

~~AMENDMENT #~~ *Amendment* ~~TO~~ *Smith* **H.R. 3736**

OFFERED BY: MR. SMITH OF TEXAS

AMENDMENT No. 3: Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMEND-
2 MENTS TO IMMIGRATION AND NATIONALITY
3 ACT.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Temporary Access to Skilled Workers and H-1B Non-
6 immigrant Program Improvement Act of 1998”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents; amendments to Immigration and Nationality Act.

TITLE I—PROVISIONS RELATING TO H-1B NONIMMIGRANTS

Sec. 101. Temporary increase in access to temporary skilled personnel under H-1B program.

Sec. 102. Protection against displacement of United States workers in case of H-1B-dependent employers.

Sec. 103. Changes in enforcement and penalties.

Sec. 104. Collection and use of H-1B nonimmigrant fees for scholarships for low-income math, engineering, and computer science students and job training of United States workers.

Sec. 105. Computation of prevailing wage level.

Sec. 106. Improving count of H-1B and H-2B nonimmigrants.

Sec. 107. Report on older workers in the information technology field.

Sec. 108. Report on high technology labor market needs; reports on economic impact of increase in H-1B nonimmigrants.

TITLE II—SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO CIVILIAN EMPLOYEES

Sec. 201. Special immigrant status for certain NATO civilian employees.

TITLE III—MISCELLANEOUS PROVISION

Sec. 301. Academic honoraria.

1 (c) AMENDMENTS TO IMMIGRATION AND NATIONAL-
2 ITY ACT.—Except as otherwise specifically provided in
3 this Act, whenever in this Act an amendment is expressed
4 in terms of an amendment to a section or other provision,
5 the reference shall be considered to be made to that sec-
6 tion or other provision of the Immigration and Nationality
7 Act (8 U.S.C. 1101 et seq.).

8 **TITLE I—PROVISIONS RELATING**
9 **TO H-1B NONIMMIGRANTS**

10 **SEC. 101. TEMPORARY INCREASE IN ACCESS TO TEM-**
11 **PORARY SKILLED PERSONNEL UNDER H-1B**
12 **PROGRAM**

13 (a) TEMPORARY INCREASE IN SKILLED NON-
14 IMMIGRANT WORKERS.—Paragraph (1)(A) of section
15 214(g) (8 U.S.C. 1184(g)) is amended to read as follows:

16 “(A) under section 101(a)(15)(H)(i)(b), may
17 not exceed—

18 “(i) 65,000 in each fiscal year before fiscal
19 year 1999;

20 “(ii) 115,000 in fiscal year 1999;

21 “(iii) 115,000 in fiscal year 2000;

22 “(iv) 107,500 in fiscal year 2001; and

23 “(v) 65,000 in each succeeding fiscal year;

24 or”.

1 (b) EFFECTIVE DATES.—The amendment made by
 2 subsection (a) applies beginning with fiscal year ~~1998~~. 1999

3 SEC. 102. PROTECTION AGAINST DISPLACEMENT OF
 4 UNITED STATES WORKERS IN CASE OF H-1B-
 5 DEPENDENT EMPLOYERS.

6 (a) PROTECTION AGAINST LAYOFF AND REQUIRE-
 7 MENT FOR PRIOR RECRUITMENT OF UNITED STATES
 8 WORKERS.—

9 (1) ADDITIONAL STATEMENTS ON APPLICA-
 10 TION.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is
 11 amended by inserting after subparagraph (D) the
 12 following:

13 “(E)(i) In the case of an application described
 14 in clause (ii), the employer did not displace and will
 15 not displace a United States worker (as defined in
 16 paragraph (4)) employed by the employer within the
 17 period beginning 90 days before and ending 90 days
 18 after the date of filing of any visa petition supported
 19 by the application.

20 “(ii) An application described in this clause is
 21 an application filed on or after the date final regula-
 22 tions are first promulgated to carry out this sub-
 23 paragraph, and before October 1, ~~2000~~ ²⁰⁰¹, by an H-
 24 1B-dependent employer (as defined in paragraph
 25 (3)) or by an employer that has been found under

Substantive

Strike

or obtained
by the
employer
by K,
employee
leasing,
temp. help
agreement,
or other
similar
basis.”

4

w/in the 5 yrs. prior to the date of the applicat.
w/in prev. 5 yrs.

should correspond to pg. 20

1 paragraph (2)(C) or (5) to have committed a willful
2 failure or misrepresentation ~~on or after the date of~~
3 ~~the enactment of this subparagraph.~~ [An application
4 is not described in this clause if the only H-1B non-
5 immigrants sought in the application are exempt H-
6 1B nonimmigrants.

struck
substantive
(OR)

7 "(F) In the case of an application described in
8 subparagraph (E)(ii), the employer will not place the
9 nonimmigrant with another employer (regardless of
10 whether or not such other employer is an H-1B-de-
11 pendent employer) where—

kill
"or its equiv."
on line 17

12 "(i) the nonimmigrant performs duties in
13 whole or in part at one or more worksites
14 owned, operated, or controlled by such other
15 employer; and

16 "(ii) there are indicia of an employment re-
17 lationship between the nonimmigrant and such
18 other employer;

19 unless the employer has ^{made reasonable} ~~inquired~~ ^{inquiry of the} of the other em-
20 ployer as to whether, and has no knowledge ^{or reason to know} that,
21 within the period beginning 90 days before and end-
22 ing 90 days after the date of the placement of the
23 nonimmigrant with the other employer, the other
24 employer has displaced or intends to displace a

1 United States worker employed by the other em-

2 ployer. *In the same or subst. equiv. occupational classified*
3 *as the H-1B nonimmigrant*
4 *will be (or is) employed*

5 “(G)(i) In the case of an application described
6 in subparagraph (E)(ii), subject to clause (ii), the
7 employer, prior to filing the application—

8 “(I) has taken good faith steps to recruit,
9 in the United States using procedures that
10 meet industry-wide standards and offering com-
11 pensation that is at least as great as that re-
12 quired to be offered to H-1B nonimmigrants
13 under subparagraph (A), United States workers
14 for the job for which the nonimmigrant or non-
15 immigrants is or are sought; and

16 “(II) has offered the job to any United
17 States worker who applies and is equally or bet-
18 ter qualified for the job for which the non-
19 immigrant or nonimmigrants is or are sought.

20 “(ii) The conditions described in clause (i) shall
21 not apply to an application filed with respect to the
22 employment of an H-1B nonimmigrant who is de-
23 scribed in subparagraph (A), (B), or (C) of section
24 203(b)(1).”.

25 (2) NOTICE ON APPLICATION OF POTENTIAL LI-
26 ABILITY OF PLACING EMPLOYERS.—Section
27 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by add-

1 ing at the end the following: "The application form
2 shall include a clear statement explaining the liabil-
3 ity under subparagraph (F) of a placing employer if
4 the other employer described in such subparagraph
5 displaces a United States worker as described in
6 such subparagraph."

7 (3) CONSTRUCTION.—Section 212(n)(1) (8
8 U.S.C. 1182(n)(1)) is further amended by adding at
9 the end the following: "Nothing in subparagraph (G)
10 shall be construed to prohibit an employer from
11 using legitimate selection criteria relevant to the job
12 that are normal or customary to the type of job in-
13 volved, so long as such criteria are not applied in a
14 discriminatory manner."

15 (b) H-1B-DEPENDENT EMPLOYER AND OTHER
16 DEFINITIONS.—

17 (1) IN GENERAL.—Section 212(n) (8 U.S.C.
18 1182(n)) is amended by adding at the end the fol-
19 lowing:

20 “(3)(A) For purposes of this subsection, the term ‘H-
21 1B-dependent employer’ means an employer that—

22 “(i)(I) has 25 or fewer full-time equivalent em-
23 ployees who are employed in the United States; and
24 (II) employs more than 7 H-1B nonimmigrants;

1 “(ii)(I) has at least 26 but not more than 50
2 full-time equivalent employees who are employed in
3 the United States; and (II) employs more than 12
4 H-1B nonimmigrants; or

5 “(iii)(I) has at least 51 full-time equivalent em-
6 ployees who are employed in the United States; and
7 (II) employs H-1B nonimmigrants in a number that
8 is equal to at least 15 percent of the number of such
9 full-time equivalent employees.

§214(i)(1)(B)

10 “(B) For purposes of this subsection—

11 “(i) the term ‘exempt H-1B nonimmigrant’
12 means an H-1B nonimmigrant who—

13 “(I) receives wages (including cash bonuses
14 and similar compensation) at an annual rate
15 equal to at least \$60,000; or

16 “(II) has attained a master’s or higher de-
17 gree ~~(or its equivalent)~~ ^{the specific (or its equivalent)} in a specialty related to
18 ~~the intended employment, and~~

19 “(ii) the term ‘nonexempt H-1B nonimmigrant’
20 means an H-1B nonimmigrant who is not an ex-
21 empt H-1B nonimmigrant.

22 “(C) For purposes of subparagraph (A)—

23 “(i) in computing the number of full-time equiv-
24 alent employees and the number of H-1B non-

if only for
transition, OK.
If stays otherwise,
must get rid of
“or equivalent”

as
and
freely
into the
occupational
interests.

1 immigrants, exempt H-1B nonimmigrants shall not
2 be taken into account during the longer of—

3 “(I) the 6-month period beginning on the
4 date of the enactment of the Temporary Access
5 to Skilled Workers and H-1B Nonimmigrant
6 Program Improvement Act of 1998; or

7 “(II) the period beginning on the date of
8 the enactment of the Temporary Access to
9 Skilled Workers and H-1B Nonimmigrant Pro-
10 gram Improvement Act of 1998 and ending on
11 the date final regulations are issued to carry
12 out this paragraph; and

13 “(ii) any group treated as a single employer
14 under subsection (b), (c), (m), or (o) of section 414
15 of the Internal Revenue Code of 1986 shall be treat-
16 ed as a single employer.

17 “(4) For purposes of this subsection:

18 “(A) The term ‘area of employment’ means the
19 area within normal commuting distance of the work-
20 site or physical location where the work of the H-
21 1B nonimmigrant is or will be performed. If such
22 worksite or location is within a Metropolitan Statis-
23 tical Area, any place within such area is deemed to
24 be within the area of employment.

1 “(B) In the case of an application with respect
2 to one or more H-1B nonimmigrants by an em-
3 ployer, the employer is considered to ‘displace’ a
4 United States worker from a job if the employer lays
5 off the worker from a job that is essentially the
6 equivalent of the job for which the nonimmigrant or
7 nonimmigrants is or are sought. A job shall not be
8 considered to be essentially equivalent of another job
9 unless it involves essentially the same responsibil-
10 ities, ~~was held by a United States worker with sub-~~
11 ~~stantially equivalent qualifications and experience,~~
12 and is located in the same area of employment as
13 the other job.

needs
to go

14 “(C) The term ‘H-1B nonimmigrant’ means an
15 alien admitted or provided status as a nonimmigrant
16 described in section 101(a)(15)(H)(i)(b).

17 “(D) The term ‘lays off’, with respect to a
18 worker—

19 “(i) means to cause the worker’s loss of
20 employment, other than through a discharge for
21 inadequate performance, violation of workplace
22 rules, cause, voluntary departure, voluntary re-
23 tirement, or the expiration of a grant or con-
24 tract (other than a temporary employment con-
25 tract entered into in order to evade a condition

insert
collective
bargaining
language

1 described in subparagraph (E) or (F) of para-
2 graph (1)); but

3 “(ii) does not include any situation in
4 which the worker is offered, as an alternative to
5 such loss of employment, a similar employment
6 opportunity with the same employer (or, in the
7 case of a placement of a worker with another
8 employer under paragraph (1)(F), with either
9 employer described in such paragraph) at equiv-
10 alent or higher compensation and benefits than
11 the position from which the employee was dis-
12 charged, regardless of whether or not the em-
13 ployee accepts the offer.

14 “(E) The term ‘United States worker’ means
15 an employee who—

16 “(i) is a citizen or national of the United
17 States; or

18 “(ii) is an alien who is lawfully admitted
19 for permanent residence, is admitted as a refu-
20 gee under section 207, is granted asylum under
21 section 208, or is an immigrant otherwise au-
22 thorized, by this Act or by the Attorney Gen-
23 eral, to be employed.”.

24 (2) CONFORMING AMENDMENTS.—Section
25 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by

1 striking "a nonimmigrant described in section
2 101(a)(15)(H)(i)(b)" each place it appears and in-
3 serting "an H-1B nonimmigrant".

4 (c) IMPROVED POSTING OF NOTICE OF APPLICA-
5 TION.—Section 212(n)(1)(C)(ii) (8 U.S.C.
6 1182(n)(1)(C)(ii)) is amended to read as follows:

7 " (ii) if there is no such bargaining rep-
8 resentative, has provided notice of filing in the
9 occupational classification through such meth-
10 ods as physical posting in conspicuous locations
11 at the place of employment or electronic notifi-
12 cation to employees in the occupational classi-
13 fication for which H-1B nonimmigrants are
14 sought."

15 (d) REQUIREMENTS RELATING TO BENEFITS.—

16 (1) IN GENERAL.—Section 212(n)(1)(A) (8
17 U.S.C. 1182(n)(1)(A)) is amended—

18 (A) in clause (i), by striking "and" at the
19 end;

20 (B) in clause (ii), by striking the period at
21 the end and inserting ", and"; and

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

23 "(iii) is offering and will offer to H-1B
24 nonimmigrants, during the period of authorized
25 employment, benefits and eligibility for benefits

(including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; cash bonuses and noncash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers benefits and eligibility for benefits to United States workers.”.

(2) ORDERS TO PROVIDE BENEFITS.—Section 212(n)(2)(D) (8 U.S.C. 1182(n)(2)(D)) is amended—

(A) by inserting “or has not provided benefits or eligibility for benefits as required under such paragraph,” after “required under paragraph (1),”; and

(B) by inserting “or to provide such benefits or eligibility for benefits” after “amounts of back pay”. ~~Do you want this amendment moved to section 103? It could be inserted, for example, as a new section 103(d).]~~

(e) EFFECTIVE DATES.—The amendments made by subsections (a) and (c) apply to applications filed under section 212(n)(1) of the Immigration and Nationality Act on or after the date final regulations are issued to carry

1 out such amendments, and the amendments made by sub-
 2 section (b) take effect on the date of the enactment of
 3 this Act. ~~Effective date for subsection (d)?~~

4 (f) REDUCTION OF PERIOD FOR PUBLIC COM-
 5 MENT.—In first promulgating regulations to implement
 6 the amendments made by this section in a timely manner,
 7 the Secretary of Labor and the Attorney General may re-
 8 duce to not less than 30 days the period of public comment
 9 on proposed regulations.

does this
preclude
the issuance
of an
interim
rule.

10 SEC. 103. CHANGES IN ENFORCEMENT AND PENALTIES.

11 (a) INCREASED ENFORCEMENT AND PENALTIES.—

12 Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)(C)) is amend-
 13 ed to read as follows:

14 “(C)(i) If the Secretary finds, after notice and oppor-
 15 tunity for a hearing, a failure to meet a condition of para-
 16 graph (1)(B), (1)(E), or (1)(F), a substantial failure to
 17 meet a condition of paragraph (1)(C), (1)(D), or
 18 (1)(G)(i)(I), or a misrepresentation of material fact in an
 19 application—

20 “(I) the Secretary shall notify the Attorney
 21 General of such finding and may, in addition, im-
 22 pose such other administrative remedies (including
 23 civil monetary penalties in an amount not to exceed
 24 \$1,000 per violation) as the Secretary determines to
 25 be appropriate; and

DOL can't step across
line to look @ whether
U.S. workers not offered
jobs @ (even w/ higher
quality)
Wait Secy to be
able to look @

OSC can look
@ based on national
origin discrim
DOL can't

Remove

This would mean
that the Dept. of Labor
can never look @
recruitment

September 23, 1998

① good faith;
industry-wide
standards
for recruitment—
DOL can look into
that

② have to hire an
equally qualified
U.S. worker.

AG can only look @
a frustrated applicant

1 “(II) the Attorney General shall not approve
2 petitions filed with respect to that employer under
3 section 204 or 214(c) during a period of at least 1
4 year for aliens to be employed by the employer.

5 “(ii) If the Secretary finds, after notice and oppor-
6 tunity for a hearing, a willful failure to meet a condition
7 of paragraph (1), a willful misrepresentation of material
8 fact in an application, or a violation of clause (iv)—

9 “(I) the Secretary shall notify the Attorney
10 General of such finding and may, in addition, im-
11 pose such other administrative remedies (including
12 civil monetary penalties in an amount not to exceed
13 \$5,000 per violation) as the Secretary determines to
14 be appropriate; and

15 “(II) the Attorney General shall not approve
16 petitions filed with respect to that employer under
17 section 204 or 214(c) during a period of at least 2
18 years for aliens to be employed by the employer.

19 “(iii) If the Secretary finds, after notice and oppor-
20 tunity for a hearing, a willful failure to meet a condition
21 of paragraph (1) or a willful misrepresentation of material
22 fact in an application, in the course of which failure or
23 misrepresentation the employer displaced a United States
24 worker employed by the employer within the period begin-
25 ning 90 days before and ending 90 days after the date

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w/ how
define
lay-off on
pg. 9
September 23, 1998
lay-off should
cover those emp.
in K etc. 1a not
term the

1 of filing of any visa petition supported by the applica-
2 tion—

3 “(I) the Secretary shall notify the Attorney
4 General of such finding and may, in addition, im-
5 pose such other administrative remedies (including
6 civil monetary penalties in an amount not to exceed
7 \$35,000 per violation) as the Secretary determines
8 to be appropriate; and

9 “(II) the Attorney General shall not approve
10 petitions filed with respect to that employer under
11 section 204 or 214(c) during a period of at least 3
12 years for aliens to be employed by the employer.

13 “(iv) It is a violation of this clause for an employer
14 who has filed an application under this subsection to in-
15 timidate, threaten, restrain, coerce, blacklist, discharge, or
16 in any other manner discriminate against an employee
17 (which term, for purposes of this clause, includes a former
18 employee and an applicant for employment) because the
19 employee has disclosed information to the employer, or to
20 any other person, that the employee reasonably believes
21 evidences a violation of this subsection, or any rule or reg-
22 ulation pertaining to this subsection, or because the em-
23 ployee cooperates or seeks to cooperate in an investigation
24 or other proceeding concerning the employer’s compliance

1 with the requirements of this subsection or any rule or
2 regulation pertaining to this subsection.

3 “(v) The Secretary of Labor and the Attorney Gen-
4 eral shall devise a process under which an H-1B non-
5 immigrant who files a complaint regarding a violation of
6 clause (iv) and is otherwise eligible to remain and work
7 in the United States may be allowed to seek other appro-
8 priate employment in the United States for a period (not
9 to exceed the ^{period of stay authorized in such non-immig. classified} ~~duration of the alien's authorized admission~~
10 ~~as such a nonimmigrant~~).

11 “(vi) It is a violation of this clause for an employer
12 who has filed an application under this subsection to re-
13 quire an H-1B nonimmigrant to pay a penalty (as deter-
14 mined under State law) for ceasing employment with the
15 employer prior to a date agreed to by the nonimmigrant
16 and the employer. If the Secretary finds, after notice and
17 opportunity for a hearing, that an employer has committed
18 such a violation, the Secretary may impose a civil mone-
19 tary penalty of \$1,000 for each such violation and issue
20 an administrative order requiring the return to the non-
21 immigrant of any amount required to be paid in violation
22 of this clause, or, if the nonimmigrant cannot be located,
23 requiring payment of any such amount to the general fund
24 of the Treasury.”.

25 “(vii) no benching language

1 (b) USE OF ARBITRATION PROCESS FOR DISPUTES
2 INVOLVING QUALIFICATIONS OF UNITED STATES WORK-
3 ERS NOT HIRED.—

4 (1) IN GENERAL.—Section 212(n) (8 U.S.C.
5 1182(n)), as amended by section 102(b), is further
6 amended by adding at the end the following:

7 “(5)(A) This paragraph shall apply instead of sub-
8 paragraphs (A) through (E) of paragraph (2) in the case
9 of a violation described in subparagraph (B). It shall not otherwise

*John faxed
law. to Lee
last night*

10 “(B) The Attorney General shall establish a process
11 for the receipt, initial review, and disposition in accord-
12 ance with this paragraph of complaints respecting an em-
13 ployer's failure to meet the condition of paragraph
14 (1)(G)(i)(II) or a petitioner's misrepresentation of mate-

*to investigate
(recruitment)*

15 rial facts with respect to such condition. Complaints may
16 be filed by ^{any source whose identity is known to the AG,} (an aggrieved individual) who has submitted a
17 resume or otherwise applied in a reasonable manner for
18 the job that is the subject of the condition. No proceeding
19 shall be conducted under this paragraph on a complaint
20 concerning such a failure or misrepresentation unless the
21 Attorney General determines that the complaint was filed
22 not later than 12 months after the date of the failure or
23 misrepresentation, respectively.

*who is likely
to have knowledge
of the employers
recruitment or
hiring practices,
and who provides
... (etc.)*

24 “(C) If the Attorney General finds that a complaint
25 has been filed in accordance with subparagraph (B) and

1 there is reasonable cause to believe that such a failure or
2 misrepresentation described in such complaint has oc-
3 curred, the Attorney General shall initiate binding arbitra-
4 tion proceedings by requesting the Federal Mediation and
5 Conciliation Service to appoint an arbitrator from the ros-
6 ter of arbitrators maintained by such Service. The proce-
7 dure and rules of such Service shall be applicable to the
8 selection of such arbitrator and to such arbitration pro-
9 ceedings. The Attorney General shall pay the fee and ex-
10 penses of the arbitrator.

11 “(D)(i) The arbitrator shall make findings respecting
12 whether a failure or misrepresentation described in sub-
13 paragraph (B) occurred. If the arbitrator concludes that
14 failure or misrepresentation was willful, the arbitrator
15 shall make a finding to that effect. The arbitrator may
16 not find such a failure or misrepresentation (or that such
17 a failure or misrepresentation was willful) unless the com-
18 plainant demonstrates such a failure or misrepresentation
19 (or its willful character) by ~~clear and convincing evidence~~.

20 The arbitrator shall transmit the findings in the form of
21 a written opinion to the parties to the arbitration and the
22 Attorney General. Such findings shall be final and conclu-
23 sive, and, except as provided in this subparagraph, no offi-
24 cial or court of the United States shall have power or ju-
25 risdiction to review any such findings.

1 “(ii) The Attorney General may review and reverse
2 or modify the findings of an arbitrator only on the same
3 bases as an award of an arbitrator may be vacated or
4 modified under section 10 or 11 of title 9, United States
5 Code.

6 “(iii) With respect to the findings of an arbitrator,
7 a court may review only the actions of the Attorney Gen-
8 eral under clause (ii) and may set aside such actions only
9 on the grounds described in subparagraph (A), (B), or (C)
10 of section 706(a)(2) of title 5, United States Code. Not-
11 withstanding any other provision of law, such judicial re-
12 view may only be brought in an appropriate United States
13 court of appeals.

14 “(E) If the Attorney General receives a finding of an
15 arbitrator under this paragraph that an employer has
16 failed to meet the condition of paragraph (1)(G)(i)(II) or
17 has misrepresented a material fact with respect to such
18 condition, unless the Attorney General reverses or modi-
19 fies the finding under subparagraph (D)(ii)—

20 “(i) the Attorney General may impose adminis-
21 trative remedies (including civil monetary penalties
22 in an amount not to exceed \$1,000 per violation or
23 \$5,000 per violation in the case of a willful failure
24 or misrepresentation) as the Attorney General deter-
25 mines to be appropriate; and

*could include
back pay, etc.
but no clearing
remedy*

1 “(ii) the Attorney General is authorized to not
2 approve petitions filed with respect to that employer
3 under section 204 or 214(c) during a period of not
4 more than 1 year for aliens to be employed by the
5 employer.

6 “(F) The Attorney General shall not delegate, to any
7 other employee or official of the Department of Justice,
8 any function of the Attorney General under this para-
9 graph, until ^{body of} the Attorney General has ^{submitted a plan for such} ~~consulted~~ ^{delegated} with the
10 Committees on the Judiciary of the United States House
11 of Representatives and the Senate with respect to such
12 delegation.”.

13 (2) CONFORMING AMENDMENT.—The first sen-
14 tence of section 212(n)(2)(A) (8 U.S.C.
15 1182(n)(2)(A)) is amended by striking “The Sec-
16 retary” and inserting “Subject to paragraph (5)(A),
17 the Secretary”.

18 (c) LIABILITY OF PETITIONING EMPLOYER IN CASE
19 OF PLACEMENT OF H-1B NONIMMIGRANT WITH AN-
20 OTHER EMPLOYER.—Section 212(n)(2) (8 U.S.C.
21 1182(n)(2)) is amended by adding at the end the follow-
22 ing:

23 “(E) If an H-1B-dependent employer places a non-
24 exempt H-1B nonimmigrant with another employer as
25 provided under paragraph (1)(F) and the other employer

*What about that
says that
recruitment is
generally enforced
by DOL.*

1 has displaced or displaces a United States worker em-
2 ployed by such other employer during the period described
3 in such paragraph, such displacement shall be considered
4 for purposes of this paragraph a failure, by the placing
5 employer, to meet a condition specified in an application
6 submitted under paragraph (1); except that the Attorney
7 General may impose a sanction described in subclause (II)
8 of subparagraph (C)(i), (C)(ii), or (C)(iii) only if the Sec-
9 retary of Labor found that such placing employer—

10 “(i) knew or had reason to know of such dis-
11 placement at the time of the placement of the non-
12 immigrant with the other employer; or

13 “(ii) has been subject to a sanction under this
14 subparagraph based upon a previous placement of
15 an H-1B nonimmigrant with the same other em-
16 ployer.”.

17 (d) SPOT INVESTIGATIONS DURING PROBATIONARY
18 PERIOD.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as
19 amended by subsection (c), is further amended by adding
20 at the end the following:

21 “(F) The Secretary may, on a case-by-case basis,
22 subject an employer to random investigations for a period
23 of up to 5 years, beginning on the date that the employer
24 is found by the Secretary to have committed a willful fail-
25 ure to meet a condition of paragraph (1) (or has been

1 found under paragraph (5) to have committed a willful
 2 failure to meet the condition of paragraph (1)(G)(i)(II))
 3 or to have made a willful misrepresentation of material
 4 fact in an application. The preceding sentence shall apply
 5 to an employer regardless of whether or not the employer
 6 is an H-1B-dependent employer. The authority of the Sec-
 7 retary under this subparagraph shall not be construed to
 8 be subject to, or limited by, the requirements of subpara-

9 graph (A)."

10 *Insert Addendum A Here*
 SEC. 104. COLLECTION AND USE OF H-1B NONIMMIGRANT

11 FEES FOR SCHOLARSHIPS FOR LOW-INCOME
 12 MATH, ENGINEERING, AND COMPUTER
 13 SCIENCE STUDENTS AND JOB TRAINING OF
 14 UNITED STATES WORKERS.

15 (a) IMPOSITION OF FEE.—Section 214(c) (8 U.S.C.
 16 1184(c)) is amended by adding at the end the following:

17 “(9)(A) The Attorney General shall impose a fee on
 18 an employer (excluding an employer described in subpara-

19 graph (A) or (B) of section 212(p)(1)) and an employer

20 ~~filing for new concurrent employment) as a condition for~~

21 ~~the approval of a petition filed on or after October 1,~~

22 ~~1998, and before October 1, 2002, under paragraph (1)~~

23 “(i) initially to grant an alien nonimmigrant

24 status described in section 101(a)(15)(H)(i)(b); or

~~as a condition for~~

*for any petition filed on or after
 May 12, 1998 and before
 Oct. 1, 2001.*

*approval
 effective
 date on or
 after Oct 1, 1998
 too soon
 for INS
 May 12, 1998*

*Doyle
 INS
 Confused*

1182(h)(2) IS ~~BASED ADDENDUM~~ the following:
If the Secretary receives specific, credible information, from a source likely to have knowledge of an employer's practices, employment conditions or compliance with the employer's labor condition application whose identity is known to the Secretary, that provides reasonable cause to believe that an employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(E), (1)(F), or (1)(G)(i)(I), a pattern and practice of failures to meet the [aforementioned conditions], or a substantial failure meet the [aforementioned conditions] that affects multiple employees, the Secretary may conduct a 30 day investigation of these allegations, provided that the Secretary personally (or the Acting Secretary in the case of the Secretary's absence or disability) certifies that the requirements for conducting such an investigation have been met and approves commencement of the investigation. At the request of the source, the Secretary may withhold the identity of the source from the employer, and the source's identity shall not be disclosable pursuant to a Freedom of Information Act request.

(ii) The Secretary shall establish a procedure for any individual who provides the information to DOL that constitutes part of the basis for the commencement of an investigation on the basis described above to provide that information in writing on a form that the Department will provide to be completed by, or on behalf of, the individual.

(iii) It shall be the policy of the Secretary to provide to the employer notice of the potential initiation of an investigation of an alleged violation under the authority granted in this [] with sufficient specificity to allow the employer to respond before the investigation is actually initiated unless in the Secretary's judgment such notice would interfere with efforts to secure compliance. OK

(iv) Nothing in this section shall authorize the Secretary to initiate or approve the initiation of an investigation without the receipt of information from a person or persons not employed by the Department of Labor that provides the reasonable cause required by this section. The receipt of the I.c.a. and other materials the employer is required in order to obtain an H-1B visa shall not constitute "receipt of information" for purposes of satisfying this requirement. "

The authority granted herein ^{to file/submit} shall expire on
Sept 30, 2001

Addendum

23

1 ~~"(ii) to extend for the first time the stay of an~~
2 ~~alien having such status.~~

3 "(B) The amount of the fee shall be \$500 for each
4 such nonimmigrant.

5 "(C) Fees collected under this paragraph shall be de-
6 posited in the Treasury in accordance with section 286(s).

7 "(D)(i) An employer may not require an alien who
8 is the subject of the petition for which a fee is imposed
9 under this paragraph to reimburse, or otherwise com-
10 pensate, the employer for part or all of the cost of such
11 fee) and may not otherwise accept such reimbursement or
compensation from such alien.

12 "(ii) Section 274A(g)(2) shall apply to a violation of
13 clause (i) in the same manner as it applies to a violation
14 of section 274A(g)(1)."

15 (b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—
16 Section 286 (8 U.S.C. 1356) is amended by adding at the
17 end the following:

18 "(s) H-1B NONIMMIGRANT PETITIONER AC-
19 COUNT.—

20 "(1) IN GENERAL.—There is established in the
21 general fund of the Treasury a separate account,
22 which shall be known as the 'H-1B Nonimmigrant
23 Petitioner Account'. Notwithstanding any other sec-
24 tion of this title, there shall be deposited as offset.

DOL/INS
what
about
changing
jobs (?)

take lang- of
274A(g)(2)
and put in the
stay of labor
not changing substance;
only the responsible
part

2/2/98 M.

1 ting receipts into the account all fees collected under
2 section 214(c)(9).

3 "(2) USE OF FEES FOR JOB TRAINING.—60
4 percent of amounts deposited into the H-1B Non-
5 immigrant Petitioner Account shall remain available
6 to the Secretary of Labor until expended for dem-
7 onstration programs and projects described in sec-
8 tion 104(c) of the Temporary Access to Skilled
9 Workers and H-1B Nonimmigrant Program Im-
10 provement Act of 1998.

11 "(3) USE OF FEES FOR LOW-INCOME SCHOLAR-
12 SHIP PROGRAM.—32 percent of the amounts depos-
13 ited into the H-1B Nonimmigrant Petitioner Ac-
14 count shall remain available to the Director of the
15 National Science Foundation until expended for
16 scholarships described in section 104(d) of the Tem-
17 porary Access to Skilled Workers and H-1B Non-
18 immigrant Program Improvement Act of 1998 for
19 low-income students enrolled in a program of study
20 leading to a degree in mathematics, engineering, or
21 computer science.

22 "(4) USE OF FEES FOR APPLICATION PROCESS-
23 ING AND ENFORCEMENT.—2.5 percent of the
24 amounts deposited into the H-1B Nonimmigrant
25 Petitioner Account shall remain available to the Sec-

Handwritten:
~~2.5 percent~~
after 2.5 %

1 retary of Labor until expended for decreasing the
2 processing time for applications under section
3 212(n)(1), and 2.5 percent of such amounts shall re-
4 main available to such Secretary until expended for
5 carrying out section 212(n)(2). [Notwithstanding the
6 preceding sentence, both of the amounts made avail-
7 able for any fiscal year pursuant to the preceding
8 sentence shall be available to such Secretary, and
9 shall remain available until expended, only for carry-
10 ing out section 212(n)(¹~~2~~) until the Secretary sub-
11 mits to the Congress a report containing a certifi-
12 cation that, during the most recently concluded cal-
13 endar year, the Secretary substantially complied
14 with the requirement in section 212(n)(1) relating to
15 the provision of the certification described in section
16 101(a)(15)(H)(i)(b) within a 7-day period."]

17 (c) DEMONSTRATION PROGRAMS AND PROJECTS TO
18 PROVIDE TECHNICAL SKILLS TRAINING FOR WORK-
19 ERS.—

20 (1) IN GENERAL. (Subject to paragraph (3), in
21 establishing demonstration programs under section
22 452(c) of the Job Training Partnership Act (29
23 U.S.C. 1732(c)), as in effect on the date of the en-
24 actment of this Act, or demonstration programs or
25 projects under section 171(b) of the Workforce In-

1 vestment Act of 1998, the Secretary of Labor shall
2 establish demonstration programs or projects to pro-
3 vide technical skills training for workers, including
4 both employed and unemployed workers.

5 (2) GRANTS.—Subject to paragraph (3), the
6 Secretary of Labor shall award grants to carry out
7 the programs and projects described in paragraph
8 (1) to—

9 (A)(i) private industry councils established
10 under section 102 of the Job Training Partner-
11 ship Act (29 U.S.C. 1512), as in effect on the
12 date of the enactment of this Act; or

13 (ii) local boards that will carry out such
14 programs or projects through one-stop delivery
15 systems established under section 121 of the
16 Workforce Investment Act of 1998; or

17 (B) regional consortia of councils or local
18 boards described in subparagraph (A).

19 (3) LIMITATION.—The Secretary of Labor shall
20 establish programs and projects under paragraph
21 (1), including awarding grants to carry out such
22 programs and projects under paragraph (2), only
23 with funds made available under section 286(s)(2) of
24 the Immigration and Nationality Act, and not with
25 funds made available under the Job Training Part-

insane

1 nership Act or the Workforce Investment Act of
2 1998.

3 (d) LOW-INCOME SCHOLARSHIP PROGRAM.—

4 (1) ESTABLISHMENT.—The Director of the Na-
5 tional Science Foundation (referred to in this sub-
6 section as the “Director”) shall award scholarships
7 to low-income individuals to enable such individuals
8 to pursue associate, undergraduate, or graduate level
9 degrees in mathematics, engineering, or computer
10 science.

11 (2) ELIGIBILITY.—

12 (A) IN GENERAL.—To be eligible to receive
13 a scholarship under this subsection, an individ-
14 ual—

15 (i) must be a citizen or national of the
16 United States or an alien lawfully admitted
17 to the United States for permanent resi-
18 dence;

19 (ii) shall prepare and submit to the
20 Director an application at such time, in
21 such manner, and containing such infor-
22 mation as the Director may require; and

23 (iii) shall certify to the Director that
24 the individual intends to use amounts re-
25 ceived under the scholarship to enroll or

1 continue enrollment at an institution of
2 higher education (as defined in section
3 1201(a) of the Higher Education Act of
4 1965) in order to pursue an associate, un-
5 dergraduate, or graduate level degree in
6 mathematics, engineering, or computer
7 science.

8 (B) ABILITY.—Awards of scholarships
9 under this subsection shall be made by the Di-
10 rector solely on the basis of the ability of the
11 applicant, except that in any case in which 2 or
12 more applicants for scholarships are deemed by
13 the Director to be possessed of substantially
14 equal ability, and there are not sufficient schol-
15 arships available to grant one to each of such
16 applicants, the available scholarship or scholar-
17 ships shall be awarded to the applicants in a
18 manner that will tend to result in a geographi-
19 cally wide distribution throughout the United
20 States of recipients' places of permanent resi-
21 dence.

22 (3) LIMITATION.—The amount of a scholarship
23 awarded under this subsection shall be determined
24 by the Director, except that the Director shall not

1 award a scholarship in an amount exceeding \$2,500
2 per year.

3 (4) FUNDING.—The Director shall carry out
4 this subsection only with funds made available under
5 section 286(s)(3) of the Immigration and National-
6 ity Act.

7 **SEC. 105. COMPUTATION OF PREVAILING WAGE LEVEL**

8 (a) IN GENERAL.—Section 212 (8 U.S.C. 1182) is
9 amended by adding at the end the following:

10 “(p)(1) In computing the prevailing wage level for an
11 occupational classification in an area of employment for
12 purposes of subsections (n)(1)(A)(i)(II) and (a)(5)(A) in
13 the case of an employee of—

14 “(A) an institution of higher education (as de-
15 fined in section 1201(a) of the Higher Education
16 Act of 1965), or a related or affiliated nonprofit en-
17 tity; or

18 “(B) a nonprofit research organization or a
19 Governmental research organization;

20 the prevailing wage level shall only take into account em-
21 ployees at such institutions and organizations in the area
22 of employment.

23 “(2) With respect to a professional athlete (as defined
24 in subsection (a)(5)(A)(iii)(II)) when the job opportunity
25 is covered by professional sports league rules or regula-

1 tions, the wage set forth in those rules or regulations shall
2 be considered as not adversely affecting the wages of
3 United States workers similarly employed and be consid-
4 ered the prevailing wage.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) applies to prevailing wage computations
7 made for applications filed on or after the date of the en-
8 actment of this Act.

9 **SEC. 106. IMPROVING COUNT OF H-1B AND H-2B NON-**
10 **IMMIGRANTS.**

11 (a) ENSURING ACCURATE COUNT.—The Attorney
12 General shall take such steps as are necessary to maintain
13 an accurate count of the number of aliens subject to the
14 numerical limitations of section 214(g)(1) of the Immigra-
15 tion and Nationality Act (8 U.S.C. 1184(g)(1)) who are
16 issued visas or otherwise provided nonimmigrant status.

17 (b) REVISION OF PETITION FORMS.—The Attorney
18 General shall take such steps as are necessary to revise
19 the forms used for petitions for visas or nonimmigrant sta-
20 tus under clause (i)(b) or (ii)(b) of section 101(a)(15)(H)
21 of the Immigration and Nationality Act (8 U.S.C.
22 1101(a)(15)(H)) so as to ensure that the forms provide
23 the Attorney General with sufficient information to permit
24 the Attorney General accurately to count the number of
25 aliens subject to the numerical limitations of section

1 214(g)(1) of such Act (8 U.S.C. 1184(g)(1)) who are
 2 issued visas or otherwise provided nonimmigrant status.

3 (c) REPORTS.—Beginning with fiscal year 1999, the
 4 Attorney General shall ~~provide to the Congress~~ ^{publish in the Fed. Register a notice of}

5 (1) ~~on a quarterly basis a report on the num-~~ ^{semi-annual}
 6 bers of ~~individuals~~ ^{aliens} who were ~~issued visas or other-~~ ^{classified}
 7 wise provided nonimmigrant status during the pre-
 8 ceding 3-month period under section
 9 101(a)(15)(H)(i)(b) of the Immigration and Nation-
 10 ality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)); and

11 (2) on an annual basis a report on the countries
 12 of origin and occupations of, educational levels at-
 13 tained by, and compensation paid to, individuals
 14 issued visas or provided nonimmigrant status under
 15 such sections during such period.

16 Each report under paragraph (2) shall include the number
 17 of individuals described in paragraph (1) during the year
 18 who were issued visas pursuant to petitions filed by insti-
 19 tutions or organizations described in section 212(p)(1) of
 20 such Act (as added by section 105 of this Act).

21 **SEC. 107. REPORT ON OLDER WORKERS IN THE INFORMA-**
 22 **TION TECHNOLOGY FIELD.**

23 (a) STUDY.—The Secretary of Commerce shall enter
 24 into a contract with the President of the National Acad-
 25 emy of Sciences to conduct a study, using the best avail-

Report to
Congress quantity
is questionable as
effective; burdensome

from INS

need a
later effective
date
FY 2000

notice of
semi-annual
burden;
doesn't
help
Congress
Not in
federal
register
nor
mechanism

INS does
not collect
this data
on an
automated
basis.

1 able data, assessing the status of older workers in the in-
2 formation technology field. The study shall consider the
3 following:

4 (1) The existence and extent of age discrimina-
5 tion in the information technology workplace.

6 (2) The extent to which there is a difference,
7 based on age, in—

8 (A) promotion and advancement;

9 (B) working hours;

10 (C) telecommuting;

11 (D) salary; and

12 (E) stock options, bonuses, and other bene-
13 fits.

14 (3) The relationship between rates of advance-
15 ment, promotion, and compensation to experience,
16 skill level, education, and age.

17 (4) Differences in skill level on the basis of age.

18 (b) REPORT.—Not later than October 1, 2000, the
19 Secretary of Commerce shall submit to the Committees
20 on the Judiciary of the United States House of Represent-
21 atives and the Senate a report containing the results of
22 the study described in subsection (a).

1 SEC. 108. REPORT ON HIGH TECHNOLOGY LABOR MARKET
2 NEEDS; REPORTS ON ECONOMIC IMPACT OF
3 INCREASE IN H-1B NONIMMIGRANTS.

4 (a) NATIONAL SCIENCE FOUNDATION STUDY AND
5 REPORT.—

6 (1) IN GENERAL.—The Director of the National
7 Science Foundation shall conduct a study to assess
8 labor market needs for workers with high technology
9 skills during the next 10 years. The study shall in-
10 vestigate and analyze the following:

11 (A) Future training and education needs of
12 companies in the high technology and informa-
13 tion technology sectors and future training and
14 education needs of United States students to
15 ensure that students' skills at various levels are
16 matched to the needs in such sectors.

17 (B) An analysis of progress made by edu-
18 cators, employers, and government entities to
19 improve the teaching and educational level of
20 American students in the fields of math,
21 science, computer science, and engineering since
22 1998.

23 (C) An analysis of the number of United
24 States workers currently or projected to work
25 overseas in professional, technical, and manage-
26 rial capacities.

1 (D) The relative achievement rates of
2 United States and foreign students in second-
3 ary schools in a variety of subjects, including
4 math, science, computer science, English, and
5 history.

6 (E) The relative performance, by subject
7 area, of United States and foreign students in
8 postsecondary and graduate schools as com-
9 pared to secondary schools.

10 (F) The needs of the high technology sec-
11 tor for foreign workers with specific skills and
12 the potential benefits and costs to United
13 States employers, workers, consumers, post-
14 secondary educational institutions, and the
15 United States economy, from the entry of
16 skilled foreign professionals in the fields of
17 science and engineering.

18 (G) The needs of the high technology sec-
19 tor to adapt products and services for export to
20 particular local markets in foreign countries.

21 (H) An examination of the amount and
22 trend of moving the production or performance
23 of products and services now occurring in the
24 United States abroad.

1 (2) REPORT.—Not later than October 1, 2000,
2 the Director of the National Science Foundation
3 shall submit to the Committees on the Judiciary of
4 the United States House of Representatives and the
5 Senate a report containing the results of the study
6 described in paragraph (1).

7 (3) INVOLVEMENT.—The study under para-
8 graph (1) shall be conducted in a manner that en-
9 sures the participation of individuals representing a
10 variety of points of view.

11 (b) REPORTING ON STUDIES SHOWING ECONOMIC
12 IMPACT OF H-1B NONIMMIGRANT INCREASE.—The
13 Chairman of the Board of Governors of the Federal Re-
14 serve System, the Director of the Office of Management
15 and Budget, the Chair of the Council of Economic Advis-
16 ers, the Secretary of the Treasury, the Secretary of Com-
17 merce, the Secretary of Labor, and any other member of
18 the Cabinet, shall promptly report to the Congress the re-
19 sults of any reliable study that suggests, based on legiti-
20 mate economic analysis, that the increase effected by sec-
21 tion 101(a) of this Act in the number of aliens who may
22 be issued visas or otherwise provided nonimmigrant status
23 under section 101(a)(15)(H)(i)(b) of the Immigration and
24 Nationality Act has had an impact on any national eco-

1 nomic indicator, such as the level of inflation or unemploy-
2 ment, that warrants action by the Congress.

3 **TITLE II—SPECIAL IMMIGRANT**
4 **STATUS FOR CERTAIN NATO**
5 **CIVILIAN EMPLOYEES**

6 **SEC. 201. SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO**
7 **CIVILIAN EMPLOYEES.**

8 (a) IN GENERAL.—Section 101(a)(27) (8 U.S.C.
9 1101(a)(27)) is amended—

10 (1) by striking “or” at the end of subparagraph
11 (J),

12 (2) by striking the period at the end of sub-
13 paragraph (K) and inserting “; or”, and

14 (3) by adding at the end the following new sub-
15 paragraph:

16 “(L) an immigrant who would be described in
17 clause (i), (ii), (iii), or (iv) of subparagraph (I) if
18 any reference in such a clause—

19 “(i) to an international organization de-
20 scribed in paragraph (15)(G)(i) were treated as
21 a reference to the North Atlantic Treaty Orga-
22 nization (NATO);

23 “(ii) to a nonimmigrant under paragraph
24 (15)(G)(iv) were treated as a reference to a
25 nonimmigrant classifiable under NATO-6 (as a

1 member of a civilian component accompanying
2 a force entering in accordance with the provi-
3 sions of the NATO Status-of-Forces Agree-
4 ment, a member of a civilian component at-
5 tached to or employed by an Allied Head-
6 quarters under the 'Protocol on the Status of
7 International Military Headquarters' set up
8 pursuant to the North Atlantic Treaty, or as a
9 dependent); and

10 "(iii) to the Immigration Technical Correc-
11 tions Act of 1988 or to the Immigration and
12 Nationality Technical Corrections Act of 1994
13 were a reference to the Temporary Access to
14 Skilled Workers and H-1B Nonimmigrant Pro-
15 gram Improvement Act of 1998."

*technical
conforming
amendment?*

16 (b) CONFORMING NONIMMIGRANT STATUS FOR CER-
17 TAIN PARENTS OF SPECIAL IMMIGRANT CHILDREN.—
18 Section 101(a)(15)(N) (8 U.S.C. 1101(a)(15)(N)) is
19 amended—

20 (1) by inserting "(or under analogous authority
21 under paragraph (27)(L))" after "(27)(I)(i)", and

22 (2) by inserting "(or under analogous authority
23 under paragraph (27)(L))" after "(27)(I)".

1 **TITLE III—MISCELLANEOUS**
2 **PROVISION**

3 **SEC. 301. ACADEMIC HONORARIA.**

4 (a) IN GENERAL.—Section 212 (8 U.S.C. 1182), as
5 amended by section 105, is further amended by adding
6 at the end the following:

7 “(q) Any alien admitted under section 101(a)(15)(B)
8 may accept an honorarium payment and associated inci-
9 dental expenses for a usual academic activity or activities
10 (lasting not longer than 9 days at any single institution),
11 as defined by the Attorney General in consultation with
12 the Secretary of Education, if such payment is offered by
13 an institution or organization described in subsection
14 (p)(1) and is made for services conducted for the benefit
15 of that institution or entity and if the alien has not accept-
16 ed such payment or expenses from more than 5 institu-
17 tions or organizations in the previous 6-month period.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply to activities occurring on or
20 after the date of the enactment of this Act.

*Compensating in the U.S.
on a B-1 visa*

*Eroding principle of B-1 (visitor
for business).
BUT /not allowed to perform
skilled or unskilled labor
while in the U.S.*