

--If DOL receives specific, credible and probative evidence, not derived from a complaint by an aggrieved party but derived from particular individuals whose identity is known to DOL and who have first-hand knowledge of the information they have provided, that there is probable cause to believe that an employer has committed a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an application, or a violation of clause (iv), the Secretary may conduct a thirty day investigation in order to determine whether a reasonable basis exists for finding that the employer has committed such a violation, provided that the Secretary, the Secretary of Commerce, and Attorney General each personally certify that they have reviewed the evidence, that it is specific, credible, and probative, and that it provides the probable cause required.

--DOL shall establish a procedure for any individual who provides 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 DOL will provide. That form shall advise the individual that statements made on the form in connection with such a potential investigation are covered by section 1001 of title 18 and requiring the individual to indicate by the individual's signature of the form that the individual is aware of this fact and of the penalties for violation of that section.

--No later than the thirtieth day after the initiation of such an investigation, if the Secretary determines that a reasonable basis exists for finding that the employer has committed a violation specified in paragraph (a), the Secretary shall provide to the employer notice of such determination, the alleged violation or violations that the Secretary has determined there is reasonable basis for finding that the employer has committed, the evidence underlying the Secretary's determination with respect to each alleged violation, and an opportunity for a hearing on the alleged violation under the procedures set forth in [212(n)(2)(B)] [this is the right cross-reference under current law. Have not checked if the paragraph number is changed by Smith substitute to H.R. 3736]

--The Secretary may withhold from the employer the identity of the individual or individuals who provided the evidence if the individual or individuals so request, except that if the withholding of the identity of the individual or individuals in question prevents the employer from being given sufficiently specific information to allow the employer to respond to the allegations, the Secretary shall not proceed any further on the matter.

Per country limit:

Allow H-1B visa holders whom the employer wants to hire permanently and who would be eligible for a permanent employment visa but for being barred by the per country limit to be given by the Attorney General a one-time extension of their visa until the per-country limit would no longer bar them from getting the permanent visa, except that the extension cannot extend beyond Sept. 30, 2001.

(1)

1 (E) An examination of the amount and
2 trend of high technology work that is out-
3 sourced from the United States to foreign coun-
4 tries.

5 (b) REPORT.—Not later than October 1, 2000, the
6 National Science Foundation shall submit a report con-
7 taining the results of the study described in subsection (a)
8 to the Committees on the Judiciary of the House of Rep-
9 resentatives and the Senate.

10 (c) AVAILABILITY OF FUNDS.—Funds available to
11 the National Science Foundation shall be made available
12 to carry out this section.

13 **SEC. 8. LIMITATION ON PER COUNTRY CEILING WITH RE-**
14 **SPECT TO EMPLOYMENT-BASED IMMI-**
15 **GRANTS.**

16 (a) SPECIAL RULES.—Section 202(a) (8 U.S.C.
17 1152(a)) is amended by adding at the end the following
18 new paragraph:

19 “(5) RULES FOR EMPLOYMENT-BASED IMMI-
20 GRANTS.—

21 “(A) EMPLOYMENT-BASED IMMIGRANTS
22 NOT SUBJECT TO PER COUNTRY LIMITATION IF
23 ADDITIONAL VISAS AVAILABLE.—If the total
24 number of visas available under paragraph (1),
25 (2), (3), (4), or (5) of section 203(b) for a cal-

Why do we
have the per
country caps?

From the
“original”
Abraham
bill
(actually
the
substitute)

endar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

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

(b) CONFORMING AMENDMENTS.—

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

(2) Section 202(e)(3) (8 U.S.C. 1152(e)(3)) is amended by striking “the proportion of the visa

3

1 numbers" and inserting "except as provided in sub-
2 section (a)(5), the proportion of the visa numbers".

3 (c) ONE-TIME PROTECTION UNDER PER COUNTRY

4 CEILING.—Notwithstanding section 214(g)(4) of the Im-
5 migration and Nationality Act, any alien who—

6 (1) as of the date of enactment of this Act is
7 a nonimmigrant described in section
8 101(a)(15)(H)(i) of that Act;

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

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

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

19 **SEC. 9. ACADEMIC HONORARIA.**

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

22 "(p) Any alien admitted under section 101(a)(15)(B)
23 may accept an honorarium payment and associated inci-
24 dental expenses for a usual academic activity or activities,
25 as defined by the Attorney General in consultation with

(1)

1 issued visas or provided nonimmigrant status under
2 such sections during such period.

3 **[SEC. 108. TEMPORARY EXTENSION OF LENGTH OF STAY**
4 **FOR H-1B NONIMMIGRANTS AWAITING**
5 **SKILLED IMMIGRANT VISA UNDER PER**
6 **COUNTRY CEILING.**

7 **[**Notwithstanding section 214(g)(4) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1184(g)(4)), in the
9 case of an alien who—

10 (1) as of the date of enactment of this Act, is
11 a nonimmigrant described in section
12 101(a)(15)(H)(i)(b) of such Act (8 U.S.C.
13 1101(a)(15)(H)(i)(b));

14 (2) is the beneficiary of a petition filed under
15 section 204(a) of such Act (8 U.S.C. 1154(a)) for a
16 preference status under paragraph (1), (2), or (3) of
17 section 203(b) of such Act (8 U.S.C. 1153(b));

18 (3) would qualify for a visa under such para-
19 graph but for the application of a per country limi-
20 tation under section 202(b) of such Act (8 U.S.C.
21 1152(b)); and

22 (4) applies for benefits under this section;
23 the Attorney General may grant an extension of such non-
24 immigrant status for the alien until the alien's application
25 for adjustment of status has been processed and a decision

From the
a draft
of the
Abraham
Smith
proposal

7

(2)

1 made thereon, except that the Attorney General may not
2 so extend an alien's status beyond September 30, 2001.]

3 **SEC. 109. REPORT ON AGE DISCRIMINATION IN THE INFOR-**
4 **MATION TECHNOLOGY FIELD.**

5 (a) STUDY.—The [Comptroller General of the United
6 States] shall conduct a study assessing age discrimination
7 in the information technology field. The study shall con-
8 sider the following:

9 (1) The prevalence of age discrimination in the
10 information technology workplace.

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

13 (A) promotion and advancement,

14 (B) working hours,

15 (C) telecommuting,

16 (D) salary, and

17 (E) stock options, bonuses, and other bene-
18 fits.

19 (3) The relationship between rates of advance-
20 ment, promotion, and compensation to experience,
21 skill level, education, and age.

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

23 (b) REPORT.—Not later than October 1, 2000, the
24 [Comptroller General of the United States] shall submit

25 to the Committees on the Judiciary of the United States

Section by Section**Abraham
Hatch****The Abraham-Hatch Substitute Amendment for the American Competitiveness Act
S. 1723****Section 1**

The Act may be cited as the "American Competitiveness Act."

Section 2. Findings:

The Act makes the following findings:

- The National Software Alliance a consortium of concerned government, industry, and academic leaders that includes the U.S. Army, Navy, and Air force has concluded that
- "The supply of computer science graduates is far short of the number needed by industry." The Alliance concludes that the current severe understaffing could lead to inflation and lower productivity.
- The U.S. Department of Labor projects that our economy will produce more than 130,000 information technology jobs in each of the next 10 years, for a total of more than 1.3 million.
- The Hudson Institute estimates that the unaddressed shortage of skilled workers throughout the U.S. economy will result in a 5 percent drop in the growth rate of GDP. That translates into approximately \$200 billion in lost output, nearly \$1,000 for every American.
- In FY 1997, U.S. companies and universities reached the cap of 65,000 on H-1B temporary visas a month before the end of the fiscal year. In FY 1998 the cap is expected to be reached as early as May if Congress takes no action. And it will be hit earlier each year until backlogs develop of such a magnitude as to prevent U.S. companies and researchers from having any timely access to skilled foreign-born professionals.
- It is vital that more American young people be encouraged and equipped to enter technical fields, such as mathematics, engineering, and computer science.
- If American companies cannot find home-grown talent, and if they cannot bring talent to this country, a large number are likely to move key operations overseas, sending those and related American jobs with them.
- Inaction in these areas will carry significant consequences for the future of American competitiveness around the world and will seriously undermine efforts to create and keep jobs here in the United States.

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Section 3. Increased Access to Skilled Personnel for United States Companies and Universities. Additional Numbers Sunset After 5 Years.

The numbers in the Abraham-Hatch Substitute are the same as in the original bill, with three exceptions:

Under the Substitute, rather than being available on a permanent basis, the additional numbers in the bill for H-1B visas would sunset after five years.

The amendment substitutes a hard number (95,000) for the formula requiring a doubling of usage as of March 31 for FY 1998. We now have a pretty clear idea what that formula would produce, and it would be somewhere between 90,000 and 95,000. The 95,000 also includes between 3,000 and 5,000 visas that would have been granted last fiscal year but for the cap.

The reserve in the substitute drawn from unused H-2B visas is capped at 20,000 rather than 25,000.

Like the original bill, the Substitute creates a new H-1C category that will include physical/occupational therapists and other health care professions, which are removed and subtracted from the H-1B category.

	H-1B Visas	H-1C Visas (New Category for Physical Therapists and Other Health Care Workers)
FY 1998	95,000 (current projected usage for FY 1998)	
FY 1999	85,000 (plus a maximum of 20,000 H-2B visas if unused in previous fiscal year)	10,000
FY 2000	Same as above	10,000*
FY 2001	Same as above	10,000*
FY 2002	Same as above	10,000*
FY 2003	65,000	(would revert to H-1B category)

Note: *If H-1C visas are unused in a fiscal year, they will be made available to the H-1B category in the next year.

Section 4. Education and Training in Science and Technology

The bill authorizes \$50 million for the State Student Incentive Grant (SSIG) program to create approximately 20,000 scholarships a year for low-income students pursuing an associate, undergraduate, or graduate level degree in mathematics, engineering or computer science. The program provides dollar-for-dollar federal matching funds that will grow to \$100 million with state matching. The scholarships will be for up to \$5,000 each. The bill also authorizes \$10 million a year to train unemployed American workers in new skills for the information technology industry.

Section 5. Increased Enforcement Penalties and Improved Operations

1. Layoff Protection for U.S. Workers. The Substitute adds a new provision to protect against layoffs of U.S. workers. Any employer who commits a willful violation that includes a layoff of a U.S. worker is subject to a fine of \$25,000 per violation and a 2-year debarment from the H-1B program and the permanent employment visa program.

2. Fines. The bill increases fines by five-fold for willful violators of the H-1B program, from the current \$1,000 to \$5,000.

3. Additional Enforcement Powers. The bill allows the Secretary of Labor to conduct spot inspections and exercise other enforcement powers for in the absence of complaint for employers previously found to have committed a willful violation whom the Secretary determines should be placed on probation for the duration of the probationary period.

3. Certification Application Responsibility Transfer. This section transfers filing of the Labor Condition Application to the INS, which will free up resources for enforcement at the Department of Labor on H-1Bs.

4. Prevailing Wage. Under current law an employer must attest on a Labor Condition Application that an individual on an H-1B will be paid the greater of the prevailing or actual wage paid to similarly employed U.S. workers. The bill seeks to correct for the inaccuracies in the current Department of Labor use and calculation of prevailing wage data.

The substitute amendment changes the prevailing wage provisions that were in the bill to focus on just two areas — helping universities deal with the Hathaway decision, which has artificially inflated their wages by lumping them in with for-profit entities, and allowing universities and businesses to use private, generally accepted, academic and industry surveys to determine prevailing wage. The Department of Labor would still have the ability to challenge a survey if it was considered a "sham" survey or not a commonly used survey. The amendment also contains a provision dealing with special issues regarding prevailing wages confronting professional sports teams.

04/01/86 18.25
5. **Posting.** The bill provides for posting by electronic means (e.g. e-mail) rather than exclusively by physical means (e.g. bulletin boards at lunch rooms). The substitute clarifies that this language is not intended to change the scope of the posting obligation.

Section 6. Annual and Quarterly Reports on H-1B Visas

Requires quarterly reports on H-1B numbers. Mandates annual reports on the occupations and compensation of aliens provided nonimmigrant status under such section during the previous fiscal year.

Section 7. Study. The Substitute adds a new section requiring a study and report on high tech labor market needs for the next ten years overseen by the National Science Foundation and done by a panel established by the National Academy of Sciences to be transmitted to the Judiciary Committees of both Houses by October 1, 2000.

Section 8. Limitation on Per Country Ceiling with Respect to Employment-based Immigrants

The bill modifies per country limits on employment-based visas to eliminate the discriminatory effects of those per country limits on nationals from certain Asian Pacific nations. Currently, in a given year there are employment-based immigrant visas available within the annual limit of 140,000, yet U.S. law prevents individuals born in particular countries from being able to join employers who want to sponsor them as permanent employees because those countries have reached their per country limit. This amounts to preventing an employer from hiring or sponsoring permanently in that year someone because he or she is Chinese or Indian, even though the individuals meets all the proper legal criteria set forth by the U.S. government. The bill would end this prohibition itself leaving intact the annual level of 140,000.

Section 9. Academic Honoria

Permits universities to pay honoraria and incidental expenses for speeches by visiting scholars.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide substitute language.

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

S. 1723

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

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. ABRAHAM (for himself and Mr. Hatch)

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 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

1 to be made to the Immigration and Nationality Act (8
2 U.S.C. 1101 et seq.).

3 **SEC. 2. FINDINGS.**

4 Congress makes the following findings:

5 (1) American companies today are engaged in
6 fierce competition in global markets.

7 (2) Companies across America are faced with
8 severe high skill labor shortages that threaten their
9 competitiveness.

10 (3) The National Software Alliance, a consor-
11 tium of concerned government, industry, and aca-
12 demic leaders that includes the United States Army,
13 Navy, and Air Force, has concluded that "The sup-
14 ply of computer science graduates is far short of the
15 number needed by industry.". The Alliance con-
16 cludes that the current severe understaffing could
17 lead to inflation and lower productivity.

18 (4) The Department of Labor projects that the
19 United States economy will produce more than
20 130,000 information technology jobs in each of the
21 next 10 years, for a total of more than 1,300,000.

22 (5) Between 1986 and 1995, the number of
23 bachelor's degrees awarded in computer science de-
24 clined by 42 percent. Therefore, any short-term in-
25 creases in enrollment may only return the United

1 States to the 1986 level of graduates and take sev-
2 eral years to produce these additional graduates.

3 (6) A study conducted by Virginia Tech for the
4 Information Technology Association of America esti-
5 mates that there are more than 340,000 unfilled po-
6 sitions for highly skilled information technology
7 workers in American companies.

8 (7) The Hudson Institute estimates that the
9 unaddressed shortage of skilled workers throughout
10 the United States economy will result in a 5-percent
11 drop in the growth rate of GDP. That translates
12 into approximately \$200,000,000,000 in lost output,
13 nearly \$1,000 for every American.

14 (8) It is necessary to deal with the current situ-
15 ation with both short-term and long-term measures.

16 (9) In fiscal year 1997, United States compa-
17 nies and universities reached the cap of 65,000 on
18 H-1B temporary visas a month before the end of
19 the fiscal year. In fiscal year 1998 the cap is ex-
20 pected to be reached as early as May if Congress
21 takes no action. And it will be hit earlier each year
22 until backlogs develop of such a magnitude as to
23 prevent United States companies and researchers
24 from having any timely access to skilled foreign-born
25 professionals.

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

(11) If American companies cannot find home-grown talent, and if they cannot bring talent to this country, a large number are likely to move key operations overseas, sending those and related American jobs with them.

(12) Inaction in these areas will carry significant consequences for the future of American competitiveness around the world and will seriously undermine efforts to create and keep jobs in the United States.

**SEC. 3. INCREASED ACCESS TO SKILLED PERSONNEL FOR
UNITED STATES COMPANIES AND UNIVERSITIES.**

(a) ESTABLISHMENT OF H1-C NONIMMIGRANT CATEGORY.—

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

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

(B) by inserting after "section 212(n)(1)" the following: ", or (c) who is coming temporarily to the United States to perform labor as a health care worker, other than a physician, in a specialty occupation described in section 214(i)(1), who meets the requirements of the occupation specified in section 214(i)(2), who qualifies for the exemption from the grounds of inadmissibility described in section 212(a)(5)(C), and with respect to whom the Attorney General certifies that the intending employer has filed with the Attorney General an application under section 212(n)(1).".

(2) CONFORMING AMENDMENTS.—

(A) Section 212(n)(1) is amended by inserting "or (c)" after "section 101(a)(15)(H)(i)(b)" each place it appears.

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

(3) TRANSITION RULE.—Any petition filed prior to the date of enactment of this Act, for issuance of a visa under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act on behalf of an alien described in the amendment made by para-

graph (1)(B) shall, on and after that date, be treated as a petition filed under section 101(a)(15)(H)(i)(c) of that Act, as added by paragraph (1).

(b) ANNUAL CEILINGS FOR H1-B AND H1-C WORKERS.—

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

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

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

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

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

“(iii) for fiscal year 1999, may not exceed the number determined for fiscal year 1998 under such section, minus 10,000, plus the number of unused visas under subparagraph (B) for the fiscal year preceding the applicable fiscal year, and

“(iv) for fiscal year 2000, and each applicable fiscal year thereafter through fiscal year

1 2002, may not exceed the number determined
2 for fiscal year 1998 under such section, minus
3 10,000, plus the number of unused visas under
4 subparagraph (B) for the fiscal year preceding
5 the applicable fiscal year, plus the number of
6 unused visas under subparagraph (C) for the
7 fiscal year preceding the applicable fiscal year;
8 “(B) under section 101(a)(15)(H)(ii)(b), begin-
9 ning with fiscal year 1992, may not exceed 66,000;
10 or
11 “(C) under section 101(a)(15)(H)(i)(c), begin-
12 ning with fiscal year 1999, may not exceed 10,000.
13 For purposes of determining the ceiling under subpara-
14 graph (A) (iii) and (iv), not more than 20,000 of the un-
15 used visas under subparagraph (B) may be taken into ac-
16 count for any fiscal year.”.

17 (2) TRANSITION PROCEDURES.—Any visa is-
18 sued or nonimmigrant status otherwise accorded to
19 any alien under clause (i)(b) or (ii)(b) of section
20 101(a)(15)(H) of the Immigration and Nationality
21 Act pursuant to a petition filed during fiscal year
22 1998 but approved on or after October 1, 1998,
23 shall be counted against the applicable ceiling in sec-
24 tion 214(g)(1) of that Act for fiscal year 1998 (as
25 amended by paragraph (1) of this subsection), ex-

1 cept that, in the case where counting the visa or the
2 other granting of status would cause the applicable
3 ceiling for fiscal year 1998 to be exceeded, the visa
4 or grant of status shall be counted against the appli-
5 cable ceiling for fiscal year 1999.

6 **SEC. 4. EDUCATION AND TRAINING IN SCIENCE AND TECH-**
7 **NOLOGY.**

8 (a) DEGREES IN MATHEMATICS, COMPUTER
9 SCIENCE, AND ENGINEERING.—Subpart 4 of part A of
10 title IV of the Higher Education Act of 1965 (20 U.S.C.
11 1070c et seq.) is amended—

12 (1) in section 415A(b)(1) (20 U.S.C.
13 1070c(b)(1))—

14 (A) by striking “\$105,000,000 for fiscal
15 year 1993” and inserting “\$155,000,000 for
16 fiscal year 1999”; and

17 (B) by inserting “, of which the amount in
18 excess of \$25,000,000 for each fiscal year that
19 does not exceed \$50,000,000 shall be available
20 to carry out section 415F for the fiscal year”
21 before the period; and

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

1 "SEC. 415F. DEGREES IN MATHEMATICS, COMPUTER
2 SCIENCE, AND ENGINEERING.

3 "(a) ALLOTMENTS AND GRANTS.—From amounts
4 made available to carry out this section under section
5 415A(b)(1) for a fiscal year, the Secretary shall make al-
6 lotments to States to enable the States to pay not more
7 than 50 percent of the amount of grants awarded to low-
8 income students in the States.

9 "(b) USE OF GRANTS.—Grants awarded under this
10 section shall be used by the students for attendance on
11 a full-time basis at an institution of higher education in
12 a program of study leading to an associate, baccalaureate
13 or graduate degree in mathematics, computer science, or
14 engineering.

15 "(c) COMPARABILITY.—The Secretary shall make al-
16 lotments and grants shall be awarded under this section
17 in the same manner, and under the same terms and condi-
18 tions, as—

19 "(1) the Secretary makes allotments and grants
20 are awarded under this subpart (other than this sec-
21 tion); and

22 "(2) are not inconsistent with this section."

23 (b) DATA BANK; TRAINING.—

24 (1) IN GENERAL.—The Secretary of Labor
25 shall—

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

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

(ii) the matching of individuals possessing technology credentials with employment in the field of technology; and

(B) provide training in information technology to unemployed individuals who are seeking employment.

(2) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated for fiscal year 1999 and each of the 4 succeeding fiscal years—

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

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

SEC. 5. INCREASED ENFORCEMENT PENALTIES AND IMPROVED OPERATIONS.

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

(1) by striking “a failure to meet” and all that follows through “an application—” and inserting “a

1 willful failure to meet a condition in paragraph (1)
2 or a willful misrepresentation of a material fact in
3 an application—"; and

4 (2) in clause (i), by striking "\$1,000" and in-
5 serting "\$5,000".

6 (b) SPOT INSPECTIONS DURING PROBATIONARY PE-
7 RIOD.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)) is
8 amended—

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

11 (2) by inserting after subparagraph (C) the fol-
12 lowing:

13 "(D) The Secretary of Labor may, on a case-by-case
14 basis, subject an employer to random inspections for a pe-
15 riod of up to five years beginning on the date that such
16 employer is found by the Secretary of Labor to have en-
17 gaged in a willful failure to meet a condition of subpara-
18 graph (A), or a misrepresentation of material fact in an
19 application."

20 (c) LAYOFF PROTECTION FOR UNITED STATES
21 WORKERS.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as
22 amended by subsection (b), is further amended by adding
23 at the end the following:

24 "(F)(i) If the Secretary finds, after notice
25 and opportunity for a hearing, a willful failure

to meet a condition in paragraph (1) or a willful misrepresentation of a material fact in an application, in the course of which the employer has replaced a United States worker with a nonimmigrant described in section 101(a)(15)(H)(i) (b) or (c) within the 6-month period prior to, or within 90 days following, the filing of the application—

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

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

“(ii) For purposes of this subparagraph:

“(I) The term ‘replace’ means the employment of the nonimmigrant at the specific place of employment and in the specific employment opportunity from which a

1 United States worker with substantially
2 equivalent qualifications and experience in
3 the specific employment opportunity has
4 been laid off.

5 “(II) The term ‘laid off’, with respect
6 to an individual, means the individual’s
7 loss of employment other than a discharge
8 for inadequate performance, violation of
9 workplace rules, cause, voluntary depart-
10 ure, voluntary retirement, or the expira-
11 tion of a grant, contract, or other agree-
12 ment. [The term ‘laid off’ does not include
13 any situation in which the individual in-
14 volved is offered, as an alternative to such
15 loss of employment, a similar employment
16 opportunity with the same employer at the
17 equivalent or higher compensation and
18 benefits as the position from which the em-
19 ployee was discharged, regardless of wheth-
20 er or not the employee accepts the offer.

21 “(III) The term ‘United States work-
22 er’ means—

23 “(aa) a citizen or national of the
24 United States;

“(bb) an alien who is lawfully admitted for permanent residence; or

“(cc) an alien authorized to be employed by this Act or by the Attorney General.”.

(d) EXPEDITED REVIEWS AND DECISIONS.—Section 214(c)(2)(C) (8 U.S.C. 1184(c)(2)(C)) is amended by inserting “or section 101(a)(15)(H)(i)(b)” after “section 101(a)(15)(L)”.

(e) DETERMINATIONS ON LABOR CONDITION APPLICATIONS TO BE MADE BY ATTORNEY GENERAL.—

(1) IN GENERAL.—Section 101(a)(15)(H)(i)(b) (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by striking “with respect to whom” and all that follows through “with the Secretary” and inserting “with respect to whom the Attorney General determines that the intending employer has filed with the Attorney General”.

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

(A) in paragraph (1)—

(i) in the first sentence, by striking “Secretary of Labor” and inserting “Attorney General”;

(ii) in the sixth and eighth sentences,
by inserting "of Labor" after "Secretary"
each place it appears;

(iii) in the ninth sentence, by striking
"Secretary of Labor" and inserting "Attor-
ney General";

(iv) by amending the tenth sentence
to read as follows: "Unless the Attorney
General finds that the application is in-
complete or obviously inaccurate, the At-
torney General shall provide the certifi-
cation described in section
101(a)(15)(H)(i)(b) and adjudicate the
nonimmigrant visa petition."; and,

(v) by inserting in full measure mar-
gin after subparagraph (D) the following
new sentence: "Such application shall be
filed with the employer's petition for a
nonimmigrant visa for the alien, and the
Attorney General shall transmit a copy of
such application to the Secretary of
Labor."; and

(B) in the first sentence of paragraph
(2)(A), by striking "Secretary" and inserting
"Secretary of Labor".

1 (f) PREVAILING WAGE CONSIDERATIONS.—Section
2 101 (8 U.S.C. 1101) is amended by adding at the end
3 the following new subsection:

4 “(i)(1) In computing the prevailing wage level for an
5 occupational classification in an area of employment for
6 purposes of section 212(n)(1)(A)(i)(II) and section
7 212(a)(5)(A) in the case of an employee of—

8 “(A) an institution of higher education (as de-
9 fined in section 1201(a) of the Higher Education
10 Act of 1965), or a related or affiliated nonprofit en-
11 tity, or

12 “(B) a nonprofit or Federal research institute
13 or agency,

14 the prevailing wage level shall only take into account em-
15 ployees at such institutions, entities, and agencies in the
16 area of employment.

17 “(2) With respect to a professional athlete (as defined
18 in section 212(a)(5)(A)(iii)(II)) when the job opportunity
19 is covered by professional sports league rules or regula-
20 tions, the wage set forth in those rules or regulations shall
21 be considered as not adversely affecting the wages of Unit-
22 ed States workers similarly employed and be considered
23 the prevailing wage.

24 “(3) To determine the prevailing wage, employers
25 may use either government or nongovernment published

1 surveys, including industry, region, or statewide wage sur-
 2 veys, to determine the prevailing wage, which shall be con-
 3 sidered correct and valid if the survey was conducted in
 4 accordance with generally accepted industry standards
 5 and the employer has maintained a copy of the survey in-
 6 formation.”.

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

10 “(ii) if there is no such bargaining rep-
 11 resentative, has provided notice of filing in the
 12 occupational classification through such meth-
 13 ods as physical posting in a conspicuous loca-
 14 tion, or electronic posting through an internal
 15 job bank, or electronic notification available to
 16 employees in the occupational classification.”.

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

18 Section 212(n) (8 U.S.C. 1182(n)) is amended by
 19 adding at the end the following:

20 “(3) Using data from petitions for visas issued
 21 under section 101(a)(15)(H)(i)(b), the Attorney
 22 General shall annually submit the following reports
 23 to Congress:

24 “(A) Quarterly reports on the numbers of
 25 aliens who were provided nonimmigrant status

under section 101(a)(15)(H)(i)(b) during the previous quarter and who were subject to the numerical ceiling for the fiscal year established under section 214(g)(1).

“(B) Annual reports on the occupations and compensation of aliens provided non-immigrant status under such section during the previous fiscal year.”.

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

(a) **STUDY.**—The National Science Foundation shall oversee the National Academy of Sciences in establishing a government-industry panel, including representatives from academia, government, and business, to conduct a study, using sound analytical methods, to assess the labor market needs for workers with high technology skills during the 10-year period beginning on the date of enactment of this Act. The study shall focus on the following issues:

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

(2) Future training and education needs of United States students to ensure that their skills, at various levels, are matched to the needs of the high

technology and information technology sector over that 10-year period.

(3) An analysis of progress made by educators, employers, and government entities to improve the teaching and educational level of American students in the fields of math, science, computer, and engineering since 1998.

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

(5) The following additional issues:

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

(B) The potential benefits gained by the universities, employers, and economy of the United States from the entry of skilled professionals in the fields of science and engineering.

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

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

1 (E) An examination of the amount and
2 trend of high technology work that is out-
3 sourced from the United States to foreign coun-
4 tries.

5 (b) REPORT.—Not later than October 1, 2000, the
6 National Science Foundation shall submit a report con-
7 taining the results of the study described in subsection (a)
8 to the Committees on the Judiciary of the House of Rep-
9 resentatives and the Senate.

10 (c) AVAILABILITY OF FUNDS.—Funds available to
11 the National Science Foundation shall be made available
12 to carry out this section.

13 **SEC. 8. LIMITATION ON PER COUNTRY CEILING WITH RE-**
14 **SPECT TO EMPLOYMENT-BASED IMMI-**
15 **GRANTS.**

16 (a) SPECIAL RULES.—Section 202(a) (8 U.S.C.
17 1152(a)) is amended by adding at the end the following
18 new paragraph:

19 “(5) RULES FOR EMPLOYMENT-BASED IMMI-
20 GRANTS.—

21 “(A) EMPLOYMENT-BASED IMMIGRANTS
22 NOT SUBJECT TO PER COUNTRY LIMITATION IF
23 ADDITIONAL VISAS AVAILABLE.—If the total
24 number of visas available under paragraph (1),
25 (2), (3), (4), or (5) of section 203(b) for a cal-

endar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

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

(b) CONFORMING AMENDMENTS.—

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

(2) Section 202(e)(3) (8 U.S.C. 1152(e)(3)) is amended by striking “the proportion of the visa

1 numbers" and inserting "except as provided in sub-
2 section (a)(5), the proportion of the visa numbers".

3 (c) ONE-TIME PROTECTION UNDER PER COUNTRY
4 CEILING.—Notwithstanding section 214(g)(4) of the Im-
5 migration and Nationality Act, any alien who—

6 (1) as of the date of enactment of this Act is
7 a nonimmigrant described in section
8 101(a)(15)(H)(i) of that Act;

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

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

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

19 **SEC. 9. ACADEMIC HONORARIA.**

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

22 "(p) Any alien admitted under section 101(a)(15)(B)
23 may accept an honorarium payment and associated inci-
24 dental expenses for a usual academic activity or activities,
25 as defined by the Attorney General in consultation with

1 the Secretary of Education, if such payment is offered by
2 an institution of higher education (as defined in section
3 1201(a) of the Higher Education Act of 1965) or other
4 nonprofit entity and is made for services conducted for
5 the benefit of that institution or entity.”.

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SEC. __. IMPOSITION AND USE OF FEE.

Section 214(c) (1) of the Immigration and Nationality Act (8 U.S.C. 1184(c) (1)) is amended by adding at the end the following:

"The Attorney General shall impose a special fee on each employer filing a petition to import an alien as a nonimmigrant described in section 101(a) (15) (H) (i) (b). The fee shall equal \$250 for each such nonimmigrant for whom a petition is filed. The Attorney General shall deposit all fees collected under the preceding sentence in a fund established for this purpose in the Treasury of the United States. Of the amounts deposited, 80 percent shall be available until expended to the Secretary of Labor for the purposes of providing training and related activities to assist in preparing workers for employment in industries with skill needs under part D of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.) and 20 percent shall be available until expended to carry out the Mathematics, Engineering and Science Achievement Program under the Informal Science Program administered by the National Science Foundation (42 U.S.C. 1861 et. seq.)."

SEC. __. IMPOSITION AND USE OF FEE.

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended by adding at the end the following paragraph:

"(3) The Secretary of Labor shall impose a fee on each employer filing an application under this subsection for certification of a nonimmigrant temporary worker described in section 101(a)(15)(H)(i)(b). The fee shall equal \$250 for each position for which an application is filed. The Secretary of Labor shall deposit all fees collected under the preceding sentence in a fund established for this purpose in the Treasury of the United States. Of the amounts deposited, 80 percent shall be available until expended to the Secretary of Labor for the purposes of providing training and related activities to assist in preparing workers for employment in industries with skill needs under part D of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.) and 20 percent shall be available until expended to carry out the Mathematics, Engineering and Science Achievement Program under the Informal Science Program administered by the National Science Foundation (42 U.S.C. 1861 et. seq.)."



UNITED STATES DEPARTMENT OF LABOR

FACSIMILE TRANSMISSION

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

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Room S-1325
Washington, DC 20210

Confirmation:
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May 1, 1998/4:34pm

TO: CECI ROUSE
JULIE FERNANDEZ

DEPARTMENT/COMPANY:

FACSIMILE NUMBER: ~~6558~~ 5581
2223

FROM: EARL GOHL

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	IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY	202/219-5288

MESSAGE: this is mark's first cut..

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H.L.C.

Smith

105TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Texas introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Immigration and Nationality Act to make
changes relating to H-1B nonimmigrants.

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 "Workforce Improve-
5 ment and Protection Act of 1998".

6 SEC. 2. TEMPORARY INCREASE IN SKILLED FOREIGN
7 WORKERS.

8 Section 214(g) of the Immigration and Nationality
9 Act (8 U.S.C. 1184(g)) is amended—

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1 (1) by amending paragraph (1)(A) to read as
2 follows:

3 "(A) under section 101(a)(15)(H)(i)(b), subject
4 to paragraph (5), may not exceed—

5 "(i) 95,000 in fiscal year 1998;

6 "(ii) 105,000 in fiscal year 1999; and

7 "(iii) 115,000 in fiscal year 2000; or"; and

8 (2) by adding at the end the following:

9 "(5) In each of fiscal years 1999 and 2000, the total
10 number of aliens described in section 212(a)(5)(C) who
11 may be issued visas or otherwise provided nonimmigrant
12 status under section 101(a)(15)(H)(i)(b) may not exceed
13 7,500."

14 **SEC. 3. PROTECTION AGAINST DISPLACEMENT OF UNITED**
15 **STATES WORKERS.**

16 (a) **IN GENERAL.**—Section 212(n)(1) of the Immi-
17 gration and Nationality Act (8 U.S.C. 1182(n)(1)) is
18 amended by inserting after subparagraph (D) the follow-
19 ing:

20 "(E)(i) The employer has not laid off or other-
21 wise displaced and will not lay off or otherwise dis-
22 place, within the period beginning 6 months before
23 and ending 90 days following the date of filing of
24 the application or during the 90 days immediately
25 preceding and following the date of filing of any visa

April 28, 1998

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1 petition supported by the application, any United
2 States worker (as defined in paragraph (3)) (includ-
3 ing a worker whose services are obtained by con-
4 tract, employee leasing, temporary help agreement,
5 or other similar means) who has substantially equiv-
6 alent qualifications and experience in the specialty
7 occupation, and in the area of employment, for
8 which H-1B nonimmigrants are sought or in which
9 they are employed.

10 "(ii) Except as provided in clause (iii), in the
11 case of an employer that employs an H-1B non-
12 immigrant, the employer shall not place the non-
13 immigrant with another employer where—

14 "(I) the nonimmigrant performs his or her
15 duties in whole or in part at one or more work-
16 sites owned, operated, or controlled by such
17 other employer; and

18 "(II) there are indicia of an employment
19 relationship between the nonimmigrant and
20 such other employer.

21 "(iii) Clause (ii) shall not apply to an employ-
22 er's placement of an H-1B nonimmigrant with an-
23 other employer if the other employer has executed
24 an attestation that it satisfies and will satisfy the

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1 conditions described in clause (i) during the period
2 described in such clause."

3 (b) DEFINITIONS.—

4 (1) IN GENERAL.—Section 212(n) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1182(n)) is
6 amended by adding at the end the following:

7 "(3) For purposes of this subsection:

8 "(A) The term 'H-1B nonimmigrant' means an
9 alien admitted or provided status as a nonimmigrant
10 described in section 101(a)(15)(H)(i)(b).

11 "(B) The term 'lay off or otherwise displace',
12 with respect to an employee—

13 "(i) means to cause the employee's loss of
14 employment, other than through a discharge for
15 cause, a voluntary departure, or a voluntary re-
16 tirement; and

17 "(ii) does not include any situation in
18 which employment is relocated to a different ge-
19 ographic area and the employee is offered a
20 chance to move to the new location, with wages
21 and benefits that are not less than those at the
22 old location, but elects not to move to the new
23 location.

24 "(C) The term 'United States worker' means—

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1 “(i) a citizen or national of the United
2 States;

3 “(ii) an alien lawfully admitted for perma-
4 nent residence; or

5 “(iii) an alien authorized to be employed
6 by this Act or by the Attorney General.”.

7 (2) CONFORMING AMENDMENTS.—Section
8 212(n)(1) of the Immigration and Nationality Act (8
9 U.S.C. 1182(n)(1)) is amended by striking “a non-
10 immigrant described in section 101(a)(15)(H)(i)(b)”
11 each place such term appears and inserting “an H-
12 1B nonimmigrant”.

13 **SEC. 4. RECRUITMENT OF UNITED STATES WORKERS**
14 **PRIOR TO SEEKING NONIMMIGRANT WORK-**
15 **ERS.**

16 Section 212(n)(1) of the Immigration and Nationality
17 Act (8 U.S.C. 1182(n)(1)), as amended by section 3, is
18 further amended by inserting after subparagraph (E) the
19 following:

20 “(F)(i) The employer, prior to filing the appli-
21 cation, has taken, in good faith, timely and signifi-
22 cant steps to recruit and retain sufficient United
23 States workers in the specialty occupation for which
24 H-1B nonimmigrants are sought. Such steps shall
25 have included recruitment in the United States,

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1 using procedures that meet industry-wide standards
2 and offering compensation that is at least as great
3 as that required to be offered to H-1B non-
4 immigrants under subparagraph (A), and offering
5 employment to any qualified United States worker
6 who applies.

7 "(ii) The conditions described in clause (i) shall
8 not apply to an employer with respect to the employ-
9 ment of an H-1B nonimmigrant who is described in
10 subparagraph (A), (B), or (C) of section
11 203(b)(1).".

12 **SEC. 6. LIMITATION ON AUTHORITY TO INITIATE COM-**
13 **PLAINTS AND CONDUCT INVESTIGATIONS**
14 **FOR NON-H-1B-DEPENDENT EMPLOYERS.**

15 (a) **IN GENERAL.**—Section 212(n)(2)(A) of the Im-
16 migration and Nationality Act (8 U.S.C. 1182(n)(2)(A))
17 is amended—

18 (1) in the second sentence, by striking the pe-
19 riod at the end and inserting the following: “, except
20 that the Secretary may only file such a complaint re-
21 specting an H-1B-dependent employer (as defined
22 in paragraph (3)), and only if there appears to be
23 a violation of an attestation or a misrepresentation
24 of a material fact in an application.”; and

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1 (B) by inserting after the second sentence
2 the following: "Except as provided in subpara-
3 graph (F) (relating to spot investigations dur-
4 ing probationary period), no investigation or
5 hearing shall be conducted with respect to an
6 employer except in response to a complaint filed
7 under the previous sentence."

8 (b) DEFINITIONS.—Section 212(n)(3) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1182(n)(2)), as
10 added by section 3, is amended—

11 (1) by redesignating subparagraphs (A), (B),
12 and (C) as subparagraphs (B), (C), and (E), respec-
13 tively;

14 (2) by inserting after "purposes of this sub-
15 section:" the following:

16 "(A) The term 'H-1B-dependent employer'
17 means an employer that—

18 "(i)(I) has fewer than 21 full-time equiva-
19 lent employees who are employed in the United
20 States; and (II) employs 4 or more H-1B non-
21 immigrants; or

22 "(ii)(I) has at least 21 but not more than
23 150 full-time equivalent employees who are em-
24 ployed in the United States; and (II) employs
25 H-1B nonimmigrants in a number that is equal

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1 to at least 20 percent of the number of such
2 full-time equivalent employees; or

3 "(iii)(I) has at least 151 full-time equiva-
4 lent employees who are employed in the United
5 States; and (II) employs H-1B nonimmigrants
6 in a number that is equal to at least 15 percent
7 of the number of such full-time equivalent em-
8 ployees.

9 In applying this subparagraph, any group treated as
10 a single employer under subsection (b), (c), (m), or
11 (o) of section 414 of the Internal Revenue Code of
12 1986 shall be treated as a single employer. Aliens
13 employed under a petition for H-1B nonimmigrants
14 shall be treated as employees, and counted as non-
15 immigrants under section 101(a)(15)(H)(i)(b) under
16 this subparagraph."; and

17 (3) by inserting after subparagraph (C) (as so
18 redesignated) the following:

19 "(D) The term 'non-H-1B-dependent employer'
20 means an employer that is not an H-1B-dependent
21 employer.".

22 **SEC. 6. INCREASED ENFORCEMENT AND PENALTIES.**

23 (a) **IN GENERAL.**—Section 212(n)(2)(C) of the Im-
24 migration and Nationality Act (8 U.S.C. 1182(n)(2)(C))
25 is amended to read as follows:

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1 “(C)(i) If the Secretary finds, after notice and oppor-
2 tunity for a hearing, a failure to meet a condition of para-
3 graph (1)(B) or (1)(E), a substantial failure to meet a
4 condition of paragraph (1)(C), (1)(D), or (1)(F), or a mis-
5 representation of material fact in an application—

6 “(I) the Secretary shall notify the Attorney
7 General of such finding and may, in addition, im-
8 pose such other administrative remedies (including
9 civil monetary penalties in an amount not to exceed
10 \$1,000 per violation) as the Secretary determines to
11 be appropriate; and

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

16 “(ii) If the Secretary finds, after notice and oppor-
17 tunity for a hearing, a willful failure to meet a condition
18 of paragraph (1) or a willful misrepresentation of material
19 fact in an 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 \$5,000 per violation) as the Secretary determines to
25 be appropriate; and

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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 “(iii) If the Secretary finds, after notice and oppor-
6 tunity for a hearing, a willful failure to meet a condition
7 of paragraph (1) or a willful misrepresentation of material
8 fact in an application, in the course of which failure or
9 misrepresentation the employer also has failed to meet a
10 condition of paragraph (1)(E)—

11 “(I) the Secretary shall notify the Attorney
12 General of such finding and may, in addition, im-
13 pose such other administrative remedies (including
14 civil monetary penalties in an amount not to exceed
15 \$25,000 per violation) as the Secretary determines
16 to be appropriate; and

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

21 (b) **PLACEMENT OF H-1B NONIMMIGRANT WITH**
22 **OTHER EMPLOYER.**—Section 212(n)(2) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1182(n)(2)) is amend-
24 ed by adding at the end the following:

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1 “(E) Under regulations of the Secretary, the previous
2 provisions of this paragraph shall apply to a failure of an
3 other employer to comply with an attestation described in
4 paragraph (1)(E)(iii) in the same manner as they apply
5 to a failure to comply with a condition described in para-
6 graph (1)(E)(i).”

7 (c) SPOT INVESTIGATIONS DURING PROBATIONARY
8 PERIOD.—Section 212(n)(2) of the Immigration and Na-
9 tionality Act (8 U.S.C. 1182(n)(2)), as amended by sub-
10 section (b), is further amended by adding at the end the
11 following:

12 “(F) The Secretary may, on a case-by-case basis,
13 subject an employer to random investigations for a period
14 of up to 5 years, beginning on the date that the employer
15 is found by the Secretary to have committed a willful fail-
16 ure to meet a condition of paragraph (1) or to have made
17 a misrepresentation of material fact in an application. The
18 preceding sentence shall apply to an employer regardless
19 of whether the employer is an H-1B-dependent employer
20 or a non-H-1B-dependent employer. The authority of the
21 Secretary under this subparagraph shall not be construed
22 to be subject to, or limited by, the requirements of sub-
23 paragraph (A).”

April 28, 1988

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1 SEC. 7. EFFECTIVE DATE.

2 The amendments made by this Act shall take effect
3 on the date of the enactment of this Act and shall apply
4 to applications filed with the Secretary of Labor on or
5 after 30 days after the date of the enactment of this Act,
6 except that the amendments made by section 2 shall apply
7 to applications filed with such Secretary before, on, or
8 after the date of the enactment of this Act.

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POSSIBLE AMENDMENTS TO HR 3736

REP. WATT

1. Reduce increase to 25,000+ for the next 3 years
2. Reverse the order of the increase so highest increase (50,000+) is this year. Phase down to 40,000+ in FY '99, 30,000+ in FY'00 and back to 65,000 in 2001.
3. Add sunset language so clear that in FY 2001, cap returns to 65,000
4. Amendment to have all new H1-B visas expire at the end of FY 2000
- OK 5. Limited exemption for universities from new lay-off attestation requirement (w/Pease)
6. Companies may not have workforce that is more than 25% H1-B worker
7. Clarify that U.S. workers will have right to file complaint w/ DoL if they apply for jobs for which they are facially qualified but do not receive an interview and an H1-B is hired instead.
8. Outsourcing firms/employment agencies barred from using H1-Bs
9. H1-B visa duration reduced from 6 years to 3 years
10. 5,000 cap on the number of health care professionals who may use H1-Bs
11. Provide greater public access to H1-B applications

REP. LOFGREN

- OK ①. Require INS to change the format of its H1-B petitions so better data on the users of H1-Bs can be collected
2. Total Compensation Floor of \$50,000 on all H1-Bs, including original 65,000 (USTR Problem)
- OK ③. Age Discrimination Study
- OK ④. GAO Labor Market Study to determine if shortage really exists
5. Imposition of a User Fee to fund increased training and education for U.S. workers
6. Total compensation floor of \$50,000 on those H1-Bs above 65,000
- OK ⑦. Bar against employer importing H1-B workers if forced them to enter unconscionable contracts

REP. CONYERS

1. New restrictions of H1-B visas in excess of original 65,000
(i.e. Masters Degree or B.A. plus experience and a salary floor of \$75,000)

REP. BERMAN

1. Whistle blower amendment

REPUBLICAN AMENDMENTS

- defeated
22-7 -* ①
1. Strike Attestation requirements (Rogan)
 2. Offset H1-B increases against H2-B seasonal, unskilled workers (Pease) *does he mean H2A?*
 3. Add amendment creating a farm guestworker program (unlikely/subject to point of order)
 4. Attempt to offset H1-B increases against family based immigration categories (unlikely)

**UNITED STATES DEPARTMENT OF LABOR****FACSIMILE TRANSMISSION****OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS**

200 Constitution Avenue,
N.W.
Room S-1325
Washington, DC 20210

Confirmation:
202/219-6141

May 11, 1998/7:46pm

TO: PETER JACOBY
JULE FERNANDEZ
CECI ROUSE

DEPARTMENT/COMPANY: 2604
5581
2223

FACSIMILE NUMBER:

FROM: EARL GOHL

NUMBER OF PAGES INCLUDING COVER:

FACSIMILE REPLIES:	CONGRESSIONAL AFFAIRS	202/219-5120
	INTERGOVERNMENTAL AFFAIRS	202/219-5736
	IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY	202/219-5288

MESSAGE:

MAY 14 1998 4:00PM

N. OUCH

[Discussion Draft]
Amendment to H.R. 3736
Offered by Ms. Lofgren
(#15)

Lofgren
draft
amendments

On page 6, line 11, insert after "ii",

- 1 “(iii) The conditions described in clause (i)
2 shall not apply to an employer who has been certified
3 by the Attorney General, as an employer who is uses “best
4 practices” to recruit new employees in the United
5 States. This certification shall be withdrawn if, after
6 notice and hearing, the Attorney General finds that the
7 employer no longer meets the requirements of (I) and (II)
8 or if the conditions of (III) no longer exist.
- 9 (I) The Attorney General shall so certify an employer,
10 if the employer provides evidence that during the preceding
11 year, that the employer has utilized practices common to the
12 industry to recruit new employees within the United States,
13 and certifies that it will continue such practices. Such
14 recruitment shall be established by evidence of at least
15 three of the following practices: recruitment at a minimum
16 of three institutions of higher education as defined in
17 Section 1141 of the Higher Education Act of 1965;

MAY 14 1998 4:00PM

1 an offer of "signing bonuses" upon hire;
2 the offer of stock options; the provision of relocation
3 expenses to relocating employees; the provision of
4 home mortgage assistance to employees; the provision
5 of subsidies or other financial assistance for employee
6 child or elder care, and subsidies to employees for
7 training or education or the provision of internal
8 training programs for employees, or
9 (III) The Attorney General shall so certify an
11 employer if, during the preceding three month period,
12 the unemployment rate for the job categories for which
13 the employer is recruiting is 3% or less in the
14 statistical metropolitan area where the employment
15 is offered. The unemployment rate will be established
16 by the Bureau of Labor Statistics or the equivalent
17 agency of a state.

**UNITED STATES DEPARTMENT OF LABOR****FACSIMILE TRANSMISSION****OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS**

200 Constitution Avenue, N.W.
Room S-1325
Washington, DC 20210

Confirmation: 202/219-6141

To: Julie & Carol

DEPARTMENT/COMPANY:

FACSIMILE NUMBER:

FROM: For G41

NUMBER OF PAGES INCLUDING COVER:

2223 558)

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CONGRESSIONAL AFFAIRS

INTERGOVERNMENTAL AFFAIRS

IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY

202/219-5120

202/219-5736

202/219-5288

MESSAGE:

**UNITED STATES DEPARTMENT OF LABOR****FACSIMILE TRANSMISSION****OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS**

200 Constitution Avenue,
N.W.
Room S-1325
Washington, DC 20210

Confirmation:
202/219-6141

May 1, 1998/4:34pm

TO: CECI ROUSE
JULIE FERNANDEZ

DEPARTMENT/COMPANY:

FACSIMILE NUMBER: ~~6858~~ 5581
2223

FROM: EARL GOHL

NUMBER OF PAGES INCLUDING COVER:

FACSIMILE REPLIES:	CONGRESSIONAL AFFAIRS	202/219-5120
	INTERGOVERNMENTAL AFFAIRS	202/219-5736
	IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY	202/219-5288

MESSAGE: this is mark's first cut..

Lofgren amendment

SEC. ____ IMPOSITION AND USE OF FEE.

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended by adding at the end the following paragraph:

"(3) The Secretary of Labor shall impose a fee on each employer filing an application under this subsection for certification of a nonimmigrant temporary worker described in section 101(a)(15)(H)(i)(b). The fee shall equal \$250 for each position for which an application is filed. The Secretary of Labor shall deposit all fees collected under the preceding sentence in a fund established for this purpose in the Treasury of the United States. Of the amounts deposited, 80 percent shall be available until expended to the Secretary of Labor for the purposes of providing training and related activities to assist in preparing workers for employment in industries with skill needs under part D of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.) and 20 percent shall be available until expended to carry out mathematics, engineering and science achievement activities under the Informal Science Program administered by the National Science Foundation (42 U.S.C. 1861 et. seq.)."

S:\opr\dp1d\legis\lofgren4.wpd

SEC. __. IMPOSITION AND USE OF FEE.

Section 214(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(1)) is amended by adding at the end the following:

"The Attorney General shall impose a special fee on each employer filing a petition to import an alien as a nonimmigrant described in section 101(a)(15)(H)(i)(b). The fee shall equal \$250 for each such nonimmigrant for whom a petition is filed. The Attorney General shall deposit all fees collected under the preceding sentence in a fund established for this purpose in the Treasury of the United States. Of the amounts deposited, 80 percent shall be available until expended to the Secretary of Labor for the purposes of providing training and related activities to assist in preparing workers for employment in industries with skill needs under part D of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.) and 20 percent shall be available until expended to carry out mathematics, engineering and science achievement activities under the Informal Science Program administered by the National Science Foundation (42 U.S.C. 1861 et. seq.)."

Kennedy amendment

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

S.1723

Amendment intended to be proposed by Mr. Kennedy

Viz.

1 At the appropriate place in the bill, insert the following new section:

2 SEC. __. RECRUITMENT OF UNITED STATES WORKERS PRIOR TO
3 SEEKING TEMPORARY FOREIGN WORKERS UNDER THE "H-1B
4 VISA" PROGRAM.

5 (a) IN GENERAL.—Section 212(n)(1) of the Immigration and Nationality
6 Act (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (D)
7 the following new subparagraph:

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

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

S.1723

Amendment intended to be proposed by Mr. Kennedy

Viz:

1 Strike subsection 5(c) and reletter subsequent subsections accordingly.

2 At the appropriate place in the bill, insert the following new section:

3 SEC. __. PROTECTION AGAINST DISPLACEMENT OF UNITED
4 STATES WORKERS.

5 (a) IN GENERAL.—Section 212(n)(1) of the Immigration and Nationality
6 Act (8 U.S.C. 1182(n)(1) is amended by inserting after subparagraph (D) the
7 following:

8 “(E) The employer has not replaced any United States worker
9 (including a worker obtained by contract, employee leasing, temporary
10 help agreement, or other similar basis) with a nonimmigrant described
11 in section 101(a)(15)(H)(i)(b) or (c)

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

14 “(ii) during the 90-day period following the filing of the
15 application, and

16 “(iii) during the 90-day period immediately preceding and

1 following the filing of any visa petition supported by the
2 application.”

3 (b) DEFINITIONS.—Section 212(n) of the Immigration and Nationality
4 Act (8 U.S.C. 1182(n)) is amended by adding at the end the following:

5 “(3) For purposes of this subsection:

6 “(A) The term “replace” means the employment of the
7 nonimmigrant (Do we need to add this?: including through contract,
8 employee leasing, temporary help agreement, or other similar basis) at
9 the specific place of employment and in the specific employment
10 opportunity from which a United States worker with substantially
11 equivalent qualifications and experience in the specific employment
12 opportunity has been laid off.”

13 “(B) The term ‘laid off’, with respect to an individual, means the
14 individual’s loss of employment other than a discharge for inadequate
15 performance, violation of workplace rules, cause, voluntary departure,
16 voluntary retirement, or the expiration of a grant, contract, or other
17 agreement. The term ‘laid off’ does not include any situation in which
18 the individual involved is offered, as an alternative to such loss of
19 employment, a similar employment opportunity with the same
20 employer at equivalent or higher compensation and benefits as the

1 position from which the employee was discharged, regardless of
2 whether or not the employee accepts the offer.

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

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

5 “(ii) an alien who is lawfully admitted for permanent
6 residence; or

7 “(iii) an alien authorized to be employed by this Act or by
8 the Attorney General.”.

Kennedy Amendments



UNITED STATES DEPARTMENT OF LABOR

FACSIMILE TRANSMISSION

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

200 Constitution Avenue,
N.W.
Room S-1325
Washington, DC 20210

Confirmation:
202/219-6141

May 11, 1998/7:46pm

TO: PETER JACOBY
JULE FERNANDEZ
CECI ROUSE

DEPARTMENT/COMPANY: 2604
5581
2223

FACSIMILE NUMBER:

FROM: EARL GOHL

NUMBER OF PAGES INCLUDING COVER:

FACSIMILE REPLIES:	CONGRESSIONAL AFFAIRS	202/219-5120
	INTERGOVERNMENTAL AFFAIRS	202/219-5736
	IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY	202/219-5288

MESSAGE:

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

S.1723

Amendment intended to be proposed by Mr. Kennedy

Viz.

1 At the appropriate place in the bill, insert the following new section:

2 SEC. __. RECRUITMENT OF UNITED STATES WORKERS PRIOR TO
3 SEEKING TEMPORARY FOREIGN WORKERS UNDER THE "H-1B
4 VISA" PROGRAM.

5 (a) IN GENERAL.—Section 212(n)(1) of the Immigration and Nationality
6 Act (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (D)
7 the following new subparagraph:

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

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

S.1723

Amendment intended to be proposed by Mr. Kennedy

Viz:

1 Strike subsection 5(c) and reletter subsequent subsections accordingly.

2 At the appropriate place in the bill, insert the following new section:

3 SEC. __. PROTECTION AGAINST DISPLACEMENT OF UNITED
4 STATES WORKERS.

5 (a) IN GENERAL.—Section 212(n)(1) of the Immigration and Nationality
6 Act (8 U.S.C. 1182(n)(1) is amended by inserting after subparagraph (D) the
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9 (including a worker obtained by contract, employee leasing, temporary
10 help agreement, or other similar basis) with a nonimmigrant described
11 in section 101(a)(15)(H)(i)(b) or (c)

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

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1 following the filing of any visa petition supported by the
2 application.”

3 (b) DEFINITIONS.—Section 212(n) of the Immigration and Nationality
4 Act (8 U.S.C. 1182(n)) is amended by adding at the end the following:

5 “(3) For purposes of this subsection:

6 “(A) The term “replace” means the employment of the
7 nonimmigrant (Do we need to add this?: including through contract,
8 employee leasing, temporary help agreement, or other similar basis) at
9 the specific place of employment and in the specific employment
10 opportunity from which a United States worker with substantially
11 equivalent qualifications and experience in the specific employment
12 opportunity has been laid off.”

13 “(B) The term ‘laid off’, with respect to an individual, means the
14 individual’s loss of employment other than a discharge for inadequate
15 performance, violation of workplace rules, cause, voluntary departure,
16 voluntary retirement, or the expiration of a grant, contract, or other
17 agreement. The term ‘laid off’ does not include any situation in which
18 the individual involved is offered, as an alternative to such loss of
19 employment, a similar employment opportunity with the same
20 employer at equivalent or higher compensation and benefits as the

1 position from which the employee was discharged, regardless of
2 whether or not the employee accepts the offer.

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

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

5 “(ii) an alien who is lawfully admitted for permanent
6 residence; or

7 “(iii) an alien authorized to be employed by this Act or by
8 the Attorney General.”.

Wellstone Amendment.

DRAFT

DRAFT

DRAFT

DRAFT

1. Through demonstration programs under part D of Title IV of the Job Training Partnership Act, the Secretary of Labor may provide grants for the purpose of providing training and related activities to assist in preparing workers for employment in industries with technology skills needs to:

(a) Private Industry Councils or their successor organizations under new federal workforce legislation; or

(B) Private Industry Councils or their successor organizations under new federal workforce legislation in alliance with local or regional partnerships or consortia consisting of representatives from private businesses, labor organizations, state or local governments, and education organizations.

2. No funds shall be obligated or spent to carry out new activities under paragraph 1 in the absence of a fund in the Treasury of the United States established for that purpose through fees collected from employers applying to import aliens as nonimmigrants described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act.

3. It is the Sense of the Senate that the Secretary of Labor should impose a fee on each employer filing an application to import an alien as a nonimmigrant described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act. The fee should equal \$250 for each position for which an application is filed. The Secretary should deposit all fees collected under the preceding sentence in a fund established for this purpose in the Treasury of the United States. Of the amounts deposited, 50 percent should be available until expended to the Secretary of Labor for purposes described in paragraph 1.

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Co.		Co.	
Dept.		Phone #	224-4925
Fax #	456-2223	Fax #	

**UNITED STATES DEPARTMENT OF LABOR****FACSIMILE TRANSMISSION****OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS**

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Confirmation:
202/219-6141

May 11, 1998/7:46pm

TO: PETER JACOBY
JULE FERNANDEZ
CECI ROUSE

DEPARTMENT/COMPANY: 2604
5581
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FACSIMILE NUMBER:

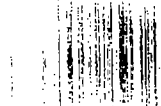
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	IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY	202/219-5288

MESSAGE:

Senate amendmentsSenate
Amendments
(proposed)

1. Kennedy: recruitment
 2. Kennedy: No lay off
 3. Feinstein: Enforcement
 4. Kennedy: Whistleblower
 5. Wellstone: Training
 6. Bumpers: Investors
 7. Reed: Remove SSIG
 8. Reid: Parental Child Abduction
 9. Warner and Robb: Nato Workers(same status of other orgs)
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