

Comparison of Selected* Guest Worker and Amnesty Bills in the 108th Congress

| | S. 1387 Sen. Cornyn | S. 1461 H.R. 2899 Sen. McCain Rep. Kolbe | S. 1645 H.R. 3142 Sen. Craig Rep. Cannon | H.R. 3534 Rep. Tancredo | S. 2010 Sen. Hagel | S. 2185 H.R. 3604 Sen. Chambliss Rep. Goodlatte | S. 2381 H.R. 4262 Sen. Kennedy Rep. Gutierrez |
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| Amnesty¹ provisions? | YES | YES | YES | NO | YES | NO | YES |
| What type² of amnesty? | <p>MULTI-STEP JACKPOT REWARD AMNESTY³ Illegal aliens first would apply for a temporary W visa and work permit (§201(a)). After working for at least three years, they could apply for permanent resident status and the path to citizenship (§104(a)). Depending on their work history, they could even be given priority for such status over other applicants who have never violated U.S. law (§218A(j) as added by §101).</p> | <p>MULTI-STEP JACKPOT REWARD AMNESTY Illegal aliens first would apply for a temporary H-4B visa and work permit (§251(a) as added by §4(a)). After working for three years, they could adjust to H-4A status (§251(e) as added by §4(a)). If an employer is willing to sponsor them, they could apply for permanent resident status and the path to citizenship anytime after obtaining H-4A status. Without an employer-sponsor, they would have to work for three years in H-4A status before becoming eligible for permanent resident status (§218A(h) as added by §3(a)).</p> | <p>MULTI-STEP JACKPOT REWARD AMNESTY Illegal aliens (both those currently present and those who were here illegally in the past but left) first would apply for “temporary resident status” and a work permit (§101(a)). After working the lesser of 2,060 hours or 360 “work days” in agriculture before 8/31/09, they could apply for permanent resident status and the path to citizenship (§101(c)).</p> | N/A | <p>INSTANT JACKPOT REWARD AMNESTY Most illegal aliens could apply directly for permanent resident status and the path to citizenship (§245B(a) as added by §301(a)).</p> <p>MULTI-STEP JACKPOT REWARD AMNESTY Certain illegal aliens would first apply for “transitional worker status” and a work permit (§245B(n)(1) as added by §301(a)). After working for a specified period, they could apply for permanent resident status and the path to citizenship (§245B(n)(4) as added by §301(a)).</p> <p>BASIC PENALTY AMNESTY Aliens seeking permanent resident status as the spouse, child or parent of a U.S. citizen or the spouse or child of a permanent resident would be exempt from three-year bar on legal admission for certain aliens who lived in the United States illegally for more than six months but less than one</p> | N/A | <p>INSTANT JACKPOT REWARD AMNESTY Most illegal aliens could apply directly for permanent resident status and the path to citizenship (§101)(a)).</p> <p>MULTI-STEP JACKPOT REWARD AMNESTY Certain illegal aliens would first apply for “transitional status” and a work permit. After working for a specified period, they could apply for permanent resident status and the path to citizenship (§116(a)).</p> |

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| | | | | | year, and from the 10-year bar on legal admission for certain aliens who lived here illegally for a year or more (§103). | | |
| Who would qualify for amnesty? | <p>Illegal aliens 18 or older who: were employed in the United States on the date of enactment; have not been convicted in the United States of a felony or three or more misdemeanors (unless such convictions relate to unlawful presence); and apply within one year of enactment. The applicant's U.S. employer would have to attest to the alien is an employee (§201(a)).</p> | <p>Illegal aliens who: were in the United States illegally before August 1, 2003; are not subject to a two-year foreign residence requirement (if they originally entered as exchange visitors, but overstayed); are not national security threats or likely to become public charges; have not been convicted of a crime in the United States, except for crimes related to immigration status or document fraud; have not assisted in the violation of human rights; and have been employed in the United States since before August 1, 2003, plus the spouse or child of such an alien (§251(a) as added by §4(a)). Illegal aliens seeking H-4B status would not be required to undergo health screenings to detect communicable or other diseases; nor would they be required to provide proof of immunizations (§251(a)(2)(A) as added by §4(a)).</p> | <p>Any aliens who were in the United States illegally and who worked in agriculture for the lesser of 575 hours or 100 "work days" during any 12 consecutive months between March 1, 2002 and August 31, 2003 (§101(a)(1)). (The bill defines a "work day" as any day in which the alien is employed one or more hours, so an illegal alien who performed as little as the equivalent of 2½ full work weeks of agricultural work in a year could qualify (§2(7)).) Aliens must apply during the 18-month period beginning six months after enactment, and they must not be national security threats, have been convicted of certain crimes, or have a history of accepting public cash assistance (§101(a)(1) and §101(e)(2)). Spouses and children of qualifying aliens cannot be removed from the United States as long as the principal alien has temporary resident status, but they are not eligible for work permits, unless they qualify independently, or until the principal applies for permanent residence (§101(c)(2)(B)).</p> | N/A | <p>- Any aliens who: have been present in the United States since 1/21/99 and were illegally present here on 1/21/04; were employed in the United States for an aggregate of three years between 1/21/99 and 1/21/04, and for an aggregate of at least one year between the date of enactment and the date the application is filed (this requirement is waived for those who were under age 20 on 1/21/04 and reduced for those who cannot work due to disability or pregnancy); have paid or agreed to pay any Federal income taxes owed on earnings from (only) work that satisfies the employment requirement above; have a minimal understanding of English and the history and government of the United States, or are pursuing studies to develop such understanding (unless the alien is disabled, impaired or 65 or older); has registered under the Military Selective Service Act, if required; and submits to fingerprinting and a criminal background check, plus the spouses and children of such aliens (§245B(a) as added by §301(a)).</p> <p>- Aliens who meet all the requirements above except for</p> | N/A | <p>- Any aliens who: have been present in the United States since 5/4/99; were illegally present here on 5/4/04; were employed for two years (defined as at least 1,800 hours or 260 days) between 5/4/99 and 5/4/04; have paid or agreed to pay any Federal income taxes owed on earnings from (only) work that satisfies the employment requirement above; have a minimal understanding of English and the history and government of the United States, or are pursuing studies to develop such understanding (unless the alien is disabled, impaired or 55 or older); has registered under the Military Selective Service Act, if required; files an application within two years of the date final regulations for implementation are issued; and submits to fingerprinting and a criminal background check, plus the spouses and children of such aliens (§101).</p> <p>- The employment requirement does not apply to aliens who were under age 21 on 5/4/04 or who could not work due to pregnancy or primary caregiver duties; and it is to be reduced for those who are disabled (§101(a)(4)(B) and §101(a)(4)(C)).</p> |

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| | | | | | <p>the first two (presence and employment) may apply for “transitional worker status,” which is valid for up to three years and available only within three years of the date that final regulations to implement the amnesty take effect. Transitional workers who were lawfully employed in the United States for an aggregate of between two and three years between 1/21/99 and 1/21/04 and for an aggregate of two years after 1/21/04 could apply for permanent residence, along with their spouses and children (§245B(n) as added by §301(a)).</p> | | <ul style="list-style-type: none"> - Each year in which an alien attended high school or postsecondary education at least half time after the age of 18 constitutes one year of the required employment (§101(a)(4)(D)). - Illegal aliens applying for amnesty would not be required to undergo health screenings to detect communicable or other diseases or to provide proof of immunizations (§102(3)). - Illegal aliens who were illegally present on 5/4/04 can apply for transitional status, which is valid for five years from issuance (§116(a)). - Aliens in transitional status who meet all the requirements of the instant amnesty except for the first and third and who are employed for an aggregate of 1,800 hours or 260 days between 5/4/04 and 5/4/09 are eligible for permanent residence (§116(e)), along with their spouses and children (§116(f)). |
| <p>Waivers for prior law violations by amnesty applicants?</p> | <p>Illegal aliens who participate in the program would be “absolved of all liability for illegal behavior” pertaining to immigration status that occurred before such participation (§218A(i) as added by §101).</p> | <p>Convictions for crimes related to unlawful entry or presence or immigration-related document fraud would be ignored (§251(a)(2)(B) as added by §4(a)).</p> | <p>Any prior law violation may be waived except those for crimes involving moral turpitude or controlled substances, multiple criminal convictions resulting in an aggregate sentence of five years or more, and those relating to drug offenses (§101(e)(2)).</p> | <p>N/A</p> | <p>Prior violations relating to immigration status, including failure to attend a removal proceeding and failure to depart when required, would be waived (§245B(b)(B) as added by §301(a)).</p> | <p>N/A</p> | <p>Violations relating to prostitution, commercialized vice, and immigration status would be waived, no matter when they were committed (§102(2)). Violations relating to alien smuggling could be waived if not committed for commercial gain (§102(4)). Amnesty applicants also would not be subject to reinstatement of prior removal orders or civil penalties for failure to depart</p> |

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| Estimated number of potential amnesty recipients? | Most of the seven million adult illegal aliens currently estimated ⁴ to be working in the United States could qualify. ⁵ | Most of the almost 6.8 million adult illegal aliens estimated ⁴ to have been working in the United States as of August 1, 2003, plus an estimated 3.2 million non-working spouses and minor children, could qualify. | An estimated 860,000 ⁶ illegal-alien agricultural workers who are currently present in the United States along with their spouses and children for a total of up to three million, plus an unknown number of additional aliens who were present illegally and worked in agriculture during the qualifying period, but who have since left the United States could qualify (§101(d)(1)(B)). | N/A | - Almost all of the 5.3 million illegal aliens estimated ⁴ to have been working in the United States in 1999 could qualify for the instant reward amnesty, along with their spouses and children. The total number of reward-amnesty beneficiaries would be significantly higher, though, since the residence and employment requirements include both legal and illegal presence and employment. ⁷ - The number of aliens who could benefit from the penalty amnesty is impossible to estimate, since it would apply indefinitely into the future. State Department officials have estimated that up to 65 percent of spouses and children of lawful permanent residents on the visa waiting list are residing illegally in the United States. | N/A | when required (§102(5)). Virtually all of the 10.3 million illegal aliens estimated ⁴ to have been living in the United States in March 2004 could qualify for amnesty, along with their spouses and children. |
| Taxpayer-funded counsel for amnesty applicants? | NO | NO | Illegal aliens are permitted to obtain tax-payer funded counsel through the Legal Services Corporation for assistance with their applications for both temporary and permanent resident status (§101(d)(8)). | N/A | NO | N/A | Illegal aliens are permitted to obtain tax-payer funded counsel through the Legal Services Corporation for assistance with their applications for both temporary and permanent resident status (§117). |
| Legal protections for amnesty applicants? | No provisions included. | - DHS is required to establish a process through which an alien subject to a final order of deportation may file an application for H-4B status and be permitted to remain in the | - Illegal aliens apprehended during the six months between enactment and the beginning of the application period may not be removed from the United States earlier than 30 | N/A | - Illegal aliens who have filed an application for the instant amnesty cannot be detained, determined inadmissible or deportable, or removed until the application is adjudicated, | N/A | - Illegal aliens who have filed an application for the instant amnesty cannot be detained, determined inadmissible or deportable, or removed until the application is adjudicated, |

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United States; such an alien cannot be removed until a final determination is made on the application (§251(d)(1) as added by §4(a)).

- DHS may not remove an illegal alien under any provision of immigration law if such alien has filed an application for H-4B status unless and until a final determination is made to deny the application (§251(d)(2) as added by §4(a)).

days into the application period and they must be given a work permit if they have a non-frivolous case for eligibility (§101(f)(1)). If such aliens file an application, they may not be removed (and must be allowed to work) until a final decision on the application is rendered (§101(f)(2)).

- An alien who is apprehended during the application period and who files a nonfrivolous application for amnesty within 30 days of apprehension may not be removed (and must be allowed to work) until a final decision on the application is rendered (§101(f)(2)).
- Illegal aliens whose applications are denied are entitled to an administrative appellate review (§101(g)).
- The temporary legal resident status granted to a qualifying illegal alien may not be terminated unless the alien is formally found to be deportable (§101(a)(4)).
- Illegal aliens granted temporary legal residence may not be terminated by their employers except for just cause (§101(b)(2)).
- Illegal aliens must be represented by counsel in order to file their applications directly with DHS. Otherwise, they must file their applications with a designated farm labor organization, employers association, or other entity that can assist the aliens with

unless they commit an act that makes them ineligible for amnesty (§245B(c)(1)(C) as added by §301(a)).

- Illegal aliens in removal proceedings who can establish prima facie eligibility for amnesty are entitled to have the proceedings terminated until their amnesty application is adjudicated, unless the removal is based on an act that makes them ineligible for amnesty (§245B(c)(4) as added by §301(a)).
- Illegal aliens apprehended after enactment but before the application period begins cannot be removed during the first six months of the application period, unless removal is based on an act that makes them ineligible (§245B(d) as added by §301(a)).
- Illegal aliens who have been ordered excluded, deported, removed, or to depart voluntarily, but who are still present in the United States can apply for amnesty. If the application is granted, the order is cancelled; if the application is denied, the order is enforceable (§245B(h) as added by §301(a)).
- Illegal aliens whose amnesty applications are denied are entitled to administrative appellate review and judicial review of the decision (§245B(j) as added by §301(a)).

unless they commit an act that makes them ineligible for amnesty (§103(a)(3)).

- Illegal aliens in removal proceedings who can establish prima facie eligibility for amnesty are entitled to have the proceedings terminated until their amnesty application is adjudicated, unless the removal is based on an act that makes them ineligible for amnesty (§103(d)).
- Illegal aliens apprehended after enactment but before the application period begins cannot be removed during the first six months of the application period (§104).
- Illegal aliens who have been ordered excluded, deported, removed, or to depart voluntarily, but who are still present in the United States can file an amnesty application to stay the removal until the application is adjudicated (§108).
- Illegal aliens whose amnesty applications are denied are entitled to administrative appellate review and judicial review of the decision (§110).
- Illegal aliens may file their applications with a designated organization that can assist in preparing the applications (§112).

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| | | | preparing the applications (§101(d)(1)(A)). | | | | |
| Amnesty for employers of illegal aliens? | Employers of illegal aliens who participate in the program would be “absolved of all liability for illegal behavior” pertaining to the immigration status of employees that occurred before such participation (§218B(f) as added by §102(a)). | Exemption from sanctions of employers of illegal aliens who apply for legal status under the bill is not directly addressed. Practically, though, it is virtually certain that they would not be subject to sanctions for illegally hiring such aliens. | Information provided by illegal aliens or their employers to prove work history may not be used for any purpose by deciding the application for amnesty, so employers of illegal aliens who apply for legal status under the bill would not be subject to sanctions for illegally hiring such aliens (§101(d)(6)(A)(i)). | N/A | Employers of illegal aliens who apply for legal status under the bill would not be subject to sanctions for illegally hiring such aliens (§245B(l) as added by §301(a)). | N/A | Employers of illegal aliens who apply for legal status under the bill would not be subject to sanctions for illegally hiring such aliens (§114). |
| Funding for amnesty program? | No additional funds are authorized and no provision for fees to be paid by applicants or employers is included. | <ul style="list-style-type: none"> - No additional funds are authorized. - DHS is required to set an application fee for illegal-alien applicants to cover the cost of processing the visas (§251(b)(1) as added by §4(a)). - Illegal aliens also must pay a fine of \$1,500, which may be garnished from wages if the alien does not have it. This fine is to be used to administer the program (§251(b)(2) as added by §4(a)). | <ul style="list-style-type: none"> - \$40 million per year for four years is appropriated from “any money in the Treasury not otherwise appropriated” to carry out the amnesty (§101(k)). - DHS is required to set the fees to be charged for the filing of applications for temporary status and those that may be charged by the entities designated to receive applications (§101(d)(9)(A)). | N/A | <ul style="list-style-type: none"> - The bill authorizes “such funds as are necessary to commence processing applications” for amnesty (§245B(m)(1) as added by §301(a)). - Applicants for the instant amnesty must pay a fine to be set by DHS, plus a fee of \$1,000 (the fee is waived for those under 18) (§245B(m)(2) and §245B(m)(3) as added by §301(a)). - 60 percent of the fines and fees are to be used to implement the amnesty and process applications; 40 percent are to be used to fund the increase in family-based immigration described below (§245B(m)(4) as added by §301(a)). | N/A | <ul style="list-style-type: none"> - The bill authorizes such funds as are necessary to commence processing applications for amnesty and to reimburse or make grants to entities designated to accept amnesty applications (§115(a)). - Applicants for the instant amnesty must pay a fee to cover processing costs, along with a fine of \$500 (unless they are under 21) (§115(b) and §115(c)). - All fees are to be used to process amnesty applications, though any remaining funds may be used to process other applications (§115(d)). |
| Nonimmigrant/guest worker provisions? | YES | YES | YES | YES | YES | YES | YES |
| Modifies existing guest worker program(s)? | NO | NO | The bill modifies the existing H-2A program by: <ul style="list-style-type: none"> - Extending the time an H-2A | The bill eliminates all current H nonimmigrant visa categories, including H-1B, H-1C, H-2A, | The bill modifies the existing H-2B program by: <ul style="list-style-type: none"> - Permitting H-2B workers to | The bill modifies the existing H-2A program by: <ul style="list-style-type: none"> - Eliminating the requirement | The bill modifies the existing H-2B program by: <ul style="list-style-type: none"> - Permitting H-2B workers to |

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| | | | <p>worker may remain in the United States to three years from one year (§218B(h) as added by §201(a));</p> <ul style="list-style-type: none"> - Eliminating the requirement that employers apply to the Department of Labor for a certification that there are not sufficient U.S. workers available and that importation of workers will not depress wages or working conditions for U.S. workers (§218(a) as amended by §201(a)); - Permitting employers to place H-2A workers with other employers under certain circumstances (§218(b)(2)(E) as amended by §201(a)); and - Authorizing employers to provide a housing allowance instead of providing actual housing (§218A(b)(1)(G) as added by §201(a)). | <p>H-2B, and H-3 (§210(a)).</p> | <p>change jobs without affecting their status if the employer violates a law, regulation or condition relating to the employment of the alien or if the “personal circumstances” of the alien change so that the alien is unable to perform the original job (§206);</p> <ul style="list-style-type: none"> - Prohibiting recruiting entities and job shops from petitioning for H-2B workers (§214(c)(2) as amended by §208); and - Restricting the validity of H-2B visas to an initial period of not more than nine months, renewable to a total of 36 months in any four-year period, unless a petition or application for permanent resident status has been filed and pending for a year or more, in which case H-2B status may be extended until a final decision on the application is made (§210). - Spouses and children of H-2B workers would receive derivative H-2B status (§207). | <p>change jobs after working for three months for the petitioning employer, however the second employer must file a new application for the worker (§305);</p> <ul style="list-style-type: none"> - Prohibiting recruiting entities and job shops from petitioning for H-2B workers (§214(c)(2) as amended by §307); - Restricting the validity of H-2B visas to an initial period of not more than nine months, renewable to a total of 40 months, unless a petition or application for permanent resident status has been filed and pending for a year or more, in which case H-2B status may be extended until a final decision on the application is made (§309); - Spouses and children of H-2B workers would receive derivative status (§306). | <p>that employers seeking H-2A workers apply to the Labor Department for a certification that insufficient workers are available and that importation of workers will not depress wages or working conditions for U.S. workers (§218(a) as amended by §2(a));</p> <ul style="list-style-type: none"> - Permitting H-2A workers to be transferred to another employer in certain circumstances (§218(a)(8) as amended by §2(a)); - Authorizing the Labor Department to review employer certification applications only for completeness and obvious inaccuracies (§218(d)(2) [Senate bill] or §218(e)(2) [House bill] as amended by §2(a)); - Requiring Labor to issue the certification within 15 days in the Senate bill (§218(d)(3) as amended by §2(a)) and within seven days in the House bill (§218(e)(3) as amended by §2(a)); - Directing DHS to expedite adjudication of petitions for H-2A workers and announce decision within 7 days of receipt (§218(o) [Senate bill] or §218(p) [House bill] as amended by §2(a)); and - Authorizing employers to provide a housing allowance instead of actual housing (§218(m)(3) [Senate bill] or §218(n)(3) [House bill] as amended by §2(a)). |
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| Creates new guest worker program(s)? | <p>The bill creates a new "W" nonimmigrant visa category with two subcategories (§103):</p> <ul style="list-style-type: none"> - W(i) seasonal workers may be admitted for up to 270 days in any calendar year and may reapply in any subsequent year (§218A(d)(1) as added by §101). - W(ii) nonseasonal workers (plus their spouses and children, if the worker earns at least 125 percent of the poverty level) may be admitted for up to 12 months and may have their visas extended for additional 12-month periods up to three years, after which they must return to the home country (or the country under whose auspices they were admitted) for at least six months before returning to the United States (§218A(d)(2) as added by §101). | <p>The bill creates a new "H-4" nonimmigrant visa category with two subcategories (§2):</p> <ul style="list-style-type: none"> - H-4A visas, for workers who apply from abroad, are valid for three years and may be renewed once for a total of six years; after six years, workers may either leave the United States or apply for permanent residence (§218A(c) as added by §3(a)). - Aliens who enter the United States illegally after August 1, 2003, are not eligible for H-4A visas until three years after they leave or are removed from the United States (§218A(g)(2) as added by §3(a)). - H-4A visa holders may not bring family members to the United States with them, except for spouses who also qualify for H-4A visas and children whose parents both have H-4A visas, or whose sole custodian has an H-4A visa (§218A(f) as added by §3(a)). However, spouses and children of H-4A workers are to receive priority for visitor visas (§218A(b)(4) as added by §3(a)). - Spouses and children of H-4A workers who initially had H-4B visas will receive H-4A status, as well, so they can remain in the United States (§218A(f)(3) as amended by §3(a)). - H-4A workers may not change employers unless the | <p style="text-align: center;">NO</p> <p>The only aliens who would receive legal status other than through the modified H-2A program are the amnesty beneficiaries described above.</p> | <ul style="list-style-type: none"> - The bill creates a new H nonimmigrant visa for skilled and unskilled workers who apply from abroad (§210(a) and §214(g)(4) as added by §213(a)). H visas are valid for up to 365 days in any two-year period and may be renewed every two years (§214(g)(1) as amended by §210(b)). H workers are not permitted to bring family members with them to the United States (§214(g)(3) as amended by §210(b)). - Employers of H workers are required to provide the workers with health insurance (§212(f)). - Employers of H workers are required to place into escrow sufficient funds to transport the workers to their home countries when the job ends (§212(e)). - Aliens seeking to work in the United States must provide the State Department with information about their education, job skills and employment history (§214(g)(6) as added by §213(a)), and State must verify the education and work history (§214(g)(8) as added by §213(a)). The aliens must be photographed and fingerprinted and undergo criminal background and health checks (§214(g)(9) as added by §213(a)). They must sign an affidavit attesting that they understand that: they may | <ul style="list-style-type: none"> - The bill creates a new H-2C nonimmigrant visa for workers coming to perform jobs not covered by other H, L, O, or P visas (§201(b)). H-2C visas are valid for an initial period of up to two years, renewable to a total of four years, unless a petition or application for permanent resident status has been filed and pending for a year or more, in which case H-2C status may be extended until a final decision on the application is made (§210). - Spouses and children of H-2C workers would receive derivative H-2C status (§207). - H-2C workers would be permitted to change jobs after working for three months for the petitioning employer (§206). - Recruiting entities and job shops would be barred from petitioning for H-2C workers (§214(c)(2) as amended by §208). - The H-2C program would terminate at the end of the fifth full fiscal year of operation (§217). | <p style="text-align: center;">NO</p> | <ul style="list-style-type: none"> - The bill creates a new H-1D nonimmigrant visa for workers coming to perform jobs not covered by other H, L, O, or P visas (§301(b)). H-1D visas are valid for an initial period of up to two years, renewable to a total of six years, unless a petition or application for permanent resident status has been filed and pending for a year or more, in which case H-1D status may be extended until a final decision on the application is made (§309). - H-1D workers would be permitted to change jobs after working for three months for the petitioning employer, however the second employer has to file a new application for the worker (§305). - Spouses and children of H-1D workers would receive derivative status (§306). - Recruiting entities and job shops would be barred from petitioning for H-1D workers (§307). |

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| | | <p>new employer has submitted a new petition and paid the petition fee (§218A(e) as added by §3(a)).</p> <ul style="list-style-type: none"> - H-4B visas, for illegal aliens, are valid for three years and are nonrenewable. After three years, the worker must either leave the United States or apply for an H-4A visa (§251(e) as added by §4(a)). Spouses and children of H-4B visa holders are to receive derivative H-4B status (§218A(f)(3) as added by §3(a) and §251(a)(3)(B) as added by §4(a)). | | <p>not adjust to any other legal status while in the United States; they are not entitled to any non-emergency public services; and that failure to comply with the terms of the H visa will result in a 10-year bar on re-entry (§214(g)(10) and §214(g)(11) as added by §213(a)).</p> <ul style="list-style-type: none"> - H workers must undergo new criminal background and health checks each time they seek to renew their status (§214(g)(12) as added by §213(a)). - The Labor Department is to maintain a database of all aliens pre-approved by State (§214). - Once a labor certification is approved, an employer may access the list of pre-approved workers to select which worker(s) he wants to hire (§214). | | | |
| Numerical limits on affected guest worker program(s)? | NONE | NONE | NONE | NONE | <ul style="list-style-type: none"> - H-2B limit: 100,000 workers per year for five years, after which it would fall back to 66,000 per year (§211). - H-2C limit: 250,000 workers per year (§211). | NONE | <ul style="list-style-type: none"> - H-2B limit: 100,000 workers per year (§310). - H-1D limit: 250,000 workers per year (§310). |
| Waivers for prior law violations by guest worker applicants? | Unlawful presence in the United States is waived for applicants who apply within one year of enactment (§218A(c)(2) as added by §101) | Prior immigration violations are waived only for H-4B workers (§251(a)(2)(B) as added by §4(a)). Applicants for H-4A visas must meet current admissibility requirements. Aliens who enter(ed) illegally after August 1, 2003 are ineligible for H-4A visas for three years after their | The three-year and 10-year bars on re-entry to the United States for aliens who were unlawfully present for more than six months would be waived for H-2A applicants abroad, but only as long as they comply with all the terms of their visas (§218B(c)(3) as added by §201(a)). | NONE | Violations relating to immigration status, including failure to attend a removal proceeding, would be ignored, as long as such violations were committed prior to 1/21/04 (§215). | The three-year and 10-year bars on re-entry to the United States for aliens who were unlawfully present for more than six months would be waived for H-2A applicants abroad, but only as long as they comply with all the terms of their visas (§218(p)(2) [Senate bill] or §218(q)(2) | Violations relating to immigration status, including failure to attend a removal proceeding, would be ignored, as long as such violations were committed prior to the issuance of the H-2B or H-1D visa (§314). |

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| | | departure or removal from the United States (§218A(g)(2) as added by §3(a)). | | | | [House bill] as amended by §2(a). | |
| Protections for U.S. workers (U.S. citizens and legal residents) from guest worker programs? | <ul style="list-style-type: none"> - There are no protections for U.S. workers from employers of illegal aliens seeking W visas. Such employers are not required to do anything but inform the Labor Department that the aliens are in their employ (§201(b)(2)). - Employers seeking W workers from abroad must file an application with the Labor Department that includes a description of the job opening and “assurances” that the employer: has or will offer the job to qualified, available U.S. workers who apply; advertised the job in the local labor market for at least 14 days; will pay at least minimum wage; will pay work-related injury and disease insurance if the job is not covered by workers’ compensation laws; and will comply with vehicle safety rules (§218B(a) and §218B(b) as added by §102). - Employers seeking nonseasonal W(ii) workers also must apply to the Labor Department for an attestation that there are not sufficient U.S. workers available to do the job the employer seeks to fill and that hiring a W(ii) worker will not adversely affect the wages or working conditions of similarly employed U.S. workers (§218B(a)(1)(A) as added by | <ul style="list-style-type: none"> - Neither employers of illegal aliens seeking H-4B visas nor employers of H-4A workers who originally had H-4B status are required to advertise the jobs to U.S. workers, but they are required to comply with the other requirements listed below for employers of H-4A workers (§251(g) as added by §4(a) and §218A(i)(2) as added by §3(a)). - Employers must advertise the job openings for which they seek H-4A workers on an electronic job registry for at least 14 days so that U.S. workers have a chance to apply (§218A(i)(1) as added by §3(a)). - Employers seeking H-4A workers must attest that they advertised the position on the job registry and will verify the H-4A workers’ identity and work authorization (§218A(a)(2)(B) as added by §3(a)). Employers of all H-4 workers must attest that they: will provide the same benefits, wages and working conditions as they would for U.S. workers; will not forbid the H-4 workers from working for a competitor; have not and will not displace a U.S. worker within 90 days before or after seeking the H-4 worker; and will comply with labor laws (§218A(a)(2)(B) as added by | <p>The bill codifies some of the current Department of Labor regulations, including the following requirements:</p> <ul style="list-style-type: none"> - Employers must take steps to recruit U.S. workers before seeking H-2A workers, except where “the employer’s need for H-2A workers could not reasonably have been foreseen” (§218(b)(2)(H)(i) as amended by §201(a)). - Employers must hire any qualified U.S. worker who applies before 50 percent of the period of employment of the H-2A worker has elapsed (§218(b)(2)(H)(iii)). - Employers must publicly post at the work site each application for an H-2A worker (218(e)(1) as amended by §201(a)). - Requires employers to state on the application for H-2A workers that they did not displace a U.S. worker during the 30 days before hiring an H-2A worker and that they will not do so during the H-2A worker’s employment (§218(b)(2)(D) as amended by §201(a)). | <ul style="list-style-type: none"> - Employers seeking to hire H workers must advertise the job on the internet-based job posting system for at least 14 days (§212(a) and §212(d)). - The employers must certify that they have not laid off any U.S. workers in equivalent jobs in the six months prior to the labor certification and will not in the six months following (§212(g)(2)). - The bill doubles the penalties for employers who knowingly fail to comply with the requirements for hiring H workers (212(g)(4)). - The Labor Department is prohibited from approving any labor certification applications pertaining to an occupational category and geographic region in which the unemployment rate exceeds five percent and the share of recent hires who are H workers exceeds 15 percent. Once the unemployment rate falls below five percent, Labor must re-evaluate the prevailing wage for that occupation and region before it may resume approving applications (§211(f)). | <ul style="list-style-type: none"> - 14 days prior to applying for an H-2B worker, an employer must submit a description of the job to the United States Employment Services for dissemination, post the job opening at the worksite, and advertise it for at least three consecutive days in a publication likely to be seen by potential applicants §212(t)(1) as added by §202). - 30 days prior to applying for an H-2C worker, an employer must submit a job description to the United States Employment Services, post the job opening at the worksite, and advertise it for at least 10 consecutive days (§212(t)(2) as added by §202). - Employers seeking H-2B or H-2C workers must attest that: they will pay the required wages and offer the same benefits and working conditions as are provided to U.S. workers; there is no strike, lockout, or labor dispute; they will abide by the right of workers to unionize; they have provided advance notice to current employees of the application; they have not required the worker to pay the application fees; they have not laid off and will not lay off similarly employed U.S. workers in the 60 days before and 60 days after filing the | <ul style="list-style-type: none"> - The bill codifies many of the protections incorporated into Labor Department regulations, including a rule that requires H-2A employers to hire any qualified U.S. worker who applies before 50 percent of the H-2A worker’s contract period has elapsed (§218(a)(6) as amended by §2(a)); and - Requires employers to state on the application for H-2A workers that they did not displace a U.S. worker during the 30 days before hiring an H-2A worker and that they will not do so during the H-2A worker’s employment (§218(a)(3) as amended by §2(a)). - The House bill reduces the length of time for which an H-2A visa is valid from one year to 10 months (§218(r) as amended by §2(a)). The maximum continuous period (including extensions) an H-2A worker may remain in the United States is reduced from three years to two years, after which the worker must remain outside the country for 1/5 of the total duration of the most recent period before he may apply again (§218(v) as amended by §2(a)). | <ul style="list-style-type: none"> - 14 days prior to applying for an H-2B worker, an employer must submit a description of the job to the United States Employment Services for dissemination, post the job opening at the worksite, and advertise it for at least three consecutive days in a publication likely to be seen by potential applicants (§302). - 30 days prior to applying for an H-1D worker, an employer must submit a job description to the United States Employment Services, post the job opening at the worksite, and advertise it for at least 10 consecutive days (§302). - Employers seeking H-2B or H-1D workers must attest that: they will pay the required wages and offer the same benefits and working conditions as are provided to U.S. workers; there is no strike, lockout, or labor dispute; they will abide by the right of workers to unionize; they have provided advance notice to current employees of the application; they have not required the worker to pay the application fees; they have not laid off and will not lay off similarly employed U.S. workers in the 60 days before and 60 days after filing the application; and they complied with recruiting requirements |

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| | §102). | §3(a) and §251(g) as added by §4(a). - Employers seeking to renew the visa of an H-4A worker for a second three-year period must re-advertise the job on the electronic job registry (§218A(c)(2)(B) as added by §3(a)). | | | application; and they complied with recruiting requirements (§212(t)(3) as added by §203(a)). | | (§303(a)). |
| Wage requirements for guest workers? | Minimum wage (§218B(b)(3) as added by §102). | Minimum wage (§218A(k)(4) as added by §3(a)). | Adverse effect wage level, frozen for three years at the January 1, 2003 level. After three years, increases in the adverse effect wage level may be based only on the Consumer Price Index (§218A(b)(3) as added by §201(a)). | Prevailing wage (§212(c)(5)). | The greater of the actual wage paid to similar employees or the prevailing wage for the occupational category (§212(t)(3)(A) as added by §203(a)). | Prevailing wage (§218(m)(2) [Senate bill] or §218(n)(2) [House bill] as amended by §2(a)). | Prevailing wage (§212(u)(3)(A) as added by §303). |
| Funding for guest worker program(s)? | No additional funds are authorized and no provision for fees to be paid by applicants or employers is included. Funds already appropriated to the Labor Department for the United States Employment Service, however, are to be made available to pay Labor's costs for processing applications from employers seeking W workers from abroad (§106). | - Employers with more than 500 total employees must pay \$1,000 for each petition for an H-4A worker (§218A(a)(1)(A) as added by §3(a)). - Employers with 500 or fewer total employees must pay a \$500 fee to petition for an H-4A worker (§218A(a)(1)(B) as added by §3(a)). - DHS is required to set the fee H-4A workers must pay based on the actual cost of processing the application (§218A(b)(1) as added by §3(a)). - No fee may be charged for a renewal or extension of an H-4A visa (§218A(c)(2)(C) as added by §3(a)). - Authorizes additional funds only to the United States Employment Service to assist State public employment | DHS is required to establish a schedule of fees to be charged to employers of H-2A workers (§301). | - Employers seeking to hire H workers must pay a fee of \$10 per job announcement they post on the internet-based system (§212(b)). - Aliens applying for H visas must pay a visa processing fee (§214(g)(5) as added by §213(a)). | - Employers petitioning for H-2B workers must pay a filing fee for each worker based on processing costs, plus a fee of \$125-\$500 depending on the total number of employees the employer has (§216). - Employers petitioning for H-2C workers must pay a filing fee for each worker based on processing costs, plus a secondary fee of \$250-\$1,000 depending on the total number of employees the employer has (§216). - 15 percent of all fees collected go to DHS for processing H-2B and H-2C petitions; 20 percent go to Labor for processing employer attestations for H-2B and H-2C workers and for helping employers recruit U.S. workers; 15 percent go to | - Senate bill codifies current fee schedule and adds an inflation adjustment formula to determine future fees (§218(g)(4) as amended by §2(a)). - House bill permits Labor to set fees by regulation to cover reasonable costs of processing applications (§218(h)(4) as amended by §2(a)). | - Employers petitioning for H-2B workers must pay a filing fee for each worker based on processing costs, plus a fee of \$125-\$500 depending on the total number of employees the employer has (§315). - Employers petitioning for H-1D workers must pay a filing fee for each worker based on processing costs, plus a secondary fee of \$250-\$1,000 depending on the total number of employees the employer has (§315). - 20 percent of all fees collected go to DHS for processing H-2B and H-1D petitions; 15 percent go to Labor for processing employer attestations; 20 percent go to State for processing H-2B and H-1D visas; 15 percent go to Labor for protecting the rights |

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| | | services in meeting increased demand resulting from use of the electronic job registry (§5). | | | State for processing H-2B and H-2C visas; 20 percent go to Labor and Justice for protecting the rights of H-2B and H-2C workers and investigating employer violations; and 30 percent go to DHS for border security (§216). | | of H-2B and H-1D workers and investigating employer violations; 15 percent go to Labor for helping employers recruit U.S. workers; and 15 percent go to DHS for border security (§315). |
| Path to U.S. citizenship for future guest workers? | Aliens who work in the United States with W visas for a continuous three-year period would be given priority for lawful permanent resident status and the path to U.S. citizenship (§218A(j) as added by §101). The spouses and children of such workers would be eligible for derivative status (current law). | H-4A workers whose U.S. employers are willing to sponsor them may apply for permanent residence and the path to citizenship at any time. Otherwise, H-4A workers must be employed in the United States for at least three years before they can apply (§218A(h)(1) as added by §3(a)). Spouses and children would be eligible for derivative status (current law). | NO | NO | H-2B and H-2C workers whose U.S. employers are willing to sponsor them can apply for permanent residence and the path to citizenship at any time. Otherwise, H-2B and H-2C workers must be employed in the United States for at least three years before they can apply. Spouses and children would be eligible for derivative status (§214). | NO | H-2B and H-1D workers whose U.S. employers are willing to sponsor them can apply for permanent residence and the path to citizenship at any time. Otherwise, H-2B and H-1D workers must be employed in the United States for at least two years before they can apply. Spouses and children would be eligible for derivative status (§312). |
| Increases legal, permanent immigration levels? | YES | YES | YES | NO | YES | NO | YES |
| Increase due to amnesty? | All of the seven million illegal aliens who could qualify for a W visa could apply for permanent residence after three years as W workers, as long as they comply with the terms of the visa during that period. The spouses and children of these workers also could qualify for permanent residence. It is unclear whether the estimated 3.3 million spouses and children who already are here illegally would have to return to the home country in order to | All of the 6.8 million illegal-alien workers, plus their 3.2 million illegally present spouses and minor children, who could apply for H-4B and then H-4A visas could apply for permanent residence and the path to citizenship. They would not be counted against current limits on legal immigration (§218A(h)(1) as added by §3(a)). | - The total number of amnestied aliens to qualify for permanent residence under this bill could end up at well over three million, and they would not be counted against current limits on legal immigration (§101(e)(1)). - All of the 860,000 illegal-alien agricultural workers currently present in the United States who could apply for temporary resident status, plus an unknown number who would be allowed to re-enter the United States to apply for | N/A | - More than five million illegal aliens, plus their spouses and children, could apply directly for permanent residence. - That number would increase substantially when the illegal aliens who qualify for “transitional worker status” become eligible to apply for permanent residence. - All these aliens, plus their spouses and children would be granted permanent residence outside the existing categories and without numerical limit. | N/A | - All of the 10.3 million illegal aliens who could qualify for one of the reward amnesties, plus their spouses and children, could be granted permanent residence outside the existing categories and without numerical limit (§101(c)). |

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| | <p>qualify.</p> <ul style="list-style-type: none"> - The bill directs the Secretary of the Department of Homeland Security to set the annual number of W workers, including illegal aliens granted W visas, who may be adjusted to lawful permanent resident status each year based on "economic determinations made by the Secretary of Labor and the number of participants" in the W visa program (§104(b)). While some may have to wait longer than others, then, all the illegal aliens who received W visas and complied with the rules of the program could eventually get permanent residence and the path to citizenship. | | <p>temporary resident status based on past illegal status, could apply for permanent residence (§101(c)(1)). The spouses and children (the latter includes sons and daughters who were under age 21 on the date the principal alien was granted temporary resident status) of all such workers also could apply for permanent residence (§101(c)(2)). In order to qualify, the workers with temporary resident status would have to perform a minimum of 360 "work days" (the equivalent of nine 40-hour work weeks) before August 31, 2009, and they would have to apply for permanent residence by August 31, 2010 (§101(c)(1)).</p> | | | | |
| <p>Increase in family-based immigration?</p> | <p>Aliens who applied for W visas from abroad also could apply for permanent residence and the path to citizenship, but the bill does not change the family quotas to accommodate them.⁸</p> | <p>Total legal immigration would surge, but the bill does not alter current family-based immigration quotas.</p> | <p>Only amnestied aliens who apply for lawful permanent residence would be exempt from immigration quotas (§101(e)(1)).</p> | <p>N/A</p> | <ul style="list-style-type: none"> - The bill would treat spouses and children of legal residents as Immediate Relatives, a category that is numerically unlimited (§201(a)). - It also would increase the numerical limit on family-sponsored immigration by 300,000-342,000 per year (§101). The bulk of this increase would be allocated for the unmarried, adult children of legal residents (§102(b)). - Combined with the increase in employment-based immigration, these provisions could easily double legal immigration from its current level of just over one million per year, except that | <p>N/A</p> | <ul style="list-style-type: none"> - Legal immigration would skyrocket under this bill. - It would treat spouses and children of legal residents as Immediate Relatives, a category that is numerically unlimited (§202(a)). - It also would increase the numerical limit on family-sponsored immigration by 300,000-342,000 per year (§201(a)). The bulk of this increase would be allocated for the adult siblings of U.S. citizens (§202(b)). - Any alien who is placed on the waiting list for a family-preference visa for over five years would be exempted from the remaining numerical limits |

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| | | | | | processing delays are likely to be a major problem. | | and granted permanent residence (§204). - Any family-preference visas not issued for any reason in a fiscal year would be carried over to the next year (§205). |
| Increase in employment-based immigration? | The bill also does not change the employment quotas to accommodate W workers who qualify for permanent residence. | H-4A workers and their families who are granted permanent residence would be granted employment-based immigrant visas without regard to the numerical cap (§218A(h)(1) as added by §3(a)). | Only amnestied aliens who apply for lawful permanent residence would be exempt from immigration quotas (§101(e)(1)). | N/A | H-2B and H-2C workers, plus their spouses and children, who qualify for permanent residence would be granted employment-based visas, without regard to the numerical limits that currently apply (§214). | N/A | - H-2B and H-1D workers, plus their spouses and children, who qualify for permanent residence would be granted employment-based visas, without regard to the numerical limits that currently apply (§312). - Any employment-based visas not issued for any reason in a fiscal year would be carried over to the next year (§205). |
| Funding for increases in permanent immigration? | No additional funds are authorized either for processing additional applications resulting from the bill or for addressing the current backlog of over six million applications. | No additional funds are authorized either for processing additional adjustment of status applications resulting from the bill or for addressing the current backlog of over six million applications. | - DHS is required to set fees for filing applications for adjustment to permanent residence (§101(d)(9)(A)). - No additional funds are authorized either for processing additional applications resulting from the bill or for addressing the current backlog of over six million applications. | N/A | - 40 percent of the fines and fees collected from amnesty applicants are to be used to fund the increase in family-based immigration (§245B(m)(4) as added by §301(a)). - No additional funds are authorized either for processing additional applications resulting from the bill or for addressing the current backlog of over six million applications. | N/A | - Any unused fees and fines collected from the amnesty applicants are to be used to process the increases in legal immigration (§115(d)). |
| Immigration Enforcement provisions? | MINOR | MINOR | NO | YES | MINOR | NO | MINOR |
| Provisions to improve border control? | NONE | NONE | NONE | The bill would: - amend <i>Posse Comitatus</i> to permit the military to assist the Border Patrol (§102); - authorize an increase in | 30 percent of the fees collected from employers of H-2B and H-2C workers are to be allocated to border security measures (§216). | NONE | 15 percent of the fees collected from employers of H-2B and H-1D workers are to be allocated to border security measures (§315). |

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| | | | | <ul style="list-style-type: none"> Border Patrol agents to 20,000 by 2008 (§103); - authorize 2,000 additional immigration inspectors by 2006 (§104); - suspend the visa waiver program until US VISIT is fully implemented, all ports of entry have biometric machine readers, and all participating countries issue machine-readable, biometric passports (§108); and - require fingerprinting of all U.S. passport applicants (§114). | | | |
| Provisions to improve interior enforcement? | <ul style="list-style-type: none"> - The bill requires DHS to establish a database to monitor the entry and exit of W workers (only), to track employer compliance with the program, and to store past employment records of W workers (§218A(h) as added by §101). - It increases civil penalties for employers who hire illegal aliens, more than one year after enactment (§202). | <ul style="list-style-type: none"> - The bill requires the establishment of a toll-free, electronic employment eligibility verification system, but only employers of H-4A and H-4B workers have to use it to verify the status only of those temporary workers. Thus, employers could continue to hire illegal aliens without having to use the verification system (§218A(a)(2)(B) as added by §3(a)). - All H-4A workers are to be issued machine-readable, biometric visas (§218A(b)(2) as added by §3(a)). | NONE | <p>The bill would:</p> <ul style="list-style-type: none"> - authorize an increase in immigration special agents to 4,500 by 2006 (§105); - authorize 2,000 additional detention and removal officers by 2006 (§106); - authorize certain detention and removal officers to assist in interior enforcement (§107); - make overstaying a visa by 30 days or more a felony (§109); - increase the penalties for document fraud and false claims of citizenship (§110); - authorize a doubling in the number of detention beds (§111); - prohibit Federal agencies from accepting non-U.S.-issued, non-verifiable identification documents (§112); - authorize consular officers to require visa term compliance bonds (§115(b)); | <p>The bill would triple the civil penalties for document fraud by a commercial enterprise for commercial advantage or financial gain (§224).</p> | NONE | <ul style="list-style-type: none"> - All visas issued under this bill are to be machine readable and biometric (§103(c); §116(c); §209; §303(d)). - The bill would triple the civil penalties for document fraud by a commercial enterprise for commercial advantage or financial gain (§320). |

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| | | | | <ul style="list-style-type: none"> - restrict release on recognizance of aliens in removal proceedings (§116); - require security improvements in Social Security Cards (§118); - require security improvements in birth certificates (§119); - require the establishment of a toll-free electronic employment eligibility verification system (§142); - require all U.S. employers to use the system to verify the work eligibility of all new hires, and protect employers who comply from employer sanctions liability (§141); - restrict adjustments to permanent resident status within the United States (§143); and - prohibit the IRS from issuing individual taxpayer ID numbers to aliens not lawfully present in the United States (§146). | | | |
| Miscellaneous provisions of note? | YES | YES | YES | YES | YES | NO | YES |
| Changes in sponsorship requirements? | NO | NO | NO | NO | NO | N/A | The bill would reduce the required income of sponsors of legal immigrants from 125 percent of the poverty level to 100 percent of the poverty level (§206). |
| Changes in Social Security rules? | <ul style="list-style-type: none"> - 100 percent of W workers' Social Security contributions are to be deposited into a guest worker investment account for each W worker. - Each W worker is to receive | NO | The bill protects illegal aliens granted temporary resident status from prosecution for Social Security fraud. Under current law, illegal aliens who obtain legal status can apply to | NO | The bill protects illegal aliens granted temporary resident status from prosecution for Social Security fraud. Under current law, illegal aliens who obtain legal status can apply to | N/A | The bill protects illegal aliens granted temporary resident status from prosecution for Social Security fraud. Under current law, illegal aliens who obtain legal status can apply to |

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| | <p>annually a report on the amount deposited into his/her investment account.</p> <p>- The funds in the account are to be transferred to the worker after he/she permanently leaves the W worker program and returns to the home country. (It is unclear what happens to funds in the accounts of those workers who adjust to permanent residence without leaving the United States.) (§105)</p> | | <p>the Social Security Administration to get credit for earnings from quarters worked while the aliens were here illegally. In order to do this, they must prove to the SSA that the earnings are theirs. The required proof of earnings generally also provides proof of fraud (e.g., the use of a fraudulent or stolen Social Security number or a stolen identity), for which the alien can be prosecuted. The provision in this bill allows illegal aliens to claim earnings without risking prosecution (§102).</p> | | <p>the Social Security Administration to get credit for earnings from quarters worked while the aliens were here illegally. In order to do this, they must prove to the SSA that the earnings are theirs. The required proof of earnings generally also provides proof of fraud (e.g., the use of a fraudulent or stolen Social Security number or a stolen identity), for which the alien can be prosecuted. The provision in this bill allows illegal aliens to claim earnings without risking prosecution (§302).</p> | | <p>the Social Security Administration to get credit for earnings from quarters worked while the aliens were here illegally. In order to do this, they must prove to the SSA that the earnings are theirs. The required proof of earnings generally also provides proof of fraud (e.g., the use of a fraudulent or stolen Social Security number or a stolen identity), for which the alien can be prosecuted. The provision in this bill allows illegal aliens to claim earnings without risking prosecution (§113).</p> |
| Other? | <p>Countries that wish their residents (except those already here illegally) to be eligible for W visas must enter into an agreement with the United States under which the foreign nation agrees to: determine the eligibility of its residents to participate; establish a procedure for enrollment of eligible workers in the program; train such workers; establish procedures for providing health care; monitor and share travel data regarding such workers with the United States; and accept the return of the workers from the United States (§218A(a) and §218A(b) as added by §101). There is no requirement that participating workers be citizens or nationals of a country entering into such an agreement.</p> | <p>- The Department of Labor (or a designee) is required to establish an internet-based electronic job registry on which employers can advertise job opportunities (§218A(i)(1)(A) as added by §3(a)).</p> <p>- The registry must circulate job opportunities through the interstate employment service system and furnish them to State public employment services (§218A(i)(3)(A) as added by §3(a)).</p> <p>- The bill requires the Secretaries of Labor and State to "consult with and advise foreign governments in the use and construction of facilities to assist their nationals in obtaining" H-4A status (§3(d)).</p> | <p><u>Aliens currently living outside the United States but who lived and worked here illegally in agriculture for the requisite period between March 1, 2002 and August 31, 2003 also could qualify for this amnesty.</u> They would be permitted to apply for temporary resident status at a U.S. consulate abroad or at a port of entry on the U.S.-Mexico (but not the U.S.-Canada) border (§101(d)(1)(B) and §101(d)(1)(C)). Former illegal aliens who show up at the border seeking amnesty would only have to provide a "preliminary application," the application fee, photos, and documentary evidence that the requisite work was performed (§101(d)(1)(C)). The "evidence" must be sufficient to indicate the extent of</p> | <p>- The new H worker program cannot be implemented until: (1) DHS certifies to Congress that: US VISIT is fully implemented; all U.S.-issued travel and entry documents are machine readable and include biometric identifiers; the electronic employment eligibility verification system is fully implemented; at least 20,000 Border Patrol agents have been deployed; all Federal databases containing information on aliens have been integrated; fewer than 1,000 alien absconders remain in the United States; Federal immigration authorities consistently respond to requests by state and local law enforcement to pick up illegal aliens; at least two percent of U.S. businesses are subject to random worksite inspections</p> | <p>- Employees of State and Federal administrative agencies with jurisdiction over worksites would be prohibited from disclosing to DHS the immigration status of any worker; DHS would be prohibited from acting on any such information it received (§280B(a) as added by §223).</p> <p>- To demonstrate that they have met the employment requirements, amnesty applicants must produce "evidence" sufficient to indicate the extent of employment "as a matter of just and reasonable inference" (§245B(a)(1)(D)(v) as added by §301(a)). If applicants cannot produce wage, tax or employer records, they may submit sworn declarations that they worked for the requisite period (§245B(a)(1)(D)(iv)(II) as</p> | N/A | <p>- The bill would <i>retroactively</i> repeal the three- and 10-year bars on re-entry for unlawful presence for more than six months (§208).</p> <p>- Employees of State and Federal administrative agencies with jurisdiction over worksites would be prohibited from disclosing to DHS the immigration status of any worker; DHS would be prohibited from acting on any such information it received (§280B(a) as added by §319).</p> <p>- The bill states that U.S. district courts will have jurisdiction over "any cause or claim arising from a pattern or practice of the Secretary of Homeland Security in the operation or implementation" of the amnesty that "is arbitrary, capricious, or otherwise contrary to law"</p> |

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| | | employment “as a matter of just and reasonable inference” (§101(d)(3)(B)(iii)). If the immigration inspector finds the application “credible,” the former illegal alien is to be granted temporary residence and a work permit (§101(d)(1)(C)). | each year; and fewer than 5,000 visa overstays reside in the United States (§201(a)). (2) The Environmental Protection Agency conducts an environmental impact statement and certifies that neither current levels of legal immigration nor the H worker program will adversely impact the human environment in the United States (§201(b)). - The Department of Labor is required to create an internet-based job posting system on which any U.S. employer can advertise job openings (§211(a)). | added by §301(a). | | (§110(c)(4)). - To demonstrate that they have met the employment requirements, amnesty applicants must produce “evidence” sufficient to indicate the extent of employment “as a matter of just and reasonable inference” (§101(a)(4)(F)). If applicants cannot produce wage, tax or employer records, they may submit sworn declarations that they worked for the requisite period (§101(a)(4)(E)(ii)). |

Please contact Rosemary Jenks, Director of Government Relations at NumbersUSA, at (202) 543-1341 if you have questions about this chart or the accuracy of anything in it.

* These particular bills were selected because they have received the most public attention, and they represent a broad spectrum of immigration proposals designed to address illegal immigration and the perceived need for foreign labor. A variety of other immigration bills have been introduced, as well, so this paper is not a comprehensive comparison of immigration legislation in the 108th Congress.

¹ This chart uses the Black’s Law Dictionary definition of amnesty: “a sovereign act of forgiveness for past acts, granted by a government to all persons (or a certain class of persons) who have been guilty of a crime or delict.”

² NumbersUSA has identified six types of amnesties for illegal aliens:

1. BASIC PENALTY AMNESTY: The lawbreaker is forgiven the crime and not assessed the penalty. The Basic Penalty Amnesty waives one or more of the penalties the law currently assesses for illegal immigration, including civil and criminal penalties and bars on legal re-entry. Illegal aliens under a Basic Penalty Amnesty would be still required to leave the United States, though.
2. BASIC REWARD AMNESTY: The lawbreaker is actually rewarded for lawbreaking by being given the very thing he/she attempted to steal in the first place. In the case of illegal aliens, most are seeking a job in the United States. A Basic Reward Amnesty would give illegal aliens the legal right to work, either temporarily or permanently.
3. INSTANT JACKPOT REWARD AMNESTY: The lawbreaker wins the jackpot of all global jackpots throughout the 3rd world - he/she is instantly rewarded for breaking our immigration laws by being given permanent U.S. residency and the right to U.S. citizenship. Instant Jackpot Reward Amnesties generally are limited to illegal aliens of a certain national origin or who are working in a particular occupation in the United States.
4. MULTI-STEP JACKPOT REWARD AMNESTY: The lawbreaker is first given a Basic Reward Amnesty (usually through a legal work permit and temporary resident status or “cancellation of removal”) and, after a period of time and at least one more step, then given permanent U.S. residency and the right to U.S. citizenship.
5. BLANKET AMNESTY: This is basically the Instant Jackpot Reward Amnesty but for the entire population of illegal aliens (minus a few exceptions, such as certain criminals), although it may be limited to illegal aliens who have lived in the United States for a certain period. The “general amnesty” included in the 1986 Immigration Reform and Control Act, for example, was a Blanket Amnesty for all illegal aliens who had lived in the United States since January 1, 1982.
6. DE FACTO AMNESTY: This does not immediately reward illegal aliens with legal status but holds out the promise that if they avoid arrest long enough they will be exempted from the penalties for illegal immigration and granted legal status. Section 245(i) is a De-Facto Amnesty because it says that all illegal aliens in the country who have the right through jobs or relatives to apply for legal immigration may do so from within this country with the tacit assurance that they may remain in this country illegally until their name comes up to the top of the list for a green card sometime in the future.

³ The language used in S. 1387 to establish how an alien with a W visa (whether previously illegal or not) may obtain lawful permanent resident status is contradictory and thus requires an explanation of the descriptions used in this chart. Section 218A(j), as created by Section 101 of the bill, directs the “Secretary of Homeland Security” to establish a process that gives priority for “adjustment of status to aliens who are applying for legal permanent residency, if the alien has participated in the [W] guest worker program and has worked in the United States for a continuous 3-year period.” It then says that an alien can only apply for such status when the alien returns to the home country (in the case of a previously illegal alien) or the foreign country under whose auspices the alien entered the guest worker program. At first glance, this would seem to indicate that W guest workers must leave the United States and apply for permanent residence from abroad. However, in immigration law, the term “adjustment of status” means specifically that an alien already in the United States legally (e.g., a temporary worker) is applying to change to another legal immigration status *without leaving the United States*. Moreover, Section 104 of the bill specifically amends Section 245 of the Immigration and Nationality Act, which deals exclusively with the conditions under which an alien who is *already in the United States* legally may adjust to lawful permanent resident status *without leaving the United States*, by adding a provision that prohibits W guest workers from adjusting to permanent residence *unless* the worker has been employed as a W worker for at least three years and has complied with the terms of the program. The clear result of Section 104, if enacted, would be that W workers, including those who were illegally present prior to receiving a W visa, would not have to leave the United States in order to apply for lawful permanent resident status.

⁴ Except as otherwise noted, all estimates are extrapolated from “Undocumented Immigrants: Facts and Figures,” by Jeffrey S. Passel, Randy Capps, and Michael Fix of the Urban Institute Immigration Studies Program, January 12, 2004, which found that the illegal-alien population was 9.3 million in March 2002. The study is available at: <http://www.urban.org/url.cfm?ID=1000587>. The figures in this chart assume that the illegal-alien population in the United States has increased by a net 500,000 annually since the late 1990s, as estimated by DHS (http://uscis.gov/graphics/shared/aboutus/statistics/III_Report_1211.pdf), for a total population of 10.3 million in 2004. The chart also assumes that the labor force participation rates and gender and age distribution figures provided in the Urban Institute Study have remained constant since 2002.

⁵ S. 1387 is ambiguous about the status non-working spouses and children of illegal aliens who qualify for amnesty would be given, if any. The bill permits family members to accompany nonseasonal guest workers with incomes of at least 125 percent of the poverty level, so presumably, the family members of some illegal aliens who qualify as nonseasonal workers would receive derivative legal status. If illegally present spouses and minor children of illegal workers were amnestied along with the workers, the total number to receive amnesty likely would be between 9.5 and 10 million. Family members of amnestied aliens who later apply for permanent resident status undoubtedly would be granted derivative permanent resident status at that point, though.

⁶ This estimate comes from Dr. Philip Martin, professor of agricultural and resource economics at the University of California, Davis. Dr. Martin was a member of the Commission on Agricultural Workers created by Congress in 1986 in the Immigration Reform and Control Act (IRCA) and comprised of representatives of both growers and farmworkers, along with academicians and policy experts. IRCA included an amnesty for “Special Agricultural Workers,” similar in many ways to S. 1645/H.R. 3142. In its 1992 report to Congress, the Commission concluded that “worker-specific and/or industry-specific legalization programs as contained in IRCA should not be the basis of future immigration policy.”

⁷ S. 2010 does not specify that applicants for the instant amnesty have to have been *illegally* present since 1/21/99. Applicants only have to have been illegally present on 1/21/04, so they could have entered the United States on a valid nonimmigrant visa prior to 1/21/99, worked legally until the visa expired, and then remained in the United States illegally. Applicants for the multi-step amnesty, on the other hand, can only count lawful employment and they do not have to have been illegally present at any particular point. Thus, an alien who entered on a three-year H-1B visa on 1/1/02, overstayed illegally after the visa expired on 1/1/05, and then applied for “transitional worker status” on 6/1/05 could qualify for permanent residence after working for just over a year on his new legal status, when his aggregate lawful employment since 1/21/04 would total two years. Similarly, an alien who entered on a three-year H-1B visa on 2/1/95, renewed it for an additional three years on 2/1/98, remained illegally when it expired on 2/1/01, applied for transitional worker status, and then worked for two years also could qualify for lawful permanent resident status under S. 2010. The various combinations of lawful and unlawful presence and employment that could qualify an illegal alien for either the instant or the multi-step amnesty make it impossible to estimate the total potential pool of beneficiaries.

⁸ S. 1387 does not specify whether W workers who apply for permanent residence are to be admitted under current quotas or without regard to those quotas. The fact that the bill directs the Secretary of DHS to set the annual number of W workers who may be granted legal residence indicates that such workers would be admitted as immigrants outside the current quota system.