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SENATE OKS BILL BOOSTING BORDER FUNDING WITH TARGETED VISA FEE HIKES AS OFFSETS

By Amber McKinney

The Senate late Aug. 5 passed by unanimous consent a bill that would provide \$ 600 million in funding for border security, paid for by raising fees on certain H-1B and L-1 visa petitions.

The Emergency Border Security Supplemental Appropriations Act (H.R. 5875) was passed including a substitute amendment offered by Sen. Charles Schumer (D-N.Y.) that incorporates a bill (S. 3721) he introduced earlier the same day (150 DLR A-13, 8/5/10).

The House passed their version of H.R. 5875 July 28. The Senate-passed version of the bill now goes back to the House for consideration.

On Aug. 5 Schumer, along with Sen. Claire McCaskill (D-Mo.) introduced S. 3721, which would increase funding for border security and also calls for the deployment of 1,500 new federal agents along the Southern border and funds unmanned aerial vehicles to boost border surveillance.

The bipartisan passage of the border funding bill "shows we are serious about making the border more secure than ever," Schumer said in an Aug. 5 statement. "Now our attention must turn to comprehensive reform, which is the only way to fully address the problem of illegal immigration," he said.

Fees on Certain H-1B and L Visa Petitioners.

The proposal would "hike fees assessed on particular companies who exploit" the H-1B and L visa programs, McCaskill said in an Aug. 5 statement.

The H-1B visa program enables U.S. employers to employ foreign workers in fields that require theoretical and practical expertise in specialized occupations requiring a bachelor's degree or higher, such as scientists, engineers, or computer programmers. L-1 visas allow intracompany job transfers for individuals with managerial, executive, or specialized knowledge capacity for subsidiaries, branch offices, or joint ventures of U.S. companies in foreign countries.

The bill would increase the filing and fraud prevention fees paid by companies that have more than 50 employees in the United States, if more than 50 percent of their employees are on H-1B visas, by roughly \$ 2,000 per visa application, McCaskill said. This would not impact U.S. tech companies, she added.

Indian Firms Concerned

"While we understand the need for heightened border security, we believe that the extra fees [levied against certain H-1B petitioners] will produce negative consequences for both U.S. and Indian companies," said Som Mittal, president of NASSCOM, a trade association representing high-tech Indian companies.

According to Mittal, Indian companies use less than 12 percent of the total number of H-1B visas issued each year, and are unfairly targeted by the legislation. "The legislation sends the message that foreign workers are not welcome," he said.

"The higher fees will have a negative impact on the substantial investment that Indian companies have been making in the U.S., will reduce the number of Americans that Indian companies employ and will lead to an increase in the off-shoring of technology endeavors that would have otherwise occurred in the U.S.," Mittal predicted.

The bill is "an indirect form of protectionism and runs contrary to the Obama administration's oft-repeated goal of opening markets and doubling U.S. exports," Mittal said. "While the full details of implementation are not available, we estimate the impact on Indian companies could be as high as \$ 200 million to \$ 250 million dollars per year," he added.

"The legislation will also lead to diminished inflow of Indian talent to the U.S., which helps to drive U.S. tech innovation and to spur the U.S. economic recovery," he said.

Napolitano, Schumer Say Overhaul Still Needed.

Schumer Aug. 6 said that the border security funding measure was important because "we have heard a lot of talk about controlling our Southern border," and Congress is "finally doing something about it."

However, Schumer said it is still important to work toward a comprehensive immigration overhaul. The only "real way" to stop illegal immigration is to stop employers from hiring undocumented workers, he said.

Many members of Congress "would not consider a comprehensive immigration bill until we did something at the border," Schumer said. He called the Senate passage of the bill a "smart" step toward securing the border and moving an immigration overhaul forward.

Meanwhile, Homeland Security Secretary Janet Napolitano Aug. 6 praised the Senate passage of the border security funding bill, calling it a "great add on to the record resources we've already deployed to the Southwest border."

Napolitano said that the Obama administration has reached out to House leadership to try to get a concurring vote as soon as possible, but said it is only one step toward a more comprehensive immigration solution.

Overhaul Only Real Answer, Advocates Say

"Over the last ten years, we have spent billions of dollars and sent thousands of boots to the border, yet our immigration system remains broken," Clarissa Martinez De Castro, director of immigration and national campaigns at the National Council of La Raza, said in an Aug. 6 statement.

"Congress understands full well that a sound law-and-order approach requires fixing the dysfunctional legal immigration system that is feeding the black market" for undocumented workers, she said.

Martinez said the best solution is a comprehensive immigration overhaul, not just legislation aimed at beefing up border security.

"Both parties should admit that 'border security first' is an election year slogan, not a real route to reform," said Frank Sharry, executive director of America's Voice. "They should now work together to pass what people want--broader, pragmatic reforms that move toward a comprehensive solution," he added.