Kay Bailey Hutchison, Chairman
Bill Hughes, Staff Director

347 Russell Senate Office Building
Washington, DC 20510
202-224-2946
http://rpc.senate.gov

SENATE REPUBLICAN POLICY COMMITTEE

Legislative Notice

No. 15 May 15, 2007

S. 1348 – Comprehensive Immigration Reform Act

Calendar No. 144

S. 1348 was read the second time and placed on the Senate Calendar on May 10, 2007.

Noteworthy

- On May 14, the Senate Majority Leader filed a cloture petition on the motion to proceed to S. 1348. As such, a cloture vote on the motion to proceed should occur on Wednesday, May 16.
- S. 1348 is essentially the same bill as S. 2611 of the 109th Congress, which the Senate passed on May 25, 2006, by a vote of 62-36.
- S. 1348 was placed on the Senate Calendar on May 10 under the procedures of the Senate's Rule 14. On May 11, 2007, the Majority Leader acknowledged that Senators were negotiating a new proposal in good faith, but added that if they were unable to reach a new bipartisan agreement by this week, he wanted to move to S. 1348.
- At the time this Legislative Notice was issued, the bipartisan negotiations were still ongoing.

Highlights

- ***New Temporary Worker Visa.*** S. 1348 would provide for a *new temporary worker visa* ("H-2C visa"), capped at 200,000 visas. The requirements for this visa are as follows (but are waived for "Group 2"): (1) capability of performing labor required for intended occupation; (2) offer of employment; (3) $500 fee; (4) medical exam; (5) background check; and (6) residence abroad with no intent to abandon. All H-2Cs would be able to self-petition for permanent residency (and path to citizenship) after 4 years, or could be petitioned for the same by a willing employer anytime after they began work.
- ***Increasing Green Card (Permanent Resident) Quotas.*** S. 2611 would essentially triple the current 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). Further, the employment-based quota would allow more unskilled workers to gain green cards.

- S. 1348, like last year's bill, would effectively divide the unauthorized alien population (estimated at 12 million) 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 Legal Permanent Residency after 6 more years of work *(all such aliens can apply for citizenship in 5 years, or in 3 years, if married to a U.S. citizen).*
    - **"Group 2:"** Unauthorized aliens who have resided here 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:"** For unauthorized aliens who resided here after January 7, 2004, the *status quo* would continue (they are and would be deportable).
- ***Quotas Would 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 in combination 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 to allow nationals of countries expected to provide numerous workers to escape these quotas.
- ***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).[1] *Under S. 2611, the number of green cards issued over the next 10 years could rise from approximately 10 million to over 40 million).*
- ***The Green Card Line.*** Unauthorized aliens from Group 1 (above) are exempt from the green card quota. 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).
- ***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.

[1] Note that *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.* Census Bureau data for Census 2000 indicates the average household size for Hispanic or Latino households is 3.62, http://factfinder.census.gov/servlet/DTTable?_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; it places the average Hispanic household size at 3.87.

Background

This year, the Bush Administration has been active in negotiations concerning an immigration bill. Negotiations between the Administration and several Senators from both sides of the aisle are ongoing, and, at the time this Legislative Notice was issued, it was uncertain when final agreement on the bipartisan product would be reached.

However, according to various media reports, the plan would include or address the following provisions (as of May 14, 2007):

- an end to chain migration: that is, an end to permanent immigration based solely on extended family relations (as opposed to just nuclear family relations);
- several triggers must be in place before any legalization or new temporary worker program comes into being: (1) certain border security measures taking place, (2) the implementation of a new electronic employee verification system, (3) registration of unauthorized aliens, and (4) reiteration of a "no catch-and-release" policy;
- a host of new interior enforcement measures coming into place (as somewhat reflected by Title II in S. 1348);
- a new electronic employment verification system;
- a new temporary "Y" worker program, limited from 3-6 years, with possible safeguards to ensure their return (but may include some family members coming with them, with certain restrictions);
- a registration period for the unauthorized alien population;
- a quasi-permanent "Z" card non-immigrant visa, allowing the registered population to remain in the United States indefinitely, as long as they do not become inadmissible (i.e., commit a crime or similar), but not allowing for an automatic path to citizenship;
- a new merit-based immigration system (similar to Canada's permanent immigration system), whereby a certain portion of permanent residents accepted would have to demonstrate skills or education that benefit America; others would be allowed permanent residency based on family relations;
- "Z" visa holders would be eligible to apply for permanent residency (i.e., a green card), but only if they leave the United States, and if they otherwise qualify under the new merit-based system;
- the current backlog of green card applicants (i.e., those in line currently for a green card) would be processed while the merit system is put into place;
- the Diversity Visa program and other categories may be curtailed, and new green card numbers added, to reduce the backlog within 8 years.

S. 2611, Last Year's Senate-passed Immigration Bill

Last year, S. 2611 was passed by a vote of 62-36, after 47 amendments were considered (and after a 73-25 vote to invoke cloture). [For details of the debates and the votes, consult RPC's Record Vote Analyses beginning with Record Vote No. 83 and concluding with Record Vote No. 157.] Members of the House of Representatives then threatened to "blue slip" the bill on the grounds that it was a revenue-raising bill (constitutionally, all such bills must originate in the House). A conference between the two Chambers was not called before Congress adjourned sine die.

Bill Provisions

The following sections provide a summary of the major sections of S. 1348 by title; *this is not a comprehensive section-by-section review of the bill* as this legislative notice attempts to organize sections by subject matter. When possible, section numbers are noted. Section numbers pertaining to S. 1348 sections are noted at the end of each descriptive section below.

The bill is organized in this fashion:

Title I – Border Security

Title II – Interior Enforcement

Title III – Electronic Employment Authorization Verification

Title IV – Temporary Workers

Title V – Green card quotas (and sub-quotas)

Tile VI – Legalization of Unauthorized Aliens (including Ag jobs and DREAM Act)

Title VII – Litigation Reform and miscellaneous

Title VIII – Intercountry Adoption Reform

TITLE I – BORDER ENFORCEMENT ASSETS FOR CONTROLLING U.S. BORDERS

Enforcement Personnel. The bill authorizes 200 new positions for investigative personnel to investigate alien smuggling, and 500 additional port of entry inspectors, annually from FY 2008 to FY 2012. A total of 11,200 new Border Patrol agents would be added between 2008-2012, 20% of which would be devoted to the northern border (section 151 of S. 1348 seems to contradict this with different numbers). As of May 2007, there are approximately 13,000 Border Patrol agents. Further, the manager's amendment from last year added 50 more Deputy Marshalls per year for 5 years to investigate immigration cases. (Section 101 of S. 1348).

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. (Note: last year, H.R. 6061, the Secure Fence Act of 2006, was enacted, authorizing 700 miles of fence along the border; funds for about half of that were later appropriated). (Sections 102-110 of S. 1348).

Requirement to Cooperate with Mexico. The bill would require the U.S. government to cooperate with Mexico with regard to building any border fencing and cross-border migration. (Section 117 of S. 1348).

US-VISIT. The Secretary of DHS, by October 1, 2008, 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 deploy 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. (Sections 121-122, 128 of S. 1348).

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, 2008. 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. (Sections 125, 126).

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 anti-fraud provisions. 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. (Sections 205-208).

Expedited Removal and other border issues. 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. The bill provides for mandatory detention of aliens caught entering the country between the ports of entry, and criminalizes evading border inspection. Further, the bill provides a grant program for local law enforcement assistance at the border (Sections 131, 132, 143, 227 of S. 1348).

Financial Accountability. The Department of Homeland Security Inspector General will review each contract for the Secure Border Initiative program that is $20 million or over. (Section 130 of S. 2611).

Border Security Plans and Reports. S. 1348 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 and a plan to combat human smuggling and cross-border deaths. 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. The Government Accountability Office (GAO) would be directed to review Border Patrol training, and the Committee on Foreign Investment would report on foreign contracts to manage a U.S. port facility (Sections 111-113, 115, 116, 129, and 130 of S. 1348).

Border Security Amendments Adopted to S. 2611.

The following is a list of border security amendments that were adopted into last year's immigration bill, S. 2611, and included in S. 1348:

Agreed to, 83-10: **Ensign amendment #4076, as modified**, to S. 2611. The amendment would authorize "Operation Jumpstart," the Administration's actions mobilizing the National Guard to temporarily assist the Department of Homeland Security in its mission to maintain the integrity of United States' international borders. It provides that a State Governor may order units or personnel of the National Guard of such State for annual training duty to carry out in any State along the southern land border various activities authorized for the purpose of securing that border, with the approval of the Secretary of Defense. (Section 133 of S. 1348).

Agreed to, 79-16: **Salazar amendment #3994** to S. 2611. The amendment would prohibit implementation of the bill provisions creating a new temporary worker program and legalization of unauthorized aliens (Titles IV and VI) until the President makes a determination that such implementation will strengthen the national security of the United States. (Section 777 of S. 1348).

Agreed to, 83-16: **Sessions amendment #3979 (border fences),** to S. 2611. The amendment would direct the Secretary of Homeland Security to construct at least 370 miles of triple-layered fence, and 500 miles of vehicle barrier at strategic locations along the southwest border. (This was later enacted separately as the Border Fence Act of 2006).

Voice Vote: Stevens amendment #4018, to extend for 18 more months the exception in current law that U.S. nationals do not have to carry a passport while traveling in the Western Hemisphere (including Canada, Mexico, and various Caribbean islands). The Intelligence Reform and Terrorism Prevention Act of 2004 repealed this exception to the passport requirement as of January 1, 2008. (Section 135 of S. 1348).

Voice Vote: Santorum amendment #4000, to allow additional countries to participate in the visa waiver program under section 217 of the Immigration and Nationality Act (originally designed to allow Poland into the Program). (Section 413 of S. 1348).

Voice Vote: Kerry Amendment #3999, which would improve the capacity of the United States Border Patrol to rapidly respond to threats to border security. (Subtitle E of Title I of S. 1348).

Manager's amendment added sections to encourage former military personnel to serve in the Border Patrol (Section 134 of S 1348).

TITLE II – INTERIOR IMMIGRATION ENFORCEMENT

Additional personnel. The bill would increase the number of Immigration & Customs Enforcement agents by 2000 per year for 4 years. 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). (Sections 101, 216 of S. 1348).

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.)* (Section 201 of S. 1348).

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. (Section 204 of S. 1348).

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. (Section 204 of S. 1348).

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.[2] 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.

[2] 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.

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 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). (Section 202 of S. 1348). The bill would also encourage the government to use land at base closings for detention facility construction. (Section 233 of S. 1348).

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). (Section 203 of S. 1348).

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. (Section 205 of S. 1348).

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. (Sections 115, 205 of S. 1348).

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. (Section 205(c) of S. 1348).

Unlawful Presence of an Alien and Illegal Entry. The bill modifies INA Section 275 by criminalizing, as a misdemeanor, an alien's knowing unlawful entry into 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.[3] (Section 206 of S. 1348).

Diplomatic Security Services. The bill 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. (Section 215 of S. 1348).

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 Immigration & Nationality Act§ 287(g). (Section 218 of S. 1348).

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. (Section 223 of S. 1348).

[3]The 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.

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. (Section 228 of S. 1348).

Immigration Violators in the NCIC Database. The bill 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. (Section 231 of S. 1348).

Prosecutions. The bill requires U.S. Attorneys to determine the immigration (or citizenship) status of all defendants in any case they bring. (Section 234 of S. 1348). A third drunk driving conviction would make an alien inadmissible and removable. (Section 225 of S. 1348).

Interior Enforcement Amendments Adopted to S. 2611.

The following is a list of interior enforcement amendments that were adopted into last year's immigration bill, S. 2611, and included in S. 1348:

Agreed to, 52-45: **Feingold amendment #4083** to S. 2611. The amendment struck a provision that the underlying bill would have inserted into sec. 242(f)(2) of the Immigration & Nationality Act; that provision would prevent a court from "staying" the removal of any alien pursuant to a final order of removal, unless the alien evidences that the order is prohibited as a matter of law (current law prohibits a court from "enjoining" such a removal). (Sec. 227(c) of S. 2611 was struck, and subsection (d) became subsection (c) in S. 1348).

Agreed to, 73-25: Byrd amendment #4127 (enforcement funding), to S. 2611. The amendment would require any alien gaining an immigration benefit under the bill to pay a fee of $500 (in addition to any other fees) to be used for immigration enforcement activities. (Section 644 of S. 1348).

Voice Vote: Nelson (FL) amendment #3998, as modified, which would improve the United States' ability to detain unauthorized aliens. (Section 235).

TITLE III – WORK AUTHORIZATION VERIFICATION

The original Title III in S. 2611 was substituted with a new negotiated Title III. The current language of Title III is far more developed than what was passed in the House in H.R. 4437. (*Note: Republican Policy Committee has produced a comprehensive policy paper on this issue*).[4]

The Work Authorization Verification language in S. 1348 provides that:

- Employment of unauthorized aliens is unlawful;
- Employers who in good faith follow the provisions of this section have an affirmative defense;
- DHS 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").
- New hires must attest that he is a citizen, 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/ telephone; every work-authorized alien is given an "alien number.")*
- 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

[4] "Alien Work-Authorization Verification: Can This Broken System Be Fixed?", February 28, 2006. www.rpc.senate.gov.

percent of the enforcement hours of Immigration and Customs Enforcement (DHS) be used for worksite enforcement.

TITLE IV – TEMPORARY WORKERS, AND H-2C VISA LEADING TO PERMANENT RESIDENCY

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, and theoretically million-dollar investors 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 200,000 visas.
- 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; however, see RPC policy paper explaining how Davis-Bacon wages are included as part of this requirement.[5]

- DHS would be prohibited from approving petitions for employment located in Metropolitan Statistical Areas of high (9%) unskilled 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.

***Visa Revalidation*.** The bill would reinstate an old practice of allowing the State Department to essentially reissue certain types of work visas while the alien is in the United States (this ability was removed after 9/11 but the security benefits of doing so are unclear). (Section 532 of S. 1348).

Temporary Worker Amendments Adopted to S. 2611.

The following is a list of temporary worker amendments that were adopted into last year's immigration bill, S. 2611, and included in S. 1348:

Voice Vote: Boxer amendment #4144 (H-2C labor certification), to insert a labor certification process for employers seeking to hire H-2C nonimmigrant foreign workers. (Amendment is reflected in a modified Section 404 of S. 1348).

Voice Vote: Obama amendment #3971, as modified, modifies Senator Kyl's amendment in Committee to prohibit the approval of petitions for H-2C workers in areas of high unskilled unemployment, excepting agricultural jobs (the amendment lowered the threshold unskilled unemployment rate from 12% to 9%). (The change is reflected in Section 404 of S. 1348).

Bingaman amendment #3981 was not tabled (18-79 vote), would lower the annual visa quota for the H-2C guest worker visas (created by S. 2611) from 325,000 (plus 10-20 percent increases within, and at the end of, each year, for every year the cap is reached) to 200,000 per year. (Section 408(g) of S. 1348).

[5] RPC published a policy paper on July 11, 2006 regarding "David Bacon Expanded to Private Projects in Senate Immigration bill. Available on line at www.rpc.senate.gov.

TITLE V – GREEN CARD AND OTHER QUOTAS

Increased Green Card Numbers. S. 1348 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 2018 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. There are approximately 12 million applications for green cards in the backlog, and approximately 1 million green cards are processed each year (some of those in the backlog will abandon their applications). (Section 501 of S. 1348).

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).* (Section 503, 505 of S. 1348).

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,[6] but was in some ways intended to correct past laws discriminating against certain nationalities (e.g., Chinese Exclusion Acts)).* (Section 502, 505(b), 505(c) of S. 1348).

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. (Section 503 of S. 1348).

Allocation of Employment-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

[6] 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.

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 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). (Section 503 of S. 1348).

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. (Section 507 of S. 1348).

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. (Section 507(e) of S. 1348).

Visas for Individuals with Advanced Degrees. The bill exempts from the numerical cap on employment-based immigrant 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. (Section 508 of S. 1348).

SKIL Act. The bill would add provisions to increase the H-1B visa quota from 85,000[7] to 115,000, with an escalator clause based on demand for H-1Bs visas. Certain aliens with masters degrees, or medical skills, or in shortage occupations would not be subject to the numerical cap for green cards. Foreign students would be allowed to work in the U.S. (Section 521-525 of S. 1348).

Expedited petition processing. The bill would provide for expedited petition processing for known employers and for those who pay an expedited processing fee. (Section 510, 528, 529 of S. 1348).

[7] Some H-1B visas are not subject to a cap, and others have certain conditions on them.

Quota-related Amendments Adopted to S. 2611.
The following is a list of green card quota amendments that were adopted into last year's immigration bill, S. 2611, and included in S. 1348:

Agreed to, 51-47: **Bingaman amendment #4131** to S. 2611. The amendment would place an annual cap of 650,000 green cards for principal employment-based green card applicants, their spouses, and children (450,000 applicants, as found in the bill, with a limit of 200,000 spouses and children). (Section 501(b) of S. 1348).

Agreed to, 56-42: **Gregg amendment #4114** (advanced degree visas), to S. 2611. The amendment would upgrade the provisions of the diversity visa lottery program (granting green cards to aliens of only certain nationalities on a lottery basis) to include more aliens with advanced degrees. (Section 508 of S. 1348).

Voice Vote: Akaka amendment #4029, which would grant the children of Filipino World War II veterans special immigrant status for purposes of family reunification. (Section 509 of S. 1348).

Manager's amendment: The manager's amendment added lengthy provisions exempting victims of Hurricane Katrina from certain immigration documentation requirements, and forgiving them for not making certain deadlines. (Section 541, et seq., of S. 1348).

TITLE VI – IMMIGRATION STATUS FOR THE UNAUTHORIZED ALIEN POPULATION

The section dealing with legalization of the general unauthorized alien population is found in section 601 of the bill:

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. Inadmissability 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.
- 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 (Subtitle B of Title VI).

The "Ag Worker" amendment added in the Judiciary Committee to a Chairman's Mark last year is also contained in S. 1348 (Subtitle B of Title VI) 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 (Subtitle C of Title VI)

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. 1348. *(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.

Legalization Amendments Adopted to S. 2611.

The following is a list of legalization amendments that were adopted into last year's immigration bill, S. 2611, and included in S. 1348:

Agreed to, 50-47: **Ensign amendment #4136** to S. 2611. The amendment would add a limitation to the "back tax payment" requirement for "Group 1" unauthorized aliens (to pay taxes on 3 years of work) before they can obtain a green card. The limitation would be that they could not collect a tax refund for any taxable year prior to 2006, or file a claim for the Earned Income Tax Credit (EITC), or any other tax credit prior to 2006. (Section 601 of S. 1348).

Agreed to, 56-43: **Kennedy amendment #4066** to S. 2611, the *Immigration Reform bill*. The amendment would modify Cornyn amendment #3965 to strike the ability of unauthorized aliens obtaining an H-2C visa to self-petition for a green card. The amendment states that an alien can self-petition with the employer's promise of a job, or evidence from the alien that he has two of the following documents evidencing employment: his records maintained by the Social Security Administration, pay stubs, IRS documents, or documents from any other agency (***Agreed to, 50-48:*** **Cornyn amendment #3955, as modified,** to S. 2611. The amendment would strike the ability of unauthorized aliens obtaining an H-2C visa to self-petition for a "green card." Under S. 2611, an H-2C visa worker can either (1) on any day after beginning employment, be petitioned by his/her employer for a "green card," or (2) in 4 years, self-petition for a "green card" (permanent residency and employment authorization, leading to a chance for citizenship)). (In effect these two amendments cancelled each other out, and there was no effective change in the bill).

Agreed to, 64-32: **Cornyn amendment #4038** to S. 2611. The amendment would impose an additional $750 fee (or $100 for each dependent) on any unauthorized alien who applies for legal status. It would not reduce any money going to the Department of Homeland Security or the Department of Labor for administrative costs. The funds would be used to reimburse state and local governments for health and education services caused by years of unauthorized alien use of healthcare facilities. (Section 601 of S. 1348).

Agreed to, 99-0: **Kyl/Cornyn amendment #4027** to S. 2611. The amendment closes a loophole in S. 2611 that would allow criminal aliens to obtain legal status. The amendment clarifies that any illegal alien who is ineligible for a visa, or who has been convicted of a felony or three misdemeanors, or was the subject of a final order of removal, or constitutes a danger to the U.S. (as determined by DHS), is ineligible for a green card. (Section 601 of S. 1348).

Voice Vote: Vitter amendment #3964, would modify the burden of proof requirements for purposes of adjustment of status under Title VI. (Section 601 of S. 1348).

TITLE VII –LITIGATION REDUCTION & MISCELLANEOUS

Additional Immigration Litigation 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. (Section 701 of S. 1348).

Board of Immigration Appeals (BIA). The bill directs the Attorney General 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. However, the BIA is required to hear cases de novo, but cannot engage in fact finding (without remanding the case to an Immigration Judge). The qualifications and appointment procedure of Immigration Judges (administrative law judges) would be modified. (Section 702-704 of S. 1348).

Miscellaneous Amendments Adopted to S. 2611.

Agreed to, 63-34: **Inhofe amendment #4064** to S. 2611. The amendment would require that English be declared the national language of the United States. It also provides that the English language be the default language for government communication, and that no person has a right to have the government communicate in any language other than English, *unless* "specifically stated in applicable law." The amendment would make findings and set goals for the redesign of the ongoing naturalization exam. Lastly, the amendment would change the S. 2611 provisions that allow an unauthorized alien to meet the current English language portion of the naturalization exam by enrolling in an English language class. (Section 765 of S. 1348).

Agreed to, 58-39: **Salazar amendment #3979** to S. 2611. The amendment states that English is the unifying language of the United States. It also states that the government shall preserve the role of English as the unifying language of America and shall not diminish existing rights to services or materials (including US Code, judicial decisions, and regulations) provided by the government in the English language. (Section 7665 of S. 1348).

Voice Vote: Burns amendment #4124 (census), to provide for a Bureau of the Census report to Congress on the impact of illegal immigration on the apportionment of Representatives in Congress. (Section 769 of S. 1348).

TITLE VIII – INTERCOUNTRY ADOPTION "REFORM"

This title would change the way certain children born abroad of American citizens obtain citizenship automatically (in many circumstances it would make it harder), and grant adoptees automatic citizenship under the same requirements when the adoption is "full and final." (One citizen parent would have had to have been physically present in the U.S. for 5 years, 2 of which were at the age of 14 and older, with time served in government service abroad counting toward this requirement). It would create an Ambassador at Large position at the Department of State to handle international adoption issues,[8] and outlines the content of an international adoptions office (already in existence). It creates a new "W visa" for potential adoptees from other countries (who would be treated as permanent residents until final adoption). The opinions of the State Department and the Joint Council on International Children Services are available from RPC upon request.

Administration Position

At press time, the Administration had not issued a Statement of Administration Policy (SAP) with regard to S. 1348 or to any alternative bill.

CBO Estimate

The Congressional Budget Office provided an estimate on the cost of S. 2611 and later updated the estimate in August. CBO estimated that S. 2611, as passed, would increase spending by $16 billion in direct spending between 2007-2011 period, and $48 billion over the 2007-2016 period, and cause an increase in discretionary spending by $33 billion between 2007-2011, and $78 billion over the 2007-2016 period.

The CBO estimates for S. 2611 can be found at:

http://www.cbo.gov/ftpdocs/75xx/doc7501/s2611spass.pdf
http://www.cbo.gov/ftpdocs/72xx/doc7216/s2611Sess.pdf
http://www.cbo.gov/ftpdocs/72xx/doc7208/s2611.pdf

Note: The Budget Act with respect to S. 2611 was waived during last year's consideration of S. 2611, by a vote of 67-31. Section 407 from the FY 2006 Budget Resolution (H. Con. Res. 95) allows for a point of order for any legislation that would result in a net increase in direct

[8] The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption was completed and circulated for member countries' comments on May 29, 1993 under the auspices of the Hague Conference on Private International Law, an international organization begun in 1893. Currently, 68 countries have joined the Convention. In the last ten years, the number of intercountry adoptions to the U.S. has more than doubled. In FY2005, U.S. citizens adopted 22,739 orphans from around the world. Of these, 13,241 were from countries that joined the Hague Convention. In 2007, the Convention will enter into force for the Untied States, at which time, adoption services related to the 68 Convention countries can only be provided by an accredited adoption provider.

spending in excess of $5 billion in any of the four 10-year periods beginning in fiscal year 2016 through fiscal year 2055.

Possible Amendments

At press time, the vote to invoke cloture on the motion to proceed had yet to occur, and so it is unclear what amendments may be offered.