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Special Report - Senate FY 2011 Department of Homeland Security Appropriations and California Implications - August 2010

On July 15, 2010, the Senate Appropriations Committee reported S. 3607 (S.Rpt. 111-222), the Fiscal Year 2011 Department of Homeland Security Appropriations by a vote of 17-12. The bill provides \$45,191,136,000 for the Department of Homeland Security for fiscal year 2011, \$154,835,000 more than the budget request. Of this amount, \$43,790,436,000 is for discretionary programs.

This document provides a California-oriented analysis of the appropriations prepared by the staff of the California Institute for Federal Policy Research. It is available on the Institute's website at:

<http://www.calinst.org/pubs/dhs11senate.shtml> or alternatively in pdf format at <http://www.calinst.org/pubs/dhs11senate.pdf>

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DEPARTMENT OF HOMELAND SECURITY

The bill proposes a total of \$45,191,136,000 in funding, compared to the FY 2010 appropriations of \$44,137,241,000 and the budget request of \$45,036,301,000.

Border Tunnel Report

The Committee report states: "As outlined in Senate Report 111-31, the Department of Homeland Security is required to submit semiannual reports on border tunnel issues, including information on the number of tunnels discovered, their location and demolition, all activities undertaken to prosecute individuals under the Border Tunnel Prevention Act, funding requirements, and the progress made in developing and implementing detection methods used to discover new tunnels. The report is long overdue. Given the fact there has been increased physical reinforcing of the Southwest border, more tunnels built to smuggle various types of contraband are being discovered under the border. The Committee directs that this report be submitted immediately."

Overdue Quarterly SBI Reports

The Committee report states: "In addition to delayed expenditure plans, there are a number of regular reports that the Committees have required be submitted, in some cases for many years. For instance, the Committees have required quarterly submission of a report which in essence is a compilation of border security-related facts – such as apprehensions at the border, number of illegal

aliens removed, and miles of the border under effective control. The report is a snapshot of what the Department and its component agencies have accomplished during the previous quarter and the past years. The report is not supposed to be a press document requiring extensive narrative and/or ‘spin.’ Yet the fourth quarter of fiscal year 2009 report was not submitted to the Committees until March 26, 2010 – almost 6 months after the end of the fiscal year. The Committees have yet to receive the first and second quarter reports for fiscal year 2010. This is unacceptable. The Committee directs the Department to submit these reports no later than 30 days after the end of each quarter.”

U.S. CUSTOMS AND BORDER PROTECTION

The Committee recommends total resources of \$11,281,621,000, including direct appropriations of \$9,916,453,000 and estimated fee collections of \$1,365,168,000.

Layered Border Security

The Committee report states: “Since the creation of the Department of Homeland Security, a key philosophy to providing security is to “push our borders out” as well as the concept of “layered border security”. The Committee is disappointed that the President proposes deep cuts in effective programs which accomplish these goals. The Committee strongly supports programs which provide this layered border security and adds funding above the request for a number of these programs. While unable to fully restore the reductions to the Container Security Initiative, the Customs-Trade Partnership Against Terrorism [C-TPAT], and the Western Hemisphere Travel Initiative, the Committee recommends \$29,900,000 above the request for these programs and requests a briefing within 90 days of enactment of this act on how these additional funds will be allocated to enhance security as well as what steps will be taken to mitigate the impact on security of the remaining cuts.”

Southwest Border Initiative

The Committee report states: “Between fiscal years 2008–2009, Border Patrol apprehensions of illegal aliens decreased from 723,800 to 556,000. This 23 percent reduction is an indication that the combined effect of the recession and our bipartisan efforts to secure the border are resulting in fewer people attempting to illegally cross the border. Over the 5-year period ending in fiscal year 2009, Border Patrol apprehensions along the Southwest border decreased by 53 percent. . . . There has been an increased level of violence being directed at our Border Patrol agents and CBP officers stationed at and between our ports of entry. In fiscal year 2008, there were 575 assaults on agents and 97 on officers. Those numbers jumped in fiscal year 2009 to 1,073 agent assaults and 332 officer assaults. As of the end of April 2010, there have been 529 agent assaults and 17 officer assaults. As we have moved to further secure the Southwest border, we have increased the cost of doing business for the smugglers while also increasing their levels of frustration.

“In March 2009, the Secretary of Homeland Security announced a major initiative to assist the Mexican Government in combating drug cartel violence by deploying additional CBP and United States Immigration and Customs Enforcement [ICE] personnel and resources to the Southwest border. Between the Supplemental Appropriations Act, 2009 (Public Law 111–32) and the Department of Homeland Security Appropriations Act, 2010, more than \$88,600,000 has been added above the President’s requests for CBP for Southwest border security, including outbound inspections to combat smuggling of guns and bulk cash which support the drug cartels.

“To continue this effort, the Committee recommends a total of \$66,400,000 in various CBP accounts to hire more CBP officers and pilots, and procure one additional unmanned aerial system [UAS]. With these additional funds, combined with funds requested in the President’s budget, and those in the inventory or awaiting delivery, CBP will have a total of nine UAS to patrol our borders. Specifically, as detailed later in this report, the Committee recommends \$20,000,000 to hire no fewer

than 80 new CBP officers and \$10,000,000 to hire the 62 CBP officers funded by the Congress in the fiscal year 2010 act but not hired due to overall CBP fee revenue shortfalls. Finally, the Committee recommends \$15,900,000 above the request for hiring 86 pilots, marine enforcement agents, and operational support staff, as well 5 new positions in support of the additional UAS.”

Border Patrol Agents

The Committee report states: “Since Congress began increasing the size of the Border Patrol by funding the hiring of 500 new agents in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Public Law 109–13), a total of 9,344 new Border Patrol agents, and attendant support positions, will have been funded and hired through the end of fiscal year 2010. The Congress strongly supports the Border Patrol mission of securing our borders and fully funds the amended fiscal year 2011 request.

“Included in the amount recommended by the Committee for “Border Security and Control” is a total of \$3,536,833,000, \$10,000,000 below the request. The amount does not include the hiring of additional intelligence analysts, as discussed later in the report. These funds provide the full funding necessary for 20,370 Border Patrol agents and the attendant support positions, as compared with 9,951 agents on board at the end of fiscal year 2002.

Bill language is included mandating a floor of not less than 20,370 Border Patrol agents on-board throughout fiscal year 2011. Since Congress began increasing the size of the Border Patrol by funding the hiring of 500 new agents in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Public Law 109–13), a total of 9,344 new Border Patrol agents, and attendant support positions, will have been funded and hired through the end of fiscal year 2010. The Congress strongly supports the Border Patrol mission of securing our borders and fully funds the amended fiscal year 2011 request. Included in the amount recommended by the Committee for “Border Security and Control” is a total of \$3,536,833,000, \$10,000,000 below the request. The amount does not include the hiring of additional intelligence analysts, as discussed later in the report. These funds provide the full funding necessary for 20,370 Border Patrol agents and the attendant support positions, as compared with 9,951 agents on board at the end of fiscal year 2002.

“Bill language is included mandating a floor of not less than 20,370 Border Patrol agents on-board throughout fiscal year 2011.”

Operation Streamline

The Report states: “The Committee supports Operation Streamline, a program in which individuals apprehended crossing the Southwest border are sentenced by a judge to serve a period of time in jail. In Border Patrol sectors where Operation Streamline is robustly in effect, there has been a noticeable reduction in attempted illegal crossings. The Committee encourages the Department to work with the appropriate Department of Justice agencies and the Judiciary to expand Operation Streamline to additional Border Patrol sectors.

“Additionally, the Committee encourages CBP to consider expanding the community liaison officers program and provide a briefing to the Committees on Appropriations not later than 90 days after the date of enactment of this act on the costs and benefits associated with this program.”

Intellectual Property Rights

The Committee recommendation includes \$20,000,000 for intellectual property rights, an increase of \$20,000,000 above the fiscal year 2010 level and \$5,000,000 less than the budget request. The Committee also includes language in the bill withholding \$20,000,000 from obligation until the Commissioner of CBP submits the 5-year intellectual property rights enforcement strategy required in the joint explanatory statement accompanying the Conference Report (House Report 111–298) on

Public Law 111–83.

Invasive Species

The Committee directs CBP to fund activities associated with the control of invasive species, such as carrizo cane, and any mitigation efforts from within the Border Security Fencing, Infrastructure, and Technology account.

Border Security Fencing, Infrastructure, and Technology

The Border Security, Fencing, Infrastructure, and Technology account funds the capital procurement and total operations and maintenance costs associated with fencing, infrastructure, sensors, surveillance, and other technology. The Committee recommends \$574,173,000, as requested by the Administration, for this activity. FY 2010 Appropriations were \$800,000,000.

Secure Border Initiative

The Committee Report states: “Approximately \$4,500,000,000 has been appropriated to the Secure Border Initiative [SBI] program between fiscal years 2005–2010. With the \$574,173,000 recommended in this bill, more than \$5,000,000,000 will have been made available to secure our borders via physical fencing, tactical infrastructure, and other technologies.

“The Committee has strongly supported the SBI program—including SBInet, the so-called “virtual fence”. From the beginning, however, the SBInet program has been troubled by both real and perceived problems. More than \$1,200,000,000 of the total funding has been devoted to SBInet and the Committee is concerned with the performance of the SBInet contract and how it has been implemented. While the program is under strong leadership at this point, it is imperative that outstanding issues must be resolved quickly. On March 15, 2010, the Secretary halted further expansion, development, and deployment of the testing activities beyond the Tucson-1 and Ajo-1 projects currently ongoing in Arizona pending a two-stage review of the entire SBInet program. The Committee supports this review, but notes that, contrary to media reports, Border Patrol agents have been using the cameras and sensors being tested in the Tucson sector and they report that improvements have been made. These agents have been able to use these cameras to make apprehensions and are pleased to have a detection technology previously unavailable in the sector.

“Pending this review, the Committee strongly urges the Department to use currently available funding, as well as the funds provided in this bill, to procure and deploy useful and proven technologies— such as remote video sensors and mobile surveillance systems—to further assist agents who daily secure our borders.

“The tactical communications program is also a proven system which provides vastly improved communications capabilities to Border Patrol agents working in remote areas along the borders. The Committee strongly supports the use of funds provided in this bill to further expand the tactical communications program to Border Patrol sectors according to the approved Border Patrol plan. The total life-cycle cost for this planned upgrade is estimated to be nearly \$1,600,000,000 to be implemented over a period of 10 years. The Committee also encourages CBP to explore other interoperable communications options, including satellite phones, for use in remote areas and to improve officer safety. We must not delay in providing these agents with the technology they need to secure the border and ensure their personal safety.”

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Committee recommends total resources of \$5,862,549,000, including direct appropriations of \$5,551,162,000, and estimated fee collections of \$311,387,000.

Southwest Border Enforcement Initiative (see also Customs and Border Protection section above)

The Committee recommends \$30,000,000, 130 positions, and 65 FTE above the request, to enhance ongoing efforts to combat criminal activities which pose a threat to the U.S. along the Southwest border. Included in the amount listed above is \$1,000,000 provided in “Intelligence” to support enhanced intelligence capabilities in Mexico. Also, included in the total amount recommended by the Committee is \$10,000,000, as requested, to expand the BEST program to three additional locations.

Office of State and Local Coordination

The Committee recommends \$68,321,000, 125 positions and FTE, as requested, for the Office of State and Local Government Coordination. Included in this amount is funding for training and information technology assistance for participants in the 287(g) program.

Intellectual Property Rights

The Committee provides \$5,000,000, as requested, for the Intellectual Property Rights Coordination Center and an additional \$5,000,000 above the request for additional special agents nationwide to investigate intellectual property rights.

Detention and Removal - Custody Operations (Beds)

The Committee recommends a total of \$1,903,764,000, an increase of \$132,596,000 above the amount provided in fiscal year 2010, as requested in the budget.

Detention and Removal - Alternatives to Detention

The Committee recommends a total of \$72,075,000, 181 positions, and 182 FTE, as requested in the budget. The Report states: “The Committee encourages ICE to prioritize enrollment of families with children in this program, to continue to use intensive supervision, and directs ICE to brief the Committee semiannually on the program beginning no later than 60 days after the date of enactment of this act.”

Secure Communities

The Committee recommends \$146,943,000, 552 positions, and 552 FTE, as requested. Congress initiated this program in fiscal year 2008 and has provided total new funding of \$550,000,000 over the past 3 years.

United States Visitor and Immigrant Status Indicator Technology

The Committee recommends \$334,613,000, the same as the budget request, but less than the FY 2010 appropriation of \$373,762,000. The Committee report states that the US-VISIT program has prevented 8,800 criminal and illegal aliens from entering the country with its biometric system.

FEDERAL EMERGENCY MANAGEMENT AGENCY

The Committee recommends total resources of \$912,996,000 for Management and Administration, including \$216,760,000 made available by transfer from Disaster Relief. Of this amount, \$4,000,000 is for the Emergency Management Assistance Compact; \$10,215,000 is for the National Earthquake Hazards Reduction Program; \$2,615,000 is for the National Hurricane Program; \$10,717,000 is for the National Dam Safety Program; and \$71,076,000 is for the Office of the Chief Information Officer, of which \$5,900,000 is for data center migration, as requested in the budget.

State and Local Programs

The Committee recommends \$3,078,970,000 for State and local programs. The Committee recommendation is \$33,380,000 above the comparable requested level. The Committee does not approve the budget request to fund Firefighter Assistance Grants and Emergency Management Performance Grants under this heading, each program is funded in a separate account consistent with previous years.

State Homeland Security Grant Program

The Committee recommends \$950,000,000 for the State Homeland Security Grant Program [SHSGP], of which \$60,000,000 shall be for Operation Stonegarden Grants, the same amounts as the fiscal year 2010 level. The budget request of \$1,050,000,000 for SHSGP includes funding for activities appropriated under Metropolitan Medical Response System, Citizens Corps, Driver's Licenses Security Program, and Interoperability Emergency Communications Program Grants in fiscal year 2010. The budget proposes to combine several grant programs which are specifically authorized as separate programs in the 9/11 Act. The Committee does not approve the proposed restructuring of the grant programs, but encourages FEMA to continue to work with stakeholders on ways to streamline grant programs and processes. In accordance with section 2004 of the Homeland Security Act of 2002, all funds (excluding Operation Stonegarden) above the amount automatically allocated to States and territories, shall be allocated based on risk (as defined by threat, vulnerability, and consequence) and effectiveness. Operation Stonegarden shall be competitively awarded and all border States shall be eligible to apply in fiscal year 2011.

Urban Area Security Grant Program

The Committee recommends \$950,000,000 for the UASI Grant Program, \$63,000,000 above the fiscal year 2010 level. Of this amount, the recommendation includes \$20,000,000 for nonprofit entities determined to be at risk by the Secretary.

Regional Catastrophic Preparedness Grant Program

The Committee recommends \$35,000,000 for the Regional Catastrophic Preparedness Grant Program [RCPGP], the same amount as the fiscal year 2010 level and as proposed in the budget. Of this amount, no more than \$3,000,000 shall be for technical assistance.

Metropolitan Medical Response System

The Committee recommends \$38,000,000 for the Metropolitan Medical Response System [MMRS], which is \$3,000,000 below the fiscal year 2010 level.

Public Transportation Security Assistance, Railroad Security Assistance, and Over-The-Road Bus Security Assistance

The Committee recommends \$350,000,000 for Public Transportation Security Assistance [PTSA], Railroad Security Assistance [RSA], and Over-The-Road Bus Security Assistance; instead of \$300,000,000 for PTSA and RSA, and no funding for Over-The-Road Bus Security Assistance as proposed in the budget request. Of the recommended amount, no less than \$25,000,000 is provided for Amtrak security needs and no less than \$6,000,000 is for Over-The-Road Bus Security Assistance.

Port Security Grants

The Committee recommends \$350,000,000 for the Port Security Grant Program, \$50,000,000 above the amount proposed in the budget and \$50,000,000 above the fiscal year 2010 level.

Emergency Operations Centers

The Committee recommends \$31,520,000 for Emergency Operations Centers, instead of no funding as proposed in the budget. Of the amount provided \$15,760,000 is to be competitively awarded. Bill language includes the following Congressionally directed facilities in California:

City of Compton, CA - \$500,000

City of Pasadena, CA - \$500,000

Continuing Training Grants

The Committee provides \$30,000,000 for continuing training grants, \$8,410,000 above the request and \$1,000,000 above fiscal year 2010, of which State and local government intelligence awareness training will be no less than \$1,000,000 above the level funded in fiscal year 2010.

Firefighter Assistance Grants

The Committee recommends \$810,000,000 for firefighter assistance grants, including \$390,000,000 for firefighter assistance grants, and \$420,000,000 for firefighter staffing grants, to remain available until September 30, 2011. This is the same amount as the fiscal year 2010 level and \$200,000,000 above the level requested in State and Local Programs.

Emergency Management Performance Grants

Funding requested in this account provides support to the Nation's all-hazards emergency management system and helps to build State and local emergency management capability. The Committee recommends \$345,000,000 for emergency management performance grants [EMPG], the same level as the amount requested in the budget within the State and Local Programs account and \$5,000,000 above the fiscal year 2010 level.

National Predisaster Mitigation Fund

The National Predisaster Mitigation [PDM] Fund provides grants to States, communities, territories, and Indian tribal governments for hazard mitigation planning and implementing mitigation projects prior to a disaster event. PDM grants are awarded on a competitive basis. This program operates independent of the Hazard Mitigation Grant Program, funded through the Disaster Relief Fund, which provides grants to a State in which a disaster has been declared. The Committee recommends \$75,000,000 for PDM, \$25,000,000 below the fiscal year 2010 level and the request. The Report states: "The Committee continues to support predisaster mitigation, and recognizes the importance of coordinating predisaster mitigation projects with projects being completed through the Hazard Mitigation Grant Program. The Committee continues to be concerned about the pace of awarding these funds. Over \$230,000,000 of prior-year appropriations remain unobligated as of April 30, 2010."

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

The Committee recommends total resources of \$2,598,150,000, including direct appropriations of \$171,593,000 and estimated fee collections of \$2,426,557,000.

E-Verify

The Committee recommends \$103,400,000 for the E-verify program, as requested. The Report states: "The Committee supports E-Verify and the effort the Department is performing to improve E-Verify's ability to automatically verify those who are work authorized, detect identity fraud, and detect system misuse and discrimination. E-Verify is both a tool for employers committed to maintaining a legal workforce and a deterrent to illegal immigration. The Committee notes progress continues to be made on reducing the mismatch rate. The additional funds above the request provided to

this program in the fiscal year 2010 act that remain available in fiscal year 2011 will promote monitoring and compliance activities and IT-related business initiatives geared toward improved system use. The Committee is disappointed that USCIS has not aggressively made use of the additional funds provided above the President's request for E-Verify compliance and capacity building. The Committee directs USCIS to provide a briefing by September 10, 2010, on efforts to improve compliance and the capacity of the system."

Driver's License Security Hub

The Report states: "The Committee is disappointed that it has not yet received the REAL ID Hub expenditure plan as called for in the statement of managers accompanying the Department of Homeland Security Appropriations Act, 2010. The Committee directs that it be submitted immediately. A rescission of \$10,000,000 in unobligated prior-year funding for this activity is included as a General Provision."