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SUBJECT: **Comparison of Selected Provisions on Nonimmigrants in Senate-passed S. 2611 and Current Law**

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This memorandum is one in a series of memoranda the Congressional Research Service is preparing to compare current immigration law and legislation passed in the 109th Congress by the House (H.R. 4437) and the Senate (S. 2611). In the attached comparison table, current law is the Immigration and Nationality Act (INA),[1] unless otherwise noted; federal regulations are included in the "Current Law" column where directly relevant. The provisions covered by this memorandum are those in Title IV, Subtitle A of S. 2611 and a few related provisions in S. 2611.

The House passed the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437), as amended, on December 16, 2005. H.R. 4437 primarily addresses immigration enforcement-related issues, including border security; the role of state and local law enforcement agencies in immigration enforcement; unlawful presence; smuggling; detention; and the enforcement of prohibitions on employing unauthorized workers. A number of provisions in H.R. 4437 were included in a predecessor bill (H.R. 4312), as reported by the House Homeland Security Committee.

The Senate passed the Comprehensive Immigration Reform Act of 2006 (S. 2611), as amended, on May 25, 2006. The Senate had debated immigration reform from late March through early April 2006, but efforts to invoke cloture failed. At that time the leading proposals included S. 2454, the Securing America's Borders Act, which Senate Majority Leader Bill Frist introduced on March 16, 2006, and S. Amdt. 3192 to S. 2454, the Comprehensive Immigration Reform Act, which Judiciary Chairman Arlen Specter offered

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[1] Act of June 27, 1952, ch. 477, codified at 8 U.S.C. §1101 *et seq.*

on March 30, 2006.[2] In addition to including provisions on immigration enforcement-related issues (e.g., border enforcement, interior enforcement, and unlawful employment of aliens), Senate-passed S. 2611 would revise current law on temporary workers, expand legal permanent immigration, and enable certain unauthorized aliens in the United States to adjust to legal permanent resident status.

This memorandum compares selected provisions on nonimmigrants in the Senate bill and current law. The provisions included are those in Title IV, Subtitle A of S. 2611 and related provisions in S. 2611 on L visas (§526) and H-2B visas (§753). These provisions address "H" temporary worker visas, except for the H-2A agricultural worker visa,[3] and primarily deal with the new H-2C visa that S. 2611 would establish. In addition to provisions on "H" temporary worker visas, the attached table includes provisions on L intracompany transferee visas, S criminal and terrorist informant visas, and the Visa Waiver Program.

As H.R. 4437 does not contain any provisions on nonimmigrants, this memorandum compares S. 2611 with current law, and provides selected commentary. It is largely organized by section and subsection of Title IV, Subtitle A of S. 2611, as the table of contents indicates.

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[2] S. Amdt. 3192 is based on the legislative language that the Senate Committee on the Judiciary approved on March 27, 2006.

[3] Language in §402(a) of S. 2611 on the H-2A visa will be covered in a separate memorandum on agricultural worker provisions.

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Current Law	Senate-passed S. 2611	Comments
TITLE IV, SUBTITLE A OF S. 2611 AND RELATED PROVISIONS		
Immigration Impact Study		
No similar provisions.	Any regulation that would increase the number of aliens eligible for legal status could not take effect until 90 days after the Director of the Census Bureau submits a required report to Congress. The study, to be conducted by the Director of the Census Bureau jointly with the Secretaries of the Departments of Homeland Security (DHS), Agriculture, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, and Labor (DOL), among others, would examine the impacts of the current and proposed annual grants of legal status, including immigrant and nonimmigrant status, and the current level of illegal immigration, on the infrastructure of and quality of life in the U.S. The report on the study findings would have to be submitted not later than 90 days after the date of enactment. (§401)	
Temporary Worker Categories		
Temporary Worker Categories: *Definition of H-1B Category*		
An H-1B nonimmigrant is an alien who is coming temporarily to the U.S. to perform services in a specialty occupation or as a fashion model, who meets specified requirements for the occupation or is of distinguished merit and ability, and with respect to whom, the Secretary of Labor determines and certifies to the Attorney	Would retain current law except would replace "Attorney General" with "Secretary of Homeland Security." (§402(a))	Basically a technical correction to reflect transfer of the functions of the Immigration and Naturalization Service (INS) to DHS. Other provisions revising the H-1B professional specialty workers are included in Title V of S. 2611.

Current Law	Senate-passed S. 2611	Comments
General that the intending employer has filed a labor attestation. (INA §101(a)(15)(H)(i)(b)) A *specialty occupation* for H-1Bs is defined as an occupation requiring theoretical and practical application of a body of **highly** specialized knowledge and requiring the attainment of a bachelor's degree or its equivalent as a minimum. (INA §214(i)(1))		
Temporary Worker Categories: *Definition of H-1B1 Category*		
An H-1B1 nonimmigrant is an alien who is entitled to enter the U.S. under and in pursuance of the provisions of the free trade agreements with Chile and Singapore, who is engaged in a specialty occupation, and with respect to whom, the intending employer has filed a labor attestation with the Secretary of Labor. (INA §101(a)(15)(H)(i)(b1)) A *specialty occupation* for H-1B1s is defined as an occupation requiring theoretical and practical application of a body of specialized knowledge (not highly specialized knowledge) and requiring the attainment of a bachelor's degree or its equivalent as a minimum. (INA §214(i)(3))	Would retain current law (§402(a))	Other provisions revising the H-1B professional specialty workers are included in Title V of S. 2611.

Current Law	Senate-passed S. 2611	Comments
Temporary Worker Categories: *Definition of H-1C Category*		
An H-1C nonimmigrant is an alien who is coming temporarily to the U.S to perform services as a registered nurse, who meets specified qualifications, and with respect to whom, the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is in effect for the facility for which the alien will perform the services. (INA §101(a)(15)(H)(i)(c))	Would retain current law except would replace "Attorney General" with "Secretary of Homeland Security." (§402(a))	Basically a technical correction to reflect transfer of the functions of INS to DHS.
Temporary Worker Categories: *Definition of H-2ACategory*		
[*Note: The INA definition of the H-2A category, which is the subject of language included in §402(a) of S. 2611, will be covered in a separate memorandum comparing provisions in current law, H.R. 4437, and S. 2611 on agricultural workers.*]		
Temporary Worker Categories: *Definition of H-2B Category*		
An H-2B nonimmigrant is an alien having a residence in a foreign country that he or she has no intention of abandoning who is coming temporarily to the U.S. to perform nonagricultural **temporary service or labor** if unemployed persons capable of performing such work cannot be found in the U.S., but not a medical school graduate coming to the U.S. to perform services as a member of the medical profession. (INA §101(a)(15)(H)(ii)(b))	An H-2B nonimmigrant would be an alien having a residence in a foreign country that he or she has no intention of abandoning who is coming temporarily to the U.S. to perform nonagricultural **work or services of a temporary or seasonal nature** if unemployed persons capable of performing such work cannot be found in the U.S., but not a medical school graduate coming to the U.S. to perform services as a member of the medical profession. (§402(a))	It is unclear if the change in language proposed in S. 2611 regarding the nature of the work that an H-2B alien could perform would be a substantive change from current law (*see text in bold in Current Law and S. 2611 columns*). As shown below in *Definition of H-2C Category*, however, the language proposed in S. 2611 to describe the nature of the work that could be performed by an H-2C alien is similar to that in the current H-2B definition and somewhat different than that in the proposed H-2B definition.

Current Law	Senate-passed S. 2611	Comments
"Temporary services or labor" under the H-2B classification refers to any job in which the petitioner's need for the duties to be performed by the employee is temporary. The petitioner's need shall be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. (8 C.F.R. 214.2(h)(6)(ii))		
Temporary Worker Categories: *Definition of H-2C Category*		
No similar provisions.	A new H-2C visa would be established under the INA for an alien with a residence in a foreign country that he or she has no intention of abandoning who is coming temporarily to the U.S. to perform **temporary labor or services** other than the labor or services covered under the H-1B professional speciality worker visa, H-1C registered nurse visa, H-2A agricultural worker visa, H-3 trainee visa, L intracompany transfer visa, O person with extraordinary ability visa, P internationally recognized athlete/entertainer visa, or R religious worker visa if unemployed persons capable of performing such work cannot be found in the U.S. The requirements of the new INA §218A on the admission of H-2C workers (*see below*), including the filing of a petition on behalf of the alien, would have to be met. (§402(a))	In light of the H-2C definition proposed in S. 2611, H-2C aliens presumably would perform H-2B-like work. It is unclear whether the proposed H-2C visa would be restricted similarly to the current H-2B visa with respect to the nature of the employer's need (*see "Definition of H-2B Category," Current Law column, above*).
Temporary Worker Categories: *Definition of H-3 Category*		
An H-3 nonimmigrant is an alien having a residence in a foreign country that he or	Would retain current law. (§402(a))	

Current Law	Senate-passed S. 2611	Comments
she has no intention of abandoning who is coming temporarily to the U.S. as a trainee, other than to receive graduate medical education or training, in a training program not primarily designed to provide productive employment. (INA §101(a)(15)(H)(iii))		
Temporary Worker Categories: *Definition of H-4 Category*		
H-4 nonimmigrants are the alien spouse and minor children of an H nonimmigrant if accompanying or following to join him or her. (INA §101(a)(15)(H); 8 C.F.R. 214.1(a)(1)(iii))	Would retain current law. (§402(a))	
Temporary Worker Categories: *Effective Date and Application*		
No similar provisions.	The amendment proposed by §402(a) would take effect 18 months after the date that at least $400 million are appropriated and made available to the Secretary of DHS to implement the Electronic Employment Eligibility System (to be established under Title III of the bill) with respect to aliens who, on such effective date, are outside the U.S. (§402(b))	The meaning and significance of the phrase in the S. 2611 provision referencing aliens who are outside the U.S. on the effective date is unclear. Does the phrase relate to the application of the nonimmigrant category definitions in §402(a), or does it relate to the application of the verification system? In either case, what would it mean for aliens within the U.S.? For example, if the phrase relates to the application of the nonimmigrant category definitions, would aliens in the U.S. be able to apply to change to one of H classifications after the effective date? Similar language to the S. 2611 provision also appears in §406 of the bill (*see "Rulemaking and Effective Date," below*).

Current Law	Senate-passed S. 2611	Comments
Admission of H-2C Nonimmigrants		
No similar provisions.	A new §218A would be added to the INA on admission of H-2C nonimmigrants. (§403(a)(1))	
Admission of H-2C Nonimmigrants: *Authorization*		
The question of importing any alien as an H (excluding H-1B1), L, O or P-1 nonimmigrant shall be determined by the Attorney General after consultation with appropriate government agencies upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. (INA §214(c)(1))	The Secretary of State could grant an H-2C visa to an alien who demonstrates an intent to perform labor or services in the U.S., other than labor or services covered under the H-IB, H-2A, L, O, P, or R nonimmigrant visas. (§403(a)(1))	The disallowed work in this S. 2611 provision does not include work covered under the H-1C or H-3 visa although the description of the H-2C category in §402(a) of S. 2611 explicitly excludes work covered under these visas. As noted above, H-2C aliens presumably would perform H-2B-like work. (*See "Temporary Worker Categories: Definition of H-2C Category," above.*)
Admission of H-2C Nonimmigrants: *Eligibility Requirements*		
No similar provisions.	An alien would be eligible for H-2C status if the alien meets the following requirements: establishes the ability to perform the work; establishes receipt of a job offer from an eligible employer (*see "H-2C Employer Obligations," below*); pays an additional $500 visa issuance fee; undergoes a medical exam; and submits an application to the Secretary of DHS, which, among other information, would include specified information about the alien's health and background. (§403(a)(1))	
Admission of H-2C Nonimmigrants: *Grounds of Inadmissibility*		
Except as otherwise provided in the INA, aliens who are inadmissible under the	In determining an alien's admissibility as an H-2C nonimmigrant, INA §212(a)(5) (labor certification);	

Current Law	Senate-passed S. 2611	Comments
following paragraphs of INA §212(a) are ineligible to receive visas from the Department of State (DOS) or to be admitted to the U.S. by DHS: (1) health-related grounds; (2) criminal and related grounds; (3) security and related grounds; (4) public charge; (5) labor certification; (6) illegal entrants and immigration violators; (7) documentation requirements; (8) ineligible for citizenship; (9) aliens previously removed; and (10) miscellaneous. Discretionary waivers of certain grounds of inadmissibility (such as, specified provisions of the criminal grounds and of the "illegal entrants and immigration violators" grounds) are authorized. (INA §212(a))	(6)(A) (aliens present without admission or parole); (7) (documentation requirements); and (9)(B) (aliens unlawfully present) and (9)(C) (aliens unlawfully present after previous immigration violations) could be waived for conduct that occurred before the effective date of the legislation. DHS could not waive INA §212(a)(2)(A) (conviction of certain crimes), (2)(B) (multiple criminal convictions), (2)(C) (controlled substance traffickers), (2)(E) (certain aliens involved in serious criminal activity who have asserted immunity), (2)(G) (foreign government officials who have committed serious violations of religious freedom), (2)(H) (significant traffickers in persons), or (2)(I) (money laundering); (3) (security and related grounds); or (10)(A) (practicing polygamists), (10)(C) (international child abduction), or (10)(D) (unlawful voters). For conduct that occurred before the date of enactment, DHS could waive any other ground of inadmissibility in individual cases. An alien seeking renewal of admission, or subsequent admission, as an H-2C nonimmigrant would have to establish that he or she is not inadmissible. (§403(a)(1))	
Admission of H-2C Nonimmigrants: *Background Checks*		
The immigration-related powers and duties of the Secretary of DHS, the Attorney General, and the Secretary of State are assigned. (INA §§103, 104)	The Secretary of DHS would not admit, and the Secretary of State would not issue a visa to, an alien seeking H-2C status unless all appropriate background checks are completed. (§403(a)(1))	

Current Law	Senate-passed S. 2611	Comments
Aliens who are inadmissible under the grounds enumerated in INA §212(a) are ineligible to receive visas from DOS or to be admitted to the U.S. by DHS (*see "Grounds of Inadmissibility," above*). (INA §212(a))		
Admission of H-2C Nonimmigrants: *Change of Nonimmigrant Classification*		
Lawful nonimmigrant aliens in the U.S. are able to apply to change to another nonimmigrant classification, unless listed as being prohibited from doing so. (INA §248)	An H-2C alien would not be allowed to change to another nonimmigrant classification. (§403(a)(1))	Currently, aliens in the H classifications are allowed to change status.
Admission of H-2C Nonimmigrants: *Period of Authorized Admission and Extension of Stay*		
A beneficiary of a petition to accord an "H" nonimmigrant classification shall be admitted to the U.S. for the validity period of the petition, plus a period of up to 10 days before and up to 10 days after the validity period. (8 C.F.R. 214.2(h)(13)(i)(A))	The initial period of admission as an H-2C alien would be 3 years. The alien could seek 1 extension of 3 years. DHS would extend, in 1 year increments, the stay of an H-2C alien with a pending permanent labor certification application or immigrant visa petition until a final decision is made on the alien's legal permanent residence (*see "Dual Intent," below, for related provisions*). (§§403(a)(1), 408(h))	S. 2611 references an immigrant visa petition filed under INA §204(b). INA §204(b) deals with DHS approvals of immigrant visa petitions. It is unclear whether all or some subset of immigrant visa petitions would be covered under this provision in S. 2611. For purposes of comparison, under immigration regulations, the approval of an H-2B petition shall be valid for a period of up to 1 year. An extension of stay for an H-2B nonimmigrant may be authorized for the validity of the labor certification or for a period of up to 1 year. The alien's total period of stay as an H-2B worker may not exceed 3 years. The approval of a permanent labor certification, or the filing of a preference petition for an alien currently employed by

Current Law	Senate-passed S. 2611	Comments
		the same petitioner, shall be a reason, by itself, to deny the alien's extension of stay (*see "Dual Intent," below, for related provisions*). (8 C.F.R. 214.2(h)(9)(iii)(B)(1); (15)(ii)(C); (16)(ii))
Admission of H-2C Nonimmigrants: *Bars to H-2C Admission and Extension of Stay and Exceptions*		
Except as otherwise provided in the INA, aliens who are inadmissible under INA §212(a) are ineligible to receive visas from DOS or to be admitted to the U.S. by DHS (*see "Admission of H-2C Nonimmigrants: Grounds of Inadmissibility," above*). (INA§ §212(a)) When an alien in an H classification has spent the maximum allowable period of stay in the U.S., a new petition to accord H or L nonimmigrant status may not be approved unless that alien has resided and been physically present outside the U.S. for the time limit imposed on the particular H classification. (8 C.F.R. 214.2(h)(13)(i)(B))	An alien could not be granted H-2C status or an extension of such status if the alien has violated any term or condition of such status granted previously, or is inadmissible as a nonimmigrant; or if the granting of such status or extension would allow the alien to exceed 6 years as an H-2C nonimmigrant, unless the alien has resided and been physically present outside the U.S. for at least 1 year after the expiration of H-2C status. H-2C stay limitations would not apply to an alien who resides outside the U.S. and commutes to work as an H-2C worker. (§403(a)(1))	For purposes of comparison, under immigration regulations, an H-2B alien who has spent 3 years in the U.S. as an H and/or L nonimmigrant may not seek extension, change status, or be readmitted to the U.S. as an H and/or L nonimmigrant unless the alien has resided and been physically present outside the U.S. for the immediate prior 6 months. This limitation shall not apply to H-2B aliens who did not reside continually in the U.S. and whose employment in the U.S. was seasonal or intermittent or was for an aggregate of 6 months or less per year; and shall not apply to aliens who reside abroad and regularly commute to the U.S. to engage in part-time employment. (8 C.F.R. 214.2(h)(13))
Admission of H-2C Nonimmigrants: *Termination of Authorized Admission and Reentry*		
No similar provisions.	With specified exceptions, an H-2C alien's period of authorized admission would terminate if the alien is unemployed for 60 or more consecutive days. Such an alien would be required to leave the U.S. An H-2C alien whose period of authorized admission so	Although it is not explicitly stated, presumably under S. 2611 the alien would reenter on the basis of the same visa. The section of S. 2611 that sets forth the reentry process is entitled "period of visa validity".

Current Law	Senate-passed S. 2611	Comments
	terminates and who departs could reenter the U.S. as an H-2C nonimmigrant to work for an employer if the alien complies with the requirements for H-2C admission (*see "Eligibility Requirements," above*). The Secretary of DHS could reauthorize such an alien for admission as an H-2C nonimmigrant without requiring the alien's departure from the U.S. (§403(a)(1))	
Admission of H-2C Nonimmigrants: *Ability to Travel Abroad*		
No similar provisions.	An H-2C nonimmigrant could travel outside the U.S. and be readmitted without a new visa if the period of authorized admission has not expired. (§403(a)(1))	
Admission of H-2C Nonimmigrants: *Documentary Evidence of Nonimmigrant Status*		
The Attorney General and the Secretary of State are required to issue only machine-readable, tamper-resistant visas and other travel documents with biometric identifiers. (Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173) §303(b)(1)), as amended; 8 U.S.C. §1732) In developing an integrated alien entry/exit system, the Attorney General and the Secretary of State are to focus on issuing visas or documents with biometric identifiers that are tamper-resistant and readable at ports of entry. (USA PATRIOT Act (P.L. 107-56) §414(b); 8 U.S.C. §1365a note)	Each H-2C nonimmigrant would be issued documentary evidence of such status that would: be machine-readable, tamper- resistant, and allow for biometric authentication; be designed in consultation with the DHS Bureau of Immigration and Customs Enforcement's Forensic Document Laboratory; and serve as a valid entry document for applying for admission to the U.S. instead of a passport or visa, in the case of an alien who is a national of Mexico or Canada and is applying for admission at a land port of entry, or in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry. The document could be accepted by an employer as evidence of employment authorization and identity, and would be issued to the H-2C nonimmigrant by DHS promptly after final adjudication of the alien's H-2C application.	For related provisions, see §126 of S. 2611.

Current Law	Senate-passed S. 2611	Comments
	(§403(a)(1))	
Admission of H-2C Nonimmigrants: *Penalty for Failure to Depart*		
Generally, the nonimmigrant visa of an alien who remains in the U.S. beyond the authorized period of stay is void at the conclusion of the period of stay and the alien is ineligible for readmission except when the consular office in the alien's country of nationality issues a new visa. (INA §222(g))	An H-2C nonimmigrant who fails to depart the U.S. before the date that is 10 days after the alien's authorized period of admission as an H-2C nonimmigrant terminates may not apply for or receive any immigration relief or benefit, except for specified relief under INA §208 (asylum) and §241(b)(3) (withholding of removal of an alien to a country where his or her life or freedom would be threatened) and under regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (§403(a)(1))	
Admission of H-2C Nonimmigrants: *Penalty for Illegal Entry or Overstay*		
Aliens who unlawfully enter or attempt to enter the U.S., or who are physically present in the U.S. in violation of immigration laws, are subject to exclusion or removal. (*E.g.*, INA §§ 212(a)(6), (7), (9); 237(a)(1)) The Attorney General may cancel the removal and adjust the status of certain otherwise deportable and inadmissible aliens if certain criteria are met, including continuous presence in the U.S. for a specified period (7 years in the case of permanent residents; 10 years in the case of non-permanent residents). (INA §§	In addition to current law, any alien who enters, attempts to enter, or crosses the border after the date of enactment and is physically present in the U.S. after such date in violation of federal law could not receive, for a period of 10 years, any relief under INA provisions §§240A(a) or 240A(b)(1) (cancellation of removal/adjustment of status) or §240B (voluntary departure), or any nonimmigrant status except for T victim of trafficking status or U victim of crime status. (§403(a)(1))	Although this S. 2611 provision appears in the "Admission of H-2C Nonimmigrants" section, it seems to apply to *any* alien. If a reviewing court were to read the language of the S. 2611 provision literally, it could result in the availability of voluntary departure and cancellation of removal (at least in the case of permanent residents) being greatly limited. For example, the vast majority of removable aliens are permitted to voluntarily depart the U.S. in lieu of formal removal. The language of this provision would arguably eliminate the availability of voluntary departure for removable aliens who had not been present in the U.S. for at least 10 years following the enactment of S. 2611.

Current Law	Senate-passed S. 2611	Comments
240A(a), (b)) The Attorney General has authority to permit many categories of deportable or inadmissible aliens to voluntarily depart the U.S. in lieu of either removal proceedings or ordered removal. (INA § 240B)		For provisions in H.R. 4437 restricting eligibility for voluntary departure and cancellation of removal, see § 601(a)(3),(4). Title II of both H.R. 4437 and S. 2611 contain other provisions on unlawful entry.
Admission of H-2C Nonimmigrants: *Portability*		
No similar provisions.	An H-2C nonimmigrant could accept new employment with a subsequent employer if the employer complies with the applicable requirements (*see "H-2C Employer Obligations," below*) and the alien, after lawful admission to the U.S., did not work without authorization. (§403(a)(1))	H-1B nonimmigrants have "portability," which is detailed in INA §214(n).
Admission of H-2C Nonimmigrants: *Change of Address*		
Each alien in the U.S. who has not been registered and who remains in the U.S. for 30 days or longer must apply for registration. (INA §262) Each alien required to be registered who is within the U.S. shall notify the Attorney General in writing of each change of address and new address within 10 days of such change. (INA §265(a))	An H-2C nonimmigrant would have to comply with the change of address reporting requirements under INA §265 through either electronic or paper notification. (§403(a)(1))	
Admission of H-2C Nonimmigrants: *Collection of Fees*		

Current Law	Senate-passed S. 2611	Comments
With some exceptions, all moneys received in payment of fees and administrative fines and penalties under 8 U.S.C. §§1151-1381 (Subchapter II of 8 U.S.C. Chapter 12, Immigration and Nationality) shall be covered into the U.S. Treasury as miscellaneous receipts. (INA §286(c))	All fees collected under §403 of the legislation would be deposited into the U.S. Treasury in accordance with INA §286(c). (§403(a)(1))	
Admission of H-2C Nonimmigrants: *H-4 Visas for Spouses and Children*		
The alien spouse and minor children of an H alien are eligible for derivative H nonimmigrant status (H-4) if accompanying or following to join that alien. (INA §101(a)(15)(H); 8 C.F.R. 214.1(a)(1)(iii)) The admission of aliens to the U.S. is subject to grounds of inadmissibility (*see "Grounds of Inadmissibility," above*). (INA §212(a))	The alien spouse and minor children of an H-2C nonimmigrant could be issued H-4 visas if they are accompanying or following to join the H-2C alien and meet the following requirements: the spouse or child is admissible as an nonimmigrant and submits to a medical exam; and before issuing a visa, the consular officer conducts background checks that the Secretary of State, in consultation with the Secretary of DHS, deems appropriate. (§403(a)(1))	In an apparent error, S. 2611 makes reference to "H-4A nonimmigrant status."
Definitions		
[Note: The definitions at the end of §403(a)(1) of S. 2611 are included below where the terms appear in the text of the bill.]		
H-2C Employer Obligations		
No similar provisions.	A new §218B would be added to the INA on H-2C employer obligations. (§404(a))	
H-2C Employer Obligations: *General Requirements*		

Current Law	Senate-passed S. 2611	Comments
The question of importing any alien as an H (excluding H-1B1), L, O or P-1 nonimmigrant shall be determined by the Attorney General after consultation with appropriate government agencies upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. (INA §214(c)(1))	Each H-2C employer would have to file a petition and pay an appropriate fee, as determined by DOL. (§404(a))	Although it is not explicitly stated, presumably under S. 2611 the petition would be filed with DHS. In an apparent error, S. 2611 would require that the petition be filed in accordance with "subsection (b)" rather than subsection (c), which describes the petition requirements.
H-2C Employer Obligations: *Recruitment of U.S. Workers*		
The INA bars the admission of any alien who seeks to enter the U.S. to perform skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of the alien's application for a visa and admission to the U.S. and at the place where the alien is to perform such skilled or unskilled labor; and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed workers in the U.S. (INA §212(a)(5)) [*This is the labor certification ground of inadmissibility (see "Admission of H-2C Nonimmigrants: Grounds of Inadmissibility," above.*]	Unless DOL has determined that there is a shortage of *U.S. workers* (defined in §403(a)(1) as U.S. citizens or nationals, or aliens who are LPRs, refugees, granted asylum, or otherwise authorized to be employed in the U.S.) in the occupation and area of intended employment for which an H-2C nonimmigrant is sought, the employer would have to engage in U.S. worker recruitment. During the period from 90 days before filing an H-2C petition to 14 days before filing such a petition, the employer would: submit a copy of the job offer, including wages and minimum job requirements, to the appropriate State Employment Service Agency (SESA); authorize the SESA to post the job on the America's Job Bank website, with local job banks, and with other labor referral and recruitment sources; authorize the SESA to notify labor organizations in the state and, if applicable, the office of the relevant local union about the job; and post the job at the place of employment. The employer would have to offer the job to any U.S. worker who applies, is qualified,	

Current Law	Senate-passed S. 2611	Comments
	and is available at the time of need. (§404(a))	
H-2C Employer Obligations: *Petition for H-2C Workers*		
The INA bars the admission of any alien who seeks to enter the U.S. to perform skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of the alien's application for a visa and admission to the U.S. and at the place where the alien is to perform such skilled or unskilled labor; and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed workers in the U.S. (INA §212(a)(5))	The employer's H-2C petition would have to include an attestation regarding U.S. worker protections, wages, U.S. worker recruitment, and other items. (§404(a))	
H-2C Employer Obligations: *Attestation on Protection of U.S. Workers*		
The INA bars the admission of any alien who seeks to enter the U.S. to perform skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of the alien's application for a visa and admission to the U.S. and at the place	The employer would have to attest that: the employment of an H-2C nonimmigrant will not adversely affect the wages and working conditions of similarly employed workers in the U.S.; and did not and will not cause the *separation from employment* (defined in §403(a)(1) as the loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract) of a U.S. worker	

Current Law	Senate-passed S. 2611	Comments
where the alien is to perform such skilled or unskilled labor; and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed workers in the U.S. (INA §212(a)(5))	employed by the employer during the 180 days beginning 90 days before the petition filing date. (§404(a))	
H-2C Employer Obligations: *Attestation on Wages*		
The INA bars the admission of any alien who seeks to enter the U.S. to perform skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of the alien's application for a visa and admission to the U.S. and at the place where the alien is to perform such skilled or unskilled labor; and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed workers in the U.S. (INA §212(a)(5))	The employer would have to attest that the H-2C nonimmigrant would not be paid less than the greater of the actual wage level paid by the employer to all others with similar experience and qualifications for the particular employment, or the prevailing wage level for the occupational classification in the area of employment taking into account experience and skills. The prevailing wage level would be determined as specified. (§404(a))	INA §212(n) details analogous provisions for employers applying to hire H-1B nonimmigrants.
H-2C Employer Obligations: *Attestation on Working Conditions and Benefits*		
The INA bars the admission of any alien who seeks to enter the U.S. to perform skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the	The employer would have to attest that all workers in the occupation at the place of employment at which the H-2C nonimmigrant will be employed will be provided the working conditions and benefits that are normal to similarly employed workers in the area of	INA §212(n) details analogous provisions for employers applying to hire H-1B nonimmigrants.

Current Law	Senate-passed S. 2611	Comments
Attorney General that there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of the alien's application for a visa and admission to the U.S. and at the place where the alien is to perform such skilled or unskilled labor; and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed workers in the U.S. (INA §212(a)(5))	intended employment. (§404(a))	
H-2C Employer Obligations: *Attestation on No Labor Dispute*		
The INA bars the admission of any alien who seeks to come to the U.S. to perform skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of the alien's application for a visa and admission to the U.S. and at the place where the alien is to perform such skilled or unskilled labor; and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed workers in the U.S. (INA §212(a)(5))	The employer would have to attest that there is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the H-2C nonimmigrant will be employed, and that if such a strike, lockout, or work stoppage occurs following submission of the petition, the employer will provide notification. (§404(a))	INA §212(n) details analogous provisions for employers applying to hire H-1B nonimmigrants. INA §218(b)(1) is an analogous provision for employers applying to hire H-2A nonimmigrants.
H-2C Employer Obligations: *Attestation on Provision of Insurance*		

Current Law	Senate-passed S. 2611	Comments
No similar provisions.	The employer would have to attest that, if the position for which the H-2C nonimmigrant is sought is not covered by the state workers' compensation law, he or she will provide comparable insurance at no cost to the H-2C worker. (§404(a))	INA §218(b)(3) is an analogous provision for employers applying to hire H-2A nonimmigrants.
H-2C Employer Obligations: *Attestation on Notice to Employees of Petition Filing*		
No similar provisions.	The employer would have to attest that he or she has provided notice of the filing of the H-2C petition to the relevant bargaining representative of the employer's employees, or if there is no such bargaining representative, that the employer has posted a notice of the petition filing at the relevant place(s) of employment, or has electronically disseminated such a notice to the employees in the relevant occupational classification. (§404(a))	INA §212(n) details analogous provisions for employers applying to hire H-1B nonimmigrants.
H-2C Employer Obligations: *Attestation on Recruitment*		
The INA bars the admission of any alien who seeks to enter the U.S. to perform skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of the alien's application for a visa and admission to the U.S. and at the place where the alien is to perform such skilled or unskilled labor; and that the employment of the alien will not adversely	Unless DOL has determined that there is a shortage of U.S. workers in the occupation and area of intended employment for which an H-2C nonimmigrant is sought, the employer would have to attest that there are not sufficient workers who are able, willing, qualified, and available to perform the work, and that good faith efforts have been taken to recruit U.S. workers in accordance with DOL regulations, including using the actual wage paid by the employer for the occupation in the areas of intended employment in conducting recruitment (*see "Recruitment of U.S. Workers," above, for required recruitment activities*). (§404(a))	INA §§218(a) and (b) include analogous provisions for employers applying to hire H-2A nonimmigrants.

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affect the wages and working conditions of similarly employed workers in the U.S. (INA §212(a)(5))		
H-2C Employer Obligations: *Attestation on Employer Ineligibility*		
No similar provisions.	The employer would have to attest that he or she is not currently ineligible to use the H-2C nonimmigrant program (see "*Ineligible Employers," below*). (§404(a))	
H-2C Employer Obligations: *Attestation on Bona Fide Offer of Employment*		
No similar provisions.	The employer would have to attest that the job for which the H-2C nonimmigrant is sought is a bona fide job. (§404(a))	
H-2C Employer Obligations: *Attestation on Public Availability of Petition and Documentation*		
No similar provisions.	The employer would have to attest that a copy of the petition filed under this section and supporting documentation will: be provided to each H-2C nonimmigrant; be made available for public examination at the place of employment; be made available to DOL during any audit; and remain available for examination for 5 years after the petition filing date. (§404(a))	
H-2C Employer Obligations: *Attestation on Notification of H-2C Separation or Transfer*		
No similar provisions.	The employer would have to attest that he or she will notify DOL and DHS of an H-2C nonimmigrant's *separation from employment* (defined in §403(a)(1) as the loss of employment, other than through a	

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	discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract) or transfer to another employer not more than 3 business days after the event. (§404(a))	
H-2C Employer Obligations: *Attestation on Petition Filing Time Frame*		
No similar provisions.	The employer would have to attest that the H-2C petition was filed not more than 60 days before the date of need for the labor. (§404(a))	
H-2C Employer Obligations: *DOL Audit of Attestations*		
No similar provisions.	DHS would refer all approved H-2C petitions to DOL for potential audit. DOL would be authorized to audit any petition so referred in accordance with DOL regulations. (§404(a))	In an apparent error, S. 2611 references attestations required by subsection (b), rather than subsection (c); subsection (b) sets forth recruitment requirements (*detailed in "H-2C Employer Obligations: Recruitment of U.S. Workers," above*).
H-2C Employer Obligations: *Ineligible Employers*		
No similar provisions.	DHS would not approve an employer's petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program if DOL determines that the employer has, with respect to the required attestations under the H-2C program, misrepresented a material fact, made a fraudulent statement, or failed to comply with the terms of the attestations; or failed to cooperate in the audit process. Such an employer would be ineligible to participate in the labor certification programs of DOL for a period to be determined by DOL, not to exceed 3 years. (§404(a))	

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H-2C Employer Obligations: *Employers in High Unemployment Areas*		
No similar provisions.	Beginning 1 year after the date of enactment, DHS could not approve an employer's petition if the work to be performed by the H-2C nonimmigrant is not agriculture based and is located in a metropolitan or micropolitan statistical area in which the unemployment rate for workers who have not completed any education beyond a high school diploma averaged more than 9 percent during the most recent 6-month period. (§404(a))	
H-2C Employer Obligations: *Employment Relationship with H-2C Nonimmigrants*		
No similar provisions.	An H-2C nonimmigrant could not be treated as an independent contractor. (§404(a))	
H-2C Employer Obligations: *Applicability of Laws*		
No similar provisions.	An H-2C nonimmigrant would not be denied any right or remedy under federal, state, or local labor or employment law that would be applicable to a U.S. worker employed in a similar position with the employer because of the alien's status as nonimmigrant worker. (§404(a))	
H-2C Employer Obligations: *Compliance with Applicable Tax Laws*		

Current Law	Senate-passed S. 2611	Comments
Among other related provisions, the Internal Revenue Code specifies that any person required to collect, account for, and pay over any tax imposed by the code who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution. (Act of Aug. 16, 1954, ch. 736, §7202; 26 U.S.C. §7202)	An H-2C employer would have to comply with all applicable federal, state, and local tax and revenue laws with respect to each employed H-2C nonimmigrant. (§404(a))	
H-2C Employer Obligations: *Whistleblower Protection*		
No similar provisions.	It would be unlawful for an H-2C employer or labor contractor to intimidate, threaten, retrain, coerce, retaliate, discharge, or otherwise discriminate against an employee or former employee because he or she discloses information that he or she believes demonstrates a violation of the INA, or cooperates in an investigation or other proceeding concerning compliance with the requirements of the INA. (§404(a))	INA §212(n) details analogous provisions for employers of H-1B nonimmigrants.
H-2C Employer Obligations: *Foreign Labor Contracting*		
No similar provisions.	Each employer that engages in a *foreign labor contracting activity* (defined in §403(a)(1) as recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside the U.S. for employment in the U.S. as an H-2C	

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	nonimmigrant) and each *foreign labor contractor* (FLC; defined in §403(a)(1) as any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity) would have to ascertain and disclose to each worker who is recruited for employment, specified information related to that employment. Such an employer or FLC would be prohibited from knowingly providing material false or misleading information to any worker concerning any required disclosures, and from violating, without justification, the terms of any agreement made by the employer or FLC regarding the employment. The information required to be disclosed would be provided in English or other languages, as necessary and reasonable. A person conducting foreign labor contracting could not assess a fee to the worker for such contracting, and could only charge workers reasonable transportation fees. (§404(a))	
H-2C Employer Obligations: *Notification About Foreign Labor Contractors (FLCs)*		
No similar provisions.	At least once every 2 years, each employer would have to notify DOL of any FLC engaged in a foreign labor contracting activity for the employer. (§404(a))	
H-2C Employer Obligations: *Registration of FLCs*		
No similar provisions.	No person could engage in foreign labor recruiting unless he or she has a certificate of registration from DOL specifying the activities that he or she is authorized to perform. DOL would promulgate regulations to establish a process to investigate and	

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	approve applications for such a certificate of registration not later than 14 days after the filing date. The certificate would be valid for 2 years. DOL could refuse to issue or renew, or could suspend or revoke, a certificate under specified circumstances. Employers engaging in foreign labor contracting and FLCs would be subject to remedies for violations. An employer would have to notify DOL if he or she becomes aware of a violation by a foreign labor recruiter. An FLC would be prohibited from violating the terms of any written agreements made with an employer relating to any contracting activity or worker protection. DOL could require an FLC to post a bond to ensure the protection of individuals he or she recruited. (§404(a))	
H-2C Employer Obligations: *Enforcement*		
No similar provisions.	DOL would promulgate regulations for the receipt, investigation, and disposition of complaints by an *aggrieved person* (defined in §403(a)(1) as a person adversely affected by an alleged violation, including a worker whose job, wages, or working conditions are adversely affected by the violation, and a representative for workers so affected who brings a complaint on behalf of a worker). Components of the complaint process, including the filing deadline and notice and hearing provisions, would be specified. The Secretary of Labor could bring an action in any court of competent jurisdiction to seek remedial action, including injunctive relief; to recover damages; or to ensure compliance with terms and conditions of the whistleblower protection provisions	

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	(*see "Whistleblower Protection," above*). The rights and remedies provided to workers under this section would be in addition to any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies. (§404(a))	
H-2C Employer Obligations: *Penalties*		
No similar provisions.	DOL could impose administrative remedies and penalties, including back pay, benefits, and civil money penalties, for violations of provisions on recruitment of U.S. workers; ineligible employers; treatment of H-2C nonimmigrants; applicability of laws; compliance with applicable tax laws; or whistleblower protection (*see discussion of each of these provisions above*). (§404(a))	
H-2C Employer Obligations: *Civil Penalties for Certain Violations*		
No similar provisions.	For a violation of provisions on ineligible employers, treatment of H-2C nonimmigrants, applicability of laws, or compliance with applicable tax laws, DOL could impose a civil penalty of up to $25,000 per violation per affected worker, depending on the nature of the violation. (§404(a))	
H-2C Employer Obligations: *Civil Penalties for Violations of Whistleblower Protections*		
No similar provisions.	For a violation of provisions on whistleblower protection, DOL could impose a civil penalty ranging from $500 to $35,000 per violation per affected worker, depending on the nature of the violation. (§404(a))	

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H-2C Employer Obligations: *Use of Civil Penalties*		
With some exceptions, all moneys received in payment of fees and administrative fines and penalties under 8 U.S.C. §§1151-1381 (Subchapter II of 8 U.S.C. Chapter 12, Immigration and Nationality) shall be covered into the U.S. Treasury as miscellaneous receipts. (INA §286(c))	All civil penalties for violations of provisions on recruitment of U.S. workers; ineligible employers; treatment of H-2C nonimmigrants; applicability of laws; compliance with applicable tax laws; or whistleblower protection would be deposited in the U.S. Treasury in the Employer Compliance Fund, a separate account to be established by the legislation as INA §286(w). (§404(a))	Section 302 of S. 2611 would add INA §286(w).
H-2C Employer Obligations: *Criminal Penalties for Violations of Whistleblower Protections*		
No similar provisions.	Criminal penalties of up to $35,000, imprisonment for up to 6 months, or both could be imposed for specified violations of the whistleblower protection provisions. (§404(a))	
Alien Employment Management System		
No similar provisions.	A new §218C would be added to the INA on an alien employment management system. DHS, in consultation with DOL, DOS, and the Social Security Administration (SSA), would be tasked with developing and implementing such a system to manage and track the employment of H-2C nonimmigrants. Among other things, this system would: provide employers with an opportunity to recruit U.S. workers before hiring an H-2C nonimmigrant; and collect information from employers to enable DHS to make various determinations, including whether a nonimmigrant is employed and which employers have hired an H-2C	S. 2611 states that the alien employment management system would manage and track the employment of aliens described in INA §218A (H-2C nonimmigrants) and §218D. The INA does not currently include a §218D and S. 2611 would not add one. A predecessor immigration reform bill in the 109th Congress (S. 1438) proposed an alien employment management system to manage and track the employment of aliens granted a new ("W") nonimmigrant status and aliens granted a new Deferred Mandatory Departure (DMD) status under the bill. S. 2611 would also grant a status termed DMD to certain aliens in the U.S. (although the DMD

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	nonimmigrant. (§405(a))	status in S. 2611 differs from that in S. 1438). It is unclear whether the intent of S. 2611 is to include aliens granted DMD status (described in a new §245C to be added to the INA under §601(c) of S. 2611) in the alien employment management system.
	Rulemaking and Effective Date	
No similar provisions.	Not later than 6 months after the date of enactment, DOL would promulgate regulations to carry out the provisions in the legislation on admission of H-2C nonimmigrants, H-2C employer obligations, and the alien employment management system. These provisions and related clerical amendments would take effect 1 year after the date of enactment with regard to aliens, who, on such effective date, are in the foreign country where they maintain residence. (§406)	The significance of the phrase in the S. 2611 provision referencing aliens who are outside the U.S. on the effective date is unclear. Would it mean that H-2C aliens could only be admitted from abroad? Similar language to the S. 2611 provision also appears in §402(b) of the bill (*see "Temporary Worker Categories: Effective Date and Application," above*).
	Electronic Job Registry	
No similar provisions.	DOL would establish a web page on its website that provides a single link to each state workforce agency's statewide electronic registry of jobs available in the U.S. to U.S. workers. A prospective H-2C employer would have to attest that he or she has posted a job opportunity at a prevailing wage level, and would have to maintain records for at least 1 year after hiring an H-2C worker that describe the reasons for not hiring any U.S. workers who applied for the position. DOL would promulgate regulations on the maintenance of electronic job registry records for purposes of audit and investigation, and would	In an apparent error, the S. 2611 provision refers to the prevailing wage level described in INA §218B(b)(2)(C); the process for determining the prevailing wage level is described in INA §218B(c)(2)(C), as added by the bill. While this section of S. 2611 would require that employers post the job at a prevailing wage level, the provision on the required H-2C employer attestation on recruitment would require that the employer use the actual wage paid by the employer in conducting recruitment (*see "H-2C Employer Obligations:*

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	ensure that the job registry is accessible to state workforce agencies, workers, employers, labor organizations, and others. (§407)	*Attestation on Recruitment*," above).
Temporary Guest Worker Visa Program Task Force		
No similar provisions.	A Temporary Worker Task Force would be established to study the impact of the admission of H-2C nonimmigrants on U.S. workers' wages, working conditions, and employment, and to make recommendations to DOL regarding the need for an annual numerical limit on H-2C admissions. Requirements regarding Task Force membership and member qualifications would be specified. The Task Force would have to submit a report with its findings and recommendations not later than 18 months after the date of enactment. (§408(a)-(f))	Although the S. 2611 provision would have the Task Force make recommendations on the need for an annual numerical limit on the H-2C visa, §408(g) of the bill would impose such a cap (*see "H-2C Numerical Limitations," below*).
H-2C Numerical Limitations		
No similar provisions.	The total number of aliens who could be issued H-2C visas or otherwise provided H-2C status during any fiscal year could not exceed 200,000. (§408(g))	There is an annual numerical limit of 66,000 on the H-2B visa under INA §214(g)(1)(B).
Adjustment of H-2C Aliens to Legal Permanent Resident (LPR) Status		
The status of an alien who was inspected and admitted or paroled into the U.S. may be adjusted by the Attorney General to that of an LPR if the alien applies for such adjustment, is eligible to receive an immigrant visa, and is admissible to the U.S. for permanent residence, and if an immigrant visa is immediately available to	For purposes of adjustment to LPR status, H-2C workers would be eligible for employment-based immigrant visas, subject to INA numerical limitations. A petition for such a visa could be filed by the H-2C alien's employer or, if certain requirements are met, by the H-2C alien. Among these requirements are that the alien has been employed in H-2C status for a cumulative total of at	It is unclear given the use of "and" and "or" in S. 2611 the requirements that an H-2C alien would have to meet in order to self-petition for an employment-based visa. Although there is some difference in language, two of the self-petitioning requirements in S. 2611 (which would be added to the INA as §245(n)(1)(B)(iii) and

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the alien at the time the application is filed. (§245(a)) [*INA §312 describes the requirements for naturalization, which, for most applicants, include an understanding of English, U.S. history, and U.S. government.*]	least 4 years, and that an employer attests that he or she will employ the alien in an offered position. An H-2C alien could not apply for adjustment of status under these provisions unless the alien is physically present in the U.S. and meets the requirements of INA §312. (§408(h))	§245(n)(1)(B)(iv)) appear to be the same.
Dual Intent		
All aliens (other than L intracompany transfers, V family members of LPRs, and H-1 workers except H-1B1s) are presumed to be immigrants – and thus barred from nonimmigrant visas – until they establish that they are not coming to live permanently in the U.S. (INA §214(b)) The fact that an alien is seeking permanent residence in the U.S. shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining an H-1B, H-1C, L, or V nonimmigrant visa or otherwise obtaining or maintaining such status. (INA §214(h))	Filing an employment-based immigrant visa petition for, or otherwise seeking permanent residence in the U.S. for, an H-2C alien would not constitute evidence of the alien's ineligibility for H-2C status. (§408(h))	S. 2611 does not propose to amend INA §214(b) to add an exception for H-2C nonimmigrants. S. 2611 also does not propose to amend INA §214(h) to add H-2C nonimmigrants, although the H-2C classification, as defined in the bill, would require that an H-2C nonimmigrant have a residence in a foreign country that he or she has no intention of abandoning (*see "Temporary Worker Categories: Definition of H-2C Category," above)*.
Requirements for Participating Countries		
No similar provisions.	DOS, in conjunction with DHS and the Attorney General, would negotiate with each home country of H-2C aliens in order to enter into a bilateral agreement. This bilateral agreement would require the home country to: accept return of nationals	Bilateral and multilateral agreements with specific countries, with the exception of free trade agreements, are quite rare in U.S. immigration policy. When the Immigration Amendments of 1965 replaced the national origins quota system with per-country

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	ordered removed within 3 days of the removal order; cooperate with the U.S. to control illegal immigration, gang membership, violence, and human trafficking and smuggling; provide the U.S. with passport information and criminal records of aliens seeking admission to or who are present in the U.S., and with exit and entry data; educate nationals of the home country regarding U.S. temporary worker programs to ensure nationals are not exploited; and evaluate means to provide housing incentives in the home country for returning workers (§409)	ceilings, U.S. immigration policy shifted to one that was generally applied neutrally across the countries of origin. Formal bilateral guest worker programs, such as the Bracero Program with Mexico, ended as well.
H-2B Returning Worker Exemption from Numerical Limit		
The total number of aliens who can be issued H-2B visas or otherwise provided H-2B status during any fiscal year cannot exceed 66,000. (INA §214(g)(1)(B)) For FY2005 and FY2006, an alien who has already been counted toward the H-2B annual numerical limitations during any 1 of the 3 fiscal years prior to the start date of an H-2B petition shall not be counted toward such limitation for the fiscal year in which the petition is approved. Such an alien shall be considered a returning worker. (P.L. 109-13, Division B, Title IV, §402)	The exemption for H-2B returning workers, enacted by P.L. 109-13, would be extended through FY2009. (§753)	
S Informant Visas		
S Visas: *Classification Concerning a Criminal Organization*		

Current Law	Senate-passed S. 2611	Comments
An S-5 nonimmigrant is an alien who the Attorney General determines: possesses critical, reliable information concerning a criminal organization or enterprise; and is willing to supply such information to federal or state law enforcement authorities or to a federal or state court. The Attorney General also must determine that the alien's presence in the U.S. is essential to the success of an authorized criminal investigation or to the successful prosecution of an individual involved in a criminal organization or enterprise. (INA §101(a)(15)(S)(i); 8 C.F.R. 214.1(a)(2))	The S-5 nonimmigrant classification would be expanded to include an alien who the Secretary of DHS determines possesses critical, reliable information concerning a criminal enterprise undertaken by a foreign government, its agents, representatives, or officials; and is willing to supply such information to federal or state law enforcement authorities or to a federal or state court. In such cases involving a foreign government, its agents, representatives, or officials, the Secretary of DHS would **not** need to determine that the alien's presence in the U.S. is essential to the success of an authorized criminal investigation or to the successful prosecution of an individual involved in a criminal organization or enterprise. "Attorney General" would be replaced with "Secretary of Homeland Security" each time it appears. (§410(a))	
S Visas: *Classification Concerning a Terrorist Organization*		
An S-6 nonimmigrant is an alien who the Secretary of State and the Attorney General jointly determine: possesses critical, reliable information concerning a terrorist organization, operation, or enterprise; is willing to supply such information to federal law enforcement authorities or to a federal court; will be or has been placed in danger as a result of providing such information; and is eligible to receive a cash reward, as specified. (INA §101(a)(15)(S)(ii); 8 C.F.R.	Would retain current law except would replace "Attorney General" with "Secretary of Homeland Security." (§410(a))	

Current Law	Senate-passed S. 2611	Comments
214.1(a)(2))		
S Visas: *Classification Concerning Weapons of Mass Destruction*		
No similar provisions.	A new S classification would be established for an alien whom the Secretary of DHS and the Secretary of State, in consultation with the Director of Central Intelligence, jointly determine: possesses critical, reliable information concerning the activities of governments or organizations, or their agents, representatives, or officials, with respect to weapons of mass destruction and related delivery systems, if such governments or organizations are at risk of developing, selling or transferring such weapons or related delivery systems; and is willing to supply such information to appropriate persons in the U.S. government. (§410(a))	
S Visas: *Accompanying Family Members*		
S-7 nonimmigrants are the qualifying accompanying family members, who may include spouses, married or unmarried sons and daughters, and parents, of an S-5 or S-6 nonimmigrant. (INA §101(a)(15)(S); 8 C.F.R. 214.1(a)(2))	The derivative family classification would be expanded to include the qualifying accompanying family members, who may include spouses, married or unmarried sons and daughters, and parents, of a nonimmigrant admitted under the new S classification concerning weapons of mass destruction. (§410(a))	
S Visas: *Numerical Limits*		
In any fiscal year, the number of aliens who can be provided an S-5 visa cannot exceed 200, and the number of aliens who can be provided an S-6 visa cannot exceed 50. (INA §214(k)(1))	In any fiscal year, the number of aliens who could be provided an S visa would be increased to 1,000. (§410(b))	

Current Law	Senate-passed S. 2611	Comments
S Visas: *Report to Congress*		
The Attorney General is required to submit an annual report to the House and Senate Judiciary Committees concerning the number of S nonimmigrants admitted; the number of successful criminal prosecutions or investigations, and the number of terrorist acts prevented or frustrated as a result of cooperation of such aliens; and other specified information. (INA §214(k)(4))	The Secretary of DHS would be required to submit an annual report to the House and Senate Judiciary Committees that, in addition to the information required under current law, would have to include, if the total number of S nonimmigrants admitted is fewer than 25% of the annual cap, the reasons why the number of admissions is under 25%, the efforts made by DHS to admit such nonimmigrants, and any extenuating circumstances that contributed to the number of admissions being less than 25% of the cap. If necessary, information in the report could be classified, and the Secretary of DHS, to the extent feasible, would submit a non-classified version of the report to the House and Senate Judiciary Committees. (§410(c))	
L Intracompany Transferee Visas		
L Visa: *New facility*		
An L-1 nonimmigrant is an alien who works for an international firm or corporation in a managerial or executive position or who has specialized knowledge who seeks to enter the U.S. temporarily in order to continue to render services to the same employer or a subsidiary or affiliate thereof. (INA §101(a)(15)(L); 8 C.F.R. 214.1(a)(1)(vi)) The Attorney General is required to	The petition for an L nonimmigrant coming to the U.S. to open, or to be employed in, a new facility could be approved for a period not to exceed 12 months and only if the L nonimmigrant or the employer has a business plan, sufficient physical premises to carry out the proposed business activities, and the financial ability to start doing business immediately upon petition approval. An extension of the approval period could not be granted unless the importing employer submits to DHS specified documentation, including: evidence	

Current Law	Senate-passed S. 2611	Comments
provide a process, in consultation with other appropriate federal departments, for reviewing and acting upon petitions submitted by firms seeking to obtain L visas for intracompany transferees. (INA §214(c)) The period of admission for an L nonimmigrant admitted to render services in a managerial or executive capacity cannot exceed 7 years, and for an L nonimmigrant admitted to render services in a capacity that involves specialized knowledge cannot exceed 5 years. (INA §214(c)(2)(D))	that the employer meets all requirements and has fully complied with the business plan; evidence of the truthfulness of representations made in connection with the petition; evidence that the employer, during the previous 12 months, has been doing legitimate business or has taken commercially reasonable steps to establish the new facility as a commercial enterprise; a statement of the duties the L nonimmigrant has performed at the new facility during the previous 12 months and will perform over the next extension period; information regarding the number of employees and the types of positions held at the new facility; evidence of wages paid to employees if the L nonimmigrant will work in a managerial or executive capacity; and evidence of the financial status of new facility. (INA §411)	
L Visa: *Employment Authorization for Accompanying Spouses*		
The Attorney General must issue employment authorization to the accompanying spouse of an L nonimmigrant. (INA §214(c)(2)(E))	The accompanying spouse of an L nonimmigrant who is coming to the U.S. to open, or to be employed in, a new facility may not be issued employment authorization during the first 9 months of the approval period of the L petition; DHS may provide employment authorization for these spouses upon approval of an extension. (INA §411)	
L Visa: *Period of Authorized Admission*		
The period of admission for an L nonimmigrant admitted to render services in a managerial or executive capacity	The time limits in current law would not apply to L nonimmigrants with pending employment-based immigrant petitions or labor certification	Sections 526 and 411 of S. 2611 would both add a new subparagraph (G) to INA §214(c)(2).

Current Law	Senate-passed S. 2611	Comments
cannot exceed 7 years, and for an L nonimmigrant admitted to render services in a capacity that involves specialized knowledge cannot exceed 5 years. (INA §214(c)(2)(D))	applications, if at least 365 days have lapsed since such filing. (INA §526)	
Compliance Investigations		
No similar provisions.	Subject to the availability of appropriations, DOL would annually increase, by not less than 2,000, the number of positions for compliance investigators dedicated to enforcing compliance with Title IV of the legislation. (§412)	
Visa Waiver Program		
Visa Waiver Program: *Probationary Admission*		
The Visa Waiver Program (VWP) allows nationals from certain countries to enter the U.S. as temporary visitors (nonimmigrants) for business or pleasure without first obtaining a visa from a U.S. consulate abroad. To qualify for the VWP, a country must: (1) offer reciprocal privileges to U.S. citizens; (2) have had a nonimmigrant visa refusal rate of less than 3% for the previous year or an average of no more than 2% over the past 2 fiscal years with neither year going above 2.5%; (3) issue machine-readable passports (and all aliens entering under the VWP must possess a machine-readable passport); and	In addition to designation as a VWP country under current law, a country could be designated as a VWP country on a probationary basis if: (1) the country is a member of the European Union (EU); (2) the country is providing material support [*defined below*] to U.S. or multilateral forces in Afghanistan or Iraq; and (3) the participation of the country in the VWP does not compromise U.S. law enforcement interests. The determination of U.S. law enforcement interests would exclude visa refusal or overstay rates for the first full year of the country's admission into the EU. (§413)	Currently under the VWP, there is no provision for probationary admission for countries who do not meet the program's requirements. In 1994, Congress added a probationary status to the VWP, which expired in 1996 (P.L. 103-416, §211; P.L. 104-208, §635). To qualify as a probationary VWP country under P.L. 103-416, the country had to: (1) have an average nonimmigrant visa refusal rate for the past 2 years of less than 3.5%; (2) have a nonimmigrant visa refusal rate for the past year of less than 3%; (3) have the total number of nationals who were excluded from U.S. admission, or withdrew their applications, be less than 1.5% of all nationals who applied for U.S. admission; and (4) certify that it had or was developing machine-readable passports.

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(4) be determined by the Attorney General, in consultation with the Secretary of State, not to compromise U.S. law enforcement or security interests by its inclusion in the program. (INA §217) The government of each VWP country must certify that it has established a program to issue to its nationals machine-readable passports that are tamper-resistant and incorporate biometric identifiers. (P.L. 107-173 §303(c)(1), as amended; 8 U.S.C. 1732)		Under the S. 2611 provision, the only country that appears to meet the requirements for probationary status is Poland. According to unpublished data from DOS, Poland's adjusted nonimmigrant visa refusal rate (that is, the rate taking into account initial refusals that are subsequently overcome) in FY2005 was 25%.
Visa Waiver Program: *Definition of "Material Support"*		
No similar provisions.	For purposes of probationary inclusion in the VWP, *material support* would be defined as the current provision of the equivalent of not less than a battalion (300 to 1,000 military personnel) to Operations Iraqi Freedom or Enduring Freedom to provide training, logistical or tactical support, or military presence. (§413)	
Visa Waiver Program: *End of Probationary Period*		
No similar provisions. [*See "Probationary Admission," above, for current VWP requirements.*]	No later than 2 years after a country's probationary admission to the VWP, the country would have to be in full compliance with all requirements to be in the VWP or have its VWP country status terminated. (§413)	Between 1994 and 1996, there was a probationary period for the VWP [*see "Probationary Admission," above*]. Under §211 of P.L. 103-416, a country's probationary VWP status would have been be terminated if: the total number of nationals who were

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		excluded from U.S. admission, or withdrew their applications, and the total number of nationals who were admitted as visitors and violated the terms of their admission, were more than 2% of all nationals who applied for U.S. admission during the previous fiscal year; or if the country failed to meet the regular requirements for VWP participation within 3 fiscal years from its probationary designation. The probationary status would have been removed if the total number of nationals who were excluded from U.S. admission, or withdrew their applications, and the total number of nationals who were admitted as visitors and violated the terms of their admission, were less than 2% of all nationals who applied for U.S. admission during the previous fiscal year.
Visa Waiver Program: *Extension of Probationary Period*		
No similar provisions.	The Secretary of State could extend a country's VWP probationary designation for up to 2 years if the country is making significant progress towards meeting the VWP requirements, is likely to achieve full compliance before the end of 2 years, and continues to be an ally of the U.S. against terrorist states, organizations, and individuals, as determined by the Secretary of Defense in consultation with the Secretary of State. (§413)	
Authorization of Appropriations		
No similar provisions.	Would authorize appropriations to DHS of such sums as necessary to carry out §§401-414 for the first fiscal year beginning before the date of enactment and each	

Current Law	Senate-passed S. 2611	Comments
	of the subsequent fiscal years beginning not more than 7 years after the effective date of DHS implementing regulations. (§414)	