

# SUMMARY OF THE CANTWELL AMENDMENT (P. 262) TO S. 1639<sup>1</sup>

June 26, 2007

## Changes to the H-1B Program:

- Strikes provision in base bill that removed “dual intent”. (*Section 418*)
- Grants dual intent to certain nonimmigrant students. (*Section 418*)
- Strikes provision in base bill that removed “degree equivalency.” (*Section 419*)
- Note there is a drafting error at Sec. \_\_ (c)(1) where “(i)” indicates 15,000 rather than 115,000. (*Section 419*)
- Caps at 50,000 the H-1B exemption for workers who are employed at higher education institutions, nonprofits or government research organizations. (*Section 419*)
- Doubles the H-1B exemption to 40,000 for individuals who have earned a master's degree or higher at a U.S. institution of higher education. (*Section 419*)
- Adds a new H-1B exemption of 20,000 individuals who have earned a master's degree or higher in a STEM field outside the U.S. (*Section 419*)
- Limits employers who have at least 1,000 employees and a total workforce that is 15% or more H-1Bs to a maximum of 1,000 H-1B petitions a year. This reform is designed to curb abuses by large, foreign-based software service contracting companies with U.S. subsidiaries that file thousands of H-1B petitions, capturing a huge percentage of the limited H-1B supply. (*Section 419*)
- Allows for the filing of adjustment of status applications by H-1Bs and H-1B dependents who are waiting in employment backlog. Since individuals who file an adjustment of status application may also be granted employment authorization, this would allow H-1B dependents to work while waiting for final approval. (*Section 419*)
- Prohibits placement of an H-1B worker at another employer's worksite where the placement of the alien at the worksite is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the service of the affiliated employer. (*Section 420*)
- Requires DHS provide a report on fraud risk assessment of the H1-B program within 60 days of enactment. (*Section 420*)

## Modifications to Title V

### Phase-in of Self-Petitioning for Merit-Based System

- Phases *out* employer sponsorship of immigrants during first 5 fiscal years post-enactment. During that period, a diminishing portion of the overall number of merit-based green cards will be reserved for employer-sponsored petitions; the

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<sup>1</sup> The Cantwell provisions can be found on p. 262-71 of the “clay pigeon” amendment text, available on InfoNet at <http://www.aila.org/content/default.aspx?docid=22748>.

remainder will be available for self-petitioning. The employer-sponsored green cards will be awarded within the new merit-based system to those beneficiaries who have the point totals.

- Permits employers, even at the end of the phase-out period, to petition on behalf of a specific beneficiary but no numbers are specifically set aside for that purpose.

**Carve-out for “Priority Workers”**

- Reserves 20,000 green cards out of the worldwide ceiling for each of the first 5 fiscal years to be awarded to the current EB-1 Priority Worker category. This category includes: Aliens with Extraordinary Ability; Outstanding Professors and Researchers; and Certain Multinational Executives and Managers.

**Permanent employment visas deadline and extension:**

- Requires applications and petitions to be filed by July 1 at which point the Secretary will determine the threshold number of points necessary for green card eligibility. If there are too few applications meeting the threshold, DHS can continue receiving applications. (*Sec. 502(b)(1)*)

**Pending and approved employment-based permanent visas:**

- Employment-based visa filed for classification that were filed prior to the date of the introduction of this bill and were pending or approved at that time shall be treated as if such provision remained effective. The beneficiary and any dependent accompanying or following to join such beneficiary, may apply to adjust status regardless of whether an immigrant visa is immediately available and will be approved when a visa number becomes available. Aliens with applications for a labor certification pending shall preserve the immigrant visa priority date from the time the petition was filed.