

# American Immigration Lawyers Association

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## Senate Kills Attempt to Alter AgJobs Compromise, Approves Placing National Guard on the Border

The Senate resumed debate today on S. 2611, the Comprehensive Immigration Reform Act of 2006, with Senators speaking on a number of amendments they intend to offer and discussing their positions on amendments currently pending. Two roll call votes were conducted toward the end of the day. The first of those was a vote on a controversial amendment (No. 4099) that Senator Chambliss (R-GA) offered at the end of last week that would amend the AgJobs program by changing the wage requirements for employers seeking to hire agricultural guestworkers.

Currently, H-2A employers must pay the highest of three wage rates—the state or federal minimum wage, the local prevailing wage, or the “adverse effect wage rate” (AEWR)—a mechanism created under the *Bracero* program as a protection against depressed prevailing wages. The AgJobs compromise contained in the bill would reduce the AEWRs for each state by about 10% by setting them at the rates in effect on January 1, 2003, and would then freeze the AEWRs for 3 years, while two studies are performed to examine H-2A wage rates and make recommendations to Congress. If Congress were to fail to enact an AEWR formula within 3 years, the AEWRs would be adjusted at the end of that period by an amount commensurate with the increased cost of living.

Opponents of the Chambliss amendment argued that the AEWR is a necessary protection, adding that the histories of the *Bracero* and H-2A guestworker programs have shown that the prevailing wage formula alone is not a sufficient protection to prevent the hiring of guestworkers from depressing wages of U.S. workers.

A **Motion to Table** the Chambliss amendment was **agreed to** by a vote of 50-43, thus killing the amendment.

Next up for a vote was an amendment offered by Senator Ensign (R-NV) (No. 4076), that would provide support to the U.S. Border Patrol by authorizing the National Guard to provide, as part of their training, ground and air reconnaissance, logistical support, language translation services, administrative support, technical training services, emergency medical services, communication services, rescue of aliens in distress, and assistance in construction of patrol roads and fences and barriers along the southern U.S. border.

The amendment was **approved** by an 83-10 vote.

Senator Feinstein (D-CA) next introduced her “orange card” amendment (No. 4087), which would replace the bill’s three-tiered treatment of undocumented aliens with a single system that would provide a path to citizenship for all eligible aliens present in the U.S. on January 1, 2006. Prospective applicants would have to register and submit fingerprints, pass all required background checks, demonstrate presence in the country, work history, an understanding of English, civics and American history, and would have to pay back taxes and a \$2,000 fine. In

addition, orange card holders would have to fulfill an annual reporting requirement and pay a \$50 processing fee on each occasion. After completing the six-year prospective work requirement, orange card holders would be placed at the end of the line to apply for a green card, with their individual place in line corresponding to the length of time they had been in the U.S.

The Senate agreed to provide for an hour of debate on the Feinstein amendment as the first order of business tomorrow, with a vote expected at 10:45 a.m.

Another amendment likely to come up for a vote tomorrow is an amendment (No. 4054) by Senator Gregg (R-NH) that would amend the diversity immigrant visa program by reserving two-thirds of the available 55,000 visas for aliens who hold an advanced degree in science, math, technology or engineering.

In the final act of the day, Senate Majority Leader Frist filed for cloture on the bill. Cloture is a procedural mechanism used to limit debate on a measure. The cloture motion must receive the votes of three-fifths of the entire Senate (normally, 60) for cloture to be invoked. The cloture request is put to a roll-call vote one hour after the Senate meets on the second day following the introduction of the motion. If approved, cloture limits each senator to one hour of debate. The bill would then come to a final vote after 30 hours of consideration (including debate time it takes to conduct roll calls, quorum calls and other procedural motions.)

Additional votes are expected to occur throughout the day tomorrow. As always, we will continue to update you as the process unfolds.

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