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2d Session } HOUSE OF REPRESENTATIVES { REPORT 107–753

BORDER COMMUTER STUDENT ACT OF 2002

OCTOBER 15, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4967]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4967) to establish new nonimmigrant classes for border commuter students, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 4967 would expand the "F" and "M" nonimmigrant student visa categories of the Immigration and Nationality Act (INA) to include nationals of Canada or Mexico who maintain actual residence and place of abode in the country of nationality, whose course of study may be full or part-time, and who commute to a United States institution or place of study from Canada or Mexico.

BACKGROUND AND NEED FOR THE LEGISLATION

The INA permits foreign students to study in the U.S. on temporary, or "nonimmigrant" student visas. Subsections (F) and (M) of the INA section 101(a)(15) require aliens to be full-time students to be eligible for "F" (Academic or Language Studies) or "M" (Vocational or Non-academic Studies) nonimmigrant student visas. However, some Immigration and Naturalization Service (INS) districts have permitted commuter part-time students from Canada and Mexico to enter the U.S. as visitors to by-pass this statutory requirement because no visa category exists for part-time commuter students.

Since September 11, 2001, the INS has issued memoranda regarding its intent to end this practice, but permitted its continuance through the end of 2002 for students already enrolled in border schools. On August 27, 2002, the INS issued an interim rule to expand the "F" and "M" student visa categories to permit Mexican and Canadian part-time commuter students to obtain student visas. However, such a rule is open to differing interpretations across administrations. H.R. 4967 would make Congress' intent clear that such students should be able to obtain student visas and attend U.S. schools along our borders.

HEARINGS

No hearings were held on H.R. 4967.

COMMITTEE CONSIDERATION

On September 25, 2002, the Subcommittee on Immigration, Border Security, and Claims met in open session and ordered favorably reported the bill H.R. 4967, by a voice vote, a quorum being present. On October 9, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 4967 without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes on H.R. 4967.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 4967 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 2. Establishment of Border Commuter Non-immigrant Class.

Section 2(a) of the bill amends section 101(a)(15)(F) of the INA to expand authorization for such status to include aliens who are nationals of Canada or Mexico, who maintain actual residence and place of abode in their country of nationality, who are pursuing a full or part-time course of study in academic or language studies, and who commute to the U.S. institution or place of study from Canada or Mexico.

Section 2(b) amends section 101(a)(15)(M) of the INA to expand authorization for such status to include aliens who are nationals of Canada or Mexico, who maintain actual residence and place of abode in their country of nationality, who are pursuing a full or part-time course of study in vocational or non-academic studies, and who commute to the U.S. institution or place of study from Canada or Mexico.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who

seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, **[**and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;**]** *(ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;*

* * * * * * *

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, **[**and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;**]** *(ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;*

* * * * * * *

TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

* * * * * * *

(m)(1) An alien may not be accorded status as a nonimmigrant under [section 101(a)(15)(F)(i)] *clause (i) or (iii) of section 101(a)(15)(F)* in order to pursue a course of study—

(A) * * *

* * * * * * *

(2) An alien who obtains the status of a nonimmigrant under [section 101(a)(15)(F)(i)] *clause (i) or (iii) of section 101(a)(15)(F)* in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded shall be considered to have violated such status, and the alien's visa under section 101(a)(15)(F) shall be void, if the alien terminates or abandons such course of study at such a school and undertakes a course of study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) are met).

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, OCTOBER 9, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 11:25 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner [Chairman of the Committee] presiding.

* * * * * * *

Chairman SENSENBRENNER. The next item on the agenda is the adoption of H.R. 4967. The Chair recognizes the gentleman from Pennsylvania for a motion.

Mr. GEKAS. Mr. Chairman, the Subcommittee on Immigration and Border Security reports favorably the bill H.R. 4967 and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 4967, follows:]

I

107TH CONGRESS
2D SESSION

H. R. 4967

To establish new nonimmigrant classes for border commuter students.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2002

Mr. KOLBE (for himself, Mr. BONILLA, Mr. SKEEN, Mr. PASTOR, Mr. FILNER, and Mr. REYES) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To establish new nonimmigrant classes for border commuter students.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Border Commuter Student Act of 2002".

SEC. 2. ESTABLISHMENT OF BORDER COMMUTER NONIMMIGRANT CLASS.

(a) CLASS FOR ACADEMIC OR LANGUAGE STUDIES.—Section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) is amended by

striking "and (ii)" and all that follows through the end of subparagraph (F) and inserting the following: "(ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;".

(b) CLASS FOR VOCATIONAL OR NONACADEMIC STUDIES.—Section 101(a)(15)(M) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(M)) is amended by striking "and (ii)" and all that follows through the end of subparagraph (M) and inserting the following: "(ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;".

(c) LIMITATION.—Section 214(m) of the Immigration and Nationality Act (8 U.S.C. 1184(m); as redesignated by section 107(e)(2)(A) of P.L. 106–386) is amended by striking "section 101(a)(15)(F)(i)" both places it appears and inserting "clause (i) or (iii) of section 101(a)(15)(F)".

○

Chairman SENSENBRENNER. And the Chair recognizes the gentleman from Pennsylvania, Mr. Gekas, to strike the last word.

Mr. GEKAS. The Immigration and Nationality Act permits foreign students to study in the U.S. on nonimmigrant student visas. Aliens must be full-time students and reside in the U.S. to be eligible for this particular nonimmigrant student visa; however, some INS districts have paroled commuter students from Canada and Mexico into the U.S. as visitors to bypass this statutory requirement because no visa category exists for part-time commuter students.

Since September 11, 2001 the INS has issued memoranda regarding its intent to end this practice of accommodating commuter students, but permitted its continuance through the end of 2002 for students already enrolled in these border schools.

On August 27, 2002 the INS issued an interim rule to expand the "F" and "M" student visa categories to permit Mexican and Canadian commuter students to obtain student visas. However, such a rule is open to differing interpretations across administrations.

Passing this bill, H.R. 4967, the "Border Commuter Student Act," would make Congress's intent clear that such Canadian and Mexican students should be able to obtain student visas and attend U.S. schools along our borders.

H.R. 4967 amends the F and M student categories of the INA to expand student visa authorization for nationals of Canada or Mexico who maintain actual residence and place of abode in the country of nationality, whose course of study may be full or part time, and who commute to the U.S. institution or place of study from Canada or Mexico.

We urge support of this bill.

Chairman SENSENBRENNER. Without objection, all Members' opening statements may be placed in the record at this point.

Chairman SENSENBRENNER. Are there amendments? There are no amendments. The Chair notes—.

Mr. GEKAS. Mr. Chairman, we have several documents that we wish to enter into the record, without objection.

Chairman SENSENBRENNER. Without objection, they will be entered.

[The information follows:]

United States Department of State

Washington, D.C. 20520

OCT - 9 2002

Dear Mr. Kolbe:

This is in response to your letter of July 10 to the Secretary of State regarding the Border Commuter Student Act of 2002 (HR 4967) which would create a new nonimmigrant classification for Mexican and Canadian citizens who live near the border and want to commute each day to a U.S. school or college. Our response was delayed to accommodate input from other agencies.

The Department of State agrees that facilitation of part-time study in the U.S. for our commuting neighbors on the Canadian and Mexican borders is in our interest as well as theirs. As you know, on August 27, 2002, the Immigration and Naturalization Service published an interim rule to allow Mexican and Canadian commuter students to study as F-1 or M-1 nonimmigrants on a part-time basis at schools located within 75 miles of the United States border. The purpose of the Administration's rule is to accommodate the special relationship between the U.S. and its neighbors and to legitimize such part-time study by border commuter students while placing it in a regulated controlled process.

We have no objection to your efforts to provide explicit statutory language on this issue and would be available to work with you on any element of your legislation.

We hope this information is helpful.

Sincerely,

Paul V. Kelly
Assistant Secretary
Legislative Affairs

The Honorable
Jim Kolbe,
House of Representatives.

SRE
SECRETARIA DE RELACIONES EXTERIORES

Consulado General de México

Number: PHO-3523

File: 73-37 / 700 "02"

Phoenix, Arizona, July 29, 2002

Rep. Jim Kolbe
U.S. Representative
1661 North Swan Road
Suite # 1661
Tucson, AZ 85712

Dear Representative Kolbe.

Undersecretary Enrique Berruga Filloy of the Mexican Foreign Ministry in Mexico City has asked that we forward the following letter to your Office regarding the "Border Commuter Student Act".

Sincerely,

Ruben Beltran-Guerrero
Consul General of Mexico

Enclosures: (1)

C.c.p.-Subsecretaria de Relaciones Exteriores.

AHF

SECRETARIA
DE
RELACIONES EXTERIORES

México, D.F., a 4 de julio de 2002

Señor Jim Kolbe
Representante Federal por Arizona
Cámara de Representantes
Congreso Federal de los Estados Unidos
Presente.-

Dear Congressman Kolbe,

Por parte del Gobierno de México le extiendo una amplia felicitación por la introducción de la iniciativa de ley HR4967, conocida como *Border Commuter Student Act of 2002*, a la Cámara de Representantes de los Estados Unidos, el pasado mes de junio.

Esta iniciativa de ley es muy importante para México porque permitirá que los estudiantes mexicanos que viven en la zona fronteriza entre nuestros países puedan continuar sus estudios de tiempo parcial en territorio estadounidense, con una nueva visa que satisfaga sus necesidades académicas y cumpla con los requisitos de seguridad de Estados Unidos.

Este tipo de acciones es, sin duda alguna, el reflejo de una realidad compartida entre México y Estados Unidos, que contribuye al mejor entendimiento de nuestras sociedades, pero sobre todo a generar espacios de colaboración y cooperación que permitan el desarrollo de nuestros países.

Atentamente,

Embajador Enrique Berruga Filloy
Subsecretario de Relaciones Exteriores de México

Dear Congressman Kolbe,

On behalf of the Government of Mexico, we extend to you sincere congratulations for the introduction of the bill HR4967, known as Border Commuter Student Act of 2002, in the U.S. House of Representatives last June.

This bill is very important to Mexico because it will permit Mexican students who live along the border between our countries to continue their part-time studies in the United States with a new visa that satisfies their academic needs and complies with the security requirements of the United States.

This sort of step is, without a doubt, the reflection of a shared reality between Mexico and the United States that contributes to the better understanding between our societies, but above all helps generate areas of collaboration and cooperation that permit the development of our countries.

Sincerely,

Ambassador Enrique Berruga Filloy
Undersecretary of Foreign Relations of Mexico

Chairman SENSENBRENNER. The Chair notes the presence of a reporting quorum. The question occurs on the motion to report the bill H.R. 4967 favorably.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The motion to report favorably is adopted.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by House rules in which to submit additional dissenting, supplemental, or minority views.

○