



No. 37

May 15, 2006

S. 2611– Comprehensive Immigration Reform Act

Calendar No. 414

S. 2611 was read twice and ordered placed on the Senate Calendar on April 24, 2006.

Noteworthy

- S. 2611 effectively would divide the unauthorized alien population (estimated at 12 mil.) into 3 groups:
 - **“Group 1:”** Aliens who resided in the United States for at least 5 years prior to April 5, 2006, were unauthorized on that date, and have worked for 3 of those 5 years.
 - This group would receive Permanent Residency (i.e., “green cards”) after 6 more years of work. (*Note: all green card holders can apply for citizenship in 5 years, or in 3 years, if married to an American citizen.*)
 - **“Group 2:”** Unauthorized aliens who resided here for 2 to 5 years (since January 7, 2004).
 - To become legal, these individuals must register and essentially “touch home base” (leave the U.S., most likely for a border town U.S. consulate); and then they would either (a) receive an almost-guaranteed temporary “H-2C” work visa (and apply for a green card once back in the U.S.), or (b) apply for a green card from abroad.
 - **“Group 3:”** Unauthorized aliens who resided here for less than 2 years.
 - The *status quo* would continue for this group (they are deportable).
- **Increasing Green Card Quotas.** S. 2611 would essentially triple the current green card cap (“immigrant visa cap”) for employment-based green cards (to 450,000 annually for 10 years) and double the number of family-based green cards (to 480,000 annually).
- **Quotas Favor Unskilled and Low-Skilled Workers.** The bill changes the quota system to provide up to 30 percent of the overall quota to unskilled workers, and up to 35 percent of the overall quota for low-skilled workers. (*Note: current law provides both groups together a total of 28.6 percent of the quota.*)
- **Per Country Quotas (“Exceptions to Nondiscrimination Requirements” section).** The bill creates exceptions to the per country quotas in order to allow nationals of countries expected to provide numerous workers to escape these quotas.

Highlights

- **Unanimous consent agreement.** Under a unanimous consent agreement reached on May 11, 2006, the Senate will proceed to consideration of S. 2611 on Monday, May 15, 2006. The agreement does not limit time or amendments, but does specify (in advance) that the Conferees with the House of Representatives (when a conference is requested) will be composed of 26 Senators – 7 of the highest ranking Republican Senators and 5 of the highest ranking Democratic Senators on the Judiciary Committee, plus the Majority and Minority Leaders each will select 7 more Conferees. The first day of Senate consideration (May 15) will be for debate only, and votes on amendments are expected early May 16. Only two hours for debate on each amendment is expected.
- **Hagel-Martinez compromise plan.** S. 2611, otherwise known as the “Hagel-Martinez compromise plan,” was initially introduced during Floor debate of S. 2454, the Secure America’s Borders Act (SABA), when it appeared that only a comprehensive (border security and legalization) bill could bring cloture. Prior to the Senate’s April recess, three cloture votes took place, and all failed. S. 2611 was then placed on the Senate Calendar under Rule XIV with Senator Specter named as the sponsor.
- **Managers’ Amendment.** As noted, S. 2611 was not reported by the Judiciary Committee. Senators Specter and Leahy are likely to offer a managers’ amendment to address technical and other changes to the bill, but according to committee staff, that amendment is not likely to be offered until near the end of the Senate’s consideration.
- **Some Quotas Favor Aliens over Citizen Families.** The bill would favor spouses and children of green card holders (up to 50 percent of the quota) rather than the unmarried sons and daughters of citizens (up to 10 percent). (*Note: spouses and children of unauthorized aliens gaining green cards under S. 2611 are exempt from the cap (the overall average American family size is 3.19 persons, and 3.62 persons for Hispanic households).*¹ Under S. 2611, the number of green cards issued over the next 10 years would rise from approximately 10 million to over 40 million).
- **Exemptions to the Green Card Line.** Unauthorized aliens from Group 1 (above) are exempt from the green card quota. As written, the bill language may permit some Group 2 applicants to receive their green cards before Group 1, and before certain current applicants for family-based green cards. Also, the bill as written, may allow unauthorized aliens to gain an advantage in the green card line by allocating 30 percent of all green card quota numbers to aliens physically present in the U.S. before January 7, 2004 (this mainly pertains to Group 2).
- **New Temporary Worker Visa.** S. 2611 would also provide for a *new temporary worker visa* (“H-2C visa”), capped at 325,000 visas for the first year after enactment, but with a

¹ Census Bureau data for Census 2000 indicates the average household size for Hispanic or Latino households is 3.62, http://factfinder.census.gov/servlet/DTable?_bm=y&-geo_id=01000US&-ds_name=DEC_2000_SF1_U&-lang=en&-mt_name=DEC_2000_SF1_U_P017H&-format=&-CONTEXT=dt. HispanoClick, “Hispanic Americans are not just the largest ethnic group in the United States they may well be the most dynamic, vital force shaping America’s future,” available at: <http://www.hispanoclick.com/news-media.php>, places the average Hispanic household size at 3.87.

provision to increase the cap by 20 percent in succeeding years if all 325,000 visas are used. The requirements for this visa are as follows (but are waived for “Group 2”): (1) Capability of performing labor required for intended occupation (and has job portability); (2) Offer of employment; (3) \$500 fee; (4) Medical exam; (5) Background check; and, (6) Residence abroad with no intent to abandon.

- **Enforcement.** The bill would also authorize numerous resources and provide additional tools to combat alien smuggling, secure the land borders, enforce internal immigration laws, and provide for a viable work authorization verification program. It does mirror the border security and immigration enforcement of S. 2454, Senator Frist’s border security bill.
- **Work Authorization Verification.** Title III (on electronic employment authorization verification) was substantially reformed by Senators Grassley and Kyl.
- S. 2611 includes language based on Title VII of S. 1033, a bill sponsored by Senators Kennedy and McCain, that would provide for eventual “green cards” and a path to citizenship for most of the 11-12 million illegal aliens currently estimated to be residing in the United States.
- On December 16, 2005, by a vote of 239-182, the House of Representatives passed H.R. 4437, which addresses border security, but not the President’s request for a guest-worker program.

Background

Illegal Immigration: A Growing Problem

In 1986, Congress passed the Immigration Reform and Control Act (IRCA) as a means to address the then-existing population of aliens without valid immigration status. The law effectively provided green cards (and, as a result, a path to citizenship) for what turned out to be 3 million illegal aliens in the United States (an amount that was double the number that had been estimated (1.5 million)). Other smaller scale programs to legalize unauthorized aliens (less than 1 million illegal immigrants) occurred in 1994, 1997, 1998, and in 2000.²

Today, according to the Pew Hispanic Center, there are an estimated 12 million unauthorized migrants in the United States: “March 2005 Current Population Survey shows that there were 11.1 million unauthorized migrants in the United States a year ago. Based on analysis

² The FY 1995 Commerce, Justice, State Appropriations bill included an addition of section 245(i) to the Immigration & Nationality Act in 1997 (that section allows for illegal aliens to gain a green card by paying a stiff fine); section 245(i) was extended in H.R. 2267; The Nicaraguan Adjustment and Central American Relief Act (NACARA) granted amnesty to certain Nicaraguans and Cubans, and, in effect, did the same for certain Salvadorans, Guatemalans and Eastern Europeans; in 1998, Congress passed The Haitian Refugee Immigration Fairness Act (HRIFA) for Haitians; and, in 2000, Congress passed the LIFE Act and other aliens were also allowed to gain green cards as a result of a political and court settlement.

of other data sources that offer indications of the pace of growth in the foreign-born population, the Center developed an estimate of 11.5 to 12 million for the unauthorized population, as of March 2006.”³

The President’s Proposal

On January 7, 2004, the President presented a plan for comprehensive immigration reform in his State of the Union address to the nation. In his speech, and in later speeches, he called for a program that would address the illegal alien population by offering temporary worker visas lasting a total of six years, but which would provide for no special path to citizenship and no amnesty. The temporary work program (“TWP”) would match willing employers with willing foreign employees, so long as there was no American worker willing and able to take the job.

On the issue of amnesty, the President recently stated, “One thing the temporary worker program would not do is provide amnesty to those who are in our country illegally. I believe that granting amnesty would be unfair, because it would allow those who break the law to jump ahead of people who play by the rules and wait in the citizenship line. Amnesty would also be unwise, because it would encourage waves of illegal immigration, increase pressure on the border, and make it more difficult for law enforcement to focus on those who mean us harm. For the sake of justice and for the sake of border security, I firmly oppose amnesty.”⁴

House Action

On December 16, 2005, the House of Representatives passed the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437) by a vote of 239-182 (with 30 Democrats voting in favor and 18 Republicans opposed). The bill only addresses border control and internal immigration enforcement, and so does not directly respond to the President’s request for a guest worker program. Meanwhile, since the bill’s passage, over 85 Members of the House of Representatives have pledged to vote against any kind of guest worker visa akin to the President’s proposal. One of the more controversial provisions of H.R. 4437 was making “illegal presence” a felony (a manager’s amendment to reduce that to a misdemeanor failed, with most Democrats voting against). Additionally, some opponents claim that the bill would make church and humanitarian organization assistance to unauthorized migrants a crime under the human smuggling provisions. (*Note: S. 2611 carves out a specific exception for these organizations.*)

Senate Judiciary Committee Action

On March 7, 2006, Judiciary Committee Chairman Specter began the markup proceedings on his own proposed compromise between two major immigration bills that had

³ Pew Hispanic Center, “Size and Characteristics of the Unauthorized Migrant Population in the U.S.,” March 7, 2006.

⁴ President’s Radio Address, March 25, 2006.

been offered by Senators sitting on the Committee. In brief, Senators Cornyn and Kyl (both Committee Members) offered a plan that would create temporary worker visas that would be limited to the six years that the President proposed. Senator Kennedy (also a Committee Member) and Senator McCain proposed a plan that would create a six-year temporary work visa for 400,000 aliens per year (with that number increasing every year), and would provide all of the 12 million unauthorized aliens Permanent Residency (“green cards”), and thus a path to citizenship.

The “Chairman’s Mark” provided for an unlimited number of temporary work visas, based on the Cornyn-Kyl bill, but also provided for a “gold card” for all unauthorized aliens present in the United States at the time of the President’s 2004 State of the Union address. The “gold card” would change the status of unauthorized aliens into a legal status but without granting them green cards; however, it was left unclear as to whether “gold card” holders would have a special path to obtain a green card and eventual citizenship.

After four days of markup (over a two-week period), the Committee found relative compromise on the border security and internal immigration enforcement provisions of the Chairman’s Mark. Senator Grassley objected to issues raised in Title III of the Mark (dealing with employment authorization verification reform) on the basis that it infringed on the jurisdiction of the Finance Committee. A quick compromise was established whereby Senator Kyl would work with Senator Grassley to craft compromise language that would have the Finance Committee’s “blessing,” to be offered again in Committee or on the Floor.

When debate began on the contentious Titles IV through VI (the temporary worker visas, visa numerical limits, and green card provisions), Chairman Specter again called for a compromise between the Senators who call for providing green cards to the unauthorized population and those Senators who prefer to provide only temporary visas or no visas at all. Committee Members and staff met over the recess to work towards a compromise solution.

A subsequent markup took place on Monday, March 27, the day the Majority Leader had announced would be the absolute deadline for bringing the comprehensive immigration reform bill to the Floor. Senator Feinstein’s amendment to legalize only agricultural workers out of the unauthorized migrant population won approval. (*Note: this amendment is the same as Senator Craig’s bill (S. 359) with some changes to the green card provisions and with an expansion of the current H-2A shepherder carve-out to cover dairy-related work.*) Another Feinstein amendment, cosponsored by Senator Kyl, on criminalizing the building of border tunnels, won approval. Various other amendments related to enforcement passed. Ultimately, the title of the Chairman’s mark relating to legalizing the unauthorized population was substituted with the McCain-Kennedy plan proposal (Title VII of S. 1033). The title providing for a new temporary worker program was substantially modified, also by the McCain-Kennedy plan (see Title III of S. 1033). Most of these provisions are in S. 2611, in some form.

Majority Leader’s Bill S. 2454 – on which cloture failed

On March 16, 2006, the Majority Leader introduced his own bill, S. 2454, the Secure America’s Borders Act (SABA), and immediately filed for cloture on the motion to proceed to

his bill. S. 2454 was based, in part, on Senator Specter's compromise Chairman's mark in that it adopted that bill's Titles I, II, and III (the border security, enforcement, and work authorization verification provisions) as those titles were amended by the Committee in its markup sessions prior to March 16. (Additional amendments were made to those titles by the Committee on March 27.) Like the House-passed bill, S. 2454 did not provide for a guest worker program or for green cards to illegal aliens, but it did provide some additional benefits to foreign students and highly skilled immigrants.

Floor Action on S. 2454, the proposed Judiciary Committee Substitute, and Introduction of S. 2611.

After Committee Chairman Specter was selected to manage the bill on the Floor, he placed the reported bill on top of Senator Frist's bill, already under consideration on the Floor. After a handful of non-controversial amendments were passed on the Floor, Democrats refused to close debate on the Kyl-Cornyn amendment to prohibit the issuances of green cards to aliens convicted of one felony, three misdemeanors, or who were subject to a final order of deportation under applicable sections of law under Title 8 of U.S. Code. Ultimately, the Senate voted on a motion to table that amendment, and it failed by a vote of 0-99, but opponents would not allow for an up or down vote on the amendment, and it was not adopted. (*Note: this amendment was mischaracterized as being dilatory by Senator Durbin.*)

Senator Kyl's amendment had been pending for nearly a week before the Democratic leadership filed cloture on the underlying bill. When it ripened, the vote was 39-60 in favor of cloture. Five Democrats voted against the motion, while Republicans were united in voting against the motion. Senator Kennedy went on television to announce that a compromise bill was in the works.

Cloture had also been filed on Senator Frist's underlying bill and on a motion to commit the bill to committee with the Hagel-Martinez compromise. On April 7, both motions failed 36-62 (see roll call vote No. 90), and 38-60 (roll call vote No. 89). The Senate then went into its previously scheduled two-week recess.

On May 11, the Majority Leader announced that he had come to agreement with the Democrats to allow S. 2611 to be brought to the Floor. The Unanimous Consent agreement designated that there would be 26 Senators in Conference with the House of Representatives on the immigration bill (when and if S. 2611 passed the Senate and a conference was requested by either chamber), but it did not address the number or content of amendments.

Bill Provisions

The following sections provide a summary of the major sections of S. 2611 according to subject matter; this is not a comprehensive section-by-section review of the bill.

INCREASES GREEN CARD QUOTA AND NEW VISA CATEGORY FOR STUDENTS AND ALIENS WITH ADVANCED DEGREES

Increased Green Card Numbers. S. 2611 increases the number of employment-based green cards from 140,000 to 450,000 per year (for the next 10 years, and to 290,000 for FY 2017 and beyond), and increases the family-based green card quota from 226,000 to 480,000 per year. By increasing green card numbers, the bill theoretically reduces visa “backlog” waiting times.

Exemptions to the Green Card Line. Unauthorized aliens from Group 1 (above) are *exempt from the green card quota*. Also, aliens who obtain admission to perform labor in a shortage occupation, as well as their spouse and children, are also *exempt from the green card quota*. (Note: As written, the bill language may permit some Group 2 applicants to receive their green cards before Group 1, and before certain current applicants for family-based green cards). Also, the bill as written, may allow unauthorized aliens to gain an advantage in the green card line by allocating 30 percent of all green card quota numbers to aliens physically present in the U.S. before January 7, 2004 (this mainly pertains to Group 2). (Note: there were concerns in Committee that unauthorized aliens would cut in front of aliens already in line for a green card, and a Sense of the Senate amendment was passed to reflect that concern).

Country Limits (“Exceptions to Nondiscrimination Requirements” section). The bill increases the per-country limits for family-sponsored and employment-based immigrants from 7 percent to 10 percent, and exempts certain labor-based aliens from the per-country quota. (Note: this allows nationals of more populous countries capable of obtaining an American employer sponsor to gain a larger share of the green card quota. The quota “non-discrimination” section of the Immigration and Nationality Act (INA) is already somewhat supplanted by the exemption under INA, section 202(a)(4), granting exemption from quotas for some Mexican family-based green cards,⁵ but was in some ways intended to correct past laws discriminating against certain nationalities (e.g., Chinese Exclusion Acts)).

Allocation of Family-based Green Cards. The new 480,000 ceiling on family-sponsored immigrants would be redistributed among existing family preference categories, but it heavily favors spouses and children of green card holders (up to 50 percent of the quota) rather than minor children of citizens (up to 10 percent). The new 450,000 (290,000 for FY 2017 and beyond) ceiling for employment-based immigrant visas is redistributed among the employment-based immigrant visa categories and certain modifications are made to current categories.

Allocation of Family-based Green Cards. The new 480,000 ceiling on employment-based immigrants would be redistributed among existing family preference categories, but changes current law to *heavily favor unskilled workers* over skilled workers (the latter is favored under current law). The bill would halve the quotas for “Priority Workers” (defined as “aliens with extraordinary ability and outstanding professors and researchers”), and the quota for alien

⁵ State Department Visa Bulletin, “2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 15APR99 and earlier than 08FEB02. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)” http://travel.state.gov/visa/frvi/bulletin/bulletin_2771.html.

professionals “with advanced degrees or aliens of exceptional ability.” It lowers the “million-dollar” investor category quota, and increases to 35 percent the low skilled worker (defined as an alien capable of performing a job requiring 2 years of experience) quota. Finally, the unskilled quota (“other worker category”) is set at 30 percent (from a current limit of 5,000).

Student Visas. The bill extends foreign students’ post-curricular Optional Practical Training (and F-1 status) to 24 months. It also creates a new “F-4” student visa for advanced degree candidates studying in the fields of math, engineering, technology, or the physical sciences. The new visa will allow eligible students to either return to their country of origin or remain in the United States for up to one year and seek employment in their relevant field of study. Once such a student receives such an offer of employment, the individual will be allowed to obtain a green card after paying a \$1,000 fee and completing necessary security clearances. Of the fees collected, 80 percent will be deposited into a fund for job training and scholarships for American workers, while 20 percent will go toward fraud prevention.

Visas for Individuals with Advanced Degrees. The bill exempts from the numerical cap on employment-based visas those aliens with advanced degrees in science, technology, engineering, or math who have worked in a related field in the United States during the three-year period preceding their application for adjustment of status. It also exempts immediate relatives of aliens who are admitted as employment-based immigrants from the numerical limitations of 203(b). Finally, it increases the available visa numbers for H-1B non-immigrants and provides an exemption from the numerical limitation for aliens who have earned advanced degrees in science, technology, engineering, or math.

Medical Services in Underserved Areas. The bill permanently authorizes the current J-1 visa waiver for INA 212(e) (the requirement that foreign medical students go back to serve in their home country for two years before applying for a green card in the U.S.). Under this program, participating states are allocated 30 J-1 visa waivers, which enables them to waive the two-year home-residency requirement for medical students and physicians who serve in “medically underserved areas” upon completion of their J-1 program. The program has been reauthorized twice before and is now set to expire on June 1, 2006.

NEW H-2C NONIMMIGRANT VISA LEADING TO A GREEN CARD

Nonimmigrant Temporary Worker.

This section creates a new temporary worker visa (H-2C) that could be issued to an alien who is coming here to temporarily perform labor or services, if an American employer sponsor could not find unemployed Americans capable of performing such services. The following is a summary of the requirements, benefits, and limitations:

- Aliens must:
 - show capability of performing labor required for intended occupation;
 - show an offer of employment;

- pay a \$500 fee;
 - pass a medical exam;
 - not be inadmissible (but conduct before bill enactment can be waived);
 - pass a background check; and,
 - retain residence abroad with no intent to abandon.
- H-2C aliens could apply for a green card on day one of entry with an employer petition, or in four years by self-petition (currently, only battered spouses and children, or widow/widowers can self-petition).
 - Once an alien applies for a green card, he must show that he meets the naturalization requirements for English language ability, *but* that can be satisfied by “pursuing a course of study to achieve such an understanding of English.” This lessens the current requirement for English language ability and the English language requirement at time of naturalization.
 - The term of the H-2C status would be 3 years, renewable for 3 years.
 - The program is capped at 325,000 visas for the first year after enactment, but with a provision to increase the cap by 20 percent in succeeding years if all 325,000 visas are used. (*Note: this would be the largest temporary work program, as seasonal workers are capped at 66,000 per year, and specialty or skilled workers are capped at 85,000 per year, with some exceptions*).
 - Aliens in H-2C immigration status could not change status to another immigration category, but do have job portability.
 - The employer of an H-2C alien must file a petition and attest that he is paying the alien no less than he pays American workers with similar qualifications in similar jobs, or is paying the alien the prevailing wage.
 - DHS would be prohibited from approving petitions for employment located in Metropolitan Statistical Areas of high unemployment.
 - Dependents of H-2C workers are allowed to come to the U.S. under an H-4 visa.
 - The State Department, at some time, would have to negotiate an agreement with each country that sends nationals under the H-2C program.

IMMIGRATION STATUS FOR THE UNAUTHORIZED ALIEN POPULATION

Group 1 – Unauthorized Aliens Residing in the U.S. for 5 years and worked 3 years.

Green Cards. Aliens may apply for a green card under this group, if they:

- were illegal on April 5, 2006,
- were physically present in the U.S. on or before April 5, 2001,
- did not depart the U.S. during that time, except for short trips;
- worked for 3 years during that time period (and paid or will pay state and federal taxes owed for that work);
- pass a security check;
- pay a \$2,000 fee (80 percent of the funds would go to border security);
- work 6 years after bill enactment; and,
- demonstrate that they meet the naturalization requirements for English language ability (*but that can also be satisfied by “pursuing a course of study to achieve such an understanding of English”*). (*Note: all green card holders can apply for citizenship in 5 years, or in 3 years, if married to an American citizen*).

Proof of Employment. The alien has the burden of proof by a preponderance of the evidence to obtain a green card under this section (satisfied by “just and reasonable inference”). For proof of work and residence, aliens must submit at least some of the following:

- Social Security Administration (SSA) records;
- Employer records;
- Internal Revenue Service records;
- Union or day labor records;
- Records from any other government agency;
- Sworn declarations (*Note: this has been interpreted by some to include self-declarations*).

Proof of Residence. The bill does not provide statutory guidance in this regard.

Work. “Group 1” aliens are automatically granted work authorization.

Spouse and Children. Spouse and children of any principal alien eligible to be in Group 1 can obtain a green card. (*Note: these aliens are not subject to the green card quota*).

Visa Ineligibilities. Most visa ineligibilities, including immigration fraud, are waived automatically for this group. Inadmissibility for likelihood of becoming a public charge (i.e., become a welfare recipient) is automatically waived if the alien has a history of self-support in the U.S.

Travel Abroad. Group 1 aliens can travel abroad until the green card is finalized.

Group 2 – Aliens who have resided in the U.S. for 2 -5 years.

Any alien (including unauthorized aliens) who was physically present in the U.S. on January 7, 2004, has two choices (within a three-year timeframe):

- depart the U.S. and apply for an H-2C visa (but with all of the normal requirements waived); or,
- depart the U.S. and seek admission with a green card.

Some components:

- The alien must register with DHS before departure.
- As currently written, H-2C visa holders may apply for a green card on day one after entry, potentially putting their green card applications ahead of Group 1.
- *(Note: the managers' amendment may lessen the Group 2 waiver of H-2C requirements to require an employer petition, and may place Group 2 applicants for a green card behind Group 1 applicants).*
- The application fee is \$1,000.

Criteria. To be part of Group 2, aliens would have to establish that:

- They were physically present in the U.S. on January 7, 2004;
- They were illegally present on that date;
- They had been employed from that date until present (except for 60-day breaks), and,
- They have been continuously present (short trips abroad excepted) in the U.S. since then.

Proof. The bill requires that the alien provide proof of employment using:

- Social Security Administration (SSA) records;
- employer, union, bank, remittance, records; or,
- sworn affidavits from non-relatives.

Spouse and Children. Spouse and children of any Group 2 alien are subject to the same conditions as the principal alien. *(Note: although children are exempt from work requirements, it is unclear whether the spouse is.)*

Visa Ineligibilities. Many visa ineligibilities are waived automatically for this group, but not as many as for Group 1. DHS may waive any other ineligibility.

Group 3 – Unauthorized Aliens who have resided in the U.S. for less than 2 years.

The bill does not have a “Group 3,” but effectively provides (with its silence) that the status quo would remain for aliens who have resided in the United States less than two years.

Agricultural Workers to obtain green cards.

The “Ag Worker” amendment added in the Judiciary Committee to a Chairman’s Mark is also contained in S. 2611 and has the following provisions:

- Pilot program to allow certain undocumented agricultural workers to legalize their immigration status in the United States *and to modify the current H2A program.*
- The first step requires that undocumented agricultural workers apply for a “blue card” if they can demonstrate that they have worked in American agriculture for at least *150 work days within the previous two years before December 31, 2005.*
- The second step requires that after “blue card” holders can demonstrate that they have worked in American agriculture for an additional *150 work days per year for three years, or 100 work days per year for five years,* they will then be eligible for a green card.
- Employment will be verified through employer-issued itemized statements, pay stubs, W-2 forms, employer letters, contracts or agreements, employer-sponsored health care, time cards, or payment of taxes.
- This program will be capped at 1.5 million blue cards in five years (without a per-year cap) and sunset after five years.
- Individuals may participate in employment other than agriculture so long as the worker satisfies the 100 or 150 workdays each year.
- Blue card holders (including spouses and children) will be allowed to travel in and out of the United States.
- Spouses of blue card workers will be eligible to apply for their own work permit, and their employment will not be limited to agricultural employment.
- Aliens participating in the program will be required to pay a fine of \$500, show that they are current on their taxes, and that they have not been convicted of any crime that involves bodily injury, the threat of serious bodily injury, or harm to property in excess of \$500.
- The Department of Homeland Security will determine the adequate application fee necessary to offset the costs of this pilot program.
- To avoid backlogs, aliens who receive a green card under this program will be exempt from the overall numerical limitations on visas (i.e., 675,000 visas) and (in effect) the country numerical limitations for Mexico, India, China, and the Philippines.

The DREAM Act

Senator Durbin’s amendment that was adopted during the markup of a Chairman’s Mark in committee was essentially the “DREAM Act.” This provision is also in S. 2611. *(Note: In 2005, Senators Durbin, Hagel and Lugar introduced the Development, Relief, and Education for Alien Minors (DREAM) Act, S. 2075. The bill provides an opportunity to children of undocumented immigrants who have graduated from high school and have not committed any criminal offense to attend college or enlist in the military, and ultimately earn lawful resident status in the United States. The DREAM Act was first introduced in the 107th Congress (2001-2002) by then Senate Judiciary Committee Ranking Republican Hatch, with Senator Durbin as the chief cosponsor. The committee approved the bill by a 12-6 vote, but it did not receive a Floor vote before the end of the 107th Congress. In the 108th Congress (2003-2004), Senator Hatch, then Chairman of the*

Judiciary Committee, again introduced the DREAM Act along with Senator Durbin. The Judiciary Committee approved the new version of the bill by a 16-3 vote, but it also did not receive a floor vote before the end of the 108th Congress. The current bill resembles the version that the Judiciary Committee approved in the 108th Congress, but has a registration requirement with the ICE-maintained database of legal foreign students.)

The DREAM Act provisions would:

- Repeal Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, which bars states from granting in-state tuition rates to undocumented immigrants unless the state offers the same rate to all U.S. citizens without regard to residency. Under this section, each state would be free to decide whether an out-of-status student may be treated as a resident for in-state tuition purposes, but no state would be required to provide in-state tuition to out-of-status students.
- Allow applicants to qualify for an initial six-year period of conditional status during which they can work towards permanent resident status if they:
 - Possess good moral character per the statutory definition;
 - Entered the United States at least five years prior to the law's enactment and were under 16 years of age at the time of entry;
 - Are not inadmissible or deportable on specifically enumerated grounds; and
 - Have graduated from high school, obtained a GED, or are admitted to an institution of higher learning as defined in 20 U.S.C. 1001.
- Allow applicants who have met the six-year conditional resident requirement to obtain permanent resident status through:
 - Earning a degree from an institution of higher education (including junior college or trade school) or completing two years in a bachelor's or higher degree program; or
 - Serving honorably in the military for at least two years; and maintaining good moral character and a clean criminal record throughout the six-year period, and maintaining continuous residence, as defined by this act, in the United States.

If the applicant meets the requirements above, he/she will also have satisfied the residency requirements for naturalization, subject to the limitations set forth in section 316 of the Immigration and Nationality Act. It would “grandfather” applicants who already have satisfied the requirements under DREAM (i.e., those who came to the United States before turning 16 and can demonstrate good moral character). However, those who benefit from the “grandfather” clause must meet the six-year conditional requirement and comply with all other requirements. DREAM Act beneficiaries could not receive federal financial aid for tuition assistance. However, they could participate in work-study programs and receive loans.

WORK AUTHORIZATION VERIFICATION

The current wording of the Work Authorization Verification section of S. 2611 was developed by Senators Grassley and Kyl in conjunction with Senator Kennedy. During Judiciary Committee proceedings on the immigration bill, Senator Grassley, Chairman of the Finance Committee, raised an objection on the basis that the wording of the section impinged on the jurisdiction of the Finance Committee. Thereafter, Senators Kyl and Grassley agreed to work jointly to present language on the Floor. This language was included in S. 2611. However, Senators Baucus, Obama, and Kennedy wished to insert their voices into the process, and discussions on further refinements have been ongoing (in particular, provisions regarding privacy and litigation against the government). An updated version of Title III (the Work Authorization section) may be offered as an amendment. (*Note: the Republican Policy Committee has produced a comprehensive policy paper on this issue*).⁶

The Work Authorization Verification language in S. 2611 provides:

- Employment of unauthorized aliens is unlawful;
- An employer who in good faith follows the provisions of this section has an affirmative defense;
- DHS on good cause can require an employer to certify that it is in compliance with this section;
- An employer must attest that he has reasonably verified (under the totality of the circumstances) the identity and eligibility for work of each new hire;
- Documents that verify both identity and work authorization:
 - U.S. passport;
 - A green card;
 - A secure document with photograph that DHS has approved for this purpose.
- Documents that verify identity:
 - REAL ID “compliant” driver’s license or state ID;
 - A federal employee identification card;
 - A secure card approved by DHS.
- Documents that verify work authorization:
 - Social Security Card (other than one stamped “not valid for employment”).
- The new hire must attest that he is a citizen of the U.S., a permanent resident, or an alien authorized to work.
- There is a specific provision stating that nothing in the section authorizes a national ID card.
- DHS will develop an electronic employee verification system that provides an employer a “green light” or “red light” or “tentative non-confirmation” for every employee name and social security number (or “alien number”) submitted to the system. If an employee contests the non-confirmation, DHS will respond in 10 days with a final decision (DHS may extend this time period if necessary). (*Note: it is envisioned that the system will be accessible by Internet or by telephone; every work-authorized alien is given an “alien number”*).

⁶“Alien Work-Authorization Verification: Can This Broken System Be Fixed?”, February 28, 2006. www.rpc.senate.gov.

- GAO is required to conduct a study of the efficiency of the system, and if it finds that it takes DHS longer than 10 days on average to produce a final decision in 99 percent of the cases, DHS will automatically extend the time for a response.
- DHS will designate critical employers that must be using the system within 180 days of bill enactment (e.g., critical infrastructure employers), and all other employers must utilize the system 18 months after funds are appropriated for the system. (*Note: in discussions with DHS, DHS confirmed it could meet this deadline to implement the wide-ranging system*).
- Social Security Administration would disclose certain information to DHS, including information about submissions on tax forms of social security numbers indicating no work authorization and information about when a social security number did not match the proper name on a “W-2” tax form. However, the section specifically restricts the release of information to that necessary to establish and enforce the electronic work verification system.
- This section requires an annual increase of 2,000 investigators (for five years) dedicated to worksite enforcement of the immigration laws, and specifically requires not less than 20 percent of the enforcement hours of Immigration and Customs Enforcement (DHS) be used for worksite enforcement.

BORDER SECURITY PLANS, STRATEGIES AND REPORTS

S. 2611 requires the Secretary of Homeland Security to submit a comprehensive plan for the systematic surveillance of the U.S. land and sea borders and a National Strategy for Border Security. The Secretary of State is required to report on improving the exchange of information related to the security of North America (including progress made on security clearances and terrorist watch lists). It also directs the FBI to establish a database to track criminal gang activities in Central America.

BORDER ENFORCEMENT ASSETS FOR CONTROLLING U.S. BORDERS

Enforcement Personnel. The bill authorizes 250 new Customs and Border Protection (CBP) officers, 200 new positions for investigative personnel to investigate alien smuggling, and 250 additional port of entry inspectors, annually from FY 2007 to FY 2011. It also increases the number of customs enforcement inspectors by 200 in section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004. It also authorizes 2,400 additional border patrol agents annually for six years – adding an additional 4,400 agents to the border over six years to the 10,000 already added by the Intelligence Reform and Terrorism Prevention Act of 2004 (for a total of 14,400 new Border Patrol Agents by 2011).

Technological Assets and Infrastructure. The bill authorizes such sums as necessary for the acquisition of unmanned aerial vehicles, cameras, poles, sensors and other technologies to achieve operational control of the borders, and to construct all-weather roads and add vehicle barriers along the borders. It requires the Department of Homeland Security (DHS) to replace damaged primary fencing with double- or triple-layered fencing in Arizona population centers on

the border, and to construct at least 200 miles of vehicle barriers and all-weather roads in areas that are known transit points for illegal cross-border traffic.

US-VISIT. The Secretary of DHS, by October 1, 2007, will be required to enhance the connectivity between the Automated Biometric Fingerprint Identification System (IDENT) and Integrated Automated Fingerprint Identification System (IAFIS) biometric databases, and collect all fingerprints from individuals through the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program during their initial enrollment. The bill also requires DHS to submit to Congress a timeline for equipping all land border ports of entry with the US-VISIT system and deploying at all land border ports of entry the exit component of the US-VISIT system. It also authorizes DHS to collect biometric data from any alien or LPR seeking admission to, exit from, transit through, or parole into the U.S., and provides that failure to comply with the biometric requirements is a ground for inadmissibility.

Improved Document Integrity. The bill requires that immigration-status documents, other than interim documents, issued by DHS be machine-readable, tamper-resistant, and incorporate biometric identifiers by October 26, 2007. It also voids visas held by a nonimmigrant alien if the alien remains in the U.S. beyond the period of authorized stay, and requires aliens who overstay to return to their consulate abroad to undergo additional screening before being able to return to the U.S. The bill requires that all immigration inspectors receive training in identifying and detecting fraudulent travel documents and obtain access to the Forensic Document Laboratory.

The bill provides a comprehensive rewriting of chapter 75 of Title 18 of U.S. Code (passports and visa fraud) and also expands passport, visa, and immigration fraud. It also creates a new crime for:

- trafficking in passports and punishing those who unlawfully produce, issue, transfer, forge, or falsely make passports, as well as those who transact in passports they know to be forged or counterfeited, and those who prepare, submit, or mail applications for passports that they know include a false statement;
- completing, signing, or submitting a passport application knowing that it contains a false statement or representation;
- knowingly and without lawful authority producing or issuing a passport for or to any person not owing allegiance to the United States;
- knowingly and without lawful authority transferring a passport to a person for use when such person is not the person for whom the passport was issued or designed;
- knowingly using a passport to enter or attempt to enter the country, knowing that the passport is forged or counterfeited;
- knowingly using a passport to defraud an agency of the United States or a State, knowing that the passport is forged or counterfeited;
- knowingly executing a scheme to defraud any person in connection with any matter arising under the immigration laws or that the offender claims arises under the immigration laws;
- knowingly using any immigration document issued or designed for use by another;
- trafficking in immigration documents;

- knowingly and without lawful authority, producing, obtaining, or possessing various papers, seals, symbols, or other materials used to make immigration documents;
- entering into multiple marriages to evade immigration law; and,
- arranging, supporting, or facilitating such multiple marriages.

The bill renders inadmissible and removable any alien convicted of a passport or visa violation under Chapter 75 of title 18.

Expedited Removal. The bill mandates the use of expedited removal of illegal aliens who are apprehended within 100 miles of the border or 14 days of unauthorized entry. Additionally, this section amends the current immigration law to expand the scope of offenses subject to the expedited removal program for incarcerated or deportable aliens and allows DHS to use expedited removal for criminal aliens found in correctional institutions.

INTERIOR IMMIGRATION ENFORCEMENT

The bill mandates each State to have at least 40 immigration enforcement agents, and at least 15 service personnel (the Secretary of Homeland Security may waive this requirement for states with smaller populations).

Removal and Denial of Benefits to Terrorist Aliens. The bill amends the Immigration & Nationality Act (INA) so that all aliens inadmissible on terrorism-related grounds are ineligible for asylum and also makes them ineligible for cancellation of removal. *(Note: current law provides that all aliens “inadmissible” and “deportable” on security-related grounds are ineligible; subsection (b) provides that all aliens “described in” those provisions are also ineligible. This would correct a procedural loophole: unlike immigration judges, initial adjudicators of asylum cannot make an inadmissibility finding and, therefore, may be put in the position of granting asylum to an alien who is inadmissible on security-related grounds, such as terrorism. This section applies to aliens in removal, deportation, and exclusion proceedings on the date of enactment, and to acts or conditions occurring before, on, or after the date of enactment.)*

The bill provides that no alien shall be found to have “good moral character” for purposes of the INA if DHS or DOJ determines that the alien is described in sections 212(a)(3) (excludable on security-related grounds) or 237(a)(4) (removable on security or related grounds). It also provides that a petition for granting certain classes of immigrant status may not be granted if there is any proceeding pending that could result in the petitioner’s denaturalization or loss of the petitioner’s lawful permanent resident status.

The bill bars from being naturalized any alien whom DHS determines to have been at any time an alien described in INA sections 212(a)(3) (excludable on security or related grounds) or 237(a)(4) (removable on security or related grounds). The bill modifies the law governing judicial review of naturalization decisions. Subsection (d)(1) requires an alien to seek review of the denial of his application for naturalization within 120 days of DHS’s final determination, and imposes on the alien the burden of showing that DHS’s denial was contrary to law. It also removes jurisdiction from the courts, except in proceedings to revoke naturalization, to review or

make any determination that an alien is a person of good moral character, understands and is attached to the principles of the Constitution, and is well disposed to the good order and happiness of the United States.

It also requires DHS and DOJ to wait until the completion of background and security checks before granting any immigration-related status or benefit, or issuing documentation evidencing such a grant.

Detention and Removal of Aliens. The Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001) mandates the release of former criminal aliens detained for the purpose of deportation if his deportation cannot be secured within six months. (*Note: many countries refuse to accept some of their own citizens or otherwise make it very difficult for DHS to deport them home.*) The bill provides authority to detain beyond the removal period aliens ordered removed who are inadmissible; who are removable as a result of violations of status requirements or entry conditions, violations of criminal law, or reasons of security or foreign policy; or who have otherwise been determined by the Attorney General to constitute a risk to the community or to be unlikely to comply with the order of removal. It also provides that such aliens may be detained beyond the removal period at the discretion of DHS and without any limitations, but provides factors to consider:

- With respect to aliens who have effected entry into the United States and have fully cooperated with the Government's efforts to carry out removal, DHS may detain such aliens until removal after making one of a variety of certifications.⁷ DHS must renew such a certification every six months for as long as it wants to continue detaining the alien. In the absence of a certification, the alien is to be released, although conditions may be imposed and re-detention is possible. DHS may not delegate the decision to certify or renew a certification to an officer inferior to the Assistant Secretary of Immigration and Customs Enforcement (ICE).
- With respect to aliens who have effected entry into the United States and would be removed but for failure to cooperate fully with removal efforts, DHS may detain them until the aliens make all reasonable efforts to comply with the removal efforts.
- With respect to aliens who have not effected entry into the United States, DHS is required to follow the guidelines set forth in a specified provision of the CFR.

The bill also:

- permits the government to penalize aliens for failing to depart because they were inadmissible;
- changes the base penalty for an alien's failure to depart to a mandatory minimum of 6 months and a maximum of 5 years, along with a fine;
- changes the penalty for an alien's willful failure to comply with the terms of release under supervision by removing any statutory limit on the fine and adding a mandatory

⁷ These include: there is a significant likelihood that the alien will be removed in the reasonably foreseeable future; that the alien has a highly contagious disease posing a threat to public safety; that release of the alien will have serious adverse consequences for foreign policy or national security; and, under some circumstances, that release of the alien will threaten the safety of the community or any person.

minimum of 6 months and a maximum of 5 years, or 10 years for certain categories of deportable aliens; and

- allows the Secretary of Homeland Security to instruct the Secretary of State to deny issuing a visa to any national of a country if that country refuses to accept the return of its nationals. The language only relates to visa issuance, not denial of admission at port-of-entry, ensuring that refugees/asylees are not impacted and that aliens know they will not be admitted before they travel to the U.S.

The bill authorizes DHS to extend the Institutional Removal Program (IRP), which identifies removable aliens in Federal and State prisons and removes such aliens after completion of their sentences, to all states.

It also directs the Secretary of DHS to study the effectiveness of alternatives to detention, including electronic monitoring and the Intensive Supervision Appearance Program (ISAP).

Aggravated Felony. The term “aggravated felony” under the INA is modified to include (a) convictions even if the length of the sentence was based on recidivist or other enhancements, (b) all human smuggling crimes, (c) any felony conviction under INA section 275 (Improper Entry by an Alien) and section 276 (“Reentry of Removed Alien”), and (d) soliciting, aiding, abetting, counseling, commanding, inducing, or procuring another to commit one of the crimes listed already in the definition. *(Note: the current definition covers only crimes under Sections 275(a) and 276 that were committed by an alien previously deported for another aggravated felony; by capturing the rest of Section 275, the definition now includes felony convictions for marriage fraud and immigration-related entrepreneurship fraud).* The bill also bars a refugee convicted of an aggravated felony from eligibility for adjustment of status (i.e., the refugee would not be allowed to get a green card).

Gang Violence. The bill renders inadmissible any alien who is known to be or believed to be (by a consular officer, or DOJ or DHS employee) a member of a gang, or who has participated in such a gang’s activities if the alien knows or has reason to know that such activities supported the gang’s illegal conduct. Temporary Protected Status (TPS) is denied to any alien who is a member of a gang, or who has been at any time after admission.

Alien Smuggling. The bill strikes and replaces the provision of the INA covering alien smuggling and related offenses. Substantive changes include:

- expanding the alien-smuggling crime to cover individuals who “facilitate[], encourage[], direct[], or induce[]” an alien to enter the country at other than a designated port of entry, and to cover those who act with reckless disregard of the alien’s unlawful immigration status;
- creating a new crime for transporting or harboring certain aliens in unlawful transit outside the U.S., under circumstances in which the alien is seeking to enter the United States unlawfully; and,
- criminalizing attempts to encourage or induce an alien to reside or remain in the United States.

The bill adds alien smuggling to the list of crimes during and in relation to which 18 U.S.C. § 924(c) provides a mandatory minimum for carrying or using a firearm.

Are churches criminalized for assisting illegal aliens? The bill clarifies that a religious organization is not guilty of alien smuggling if it provides room, board, travel, and medical assistance to an alien serving as a minister or missionary in a volunteer capacity, provided that the alien has been a member of the religious denomination for at least one year. The bill also dispenses with the current penalty scheme for alien smuggling and provides increasing penalties depending on whether the offense was committed for profit, and provides for extraterritorial federal jurisdiction.

Unlawful Presence of an Alien and Illegal Entry. The bill modifies INA Section 275 (illegal entry) by criminalizing, as a misdemeanor, an alien's knowing unlawful presence in the United States. The bill provides higher maximum penalties for aliens convicted of illegal reentry who have a sufficiently serious criminal record. It also adds an element to an affirmative defense available to aliens previously denied admission and removed.⁸

Diplomatic Security Services. Section 215 authorizes Special Agents of the State Department and the Foreign Service to investigate identity theft, document fraud, peonage, slavery, and Federal offenses committed within the special maritime and territorial jurisdiction of the United States.

State and Local Law Enforcement of Federal Immigration Laws. The bill requires the Secretary of Homeland Security to reimburse state/local police organizations for training required under § 287(g).

Alien Address Reporting Requirements. The Secretary should provide for appropriate coordination and cross-referencing of address information provided by aliens. The Secretary can rely on the most recent address provided by an alien to the Secretary for any purpose under the immigration laws as an address to contact the alien.

Protecting Immigrants from Convicted Sex Offenders. The bill prohibits certain criminals (i.e., convicted sex offenders) from sponsoring an alien (e.g., spouse or fiancée) for a green card unless the DHS determines that the sponsor poses no threat to the alien.

Immigration Violators in the NCIC Database. Section 230 directs ICE to work with the FBI to place information on certain immigration violators into the already existing Immigration Violators File (IVF) of the National Crime Information Center database.

⁸The element is that, in addition to the existing element that the alien was not required to obtain advance consent to reapply for admission, the alien had complied with all other laws and regulations governing the alien's admissibility.

IMMIGRATION LITIGATION REDUCTION

Consolidation Of Immigration Appeals. The bill consolidates all INA civil and administrative appeals into the United States Court of Appeals for the Federal Circuit, and increases the number of authorized judgeships in the Federal Circuit by 3, to a total of 15. The amendments made by this section shall apply to any final agency order or District Court decision entered on or after the date of enactment of this Act.

Additional Immigration Personnel. The bill directs the Secretary of Homeland Security to increase annually in FY 2007-2011 the number of investigative personnel investigating immigration violations by not less than 200 and the number of trial attorneys in the Office of General Counsel working on immigration by not less than 100, subject to the availability of appropriations. It also directs the Attorney General to increase annually in FY 2007-2011 the number of litigation attorneys in the Office of Immigration Litigation by not less than 50, the number of Assistant U.S. Attorneys who litigate immigration cases in Federal courts by not less than 50, and the number of immigration judges by not less than 50, subject to the availability of appropriations. Finally, it authorizes appropriations for additional Assistant Federal Public Defenders who litigate Federal criminal immigration cases in Federal court.

Board of Immigration Appeals Removal Order Authority. The bill grants the Board of Immigration Appeals authority to enter an order of removal without remanding to the immigration judge. It also conforms certain terminology to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) by inserting the term “order of removal,” and inserting the term “immigration judge” in place of the term “special inquiry officer,” and expanding the situations in which orders of removal are deemed final.

Judicial Review of Visa Revocation. The bill provides that the decision to revoke a visa and the removal order predicated on that revocation are not reviewable. Review of a final order of removal, however, is still permitted under 8 U.S.C. § 1252(a)(2)(D) when questions of statutory interpretation or alleged constitutional infirmity arise.

Reinstatement of Removal Orders. The bill clarifies that section 241(a)(5) of the INA (8 U.S.C. § 1231(a)(5)) does not require further hearing by an immigration judge in cases in which prior orders of removal are reinstated against aliens who illegally reenter the United States. This provision applies to orders of deportation or exclusion issued in cases initiated before April 1, 1997, and clarifies that the alien’s ineligibility for relief is not dependent on when the alien applied for such relief. This section also provides that reinstatement orders are not reviewable.

Certificate of Reviewability. The bill establishes a screening process for aliens’ appeals of Board decisions under which appeals of removal orders will be referred to a single judge on the Federal Circuit Court of Appeals. If the alien establishes a prima facie case that the petition for review should be granted, the judge will issue a “certificate of reviewability” allowing the case to proceed to a three-judge panel; otherwise it is dismissed.

Discretionary Decisions on Motions to Reopen or Reconsider. The bill revises the statutory provisions relating to motions to reopen and motions to reconsider, and states expressly

that the Attorney General's decision whether or not to grant or deny such motions are committed to his discretion, subject to existing statutory exceptions. This section adds a special provision providing for reopening in order to consider withholding of removal or protection under the Convention Against Torture claims in one limited circumstance. These amendments are applicable to all motions to reopen or reconsider filed on or after the date of enactment in any removal, deportation, or exclusion proceeding.

Prohibition of Attorney Fee Awards for Review of Final Orders of Removal. Section 509 abolishes EAJA fee awards in immigration cases for aliens who are removable, except when the Attorney General's or the Secretary's determination regarding removability was not substantially justified.

Board of Immigration Appeals. The bill directs the Attorney General to promulgate regulations to require the Board of Immigration Appeals to hear cases in three-member panels (unless certain conditions are met) and to permit the Board limited authority to issue affirmances without opinion.

Administration Position

The Administration does not plan to issue a Statement of Administration Position (SAP) with regards to S. 2611. However, it had issued a SAP on S. 2454 on April 4 (please contact RPC for a copy of the lengthy SAP, or see <http://www.whitehouse.gov/omb/legislative/sap/109-2/s2454sap-s.pdf>). On January 7, 2004, the President presented a plan for comprehensive immigration reform in his State of the Union address. In his speech, and in later speeches, he called for a program that would address the illegal alien population by offering temporary worker visas lasting a total of six years, but provide for no special path to citizenship and no amnesty. The temporary work program ("TWP") would match willing employers with willing foreign employees so long as there was no American worker willing and able to take the job.

CBO Estimate

The Congressional Budget Office has not provided an estimate on the cost of S. 2611 at this time.

Possible Amendments

A number of amendments may be offered to S. 2611, including various components of the Cornyn-Kyl immigration bill (S. 1438), and the McCain-Kennedy immigration bill (S. 1033), as substitutes. Other perfecting amendments may be offered, including the following (which are subject to modification as they are not yet formally submitted. Democrats are likely to offer a limited number of amendments, as well.

- Senator Burns - This amendment would prohibit the counting of illegal aliens for reapportionment purposes.
- Senator Cornyn - This amendment would require that some of the fees and fines paid by unauthorized aliens to become legalized go to a health care fund to reimburse hospitals.
- Senators Cornyn, Kyl, Sessions - This amendment would strike provisions that restrict the Department of Homeland Security's ability to investigate fraud.
- Senator Ensign - This amendment would prohibit the issuance of Social Security benefits based on unauthorized work by aliens or based on identity theft.
- Senator Ensign - This amendment provides reimbursement for the use of National Guard to protect the border.
- Senator Grassley - This amendment would require that unauthorized aliens pay all back taxes before legalization (*Note: S. 2611 only requires that Group 1 aliens pay taxes for 3 of the 5 years that they were a resident in the United States*).
- Senator Gregg - This amendment would require that aliens with higher educational degrees receive the majority of the diversity visas (*Note: the "Diversity Visa Lottery" provides 55,000 green cards to aliens based on immigration volume from each country for the past 5 years; therefore, it disadvantages countries with high immigration in the very recent past. An alien can qualify by submitting an application and having the equivalent of a high school diploma. Currently, the lottery provides visa numbers that heavily favor African and East European nationalities*).
- Senators Kyl, Cornyn, Chambliss, Ensign, et al. - This amendment would strike the bill provision allowing any kind of path to a green card by H-2C visa holders.
- Senators Cornyn, Kyl, Sessions, Ensign, et al. - This amendment strikes the bill provisions allowing new "temporary" H-2C visa holders to self-petition for a green card (*Note: only aliens who prove they are a battered spouse or child can currently self-petition; other aliens are required to have a family member or employer "vouch" for them and provide an affidavit of support*).
- Senator Hutchison - This amendment is the Secure Authorized Foreign Employee (SAFE) Visa. - Amendment (by Sen. Hutchison) to Title IV of S 2611/2612. Proposes the creation of a new, guest worker (future flow) program; does not offer social services or a path to citizenship. Applicants must apply from home country, complete a successful background check, have proof of employment and return to their country of origin for two months of the year. Safe visa is renewable. Employer is responsible for standard payroll withholding/deductions and must pay prevailing wage.
- Senators Inhofe/ Sessions - This amendment requires that English be used in all official business of the United States, except when another language is specifically designated in law (it does not alter the Voting Rights Act); it requires the naturalization exam to test for

a minimum of eighth grade level English, and that the civics exam have not less than 50 questions.

- Senator Isakson – This amendment provides that the Secretary of Homeland Security must certify that the land borders are secure and that enforcement authorizations are met and operational before a program to legalize unauthorized aliens can come into effect.
- Senators Kyl and Cornyn - This amendment would prohibit any unauthorized alien from obtaining legalization if he is a convicted felon, has had three convictions for misdemeanors (these provisions were in the 1986 “amnesty”), or has already been ordered deported.
- Senator Kyl – This amendment would strike bill provisions allowing unauthorized aliens to obtain a green card, but it provides a humanitarian exemption (for elderly and others).
- Senator McConnell - Voting amendment.
- Senators Sessions and Santorum - This amendment would authorize border fencing.
- Senator Santorum – This amendment would provide that to obtain a visa under the H-1b visa cap, a foreign professor who intends to teach at an American university must speak understandable English.
- Senator Santorum - This amendment would add countries to the Visa Waiver Program that contributed substantially to U.S. coalition efforts in the war in Iraq and Afghanistan, and that are members of the European Union. *(Note: this amendment is designed to allow Poland visa waiver status. Poland is not close to meeting the current requirements of visa waiver program, but claims statistics are skewed against Polish applicants. It is clearly a domestic political concern of the Polish government.)*
- Senator Sessions - This amendment would clarify that unauthorized aliens who are legalized are prohibited from public benefits.
- Senators Vitter, Kyl, Cornyn, Ensign, Sessions, Chambliss, Grassley, et al. – This amendment would strike bill provisions allowing unauthorized aliens to obtain a green card while in the U.S.
- Senator Vitter – This amendment would strike bill provisions allowing unauthorized aliens to self-attest to the requirements for legalization (i.e., time in country and period of work).

Additional Possible Amendments

Other amendments are likely.