

## **Senate Judiciary Committee Makes Some Headway in Markup, Defers Difficult Questions**

The Senate Judiciary Committee finally began to make some headway today in its markup of Chairman Specter's draft bill on comprehensive immigration reform, known as the "Chairman's Mark." The Committee officially took up the bill last Thursday (March 2), but got little beyond opening statements. Progress was also scarce on Day 2 of the markup yesterday, when Chairman Specter had difficulty maintaining a voting quorum. Several competing committee markups plus Senate floor votes seemed to be the primary cause of the attendance problems, with committee members coming in and out throughout the day, but rarely numbering the 8 required for votes to occur.

The Committee finally appeared to hit its stride today, although it continued to defer action on much of the more controversial subject matter. Chairman Specter has been proceeding through the Mark sequentially, and has only made it through Titles I and II thus far, leaving an incredible amount of work yet to be done in the two markup sessions that remain. (As background, Senate Majority Leader Frist has threatened to bring his enforcement-only legislation directly to the Senate floor unless the Judiciary Committee produces a bill by March 27.) The controversial and highly technical titles dealing with employer sanctions, the undocumented population, a guestworker program, and judicial review all still await consideration.

That having been said, the following is a very brief summary of the amendments that have been addressed thus far. We will continue to update you as action on the bill continues.

Summary of Wednesday, March 8, amendments:

1. A Feinstein amendment that would add more border patrol agents was deferred for future consideration.
2. A Brownback/Sessions amendment on information sharing between the Social Security Administration and the DHS was deferred for future consideration.
3. A Kyl amendment on more fencing along certain sectors of the border in Arizona was deferred for future consideration.
4. A Kyl amendment on increased detention beds was accepted by the bill manager (Chairman Specter) and will be part of a further amended Chairman's Mark.
5. A Kyl amendment mandating and authorizing funding for DHS to provide sufficient transportation for aliens apprehended by state/local authorities passed by voice vote.
6. A Cornyn amendment providing for the reimbursement to states and local governments for training and equipment costs related to the enforcement of federal immigration laws passed by voice vote.

7. A Durbin amendment to strike the Mark's criminalization of unlawful status, and to ameliorate its smuggling provision so as not to criminalize humanitarian assistance, was deferred for future consideration.

8. A Cornyn amendment that would authorize the DHS Secretary to deny a visa to any alien from a country that has denied or unreasonably delayed the acceptance of its citizens who are ordered removed from the U.S. passed by a voice vote.

9. The Committee deferred action on a Feingold three-part amendment that would:  
(1) strike the "described in" language throughout Title II of the bill (that would bar benefits to aliens "described in" certain sections of the statute and the criminal code);  
(2) reinstate the judicial review of naturalization decisions that the Mark would do away with; and  
(3) assure full access to the federal courts when naturalization proceedings are delayed. Again, the Mark would effectively negate such review.

10. A Leahy amendment on cooperation between the U.S. and other governments on security-related issues was deferred.

11. A Brownback amendment to strike the sunset of J-waiver program for foreign doctors in underserved areas was deferred.

12. A second Brownback amendment to exempt nurses and physical therapists from the annual employment-based and country caps was also deferred.

13. A Coburn amendment to mandate expedited removal within 100 miles of the southern border and within 14 days of entry was deferred.

14. A Sessions amendment to the Kyl amendment on fences was withdrawn. Senator Sessions indicated that he may reoffer it on during floor consideration.

15. A Cornyn amendment barring convicted sex offenders from sponsoring family members was deferred.

Summary of Thursday, March 9, amendments:

1. A Kyl amendment to provide more fencing in certain Arizona sectors passed by voice vote.

2. A related amendment by Kennedy requiring a study prior to construction of any additional physical barriers also passed by a voice vote.

3. A Sessions amendment to increase the number of Border Patrol Agents from 2,000 to 2,400 passed by voice vote. A related amendment by Graham to require the Department of Defense to liaise with DHS and to inform its riffed and/or otherwise departing military

personnel of employment opportunities available within the Border Patrol also passed by a voice vote.

4. A Kennedy amendment to improve agency coordination on alien smuggling issues passed by voice vote.

5. The Committee reserved action on a Sessions amendment to increase penalties for evading inspection.

6. A Sessions amendment to provide an extension of preemption to required construction of day laborer shelters passed by voice vote.

7. A Grassley amendment to require the DHS Inspector General to review all contracts related to the Secure Border Initiative worth \$20 million or more passed by voice vote.

8. A Leahy amendment on cooperation between the U.S. and other governments on security-related issues was once again deferred.

9. A Sessions amendment requiring the mandatory detention of “Other Than Mexicans” (OTMs) apprehended at or between the ports of entry passed by a voice vote. The amendment would take effect on Oct. 1, 2006, with an interim period beginning 60 days after enactment during which the DHS Secretary could release an alien after completion of appropriate background checks and with the posting of a bond of at least \$5,000. There was lots of debate on the issue, most of it centering on the current shortage of detention space. In addition, the amendment as drafted provides an exception for Cubans. There was some confusion about this carve-out and it is unclear whether Members modified the amendment to eliminate it.

10. A Cornyn amendment barring convicted sex offenders from sponsoring family members passed by voice vote.

11. A Grassley amendment to increase the number of enforcement personnel allocated to each state passed by voice vote.

12. A Grassley amendment to add habitual drunk driving to the list of aggravated felonies appears to have passed, although action was uncertain.

13. A Durbin amendments to (1) strike the section of the Mark that would criminalize unlawful status, and (2) ameliorate the smuggling provisions so as not to criminalize the provision of humanitarian assistance were deferred, with instructions to staffers to work out details of the humanitarian assistance language.

14. Over Feingold’s strong objections, the Committee once again deferred action on a Feingold three-part amendment that would:

(1) strike the “described in” language throughout Title II of the bill (that would bar benefits to aliens “described in” certain sections of the statute and the criminal code);

(2) Reinstate the judicial review of naturalization decisions that the Mark would do away with; and

(3) Assure full access to the federal courts when naturalization proceedings are delayed. Again, the Mark would effectively negate such review.

15. A Brownback amendment to permanently authorize the J-1 waiver program for foreign doctors working in underserved areas passed by a voice vote.

16. A Brownback amendment to exempt nurses and physical therapists from the annual employment-based and per-country caps was again deferred.

17. A Coburn amendment authorizing the DHS to impose expedited removal mandating expedited removal within 100 miles of the southern border and within 14 days of entry passed on a voice vote, as did a 2<sup>nd</sup> degree amendment excluding LPRs from expedited removal.

18. The Committee deferred action on a Kennedy amendment that would strike the retroactive application of some of the Mark's provisions.

19. A Feinstein amendment providing a carve-out for refugees and asylees from the Mark's passport fraud provisions (section 208) passed on a voice vote, with an agreement that her staff would work with Kyl's staff to tighten the language.

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