

Summary of S.1639 (the Senate Comprehensive Immigration Reform Bill)

Summary of key provisions prepared by Greg Siskind (gsiskind@visalaw.com , www.visalaw.com, 901-682-6455). Greg Siskind is a partner at the immigration law firm Siskind Susser Bland, P.C.

On June 1., 2007, Senator Edward Kennedy and Senator Arlen Specter re-introduced the Senate's comprehensive immigration reform bill for 2007. Debate is expected to begin in the next few days.

This is a summary of the provisions of this 418 page bill. S. 1639 is largely the same as S.1348, but now incorporates amendments that passed before the failed cloture vote of earlier this month as well as a new \$4,400,000,000 appropriations provision.

[Redacted] = changes from S.2611, the Senate comprehensive immigration reform bill passed in 2006

[Redacted] = changes from S. 1348, the Senate comprehensive immigration reform bill that failed in a cloture vote earlier in June 2007.

[Note – the compromise bill leaves out many, many components of S.2611 including the SKIL Act (except for more H-1B numbers), the Brownback nurse immigration provisions, the Alexander four year naturalization requirement for those fluent in English, visa revalidation and more). On legal immigration, this is largely S2611-lite.] I will update this document as amendments are passed.]

Section by section summary.

Sec. 2. Effective Date Triggers. – Note section number change where table of contents is removed and Section 2 becomes section 1

This section establishes the concept of triggers in the legislation. These are benchmarks which must be met before the guest worker program in Title IV and the legalization program in Title VI (with the exception of the probationary program described in Section 601(h). The Secretary of Homeland Security must certify the following before going forward:

1. DHS must establish and demonstrate “operational control of 100%” of the US-Mexico border
2. Deployment of 20,000 (up from 18,000) additional Border Patrol agents and support staff;
3. Installation of 300 miles of vehicle barriers (up from 200), 370 miles of fencing, 105 ground-based radar and camera towers (up from 70) along the southern land border and 4 unmanned aerial vehicles and supporting systems;

4. End of catch and release; ICE must have the resources to detain up to 31,500 aliens per day on an annual basis (up from 27,500).
5. Establishment of secure and effective identification tools to prevent unauthorized workers from obtaining jobs in the US including establishing strict biometric standards for ID documents and an electronic employment eligibility verification system (EEVS).
6. DHS has received and is processing and adjudicating in a timely manner Z nonimmigrant application under Title VI including conducting all necessary background and security checks.

Congress has set as a goal of completion of the benchmarks “as soon as practicable” (previous version said “not later than 18 months”).

The President must submit a report to Congress documenting progress every 90 days. If the President determines sufficient progress is not being made, the President must include in the report recommendations for funding, authorization, or other actions being undertaken.

Not later than 30 days after certification is submitted that the triggers have been met, the GAO must submit a report on the accuracy of such certification.

Section 2. Immigration Security Account

A new account shall be established at the Treasury called the “Immigration Security Account.” \$4,400,000 shall be transferred from the general fund of the Treasury to the new Immigration Security Account. The funds will be used to help DHS meet the trigger requirements in Section 1 (including fencing, towers, detention beds, the electronic verification system and the implementation of the Y and Z visas). DHS must submit to the Senate a plan within 60 days on how the money will be spent.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

Sec. 101. Enforcement personnel.

Over five year period, increases CBP inspectors by 500. Authorizes appropriations for this.

Increase in Border Patrol numbers as follows:

2007 – 2,000
2008 – 2,400
2009 – 2,400
2010 – 2,400

2011 – 2,400
2012 – 2,400

20% of the net increase shall be assigned to the US-Canada border.

Number of ICE investigators to increase by 1000 instead of the 800 called for in 2004 law.

200 additional personnel to investigate alien smuggling.

50 additional US Marshalls.

Establishment of program to recruit former military personnel to CBP.

Authorizes DHS to establish new Customs Patrol Officers (commonly known as “Shadow Wolves”).

Sec. 102. Technological assets.

Purchases of a number of technological assets like new unmanned aerial planes are authorized. S. 2611 called for establishing a “virtual fence” along the US borders, but the provision is not in S.1348.

S.2611 required issuance of a report to be issued on the use of Defense Department equipment. The report would assess the risks to US citizens associated with using the equipment. Also, S.2611 included stated that the Defense Department equipment authorized in Section 102 does not alter the prohibition on using the Army or Air Force for border patrol work. These provisions are not in the latest Senate bill.

Sec. 103. Infrastructure.

DHS shall build a second and third fence on the 14 mile border section starting at the Pacific Ocean in San Diego. S.2611’s Section 103 called for building all-weather roads and buying vehicle barriers and facilities needed to get operational control over the borders. That provision has been deleted. New S. 1639 requires DHS to work with other agencies to minimize the impact on the environment, culture, commerce and quality of life for people located near the sites.

Sec. 104. Ports of entry.

S.2611’s section 104 called for DHS to maintain temporary or permanent checkpoints on roadways in border patrol sectors near the Mexican border. That provision is not in the latest bill.

New Section 104 includes authorization to build additional ports of entry.

Sections 106 from S.2611 regarding the construction of strategic border fencing and vehicle barriers has been deleted. But the provision calling for fence and barrier construction is largely included in Section 1 on benchmarks.

Subtitle B—Border Security Plans, Strategies, and Reports

Sec. 111. Biometric Entry-Exit System

Originally Section 128 of S. 2611. Permanent residents would now be required to provide biometrics upon entry and exit from the US just like non-immigrants. Failure to comply will be a new ground for inadmissibility.

Sec. 112. Unlawful Flight from Immigration or Customs Controls.

This is a section not included in S.2611. Makes it a crime to operate a car or vessel, knowingly flee or evade a checkpoint operated by DHS or any other Federal law enforcement agency and then disregarding a command of a law enforcement agent.

Sec. 113. Release of Aliens from Noncontiguous Countries.

This is a section not included in S.2611. This increases the bond from \$1500 to \$5000 for aliens from countries not contiguous to the US who are apprehended within 100 miles of the border or who presents a flight risk according to DHS.

Subtitle C – Other Measures

Sec. 121. Deaths at the United States-Mexico border.

Requires CBP to collect data on the causes of death and the total number of deaths. A report must be produced annually on this that analyzes trends and recommends actions.

Sec. 122. Border security on certain Federal land.

CBP will increase personnel placed on protected federal land in order to stop illegal border crossings and drug smuggling. CBP will also provide specialized training and equipment.

Sec. 123. Secure Communication.

DHS shall implement a plan to use satellites to ensure 2-way communication capabilities among Border Patrol agents and their stations and between border security agencies.

Sec. 124. Unmanned Aircraft Systems

DHS shall acquire unmanned aircraft systems for use on the border. Approximate \$450 million is authorized for this.

Sec. 125. Surveillance Technologies Programs.

Calls on DHS to develop a plan to fully utilize aerial surveillance technologies with the goal of continuously monitoring each mile of the border.

Sec. 126. Surveillance Plan.

This is new to the bill. Requires DHS to develop a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States. The plan must be submitted within six months of enactment.

Sec. 127. National Strategy for Border Security.

DHS shall develop a National Strategy for Border Security that describes actions to be carried out to achieve operational control over all ports of entry into the US and the land and maritime borders.

Sec. 128. Border Patrol training capacity review.

Comptroller General of the US shall conduct a review of the training of Border Patrol agents to ensure such training is provided efficiently and effectively.

Sec. 129. Biometric data enhancements.

This section requires DHS to integrate biometric databases by October 1, 2008 (S.2611 said October 1, 2007).

Sec. 130. US-VISIT System.

Mandates DHS submit a timeline for the extension of the US-VISIT exit-entry system to all ports of entry.

Sec. 131. Document fraud detection.

DHS will provide CBP officers with training in identifying and detecting fraudulent travel documents. Inspector General shall conduct an independent assessment of the Forensic Document Laboratory.

Sec. 132. Border relief grant program.

DHS authorized to issue grants to local law enforcement agencies near the border to combat crime.

Sec. 133. Port of Entry Infrastructure Assessment Study.

Calls for the Administrator of General Services to annually update a Port of Entry Infrastructure Assessment Study prepared by BP. The report will cover port of entry infrastructure and technology improvement projects and projects identified in a National Land Border Security Plan (the NLBSP). The NLBSP shall include a vulnerability assessment for each port of entry at both borders. DHS will also establish one or more port security coordinators at each border.

Sec. 134. National Land Border Security Plan.

Within a year, DHS will consult with law enforcement authorities around the country and submit a National Land Border Security Plan to Congress. The plan will review the vulnerabilities of each port of entry on the northern and southern borders. DHS will appoint “port security officers” at each port.

Sec. 135. Port of entry technology demonstration program.

DHS will set up a technology testing program to enhance port operations at three to five demonstration sites. Training programs for law enforcement personnel will be conducted at one of the demonstration sites.

Sec. 136. Combating human smuggling.

Calls for creation of an interagency plan to connect databases used to prevent human smuggling, ensure adequate personnel training, effectively target smuggling networks and use tools like visas for victims.

Sec. 137. Increase of Federal detention space and the utilization of facilities identified for closures as a result of the Defense Base Closure Realignment Act of 1990.

This section requires, subject to appropriations, DHS to construct at least twenty detention facilities in the US to house at least 20,000 individuals.

Sec. 138. United States-Mexico Border Enforcement Review Commission.

A new independent bipartisan commission called the US-Mexico Border Enforcement Review Commission shall be set up to study overall enforcement and detention strategies, programs and policies of federal agencies along the US-Mexico border and make recommendations to Congress. The USMBERC is to issue a report within two years.

Sec. 139. Northern Border Prosecution Reimbursement

The Attorney General, acting through the Director of the Bureau of Justice Assistance of the Office of Justice Programs, shall carry out a program, to be known as the Northern Border Prosecution Initiative, to provide funds to reimburse eligible northern border entities for costs incurred by those entities for handling case dispositions of criminal cases that are federally initiated but federally declined-referred. This program shall be modeled after the Southwestern Border Prosecution Initiative and shall serve as a partner program to that initiative to reimburse local jurisdictions for processing Federal cases.

Subtitle D. Asylum and Detention Safeguards (implements Lieberman Amendment)

Sec. 140. Short Title.

This subtitle may be cited as the “Secure and Safe Detention and Asylum Act”

Sec. 141. Definitions.

Defines “credible fear of persecution”, detainee”, “detention facility”, “reasonable fear of persecution and torture” and “standard.”

Sec. 142. Recording Expedited Removal Interviews.

Requires questions be asked in a standard manner and interviews are recorded in a uniform fashion. Competent, non-government interpreters must be used.

Sec. 143. Options Regarding Detention Decisions.

Provides for asylum applicants to be released in additional circumstances on their own recognizance or in to a “secure alternatives” program.

Sec. 144. Report to Congress on Parole Procedures and Standardization of Parole Procedures.

The Attorney General and the Secretary of Homeland Security must present a report to Congress within 180 days on the implementation of this subtitle.

Sec. 145. Legal Orientation Program.

EOIR shall provide legal information to detainees and USCIS should promote pro bono counseling and legal assistance for aliens awaiting a credible fear interview.

Sec. 146. Condition of Detention.

DHS shall ensure that standards governing the procedures at detention facilities are fully implemented and enforced. New special standards are to be put in place to improve the treatment of noncriminal detainees as well as victims of persecution, families with children, detainees who do not speak English and those with special religious, cultural and spiritual considerations.

Sec. 147. Office of Detention Oversight.

A new office shall inspect detention centers and conduct investigations of problems at detention centers.

Sec. 148. Secure Alternatives Program.

DHS must establish a program to allow aliens to be released under enhanced supervision. DHS may enter in to contracts with nongovernmental entities to implement the program.

Sec. 149. Less Restrictive Detention Facilities.

DHS shall build less restrictive detention facilities for those detainees being held more than 72 hours. DHS shall also develop special detention facilities for families with children.

Sec. 150. Authorization of Appropriations; Effective Date.

Funds needed to carry out this section are to be appropriated. This subtitle is to take effect 180 days after the enactment of the law.

TITLE II—INTERIOR ENFORCEMENT

Sec. 201. Additional immigration personnel.

Section 701 calls for the increase in the Office of General Counsel of 100 attorneys per year for five years. 50 attorneys per year are to be added to the Office of Immigration Litigation. At least 50 attorneys are to be added each year for five years to handle immigration matters at the US Attorneys' office.

The number of immigration judges is to be increased by 20 each year for the next five years. At least 80 people per year are to be added as personnel to support the new immigration judges.

At least ten attorneys and ten support personnel are to be added each year for five years to the Board of Immigration Appeals.

At least 50 attorneys per year for five years are to be added to the Federal Defenders Program to litigate criminal immigration cases.

Adds to S.2611 by calling for addition of 100 USCIS adjudicators per year for five years.

Sec. 202. Detention and removal of aliens ordered removed.

Aliens may be detained longer than 90 days if an attempt is made to contact DHS by the jail. And a longer detention may be allowed if the alien is making efforts not to leave such as not applying for a travel document. Provides for detention of aliens awaiting removal and the discretion to allow such individuals to be detained longer if the alien is likely to be removed in very near future. Provides more review rights than S.2611.

Makes it easier for judges to order detention of persons deemed a threat to the safety of any other person and the community.

Sec. 204. Increased criminal penalties related to gang violence and removal.

Creates new ground of inadmissibility for people convicted of certain gang-related crimes. This section would also transfer responsibility for Temporary Protected Status from the Attorney General to the Secretary of Homeland Security. Adds definition of "criminal gang". Changes S.2611 to cover "aliens associated with criminal gangs" and not just "members". Removes the retroactivity language of S.1348. Adds new language making it an immigration offense for convicted sex offenders failing to register. Adds new provision creating a ground of inadmissibility for aliens convicted of serious

criminal offenses and domestic violence, stalking, child abuse and violation of protection orders.

Sec. 205. Increased Criminal Penalties Related to Drunk Driving, Illegal Entry, Perjury, and Firearms Offenses.

Makes drunk driving convictions a deportable offense and ground of inadmissibility if the alien was sentenced to a felony with at least one year imprisonment.

Makes it a crime to knowingly cross the border illegally or by seeking entry through the concealing of a material fact.

Sec. 206. Illegal entry.

This section seems to repeat the criminal penalty provisions listed in Section 205.

Sec. 207. Illegal reentry.

Provides for a two year sentence if an alien is deported and illegally reenters. Marriage fraud and EB-5 fraud for which the term of imprisonment is at least a year would now be aggravated felonies. Asylees convicted of aggravated felonies would no longer be eligible for waivers to adjust status to permanent residency. "Good moral character" would not apply in cases where a person is convicted of a crime that is not defined as an aggravated felony at the time it occurs but is later classified as an aggravated felony unless the crime is more than ten years old and the applicant is granted a waiver by DHS. Like S. 2611, clarifies that providing humanitarian assistance not a crime nor is providing transportation to a place to get assistance.

Sec. 208. Reform of passport, visa and immigration fraud offenses.

This section creates a number of new offenses related to producing fraudulent passports including producing fraudulent passports, trafficking in such passports, or dealing or possessing passport material. Also creates new criminal penalties for making false statements in a passport application. If the crime occurs outside the US, the prosecution would happen in the place where the passport is produced. Criminalizes fraudulent use of a valid passport. Creates new crimes for fraudulently applying for or using an immigration document or employment document or trafficking in such documents.

Sec. 209. Inadmissibility and Removal for Passport and Immigration Fraud Offenses.

This section lays out the penalties for violations in Section 208 which now include being rendered inadmissible to the US and being removable if already here. This section applies to conduct occurring on or after the date of enactment.

Sec. 210. Incarceration of criminal aliens.

Calls for DHS to continue to operate the Institutional Removal Program to identify criminal aliens in jail and then deport upon completion of the sentence. A provision from S.2611 bill that would authorize state and local law enforcement authorities to incarcerate someone upon completion of their sentence while they wait on the person to be claimed by DHS has been removed.

Sec. 211. Encouraging aliens to depart voluntarily.

This section would tighten voluntary departure rules including shortening the affirmative voluntary departure period from 120 days to 60 days and the voluntary departure in removal proceedings from 60 to 45 days. The language from S.2611 calling for the voluntary departure applicant to waive the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal is not in this version. \$3000 fine for voluntary departure order violations. Six month phase in period.

Sec. 212. Deterring aliens ordered removed from remaining in the United States unlawfully.

Clarifies that attempt at reentering the US is penalized if the alien “seeks admission not later than five years after the date of alien’s removal” as opposed to “seeks admission within five years of the date of such removal”.

Sec. 213. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.

Bars sale of guns to non-immigrants. A waiver is possible.

Sec. 214. Uniform statute of limitations for certain Immigration, naturalization, and peonage offenses.

The statute of limitations for all immigration related crimes would be made a uniform ten years

Sec. 215. Diplomatic Security Service.

Expands power of Justice Department to investigate illegal passport or visa issuance or use and identity theft or document fraud relating to the State Department.

Sec. 216. Streamlined processing of background checks conducted for immigration benefit applications and petitions.

DHS will set up an interagency task force to work on resolving cases that have been delayed more than two years due to background checks. Funds are authorized as necessary to handle background checks. The FBI must prepare a report for Congress on background check delays within 180 days of enactment of the law. A more expansive version of this new section is in the STRIVE Act and that bill sets timeframes for processing background checks. That language was NOT included in this version of the bill.

Sec. 217. State criminal alien assistance program.

Authorization to reimburse states for costs associated with incarcerating criminal aliens extended.

Sec. 218. Transportation and processing of illegal aliens apprehended by State and local law enforcement officers.

This section requires DHS to provide state and local law enforcement authorities with sufficient transportation and officers to take illegal aliens into custody for processing at a detention bill.

Sec. 219. Reducing illegal immigration and alien smuggling on tribal lands.

DHS may award grants to Indian tribes with lands adjacent to land borders to cover costs associated with illegal immigration (law enforcement, environmental cleanup, etc.). Funding authorized until 2011.

Sec. 220. Alternatives to Detention.

DHS shall conduct a study on the effectiveness of alternatives to detention including electronic monitoring services and intensive supervision programs.

Sec. 221. State and local Enforcement of Federal Immigration laws.

This section requires DHS to reimburse state and local governments for training related to the enforcement of federal immigration laws.

Sec. 222. Protecting Immigrants from Convicted Sex Offenders.

This section bars convicted sex offenders from petitioning for relatives for permanent residency status under Section 245(a) of the Immigration and Nationality Act unless DHS determines the alien poses no risk to the citizen with respect to whom a petition is filed. The measure also extends to petitions by permanent resident and K visa applicants.

Sec. 223. Law enforcement authority of States and political subdivisions and transfer to Federal custody.

This section increases areas of cooperation between federal immigration enforcement authorities and the states. The section includes provisions stating the inherent authority to arrest and transfer to Federal custody any alien for the purpose of assisting in the enforcing criminal immigration law provisions.

Sec. 224. Laundering of monetary instruments.

This section adds alien smuggling and related activities to the list of crimes the financial proceeds of which are subject to money laundering statutes.

Sec. 225. Cooperative Enforcement Programs.

This section requires DHS, within two years, to enter into cooperative enforcement agreements with at least one law enforcement agency in each state.

Sec. 226. Expansion of the Justice Prisoner and Alien Transfer System.

This section expands the Justice Prisoner and Alien Transfer System (JPATS). The expansion will include increasing the use of buses and air hubs in three geographic regions, allocating a set number of seats for affected aliens in each metropolitan area, and allowing metro areas to trade seats depending on their needs.

Sec. 227. Directive to the United States Sentencing Commission

Directs the US Sentencing Commission to amend their policies relating to passport fraud offences.

Sec. 228. Cancellation of visas.

Expands INA Section 222(g) to void all non-immigrant visas of alien and not just the particular visa that is the subject of the overstay. Those subject to 222(g) will now be able to process in country of last residence and not just country of nationality.

Sec. 229. Judicial Review of Visa Revocation.

This implements the Grassley amendment and bars any form of judicial review of visa revocations.

TITLE III—WORKSITE ENFORCEMENT

This title was called “Unlawful Employment of Aliens” in S. 2611.

Section 301. Purposes.

This is a new section outlining the goals for Title III and include the following:

- 1. to continue to prohibit employing unauthorized aliens;**
- 2. to require employers verify identity and work authorization of all employees;**
- 3. to authorize DHS to access records of other agencies to confirm identity, authenticate lawful presence and prevent identity theft and fraud;**
- 4. to ensure the Social Security Administration has authority to assist in enforcement of immigration laws;**
- 5. to collect information on employee hires;**
- 6. to electronically secure a social security number in the new Employment Eligibility Verification System (EEVS);**
- 7. to provide for record retention of EEVS inquiries, to prevent identity fraud and employment authorization fraud;**
- 8. to employ fast track regulatory procedures to expedite implementation of Title III provisions for a two year period;**
- 9. to establish**
 - a. a document verification process requiring employers to inspect, copy and retain ID and work authorization documents;**
 - b. an EEVS requiring employers to obtain confirmation of an individual’s ID and work authorization;**
 - c. procedures for employers to register for the EEVS and to confirm work eligibility through EEVS;**
 - d. a streamlined enforcement system to ensure compliance;**
 - e. a system for imposing civil penalties;**
 - f. enhancing criminal and civil penalties;**
 - g. increased coordination with the IRS and DHS regarding employers who have violations related to employing unauthorized aliens;**
 - h. increased tax penalties on employer violators**

Sec. 302. Employment verification.

Section 302 of the bill covers the unlawful employment of aliens. Employers would now be required to not only comply with I-9 rules, but also with a new Electronic Employment Verification System that is a permanent implementation of the basic pilot program that has been in existence for the last few years. DHS is also permitted to charge employers taxes tied to use of the system. This section also recognizes DOL's authority to investigate employers under the Fair Labor Standards Act of 1938.

Knowingly or hiring unauthorized workers carries tougher penalties than unknowingly hiring unauthorized workers. Employers who attempted in good faith to comply with the I-9 rules do have a defense, however, until electronic verification system participation is required.

Section 302 contains a new rule prohibiting companies from using contract workers knowing or recklessly disregarding that the workers are unlawful. The rule is retroactive (unlike the STRIVE Act). The new language differs from S.2611 by requiring employers to add language to contracts with contractors or subcontractors requiring the contractor or subcontractor to adhere to immigration laws. Also employers will now be able to verify that the contractor or subcontractor has registered with the EEVS.

The bill creates a good faith defense for employers, including technical or procedural failures.

The new language states that "employer" includes entities in any branch of the Federal Government.

Employers will have to maintain I-9s AND use the EEVS system. Changes the I-9 document list. The employment verification system is significantly altered by now only allowing for a limited number of identification documents to work for employment verification purposes. For US citizens, documents that meet both identification and employment authorization will now only include US passports, a new biometric tamper-resistant, machine-readable passport, a REAL ID compliant driver's license. For permanent residents, dual id/employment documents are the green card and the biometric Social Security card (not the REAL ID driver's license). For everyone else, the only dual documents are the USCIS employment authorization card or the biometric SS card or, for Z visa holders described in Title VI, the secure identification card called for under that section. DHS can also designate additional documents (which presumably will be necessary since work authorized non-immigrants will likely be unable to get the two documents listed in a timely manner in order to start work upon entry to the US). Special procedures are set out for minors unable to get the documents in this section. Special rules are also set out for disabled persons working at non-profits or as part of a rehabilitation program. DHS can also bar a document in this section if it finds it to be problematic.

Documents must be retained for seven years from the date of hiring or two years from the date an individual is terminated (a substantial increase over current retention requirements). Employers are, for the first time, required to retain copies of the

documents presented to prove ID and work authorization. Employers must also retain SSA mismatch letters and correspondence. And employers must maintain records of all actions taken by the employer relating to questioning of an alien's identity or work authorization.

DHS and SSA will implement an electronic employment verification system (EEVS). Upon enactment, DHS is authorized to require employers determined to be part of the critical infrastructure, a federal contractor or directly related to national or homeland security to begin using the system. DHS will notify covered employers 30 days prior to the required time they must start using the EEVS.

Within six months, DHS shall require additional employers or industries to start entering new hires and reverifications. These employers may be designated based on risks to critical infrastructure, national security, immigration enforcement or homeland security needs.

Within 18 months, shall require all employers to participate in EEVS with respect to new hires.

Within three years, all employers must be using EEVS for all new employees and must verify all other employees.

DHS has the authority to allow employers to start using EEVS sooner if the employer volunteers.

Employers must register in the EEVS and shall be required to undergo training on the proper use and security of EEVS. Such training shall, to the extent practicable, be available electronically.

Employers will be required to obtain an individual's name, social security number, alien number and any other information required by DHS and make an inquiry in the electronic system between the date of hire and the first day of employment (or recruitment or referral). Employers participating in the Voluntary Advanced Verification Program to Combat Identity Theft under Section 307 will also submit fingerprints.

DHS will respond within three business days to either confirm eligibility or a tentative non-confirmation. If the employer receives a further action notice, the employer must notify the employee "without delay". The employee then has ten days to contact the appropriate agency to contest the notice and, if DHS so requires, appear in person at the appropriate Federal agency. DHS shall also specify an available secondary verification procedure to confirm the validity of information provided.

If the individual does not contest, a final nonconfirmation shall issue. Otherwise, the EEVS shall provide a final confirmation or nonconfirmation within ten business days from the employee's contesting of the further action notice. DHS may extend the

investigation period. DHS can reexamine a previously denied case if it learns that the individual may not actually be work authorized.

Employers may not terminate until it receives a final nonconfirmation notice. After that, the employer is required to terminate unless the individual files an appeal in a timely manner. After the final nonconfirmation, a rebuttable presumption is created that the employer has violated this section.

Employers may not use EEVS to verify an individual prior to extending an offer of employment and employers cannot make potential employees verify their own employment offer. Employers may also not punish workers who have been issued a further action notice. Employers may not require a prospective employee present additional documents or different documents than those required.

Employers must develop the necessary policies and procedures to monitor employers' use of the EEVS and their compliance with the rules for the program. Employers are liable for a civil penalty of up to \$10,000 for each violation.

DHS will enforce the rules under this program.

\$120,000,000 for a three year period is authorized to be spent on a public education campaign to be conducted by DHS in cooperation with the Small Business Administration.

DHS may modify requirements as necessary to combat fraud and identity theft.

Employers participating in EEVS shall not be liable with respect to any employer who relied in good faith on information provided through the confirmation system.

Workers will have the right to administrative and judicial review of a finding of nonconfirmation. An administrative appeal must be made within 15 days of being terminated as a result of receiving a final nonconfirmation notice.

Appeals by those claiming to be US national are made with the Commissioner of Social Security. Claims by aliens who are work authorized are made with DHS.

Unlike prior version, no entitlement to any fees or damages to an employee who prevails on an appeal. The government is insulated from liability under the bill from those challenging a final nonconfirmation notice.

An administrative appeal can be appealed via a petition for review with the US Court of Appeals for the circuit where the nonconfirmation notice was issued. The petition must be filed within 30 days after the date of the completion of the administrative appeal. Only the items in the administrative record of the final nonconfirmation order can be considered.

DHS must respond to inquiries made by participating employers at any time through the Internet.

DHS is allowed to access EEVS records to prevent fraud and identity theft. DHS shall also develop systems to protect privacy and secure personal information.

Employers unable to access EEVS shall have special arrangements made to use federal government facilities or public facilities to utilize EEVS.

The State Department is required to provide access to passport and visa information to the EEVS. SSA and DHS are required to update their information in a manner that promotes maximum accuracy and provides for the prompt correction of erroneous information.

Government agencies are prohibited from using data from this system for anything other than verifying employment. No other agencies may access the data other than DHS and only officers responsible for verifying employment authorization.

Employers found to have violated the rules will be penalized as follows:

- fines of \$5000 per alien that is the subject of a violation
- fines of \$10,000 per alien if the employer has been fined previously for hiring illegal workers
- fines of \$25,000 per alien if the employer has been fined more than once for hiring illegal workers as well as if the employer has failed to comply with a previously issued final order.
- Up to \$75,000 for each alien if the employer has been fined more than twice or has failed to comply with an order. .
- recordkeeping violations of \$1000 for each violation
- recordkeeping violations of \$2000 per violation if the employer has been fined once in the previous year
- \$5000 for each recordkeeping violation if the employer has been fined previously.
- \$15,000 if the employer has been fined more than twice.

Employers that engage in a pattern of knowing violations liable for a criminal fine of \$75,000 for each alien.

Federal contractors face debarment from accepting government contracts if they are.

Class action lawsuits to challenge provisions of the section are prohibited.

Section 303. Effective Date.

This section becomes effective on the date of enactment.

Sec. 304. Disclosure of Certain Taxpayer Information to Assist in Immigration Enforcement.

Mandates that the Social Security Administration share information on records where names and social security numbers do not match or when multiple names have the same taxpayer identifying number. SSA also must share information on individuals with returns who are under 14 years of age or whose death was recorded in the preceding year.

DHS contractors are barred from having access to this shared information unless various safeguards are taken.

Sec. 305. Increasing Security and Integrity of Social Security Cards.

Within 180 days, SSA must begin to administer and issue fraud-resistant, tamper-resistant Social Security cards and within two years of enactment, all cards issued must be tamper-resistant, wear-resistant and fraud-resistant.

Replacements of Social Security cards may not take place unless the SSA determines that the purpose of replacing the document is legitimate.

Sec. 306. Increasing Security and Integrity of Identity Documents.

DHS shall issue grants to States for the purpose of issuing documents compliant with this title. Only States that certify intent to comply with the REAL ID Act are eligible for these grants.

Sec. 307. Voluntary Advanced Verification Program to Combat Identity Theft.

DHS shall establish a voluntary program to allow employers to submit and verify an employee's fingerprints for purposes of determining the identity and work authorization of the employee. The program must be implemented within 18 months of enactment.

DHS will only maintain the fingerprint records for ten days and then such records shall be purged unless the records require further investigation. US citizens may request DHS retain their fingerprints for employee verification purposes and to prevent identity theft. Consent may be withdrawn and DHS would have ten business days to purge the records. DHS may only use the fingerprints solely for verifying identity and work authorization.

Sec. 308. Responsibilities of the Social Security Administration.

States that SSA is responsible for setting up a method for the EEVS to compare names, social security numbers and available citizenship information in order to confirm or not

confirm the validity of information provided regarding an individual. SSA is responsible for making improvements in its databases in order to prevent identity theft. SSA must also establish a secure process to allow an individual to request that SSA preclude conformation under EEVS of a Social Security number until it is reactivated by that individual.

Sec. 309. Immigration Enforcement Support by the Internal Revenue Service and the Social Security Administration.

The Secretary of the Treasury is to establish a unit within the Criminal Investigation office of the IRS to investigate tax law violations of individuals not authorized to work in the US. At least ten full-time agents and up to 200 full time special agents are authorized for hire.

Fines on employers failing to file correct information are quadrupled from the current penalties. The new penalties apply to failures occurring after December 31, 2006.

Sec. 310. Authorization of Appropriations.

Authorizes appropriations to increase the number of personnel devoted to enforcing Title III to not less than 4500. Authorizes funds needed to implement the technology needed for the EEVS for both the SSA and DHS.

[Note – It appears that certain important provisions from S.2611 are not here including extending the INA’s anti-discrimination provisions to the EEVS. Also, a provision changing the employment verification to ask if a person is a “national” of the US instead of a “citizen” is not here. A provision requiring 25% of ICE’s work hours be devoted to worksite enforcement has apparently been removed. Fine increases for anti-discrimination violations are removed.]

TITLE IV—NEW TEMPORARY WORKER PROGRAM

Sec. 401. Nonimmigrant worker.

The controversial section 401 from S.2611 is removed. That section stated that any regulation that would increase the number of aliens eligible for legal status not take effect before 90 days after the date on which the Director of the Bureau of the Census submitted a report to Congress. The report would be made jointly with a number of departments of the Federal government and is to assess the impact of the bills increased immigrant numbers on the “infrastructure” and “quality of life in the United States.” The report must

be submitted to Congress within 90 days after enactment of the new law. Nevertheless, the trigger requirements from the preamble to the act must be met to go forward with this program.

Section 401 creates a new Y visa category that is similar to the H-2C proposed in last year's S.2611 bill.

The H-2B category is eliminated (it is replaced by the Y visa).

This visa appears targeted to workers either outside the US or currently in legal status in the US. A separate guest worker program targeted at out of status workers is outlined in Title VI.

The visa is available to those coming to the US temporarily to perform temporary labor or services other than labor or services covered in H-1B, H-1B1, H-1C, H-3, D, E, I, L, O, P, R or TN visas.

There are two Y visas – a Y-1 for non-seasonal workers and a Y-2 visa for seasonal workers. The H-2A was originally to be scrapped for a separate Y visa category, but this has now changed. A Y-3 visa is available for spouses and children.

In S.2611, the employer had to only show that no unemployed workers are available. STRIVE requires a showing that there are no US workers “who are able, willing and qualified” to perform the job,” a tougher standard since it presumably would cover employed workers immediately available to change to the new position.

The Y program will sunset after 5 years (this is from the Dorgan Amendment).

Sec. 402. Admission of Nonimmigrant Workers.

Mandates a labor certification process for Y workers to be administered by the Labor Department with the petition first submitted to DHS (i.e. no direct consular filing). The labor certification must be submitted with the DHS petition.

A petition must be filed within 180 days of the date of certification by the Labor Department.

DHS may request information to verify the attestations made by the employer during the labor certification process.

DHS may notify the petitioner of a decision on the case electronically or “any other means assuring expedited delivery.”

DHS may deny a petition without seeking additional evidence and must notify the petitioner of appeal rights and that the denial is without prejudice to the filing of any subsequent petitions.

An approved Y petition will be valid for the period certified by the Labor Department. DHS may terminate when it determines that the proffered wage is not being paid, the geographic location of employment has changed, the duties of the position are not the same as certified, or that the facts have changed in a way that would invalidate the recruitment actions or that there has been fraud or misrepresentation.

DHS shall authorize appeals to the AAO.

Visas will be limited to a single-entry. Canadians must possess an actual Y visas stamp or documentation of Y nonimmigrant status.

Aliens must show they are capable of performing the work and that they have evidence of an employment offer.

Fees – In addition to a processing fee sufficient to meet the costs of the State Department for adjudicating the case, Y-1 applicants must pay a \$500 “state impact” fee and an additional \$250 for each dependent accompanying the Y-1 up to \$1500 per family. These fees do not affect the requirement to pay a machine-readable visa fee or reciprocal fees applicable to certain countries.

Workers must have a medical examination at the worker’s expense.

Workers are ineligible if they are described in Section 601(d)(1)(A), (D), (E), (F), or (G) of this legislation. Applicants must not be inadmissible under Section 601(d)(2) of this bill. . DHS may waive in admissibility in certain cases where there are humanitarian, public policy or family unity reasons to consider (S.2611 limited such waivers to conduct that occurred before enactment of the comprehensive bill).

A Y visa applicant’s background check must be completed before admission to the US.

Y-1 visas are available for us to two years with two additional two year terms. However, Y visa holders who have spent twenty-four months in the US in Y-1 status may not seek extension or be readmitted to the US as a Y-1 nonimmigrant unless the alien has been physically present outside the US for the immediate prior 12 months.

Y-1s with dependents in Y-3 status are limited to two two-year periods of admission. If family members accompany the Y-1 in the first period of admission, they may not accompany the Y-1 during the second period of admission. If the Y-1 nonimmigrant’s family members accompany or follow to join in the second period of admission, but not the first, then the Y-1 shall not be granted any additional periods in Y-1 status. Y-3s are limited to the length of admission of the Y-1.

International commuters residing outside the US who leave the US each day shall be authorized to remain for three years. There is no requirement to reside outside the US before seeking re-admission for these individuals.

Y visa holders can have their status terminated if they are unemployed for 60 or more consecutive days or, in the case of Y-1s, for an aggregate of 120 days, or, in the case of Y-2s, an aggregate period of 30 days. If one's status terminates, he or she needs to register such departure at a designated port of departure. Exceptions for medical disability or leave or for disaster included in S.2611 are not included.

Workers are entitled to enter the US up to a week before the start date of a job and up to 14 days following the end of the job (for the purposes of departing or extending based on a subsequent job offer) except that the total length of the admission to the US may not exceed the two year admission period for the Y-1s or ten months for the Y-2s.

Y-2s are authorized to be in the US for 10 months per admission.

Travel outside the US is permitted on Y visas but time outside the US will not be tacked on to the period of authorized admission.

Ys will be granted a biometric, tamper-resistant card either at a port of entry or a consulate if they are from a country contiguous to the US.

Y nonimmigrants who overstay are permanently barred from any future benefits except asylum, withholding of removal or protection under the Convention Against Torture. An exemption is made if the overstay was due to extraordinary circumstances beyond the control of the applicant and the alien has not otherwise violated Y status.

Anyone who enters or attempts to enter the US without inspection after enactment of this law will be barred permanently from receiving most immigration benefits.

The Y visa is portable and workers can move to new jobs as long as the new employer complies with the terms for Y employment and notifies USCIS of the change of employment.

A new section is included that requires employers to notify USCIS within three days that a Y worker has reported for work, that the worker has changed jobs and started with the new employer, the employment of the Y worker has terminated, or the Y worker has failed to show up within three days of the agreed start date. Employers that violate the reporting rules can be fined.

Y workers are permitted to change status in the US, but others may not change to Y status from within the US. Ys may not change to other Y categories in the US (though it is possible to do so from outside the US).

Spouses and children may visit or enter in a category other than on a Y.

Sec. 403. General Y Nonimmigrant Employer Obligations.

Describes the labor certification requirement for employers.

Section 403 spells out an employer's obligations when hiring Y workers. Employers are required to pay the worker's filing fee. The fees are as follows:

- \$500 per worker for employers with fewer than 25 workers;
- \$750 for employers of between 26 and 150 employees;
- \$1000 for employers of 151 to 500 employees; or
- \$1250 for employers with more than 500 employees.

Employers that provide health insurance are not required to pay the impact fee.

This section also sets out recruiting requirements for Y applications. In the period beginning not later than 90 days prior to submitting the application, the following must occur:

- submission of a copy of the job opportunity to the State Employment Service Agency (SESA);
- authorizing the SESA to post the job on the web, with local job banks, and with unemployment agencies and similar recruitment sources;
- authorizing SESA to notify labor unions;
- posting of the job at the place of employment;
- advertising the job in one of the publications with the three highest circulation in the job market for at least ten consecutive days in the period ending at least 14 days before the filing date; and
- based on the recommendations of the local job service, advertising in professional, trade, or ethnic publications likely to be patronized by a potential worker.

The job must first be offered to any eligible US worker who applies, is qualified and is available at the time of need.

Employers must also attest that

- Hiring the Y worker will not adversely affect wages and working conditions for US workers.
- The employer did not and will not cause US workers to lose their jobs by hiring the Y worker. There is a 90 day look back and look forward provision.
- The worker will be paid the higher of either the actual or prevailing wage; the wage set by a collective bargaining agreement shall be considered the prevailing wage; Davis-

Bacon rate used for occupations covered; private wage surveys available if the occupation is not covered by DOL.

- There is no strike or other form of work stoppage.
- The employer is covered by a state workers compensation program, the employer will provide at no cost to the worker insurance covering injury or illnesses arising due to the job. The insurance would need to be comparable to state workers compensation programs.
- Notice to workers is provided and notice to a collective bargaining representative if one exists
- Unless DOL has pre-certified a shortage, the employer can show there are not sufficient workers able, willing and qualified and immediately available to perform the job. Good faith recruiting efforts must be undertaken in the three month period prior to filing (with recruiting ending at least 14 days prior to filing). The job must be advertised at the actual wage paid by the employer.
- The job must be bona fide.
- Employers must maintain public access files.
- The employer must notify DOL and DHS when an H-2C leaves the employer within three business days after the departure.
- The petition must be filed not more than 60 days before the date the services are needed.

DHS shall have the authority to audit employers to ensure compliance.

Employers who misrepresent facts or fail to comply with the terms of the program can be barred for up to three years from sponsoring or employing Y workers. And punishing whistle blowing employees or former employees is prohibited.

The Y visa will not be available to workers coming to perform services in metro areas in which the unemployment rate for unskilled or low-skilled workers during the most recently completed six month period averaged more than 7% (it was 9% in S.2611 and the STRIVE Act). A waiver is possible if an employer can prove it has met specific recruiting rules.

Employers are required to retain records for five years from the date the petition is filed.

S.2611 had a one year phase in date for this provision, but STRIVE makes it immediately applicable.

Y workers may not be treated as independent contractors.

Foreign labor contractors recruiting Y workers are required to disclose a variety of details to Y workers at the time of their recruitment including information on the proposed place of employment, the pay, the type of work, who is paying travel expenses, whether there is a strike or other similar labor dispute, whether the contractor is getting a commission based on the worker's services, details regarding insurance and worker's compensation coverage, and information on the risk of work related injuries. Foreign labor contractors are prohibited from charging the Y worker for their services.

Foreign labor contractors will be required to register with the Department of Labor and employers may only use the services of registered contractors. DOL will issue two year renewable certifications of these contractors. Y workers will also have the ability to lodge complaints against contractors with the DOL. The DOL will have the discretion to require contractors be bonded and may also deny certification if it determines the contractor lacks sufficient ties to the US to adequately enforce these rules.

Employers are subject to civil fines of \$2000 up to \$35,000 per worker depending on whether the violation is willful and whether a worker was harmed. Imprisonment of up to six months and additional fines of up to \$35,000 are possible if a willful violation occurs and an individual suffers extreme physical or financial harm.

Subtitle B: Seasonal Agricultural Nonimmigrant Temporary Workers

Sec. 404. Amendment to the Immigration and Nationality Act

H-2A workers would only be eligible to work up to ten months, down from the current 364 day a year limit. The new program would drop the labor certification requirement and replace it with a program that involves filing a labor condition application, much like the current H- 1B visa program. The H-2A applications by employers would have to be adjudicated within seven days by the USCIS. Employers would still have to engage in recruiting including listing the job with a local job service for 28 days before bringing workers in to the US.

There are also a number of modifications and clarifications of the work conditions applicable to H-2A workers. Regulations enacting H-2A provisions of the law would have to be in place within a year of the law passing. A housing allowance can be provided as an alternative to providing housing. Workers must be given a transportation allowance to get to the job.

The section modifies the definition of a “work day” in agriculture to include only days when .75 hours are worked, an increase from 1 hour listed in the earlier version of the bill. Under the AgJobs legalization rules, the tax requirement is broadened to include all Federal taxes owed as opposed to just taxes owed during the requisite employment period.

A difference between this bill and STRIVE is that STRIVE has special eased rules for shepherders, goat herders, or dairy workers.

Sec. 405. Determination and use of user fees.

Calls on DHS to establish a schedule of fees based on the number of job opportunities an employer includes in a petition.

Sec. 406. Regulations.

DHS and the State Department shall consult with the Department of Labor and Department of Agriculture in issuing regulations. Regulations are due within a year of enactment.

Sec. 407. Reports to Congress.

DHS shall annually report to Congress on the AgJobs program.

Sec. 408. Effective date.

This section shall become effective a year after enactment.

Sec. 409. Numerical limitations.

200,000 total cap (this is drawn from the Bingaman Amendment). The provision allowing the cap to grow up to 15% per year (it was 20% in S.2611) depending on how quickly the cap is reached in the previous fiscal year is removed as is the provision that would allow the cap may to decrease by 10% per year if the cap is not reached (unless the cause of this was either a delay in issuing rules or processing delays).

Y-2s may not exceed 100,000 in the first fiscal year with a total cap of 200,000 based on a regulator allowing 15% growth per year.

Y-3s may not exceed 20% of the annual limit on Y-1s.

Sec. 410. Requirements for participating countries.

The US shall negotiate bilateral treaties with countries sending H-2C workers requiring the countries to accept the return of nationals ordered removed from the US within three days of such removal.

Sec. 411. Compliance investigators.

The Labor Department is now directed to hire not less than 200 per year for five years additional investigators and attorneys to ensure compliance with the rules of the H-2C program.

Sec. 412. Standing commission on immigration and labor markets.

Calls for the creation of a new independent federal agency called the Standing Commission on Immigration and Labor Markets that will study nonimmigrant and immigrant programs and numerical limits and the new point system.

Sec. 412. Agency representation and coordination. NOTE: THERE IS A NUMBERING MISTAKE IN THE NEW BILL AND THERE ARE TWO SECTION 412s. I AM PRESUMING THIS WILL BE CORRECTED AND I AM NOT CHANGING MY SECTION NUMBERS IN ORDER TO MAKE COMPARING EASIER.

Bars ICE officials from representing to employees or employers that they are a member of any agency or organization that provides domestic violence services, enforces health and safety law or other labor laws, provides health care services, or any other services to protect life and safety.

Sec. 413. Bilateral Efforts With Mexico to Reduce Migration Pressures and Costs.

Expresses the sense of Congress on the need to promote economic development in Mexico in order to relieve immigration pressures in the US.

Sec. 414. Willing Worker-Willing Employer Electronic Database.

Requires DOL to establish a web site that allows each SESA's electronic job bank to be accessible via a central web site.

Sec. 415. Enumeration of Social Security Numbers.

DHS and SSA shall set up a system to allow for the prompt enumeration of an SS number after DHS has granted a Y status.

Sec. 416. Contracting.

Allows DOL and DHS to contract with other entities if they can do so in a feasible, cost-effective, secure way.

Sec. 417. Federal Rulemaking Requirements.

DOL and DHS must issue an interim final rule within six months to implement and such rule shall become effective upon publication in the Federal Registration.

Subtitle C – Nonimmigrant Visa Reform

Sec. 418. Student Visas.

Creates new F-4 visa for students pursuing graduate study in mathematics, science, information technology, or the natural sciences. F-4s do not need to maintain a foreign residence and are dual intent.

Creates a new student visa category for distance learning programs where student enters for less than 30 days.

Dual intent for H-1Bs is eliminated.

Allows for off campus work authorization for students if they are maintaining good academic standing and an employer provides the school and DOL with an attestation that it has recruited US workers for 21 days, will pay the actual or prevailing wage and the student won't be employed more than 20 hours per week during the school year and 40 hours per week during vacation periods and between academic terms. Employers who commit fraud or fail to pay the wages, the employer may be disqualified for five years from employing an alien student.

Sec. 419. H-1B Streamlining and Simplification

Increases the H-1B cap to 115,000 in 2008 and 180,000 per year after that. H-1Bs issued to Singapore and Chilean nationals will no longer be deducted from the general H-1B quota.

Experience equivalency will no longer be accepted for H-1Bs.

Allows for extensions in one year increments beyond the six year limit if a merit-based point system adjustment application has been pending for a year.

Sec. 422. H-1B Employer Requirements.

Non-displacement and good faith recruitment requirements currently applicable to "H-1B dependent" employers will not apply to all H-1B employers. The nondisplacement requirement is lengthened to 180 days before and after from 90 days. This provision takes effect immediately upon enactment, but shall not apply to displacements more than 90 days before enactment.

H-1B recruiting may not be limited to or prefer H-1Bs. Employers may not limit recruiting only to H-1Bs.

Limits employers with less than 50 employees to not more than 50% of such employees being in H-1B status.

Sec. 421. H-1B Government Authority and Requirements.

Expands DOL's authority to investigate H-1B violations. Doubles fines.

Sec. 422. L-1 Visa Fraud and Abuse Protections.

[Note – The first part of this section appears to duplicate much of Sec. 424.] L-1 applicants entering for start ups may be approved for one year only if the alien has not been the beneficiary of two or more L-1 petitions within the preceding two years. The petition must have an adequate business plan, sufficient premises to carry out the proposed business activities, and the financial ability to commence doing business immediately upon the approval of the petition. Extensions must be accompanied by documentation that the employer has complied with the business plan. DHS has discretion to extend if the business has been operational for six months.

Expands DHS' authority to investigate fraud in L-1 visa filing. At least 1% of employers must be audited annually.

Sec. 423. Whistleblower Protections.

Requires employers who try to take action to intimidate H-1B whistleblowers are liable for lost compensation, including back pay.

Sec. 424. Limitations on Approval of L-1 Petitions for Start-Up Companies.

L-1 applicants entering for start ups may be approved for one year only if the alien has not been the beneficiary of two or more L-1 petitions within the preceding two years. The petition must have an adequate business plan, sufficient premises to carry out the proposed business activities, and the financial ability to commence doing business immediately upon the approval of the petition. Extensions must be accompanied by documentation that the employer has complied with the business plan. DHS has discretion to extend if the business has been operational for six months.

Spouses of L-1s in start ups may not be granted employment authorization during the initial 12 month period.

Sec. 425. Medical Services in Underserved Areas

[This section is expected to be substantially revised before formal introduction of the legislation]

Sec. 426 [Section number will likely change]. B-1 Visitor Visa Guidelines and Data Tracking Systems.

Within six months, DOS is to review its regulations and guidelines to ensure that the issuance of B-1 visitors is made in a consistent manner. DHS shall do the same for CBP officers with respect to the admission of B-1s. Within 18 months, DOS and DHS are to establish data tracking systems as part of the effort to ensure consistency.

Sec. 427. Authorization of Appropriations.

Authorizes appropriations as needed to carry out Title IV’s provisions.

TITLE V – IMMIGRATION BENEFITS

Sec. 501. Rebalancing of Immigrant Visa Allocation.

Increases the number of visas for family-sponsored cases to 567,000 until all backlogged family cases are adjudicated (expected to be about eight years). After that, the limit is 127,000 per year.

Merit-based immigrants are limited to the numbers used in the employment-based green card categories in fiscal year 2005. 10,000 additional numbers are made available for exceptional aliens in the Y visa category and an extra 90,000 for beneficiaries pending or approved at the time of the effective date of the section.

After the sixth fiscal year, the number shall be set at 140,000 per year.

Once the Z legalization applicants described in Title VI become eligible for green cards, the allocation of merit-based green cards will increase to 380,000 per year or which 10,000 are reserved for exceptional Y visa holders plus the “temporary supplemental allocation” which is set at 20% of the estimated pool of Z nonimmigrants for five years, and then whatever amount is necessary after that.

Sec. 502. Increasing American Competitiveness Through a Merit-Based Evaluation System for Immigrants.

Replaces the EB-1, EB-2 and EB-3 categories (including labor certification system) with a merit-based evaluation system. The point chart is as follows:

Category	Description	Max pts
Employment	U.S. employment in Specialty Occupation	47

Occupation	(DoL definition) – 20 pts U.S. employment in High Demand Occupation (BLS largest 10-yr job growth, top 30) – 16 pts	
National interest/ critical infrastructure	U.S. employment in STEM or health occupation, current for at least 1 year – 8 pts (extraordinary or ordinary)	
Employer endorsement	A U.S. employer willing to pay 50% of LPR application fee either 1) offers a job, or 2) attests for a current employee – 6 pts	
Experience	Years of work for U.S. firm – 2 pts/year (max 10 pts)	
Age of worker	Worker’s age: 25-39 – 3 pts	
Education <i>(terminal degree)</i>	M.D., M.B.A., Graduate degree, etc. – 20 pts Bachelor’s degree – 16 pts Associate’s degree – 10 pts High School diploma or GED – 6 pts Completed certified Perkins Vocational Education program – 5 pts Completed DoL Registered Apprenticeship – 8 pts STEM, assoc & above – 8 pts	28
English & civics	Native speaker of English or TOEFL score of 75 or higher – 15 pts TOEFL score of 60-74 – 10 pts Pass USCIS Citizenship Tests in English&Civics– 6 pts	15
Extended family (Applied if threshold of 55 in above categories.)	Adult (21 or older) son or daughter of USC – 8 pts Adult (21 or older) son or daughter of LPR – 6 pts Sibling of USC or LPR – 4 pts If had applied for a family visa in any of the above categories after May 1, 2005– 2 pts	10
		100

Supplemental schedule for Zs		
Agriculture National Interest	Worked in agriculture for 3 years, 150 days per year – 21 pts Worked in agriculture for 4 years (150 days for 3 years, 100 days for 1 year) – 23 pts Worked in agriculture for 5 years, 100 days per year – 25 points	25
U.S. employment exp.	Year of lawful employment – 1 pt	15

<i>Home ownership</i>	Own place of residence – 1 pt/year owned	5
<i>Medical Insurance</i>	Current medical insurance for entire family	5

No modifications to the selection criteria and relative weights accorded each should take place earlier than the sixth year after beginning the system.

Cuts the EB-4 special immigrant quota from 5,000 to 4,200.

Cuts EB-5s to 2,800 per year and targeted area EB-5s to 1,500.

Cases filed before enactment will still be adjudicated under the current system.

Sec. 503. Reducing Chain Migration and Permitting Petitions by Nationals.

Parents of US citizens removed from immediate relative category into a new preference category set at 40,000 per year. The F-1, F-2B, F-3 and F-4 family categories are being eliminated.

Spouses and minor child of permanent residents are allocated 87,000 per year. 440,000 per year are to be dedicated to reducing the backlog in the family categories for cases filed before May 1, 2005. Cases received after that date are not eligible in family categories anymore. Of the 440,000, the following is the breakdown of how the numbers are to be allocated per year:

- 70,400 for F-1
- 110,000 for F-2B
- 70,400 for F-3
- 189,200 for F-4

DHS is to contact applicants in the backlog to see if they remain interested in immigrating and may deny petitions for those who fail to respond.

Creates a new immigrant visa limited to 5,000 per year for hardship cases for people who would have met the eliminated categories. Applicants must show no ability to immigrate through other means. A green card must be pursued within a year of a priority date in this category becoming current for the applicant. Half of the quota is reserved for each half of the fiscal year (similar to H-2Bs).

Sec. 505. Elimination of the Diversity Visa Program.

The lottery is being eliminated. This would take effect on October 1, 2008, ahead of the next scheduled lottery date. No one can adjust status after that date and the latest an immigrant visa may be granted is on that date.

Sec. 506. Family Visitor Visa

Parents of adult US citizens or the spouses or children of aliens in Y status may qualify for visitor status and be exempt from Section 214(b), the immigrant intent language. A \$1000 bond may be requested by DHS and the applicant should possess proof of the ability and financial means to return to the country of residence. Overstays will result in a permanent bar with the exception of person applying for asylum or similar statuses unless there is a good excuse.

Sec. 507. Prevention of Visa Fraud.

Expands DHS's ability to audit and investigate fraud.

Sec. 508. Increasing Per-Country Limits and Exempting Family-Sponsored and Employment-Based Immigrants.

Raises per country limits from 7% to 10%. Per country limits don't apply to pre-May 1, 2005 applicants.

TITLE VI – NONIMMIGRANTS IN THE UNITED STATES PREVIOUSLY IN UNLAWFUL STATUS

Sec. 601.

The new bill takes a somewhat different approach to legalization than S.2611. It calls for calls for a probationary status to be followed by a Z nonimmigrant visa followed by a departure to obtain green card status through the new merit-based point system.

Sec. 601. Conditional nonimmigrants.

Allows people covered in this Title to remain lawfully in the US.

Z-1 nonimmigrants are those physically present in the US since January 1, 2007 who are employed and seek to continue working or studying.

Z-2s are for spouses or parents over the age of 65 of Z-1 nonimmigrants. Must also have been in the US since January 1, 2007. Also includes ex-spouses who were victims of domestic violence

Z-3s are available for those under 18 at the time of the application if the person was in the US from January 1st, 2007 and born to or adopted by at least one parent who is a Z-1 or a Z-2

Applicants must show that they were not in lawful status under INA 101(a)(15) on January 1, 2007. Breaks from residence in the US for 90 continuous days or an aggregate of 180 days will break residency for purposes of Z visa processing.

Z visas are not available to aliens inadmissible on health, criminal, persecution, security, public charge and certain immigration violator grounds. Drunk drivers who have injured someone are ineligible. There is also a good moral character requirement.

Amendment expands inadmissibility to include “serious criminal offenses”

The unlawful presence bars would not apply nor would failure to attend a removal proceeding, misrepresentation and false claims to US citizenship.

Those with final orders of removal are ineligible if such removal orders are based on crimes or security issues. Individuals subject to a reinstatement of a deportation order are ineligible.

No illegal attempted illegal entries after January 1, 2007 are permitted.

Waivers of 212(a) grounds are available based on humanitarian grounds.

Application fees – Aliens must pay a processing fee to recover the full cost of adjudication which shall not exceed \$1500. The extension fee may also not exceed \$1500.

A penalty fee of \$1000 must be paid at the time of the initial Z-1 application. A \$500 penalty fee must be paid for each Z-2 and Z-3 applicant. Z-2s and Z-3s who change to Z-1 would pay the Z-1 penalty fee in addition to the \$500 fee. Z-1s must pay a \$500 state impact fee.

Z visa applicants must be interviewed.

Z applicants that are draft age must register for Selective Service.

Applications will be accepted during a one year period beginning no later than 180 days after the date of enactment. DHS has the authority to extend the registration period for up to one additional year.

Applicants must provide fingerprints at the time of application

Probationary legal status and work authorization is available to applicants after an initial one-day background check of name and fingerprints. Travel permission may be granted in DHS' discretion. Applications for initial probationary status will be turned around in one business day. More extensive background checks will still continue for converting to the next phase of processing.

Applicants appearing to be eligible to apply who are apprehended or in removal proceedings after enactment and before the registration system starts will be given the opportunity to apply after the regulations are promulgated.

Documents to establish presence in the US are outlined. Aliens have to prove by a preponderance of the evidence that they have satisfied the requirements.

Z visa holders will be issued a machine-readable, tamper-resistant card that will serve as a valid travel and entry document. Travel outside the US will not add to the period authorized on a Z status.

Z applicants will be granted a four year initial status. Z status holders may seek an indefinite number of status extensions. Extension applicants must demonstrate or attempt to gain an understanding of English and civics as normally applicable to citizenship applications. By the time of the second renewal, applicants must pass the naturalization test. Applicants will get up to three chances. Exceptions are made for the disabled, those over age 50 who have been living the US for 20 years and those over fifty-five who have been in the US 15 years or more. Fresh background checks may be required at the time of extension.

Z nonimmigrants may not change status to another nonimmigrant status. Z-2 and Z-3s may change status to Z-1 status. Only one such change may be permitted during a 365 day period unless DHS waives this requirement.

Z nonimmigrants seeking extensions must show continuous employment unless they can show they were studying or disabled.

Z-2s shall be authorized to work.

Z-1s are portable and can change employers.

DHS must widely disseminate information on the program in the two year period immediately after the issuance of the regulations.

Earned Adjustment for Z Status Aliens

Z status holders may not apply for green cards under the regular programs.

Touchback – Z-1 applications to adjust status must be filed in person at a US consulate abroad in the applicant’s country of origin or in another consulate that accepts, as a matter of discretion, the application. Disabled applicants are exempt from touchback.

Applicants must qualify for a green card under the new point system. Applicants must pay a \$4000 penalty at the time of submitting the immigrant petition.

Z-2s and Z-3s are exempt from touchback, but may not become permanent residents unless they are the beneficiary of a green card filed by the Z-1 or are approved in their own right under the points system.

No adjustments of Zs to permanent residency until after all green card applicants in the family and employment category lines filed before May 1, 2005 are cleared.

Restricts Z green card holders from public benefits (with certain exceptions).

Applicants for earned adjustment must take medical exams and pay unpaid income taxes,

Sec. 603. Administrative Review, Removal Proceedings, and Judicial Review For Aliens Who Have Applied for Legal Status.

DHS shall establish a single level of administrative review for final adjustment denials under this section. No court will have the authority to review denials at the administrative appellate level. Only one motion to reopen or reconsider is permitted during the administrative appellate process.

Sec. 604. Mandatory Disclosure of Information.

DHS may not share information from applications except with respect to law enforcement agencies engaged in criminal and national security investigations. Notwithstanding this, no DHS officer may use information from applications for any purpose other than to make a determination on the application, make any publication through with the information in an application can be identified, or permit anyone other than the sworn officers and employees of the agency to examine individual applications. Violators are subject to a \$10,000 fine.

An exception is made for cooperating with law enforcement agencies.

Sec. 605. Employer protections.

Copies of employment records provided by Z applicants may not be used in a prosecution or investigation (civil or criminal) of an employer under INA Section 274A. This is somewhat different from S2611 which said that employers were not liable for employment of aliens benefiting under Title VI.

This section does not protect employers from violations of other laws.

Sec. 606. Enumeration of Social Security Numbers.

DHS and SSA shall set up a system to allow for the prompt enumeration of an SS number after DHS has granted a Z status.

Sec. 607. Preclusion of Social Security Credits for Years Prior to Enumeration.

Amendment language added barring claiming social security benefits for unauthorized work.

Sec. 608. Payment of Penalties and Use of Penalties Collected

DHS may set up a system to allow for up to 80% of the penalties to be paid under an installment payment plan.

Sec. 609. Limitations on eligibility.

Applicants under Title VI are not rendered ineligible solely on the basis of crimes related to the misuse of passports, though they are still subject to prosecution for such crimes. This does not apply to forgery, fraud or misrepresentation on the Z application, however.

Sec. 610. Rulemaking.

DHS must issue an interim final rule within six months and the interim rule shall become effective immediately upon publication in the Federal Register. S2611 only said DHS had to issue regulations but did not mandate a timeframe.

Sec. 611. Authorization of Appropriations.

Authorizes \$4,400,000 collected in Z visa fines to be used to fund various sections of the bill.

Subtitle B—DREAM Act

Sec. 612. Short title.

This section implements the “Development, Relief, and Education for Alien Minors Act of 2007.

Sec. 613. Definitions.

Subtitle B (Sections 612 to 632) codifies the DREAM Act and is generally identical to the DREAM Act provisions in S.2611 with exceptions highlighted below. Provisions relating to cancellation of removal are gone presumably because potential Z applicants in removal proceedings can now get out of them if they are eligible for a Z.

Sec. 614. Adjustment of Status of Certain Long-Term Residents Who Entered the United States as Children.

Beginning three years after the date of enactment, DHS may adjust to permanent residency aliens determined to be eligible for or has been issued a probationary Z or Z nonimmigrant visa if the alien has been

- physician present since January 1, 2007, is under 30 years of age and was under 16 at the time of initial entry;
- the alien has earned a high school diploma or obtained a GED certificate
- the alien has not abandoned residency in the US
- the alien has completed a college degree or completed at least two years in good standing toward a bachelors degree or has served in the armed forces for two years and has not been discharged dishonorably.

DREAM Act applicants are exempt from green card caps.

Interim rules must be issued within 180 days of enactment and be effective immediately.

Sec. 615. Expedited processing of applications; prohibition on fees.

S.2611 said that DREAM Act applications are to be considered on an expedited basis and without payment of a premium processing fee. This version drops the expedited language but keeps the requirement that no fee be charged.

Sec. 616. Higher Education Assistance.

Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 would not apply to Zs. That section of IIRAIRA limits eligibility for preferential treatment (i.e. in state tuition based on residency) for higher education benefits for aliens not lawfully present unless such benefits are available to all US citizens and permanent residents regardless of their residence.

Notwithstanding this, DREAM Act recipients are limited in their entitlement to federal student aid.

Sec. 617. Delay of Fines and Fees.

Applicants qualifying for the DREAM Act will not be subject to the Z fees described above until the date that is six years and six months after the date of enactment or until the alien reaches the age of 24, whichever is later. If the applicant shows that all requirements of Section 614 are met by then, the penalties shall be waived.

If the college degree or military service requirement are not met by that date, the payment may be refunded later if the alien later meets the requirements.

Sec. 618. GAO report.

GAO must issue a report to Congress on the DREAM Act's implementation within seven years of enactment.

Sec. 619. Regulations, Effective Date, Authorization of Appropriations.

Regulations must be carried out after six months from the date of enactment and the rules must take effect on that date. Appropriations are authorized as needed.

PART II – CORRECTION OF SOCIAL SECURITY RECORDS

Sec. 620. Correction of Social Security Records

Allows for Z nonimmigrants to correct social security records.

Subtitle C – Agricultural Workers

Sec. 621. Short Title.

This version of AgJobs is just 20 pages, far smaller than the nearly 100 pages of version in S.2611.

Part I – Admission of Agricultural Workers

Sec. 622. Admission of Agricultural Workers.

This section establishes a Z-A nonimmigrant visa category for agricultural workers and their spouses and children.

The section contains definitions similar to last year's S.2611 including "agricultural employment," "blue card status," "Department," "employer," "Secretary," "temporary," and "work day."

Like the Z category, applicants will get a work and travel status. The bill would apply to those agricultural workers who have already been working at least 150 days in an eighteen month period in the 24 month period ending December 31, 2006. Application must be filed within 18 months of the seventh month from the date of enactment. Applicants must not be inadmissible for serious crimes.

Z-A dependents are eligible for legal status.

Z-As will undergo security and law enforcement background checks.

Like the Z, immigration violations are forgiven and others may be waived for humanitarian reasons. The public charge ground of inadmissibility will be waived if the applicant can show a history of employment in the US and no reliance on public cash assistance.

The bill discusses the types of documents that would be required to show work time in the US.

DHS shall establish fees.

Like Z nonimmigrants, Z-As will be granted probationary status allowing for employment and protection from being put in immigration proceedings based on lack of immigration status. Also like the Z, probationary status must be granted within one business day if a person is eligible. Z-As will be granted a counterfeit-resistant document.

Persons apprehended after enactment and before implementation of the regulations.

1,500,000 Z-A visas may be issued and they will not count toward other categories.

Z-A applicants will pay a \$100 fine.

Z-As will not be eligible for public benefits for five years from the date the alien adjusts status.

DHS must establish an arbitration process to handle complaints.

Z-As will be awarded the maximum number of points under the new points system and adjust status to permanent residency if they work at least 100 days per year during the

five year period beginning on the date of enactment of this bill or 150 days per year during the three year period from enactment of the bill. Extensions of time necessary to complete work can be provided by DHS in extraordinary circumstances such as in the case of disability or pregnancy. An application must be submitted within seven years of the date of enactment of the bill.

Z-As may only be terminated during blue card status for just cause.

Applicants must pay a \$400 fine to file to adjust under this category.

Spouses and children are eligible to adjust as dependents to permanent residency.

Green card applications must be filed not later than 8 years after the date of enactment or the applicant must seek renewal of nonimmigrant status.

Criminals and those who fail to meet the requirements of the program are subject to removal and applicants can be barred for adjusting for criminal, security and other grounds.

Applicants will have to pay back taxes and pass an English test by the date of adjustment or renewal.

No green cards may be granted until all persons in the family and employment backlogs as of May 1, 2005 have had their green cards processed.

Adjustment applications must be processed within a one year period. Green card caps don't apply to these applicants.

By the time the application period opens up, DHS must have an information dissemination plan in place to let the public know about the rules for the program.

Sec. 623. Agricultural Worker Immigration Status Adjustment Account.

Requires a separate account for funds necessary for processing Z-A and ensuing green card applications.

Sec. 624. Regulations, effective date, authorization of appropriations.

Regulations must be issued by the beginning of the seventh month from the date of enactment. Funds necessary to carry out this law are authorized for appropriation.

Sec. 625. Limitation on Claiming Earned Income Tax Credit

Bars Y and Z visa holders from claiming the earned income tax credit.

Sec. 626. Earned Income Tax Credit

Confirms that nothing changes in the Internal Revenue Code regarding lack of access to the tax credit for illegal aliens.

PART II—CORRECTION OF SOCIAL SECURITY RECORDS

Sec. 627. Correction of Social Security records.

Allows Z-A holders to correct social security information.

TITLE VII—MISCELLANEOUS

Subtitle A—Miscellaneous Immigration Reform.

Sec. 701. Waiver of Requirement for Members of the Armed Forces

The fingerprint requirement is waived for soldiers pursuing naturalization under INA Section 328 or 329. Instead DHS shall use fingerprints provided by the Department of Defense. To qualify, an applicant must apply within twelve months after enlisting.

Sec. 702. Declaration of English.

This declares English the official language of the government of the US.

Sec. 703. Declaration of English as Language

Declares English the common language of the US.

Section 704. Pilot Project Regarding Immigration Practitioner Complaints.

Within six months of enactment, DHS shall institute a three year pilot program to encourage victims of immigration practitioner fraud and related crimes to come forward and file practitioner fraud complaints with DHS and to work with law enforcement

officials to investigate and prosecute such crimes. A report must be issued within one year.

Subtitle B – Assimilation and Naturalization

Sec. 704. The Office of Citizenship and Integration

Changes the Office of Citizenship” to the “Office of Citizenship and Integration”.

Sec. 705. Special Provisions for Elderly Immigrants

Waives English and civics requirements for naturalization applications over 75 years of age on the date of filing the application if the person expresses in English or their native language that the person understands and agrees to the oath.

Sec. 706. Funding for the Office of Citizenship and Integration.

Provides funds to carry out the mission of the new office which includes the “patriotic integration” of citizens into American common values and traditions and civic traditions of the US.

Sec. 707. Citizenship and Integration Councils

Provides that the Office of Citizenship and Immigrant Integration may provide grants to states and municipalities “for effective integration of immigrants into American society through the creation of New American Integrations Councils.

Sec. 709. Presidential Award for Business Leadership in Promoting Citizenship.

An award is established for employers that best help employees learn English and prepare for citizenship test.

Sec. 708. History and Government Test.

The civics test will incorporate questions to make sure the applicant understands the oath.

Sec. 709. English Learning Program.

The Secretary of Education must establish a free, web-based English language instruction programs to get people to the point of passing the Test of English as a Foreign Language. The courses will be targeted at individuals who speak the top five foreign languages spoken inside the US. Necessary funds are appropriated.

Sec. 703 GAO Study on the Appellate Process for Immigration Appeals.

Changes to the appellate process included in S.2611 are replaced with this section calling on the GAO to do a study on the system.

Sec. 713. American Competitiveness Scholarship Program.

This language is the Sanders Amendment imposing new taxes on H-1B visas. The National Science Foundation shall establish a scholarship program to fund students studying science, health care, mathematics and engineering. The scholarships will be \$15,000 or the cost of tuition and fees, whichever is lower.

Sec. 714. Supplemental H-1B Nonimmigrant Petitioner Account.

The scholarship in Section 713 will be funded by a new H-1B fee.

Sec. 715. Supplemental Fees.

The scholarship noted in Section 713 will be funded by a \$3500 supplemental fee (on top of other H-1B fees). The fee will be \$1750 for employers with fewer than 25 employees.

Title VIII – Miscellaneous

Subtitle A – Unaccompanied Alien Child Protection Act of 2007

This news title contains the Feinstein accompanied child provisions including special rules for minors taken in to custody. Housing standards, access to counsel, training requirements for officers, special procedures for asylum and refugee applicants.

TITLE IX –Study Of Wartime Treatment Of Certain People

Requires review of US World War II immigration policies and issuance of a report.