

106TH CONGRESS
1ST SESSION

S. 1709

To provide Federal reimbursement for indirect costs relating to the incarceration of illegal aliens and for emergency health services furnished to undocumented aliens.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 1999

Mr. KYL (for himself, Mr. MCCAIN, Mrs. HUTCHISON, Mr. DOMENICI, Mr. BINGAMAN, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide Federal reimbursement for indirect costs relating to the incarceration of illegal aliens and for emergency health services furnished to undocumented aliens.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “State Criminal Alien
5 Assistance Program II and Local Medical Emergency Re-
6 imbursement Act”.

1 **TITLE I—STATE CRIMINAL**
2 **ALIEN ASSISTANCE PROGRAM II**

3 **SEC. 101. SHORT TITLE.**

4 This Act may be cited as the “State Criminal Alien
5 Assistance Program II Act of 1999”.

6 **SEC. 102. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) Federal policies and strategies aimed at
10 curbing illegal immigration and criminal alien activ-
11 ity implemented along our Nation’s southwest border
12 influence the number of crossings, especially their lo-
13 cation.

14 (2) States and local governments were reim-
15 bursed approximately 60 percent of the costs of the
16 incarceration of criminal aliens in fiscal year 1996
17 when only 90 jurisdictions applied for such reim-
18 bursement. In subsequent years, the number of local
19 jurisdictions receiving reimbursement has increased.
20 For fiscal year 1999, 280 local jurisdictions applied,
21 and reimbursement amounted to only 40 percent of
22 the costs incurred by those jurisdictions.

23 (3) Certain counties, often with a small tax-
24 payer base, located on or near the border across
25 from sometimes highly populated areas of Mexico,

1 suffer a substantially disproportionate share of the
2 impact of criminal illegal aliens on its law enforce-
3 ment and criminal justice systems.

4 (4) A University of Arizona study released in
5 January 1998 reported that at least 2 of the 4 coun-
6 ties located on Arizona's border of Mexico, Santa
7 Cruz and Cochise Counties, are burdened with this
8 problem—

9 (A) for example, in 1998, Santa Cruz
10 County had 12.7 percent of Arizona's border
11 population but 50 percent of alien crossings and
12 32.5 percent of illegal alien apprehensions;

13 (B) for fiscal year 1998, it is estimated
14 that, of its total criminal justice budget of
15 5,000,000 (\$5,033,000), Santa Cruz County
16 spent \$1,900,000 (39 percent) to process crimi-
17 nal illegal aliens, of which over half was not re-
18 imbursed by Federal monies; and

19 (C) Santa Cruz County has not obtained
20 relief from this burden, despite repeated ap-
21 peals to Federal and State officials.

22 (5) In the State of Texas, the border counties
23 of Cameron, Dimmit, El Paso, Hidalgo, Kinney, Val
24 Verde, and Webb bore the unreimbursed costs of ap-
25 prehension, prosecution, indigent defense, and other

1 related services for criminal aliens who served more
2 than 142,000 days in county jails.

3 (6) Throughout Texas nonborder counties bore
4 similar unreimbursed costs for apprehension, pros-
5 ecution, indigent defense, and other related services
6 for criminal aliens who served more than 1,000,000
7 days in county jails.

8 (7) The State of Texas has incurred substantial
9 additional unreimbursed costs for State law enforce-
10 ment efforts made necessary by the presence of
11 criminal illegal aliens.

12 (8) The Federal Government should reimburse
13 States and units of local government for the related
14 costs incurred by the State for the imprisonment of
15 any illegal alien.

16 (b) PURPOSE.—The purpose of this title is—

17 (1) to assist States and local communities by
18 providing financial assistance for expenditures for il-
19 legal juvenile aliens, and for related costs to States
20 and units of local government that suffer a substan-
21 tially disproportionate share of the impact of crimi-
22 nal illegal aliens on their law enforcement and crimi-
23 nal justice systems; and

24 (2) to ensure equitable treatment for those
25 States and local governments that are affected by

1 Federal policies and strategies aimed at curbing ille-
 2 gal immigration and criminal alien activity imple-
 3 mented on the southwest border.

4 **SEC. 103. REIMBURSEMENT OF STATES FOR INDIRECT**
 5 **COSTS RELATING TO THE INCARCERATION**
 6 **OF ILLEGAL ALIENS.**

7 Section 501 of the Immigration Reform and Control
 8 Act of 1986 (8 U.S.C. 1365) is amended—

9 (1) in subsection (a), by striking “for” and all
 10 that follows through “State” and inserting “for—

11 “(1) the costs incurred by the State for the im-
 12 prisonment of any illegal alien or Cuban national
 13 who is convicted of a felony by such State; and

14 “(2) the indirect costs related to the imprison-
 15 ment described in paragraph (1).”;

16 (2) by striking subsection (c) and inserting the
 17 following:

18 “(c) INDIRECT COSTS DEFINED.—In subsection (a),
 19 the term ‘indirect costs’ includes—

20 “(1) court costs, county attorney costs, and
 21 criminal proceedings expenditures that do not in-
 22 volve going to trial;

23 “(2) indigent defense; and

24 “(3) unsupervised probation costs.”; and

1 (3) by amending subsection (d) to read as fol-
 2 lows:

3 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
 4 are authorized to be appropriated \$200,000,000 to carry
 5 out subsection (a)(2) for each of the fiscal years 2001
 6 through 2004.”.

7 **SEC. 104. REIMBURSEMENT OF STATES FOR COSTS OF IN-**
 8 **CARCERATING JUVENILE ALIENS.**

9 (a) IN GENERAL.—Section 501 of the Immigration
 10 Reform and Control Act of 1986 (8 U.S.C. 1365), as
 11 amended by section 103 of this Act, is further amended—

12 (1) in subsection (a)(1), by inserting “or illegal
 13 juvenile alien who has been adjudicated delinquent
 14 or committed to a juvenile correctional facility by
 15 such State or locality” before the semicolon;

16 (2) in subsection (b), by inserting “(including
 17 any juvenile alien who has been adjudicated delin-
 18 quent or has been committed to a correctional facil-
 19 ity)” before “who is in the United States unlaw-
 20 fully”; and

21 (3) by adding at the end the following:

22 “(f) JUVENILE ALIEN DEFINED.—In this section,
 23 the term ‘juvenile alien’ means an alien (as defined in sec-
 24 tion 101(a)(3) of the Immigration and Nationality Act)
 25 who has been adjudicated delinquent or committed to a

1 correctional facility by a State or locality as a juvenile of-
 2 fender.”.

3 (b) ANNUAL REPORT.—Section 332 of the Illegal Im-
 4 migration Reform and Immigrant Responsibility Act of
 5 1996 (8 U.S.C. 1366) is amended—

6 (1) by striking “and” at the end of paragraph
 7 (3);

8 (2) by striking the period at the end of para-
 9 graph (4) and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(5) the number of illegal juvenile aliens (as de-
 12 fined in section 501(f) of the Immigration Reform
 13 and Control Act) that are committed to State or
 14 local juvenile correctional facilities, including the
 15 type of offense committed by each juvenile.”.

16 (c) CONFORMING AMENDMENT.—Section
 17 241(i)(3)(B) of the Immigration and Nationality Act (8
 18 U.S.C. 1231(i)(3)(B)) is amended—

19 (1) by striking “or” at the end of clause (ii);

20 (2) by striking the period at the end of clause
 21 (iii) and inserting “; or”; and

22 (3) by adding at the end the following:

23 “(iv) is a juvenile alien with respect to
 24 whom section 501 of the Immigration Re-
 25 form and Control Act of 1986 applies.”.

1 **SEC. 105. REIMBURSEMENT OF STATES BORDERING**
 2 **MEXICO OR CANADA.**

3 Section 501 of the Immigration Reform and Control
 4 Act of 1986 (8 U.S.C. 1365), as amended by sections 103
 5 and 104 of this Act, is further amended by adding at the
 6 end the following new subsection:

7 “(g) MANNER OF ALLOTMENT OF REIMBURSE-
 8 MENTS.—Reimbursements under this section shall be al-
 9 lotted in a manner that takes into account special consid-
 10 eration for any State that—

11 “(1) shares a border with Mexico or Canada; or

12 “(2) includes within the State an area in which
 13 a large number of undocumented aliens reside rel-
 14 ative to the general population of the area.”.

15 **TITLE II—REIMBURSEMENT OF**
 16 **STATES AND LOCALITIES FOR**
 17 **EMERGENCY HEALTH SERV-**
 18 **ICES TO UNDOCUMENTED**
 19 **ALIENS**

20 **SEC. 201. AUTHORIZATION OF ADDITIONAL FEDERAL REIM-**
 21 **BURSEMENT OF EMERGENCY HEALTH SERV-**
 22 **ICES FURNISHED TO UNDOCUMENTED**
 23 **ALIENS**

24 (a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT.—
 25 To the extent of available appropriations under subsection
 26 (e), there are available for allotments under this section

1 for each of fiscal years 2002 through 2005, \$200,000,000
2 for payments to certain States under this section.

3 (b) STATE ALLOTMENT AMOUNT.—

4 (1) IN GENERAL.—The Secretary shall compute
5 an allotment for each fiscal year beginning with fis-
6 cal year 2001 and ending with fiscal year 2004 for
7 each of the 17 States with the highest number of
8 undocumented aliens. The amount of such allotment
9 for each such State for a fiscal year shall bear the
10 same ratio to the total amount available for allot-
11 ments under subsection (a) for the fiscal year as the
12 ratio of the number of undocumented aliens in the
13 State in the fiscal year bears to the total of such
14 numbers for all such States for such fiscal year. The
15 amount of allotment to a State provided under this
16 paragraph for a fiscal year that is not paid out
17 under subsection (c) shall be available for payment
18 during the subsequent fiscal year.

19 (2) DETERMINATION.—For purposes of para-
20 graph (1), the number of undocumented aliens in a
21 State under this section shall be determined based
22 on estimates of the resident illegal alien population
23 residing in each State prepared by the Statistics Di-
24 vision of the Immigration and Naturalization Service
25 as of October 1992 (or as of such later date if such

1 date is at least 1 year before the beginning of the
2 fiscal year involved).

3 (c) USE OF FUNDS.—

4 (1) IN GENERAL.—From the allotments made
5 under subsection (b) for a fiscal year, the Secretary
6 shall pay to each State amounts described in a State
7 plan, submitted to the Secretary, under which the
8 amounts so allotted will be paid to local govern-
9 ments, hospitals, and related providers of emergency
10 health services to undocumented aliens in a manner
11 that—

12 (A) takes into account—

13 (i) each eligible local government's,
14 hospital's or related provider's payments
15 under the State plan approved under title
16 XIX of the Social Security Act for emer-
17 gency medical services described in section
18 1903(v)(2)(A) of such Act (42 U.S.C.
19 1396b(v)(2)(A)) for such fiscal year; or

20 (ii) an appropriate alternative proxy
21 for measuring the volume of emergency
22 health services provided to undocumented
23 aliens by eligible local governments, hos-
24 pitals, and related providers for such fiscal
25 year; and

1 (B) provides special consideration for local
 2 governments, hospitals, and related providers
 3 located in—

4 (i) a county that shares a border with
 5 Mexico or Canada; or

6 (ii) an area in which a large number
 7 of undocumented aliens reside relative to
 8 the general population of the area.

9 (2) SPECIAL RULES.—For purposes of this sub-
 10 section:

11 (A) A provider shall be considered to be
 12 “related” to a hospital to the extent that the
 13 provider furnishes emergency health services to
 14 an individual for whom the hospital also fur-
 15 nishes emergency health services.

16 (B) Amounts paid under this subsection
 17 shall not duplicate payments made under title
 18 XIX of the Social Security Act for the provision
 19 of emergency medical services described in sec-
 20 tion 1903(v)(2)(A) of such Act (42 U.S.C.
 21 1396b(v)(2)(A)).

22 (d) DEFINITIONS.—In this section:

23 (1) HOSPITAL.—The term “hospital” has the
 24 meaning given such term in section 1861(e) of the
 25 Social Security Act (42 U.S.C. 1395x(e)).

1 (2) PROVIDER.—The term “provider” includes
2 a physician, another health care professional, and an
3 entity that furnishes emergency ambulance services.

4 (3) SECRETARY.—The term “Secretary” means
5 the Secretary of Health and Human Services.

6 (4) STATE.—The term “State” means the 50
7 States and the District of Columbia.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
9 authorized to be appropriated to carry out this section
10 \$200,000,000 for each of fiscal years 2001 through 2005.

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