

American Immigration Lawyers Association

Senate Passes Comprehensive Immigration Reform Bill

The Senate voted 62 to 36 to approve compromise immigration reform legislation (S. 2611, the Comprehensive Immigration Reform Act of 2006), thereby setting the stage for what will likely be a contentious House/Senate conference, in which the Senate-passed bill will now have to be harmonized with the harsh, enforcement-only bill (H.R. 4437) passed by the House in December. Despite attempts by a handful of Senators to fundamentally alter the bill that was reported out of the Senate Judiciary Committee in March, the basic architecture of comprehensive immigration reform survived intact after nearly four weeks of Senate Floor debate on the measure and votes on more than 40 amendments.

The Senate bill includes a path to permanent legal status for most of the 12 million undocumented immigrants in the country, a new temporary worker program, significant increases in family- and employment-based permanent visas, important reforms to the agricultural worker program, significant reforms to the high-skilled immigration programs, and relief for undocumented high school graduates (DREAM Act). The bill also includes some very harsh enforcement provisions and erosion of due process protections that will need to be addressed and corrected as negotiations move forward.

Senators tackled several controversial issues today before voting for the bill's passage. The first of these was an amendment (No. 4097) offered by Senator Cornyn (R-TX) that would strike provisions in the bill that would preserve the confidentiality of information furnished by applicants for legalization and allow government agencies to share an undocumented immigrant's personal information if his or her application and all appeals for legal status have been denied. Opponents of the amendment argued that striking these important safeguards would serve as a major disincentive for undocumented immigrants to come out of the shadows and participate in the program.

The Senate **rejected** the Cornyn amendment on a tie vote of 49-49.

Senator Bingaman (D-NM) offered an amendment (No. 4131) that would cap the number of employment-based immigrant visas available to workers and their immediate relatives at 650,000 visas. This is a net reduction of several hundred thousand permanent visas compared to the number that would be available under the current bill. Thirty percent of the worldwide visas would be available annually to workers in the new H-2C category. Under the Bingaman amendment that number would be approximately 200,000 (30% of 650,000). At a rate of 200,000 H-2C temporary worker entrants per year plus another 200,000 derivative spouses and children, there could be 400,000 entrants vying for 200,000 slots in a given year. The result would be a backlog in immigrant visas growing by 200,000 per year. Senator Bingaman argued that his amendment was designed to establish certainty about how many individuals would be eligible for permanent status under this bill. However, opponents responded that the amendment would create significant *uncertainty* as to how many workers could pursue permanent residence in any given year. Indeed, they added, the spouses and children of principals from one

preference category could end up taking slots that would otherwise be allocated to employment based principals in another high demand preference category.

The Bingaman amendment was nonetheless **approved** by a vote of 51 to 47.

Next up was Senator Feingold (D-WI), with an amendment (No. 4083) that would strike an obscure provision in the bill—section 227(c)—that was added during Committee markup without any discussion, and with little awareness by most Members or staff that it had been included. Section 227(c) would bar federal courts from staying the deportation of any immigrant with a final removal order unless he or she shows by “clear and convincing evidence” that deportation is prohibited as a matter of law. This heightened standard would make it virtually impossible for most asylum seekers, domestic abuse victims, and human trafficking victims to obtain stays of deportation while their cases are on appeal to the federal courts, resulting in grave, potentially life-threatening consequences for legitimate asylum seekers. Section 227(c) also would cause the United States to violate the United Nations Convention and Protocol Relating to the Status of Refugees, which prohibits the return of individuals to countries where they will face persecution. This same provision was stricken by the Senate during the conference negotiations over the REAL ID Act.

Senators **approved** the Feingold amendment on a vote of 52 to 45.

Senator Sessions (R-AL) was next on deck, with an amendment (No. 4108) that would deny eligibility for the Earned Income Tax Credit to aliens adjusting their status under either the new H-2C guestworker program, the earned adjustment program for undocumented immigrants currently present in the country, or the AgJobs program.

The Sessions amendment was **rejected** by a vote of 37 to 60.

Senator Ensign (R-NV) offered the final amendment to the bill, which was similar to the Sessions amendment above. The Ensign amendment (No. 4136) would preclude an alien who legalizes under the bill’s earned adjustment program from collecting *any* tax refund for tax years prior to 2006, even if he or she paid all of taxes on time and is owed the refund because of an inadvertent overpayment or an IRS error. In addition, the amendment would preclude such individuals from filing a claim for the Earned Income Tax Credit or any other tax credits for tax years prior to 2006, potentially requiring legalized immigrants to pay more taxes than other people.

Senators **approved** the Ensign amendment on a vote of 50 to 47.

After the Ensign vote, Senators turned to a manager’s amendment, a package of numerous individual amendment agreed to in advance by both sides that would make a number of fixes to the underlying bill. We have not yet seen the text of the amendment so we don’t know with any certainty what changes were included.

Senators voted 56 to 41 (with one Member voting “present”) to **approve** the manager’s amendment after which a final vote on the bill was ordered.

The Senate **approved** S. 2611 by a vote of 62 to 36.

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