



Siskind Susser PC
Immigration Lawyers

1028 Oakhaven Road
Memphis, TN 38119

tel 901.682.6455
fax 901.682.6394

The Siskind Summary: A Section by Section Review of HR 4321 (the Gutierrez CIR bill)

Below you will find a review of HR 4321, the first major comprehensive immigration reform bill to be introduced in the current Congress. Please keep in mind that this bill was introduced on 12/16/2009 and this summary was prepared in less than 48 hours. Also, note that the bill is close to 700 pages and it is impossible to cover every detail. Please send correction requests to Greg Siskind at gsiskind@visalaw.com. For information on my background, please go to <http://www.visalaw.com/gsiskind.html>.

Greg's Shorthand –

AG= US Attorney General
BP = Border Patrol
CBP = Customs and Border Protection
CIS = Citizenship and Immigration Services
CNIS = Conditional Nonimmigrant Status
DOD = Department of Defense
DHS = Department of Homeland Security
DOL = Department of Labor
DOS = Department of State
EOIR = Executive Office of Immigration Review
FAA = Federal Aviation Administration
FY = Fiscal Year
GSA = General Services Administration
HHS = Department of Health and Human Services
ICE = Immigration and Customs Enforcement
INA = Immigration and Nationality Act
LPR = lawful permanent resident
NTA = Notice to Appear
OES = Occupational Employment Survey

ORR = HHS' Office of Refugee Resettlement
POEs = Ports of Entry
USC = United States citizen

Section 1. Short Title; Table of Contents

The bill is titled the "Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009" (CIR ASAP).

Section 2. Findings

- Immigration is integral to American history and our identity
- The US government must reduce the deficit by ensuring all individuals and employers pay their fair share of taxes
- The US government must ensure the labor rights of all workers and end driving down of wages and workplace standards due to broken immigration system
- The US government must ensure growth for honest businesses playing by the rules
- Labor and immigration policies need to be modernized
- The US government can't ensure national security effectively without requiring undocumented immigrants to come forward
- Eliminating our immigrant workforce is not an effective or honest solution to our economic problems.
- Dividing families is not moral or just
- Flawed immigration laws interfere with effective community policing
- The US government must seek to eliminate racial profiling
- The US government should ensure that our borders are secure by investing in effective strategies and working in concert with communities on both the northern and southern borders
- Foreign governments must play a role in securing international borders and deterring illegal entry of immigrants
- The US government must reaffirm its commitment to teaching and promoting the learning of English
- CIR will encourage legal immigration, deter illegal immigration and promote the economic and national security interests of the US.

Section 3. Reference to the Immigration and Nationality Act

References to existing law will be to the Immigration and Nationality Act (as opposed to the corresponding US Code section).

Section 4. Definitions

"Department" means "Department of Homeland Security"

"Secretary means "Secretary of Homeland Security"

Section 5. Severability

If any section of the bill is deemed invalid, the remainder of the bill is not to be considered affected.

TITLE I – BORDER SECURITY AND ENFORCEMENT

Section 101. Sense of Congress

- Congress believes the Secretary should establish a national strategic plan for short-term and long-term border security with improved accountability and transparency.
- Secretary's priorities must support significant advances in operational control of the border
- Security must secure ports of entry (POEs) and ease commerce and travel
- POEs need additional assets, personnel, infrastructure and technology improvements
- Border security and enforcement of immigration laws are the responsibility of the Federal government
- Combating human smuggling, arms trafficking and drug trafficking are essential to border security
- Protecting the economic and civic vitality of border region is key to security
- Effective border security depends on international cooperation

Subtitle A – Border Security

Section 111. National Strategy for Border Security

DHS, in consultation with other agencies, shall develop a National Strategy for Border Security(NSBS) that covers actions to maintain control of ports and international land and sea borders. The NSBS must include

- Terrorist threat assessment
- Risk assessment for all ports and all land and sea borders and a summary of efforts being taken to prevent entry of terrorists, unlawful aliens and narcotics and to protect critical infrastructure
- Assessment of most appropriate, practical and cost-effective means to defend the borders including cost assessment of risks, prevention efforts to address such risks, and recommendations on realigning programs and resources to address the risks.
- Assessment of staffing needs
- Description of border security roles and missions of all agencies and recommendations for actions DHS can carry out to improve coordination
- Assessment of existing programs and technology and effect on civil rights, family unity, private property rights, privacy rights and civil liberties.
- List of R & D objectives to enhance border security
- Description of ways to ensure free flow of legitimate travel and commerce is not diminished by border security efforts
- Description of performance metrics to be used to ensure accountability
- Schedule for the implementation of the measures in the NSBS

DHS shall consult with state and local governments, the private sector, NGOs and affected communities when developing the NSBS.

Must be submitted to Congress within one year after enactment of CIR ASAP. Updates must be submitted to Congress within 30 days. DHS is not relieved of current obligations in the mean time.

Section 112. Increase in Number of Customs and Border Protection Officers.

- Between FY 2010 and FY 2014, DHS shall increase CBP officers by at least 5000 over FY 2009 number
- Between FY 2010 and 2014, DHS shall increase by 1200 the number of CBP agriculture specialists over FY 2009 number
- Between FY 2010 and 2014, DHS shall increase by 350 the number of border security support personnel at US POEs over 2009 number

Section 113. Improving Ports of Entry for Border Security and Other Purposes.

- \$1 billion each year between 2010 and 2014 to improve ports of entry
- Priority to be given to ports most in need of repair to improve border security

Section 114. Inventory of Personnel

- DHS shall identify and inventory current personnel before any increase
- DHS shall submit the inventory within 90 days of enactment to Congress

Section 115. Standards of Professional Conduct

- Within 90 days, DHS shall set clear standards of professional conduct for interaction with the public for all CBP agents, US Border Patrol agents, ICE agents and Agricultural Inspectors within 100 miles of all borders and POEs.
- The standards will specify that agents
 - o shall not violate any laws or policies
 - o shall obey all lawful orders
 - o shall not engage in conduct that discredits the agents or brings the agency in to disrepute
 - o shall conduct themselves in a civil an professional manner
 - o shall treat violators with respect and courtesy
 - o shall adhere to the agency's use-of-force policies and observe civil rights and the well-being of those in their charge
 - o shall not use their powers to resolve personal grievances with individuals.
- DHS shall develop a plan that incorporates these standards in to officer and supervisor evaluations and shall establish strong penalties for failure to follow them.
- The standards shall be posted at all POEs in locations easily viewed by the public

- Within six months of enactment, DHS in consultation with Office of Civil Rights and Civil Liberties, shall establish uniform process for making complaints against agents. The process shall involve a quick review to meaningfully resolve the complaints, apply uniformly to all POEs and Border Patrol Sectors and specify where and how complaints are to be filed. The complaint process is to be posted at all POEs and interior checkpoints in multiple languages and the process is to be appropriately funded. DHS must also set up a publicly accessible national database and DHS must provide publicly accessible records with copies of complaints and their resolutions permanently preserved.
- Any interested party may file a complaint and complainants are protected from retaliation. Information in complaints cannot be used to initiate removal proceedings and complainants cannot be removed while the complaint is pending. The privacy of the complainant must be preserved. DHS shall assist complainants in filing complaints.
- DHS must report annually to Congress on the number and type of complaints as well as additional information on the demographics of complainants, results of investigations and violation patterns identified.

Section 116. Inventory of Assets.

- DHS shall identify and inventory the current assets, equipment, supplies or other resources devoted to border security and enforcement prior to any increase in assets, equipment, supplies or resources.
- DHS shall submit the inventory to Congress within 90 days from enactment.

Section 117. Customs Border Patrol and Border Protection Assets.

- Personal equipment
 - o DHS shall ensure every agent has body armor
 - o DHS shall ensure that all agents have reliable weapons
 - o DHS shall ensure all agents have all necessary uniform items
- Helicopters and Power Boats
- DHS shall review number of helicopters, power boats and motor vehicles and increase the number as needed. Motor vehicles must have portable computers to access law enforcement databases.
- Border Patrol agents must be provided with GPS devices and night vision equipment
- All funds needed to carry this out are authorized for FYs 2011 through 2015.

Section 118. Technological Assets.

- DHS and DOD shall analyze whether to increase availability of DOD equipment in carrying out surveillance at land borders
- DHS and DOD shall report to Congress within 180 days after enactment regarding the analysis
- All needed funds to implement recommendations are to be appropriated during FYs 2011 to 2015

Section 119. Secure Communication

DHS shall develop a plan to improve satellite communications and other technologies to ensure clear and secure 2-way communication capabilities among BP agents and between border security agencies.

Section 120. Surveillance Plan.

DHS shall develop a comprehensive plan for the systematic surveillance of land and sea borders. The plan shall include

- Assessment of existing technologies
- Description of compatibility of new technologies with existing technology
- Description of how CBP is working with Undersecretary for Science and Technology to test technology
- Description of specific surveillance technology to be deployed
- Identify any obstacles to deployment
- Detailed estimate of all costs
- Description of how DHS is working with FAA on safety and airspace control issues associated with unmanned aerial vehicles
- Description of aerial surveillance demonstration program
- Description of Integrated and Automated Surveillance demonstration program described in Section 121

The plan must be submitted to Congress within 180 days after enactment.

Section 121. Surveillance Technologies Programs

Within 90 days of enactment, DHS shall develop an Aerial Surveillance Demonstration Program to fully integrate aerial surveillance technologies. DHS must consider current and proposed technologies, assess the feasibility of using such technologies, consult with DOD regarding technologies used along the border, consult with the FAA regarding airspace coordination and conduct a privacy impact assessment. This section doesn't affect the current use of aerial surveillance technologies. DHS must report to Congress on this section within six months of enactment.

A similar Integrated and Automated Surveillance Demonstration Program (IASDP) shall be created to demonstrate technologies relating to cameras, poles, sensors, satellites, radar coverage and other technologies. A report on this demonstration program must be given to Congress within a year after implementation of the IASDP. DHS shall develop standards for contractors carrying out the IASDP and the DHS Inspector General shall review each new contract that is worth more than \$5 million and report to Congress on the findings of each review within 30 days. Needed funds to implement this section are to be appropriated.

Section 122. Border Security Searches of Electronic Devices

Within six months of enactment, DHS shall issue a rule on the scope of and procedural and record keeping requirements associated with border security searches of electronic devices (such as computers or cell phones). The rule must include

- A requirement that information collected from an electronic device that has commercial information (trade secrets, etc.) shall be handled consistent with the law and shall not be shared unless it is determined that such agency has complied with the law regarding such sharing.
- A requirement that such searches take place in front of a supervisor and the owner of the device
- A determination of the number of days that the device may be retained
- A requirement that if information is copied or shared, the owner of the device shall get written notification
- A requirement that an individual whose device is taken from one's possession, the owner shall get a receipt
- A requirement that an individual whose device is searched get a notice of how to report abuses or concerns
- A requirement that information on the rights of individuals subject to a search be posted at all POEs in locations likely to be seen by the searched individual
- Privacy and civil liberties impact assessments

DHS shall provide agents with appropriate training regarding searches of electronic devices at POEs and shall develop an auditing mechanism to ensure searches are conducted in accordance with the rule. Within six months of the rule's effective date, DHS shall report to Congress on searches conducted under the rule.

Section 123. Border Relief Grant Program.

The AG can award grants for up to two years to law enforcement agencies (and colleges and universities that assist them) to address drug-related criminal activity and for related training and assistance. The funds will be used to

- combat criminal activities on the border
- facilitate information sharing and collaboration
- enhance jails
- provide training and technical assistance

The AG must report on the program to Congress on a bi-annual basis.

\$100,000,000 per year from FY 2011 to 2015 are to be allocated for the grant program.

Section 124. Northern and Southern Border Drug Prosecution Initiative

The AG shall reimburse state and local prosecutors for prosecuting federally initiated and referred drug cases. Funds from FY 2011 to 2015 are to be appropriated.

Section 125. Operation Streamline Prosecution Initiative.

DHS shall suspend Operation Streamline pending submission of a report to Congress and a reevaluation of the program's future viability. Operation Streamline is a program that brings low-level criminal charges against virtually all illegally present immigrants caught crossing parts of the US-Mexico border.

Within 180 days of enactment, the AG must a report on

- the goals and oversight mechanisms for the program
- the costs of seeking prosecution and jail time for illegal entrants
- the costs of detention and incarceration
- the costs of implementing the program effectively in each BP sector
- the impact of the program on federal prosecutorial initiatives focused on curbing border violence
- the impact on discretionary prosecutorial decisions
- the number of prosecutions for various crimes over the three years prior to enactment of CIR ASAP
- the lengths of imprisonment and locations of prisons used
- federal convictions obtained under Operation Streamline
- a comparison of rates of prosecution and convictions in districts on the border compared to districts nationwide
- interviews with criminal defense attorneys who have represented defendants charged under Operation Streamline

After the report is submitted, the AG shall have 180 days to re-evaluate the future viability of the program.

Section 126. Project Gunrunner

The AG shall expand resources provided for the Project Gunrunner initiative of the Bureau of Alcohol, Tobacco, Firearms and Explosives to prosecute individuals involved in trafficking firearms across the US-Mexico border. This will include assigning additional agents from BATFE to the border, establishing not fewer than one Project Gunrunner team in each border state and coordinating with the heads of other agencies. \$15,000,000 shall be appropriated for years 2011 to 2015 for this section.

Section 127. Operation Armas Cruzadas.

DHS shall expand resources for Operation Armas Cruzadas of ICE to prosecute individuals involved in trafficking and smuggling firearms across the US-Mexico border. This will include assigning additional agents from ICE and the Border Enforcement Security Task Force (BEST) teams to the border, establishing not fewer than one Project Gunrunner team in each border state and coordinating with the heads of other agencies. \$15,000,000 shall be appropriated for years 2011 to 2015 for this section.

Section 128. Combating Human Smuggling

DHS shall implement a plan to improve coordination between ICE and CBP and other agencies to combat human smuggling. A report on this plan shall be submitted to Congress within a year of implementing the plan.

Section 129. Report on Deaths and Strategy Study.

CBP shall collect statistics on deaths occurring at the border with Mexico and shall publish the data quarterly. CBP shall report annually on trends and recommendations on reducing deaths to Congress starting no later than a year after enactment.

DHS shall study Southwest Border Enforcement operation from 1994 to the present and the relationship to death rates on the border.

A report on the studies shall be submitted to the US-Mexico Border Enforcement Commission (see Section 130) and Congress. Necessary funds to do the studies are to be appropriated.

Section 130. United State-Mexico Border Enforcement Commission

An independent Immigration and United State-Mexico Border Enforcement Commission is established to study federal agency enforcement strategies along the border with Mexico. The Commission shall also strengthen relations and collaboration between communities in the border regions, ensure that civil and human rights are protected and to make recommendation with respect to such strategies.

The Commission will have 16 voting members including local elected officials, law enforcement officials and local civic leaders appointed by the governors of the border states. Two of the members would be nonvoting and would be appointed by the Secretary of DHS and the AG. The governors must split appointments equally between Democrats and Republicans.

Members must be appointed within six months of enactment and terms shall be for three years.

The Commission will hold hearings, will have subpoena power, and will have the power to make recommendation to DHS. DHS will have six months to respond to the Commission report.

Necessary funds shall be appropriated.

Section 131. Prohibition on Military Involvement in Nonemergency Border Enforcement.

The Armed Forces are prohibited from assisting in local and civilian law enforcement of immigration laws. There's an exception if the President has declared a national emergency or when required for counter-terrorism duties. In those cases, the military will play rear echelon support duties, nonarmed operations within 25 miles of the border and armed operations outside 25 miles of the border. DHS shall report annually on the involvement of the Armed forces in border security and immigration law enforcement.

Section 132. Definitions.

For Sections 124 through 128, the following terms are defined: “Indian Tribe” and “Secretary Concerned”

Section 133. Border Protection Strategy

Before September 30, 2010, DHS, the Secretary of the Interior, the Secretary of Agriculture, DOD and the Secretary of Commerce, in conjunction with state and local officials, shall jointly develop and submit to Congress a border protection strategy for the US borders. The strategy shall include

- an analysis of levels of operational control achievable through alternative tactical infrastructure and other security measures including fencing, vehicle barriers, additional BP agents, natural barriers and open space, advanced remote sensing and information integration technology, coordination with agencies in Mexico and Canada and removal of vegetation
- an analysis of the costs and impacts of such security measures
- a compilation of the fiscal investments in acquiring lands and waters on the borders that have been acquired or managed for conservation purposes
- recommendations for strategic border security management

DHS shall provide CBP agents natural resource protection training and cultural resource training.

Section 134. Actions to Further Secure Operational Control of the International Land Borders of the United States.

The 1996 IIRAIRA immigration act is amended to alter Section 102 which requires the installation of a border wall. Section 134 would require DHS to first prioritize the use of remote cameras, sensors, removal of nonnative vegetation, incorporation of natural barriers, additional manpower, unmanned aerial vehicles and other low impact border enforcement techniques before the building of a wall. DHS is no longer required to install physical barriers if DHS determines that the use or placement of these resources is not the most effective and appropriate means to maintain operational control over the border or if DHS determines that the impact on the environment, culture, commerce, safety or quality of life for the affected communities outweigh the benefits.

Section 135. Borderlands Monitoring and Mitigation.

DHS, in consultation with the Department of Interior, Department of Agriculture, DOD, Department of Commerce and state and local agencies, shall implement a comprehensive monitoring and mitigation plan to address environmental impacts of border security measures along the border. DHS may transfer its funds to other agencies to pay for activities under the plan. DHS can accept and use donations to implement the plan. Funds shall be appropriated to carry out the mitigation plan.

Section 136. Border Communities Liaison Office.

DHS shall establish a Border Communities Liaison Office in each BP sector for the purpose of fostering communications with border communities. Funds needed to carry out this section shall be appropriated.

Section 137. Office of Civil Rights and Civil Liberties and Office of Inspector General

DHS shall get the funds for the Office of Inspector General and the Office of Civil Rights and Civil Liberties to be comparable to other federal agencies.

Section 138. Improving Ports of Entry for Border Security and Other Purposes

Money will be appropriated for the General Services Administration for FY 2011 to 2015 to make improvements to POEs based on which need repairs the most.

Section 139. Ports of Entry.

CBP may construct and modify POEs. DHS shall consult with other departments to determine new locations and minimize adverse impacts. DHS is also permitted to construct roads and acquire vehicle barriers and facilities to maintain operational control of the borders.

Section 140. Ports of Entry Infrastructure and Operations Assessment Study.

Before January 31st each year, the GSA shall update the Port of Entry Infrastructure and Operations Assessment Studied prepared by CBP.

Section 141. National Land Border Ports of Entry Security Plan.

Within a year of enactment of CIR ASAP, DHS shall submit a National Land Border Ports of Entry Security Plan to Congress that includes a vulnerability assessment for each POE on the northern and southern borders.

Section 142. Ports of Entry Technology Demonstration Program.

DHS shall carry out a technology demonstration program to test and refine POE technologies and train personnel. The program shall be carried out at between three and five sites. A report must be submitted annually to Congress assessing the feasibility of incorporating any demonstrated technology for use through CBP.

Section 143. Reports on Improving the Exchange of Information on North American Security.

DHS shall annually submit to Congress a report on the status of improvements to information exchange related to the security of North America. The report shall describe the following:

- the status of the development of common enrollment, security, technical, and biometric standards for secure documents (passports, visas and permanent residency cards)
- the progress of efforts to share information regarding high-risk people who attempt to enter Canada, Mexico or the US
- the progress made by Canada, Mexico and the US to enhance security by cooperating on visa policy and identifying best practices regarding immigration security
- the progress made by Canada and the US in implementing entry-exit tracking systems that share information regarding third country nationals who have overstayed their periods of admission in the US or Canada
- the status of the capacity of the US to combat terrorism through the coordination of counterterrorism efforts
- the progress made in improving information sharing and law enforcement cooperation in combating organized crime
- the progress made in enhancing law enforcement cooperation among Canada, Mexico, and the US through enhanced technical assistance for the development of a national database built on best practices to identify criminals or terrorists.

Section 144. Southern Border Security Task Force.

Within six months of enactment, DHS shall establish a Southern Border Security Task Force to coordinate the efforts of federal, state and local border and law enforcement officials and task forces to protect the US from violence associated with drug trafficking, gunrunning, illegal alien smuggling, violence and kidnapping along the US-Mexico border. The Task Force shall have representatives from CBP, ICE, the Coast Guard and other federal agencies, border state and local law enforcement agencies.

DHS shall report on the Task Force to Congress within six months after the establishment of the Task Force and annually thereafter. \$10,000,000 shall be authorized each year from FY 2010 to 2014 to operate the Task Force and prosecute individuals engaged in the above-listed criminal activities.

Section 145. Cooperation with the Government of Mexico.

DHS shall work with officials from the Mexican government to improve coordination regarding border security, reducing human trafficking, reducing drug trafficking, reducing gang membership, reducing violence against women and reducing other violence and criminal activity. DHS shall also work with Mexican government officials to educate Mexican citizens regarding eligibility for status as non-immigrants in the US.

DHS shall also work with the Mexican government to encourage "circular migration" including assisting in the development of opportunities and providing job training for citizens in Mexico.

A report must be submitted with six months of enactment and annually thereafter reporting on actions taken by each country under this section.

Section 146. Enhanced International Cooperation.

DHS shall assign agents from the Bureau of Alcohol, Tobacco, Firearms, and Explosives to the US mission in Mexico to work with Mexican law enforcement agencies in conducting investigations relating to gun running and other criminal activities. \$9,500,000 is provided each year for FY 2011 and 2012 to carry out this section.

Section 147. Expansion of Commerce Security Programs.

Within six months of enactment, CBP shall coordinate with the Secretary of DHS to develop a plan to expand the programs of the Customs-Trade Partnership Against Terrorism including adding additional personnel for the programs along each border.

Within six months of enactment, CBP must implement at least one Customs-Trade Partnership Against Terrorism program which has been successfully implemented on the northern border, along the southern border.

Within six months of enactment, CBP shall establish a demonstration program to develop a cooperative trade security system to improve supply chain security.

Section 148. Authorization of Appropriations.

In addition to other money otherwise available, all funds needed to carry out this bill are authorized from FY 2011 to 2015.

Subtitle B – Detention

Section 151. Definitions.

The following terms are defined in this subsection: “detention”, “detention facility”, “short-term detention facility”, “immigration-related enforcement activity”, “secure alternatives programs”, “unaccompanied alien child or children”, “apprehension” and “SSA”.

Section 152. Detention Conditions.

DHS shall ensure that detainees are treated humanely and granted the following protections:

- prompt and adequate medical care (including care to deal with preexisting conditions and needed primary care, emergency care, chronic care, prenatal care, dental care, eye care, mental health care and medically necessary specialized care).
- Detainees shall receive a comprehensive medical, dental and mental health intake screening at the time of arrival at a detention facility and a comprehensive medical and mental health examination within 14 days of arrival at the facility.

- Detainees taking prescribed medications prior to detention shall be allowed to continue to take the medications without disruption until a licensed health care professional examines the detained and decides upon an alternative course of treatment. Detainees lacking their prescription medicine upon arrival must be evaluated within 24 hours. Decisions to discontinue medication must be conveyed in the detainee's language and recorded in writing in the detainee's medical records.
- Medication may not be forcibly administered to facilitate control behavior and psychotropic drugs may only be used in emergency situations after a doctor has personally examined the detained and determined the detainee is a danger to himself or herself or others due to mental illness and the drug is appropriate to treat the illness.
- Detainees shall be provided prenatal care, prenatal vitamins, hormonal therapies and birth control. Female detainees shall be provided with access to sanitary products.
- Medical care requested by a detainee shall be determined within 72 hours after the care is requested and the decision must be immediately communicated. Denials of care can be appealed to an independent appeals board made up of health care professionals. The appeal must issue a written decision within seven days of receiving the appeal.
- DHS must respond within 72 hours of requests by medical providers to provide medical or mental health care and denials must be accompanied by a written explanation. The medical provider can appeal to the same appeals board noted above and the board has seven days to issue a decision in writing.
- Detainees with a medical or mental health condition, and pregnant and nursing women shall be considered by DHS for release on parole or bond or into a secure alternatives program. Individuals denied such release shall be re-evaluated periodically.
- DHS shall maintain complete, confidential medical records for all detainees and make the records available to detainees no later than 72 hours after requested.
- Transferred detainees shall have their records transferred immediately upon a transfer to a new facility.
- Detention facilities must provide reasonable and equitable access to telephones and the ability to contact lawyers, courts, child protective services, foreign consulates, government agencies, etc. Detainees must be provided a copy of the rules governing telephone access and the rules must be provided in Spanish and two other languages spoken by a substantial part of the detainee population. Oral and written translation assistance must also be provided to detainees in reading any relevant materials required to request telephone access. Rates charged for phone calls must be fair. The number of phone calls to lawyers or consular officials may not be restricted or limited in duration. At least one phone per 25 detainees must be available. The facility must ensure detainees have privacy in making telephone calls to lawyers and consulates. Calls to courts, lawyers or consulates may not be monitored or recorded without a court order. Telephone messages must be delivered promptly (and at least twice a day). Detainees must be granted the ability to return calls from courts, lawyers, consular officials, etc. within 8 hours of receiving the message.
- Detention facilities must take all needed measures to prevent sexual abuse of detainees and where abuse does occur, facilities shall ensure that prompt medical intervention is taken including providing prophylactic treatment and victims are separated from their abusers. Victims may not be punished for reporting abuse and all cases of abuse must be thoroughly and timely investigated.
- Detainees may not be transferred if the transfer would negatively affect an existing attorney-client relationship or negatively affect the detainee's legal proceedings including merits or calendar hearings or a pending application with USCIS or EOIR by limiting access to securing a

lawyer, preparing a defense to removal or removing the detainee from the legal venue of a proceeding. Transfers are also prohibited if it would negatively affect a detainee's health and medical fitness or places the detainee in a location more distant from detainee's residence than the original detention location or in a location more distant from family members.

- Detainees must get 72 hours notice of a transfer and shall get at least one toll-free call to notify the detainee's lawyer or an adult family member or other person designated by detainee. DHS must also notify the Immigration Court, Board of Immigration Appeals, or Circuit Court of Appeals, as appropriate, of the transfer and the new address. Detainees awaiting a bond hearing or bond redetermination hearing shall not be transferred. Detainees may be transferred in the case of emergencies such as natural disasters or comparable emergencies. DHS must make a record of the reasons and circumstances necessitating transfers.

Section 153. Specific Detention Requirements for Short-Term Detention Facilities.

All detainees in short-term facilities shall receive potable water, food (if detained more than five hours), basic toiletries, diapers, sanitary products and blankets, access to bathrooms and access to telephones.

DHS must provide consular officials with access to detainees in short-term facilities and detainees shall be afforded reasonable access to health care professionals. Nursing mothers must be provided access to their children.

Confiscated property shall be returned to the detainee upon repatriation or transfer.

Children shall have special rights including

- DHS shall ensure that trained and qualified staff are stationed at each POE where an average of at least 50 unaccompanied minors have been held during the two most recent fiscal years. Staff must include licensed social workers and agents charged with the safe and humane transportation of children to the custody of the Office of Refugee Resettlement.
- The social workers shall ensure that the children
 - o Receive emergency medical care
 - o Receive mental health care in case of trauma, access to psychosocial health services
 - o Provided with adequate bedding
 - o Receives adequate nutrition
 - o Enjoys a sanitary, safe living environment
 - o Receives educational materials and has access to at least three hours of indoor and outdoor recreational activities each day.
- HHS must maintain the confidentiality of the unaccompanied child's information except when it is in the best interest of the child or the disclosure is a law enforcement entity and is necessary to prevent imminent and serious harm to another individual. Such communications must be recorded and placed in the child's file.

Section 154. Rulemaking and Enforcement.

Within 60 days of enactment, DHS shall issue a notice of proposed rulemaking regarding implementation of these detention provisions. Within six months, DHS shall issue rules binding on all detention facilities.

Detainees shall have the right to file grievances with the staff of detention facilities and DHS and shall be protected from retaliation. DHS must review complaints and issue determinations within 30 days and remedy within 30 more days. Detainees must be advised of the remedy. DHS determinations of no violations are considered the final DHS determination. Appeals are not permitted until the 30 days have passed.

DHS may impose financial penalties on out of compliance facilities and terminate the contract with such facilities.

Each facility must appoint a compliance officer to investigate complaints and handle remediation actions.

Punitive damages are not permitted.

Section 155. Immigration Detention Commission.

The Secretary of DHS shall appoint an Immigration Detention Commission which shall be comprised of experts from ICE, CBP, ORR and the Division of Immigration Health Services at HHS plus independent experts equal in number to the government officials. The Commission shall conduct investigations and report on the compliance of detention facilities. A report must be provided to Congress within 14 months of enactment and then every two years.

Section 156. Death in Custody Reporting Requirement.

If a detainee dies in DHS custody or en route to or from custody, the supervisor of the facility shall immediately notify the DHS Secretary and within 48 hours of receiving the notice, the Secretary shall report the death to the Office of Inspector General of DHS and to DOJ.

DHS shall complete an investigation in to each detainee death. The investigation must be conducted by a panel of physicians with experience in morbidity and shall include the medical staff of the facility that cared for the detainee, physicians from within DHS and independent doctors not affiliated with DHS. Within sixty days of the end of a fiscal year, DHS shall submit a report to Congress detailing all the deaths of detainees in DHS custody during the preceding fiscal year.

Section 157. Protection of Community-Based Organizations, Faith-Based Organizations and Other Institutions.

DHS shall issue regulations requiring DHS officials to prohibit the apprehension of persons on the premises or in the immediate vicinity of

- a childcare provider, day care center, head start center, school bus stop or recreation center
- a school
- a legal-service provider
- a federal court or state court proceeding
- an administrative proceeding
- a funeral home
- a cemetery
- a college or university
- a victim services agency
- a social service agency
- a hospital or emergency care center or health care clinic
- a mental health facility and
- a community center

A DHS Notice to Appear must include a statement that no immigration enforcement activity was undertaken in one of these locations.

Section 158. Apprehension Procedures for Immigration-Related Enforcement Activities.

The following are rules DHS must follow in an apprehension:

- DHS shall conduct an initial review of each individual apprehended in an immigration-related arrest to ascertain whether the individual may be a US citizen, lawful permanent resident or alien lawfully present in the US. If an individual claims to have such status, DHS shall ensure that the claim is investigated and the individual is considered for release under Section 160. DHS must notify state service agencies (SSAs) of planned enforcement-related activities at least 24 hours in advance or in a timely fashion if there is not enough time. Access to individuals apprehended by DHS must be provided to the SSA within six hours of the apprehension.
- Local law enforcement agencies must be notified at least 24 hours before the enforcement action unless there is not enough time.
- DHS personnel, SSAs and medical personnel must be provided with instructions if they encounter an individual from a vulnerable population.
- At least one interpreter must be available for every five individuals targeted in an enforcement action.
- Nonprofit legal service providers, organization and pro bono attorneys must be permitted to offer their services to apprehended individuals.
- Access to a telephone must be provided within six hours of being detained.

Section 159. Protection Against Unlawful Detentions of United States Citizens.

Before questioning an individual detained based on a suspected immigration violation, a DHS officer must first advise the detainee in the detainee's language that the detainee has the right to be

represented by counsel at the detainee's expense, that the detainee may remain silent and that the any statement by the detainee may be used against him or her in a removal or criminal proceeding. Evidence obtained in violation of this section is not admissible in a removal proceeding or to confirm that a detainee is a noncitizen.

All detainees shall be entitled to a legal orientation through a program administered by the EOIR. The program is based on EOIR's existing Legal Orientation Program. The funds necessary to implement this program for all detainees shall be authorized.

Detained individuals may be represented by counsel at any time. The examining officer shall, in the language spoken by the detainee, provide the person with a list of available free or low-cost legal services provided by organizations and attorneys in the area of the arrest and the officer shall note on the Notice to Appear that the list was provided.

Aliens with legal, mental or physical disabilities preventing the person from meaningfully representing him or herself shall have counsel, including counsel appointed by the AG at the government's expense.

Individuals detained for more than 48 hours must be brought before an emigration judge for a custody determination not later than 72 hours after the beginning of detention unless the individual waives this right. A detainee can waive these requirements for up to seven days if the detainee agrees in writing to the waiver and is prima facie eligible for immigration benefits or demonstrates prima facie eligibility for a defense against removal.

In criminal proceedings, an alien and his or her attorney must be provided with a written notice of a detainer indicating that DHS intends to assume custody of the alien upon completing the criminal proceedings. The notice must explain the basis for issuing the detainer and explain how to challenge detainers lodged in error. DHS shall not take custody of individuals until resolution of pending criminal charges when a person is granted pre-trial release and the alien has complied with the conditions of the release. A detainer is not a basis for denying pre-trial release.

DHS must issue rules relating to detainers under this section requiring DHS officials to confirm the alienage of an individual through lawfully obtained information and whether the individual is removable.

DHS must collect data on retainers and report to Congress annually beginning a year after enactment. The report also goes to the DHS Inspector General, The DOJ Civil Rights Division and the DHS Office of Civil Rights and Civil Liberties. The report must outline the extent to which detainers are erroneously lodged, how often people remain in detention past the expiration of a detainer, whether detainers are lodged disproportionately against certain ethnicities, whether the lodging of detainers results in longer jail times and whether detainers are lodged for an investigatory purpose to investigate criminal activity instead of placing individuals in removal proceedings. Funds needed to carry out this section shall be authorized for FY 2008 through 2012.

Section 160. Basic Protections for Vulnerable Populations.

No later than 48 hours after starting an immigration-related enforcement activity, DHS shall screen each detainee to see if the detainee is a member of a vulnerable population. That includes any of the following:

- Individuals with nonfrivolous US citizenship claims
- Disabled individuals or those with medical or mental health needs
- Pregnant or nursing women
- Individuals detained with one or more of their children, and their detained children
- Individuals who provide financial, physical and other support to their minor children, parents or other dependents
- People over 65
- Children
- Victims of abuse, violence, crime or human trafficking
- People referred for credible fear interviews or asylum hearings
- Stateless individuals
- People who have or intend to apply for asylum, withholding of removal or protection under the Convention Against Torture
- Individuals who make a prima facie case for eligibility for relief under the INA
- Any group designated by DHS as a vulnerable population

DHS shall release within 72 hours members of these groups under the individual's own recognizance or release the individual to a secure alternatives program. There shall not be electronic monitoring unless the individual is subject to mandatory custody because of an individual's criminal history, the individual poses a national security risk, or the individual poses a flight risk. Detained members of vulnerable populations must be provided notice in writing explaining the decision.

If an alien is not subject to mandatory detention because he or she is a member of one of these groups, DHS shall examine the risk to public safety posed by the alien, the risk of flight and whether there are other conditions of release which will reasonably ensure that the person will show up for their proceedings. Persons who have committed certain serious crimes are not eligible for release under this section.

DHS shall establish a secure alternatives program that ensures public safety and appearances at immigration proceedings. Individuals will be determined to be eligible for the program on a case by case basis. One alternative shall be electronic ankle devices.

Section 161. Report on Protections for Vulnerable Populations Impacted by Immigration Enforcement Activities.

Within a year of enactment and annually after that, DHS shall submit a report to Congress describing the impact of immigration-related enforcement on US citizens, permanent residents and undocumented aliens present in the US. The report must assess

- the number of individuals apprehended who are children, US citizens, permanent residents and lawfully present non-citizens.
- Immigration-related apprehensions at barred sites noted in Section 157
- Apprehensions of sole caregivers, primary breadwinners, pregnant and nursing mothers and other vulnerable populations

- The extent to which DHS cooperates with state and local law enforcement agencies during immigration-related enforcement activities
- The number of apprehensions resulting from cooperation with state and local law enforcement
- Whether apprehended individuals are provided telephone access and how fast
- The manner through which family members of the apprehended people are notified of the detention
- The number of parents, guardians or child caregivers removed from the US and a breakdown of those whose children accompany them and those whose children do not
- The number of occasions on which both parents are removed
- The length of time it takes to remove parents, guardians and caregivers
- The number of children that remain after such removals
- The number of people apprehended who are in vulnerable populations who are released under Section 160
- The length of time between when an individual is determined to be in a vulnerable population and the time that individual is released
- The methodology used by DHS for notifying agents and entities under agreement with DHS about enforcement standards concerning vulnerable populations
- The number of officials of DHS disciplined for violations during apprehensions
- Details on the transfers of immigrants during enforcement actions including whether apprehended people had access to counsel before being transferred, whether the immigrant got notice of the transfer and whether the immigrant was evaluated under Section 160 to determine if he or she is part of a vulnerable population.
- Apprehension procedures for enforcement actions and compliance with screening vulnerable populations
- Recommendations for improving enforcement actions by reducing the negative impact on children and vulnerable populations
- Information on secure alternatives programs including the types of programs used, reasons for not using them, the percentage of cases in which adjustment of status is granted, the percentage of cases in which removal is undertaken and the number of those absconding
- The number of people apprehended after officials were notified by a health or mental health professional.

Section 162. Family Detention and Unity Protections.

Any family with children in removal proceedings shall be placed in removal proceedings under section 240 of the INA. Families with children shall not be separated or taken into custody except when there are exceptional circumstances or when required by law. When release is not permitted, DHS shall ensure that special non-jail, residential, home-like facilities are used to house families with children. Procedures and custody conditions must be appropriate for these families and entities with expertise in child welfare shall manage the facilities. There shall be no restrictions on the freedom of movement, visitations, telephone, internet, library access, possession of personal property, age appropriate education or religious practice other than to prevent flight and ensure the safety of residents. Judges shall review each family's well being, custody status and the need for continued detention every 30 days and families shall be notified in writing of the decision and the reasons for the decision. Parents retain parental rights including the discipline of children (in keeping with applicable state laws).

DHS is granted discretionary waiver authority and may decide not to detain families with children otherwise subject to mandatory detention.

Section 163. Apprehension Procedures for Families and Parents.

DHS and entities contracting with DHS shall

- offer confidential psychosocial and mental health services to children and family members at the time of apprehension.
- Provide and promote in the media a toll-free number through which family members of people apprehended in immigration raids may report information relevant to the release of an apprehended family member as a member of a vulnerable population which will then be reported to DHS and applicable state social service agencies
- Provide parents, guardians and caregivers with confidential and toll free phone calls to arrange for the care of children within two hours of screening and provide access to information on legal service providers and child welfare providers.
- Ensure that DHS and contractor personnel do not interrogate or screen individuals in the presence of children; interrogate or detain any child apprehended with a parent without the present or consent of the parent; or compel or request a child to translate for others in an enforcement operation
- Ensure that the best interests of children are considered in decisions relating to the detention or release of any individual apprehended by DHS and that there be a preference for family unity when possible.

Section 164. Child Welfare Services for Children Separated From Parents Detained or Removed from the United States for Immigration Violations.

Under the Social Security Act, states shall implement protocols for handling children separated from parents during apprehensions.

Section 165. Vulnerable Population and Child Welfare Training for Immigration Enforcement Officers.

DHS, in consultation with HHS and child welfare experts shall mandate live specialized training of all personnel reimbursed for caring for separated children and members of vulnerable populations.

Law enforcement agencies under contract with DHS shall sign memoranda of understanding with social service agencies with respect to the availability of services relevant to the humanitarian and due process protections for vulnerable populations.

Section 166. Access for Parents, Legal Guardians, and, Primary Caregiver Relatives.

DHS shall ensure that detention centers take steps to preserve family unity and ensure that the best outcome for families be considered in decisions and relating to the custody of children whose parents are detained. DHS shall mandate live training of all personnel at detention facilities in regard to procedures designed to ensure parents have regular access to children, courts, consular officers and staff of state social service agencies.

DHS shall ensure that parents of children under 18 have free and confidential daily phone calls with children, have regular visits with their children and participate in person, to the extent possible, in family court proceedings relating to their children's custody. DHS shall ensure parents have access to parenting classes that help with reunification with their children, have access to child protective service agencies and family courts and have access to consular officials. DHS shall ensure that detained parents have adequate time to get travel documents for their children before removing the parents and where parents leave without their children, DHS shall ensure that state social service agencies or other caregivers are provided information about the parents travel arrangements.

Section 167. Enhanced Protections for Vulnerable Unaccompanied Alien Children and Female Detainees.

DHS in coordination with ORR and child welfare experts shall mandate live training of all personnel who come in to contact with unaccompanied alien children.

DHS shall ensure that all unaccompanied children who are in immigration proceedings are duly transported and placed in the care and custody of ORR within 24 hours of their apprehension except in unusual circumstances such as natural disasters. DHS shall ensure that female officers are responsible for the transport of female detainees.

DHS shall ensure that an independent social workers provides unaccompanied minors with a video orientation and oral and written notice of their rights under the INA including the right to relief from removal and the right confer with counsel, family, or friends while in DHS' temporary custody. The social worker shall also explain the process for reporting abuse or misconduct.

DHS must keep confidential all information on an unaccompanied minor consistent with the best interests of the child.

DHS shall adopt procedures for reliable age-determination of children (which shall not include the use of forensic testing of bones and teeth), to ensure safe repatriation of children to their home countries, to utilize all legal authorities to defer a child's removal if the child faces a life-threatening risk upon return home, to ensure that unaccompanied alien children are physically separated from any adult who is not a family member and are separated by sight and sound from criminal and violent immigrant detainees.

Section 168. Preventing Unnecessary Detention of Refugees.

This section makes it easier for asylees to file for adjustment of status. They would be able to apply for adjustment of status 90 days prior to the one year anniversary in the US

Section 169. Reports on Protections from Unlawful Detention.

Within a year of enactment and annually thereafter, DHS shall prepare and submit a report to Congress describing the impact of worksite and fugitive enforcement operations on US citizens, permanent residents and individuals otherwise lawfully present in the US.

The report shall include an assessment of ICE's protocol for humanitarian screening during worksite raids, compliance with the protocol, collateral arrests, whether individuals detained in an immigration-related enforcement activity are notified of their right to counsel, whether ICE agents used excessive force, entered private residences without a search warrant or consent, or displayed and used weapons during raids or interrogations. The report should also note whether ICE agents identified themselves, the conditions under which individuals are confined, whether detainees are notified of their rights in a language they understand, whether individuals detained are forced to sign documents or waive rights without consulting with an attorney.

The report should describe the procedures used by DHS to notify agents about humanitarian standards in enforcement actions and whether violating agents have been held accountable.

DHS must list the per detainee cost of raids involving more than 50 detainees.

Finally, the report should list recommendations for improving worksite operations and fugitive operations.

Section 170. Rulemaking.

DHS shall issue regulations implementing Subtitle B within a year of enactment.

Subtitle C – Enforcement

Section 181. Labor Enforcement.

When DHS takes a worksite enforcement action where there is a labor dispute or where information is given to DHS to retaliate against employees exercising their employment rights, DHS shall ensure that any aliens who are arrested or detained and who are needed for the prosecution of employment law violations, shall not be removed without notifying the appropriate law enforcement agency and giving that agency the opportunity to interview such aliens. Aliens who have filed workplace claims or who are material witnesses in pending proceedings involving a workplace claim shall be entitled to a stay of removal and to an employment authorization stamp unless DHS shows by a preponderance of the evidence that DHS initiated proceedings for whole independent reasons and the workplace claim was filed in bad faith to delay removal. Employment authorization shall last as long as the proceedings relating to the workplace claim last.

DHS may grant U visas to aliens based on civil violations of Federal employment or labor laws if the alien has a reasonable fear of retaliation based on immigration status, has been threatened with such retaliation or has been retaliated against for attempting to remedy such violations.

Section 182. Mandatory Address Reporting Requirement.

Clarifies address reporting requirements. Violations of the address rules shall not affect the ability of an alien to apply for a benefit under the INA.

Section 183. Preemption of State and Local Law.

CIR ASAP preempts any state or local law imposing any sanction on any individual based on immigration status, on any person or entity based on the immigration status of its clients, employees, tenants, or other associates; or relating to a violation or alleged violation of immigration law.

Section 184. Delegation of Immigration Authority.

This provision largely repeals Section 287(g) of the INA which allows DHS to delegate enforcement powers to state and local law enforcement agencies. DHS, with limited exceptions, may no longer delegate such authority.

Section 185. Immigration and Customs Enforcement Ombudsman.

This section establishes an ICE Ombudsman who shall inspect detention facilities and local ICE offices to determine if they comply with relevant standards. The Ombudsman will also establish procedures for detainees to submit confidential complaints. The Ombudsman shall propose changes and submit an annual report to Congress.

Section 186. Eliminating Arbitrary Bar to Asylum.

The one year limit on applying for asylum is eliminated.

Section 187. Restoration of Judicial Review.

Largely restores the right to seek federal court review of DHS actions.

Title II – Employment Verification

Section 201. Employment Verification.

I-9s

If DHS has reasonable cause to believe an employer is not complying, it is authorized to require the employer to certify within 60 days that it is in compliance with this section or has instituted a program to come in to compliance. DHS has the authority to extend the deadline.

The good faith defense only works until the point when an employer is required to use E-Verify.

Changes reference to employment authorization and identification documents to Code of Federal Regulations instead of INA which will enable DHS to alter the list without an act of Congress.

Employer only required to show the document reasonably appears to be genuine.

DHS may shorten the document retention period for the employer or a class of employers.

Employers may not use copies of retained documents for anything other than complying with this section.

Clarifies that receipts for replacement documents may be accepted by employers if the individual is not able to provide a required document in time due to loss, theft or damage. The employee must present the document within 90 days of hire. If USCIS is still working on a replacement document 60 days after receipt of an application for a replacement document, it will issue a letter that the employee can present to the employer which will automatically extend the deadline an additional 90 days. This rule does not apply to positions intended to last less than 10 working days.

Authorizes acceptance of receipts for replacement document and receives for extensions of work authorization as long as the individual presents the required document within 90 days from the date the employment authorization expires. DHS shall issue employees still waiting by day 60 for the completion of processing, DHS shall issue a letter for the employer automatically granting the individual an additional 90 days.

E-Verify

E-Verify must incorporate an auto-save feature allowing the employer to retain an electronic version of the attestation and a record of any action and copies of any correspondence written or received, with respect to the verification of the individual's identity or employment eligibility.

Employer using E-Verify has to verify between first and fifth working day (it's currently three days).

DHS will have one day to respond to an E-Verify inquiry (as opposed to three days). If there is a tentative nonconfirmation, DHS shall complete a secondary manual verification not later than six working days after the tentative nonconfirmation. Not later than ten days after the employer submitted the original inquiry, DHS must provide the employer verification results.

Individuals contesting an E-Verify finding have 15 working days after receiving a tentative nonconfirmation to file a request for correction (it is currently 8 days). DHS may extend this deadline for good cause.

An employer may not terminate employment based on a tentative nonconfirmation.

Within 10 days of the individual lodging a contest or 25 days after the initial tentative nonconfirmation, DHS shall provide the results of the verification. If DHS provides a final nonconfirmation, individuals have the right to judicial review of the final nonconfirmation.

Employers shall terminate employment after the conclusion of a 30 day period for the individual to file an administrative appeal with the Social Security Administration. The final nonconfirmation will be stayed during the appeal which will allow the worker to continue on the job. The exception to this is if the SSA Commissioner determines that the appeal is frivolous, unlikely to succeed on the merits or filed for purposes of delay. If it turns out that SSA is wrong and the appeal is ultimately successful, individuals may be compensated up to \$75,000 for lost wages (plus upward indexing to account for inflation). Compensation for lost wages is also available at this appeals stage. If the determination is made that a final confirmation was issued due to the employer, the worker may file a private right of action against the employer and can seek damages, back pay or other appropriate remedies.

If the appeal is denied, DHS shall stay the decision for 15 days to permit the worker to seek judicial review. In any case, judicial review must be sought within 90 days after receiving the denial notice. The appeal would be filed with the US District Court having jurisdiction over the worker's place of residence.

DHS and SSA shall establish procedures to allow people to verify their individual eligibility for employment and to correct or update the system electronically.

Individuals who look up their data can block the use of an individual's social security number and may register a phone number or email address to be contacted upon removal of the block under the system.

Employers are not permitted to re-verify an employee in E-Verify unless the individual's work authorization has expired. DHS is to notify an employer of the expiration within 30 days of the expiration date.

An employer may not verify an individual's employment eligibility if the individual is continuing in his or her own employment.

The amount of data that may be stored is limited in order to protect privacy. Information provided for E-Verify shall be deleted one year after the date of entry unless DHS decides it is relevant to an ongoing investigation.

DHS will institute a comprehensive program of outreach and training for employers regarding the operation of the system.

DHS shall establish a 24-hour toll free hotline to receive inquiries from individuals or employers.

Employers will be required to use E-Verify as follows:

Critical employers – Within six months of enactment, DHS shall require all federal agencies (except the Armed Forces), state governments and employers working in government buildings,

on military bases, at a nuclear energy site, a weapon site, or an airport shall use E-Verify on employees hired after DHS requires participation.

Large employers – Within a year of enactment, DHS shall require employers with more than 5,000 employees in the US shall use E-Verify on employees hired after DHS requires participation.

Midsized employers – Within two years of enactment, DHS shall require employers with between 1,000 and 5,000 employees in the US shall use E-Verify on employees hired after DHS requires participation.

Small employers – Within three years of enactment, DHS shall require employers with less than 1,000 employees in the US shall use E-Verify on employees hired after DHS requires participation.

Other employers can use the system on a voluntary basis.

DHS can waive or delay participation for any employer or class of employers if DHS provides notice to Congress of such waiver prior to the date the waiver is granted.

Employers failing to comply with E-Verify shall be treated as a employer sanctions violation.

Employers are obligated to protect the confidentiality of any information collected for using e-Verify.

Employers are required to inform individuals that they received a tentative nonconfirmation no later than three days after issuance of the notice (it is currently 5 days).

Anyone who unlawfully accesses e-Verify is subject to fines of up to \$1,000 per worker or up to six months in jail. If the information is used to engage in identity theft, the fine goes up to \$10,000 per worker whose data was accessed plus up to a year in jail or both.

The Comptroller General of the US shall conduct an annual study on e-Verify regarding the accuracy of the databases. The goal is to have 99.5% accuracy rate and new information populate all databases within 3 working days of submission in 99% of cases. The Comptroller will issue a certification that accuracy targets are met.

The Office for Civil Rights and Civil Liberties will conduct annual audits of E-Verify to assess employer compliance including civil rights and civil liberties protection and compliance with E-Verify rules. Employers will be randomly selected for auditing to gauge compliance. Some employer will be chosen based on complaints as well. Employers who fail to cooperate will be noted in the annual report. A report will be provided to Congress within 18 months and then on an annual basis.

The Social Security Administration shall establish a voluntary self-verification system to allow individuals to verify that their information is correct, to block and unblock the use of a social security number and to register a phone number or email address to be contacted upon removal of the block. Federal employees and members of Congress must participate in this

Enhanced Verification System. Individuals will be assigned a PIN to secure access to the system. Individuals who choose to block their social security number from being accessed can apply for a single-use encrypted code which may be presented to an employer going through the verification process.

DHS shall establish procedures to file complaints against employers for violating the hiring laws.

ICE officials are barred from misrepresenting to employee or employers that they are members of any agency that provides domestic violence services, enforces health and safety laws or other labor laws, provides health care services, or any other services intended to protect life and safety.

DHS officials will present employers with a prepenalty notice describing the violation, laws violated and a notification that the employer will have the opportunity to explain why a monetary or other penalty shall not be imposed. The employer then has 45 days to file with DHS a petition for the remission or mitigation of the fine or penalty or a petition for termination of the proceedings. An employer's good faith compliance and participation in E-Verify are to be considered mitigating factors. If DHS determines a fine is appropriate, it will issue a written final determination stating the penalty.

Penalties for violations are increased as follows:

- a. first offense: \$500 (previously \$275) to \$4000 (previously \$2,200) for each unauthorized worker
- b. second offense (new requirement that first offense be in previous 12 months): \$4000 (previously \$2,200) to \$10,000 (previously \$5,500) for each unauthorized worker
- c. subsequent offenses (new requirement that previous offenses be in previous 12 months): \$6000 (previously \$3,300) to \$20,000 (previously \$11,000) for each unauthorized worker

Paperwork violations increase from \$110 per violation to \$200 with a maximum fine of \$2000 per form (up from the current \$1100). The law also allows for the fine to be doubled if the employer has been fined within the preceding year and an additional penalty of \$6000 for employers fined more than once in the prior year or if the employer has failed to comply with a previously issued final order. Employers that have purely paperwork violations and there is no intent to hire an individual not authorized to work can make corrections within 30 days of receiving notice from DHS.

DHS also has the ability to impose additional penalties including cease and desist orders, specially designed compliance plans and suspended fines to take effect in the event of a further violation. Employers can appeal to a court for 45 days. Employers who prevail on an appeal can seek to recover attorneys fees up to \$75,000 (which will increase with inflation).

Employers can also be criminally sanctioned. Employers who engage in a practice or pattern of hiring or continuing to employ unauthorized workers face fines up to \$20,000 per worker (currently \$3000) and imprisonment for up to three years (currently six months), or both.

There is a no provision allowing fines to rise to reflect inflation.

Employers who require employees to post a bond or indemnify the employer against IRCA violations can be fined up to \$10,000 per violation (currently \$1000) and subjected to an order to return the money to the employee.

Employers would now be barred from getting federal contracts for five years if they are repeat violators.

State and local governments are preempted from imposing their own employer sanctions rules.

Employers cannot avoid backpay remedies because an employer failed to comply with the sanctions rules.

DHS shall have six months after enactment to establish an Employment Verification Advisory Panel. The panel shall consist of members appointed by the DHS Secretary and shall include representatives from appropriate federal agencies and private sector experts. The panel will advise DHS and SSA on the implementation and deployment of verification systems. The panel is to issue a report within six months of its creation on identity fraud.

Section 202. Parity With Civil Rights Act of 1964.

Adds anti-discrimination provisions barring employers from terminating employees based on an E-Verify tentative nonconfirmation or to use the system to prescreen applicants. E-Verify cannot be used to re-verify employees. E-Verify cannot be used to deny workers' employment benefits or deny labor rights.

Penalties for unlawful discrimination claims are increased as follows:

1. First Offense: Between \$2000 and \$4000 for each individual subjected to discrimination (previously between \$275 and \$2,200);
2. Second Offense: Between \$4,000 and \$10,000 for each individual subjected to discrimination (previously between \$2200 and \$5,500);
3. Subsequent Offenses: Between \$6,000 and \$20,000) for each individual subjected to discrimination between \$3,300 and \$11,000)
4. Document abuse penalties increase and will now be between \$500 and \$5000 for each individual subjected to discrimination (previously between \$110 and \$1100).

Private actions are available and punitive damages are permitted. Compensatory damages are limited to \$50,000 except that citizenship discrimination claims can rise to \$300,000 depending on the size of the company.

This provision shall be effective immediately and apply to violations occurring after enactment.

Section 203. Amendments to the Social Security Act.

DHS is required to fund SSA for costs associated with participating in E-Verify. This will take effect six months from the date of enactment.

TITLE III – VISA REFORMS

Section 301. Elimination of Existing Backlogs.

Immediate relative numbers will not be subtracted from the 480,000 annual allotment of family green cards.

Unused numbers will roll over each year and be added to the next year's quota.

Unused numbers from 1992 through 2009 will be reclaimed for the current quota.

The employment-based green card quota is increased from 140,000 (set in 1990) to 290,000. Unused green card numbers will roll over each year and unused numbers from 1992 to 2009 will be reclaimed.

These provisions take effect 60 days from the date of enactment.

Section 302. Reclassification of Spouses and Minor Children of Legal Permanent Residents as Immediate Relatives.

Spouses and minor children of permanent residents are being reclassified as immediate relatives (which do not have quotas).

Petitions for children or parents of US citizens or permanent residents can continue as long as filed within two years of death and for children, prior to the child turning 21. Spouses are considered to remain immediate relatives after the death of a spouse as long as they were not separated at the time of death and the petition is filed within two years of the death or prior to the spouse's remarriage.

Spouses who were being petitioned for permanent residency by abusing spouses may continue processing even if the sponsoring spouse loses US citizenship or residence on account of the abuse.

The Family 1st (unmarried adult children of citizens) preference category is expanded from 23,400 to 38,000.

Family 2nd (unmarried adult children of permanent residents) is reduced from 114,200 to 60,000 (spouses and minor children of permanent residents are now immediate relatives so much of the demand in this category will diminish)

Family 3rd (married children of US citizens) is increased from 23,400 to 38,000

Family 4th (siblings of US citizens) is increased from 65,000 to 90,000.

Section 303. Country Limits

Per country limits are expanded from 7% to 10% (in the case of a single foreign state) and from 2% to 5% (in the case of a dependent area).

Section 304. Promoting Family Unity.

For the unlawful presence bar in INA Section 212(a)(9), unlawful presence will not begin until the child is 21 (the rule currently starts the clock at age 18).

The bars will not apply to people for whom a visa is available or was available as of the date of enactment of CIR ASAP. Also, people outside the US will be able to be readmitted if a visa was available on the date of enactment.

Waivers of the reentry bars will be available for parents of US citizens or permanent residents. Also, hardship no longer needs to be "extreme." Also allows the AG to issue a waiver for "humanitarian purposes" and "to ensure family unity" or if the waiver is in the public interest.

The bar based on false claims to US citizenship will now require the claim to be willful.

In family cases, the fraud bar waiver standard is modified to allow an officer to waive fraud as long as it is not contrary to the national welfare, safety or security" of the US.

Section 305. Surviving Relatives.

Spouses and children will still qualify for waivers if the spouse or parent upon whom the waiver is based dies.

Spouses of US citizens who die will still be able to naturalize after three years rather than five.

Spouses and children of asylees and refugees even if the principle applicant dies.

Section 306. Extension of Waiver Authority.

The entry-exit system deadline is extended from June 30, 2009 to June 30, 2011.

Section 307. Discretionary Waiver for Long-Term Lawful Permanent Residents.

Cancellation of removal available in case certain convictions if the AG determines that the individual does not pose a danger to the community or a national security threat and there are compelling reasons such as to preserve family unity or because removal is otherwise not in the public interest.

Section 309. Continuous Presence.

For cancellation cases, the clock for continuous residence is the date the judge makes the order rather than the date the notice to appear is issued.

Section 309. Bar on the Removal of Certain Refugees, Parolees or Asylees.

People who were granted refugee or parolee status before age 12 may not be removed from the US.

Section 310. Exemption from Immigrant Visa Limit for Certain Veterans Who Are Natives of Philippines.

Creates a special immigrant, non-quota green card category for children of Filipino World War II veterans.

Section 311. Fiancée or Fiancé Child Status Protection.

For purposes of qualifying as a minor child, the child of a fiancée or fiancé, the age is locked in at the time the K-3 petition is filed. This section is retroactive to 1986 and motions to reopen and reconsider may be filed.

Section 312. Equal Treatment for All Stepchildren.

For purposes of meeting the definition of a “child” stepchildren will now qualify if the relationship was created by age 21 (current rule is age 18).

Section 313. Sons and Daughters of Filipino World War II Veterans.

Certain children of US citizens naturalized as Filipino World War II veterans.

Section 314. Determinations Under the Haitian Refugee Immigration Fairness Act of 1998.

Under HRIFA, children's ages are locked in on October 21, 1998. The provision is retroactive so cases may now be filed for newly qualifying applicants as long as applications are filed within two years of the date of enactment or one year from the date new regulations are issued. Motions to reopen and reconsider will also be accepted.

Section 315. Discretionary Authority.

A judge may decline ordering an alien removed if he or she is the parent of a US citizen and the judge determines that the removal is against the best interest of the child. Certain serious criminals are not eligible (such as human traffickers).

Section 316. Affidavit of Support.

The old affidavit of support rule is restored and applicants only need to show they earn 100% of the poverty number as opposed to 125%.

Section 317. Visa to Prevent Unauthorized Migration.

This is the Gutierrez bill's attempt to create a "future flow" program. It is a visa program that will be in place pending the creation of a new temporary worker program that will be based on the recommendations of a new Labor Commission. The PUM category will last three years and have a limit of 100,000 per year. Selection will be based on an annual lottery. Petitions are filed by workers and not employers.

DHS will first determine which countries nationals represent less than 5% of the total number of unauthorized immigrants during the preceding five years.

Per country limits on PUM visas are set based on the percentage of the unauthorized immigrant population represented by that country. Unused numbers will be redistributed proportionately.

Qualifying applicants must be outside the US, is not eligible for an immigrant visa under any existing INA categories and has no pending green card petition. Applicants must pass security and criminal checks. Applicants may not have bachelor's degrees or higher.

Section 318. Adjustment of Status.

PUM visa holders will be considered conditional permanent residents and may apply to adjust status to permanent residence after three years. A PUM adjustment applicant must file an application to remove conditions between 90 and 180 days before the three year anniversary of being admitted. Applicants must show good moral character, no abandonment of residency, the person owes no back taxes and, if applicable, registration with Selective Service. Grounds for denial based on crimes, security, public charge, smuggling and child abduction will bar admission. Applicants must pay a \$500 application fee to qualify and the proceeds will be used to fund security and employment programs.

PUM visa holders won't count against the annual green card limits in other categories.

Section 319. Rulemaking.

DHS must issue regulations implementing the PUM visa.

Section 320. United State-Educated Immigrants.

The following groups are exempt from green card quotas:

- Those who have earned master's or higher degrees from US schools
- Physicians who are awarded "medical specialty certification" based on medical training in the US
- Aliens who perform labor in shortage occupations covered under the Department of Labor's Schedule A list
- Those who have earned master's degrees or higher in science, technology, engineering or math and have been working in their field in the US in the prior three years
- Extraordinary ability and outstanding researchers and national interest waiver applicants
- All spouses and children of people in these categories.

The provision is retroactive and will apply to cases pending on the date of enactment.

The provision also makes a new Schedule A, Group II category for physicians who have specialty training in the US. This allows for filing green card petitions without a labor certification.

This section would bar physicians and other health care workers from seeking admission as immigrants unless the alien provides an attestation that the alien does not have an obligation (e.g. received financial assistance in exchange for a commitment to return home) to the government of the alien's country of origin or the alien's country of residence. This provision may be waived if the obligation was coerced, the alien and the country reach agreement, or there are extraordinary circumstances.

This provision takes effect six months from enactment. The health care worker obligations take effect on that date regardless of whether regulations have been promulgated.

Section 321. Retaining Workers Subject to Green Card Backlog.

DHS shall issue rules allowing for adjustment applications to be filed regardless of visa number availability if the alien has an approved I-140 based on a filing under the EB-1, EB-2 or EB-3 categories or DHS exercises discretion and permits filings for people with pending I-140s in these categories. Applicants must still wait on an available visa number before the adjustment petition will ultimately be approved.

Applicants filing under this section will pay a \$500 supplemental fee.

Adjustment applicants under this section will be granted employment authorization in three year increments.

Section 322. Return of Talent Program.

Creates a new INA Section 317A that permits green card holders to return for up to two years to their home countries in order to “make a material contribution” if the country is engaged in postconflict or natural disaster reconstruction activities. Extensions may be granted. Time spent abroad will count toward the naturalization residency period.

TITLE IV – EARNED LEGALIZATION OF UNDOCUMENTED INDIVIDUALS

Subtitle A – Conditional Nonimmigrants

Section 401. Conditional Nonimmigrants.

Legalization applicants will apply for conditional nonimmigrant status (CNIS). Applicants will register with DHS by submitting biometrics and filing an application with DHS.

Applicants must have been present in the US in an unlawful status on the date OF INTRODUCTION of the bill in the House of Representatives and must have been continuously present since that date.

Continuous presence will be deemed broken if one is absent from the US for more than 180 days between the date of enactment until the beginning of the application period. Absences pursuant to advance parole don't work.

Applicants are eligible if DHS determines that the applicant is not inadmissible under Section 212(a) and has not participated in the persecution of any person and has committed a serious crime and constitutes a danger to the public or to US security. Applicants must not have been convicted of a felony or three or more misdemeanors for which the applicant has served not less than 12 aggregate months in prison.

Sections 212(a)(5) – labor certifications, (6) – illegal entrants and immigration violators, (7) – entering without documentation, and (9) – overstays - are not barred. Almost all of the criminal bars (except one minor prostitution ground), the security bars and provisions barring polygamists, child abductors and unlawful voting cannot be waived. Other 212(a) bars can be waived for humanitarian purposes or if the waiver is in the public interest.

Applicants must demonstrate that they are contributing to the US through employment, education, military service or other commitment to the community. Exceptions are available for people over 65, those with disabilities, primary caregivers to children under 16 and people on extended medical leave. Exemptions are also available to spouses of US citizens or LPRs, children under 21 of USCs or LPRs or people have been physically present in the US for at least five years preceding enactment of the law and who were under 16 at the time of entry and have not yet reached 35 (i.e. DREAM Act candidates).

All spouses or children (under 21 at the time of enactment) of conditional nonimmigrants shall be classified as dependents and provided the a conditional non-immigrant dependant visa. Spouses whose marriages were terminated because of domestic violence and spouses and children battered or subjected to extreme cruelty by a spouse or parent can be deemed conditional nonimmigrants.

Application procedures. Complete applications must include biometrics, applicable fees, penalties through fines, and answers to all eligibility questions.

The fee shall be sufficient to cover the administrative and other expenses incurred in reviewing applications.

Applicants must pay a fine of \$500. Exceptions are made for those under 21 at the time of enactment.

Fees will go into the Immigration Examination Fee Account. Fines will go into the Security and Prosperity Account.

CNIS applicants get the following benefits:

- authorization to work
- permission to travel
- be protected from deportation (unless they commit crimes)
- may not be considered unauthorized until employment authorization is denied

Applicants will be granted a tamper-resistant document verifying CNIS.

Applicants apprehended between the date of enactment and the date the applicant filed under this section and the date of filing under this section shall be permitted to apply for CNIS if they can demonstrate prima facie eligibility to DHS. DHS will not detain the person and they will be permitted to file an application. Judges may similarly close proceedings for those who can demonstrate likely eligibility.

Applicants ordered exclude, deported, removed or ordered to depart voluntarily may apply for CNIS and shall not have to file a separate motion to reopen, reconsider or vacate. The filing of CNIS or CNIS dependent status shall stay the removal of the alien pending final adjudication of the application unless the removal is based on criminal or national security grounds that would render the person ineligible for CNIS.

CNIS holders are granted for up to six years and DHS may extend the period in five year increments if the alien continues to meet the requirements.

DHS may terminate CNIS if DHS determines that the alien is ineligible for CNIS, if the alien has used documents issued under CNIS unlawfully or fraudulently, or, for children and spouses, the principle applicant's CNIS benefits are terminated (provided the spouse or child is given an opportunity to apply independently).

DHS shall set up a program to disseminate information on CNIS broadly.

Section 402. Adjustment of Status for Conditional Nonimmigrants.

DHS may adjust status of CNIS applicants to permanent residency. Applicants must demonstrate that they have met the CNIS requirements including having no convictions, paid taxes, contributed to the community through employment, education, military service or community service, has mastered English and, if required, has registered for Selective Service.

Applicants must show taxes are paid up before adjustment is granted and submit documentation that no tax liability exists, that all outstanding liabilities have been met or the alien is in compliance with an agreement to pay liabilities to the IRS.

Contributions to the US shall be demonstrated by providing evidence of employment, completion of or enrollment in an accredited education program, service in the military (past or present), or proof that the alien is an active volunteer or community member. Exempt persons must present documentation proving eligibility. Applicants must also show they are self-sufficient and will not be a public charge.

Applicants must submit records from SSA or IRS or any other government agency to document employment. Other documentation listed in this section may also be submitted including bank records, employer records, business records, labor union records, affidavits from nonrelatives aware of the applicant's contributions, remittance records, records of charitable, voluntary or 501(c)(3) nonprofit organizations, and any other documents DHS may list. Applicants bear the burden of proving, by a preponderance of the evidence the requirements of this section.

Applicants must demonstrate that they meet pass a test comparable to the citizenship English/civics test, earned a high school diploma or GED, or are pursuing a course of study to achieve an understanding of English and knowledge of history and government of the US. The requirements don't apply to those who have disabilities that prevent compliance and DHS may waive all or part of the requirements for those over 65.

Applicants must take a full medical examination and pass criminal and security checks.

DHS will issue rules outlining the process for applying for adjustment under this section and shall also determine fees sufficient to cover the expenses for reviewing applications.

Spouses and children may adjust as dependents. Separated or divorced spouses may self-petition in domestic abuse situations.

Applicants will not be able to adjust status until 30 days after family and employment based permanent residency applications filed before the date of enactment have become eligible for visa completion or six

years after the date of enactment. An exception exists for those in the US for five years at the time of enactment who are under 35 and who initially entered the US before age 16 (i.e. DREAM Act individuals) IF they have received a degree from a US college or university or completed two years toward a bachelors or higher degree in the US or have served two years in the military and, if applicable, discharged honorably or has been employed full-time, part-time or seasonally for two years prior to the application date. Those adjusting under this section shall be eligible to naturalize after three years from the date adjustment is granted.

Section 403. Administrative and Judicial Review.

DHS shall establish an independent appellate authority within USCIS to provide for a single level of administrative appellate review. Denied applicants may seek review by a US district court.

Section 404. Mandatory Disclosure of Information.

DHS shall share information from applications filed under this section with law enforcement agencies engaged in criminal and national security investigations. Notwithstanding this, no DHS officer may use information from applications for any purpose other than to make a determination on the application, make any publication through with the information in an application can be identified, or permit anyone other than the sworn officers and employees of the agency to examine individual applications. Violators are subject to a \$10,000 fine. This provision will not prevent an applicant or his or her attorney from having access to his or her application, case file or information related to his or her case.

Section 405. Penalties for False Statement in Applications.

Makes it a crime to provide false statements in adjustment CNIS and related adjustment applications. Violators may be subject to imprisonment of up to five years. Violators are also inadmissible.

An exception is made for applicants and entities that submit employment records that contain incorrect data used by the alien to obtain employment.

Section 406. Aliens Not Subject to Direct Numerical Limitations.

Applicants for adjustment under this subtitle are not subject to numerical limits.

Section 407. Employer Protections.

Employers of CNIS applicants and adjustment applicants under this section shall not be liable for unlawful employment of such aliens that occurred before the alien received employment authorization. A similar protection is offered for those providing employment records. This section does not protect employers from violations of other laws.

Section 408. Limitations on eligibility.

Applicants under Title VI are not rendered ineligible solely on the basis of crimes related to the misuse of passports, though they are still subject to prosecution for such crimes.

Section 409. Rulemaking.

DHS must issue regulations regarding the timely filing and processing of applications under this Title.

Section 410. Correction of Social Security Records.

Prevents prosecution of individuals who adjust status under this title for providing false information to the Social Security Administration.

Section 411. Restoration of State Option to Determine Residency for Purposes of Higher Education Benefits.

The provision in the 1996 IIRAIRA law barring states from providing in state tuition rates to unlawfully present immigrants is repealed.

Section 412 Authorization of Appropriations.

Funds necessary to carry out this subtitle shall be appropriated.

Subtitle B – Agricultural Job Opportunities, Benefits, and Security

Chapter 1 – Title and Definitions

Section 421. Short Title.

Nearly 100 pages of the bill are taken up by the “Agricultural Job Opportunities, Benefits and Security Act of 2009” also known as AgJobs.

Sec. 422. Definitions.

Defines “agricultural employment,” “blue card status,” “Department,” “employer,” “Secretary,” “temporary,” and “work day.”

CHAPTER 2—PILOT PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS

SUBCHAPTER A—BLUE CARD STATUS

Section 431. Requirements for Blue Card Status.

The bill would apply to those agricultural workers who have already been working at least 863 hours or at least 150 days or earned at least \$7500 from agricultural employment in the 24 month period ending December 31, 2008. Application must be filed within 18 months of the seventh month from the date of enactment. Applicants must not be inadmissible for serious crimes. They would be able to apply for a temporary visa called a “blue card.”

Blue card holders can seek work authorization and permission to travel. Blue card status can only be terminated only if the alien is deportable or before applying for adjustment, DHS determines that the applicant made a fraudulent or willful misrepresentation or the applicants commits an act that makes the applicant inadmissible or the applicant fails to perform agricultural work.

Employers must annually provide a record of employment for a six year period. . Employers may be fined up to \$1000 per violation if an employer fails to provide the employee’s record of employment.

Employers must annually provide a record of employment for a six year period.

DHS must provide blue card holders and their families with tamper-resistant, encrypted, machine readable cards with biometric features.

Applicants must pay a \$100 fine to DHS.

Up to 1,350,000 blue cards may be issued in a five year period beginning on the date of enactment of the bill.

Section 432. Treatment of Aliens Granted Blue Card Status.

Aliens in blue card status (and their spouses and children) shall be considered lawfully admitted for green card application purposes. But they will not be eligible for any welfare benefits until at least five years after being granted permanent residency status.

Section 433. Adjustment to Permanent Residence.

If they then work at least 100 days per year during the five year period beginning on the date of enactment of this bill or 150 days per year during the three year period from enactment of the bill, they would earn the right to apply for permanent residency. Extensions of time necessary to compete agricultural work can be provided by DHS in extraordinary circumstances such as in the case of disability or pregnancy. An application must be submitted within seven years of the date of enactment of the bill.

Applicants must pay a \$400 fine to file to adjust under this category.

Criminals and those who fail to meet the requirements of the program are subject to removal and termination of blue card status and applicants can be barred for adjusting for criminal, security and other grounds including failing to perform the required agricultural service.

Applicants will have to pay back taxes.

Family members may remain legally, though they will not be authorized to work until the principal applicant applies for permanent residency.

Section 434. Applications.

Blue card and adjustment applications may be filed with DHS by the applicant, through an attorney or through an accredited represented or via a “qualified designated entity” including farm labor organizations and others with longstanding experience in similar programs like the Cuban Adjustment Act.

Legal Services Corporation Act funding recipients may provide services to blue card applicants.

Section 435. Waiver of Numerical Limitations and Certain Grounds for Inadmissibility.

Green card caps do not apply to these applicants. Immigration violation grounds of inadmissibility won't prevent adjusting. Public charge grounds will be ignored if the applicant can demonstrate a history of work and self-support. Removal will be stayed for those that are likely eligible for blue cards who are apprehended before regulations are enacted.

Section 436. Administrative and Judicial Review.

DHS shall provide a single level of administrative appellate review. Judicial review is not available except in removal proceedings under INA Section 242.

Section 437. Use of Information.

By the time the application period opens up, DHS must have an information dissemination plan in place to let the public know about the rules for the program.

Section 438. Regulations, Effective Date, Authorization of Appropriations.

Regulations must be issued by the beginning of the seventh month from the date of enactment. Funds necessary to carry out this law are authorized for appropriation.

SUBCHAPTER B—CORRECTION OF SOCIAL SECURITY RECORDS

Sec. 441. Correction of Social Security Records.

Allows blue card holders to correct social security information and not be criminally penalized for previously providing false information to the SSA.

CHAPTER 3—REFORM OF H-2A WORKER PROGRAM

Sec. 451. Amendment to the Immigration and Nationality Act.

H-2A workers would only be eligible to work up to ten months, down from the current 364 day a year limit. The new program would drop the labor certification requirement and replace it with a program that involves filing a labor condition application, much like the current H-1B visa program. The H-2A applications by employers would have to be adjudicated within seven days by the USCIS. Employers would still have to engage in recruiting including listing the job with a local job service for 28 days before bringing workers in to the US.

There are also a number of modifications and clarifications of the work conditions applicable to H-2A workers. Regulations enacting H-2A provisions of the law would have to be in place within a year of the law passing. A housing allowance can be provided as an alternative to providing housing. Workers must be given a transportation allowance to get to the job.

The section modifies the definition of a “work day” in agriculture to include only days when .75 hours are worked, an increase from 1 hour listed in the earlier version of the bill. Under the AgJobs legalization rules, the tax requirement is broadened to include all

Federal taxes owed as opposed to just taxes owed during the requisite employment period.

CHAPTER 4—MISCELLANEOUS PROVISIONS

Section 461. Determination and Use of User Fees.

Calls on DHS to establish a schedule of fees based on the number of job opportunities an employer includes in a petition.

Section 462. Regulations.

DHS and the State Department shall consult with the Department of Labor and Department of Agriculture in issuing regulations. Regulations are due within a year of enactment.

Section 463. Reports to Congress.

DHS shall report annually to Congress on the AgJobs program.

Section 464. Effective Date.

This section shall become effective a year after enactment.

TITLE V – STRENGTHENING THE U.S. ECONOMY AND WORKFORCE

Subtitle A – Immigration and Labor

Chapter 1 – Immigration and Labor Markets

Section 501. Commission on Immigration and Labor Markets.

CIR ASAP creates a new independent federal agency called the Commission on Immigration and Labor Markets. The Commission's purposes are to

- establish employment-based immigration policies that promote economic growth and competitiveness while minimizing job displacement, wage depression and unauthorized employment.
- Implement a policy-focused research agenda on the economic impacts of immigration
- Analyze and share information about employment-based immigration and the labor market
- Recommend to Congress and the President a methodology for determining the level of employment-based immigration; and
- Recommend the limits and characteristics of workers to be admitted in various employment-based visa categories.

The Commission shall include 7 voting members appointed by the President with the consent of the Senate. Appointments must be made within six months of enactment. Five-year terms shall be staggered. The chair shall be for a six year term which can be extended for one additional three year term. Members shall have expertise in economics, demography, sociology, labor, business, civil rights, immigration or other pertinent qualifications or experience. No more than four members can be from one party. Eight ex-officio members will include the DHS Secretary, the DOS Secretary, the AG, the DOL Secretary, the DOC Secretary, the HHS Secretary, the DOA Secretary and the Commission of Social Security.

The Commission shall deliver an annual report to Congress which shall amend the quota levels and make other recommendations regarding employment-based visas. The Commission will also seek to establish relationships with international organizations in order to encourage the deposit of remittance with banks that will reinvest the funds to promote job development in the countries that send immigrants to the US.

Within a year of Congress appropriating funds for the Commission's operations, the Commission shall submit to Congress the methodologies it proposes to use to determine the need for immigrant workers and nonimmigrant foreign workers. Congress will have 90 days to enact a resolution of disapproval or the methodologies shall stand approved.

The Commission shall submit to Congress the numeric levels it recommends (based on a majority vote of Commission members). Congress has 90 days to disapprove or the numbers shall be approved for the next fiscal year.

Section 502. Security and Prosperity Account.

A new Treasury account is created called the Security and Prosperity Account. Funds from the CNIS penalties described in Section 401 of CIR ASAP will go in to this account.

25% of the money shall go for “Training and Employment Services” for activities under the Workforce Investment Act (WIA) of 1998. Of that money, 25% goes to grants for adult employment and training activities. 20% will go for grants to the states for dislocated worker employment and training activities. 10% shall go to dislocated workers assistance national reserve. 45% will go for a program of competitive grants for worker training and placement in high growth and emerging industry sectors.

5% shall go to the American Worker Recruit and Match System described in Section 503 of CIR ASAP.

10% shall go to DHS for the processing of immigration benefit applications and to subsidize the cost of immigration benefit applications described in Section 321.

3% shall go to implement Title VI of CIR ASAP.

2% shall go to the Commission on Labor Markets and Immigration described in Section 501 of CIR ASAP.

30% shall go to implement the amendments made by Title II of CIR ASAP and enforcement mandates in the amendments.

25% shall be allocated equally among programs created in Title I of CIR ASAP for border security, detention and enforcement.

Section 503. American Recruit and Match System.

Each State Workforce Agency shall establish an Internet-based program entitled “American Worker Recruit and Match” which will be incorporated in to existing SWA Web-based job search engines.

Employers will be able to electronically post employment opportunities in fields that have traditionally relied on unauthorized labor. Workers may post profiles that are searchable by employers. The site shall be linked on the DOL web site and to each State workforce agency.

CHAPTER 2 – PROTECTION OF WORKERS RECRUITED ABROAD

Section 511. Protection for Workers Recruited Abroad.

Employers and foreign labor contractors shall disclose in writing (in English and the language of the worker being recruited) to workers recruited for employment the following information:

- The place of employment
- The compensation for the employment
- A description of employment activities
- The period of employment
- The transportation, housing and any other employee benefit to be provided and any costs to be charged for each benefit
- The existence of any labor dispute at the place of employment
- The existence of any arrangements under which the contractor or employer is to receive a commission or other benefit resulting the any sales (including the provision of services) to the workers
- Details on how the workers will be compensated through workers' compensation, private insurance, or for injuries or death
- Any education or training that will be provided and how the costs of that will be covered
- A statement approved by DOL describing the protections for workers recruited abroad

No foreign labor contractor or employer shall knowingly provide false or misleading information to any worker concerning matters in this section.

Workers may not be charged fees for recruitment.

Employers or labor contractors shall not violate the terms of any working arrangement without justification.

The employer must pay transportation costs.

Employers may not discriminate in hiring or firing based on race, color, creed, sex, national origin, religion, age or disability.

Employers must notify DHS of any foreign labor contractors involved in foreign labor contractor activity for or on behalf of the employer. The employer shall be liable for violations committed by the contractor.

DHS shall maintain a list of violating labor contractors and shall make the list publicly available. Contractors will have a procedure made available to request removal from the list after proving the contractor has not made violations.

Retaliation against workers filing complaints under this section are barred.

Section 512. Enforcement Provisions.

Those knowingly violated the rules of this chapter shall be fined and/or imprisoned for up to a year. Multiple violators can be imprisoned for up to three years. Fines can be up to \$5,000 for any person who violates this chapter. \$10,000 fines may be imposed on employers based on the behavior of contractors. Employees may not waive their rights created by this chapter.

Section 513. Procedures in Addition to Other Rights of Employees.

Rights for workers in this chapter supplement and do not replace existing rights and remedies.

Section 514. Authority to Prescribe Regulations.

The DOL Secretary shall create regulations as may be necessary to carry out this chapter.

Section 515. Definitions.

This section defines “State”, “foreign labor contractor”, “foreign labor contracting activity”, “Secretary” and “worker”.

CHAPTER 3 – TECHNICAL CORRECTION

Section 521. Technical Correction.

Fixes a numbering problem at Section 212(t).

SUBTITLE B – REFORM OF CERTAIN CLASSES OF EMPLOYMENT-BASED VISAS

Chapter 1 – H-1B Visa Fraud and Abuse Protections

Subchapter A – H-1B Employer Application Requirements

Section 531. Modification of Application Requirements.

The LCA must certify that the employer is paying the highest of

- The locally determined prevailing wage for the occupation
- The median average wave for all workers in the occupational classification in the area of employment; and
- The median wage for skill level 2 in the OES wage survey

The “actual wage” requirement is removed.

Employers must post on the web for 30 days a detailed description of each position for which a nonimmigrant is sought that describes the wages, minimum requirements and process for applying for the job.

The wage methodology must be provided as part of the LCA application.

All employers would now have to comply with the H-1B dependency rules and document no displacement in the 180 days before and after H-1B filing. And all employers will have to recruit based on the displacement rules.

Employers may not place, outsource, lease, or otherwise contract for the services or placement of H-1B nonimmigrants unless the employer gets a waiver from DHS.

Section 532. New Application Requirements.

Employers may not advertise that a position is only available to H-1B workers or that indicates H-1Bs will be prioritized. Employers may not solely recruit from the ranks of H-1Bs. Employers with more than 50 employees may not exceed 50% of the work force.

Section 533. Application Review Requirements.

DOL will have 14 days to adjudicate an LCA (up from current 7 day limit).

Adds a provision stating that DOL Secretary may conduct an investigation if the DOL Secretary's review identifies fraud or misrepresentation of material fact, the DOL Secretary may conduct an investigation.

Subchapter B – Investigation and Disposition of Complaints Against H-1B

Section 541. General Modification of Procedures for Investigation and Disposition.

Extends from 12 to 24 months the length of time DOL has to launch an investigation of an H-1B employer after a complaint about misrepresentations in an LCA.

Allows DOL to conduct surveys of the degree to which employers comply with the H-1B rules and conduct annual compliance audits of H-1B employers. At least 1% of employers must be audited each year. All employers with more than 100 employees with more than 15% of those employees using H-1Bs must be audited annually. The general findings of these audits must be made public.

Section 542. Investigation, Working Conditions and Penalties.

Expands the violations for which penalties may be imposed. Doubles the fine to \$2000 per violation. Requires employers found liable for violations to pay lost wages and benefits to harmed employees.

For willful failures and willful misrepresentations of material fact, the fine is doubled to \$10,000 per violation and adds payment of lost wages and benefits.

For employers committing willful misrepresentations and willful failures that result in US workers, the no termination of US workers window is expanded from 90 to 180 days. Also adds payment of lost wages and benefits to harmed workers.

Expands prohibitions on employer threatening to take personnel actions against a whistleblowing employee. Employers violating the whistleblower rule shall be liable to pay lost wages and benefits.

Now makes it a violation for employers to fail to offer an H-1B non-immigrant the same benefits as offered to US works including the opportunity to participate in insurance plans, retirement plans, cash bonuses and noncash compensation. Doubles fines for violations of the rule regarding benefits and liquidated damages from \$1000 to \$2000 per violation.

Section 543. Waiver Requirements.

The bar on dependent employers placing workers at third party work sites where there have been layoffs has been modified in light of the fact that all employers are to be treated as H-1B dependent. Employers would now be able to seek a waiver on the bar on placements where there have been layoffs within 180 days before or after the date of employment, the H-1B nonimmigrant will not be controlled by the employer with whom the H-1B is placed and the placement of the H-1B is not “essentially an arrangement to provide labor for hire” for the employer where the worker is placed. DOL has seven days to respond to such waiver requests. DOL must issue rules implementing this section.

Section 544. Initiation of Investigations.

DOL’s requirement to only launch investigations when it has “reasonable cause” to believe an employer is not in compliance is modified to remove the reasonable cause language.

Makes it easier for DOL to launch an investigation based on anonymous complaints.

Now allows DOL employees to file complaints against employers. No longer will require investigations to be initiated based on information obtained from a non-DOL source or information obtained by the DOL in the course of another DOL investigation.

Also scraps the prohibition on consideration of information submitted in the I-129 petition as a basis for a DOL investigation.

DOL’s time to launch an investigation under this section is lengthened from 12 to 24 months.

DOL would not have to tell an investigated company that there is “reasonable cause” to investigate as part of the notice it provides employers in its investigation notification.

60 day limit on DOL to conduct investigation is eliminated. DOL will then give employers notice of its determinations and give the employers the opportunity for a hearing. After the hearing, if DOL finds a reasonable basis to believe that the employer has violated the requirements of this section, it will impose a penalty.

Section 545. Information Sharing.

Eliminates good faith defense for employers found to have violated the LCA rules. Eliminates defense on a prevailing wage violation that the wage calculated was consistent with recognized industry standards and practices.

Adds provision requiring USCIS to provide DOL with any information contained in the H-1B application when there is information showing an employer is not complying with the program requirements.

Section 546. Conforming Amendment.

Eliminates a sentence that refers to dependent employers since all employers are now considered dependent.

Subtitle C – Other H-1B Provisions

Section 551. Posting Available H-1B Positions Through the Department of Labor.

Eliminates H-1B dependent qualification rules since all employers will be considered dependent. Replaced with provision requiring DOL to create within 90 days of enactment of the H-1B and L-1 Visa Reform Act of 2009 (presumably Gutierrez failed to change the reference to CIR ASAP) a web site for posting H-1B positions.

Section 552. H-1B Government Authority and Requirements.

Employers may not withhold immigration petitions, notices and other written communications from workers. Employers will have 21 days to provide the information after a written request is received.

Within a year after the date of enactment, the Comptroller General of the US shall prepare a report on the DOL's job classification and wage determination system.

Section 553. Additional Department of Labor Employees.

DOL is authorized to hire an additional 200 employees to manage the H-1B program and will get the necessary appropriation.

Chapter 2 – L-1 Nonimmigrants

Section 561. Prohibition on Outplacement of L-1 Non-Immigrants.

Modifies the rules for L-1Bs working at third party sites. Now says that unless an employer gets a waiver, it cannot employ an L-1B if the employee will be at a third party worksite. Current rule permits third party placement as long as the worker is not being controlled by the worksite employer and the work is essentially labor for hire for the unaffiliated employer. To get a waiver, the employer must show the

worker will not displace US workers at the work site in the 180 days before and after the placement, the worker will not be controlled and supervised by the employer at the at the worksite and the placement is not essentially labor for hire for the unaffiliated employer. DHS will have seven days to make decisions on such waiver requests. DHS must issue rules implementing this section.

Section 562. L-1 Employer Petition Requirements for Employment at New Offices.

For L-1s coming to open a new office, the petition may be approved for up to a year only if the worker has not been the beneficiary of two or more L-1 petitions in the preceding two years and the employer has

- An adequate business plan
- Sufficient physical premises to carry out the business activities
- The financial ability to commence doing business immediately upon approval of the petition

An extension may not be approved until the employer submits an application to USCIS that has

- Evidence that the beneficiary is eligible for L-1 status
- A statement summarizing the original petition
- Evidence that the employer has fully complied with the business plan in the original petition
- Evidence that the employer, for the whole approval period, has been doing business at the new office through regular, systematic and continuous provision of goods and services
- A statement of the duties performed at the new office during the initial approval period and the duties to be performed during the extension period.
- A statement describing the staffing at the new office
- Evidence of wages paid to employees
- Evidence of the financial status of the new office
- Any other evidence DHS shall require

DHS may approve a subsequently filed petition beyond the twelve months if the employer has been doing business at the new office for six months preceding the extension application if the employer shows that the failure to operate for 12 months was due to extraordinary circumstances.

Section 563. Cooperation with Secretary of State.

A new Section 214(c)(2)(H) is added that says DHS will work with DOS to verify the existence or continued existence of a company or office in the US or in the foreign country.

Section 564. Investigation and Disposition of Complaints Against L-1 Employers.

A new Section 214(c)(2)(I) is created giving DHS the ability to initiate investigations of employers with regard to L-1 compliance. If USCIS receives “specific credible information” from a source who is “likely to have knowledge of an employer’s practices, employment conditions, or compliance”, it may conduct an investigation into the employer’s compliance with the L-1 requirements. DHS may keep the source’s identity confidential from the employer.

DHS must set up a complaint procedure including creating a complaint form.

DHS can only investigate violations occurring in the prior 24 months. Before starting an investigation, DHS must provide a notice to the employer of the intent to investigate along with details sufficient to allow the employer to respond to allegations before the investigation starts. If USCIS determines that a reasonable basis exists to make a finding of a violation, DHS shall provide the interested parties with notice of the determination and an opportunity for a hearing not later than 120 days from the date of the determination. If there's a hearing, DHS will have 120 days from the hearing date to make a finding and impose a penalty if there is a violation.

DHS may conduct surveys of the degree of compliance with the L-1 rules.

DHS shall conduct annual compliance audits of at least 1% of employers and annual audits of all employers with at least 100 employees with at least 15% working on L-1 visas. The public will have access to information on the general findings of the audits.

Section 565. Wage Rate and Working Conditions for L-1 Nonimmigrant.

A new Section 214(c)(2)(J) is created which says that for employers hiring L-1s for more than a year, the L-1 must pay the worker the higher of the local prevailing wage, the median average wage for all workers in the occupational classification in the area of employment and the Level 2 OES wage. The worker must also not have working conditions that will adversely affect the working conditions of similarly employed workers.

Employers covered under this section must provide DHS with W-2 forms with respect to the covered worker.

Employees covered under this provision may not be required to pay penalties for ceasing employment prior to the end of a contract. Also, employers must offer L-1s covered by this provision the same benefits offered its US workers. DHS must issue rules implementing this section.

Section 566. Penalties.

A new Section 214(c)(2)(K) is created that says that if DHS finds after a notice and hearing a failure to meet a condition for L-1 employment or a material misrepresentation of a fact in an L-1 petition, it shall impose fines up to \$2000 per violation. Employers can be debarred for up to a year from hiring L-1s and can be liable for paying lost wages and benefits. Willful failures and willful misrepresentations can be fined up to \$10,000 per violation and debarred for two years (plus pay lost wages and benefits).

Section 567. Prohibition on Retaliation Against L-1 Nonimmigrants.

A new Section 214(c)(2)(L) is created that makes it illegal for employers to retaliate against whistleblowers.

Section 568. Technical Amendments.

“Secretary of Homeland Security” replaces “Attorney General” in each place in the statute.

Section 569. Reports on L-1 Nonimmigrants.

Adds L-1s to the reports DHS submits annually to Congress.

Section 570. Application.

The changes take effect for applications filed on or after enactment (reference to sections in bill language is incorrect and refers to sections in standalone bill).

Section 571. Report on L-1 Blanket Petition Process.

Within six months, the Inspector General of DHS shall submit a report to Congress regarding the use of blanket petitions and whether the process has adequate safeguards against fraud and abuse.

Section 572. Requirements for Information for H-1B and L-1 Nonimmigrants.

When H-1Bs and L-1s are issued visas, they are to be given a brochure outlining employer obligations, the employee’s rights and contact information for the appropriate federal departments. The employees will also be provided at this point a copy of their nonimmigrant petition. Applicants in the US will get this information will get this information from DHS.

Chapter 3 – Protection of H-1B Nonimmigrants

Section 581. Enforcement of Federal Labor Laws Relating to H-2B Nonagricultural Guest Workers.

Changes enforcing agency to DOL from DHS. Gives DOL the authority to impose penalties and seek injunctive relief to assure employer compliance with the H-2B rules.

Gives aggrieved workers a right to file a civil action against the employer.

The Legal Services Corporation is permitted to provide services to H-2B employees regarding H-2B violations.

Employers must notify DOL within 30 days of an H-2B employee’s termination and submit to DOL payroll records showing that the employer paid the required wage, transportation and other expenses.

Section 582. Recruitment of US Workers.

Adds new recruiting steps for H-2Bs. At least 14 days before filing the H-2B petition, the employer must submit a copy of the job offer, including the wage and other conditions of employment, to the SWA. The SWA will post the job on America's Job Bank, with local job banks and with unemployment agencies and recruitment sources. The SWA will be authorized to notify the State Federation of Labor in the state and the office of the local union representing employees in the same or substantially equivalent job classification.

The employer must post the job notice in "conspicuous" locations at the place of employment.

The job listing must be advertised in a publication with the highest circulation in the labor market for at least five consecutive days. Based on a recommendation from the local job service, the employer must advertise in professional, trade or local minority and ethnic publications likely to be read by potential workers.

Employers must offer the job to any US worker who applies, is qualified and available at the time of need. Records of recruitment must be maintained for three years after the employment relationship is terminated.

H-2B employers must certify that they have not made a job offer to a US worker imposing restrictions not imposed on H-2B works, the employer has complied with the recruiting requirements, the employer will offer an H-2B nonimmigrant at least the same benefits and working conditions provided US workers similarly employed in the same occupation at the same actual place of employment, that there is no labor dispute at the place of employment in the same occupation as the H-2B, that the employer will comply with all laws relating to the right of workers to unionize, the employer has provided notice of filing an H-2B to the bargaining representative of employees in the same occupation or has posted a notice of filing if there is no such bargaining representative and the job requirements represent that actual minimum requirements applicable to the job.

Qualifying US workers who apply before the date 30 days before the date the H-2B is scheduled to begin work must be hired.

DOL must provide information about H-2B applications to US workers, nonprofits or unions within 48 hours after requests for information.

Section 583. Prevailing Wages for United States Workers and H-2B Workers.

A new Section 212(w) is created stating that an employer cannot bring in an H-2B worker unless the DOL certifies the employer is offering the wage set forth in a collective bargaining agreement, or if there is no collective bargaining agreement, the job pays wages higher than

- The wage determination issued under the Davis-Bacon Act
- The wage issued under the Service Contract Act
- The median rate of the highest 66th of the wage data published under the most recently published OES Survey compiled by BLS
- A wage that is 150% of the minimum wage

An employer may not appeal a DOL decision on wages unless US workers and their unions are given the opportunity to submit contrary evidence or appeal that such required wages are too low.

An employer may not hire an H-2B unless the real prevailing wages are at least 3% higher than wages shown in the preceding year's OES data. Or the employer offers to pay H-2B workers or US workers at least 3% more for the preceding year after adjusting for inflation under the OES.

Section 584. Certification Requirement.

A new Section 214(c)(14)(G) has been created that says employers will not be approved H-2Bs unless the employer certifies to DOL that the employer has not issued a mass layoff notice under the Worker Adjustment and Retraining Notification Act in the prior year and the employer does not intend to provide a WARN notice. If employers do provide a WARN notice, all current H-2Bs are to have their priority dates expire 60 days after the date the notice is provided. Employers are exempt if they provide certification that the total number of US workers will not be reduced as a result of the layoff. Note that there is no exception if the laid off workers are in jobs completely unrelated to the H-2B occupations.

Section 585. Protection for Workers.

A new Section 214(c)(14)(J) is created requiring employers to reimburse H-2B workers for the reasonable transportation costs incurred by the worker to reach the job site and to return home.

Workers must be guaranteed employment for at least 75% of the workdays of the total periods during which the work contract and all extensions are in effect. Employers have to pay the workers the difference in pay which they would have earned if they hit the 75% guarantee. "Workday" means a day in which the worker is offered the number of hours stated in the job order and excludes the worker's Sabbath and Federal holidays. Employers cannot meet this new requirement by making the employee work longer hours on particular days than the hours specified on the job order.

Employers must provide workers' compensation.

Section 586. Petitions By Employers That Have Signed Labor Agreements With Unions That Operate Hiring Halls.

A new INA Section 212(v) is created that says that an employer can file an H-2B if the employer has signed a labor agreement with a labor union under which the union is responsible for referring applicants for employment to the employer under a procedure commonly known as a "hiring hall" or "referral hall" and the H-2B application has a letter from the union stating that the union operates a hiring hall and is a source of employees in the occupation that's the subject of the H-2B application and that the union does not have a sufficient number of qualified applicants, that the union has advertised for five consecutive days the availability of the job paying a wage that is the same as set forth in the labor agreement with the union and that the H-2B workers who are to be employed will be paid at least the same wages and benefits set forth in the labor agreement with the union. [Note: The bill language refers to an older standalone bill and needs to be corrected.]

Section 587. H-2B Nonimmigrant Labor Certification Application Fees.

DOL shall impose a fee on H-2B employers on or 30 days after the date of enactment. During the initial 30 days after enactment, the fee will be \$800 and will be adjusted thereafter to ensure DOL recoups the full costs of adjudicating the case. Employers may not pass this fee on to workers or be subject to a \$5000 per violation fine.

DOL may issue rules that include procedures under which employers are barred from using the labor certification process.

[Note: The bill language refers to an older standalone bill and needs to be corrected.]

Chapter 4 – Adjustments to the EB-5 Visa Program

Section 591. Permanent Reauthorization of EB-5 Regional Center Program; Application Fee.

The EB-5 program is permanent reauthorized.

USCIS is authorized to charge a \$2500 fee for EB-5 regional center designation applications and the fees must be used to adjudicate the applications. USCIS shall have 120 days to issue rules to implement this, but the rule takes effect immediately.

Section 592. Premium Processing Fee for EB-5 Immigrant Investors.

USCIS shall offer premium processing for EB-5 applicants. A 60 day adjudication will be guaranteed and the fee shall be \$2500.

Section 593. Concurrent Filing of EB-5 Petitions and Applications for Adjustment of Status.

Regional center-based EB-5 petitions may have the I-526 and I-495 adjudicated concurrently if a visa number is available.

Section 594. Improved Set-Aside For Targeted Employment Areas.

In addition to rural areas and areas with unemployment at 150% of the national average, TEAs now include counties that have had a 20% or more decrease in populations since 1970, an area within the boundaries of a State or Federal economic development incentive program (including Enterprise Zones, Renewal Communities and Empowerment Zones), and areas designated by a state agency that has received authorization from the governor to designate TEAs within the state.

The definition of “rural” is changed to remove the restriction on being in a metropolitan statistical area.

TEAs shall retain their designation for at least two years beginning on the date of the determination for EB-5 purposes.

Section 595. Set-Aside of Visas for Regional Center Program.

The regional center cap is raised from 3,000 to 10,000.

Section 596. Extensions.

USCIS shall permit an extension on the requirement to file for the removal of green card conditions if the applicant can show he or she has attempted to follow his or her business model in good faith, provides an explanation for the delay in filing that is based on circumstances outside the applicant's control, and demonstrates that such circumstances will be able to be resolved in the requested extension period. Extensions of up to two years may be requested.

Section 597. Study.

DHS shall conduct a study of current job creation counting methodology and initial job projections as well as how best to promote the EB-5 program overseas to potential investors. The study results must be reported to Congress within a year of enactment.

Section 598. Full-Time Equivalents.

The definition of full-time employment is expanded to include employment representing the number of full-time employees that could have been employed if the reported number of hours worked by part-time employees had been worked by full-time employees. This is calculated by dividing the part-time hours by the standard number of hours for full-time workers.

Section 599. Eligibility for Adjustment of Status.

Extends INA Section 245(k)'s forgiving status violations less than 180 days to EB-5 applicants.

Section 599A. Expansion of EB-5 Eligibility to Include Qualified Immigrants Who Complete Investment Agreements.

Two new types of enterprises are included in the EB-5 category:

- The alien has completed an investment agreement with a qualified venture capital operating company for an investment in the enterprise for the required amount
- The alien has completed an investment agreement with one or more angel investors for an investment in an enterprise for the required amount

The requirement for these two new types of enterprises is five full-time jobs for USCs or LPRs or other immigrants authorized to be employed in the US (other than family of the investor).

These two investment types will only have a \$500,000 minimum investment threshold.

A “Qualified Venture Capital Operating Company” is defined as one that is registered under the Investment Company Act of 1940 or is an investment company that is exempt from registration and is organized in the US and the majority ownership is comprised of USCs or LPRs or is owned or controlled by an entity organized in the US with majority ownership comprised of USCs and LPRs.

An “Angel Investor” is defined as any individual who is a USC or LPR or any entity wholly owned by a USC or LPR who has made five angel investments of at least \$500,000 during the three years preceding the completion of the investment agreement.

“Angel Investment” means an investment made in a commercial enterprise that was not owned or controlled by the investor, any member of the investor’s family or any entity owned or controlled by the investor or a member of his or her family.

The petition will be denied if the alien did not create the minimum number of jobs or generate a profit and at least \$1,000,000 in revenue.

Chapter 5 – Effective Date

Section 599B. Application.

Except when otherwise specified, the provisions in this section shall apply to applicants filed on or after the date of enactment.

TITLE VI – INTEGRATION OF NEW AMERICANS

Subtitle A – Citizenship Promotion

Section 601. Immigration Service Fees.

DHS will set fees for providing immigration services at a level that will ensure recovery of the full costs of providing such services.

Fees may not be increased by DHS above the fee on the day the bill is introduced [Note – the bill incorrectly refers to a standalone bill rather than CIR ASAP] until DHS submits a report to Congress identifying the overhead costs associated with providing immigration services and distinguishes such costs from immigration enforcement and national security costs. The report should also provide data on the costs allocated to premium processing for business customers and whether that fee is adequate to ensure recovery of those costs. Fees may not be raised for at least 45 days after the report is provided to Congress.

DHS may waive any fees if the applicant can show that he or she is unable to pay the fee. The 245(i) fee may not be waived. Fee waiver applicants must show that within the past 180 days, the applicant received public benefits or that his or her annual income is at or below 125% of the poverty level.

Section 602. Administration of Tests for Naturalization; Fulfillment By Elderly Persons of Requirement For Naturalization Relating To Knowledge of English Language.

A uniform citizenship test must be administered. Questions may be varied for each applicant depending on the age of the applicant, the education level of the applicant, the amount of time the applicant has been in the US and the efforts made by the applicant to acquire the knowledge required to pass the test. DHS can come up with additional factors.

The elderly exemption from the English test is extended to individuals over 60 who have been living in the US for at least five years after being admitted as a permanent resident.

Section 603. Voluntary Electronic Filing of Applications.

DHS may not require applicants for permanent residency or citizenship to e-file any application or use a customer account.

Section 604. Timely Background Checks.

The Comptroller General of the US shall conduct a study on background checks in citizenship applications. The report shall be issued within a year of enactment and annually thereafter. The report should discuss the number of background checks, the types of checks, the average time spent on each type of check, and a discussion of the obstacles leading to delays in completing the checks. The report should also discuss whether DOJ name checks just duplicate other background checks.

DOJ and DHS shall seek to complete background checks within 90 days. After 90 days, the agencies must document why they have failed to meet the 90 day test and after 181 days, the agencies will have 30 days to submit a report to Congress explaining the delay and when the check will be complete. The agencies also must submit an annual report to Congress regarding background check delays.

Section 605. National Citizenship Promotion Program.

Within six months of enactment, DHS shall establish a program to assist people in becoming citizens (known as the “New Americans Initiative”). DHS will award grants and carry out outreach initiatives to meet the mission.

Grants will be awarded for activities to help LPRs become citizens including –

- Conducting English classes
- Providing legal assistance,
- Carrying out outreach activities
- Assisting aliens with applications to become citizens, as allowed by federal and state law

Only non-profits can become eligible for grant funds.

DHS shall make outreach materials available to encourage people to apply for citizenship and make the materials available through public service announcements, ads and other media.

Subtitle B – Miscellaneous

Section 611. Grants to Support Public Education and Community Training

The Attorney General may provide grants to organizations interested in the provisions of this Act. The funds are to be used for education and training.

Section 612. Grant Program to Assist Applicants For Naturalization.

This section calls for the creation of a program to provide grant funds to provide funds to community-based organizations to provide assistance with blue card, adjustment of status and naturalization applications.

Section 613. Naturalization For Certain U.S. High School Graduates.

For DREAM Act recipients (see Section 312(a) of CIR ASAP), if the person is under 25 years of age on the date the person applies for naturalization and presents transcripts showing completion of grades six through 12 and a high school diploma and a curriculum showing knowledge of US civics, the English and civics knowledge requirement for naturalization shall be deemed to have been met and the application fee will be reduced by 50%. Regulations implementing this provision must be issued within six months of enactment.

Section 614. Family Integration.

Reduces from 21 to 18 the age a US citizen must be to sponsor a parent for permanent residency.

Section 615. Consideration for Domestic Resettlement of Refugees.

Environmental and geographic factors should be considered when determining the location for resettling a refugee.

Section 616. Credits for Teachers of English Language Learners.

Tax credits will be allowed for teachers of ESL teachers of \$1500 for each of five years the taxpayer is allowed a tax credit under this section and \$1000 for any other taxable year. Part-time ESL teachers are eligible for a lesser credit. [Note: The amounts for the tax credit appear to have changed because the part-time tax credit section does properly reference the full-time teacher tax credit].

ESL teachers will also be eligible to deduct expenses related to attending certain courses for certification or licensure as an ESL teacher. This provision will expire 12/31/2014.

Regulations must be issued by the Treasury Department within six months. These provisions apply to tax years beginning after 12/31/2009.

Section 617. Credits for Employer-Provided Adult English Literacy and Basic Education Programs.

20% of qualified education program expenses up to \$1000 per full-time employee participating may be credited against an employer's owed taxes when the employer covers English and basic study expenses for employees who are English language learners who have not received a secondary school diploma or who lack mastery of basic educational skills including financial literacy.

Section 618. Grants to States to Form New American Councils.

The Office of Citizenship and Immigrant Integration is authorized to provide grants to states to form New American Councils. These councils shall be comprised of representatives from business, faith-based organizations, civic organizations, philanthropic leaders, nonprofits, educational stakeholders, government education offices, libraries, and other government entities.

[Note: There are incorrect section references to a standalone bill in this section].

Section 619. Independence Day Ceremonies for Oaths of Allegiance.

DHS shall get additional funds to enable more naturalizations be conducted on the Fourth of July.