

# **Comprehensive Immigration Reform – S. 744 - A Synopsis**

**Border Security, Economic Opportunity, and Immigration  
Modernization Act**

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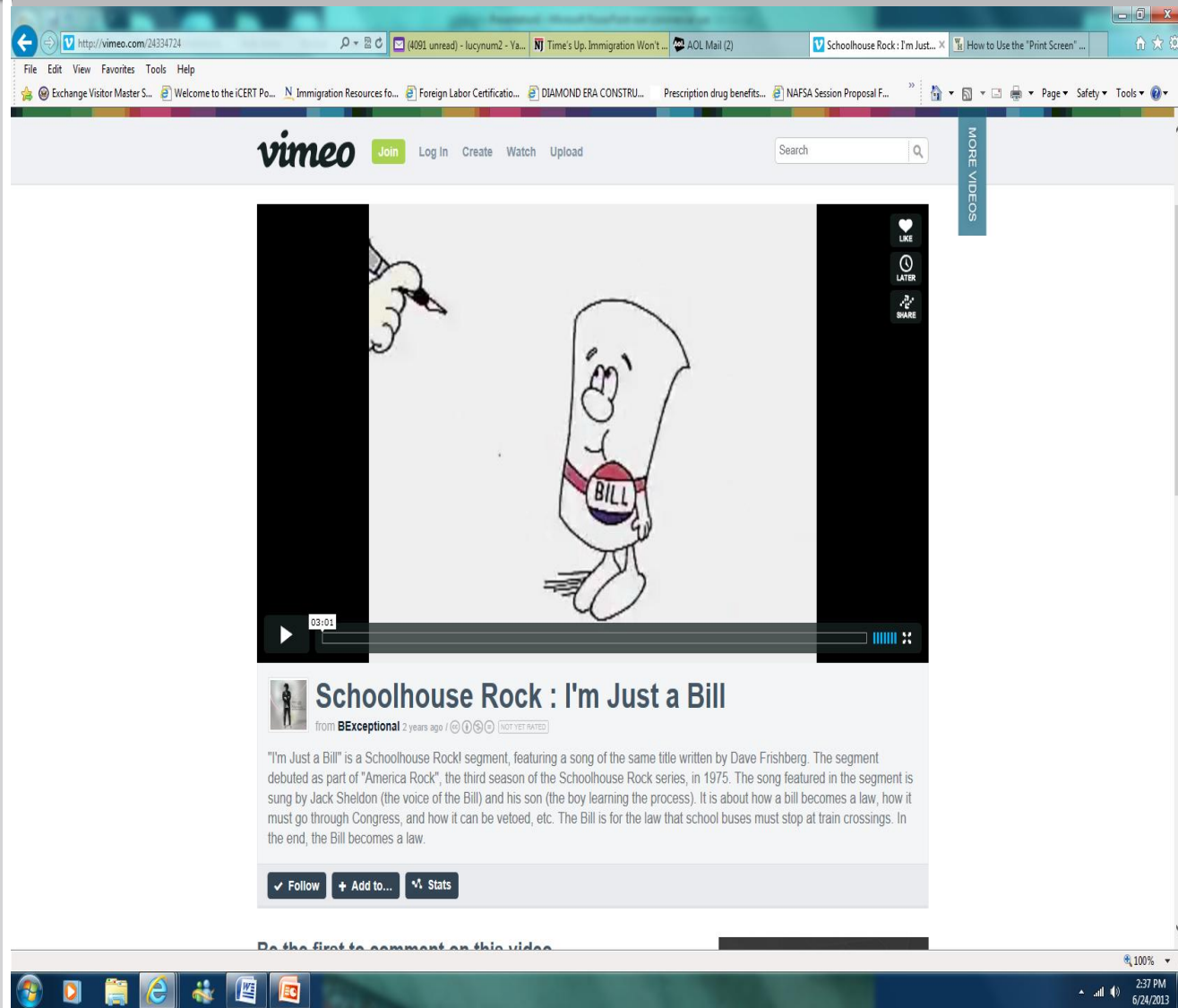
# Hi, I'm Just a Bill!

NAFSA Region X Downstate NY/NJ Meeting - June 25, 2013

2

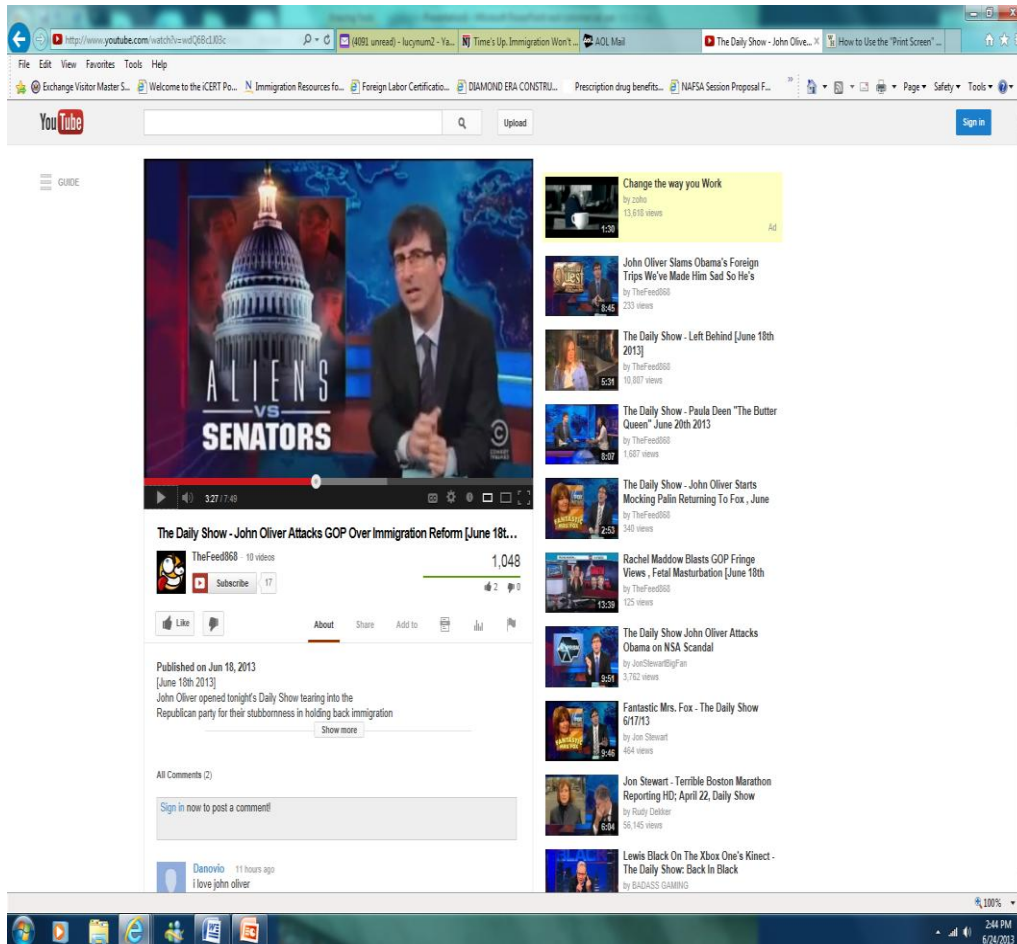
The Gang of Eight senators introduced a bipartisan bill - S. 744 Comprehensive Immigration Reform - to the Senate in April, 2013.

The bill has gone through markups in the Senate Judiciary Committee and is ready to be voted on by early July.



The screenshot shows a web browser window displaying a Vimeo video. The browser's address bar shows the URL <https://vimeo.com/24334724>. The browser's tab bar shows several tabs, including "Schoolhouse Rock: I'm Just a Bill". The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The browser's toolbar includes a search bar, a "Join" button, and links for Log In, Create, Watch, and Upload. The video player shows a cartoon character of a bill, wearing a red and white striped shirt with a "BILL" tag, and a yellow pencil is drawing it. The video player has a progress bar at the bottom showing 03:01. Below the video player, the title "Schoolhouse Rock : I'm Just a Bill" is displayed, along with the channel name "BEXceptional" and a "NOT YET RATED" label. The description of the video is: "I'm Just a Bill" is a Schoolhouse Rock! segment, featuring a song of the same title written by Dave Frishberg. The segment debuted as part of "America Rock", the third season of the Schoolhouse Rock series, in 1975. The song featured in the segment is sung by Jack Sheldon (the voice of the Bill) and his son (the boy learning the process). It is about how a bill becomes a law, how it must go through Congress, and how it can be vetoed, etc. The Bill is for the law that school buses must stop at train crossings. In the end, the Bill becomes a law. At the bottom of the page, there are buttons for "Follow", "Add to...", and "Stats". The Windows taskbar at the bottom shows the time as 2:37 PM on 6/24/2013.

# What is in this Bill?



- Introduces new nonimmigrant categories;
- Introduces new ways to become LPRs;
- Increases border security and internal enforcement.

# Current Paths to Green Card

- Option #1 Family Based
  - Family preferences based on relationships
    - Unmarried Sons and Daughters (Over 21) of USC (Age Out Provisions - CSPA)
    - Spouses, Children and Unmarried Sons and Daughter (Over 21) of LPR.
    - Married Sons and Daughters of USC
    - Siblings of Adult USC
- Option #2 Employment Based
  - Employment preferences based on skills
- Option #3 Diversity Visa Lottery

# Proposed Paths to Green Card

- Family Based:
  - Reduced to two preference categories.
  - Spouses and children of LPR now Immediate Relatives.
  - Brothers and Sisters of USC preference eliminated.
  - Cap on age for married sons/daughters of USC at under 31 years of age.
  - The new family preference categories will cover: unmarried adult children of USC, married adult children of USC who file before age 31, and unmarried adult children of LPR.

# Proposed Paths to Green Card

- Employment Based:
  - Remove Employment per-country limits
  - Changing EB2 to STEM only, eliminating exceptional and general EB2 category.
  - Not subject to numerical limitations → (1) earned a graduate degree at Master's level or higher in a STEM field from a US institution of higher education, (2) has an offer of employment from a US employer in a related field, and (3) earned the qualifying degree within 5 years immediately prior to filing the petition.
  - Removes the requirement for a Labor Certification for STEM workers.
  - Exempt from the quota: Derivative beneficiaries of EB immigrants, EB1 (Extraordinary, Outstanding, Multinational), doctorate degree holders, physicians who have completed the foreign residency requirements or obtained a waiver or NIW.

# Proposed Merit-Based Point System

- No more Diversity Visa Lottery.
- Awards points to applicants for factors such as education, length of employment, type of employment, TOEFL scores, age, country of origin, family members in the U.S., and length of residence in the U.S.
- Establishes a fee of \$500.
- Eligibility criteria:
  - RPI (new status – Registered Provisional Immigrant) may begin accruing points no earlier than 10 years after enactment.
  - Individuals with a pending or approved petition in another immigrant category are ineligible to apply for a merit-based immigrant visa.
- No increase to the level of visa numbers is allowed if unemployment is over 8.5 percent.

# Track One vs. Track Two

## TRACK ONE

- In a nutshell – Track One is for skilled workers, professionals, and non-seasonal unskilled labor.

## TRACK TWO

- Beneficiaries of family-and employment-based immigrant petitions pending for 5 years and filed prior to enactment.
- Beneficiaries of current F3/F4 petitions pending for 5 years and filed after enactment.
- Long-term workers, who were not admitted under the W visa and have been lawfully present in the US for 10 years.



# H-1B Visa Reform

- Currently, there is a H-1B cap of 65,000 + 20,000 for those with U.S. advanced degree
- The new bill creates a floor of 110,000 and ceiling of 180,000 for the H-1B cap
- Changes the Master Exception cap → (1) limiting the exemption to STEM occupations; (2) the STEM occupations under DOE classification for computer and information sciences and support, engineering, mathematics and statistics, and physical sciences; and (3) increasing the number from 20,000 to 25,000.
- Allows work authorization for spouses of H-1Bs (H-4s) if the spouse is a national of a country that allows reciprocal employment in similar situations.

# H-1B Visa Reform

- Deference for previously approved H-1B or L absent material error, substantial changes in circumstances, or newly discovered material information.
- Allows a 60-day grace period after layoffs → during which time in lawful status and could file a COS, EOS, or AOS.
- Allows visa revalidation within the US for A, E, G, H, I, L, O, P, R, and W statuses.
- Adds a \$500 fee to the PERM process.
  - Funding for STEM education programs.

# New Prevailing Wage Determination

- Changes to the DOL Prevailing Wage Determinations from 4 levels to 3 levels.
- EXCEPTION → still 4-level system for nonprofit institutions of higher education, related or affiliated nonprofit entities, nonprofit research organization, and government research organization.

# New H-1B Recruitment Requirements

- Requirements for all H-1Bs: posting the position before filing a LCA for 30 days on a DOL website to be designed for the purpose.
- Requires that the employer have offered the job to any US worker applicant who is equally or better qualified than the H-1B.
- Adds non-displacement provision → requiring that the employer attest that for 90 days before and after the LCA filing, it has not and will not displace a US worker

# New H-1B Reporting Requirement

- Requires all H-1B employers to submit an annual report to DHS that includes W-2 tax forms for each H-1B employed during the previous year.
- Prohibits advertising that a position is open only to H-1Bs (or potential H-1Bs) or F-1 OPT holders, or that H-1Bs or F-1 OPTs will receive preference in hiring, or having solely recruited H-1Bs or F-1 OPTs.

# K Visas Changes

- Must apply for AOS within 6 months following the marriage.
- CSPA (Child Status Protection Act) → Age of dependent child determined at the time the petition is filed for purposes of the visa petitions and the subsequent AOS.

# (New) V Nonimmigrant Visas

- Unmarried sons or daughters of USCs or LPRs and married sons or daughters of USCs under the age of 31, if the alien is the beneficiary of an approved petition:
  - Eligible for work authorization, termination of authorized admission 30 days after denial of visa petition or AOS application.
- Siblings of USC and married sons/daughters of USCs over 31 (no longer available for GC):
  - Ineligible for work authorization, authorized admission may not exceed 60 days per fiscal year.
- No public benefits.

# (New) W Nonimmigrant Visas

- Creates a new “W” nonimmigrant classification for aliens having a foreign residence who will come to the US temporarily to perform services or labor for a registered employer in a registered position.
- Spouse and children of the W visa holder will be allowed to join and will be given work authorization for the same period of admission.
- For Shortage Occupation.
- No W may be hired if unemployment rate is more than 8.5 percent.



# Other Important Changes

- Authorizes dual intent for F-1 aliens who are pursuing bachelor's or graduate degrees.
- Eliminates 2 year home residency requirement under 212(e) for spouse and children of a J-1 exchange visitor.
- Institutions where an individual with certain criminal convictions or immigration offenses is in an ownership or management role are ineligible for authorization to accept F- students.
- E-visas: Adding Ireland.
- Will clarify rule on accepting academic honoraria for B visa visitors.
- Extends portability to O-1 visa holders (240 day extension).
- O-1 motion pictures or TV: No need for new consultation if within 3 years.
- EOS applications: For A, E, G, H, I, J, L, O, P, Q, R, and TN, provides status and employment authorization if extension is timely filed until the petition or application is adjudicated.
- Repeal IIRAIRA 505 – to allow state to determine residency for purposes of higher education.

# (New Status) Registered Provisional Immigrant Status (RPI):

New INA §245B to allow certain noncitizens who are:

- Currently unlawfully present and
  - *Who entered the U.S. before December 31, 2011\**
  - To adjust status to that of RPI.
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- Must clear national security and background check,
  - Meet certain eligibility criteria,
  - Apply for RPI status within the application period,
  - And pay applicable penalties and fees.

## ■ Criminal Bars:

- Any felony (other than state or local status-based or immigration offenses);
- Aggravated felony under INA §101(a)(43);
- 3 or more misdemeanors (other than minor traffic offense or state/local status-based or immigration offenses) where conviction occurred on different dates. May be waived for humanitarian purposes to ensure family unity, or if otherwise in the public interest.
- Foreign offenses (except purely political offenses) that would render the person inadmissible or deportable if committed in the U.S., with certain exceptions.
- Unlawful voting.

# RPI – Duration of Status and Extension

- Initial RPI status valid for 6 years unless revoked. May be extended for additional 6 years if:
  - RPI continues to be eligible for RPI status and RPI status has not been revoked, and
  - RPI satisfies any applicable federal tax liability;
  - Employment Requirement. Applicant (1) must have been regularly employed through RPI period (allowing for gaps for not more than 60 days); and (2) is not likely to become a public charge; or (3) demonstrates an average income or resources not less than 100 percent of the poverty level throughout RPI period.

# Registered Provisional Immigrant

## ■ Fees and Penalties:

- RPIs 21 and older must pay penalties. Allows for installment payments.

## ■ Penalties:

- \$500 initial (exempt for DREAM Act eligible students),
- \$500 extension,
- \$1000 when apply for LPR.

## ■ Evidence of RPI Status:

- Shall receive a machine-readable, tamper-resistant photo ID as proof of RPI status.
- Document authorizes travel and employment, though employment authorization is limited to 3 years.

# DACA recipients:

- Authorizes the DHS Secretary to grant RPI status to DACA beneficiaries provided that they undergo renewed national security and law enforcement clearances and have not engaged in conduct that would render the individual ineligible for RPI status since DACA was granted.

# Adjustment to LPR from RPI

- After 10 years, aliens in RPI status may adjust to LPR status through the same Merit-Based System everyone else must use to earn a green card if:
  - Maintained continuous physical presence,
  - Paid all taxes owed during the period that they are, in status as an RPI,
  - Worked in the US regularly, and
  - Demonstrated knowledge of civics and English
- All people currently waiting for family and employment green cards as of the date of enactment have had their priority date become current.
- A penalty fee of \$1,000 is paid.

# Enforcement

## E-VERIFY

- Makes it mandatory for all employers over a period of 5 years. (Previously a voluntary program)
- Photo matching – As part of the E-Verify system, every non-citizen will be required to show their “biometric work authorization card,” or their “biometric green card.”
- Allow all employees to check their own E-Verify history.

## COMBATING SCHEMES TO DEFRAUD ALIENS

- Empowers the AG with injunctive authority to act against any “immigration service provider” at the federal level – whether well-meaning or unscrupulous.
- “Immigration service provider” is any individual or entity (other than an attorney or BIA rep) who provides ANY assistance in relation to an immigration matter.
- Any person who receives compensation in connection with preparation of an application or other submission is required to sign as preparer.

# **New grounds of inadmissibility, deportability, and ineligibility for RPI status:**

- **Criminal Street Gangs**
- **Habitual Drunk Drivers (3 or more offenses on separate dates)**
- **Sexual Abusers of Minors**
- **Illegal Entry (Increased penalties)**
- **Reentry of Removed Alien (Increased penalties)**



# Border Security

- (1) Comprehensive Southern Border Security Strategy, and (2) Southern Border Fencing Strategy.
- Achieving and maintaining effective control (persistent surveillance and 90 percent effectiveness rate) between the ports of entry in all high risk border sectors along the Southern border.
- Hiring 3,500 officers by September 30, 2017.
- Fencing – including double-layer, triple-layer fencing, infrastructure, and technology (manned, unmanned, infrared aerial surveillance).
- RPIs cannot adjust until 90% effectiveness rate for the border security strategy.

# So where do we go from here?

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- A look at what's ahead