

Legislative Bulletin.....December 8, 2010

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- **Chain Migration Will Result From DREAM.** Aliens who become citizens via this bill will be able to petition for their family members to come to the United States. Many of these individuals may be parents who brought their children here illegally in the first place.
- **Provides Safe-Haven To Any Alien That Applies For Conditional Nonimmigrant Status.** The bill prohibits an alien from being removed if he/she has a pending application for conditional status. Should that application be litigated or take years to complete due to an influx of applications, he/she could continue to stay in the United States, unable to be removed.
- **An Illegal Alien Can Come In And Out Of The U.S.** A break in continuous physical presence constitutes a period of more than 90 days, or for any periods in the aggregate exceeding 180 days. This can be extended for exceptional circumstances. This means the alien could leave the country for up to three months (a few times) and still be protected and able to enter back into the U.S. legally so long as he/she has submitted an application, since no alien may be removed who “has a pending application for conditional nonimmigrant status under this Act.”
- **Illegal Aliens Given Access to Federal Student Loans.** The bill creates an entitlement for illegal aliens by giving them access to mandatory dollars via student loans. These loans, however, are not entitlements – each school has a finite number of resources to divide among its students. This bill will place an additional burden on cash-strapped schools.
- **Illegal Immigrants May Be Eligible for Loan Forgiveness Programs.** Subsidized and unsubsidized Stafford and Perkins loans are eligible for many loan forgiveness programs if the borrower meets the criteria. Some conservatives may

view this as an insult to low income American citizens being forced to compete for scarce funds against individuals that chose to break the law.

- **Aliens Do Not Need To Finish a Degree To Be Eligible For Lawful Permanent Resident Status.** To receive legal permanent resident status, the bill requires that an applicant complete two years at an “institution of higher education” or complete two years in the military.
- **Closed Process.** This bill never received a committee markup and therefore was unable to be amended. Furthermore, by using procedural gimmicks, Republicans will be unable to offer a Motion to Recommit.

Senate Amendments to H.R. 5281 - Development, Relief, and Education for Alien Minors (DREAM) Act of 2010 (*Berman, D-CA*)

Order of Business: The bill is scheduled to be considered on Wednesday, December 8, 2010 under a closed [rule](#) making in order a motion to amend the Senate with a House amendment. This bill is the exact same text as H.R. 6497, introduced by Mr. Berman yesterday. However, in order to prevent Republicans from offering a Motion to Recommit, the text of H.R. 6497 will be inserted into a bill (H.R. 5281) that passed both the House and the Senate. The text of H.R. 5281 will be completely removed and replaced with the DREAM Act. For purposes of this Legislative Bulletin, the bill will be referred to as H.R. 6497.

Summary: H.R. 6497 would authorize the cancellation of removal and adjustment of status of certain alien students and allow them to ultimately become legal permanent residents of the United States. This bill does NOT include in-state tuition for aliens as did previous versions.

Specifically, the bill does the following:

Cancellation of Removal of Aliens Who Came Here as Kids. The bill gives the Secretary of Homeland Security the authority to cancel removal of and **adjust the status of an illegal alien to a conditional nonimmigrant status** if the alien:

- Has been in the U.S. for a continuous period over not less than 5 years;
- Was younger than 16 when he or she came to the U.S.;
- Has been a person of good moral character;
- Is not inadmissible or deportable on specific grounds;
- Has not ordered, incited, assisted, or participated in the persecution of anyone on account of race, religion, nationality, membership in a particular social group, or political opinion;
- Has not been convicted of a federal or state offense punishable by imprisonment of more than 1 year, or has not been convicted of 3 or more offenses and sentenced to imprisonment for an aggregate of 90 days or more;
- Has been admitted to an institution of higher education or has earned a high school diploma or GED;

- Has never been under a final administrative or judicial order of exclusion, deportation, or removal; and
 - Was younger than 30 on the date of enactment.
- *Waiver Authority.* The Secretary of Homeland Security may waive ineligibility for humanitarian purposes of “family unity or when it is otherwise in the public interest.”
 - *Application.* Allows illegal aliens to apply for relief “without being placed in removal proceedings.” *See conservative concern below.
 - *Fees.* Includes a \$525 per application fee to apply and a \$2,000 fee to extend conditional LPR for 5 years after the initial 5 years (these were not included in the Durbin bill and was included to comply with paygo).
 - *Deadlines.* An alien must submit an application for adjustment of status no later than one year after the alien earned a high school diploma or GED.
 - *Biometric and Biographic Data Requirements.* Requires the submission of this data in order to adjust status.
 - *Background Checks and Medical Exams.* Biometric and biographic data will be used to conduct background checks and to determine whether he/she is ineligible. A medical examination is required.
 - *Breaks in Presence.* A break in continuous physical presence constitutes a period of more than 90 days, or for any periods in the aggregate exceeding 180 days. This can be extended for exceptional circumstances. ***This means the alien could leave the country for up to three months (a few times) and still be protected and able to enter back into the U.S. legally so long as he/she has submitted an application since no alien may be removed who “has a pending application for conditional nonimmigrant status under this Act.”***
 - *Removal of Alien.* No alien may be removed that has a pending application for conditional LPR and establishes prima facie eligibility for conditional LPR. This is “evidence that is sufficient to raise a presumption of fact or to establish the fact in question unless rebutted.” (lectlaw.com)
 - *Regulations.* No later than 180 days after enactment, the Secretary of DHS must publish interim regulations. Within a “reasonable time” after publication of the interim regulations, the Secretary shall publish final regulations.

Conditional Nonimmigrant Status. Conditional nonimmigrant status is valid for 5 years. The terms are as follows for the alien with conditional status:

- Must be authorized to be employed in the U.S.;

- May “travel outside the United States and may be admitted (if otherwise admissible) upon return to the United States without having to obtain a visa if -- A) the alien is the bearer of valid, unexpired documentary evidence of conditional nonimmigrant status; and the alien’s absence from the United States was not for a period exceeding 180 days.” (emphasis added)
- *Extension of Conditional Nonimmigrant Status.* An alien with conditional nonimmigrant status may receive an extension of 5 years if he/she:
 - Has demonstrated good moral character;
 - Is not inadmissible or deportable for certain reasons;
 - Has not abandoned his/her residence in the U.S.;
 - Has acquired a degree from an institution of higher education or has completed at least 2 years in a program for a bachelor’s degree or higher degree, or has served in the military for at least 2 years; and
 - Has provided a list of each secondary school that the alien attended in the U.S.

This *may be extended further* if the alien “demonstrates compelling circumstances for the inability to complete the requirements” described above, or if he/she demonstrates that the removal would result in “exceptional and extremely unusual hardship to the alien or the alien’s spouse, parent, or child who is a citizen or a lawful permanent resident of the United States.”

Adjustment to Legal Permanent Resident Status. An alien is eligible if he/she:

- Has demonstrated good moral character;
- Is not inadmissible or deportable for certain reasons;
- Has not abandoned his/her residence for longer than 730 aggregate days;
- Has complied with requirements related to hardship extensions if he/she received one.
- *Payment of Federal Taxes and Biometric Data.* Requires aliens to satisfy federal tax liability when he/she applies for LPR. Also requires them to submit biometric and biographic data to DHS.
- *No Numerical Limitation.* There is no limit to the number of individuals who may adjust status to LPR.
- *Eligibility for Citizenship.* Aliens with LPR status may be naturalized and become U.S. citizens if they have resided continuously in the U.S. for at least 3 years and have been physically present in the U.S. for periods totaling at least half of that time.

Stay of Removal of Certain Aliens Enrolled in Primary or Secondary School. Provided that the alien meets the requirements listed above (good moral character, not inadmissible, etc.), and is at least 12 years old, and is enrolled full-time in a primary or

secondary school. The bill does not indicate what happens to the parents of these children.

Penalties for False Statements. Whoever willfully and knowingly falsifies, misrepresents, or conceals a material fact or makes any false or fraudulent statement or representation, etc. shall be fined, imprisoned not more than 5 years, or both.

Higher Education Assistance. An alien granted conditional nonimmigrant status or lawful permanent resident status is eligible for federal student loans (subsidized Stafford, unsubsidized Stafford and Perkins loans) and federal work-study programs. *This bill does NOT include in-state tuition for aliens as did previous versions.*

GAO Report. No later than 7 years after enactment, the Comptroller General shall submit to the Senate and House Judiciary Committees a report with the following information:

- The number of aliens who were eligible for cancellation of removal and grant of conditional nonimmigrant status;
- The number of aliens who applied for cancellation of removal and conditional nonimmigrant status;
- The number of aliens who were granted conditional nonimmigrant status; and
- The number of aliens whose status was adjusted to an alien lawfully admitted for permanent residence.

Additional Background: The DREAM Act has been introduced in every Congress in recent history. Versions of this bill have also been included in many comprehensive immigration proposals, including S. 2611, the Comprehensive Immigration Reform Act of 2006 (introduced by Senator Specter, R-PA), which passed the Senate by a vote of 62-36. The DREAM Act has never passed the House or the Senate as a stand alone.

Potential Conservative Concerns:

- **Adults Will Benefit From A Bill Geared Toward “Minors.”** The DREAM Act will allow individuals under the age of 30 at the date of enactment the ability to become eligible for LPR status.
- **Chain Migration Will Result From DREAM.** Aliens who become citizens via this bill will be able to petition for their family members to come to the United States. Many of these individuals may be parents who brought their children here illegally in the first place.
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- **Closed Process.** This bill never received a committee markup and therefore was unable to be amended. Furthermore, by using procedural gimmicks, Republicans will be unable to offer a Motion to Recommit.

Committee Action: H.R. 6497 was introduced on December 7, 2010 and referred to the House Judiciary Committee. No further public action was taken.

Administration Position: “The Administration strongly supports House passage of the House amendment to the Senate amendments to H.R. 5281, which would address the immigration status of certain individuals who came to the United States as children, know this Nation as their home, and, by their actions, are contributing to the prosperity and security of the United States. The DREAM Act would provide conditional nonimmigrant status for five years to individuals who: (1) came to the United States before turning 16 years old; (2) have lived continuously in the United States for at least five years prior to the date of enactment; (3) were under the age of 30 on the date of enactment; (4) demonstrate good moral character; (5) are not inadmissible or deportable under a number of key grounds; and (6) have graduated from high school, have obtained a GED certificate, or have been admitted to an institution of higher education in the United States.

Before these individuals could apply for a five-year extension to their conditional nonimmigrant status, they would have to meet additional requirements – in particular, completion of at least two years of either college or military service. After ten years, these individuals would be eligible to apply for permanent resident status. The young people who would be eligible for relief under the DREAM Act are prime examples of the need for comprehensive immigration reform that is based on requiring accountability and

responsibility from all – the government, employers, and those who have entered the country illegally. The present system is broken and the Administration continues to call on the Congress to pass comprehensive reform. While the broader immigration debate continues, the Administration urges the House to take this important step and pass the DREAM Act. Young people who have spent much of their lives in the United States and want to improve their lives and their Nation by pursuing higher education or defending the United States as members of the Armed Forces should be given this opportunity to earn legal status.”

Cost to Taxpayers: CBO states that the bill increases revenues by \$1.73 billion over ten years. The bill also reduces mandatory spending by \$495 million over ten years.

Does the Bill Expand the Size and Scope of the Federal Government? Yes. The bill grants amnesty to potentially millions of individuals. In turn, this will certainly lead to the explosion of many government programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? According to CBO: “This bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Some state and local colleges and universities may experience increased enrollment as a result of this bill, but any associated costs would not result from intergovernmental mandates. H.R. 6497 also contains no private-sector mandates as defined in UMRA.”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Although the bill contains no earmarks, and there is no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

Constitutional Authority: A committee report stating constitutional authority is unavailable.

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