

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1085 w/CS Immigration and Nationality Act
SPONSOR(S): Brutus
TIED BILLS: None **IDEN./SIM. BILLS:** SM 1008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	15 Y, 0 N w/CS	Jaroslav	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

In 2001, a bill was introduced in Congress to allow the Attorney General of the United States to adjust the immigration status of unaccompanied alien minors under certain conditions, and to establish a panel of advisors to serve as guardians ad litem for such minors. This memorial requests that Congress pass this bill, or similar legislation for the purpose of assisting children in these circumstances.

This memorial does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

On February 7, 2001, H. R. 505 (107th Cong., 1st Sess.) was introduced in the United States House of Representatives and referred to its Committee on the Judiciary. This bill, entitled the “Alien Unaccompanied Minor Adjustment and Protection Act of 2001,” sought to amend Section 245 of the Immigration and Nationality Act¹ to provide that the Attorney General of the United States, at his or her discretion, may adjust the immigration status of an alien under 18 years of age to that of an alien lawfully admitted for permanent residence if:

(A)(i) the alien (or a parent or legal guardian acting on the alien's behalf) has applied for the status; and

(ii) the alien has resided in the United States for a period of 5 consecutive years; or

(B)(i) no parent or legal guardian requests the alien's return to the country of the parent's or guardian's domicile, or with respect to whom the Attorney General finds that returning the child to his or her country of origin would subject the child to mental or physical abuse; and

(ii) the Attorney General determines that it is in the best interests of the alien to remain in the United States notwithstanding the fact that the alien is not eligible for asylum protection . . . based on input from a person or entity that is not employed by or a part of the [Immigration and Naturalization] Service and that is qualified to evaluate children and opine as to what is in their best interest in a given situation.

The term “covered unaccompanied alien child” is defined in the bill as a child who is under the age of 18, who has no lawful immigration status in the United States and is not within the physical custody of a parent or legal guardian, and whom no parent or legal guardian requests the child's return to the country of the parent's or guardian's domicile, or to whom the Attorney General finds that returning the child to his or her country or origin would subject the child to physical or mental abuse.

The bill also provided for the establishment of a panel of at least 200 advisors to serve as guardian ad litem for unaccompanied alien children, “skilled in social services, psychology, education, and other fields relevant to serving as such guardians.” No action was taken on H. R. 505 after February 23, 2001, when it was referred to the Subcommittee on Immigration and Claims. Upon the expiration of the 107th Congress in January of 2003, the bill died.

¹ Title 8 U.S.C. § 1255.

The term "alien" is defined in Title 8 U.S.C. § 1101(a)(3) as "any person not a citizen or national of the United States". The term "national of the United States" is defined in Title 8 U.S.C. § 1101(a)(22) as "a person who, though not a citizen of the United States, owes permanent allegiance to the United States." The term "lawfully admitted for permanent residence" is defined in Title 8 U.S.C. § 1101(20) as "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed."

Legal immigrants, also known as "lawful permanent residents," are individuals who have been granted admission for permanent residence to the United States on the basis of family relation or job skill. Legal immigrants entering the United States apply for immigrant visas and are issued the "green card" after arrival, which is proof of lawful permanent residence in the United States. Nonimmigrants are individuals allowed to enter the United States for a specific purpose and for a temporary or limited period of time, such as tourists, students, and business visitors. There are approximately 70 specific types of nonimmigrant visas, with the largest category being temporary business or pleasure visitors. The United States also accepts "refugees" and asylum applicants, "those who have a well-founded fear of persecution because of race, religion, nationality, political opinion, or membership in a particular social group."²

As part of the Homeland Security Act of 2002,³ the Director of the Office of Refugee Resettlement of the Department of Health and Human Services was transferred the responsibilities under the immigration laws with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization. Under the Homeland Security Act, the Director of the Office of Refugee Resettlement is now responsible for specific functions as they relate to the care of unaccompanied alien children including, but not limited to, coordinating and implementing the care and placement of unaccompanied alien children who are in federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child.⁴

This memorial requests Congress to enact H. R. 505, or similar legislation, to provide assistance to alien unaccompanied minors in immigration proceedings. Copies of the memorial are to be dispatched to the President of the United States, the Vice-President of the United States (as President of the U.S. Senate), the Speaker of the U.S. House of Representatives, and Florida's Congressional delegation.

C. SECTION DIRECTORY:

N/A

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

² Title 8 U.S.C. § 1158.

³ Pub. L. 107-296, 116 Stat. 2135 (Nov. 25, 2002).

⁴ See 6 U.S.C. § 279.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Although the memorial itself has no fiscal impact, the underlying federal legislation whose passage it requests may, although it is unclear whether this would be positive or negative and to what extent.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

By its own terms, the qualified prohibition against imposing legislative mandates to expend funds on local governments applies only to "general law," not to memorials requesting the enactment of federal legislation by Congress.⁵ However, even if the prohibition did apply, this memorial does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 9, 2003, the House Committee on Judiciary adopted one amendment to this memorial. The amendment changes the phrase "House Resolution" to "H. R." throughout the memorial. This is because the "H. R." in H. R. 505 stands for House of Representatives, not House Resolution; resolutions of the U.S. House are styled "H. Res." The Committee then reported this memorial favorably with a committee substitute.

⁵ See Art. VIII, s. 18, Fla. Const.