


Summary of STRIVE – THE SECURITY THROUGH REGULARIZED IMMIGRATION AND A VIBRANT ECONOMY ACT OF 2007 (the House Comprehensive Immigration Reform Bill)

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*On March 22, 2007, Congressman Luis Gutierrez (D-IL) and Jeff Flake (R-AZ) introduced the House’s comprehensive immigration reform bill for 2007.*

*This is a summary of the provisions of this 697 page bill. The light blue highlights show differences from S.2611, the bill the Senate passed last year and which is likely to be introduced again shortly.*

 = changes from S.2611, the Senate comprehensive immigration reform bill passed in 2006.

Section by Section Summary of the STRIVE Act of 2007

**Sec. 1. Short title; table of contents.**

The title of the bill is Security Through Regularized Immigration and a Vibrant Economy Act of 2007.

**Sec. 2. Reference to the Immigration and Nationality Act.**

References to amendments or appeals are referring to the Immigration and Nationality Act.

**Sec. 3. Definitions.**

“Department” means Department of Homeland Security.

“Secretary” means Secretary of Homeland Security.

**Sec. 4. Severability.**

If any part of the bill is invalidated, the rest of the bill is unaffected.

**Sec. 5. Certification requirements prior to implementation of the New Worker Program and the conditional nonimmigrant classification.**

This is a new “triggers” section which bars DHS from implementing either the new guest worker or conditional non-immigrant worker (part of the legalization program) provisions until the following conditions are met:

1. Secure Border. DHS submits a report on the status of implementation of the border surveillance technology improvements called for in the Secure Border Initiative including target dates for completing them.

2. Secure Documents. The systems and infrastructure needed to make improvements to immigration documents that will be issued under the new guest worker and conditional non-immigrant programs have been developed, tested and are ready for use. Infrastructure needed for FBI security checks must be in place.

3. Electronic Employment Eligibility Verification System. The first phase of the new system (applicable to critical infrastructure employers) has been implemented

## **TITLE I—BORDER ENFORCEMENT**

### **Subtitle A—Assets for Controlling United States Borders**

#### **Sec. 101. Enforcement personnel.**

Over five year period, increases port of entry inspectors by 500. Authorizes appropriations for this.

Increase in Border Patrol numbers as follows:

2008 – 2,000  
2009 – 2,400  
2010 – 2,400  
2011 – 2,400  
2012 – 2,400

This is one year less than S.2611.

20% of the net increase shall be assigned to the US-Canada border.

Number of ICE investigators to increase by 1000 instead of the 800 called for in 2004 law.

200 additional personnel to investigate alien smuggling.

50 additional US Marshalls.

Establishment of program to recruit former military personnel to CBP.

#### **Sec. 102. Technological assets.**

Requires issuance of a report to be issued on the use of Defense Department equipment. The report should assess the risks to US citizens associated with using the equipment. Also, the use of Defense Department equipment authorized in Section 102 does not alter the prohibition on using the Army or Air Force for border patrol work.

**Sec. 103. Infrastructure.**

DHS shall build all-weather roads and buy vehicle barriers and facilities needed to get operational control over the borders.

**Sec. 104. Ports of entry.**

Authorization to build additional ports of entry.

**Sec. 105. Secure communication.**

DHS must develop a plan to use satellites and other technologies to improve two-way communications between officials of all border security officials and agencies.

**Sec. 106. Unmanned aerial vehicles.**

DHS shall acquire unmanned aerial vehicles and related equipment. Authorizes appropriations.

**Sec. 107. Surveillance technologies programs.**

DHS must develop “Integrated and Automated Surveillance Program” and issue report within a year.

**Subtitle B—Border Security Plans, Strategies, and Reports**

**Sec. 111. Surveillance plan.**

DHS shall develop comprehensive plan for surveillance of land and maritime borders.

**Sec. 112. National Strategy for Border Security.**

DHS shall develop a National Strategy for Border Security that describes actions to be carried out to achieve operational control over all ports of entry into the US and the land and maritime borders.

**Sec. 113. Reports on improving the exchange of information on North American security.**

Within a year, Secretary of State, in consultation with DHS and other agencies, shall issue a report on improving inter-agency communication.

**Sec. 114. Border Patrol training capacity review.**

Comptroller General of the US shall conduct a review of the training of Border Patrol agents to ensure such training is provided efficiently and effectively.

**Sec. 115. Secure Border Initiative financial accountability.**

The Inspector General of DHS shall conduct oversight of all Secure Border Initiative contracts worth more than \$20,000,000.

**Subtitle C—Southern Border Security**

**Sec. 121. Improving the security of Mexico's southern border.**

The Secretary of State shall work with her counterparts in Canada and Mexico to assess the needs of Central American countries in securing their borders and to assist those countries with such security. DOS, DHS and the FBI are to set up a program to track Central American gang members.

**Sec. 122. Report on deaths at the United States-Mexico border.**

Requires CBP to collect data on the causes of death and the total number of deaths. A report must be produced annually on this that analyzes trends and recommends actions.

**Sec. 123. Cooperation with the Government of Mexico.**

Requires the State Department and local, state and federal law enforcement officials to cooperate with the Mexican government to improve border security, reduce human trafficking, reduce drug smuggling, reduce gang membership, reduce violence against women and reduce other criminal activity. US officials are also to work with the Mexican

government to help educate people on the new immigration laws and to work to encourage circular migration. US officials are also to consult with Mexican government officials on fencing and border security structures. An annual report on this section must be submitted to Congress.

**Sec. 124. Temporary National Guard support for securing the southern land border of the United States.**

Governors may authorize National Guard troops to train and provide specifically listed activities at the border for up to 21 days per year. DHS shall coordinate.

**Sec. 125. United States-Mexico Border Enforcement Review Commission.**

A new independent bipartisan commission called the US-Mexico Border Enforcement Review Commission shall be set up to study overall enforcement and detention strategies, programs and policies of federal agencies along the US-Mexico border and make recommendations to Congress. The USMBERC is to issue a report within two years.

**Subtitle D—Secure Entry Initiatives**

**Sec. 131. Biometric data enhancements.**

This section requires DHS to integrate biometric databases by December 31, 2008.

**Sec. 132. US-VISIT System.**

Mandates DHS submit a timeline for the extension of the US-VISIT exit-entry system to all ports of entry.

**Sec. 133. Document fraud detection.**

DHS will provide CBP officers with training in identifying and detecting fraudulent travel documents. Inspector General shall conduct an independent assessment of the Forensic Document Laboratory.

**Sec. 134. Improved document integrity.**

All immigration-status documents, other than interim documents, issued by DHS must be machine-readable, tamper resistant and incorporate biometrics by December 31, 2008.

**Sec. 135. Biometric entry-exit system.**

Permanent residents would now be required to provide biometrics upon entry and exit from the US just like non-immigrants. Failure to comply will be a new ground for inadmissibility.

**Sec. 136. Evasion of inspection or violation of arrival, reporting, entry, or clearance requirements.**

Subjects people who attempt to elude or fail to obey a command to stop issued by a US official at a port of entry or checkpoint to prison terms of three to ten years depending on whether violence is used or not.

**Subtitle E—Law Enforcement Relief for States**

**Sec. 141. Border relief grant program.**

DHS authorized to issue grants to local law enforcement agencies near the border to combat crime.

**Sec. 142. Northern and southern border prosecution initiative.**

DOJ may reimburse local prosecutors for taking on drug-related cases.

**Subtitle F—Rapid Response Measures**

**Sec. 151. Deployment of Border Patrol agents.**

Allows border state governors to declare an emergency in order to request up to 1,000 additional border patrol agents. border state governors to declare an emergency in order to request up to 1,000 additional border patrol agents.

**Sec. 152. Border Patrol major assets.**

Requires that the Border Patrol have control over all assets used in carrying out its mission. Calls for increasing assets like helicopters, power boats and motor vehicles for Border Patrol agents.

**Sec. 153. Electronic equipment.**

Section 163 calls on adding new electronic equipment such as computers, radio and communications equipment, GPS devices and night vision equipment.

**Sec. 154. Personal equipment.**

Calls for issuing border patrol agents with body armor, reliable weapons and adequate uniforms.

**Sec. 155. Authorization of appropriations.**

Authorizes appropriations under this Subtitle from FY 2008 through FY 2012.

**Subtitle G—Border Infrastructure and Technology Modernization**

**Sec. 161. Definitions.**

Definitions of “Commissioner” of Commissioner of CBP, “northern border” and “southern border.”

**Sec. 162. Port of Entry Infrastructure Assessment Study.**

Calls for the Administrator of General Services to annually update a Port of Entry Infrastructure Assessment Study prepared by BP. The report will cover port of entry infrastructure and technology improvement projects and projects identified in a National Land Border Security Plan (the NLBSP). The NLBSP shall include a vulnerability assessment for each port of entry at both borders. DHS will also establish one or more port security coordinators at each border.

**Sec. 163. National Land Border Security Plan.**

Within a year, DHS will consult with law enforcement authorities around the country and submit a National Land Border Security Plan to Congress. The plan will review the vulnerabilities of each port of entry on the northern and southern borders. DHS will appoint “port security officers” at each port.

**Sec. 164. Expansion of commerce security programs.**

Within six months, CBP will develop a plan to expand the programs of the Customs-Trade Partnership Against Terrorism under the SAFE Port Act including adding extra personnel for the programs along the US land borders including the Business Anti-

Smuggling Coalition, the Carrier Initiative Program, the Americas Counter Smuggling Initiative, the Container Security Initiative and the Free and Secure Trade Initiative.

Within six months, CBP shall implement one of these programs previously implemented on the northern border along the southern border. And also within six months, CBP shall set up a demonstration program to develop a cooperative trade security system to improve supply chain security.

#### **Sec. 165. Port of entry technology demonstration program.**

DHS will set up a technology testing program to enhance port operations at three to five demonstration sites. Training programs for law enforcement personnel will be conducted at one of the demonstration sites.

#### **Sec. 166. Authorization of appropriations.**

Provides for funding to carry out the programs in Subtitle G.

### **Subtitle H—Safe and Secure Detention**

#### **Sec. 171. Definitions.**

Defines “asylum seeker” means one seeking asylum or withholding of removal or a person indicating an intention to apply. Does not include denied individuals. Defines “credible fear of persecution,” “detainee,” “detention facilities,” “reasonable fear of persecution or torture,” “standard,” “vulnerable populations (includes asylees, refugees and those receiving withholding of deportation, Convention Against Torture applicants and trafficking victims, VAWA recipients and unaccompanied minors)”.

#### **Sec. 172. Recording secondary inspection interviews.**

DHS shall establish quality assurance procedures to ensure the accuracy of sworn statements taken by DHS officers exercising expedited removal authority. Interviews shall be taped. Professional interpreters are to be used when the officer is not fluent in the interviewee’s language.

#### **Sec. 173. Procedures governing detention decisions.**

Allows DHS to release someone on their own recognizance or as part of a new “secure alternatives program.” Decisions to detain shall be given in writing. Decisions not to release shall be made within 72 hours of detention. The decision to detain shall be based on risks to the public, likelihood to appear at a hearing and any other relevant factors. A detainee may request a re-determination of the detention decision with an immigration

judge and all decisions to detain without bond or parole must be reviewed by an immigration judge within two weeks unless waived by the alien. A hearing may be requested later if there is a material change in the alien's situation. Allows release of certain aliens inadmissible because of criminal activity for humanitarian reasons.

If an Immigration Judge's custody decision is stayed by a DHS officer, the stay will expire in 30 days unless the BIA issues an order continuing the stay.

#### **Sec. 174. Legal orientation program.**

DHS and DOJ will establish a legal orientation program for detainees that will be administered by EOIR. DHS will expand public-private partnerships that seek to offer pro bono assistance for credible fear screenings (based on the pilot program in Arlington, VA).

#### **Sec. 175. Conditions of detention.**

DHS will ensure that detention facilities comply with new standards that will improve conditions. Standards should ensure detainees are not treated inhumanely or in a degrading way. Handcuffs, strip searches, shackling and solitary confinement should only be used if security makes them necessary. Grievance investigation procedures will be established. Access to phones will be provided and access to lawyers will be facilitated. To the extent practicable, detention facilities will be located near places where lawyers are more readily available. No-cost, quality medical care will be provided to all detainees and medical facilities in detention centers must meet federal standards. Facilities must have officers fluent in the detainee's language or translators must be made available. Daily access to recreational facilities must be provided.

New standards shall be set for non-criminal detainees including ensuring separation from criminals. Additional standards will also apply to "vulnerable populations" (defined in Section 171).

Personnel in detention facilities will be properly trained including training in the unique needs of vulnerable populations.

#### **Sec. 176. Office of Detention Oversight.**

A new Office of Detention Oversight shall be established at DHS to ensure detention facilities are meeting standards including conducting surprise inspections, receiving complaints, issuing reports and conducting investigations.

#### **Sec. 177. Secure alternatives program.**

DHS shall establish a secure alternatives program allowing detainees to be released under enhanced supervision to prevent the alien from absconding and to ensure the alien makes appearances related to such detention. This represents a nationwide expansion of the Intensive Supervision Appearance Program (ISAP).

**Sec. 178. Less restrictive detention facilities.**

DHS shall develop secure, but less restrictive facilities. The DHS detention facilities in Broward County, FL and Berks County, PA shall be models. New detention facilities shall be developed that are designed for families.

**Sec. 179. Authorization of appropriations; effective date.**

Funds authorized to be appropriated. This section will take effect six months after enactment.

**Subtitle I—Other Border Security Initiatives**

**Sec. 181. Combating human smuggling.**

Calls for creation of an interagency plan to connect databases used to prevent human smuggling, ensure adequate personnel training, effectively target smuggling networks and use tools like visas for victims.

**Sec. 182. Screening of municipal solid waste.**

Calls on CBP to develop better technologies to detect weapons in municipal solid waste.

**Sec. 183. Border security on certain Federal land.**

CBP will increase personnel placed on protected federal land in order to stop illegal border crossings and drug smuggling. CBP will also provide specialized training and equipment.

**TITLE II—INTERIOR ENFORCEMENT**

**Subtitle A—Reducing the Number of Illegal Aliens in the United States**

**Sec. 201. Incarceration of criminal aliens.**

Calls for DHS to continue to operate the Institutional Removal Program to identify criminal aliens in jail and then deport upon completion of the sentence. A provision from the Senate bill that would authorize state and local law enforcement authorities to incarcerate someone upon completion of their sentence while they wait on the person to be claimed by DHS has been removed.

**Sec. 202. Encouraging aliens to depart voluntarily.**

This section would tighten voluntary departure rules including shortening the affirmative voluntary departure period from 120 days to 60 days and the voluntary departure in removal proceedings from 60 to 45 days. The language from S.2611 calling for the voluntary departure applicant to waive the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal is not in this version. \$3000 fine for voluntary departure order violations. Six month phase in period.

**Sec. 203. Deterring aliens ordered removed from remaining in the United States unlawfully.**

Clarifies that attempt at reentering the US is penalized if the alien “seeks admission not later than five years after the date of alien’s removal” as opposed to “seeks admission within five years of the date of such removal”

**Sec. 204. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.**

Bars sale of guns to non-immigrants. A waiver is possible.

**Sec. 205. Uniform statute of limitations for certain Immigration, naturalization, and peonage offenses.**

The statute of limitations for all immigration related crimes would be made a uniform ten years.

**Sec. 206. Expedited removal.**

The section expands the circumstances under which expedited removal is permitted.

**Sec. 207. Field agent allocation.**

DHS must allocate at least 40 full-time active duty Immigration and Customs Enforcement agents to each state. The provision also requires DHS to place at least 15 USCIS agents in each state to carry out immigration and naturalization adjudications. DHS has the authority to waive these provisions if a state has a population of less than 2,000,000. Provision from S.2611 requiring the completion of any visa or status processing by DHS and the Justice Department be barred while background and security clearances are pending has been removed.

**Sec. 208. Streamlined processing of background checks conducted for immigration benefit applications and petitions.**

DHS will set up an interagency task force to work on resolving cases that have been delayed more than two years due to background checks. Funds are authorized as necessary to handle background checks. The FBI must prepare a report for Congress on background check delays within 180 days of enactment of the law. Cases may not be approved until background checks have been completed, but USCIS is not to take more than 180 days to clear a background check unless DHS certifies that the background check may show that the alien poses a security risk. The Assistant DHS Secretary must review the delay every 180 days. No appeal can be made of the decision to delay, but an alien will be eligible for interim employment authorization while waiting.

DHS and DOJ shall establish a Public Advocate for Immigration Clearances within DOJ that will serve as a public liaison for resolving background check delays.

**Sec. 209. State criminal alien assistance program.**

Authorization to reimburse states for costs associated with incarcerating criminal aliens extended.

**Sec. 210. Transportation and processing of illegal aliens apprehended by State and local law enforcement officers.**

This section requires DHS to provide state and local law enforcement authorities with sufficient transportation and officers to take illegal aliens into custody for processing at a detention bill.

**Sec. 211. Reducing illegal immigration and alien smuggling on tribal lands.**

DHS may award grants to Indian tribes with lands adjacent to land borders to cover costs associated with illegal immigration (law enforcement, environmental cleanup, etc.). Funding authorized until 2011.

**Sec. 212. Mandatory address reporting requirements.**

Authorizes electronic address change reporting (this is already happening). Bars use of post office box in address notification. Special requirements may be provided for aliens in remote locations and those incarcerated. Aliens in immigration detention are not responsible for submitting address change notifications. A database must be established to track address reporting information.

**Sec. 213. State and local Enforcement of Federal Immigration laws.**

This section requires DHS to reimburse state and local governments for training related to the enforcement of federal immigration laws.

**Sec. 214. Increased criminal penalties related to drunk driving.**

Creates a new ground of inadmissibility and deportability for persons convicted three times of drunk driving, one of which is a felony under state or federal law and for which the alien was sentenced for one year or more. Persons are to be given a warning in court of the consequences of pleading guilty to a drunk driving offense.

**Sec. 215. Law enforcement authority of States and political subdivisions and transfer to Federal custody.**

This section increases areas of cooperation between federal immigration enforcement authorities and the states. The section includes provisions stating the inherent authority to arrest and transfer to Federal custody any alien for the purpose of assisting in the enforcing criminal immigration law provisions.

**Sec. 216. Laundering of monetary instruments.**

This section adds alien smuggling and related activities to the list of crimes the financial proceeds of which are subject to money laundering statutes.

**Sec. 217. Increase of Federal detention space and the utilization of facilities identified for closures as a result of the Defense Base Closure Realignment Act of 1990.**

This section requires, subject to appropriations, DHS to construct at least twenty detention facilities in the US to house at least 20,000 individuals.

**Sec. 218. Determination of immigration status of individuals charged with Federal offenses.**

This section requires that within two years, US Attorneys must be determining the immigration status of defendants.

### **Sec. 219. Expansion of the Justice Prisoner and Alien Transfer System.**

This section expands the Justice Prisoner and Alien Transfer System (JPATS). The expansion will include increasing the use of buses and air hubs in three geographic regions, allocating a set number of seats for affected aliens in each metropolitan area, and allowing metro areas to trade seats depending on their needs.

### **Sec. 220. Cancellation of visas.**

Expands INA Section 222(g) to void all non-immigrant visas of alien and not just the particular visa that is the subject of the overstay. Those subject to 222(g) will now be able to process in country of last residence and not just country of nationality.

## **Subtitle B—Passport and Visa Security**

### **Sec. 221. Reform of passport fraud offenses.**

This section creates a number of new offenses related to producing fraudulent passports including producing fraudulent passports, trafficking in such passports, or dealing or possessing passport material. Also creates new criminal penalties for making false statements in a passport application. If the crime occurs outside the US, the prosecution would happen in the place where the passport is produced. Criminalizes fraudulent use of a valid passport. Creates new crimes for fraudulently applying for or using an immigration document or employment document or trafficking in such documents.

### **Sec. 222. Other immigration reforms.**

The US Sentencing Commission is directed to review immigration and passport crimes and review sentencing guidelines to reflect the serious nature of the offenses. Creates exemptions for asylees who engage in fraud to get in to the US.

## **Subtitle C—Detention and Removal of Aliens Who Illegally Enter or Remain in the United States**

### **Sec. 231. Detention and removal of aliens ordered removed.**

Aliens may be detained longer than 90 days if an attempt is made to contact DHS by the jail. And a longer detention may be allowed if the alien is making efforts no to leave such

as not applying for a travel document. Provides for detention of aliens awaiting removal and the discretion to allow such individuals shall be considered for.

**Sec. 232. Increased criminal penalties for immigration violations.**

Bars receiving permanent residency when one has been found removable. Amends Section 216(e) which allows for those in conditional residency status to apply for citizenship. The amendment requires that the application to remove conditional status must be submitted within 90 days of applying for naturalization. Burden on the applicant to prove lawful admission as permanent resident.

**Sec. 233. Aggravated felony.**

Broadens the definition of aggravated felony to include any offenses described in the aggravated felony definition regardless of whether the offense was a state or federal violation and shall include foreign offenses where the imprisonment was completed within the past 15 years and regardless of whether the offense occurred before September 30, 1996. **Language from S.2611 including sentences tied to recidivism was dropped.**

**Sec. 234. Increased criminal penalties related to gang violence, removal, and alien smuggling.**

Creates new ground of inadmissibility for people convicted of certain gang-related crimes. This section would also transfer responsibility for Temporary Protected Status from the Attorney General to the Secretary of Homeland Security.

**Sec. 235. Illegal entry.**

Marriage fraud and EB-5 fraud for which the term of imprisonment is at least a year would now be aggravated felonies.

**Sec. 236. Illegal reentry.**

Provides for a two year sentence if an alien is deported and illegally reenters. Marriage fraud and EB-5 fraud for which the term of imprisonment is at least a year would now be aggravated felonies. Asylees convicted of aggravated felonies would no longer be eligible for waivers to adjust status to permanent residency. "Good moral character" would not apply in cases where a person is convicted of a crime that is not defined as an aggravated felony at the time it occurs but is later classified as an aggravated felony unless the crime is more than ten years old and the applicant is granted a waiver by DHS. Like S. 2611, clarifies that providing humanitarian assistance not a crime nor is providing transportation to a place to get assistance.

## TITLE III—EMPLOYMENT VERIFICATION

### Sec. 301. Employment verification.

Section 301 of the bill covers the unlawful employment of aliens. Employers would now be required to not only comply with I-9 rules, but also with a new Electronic Employment Verification System that is a permanent implementation of the basic pilot program that has been in existence for the last few years. DHS is also permitted to charge employers taxes tied to use of the system. This section also recognizes DOL's authority to investigate employers under the Fair Labor Standards Act of 1938.

Knowingly or hiring unauthorized workers carries tougher penalties than unknowingly hiring unauthorized workers. Employers who attempted in good faith to comply with the I-9 rules do have a defense, however, until electronic verification system participation is required.

Section 301 is amended to apply the new rule to employers who use contract workers knowing or recklessly disregarding that the workers are unlawful. **Unlike S.2611, this provision is not retroactive.**

**The bill creates a good faith defense for employers, including technical or procedural failures.**

The bill states that it should not be construed to authorize any sort of national identity card.

DHS may require an employer to certify employment verification compliance based on an internal review as an alternative to a DOL audit. An employer will be granted a 60 day deadline that may be extended in the discretion of DHS.

The employment verification system is significantly altered by now only allowing for a limited number of identification documents to work for employment verification purposes. For US citizens, documents that meet both identification and employment authorization will now only include US passports, a new biometric tamper-resistant, machine-readable passport, a REAL ID compliant driver's license. For permanent residents, dual id/employment documents are the green card and the biometric Social Security card (not the REAL ID driver's license). For everyone else, the only dual documents are the USCIS employment authorization card or the biometric SS card. DHS can also designate additional documents (which presumably will be necessary since work authorized non-immigrants will likely be unable to get the two documents listed in a timely manner in order to start work upon entry to the US). Special procedures are set out for minors unable to get the documents in this section. Special rules are also set out for disabled persons working at non-profits or as part of a rehabilitation program. DHS can also bar a document in this section if it finds it to be problematic.

The current system of allowing for a showing separate documents to prove identification and employment authorization is scrapped

Individuals must attest that they are a US national, permanent resident or alien authorized to work. The attestation may be verified by signature or electronically. The attestation and supporting documentation copy may be retained in paper or electronically.

Documentation must be retained for three years from the date of hire or one year from the date of termination. (S.2611 had a five years from the date of hire retention period). DHS can also allow a shorter retention period for certain classes of employers it may later determine. Employers are required to retain copies of supporting documents (currently this is voluntary). Receipts from the new employment verification electronic system must also be retained.

DHS will establish a national electronic employment verification system to determine identity and authorization to work. DHS will have six months from enactment to establish the system's technology standards. That deadline can be extended if DHS determines an extension would result in a substantially improved system. The new system should be developed in conjunction with other agencies like the SSA to ensure cross-agency integration.

Employers will be required to make an inquiry in the electronic system within five days of hire. DHS will respond within a day to either confirm eligibility or a tentative nonconfirmation. The process after nonconfirmation has been modified from the version in S.2611. Under STRIVE, DHS will notify the worker and will manually confirm eligibility to be employed. Under both S.2611 and STRIVE, the employer is notified and then must notify the employee who is then given 10 days to notify the employer. An individual now has 15 days to respond to a notice of nonconfirmation from either the employer or DHS and DHS will issue a decision within 30 days of such response either confirming eligibility or stating that nonconfirmation is final. If DHS fails to respond in 30 days, it must issue a confirmation. But DHS can later revoke this confirmation if it determines lack of eligibility. Employers are not permitted to terminate during the tentative nonconfirmation period. But employers must terminate when they receive a final nonconfirmation notification.

Workers will have the right to administrative and judicial review of a finding of nonconfirmation. An administrative appeal must be made within 60 days. If the employee prevails in the appeal based on something that is the fault of DHS, DHS must award the employee back wages (not including time the employee was ineligible to work). A judicial appeal may be made within 90 days of a final decision on an appeal to DHS. Back wages shall also be due if the appeal is won at the judicial level.

Employers are not liable for the noncompliance of subcontractors unless the employer had actual knowledge the contractor was employing workers illegally.

Workers will be allowed to check their status in the electronic verification system in order to ensure the information is correct or has been properly updated. And a provision is included requiring DHS to keep the records as up to date as possible.

Employers may only re-verify eligibility when employment authorization is expiring. DHS is to notify the employer not later than 30 days prior to expiration. The worker can

present a receipt showing a timely extension of employment authorization. If the extension is still pending 60 days after this, DHS shall issue a letter to the employee to present to the employer authorizing an additional 90 days to the employee to present the required document.

Employers at “critical infrastructure” locations (mainly government sites) must be re-verified once under the new system.

DHS must establish a 24 hour telephone hotline to deal with problems experienced by employers using the system.

Within a year, all “critical” employers - mainly government agencies – must be using the system. Within two years, all employers with more than 5,000 workers must be using the stem. Within three years, al employers at the 1000 to 5000 level must be using the system. And within four years, all employers must be using the system.S. 2611 required the system to be fully functional for everyone within 18 months. Any employer will be able to voluntarily use the system earlier than is required. DHS can seek to delay roll out of the system to any of these groups by providing notice to Congress.

Employers will not be required to verify employment for those casually employed in an employer’s home if the work is “sporadic, irregular, or intermittent.” Workers provided through contractor or temporary agencies don’t need to be verified (though the actual employer of such workers presumably would need to verify the worker’s eligibility). And independent contractors need not be verified.

Employers are insulated from lawsuits by employees for termination if they have followed the procedures. Government agencies are prohibited from using data from this system for anything other than verifying employment. No other agencies may access the data other than DHS and only officers responsible for verifying employment authorization.

The Comptroller General must issue a report within 21 months of enactment and then annually after that regarding the reliability of the system, the rate of employer compliance, the level of staffing and funding at DHS,

DHS may notify employers of violations and an intent to fine and the employer will be permitted to rebut such findings with DHS within 45 days. Employers found to have violated the rules will be penalized as follows:

- fines of \$500 to \$4000 per alien that is the subject of a violation
- fines of \$4000 to \$10,000 per alien if the employer has been fined once in the previous year for hiring illegal workers
- fines of \$6,000 to \$12,000 per alien if the employer has been fined more than once for hiring illegal workers
- recordkeeping violations of \$200 to \$2000 for each violation
- recordkeeping violations of \$400 to \$4000 per violation if the employer has been fined once in the previous year

- recordkeeping violations of \$6000 per violation if the employer has been fined once in the previous year

Employers will be permitted 30 days to correct purely paperwork violations where there appears no intention to hire illegal immigrants. DHS will also be able to impose additional penalties such as cease and desist order, specially designed compliance plans to prevent further violations and suspended. DHS can also reduce penalties on employers based on various factors including the employer's good faith attempt to comply with the law. Employers can appeal within 45 days and can recover costs and attorneys fees up to \$50,000 (though this number will be adjusted based on inflation).

Employers can be subjected to criminal penalties for knowing violations of up to \$20,000 per alien and three years imprisonment, or both. DHS can also seek court orders against an employer engaged in a pattern or practice of violations under this section.

If an employer fails to comply with a DHS order, DHS can file suit to enforce compliance after 45 days from the point of failing to comply with the DHS order.

Employers are barred from requiring employees to post indemnity bonds relating to potential liability under this section.

Employers found to be repeat violators under this section may be barred from government contracts for five years.

The provisions of this section preempt state laws designed to crack down on employers hiring undocumented immigrants and states may not use the federal verification system for purposes other than employer verification including verifying the legal status of renters, eligibility for benefits, enrollment in school, obtaining a license, receiving a government contract, etc.

DHS will establish an Office of Electronic Verification to work with the Social Security Administration to administer the verification program.

The Employer Compliance Fund called for in S.2611's Section 302 is not in STRIVE. That fund would be comprised of fines collected under this section and used to enforce and enhance worksite compliance.

### **Sec. 302. Clarification of ineligibility for misrepresentation.**

Changes the employment verification question to ask if a person is a "national" of the US instead of a "citizen." This is a correction of the "loophole" that has allowed individuals to avoid liability for a false claim to citizenship by claiming that they were potentially claiming to be nationals instead of citizens.

### **Sec. 303. Antidiscrimination protections.**

Extends INA's anti-discrimination provisions to the new electronic verification system. It shall be unlawful discrimination to terminate someone for being the subject of a tentative

nonconfirmation. Employers may not use the electronic verification system to screen an employee before the date of hire nor may they use the system to selectively exclude individuals based on an assumption they will require additional verification.

Fines for anti-discrimination violations are dramatically increased.

**Sec. 304. Additional protections.**

Adds “compensation, terms or conditions of the employment of the individual” to national origin and citizenship status as the basis for a discrimination claim.

Document abuse provision tightened to make it a violation to require too many documents even if the employer did not intend to violate the employer compliance rules.

Requires anti-discrimination complaints filed with the Special Counsel be filed within a year of the alleged act and that the Special Counsel begin investigating within 180 days.

Administrative Law Judges are given more discretion to craft remedies appropriate to the case.

**Sec. 305. Additional worksite enforcement and fraud detection agents.**

Calls for hiring of 2,200 more ICE personnel to investigate worksite violations over a five year period from enactment. At least 25% of ICE work hours are to be devoted to worksite enforcement.

**Sec. 306. Amendments to the Social Security Act and the Internal Revenue Code.**

Requires the Social Security Administration to set up a method to verify the name, date of birth, employer identification number, social security number and citizenship status of an individual as part of the new verification program. DHS must also provide a system where people can block their numbers from being used under the system in order to prevent fraud. SSA shall coordinate with DHS in issuing social security numbers for aliens.

Calls on SSA to share information with DHS on employers that receive large numbers of no match letters.

**TITLE IV—NEW WORKER PROGRAM**

**Sec. 401. Nonimmigrant worker.**

The controversial section 401 from S.2611 is removed. That section stated that any regulation that would increase the number of aliens eligible for legal status not take effect before 90 days after the date on which the Director of the Bureau of the Census submitted a report to Congress. The report would be made jointly with a number of departments of the Federal government and is to assess the impact of the bills increased immigrant numbers on the “infrastructure” and “quality of life in the United States.” The report must be submitted to Congress within 90 days after enactment of the new law.

Section 401 of STRIVE creates a new H-2C visa that is similar to the H-2C proposed in last year’s S.2611 bill. . This visa appears targeted to workers either outside the US or currently in legal status in the US. A separate guest worker program targeted at out of status workers is outlined in Title VI.

The visa is available to those coming to the US temporarily to perform temporary labor or services other than labor or services covered in H-1B, H-1B1, H-1C, H-2A, H-3, or L, O, P, or R visas (the H-2B visa is not listed here so presumably this visa can be used as an alternative to that visa. The requirement from S.2611 that the applicant must have a residence in a foreign country which the applicant has not intention of abandoning has been removed. In S.2611, the employer had to only show that no unemployed workers are available. STRIVE requires a showing that there are no US workers “who are able, willing and qualified” to perform the job,” a tougher standard since it presumably would cover employed workers immediately available to change to the new position.

Section 403 outlines the H-2C requirements. The employer must be capable of performing the services that are the subject of the petition. The worker must show that he or she has received a job offer from a qualified employer. The worker must pay a \$500 visa issuance fee in addition to the cost of adjudicating the petition (and this is in addition to consular reciprocal fees). Workers must have a medical examination at the worker’s expense. Workers must submit background information on health, criminal and security issues.

S. 2611 required that the visa become available 18 months after \$400,000,000 is appropriated to implement the electronic verification system described in Title 3 and shall apply to aliens outside the US on the effective date. S.2611 also required that rules must be released by DOL within six months of the enactment of the law. Nether one of these provision are in the STRIVE Act.

#### **Sec. 402. Admission of nonimmigrant workers.**

Section 402 outlines the H-2C requirements. The employer must be capable of performing the services that are the subject of the petition. The worker must show his or her evidence of employment including evidence from employers, employer associations and labor representatives. The worker must pay a \$500 visa issuance fee in addition to the cost of adjudicating the petition (and this is in addition to consular reciprocal fees). Workers must have a medical examination at the worker’s expense. Workers must submit background information on health, criminal and security issues.

DHS may waive in admissibility in certain cases where there are humanitarian, public policy or family unity reasons to consider (S.2611 limited such waivers to conduct that occurred before enactment of the comprehensive bill).

H-2Cs are available for an initial term of up to three years with a one time renewal for three more years. The S.2611 requirement barring changes of non-immigrant status has been removed. Commuters into the US are not subject to the time limits. H-2C time may again be granted after a one year departure from the US.

H-2C status will be lost if a worker is unemployed for 60 or more consecutive days and the worker will be required to leave the US. DHS may continue H-2C status if the unemployment is caused by a medical disability of the alien or an immediate relative, a period of authorized medical or other leave, or a disaster or emergency as defined in Section 532 of the STRIVE Act. Workers leaving under this provision must leave, but may reenter as H-2Cs. S.2611's clause permitting DHS to waive the requirement to depart has been removed.

Travel outside the US is permitted on H-2C visas but time outside the US will not be tacked on to the six years permitted in H-2C status.

H-2Cs will be granted a biometric, tamper-resistant card either at a port of entry or a consulate if they are from a country contiguous to the US.

H-2C holders who fail to depart shall have their visas voided any are subject to Section 222(g). This is somewhat different than S.2611 which required an H-2C to depart within 10 days after the H-2C status terminates, but barred the applicant after that from most immigration benefits.

Anyone who enters or attempts to enter the US without inspection after enactment of the H-2C provisions will be barred for ten years receiving most immigration benefits.

The H-2C is portable and workers can move to new jobs as long as the new employer complies with the terms for H-2C employment.

Under S.2611, H-4 visas may be granted to spouses and children. But this provision does not appear in the STRIVE Act.

### **Sec. 403. Employer obligations.**

Section 40e spells out an employer's obligations when hiring H-2C workers. Employers are required to pay the worker's filing fee. The fees are different than under S.2611 and are as follows:

- \$250 per worker for employers with fewer than 25 workers;
- \$500 for employers of between 26 and 150 employees;
- \$750 for employers of 151 to 500 employees; or
- \$1000 for employers with more than \$1000 employees.

This section also sets out recruiting requirements for H-2Cs. In the period between 90 days and 14 days prior to submitting the application, the following must occur:

- submission of a copy of the job opportunity to the State Employment Service Agency (SESA);
- authorizing the SESA to post the job on the web, with local job banks, and with unemployment agencies and similar recruitment sources;
- authorizing SESA to notify labor unions;
- posting of the job at the place of employment;
- advertising the job in the publication with the highest circulation in the job market for at least ten consecutive days; and
- based on the recommendations of the local job service, advertising in professional, trade, or ethnic publications likely to be patronized by a potential worker.

The job must first be offered to any eligible US worker who applies, is qualified and is available at the time of need. Employers must attest that the:

- Hiring the H-2C will not adversely affect wages and working conditions for US workers.
- The employer did not and will not cause US workers to lose their jobs by hiring the H-2C worker. There is a 90 day look back and look forward provision.
- The worker will be paid the higher of either the actual or prevailing wage. A provision allowing for the use of private wage data was deleted from the version of the bill passed by the Judiciary Committee.
- There is no strike or other form of work stoppage.
- The employer is covered by a state workers compensation program, the employer will provide at no cost to the worker insurance covering injury or illnesses arising due to the job. The insurance would need to be comparable to state workers compensation programs.
- Notice to workers is provided
- Unless DOL has pre-certified a shortage, the employer can show there are not sufficient workers able, willing and qualified and immediately available to perform the job. Good faith recruiting efforts must be undertaken in the three month period prior to filing (with recruiting ending at least 14 days prior to filing). The job must be advertised at the actual wage paid by the employer.
- The job must be bona fide.
- Employers must maintain public access files.
- The employer must notify DOL and DHS when an H-2C leaves the employer within three business days after the departure.
- The petition must be filed not more than 60 days before the date the services are needed.

DHS shall have the authority to audit employers to ensure compliance. Employers are required to retain records for five years from the date the petition is filed. Employers who misrepresent facts or fail to comply with the terms of the program can be barred for up to three years from sponsoring or employing H-2C workers. And punishing whistle blowing employees or former employees is prohibited.

The H-2C visa will not be available to workers coming to perform services in metro areas in which the unemployment rate for unskilled or low-skilled workers during the most recently completed six month period averaged more than 9%. S.2611 had a one year phase in date for this provision, but STRIVE makes it immediately applicable.

H-2C workers may not be treated as independent contractors.

Foreign labor contractors recruiting H-2C workers are required to disclose a variety of details to H-2C workers at the time of their recruitment including information on the proposed place of employment, the pay, the type of work, who is paying travel expenses, whether there is a strike or other similar labor dispute, whether the contractor is getting a commission based on the worker's services, details regarding insurance and worker's compensation coverage, and information on the risk of work related injuries. Foreign labor contractors are prohibited from charging the H-2C worker for their services.

Foreign labor contractors will be required to register with the Department of Labor and employers may only use the services of registered contractors. DOL will issue two year renewable certifications of these contractors. H-2C workers will also have the ability to lodge complaints against contractors with the DOL. The DOL will have the discretion to require contractors be bonded and may also deny certification if it determines the contractor lacks sufficient ties to the US to adequately enforce these rules.

STRIVE has two protections not included in S.2611. First, H-2Cs may not be required to waive any rights or protections under STRIVE and employers who have filed an attestation with DOL may not threaten an alien with the withdrawal of a petition in retaliation for the beneficiary's exercise of rights under STRIVE.

Employers are subject to civil fines of \$2000 up to \$35,000 per worker depending on whether the violation is willful and whether a worker was harmed. Imprisonment of up to six months and additional fines of up to \$35,000 are possible if a willful violation occurs and an individual suffers extreme physical or financial harm. STRIVE also adds a provision to S.2611 stating that fines under the Fair Labor Standards Act or OSHA relating to an H-2C will be doubled.

#### **Sec. 404. Alien employment management system.**

DHS is required to set up an alien employment management system to allow for electronic filing of single or multiple H-2C applications and manage and track the employment of H-2C immigrants. S.2611 stated that employers shall be able to recruit and advertise employment opportunities through the system, but this provision is dropped in STRIVE.

#### **Sec. 405. Recruitment of United States workers.**

The Department of Labor must set up a web page linking to each state's electronic job registry information on job opportunities for US workers in order to ensure US workers

are not being passed over in favor of foreign workers. And DOL must set up a publicly accessible web page that provide a single Internet link to each State workforce agency's electronic registry of jobs available throughout the US.

#### **Sec. 406. Numerical limitations.**

400,000 H-2Cs in year one. The cap may grow up to 20% per year depending on how quickly the cap is reached in the previous fiscal year. The cap may also decrease by 10% per year if the cap is not reached (unless the cause of this was either a delay in issuing rules or processing delays). A total cap of 600,000 is set.

#### **Sec. 407. Adjustment to lawful permanent resident status.**

Unlike S.2611, provides for adjustment of status to permanent residency for H-2Cs if they have

- sponsorship by the employer or
- they have been in H-2C status for five years and self petition

Applicants must pay a \$500 fee, be in the US, prove employment, and prove English proficiency under Section 312 of the naturalization rules of the INA or be studying English and US civics.

The green card will be conditional for two years. Conditional status will be removed if the applicant proves continuing employment in an area that is not a high unemployment area, proof of payment of income taxes, English and civics skills, background checks completed, registration for selective service.

Applying for permanent residence shall not interfere with non-immigrant requirements for H-2C status.

H-2C status may be extended in one year increments beyond six years if a normal family or employment-based green card is pending or an adjustment application under this section.

#### **Sec. 408. Requirements for participating countries.**

The US shall negotiate bilateral treaties with countries sending H-2C workers requiring the countries to accept the return of nationals ordered removed from the US within three days of such removal.

#### **Sec. 409. Compliance investigators.**

The Labor Department is now directed to hire not less than 2,000 additional investigators annually to ensure compliance with the rules of the H-2C program.

**Sec. 410. Standing commission on immigration and labor markets.**

Calls for the creation of a new independent federal agency called the Standing Commission on Immigration and Labor Markets that will study the H-2C program and make recommendations.

**Sec. 411. Admission of nonimmigrants.**

Adds the H-2C to the list of dual intent visa categories.

**Sec. 412. Agency representation and coordination.**

Bars ICE officials from representing to employees or employers that they are a member of any agency or organization that provides domestic violence services, enforces health and safety law or other labor laws, provides health care services, or any other services to protect life and safety.

**Sec. 413. Sense of Congress regarding personal protective equipment.**

States that Congress would like DOL to issue regulations requiring employer to provide employees with personal protective equipment.

**Sec. 414. Rulemaking; effective date.**

DHS will have one year to implement the H-2C program.

**Sec. 415. Authorization of appropriations.**

Authorizes appropriations as necessary to carry out Title IV.

**TITLE V—VISA REFORMS**

**Subtitle A—Backlog Reduction**

**Sec. 501. Elimination of existing backlogs.**

Allows for the recapture of unused green card numbers from previous years in the family-based categories.

This section allows recapture of unused visa numbers. It also increases employment-based green cards from 140,000 to 290,000 to accommodate some of the undocumented workers who will now have to queue up behind the longer term residents (those over five years) as well as all persons currently awaiting employment based green cards either in the US or abroad).

Visas for spouses and children shall not be counted against the employment-based numerical limits as long as that number does not exceed 800,000 per year (S.2611 set that number at 650,000).

### **Sec. 502. Increasing country limits and exempting family-sponsored and employment-based immigrants.**

Raises per country limits from 7% to 10%.

### **Sec. 503. Allocation of immigrant visas.**

The allocation of family-sponsored visas is shifted as follows:

- 10% - F1 unmarried sons and daughters of citizens
- 50% - F-2 spouses, minor children and unmarried adult sons and daughters of permanent residents (77% of these go to spouses and minor children of permanent residents)
- 10% - married sons and daughters of US citizens
- 30% - brothers and sisters of citizens

The allocation of 290,000 employment-based visas is shifted as follows:

- 15% for EB-1 (was 28.6% but presumably many will now qualify in the new uncapped category for certain advanced degree holders)
- 15% for EB-2
- 35% for EB-3
- 5% for investors (re-designated as EB-4)
- 30% for new EB-5 for other workers (old EB-3 unskilled workers) – 30% of these shall be reserved for people in the US before January 7, 2004

Section 503 is amended to remove the numerical limitation on green cards for all special immigrants and not just the first two small groups (returning lawful permanent residents and former US citizens returning to the US). This expanded group includes religious workers.

Increases from 50 to 300 the number of Iraqi and Afghan translators for fiscal years 2007, 2008 and 2009.

Reduction by 5,000 of H-2B visas from NACARA repealed.

**Sec. 504. Nursing shortage.**

This section exempts Schedule A shortage occupations (nurses and physical therapists are the only groups on the list right now) from employment-based green card caps until September 30, 2017. Spouses and children are included in the cap exemption.

New language has been added requiring an HHS report on the nursing shortage, the foreign nurse population in the US and the impact of nursing immigration on the supply of nurses in the countries the nurses are leaving. Also calls on HHS to enter into a contract with the National Academy of Sciences Institute of Medicine to determine the amount of Federal investment necessary to eliminate the nursing shortage within seven years of this report being published. And HHS shall collaborate with the health ministries of the five countries sending us the most nurses and physical therapists to address any health care worker shortages caused by emigration.

Removes per country limits on special immigrants.

Allows for direct consular filing of I-140 petitions for Schedule A

**Sec. 505. Expedited adjudication of employer petitions for aliens of extraordinary artistic ability.**

This section calls for expedited processing for O and P artist visas. USCIS will have 30 days to process these applications and 15 days to complete processing after submitting a response to a request for evidence. Cases not decided in 30 days for non-profit petitioners or individuals petitioning primarily on behalf of a nonprofit petitioner are entitled to have their cases converted to the premium processing program without charge.

**Sec. 506. Powerline workers and boilermakers.**

Adds powerline workers **and boilermakers** to the TN list of occupations.

**Sec. 507. H-1B visas.**

This section incorporates parts of the SKIL Act which was incorporated in to S.2611. It makes a number of modifications to the H-1B program including the following changes to the cap rules:

- The cap exemption for non-profit research institutions is broadened to include all non-profit institutions
- The cap exemption for governmental organizations is clarified to include “Federal, State, or local” governmental research organizations.

- The 20,000 cap exemption for graduates of US masters programs and higher is eliminated and all US graduates of graduate programs are exempt from the cap
- Physicians in specialty medicine
- master's and higher degree holders in science, technology, engineering and math where the degrees were earned outside the US (SKIL limited this group to 20,000, though it included all graduate degree holders and not just the stem professionals)
- The changes to the cap exemption rules take effect upon passage of the new law and will apply to petitions filed on or after that date.

### **Sec. 508. United States educated immigrants.**

This section from the SKIL Act covers US-educated immigrants. The following new categories of aliens will not be subject to green card caps:

- Aliens who have earned master's or higher degrees from accredited US universities
- Aliens who have been awarded medical specialty certification based on US training
- Aliens in Schedule A occupations
- Aliens who have earned a master's degree or higher in science, technology, engineering or math and have been working in a related field in the US in a nonimmigrant status during the three year period preceding their application for an immigrant visa under Section 203(b).
- National interest waiver recipients (including the physician national interest waiver recipients)
- Spouses and minor children of anyone admitted as an employment-based immigrant under Section 203(b) (this would appear to protect family members from being kept out of the US if green card numbers regress before they enter to join their spouses and parents).

Adds members of the professions possessing master's degrees or higher from US schools or who have been awarded medical specialty certification to the special handling category.

The section would also bar nurses, doctors and other health care workers from coming to the US if they have an "outstanding obligation" to their home country for financial support funding their education. This provision would become effective 180 days from enactment.

### **Sec. 509. Student visa reform.**

Section 509 covers student visa issues. Creates a new student F-1 visa category for those pursuing bachelors degrees or higher in the sciences, math, technology or engineering. The category would not require a foreign place of residence (other students would not be affected by this change and will be redesignated F-2s). F-2 dependents will now be F-3s.

A new F-4 will be created for Canadians and Mexicans who maintain a residence in their country and who commute to study in the US or are in practical training in the US. A new F-5 is created for distance learners coming to the US for up to 30 days as part of their course of study.

F-1 students will be permitted to work off campus in any field if they are in good academic standing and an employer attests that it has recruited for the job for at least 21 days and they will pay the higher of the actual wage or the prevailing wage. Hours are limited to 20 per week (40 per week on holidays and between academic terms).

**Sec. 510. L-1 visa holders subject to visa backlog.**

Section 510 would allow L-1 visa holders to extend their status one year at a time when a green card application or labor certification petition is pending for at least one year or the labor certification has been pending for at least year. This rule mirrors a similar provision applicable to H-1B cases.

**Sec. 511. Retaining workers subject to green card backlog.**

Section 511 governs green card backlogs. A \$500 supplemental fee may be paid by an adjustment applicant to file an employment-based adjustment case when no visa number is available. A new provision from S.2611 would allow USCIS to issue three year employment and advance parole documents for people applying under this section. Fees would be permitted to be adjusted for these documents given the longer validity period. Also adds a new provision requiring the fees in this account be used for backlog reduction and clearing security background checks.

**Sec. 512. Streamlining the adjudication process for established employers.**

Under Section 512, employers are going to be able to get pre-certified in order to speed up processing times.

**Sec. 513. Providing premium processing of Employment-Based visa petitions.**

Section 513 requires USCIS to accept premium processing applicants for employment-based immigrant visa petitions. This is probably no longer going to be an issue since USCIS just announced they be doing this anyway.

**Sec. 514. Eliminating procedural delays in labor certification process.**

Section 514 deals with eliminating procedural delays in the labor certification process. It makes a number of key changes to the labor certification process:

- The US Department of Labor will now be required to make prevailing wage determinations and will not be permitted to source that function to a state workforce agency as is the current practice.
- The DOL will have a 20 day limit to provide such a determination. If the DOL fails to respond within 20 days, then the wage proposed by the employer shall be considered the prevailing wage.
- The DOL must consider an employer provided wage survey unless it can show why the wage component of the Occupational Employment Statistics Survey is more accurate for that occupation in the labor market area.
- DOL must maintain a web site with links to the web site of each state workforce agency and the DOL web site must contain filing instructions for a job order in each state.
- The DOL must set up a process by which employer may make technical corrections to applications in order to avoid requiring employers to conduct additional recruitment to correct an initial technical error. A technical error shall include anything that would not have a material effect on the validity of the employer's recruitment of able, willing and qualified US workers.
- Appeals and motions to reopen labor certification cases must be decided within 60 days after filing.
- Within 180 days of enactment of this bill, the DOL shall process and issue decisions on all applications filed prior to March 28, 2005 (the date the new PERM system went into force). All other provisions relating to labor certifications take effect 90 days after this law passes regardless of whether the DOL has enacted regulations.

### **Sec. 515. Visa revalidation.**

Section 515 brings back visa revalidation, a popular program available prior to the September 11<sup>th</sup> attacks. Visa revalidation allows for those in the US after entering with E, H, I, L, O, or P non-immigrant visas to renew those visas by mail from within the US. Visa revalidation will be allowed if the visa expired during the 12 month period prior to filing the application, the applicant is seeking a nonimmigrant visa in the same category under which the applicant previously received a visa and the alien has complied with all immigration laws.

### **Sec. 516. Relief for minor children and widows.**

Section 504 is broadened to allow a widow or widower of US citizens married less than two years at the time of the citizen's death to also seek permanent residency if the spouse can show by a preponderance of the evidence that the marriage was entered into in good faith and not solely for the purpose of obtaining an immigration benefit. Current law requires one always be married for more than two years. A new section of the statute added by STRIVE would expand to allow people whose citizen relative died before enactment of STRIVE would be able to apply as long as an adjustment application is filed within two years of enactment. And those removed, excluded, voluntary departed or deported before the date of enactment due to a citizen's death, can be paroled in to the US and apply for adjustment and not be subject to the 3/10 year bars.

A new section also allows the following petitions to continue after the death of the petitioner or principle applicant:

- immediate relative petitions
- family petitions
- derivative beneficiaries of employment-based petitions
- derivative beneficiaries of lottery-based petitions

Those whose petitions were denied before the date of enactment may file a motion to reopen if filed within two years of enactment or seek parole (if already removed, excluded, deported or voluntarily departed) and apply for adjustment after admission and not be subject to the 3/10 year bars.

STRIVE also allows naturalization applicants under 319(a) – spouses of US citizens applying for naturalization after three years instead of five – if the US citizen spouse dies.

#### **Sec. 517. Relief for widows and orphans.**

Section 517 codifies the Widows and Orphans Act. The provisions of this section allow certain children and women outside the US who are at risk of harm and who are referred by US officials, international officials and certain non-governmental organizations to qualify as special immigrants.

#### **Sec. 518. Sons and daughters of Filipino World War II veterans.**

Section 518 allows Filipino children of US citizen World War II veterans otherwise eligible for a first or third preference family petition to be classified as a special immigrant and not subject to a green card cap.

#### **Sec. 519. Determinations under the Haitian Refugee Immigration Fairness Act of 1998.**

Section 519 modifies the Haitian Refugee Immigration Fairness Act of 1998. It retroactively allows individuals who were under 21 on October 21, 1998 to apply as qualifying children under HRIFA. HRIFA's rules made it very difficult for children to qualify for adjustment benefits. Motions to Reopen will be able to be submitted under this new law. Persons excluded, removed, deported or ordered to depart voluntarily will be permitted to file motions to reopen.

#### **Sec. 520. S visas.**

Section 520 expands the S visa category. The S visa category is now available to those providing information on a criminal enterprise undertaken by a foreign government, its

agents, representatives or officials as well as to individuals with information on the development of weapons of mass destruction of foreign governments. The limit on S visas is raised from 200 to 1,000.

#### **Sec. 521. L visa limitations.**

The provision adds a statutory requirement that a beneficiary coming to the US to open a new facility may only be approved for a year. It's not clear that this is different than the current regulation at 8 CFR 214.2(l)(7)(i)(A)(3) that appears to do the same thing. New office applicants must present a business plan, show that sufficient physical premises have been located, and the business has the financial ability to commence doing business (again, it is not clear how this differs from current USCIS regulations). An extension may be granted if the petitioner can show adequate progress along the lines described in the business plan. A provision is included which excuses the failure to make progress if there are extraordinary circumstances. Spouses may not get employment authorization during this restricted one year period. Finally, DHS and DOS must establish a program to work cooperatively to verify a company or facility's existence in the US and abroad.

#### **Sec. 522. Establishment of new fashion model nonimmigrant classification.**

Moves fashion models from the H-1B to a new O-3 visa category. Caps the number at 1,000.

#### **Sec. 523. EB-5 regional center program.**

Allows concurrent filing of I-526 EB-5 petition and adjustment of status petitions. Ends the sunset date on the regional pilot center program. Adds a \$2500 fee to the regional center designation application. The fees are to be put in to an account for the administration of the EB-5 program.

#### **Sec. 524. Return of Talent Program.**

This section creates a program that would allow permanent residents to go to their home countries to help in post-conflict or natural disaster recovery activities for up to two years. DHS may extend this period. DHS will have six months to implement regulations.

#### **Subtitle B—Preservation of Immigration Benefits for Victims of a Major Disaster or Emergency**

#### **Sec. 531. Short title.**

The section is titled the “Major Disaster and Emergency Victims Benefits Preservation Act.”

### **Sec. 532. Definitions.**

Subtitle B draws on provisions originally drafted for S.2611 to cover victims of Hurricanes Katrina and Rita. In most cases where Katrina or Rita was mentioned, the provision is altered to refer generally to disasters and emergencies.

Section 532 contains definitions. The section makes clear that the bill covers direct damage from major disasters or emergencies, but does not include collateral or consequential economic effects in the US or internationally. “Major disasters and emergencies” are defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5122(2)).

### **Sec. 533. Special immigrant status.**

Section 533 allows certain individuals to receive special immigrant status. Those individuals are persons who were beneficiaries of an immigrant visa petition, a K nonimmigrant visa petition, or a labor certification filed on or before the disaster or emergency and the petition was revoked or terminated before or after its approval solely due to the death or disability of the petitioner, applicant, or alien beneficiary as a direct result of the disaster or emergency or the loss of a job as a direct result of the disaster or emergency. Spouses and children are also included in this provision including following to join applicants for those entering before the disaster or emergency. For those following to join, the death of the principal applicant will be disregarded. Grandparents and legal guardians of children may step in as petitioners as well.

### **Sec. 534. Extension of filing or reentry deadlines.**

Section 534 allows for the automatic extension of nonimmigrant status to the date on which nonimmigrant status would have otherwise terminated or one year after a death or onset of disability that has caused someone to fail to maintain nonimmigrant status. The provision applies to those disabled as a result of the hurricanes as well as to spouses and children of those persons as well as persons killed as a direct result of the hurricanes. Persons covered by this section may be provided employment authorization during this period.

Applicants lawfully in the US on the date of the disaster or emergency who were prevented from filing a timely extension or change of nonimmigrant status application as a result of the disaster or emergency will be considered to have timely filed for an extension or change of status if the application was filed not later than a year after the application would have otherwise been due. Katrina and Rita victims will get 90 days from the date of enactment.

Circumstances preventing an alien from timely action include

- office closures
- mail delays
- other delays affecting processing
- mandatory evacuation and relocation; or
- other circumstances including medical problems or financial hardships

Section 544 also excuses late departures from the US. If someone was lawfully present in the US on the date of the emergency or disaster and was unable to depart the US in a timely manner as a result of the hurricanes, the individual will not be considered unlawfully present during a “reasonable period” to be determined by DHS. Katrina and Rita victims will get 90 days from enactment. The same reasons for late filing a nonimmigrant extension or change of status application noted above would apply here as well.

Diversity Visa and Temporary Protected Status applicants will also get relief under this section and will be excused for late filing a petition. Those in the middle of a voluntary departure period during a disaster or emergency who are delayed in leaving as a result of the disaster will be granted a 60 day extension. Katrina and Rita victims in voluntary departure periods will be considered to have had their departure period end on December 31, 2005.

H-1B, H-2B, H-3, H-2A and H-1C visa holders will be excused from status violations if they lost their jobs as a result of the disaster or emergency and find a new sponsor to petition for them within a year. Katrina and Rita victims will have until August 29, 2007. Employment authorization will continue for these individuals until the new petition is adjudicated.

### **Sec. 535. Humanitarian relief for certain surviving spouses and children.**

Section 535 provides humanitarian relief for certain surviving spouses and children. Spouses of US citizens killed as a result of a disaster or emergency who were not separated at the time of death will be permitted to file immediate relative petitions as long as such petitions are filed within two years after the date of death or the date when the alien remarries. Children of US citizens will be protected from aging out and both spouses and children will be permitted to self-petition for adjustment of status. Children, unmarried sons and daughters and spouses of permanent residents will be permitted to continue with their petitions even though the sponsoring petitioner has died. If a petition was not filed before the relative died, a petition may be self-filed. Spouses and children or refugees and asylees will also be able to have their petitions adjudicated as if the death of the spouse or parent had not occurred. Beneficiaries under this section will have their public charge grounds for inadmissibility waived.

### **Sec. 536. Recipient of public benefits.**

Any person benefiting under this section will not be deemed inadmissible for receiving public benefits as a direct result of the disaster or emergency.

**Sec. 537. Age-out protection.**

And anyone who aged out of a benefit and was unable to secure a benefit as a result of the disaster or emergency can get relief as well.

**Sec. 538. Employment eligibility verification.**

Section 538 permits DHS to modify employment eligibility verification requirements in response to disasters or emergencies. If such requirements are modified, DHS must notify the Senate and the House. This new authority will expire on August 26, 2008.

**Sec. 539. Naturalization.**

Section 539 allows naturalization applicants who filed in a district affected by a disaster or emergency to naturalize in any district within the US.

**Sec. 540. Discretionary authority.**

Section 540 allows DHS or the Attorney General to waive immigration law violations occurring on the last business day before the disaster or emergency by persons in the US lawfully in the US on that date who failed to comply with immigration laws as a result of the emergency or disaster.

**Sec. 541. Evidentiary standards and regulations.**

Requires DHS to establish evidentiary standards for determining if a death, disability or loss employment were due to the emergency or disaster.

**Sec. 542. Identification documents.**

Section 542 allows DHS to issue temporary identification documents to individuals affected by a specified emergency or disaster. The documents will be acceptable until one year after the disaster (August 29, 2007 for Katrina and Rita victims). Such documents will not constitute proof of citizenship or immigration status.

**Sec. 543. Waiver of regulations.**

Section 543 allows DHS to act without regulations to implement these provisions and can avoid the normal Administrative Procedure Act rules.

#### **Sec. 544. Notices of change of address.**

Section 544 allows those affected by emergencies and disasters to be excused for the late filing of an AR-11 change of address form. The change form may be submitted on a date to be determined by DHS. For Katrina and Rita victims, the date for notification will be the date of enactment of the act.

#### **Sec. 545. Foreign students and exchange program participants.**

Section 545 covers F, J, and M students who are unable to maintain their status as a result of the disaster or emergency. The nonimmigrant status of such students will be deemed to have been maintained from the date of the disaster or emergency until a date determined by DHS if the alien is enrolled in a course of study or exchange program on that date. For Katrina and Rita victims, that date will be September 15, 2006.

### **TITLE VI—LEGALIZATION OF UNDOCUMENTED INDIVIDUALS**

STRIVE takes a somewhat different approach to legalization than S.2611. The House bill calls for a conditional temporary status to be followed by a departure – a “touchback” – and then eventual permanent residency and possible citizenship.

#### **Subtitle A—Conditional Nonimmigrants**

##### **Sec. 601. Conditional nonimmigrants.**

Conditional nonimmigrant status (CNIS) will be available to those in the US unlawfully before June 1, 2006 and has been continuously present since that date. Continuous presence will be deemed broken if one is absent from the US for more than 180 days from June 1<sup>st</sup> until the beginning of the application period unless USCIS has granted permission to leave.

Children and spouses are allowed to get derivative CNIS.

Those participating in persecution, who DHS has reason to believe have committed serious crimes, are security threats, or who have been convicted of a felony or three or more state or Federal misdemeanors are not eligible for CNIS. Other grounds of inadmissibility will apply, though some may be waived on a humanitarian basis.

The applicant must attest employment on June 1, 2006 and such employment continues. Employment may be part-time or seasonal and self-employment counts.

Prima facie evidence of presence and employment must be submitted.

Applicants must submit fingerprints before being granted CNIS. Background checks must be completed expeditiously.

CNIS shall be valid for six years. No change to another nonimmigrant or immigrant status for the principal or derivative CNIS holder until the six year period is up. Extensions of CNIS are only available if one is applying for adjustment of status under Title VI of STRIVE.

Applicants for CNIS will pay a fee to be determined by DHS plus a fine of \$500. The fine shall not be applicable to those under 21 years of age.

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 CNIS opens up shall be permitted to apply for CNIS if they can demonstrate this to DHS. Judges may similarly close proceedings for those who can demonstrate likely eligibility.

DHS may revoke CNIS if DHS finds the applicant is ineligible for CNIS, the alien is removable under Section 237, the alien has used CNIS documentation fraudulently or unlawfully, or, in the case of a spouse or child, the status of the principal applicant is terminated.

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

### **Sec. 602. Adjustment of status for conditional nonimmigrants.**

DHS may adjust status of CNIS applicants to permanent residency. Applicants must demonstrate that they have been employed or self-employed and also met the education requirements.

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, labor union records, affidavits remittance records and any other documents DHS may list.

Section states “sense of Congress” that DHS should consider difficulty people without status might have in gathering documentation required under this section. DHS will consider the employment test satisfied if one can reasonably infer that work has occurred.

The employment need not take place with a single employer. Children under 21 and individuals over 65 need not meet the employment test. The employment may be “reduced” in cases of disability or pregnancy.

DHS shall set regulations and impose a \$1500 fee for adjustment under this section. The fee shall not apply to people who were under 21 on the date of enactment. An additional \$500 state impact assistance fee shall be paid by the applicant.

Except for inadmissibility grounds that are waived as part of the statute (such as entry without inspection), the adjustment applicant must not be inadmissible (such as due to criminal or security grounds).

Applicants for adjustment must have departed the US and entered as a CNIS holder or applicant for CNIS as registered by US-VISIT or whatever system DHS establishes. This is the so-called “touchback” provision. Touchback shall not apply to

- people in or who have served in the Armed Forces as well as their parents
- person having a pending or approved application under NACARA or HRIFA
- people over 65 or under 21
- disabled individuals
- single parent heads of households
- those who can show an extreme hardship to himself or herself or an immediate relative

Applicants failing to comply with touchback or meeting one of the above exemptions may not adjust status.

Adjustment applicants must pass a medical examination.

Adjustment applicants must pay back taxes or show taxes are not owing or the applicant is complying with an agreement to pay back taxes.

Applicants must pass an English/civics test equivalent to that required for naturalization or is satisfactorily pursuing a course of study to achieve such an understanding of English and US civics. 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.

DHS must complete a security clearance.

Those required to register with Selective Service must show that requirement has been satisfied.

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

For DREAM Act applicants, all other green card applications pending on the date of enactment of STRIVE must be have green cards available for 30 days or eight years after

the date of enactment [GHS note: not clear why this provision is found in this section as opposed to DREAM Act section]

Applicants not eligible in most cases for any means-tested public benefits.

**Sec. 603. Administrative and judicial review.**

DHS shall establish a single level of administrative review for final adjustment denials under this section. The circuit courts of appeal have the authority to review denials at the administrative appellate level. District courts can review claims based on a practice or pattern at DHS that is arbitrary or capricious. Removals shall be stayed until a final determination is made on an appeal under this section.

**Sec. 604. 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.

**Sec. 605. Penalties for false statements 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.

**Sec. 606. Aliens not subject to direct numerical limitations.**

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

**Sec. 607. 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.

**Sec. 608. 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.

**Sec. 609. Rulemaking.**

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

**Sec. 610. Authorization of appropriations.**

Funds necessary to carry out this subtitle shall be appropriated. “It is the sense of the Congress that funds authorized to be appropriated under subsection (a) should be directly appropriated so as to facilitate the orderly and timely commencement of the processing of applications filed under sections 601 and 602.”

**Subtitle B—DREAM Act of 2007**

**Sec. 621. Short title.**

This section implements the “Development, Relief, and Education for Alien Minors Act of 2007.

**Sec. 622. Definitions.**

Subtitle B (Sections 621 to 632) codifies the DREAM Act and is generally identical to the DREAM Act provisions in S.2611. Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 would be repealed. That section of IIRAIRA limits eligibility for preferential treatment (i.e. in state tuition based on residency) for higher education benefits for aliens not lawfully present unless such benefits are available to all US citizens and permanent residents regardless of their residence.

Applicants inadmissible because of criminal or security violations are not eligible to participate. Fraud violations will render a person ineligible if the violations occurred after age 16. Somewhat less restrictive than S.2611 due to its lack of inclusion of exclusion grounds of failing to attend proceedings and misrepresentation (INA Section 212(a)(6)(B) and (C) .

**Sec. 623. Restoration of State option to determine residency for purposes of higher education benefits.**

Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 would be repealed. That section of IIRAIRA limits eligibility for preferential treatment (i.e. in state tuition based on residency) for higher education benefits for aliens not lawfully present unless such benefits are available to all US citizens and permanent residents regardless of their residence.

**Sec. 624. Cancellation of removal and adjustment of status of certain long-term residents who entered the United States as children.**

DHS may cancel removal of anyone who

- has been present in the US for a continuous period of at least five years before the date of enactment and was under 16 at the time of entry
- has been of good moral character since the time of application
- is not inadmissible on various criminal and security grounds
- at the time of application, has been admitted to an institution of higher education, or has earned a high school diploma or GED certificate in the US
- the alien has never been ordered removed, excluded, or deported unless he or she has remained in the US under color of law after such order was issued or received the order before age 16

Numerical limitations on cancellation of removal or adjustment of status don't apply to DREAM Act recipients.

DHS shall have 180 days to issue interim regulations implementing the provisions of the DREAM Act. Those regulations will take effect immediately, though DHS is only required to issue final regulations within a reasonable time.

DHS may not remove anyone who has a pending application for conditional status under this subtitle.

Grounds of ineligibility may be waived for humanitarian, family unity or public interest grounds.

The continuous residence period required under the DREAM Act shall not be broken by being served a notice to appear. Continuous periods outside the US in excess of 90 days or cumulative periods of 180 days shall break residency. DHS may permit extensions of the allowed time if there are exceptional circumstances.

**Sec. 625. Conditional permanent resident status.**

DREAM Act recipients will be granted conditional permanent residence for a period of six years. DHS must notify DREAM Act recipients of the conditions on the green card and the procedures for removal. Conditions won't be removed if the applicant fails to meet the education requirements, becomes a public charge or is dishonorably discharged from the armed forces. Those whose conditions are terminated will return to whatever status they held before applying under the DREAM Act.

A petition to remove conditions must be filed in the period beginning 180 days before and ending two years after the date that is six years from the granting of conditional permanent status. An applicant is considered to be in conditional status while the application is pending.

Conditions may be removed if the alien has demonstrated good moral character during the conditional period, the alien has not abandoned residency, and the alien has at least one of the following:

- received a college degree or completed two years of higher education, or
- has served two years in the military and, if discharged, has received an honorable discharge.

A hardship exception is available and upon a showing of good cause, DHS can extend conditional residency in order to meet the above requirements. Conditional status must be lifted before an alien can apply for naturalization.

**Sec. 626. Retroactive benefits under this Act.**

The DREAM Act will be implemented retroactively and persons who meet the requirements at the time of enactment can file to adjust status and will get conditional residency that can be removed at the end of the residency period described above.

**Sec. 627. Exclusive jurisdiction.**

DHS shall stay removal proceedings against primary and secondary school students at least 12 years of age who meet the residency and good moral character requirements. Employment may be engaged in for persons whose removal is stayed under the Act.

**Sec. 628. Penalties for false statements in application.**

People who provide false statements in a DREAM Act application may be punished by fines and/or up to five years imprisonment.

**Sec. 629. Confidentiality of information.**

DHS is obligated to keep DREAM Act application information confidential except as necessary to cooperate in criminal and security-related investigations. Violators are potentially subject to a fine of up to \$10,000.

**Sec. 630. Expedited processing of applications; prohibition on fees.**

DREAM Act applications are to be considered on an expedited basis and without payment of a premium processing fee.

**Sec. 631. Higher education assistance.**

DREAM Act recipients are limited in their entitlement to federal student aid.

**Sec. 632. GAO report.**

GAO must issue a report to Congress on the DREAM Act's implementation within seven years of enactment.

**Subtitle C—AgJOBS Act of 2007**

**Sec. 641. Short title.**

Nearly 100 pages of the bill are taken up by the “Agricultural Job Opportunities, Benefits and Security Act of 2006” also known as AgJobs.

**Sec. 642. Definitions.**

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

**CHAPTER 1—PILOT PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS**

**SUBCHAPTER A—BLUE CARD STATUS**

**Sec. 643. Requirements for blue card status.**

The bill would apply to those agricultural workers who have already been working at least 150 days in an eighteen month period in the 24 month period ending December 31, 2006. 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.

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 1,500,000 blue cards may be issued in a five year period beginning on the date of enactment of the bill.

#### **Sec. 644. Treatment of aliens granted blue card status.**

Aliens in blue card status 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.

Blue card employees may only be terminated during blue card status for just cause.

DHS must establish an arbitration process to handle complaints.

#### **Sec. 645. 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 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 applicants can be barred for adjusting for criminal, security and other grounds.

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.

**Sec. 646. Applications.**

Blue card and adjustment applications may be filed with DHS by the applicant, through an attorney or through an accredited representative 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.

**Sec. 647. 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.

**Sec. 648. 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.

**Sec. 649. 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.

**Sec. 650. 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. 651. Correction of Social Security records.**

Allows blue card holders to correct social security information.

## **CHAPTER 2—REFORM OF H-2A WORKER PROGRAM**

### **Sec. 652. 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 3—MISCELLANEOUS PROVISIONS**

### **Sec. 653. 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.

### **Sec. 654. 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.

### **Sec. 655. Reports to Congress.**

DHS shall annually report to Congress on the AgJobs program.

**Sec. 656. Effective date.**

This section shall become effective a year after enactment.

**Subtitle D—Programs to Assist Nonimmigrant Workers**

**Sec. 661. 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.

**Sec. 662. 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.

**Sec. 663. Strengthening American citizenship.**

Section 663 was contains the “Strengthening American Citizenship Act of 2006.” The new program provides a grant of \$500 to any legal permanent resident who declares an intent to apply for citizenship and needs the funds to help pay for a program to assist in preparing for the English exam. If not enough money is available for all applicants, Chief of the Office of Citizenship at USCIS shall give priority based on the financial need of the applicants.

Applicants for citizenship who can demonstrate English fluency will satisfy the residency requirements for citizenship after four years instead of five.

The provisions providing for the funding of the Office of Citizenship as well as the provision creating the Civics Integration Grant Program were each eliminated by a floor amendment.

The bill creates a new uniform citizenship oath:

”I take this oath solemnly, freely, and without any mental reservation. I absolutely and entirely renounce any allegiance to any foreign state or power of which I have been a subject or citizen. My fidelity and allegiance from this day forward are to the United States of America. I will bear true faith and allegiance to the Constitution and laws of the United States, and will support and defend them against all enemies, foreign and domestic. I will bear arms, or perform noncombatant military or civilian service, on behalf of the United States when required by law. This I do solemnly swear, so help me God.”

Questions on the meaning of this oath may be incorporated into the history and government test.

The Department of State will notify the embassy of the country on which the new citizen was a citizen that the person has renounced citizenship to that country and sworn allegiance to the US.

This section will take effect six months after the date of enactment of the law.

The President will create a new national medal in recognition of outstanding contributions of an individual naturalized within the prior ten years. Up to ten medals may be awarded each year.

Revisions are made to the provisions of the law providing citizenship assistance for members of the Armed Services. The original draft provided for the creation of a new citizenship advocate at each USCIS office to assist service men and women in pursuing naturalization. The new version of the statute eliminates this position.

#### **Sec. 664. Addressing poverty in Mexico.**

Section 664 is created to establish a grant program to fight poverty in Mexico.

[note – the \$500 add on fee for all Title VI applications from S.2611 has been removed]

### **TITLE VII—MISCELLANEOUS**

#### **Subtitle A—Increasing Court Personnel**

##### **Sec. 701. Additional immigration personnel.**

Section 701 calls for the increase in the Office of General Counsel of 100 attorneys per year for five years. 50 attorneys per year are to be added to the Office of Immigration Litigation. At least 50 attorneys are to be added each year for five years to handle immigration matters at the US Attorneys' office.

The number of immigration judges is to be increased by 20 each year for the next five years. At least 80 people per year are to be added as personnel to support the new immigration judges.

At least ten attorneys and ten support personnel are to be added each year for five years to the Board of Immigration Appeals.

At least 50 attorneys per year for five years are to be added to the Federal Defenders Program to litigate criminal immigration cases.

**Sec. 702. Senior judge participation in the selection of magistrates.**

Provides for senior judicial participation in the selection of magistrates in the Northern Mariana Islands.

**Sec. 703. Study on the appellate process for immigration appeals.**

Within six months, the Director of the Federal Judicial Center must conduct a study on the appellate process in immigration appeals.

**Sec. 704. Sense of Congress regarding the establishment of an immigration court system.**

Expresses the sense of Congress that a fair and effective immigration court system should be established.

**Subtitle B—Citizenship Assistance for Members of the Armed Services**

**Sec. 711. Waiver of requirement for fingerprints for members of the Armed Forces.**

The fingerprint requirement is waived for soldiers pursuing naturalization under INA Section 328 or 329. Instead, the fingerprints given at the time of enlistment will be used. To qualify, an applicant must apply within twelve months after enlisting.

**Sec. 712. Noncitizen membership in the Armed Forces.**

Non-citizens shall not be denied membership in the armed services and those who complete two years of honorable service are eligible for citizenship. Citizenship will be granted within ninety days of becoming eligible.

**Sec. 713. Provision of information on naturalization to members of the Armed Forces.**

DHS will provide a toll free information telephone line to members of the armed services.

**Sec. 714. Provision of information on naturalization to the public.**

DHS must notify the public of these changes within 30 days via DHS' handbooks, its web site and its forms.

**Sec. 715. Reports.**

Within 120 days, the Comptroller General shall deliver a report to Congress on Sections 328 and 329 naturalizations and within 180 days the Comptroller General shall deliver a second report on the changes made by this law.

**Subtitle C—Family Humanitarian Relief**

Sec. 721. Adjustment of status for certain nonimmigrant victims of terrorism.

Section 721 calls for the adjustment of status to permanent residency of any applicant who is spouses and children of people lawfully in the US who were killed in the September 11<sup>th</sup> attacks. Applicants will have two years to apply from the date where DHS issues regulations implementing this section. Several provisions barring applicants from applying for adjustment such as having been previously ordered removed are waived for people applying under this section..

**Sec. 722. Cancellation of removal for certain immigrant victims of terrorism.**

Spouses and children of people killed in the September 11<sup>th</sup> attacks will be eligible for cancellation of removal and those already ordered removed may file motions to reopen removal proceedings

**Sec. 723. Exceptions.**

Anyone ineligible under the deportation categories in INA Section 237 are not eligible in this section for relief.

**Sec. 724. Evidence of death.**

The standards for determining if a death was caused by 9/11, the standards in Section 426 of the Patriot Act will be used.

**Sec. 725. Definitions.**

Defines “specified terrorist activity.”

**Subtitle D—Other Matters**

**Sec. 731. Office of Internal Corruption Investigation.**

This section creates an Office of Internal Corruption Investigation at the Department of Homeland Security to investigate “criminal and noncriminal allegations of misconduct, corruption and fraud involving any employee or contract worker of United States Citizenship and Immigration Services that are not subject to investigation by the Inspector General.”

**Sec. 732. Adjustment of status for certain persecuted religious minorities.**

Section 732 allows for the adjustment of status for certain persecuted religious minorities. If one is a member of a persecuted religious minority who had an application for asylum pending on May 1, 2003 and who applies for adjustment of status, the applicant may pay a fee and adjust.

**Sec. 733. Eligibility of agricultural and forestry workers for certain legal assistance.**

Adds forestry workers to those eligible for certain legal assistance.

**Sec. 734. State court interpreter grants.**

Provides grants to fund court interpreter programs plus provides \$500,000 per year to assist the state courts in this area.

**Sec. 735. Adequate notice for alternate country of removal.**

If DHS decides to deport someone to a country that is not designated by that person, DHS must now provide a hearing before the person is to be removed.

**Sec. 736. Standards for biometric documents.**

Calls for all DOS visas and DHS immigration documents to be tamper-proof, have biometric identifiers and be machine –readable. There is no phase in period.

**Sec. 737. State Impact Assistance Account.**

Provides grant funds for states to offset services costs to non-citizens.

**Sec. 738. New Worker Program and Conditional Nonimmigrant Fee Account.**

Calls for the creation of a “New Worker Program and Conditional Nonimmigrant Fee Account.” 53% of funds go to STRIVE Act new worker program implementation. 15% are allocated to DOL to enforce the H-2C labor standards. 15% are allocated to the Social Security Administration in connection with the extra work associated with implementing the electronic verification system. 2% goes to HHS to reimburse hospital for costs associated with illegal immigration.