AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

**Calendar No. 415**

108TH CONGRESS, 2d Session | SENATE | REPORT 108–224

# AMENDING THE ILLEGAL IMMIGRATION REFORM ACT OF 1996

FEBRUARY 9, 2004.—Ordered to be printed

Mr. HATCH, from the Committee on the Judiciary, submitted the following

## R E P O R T

together with

## ADDITIONAL VIEWS

[To accompany S. 1545]

The Committee on the Judiciary, to which was referred the bill (S. 1545), to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit states to determine residency requirements for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

## CONTENTS

| | Page |
|---|---|
| I. Purpose and need for S. 1545 | 2 |
| II. Legislative History | 3 |
| III. Votes in the committee | 3 |
| IV. Section-by-section analysis | 4 |
| V. Cost Estimate | 7 |
| VI. Regulatory impact statement | 10 |
| VII. Changes in existing law | 11 |
| Additional Views of Senator Sessions | 12 |
| Additional Views of Senator Cornyn | 15 |
| Additional Comments of Senator Chambliss | 14 |
| Appendix A: Excerpts from Committee Executive Business Meeting Transcript, October 16, 2003 | 17 |
| Appendix B: Excerpts from Committee Executive Business Meeting Transcript, October 23, 2003 | 20 |

29–010

## I. Purpose and Need for S. 1545

The United States should vigilantly protect its borders and enforce its immigration laws. The consequence of illegal entry or overstaying a visa should be deportation. Illegal immigrants who have eluded authorities should not be rewarded with blanket amnesty. At the same time, America's immigration policy must also be sufficiently flexible so that our firm stance against illegal immigration does not undermine our other national interests. The Development, Relief, and Education for Alien Minors (DREAM) Act represents a common-sense approach to our immigration policy.

Thousands of children of undocumented immigrants have graduated from our high schools. Most came to America as children, playing no part in the decision to enter the United States, and may not even know they are here illegally. A great many grow up to become honest and hardworking young adults who are loyal to our country and who strive for academic and professional excellence. It is a mistake to lump these children together with adults who knowingly crossed our borders illegally. Instead, the better policy is to view them as the valuable resource that they are for our nation's future.

The DREAM Act does not guarantee any illegal immigrant the right to remain in the United States, and does not grant automatic or blanket amnesty to its potential beneficiaries. However, it does give some who have been acculturated in the United States the privilege of earning the right to remain. The bill provides a six-year conditional residence period for those who entered the United States prior to attaining sixteen years of age, have been here continuously for at least five years, stayed away from crime, and either earned at least a high school degree or gained acceptance to college.

During that six-year period, these individuals can earn the right to stay permanently by serving in our military, obtaining an associate's degree or trade school diploma, or completing two years in a bachelor's or graduate program. Because of the residency and age requirements described in Section V of this report, there is no incentive to enter the United States illegally in the future, as anyone who entered the United States after the age of sixteen or who has been in the United States less than five years at the time of enactment will not be able to benefit from this legislation. In other words, the act grants absolutely no benefit to anyone who plans to illegally enter the United States in the future. Moreover, these rigorous standards result not in citizenship, but only in permanent residency status that may one day result in eligibility to apply for citizenship.

Our society benefits greatly from educating our immigrant population. For example, in its "policy recommendations for the 108th Congress," the Cato Institute states that "[i]mmigration gives America an economic edge in the global economy." The same report also found that "the typical immigrant and his or her offspring will pay a net $80,000 more in taxes during their lifetimes than they collect in government services."[1] Further, in testimony before the Senate Immigration subcommittee, a senior economics fellow with

[1] Cato Institute, The Cato Handbook for Congress: Policy Recommendations for the 108th Congress.

the Cato Institute estimated that immigrant households paid approximately $133 billion in direct taxes to federal, state and local governments in 1998. He further estimated that the total net benefit (taxes paid over benefits received) to the Social Security system from continuing current levels of immigration is nearly $500 billion from 1998–2022 and nearly $2.0 trillion through 2072.[2]

Moreover, the RAND Corporation published a study showing that higher levels of education are associated with public savings in the form of lower expenditures for public income transfer and health programs, and higher tax contributions. The same study also found that larger savings in public social programs would be realized if the educational levels of the total population, which includes both native born and immigrant segments, were increased.[3] As such, the DREAM Act will not only directly improve the quality of life of its beneficiaries, but will also benefit the overall United States economy.

America's national interests must shape our immigration policy. We must protect our borders and remove those who do not have permission to remain within them. At the same time, with the DREAM Act, we can extend a welcoming hand, guided by specific and rigorous standards, to those who have already been integrated as part of our society and whose continued presence will benefit our country.

Finally, it must be emphasized that the DREAM Act does not require states to give undocumented alien children in-state tuition. Quite to the contrary and consistent with the principle of federalism, the DREAM Act returns to the states their prerogative to determine how to allocate their own resources.

## II. Legislative History

In the 107th Congress, on August 1, 2001, Senator Hatch introduced the DREAM Act, S. 1291. The Leahy amendment of S. 1291 (in the nature of a substitute) was reported out of the Committee on the Judiciary on June 20, 2002. S. 1291 was placed on Senate legislative calendar but never received a floor vote.

## III. Vote by the Committee

The Senate Committee on the Judiciary, with a quorum present on October 23, 2003, considered S. 1545. The Committee approved an amended version of the bill in the nature of a substitute. The substitute was approved by a 16–3 vote. All members of the Committee except Senators Chambliss, Graham, and Sessions voted in the affirmative. The Committee also accepted an amendment offered by Senators Grassley and Feinstein (as orally modified by members of the Committee) by a margin of 18–1, with Senator Sessions voting in the negative.

---

[2] Immigration and the U.S. Economy, 107th Cong. Before the Senate Comm. on the Judiciary, Subcomm. on Immigration (2001) (statement of Stephen Moore, Senior Fellow in Economics, Cato Institute).

[3] George Vernez, Richard A. Krop & C. Peter Rydell, Closing the Education Gap: Benefits and Costs 30, 78 (RAND Corporation 1999).

## IV. SECTION-BY-SECTION ANALYSIS

The Hatch-Durbin Substitute to S. 1545, as amended by the Grassley-Feinstein Amendment, now provides as follows:

Section 1 contains the short title of the DREAM Act.

Section 2 explains that "institution of higher education" is defined by the Higher Education Act of 1965. 20 U.S.C. § 1001.

Section 3 repeals IIRIRA § 505, 8 U.S.C. § 1623. Each state is free to determine whom it deems a resident for the purpose of determining in-state tuition. The DREAM Act does not compel states to offer in-state tuition to undocumented aliens, nor does it prevent states from offering in-state tuition to anyone else.

Section 4 provides that applicants may qualify for an initial conditional period of six years during which they can earn permanent resident status if they entered the United States at least five years prior to enactment, were under 16 years of age at the time of entry and are not inadmissible or deportable for specifically enumerated grounds. There is a limited waiver only applicable for grounds of inadmissibility under Immigration and Nationality Act (INA) § 212(a)(6) or deportability under INA § 237(a)(1), (3), and (6). The intent behind removing certain grounds of inadmissibility, and providing a waiver for others, is to ensure that applicants are not denied relief under this act based on circumstances that result solely from their undocumented status. The applicant must also have graduated from high school, obtained a GED, or be admitted to an institution of higher learning as defined in 20 U.S.C. § 1001. Per the Grassley-Feinstein Amendment, the secondary and higher education institutions must be located within the United States. It is the opinion of this Committee that the term "United States" used in this Act incorporates definitions provided in INA § 1101(a)(29) (American Samoa and Swain Islands) and § 1101(a)(38) (the continental United States, Alaska, Hawaii, Puerto Rico, Guam and Virgin Islands).

Persons previously ordered deported are not eligible for adjustment of status under this Act. Exceptions are made for those who remain within the United States with the U.S. government's consent or who received the deportation order while under the age of sixteen. Examples of such U.S. government consent would be temporary protected status or a stay of deportation. Moreover, the Act presumes that if an alien minor receives a removal order prior to the age of sixteen, the minor is not accountable for failure to comply with the order.

Section 4 also contains a physical presence requirement that the applicant must not have been out of the United States for more than ninety days in one visit, or one hundred and eighty days in the aggregate during the five year period. There is a possible waiver of this requirement if the applicant shows exceptional circumstances no less compelling than serious illness to self, or death or serious illness to an immediate family member. The intent of this language is to provide examples to convey the degree of compelling circumstances that one who seeks the waiver must demonstrate. Immigration officials should not interpret the language as a literal prescription of what an alien must demonstrate in order to qualify for the waiver.

Section 5 provides the ways through which conditional residents, after proving themselves worthy after six years, may become permanent residents. The ways are to earn a degree from an institution of higher education or to complete two years in a bachelor's or higher program,[4] or to serve honorably in the military for at least two years. The option of performing community service was eliminated by the Grassley-Feinstein Amendment. The applicant may obtain a waiver for these requirements but only at the discretion of the Secretary of Homeland Security or the Attorney General and only if applicant demonstrates "exceptional and extreme unusual hardship." It is the opinion of this Committee that such hardship must be circumstances beyond the alien's control and which prevented the alien from accomplishing the requirements. A representative example of exceptional and extreme hardship would be a debilitating illness or permanent injury to the applicant or an immediate family member that results in more than inconvenience, but that would prevent the alien from attending school. Failure to complete the requirements because of procrastination, poor planning, or lack of effort should not be considered sufficient hardship.

In addition, the applicant must maintain a clean record, meaning no crime or other misdeed that would render the applicant deportable or inadmissible. The alien cannot be a public charge during the six-year period. The applicant also must maintain continuous residence, as defined by this act, in the United States. If the applicant successfully completes the enumerated requirements, the six-year conditional period also satisfies the residency requirements for naturalization, subject to the limitations set forth in section 316 of the Immigration and Nationality Act.

Section 6 provides that if at the time of enactment an alien has already satisfied all requirements under sections 4 and 5 (meaning that the alien has already "passed the test" and has proven herself worthy of the DREAM Act benefits) then that alien can adjust to permanent resident status without going to school or serving in the military again. Pursuant to the Grassley-Amendment, those who benefit from this "grandfather" clause must undergo the six-year conditional period and comply with all other requirements.

Section 7 provides that the Secretary of Homeland Security has jurisdiction to adjudicate affirmative applications for benefits, but the jurisdiction transfers to the EOIR under the DOJ when the applicant is in removal proceedings. The DREAM Act benefits will be available defensively to those in proceedings. Children 12 years of age or older who satisfy all other requirements of this act but who are still enrolled full time in school shall be granted a stay of proceedings by the EOIR.

To the extent permissible under existing law, a child whose removal proceedings are stayed may obtain work authorization. Sec-

[4] As a condition for their support at the committee level, Senators Kyl and Cornyn expressed that they would like to continue working with the Chairman on other changes to S. 1545. Specifically, Senator Kyl wished to impose an age limit for beneficiaries, and Senator Cornyn circulated but did not offer an amendment that would require graduation regardless of the type of institution that a beneficiary attends. The members of the Committee then discussed the need for a more specific standard that governs beneficiaries who are enrolled in a bachelor's program (under the present language, must complete "at least two years, in good standing, in a program for a bachelor's degree or higher degree in the United States."). The Chairman pledged his good faith to work with Senators Kyl and Cornyn to reach an agreement on an age limit, and to "make it very clear that it is two years toward a bachelor's degree, which means a full course of instruction." See Transcript of Committee Business, October 23, 2003, at 67.

tion 7 does not preempt any existing federal or state labor laws, including laws governing minimum age to work.

Section 8 provides for criminal penalties for falsifying the application including fine or imprisonment or both.

Section 9 contains a confidentiality clause. The Government is not permitted to use information gathered in processing an application under the DREAM Act to initiate removal proceedings against anyone. Violation of the confidentiality agreement would result in a fine up to $10,000. However, information sharing is permissible for the purpose of investigating a crime or a national security breach. Information also may be disseminated to a coroner for the purpose of identifying the deceased.

Section 10 prohibits the collection of an application fee.

A new section 11 created by the Grassley-Feinstein Amendment requires an institution of higher education to register any student it enrolls who is a beneficiary under this Act in the Student and Exchange Visitor Information System (SEVIS).

Section 12, also created by the Grassley-Feinstein Amendment, limits the types of federal financial assistance that beneficiaries may receive. Members of the Committee discussed at length on October 23, 2003 and orally modified the Grassley-Feinstein Amendment but did not agree on the precise modified language. Section 12 as contained in the Grassley-Feinstein Amendment limits federal financial assistance under Title IV of the Higher Education Act of 1965 to student loans under Parts B and D, and work study programs under Part C of Title IV. The modification was based on an understanding that while DREAM Act beneficiaries would not be eligible for grant assistance under Title IV, they would not be limited to receiving only the loans specified under the Grassley-Feinstein Amendment. The Chairman exhorted the Senators to vote on the Grassley-Feinstein Amendment with the understanding that they will in good faith work out the financial assistance issue.

The members of the Committee did work out the precise language of section 12. The premises that guided the agreement were: (1) a DREAM Act beneficiary shall be eligible to receive all loans under Title IV, not just loans under parts B and D; (2) The beneficiary shall not be eligible for disbursement of funds, such as Pell Grants or other grants or scholarships, which do not require repayment. This is true whether the funds are disbursed directly from the government to the beneficiary, the funds are routed through a third party entity, such as a school or a clearinghouse, or the funds are deposited with a school in the beneficiary's behalf; (3) Section 12 is not intended to bar access to services, such as tutoring, child care, mentoring, counseling and all related assistance programs that do not consist of the government actually giving the beneficiary a specific sum of money; (4) Section 12 is not intended to bar financial assistance by any non-federal entity, whether or not such entity receives funding from the federal government; and (5) The scope of Section 12 is limited to Title IV only.[5]

[5] The above-described premises can be illustrated by the following hypothetical situations:

Situation 1: Federal Government gives Student $100 with the understanding that Student will repay the amount. This is a loan and is permissible under Section 12.

Situation 2: Federal Government either directly gives Student $100, gives $100 to Institution to pass onto Student, or gives Institution $100 but specifically for Student's benefit. This is prohibited under Section 12.

The original Grassley-Feinstein Amendment permitted the beneficiaries under this Act to participate in work study programs under Title IV, Part C. Although work study was not part of the discussion during the executive business meeting on October 23, 2003, the members agreed that the Committee never intended to eliminate work study eligibility from Section 12.

Section 13 requires the Government Accounting Office (GAO) to produce a study, seven years after enactment, concerning the number of aliens who apply for and receive benefits under this Act.

## V. Cost Estimate

The Congressional Budget Office (CBO) estimates that enacting S. 1545 would increase direct spending by an insignificant amount from 2004 through 2008. The estimate assumes, based upon historical data, that the cost for Medicare and food stamps will be $90 million from 2009 through 2014 (the CBO estimate does not specifically reference the effects higher education and initial bar to public assistance have on future dependency on public assistance).

The CBO further estimates that the cost of expanding SEVIS to beneficiaries of S. 1545 could be up to $1 million.

### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*S. 1545—Development, Relief, and Education for Alien Minors Act*

Summary: S. 1545 would authorize the Secretary of Homeland Security to adjust the status of certain undocumented alien children to conditional legal permanent resident status if they meet specific criteria. This change in status would make these aliens eligible to participate in federal student loan programs and receive certain other federal benefits. In addition, the bill would require institutions of higher education that enroll aliens who are beneficiaries of this legislation to register those students in the Student and Exchange Visitor Information System (SEVIS).

CBO estimates that enacting S. 1545 would increase direct spending for the student loan, Food Stamp, and Medicaid programs by an insignificant amount in 2004 and by $90 million over the 2004–2014 period. In addition, CBO estimates that implementing S. 1545 would cost up to $1 million in 2005 to expand SEVIS, assuming the availability of appropriated funds.

S. 1545 contains an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would increase the number of students that colleges and universities must track in SEVIS. CBO estimates that the cost of this mandate would be well below the annual thresholds established in UMRA ($60 million for intergovernmental mandates and $120 million for private-sector mandates in 2004, adjusted annually for inflation).

In addition, as legal permanent residents, some individuals would be eligible for Medicaid assistance as a result of the bill. Benefits under the Medicaid program for these individuals would

---

Situation 3: Federal Government gives Institution $100 for reasons not specific to Student. Institution then gives B $50 dollars on its own volition. This is permissible because it does not involve the federal government disbursing money specifically to the beneficiary.

Situation 4: Federal Government spends $100 for programs and services, invites a number of participants to attend these programs and services, Student is one of the participants. This is permissible because no money is given to the beneficiary.

cost states approximately $45 million over the 2009–2014 period. Because states have sufficient flexibility to offset such costs if they choose, they would not be considered mandates under UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1545 is shown in the following table. The costs of this legislation fall within budget functions 500 (education, training, employment, and social services), 550 (health), 600 (income security), and 750 (administration of justice).

| | By fiscal year, in millions of dollars— | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | | | | | | |
| Estimated Authorization Level | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| CHANGES IN DIRECT SPENDING | | | | | | | | | | | |
| Student Loans: | | | | | | | | | | | |
| Estimated Budget Authority | * | * | * | * | * | * | * | * | * | * | * |
| Estimated Outlays | * | * | * | * | * | * | * | * | * | * | * |
| Food Stamps: | | | | | | | | | | | |
| Estimated Budget Authority | 0 | 0 | 0 | 0 | 0 | 5 | 5 | 5 | 5 | 5 | 5 |
| Estimated Outlays | 0 | 0 | 0 | 0 | 0 | 5 | 5 | 5 | 5 | 5 | 5 |
| Medicaid: | | | | | | | | | | | |
| Estimated Budget Authority | 0 | 0 | 0 | 0 | 0 | 5 | 10 | 10 | 10 | 10 | 15 |
| Estimated Outlays | 0 | 0 | 0 | 0 | 0 | 5 | 10 | 10 | 10 | 10 | 15 |
| Total Changes in Direct Spending: | | | | | | | | | | | |
| Estimated Budget Authority | * | * | * | * | * | 10 | 15 | 15 | 15 | 15 | 20 |
| Estimated Outlays | * | * | * | * | * | 10 | 15 | 15 | 15 | 15 | 20 |

Notes.—* = Less than $500,000.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by July 1, 2004, and that the necessary amounts to implement the bill will be appropriated for 2005.

S. 1545 would make certain undocumented alien children eligible for conditional legal permanent resident status. The Secretary of Homeland Security would have the authority to adjust the status of undocumented high school graduates and undocumented high school students admitted to an institution of higher education if they had lived in the United States for at least five years prior to the bill's enactment, were less than 16 years of age at time of entry into the United States, and meet several other criteria. After six years, individuals could petition to have the conditional basis removed if they have received a degree from an institution of higher education, completed at least two years toward a bachelor's degree or higher, or served for at least two years in the United States military.

Aliens who convert to conditional legal permanent resident status would become eligible for federal financial aid. These aliens also could become eligible for other federal benefits such as Food Stamps and Medicaid after five years—assuming they meet other program requirements.

*Spending subject to appropriation*

Implementation of S. 1545 would require institutions of higher education that enroll alien beneficiaries of the bill to register them in SEVIS, which is administered by the Bureau of Immigration and Customs Enforcement (ICE). Based on information from ICE, CBO estimates that it would cost up to $1 million in 2005 to expand and modify SEVIS to collect information on aliens benefitting from S.

1545. CBO expects that any such spending would come from appropriated funds.

*Direct spending*

CBO estimates that enacting S. 1545 would increase direct spending by an insignificant amount in 2004 and $90 million over the 2004–2014 period.

Student Loans. Granting conditional legal permanent resident status would allow these students to participate in the federal student loan programs, CBO estimates that about 13,000 undocumented alien children would enroll during the 2004–2005 academic year and meet all of the other criteria. CBO assumes this number would remain around this level through 2008 and then decline relatively rapidly after that. CBO assumes that these students would be less likely to participate in federal student loan programs than other students for two main reasons. First, these students are more likely to be enrolled in lower-cost community colleges where the need for financial assistance is less great. Second, they would be less willing to submit financial aid forms for fear of exposing the presence of other family members who remain undocumented. Assuming that 1 in 10 enrolled students borrow student loans, CBO estimates the bill would have a negligible effect on federal spending.

Food Stamps. CBO estimates that enacting the bill would increase costs in the Food Stamp program. By allowing certain aliens who are in the United States illegally to adjust their status to conditional legal permanent residents, they would then be considered qualified aliens for Food Stamp eligibility purposes. However, such individuals would be ineligible for Food Stamp benefits during their first five years as qualified aliens, so no additional costs would occur until 2009.

Based on data from the Current Population Survey on participation by noncitizens before the changes in eligibility that were enacted in 1996, CBO estimates that an additional 6,000 people would receive Food Stamps in 2009, declining to about 4,000 a year by 2014. Food Stamp costs would increase by $5 million in 2009 and a total of $30 million over the 2009–2014 period.

Medicaid. CBO estimates that enacting the bill would increase federal Medicaid spending by $60 million over the 2009–2014 period. CBO anticipates that the individuals affected by the bill would qualify for Medicaid primarily through eligibility categories for pregnant women or disabled people with high medical expenses. Based on historical data on Medicaid participation, CBO estimates that an additional 1,000 people would receive Medicaid in 2009 under the bill, rising to about 3,000 by 2014. Most of these new recipients would be pregnant women. The estimate of the per capita for the new recipients excludes emergency services, which are already covered under current law.

Department of Homeland Security. The Bureau of U.S. Citizenship and Immigration Services (CIS) would charge fees totaling several hundred dollars per case to provide certifications of legal permanent resident status, authorizations of employment, and cancellations of deportation. Thus, the agency could collect several million dollars annually over the next few years from individuals who would be affected by the bill. The CIS is authorized to spend such

fees without further appropriation, so the net impact on that agency's spending would be negligible. CIS fees are classified as offsetting receipts (a credit against direct spending).

Intergovernmental and private-sector impact: S. 1545 contains an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act because it would increase the number of students that colleges and universities must track in the SEVIS system. SEVIS was created to collect timely information on foreign students who come to the United States for educational or student exchange purposes. Colleges and universities are responsible for collecting and submitting information on student registration, address, and work activities. Currently, colleges and universities are only required to track students who enter the country using three specific types of visas (F, J, and M) for academic students, vocation students, and exchange visitors. There are currently 1 million students registered in the system. Section 11 would add a new classification of students, those that have attained the status of conditional permanent resident under this bill.

CBO estimates that about 46,000 college students over the 2004–2014 period would be eligible to have their status changed to conditional permanent resident. This represents an increase of less than 5 percent in students who must be tracked in SEVIS. CBO estimates that while universities and colleges currently incur significant costs to comply with the requirements of SEVIS, the incremental costs that would result from these additional students would be small and well below the annual thresholds established in UMRA ($60 million for intergovernmental mandates and $120 million for private-sector mandates in 2004, adjusted annually for inflation).

In addition, as legal permanent residents, some individuals would be eligible for Medicaid assistance as a result of the bill. Benefits under the Medicaid program for these individuals would cost states approximately $45 million over the 2009–2014 period. Because states have sufficient flexibility to offset such costs if they choose, they would not be considered mandates under UMRA.

Furthermore, the repeal of section 505 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (8 U.S.C. 1623) would give states the discretion to provide state-level educational benefits to illegal aliens if they so choose.

Estimate prepared by: Federal Costs: Student Loans: Deborah Kalcevic; Food Stamps: Kathleen FitzGerald; Medicaid: Jeanne De Sa; and CIS and ICE: Mark Grabowicz. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## VI. Regulatory Impact Statement

The passage of S. 1545 will require the Departments of Homeland Security and Justice to promulgate regulations governing the application as well as the review process.

## VII. Changes in Existing Law

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate to dispense with the requirements of Paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

## ADDITIONAL VIEWS OF SENATOR JEFF SESSIONS

The legislation reported by the Committee today, S. 1545, is no DREAM. Instead, it represents a cyclical nightmare for the rule of law in immigration policy reform. It does not address the overall problem of illegal immigration, but instead grants legal status to a select, carved-out group of illegally present individuals. Regardless of the carved-out category, absolving illegal aliens of their illegal status through piecemeal legislation erodes the rule of law and promotes future illegal immigration by sending a clear message to future and current illegal aliens: "The United States has enacted immigration laws, but lacks the intent to meaningfully enforce them."

The majority alleges that the DREAM Act is a "one-time" fix that will not be repeated.[1] That same claim was made by the sponsors of 245 I—an amnesty that Congress has repeatedly extended. If the DREAM Act passes, five years from now we will have no principled or moral basis to deny these same benefits to those brought here after the enactment of this legislation. The cycle will continue.

### I. EFFECTS OF THE DREAM ACT

The DREAM Act will give amnesty, through cancellation of removal, to approximately 500,000 illegal aliens, a number which could easily increase because the DREAM Act contains no numerical cap. Once the illegal alien beneficiaries of the DREAM Act cancel their removal, they will be eligible for legal permanent residence, which puts them on a direct path to citizenship. After 5 years of legal status, all legal permanent residents are eligible to apply for citizenship.

The DREAM Act will allow states to give in-state tuition rates to illegal aliens, when those tax-payer subsidized tuition rates are not even available to citizens of other states. Illegal aliens that are the beneficiaries of the Act will be eligible for all student loans under Title IV of the Higher Education Act of 1965, just like citizens and legal immigrants. Although children of legal aliens, such as H1B visa holders, are not allowed to work, the DREAM Act will allow illegal alien children that added privilege. Most offensively, the DREAM Act contemplates no enforcement provisions or penalties for the people that knowingly violated our immigration laws

[1] In explaining the need for the DREAM Act, the majority of the committee relies on a figure cited by CATO in its "policy" recommendations for the 108th Congress," which states that "the typical immigrant and his or her offspring will pay a net $80,000 more in taxes during their lifetimes than they collect in government services." Cato Institute, The Cato Handbook for Congress: Policy Recommendations for the 108th Congress. This figure is based on a hypothetical calculation done by the National Research Council that projected the net costs of immigrant descendants 300 years into the future. In the report itself, the National Research Council states, "The NPV calculations are based on projections that reach 300 years into the future, and it would be absurd to claim that the projections into the 23rd century are very reliable." National Research Council, The New Americas: Economic, Demographic, and Fiscal Effects of Immigration, National Academy Press, 1997. P.342.

to bring the Act's beneficiaries illegally into the United States. This bill will give those illegal alien parents exactly what they broke our laws to get—legal permission for their children to live and work permanently in the United States and one day become citizens.

II. PROVIDING ILLEGAL IMMIGRANTS WITH INCENTIVES IS BAD IMMIGRATION POLICY

We must not provide legal incentives and rewards for violations of our immigration laws. We cannot threaten deportation for illegal entry, while we simultaneously tell illegal aliens that if they manage to stay in the United States for just a few years illegally working or going to school, we will pass legislation that gives them permission to stay forever, and gives them a guaranteed route to citizenship. It is a confusing and contradictory message, a message that cannot be the basis for the sound immigration policy of a mature nation.

III. RETROACTIVE BENEFITS AND AMNESTIES ENCOURAGE FUTURE ILLEGAL IMMIGRATION

The conclusion by the majority that retroactive benefits are not an incentive for future illegal immigration is not correct. If the DREAM Act becomes law, we will openly state to the world that it is the policy of the United States to continue our cycle of rewarding people who break our immigration laws with eventual legal status and even citizenship. People will rightly conclude that they can come here illegally and wait for the next amnesty.

IV. IT IS TIME FOR COMPREHENSIVE IMMIGRATION REFORM, NOT PIECEMEAL LEGISLATION

One thing we all can agree on is that our immigration system is broken. The time has come to take an honest look at the broad problem of illegal immigration in America and to enact comprehensive reform that addresses the lack of interior enforcement resources and promotes homeland security. The President has put comprehensive immigration reform on the table by announcing his plan for a large-scale guest worker program. From what I have heard, I cannot agree to all parts of the proposal. Still, discussing the problem as a whole is the right approach. We have no choice but to focus our efforts on a comprehensive reform package that rewards those who follow proper immigration procedures. We must reject piecemeal legislation that only addresses part of the problem while we study comprehensive reform. Secondly, no sensible reform plan can provide financial benefits to aliens who are here illegally. Likewise, comprehensive reform cannot result in rewarding illegal activity with permanent residence and citizenship.

JEFF SESSIONS.

## ADDITIONAL COMMENTS OF SENATOR CHAMBLISS

At the markup on October 16, 2003, the Committee took up the DREAM Act, S. 1545. Senator Chambliss filed and spoke on an amendment that addressed financial assistance for beneficiaries of S. 1545. This amendment was ultimately included, word-for-word, as part of the Grassley amendment, which the Committee considered and accepted on October 23, 2003.

To provide legislative history for Section 12 of S. 1545 as reported with the Grassley amendment, attached is Senator Chambliss' statement as the original author of that Section's financial assistance language. This statement is taken directly from pages 41–46 of the Committee's October 16 transcript (Appendix A).

In particular, Senator Chambliss, as addressed beginning on page 43 of the October 16 transcript, intended the financial assistance amendment to continue to make DREAM Act beneficiaries ineligible for HOPE scholarships as illegal aliens are ineligible under the current law. This amendment ensures that DREAM Act beneficiaries will not be considered eligible for HOPE scholarships under the definition of eligibility in Title IV of the Higher Education Act.

SAXBY CHAMBLISS.

## ADDITIONAL VIEWS OF SENATOR JOHN CORNYN

Supporters of the Dream Act cite the goal of education, and specifically the benefits of having an educated workforce, as one of the most basic reasons to support this legislation. I believe it is in our best interest to have an educated workforce that can contribute to this great nation in a productive way. The Dream Act as introduced in 2001 required undocumented students to graduate from a qualified four or two year institution in order to obtain legal permanent residency under the Act. If we are serious that the intent of the Dream Act is about education, then I think we should require these students to graduate from a qualified institution of higher learning in order to receive legal permanent residency under the Act. As I said during the committee markup on this bill, I think we need to "make clear that what we are seeking is people that actually receive a degree which will provide them the opportunity that I think this bill is determined to provide." See Transcript of Committee Business, October 23, 2003, at 67 (Appendix B).

JOHN CORNYN.

# APPENDIX A

## EXCERPTS FROM COMMITTEE EXECUTIVE BUSINESS MEETING TRANSCRIPT FROM OCTOBER 16, 2003

* * * immigrant voices urging us to close our borders and jealously guard our citizenship privileges. If these voices had completely won out, America today would be weaker, its democracy less cohesive and dynamic, and its place in the world much diminished.

Much work remains to be done to make our immigration system more responsive to the needs of the American economy and the need of the immigrants on whom our economy depends. But I think this legislation is an important first step.

And, again, I do sincerely commend you, Mr. Chairman, for taking such a leadership role, along with Senator Durbin, on this bill.

Chairman HATCH. Well, thank you so much.

Senator Chambliss is next.

Senator CHAMBLISS. Mr. Chairman, I would just like to make a very brief comment about this bill.

First of all, I would just like to say to the Chairman that I am extremely appreciative of this bill being brought forward because this, I think, is the first in probably a series of bills that is going to bring an issue to the forefront that the American people are well aware of and that Congress has been giving a wink and a nod to for so many years, and that is, how do we deal with the huge number of illegal aliens that we know are in this country? And what sort of status should they be put in? There are too many economic sectors of our country that are dependent on illegal aliens, and we know it. But we have been giving that wink and nod, and I think this helps raise the profile of that issue.

By the same token, as I listened to my colleagues on both sides talk about the effect of this Act and the background of this Act, what you are talking about primarily is the legal aliens who have come to this country, either in legal status or have become legal once they got here. And that is a whole different category of individuals than what we are going to be dealing with here.

We have in my home State, as an example, a large population of illegal aliens. We have a large population of legal aliens. We have a large population of folks who are here illegally whose children are U.S. citizens because they were born here. So there are different categories of aliens. Here we are dealing with folks who truly are illegal.

Now, the fact of the matter is they didn't cause that to happen. Their parents did. And the issue is whether or not they are to be penalized because of—the issue is not whether they are to be penalized because of that, but the issue is whether or not they are to be treated the same as children who are born to legal U.S. citi-

zens, whether they were born in the United States or not, or whether you are going to put them in the same category as those individuals who are hard-working, tax-paying Americans when it comes to the education of the children of those folks who came into this country illegally and are here illegally.

In my home State, we do have that large population, and we also have a provision in the Georgia law that allows for children who graduated from Georgia high schools with a B average to go free tuition to our State-sponsored schools, to our State institutions. It is called the HOPE Scholarship. It was enacted, conceived as an idea by my senior Senator, then-Governor Zell Miller, and it has been a terrific program. The same program has been adopted in may other States around the country.

Under current law, because of the definition of the eligibility under Higher Education Act, children of illegal aliens who are illegally here are not eligible for that HOPE scholarship. If this bill passes, all of a sudden those children who are here illegally will be eligible for the HOPE Scholarship. The HOPE Scholarship is under extreme financial pressure right now. It is funded by our State lottery. It is projected that over the next 5 years we are going to have to go into general revenues to keep up the standards that we are now using to determine whether or not children who graduated from Georgia high schools are eligible for those scholarships.

This bill will put more individuals in the pool and really will dictate that children who are here illegally are put in the same category as the children of hard-working, tax-paying Americans when it comes to divvying up the pool of available money for the HOPE Scholarship in my State and many other States.

Now, every State in America today, for the most part, is in a financial crisis. You talk about a bill that will increase the pressure on each and every one of our governors and our State legislatures. This bill will cause more people to have the availability of in-state tuition access. It is going to increase the funding, the entitlement funding of Pell grants. We are looking at a hugh financial increase on our State and our Federal Government as a result of the passage of this.

Now, the Chairman had a bill last year that truly was narrowly drawn and is a bill that I think with some modification I would have been inclined to support. This bill is not the same bill that the chairman introduced last year, and I am afraid this bill expands the availability of the DREAM Act so broadly that it is going to cause a financial burden and it is going to put a reward on people who really are violating the law by being here illegally. It is not the intention to penalize the children of those folks, but the fact of the matter is they are what they are. And I think we have to recognize that, realize that, and, again, I commend the chairman for bringing it forward. In my subcommittee, we are going to have some hearings on broadening the availability for access to our legal immigration status for a number of these folks who are here illegally. Senator Craig, Senator Cornyn, Senator Kyl, and I know others have expressed interest, and our bill is on H2–A, which is our agricultural working program. We are working now on an expansion of that H2–A program to broaden it so that people who are here illegally that are not just working in agriculture but are in

our carpet mills and our construction industry and other aspects of my State, and certainly your States, will have easier access to come into legal status. And I think that puts them in an entirely different category than what this bill is going to put them in.

So in the present form, I am not going to be able to support the bill, and I am going to have an amendment that I think will make it a little more palatable, and as we move forward through this, I look forward to continuing to discuss it with all of our colleagues.

Senator DURBIN. Would the Senator yield for a question?

Senator CHAMBLISS. Sure.

Senator DURBIN. Just a comment. Section 3 of the bill leaves to each State the authority to make the decision as to whether any of these students will be eligible for in-state tuition or for any State scholarship. And if your State of Georgia did not want to extend HOPE Scholarships to these students, that is that State's right to do. We just give the States the option to make that decision. Today the Federal law mandates how the decision must be made.

Senator FEINSTEIN. Mr. Chairman.

Chairman HATCH. Senator Grassley was next, and then Senator Sessions, and then I will come to Senator Feinstein.

Senator GRASSLEY. I thank Senator Durbin for the statement that he just made because that is the thought that went through my mind as I heard Senator Chambliss make his statement, and it is my understanding of the legislation as well.

As a cosponsor of this bill, I commend Senator Hatch and Senator Durbin for working together on it and producing a pretty good compromise. I have heard from many Iowans about this bill, and I have heard from both sides of the fence, people very opposed to it and people supportive of the legislation. I know that some members have fears that we are rewarding illegal immigration and that the more reward that we offer, somehow more people want to come to the United States. Coming to the United States is something that we ought to be proud of because it speaks well for our * * *

## APPENDIX B

---

### EXCERPTS FROM COMMITTEE EXECUTIVE BUSINESS MEETING TRANSCRIPT FROM OCTOBER 23, 2003

* * * three other places, but I am perfectly willing to stay if we can keep some here.

Senator FEINSTEIN. I do have to leave in ten minutes, just so you know.

Chairman HATCH. Well, let's give it ten more minutes. If you could, Senator Sessions, I would appreciate it. I know you are an active member of the Armed Services Committee.

Senator KYL. Mr. Chairman, if there are other amendments, perhaps we can at least conduct some business before—just a constructive suggestion.

Chairman HATCH. Well, let me just say this. We will stack amendments. Are there any further amendments?

Senator CORNYN. Mr. Chairman.

Chairman HATCH. Senator Cornyn.

Senator CORNYN. Mr. Chairman, I had an amendment that I, in the interest of trying to be constructive and working together—I hope the process will not end once this bill is passed, but that we will continue to work together to try to strengthen this bill even further.

I had an amendment that, true to the original purpose of this bill, which was to promote education and educational opportunity, would provide that the immigrant student must graduate from a qualified four- or two-year institution in order to be eligible to become a legal permanent resident under the bill, which I believe would actually strengthen this, rather than just merely attending but not being sincere about the educational goal that we are all seeking to advance.

I think that would actually help improve the bill even further above and beyond what has been done now with the Grassley-Feinstein amendment. But rather than offer it at this time, what I would like to do is to continue to work with everyone here to see if we might be able to improve the bill even further by making sure that the goal that we are all trying to achieve, and that is education, is advanced and not provide an opportunity for those who perhaps were trying to use this Act in a way that does not serve that purpose.

Senator KYL. Mr. Chairman, might I ask Senator Cornyn or you a question on this?

Chairman HATCH. Well, let me just say that I appreciate the Senator's willingness to withhold and work with us to see if there is some way we can accommodate.

Senator Kyl.

Senator KYL. I thought there were some kind of minimal requirements, not just to take one class for two years. I mean, there is some kind of minimal requirement, is there not?

Senator CORNYN. If I may respond to that——

Chairman HATCH. They have to take two full years of classes.

Senator CORNYN. The provisions of the Act, which is 5(d)(1)(D)(i) of the Act, says the alien has acquired a degree from an institution of higher education or has completed at least two years in good standing in a program for a bachelor's degree or a higher degree, or served in the armed forces.

Chairman HATCH. In other words, they are going to have to take a regular course toward a bachelor's degree.

Senator CORNYN. I am not sure what that means exactly.

Senator KYL. Yes. Mr. Chairman, I think Senator Cornyn raises a very good point—"completed two years." Unfortunately, at some of our universities now, it takes you six years to get through, and I am not sure how many credits. "Completed two years" would be—I mean, we clearly have to get a little bit more precise about that.

Senator CORNYN. I think I understand where the authors and the sponsors are heading, and I just think we may need to firm that up and make that clear.

Chairman HATCH. Let's see if we can work that out between now and the floor.

Senator FEINSTEIN. May I ask a question of Senator Cornyn?

Senator CORNYN. And also make clear that what we are seeking is people that actually receive a degree which will provide them the opportunity that I think this bill is determined to provide.

Chairman HATCH. Senator Feinstein.

Senator FEINSTEIN. I think the thrust of the amendment is a good one. The question I would have about it is does this then subject the youngster to deportation during those two years?

Senator CORNYN. That certainly would not be my intent, not at all.

Senator FEINSTEIN. That would be my question.

Senator CORNYN. As far as I am concerned, we could make that even plain.

Chairman HATCH. Let's work in good faith to accommodate language that will make it very clear that it is two years toward a bachelor's degree, which means a full course of instruction. We might have to put in a certain amount of credits they have to go for.

Are there any other amendments to this bill at this time that we can stack?

If there are no other amendments to this bill, it is apparent we are not going to get a quorum. So what I think we will do is recess until after the first vote, and then as far as I can see it will be a vote up and down on final passage. I would prefer to do that right now if we could * * *

○