

# American Immigration Lawyers Association

---

## Cloture is Invoked, Final Vote Expected Tomorrow

On a strong 73 to 25 vote, the Senate voted overwhelmingly today to bring debate on the Hagel-Martinez compromise immigration bill to a close, paving the way for the bill's likely passage tomorrow. The successful vote to invoke cloture on the measure means that Senators now have 30 final hours of debate on the measure, with a requirement that all subsequent amendments offered be germane to the underlying bill.

Prior to invoking cloture, the Senate **rejected**, 48-49, a **Motion to Table** an amendment (No. 4085) by Senator McConnell (R-KY), that would require individuals voting in federal elections to present a current, valid photo identification that meets the requirements of the REAL ID Act of 2005, beginning on May 11, 2008. Opponents of the amendment characterized the proposal as a "poll tax" that would have the effect of disenfranchising poor, elderly, disabled and minority voters, as these groups typically are less likely than others to have driver's licenses or other forms of acceptable photo ID.

Because the Motion to Table (and thus kill) the amendment failed, it theoretically could have resurfaced later in the debate, but only if it were ruled germane to the underlying bill. Senator Kennedy raised a point of order against the amendment once cloture had been invoked, contending that the amendment was not germane. The **point of order** was **sustained** and the amendment thus fell.

Senator Byrd (D-WV) was next on deck, offering an amendment (No. 4127) that would require any alien receiving a benefit under the bill's legalization provisions to first pay a \$500 fee in addition to the other fees and penalties set forth in the bill. Funds collected under this provision would be used to fund border security efforts, including training, infrastructure, apprehension and detention of aliens, and construction projects. Senator Specter noted his concern that placing such an increased burden on the undocumented population would discourage them from coming forward and participating in the program. He believes the underlying bill provides a more reasonable fee structure.

Senators nonetheless **approved** the Byrd amendment by a vote of 73 to 25.

Next up was Senator Gregg (R-NH), with an amendment (No. 4114) 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. Both Senator Schumer (D-NY), who was the principal architect of the diversity visa program during his tenure in the House, and Senator Kennedy (D-MA), the principal Senate sponsor of the program, spoke eloquently in opposition to the amendment, noting its importance to the country. They argued that the bill already comprehensively addresses many of the critical deficiencies in our high-skilled immigration programs and that the changes proposed by the Gregg amendment would have little impact. Coming at the expense of the diversity visa program, they added, the changes are wholly unwarranted.

The Gregg amendment was **approved** by a vote of 56 to 42.

Senator Landrieu (D-LA) next offered an amendment (No. 4025) to reform the intercountry adoption process. Among other things, the amendment would establish within the Department of State (DOS) an Office of Intercountry Adoptions, and would transfer from the DHS to the DOS all functions under the immigration laws with respect to the adoption of foreign-born children by U.S. citizens and their admission to the U.S. It would also provide for automatic acquisition of citizenship for adopted children born outside the U.S.

The Landrieu amendment was **adopted** on a voice vote.

Senator Hutchison (R-TX) offered an amendment (No. 4101) that would create a new guest worker program for nationals of NAFTA and CAFTA-DR countries in addition to the guestworker program included in the underlying bill. The program would provide no path to citizenship, and applicants would have to apply from the home country, complete a background check, and, once here, could only stay and work in the U.S. for ten months out of the year, having to return home for the remaining two months. Up to 200,000 visas would be available per year, with not more than 50 percent of the annual allotment to be allocated during the first 6 months of the fiscal year in question. Opponents of the amendment argued that such a program would be inefficient and impractical for all involved, neglecting the needs of both guestworkers and their U.S. employers, and paying no heed to whether the employer needed the workers to stay long-term, with no interruption to their work period.

Senators **rejected** the Hutchison amendment by a vote of 31 to 67.

After debate had occurred on the Byrd, Gregg, Landrieu, and Hutchison amendments, but prior to votes on those amendments,<sup>1</sup> Senator Allard (R-CO), together with Senator Sessions (R-AL), raised a point of order against the bill, arguing that it violated section 407-D of the fiscal year 2006 budget resolution (i.e., it would generate costs greater than those allowed under the budget resolution). Opponents of the point of order called it just another way of trying to derail the bill, and Senator Specter (R-PA) offered a Motion to Waive all applicable points of order under the Budget Act (with a waiver, the bill's provisions can remain intact, even if in violation of the Budget Act).

The Specter **Motion to Waive** the point of order was **agreed to** by a vote of 67-31, comfortably exceeding the necessary 60-vote threshold for overcoming a point of order.

Senator Boxer (D-CA) was up next, with an amendment (No. 4144) that would modify slightly the bill's requirements regarding procedures employers must use to recruit U.S. workers for, and notify the public about, job openings prior to hiring an H-2C guestworker.

The Boxer amendment was **adopted** on a voice vote.

---

<sup>1</sup> As a time-saving mechanism, the Senate will often debate several amendments in a row and postpone the actual voting until after the series of amendments has been debated.

Senator Burns (R-MT) offered an amendment (No. 4124) that would require the Census Bureau to submit to Congress a report on the impact of illegal immigration on the apportionment of Representatives of Congress, as well as on methods for ensuring that undocumented aliens are not counted in tabulating population for purposes of congressional reapportionment.

Senators **approved** the Burns amendment on a voice vote.

Next on deck was Senator Chambliss (R-GA), with an amendment (No. 4084) that would change the AgJobs compromise in the underlying bill by establishing more stringent eligibility requirements. Specifically, the amendment would require a farmworker to prove previous agricultural work days in the U.S. of at least 150 days per year in *each* of two years. AgJobs currently would require the worker to prove 150 agricultural work days in a two-year period (not per year). In addition, the amendment would define a “work day” as at least 8 hours of work in a day. Opponents of the Chambliss amendment observed that a large number of farmworkers do not obtain 150 days of agricultural work per year, and even those who do often do not have the documents needed (or resources they would need) to obtain proof of their past employment. Moreover, they added, most farmworkers do not work 8 hours per day even when working full-time, six days a week. Frequently, agricultural workers work three to seven hours per day. This amendment would deny workers credit for their farm work on such days, and deprive them of the chance to enter the program.

A **Motion to Table** (kill) the Chambliss amendment was **approved** on a vote of 62 to 35.

Senator Dorgan (D-ND) followed, with an amendment (No. 4095) that would sunset the new H-2C guestworker program 5 years after the date of enactment.

Senators **rejected** the Dorgan amendment on a very close vote of 48 to 49.

Before adjourning for the night, the Senate reached a unanimous consent agreement on proceedings for tomorrow—the final day of consideration on the bill. As of tonight, the lineup for tomorrow will comprise:

- a Cornyn amendment to strike the bill’s confidentiality provisions
- a Bingaman amendment to modify the employment-based visa caps
- a Sessions amendment to deny certain immigrants access to the Earned Income Tax Credit
- a Feingold amendment to restore temporary stays of removal
- an Ensign amendment to deny certain immigrants tax refunds or tax credits for tax years prior to 2006

Thereafter, a manager’s amendment will be offered, followed by a final vote on the entire bill.