

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION
SENATOR EDWARD M. KENNEDY

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FAX MEMORANDUM

TO: Julia Fernandez
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FROM: Michael Myers
DATE: 9 Mar 98

NUMBER OF PAGES, INCLUDING COVER SHEET 13

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MESSAGE:

Kennedy draft bill on
H-1B (High-Tech & others) Visas

3-9-98

DRAFT

105TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to authorize a temporary increase in the number of skilled foreign workers admitted to the United States, to improve efforts to recruit United States workers in lieu of foreign workers, and to enforce labor conditions regarding non-immigrant aliens.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "High-Tech Immigra-
5 tion and United States Worker Protection Act".

1 **SEC. 2. TEMPORARY INCREASE IN SKILLED FOREIGN**
2 **WORKERS.**

3 Section 214(g)(1) of the Immigration and Nationality
4 Act (8 U.S.C. 1184(g)(1)) is amended to read:

5 “(g)(1) The total number of aliens who may be issued
6 visas or otherwise provided nonimmigrant status during
7 any fiscal year—

8 “(A) under section 101(a)(15)(H)(i)(b), may
9 not exceed 90,000 in each of fiscal years 1998,
10 1999, and 2000, 80,000 in fiscal year 2001, or
11 65,000 in fiscal year 2002 or any fiscal year there-
12 after, except that in each of fiscal years 1999
13 through 2001, not more than 5,000 of the visas or
14 grants of status may be provided to aliens described
15 in section 212(a)(5)(C); and

16 “(B) under section 101(a)(15)(H)(ii)(b), may
17 not exceed 41,000 in each of fiscal years 1998,
18 1999, and 2000, 51,000 in fiscal year 2001, or
19 66,000 in fiscal year 2002 or any fiscal year there-
20 after.”.

21 **SEC. 3. GAO STUDY AND REPORT ON LABOR MARKET**
22 **NEEDS.**

23 (a) STUDY.—The Comptroller General of the United
24 States shall conduct a study assessing labor market needs
25 for workers with high technology skills in the information
26 technology industry and the extent to which job openings

1 requiring workers with those skills are likely to be unfilled
2 in each of the fiscal years 2001 through 2006.

3 (b) REPORT.—Not later than October 1, 2000, the
4 Comptroller General shall submit a report containing his
5 findings to the Committees on the Judiciary of the House
6 of Representatives and the Senate.

7 **SEC. 4. LABOR DEPARTMENT LOAN PROGRAM FOR TRAIN-**
8 **ING HIGH TECHNOLOGY WORKERS.**

9 (a) IN GENERAL.—There is established in the De-
10 partment of Labor a program to provide individuals with
11 loans to obtain training necessary for employment in high
12 technology industries in the United States. Loans provided
13 under this section shall not exceed \$10,000 a person.

14 (b) PROGRAM REQUIREMENTS.—The Secretary of
15 Labor shall establish criteria for implementing the loan
16 program described in subsection (a), which include the fol-
17 lowing:

18 (1) QUALIFICATIONS OF INDIVIDUALS.—The
19 loan program shall provide that individuals receiving
20 a loan under this section—

21 (A) have sufficient education or experience
22 to enable them to qualify for employment in
23 high technology industries with limited addi-
24 tional training;

1 (B) are of working age and are United
2 States citizens or qualified aliens described in
3 section 431 of the Personal Responsibility and
4 Work Reconciliation Act of 1996 (8 U.S.C.
5 1641); and

6 (C) repay the loan in full not later than 4
7 years after completing the training for which
8 the individual received the loan.

9 (2) CERTIFICATION.—The loan program shall
10 be available only for training courses that the Sec-
11 retary of Labor has certified as appropriate to ob-
12 tain employment in high technology industries in the
13 United States.

14 (3) OTHER CRITERIA.—The Secretary of Labor
15 shall establish such other criteria as the Secretary
16 determines to be appropriate with respect to certify-
17 ing courses that qualify for the loan program, identi-
18 fying industries that qualify as high technology in-
19 dustries in the United States, identifying individuals
20 who qualify for loans under the program, and carry-
21 ing out the provisions of this section.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated \$50,000,000 for fiscal
24 year 1999, and each fiscal year thereafter, to carry out
25 the provisions of this section.

1 **SEC. 5. ENFORCEMENT OF LABOR CONDITIONS FOR NON-**
2 **IMMIGRANTS.**

3 Section 212(n) of the Immigration and Nationality
4 Act (8 U.S.C. 1182(n)) is amended—

*Labor
applic.
(prior to
HAB)*

5 (1) in paragraph (2)(A), by striking the first
6 sentence and inserting the following: "The Sec-
7 retary, pursuant to a complaint or upon initiation by
8 the Secretary, shall conduct an investigation where
9 there is reasonable cause to believe that an employer
10 has made a misrepresentation of a material fact on
11 a labor condition attestation or has failed to comply
12 with the terms and conditions of an application sub-
13 mitted under paragraph (1) or with the provisions of
14 this section or any rule or regulation pertaining to
15 this section. The Secretary shall establish a process
16 for the receipt, investigation, and disposition of com-
17 plaints or other cases of noncompliance with this
18 section.";

19 (2) in paragraph (2)(C), by inserting " , or that
20 the employer failed to cooperate in the conduct of
21 the Secretary's investigation or has intimidated, dis-
22 charged, or otherwise discriminated against any per-
23 son because that person has asserted a right or has
24 cooperated in an investigation under this paragraph"
25 after "a material fact in an application";

1 (3) by striking clause (i) of paragraph (2)(C)
2 and inserting the following:

3 “(i) the Secretary shall notify the Attorney
4 General of such finding and may, in addition,
5 impose such other administrative remedies as
6 the Secretary determines to be appropriate, as-
7 sess civil money penalties in an amount not to
8 exceed \$10,000 for each violation, with such
9 penalties to be deposited for use in the loan
10 program established under section 4 of the
11 High-Tech Immigration and United States
12 Worker Protection Act.”; and

13 (4) by adding at the end the following new
14 paragraph:

15 “(3)(A) The Secretary of Labor shall require
16 payment of a fee by the employer for each applica-
17 tion filed under this subsection. The fee shall be in
18 an amount prescribed by the Secretary of Labor,
19 and shall be paid to the Department of Labor.

20 “(B)(i) Such fee shall be used only—

21 “(I) to defray the cost of processing labor
22 condition applications and for personnel and
23 other costs directly associated with administer-
24 ing and enforcing the requirements applicable

1 to aliens described in section
2 101(a)(15)(H)(i)(b); and

3 “(II) to endow the loan program estab-
4 lished under section 4 of the High-Tech Immi-
5 gration and United States Worker Protection
6 Act.

7 “(ii) During the period ending September 30,
8 2001, such fee shall not exceed \$500.

9 “(iii) Not less than \$5,000,000 of the funds col-
10 lected through the fee authorized under this para-
11 graph shall be available for the purposes described
12 in paragraph (2)(A) and shall cover the costs to the
13 Department of Labor of conducting regular, random
14 audits relating to the attestations under this sub-
15 section and of engaging in other enforcement activi-
16 ties in connection with this subsection.

17 “(iv) Fees collected under this paragraph shall
18 be available to the Department of Labor, without re-
19 gard to appropriation Acts and without fiscal year
20 limitation, to supplement funds otherwise available
21 to the Department of Labor.

22 “(v) It shall be unlawful for an employer to re-
23 quire, as a condition of employment by such em-
24 ployer, that the fee prescribed under this paragraph,

1 or any part of the fee, be paid directly or indirectly
2 by the alien whose services are being sought.

3 “(vi) Any person or entity that is determined,
4 after notice and opportunity for an administrative
5 hearing, to have violated clause (v) shall be subject
6 to a civil penalty of \$5,000 for each violation, to an
7 administrative order requiring the payment of any
8 fee described in this paragraph, and to disqualifica-
9 tion for 1 year from petitioning for foreign skilled
10 temporary workers under this subsection.

11 “(vii) Any amount determined to have been
12 paid, directly or indirectly, to the fund by the alien
13 whose services were sought, shall be repaid from the
14 fund to such alien.”.

15 **SEC. 6. RECRUITMENT OF UNITED STATES WORKERS**
16 **PRIOR TO SEEKING NONIMMIGRANT WORK-**
17 **ERS.**

18 (a) IN GENERAL.—Section 212(n)(1) of the Immi-
19 gration and Nationality Act (8 U.S.C. 1182(n)(1)) is
20 amended by inserting at the end the following new sub-
21 paragraph:

22 “(E) The Secretary may issue subpoenas re-
23 quiring the attendance and testimony of witnesses or
24 the production of any records, books, papers, or doc-
25 uments in connection with any investigation or hear-

W-109 10
200

1 ing, conducted under this paragraph. In conducting
2 a hearing, the Secretary may administer oaths, ex-
3 amine witnesses, and receive evidence. For the pur-
4 pose of any hearing or investigation provided for in
5 this paragraph, the authority contained in sections 9
6 and 10 of the Federal Trade Commission Act (15
7 U.S.C. 49 and 50), relating to the attendance of wit-
8 nesses and the production of books, papers, and doc-
9 uments, shall apply.

10 “(F)(i) The employer, prior to filing the appli-
11 cation, has taken timely, significant, and effective
12 steps to recruit and retain sufficient United States
13 workers in the specialty occupation in which the
14 nonimmigrant whose services are being sought will
15 be employed. Such steps include good faith recruit-
16 ment in the United States using procedures that
17 meet industry-wide standards offering compensation
18 as required by subparagraph (A).

19 “(ii) The employer must offer employment to
20 any qualified United States worker applicant or such
21 good faith recruitment must otherwise be unsucces-
22 ful.

23 “(iii) The recruitment requirements of this sub-
24 paragraph shall not apply to aliens with extraor-
25 dinary ability, aliens who are outstanding professors

1 and researchers, and certain multinational executives
2 and managers, described in section 203(b)(1).

3 (b) WAGE COMPARABILITY.—Section 212(n)(1)(A)(i)
4 of such Act is amended by inserting “(including wages,
5 benefits, and all other compensation)” after “wage level”
6 each place it appears.

7 **SEC. 7. NONDISPLACEMENT OF UNITED STATES WORKERS.**

8 Section 212(n) of the Immigration and Nationality
9 Act (8 U.S.C. 1182(n)), as amended by section 5, is
10 amended by adding at the end the following new para-
11 graph:

12 “(4)(A) The employer—

13 “(i) has not, within the 6-month period
14 prior to the filing of the application, laid off or
15 otherwise displaced any United States worker
16 (as defined in subparagraph (B), including a
17 worker obtained by contract, employee leasing,
18 temporary help agreement, or other similar
19 basis, who has substantially equivalent quali-
20 fications and experience in the occupation clas-
21 sification for the position in which the non-
22 immigrant is intended to be (or is) employed;
23 and

24 “(ii) will not lay off or otherwise knowingly
25 displace, during the 90-day period following the

1 filing of the application, or during the 90-day
2 period immediately preceding and following the
3 filing of any visa petition supported by the ap-
4 plication, any United States worker, including
5 any worker obtained by contract, who has sub-
6 stantially equivalent qualifications and experi-
7 ence in the occupation classification for the po-
8 sition in which the nonimmigrant is intended to
9 be (or is) employed.

10 “(B) For purposes of this subsection, the term
11 ‘United States worker’ means—

12 “(i) a citizen or national of the United
13 States;

14 “(ii) an alien lawfully admitted to the
15 United States for permanent residence; or

16 “(iii) an alien authorized to be employed
17 by this Act or by the Attorney General.

18 “(C) For purposes of this subparagraph, the
19 term ‘laid off’, with respect to an employee, means
20 the employee’s loss of employment, other than a dis-
21 charge for cause or a voluntary departure or vol-
22 untary retirement. The term ‘laid off’ does not apply
23 to any case in which employment is relocated to a
24 different geographic area and the affected employee
25 is offered a chance to move to the new location with

○

- 1 the same wages and benefits but elects not to move
- 2 to the new location.”.

Total Pages: _____

LRM ID: IMS288

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Monday, April 6, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference *James J. Jukes*

OMB CONTACT: Ingrid M. Schroeder *Ingrid M. Schroeder*

SUBJECT: OMB Request for Views on S1723 American Competitiveness Act

DEADLINE: Noon Wednesday, April 8, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: S. 1723 was reported (as amended) from the Senate Judiciary Committee on 4/2/98.

Please provide comments ASAP (before the above deadline if possible). Agency comments on the amended version of S. 1723 will be used ~~in~~ an NEC/DPC principals meeting which will be scheduled this week. *to prepare for*

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SUBJECT: OMB Request for Views on S1723 American Competitiveness

**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: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (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 _____ pages, attached to this response sheet

II

Calendar No. 335**105TH CONGRESS
2D SESSION****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.

IN THE SENATE OF THE UNITED STATES**MARCH 6, 1998**

Mr. ABRAHAM (for himself, Mr. HATCH, Mr. MCCAIN, Mr. DEWINE, Mr. SPECTER, Mr. GRAMS, Mr. BROWNBACK, Mr. THURMOND, Mr. SANTORUM, Mr. ASHCROFT, Mr. SMITH of Oregon, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 2, 1998**Reported by Mr. HATCH, with an amendment****[Strike out all after the enacting clause and insert the part printed in *italics*]**

A BILL

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.

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; REFERENCES IN ACT.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “American Competitiveness Act”.

6 (b) **REFERENCES IN ACT.**—Except as otherwise spe-
7 cifically provided in this Act, whenever in this Act an
8 amendment or repeal is expressed as an amendment to
9 or a repeal of a provision, the reference shall be deemed
10 to be made to the Immigration and Nationality Act (8
11 U.S.C. 1101 et seq.).

12 **SEC. 2. FINDINGS.**

13 Congress makes the following findings:

14 (1) American companies today are engaged in
15 fierce competition in global markets.

16 (2) Companies across America are faced with
17 severe high skill labor shortages that threaten their
18 competitiveness.

19 (3) The National Software Alliance, a consor-
20 tium of concerned government, industry, and aca-
21 demic leaders that includes the United States Army,
22 Navy, and Air Force, has concluded that “The sup-
23 ply of computer science graduates is far short of the
24 number needed by industry.” The Alliance con-

1 SEC. 8. ACADEMIC HONORARIA.

2 Section 212 (8 U.S.C. 1182) is amended by adding
3 at the end the following new subsection:

4 "(p) Any alien admitted under section 101(a)(15)(B)
5 may accept an honorarium payment and associated inci-
6 dental expenses for a usual academic activity or activities,
7 as defined by the Attorney General in consultation with
8 the Secretary of Education, if such payment is offered by
9 an institution of higher education (as defined in section
10 1201(a) of the Higher Education Act of 1965) or other
11 nonprofit entity and is made for services conducted for
12 the benefit of that institution or entity."

13 SECTION 1. SHORT TITLE; REFERENCES IN ACT.

14 (a) *SHORT TITLE.*—This Act may be cited as the
15 "American Competitiveness Act".

16 (b) *REFERENCES IN ACT.*—Except as otherwise spe-
17 cifically provided in this Act, whenever in this Act an
18 amendment or repeal is expressed as an amendment to or
19 a repeal of a provision, the reference shall be deemed to be
20 made to the Immigration and Nationality Act (8 U.S.C.
21 1101 et seq.).

22 SEC. 2. FINDINGS.

23 Congress makes the following findings:

24 (1) American companies today are engaged in
25 fierce competition in global markets.

1 (2) *Companies across America are faced with se-*
2 *vere high skill labor shortages that threaten their com-*
3 *petitiveness.*

4 (3) *The National Software Alliance, a consor-*
5 *tium of concerned government, industry, and aca-*
6 *demie leaders that includes the United States Army,*
7 *Navy, and Air Force, has concluded that "The supply*
8 *of computer science graduates is far short of the num-*
9 *ber needed by industry." The Alliance concludes that*
10 *the current severe understaffing could lead to infla-*
11 *tion and lower productivity.*

12 (4) *The Department of Labor projects that the*
13 *United States economy will produce more than*
14 *130,000 information technology jobs in each of the*
15 *next 10 years, for a total of more than 1,300,000.*

16 (5) *Between 1986 and 1995, the number of bach-*
17 *elor's degrees awarded in computer science declined*
18 *by 42 percent. Therefore, any short-term increases in*
19 *enrollment may only return the United States to the*
20 *1986 level of graduates and take several years to*
21 *produce these additional graduates.*

22 (6) *A study conducted by Virginia Tech for the*
23 *Information Technology Association of America esti-*
24 *mates that there are more than 340,000 unfilled posi-*

1 *tions for highly skilled information technology work-*
2 *ers in American companies.*

3 (7) *The Hudson Institute estimates that the*
4 *unaddressed shortage of skilled workers throughout the*
5 *United States economy will result in a 5-percent drop*
6 *in the growth rate of GDP. That translates into ap-*
7 *proximately \$200,000,000,000 in lost output, nearly*
8 *\$1,000 for every American.*

9 (8) *It is necessary to deal with the current situa-*
10 *tion with both short-term and long-term measures.*

11 (9) *In fiscal year 1997, United States companies*
12 *and universities reached the cap of 65,000 on H-1B*
13 *temporary visas a month before the end of the fiscal*
14 *year. In fiscal year 1998 the cap is expected to be*
15 *reached as early as May if Congress takes no action.*
16 *And it will be hit earlier each year until backlogs de-*
17 *velop of such a magnitude as to prevent United States*
18 *companies and researchers from having any timely*
19 *access to skilled foreign-born professionals.*

20 (10) *It is vital that more American young people*
21 *be encouraged and equipped to enter technical fields,*
22 *such as mathematics, engineering, and computer*
23 *science.*

24 (11) *If American companies cannot find home-*
25 *grown talent, and if they cannot bring talent to this*

1 country, a large number are likely to move key oper-
2 ations overseas, sending those and related American
3 jobs with them.

4 (12) Inaction in these areas will carry signifi-
5 cant consequences for the future of American competi-
6 tiveness around the world and will seriously under-
7 mine efforts to create and keep jobs in the United
8 States.

9 **SEC. 3. INCREASED ACCESS TO SKILLED PERSONNEL FOR**
10 **UNITED STATES COMPANIES AND UNIVER-**
11 **SITIES.**

12 (a) *ESTABLISHMENT OF H1-C NONIMMIGRANT CAT-*
13 *EGORY.—*

14 (1) *IN GENERAL.—*Section 101(a)(15)(II)(i) (8
15 U.S.C. 1101(a)(15)(H)(i)) is amended—

16 (A) by inserting “and other than services
17 described in clause (c)” after “subparagraph (O)
18 or (P)”; and

19 (B) by inserting after “section 212(n)(1)”
20 the following: “, or (c) who is coming tempo-
21 rarily to the United States to perform labor as
22 a health care worker, other than a physician, in
23 a specialty occupation described in section
24 214(i)(1), who meets the requirements of the oc-
25 cupation specified in section 214(i)(2), who

1 *qualifies for the exemption from the grounds of*
2 *inadmissibility described in section 212(a)(5)(C),*
3 *and with respect to whom the Attorney General*
4 *certifies that the intending employer has filed*
5 *with the Attorney General an application under*
6 *section 212(n)(1).".*

7 (2) *CONFORMING AMENDMENTS.—*

8 (A) *Section 212(n)(1) is amended by insert-*
9 *ing "or (c)" after "section 101(a)(15)(H)(i)(b)"*
10 *each place it appears.*

11 (B) *Section 214(i) is amended by inserting*
12 *"or (c)" after "section 101(a)(15)(H)(i)(b)" each*
13 *place it appears.*

14 (3) *TRANSITION RULE.—Any petition filed prior*
15 *to the date of enactment of this Act, for issuance of*
16 *a visa under section 101(a)(15)(H)(i)(b) of the Immi-*
17 *gration and Nationality Act on behalf of an alien de-*
18 *scribed in the amendment made by paragraph (1)(B)*
19 *shall, on and after that date, be treated as a petition*
20 *filed under section 101(a)(15)(H)(i)(c) of that Act, as*
21 *added by paragraph (1).*

22 (b) *ANNUAL CEILINGS FOR H1-B AND H1-C WORK-*
23 *ERS.—*

1 (1) *AMENDMENT OF THE INA.—Section*
2 *214(g)(1) (8 U.S.C. 1184(g)(1)) is amended to read as*
3 *follows:*

4 “(g)(1) *The total number of aliens who may be issued*
5 *visas or otherwise provided nonimmigrant status during*
6 *any fiscal year—*

7 “(A) *under section 101(a)(15)(H)(i)(b)—*

8 “(i) *for each of fiscal years 1992 through*
9 *1997, may not exceed 65,000,*

10 “(ii) *for fiscal year 1998, may not exceed*
11 *95,000,*

12 “(iii) *for fiscal year 1999, may not exceed*
13 *the number determined for fiscal year 1998*
14 *under such section, minus 10,000, plus the num-*
15 *ber of unused visas under subparagraph (B) for*
16 *the fiscal year preceding the applicable fiscal*
17 *year, and*

18 “(iv) *for fiscal year 2000, and each applica-*
19 *ble fiscal year thereafter through fiscal year*
20 *2002, may not exceed the number determined for*
21 *fiscal year 1998 under such section, minus*
22 *10,000, plus the number of unused visas under*
23 *subparagraph (B) for the fiscal year preceding*
24 *the applicable fiscal year, plus the number of un-*

1 *used visas under subparagraph (C) for the fiscal*
2 *year preceding the applicable fiscal year;*

3 *“(B) under section 101(a)(15)(H)(ii)(b), begin-*
4 *ning with fiscal year 1992, may not exceed 66,000; or*

5 *“(C) under section 101(a)(15)(H)(i)(c), begin-*
6 *ning with fiscal year 1999, may not exceed 10,000.*

7 *For purposes of determining the ceiling under subpara-*
8 *graph (A) (iii) and (iv), not more than 20,000 of the unused*
9 *visas under subparagraph (B) may be taken into account*
10 *for any fiscal year.”.*

11 (2) *TRANSITION PROCEDURES.—Any visa issued*
12 *or nonimmigrant status otherwise accorded to any*
13 *alien under clause (i)(b) or (ii)(b) of section*
14 *101(a)(15)(H) of the Immigration and Nationality*
15 *Act pursuant to a petition filed during fiscal year*
16 *1998 but approved on or after October 1, 1998, shall*
17 *be counted against the applicable ceiling in section*
18 *214(g)(1) of that Act for fiscal year 1998 (as amended*
19 *by paragraph (1) of this subsection), except that, in*
20 *the case where counting the visa or the other granting*
21 *of status would cause the applicable ceiling for fiscal*
22 *year 1998 to be exceeded, the visa or grant of status*
23 *shall be counted against the applicable ceiling for fis-*
24 *cal year 1999.*

1 **SEC. 4. EDUCATION AND TRAINING IN SCIENCE AND TECH-**
2 **NOLOGY.**

3 (a) *DEGREES IN MATHEMATICS, COMPUTER SCIENCE,*
4 *AND ENGINEERING.*—Subpart 4 of part A of title IV of the
5 *Higher Education Act of 1965 (20 U.S.C. 1070c et seq.)*
6 *is amended—*

7 (1) *in section 415A(b)(1) (20 U.S.C.*
8 *1070c(b)(1))—*

9 (A) *by striking “\$105,000,000 for fiscal*
10 *year 1993” and inserting “\$155,000,000 for fis-*
11 *cal year 1999”; and*

12 (B) *by inserting “, of which the amount in*
13 *excess of \$25,000,000 for each fiscal year that*
14 *does not exceed \$50,000,000 shall be available to*
15 *carry out section 415F for the fiscal year” before*
16 *the period; and*

17 (2) *by adding at the end the following:*

18 **“SEC. 415F. DEGREES IN MATHEMATICS, COMPUTER**
19 **SCIENCE, AND ENGINEERING.**

20 “(a) *ALLOTMENTS AND GRANTS.*—From amounts
21 *made available to carry out this section under section*
22 *415A(b)(1) for a fiscal year, the Secretary shall make allot-*
23 *ments to States to enable the States to pay not more than*
24 *50 percent of the amount of grants awarded to low-income*
25 *students in the States.*

1 “(b) *USE OF GRANTS.*—Grants awarded under this
2 section shall be used by the students for attendance on a
3 full-time basis at an institution of higher education in a
4 program of study leading to an associate, baccalaureate or
5 graduate degree in mathematics, computer science, or engi-
6 neering.

7 “(c) *COMPARABILITY.*—The Secretary shall make allot-
8 ments and grants shall be awarded under this section in
9 the same manner, and under the same terms and condi-
10 tions, as—

11 “(1) the Secretary makes allotments and grants
12 are awarded under this subpart (other than this sec-
13 tion); and

14 “(2) are not inconsistent with this section.”.

15 (b) *DATA BANK; TRAINING.*—

16 (1) *IN GENERAL.*—The Secretary of Labor
17 shall—

18 (A) establish or improve a data bank on the
19 Internet that facilitates—

20 (i) job searches by individuals seeking
21 employment in the field of technology; and

22 (ii) the matching of individuals pos-
23 sessing technology credentials with employ-
24 ment in the field of technology; and

1 (B) provide training in information tech-
2 nology to unemployed individuals who are seek-
3 ing employment.

4 (2) AUTHORIZATION OF APPROPRIATIONS.—
5 There are authorized to be appropriated for fiscal
6 year 1999 and each of the 4 succeeding fiscal years—

7 (A) \$8,000,000 to carry out paragraph
8 (1)(A); and

9 (B) \$10,000,000 to carry out paragraph
10 (1)(B).

11 **SEC. 6. INCREASED ENFORCEMENT PENALTIES AND IM-**
12 **PROVED OPERATIONS.**

13 (a) INCREASED PENALTIES FOR VIOLATIONS OF H1-
14 B OR H1-C PROGRAM.—Section 212(n)(2)(C) (8 U.S.C.
15 1182(n)(2)(C)) is amended—

16 (1) by striking “a failure to meet” and all that
17 follows through “an application—” and inserting “a
18 willful failure to meet a condition in paragraph (1)
19 or a willful misrepresentation of a material fact in
20 an application—”; and

21 (2) in clause (i), by striking “\$1,000” and in-
22 serting “\$5,000”.

23 (b) SPOT INSPECTIONS DURING PROBATIONARY PE-
24 RIOD.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)) is amend-
25 ed—

1 (1) by redesignating subparagraph (D) as sub-
2 paragraph (E); and

3 (2) by inserting after subparagraph (C) the fol-
4 lowing:

5 “(D) The Secretary of Labor may, on a case-by-case
6 basis, subject an employer to random inspections for a pe-
7 riod of up to five years beginning on the date that such
8 employer is found by the Secretary of Labor to have engaged
9 in a willful failure to meet a condition of subparagraph
10 (A), or a misrepresentation of material fact in an applica-
11 tion.”.

12 (c) *LAYOFF PROTECTION FOR UNITED STATES WORK-*
13 *ERS.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as amended*
14 *by subsection (b), is further amended by adding at the end*
15 *the following:*

16 “(F)(i) If the Secretary finds, after notice
17 and opportunity for a hearing, a willful failure
18 to meet a condition in paragraph (1) or a willful
19 misrepresentation of a material fact in an appli-
20 cation, in the course of which the employer has
21 replaced a United States worker with a non-
22 immigrant described in section 101(a)(15)(H)(i)
23 (b) or (c) within the 6-month period prior to, or
24 within 90 days following, the filing of the appli-
25 cation—

1 “(I) the Secretary shall notify the At-
2 torney General of such finding, and may, in
3 addition, impose such other administrative
4 remedies (including civil monetary pen-
5 alties in an amount not to exceed \$25,000
6 per violation) as the Secretary determines
7 to be appropriate; and

8 “(II) the Attorney General shall not
9 approve petitions filed with respect to the
10 employer under section 204 or 214(c) dur-
11 ing a period of at least 2 years for aliens
12 to be employed by the employer.

13 “(ii) For purposes of this subparagraph:

14 “(I) The term ‘replace’ means the em-
15 ployment of the nonimmigrant at the spe-
16 cific place of employment and in the spe-
17 cific employment opportunity from which a
18 United States worker with substantially
19 equivalent qualifications and experience in
20 the specific employment opportunity has
21 been laid off.

22 “(II) The term ‘laid off’, with respect
23 to an individual, means the individual’s
24 loss of employment other than a discharge
25 for inadequate performance, violation of

1 *workplace rules, cause, voluntary departure,*
2 *voluntary retirement, or the expiration of a*
3 *grant, contract, or other agreement. The*
4 *term 'laid off' does not include any situa-*
5 *tion in which the individual involved is of-*
6 *fered, as an alternative to such loss of em-*
7 *ployment, a similar employment oppor-*
8 *tunity with the same employer at the equiv-*
9 *alent or higher compensation and benefits*
10 *as the position from which the employee*
11 *was discharged, regardless of whether or not*
12 *the employee accepts the offer.*

13 *"(III) The term 'United States worker'*
14 *means—*

15 *"(aa) a citizen or national of the*
16 *United States;*

17 *"(bb) an alien who is lawfully ad-*
18 *mitted for permanent residence; or*

19 *"(cc) an alien authorized to be*
20 *employed by this Act or by the Attor-*
21 *ney General."*

22 *(d) EXPEDITED REVIEWS AND DECISIONS.—Section*
23 *214(c)(2)(C) (8 U.S.C. 1184(c)(2)(C)) is amended by insert-*
24 *ing "or section 101(a)(15)(II)(i)(b)" after "section*
25 *101(a)(15)(L)".*

1 (e) *DETERMINATIONS ON LABOR CONDITION APPLICA-*
2 *TIONS TO BE MADE BY ATTORNEY GENERAL.—*

3 (1) *IN GENERAL.—*Section 101(a)(15)(H)(i)(b)
4 (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by strik-
5 ing “with respect to whom” and all that follows
6 through “with the Secretary” and inserting “with re-
7 spect to whom the Attorney General determines that
8 the intending employer has filed with the Attorney
9 General”.

10 (2) *CONFORMING AMENDMENTS.—*Section 212(n)
11 (8 U.S.C. 1182(n)(1)) is amended—

12 (A) in paragraph (1)—

13 (i) in the first sentence, by striking
14 “Secretary of Labor” and inserting “Attor-
15 ney General”;

16 (ii) in the sixth and eighth sentences,
17 by inserting “of Labor” after “Secretary”
18 each place it appears;

19 (iii) in the ninth sentence, by striking
20 “Secretary of Labor” and inserting “Attor-
21 ney General”;

22 (iv) by amending the tenth sentence to
23 read as follows: “Unless the Attorney Gen-
24 eral finds that the application is incomplete
25 or obviously inaccurate, the Attorney Gen-

1 *eral shall provide the certification described*
2 *in section 101(a)(15)(H)(i)(b) and adju-*
3 *dicate the nonimmigrant visa petition.”;*
4 *and*

5 *(v) by inserting in full measure mar-*
6 *gin after subparagraph (D) the following*
7 *new sentence: “Such application shall be*
8 *filed with the employer’s petition for a non-*
9 *immigrant visa for the alien, and the Attor-*
10 *ney General shall transmit a copy of such*
11 *application to the Secretary of Labor.”; and*
12 *(B) in the first sentence of paragraph*
13 *(2)(A), by striking “Secretary” and inserting*
14 *“Secretary of Labor”.*

15 *(f) PREVAILING WAGE CONSIDERATIONS.—Section 101*
16 *(8 U.S.C. 1101) is amended by adding at the end the follow-*
17 *ing new subsection:*

18 *“(i)(1) In computing the prevailing wage level for an*
19 *occupational classification in an area of employment for*
20 *purposes of section 212(n)(1)(A)(i)(II) and section*
21 *212(a)(5)(A) in the case of an employee of—*

22 *“(A) an institution of higher education (as de-*
23 *finied in section 1201(a) of the Higher Education Act*
24 *of 1965), or a related or affiliated nonprofit entity,*
25 *or*

1 “(B) a nonprofit or Federal research institute or
2 agency,
3 the prevailing wage level shall only take into account em-
4 ployees at such institutions, entities, and agencies in the
5 area of employment.

6 “(2) With respect to a professional athlete (as defined
7 in section 212(a)(5)(A)(iii)(II)) when the job opportunity
8 is covered by professional sports league rules or regulations,
9 the wage set forth in those rules or regulations shall be con-
10 sidered as not adversely affecting the wages of United States
11 workers similarly employed and be considered the prevail-
12 ing wage.

13 “(3) To determine the prevailing wage, employers may
14 use either government or nongovernment published surveys,
15 including industry, region, or statewide wage surveys, to
16 determine the prevailing wage, which shall be considered
17 correct and valid if the survey was conducted in accordance
18 with generally accepted industry standards and the em-
19 ployer has maintained a copy of the survey information.”.

20 (g) POSTING REQUIREMENT.—Section
21 212(n)(1)(C)(ii) (8 U.S.C. 1182(n)(1)(C)(ii)) is amended to
22 read as follows:

23 “(ii) if there is no such bargaining rep-
24 resentative, has provided notice of filing in the
25 occupational classification through such methods

1 *as physical posting in a conspicuous location, or*
2 *electronic posting through an internal job bank,*
3 *or electronic notification available to employees*
4 *in the occupational classification.”.*

5 **SEC. 6. ANNUAL REPORTS ON H1-B VISAS.**

6 *Section 212(n) (8 U.S.C. 1182(n)) is amended by add-*
7 *ing at the end the following:*

8 *“(3) Using data from petitions for visas issued*
9 *under section 101(a)(15)(H)(i)(b), the Attorney Gen-*
10 *eral shall annually submit the following reports to*
11 *Congress:*

12 *“(A) Quarterly reports on the numbers of*
13 *aliens who were provided nonimmigrant status*
14 *under section 101(a)(15)(H)(i)(b) during the*
15 *previous quarter and who were subject to the nu-*
16 *merical ceiling for the fiscal year established*
17 *under section 214(g)(1).*

18 *“(B) Annual reports on the occupations and*
19 *compensation of aliens provided nonimmigrant*
20 *status under such section during the previous fis-*
21 *cal year.”.*

22 **SEC. 7. STUDY AND REPORT ON HIGH-TECHNOLOGY LABOR**
23 **MARKET NEEDS.**

24 *(a) STUDY.—The National Science Foundation shall*
25 *oversee the National Academy of Sciences in establishing*

1 *a government-industry panel, including representatives*
2 *from academia, government, and business, to conduct a*
3 *study, using sound analytical methods, to assess the labor*
4 *market needs for workers with high technology skills during*
5 *the 10-year period beginning on the date of enactment of*
6 *this Act. The study shall focus on the following issues:*

7 (1) *The future training and education needs of*
8 *the high-technology sector over that 10-year period,*
9 *including projected job growth for high-technology*
10 *issues.*

11 (2) *Future training and education needs of*
12 *United States students to ensure that their skills, at*
13 *various levels, are matched to the needs of the high*
14 *technology and information technology sector over*
15 *that 10-year period.*

16 (3) *An analysis of progress made by educators,*
17 *employers, and government entities to improve the*
18 *teaching and educational level of American students*
19 *in the fields of math, science, computer, and engineer-*
20 *ing since 1998.*

21 (4) *An analysis of the number of United States*
22 *workers currently or projected to work overseas in*
23 *professional, technical, and managerial capacities.*

24 (5) *The following additional issues:*

1 (A) *The need by the high-technology sector*
2 *for foreign workers with specific skills.*

3 (B) *The potential benefits gained by the*
4 *universities, employers, and economy of the*
5 *United States from the entry of skilled profes-*
6 *sionals in the fields of science and engineering.*

7 (C) *The extent to which globalization has*
8 *increased since 1998.*

9 (D) *The needs of the high-technology sector*
10 *to localize United States products and services*
11 *for export purposes in light of the increasing*
12 *globalization of the United States and world*
13 *economy.*

14 (E) *An examination of the amount and*
15 *trend of high technology work that is out-sourced*
16 *from the United States to foreign countries.*

17 (b) *REPORT.*—*Not later than October 1, 2000, the Na-*
18 *tional Science Foundation shall submit a report containing*
19 *the results of the study described in subsection (a) to the*
20 *Committees on the Judiciary of the House of Representa-*
21 *tives and the Senate.*

22 (c) *AVAILABILITY OF FUNDS.*—*Funds available to the*
23 *National Science Foundation shall be made available to*
24 *carry out this section.*

1 **SEC. 8. LIMITATION ON PER COUNTRY CEILING WITH RE-**
2 **SPECT TO EMPLOYMENT-BASED IMMIGRANTS.**

3 (a) *SPECIAL RULES.*—Section 202(a) (8 U.S.C.
4 1152(a)) is amended by adding at the end the following
5 new paragraph:

6 “(5) *RULES FOR EMPLOYMENT-BASED IMMI-*
7 *GRANTS.*—

8 “(A) *EMPLOYMENT-BASED IMMIGRANTS NOT*
9 *SUBJECT TO PER COUNTRY LIMITATION IF ADDI-*
10 *TIONAL VISAS AVAILABLE.*—If the total number
11 of visas available under paragraph (1), (2), (3),
12 (4), or (5) of section 203(b) for a calendar quar-
13 ter exceeds the number of qualified immigrants
14 who may otherwise be issued such visas, the visas
15 made available under that paragraph shall be
16 issued without regard to the numerical limita-
17 tion under paragraph (2) of this subsection dur-
18 ing the remainder of the calendar quarter.

19 “(B) *LIMITING FALL ACROSS FOR CERTAIN*
20 *COUNTRIES SUBJECT TO SUBSECTION (e).*—In
21 the case of a foreign state or dependent area to
22 which subsection (e) applies, if the total number
23 of visas issued under section 203(b) exceeds the
24 maximum number of visas that may be made
25 available to immigrants of the state or area
26 under section 203(b) consistent with subsection

1 (e) (determined without regard to this para-
2 graph), in applying subsection (e) all visas shall
3 be deemed to have been required for the classes
4 of aliens specified in section 203(b).”.

5 (b) CONFORMING AMENDMENTS.—

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

9 (2) Section 202(e)(3) (8 U.S.C. 1152(e)(3)) is
10 amended by striking “the proportion of the visa num-
11 bers” and inserting “except as provided in subsection
12 (a)(5), the proportion of the visa numbers”.

13 (c) ONE-TIME PROTECTION UNDER PER COUNTRY
14 CEILING.—Notwithstanding section 214(g)(4) of the Immi-
15 gration and Nationality Act, any alien who—

16 (1) as of the date of enactment of this Act is a
17 nonimmigrant described in section 101(a)(15)(H)(i)
18 of that Act;

19 (2) is the beneficiary of a petition filed under
20 section 204(a) for a preference status under para-
21 graph (1), (2), or (3) of section 203(b); and

22 (3) would be subject to the per country limita-
23 tions applicable to immigrants under those para-
24 graphs but for this subsection,

1 *may apply for and the Attorney General may grant an ex-*
2 *tension of such nonimmigrant status until the alien's appli-*
3 *cation for adjustment of status has been processed and a*
4 *decision made thereon.*

5 **SEC. 9. ACADEMIC HONORARIA**

6 *Section 212 (8 U.S.C. 1182) is amended by adding*
7 *at the end the following new subsection:*

8 *"(p) Any alien admitted under section 101(a)(15)(B)*
9 *may accept an honorarium payment and associated inci-*
10 *dental expenses for a usual academic activity or activities,*
11 *as defined by the Attorney General in consultation with the*
12 *Secretary of Education, if such payment is offered by an*
13 *institution of higher education (as defined in section*
14 *1201(a) of the Higher Education Act of 1965) or other non-*
15 *profit entity and is made for services conducted for the bene-*
16 *fit of that institution or entity."*