

ASSISTANCE FOR STATES INCARCERATING UNDOCUM-
MENTED ALIENS CHARGED WITH CERTAIN CRIMES

MAY 5, 2008.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1512]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1512) to amend the Immigration and Nationality Act to provide for compensation to States incarcerating undocumented aliens charged with a felony or two or more misdemeanors, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. ASSISTANCE FOR STATES INCARCERATING UNDOCUMENTED ALIENS CHARGED WITH CERTAIN CRIMES.

Section 241(i)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(3)(A)) is amended by inserting “charged with or” before “convicted”.

SEC. 2. GAO STUDY AND REPORT.

The Comptroller General of the United States annually shall submit to the Congress and the Secretary of Homeland Security a report specifying—

- (1) the number of aliens detained by a State, or a political subdivision of a State, because the alien has been charged with an offense, or offenses, described in section 241(i)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(3)(A)), as amended by section 1 of this Act; and
- (2) the costs associated with incarcerating such aliens.

PURPOSE AND SUMMARY

The State Criminal Alien Assistance Program (SCAAP) was originally created to provide financial assistance to States and localities for costs they incur as a result of incarcerating criminal aliens. Currently States and localities are only reimbursed for a portion of these expenditures. H.R. 1512 amends the Immigration and Nationality Act to reflect the original intent of Congress, which is to provide financial assistance to States and localities for costs they incur as a result of incarcerating aliens who are either charged with or convicted of a felony or two misdemeanors.

BACKGROUND AND NEED FOR THE LEGISLATION

SCAAP was created in 1994 to reimburse States and localities for the arrest, incarceration, and transportation costs associated with criminal aliens. The SCAAP program is administered by the Bureau of Justice Assistance (BJA), which is part of DOJ’s Office of Justice Programs (OJP). The Department of Homeland Security aids BJA in administering the program by verifying the immigration status (or lack of status) of those for whom States seek reimbursement.

Currently States and localities are only reimbursed for incarcerating criminal aliens who are “convicted of a felony or two or more misdemeanors” and incarcerated for at least four consecutive days. In 2003, the Department of Justice (DOJ) reinterpreted the statute establishing SCAAP in a way that caused a drastic reduction in the amount of reimbursements received under the Program. Under this reinterpretation, reimbursement is made only if: (1) the criminal alien is convicted of a felony or two misdemeanors; and (2) the arrest and conviction occurred in the same fiscal year.

H.R. 1512 restores SCAAP as it was originally intended to be, by amending the Immigration and Nationality Act to permit States and localities to be reimbursed for the costs of incarcerating aliens who are either “charged with or convicted” of a felony or two misdemeanors, regardless of the fiscal year of the incarceration and conviction.

This bill has been introduced in every Congress since the 108th with bipartisan support.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 1512.

COMMITTEE CONSIDERATION

On September 25, 2007, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law met in open session and ordered the bill, H.R. 1512, favorably reported, without amendment, by voice vote, a quorum being present. On October 24, 2007, the Committee met in open session and ordered the bill, H.R. 1512, favorably reported with an amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 1512.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises 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.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1512, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 7, 2007.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1512, a bill to amend the Immigration and Nationality Act to provide for compensation to States incarcerating undocumented aliens charged with a felony or two or more misdemeanors.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure.

H.R. 1512—A bill to amend the Immigration and Nationality Act to provide for compensation to States incarcerating undocumented aliens charged with a felony or two or more misdemeanors.

H.R. 1512 would direct the Government Accountability Office to prepare a report each year on the costs to States and localities to incarcerate undocumented aliens charged with certain offenses. CBO estimates that the report would cost less than \$1 million annually from appropriated funds. Enacting the bill would not affect direct spending or revenues. H.R. 1512 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

H.R. 1512 also would modify the State Criminal Alien Assistance Program (SCAAP), a grant program administered by the Department of Justice (DOJ). Under SCAAP, DOJ may reimburse States and localities for costs to incarcerate undocumented aliens who have been convicted of certain crimes. H.R. 1512 would allow jurisdictions to apply for reimbursement when such aliens have been charged with those offenses.

Current law authorizes the appropriation of \$950 million annually over the 2008–2011 period for SCAAP. For fiscal year 2007, the authorization level for the program was \$850 million, and the Congress appropriated about \$400 million. In 2007, however, States and localities applied to SCAAP for reimbursements totaling over \$950 million.

Because H.R. 1512 would not change the current authorization levels for SCAAP and would not affect DOJ's current reimbursement policy, CBO estimates that the proposed changes to that program would have no cost to the Federal Government. Implementing this legislation probably would increase total applications for reimbursement under the program. DOJ's current policy, however, is to approve reimbursements to States for the costs of persons who have been incarcerated for at least four consecutive days. We expect that few individuals who have not been convicted of crimes would be held for that long.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1512 will reconfirm the original congressional intent that each eligible State that applies for reimbursement under the State Criminal Alien Assistance Program be expeditiously compensated for the costs of incarcerating undocumented aliens charged with or convicted of a felony or two or more misdemeanors.

CONSTITUTIONAL AUTHORITY STATEMENT

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

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1512 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Assistance for States Incarcerating Undocumented Aliens Charged with Certain Crimes. Section 1 amends the Immigration and Nationality Act to reflect the original intent of Congress, which is that funding be made available to States and localities for the purpose of reimbursing them for their cost of incarcerating aliens who are charged with or convicted of a felony or two misdemeanors.

Sec. 2. GAO Study and Report. Section 2 requires the Comptroller General of the United States to submit to the Congress a report specifying the number of aliens detained by a State or a political subdivision of a State because that alien was charged with an offense described in section 241(i)(3)(A) of the Immigration and Nationality Act and the costs associated with incarcerating such aliens.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 241 OF THE IMMIGRATION AND NATIONALITY ACT

DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED

SEC. 241. (a) * * *

* * * * *

(i) INCARCERATION.—

(1) * * *

* * * * *

(3) For purposes of this subsection, the term “undocumented criminal alien” means an alien who—

(A) has been *charged with or* convicted of a felony or two or more misdemeanors; and

* * * * *