

American Immigration Lawyers Association

Senate Continues Progress on Comprehensive Reform Bill

Senators continued debate today on the Comprehensive Immigration Reform Act of 2006 (S. 2611) (the “Hagel-Martinez compromise”), picking up where they left off yesterday with a pending amendment by Senators Kyl and Cornyn. A summary of today’s events follows.

Lawmakers resumed consideration of amendment no. 4027, offered by Senator Kyl (R-AZ) and cosponsors Cornyn (R-TX), Graham (R-SC), Allen (R-VA), McCain (R-AZ), Frist (R-TN), Brownback (R-KS), and Martinez (R-FL), that would render certain aliens ineligible to participate in the bill’s earned adjustment and deferred mandatory departure programs, including aliens: (1) subject to final orders; (2) who failed to depart after a grant of voluntary departure; (3) who are subject to reinstatement of removal after illegal reentry; (4) who have been convicted of a serious crime here; who are believed to have committed a serious crime outside the U.S.; or who are believed to be a danger to the security of the U.S.; or (5) who have been convicted of a felony or 3 or more misdemeanors. A discretionary waiver would be available for non-criminal aliens who: (1) failed to receive notice of removal proceedings; or (2) establish that their failure to appear was due to exceptional circumstances; or (3) can demonstrate that their departure would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse, parent or child. Senators Kyl and Cornyn offered a different version of the amendment during earlier proceedings on the bill, but it was never brought to a vote. This reworked version contains ameliorative provisions that would broaden waiver language allowing more individuals to participate in legalization.

The amendment was **approved** on a 99-0 vote.

The Senate then took up an amendment offered by Senator Sessions (R-AL) (no. 3979) that would provide for the construction of at least 370 miles of triple-layered fencing and 500 miles of vehicle barriers in areas along the southwest border that the Secretary determines are areas that are most often used by smugglers and aliens attempting to gain entry into the U.S. In addition, the amendment would require the DHS to repair and extend existing fencing, and construct vehicle barriers, in the Tucson and Yuma sectors. All construction would be required to be completed within two years of the bill’s enactment.

The Sessions amendment was **approved** on a vote of 83-16.

Senator Vitter (R-LA) offered the next amendment (no. 3963) which would strike the sections of the bill providing for earned adjustment, deferred mandatory departure, and earned adjustment for agricultural workers (sections 601 through 614). Senators Hagel, Martinez, Kennedy, Durbin, McCain and others spoke out passionately against the amendment and others, such as Senator Sessions, took to the floor in support of the Vitter amendment.

The Vitter amendment was **rejected** by a 33-66 vote.

Senator Obama (D-IL), together with Senators Feinstein (D-CA) and Bingaman (D-NM), offered an amendment (no. 3971) that would revise the bill's provisions for determining the prevailing wage for an occupation and would lower the unemployment rate that would trigger a freeze on H-2C workers in a given metropolitan statistical area from 11 percent to 9 percent.

The Obama amendment was **agreed** to on a voice vote.

Senator Leahy (D-VT) introduced an amendment (no. 4018) on behalf of Senator Stevens (R-AK) and others that would amend section 7209(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 to extend the Western Hemisphere Travel Initiative (WHTI) for 18 months, from January 1, 2008 to June 1, 2009. As background, this initiative requires all U.S. citizens, Canadians, citizens of Bermuda and Mexico, to have a passport or other accepted secure travel document when entering the United States by January 1, 2008.

The Leahy/Stevens amendment was **agreed** to on a voice vote.

Senator Santorum (R-PA) introduced an amendment (no. 4000) on behalf of himself and Senator Mikulski (D-MD) that would amend INA § 217(c) to provide for the probationary participation in the Visa Waiver Program of any country that contributed substantially to U.S. coalition efforts in the war in Iraq and Afghanistan, and that are members of the European Union. It appears that the amendment would have the effect of allowing Poland to participate in the program.

The Santorum/Mikulski amendment was **agreed** to on a voice vote.

Senators Cornyn and Kyl offered an amendment (no. 3965) that would amend (and essentially gut) the provisions of the bill that allow H-2C visa holders to self-petition for permanent residence. Currently, the bill would permit H-2C workers to self-petition if they have maintained H-2C status in the U.S. for a cumulative total of 4 years. Under the Cornyn amendment, the H-2C worker could self-petition after 4 years only if an employer attests that the employer will employ the worker in the offered job position, and the Secretary of Labor certifies that there are not sufficient U.S. workers who are able, willing, qualified, and available to fill the position. Senator Cornyn argued that the self-petition provision would allow H-2C workers to come into the U.S. and compete with American workers for jobs, while Senator Kennedy described the self-petition provision as a key labor protection that will help protect these workers from exploitation.

The Cornyn/Kyl amendment was **agreed** to by a very close vote of 50-48. Senator Kennedy plans to offer a competing amendment tomorrow.

The Senate plans to take up a variety of amendments tomorrow, with votes scheduled throughout the day.