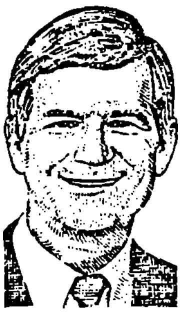
Immigration Foe's Reversal Bodes Well for Silicon Valley

By Marjorie Valbrun
Staff Reporter of The Wall Street Journal

For years, Rep. Lamar Smith has vigorously opposed expanded immigration. So the Texas Republican turned heads recently when he introduced a bill that could allow many more skilled foreign workers into the U.S.

The main reason for his change of heart? Mr. Smith says the Immigration and Naturalization Service, an agency whose nearly every move he has criticized, presented him with statistics indicating unremitting demand from U.S. employers for well-educated immigrants. The numbers were irresistible, he says: "I said all along that we wanted a bill actually based on merit and facts and figures."

Once they looked at the details of the Smith legislation, introduced last month, business advocates discovered things to complain about. But the bill's significance could be primarily as a catalyst, rather than as the legislation likely to pass, according to lawmakers. Some of them believe Mr. Smith has been easing his position in response to growing political pressure within his own party for legislative action on the hot high-technology issue.



Lamar Smith

A number of competing pro-immigration bills already are pending in both houses of Congress. With Mr. Smith's version in the hopper, it is now expected that one or another measure will be approved this year and signed by President Clinton. In courting Silicon Valley, presidential candidates Al Gore and George W. Bush both have voiced support for expanding the high-tech immigration program.

The legislation could open the door to hundreds of thousands of additional skilled foreigners—scientists, academics and computer programmers—who would become available for jobs with high-tech companies and universities.

Employers have long complained about caps on the so-called H-1B visa program, which allows skilled foreign workers to live in the U.S. for as long as six years, after which they may apply for permanent-resident status. The current annual limit of 115,000 H-1B visas fails to meet the U.S. market's voracious demand and hurts American competitiveness, these employers complain. Industry estimates of the high-tech labor shortage range from 300,000 to 800,000 workers.

Now, Mr. Smith, who is chairman of the House immigration subcommittee, has proposed removing the cap for three years, through 2002. As recently as March, the lawmaker proposed raising the annual cap by only 35,000, to 150,000, significantly less than two other pending bills that call for increasing the cap to about 200,000.

He says he thinks the industry worker-shortage numbers may be exaggerated, but he was impressed in late March, when the INS told him that in 1999, it mistakenly had handed out 22,000 H-1B visas above the cap. The agency also reported that during the first three months of this year, employers had demanded 50,000 more visas than they had during the same period last year. As a result, the INS already has stopped accepting new applications for 2000. In addition to the INS statistics, Mr. Smith says, lobbying by high-tech interests helped change his mind.

Immigration foes, such as the Federation for American Immigration in Washington, say that business interests are using campaign contributions essentially to buy an increase in H-1B visas. From January 1999 through February 2000, companies that rely on the visas gave the two political parties a total of almost $10.3 million-split roughly evenly between Republicans and Democrats, according to the Center for Responsive Politics, a nonpartisan research center in Washington.

Rep. Smith says money didn't sway him. He received only $2,750 in contributions last year from the high-tech industry, according to the politics center.

He also maintains that he didn't feel any pressure from Republicans to fall in line behind the presumptive GOP presidential candidate, Mr. Bush, a fellow Texan who supports expanded immigration. "This is not a partisan or political bill," Mr. Smith says. "It wasn't done with any political angle or campaign in mind."

Mr. Smith, 52 years old, a seven-term representative from San Antonio, has inserted provisions into his bill that he says will prevent fraud and protect American workers. But business leaders warn these restrictions would make it difficult for them to take advantage of H-1B visas.

The Smith bill would require companies that petition the government for the special visas to prove that their domestic work force is growing, and that they have raised American workers' salaries. The companies also would have to have assets of at least $250,000 and would be obliged to file public reports on the foreign workers they hire, including their positions and pay. Only immigrants with college degrees could qualify, as opposed to the current rule, which allows work experience to be considered if applicants lack degrees.

Mr. Smith says these requirements would reduce abuse of the program by, for example, deterring middlemen who apply for H-1B visas and then, for large fees, refer immigrants to employers paying relatively low wages.

The Federation for American Immigration, which has aimed slashing media attacks at some proponents of increased H-1B visas, hasn't gone after Mr. Smith's bill. The group believes that if his bill were enacted, it could actually reduce immigration by cutting out fraud and abuse, says executive director Dan Stein.

But for many employers, the red tape associated with the restrictions would make additional H-1B visas "virtually inaccessible," warns Sandy Boyd of the National Association of Manufacturers in Washington.

"Even though it appears the cap would be lifted, for most companies, it would be very difficult to comply with the requirements," agrees Paula Collins, director of government relations at Texas Instruments Inc., which has a domestic work force of 21,800 and employs about 700 H-1B immigrants, most of whom are electrical engineers.

Competing bills proposed in the House and Senate would raise the annual H-1B limit with fewer restrictions. But even if they favor different terms, sponsors of those bills view Mr. Smith's putting in his own bid as a sign that a compromise can be reached.

House Rules Committee Chairman David Drier of California, co-sponsor with Democratic Rep. Zoe Lofgren of California of one of the competing bills, calls the Smith legislation "an important step in getting a bipartisan bill passed through the House."

THE WALL STREET JOURNAL
TUESDAY, MAY 2, 2000

H1B

From: Lisa J. Macecevic on 04/12/2000 05:36:08 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: H-1B story

---------------------- Forwarded by Lisa J. Macecevic/OMB/EOP on 04/12/2000 05:44 PM ---------------------------

From: James J. Jukes on 04/12/2000 04:08:48 PM

Record Type: Record

To: Richard E. Green/OMB/EOP@EOP, Lisa J. Macecevic/OMB/EOP@EOP

cc:

Subject: H-1B story

---------------------- Forwarded by James J. Jukes/OMB/EOP on 04/12/2000 04:03 PM ---------------------------

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Page A-43

Regulation, Law & Economics

Immigration

House Immigration Panel to Consider Legislation to Lift Caps on H-1B Visas

Rising demand by U.S. firms for professional high-tech workers from abroad prompted Rep. Lamar S. Smith (R-Texas) to introduce legislation April 11 that would lift completely the cap on H-1B visas for the next three years.

The House Judiciary Subcommittee on Immigration and Claims is expected to hold a mark up April 12 on Smith's latest proposal (H.R. 3814), which dramatically modifies his earlier bill (H.R. 4227), introduced March 1, to increase the cap on H-1B visas by 45,000 to 160,000 during this fiscal year. While Smith altered the content of his legislation he retained its earlier title--the Technology Worker Relief Act.

Since introducing his previous bill, Smith said, the Immigration and Naturalization Service has reported that the projected annual demand for the visas is expected to be 50,000 more than last year.

"So, there is obviously a significant growth in demand for foreign high-tech workers," he said at a Capitol Hill press conference. "Given the importance of the high-tech industry to our economy, I think we should give the industry the benefit of the doubt and accommodate the current level of demand."

INS March 21 said it will not accept any more petitions for immigrant worker visas under the H-1B visa program this fiscal year because it has reached its statutory limit for issuing such visas.

White House Seeks Balance

White House spokesman Joe Lockhart April 11 told reporters that the administration has not yet reviewed Smith's latest effort. "I think our approach that calls for a balance that we've implemented in the past has worked quite well, and we have no intention of changing that," he said.

This approach would reflect the need for U.S. industry to remain competitive "and from time to time bring skilled workers from other places," he said, and it would reflect the need to ensure that American workers are adequately trained to fill many high-skilled positions.

Smith said his legislation would let the market determine the number of foreign skilled workers needed "rather than have Congress set limits based on arbitrary numbers."

Rep. Bob Goodlatte (R-Va.) joined Smith in introducing the legislation, and noted that there was no cap until about a decade ago, adding, "I don't see the cap serves any legitimate purpose." But he stressed that steps would be needed to crack down on employer fraud and abuse.

Another co-sponsor, Rep. Tom Campbell (R-Calif.), said H.R. 4227 is the only pending legislative proposal that would completely remove the H-1B visa cap.

Companies applying for H-1B visas would have to show they have increased their numbers of U.S. employees and increased their employee ~~compensation~~, under this legislation.

Campbell said he requested those provisions to send a message to industry: "Don't come knocking on the door for H-1Bs if you're downsizing. The effect of the legislation is to say you retrain those Americans."

The bill also would require employers to file public reports on skilled temporary foreign workers they have hired, including the jobs they perform and their wages. H.R. 4227 also would set a $40,000 floor on wages.

"The industry has said that it uses these workers to fill critical positions in their workforce. This wage is a good starting point for any high-tech professional," Smith said.

Bill Addresses Fraud, Abuse

To address potential fraud and abuse by employers, Smith said his bill would:

- require that skilled temporary foreign workers be full-time employees;
- require that employers have assets of at least $250,000;
- eliminate the substitution of work experience for a degree; and
- provide for checks of foreign educational institutions that award degrees to these workers.

The legislation would add $100 to the current $500 H-1B visa fee that would be used to enforce the bill's fraud provisions. The additional funds would be split between INS and the State Department.

Smith, who is Immigration and Claims subcommittee chairman, said he has been working with Rules Committee Chairman David Dreier (R-Calif.) on this proposal. But he said the bill "wasn't an effort to compromise. It was an effort to respond to the presumed legitimate demands of industry."

Dreier and Rep. Zoe Lofgren (D-Calif.) are cosponsors of another bill regarding the shortage of high-tech workers. Their measure, The Helping to Improve Technology and Achievement Act (H.R. 3983), would increase the number of visas to 200,000 in fiscal years 2001 to 2003.

Dreier April 11 threw his support behind Smith's proposal, calling it a very positive development. "It's big step forward in getting a bipartisan bill passed through the House that addresses a key economic need -- ensuring that our high tech industries have the workers necessary to continue to lead our high-tech economy," Drier said.

Lofgren's office did not return telephone call for comment.

Pending legislation in the Senate, the American Competitiveness Act of 2000 (S. 2045), would raise the ceiling on H-1B visas to 195,000 in fiscal 2000, 2001, and 2002. The Senate Judiciary Committee March 9 approved the bill, sponsored by Sens. Orrin G. Hatch (R-Utah) and Spencer Abraham (R-Mich.).

Organized labor opposes any move to raise in the cap, arguing that the high-tech industry is recruiting foreign workers to keep down wages.

Smith said industry leaders have given his bill a "positive response."

The U.S. Chamber of Commerce could not be reached for comment on the bill.

Science, Technology Council Issues Report

Also addressing the country's need for a skilled workforce, the Clinton administration April 11 released a report from the National Science and Technology Council. Neal Lane, assistant to the president for science and technology, said the report concludes that workers in the science, technology, and engineering workforce are essential to the private and public sectors.

"It is in the national interest to vigorously pursue the development of domestic science, technology, and engineering workers from all ethnic and gender groups," Lane said in a statement.

"If current trends persist, our nation may begin to fall far short of the talent needed to spur the innovation process that has given America such a strong economy and high quality of life," he said.

Lane noted that historically, non-Hispanic white males have comprised a large fraction of the nation's scientists and engineers. But this fraction of the population is projected to decline, he said. While Hispanics and African-Americans form a much smaller part of the high-tech workforce, their population is expected to increase markedly in the next 50 years, he said.

"High-tech careers will have to become more attractive to everyone in our society--women and men from all backgrounds and all parts of the country," he added.

A copy of the report, U.S. Scientific, Technical and Engineering Workforce, is available at http://www.whitehouse.gov/WH/EOP/OSTP/html/workforcerpt.html.

By Linda Roeder

Message Sent To:____

Ruth M. Samardick/OPD/EOP@EOP
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Mark D. Magana/WHO/EOP@EOP
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Joseph G. Pipan/OMB/EOP@EOP
Irene Bueno/OPD/EOP@EOP
Richard E. Green/OMB/EOP@EOP
Larry R. Matlack/OMB/EOP@EOP

Irene Bueno
04/11/2000 02:39:55 PM

Record Type: Record

To: Ruth M. Samardick/OPD/EOP@EOP
cc: debra j. bond/omb/eop@eop, Mark D. Magana/WHO/EOP
bcc:
Subject: fyi

Here's the statement. The bill number number HR 4227. Mark will fax you the bill and summary.

Skilled Temporary Foreign Workers

Statement of Congressman Lamar Smith, Chairman of the House Immigration Subcommittee on introduction of a new bill to increase the number of H-1b visas

April 11, 2000

A month ago, my colleagues, Bob Goodlatte, Chris Cannon, Tom Campbell, and I introduced the Technology Worker Temporary Relief Act that increased the number of skilled temporary foreign H-1b workers by 45,000.

Today there is still no objective, credible study that documents a shortage of American high-tech workers. The Department of Commerce says it does not know if there is a shortage. The study that Congress commissioned by the National Science Foundation is not scheduled to be completed until after we adjourn this year. In the private sector, two substantive non-profit studies concluded that it is unclear whether there is a shortage.

What is new is that two weeks ago the INS informed us that demand for these visas is running 50,000 ahead of last year. In addition, the INS reported that the number of visas the INS approved last year above what the law allowed was more than 21,000.

So, there is obviously a significant growth in demand for foreign high-tech workers.

Such demand can indicate any of the following: An actual shortage, a spot shortage, a preference for cheap labor or replacement workers, or something else.

Given the importance of the high-tech industry to our economy, I think we should give the industry the benefit of the doubt and accommodate the current level of demand.

The new Temporary Worker Temporary Relief Act I am introducing today will set no limits on the number of skilled temporary foreign workers we admit during the next three years. Let the market determine how many foreign skilled workers we need rather than have Congress set limits based on arbitrary numbers.

This bill responds generously to the immediate temporary needs of the high-tech industry and also includes provisions that are good for American workers.

It will require companies applying for these visas to show they have increased their number of American employees and increased compensation to American employees.

This bill requires employers to file public reports on skilled temporary foreign workers they have hired, what jobs they've been assigned to do, and the wages they are paid.

Since these are foreign workers who are filling what could otherwise be Americans' jobs, it is appropriate the American public knows what the industry is doing.

This legislation also sets a floor on wages for these workers--$40,000 per year. The industry has said that it uses these workers to fill critical positions in their workforce. This wage is a good starting point for any high-tech professional.

This bill also requires full implementation of the 1998 American Competitiveness and Workforce Improvement Act before the additional visas are available in 2001 and 2002.

Strong anti-fraud measures are necessary to address known abuses. This bill requires skilled temporary foreign workers to be full-time employees, requires employers to have assets of at least $250,000, eliminates the substitution of work experience for a degree, and provides for checks of foreign educational institutions that award degrees to these workers.

These common sense provisions that benefit American workers and reduce fraud are essential to any workable H-1b visa bill.

Finally, this legislation addresses only a small part of America's future workforce. Ninety percent of all future jobs will require more than a high school education. Tragically, 35 percent of legal immigrants, more than 300,000 annually, lack this essential qualification.

If we have learned anything from the debate over the demand for more skilled temporary foreign workers, it is that our current legal immigration system is failing us. It provides large numbers of workers with no skills but does not provide the high-tech workers we do need.

Every day that Congress debates temporary foreign workers is a warning that we need a legal immigration system that better serves America's interests.

Ruth M. Samardick

Ruth M. Samardick
04/11/2000 01:45:29 PM

Record Type: Record

To: Debra J. Bond/OMB/EOP@EOP, Irene Bueno/OPD/EOP@EOP

cc:
Subject: quick & dirty

Thanks, Debra, liked and took all your edits except one. In higher ed carveouts bullet, I thought we were not going to refer to any existing bill. Also, didn't think we were claiming any particular # or %, only key issue is that if it's there it be within the cap. At least for the short one to Gene, I'm keeping my original sentence. We can discuss as to the one for Julian.

Summary of the New Technology Worker Temporary Act

Additional Visas

·· fy 2000, 2001, 2002 No cap on the number of visas available

Conditions

In 2001-02, additional requirements to be met for those visas above current law are as follows:

- The petitioning company must demonstrate that it has:

  a) increased its number of American employees over the last year (disregarding spun-off divisions),

  b) increased the total compensation to American employees over the last year, and

  c) increased the average compensation to American employees over the last year.

  The high-tech companies that are calling for more H-1Bs visas are growing at a fast rate, hiring all the Americans they can find, and sharing their extraordinary profits with their employees. These companies need additional H-1B aliens in order to keep up these growth rates and to continue to provide new opportunities for American workers. The H-1B quota increase is intended to benefit these companies.

  However, companies that are laying off large numbers of American employees or slashing their salaries should not have the opportunity to use an H-1B visa worker.

- Final regulations implementing all provisions of the American Competitiveness and Workforce Improvement Act of 1998 must be in effect.

  The 1998 compromise H-1B legislation (the American Competitiveness and Workforce Improvement Act) increased the annual H1B cap and at the same time added safeguards for American workers. While the extra visas became immediately available, the substantive protections have never been implemented because the Administration has never issued final regulations. Thus, the 1998 compromise has not been carried out.

Additional Requirements for All H-1B Visas

Irene Bueno
04/11/2000 02:41:34 PM

Record Type: Record

To: Ruth M. Samardick/OPD/EOP@EOP
cc: debra j. bond/omb/eop@eop, Mark D. Magana/WHO/EOP@EOP
bcc: Records Management@EOP
Subject: Rep. Lamar Smith H1B bill

Here's the statement. The bill number number HR 4227. Mark will fax you the bill and summary.

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This legislation also sets a floor on wages for these workers--$40,000 per year. The industry has said that it uses these workers to fill critical positions in their workforce. This wage is a good starting point for any high-tech professional.

This bill also requires full implementation of the 1998 American Competitiveness and Workforce Improvement Act before the additional visas are available in 2001 and 2002.

Strong anti-fraud measures are necessary to address known abuses. This bill requires skilled temporary foreign workers to be full-time employees, requires employers to have assets of at least $250,000, eliminates the substitution of work experience for a degree, and provides for checks of foreign educational institutions that award degrees to these workers.

These common sense provisions that benefit American workers and reduce fraud are essential to any workable H-1b visa bill.

Finally, this legislation addresses only a small part of America's future workforce. Ninety percent of all future jobs will require more than a high school education. Tragically, 35 percent of legal immigrants, more than 300,000 annually, lack this essential qualification.

If we have learned anything from the debate over the demand for more skilled temporary foreign workers, it is that our current legal immigration system is failing us. It provides large numbers of workers with no skills but does not provide the high-tech workers we do need.

Every day that Congress debates temporary foreign workers is a warning that we need a legal immigration system that better serves America's interests.

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04/11/2000 01:45:29 PM

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cc:
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Mark D. Magana
03/14/2000 04:37:53 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: NCLR Release: H-1B is not Enough: Congress Must Address Other Immigration Issues

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FOR IMMEDIATE RELEASE
March 8, 2000
Joel Najar
Cecilia Muñoz
202-785-1670

H-1B is not Enough: Congress Must
Address Other Immigration Issues

Washington, DC - The following statement was released today by Raul Yzaguirre, President of the National Council of La Raza (NCLR), the nation's largest Hispanic civil rights organization.The Senate Judiciary Committee is preparing to move forward with legislation to increase the number of high-skilled temporary worker visas. There has been no indication by the Committee that it intends to address the various other immigration issues that have reached crisis proportion. In the attached letter, a coalition of labor, immigration, and civil rights groups urged the Committee to address these other issues.Recently, there have been some positive developments that show there is increased support for pro-immigrant policies. There are several bills that address some of the worst consequences of the severely flawed immigration legislation enacted in 1996. These bills have widespread support among immigration, civil rights, and religious groups. Nevertheless, Congress has so far shown no intention of acting on other legislation this session.The legislative agenda this session should not be only about increasing the cap on the high-skilled worker visa program. Calls from the likes of Federal Reserve Board Chair, Alan Greenspan, to organized labor, and business all urge Congress to revise our immigration policies to sustain our nation's prosperity and improve the rights of all workers. It would be shortsighted of this Congress to ignore our nation's need for modernized immigration policies by acting on only one aspect of this critical issue.###

March 8, 2000

The Honorable Orrin Hatch
Chairman, Committee on the Judiciary
United States Senate

Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Hatch and Senator Leahy:

We write to you out of concern that the agenda for legislation that the Committee will promote this session will not include several items that are of utmost and immediate importance to immigrant communities in the United States.

There are several immigration issues that have reached a crisis level and need immediate legislative attention. Given this, we are very troubled that the only immigration legislation given adequate attention this year so far is related to high-skilled temporary workers.

While various pro-immigrant organizations have differing positions on the merits of the proposals to expand the H-1B program, we feel that we cannot allow another year to go by in which Congress ignores the very real crises that have been caused by the changes in immigration law in 1996.

Last year, we promoted a legislative effort known as "Fix '96" to restore a fair balance to our nation's immigration laws. All of the issues involved in the campaign remain outstanding. To begin with, Congress must immediately address the issues of the late legalization class action lawsuits, Central American and Caribbean refugee parity in deportation relief, relief for Liberian refugees, restoration of access to public benefits, and restoring due process in the detention and deportation policies of the U.S.

We urge that the pro-immigrant agenda this session include more than just H-1B legislation. We urge you to act on these issues today. Thank you for your time and attention.

Sincerely,

Hotel Employees & Restaurant Employees International Union, AFL-CIO
Leadership Conference on Civil Rights
National Council of La Raza
National Immigration Forum
Service Employees International Union, AFL-CIO
Union of Needletrades, Industrial and Textile Employees, AFL-CIO

cc: Sen. Spencer Abraham
Sen. Edward M. Kennedy

The Fax on Immigration

A Nation of Prosperity. . . A Nation of Immigrants

National Immigration Forum

March 3, 2000

Vol. No.4

Contact: Angela Kelley, (202) 544-0004, ext. 19

1 page

Economists and Labor Market Analysts: Immigrants Vital to Prosperity

"If immigrants weren't here, businesses would close. Restaurants in the downtown skyways would close. Mall of America would have a hard time operating, factories would reduce operations or would be forced to close. In the least damaging aspect, businesses would be unable to expand, which is what you want in a growing economy."
James Kielkopf, Bank Market Researcher, *Minneapolis Star Tribune,* November 15, 1999

"Contrary to those who argue that immigrants take jobs away from those already here, the alternative to immigration would not have been more jobs for the native-born. Without the immigrants, the Fed would have tightened monetary policy and slowed the economy, much sooner and much more aggressively. Immigrants therefore have played a vital role in the U.S, economy's spectacular performance over the past few years."
Stephan-Gots Richter, President and Daniel Bachman, Chief Economist, TransAtlantic Futures Research Institute, *Transatlantic Futures,* August 24, 1999

"If you're asking if immigrants are important to the California economy, the answer is a resounding yes."
Stephen Levy, Director, Center for the Continuing Study of the California Economy, Palo Alto, *Los Angeles Times,* April 11, 1999

"If not for foreign immigration, the New England region's labor force - the number of people working or looking for work - would actually be smaller, by 200,000 people than it was in 1990."
"The Changing Workforce: Immigrants and the New Economy in Massachusetts", The Massachusetts Institute for a New Commonwealth (MassInc), November, 1999

IMMIGRATION POLICY REPORT

providing factual information about immigration and immigrants in America

Companies Face Grave Shortages of Programmers

Foreign-Born Workers Can Fill the Gap

The Bureau of Labor Statistics has predicted that 1.3 million jobs will be created in the computer and IT fields through 2006, requiring an average of 138,000 new IT workers in the U.S. job market per year. Where those workers will come from is still unclear.

Despite intensive efforts by U.S. companies to educate and train American workers, the growth of the high-tech sector together with the rapid expansion of the digital economy is creating skill demands that education and industry training cannot satisfy in the near term.

In the face of unambiguous proof that the industry is growing well beyond the pool of skilled technology professionals in the United States, and much faster than U.S. universities can prepare new high-tech workers, opponents of immigration insist that no new software programmers or engineers are needed in the U.S. workforce.

They base their denial of a shortage of software programmers on only two pieces of evidence: incoming resumes to employers and employee salaries. Neither of these factors, however, controverts the fact that a severe labor shortage exists.

Wages for computer programmers are rising at the very healthy level of 7% each year, well above the rate of inflation.

Unqualified Applicants Often Apply

A frequent argument advanced by opponents of foreign-born workers is that employers receive more than enough U.S. worker resumes for openings, thus proving that no shortage exists. However, the mere fact a company receives resumes from several candidates does not mean that these candidate are qualified. Under this line of reasoning, U.S. companies should hire every U.S. candidate, no matter their qualifications, who sends them a resume before hiring a qualified foreign-born candidate. Certainly, the United States could not remain competitive in the global economy if IT employers adopted such hiring practices.

Another argument is that no software labor shortage exists because high-tech employers are not willing to pay salary premiums to get the specialized workers they so desperately need. In support of this contention, opponents of immigration cite statistics that show wages for "ordinary" programmers are not climbing particularly rapidly--though they are rising at the very healthy level of 7% year, an annual raise that many U.S. worker households would welcome.

This 7% annual increase, however, is for an IT labor market that includes both highly specialized, skilled software devel-opers and lower-skilled, basic programmers. Of these two types of programmers, the former is often more in demand. For example, given the exponential growth in the use of Java, it makes sense that a recent graduate with 2 years of experience in the language will be valued more highly than a programmer with 20 years of experience in other languages who will need to be trained in Java on the job.

Therefore, this tactic of anti-immigration proponents to combine salary increases of in-demand programmers with those of less-skilled workers produces a distorted figure of 7% for overall increases in the software industry, when clearly the relevant figure would be the increase for in-demand workers.

An additional aspect of the high-tech industry's salary structure should be considered: the value and rate of increase of non-salary compensation (benefits and stock options), which among IT workers has grown much faster than salary in recent years. IT employers offer attractive wages and have been able to recruit new workers with smaller (but still respectable) leaps in salary.

Knowledge and techniques in the software industry change rapidly. In other engineering fields, change is measured in decades. But change in the field of software engineering is measured in years.

Employers Must Be Selective

Opponents of foreign-born workers also frequently argue that high-tech employers should hire any candidate who appears at the doorstep with a computer science degree and a few years experience in some programming language, even if that experience is irrelevant to the employer's needs. However, IT employers have important reasons for selecting carefully among applicants for positions on new software projects. The most important decision an employer can make when planning a new product is the hiring decision.

While all software engineers possess certain basic knowledge in common programming languages, specialized skills are also necessary in the competitive high-tech environment. Also, knowledge and techniques in the software industry change rapidly. In other engineering fields, change is measured in decades. For example, by and large an electrical engineer today is using the same database of knowledge and techniques as 30 years ago. But change in the field of software engineering is measured in years. Essential knowledge from 10 years ago is useless today, as the techniques and methods common then have been extended and altered by several others.

And, unlike other engineering fields, little commonality exists among software engineering projects: every project has different requirements in terms of knowledge and techniques. In software engineering, unlike traditional engineering, the transfer of skills often is not possible. A software engineer who learned programming 20 years ago doing assembly programming on mainframe computers will require at least 1 to 2 years to learn today's programming languages, and yet another 1 to 2 years to reach the efficiency and reliability of an engineer who learned those languages from the beginning.

Hiring Decisions Follow Different Model

In traditional engineering disciplines, a hiring decision is usually made within hours by a couple of people. At computer companies it is a serious issue which can last for days, and it is made by every project group separately. The candidate has individual interviews with several members of the team who try to understand whether the candidate fulfills the requirements of the project, and every interviewer issues a recommendation to hire or not hire the candidate.

Also, employers in any field want to hire people who are "right" for the job, and sometimes that means not hiring anyone until the right person if found.

Conclusion

The continued growth of America's high tech industry, including the 1.3 million new jobs that will be created over the next six years, is linked to the availability of a highly skilled, expert supply of software programmers. Despite a lack of workers, employers must be selective in their hires if they are to remain competitive in the global economy. The best candidate is the best candidate, regardless of nationality.

Prepared March, 2000

March 20, 2000, Monday

SECTION: GENERAL NEWS

LENGTH: 659 words

HEADLINE: Bipartisan coalition emerges behind immigration increase

BODY:

By PAUL SINGER

WASHINGTON, March 20 (UPI) -- House leaders of both parties are coming together to support legislation to increase the number of foreign high-tech workers who can get temporary visas to work in the United States.

The meeting of the minds is raising hopes on Capitol Hill that a bill could pass this year.

The Immigration & Naturalization Service reports that it has already filled its quota of visas for highly skilled foreign workers for this year, while industry groups warn that over 300,000 high-tech jobs are going unfilled.

Both, House Majority Leader Richard Armey, R-Texas, and Minority Leader Richard Gephardt, D- Mo., have endorsed a bill offered last week by Rep. David Drier, R-Calif., to increase the number of visas available to high-tech workers. This bipartisan support is raising the hopes of industry groups that the measure will move quickly, and competing bills will be swept aside.

The chairman of the subcommittee that will have to act first on the legislation has offered a different version that would make a much smaller increase in immigration, but subcommittee staff members acknowledge that with bipartisan support for a higher threshold, the chairman may have to rethink his bill.

Under current immigration laws, the INS may issue only 115,000 "H-1B" visas this year, which are temporary visas for workers with special high-tech qualifications and advanced degrees. The cap drops to 105,000 in 2001. The Senate Judiciary Committee earlier this month approved a bill that would raise the number of visas available to 195,000 for each of the next three years.

Lamar Smith, R-Texas, chairman of the House Immigration and Claims Subcommittee, has introduced a bill that would raise the caps on H-1B visas to 160,000 for the current year, allowing the INS to address a backlog of about 45,000 visa applications. For 2001, the cap would drop to 107,500, which Smith argues is about all the INS would be able to process anyway, based on past performance.

Dreier's bill would allow for 200,000 H-1B visas for each of the next three years. The bill also raises the fee that companies must pay for processing an employee's visa request from $500 to $1000, with the excess money going to fund math and science education programs in the United States.

The Dreier plan has attracted an unusual bipartisan coalition, and Dreier's office hosted a meeting with industry lobbyists Monday to develop a plan for drumming up additional support for his bill over the coming week. Several participants in that meeting say the discussion revolved around ways to generate sufficient support for the Dreier bill that the subcommittee will set aside Smith's bill and move Dreier's instead.

Armey is a co-sponsor of the bill, and Gephardt issued a statement last week indicating his support for the bill.

"I am pleased to offer my support for this bill," Gephardt said. "It is the start of our efforts to address the short term need to fill the job vacancies in the technology industry" while also addressing long-term training and education needs in the United States.

A Republican source on the immigration subcommittee who asked not to be named admitted that "given the support in the Democratic leadership" for the Dreier bill, Smith "will have to reconsider" whether he still wants to move ahead with his own bill.

A Democratic staff member who also requested anonymity said, "It is now a matter of the Republican leadership deciding what to do. We've been successful in getting bipartisan support" for Dreier's version of the bill.

Neither the House nor the Senate has scheduled further action on the legislation, though participants in the discussions generally agree that leaders in both chambers would like to move the bill before Congress goes on recess in mid-April. -- -- Message: WWN-UPI-1-20000320-19491800-bc-us-visas Content: SRV USNEWS Content: LEGAL ECON POL Content: 02000000 04000000 11000000

LANGUAGE: ENGLISH

LOAD-DATE: March 21, 2000
CONTACT Marilyn Geewax by e-mail at marilyng@coxnews.com

LOAD-DATE: March 21, 2000

H1-B GUIDANCE
March 9, 2000

Question:

On March 9th, the Senate Judiciary Committee marked up S. 2045, the American Competitiveness in the 21st Century Act, sponsored by Hatch and Abraham, which significantly increases the H-1B cap. What is the Administration's position on this legislation?

Answer:

- The Administration has a strong commitment to policies that strengthen the global competitiveness of our businesses and the skills and education of our workers. We have a strong record of taking responsible steps to work with the business community to meet this need while protecting and promoting the interests of U.S. workers, and preparing the U.S. workforce to meet the labor needs of the twenty-first century.

- We continue to believe that the first and primary policy for increasing the availability of high skilled workers must be focused on increasing the education and training of U.S. workers. We recognize, however, that U.S. businesses sometimes need access to the international labor market to maintain and enhance our global competitiveness, particularly in high-growth new technology industries and particularly in tight labor markets.

Balanced
~~[illegible]~~
rsnb increase
target high skills
fundg for edu.
fraud enf.

- The Administration stands ready to support a reasonable increase in the number of H-1B visas as long as it reflects a **balanced approach that protects and prepares the U.S. workforce**. This approach must include measures to more effectively target individuals at the highest skill levels, an increase in the current H-1B fee to provide funding for enhanced education and job training (including incumbent worker training), and increased resources for H-1B fraud enforcement.

- The Administration opposes S. 2045, the American Competitiveness in the Twenty-first Century Act, because we believe it fails to reflect this critical balance.

BACKGROUND:

The American Competitiveness and Workforce Improvement Act (ACWIA), which addresses the H-1B issue – the purported shortage of high skilled workers, was enacted in 1998. The H-1B issue put the Administration in a difficult position, caught between the considerable number of Democratic (and Republican) Members of Congress and worker advocates who argued that we should train Americans first, and representatives of industry (particularly high-tech industry) who argued that more H-1B visas were needed to fill gaps in the workforce that couldn't be filled with American workers. The Administration sought a middle-ground approach that would provide temporary relief for employers having difficulty finding skilled workers, while stressing that our policy should be based on the principle of training American workers first. Therefore, we negotiated a deal -- primarily with Senator Abraham – whereby we agreed to increase the caps for 3 years, in exchange for protections against abusive job shops and a $500 fee that we proposed to raise $250 million for regional training alliances, low income scholarships, and administration. ACWIA increased the H-1B visa cap from 65,000 a year to 115,000 in FYs 1999 and 2000, and 107,500 in FY 2001.

The H-1B issue is again beginning to gain some momentum. INS has recently announced that we are close to reaching the cap for this fiscal year. Of the 115,000 visas available, 67,000 have been issued and another 44,000 are pending. Senators Hatch and Abraham introduced legislation to significantly increase the number of H-1B Visas (from 115,000 to over 195,000). Senators Graham, Lieberman and Feinstein are cosponsors. The Hatch-Abraham bill was marked up in the Senate Judiciary Committee on March 9th. At the markup, Senator Kennedy offered a substitute amendment with a more modest increase in the cap. The Kennedy substitute was defeated by a vote of 8-10 (with Senator Grassley voting yes, and Senator Feinstein voting no). The underlying Hatch-Abraham bill passed by a vote of 16-2. Lamar Smith, the Chairman of the House Subcommittee on Immigration, recently introduced legislation to provide an additional 45,000 visas this year. Several other bills addressing the perceived shortage have also been introduced. Legislation increasing the cap appears likely to pass this year. The legislation may include an increase in the visa fee, increased targeting to workers with the highest skills, strengthened H-1B fraud enforcement, and expanded job training provisions. Gene Sperling is leading a White House process on the issue.

The New Workers for Economic Growth Act of 1999 (S. 1440, H.R. 2698, introduced by Senator Gramm and Representative Dreier, respectively), the Bringing Resources from Academia to the Industry of Our Nation Act (H.R. 2687, introduced by Representative Lofgren), the Helping Improve Technology Education and Competitiveness Act, "HITEC Act" (S. 1645, introduced by Senator Robb), the 21st Century Technology Resources and Commercial Leadership Act (S. 1804, introduced by Senator McCain), an H-1B scholarship payment bill (H.R. 3508, introduced by Representative Wu).

From: Lisa J. Macecevic on 03/10/2000 10:42:25 AM

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Subject: H-1B story

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Regulation, Law & Economics

Immigration
Senate Committee Approves H-1B Bill With Amendments from Feinstein, Biden

A bill that would raise the maximum number of visas issued to foreign highly skilled workers to 195,000 in each of the next three years was approved 15-3 by the Senate Judiciary Committee March 9, with amendments offered by Sens. Dianne Feinstein (D-Calif.) and Joseph R. Biden (D-Del.).

The American Competitiveness in the Twenty-First Century Act of 2000 (S. 2045), introduced Feb. 9 by committee Chairman Orrin Hatch (R-Utah), has moved quickly through the committee, fueled by bipartisan support and praise from the high-tech industry.

In addition to setting a higher cap on the number of H-1B visas issued to high-tech workers, the measure would exempt from the visa program workers employed by U.S. universities, colleges, or independent or university-affiliated research organizations, and those who recently received a master's or doctorate degree from a U.S. university. Hatch has indicated that the exemptions will exclude about 20,000 individuals a year from visa requirements.

The Clinton administration supports a "reasonable increase [on the H-1B cap] as long as the overall bill is fair and balanced," Jake Siewert, the administration's deputy press secretary, told BNA. Hatch's bill, however, "fails to reflect the balance that we are trying to seek," he said. Instead, the administration would support a bill that targets individuals at the highest skill levels and imposes higher fees on employers petitioning for the visas. The excess funds would go toward worker training programs, he said.

Business groups, who have been urging Congress to lift the caps to compensate for the dearth of high-tech workers in the United States, applauded the committee's swift action in approving the measure.

"The Senate's quick action on the Hatch/ Abraham H-1B visa bill sends a strong message that they see our nation's workforce needs as critical to the continued vibrant growth of the economy," said Sandra Boyd, chair of the American Business for Legal Immigration coalition.

The committee's action comes fast behind a March 1 announcement by the Immigration and Naturalization Service that it has issued more than half of the 115,000 H-1B visas currently allotted for fiscal year 2000. As of Feb. 15, the agency issued about 67,000 H-1B visas against the fiscal year 2000 cap. As of the same date, there were about 44,000 H-1B petitions pending, INS reported.

Feinstein Amendment Funds to Students

Feinstein's amendment, approved by a 12-6 vote, aims to address the shortage of American-born high-tech workers by channeling funds received from the additional visas to science and math education programs for low-income and disadvantaged students in grades kindergarten through 12. Feinstein worked with leaders in the high-tech industry in devising the amendment, which has been approved by companies such as Sun Microsystems, Microsoft, eBay, Intel, Dell, Hewlett-Packard, and others, she said.

Under the new provisions, funds would go to the National Science Foundation for use in a direct or matching grant program to support public-private partnerships in K-12 education. The NSF program would provide computer access to underserved students; training for teachers in math, science, and technology; opportunities for schools to develop science and math curricula; and motivation for students seeking post-secondary education in math, science and technology, she said.

Sen. Edward M. Kennedy (D-Mass.), who voted against the amendment, noted that while he supports giving funds to the NSF, such funding should not come at the expense of providing training for U.S. workers who lack the skills necessary for high-tech jobs.

Abraham, however, pointed out that existing training programs established under the 1998 bill setting the current H-1B caps will continue receiving funds. Meanwhile, under Feinstein's proposal, funds for scholarships and K-12 education programs, will increase "significantly," he said.

The committee also approved by voice vote an amendment offered by Biden that would allot $20 million per year for six years to the Boys and Girls Clubs of America for the purpose of establishing after-school programs to provide students with access to technology and technology training. The money allocated would come from the Violent Crime Reduction Trust Fund, he said.

Kennedy Substitute Rejected

The committee shot down by a vote of 10-8 a substitute bill offered by Kennedy that would have raised the cap on H-1B visas to 145,000 and exempted from the visa program workers with degrees higher than a master's degree. In addition, Kennedy's measure would have raised the fee paid by employers applying for such visas from $500 to between $1,000 to $3,000. The excess funds would then be funneled to job training, scholarships, and education programs, he said.

"We know that the IT industry needs additional workers--but we also know that many U.S. workers want the opportunity for these good-paying high technology jobs. My bill attempts to balance the needs of the industry and these U.S. workers by providing a reasonable increase in the cap, with a focus on bringing in the best and the brightest, and with an equal focus on job training and education to solve the long-term needs of industry and labor," he said.

Although he praised Kennedy's effort to improve high-tech education and training programs, Hatch indicated he would not support the proposed substitute. "I believe the increase is inadequate," he said. "The last thing any of us want is to be back here next year."

Hatch also argued that the proposed increase in fees was too high. Feinstein seconded that concern. Kennedy, however, contended that the proposed fee increase was "very, very modest," given that immigrant families seeking green cards must pay $1,000.

The committee also defeated by voice vote an amendment offered by Sen. Jon L. Kyl (R-Ariz.) that would have allocated a portion of the fees collected from H-1B petitions to a technology-related program run by the Commerce Department.

By Victoria Roberts

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Gene's handout

H-1B VARIABLES

I. NUMBER OF VISAS AVAILABLE

- Under current law, the H-1B cap for FY2000 is 115,000
- Number of Years (Current law provides for 3-year visas, which can be renewed for another 3-year period)
- Path – An increase could be phased-in (e.g., 115,000, 135,000, 150,000), or phased-out (150,00, 135,000, 65,000).

II. EDUCATIONAL ATTAINMENT

- Bachelors degree
- Masters degree
- PHD
- Education Equivalent
- Degrees from U.S. Schools Only or Any School

III. WAGES/COMPENSATION

- Amount of Money
- Wages vs. Compensation

IV. FEE

- Amount of increase
- Smaller fee for small businesses
- Does the fee apply to all visas?
- Does the fee apply to extensions?

V. USE OF FEE REVENUE

- Job Training (Regional Skills Alliances)
- National Science Foundation Scholarships
- Digital Divide
- Fraud Enforcement
- Administration
- Other

H1B Mtg - 2/19/00

Statistics - hold

Policy -

Estimate of demand for H1B application

FY2000 115K — INS receipts increasing

Dec 19K

Jan 21K — Last year 11K

Feb 21K Half — Anecdotal info b/c hit cap.

Have not received 115K

Hit cap by ~~March~~ late Feb.

Demand not filled 60K if 10K/per month average.

INS survey 50 Jan — 53.5 computing, 3.4

India = 71% computer

Bachelor's Degree 56.8%

Previous Status

Outside US 60.3

Adjusting ~~status~~ 39.7 from Non-immig.

Master from US School - ~~?~~ no cap - would that help.

EB = 1/2 H1B Credit Short to EB program

~~???~~

Don't want to open up family

②

EB-

Maral: ~~[illegible]~~ program - opens up to ~~[illegible]~~ further criticism
OS: could open funding

- 4 years ago - we introduced a bill on this

H1B stand alone

~~[illegible]~~ Listening - licensing program

next step ~~need~~ need to coordinate

- member conversation
- Hear from Karen T.
- Need to feel things out.
- Quiet conversation + figure when to enter.
- Come out ~~[illegible]~~ in favor of one bill - leverage some $ for training
- Code of practice - ~~[illegible]~~ encourage but not mandate

Background and Summaries of Major H-1B Related Bills

Background:

American Competitiveness and Workforce Improvement Act of 1998
The American Competitiveness and Workforce Improvement Act (ACWIA), which addresses the H-1B issue – the purported shortage of high skilled workers, was enacted in 1998. The H-1B issue put the Administration in a difficult position, caught between the considerable number of Democratic (and Republican) Members of Congress and worker advocates who argued that we should train Americans first, and representatives of industry (particularly high-tech industry) who argued that more H-1B visas were needed to fill gaps in the workforce that couldn't be filled with American workers. The Administration sought a middle-ground approach that would provide temporary relief for employers having difficulty finding skilled workers, while stressing that our policy should be based on the principle of training American workers first. Therefore, we negotiated a deal -- primarily with Senator Abraham – whereby we agreed to increase the caps for 3 years, in exchange for protections against abusive job shops and a $500 fee that we proposed to raise $250 million for regional training alliances, low income scholarships, and administration. ACWIA increased the H-1B visa cap from 65,000 a year to 115,000 in FYs 1999 and 2000, and 107,500 in FY 2001.

Legislation Introduced:

The issue is once again beginning to gain some momentum. Several bills addressing the perceived shortage have been introduced including: The New Workers for Economic Growth Act of 1999 (S. 1440, H.R. 2698, introduced by Senator Gramm and Representative Dreier, respectively), the Bringing Resources from Academia to the Industry of Our Nation Act (H.R. 2687, introduced by Representative Lofgren), the Helping Improve Technology Education and Competitiveness Act, "HITEC Act" (S. 1645, introduced by Senator Robb), the 21st Century Technology Resources and Commercial Leadership Act (S. 1804, introduced by Senator McCain), an H-1B scholarship payment bill (H.R. 3508, introduced by Representative Wu), and a soon to be introduced Hatch-Abraham bill.

Below are brief summaries of the bills:

The New Workers for Economic Growth Act of 1999 (S. 1440, H.R. 2698)

- Increases the H-1B cap to 200,000 for FY 2000, FY 2001 and FY 2002.
- No cap applies to individuals with a masters degree or higher (or equivalent) who receive wages (including cash bonuses and similar compensation) at an annual rate equal to at least $60,000.
- No cap applies to individuals who have a bachelor's degree or higher (or equivalent) and are employed at an institution of Higher Education.

- Eliminates the earnings penalty on senior citizens that continue to work after reaching retirement age.
- Eliminates attestation requirements for institutions of higher education.

Note: As a result of the inclusion of the earnings penalty provision, the Senate bill was referred to the Senate Finance Committee. Senator Gramm sits on the Finance Committee. The Judiciary Committee had jurisdiction over ACWIA. The House bill was jointly referred to Ways and Means and Judiciary.

Bringing Resources from Academia to the Industry of Our Nation Act (H.R. 2687)

Highlights of the "BRAIN Act" or Lofgren T Visa Proposal:

- Available to foreign students who receive a bachelors degree or higher from an American Institution of Higher Education.
- Employers would file applications with the Justice Department, with payment of an initial fee of $1,000 (the adjustment fee would be $500).
- Employers would have to pay T Visa workers an annual compensation package equal to or in excess of $60,000 a year.
- The fee would be used for a High Tech Education Trust Fund to be used by the National Science Foundation to provide grants for K-12 mathematics, science and computer science programs.
- The program is a temporary 5-year program.
- The program is uncapped (there is no limit on the number of T Visas that would be available).
- The proposal includes annual reporting requirements and Department of Justice enforcement.

Note: There are 18 cosponsors of H.R. 2687 including Representative Conyers, Judiciary Committee Ranking Member, and Representative Jackson-Lee, the Subcommittee Ranking Member. The fact that both Representative Conyers and Representative Jackson-Lee cosponsored the bill is a clear indication that Democrats on the Judiciary Committee are looking for a positive alternative to the strategy of just opposing another increase in the cap.

The Helping Improve Technology Education and Competitiveness Act, "HITEC Act" (S. 1645)

The HITEC Act is a modified version of the Lofgren bill. The HITEC Act establishes a five-year pilot program that:

- Provides T-visas to foreign students at U.S. colleges who are recipients of masters degrees or Ph. D's.

- Includes labor protections (similar to the attestations required for H-1B dependant employers).
- Includes a $1,000 fee (double the current H-1B fee).
- Creates a fee funded High-Tech Education Fund, administered by the Department of Commerce. The Fund would provide resources for competitive grants for elementary and secondary school programs in mathematics, science and technology.
- The program is uncapped (there is no limit on the number of T visas that would be available). Senator Schumer, Senator Kerry, Senator Leahy, Senator Johnson and Senator Lieberman are cosponsors of Senator Robb's bill.

21st Century Technology Resources and Commercial Leadership Act (S. 1804)

The McCain proposal would:

- Establish a grant program, run by the Department of Commerce, to strengthen the scientific, mathematical, engineering, and technology resources of the U.S.
- Uncap the current H-1B program from FYs 2000 – 2006 (there would be no limit on the number of H-1B visas that would be available).
- Establish visa issuance preference for graduates of U.S. institutions.
- Maintain the current fee but change the distribution – of the 56.3% currently going to DOL for training – 51.3% would go to Commerce for grants, and 5% would go to DOL for training.

Note: There are no cosponsors. The bill was referred to the Senate Commerce, Science, and Transportation Committee.

Representative Wu's H-1B Scholarship Payment Bill (H.R. 3508)

The Wu proposal would:

- Provide an additional 65,000 H-1B visas where:
  - The employee has attained a masters degree or higher at a U.S. institution of higher education; and
  - The employer makes a contribution to a college or university in an amount equivalent to the Pell grant maximum (currently $3,300).
- The institution receiving the scholarship money shall award the full amount of each individual contribution to one student enrolled in a full time course of study at the institution.
- Representative Davis and Representative Stark are original cosponsors of the Wu proposal.

The Hatch-Abraham bill (S. 2045, The American Competitiveness in the 21st Century Act of 2000):

- Increases the cap to 195,000 (an increase of 80,000 over the FY2000 cap level) for FY2000, FY2001 and FY2002.
- Exempts university professors and federal government and nonprofit research organizations from the cap.
- Exempts foreign nationals who obtain a masters or higher at a U.S university from the cap.
- Waives the per country limitation for permanent employment visas (if not all of the visas are claimed).
- Provides an extension of stay for H-1B visa holders while their permanent visa applications are pending, and/or while they are waiting on a permanent employment visa to become available.
- Allows H-1B employees to move more freely between employers.
- Included among the 19 cosponsors of the bill are three Democrats – Lieberman, Graham and Feinstein.

†2/18/00

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REPORT

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News

Employment

Policy Needs to Address Worker Shortage Affecting All Industries, House Panel Told

The shortage of both skilled and unskilled labor in the United States is an urgent problem that needs to be addressed, several labor economists and business representatives told a House subcommittee Feb. 17.

House Education and the Workforce Committee, Subcommittee on Oversight and Investigations Chairman Pete Hoekstra (R-Mich.) opened the session by issuing a warning that as the U.S. economy continues to boom, "many employers find themselves near economic ruin since they cannot hire enough workers to maintain production levels."

Two Dimensions to 'Worker Dearth.'

Dr. Richard W. Judy, director of the Hudson Institute's Center for Workforce Development and president of Hudson Analytics, described the U.S. employment situation as a "worker dearth," a condition he said has both a quantitative and a qualitative dimension.

Judy described the quantitative dimension as consisting of "a slowly growing and eventually shrinking workforce pool." He attributed this dimension to demographics, pointing out that most global population and workforce growth will take place outside the developed countries. "Workforce growth in the United States will be but a tiny fraction of the world's total," Judy said.

The qualitative dimension of "worker dearth," according to Judy, is the "skills gap." He said that the attitudes, skills, and knowledge required for this country's best paying and fastest growing jobs is rapidly rising while too low a proportion of American youth are developing the attitudes, skills, and knowledge to succeed in the workplace.

In order to solve these problems, Judy made several recommendations which included the following:

- Abolish the Social Security earnings limit in order to encourage people to remain in the workforce longer. Judy believes raising it "would be worse than doing nothing at all."
- Replace the federal personal income tax with a consumption tax. Judy said that instead of discouraging work the way an income tax would, the consumption would encourage work and savings.
- Reform immigration policy to put a greater weight on applicants' skills and education.

Dr. Harry J. Holzer, testified to the costs of the worker shortage on employers and the economy and possible solutions. In research he conducted, the Urban Institute visiting fellow found that 80 percent of employers reported "at least some difficulty hiring qualified workers" while 40 percent said they had "great difficulty." The Urban Institute is a Washington, D.C.-based nonpartisan economic and social policy research organization.

"While tight labor markets have not yet contributed to rising inflation or constrained output," Holzer said, "there is at least some risk that these problems could yet emerge, especially if productivity or labor force growth falters; these conditions could threaten the sustainability of our economic expansion over time."

In order to combat the tight labor market and draw more underemployed workers into the labor force, Holzer suggested that public policy could play a role. He said that the Workforce Investment Act, with its local Workforce Investment Boards and local "one-stop" centers, may be the best mechanism for doing this.

To fight small employers' problems of finding and retaining qualified workers, Holzer suggested "greater outreach to and technical assistance for small businesses."

Another Side of Worker Shortage Story Exists

Discussing the other side of the worker shortage, Creating the Future Inc.'s President Edward D. Barlow Jr. told the subcommittee, "There has never been a better time for the worker in terms of employment opportunity and upward mobility than now."

He said this employee-friendly market is captured in the new phenomenon he has learned about called "job-hopping." In states such as Florida individuals work with one company in the south in the winter months and move to work in the same industry in the cooler north in the summer time. "These workers are always welcomed back because these companies are so desperate for workers," Barlow said.

Barlow, a futurist who has his own consulting company in St. Joseph, Mich., also made some recommendations for courses of action that could be taken to alleviate the strains on employers of the tight labor market. Some of these suggestions included:

- removing barriers that limit the availability of unskilled workers such as income restrictions for individuals on Social Security, day and adult care, and transportation;
- tax incentives for industries and organizations relying upon unskilled labor to automate; and
- expanding the labor pool through rethinking immigration policies.

Several business leaders also told the panel that the worker shortage is having a detrimental effect on U.S. businesses.

Valerie C. Ferguson, regional vice president and managing director for Loews Philadelphia Hotel, told the panel about hotel chains raiding each other for employees by offering employees cash bonuses to switch companies. She also described the situation at a Colorado Springs hotel where housekeepers accumulated an average of almost 500 hours of overtime each last year, with one working more than 1,400 hours of overtime.

"Hotels offer a variety of inducements including cash signing incentives, attractive pay, free meals, health and welfare benefits, opportunity for advancement, bonuses, training and development, English as a second language classes, etc.," said Ferguson. "You may hear it claimed that we could attract enough workers if we just paid more, but the fact is that hotels are paying more and still we cannot find enough employees."

Ferguson said that the industry is reaching out to communities to find more workers. She said that programs such as "hospitality high schools . . . offer students special classes in hospitality that we hope will show them opportunities in our industry after high school or college."

She also said that the industry has looked overseas for qualified candidates to fill vacancies, but still cannot find enough employees.

Shortage of Foundry Workers

Donald L. Huizenga, president and chief executive officer of Kurdziel Industries, Muskegon, Mich., testified regarding the effect of the labor shortage on the foundry industry. He said that his industry has been experiencing a shortage of unskilled labor for nearly a decade. He emphasized the worker shortage problem with an explanation of his companies hiring criteria:

"A successful applicant at Kurdziel must meet three basic requirements," Huizenga said. "They must be a high school graduate, be drug-free, and not have a conviction record. Based on these criteria, only three out of 10 applicants qualify for employment at our company."

To address the problem, Huizenga explained some of his industry's approaches. Industry employers advertise in local newspapers and with flyers at local shopping centers and community centers. They also participate in job fairs and reach out to local employment offices. Huizenga said that Kurdziel now even employs a temporary employment agency, through which it must pay wages that are 50 percent higher than the standard worker's wage.

Even with all these efforts and perks such as tuition reimbursement, the industry is still searching for quality employees, he said.

Elizabeth C. Dickson, human resources specialist for Ingersoll-Rand Co., Woodcliff Lake, N.J., began her testimony by telling the subcommittee that the country has "a serious worker shortage issue in this country, and if it isn't rectified somehow, the consequences will range from a downturn in the economy to companies seeking more often to move outside the boundaries of the U.S. borders."

For example, her company's drill division in Texas experienced a shortage of nonprofessional, semi-skilled welders despite recruiting efforts across the country.

"When the company did identify competent welders in Mexico, the process of obtaining even temporary work visas for someone who was not considered a professional was too time-consuming and onerous to be considered a viable option," Dickson said.

As a way to address the worker shortage and worker immigration problem, Dickson pointed to Canada and its recent experience with attracting information technology workers. She said that last year it started a Software Professionals Pilot Program to attract workers to Canada and expedite their entry. According to Dickson, Ingersoll-Rand lost some employees to Canadian employers through this program.

Business Community Forms Immigration Coalition

In conjunction with Ferguson's congressional testimony and at a time when immigration law reforms are being viewed as a part of the solution to the worker shortage , the American Hotel & Motel Association Feb. 16 announced the recent formation of the Essential Worker Immigration Coalition.

According to AH&MA, EWIC was formed to seek to "ease the labor shortage by making it easier for employers to legally hire foreign workers." The coalition's members include businesses and trade associations such as the U.S. Chamber of Commerce, the National Restaurant Association, and Ingersoll-Rand.

By Mark Cutler

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Facts on Employment-Based Immigration

The **Employment Preference System** allows immigrants who have skills and talents needed in the United States to be admitted to work. Currently, immigration law allots **140,000** employment-based visas to immigrants.

How Does the System Work? Employment-based visas are divided into the following categories:

FIRST PREFERENCE:	Up to **40,000** visas a year may be issued to *priority workers.* People who have "extraordinary ability" or who are "outstanding professors and researchers" or "certain multinational executives and managers" fall into this category. In addition, any visas left over from the fourth and fifth preferences are added to this category.
SECOND PREFERENCE:	Up to **40,000** visas a year (plus any visas left over from the first preference) may be issued to persons who are "members of the professions holding advanced degrees or aliens of exceptional ability."
THIRD PREFERENCE:	Up to **40,000** visas a year (plus any visas left over from the first and second preferences) may be issued to *skilled workers, professionals, and other workers.* The *other workers* category covers workers who are "capable of performing unskilled labor," and who are not temporary or seasonal. Workers in this category are limited to **5,000** visas per year. *Skilled workers* must be capable of performing skilled labor requiring at least two years training or experience.
FOURTH PREFERENCE:	Up to **10,000** visas a year may be issued to certain special immigrants, including ministers, religious workers and others.
FIFTH PREFERENCE:	Up to **10,000** visas a year may be issued to persons who have between $500,000 and $3 million dollars to invest in a job-creating enterprise in the U.S. At least 10 U.S. workers must be employed by each investor. The amount of money can vary depending on which area of the country will benefit from the investment.

How Are U.S. Workers Protected? Before visas can be issued in the Second and Third Preference categories, the employers must first obtain a "labor certification" from the U.S. Department of Labor confirming that there are not sufficient U.S. workers who are able, qualified, and willing to perform the work. The Labor Department must also confirm that employment of the alien will not adversely affect the wages and working conditions of U.S. workers. When applying for a labor certification, the employer must provide notice to the union representing the employer's employees or to other workers at the site. Any member of the public may challenge an application for a labor certification by showing that sufficient U.S. workers are available to perform the work or by demonstrating that the employer is offering wages or working conditions that adversely affect U.S. workers.

Non-Immigrant Workers. In addition to visas given to those coming to the U.S. to live permanently, visas are also given to individuals coming to the U.S. to fill the temporary needs of U.S. employers. One category of non-immigrant worker visa is the "**H-1B**"visa given to highly skilled individuals for a renewable period of three years. Many of these workers are employed in computer-related fields. In 1999, up to 115,000 of these temporary visas will be issued. Companies applying for temporary workers must pay a fee of $610, most of which is used for education and training programs for U.S. workers, so that they might eventually fill the labor gaps.

Sources:
Immigration and Nationality Act, 102d Cong., 2d sess., April 1992.
American Immigration Lawyers Association, *Advocacy Update*, (Washington, DC: Oct. 23, 1998).

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Facts on Other Immigration Categories

Family-sponsored and employment-based immigration are the major immigration categories. However, there are other ways by which people can immigrate to the U.S. or are allowed to be here temporarily. The Diversity Visa Lottery program, Temporary Protected Status, and non-immigrant temporary visas for tourists, business visitors, students and temporary workers are a few of the ways in which people from other countries come here for varying lengths of time.

DIVERSITY VISAS – In 1990, Congress established an *annual "diversity visa" lottery* program to allow more immigration from countries that send relatively few immigrants to the U.S. Those lucky enough to win a diversity visa are permitted to come to the U.S. to reside permanently, solely on the basis of their native country's designation by the U.S. State Department. They do not need a family member or employer to sponsor them. This lottery program is much simpler than other immigration programs and works like this:

- The State Department designates which countries' residents are eligible to enter the lottery.
- Currently, the State Department has *excluded* residents from the 15 countries that sent the highest number of immigrants in the past five years. These are: China (mainland and Taiwan except Hong Kong), India, the Philippines, Vietnam, South Korea, Poland, the United Kingdom and dependent territories (except Northern Ireland), Canada, Mexico, Jamaica, El Salvador, Colombia, Haiti, and the Dominican Republic.
- Residents from eligible countries must either have a high school education or its equivalent *or*, within the past five years, have two years of work experience in an occupation that requires at least two years of training or experience.
- Applicants enter the lottery with a chance to receive one of the 50,000 randomly-awarded "diversity visas." The State Department then reviews those that are selected to ensure that they meet the above criteria.

TEMPORARY PROTECTED STATUS (TPS) – Congress has authorized the U.S. Attorney General to grant Temporary Protected Status (TPS) to nationals of countries in crisis who are presently in the U.S. The Attorney General may designate a country for TPS if the people from that country who are currently in the U.S. would face "on-going armed conflict," natural disaster, or "extraordinary temporary conditions" if they were to be returned to their home country. The INS will grant TPS to those who can prove they are from a designated country, and that they were present in the U.S. on or before the date the Attorney General made the designation. A country's designation for Temporary Protected Status may last for *6, 12, or 18 months*. Persons with TPS will not be deported from the U.S., and may live and work legally in the U.S. until the designated period expires. TPS can be renewed if the Attorney General determines that unsafe conditions in the country persist. In January of 1999, the Attorney General designated nationals of Nicaragua and Honduras to be eligible for TPS for 18 months because of the devastation in those countries due to Hurricane Mitch. Only those in the U.S. as of January 5th, 1999, are eligible for TPS. Nicaraguans and Hondurans who come to the U.S. subsequently will *not* be eligible.

In addition to Honduras and Nicaragua, eight other countries are currently designated for TPS: Liberia, Somalia, Bosnia, Kosovo, Sudan, Sierra Leone, Burundi, and Montserrat.

DEFERRED ENFORCED DEPARTURE (DED) – Similar to Temporary Protected Status, this is a humanitarian designation to delay the deportation of groups of individuals who would otherwise be placed in danger should they be deported to countries where there is instability for political or other reasons. Generally, DED is granted to nationals of a country for 12 or 18 months. During this time, persons are allowed to work in the U.S. if they obtain employment authorization, for which a fee is charged. Most recently, Haitians who had fled political turmoil in Haiti were granted DED while legislation resolving their situation was considered in Congress.

PAROLE – In certain cases, the Immigration Service will allow an individual into the country, even though he or she may not appear to meet the conditions for gaining admission to the U.S. Such persons may be admitted for urgent humanitarian reasons or significant public benefit. Parolees are not formally admitted to the U.S., and are not eligible for the benefits received by refugees. Individuals, on a case-by-case basis, receive parole for a temporary period of time, though some may eventually become eligible to adjust to immigrant status while they are in the U.S.

NON-IMMIGRANT VISAS – "Non-immigrants" are tourists, students, and other persons who come *temporarily* to the U.S. on a visa. The total number of immigrants—family-sponsored, employment-based, and diversity immigrants—is small compared to the number of people who come here for short periods of time for pleasure, for business, for study, or for diplomacy. These *non-immigrants* outnumber immigrants by about 25 to 1 each year. In fiscal year 1996, nearly 25 million persons came to this country temporarily, including:

19,110,000	Tourists
3,770,000	Business visitors
427,000	Students
215,000	Exchange visitors (participating in programs approved by the Secretary of State such as teaching, research, and consulting)
227,000	Temporary workers and trainees (registered nurses, seasonal agricultural workers, internationally recognized athletes, and entertainers)
139,000	Treaty traders and investors (who come temporarily to carry on substantial trade or to direct the operations of an enterprise in which they have invested a substantial amount of capital)
118,000	Foreign government officials (and families)
140,000	Intracompany transferees (who are employed by international companies and come to the U.S. temporarily for the same employer as a manager or executive, or who have specialized knowledge)

Sources:

Immigration and Nationality Act, 102d Cong., 2d sess., April 1992.

U.S. Immigration and Naturalization Service, Statistical Yearbook of the Immigration and Naturalization Service, 1996 (Washington, DC: U.S. Government Printing Office, 1997)

U.S. Department of State, Bureau of Consular Affairs, "Instructions for the 2000 Diversity Immigrant Visa Program (DV-2000)" *Visa Bulletin* Vol. XII, no. 90 (undated).

Revised February 1999 by the National Immigration Forum, 220 I Street, NE #220, Washington, DC 20002-4362
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Limits on Immigrants from One Country

In addition to the limits on the number of visas allocated to the different categories, U.S. law also limits the number of visas that may be issued to any one country in a year. This "per-country ceiling" (about 25,600 visas) represents the total number of family preference *and* employment-based visas that may be issued to nationals of a given country.

Income Requirements

To begin the process, the citizen or LPR must file a petition with the Immigration and Naturalization Service, seeking an "immigrant visa" for the family member. All citizens or LPRs wishing to petition for a family member must also earn at least 125% of the federal poverty level and sign a legally enforceable *affidavit of support* promising to support the immigrant financially. Petitioners are allowed to get another person to co-sign the affidavit of support on behalf of the immigrant to satisfy this financial requirement. (In this case the co-signer also assumes unlimited liability to support the immigrant.)

While this requirement was recently added to the law to ensure that immigrants will be provided for by family members and will not become a "public charge," for some hardworking but low paid Americans, it closes off an opportunity to reunite with close family members. For example, a domestic worker earning the *median income* for her occupation earns less than 125% of the federal poverty level for a family of two. Farm workers and bank tellers earning the *median income* for their occupations earn less than 125% of the federal poverty level for a family of three. A kindergarten teacher earning the *median income* for her occupation would not make the required income if she provided for a family of four. Though they may be hard working, these Americans are the ones who will most likely have trouble meeting the new income requirement.

WHEN VISAS ARE NOT AVAILABLE

The law requires that family preference visas be issued to eligible immigrants in the order the petitions are filed. When there are more applicants applying for visas in a preference category than there are visas available, the preference category is considered "over-subscribed." Applicants must then wait until a visa becomes available before they can immigrate to the United States. Currently, waits can be up to 20 years depending on the preference category and country. In most cases, family members must wait outside the United States until a visa is available, and thus remain separated from their families. Control over the order and numbers of visas granted in each preference category remains in effect despite the existence of a waiting list.

Sources:
Immigration and Nationality Act, 102d Cong., 2d sess., April 1992.
U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin*, no. 93, vol. VII (November, 1998).
Median income statistics for 1996 from the Bureau of Labor Statistics. 1998 Poverty level figures from the Department of Health and Human Services.

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Facts on Family-Sponsored Immigration

Family-Sponsored Immigration is how U.S. citizens and lawful permanent residents bring family members from other countries to live permanently in the U.S. Citizens may only bring their spouses, unmarried children, parents (if the citizen is over 21 years), married children, and brothers and sisters (if the citizen is over 21 years). Lawful Permanent Residents (LPRs) may bring only their spouses and unmarried minor and adult children. Neither citizens nor LPRs may bring in more distant family members, such as aunts, uncles, and cousins.

Our immigration system divides the family members eligible for sponsorship into two tiers. "Immediate relatives" of U.S. citizens (excluding brothers and sisters, unmarried and married adult children) receive an unlimited number of visas each year. All others fall into the "family preference system" which has an annual maximum limit of 226,000 visas issued per year.

IMMIGRATION BASED ON FAMILY RELATIONSHIPS

CATEGORY	U.S. SPONSOR	RELATIONSHIP	VISAS ALLOCATED
Immediate Relative	U.S. Citizen	spouses, unmarried minor children and parents (if the U.S. citizen is 21 years or older)	not numerically limited (approximately 250,000 have been issued annually in recent years)
1st Preference	U.S. Citizen	unmarried adult children (21 years or older)	23,400 visas/year, plus any visas left from the 4th Preference
2nd A Preference	LPR	spouses and minor children	87,900 visas/year
2nd B Preference	LPR	unmarried adult children (21 years or older)	26,300 visas/year
3rd Preference	U.S. Citizen	married adult children	23,400 visas/year, plus any left over from the 1st and 2nd Preferences
4th Preference	U.S. Citizen (21 years or older)	brothers and sisters	65,000 visas/year, plus any left over from the previous Preferences

From: Lisa J. Macecevic on 02/10/2000 09:44:01 AM

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Subject: story: BILL TO INCREASE HIGH-TECH VISAS APPEARS HEADED FOR FAST TRACK

CQ MONITOR NEWS
BILL TO INCREASE HIGH-TECH VISAS APPEARS HEADED FOR FAST TRACK
By Amy Fagan, CQ Staff Writer

Feb. 9, 2000 - A bipartisan group of senators Wednesday introduced a measure that would raise the cap on the number of temporary visas issued to highly skilled foreign workers and exempt from that limit those working for universities and research organizations.

Judiciary Committee Chairman Orrin G. Hatch, R-Utah, a primary sponsor of the bill, is anxious to move quickly on the measure, which seeks to issue six-year visas to more than 200,000 skilled foreign workers each year. "It could go through tomorrow and it wouldn't be soon enough," he said. "We have to talk to leadership ... but we will get this through."

High-tech industries say that despite a booming economy they are desperate to fill jobs. Once again, they have asked Congress to alter the popular H1B visa program and allow them to hire more skilled foreign nationals.

Many of the top math, science and computer graduates recruited out of college by high-tech companies are foreign nationals. But federal immigration policy currently limits the pool of potential employees and visas run out.

The measure would raise the number of H1B visas to 195,000 per year for the next three years. Current law (PL 105-277), which caps the visas at 115,000, and the number is set to decrease to 107,000 in 2001.

Last year, the cap was reached by June, and this year it is expected to max out by March, said bill cosponsor Slade Gorton, R-Wash.

The bill also would potentially free up an additional 20,000 H1B visas by exempting from the caps foreigners who are employed by U.S. universities or research organizations, or those who earned a graduate-level degree from a U.S. university in the prior six months. These people still would be included in the H1B visa program and subject to the six-year limitation, but they would not be counted in the caps.

A Senate Judiciary Immigration Subcommittee aide said about 20,000 foreigners fall into this category, but an exact number is not known.

The measure would extend the current $500 per visa fee and direct those revenues for scholarships and training for U.S. workers and students in high-tech fields.

In addition, the bill would extend the Labor Department's authority to investigate potential abuses of the system, even if a complaint is not filed.

Democrats Bob Graham, Fla., and Joseph I. Lieberman, Conn., have signed on to the measure. The administration's position is not yet clear, though Hatch said Federal Reserve Chairman Alan Greenspan has signaled his support.

But critics call the measure a "quick fix" that would threaten American jobs. "[The bill] would give away our best-paying jobs to nationals from other countries," said Dan Stein, executive director of the Federation for American Immigration Reform, a conservative group which generally opposes increased immigration proposals.

A competing Senate bill, introduced by Charles S. Robb, D-Va., may attract more Democrats. That bill (S 1645) would establish a pilot program allowing certain high-tech students, who have completed a master's or doctorate degree from an American university, to stay in the United States for five additional years. Rep. Zoe Lofgren, D-Calif., has introduced a similar bill (HR 2687) in the House.

Source: CQ Monitor News

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CONGRESSIONAL RECORD
SENATE
PAGE S542
Feb. 9, 2000

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself, Mr. ABRAHAM, Mr. GRAMM, Mr. GRAHAM, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. LOTT, Mr. NICKLES, Mr. MACK, Mr. SPECTER, Mr. DEWINE, Mr. MCCONNELL, Mr. GORTON, Mr. HAGEL, Mr. BENNETT, Mr. GRAMS, Mr. ASHCROFT, Mr. BROWNBACK, Mr. SMITH of Oregon, and Mr. WARNER):

S. 2045. A bill to amend the Immigration> and Nationality Act with respect to H-1B nonimmigrant aliens; to the Committee on the Judiciary.

AMERICAN COMPETITIVENESS IN THE TWENTY-FIRST CENTURY ACT OF 2000

Mr. HATCH. Mr. President, I rise today to introduce what I believe is one of the most important pieces of legislation the Senate will consider this year, the American Competitiveness in the 21st Century Act.

At the outset, I would like to express my gratitude to my two lead cosponsors, Senator ABRAHAM and Senator GRAMM. Both have worked tirelessly with me to craft this legislation. Senator ABRAHAM, of course, as chairman of the Immigration Subcommittee, has long led the way on this matter. I also thank our Democrat sponsors, Senators GRAHAM, LIEBERMAN, and FEINSTEIN, as well as our majority leader and assistant majority leader for their contributions to this effort.

Last month, the national jobless rate hit 4 percent, the lowest level in 30 years. That jobless rate is even lower in my home State of Utah at 3.3 percent. That's great news; but at the same time, serious labor shortages threaten our continued economic prosperity and global competitiveness. A recent study, for example, concluded that a shortage of high-tech professionals is currently costing the U.S. economy $105 billion a year.

A look at last Sunday's Washington Post makes the problem very clear. High-tech jobs even have their own separate section of help wanted ads. Twenty-one pages of jobs, jobs, jobs.

The Clinton administration recently projected that in the next 5 years, high-tech and related employment will grow "more than twice as fast as employment in the economy as a whole." The growth of the high-tech industry is being felt across this country, and nowhere more than in my State of Utah. Common sense tells us that we must allow American high-tech companies to fill their labor needs in the United States, or they will be forced to take these opportunities of growth abroad.

We want the high tech industry to thrive in the United States and to continue to serve as the engine for the growth of jobs and opportunities for American workers. If Congress fails to act promptly to alleviate today's high-tech labor shortage, today's low jobless rate will be a mere precursor to tomorrow's lost opportunities.

The purpose of our important bipartisan legislation is twofold: (1) To allow for a necessary infusion of high-tech workers in the short term, and (2) to make prudent investments in our own workforce for the long term.

It is clear that in the short term we need to raise the limits of the number of temporary visas for highly skilled labor. Our bill does this by increasing the cap to 195,0000 visas over each of the next 3 years. We also exempt persons from the cap who come to work in our universities and persons who have recently received advanced degrees in our educational institutions.

But this, by itself, is not a satisfactory solution either in the short item or long term. Thus, we need to redouble our efforts to provide training and educational opportunities for our current and future workforce. Thus, we raise an additional $150 million for scholarships and training of American workers for these jobs for a total of $375 million for education and training under this program over 3 fiscal years. Our legislation, in other words, seeks to address both the short and long term needs.

[Page S543]

My hope is that the administration will come to support this important high-tech legislation. In our new knowledge-based economy, where ideas and innovations rather than land or natural resources are the principal well springs of economy growth, American competitiveness depends greatly on intellectual assets and capacity. The most successful economics of the 21st century will be those which maximize intellectual assets. In recognition of this fact, the administration has worked with me over the years to improve intellectual property protection and to encourage developing nations to invest in doing likewise. For this reason, I believe that the administration appreciates the need for this legislation. In the end, I hope they will have the smarts to listen to Alan Greenspan-who has testified about the need for this bill-and that the administration will support its passage.

I ask unanimous consent that the text of the bill be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2045

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 "American Competitiveness in the Twenty-first Century Act of 2000".

SEC. 2. TEMPORARY INCREASE IN VISA ALLOTMENTS.

In addition to the number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) (8 U.S.C. 1101 (a)(15)(H)(i)(b)), the following number of aliens may be issued such visas or otherwise provided such status for each of the following fiscal years:

(1) 80,000 for fiscal year 2000;

(2) 87,500 for fiscal year 2001; and

(3) 130,000 for fiscal year 2002.

SEC. 3. SPECIAL RULE FOR UNIVERSITIES, RESEARCH FACILITIES, AND GRADUATE DEGREE RECIPIENTS.

Section 214(g) of the <Immigration> and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following new paragraphs:

"(5) The numerical limitations contained in paragraph (1)(A)(iii) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b)-

"(A) who is employed (or has received an offer of employment) at-

"(i) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a related or affiliated nonprofit entity; or

"(ii) a nonprofit research organization or a governmental research organization; or

"(B) for whom a petition is filed not more than 90 days before or not more than 180 days after the nonimmigrant has attained a master's degree or higher degree from an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)))."

"(6) Any alien who ceases to be employed by an employer described in paragraph (5)(A) shall, if employed as a nonimmigrant alien described in section 101(a)(15)(H)(i)(b), be counted toward the numerical limitations contained in paragraph (1)(A)(iii) the first time the alien is employed by an employer other than one described in paragraph (5)(A).".

SEC. 4. LIMITATION ON PER COUNTRY CEILING WITH RESPECT TO EMPLOYMENT-BASED IMMIGRANTS.

(a) SPECIAL RULES.-Section 202(a) (8 U.S.C. 1152(a)) is amended by adding at the end the following new paragraph:

"(5) RULES FOR EMPLOYMENT-BASED IMMIGRANTS.-

"(A) EMPLOYMENT-BASED IMMIGRANTS NOT SUBJECT TO PER COUNTRY LIMITATION IF ADDITIONAL VISAS AVAILABLE.-If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 203(b) for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

"(B) LIMITING FALL ACROSS FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e).-In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(b) exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 203(b) consistent with subsection (e) (determined without regard to this paragraph), in applying subsection (e) all visas shall be deemed to have been required for the classes of aliens specified in section 203(b).".

(b) CONFORMING AMENDMENTS.-

(1) Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended by striking "paragraphs (3) and (4)" and inserting "paragraphs (3), (4), and (5)".

(2) Section 202(e)(3) (8 U.S.C. 1152(e)(3)) is amended by striking "the proportion of the visa numbers" and inserting "except as provided in subsection (a)(5), the proportion of the visa numbers".

(c) ONE-TIME PROTECTION UNDER PER COUNTRY CEILING.-Notwithstanding section 214(g)(4) of the <Immigration> and Nationality Act, any alien who-

(1) is the beneficiary of a petition filed under section 204(a) for a preference status under paragraph (1), (2), or (3) of section 203(b); and

(2) would be subject to the per country limitations applicable to immigrants under those paragraphs but for this subsection,

may apply for, and the Attorney General may grant, an extension of such nonimmigrant status until the alien's application for adjustment of status has been processed and a decision made thereon.

SEC. 5. INCREASED PORTABILITY OF H-1B STATUS.

(a) IN GENERAL.-Section 214 of the <Immigration> and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

"(m)(1) A nonimmigrant alien described in paragraph (2) who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) is authorized to accept new employment upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (a). Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, employment authorization shall cease.

"(2) A nonimmigrant alien described in this paragraph is a nonimmigrant alien-

"(A) who has been lawfully admitted into the United States;

"(B) on whose behalf an employer has filed a nonfrivolous application for new employment or extension of status before the date of expiration of the period of stay authorized by the Attorney General; and

"(C) who has not been employed without authorization in the United States before or during the pendency of such petition for new employment.".

(b) EFFECTIVE DATE.-The amendment made by subsection (a) shall apply to petitions filed before, on, or after the date of enactment of this Act.

SEC. 6. EXTENSION OF AUTHORIZED STAY IN CASES OF LENGTHY ADJUDICATIONS.

(a) EXEMPTION FROM LIMITATION.-The limitation contained in section 214(g)(4) of the <Immigration> and Nationality Act with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the <Immigration> and Nationality Act on whose behalf a petition under section 204(b) to accord the alien immigrant status under section 203(b), or an application for adjustment of status under section 245 to accord the alien status under section 203(b), has been filed, if 365 days or more have elapsed since the filing of a labor certification application on the alien's behalf, if required for the alien to obtain status under section 203(b), or the filing of the petition under section 204(b).

(b) EXTENSION OF H1-B WORKER STATUS.-The Attorney General shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made on the alien's lawful permanent residence.

SEC. 7. EXTENSION OF CERTAIN REQUIREMENTS AND AUTHORITIES THROUGH FISCAL YEAR 2002.

(a) ATTESTATION REQUIREMENTS.-Section 212(n)(1)(E)(ii)) of the <Immigration> and Nationality Act (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by striking "October 1, 2001" and inserting "October 1, 2002".

(b) FEE REQUIREMENTS.-Section 212(c)(9)(A) of the <Immigration> and Nationality Act (8 U.S.C. 1182(c)(9)(A)) is amended in the text above clause (i) by striking "October 1, 2001" and inserting "October 1, 2002".

(c) DEPARTMENT OF LABOR INVESTIGATIVE AUTHORITIES.-Section 413(e)(2) of the American Competitiveness and Workforce Improvement Act of 1998 (as contained in title IV of division C of Public Law 105-277) is amended by striking "September 30, 2001" and inserting "September 30, 2002".

SEC. 8. RECOVERY OF VISAS USED FRAUDULENTLY.

Section 214(g)(3) of the <Immigration> and Nationality Act (8 U.S.C. 1184 (g)(3)) is amended to read as follows:

"(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status. If an alien who was issued a visa or otherwise provided nonimmigrant status and counted against the numerical limitations of paragraph (1) is found to have been issued such visa or otherwise provided such status by fraud or willfully misrepresenting a material fact and such visa or nonimmigrant status is revoked, then one number shall be restored to the total number of aliens who may be issued visas or otherwise provided such status under the numerical limitations of paragraph (1) in the fiscal year in which the petition is revoked, regardless of the fiscal year in which the petition was approved.".

SEC. 9. NSF STUDY AND REPORT ON THE "DIGITAL DIVIDE".

(a) STUDY.-The National Science Foundation shall conduct a study of the divergence in access to high technology (commonly referred to as the "digital divide") in the United States.

[Page S544]

(b) REPORT.-Not later than 18 months after the date of enactment of this Act, the Director of the National Science Foundation shall submit a report to Congress setting forth the findings of the study conducted under subsection (a).

Mr. ABRAHAM. Mr. President, I rise to join Senator HATCH in introducing the American Competitiveness in the 21st Century Act.

Mr. President, no company can grow if it fails to find enough employees with the skills needed to get the job done. And that is precisely the situation faced by our high-tech companies today. A Joint Venture: Silicon Valley study found that a lack of skilled workers is costing Silicon Valley companies $3 to $4 billion every year. A Computer Technology Industry Association study concluded that a shortage of information technology professionals is costing the U.S. economy as a whole $105 billion per year.

These costs should not be seen as mere abstractions. Because of skilled labor shortages, an increasing number of highly productive firms have had to curtail their economic activities and/or move offshore. At an October 21, 1999 Senate <Immigration> Subcommittee hearing, Susan DeFife, CEO of womenCONNECT.com, noted that "as investment capital flows into start-ups and puts them on a fast growth track, the demand for workers will continue to far exceed the supply. In order to fill these positions, the options for tech companies are not particularly attractive: we can limit our growth, but then we lose the ability to compete; we can `steal´ employees from other companies, which makes none of us stronger and forces us to constantly look over our shoulders; or, in the case of larger companies I know, move operations off-shore."

None of these solutions is good for our economy or our workers. As e-commerce and other forms of high technology become increasingly integrated throughout our economy, the long-term solution to our dilemma will be for earlier and better training for our young people to qualify them for high-tech tasks. But we are losing productivity and opportunities for growth right now. If we are to maintain our high-tech edge in an increasingly competitive global market, we must find the skilled workers we need wherever we can.

We must meet our training and education needs. And we need wise and careful reforms to our <immigration> laws. This is not an either/or proposition. We have studied this approach for some time. In February of 1998 the Senate <Judiciary> Committee held a hearing on high technology workforce issues. This hearing demonstrated that many companies could not find enough qualified professionals to fill key jobs. It also showed that the foreign-born individuals hired by companies on H-1B temporary visas typically many additional jobs for Americans through their skills and motivations.

Mr. President, shortly after that hearing, Congress raised the cap on H-1B visas from 65,000 to 115,000 in FY1999 and 2000, and 107,500 in 2001. A number of provisions in this legislation increased enforcement efforts and established a $500 fee per visa-currently generating $75 million per year-for training and scholarships to encourage Americans to enter high-tech related fields.

Unfortunately, this was not enough. Despite the raised cap, a tight labor market, increasing globalization and burgeoning economic growth all combined to increase demand for skilled workers. The 1999 cap on H-1B visas was reached by June of last year.

We must do more to enable American employers to hire job-creating high-tech professionals. That is why I have sponsored this legislation that would:

Provide a temporary increase in H-1B visas. Caps would be increased by 80,000 for FY 2000; 87,500 for FY 2001; and 130,000 for FY 2002.

Create exemptions for universities, research facilities, and graduate degree recipients to help keep in the country top graduates and those who help educate Americans.

Modify per-country limits on permanent employment visas to allow companies to hire talent without regard to nationality.

Increase labor mobility by allowing H-1B professionals to change jobs as soon as the new employer files the initial paperwork, instead of waiting for a new H-1B application to be approved.

Continue and extend the $500 per visa fee to provide over $150 million in additional funding over three years for training and scholarships. Counting the existing money brought in by the fee, this will raise the total to over $375 million over three years and will help over 50,000 American students receive scholarships in math, science or engineering.

These provisions will increase our economic competitiveness, sustain our economic growth, and provide new opportunities for workers and entrepreneurs. Julie Holdren, President and CEO of the Olympus Group, told the <Immigration> Subcommittee that "For every H-1B worker I employ, I am able to hire ten more American workers." A study for the Public Policy Institute of California by U.C. Berkeley Professor Annalee Saxenian bears this testimony out. It found that Chinese and Indian immigrant entrepreneurs in northern California alone were responsible for employing 58,000 people, with annual sales of nearly $17 billion.

Critics of the last H-1B visa increase have been proven spectacularly wrong, as the U.S. economy added 387,000 new jobs in January and the unemployment rate dropped to a 30-year low of 4 percent. Specialty jobs in the computer industry alone are projected to grow by 1.5 million between 1998 and 2008, according to the Department of Labor.

President Clinton´s former chief economic advisor, Laura D´Andrea Tyson argues that "it´s time to raise the cap on H-1B visas yet again and to provide room for further increases as warranted. Silicon Valley´s experience reveals that the results will be more jobs and higher incomes for both Americans and immigrant workers."

Mr. President, the final word should belong to Federal Reserve Chairman Alan Greenspan. At a Budget Committee hearing last month he was asked "Do you believe we should do something with our laws-<immigration-that would allow high tech . . . labor to come into the country to ease the burden" on our labor force?

Chairman Greenspan responded: "I would certainly agree with that. It´s clear that under existing circumstance . . . aggregate demand is putting very significant pressures on an ever-decreasing available supply of unemployed labor. The one obvious means that one can use to offset that is expanding the number of people we allow in, either generally or in a specifically focused area."

By increasing the number of highly skilled professionals we allow to work in America, and providing additional funding for training and scholarships, we will create jobs for all Americans and keep our high-tech driven economic expansion on the move.

Mr. GRAMM. Mr. President, today I am proud to join in the introduction of legislation which will increase the number of H-1B temporary work visas used to recruit and hire workers with very specialized skills, particularly in high technology fields. This bill will ensure that the dramatic U.S. economic expansion will not be stalled by a lack of skilled workers in critical positions. It retains the language of current law which protects qualified U.S. workers from being displaced by H-1B visa holders.

With record low unemployment, U.S. companies already have been forced to slow their expansion or even to cancel projects, and some may be forced to move their operations overseas because of an inability to find qualified individuals to fill job vacancies. We will achieve our full economic potential only if we ensure that high-technology companies can find and hire the people whose unique qualifications and skills are critical to America´s future.

Last year, the Congress temporarily increased the number of annual H-1B visas from 65,000 to 115,000 for Fiscal Years 1999 and 2000, and to 107,500 in 2001. The number of H-1B visas is scheduled to drop back to 65,000 for Fiscal Year 2002 and subsequent years. Our legislation will increase the H-1B visa cap to 195,000 for Fiscal Years 2000, 2001, and 2002. By the end of that period, we will have the data we need to make an informed decision on the number of such visas required beyond 2002.

According to a recent study by the American Electronics Association (AEA), Texas has the fastest growing high technology industry in the country and is second only to California in the number of high technology workers. This legislation would ensure that these companies have access to highly educated workers, in order that America can continue to grow and prosper, and in doing so, create more jobs and opportunity for U.S. workers.

[Page S545]

I believe that this legislation represents a fair and effective way to address a critical need in our Nation´s economy, and I hope my colleagues will quickly approve this important proposal.

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Debra J. Bond 02/08/2000 03:23:54 PM

Record Type: Record

To: Jacquelyn.A.Bednarz@usdoj.gov, gohl-earl@dol.gov, fra@fenix2@dol-esa.gov, owen.b.cooper@usdoj.gov

cc: See the distribution list at the bottom of this message
Subject: Draft H-1B Fraud MOU

Attached is a draft H-1B fraud MOU between DOL, DOJ (INS), and DOS. Please make sure that the appropriate persons in your agency review this document. We are also faxing the document to DOS.

Please provide me with agency comments by C.O.B. Tuesday, February 15, 2000. If you have any questions please call me at 395-7751. Thanks--

- imm-Draft MOU H-1B Fraud State-INS-DOL.doc

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MEMORANDUM OF UNDERSTANDING

Among

The U.S. Department of State, (who?),

The U.S. Department of Justice, Immigration and Naturalization Service,

and

The U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division

To Coordinate and Increase the Effectiveness of Efforts to Combat Nonimmigrant Visa Fraud

Date: ____________________________

MEMORANDUM OF UNDERSTANDING
Among
The U.S. Department of State, (who?),
The U.S. Department of Justice, Immigration and Naturalization Service,
and
The U.S. Department of Labor, Employment Standards Administration,
Wage and Hour Division
To Coordinate and Increase the Effectiveness of Efforts
to Combat Nonimmigrant Visa Fraud

I. PURPOSE:

The Department of State (DOS) and the Department of Justice's Immigration and Naturalization Service (INS) have found that there is considerable fraud in and misuse of the H-1B (temporary foreign "professional" workers) and L (inter-company transferee) nonimmigrant programs under the Immigration and Nationality Act (INA). In addition, the Department of Labor's Office of Inspector General has found widespread misuse of the H-1B nonimmigrant visa program.

Such fraud and misuse not only show disrespect for the Nation's laws and its sovereignty over its borders, but also adversely affects:

- law-abiding U.S. employers which truly need access to the international labor market because of the annual numerical limitation on H-1B visas, and

- U.S. students and workers who are deprived of real opportunities for the jobs – often good, high-paying jobs – that are inappropriately filled by the temporary nonimmigrant workers who should properly not be imported under these visa programs.

In fact, this fraud and misuse has contributed to legislative initiatives to increase the H-1B visa limit, which in turn may adversely affect U.S. students and workers by the expansion of temporary employment-based immigration.

The purpose of this Memorandum of Understanding is to establish a joint working group consisting of the U.S. Department of State _______________, the Department of Justice's Immigration and Naturalization Service, and the Department of Labor's Wage and Hour Division (of the Employment Standards Administration) to promptly develop and implement appropriate measures to better coordinate and increase the effectiveness of the signatory agencies' efforts to detect, deter, and appropriately prosecute fraud and misuse of the H and L nonimmigrant visa programs.

II. GOALS:

The goals of the interagency working group established under this Memorandum of Understanding are to:

- Collect the best available and needed additional data regarding the scope and frequency of potential fraud and misuse under the H-1B and L nonimmigrant visa programs;

- Develop and implement appropriate strategies and deploy the resources needed to effectively detect, deter and prevent, and appropriately prosecute fraud and misuse of these nonimmigrant visa programs; and,

- To the maximum extent possible, eliminate fraud and misuse from these nonimmigrant visa programs so as to ensure their proper role in the Nation's employment-based immigration system.

III. IMPLEMENTATION:

The Departments of State (______), Justice (Immigration and Naturalization Service), and Labor (Employment Standards Administration, Wage and Hour Division) shall establish a joint working group charged with achieving the above-stated purpose and goals of this Memorandum of Understanding. The interagency working group will meet on a regular basis – usually at least monthly – and may involve other Executive Branch agencies as deemed appropriate to these ends.

In developing and implementing appropriate strategies needed to effectively detect, deter and prevent, and appropriately prosecute fraud and misuse of theH-1B and L nonimmigrant visa programs, the working group will consider the utility of such steps as:

- Strengthening INS regulations to inhibit potential visa abuse such as by requiring sponsoring employers to establish the viability of its business enterprise or strengthening credentials evaluation mechanisms regarding foreign educational attainment;

- Strengthening the authorities of State's Consular Officers to detect and prevent fraudulent use or abuse of certified Labor Condition Applications ("LCAs") under the H-1B nonimmigrant visa program, or approved petitions under either the H-1B or L nonimmigrant visa programs;

- Assessing incidents of H-1B and L nonimmigrant visa fraud and abuse, including consulting with other agencies such as Labor's Office of Inspector General and State Employment Security Agencies, to identify common indicators of potential fraud and abuse so that petitions and visa applications displaying such criteria can be targeted for in-depth scrutiny;

- Improving communications among the signatory agencies to leverage available resources and better use existing investigative authorities to detect, prevent and prosecute visa fraud and abuse;

- Reaching out to other Executive Branch entities, such as Justice's Executive Office of the U.S. Attorneys and the Justice-Labor Worker Exploitation Task Force, to enhance prospects for appropriate criminal prosecutions;

- Publicizing efforts and results achieved in detecting, deterring, preventing, and prosecuting incidents of H-1B and L nonimmigrant visa fraud so as to promote public awareness of such abuses and encourage affected members of the public to help identify such abusive practices; and,

- Making recommendation to the Executive Branch regarding legislative or budget/ resource changes that may be warranted to reduce and eliminate the fraud and abuse under these nonimmigrant programs.

The working group will provide regular reports to the respective Agency Heads and to the National Economic Council regarding progress and problems encountered.

IV. AGREEMENT:

The provisions of this Memorandum of Understanding become effective on the date of signature. The provisions may be reviewed and jointly amended or eliminated, as may be appropriate, if it is determined by the signatory agencies that such review, amendment or deletion serves the interest of effectively and efficiently enforcing the laws under the agencies' respective jurisdictions.

The preceding constitutes the full Memorandum of Understanding on this subject among the Department of State, ____________; the Department of Justice, Immigration and Naturalization Service; and, the Department of Labor, Employment Standards Administration, Wage and Hour Division.

Signed this ___ day of _______, 1999,

______________________	______________________	______________________
Department of State ????	Department of Justice Immigration and Naturalization Service	Department of Labor Employment Standards Administration Wage and Hour Division

university-affiliated research organizations. The proposal also includes an exemption for individuals who in the prior six months received a master's degree or doctorate from a U.S. university. The sponsors anticipate that the two exemptions will exclude some 20,000 individuals a year from visa requirements.

In introducing the legislation, Hatch cited a recent study showing that the shortage of high-tech professionals is currently costing the U.S. economy $105 billion a year. "Common sense tells us that we must allow American high-tech companies to fill their labor needs in the U.S., or they will be forced to take these opportunities of growth abroad," Hatch said.

Sen. Dianne Feinstein (D-Calif.), a co-sponsor of the legislation and member of the Judiciary Committee, issued a statement Feb. 9 acknowledging that there is room for improvement in the proposal, especially with respect to worker training and scholarships. "We have an obligation to address the long-term needs of all American workers and ensure they are sufficiently educated, recruited and trained to obtain or retain employment in the high-tech industry," she said.

At the same time, Feinstein said, there is "no recourse but to expand" the H-1B program to fill high-tech jobs and "help ensure the continued growth of the very industries that are fueling our economic expansion." The proposal calls for a continuation of the $500 visa fee that was put in place by the 1998 law and is dedicated to training and scholarships for U.S. students and workers. The fee, which is currently set to expire at the end of FY 2001, would be extended through FY 2002 under the proposal.

In addition to Feinstein, Sens. Bob Graham (D-Fla.) and Joseph Lieberman (D-Conn.) joined a group of Republicans in co-sponsoring the bill.

A spokesman said the Clinton administration will be analyzing the bill and other proposals.

"As in the past, our ultimate orientation must be education and training for American workers first," said Patrick Dorton, Clinton administration spokesman. "There are a variety of views and proposals on this issue. We are in the process of analyzing them."

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From: Lisa J. Macecevic on 02/10/2000 09:35:20 AM

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Subject: H-1B story

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Regulation, Law & Economics

Immigration
Hatch Proposes Additional Increases In Annual Allotment of H-1B Visas

Several Republican senators, led by Senate Judiciary Committee Chairman Orrin Hatch (R-Utah), Feb. 9 unveiled a legislative proposal to increase the maximum annual number of highly skilled, foreign workers who can be employed in the United States.

The proposed American Competitiveness in the 21st Century Act (bill number not yet available), which has three Democrat co-sponsors, would authorize an additional 80,000 H-1B visas in fiscal year 2000 and an additional 87,500 visas in fiscal year 2001. The bill would allow a total 130,000 visas in FY 2002.

The previous 65,000 annual cap on H-1B visas already had been increased by legislation enacted in 1998 allowing issuance of 115,000 visas in FY 1999, 115,000 visas in FY 2000, and 107,500 visas in FY 2001. Even with the increase, however, the FY 1999 cap was officially reached last August, according to the Immigration and Naturalization Service.

In addition to recommending more increases in the cap, the legislation would exempt from the visa program individuals who are employed by U.S. universities, colleges, or independent or

Background and Summaries of Major H-1B related bills

Background:

American Competitiveness and Workforce Improvement Act of 1998

The American Competitiveness and Workforce Improvement Act (ACWIA), which addresses the H-1B issue – the purported shortage of high skilled workers, was enacted in 1998. The H-1B issue put the Administration in a difficult position, caught between the considerable number of Democratic (and Republican) Members of Congress and worker advocates who argued that we should train Americans first, and representatives of industry (particularly high-tech industry) who argued that more H-1B visas were needed to fill gaps in the workforce that couldn't be filled with American workers. The Administration sought a middle-ground approach that would provide temporary relief for employers having difficulty finding skilled workers, while stressing that our policy should be based on the principle of training American workers first. Therefore, we negotiated a deal -- primarily with Senator Abraham – whereby we agreed to increase the caps for 3 years, in exchange for protections against abusive job shops and a $500 fee that we proposed to raise $250 million for regional training alliances, low income scholarships, and administration. ACWIA increased the H-1B visa cap from 65,000 a year to 115,000 in FYs 1999 and 2000, and 107,500 in FY 2001.

Legislation Introduced

The issue is once again beginning to gain some momentum. Several bills addressing the perceived shortage have been introduced including: The New Workers for Economic Growth Act of 1999 (S. 1440, H.R. 2698, introduced by Senator Gramm and Representative Dreier, respectively), the Bringing Resources from Academia to the Industry of Our Nation Act (H.R. 2687, introduced by Representative Lofgren), the Helping Improve Technology Education and Competitiveness Act, "HITEC Act" (S. 1645, introduced by Senator Robb), the 21st Century Technology Resources and Commercial Leadership Act (S. 1804, introduced by Senator McCain), an H-1B scholarship payment bill (H.R. 3508, introduced by Representative Wu), and a soon to be introduced Hatch-Abraham bill.

Below are brief summaries of the bills:

The New Workers for Economic Growth Act of 1999 (S. 1440, H.R. 2698) Gramm + Dreier

- Increases the H-1B cap to 200,000 for FY 2000, FY 2001 and FY 2002.
- No cap applies to individuals with a masters degree or higher (or equivalent) who receive wages (including cash bonuses and similar compensation) at an annual rate equal to at least $60,000.
- No cap applies to individuals who have a bachelor's degree or higher (or equivalent) and are employed at an institution of Higher Education.
- Eliminates the earnings penalty on senior citizens who continue to work after reaching retirement age.
- Eliminates attestation requirements for institutions of higher education.

Note: As a result of the inclusion of the earnings penalty provision, the Senate bill was referred to the Senate Finance Committee. Senator Gramm sits on the Finance Committee. The Judiciary Committee had jurisdiction over ACWIA. The House bill was jointly referred to Ways and Means and Judiciary.

Bringing Resources from Academia to the Industry of Our Nation Act (H.R. 2687) Lofgren

Highlights of the "BRAIN Act" or Lofgren T visa proposal:

- Available to foreign students who receive a bachelors degree or higher from an American Institution of Higher Education;
- Employers would file applications with the Justice Department, with payment of an initial fee of $1,000 (the adjustment fee would be $500);
- Employers would have to pay T Visa workers an annual compensation package equal to or in excess of $60,000 a year;
- The fee would be used for a High Tech Education Trust Fund to be used by the National Science Foundation to provide grants for K-12 mathematics, science and computer science programs;
- The program is a temporary 5-year program;
- The program is uncapped (there is no limit on the number of T Visas that would be available);
- The proposal includes annual reporting requirements and Department of Justice enforcement.

Note: Cosponsors of H.R. 2687 include Representative Conyers, Judiciary Committee Ranking Member, and Representative Jackson-Lee, the Subcommittee Ranking Member. The fact that both Representative Conyers and Representative Jackson-Lee cosponsored the bill is a clear indication that Democrats on the Judiciary Committee are looking for a positive alternative to the strategy of just opposing another increase in the cap.

The Helping Improve Technology Education and Competitiveness Act, "HITEC Act" (S. 1645) Sen. Robb

The HITEC Act is a modified version of the Lofgren bill. The HITEC Act estabishes a five year pilot program that:

- Provides T-visas to foreign students at U.S. colleges who are recipients of masters degrees or PHD's;
- Includes labor protections (similar to the attestations required for H-1B dependant employers);
- Includes a $1,000 fee (double the current H-1B fee); and
- Creates a fee funded High-Tech Education Fund, administered by the Department of Commerce. The Fund would provide resources for competitive grants for elementary and secondary school programs in mathematics, science and technology.
- The program is uncapped (there is no limit on the number of T visas that would be available).

Senator Schumer, Senator Kerry, Senator Leahy, Senator Johnson and Senator Lieberman are cosponsors of Senator Robb's bill.

21st Century Technology Resources and Commercial Leadership Act (S. 1804) -McCain

The McCain proposal would:

- Establish a grant program, run by the Department of Commerce, to strengthen the scientific, mathematical, engineering, and technology resources of the U.S.
- Uncap the current H-1B program from FYs 2000 – 2006 (there would be no limit on the number of H-1B visas that would be available).
- Establish visa issuance preference for graduates of U.S. institutions.
- Maintain the current fee but change the distribution – of the 56.3% currently going to DOL for training – 51.3% would go to Commerce for grants, and 5% would go to DOL for training.

Note: There are no cosponsors. The bill was referred to the Senate Commerce, Science, and Transportation Committee.

Representative Wu's H-1B Scholarship Payment Bill (H.R. 3508)

The Wu proposal would:

- Provide an additional 65,000 H-1B visas where:
  - The employee has attained a masters degree or higher at a U.S. institution of higher education, and
  - The employer makes a contribution to a college or university in an amount equivalent to the Pell grant maximum (currently $3,300).
- The institution receiving the scholarship money shall award the full amount of each individual contribution to one student enrolled in a full time course of study at the institution.

Representative Davis and Representative Stark are original cosponsors of the Wu proposal.

The Hatch-Abraham bill reportedly will:

- Increase the cap to 195,000 (an increase of 80,000 over the FY2000 cap level) for FY2000, FY2001 and FY2002;
- Exempt university professors and federal government and nonprofit research organizations from the cap;
- Exempt foreign nationals who obtain a masters or higher at a U.S university from the cap.;
- Waive the per country limitation for permanent employment visas (if not all of the visas are claimed);

- Provide an extension of stay for H-1B visa holders while their permanent visa applications are pending, and/or while they are waiting on a permanent employment visa to become available; and
- Allow H-1B employees to move more freely between employers.

Apparently, the bill will not propose an increase in the H-1B visa fees, but will retain attestation and training provisions from existing law.

Feinstein
Liberman
Bob Graham

Bankruptcy

Continued from page 1

Lott Monday said there was "a desire" on both sides to reach an agreement on the bill. And while the Senate has votes scheduled on various matters both for today and Wednesday, the source said there would be no bankruptcy-related votes until Wednesday — with a cloture vote on the bankruptcy bill, which had been planned for today, having been dropped. Debate on the remaining bankruptcy amendments is nonetheless expected to begin today.

— *By Pamela Barnett*

Reworked Senate Visa Bill Would Allow More High Tech Workers

JUDICIARY

Staff for **Senate Judiciary Chairman Hatch**, **Judiciary Immigration Subcommittee Chairman Spencer Abraham**, R-Mich., and **Senate Banking Chairman Gramm** met last week to discuss a reformulation of H1-B visa legislation, which sources said could be introduced perhaps as early as next week.

The legislation — which will be introduced by Hatch and cosponsored by Abraham, Gramm and perhaps some Democrats — is expected to be fast-tracked through the Judiciary panel this year. "They're keen to move along," remarked one source familiar with the process. Although it will be a Judiciary Committee vehicle, sources said the drafting would be a joint endeavor with Gramm.

The new bill is said to represent a middle ground between an ambitious H1-B visa measure introduced last year by Gramm and a scaled back proposal by Hatch and Abraham that took a more conservative and short-term approach to the visa shortage problem.

Gramm's measure would have raised the current threshold of 115,000 H1-B visas available to highly skilled foreign workers this fiscal year to 200,000. The bill also included several exemptions from the caps for additional workers meeting certain educational and salary requirements.

Legislation extending these caps is a top priority for the nation's high technology firms, who say their demand for highly skilled workers far outstrips the number of high tech visas currently available.

The American Electronics Association Monday listed the H1-B visa issue as one of a handful of top legislative priorities for the trade group this year.

Hatch and Abraham initially had envisioned proposing a relatively modest increase of 40,000 to 50,000 additional visas over two years. The new version of the bill will "increase the number of visas and the duration of that increase," said a source in Abraham's office.

This source would not comment on whether any of Gramm's cap exemption language would be in the new bill, or whether the measure would include educational incentives to encourage high tech skills among U.S. citizens. That latter point could prove a draw for Senate Democrats.

In the House, **Rules Chairman Dreier** is reworking a version of H1-B visa legislation he introduced last year, with a view toward attracting bipartisan support.

— *By Pamela Barnett*

Rural TV

Continued from page 1

approve a bill designed to allow direct broadcast satellite companies to carry local programming — such as the local news.

Days before the Senate voted on the measure, Burns added a provision he had championed that would create a $1.25 billion rural loan guarantee to ensure that satellite television companies expand service from lucrative cities into smaller and rural markets.

But the provision was dropped after **Senate Banking Chairman Gramm** threatened a filibuster. As part of an 11th-hour compromise with Burns, Gramm and the GOP leadership, **Majority Leader Lott** promised to enact Burns' provision if Gramm failed to move a competing measure by March 30 of this year.

Today's Banking Committee hearing is the first step in that process.

But, before the agreement was announced, Baucus took to the Senate floor and demanded that a rural support provision be added to the package.

The following day, Baucus introduced a stand-alone version of the loan guarantee that was designed to avoid the Banking panel and instead go to the Agriculture Committee — a panel more in tune with the concerns of rural states.

A spokesman said Baucus introduced the bill to ensure that rural state representatives have more influence over the final measure.

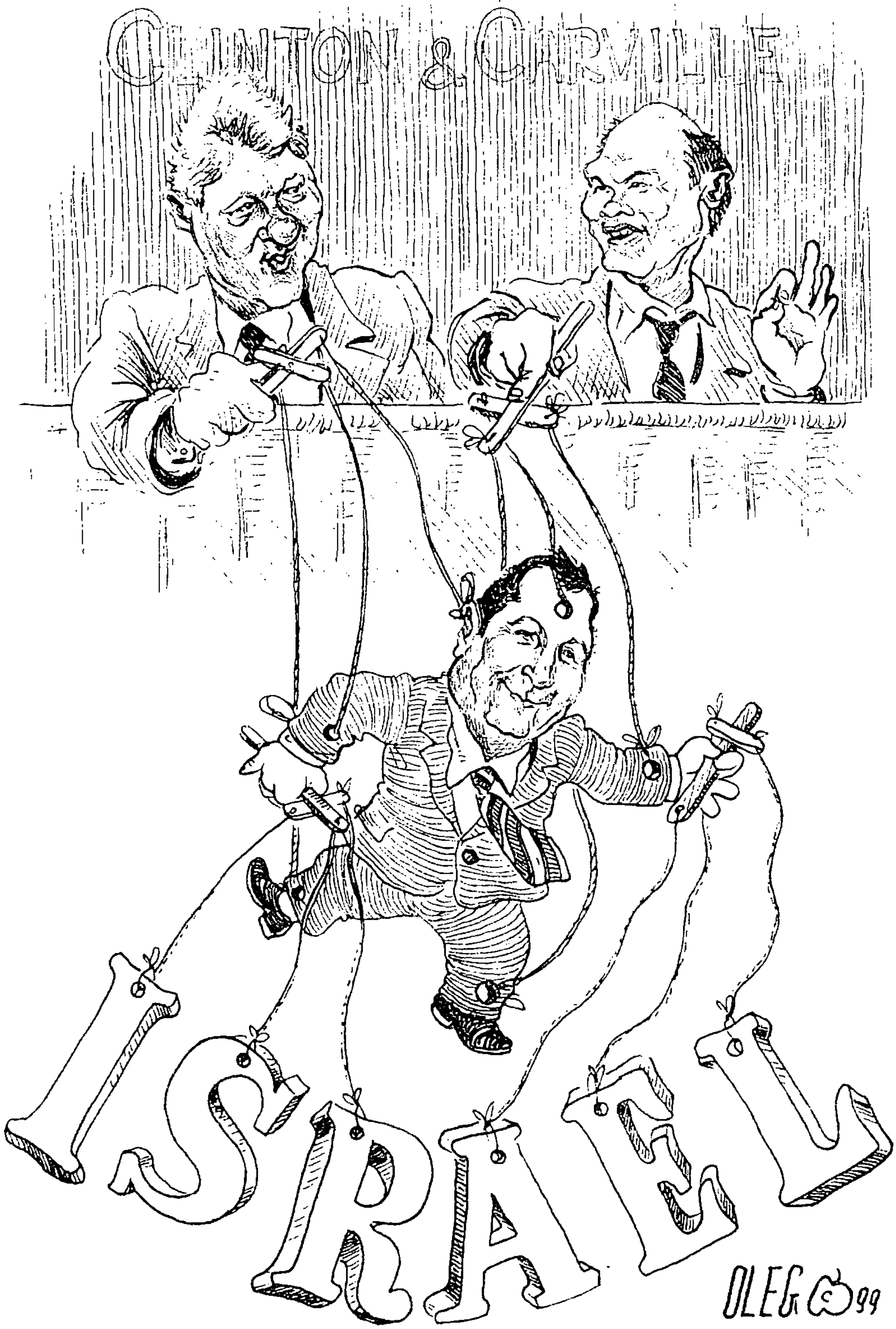
But Burns believes it was a calculated political ploy to steal the spotlight — and complains the bill is nearly identical to the measure Burns posted on his Web site Sept. 23.

Burns also claims Baucus did not notify him about the bill until after it was introduced — a charge that Baucus' staff denies.

"It's a disappointing situation," said a Burns aide. "[Burns] has been leading this fight from day one — and to the extent that there are latecomers to the process — we welcome their support, but [Burns] is going to remain out front."

Baucus, meanwhile, maintains his innocence. "This was not an attempt to steal anyone's political thunder," said his aide. "It was simply an effort by Sen. Baucus to ensure that 10 million rural households have access to local network broadcasting."

— *By Brody Mullins*



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Tight Labor Market Shifts Immigration Debate

By Marjorie Valbrun
And Glenn Burkins
Staff Reporters of The Wall Street Journal

The tight labor market is altering the tenor of the immigration debate.

With the U.S. jobless rate at 4%, the lowest in 30 years, some labor unions that had opposed loosening immigration restrictions are revisiting their stance now that the labor market is experiencing some of the worst shortages in decades. In Congress, measures to ease restrictions are drawing bipartisan support.

Yesterday, Republican lawmakers introduced legislation to increase the number of skilled foreign workers—particularly high-tech employees—allowed into the country. Democrats have proposed allowing international students to work here after graduating from U.S. universities. Next week, a House subcommittee will hold a hearing on labor shortages.

AFL-CIO President John J. Sweeney has appointed a committee to review the federation's immigration policy. After decades of viewing immigrants as a potential threat to unionized workers, labor leaders say the move recognizes that the current government system of punishing employers who hire undocumented workers has failed.

Indeed, union officials say unscrupulous employers who knowingly hire illegal immigrants, when later faced with union-organizing drives, routinely use their workers' illegal status to intimidate them. Some have even invited immigration-enforcement officials to raid their plants.

"We are looking for controlled, comprehensive and fair immigration laws that serve the needs of immigrant workers and employers and don't allow for abuse," said Andy Stern, president of the Service Employees International Union.

A Thorny Issue

The committee is set to meet next week in New Orleans, where the AFL-CIO's executive council could vote on any proposed change at its winter meeting.

On Capitol Hill, the GOP proposal introduced yesterday would raise the cap on so-called H-1B employment visas for skilled foreign workers to 195,000 each year until 2002 to offset a shortage of high-tech workers around the country. The measure, which has bipartisan backing, would be the second increase in just two years if passed. Congress raised the cap to 115,000 from 65,000 in 1998.

GOP Sen. Spencer Abraham of Michigan, chairman of the Senate immigration subcommittee, said that despite the 1998 increase, "a tight labor market, increasing globalization and burgeoning economic growth all combined to increase demand for skilled workers." The 1999 limit was reached in June.

The visa cap has been a thorny issue. The Clinton administration and unions are concerned that an increase would cause U.S. workers to lose jobs to foreign workers. The high-tech industry maintains it is being hurt in the global marketplace by a worker shortage.

Democratic Rep. Zoe Lofgren, who represents Silicon Valley, and Democratic Sen. Charles Robb of Virginia, which has a growing high-tech community, last year proposed creating an employment visa category for international students who graduate from U.S. universities with high-tech degrees.

"I understand, and support, limits on immigration," Sen. Robb said, "but when visa caps are forcing recent graduates . . . to leave the country, . . . we're losing our seed corn."

Other Industries

Meanwhile, several business groups have formed coalitions to push Congress to address labor shortages—and not just in the high-tech industry—through immigration policy.

One group, the Essential Worker Immigration Coalition, was instrumental in getting lawmakers to hold the labor shortage hearing set for a week from today.

"Everywhere I go, this is what I hear: 'We can't find enough workers,'" said John Gay, co-chairman of the coalition, which was formed in the fall by the hotel, restaurant, construction, tourism and health-care and other industries.

other workers

Mr. Gay, senior director of governmental affairs for the American Hotel and Motel Association, said members believe that Congress "did not understand how bad the situation was for us." The group is considering urging Congress to legalize certain undocumented immigrants working in the U.S.

But those who favor more immigration controls disagree with that approach.

"Thinking of immigrants as things or factors in production" is wrong, said Steven Camarota, director of research at the Center for Immigration Studies, a Washington think tank. "The implication is when the labor market is tight, we let in more immigrants because presumably we don't create inflationary measures. But by the same token, does that mean that when the next recession comes we should engage in mass expulsions?

"Thinking about immigrants as just workers misses the vast range of consequences to our economy," he said, citing overpopulation, overburdened public services and overcrowded public schools.

Frank Sharry, executive director of the National Immigration Forum, an immigration advocacy organization, counters that immigrants also help the economy.

"Something very interesting is afoot," he said. "You have all these unusual allies coming together in support of common goals, even if for different reasons. . . . The real question is whether the different interests will be creative enough to forge an alliance that's politically sustainable and will result in real changes in policy."

Hearing on labor shortage next week