members); the Board of Directors (eight members appointed by the Public Officials, several at-large members, and the heads of the U.C. and C.S.U. systems); and an Advisory Board. The Board of Directors meets in the Spring and Fall. The Advisory Board consists of representatives from business, labor and academia, and it supports the Institute with financial assistance and issue expertise.

The Institute's Board of Directors is chaired by Mr. Robert G. Foster, Senior Vice President at Southern California Edison; the vice-chair is Mr. Stephen E. Chaudet, Vice President, Public Affairs at Lockheed Martin; and the secretary-treasurer is Mr. William Hauck, President of the California Business Roundtable. During the summer of 1999, California's House Democratic delegation Chair Sam Farr (Carmel) appointed former Rep. Vic Fazio and Ms. Doris Matsui to the Institute's Board of Directors. Now a partner with the D.C. firm of Clark and Weinstock, Rep. Fazio served 10 terms in Congress representing the Sacramento area before retiring at the end of last year. He served most recently as Ranking Member of the Appropriations Subcommittee on Energy and Water, as well as Chair of the House Democratic Caucus, and was widely respected by Capitol Hill colleagues from both sides of the aisle. Ms. Matsui recently joined the Washington D.C. firm of Collier, Shannon, Rill & Scott as Senior Advisor and Director of Government Relations and Public Policy. She served from 1993 through this year as Deputy Assistant to the President and Deputy Director of Public Liaison for the White House, after serving on President Clinton's transition team. In those capacities, her focus areas included budget and economic issues, as well as international trade and development. She also served as the White House's lead point of contact with the nonprofit sector.

Mr. Ransdell served for eight years as an associate at the Washington D.C. policy & public affairs consulting firm of Francis, McGinnis & Rees, where he managed Congressional affairs and grassroots projects for a range of corporations, trade associations, employee organizations and government agencies. Earlier in his career, Mr. Ransdell worked for a range of California elected officials, including three Members of Congress, a Governor and a State Assemblymember. Born and raised in the Los Angeles area, he has also lived in Sacramento, San Diego and the Bay Area. He received a bachelors degree from the University of California at Berkeley in 1981 and a law degree from Georgetown University Law Center in 1986, and he is a member of the District of Columbia Bar. He is a contributor to the op-ed pages of California newspapers and serves as a contact point on federal issues for California reporters.

Mary Beth Sullivan joined the Institute in 1994 as its Legislative Counsel. In that capacity she works closely with the California congressional delegation and the Institute's Advisory Board members to provide timely and objective information on the impact of federal legislation on California. She covers a wide range of key issue areas at the Institute, including taxation, technology, trade, immigration, justice, intellectual property, and water. Ms. Sullivan received her law degree, *magna cum laude*, from Georgetown University, and her B.Ed from the University of Maryland. She has substantial experience working in the House of Representatives on both member and committee staffs and in private practice in government relations and civil and criminal litigation.

This year's fellow, Sarah Nakasone, is a native of New Jersey, and a graduate of Claremont McKenna College in California. Her issue areas at the Institute include agriculture and wine industry topics, transportation, housing, and various social issues. Ms. Nakasone served in the Jesse M. Unruh Assembly Fellowship program as a staff member for Assemblywoman Lynne Leach. She has a background in higher education, K-12 education, and aging and long term care policy developed through her experience in the Assembly Fellowship and elsewhere. She also draws from her experiences studying international politics abroad at Oxford University, and working in bipartisan federal politics at the White House, Common Cause and the office of Congresswoman Marge Roukema (NJ).

Each fall, the California Institute welcomes a new Fellow for a one-year appointment to a position generously funded by the California State University system, via the Center for California Studies at CSU Sacramento. Each year's fellow has spent the prior year in Sacramento, with either the Assembly Fellowship Program, the Senate Associates Program, the Executive Fellowship Program, or the Judicial Fellowship Program. The annual Congressional Fellow at the California Institute is selected from the previous year's class of Sacramento Fellows.