

107TH CONGRESS  
1ST SESSION

# S. 169

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

---

## IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2001

Mr. KYL (for himself, Mr. MCCAIN, Mrs. HUTCHISON, Mr. DOMENICI, Mrs. FEINSTEIN, Mr. BINGAMAN, and Mrs. BOXER) 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 criminal 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 2001”.

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 2000, approximately 360 local juris-  
21                  dictions applied, and reimbursement amounted to  
22                  only 40 percent of the costs incurred by those juris-  
23                  dictions.

24                   (3) Certain counties, often with a small tax-  
25                  payer base, located on or near the border across

1 from sometimes highly populated areas of Mexico,  
2 suffer a substantially disproportionate share of the  
3 impact of criminal illegal aliens on its law enforce-  
4 ment and criminal justice systems.

5 (4) A University of Arizona/U.S.-Mexico Border  
6 Counties Coalition study released in November 2000  
7 reported that the 4 counties located on Arizona's  
8 border of Mexico, Pima, Yuma, Santa Cruz, and  
9 Cochise Counties, are burdened with this problem—

10 (A) for example, in 1999, Arizona's four  
11 border counties' combined population was 1.1  
12 million, or 17.5 percent of the total population  
13 along the U.S.-Mexico border, but accounted for  
14 11 percent of alien crossings and nearly 40 per-  
15 cent of illegal alien apprehensions along the  
16 border; Santa Cruz County had 43 percent of  
17 alien crossings and 16.3 percent of illegal ap-  
18 prehensions in the State of Arizona and Cochise  
19 County had 21 percent of alien crossings and  
20 56 percent of illegal apprehensions in the State  
21 of Arizona.

22 (B) for fiscal year 1999, it is estimated  
23 that, of its total criminal justice budget of  
24 \$6,000,000, Santa Cruz County spent  
25 \$1,978,863 (33 percent) to process criminal il-

1 legal aliens, of which over half was not reim-  
2 bursed by Federal monies; and of Cochise  
3 County's total law enforcement and criminal  
4 justice budget of \$14.2 million, Cochise County  
5 spent an estimated \$4.6 million (32 percent) to  
6 apprehend and process criminal illegal aliens, of  
7 which over half was not reimbursed by Federal  
8 monies; and

9 (C) Santa Cruz County and Cochise Coun-  
10 ty have not obtained relief from this burden, de-  
11 spite repeated appeals to Federal and State of-  
12 ficials.

13 (5) In the State of Texas, the border counties  
14 of Cameron, Dimmit, El Paso, Hidalgo, Kinney, Val  
15 Verde, and Webb bore the unreimbursed costs of ap-  
16 prehension, prosecution, indigent defense, and other  
17 related services for criminal aliens who served more  
18 than 142,000 days in county jails.

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

24 (7) The State of Texas has incurred substantial  
25 additional unreimbursed costs for State law enforce-

1 ment efforts made necessary by the presence of  
2 criminal illegal aliens.

3 (8) The Federal Government should reimburse  
4 States and units of local government for the related  
5 costs incurred by the State for the imprisonment of  
6 any illegal alien.

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

8 (1) to assist States and local communities by  
9 providing financial assistance for expenditures for il-  
10 legal juvenile aliens, and for related costs to States  
11 and units of local government that suffer a substan-  
12 tially disproportionate share of the impact of crimi-  
13 nal illegal aliens on their law enforcement and crimi-  
14 nal justice systems; and

15 (2) to ensure equitable treatment for those  
16 States and local governments that are affected by  
17 Federal policies and strategies aimed at curbing ille-  
18 gal immigration and criminal alien activity imple-  
19 mented on the Southwest border of the United  
20 States.

21 **SEC. 103. REIMBURSEMENT OF STATES FOR INDIRECT**  
22 **COSTS RELATING TO THE INCARCERATION**  
23 **OF ILLEGAL ALIENS.**

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

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

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

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

8           (2) by striking subsection (c) and inserting the  
9 following:

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

12           “(1) court costs, county attorney costs, deten-  
13 tion costs, and criminal proceedings expenditures  
14 that do not involve going to trial;

15           “(2) indigent defense; and

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

17           (3) by amending subsection (d) to read as fol-  
18 lows:

19          “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
20 is authorized to be appropriated \$200,000,000 to carry  
21 out subsection (a)(2) for each of the fiscal years 2002  
22 through 2005.”.

1 **SEC. 104. REIMBURSEMENT OF STATES FOR COSTS OF IN-**  
2 **CARCERATING JUVENILE ALIENS.**

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

6 (1) in subsection (a)(1), by inserting “or illegal  
7 juvenile alien who has been adjudicated delinquent  
8 or committed to a juvenile correctional facility by  
9 such State or locality” before the semicolon;

10 (2) in subsection (b), by inserting “(including  
11 any juvenile alien who has been adjudicated delin-  
12 quent or has been committed to a correctional facil-  
13 ity)” before “who is in the United States unlaw-  
14 fully”; and

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

16 “(f) JUVENILE ALIEN DEFINED.—In this section,  
17 the term ‘juvenile alien’ means an alien (as defined in sec-  
18 tion 101(a)(3) of the Immigration and Nationality Act)  
19 who has been adjudicated delinquent or committed to a  
20 correctional facility by a State or locality as a juvenile of-  
21 fender.”.

22 (b) ANNUAL REPORT.—Section 332 of the Illegal Im-  
23 migration Reform and Immigrant Responsibility Act of  
24 1996 (8 U.S.C. 1366) is amended—

25 (1) by striking “and” at the end of paragraph

26 (3);

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

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

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

9           (c)           CONFORMING           AMENDMENT.—Section  
10 241(i)(3)(B) of the Immigration and Nationality Act (8  
11 U.S.C. 1231(i)(3)(B)) is amended—

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

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

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

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

19 **SEC. 105. REIMBURSEMENT OF STATES BORDERING MEX-**  
20 **ICO OR CANADA.**

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

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

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

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

9 **TITLE II—REIMBURSEMENT OF**  
 10 **STATES AND LOCALITIES FOR**  
 11 **EMERGENCY HEALTH SERV-**  
 12 **ICES TO UNDOCUMENTED**  
 13 **ALIENS**

14 **SEC. 201. AUTHORIZATION OF ADDITIONAL FEDERAL REIM-**  
 15 **BURSEMENT OF EMERGENCY HEALTH SERV-**  
 16 **ICES FURNISHED TO UNDOCUMENTED**  
 17 **ALIENS**

18       (a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT.—

19 To the extent of available appropriations under subsection

20 (e), there are available for allotments under this section

21 for each of fiscal years 2002 through 2005, \$200,000,000

22 for payments to certain States under this section.

23       (b) STATE ALLOTMENT AMOUNT.—

24               (1) IN GENERAL.—The Secretary shall compute

25 an allotment for each fiscal year beginning with fis-

1 cal year 2002 and ending with fiscal year 2005 for  
2 each of the 17 States with the highest number of  
3 undocumented aliens. The amount of such allotment  
4 for each such State for a fiscal year shall bear the  
5 same ratio to the total amount available for allot-  
6 ments under subsection (a) for the fiscal year as the  
7 ratio of the number of undocumented aliens in the  
8 State in the fiscal year bears to the total of such  
9 numbers for all such States for such fiscal year. The  
10 amount of allotment to a State provided under this  
11 paragraph for a fiscal year that is not paid out  
12 under subsection (c) shall be available for payment  
13 during the subsequent fiscal year.

14 (2) DETERMINATION.—For purposes of para-  
15 graph (1), the number of undocumented aliens in a  
16 State under this section shall be determined based  
17 on estimates of the resident illegal alien population  
18 residing in each State prepared by the Statistics Di-  
19 vision of the Immigration and Naturalization Service  
20 as of October 1992 (or as of such later date if such  
21 date is at least 1 year before the beginning of the  
22 fiscal year involved).

23 (c) USE OF FUNDS.—

24 (1) IN GENERAL.—From the allotments made  
25 under subsection (b) for a fiscal year, the Secretary

1 shall pay to each State amounts described in a State  
2 plan, submitted to the Secretary, under which the  
3 amounts so allotted will be paid to local govern-  
4 ments, hospitals, and related providers of emergency  
5 health services to undocumented aliens in a manner  
6 that—

7 (A) takes into account—

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

15 (ii) an appropriate alternative proxy  
16 for measuring the volume of emergency  
17 health services provided to undocumented  
18 aliens by eligible local governments, hos-  
19 pitals, and related providers for such fiscal  
20 year; and

21 (B) provides special consideration for local  
22 governments, hospitals, and related providers  
23 located in—

24 (i) a county that shares a border with  
25 Mexico or Canada; or

1                   (ii) an area in which a large number  
2                   of undocumented aliens reside relative to  
3                   the general population of the area.

4                   (2) SPECIAL RULES.—For purposes of this sub-  
5                   section:

6                   (A) A provider shall be considered to be  
7                   “related” to a hospital to the extent that the  
8                   provider furnishes emergency health services to  
9                   an individual for whom the hospital also fur-  
10                  nishes emergency health services.

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

17                  (d) DEFINITIONS.—In this section:

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

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

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

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

3           (e) AUTHORIZATION OF APPROPRIATIONS.—There is  
4           authorized to be appropriated to carry out this section  
5           \$200,000,000 for each of fiscal years 2002 through 2005.

○