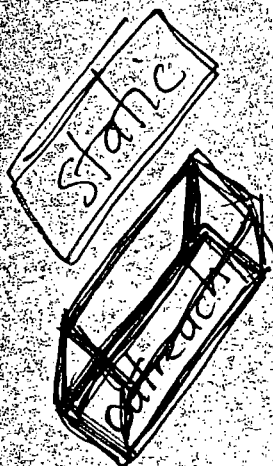


Smead
UPC 12034
No. 2-1531BE
HASTINGS NH



**PHOTOCOPY
PRESERVATION**

Labov

From: Ingrid M. Schroeder on 05/13/98 01:14:13 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP, Peter G. Jacoby/WHO/EOP

cc:

Subject: H-1B Letter to Hyde

How would you like to proceed with the H1B letter?? Any thoughts regarding whether we should include a Sec. of Labor Veto threat?

----- Forwarded by Ingrid M. Schroeder/OMB/EOP on 05/13/98 01:13 PM -----



taylor-michael@dol.gov

05/13/98 12:54:00 PM

Record Type: Record

To: Ingrid M. Schroeder@eop

cc:

Subject: H-1B Letter to Hyde

In addition to the changes I gave you yesterday, after consultation with DOJ and the White House, we would like to add the following after the first sentence of the penultimate paragraph of the letter:

"Modifications to the H-1B program that appropriately protect U.S. workers ~~will also reinforce~~ the Administration's strong support for legal immigration."

are fully consistent with



051313A6.TX

To: Cecilia Fouse

From: Seth Harris

5/8/98 - 2:30 PM

Pages including cover = (5)

Attached are 2 versions of the letter; the first has veto language, while the second does not.

Let us know how you decide to proceed.

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

VETO

Dear Chairman Hyde:

Today Your Committee will mark up H.R. 3736, the "Workforce Improvement and Protection Act of 1998." This bill is intended to address the growing demand for skilled workers in the information technology (IT) industry by enacting a temporary increase in the annual cap on the number of visas for temporary foreign "speciality" workers under the H-1B program, while also effecting reforms to this program that would help target usage of these foreign worker visas *line* to industries and employers that are actually experiencing skill shortages.

The Administration believes that the first step in increasing the availability of skilled workers must be raising the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. ~~At the same time, it is well established that the H-1B program is broken in that it does not function to achieve its intended objective. Therefore, substantial additional efforts by industry to increase the skill level of U.S. workers and needed reforms in the H-1B visa program are necessary prerequisites for the Administration to support any short-term increase in the number of visas for foreign temporary skilled workers.~~

✓ We are pleased that H.R. 3736 as reported from the Immigration and Claims Subcommittee is consistent with one of our primary objectives, insofar as it links a temporary increase in the H-1B cap to the enactment of meaningful program reforms. H.R. 3736 would help ensure that U.S. workers do not lose their jobs to temporary foreign workers and that qualified U.S. workers would have the opportunity to fill a job before a foreign temporary worker is hired. The Administration ~~opposes~~ *strongly* amendments that would weaken these reforms.

✓ Unfortunately, H. R. 3736 does not contain any provision to encourage additional training for developing the skills of U.S. workers. Training must be a vital component of our strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries. An effective training strategy would also work to reduce the demand for H-1B visas ~~even in the short term~~. The Administration *strongly* supports amending H.R. 3736 to provide for additional training of U.S. workers to meet critical skills shortages.

Moreover, this bill modestly expands enforcement authority to help prevent abuse of the H-1B program. These reforms will effectively target H-1B visas to industries experiencing skill shortages.

WORKING FOR AMERICA'S WORKFORCE

H.R. 3736 provides for modest increases in enforcement authority to prevent employer abuses of the H-1B program. These provisions will help assure compliance by employers that are dependent on the H-1B program for a significant portion of their workforce and on employers that have a history of H-1B violations. However, even with these improvements, complaints filed by visa holders, their co-workers, and unsuccessful U.S. applicants will remain the principal means for initiating an investigation of potential violations. For this reason, the Administration supports an amendment protecting "whistle blowers" from retaliation.

The Administration also is concerned that the increase in the annual number of H-1B visas reflected in this bill is too large, although we agree that the increase should last for only three years. The Administration supports an amendment that would: (1) clarify that the number of H-1B visas would return to the current level of 65,000 in 2001; (2) recognize that any shortage is a short-term problem by providing for a declining level of additional visas for the years 1998, 1999, and 2000; (3) calling for a ^{NSF} report on the labor needs of the IT industry; and (4) targeting the increase in visas to higher skilled workers.

With these improvements, the Administration believes that H. R. 3736 would significantly improve the current H-1B program and, with the addition of meaningful training provisions and a modest reduction in the level of increase in the annual H-1B visa cap, would garner the Administration's support. (If amendments are adopted that do not provide protections for U.S. workers or weaken the ability to enforce the law, or if meaningful provisions for increasing the skill levels of U.S. workers are not made, the President's senior advisers would recommend that he veto this legislation. We look forward to working with the Congress on these and other specific provisions in the bill.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program..

JANET RENO
Attorney General

ALEXIS HERMAN
Secretary of Labor

→ Possible this afternoon.

2 hr. time agreement
(does not include amendments)

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

NO VETO

Dear Chairman Hyde:

Your Committee will mark up H.R. 3736, the "Workforce Improvement and Protection Act of 1998." This bill is intended to address the growing demand for skilled workers in the information technology (IT) industry by enacting a temporary increase in the annual cap on the number of visas for temporary foreign "speciality" workers under the H-1B program, while also effecting reforms to this program that would help target usage of these foreign worker visas in industries and employers that are actually experiencing skill shortages.

The Administration believes that the first step in increasing the availability of skilled workers must be raising the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. At the same time, it is well established that the H-1B program is broken in that it does not function to achieve its intended objective. Therefore, substantial additional efforts by industry to increase the skill level of U.S. workers and needed reforms in the H-1B visa program are necessary prerequisites for the Administration to support any short-term increase in the number of visas for foreign temporary skilled workers.

We are pleased that H.R. 3736 as reported from the Immigration and Claims Subcommittee is consistent with one of our primary objectives, insofar as it links a temporary increase in the H-1B cap to the enactment of meaningful program reforms. H.R. 3736 would help ensure that U.S. workers do not lose their jobs to temporary foreign workers and that qualified U.S. workers would have the opportunity to fill a job before a foreign temporary worker is hired. The Administration opposes amendments that would weaken these reforms.

Unfortunately, H. R. 3736 does not contain any provision to encourage additional training for developing the skills of U.S. workers. Training must be a vital component of our strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries. An effective training strategy would also work to reduce the demand for H-1B visas even in the short-term. The Administration supports amending H.R. 3736 to provide for additional training of U.S. workers to meet critical skills shortages.

WORKING FOR AMERICA'S WORKFORCE

H.R. 3736 provides for modest increases in enforcement authority to prevent employer abuses of the H-1B program. These provisions will help assure compliance by employers that are dependent on the H-1B program for a significant portion of their workforce and on employers that have a history of H-1B violations. However, even with these improvements, complaints filed by visa holders and their co-workers will remain the principal means for initiating an investigation of potential violations. For this reason, the Administration supports an amendment protecting "whistle blowers" from retaliation.

The Administration also is concerned that the increase in the annual number of H-1B visas reflected in this bill is too large, although we agree that the increase should last for only three years. The Administration supports an amendment that would: (1) clarify that the number of H-1B visas would return to the current level of 65,000 in 2001; (2) recognize that any shortage is a short-term problem by providing for a declining level of additional visas for the years 1998, 1999, and 2000; (3) calling for a GAO report on the labor needs of the IT industry; and (4) targeting the increase in visas to higher skilled workers.

The Administration has four principles that must be met in an H-1B reform bill: (1) the increase in H-1B visas must be small and temporary; (2) adequate protections for U.S. workers must be included (by requiring recruitment of and prohibiting lay-offs of U.S. workers); (3) appropriate enforcement must be provided; and (4) training opportunities for U.S. workers must be expanded. With the improvements discussed above, the Administration believes that H. R. 3736 would substantially meet these four principles and would support it. We look forward to working with the Congress on these and other specific provisions in the bill.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program..

JANET RENO
Attorney General

ALEXIS HERMAN
Secretary of Labor

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF THE GENERAL COUNSEL

LEGISLATION DIVISION

HHS

FAX TRANSMISSION

FROM:

Jane Taylor
Legislation Division
OGC
690-7773 or 690-7750

TOTAL # OF PAGES: Cover + 2

TO:

Ingrid Schraeder

DATE:

5/12/98

REMARKS:

Comment on H.R. 3736.

LRM ID: IMS321 SUBJECT: LABOR and JUSTICE Report on HR3736 Workforce
Improvement and Protection Act of 1998

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3108
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: 5/12/98 (Date)
Jane Taylor (Name)
HHS (Agency)
202-690-7773 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

☐ Concur

☐ No Objection

☐ No Comment

☐ See proposed edits on pages _____

☐ Other: _____

☒ FAX RETURN of 1 pages, attached to this response sheet

*Attached are comments we
received from NIH. However,
because we have not heard
from all reviewers, we cannot
give HHS clearance at this
time.*

NIH has reviewed the draft Labor and Justice report on H.R. 3736, the Workforce Improvement and Protection Act of 1998. Consistent with our comments on the previous draft of this document, as well as comments on the proposed Administration proposal, we offer the following language for inclusion in the document:

"The Administration is pleased that H.R. 3736 includes lay-off protection for U.S. workers. However, we are concerned that the broad definition of "laid off" could negatively effect the conduct of science by colleges, universities, and the Federal government and would support the addition of language qualifying that "laid off" does not apply to the expiration of a research grant ~~or pre-established term of employment.~~"

Thank you for the opportunity to review this draft.

Labor

From: Ingrid M. Schroeder on 05/12/98 02:48:01 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP, Peter G. Jacoby/WHO/EOP

cc:

Subject: FW: Comments on Hyde Letter

Labor comments on the H1B letter - so much for their clean sign-off.

----- Forwarded by Ingrid M. Schroeder/OMB/EOP on 05/12/98 02:47 PM -----



taylor-michael@dol.gov
05/12/98 02:43:00 PM

Record Type: Record

To: Ingrid M. Schroeder@eop

cc:

Subject: FW: Comments on Hyde Letter

Subject: Comments on Hyde Letter

DOL suggests the following changes to the letter:

1. First paragraph, last sentence: Delete "their"; and add after "usage" the following --- "of these foreign temporary worker visas." ✓
2. Second paragraph, before the second sentence add: "At the same time, it is well-established that the H-1B program is broken and does not serve its intended purpose." ✗
3. Second paragraph, last sentence: Change "improvements" to "reforms". Same sentence, add "skilled" between "foreign" and "workers". ✗
4. Add a new paragraph before the second to last paragraph ("The Administration believes that . . .") as follows:

"In addition to these fundamental concerns, the Administration would support two potential amendments that will also improve H.R. 3736.

First, the Administration supports an amendment that would (1) target the increased number of visas to higher skilled foreign workers; (2) provide the largest number of H-1B visas in FY 1998 with a declining number available in FY 1999 and FY 2000 before returning to 65,000 in FY 2001; (3) clarify that the number of H-1B visas would return to the

current level of 65,000 in FY 2001; and (4) require a GAO report on the skill needs of the information technology industry. Second, even with the modest improvements in enforcement authority contained in H.R. 3736, the principal means for initiating an investigation of potential violations will remain complaints by visa holders, co-workers, and unsuccessful U.S. job applicants. For this reason, the Administration supports an amendment protecting "whistleblowers" from retaliation."



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LRM ID: IMS321 SUBJECT: LABOR and JUSTICE Report on HR3736 Workforce
Improvement and Protection Act of 1998

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

NSF

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3464

FROM: 512-98 (Date)
Anita Eisenstadt (Name)
National Science Foundation (Agency)
703-306-1060 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

☐ Concur
☐ No Objection
☐ No Comment
☐ See proposed edits on pages _____
☐ Other: _____
☒ FAX RETURN of 2 pages, attached to this response sheet

To: Julie Fernandez

NATIONAL SCIENCE FOUNDATION

4201 Wilson Boulevard
Arlington, VA 22230
(703) 306-1060



Office of the
General Counsel

MEMORANDUM

TO: Ingrid M. Schroeder, Legislative Analyst, OMB

FROM: Anita Eisenstadt, Assistant General Counsel *A.R.C.*

DATE: May 12, 1998

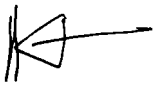
SUBJECT: LRM #IMS321; DOL/DOJ Report on H.R. 3736, the Workforce Improvement and Protection Act of 1998

Thank you for the opportunity to comment on the DOL/DOJ Report on the H.R. 3736, the Workforce Improvement and Protection Act of 1998. H.R. 3736 threatens serious damage to the U.S. scientific and engineering enterprise. It is crucial to the health of our Nation's science and engineering research enterprise to (1) allow academic institutions and other nonprofit research organizations to enhance their staff with international visitors in temporary limited term appointments, and (2) enable international collaborative researcher programs to have members of cooperating teams working together in the U.S. for short periods. The bill's recruit and retain requirements would no longer allow the H1-B visa program to be used for either of these legitimate purposes. Consequently, NSF does not agree with the report's endorsement of H.R. 3736.

NSF objects to the language in the third paragraph which endorses the bill's retain and recruitment requirements. These provisions would require an employer to hire any qualified U.S. worker for every temporary skilled position even if the U.S. worker is less qualified than the foreign worker. In fact, this would make it more difficult for universities to hire temporary foreign professors than permanent-visa professors. The exception for outstanding professors and researchers is far too narrow and would not even cover Federal agencies.

Furthermore, the bill does not provide an exemption from the recruitment requirement for international collaborative projects. This would preclude H1-Bs from being used as a visa vehicle for highly valuable international cooperative scientific activities. Such an exemption is essential. Consequently, NSF requests that the Administration ask for an exemption from the recruit and



retain requirements for international scientific collaborative projects. 

 NSF also opposes the report language endorsing the bill's definition of lay-off. The definition in H.R. 3736 is far too broad and includes terminations of Federal research grants and expiration of temporary appointments. Virtually no employer will be able to participate in the H-1B program under this broad definition of lay-off. Language should be added to the report indicating that the lay-off definition needs further refinement.

Finally, NSF ~~also~~ opposes the report language that states that any increase in the cap should be limited to three years. NSF believes that ~~a~~ five-year increase in the cap is warranted by the increasing globalization of both business and science.

In conclusion, while NSF supports additional scientific and technical training of U.S. workers through competitive training contracts or grants, NSF opposes legislation which jeopardizes continued international scientific exchange. If you have any questions, please feel free to call me at 703-306-1060.

not too stingy
on lay-off

 Watt — [exempt universities
+ non-profit research
institutions
from lay-off
(and recruit & retain)]

LRM ID: IMS321 SUBJECT: LABOR and JUSTICE Report on HR3736 Workforce
Improvement and Protection Act of 1998

Commerce

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO:

Ingrid M. Schroeder Phone: 305-3883 Fax: 305-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 305-2464

FROM:

5/12/98 (Date)
VanHanswyk (Name)
DOC (Agency)
482-2725 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

☐ Concur

☐ No Objection

☐ No Comment

☐ See proposed edits on pages _____

☒ Other: see attached memo w/

☐ FAX RETURN of _____ pages, attached to this response sheet

*Suggested
Changes,*

TO: Beth Vainauskas
From: Kent Hughes@Admin@OSEC
Cc:
Bcc:
Subject:
Attachment:
Date: 5/11/98 6:53 PM

Included in Things we
Think are nice

At the end of the first partial paragraph on page 2 (which ends with...last for only three years.) add the following new sentence. [In addition, we feel that any increase in the H-1B visa cap should be targeted at high skilled individuals with at least a ~~bachelors~~ ^{masters} degree, in science, mathematics or engineering.] (or degree equivalent)

In the second line of the first full paragraph on the second page put a period at the end of H-1B program. Start a new sentence "With the addition of a meaningful training provision, the targeting of the increase on science and engineering, and a modest reduction in the leve..."

we are not
here

LRM ID: IMS321 SUBJECT: LABOR and JUSTICE Report on HR3736 Workforce
Improvement and Protection Act of 1998

USTR

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: 5/12/98 (Date)
Peter Collins (Name)
USTR (Agency)
5-7271 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

☐ Concur
☐ No Objection
☐ No Comment
☒ See proposed edits on pages _____
☐ Other: _____
☐ FAX RETURN of 1 pages, attached to this response sheet

To: Julie Fernandes

is also concerned that the increase in the annual number of H-1B visas reflected in this bill is too large, although we agree that the increase should last for only three years.

The Administration believes that H.R. 3736 would substantially improve the current H-1B program and, with the addition of a meaningful training provision, and a modest reduction in the level of increase in the annual H-1B visa cap, would garner the Administration's support. We look forward to working with the Congress on these and other specific provisions in the bill.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

The Administration does not support provisions in the bill that would impose restrictions on use of the H-1-b program by any specific category of workers.

and modifications to make the bill consistent with U.S. international trade obligations,

O:\RYN\RYN98.351

Kennedy Amendments

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide whistleblower protection to foreign H-1B workers who file successful complaints against employers for violations of the H-1B program.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1723

To amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of United States firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KENNEDY

Viz:

1 On page 41, after line 16, insert the following:

2 SEC. ____ WHISTLEBLOWER PROTECTION.

3 Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as amended
4 by section 5 of this Act, is further amended—

5 (1) in subparagraph (C), by inserting “, or that
6 the employer has intimidated, discharged, or other-
7 wise ~~discriminated~~ ^{intimidated} against any person because that
8 person has asserted a right or has cooperated in an

1 investigation under this paragraph" after "a mate-
2 rial fact in an application"; and

3 (2) by adding at the end the following new sub-
4 paragraph:

5 "(F) Any alien admitted to the United States as a
6 nonimmigrant described in section 101(a)(15)(H)(i)(b),
7 who files a complaint pursuant to subparagraph (A) and
8 is otherwise eligible to remain and work in the United
9 States, shall be allowed to seek other employment in the
10 United States for the duration of the alien's authorized
11 admission, if—

12 "(i) the Secretary finds a failure by the em-
13 ployer to meet the conditions described in subpara-
14 graph (C), and

15 "(ii) the alien notifies the Immigration and
16 Naturalization Service of the name and address of
17 his new employer."

00

O:\RYN\RYN98.349

AMENDMENT NO. _____

Calendar No. _____

Purpose: To ensure that participating employers cannot lay off United States workers and replace them with temporary foreign workers under the H-1B visa program.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1723

To amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of United States firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. KENNEDY

Viz:

1 Beginning on page 30, strike line 12 and all that fol-
2 lows through line 21 on page 32.

3 On page 41, after line 16, add the following new sec-
4 tion:

1 SEC. ____ PROTECTION AGAINST DISPLACEMENT OF UNIT-
2 ED STATES WORKERS.

3 (a) IN GENERAL.—Section 212(n)(1) of the Immi-
4 gration and Nationality Act (8 U.S.C. 1182(n)(1)) is
5 amended by inserting after subparagraph (D) the follow-
6 ing:

7 “(E) The employer has not replaced any
8 United States worker with a nonimmigrant de-
9 scribed in section 101(a)(15)(H)(i) (b) or (c)—

10 “(i) within the 6-month period prior
11 to the filing of the application,

12 “(ii) during the 90-day period follow-
13 ing the filing of the application, and

14 “(iii) during the 90-day period imme-
15 diately preceding and following the filing of
16 any visa petition supported by the applica-
17 tion.”.

18 (b) DEFINITIONS.—Section 212(n) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1182(n)) is amended
20 by adding at the end the following:

21 “(3) For purposes of this subsection:

22 “(A) The term ‘replace’ means the employment
23 of the nonimmigrant, including by contract, em-
24 ployee leasing, temporary help agreement, or other
25 similar basis, at the specific place of employment
26 and in the specific employment opportunity from

1 which a United States worker with substantially
2 equivalent qualifications and experience in the spe-
3 cific employment opportunity has been laid off.

4 “(B) The term ‘laid off’, with respect to an in-
5 dividual, means the individual’s loss of employment
6 other than a discharge for inadequate performance,
7 violation of workplace rules, cause, voluntary depar-
8 ture, voluntary retirement, or the expiration of a
9 grant, contract, or other agreement. The term ‘laid
10 off’ does not include any situation in which the indi-
11 vidual involved is offered, as an alternative to such
12 loss of employment, a similar employment oppor-
13 tunity with the same employer at equivalent or high-
14 er compensation and benefits as the position from
15 which the employee was discharged, regardless of
16 whether or not the employee accepts the offer.

17 “(C) The term ‘United States worker’ means—

18 “(i) a citizen or national of the United
19 States,

20 “(ii) an alien who is lawfully admitted for
21 permanent residence, or

22 “(iii) an alien authorized to be employed
23 by this Act or by the Attorney General,

O:\RYN\RYN98.349

4

- 1 if the individual is employed, including employment
- 2 by contract, employee leasing, temporary help agree-
- 3 ment, or other similar basis."

O:\RYN\RYN98.350

AMENDMENT NO. _____

Calendar No. _____

Purpose: To ensure that employers recruit qualified United States workers first, before applying for foreign workers under the H-1B visa program.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1723

To amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of United States firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KENNEDY

Viz:

1 On page 41, after line 16, insert the following new

2 section:

3 SEC. ____ RECRUITMENT OF UNITED STATES WORKERS

4 PRIOR TO SEEKING TEMPORARY FOREIGN

5 WORKERS UNDER THE "H-1B VISA" PRO-

6 GRAM.

7 (a) IN GENERAL.—Section 212(n)(1) of the Immi-

8 gration and Nationality Act (8 U.S.C. 1182(n)(1)) is

1 amended by inserting after subparagraph (D) the follow-
2 ing new subparagraph:

3 “(E)(i) The employer, prior to filing the
4 application, has taken timely, significant, and
5 effective steps to recruit and retain sufficient
6 United States workers in the specialty occupa-
7 tion in which the nonimmigrant whose services
8 are being sought will be employed. Such steps
9 include good faith recruitment in the United
10 States, using procedures that meet industry-
11 wide standards, offering compensation that is
12 at least as great as that required to be offered
13 to nonimmigrants under subparagraph (A), and
14 offering employment to any qualified United
15 States worker who applies.

16 “(ii) Clause (i) shall not apply with respect
17 to aliens seeking admission or status as non-
18 immigrants described in section
19 101(a)(15)(H)(i)(b) who are—

20 “(I) aliens with extraordinary ability,
21 aliens who are outstanding professors and
22 researchers, or certain multinational execu-
23 tives and managers described in section
24 203(b)(1), or

O:\RYN\RYN98.350

3

1 “(II) aliens coming as researchers or
2 *faculty* at an institution of higher edu-
3 cation (as defined in section 1201(a) of the
4 Higher Education Act of 1965; 20 U.S.C.
5 1141(a)) (or a related or affiliated non-
6 profit entity of such institution) or a non-
7 profit or Federal research institute or
8 agency.”.

***** -COMM. JOURNAL- *****

MODE = MEMORY TRANSMISSION

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***** (202) 395-3109 - ***** 202 395 3109- *****

LRM ID: IMS328 SUBJECT: Revised LABOR and JUSTICE Report on HR3736 Workforce Improvement and Protection Act of 1998

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 305-3688 Fax: 305 3100
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 305-3464

FROM: 5/18/98 (Date)
Beth VanHanswyk (Name)
DOC (Agency)
482-2725 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

☐ Concur
☐ No Objection
☐ No Comment
☒ See proposed edit on page 2
Other: _____
☒ FAX RETURN of 2 pages, attached to this response sheet

Per our conversation

To: Julie Fernandes

LRM ID: IMS328

SUBJECT: Revised LABOR and JUSTICE Report on HR3736 Workforce Improvement and Protection Act of 1999

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Per our conversation

To: Julie Fernandes

opportunities for U.S. workers and believes that this training should be funded in part, through a modest H-1B application fee paid by employers.

The Administration is also concerned that the increase in the annual number of H-1B visas reflected in this bill is too large, although we agree that the increase should last for only three years. In addition, the Administration ~~does not support~~ provisions in the bill that would impose occupation-based restrictions on the first 85,000 H-1B visas, may be viewed by our trading partners as inconsistent with our international trade obligations.

The Administration believes that the reforms included in H.R. 3736 would substantially improve the current H-1B program. With the addition of a meaningful training provision, a modest reduction in the level of increase in the annual H-1B visa cap, and modifications to make the bill consistent with U.S. international trade obligations, H.R. 3736 would garner the Administration's strong support. However, if amendments are adopted that substantially weaken the reform or enforcement provisions of H.R. 3736 or if meaningful provisions for increasing the skill levels of U.S. workers are not adopted, the Secretary of Labor and the Attorney General would recommend that the President veto this legislation.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JANET RENO
Attorney General

ALEXIS HERMAN
Secretary of Labor

Proposed
edit by ONP
OK
tent
would Hughes
any other
guarantee
style
in days



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 11, 1998 (SENT)
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 1723 - American Competitiveness Act (Abraham (R) Michigan and 15 cosponsors)

S. 1723, "The American Competitiveness Act," is intended to respond to a reported skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B program. For the reasons outlined below, the Administration strongly opposes Senate passage of S. 1723. If S. 1723 were presented to the President, the Secretary of Labor would recommend that the bill be vetoed.

Regrettably, S. 1723 emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers. The bill's temporary increase in the annual number of H-1B visas is too large (up to 115,000) and lasts too long (5 years). In addition, the bill does not help ensure that U.S. workers do not lose their jobs to temporary foreign workers. Nor does the bill ensure that employers have made serious efforts to recruit U.S. workers for open positions so that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired. Moreover, rather than strengthening program requirements and enforcement to prevent employer abuses of the H-1B program, S. 1723 undermines some of the program's important enforcement provisions.

Since 1993 the Administration has sought reforms of the H-1B program, including: (1) requiring employers to make bona fide efforts to recruit and retain U.S. workers before hiring temporary foreign workers; and (2) prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers. These reforms, if enacted, would help target H-1B usage to industries and employers that are experiencing skill shortages.

Also, the Administration believes that the first response for increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. S. 1723 includes an authorization for a scholarship fund and a small fund to train dislocated workers, but it provides no funding for these programs. The Administration believes that increased training opportunities for U.S. workers should be funded, in part, through a modest H-1B application fee paid by employers. In addition, the Administration has called upon the private sector to establish training programs and partnerships with educational institutions to give U.S. workers the skills needed for these jobs. It also has urged industry to reach out to dislocated workers as well as segments of the labor force underrepresented in high skilled jobs. The Administration is eager to work with industry to help create these programs and partnerships.

*Add Language
about
Private
Sector*

H1B Qs

- ① where are we in the House (?)
- ② Prospects for Sen. amendment
- ③ Move for Gene to do (?)

Alan: intell. (Smith's counsel)
not marked up tomorrow

INS

no objection so far.

10am

this afternoon

4 weak sisters in House ⊕ Lofgren

Massachusetts - Delahunt, Frank
Meehan.

NJ - Rothman

Rep. support (?)

Peter concerned about univ. loophole
for universities (recruit & retain)

need to see

see this

Laban
work
on

AFL wants

- ① study of shortage problem
- ② Limit occupational scope of the increase
(possible Congress amendment)
- ③ whistle-blower amendment
- ④ make clear that a sunset is in Smith's bill

Letter:

Seth wants to know if we get 3 secs.

Peter: → If can't get 3 secs,
veto language (?)

Problem — Kennedy lay-off promise
(is this better than no lay-off
attestation)
Smith will not survive conference.

Term thinks this is a real problem.

DOL would rather that this be what comes out of
conference than to go in w/ this.

Peter asked Michael to draft no lay-off law
that could pass.

Representative Merril Cook
125 South State Street
Salt Lake City, Utah 84138

Saturday, January 31, 1998

Dear Representative Cook:

I am writing as a "Concerned Citizen" because I am concerned about possible retaliation from my employer. I am in a University of Utah research group that is supported by the National Science Foundation with funds from United States taxpayers. The group, according to the supervisor, was running short of funds last November, and did not expect to be able to continue an employee past June or September, depending on circumstances which included the employee being willing to taking on other responsibilities for which he was not hired. This employee had accepted a 3 year offer of employment as a Research Associate which began on 15 November 1996. The early termination this year is to be done under the "subject to availability of funds" clause in the 3 year offer. In December, another member of the group resigned his position to work elsewhere. The group then needed to replace the person who was leaving. This Research Associate has submitted a plan to replace the employee who has left continuing for the rest of this Research Associate's 3 year period, to November 1999. Instead, the group has apparently offered the position of Research Associate to a non-resident non-citizen living in China. The physics department has posted an intent to hire a non-resident alien and notice of application for a visa for a non-resident alien starting 01 March 1998 (one month from now). I therefore ask you and the INS to look into whether this visa is allowed for the case of when the non-resident alien may be replacing a resident employee. There is some disagreement between the supervisor and the employee over whether the position is sufficiently similar: the supervisor saying the non-resident alien has had particular experience that the current Research Associate does not have, but the current Research Associate believes that in the year that he has worked for the group the tasks which he has been given have not allowed him the opportunity to get this experience even though from the beginning the current Research Associate has done his best to get as much of this experience as he could be manage, and the current Research Associate knows the needed computer languages and is working with the necessary science. The current Research Associate is familiar with the experiment done here in Utah; the non-resident is not. The non-resident alien would be hired at the same "Research Associate" level, according to the notice posted by the physics department.

I realize that the 01 March 1998 starting date for the non-resident alien puts a rush on being able to learn from you what options are available before the government decides whether to approve a visa for the non-resident. Regarding what I can find out at the university, not all the information regarding the hiring and visa application has been available to me and I am not experienced in what sources of recourse are available. I am concerned about retaliation should my supervisor find out that an investigation of this

visa application have been prompted by a question. My concerns include making it more difficult for me to find a new job if my supervisor chooses to send poor letters of recommendation or refuses to send any letters of recommendation. But I hope that there are regulations governing the replacement of a resident employee by a non-resident alien that may protect the current Research Associate, particularly as the job market in federally funded basic science is so bad for U.S. citizens and residents, and bringing in non-residents will only make the situation worse for this job market. If this situation is looked into at the university, could it be done discretely that it not be told that the situation is being investigated due to a complaint?

Thank-you.

Sincerely,

- /—

A Concerned Citizen



HOUSE OF REPRESENTATIVES

WASHINGTON, D. C. 20515

April 24, 1998

JAMES P. MORAN
8TH DISTRICT OF VIRGINIA

Mr. Gene Sperling
Director
National Economic Council
Executive Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Gene:

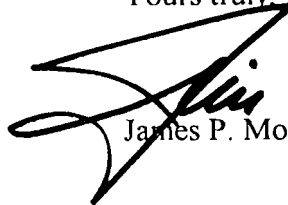
I enjoyed speaking with you yesterday and appreciate your interest in my Regional Skills Alliance legislation.

As I mentioned, this legislation builds on the successful Manufacturing Extension Program and provides federal support to leverage industry and state investment in employee training. The training is used to address specific regional needs and can be used to help address the high technology worker shortage or other workforce shortages. Like the Manufacturing Extension Program, the federal investment is limited, but produces great results.

I know the Administration is interested in promoting workforce training initiatives as an alternative or complement to Congressional efforts to increase the H-1B program. I hope you will consider supporting the Regional Skills Alliance as part of that effort.

Thank you for your consideration. Please have your staff contact Mike Brown in my office at 226-0018 if you need any additional information.

Yours truly,



James P. Moran

JPM/mtb

105TH CONGRESS
2D SESSION

H. R. 3270

To authorize the Secretary of Commerce to provide grants to improve the job skills necessary for employment in specific industries.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 1998

Mr. MORAN of Virginia (for himself, Mr. DAVIS of Virginia, Ms. STABENOW, Mr. ADAM SMITH of Washington, Mr. SAWYER, Ms. HOOLEY of Oregon, Ms. CHRISTIAN-GREEN, and Mr. RUSH) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To authorize the Secretary of Commerce to provide grants to improve the job skills necessary for employment in specific industries.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Regional Skills Train-
5 ing Alliances Act of 1998”.

6 **SEC. 2. AUTHORIZATION.**

7 (a) IN GENERAL.—The Secretary of Commerce, act-
8 ing through the Director of the National Institute of
9 Standards and Technology, and in consultation with the

1 Secretary of Labor, shall provide grants to eligible entities
2 described in subsection (b) to assist such entities to im-
3 prove the job skills necessary for employment in specific
4 industries.

5 (b) ELIGIBLE ENTITIES DESCRIBED.—

6 (1) IN GENERAL.—An eligible entity described
7 in this subsection is a consortium that—

8 (A) shall consist of representatives from
9 not less than 10 businesses (or a nonprofit or-
10 ganization that represents not less than 10
11 businesses); and

12 (B) may consist of representatives from
13 one or more of the following:

14 (i) Labor organizations.

15 (ii) State and local government.

16 (iii) Educational institutions.

17 (iv) Nonprofit organizations that rep-
18 resent businesses.

19 (2) ADDITIONAL REQUIREMENT.—To the maxi-
20 mum extent practicable, each business, organization,
21 or government that forms an eligible entity under
22 paragraph (1) shall be located in the same geo-
23 graphic region of the United States.

24 (c) PRIORITY FOR SMALL BUSINESSES.—In provid-
25 ing grants under subsection (a), the Secretary shall give

1 priority to eligible entities that consist of a majority of
2 representatives from small businesses.

3 (d) MAXIMUM AMOUNT OF GRANT.—The amount of
4 a grant provided to an eligible entity under subsection (a)
5 may not exceed \$1,000,000 for any fiscal year.

6 **SEC. 3. APPLICATION.**

7 The Secretary may not provide a grant under section
8 2 to an eligible entity unless such entity submits to the
9 Secretary an application containing such information as
10 the Secretary may reasonably require.

11 **SEC. 4. USE OF AMOUNTS.**

12 (a) IN GENERAL.—The Secretary may not provide a
13 grant under section 2 to an eligible entity unless such en-
14 tity agrees to use amounts received from such grant to
15 improve the job skills necessary for employment by busi-
16 nesses in the industry with respect to which such entity
17 was established.

18 (b) CONDUCT OF PROGRAM.—

19 (1) IN GENERAL.—In carrying out the program
20 described in subsection (a), the eligible entity may
21 provide for—

22 (A) an assessment of training and job skill
23 needs for the industry;

1 (B) development of a sequence of skill
2 standards that are benchmarked to advanced
3 industry practices;

4 (C) development of curriculum and train-
5 ing methods;

6 (D) purchase, lease, or receipt of donations
7 of training equipment;

8 (E) identification and development of
9 training providers;

10 (F) development of apprenticeship pro-
11 grams; and

12 (G) development of training programs for
13 dislocated workers.

14 (2) ADDITIONAL REQUIREMENT.—In carrying
15 out the program described in subsection (a), the eli-
16 gible entity shall provide for development and track-
17 ing of performance outcome measures.

18 (c) ADMINISTRATIVE COSTS.—The eligible entity
19 may use not more than 50 percent of the amount of a
20 grant to pay for administrative costs associated with the
21 program described in subsection (a).

22 **SEC. 5. REQUIREMENT OF MATCHING FUNDS.**

23 The Secretary may not provide a grant under section
24 2 to an eligible entity unless such entity agrees that—

1 (1) it will make available non-Federal contribu-
2 tions toward the costs of carrying out activities
3 under section 4 in an amount that is not less than
4 \$2 for each \$1 of Federal funds provided under a
5 grant under section 2; and

6 (2) of such non-Federal contributions, not less
7 than \$1 of each such \$2 shall be from businesses
8 participating in the eligible entity.

9 **SEC. 6. DEFINITION.**

10 For purposes of this Act, the term "Secretary"
11 means the Secretary of Commerce.

12 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated to carry out
14 this Act \$50,000,000 for each of the fiscal years 1999,
15 2000, and 2001.

○

Talking Points on Regional Skills Alliances

- The Regional Skill Alliance proposal is based on the Manufacturing Extension Program operated by the Department of Commerce and is designed to help region's address their workforce shortage problems through the efforts of a broad consortium.
- The bill would establish several regional skills alliances across the country through which employers, public agencies, schools, and sometimes even labor unions, would pool resources to train workers for region-wide emerging job opportunities.
- These consortia will be designed to help the hundreds of thousands of Americans are in jobs threatened by economic and technological transition into the industries, especially in the high-tech sectors, that are facing workforce shortages.
- Training is the key to linking this potential supply of skilled workers to the powerful demand.
 - Current training programs, however, are insufficient to address this problem.
 - Federal programs such as the Job Training Partnership Act do not place workers in these types of positions and the firms themselves are either unable or unwilling to adequately train employees.
 - This is partly because so many high-tech employers are small enterprises without the resources for large-scale training, and partly because employers are reluctant to pay for skills that enable employees to move on to another job.
- The Regional Skill Alliances program has been used successfully in a number of areas.
 - In Wisconsin, metal-working firms got together with the AFL-CIO in a publicly sponsored effort that used an abandoned mill building as a teaching factory, teaching workers essential skills on state-of-the-art manufacturing equipment.
 - In Rhode Island, the state helped develop a skills alliance among plastics firms, who then worked with a local community college to create a polymer training laboratory linked to an apprenticeship program that guarantees jobs for graduates.
 - And in Washington, DC, telecommunications firms donated computers and helped set up a program to train public high school students to be

computer network administrators. The firms are now hiring graduates of the program at an entry-level salary of \$25,000-30,000.

- The Regional Skills Alliances Act will expand on these limited efforts and help develop such consortia across the country.
 - The bill would offer \$1 in federal grants, up to \$1 million, for every \$2 invested by local governments and the private sector. The grant program would be authorized at \$50 million annually to support industry-led, regional skills alliances.
 - Funds would be allocated through a competitive grant process, with consortia of firms as applicants. Federal support would be limited to three years, after which the efforts would be required to be self-supporting. Successful applicants would:
 1. Have meaningful participation with a large number of firms, ideally at least 10 firms and/or employing at least 50% of the workers in that industry in the region.
 2. Be industry-led (e.g., board of directors predominantly made up of industry, with state and local officials, educational leaders, and union officials also eligible as participants): Regional chapters of industry trade associations would be eligible to apply.
 3. Be sector-based: the efforts would have to be organized around one or more industry sectors.
 4. Provide a 2 to 1 match for federal funds. For every \$1 in federal funds, state and/or local government would need to provide at least \$1, and industry \$1. Industry equipment donations to shared, off-site facilities (e.g., community colleges) would count as matching, while “in-kind” donations would not, but would be considered in ranking proposals.