

Calendar No. 335

105TH CONGRESS
2^D SESSION
S. 1723

A BILL

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

APRIL 2, 1998

Reported with an amendment

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IN THE SENATE OF THE UNITED STATES

MARCH 6, 1998

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

APRIL 2, 1998

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

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

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

3 **SECTION 1. SHORT TITLE; REFERENCES IN ACT.**

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

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

12 **SEC. 2. FINDINGS.**

13 Congress makes the following findings:

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

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

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

1 eludes that the current severe understaffing could
2 lead to inflation and lower productivity.

3 (4) The Department of Labor projects that the
4 United States economy will produce more than
5 130,000 information technology jobs in each of the
6 next 10 years, for a total of more than 1,300,000.

7 (5) Between 1986 and 1995, the number of
8 bachelor's degrees awarded in computer science de-
9 clined by 42 percent. Therefore, any short-term in-
10 creases in enrollment may only return the United
11 States to the 1986 level of graduates and take sev-
12 eral years to produce these additional graduates.

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

18 (7) The Hudson Institute estimates that the
19 unaddressed shortage of skilled workers throughout
20 the United States economy will result in a 5-percent
21 drop in the growth rate of GDP. That translates
22 into approximately \$200,000,000,000 in lost output,
23 nearly \$1,000 for every American.

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

1 (9) In fiscal year 1997, United States compa-
2 nies and universities reached the cap of 65,000 on
3 H-1B temporary visas a month before the end of
4 the fiscal year. In fiscal year 1998 the cap is ex-
5 pected to be reached as early as May if Congress
6 takes no action. And it will be hit earlier each year
7 until backlogs develop of such a magnitude as to
8 prevent United States companies and researchers
9 from having any timely access to skilled foreign-born
10 professionals.

11 (10) It is vital that more American young peo-
12 ple be encouraged and equipped to enter technical
13 fields, such as mathematics, engineering, and com-
14 puter science.

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

20 (12) Inaction in these areas will carry signifi-
21 cant consequences for the future of American com-
22 petitiveness around the world and will seriously un-
23 dermine efforts to create and keep jobs in the
24 United States.

1 **SEC. 3. INCREASED ACCESS TO SKILLED PERSONNEL FOR**
2 **UNITED STATES COMPANIES AND UNIVER-**
3 **SITIES.**

4 ~~(a)~~ ESTABLISHMENT OF H1-C NONIMMIGRANT CAT-
5 EGORY.—

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

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

11 (B) by inserting after “section 212(n)(1)”
12 the following: “, or (e) who is coming tempo-
13 rarily to the United States to perform labor as
14 a health care worker, other than a physician, if
15 the alien qualifies for the exemption from the
16 grounds of inadmissibility described in section
17 212(a)(5)(C)”.

18 ~~(2)~~ TRANSITION RULE.—Any petition filed
19 prior to the date of enactment of this Act, for
20 issuance of a visa under section 101(a)(15)(H)(i)(b)
21 of the Immigration and Nationality Act on behalf of
22 an alien described in the amendment made by para-
23 graph ~~(1)~~(B) shall, on and after that date, be treat-
24 ed as a petition filed under section
25 101(a)(15)(H)(i)(e) of that Act, as added by para-
26 graph ~~(1)~~.

1 (b) ANNUAL CEILINGS FOR H1-B AND H1-C WORK-
2 ERS.—

3 (1) AMENDMENT OF THE INA.—Section
4 214(g)(1) (8 U.S.C. 1184(g)(1)) is amended to read
5 as follows:

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

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

10 “(i) for each of fiscal years 1992 through
11 1997, may not exceed 65,000,

12 “(ii) for fiscal year 1998, may not exceed
13 2 times the number of aliens issued visas or
14 otherwise provided nonimmigrant status be-
15 tween October 1, 1997, and March 31, 1998,

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

22 “(iv) for fiscal year 2000 and each applica-
23 ble fiscal year thereafter, may not exceed the
24 number determined for fiscal year 1998 under
25 such section, minus 10,000, plus the number of

1 unused visas under subparagraph (B) for the
2 fiscal year preceding the applicable fiscal year,
3 plus the number of unused visas under subpara-
4 graph (C) for the fiscal year preceding the ap-
5 plicable fiscal year;

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

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

11 For purposes of determining the ceiling under subpara-
12 graph (A) (iii) and (iv), not more than 25,000 of the un-
13 used visas under subparagraph (B) may be taken into ac-
14 count for any fiscal year.”

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

1 ceiling for fiscal year 1998 to be exceeded, the visa
 2 or grant of status shall be counted against the appli-
 3 cable ceiling for fiscal year 1999.

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

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

10 (1) in section 415A(b)(1) (20 U.S.C.
 11 1070e(b)(1))—

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

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

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

21 **“SEC. 415F. DEGREES IN MATHEMATICS, COMPUTER**
 22 **SCIENCE, AND ENGINEERING.**

23 “(a) ALLOTMENTS AND GRANTS.—From amounts
 24 made available to carry out this section under section
 25 415A(b)(1) for a fiscal year, the Secretary shall make al-

1 allotments to States to enable the States to pay not more
 2 than 50 percent of the amount of grants awarded to low-
 3 income students in the States.

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

10 “(c) COMPARABILITY.—The Secretary shall make al-
 11 lotments and grants shall be awarded under this section
 12 in the same manner, and under the same terms and condi-
 13 tions, as—

14 “(1) the Secretary makes allotments and grants
 15 are awarded under this subpart (other than this sec-
 16 tion); and

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

18 (b) DATA BANK; TRAINING.—

19 (1) IN GENERAL.—The Secretary of Labor
 20 shall—

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

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

1 (ii) the matching of individuals pos-
2 sessing technology credentials with employ-
3 ment in the field of technology; and

4 (B) provide training in information tech-
5 nology to unemployed individuals who are seek-
6 ing employment.

7 (2) AUTHORIZATION OF APPROPRIATIONS.—

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

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

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

15 **SEC. 5. INCREASED ENFORCEMENT PENALTIES AND IM-**
16 **PROVED OPERATIONS.**

17 (a) INCREASED PENALTIES FOR VIOLATIONS OF H1-
18 **B OR H1-C PROGRAM.**—Section 212(n)(2)(C) (8 U.S.C.
19 1182(n)(2)(C)) is amended—

20 (1) by striking “a failure to meet” and all that
21 follows through “an application—” and inserting “a
22 willful failure to meet a condition in paragraph (1)
23 or a willful misrepresentation of a material fact in
24 an application—”; and

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

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

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

8 (2) by inserting after subparagraph (C) the fol-
9 lowing:

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

17 (c) EXPEDITED REVIEWS AND DECISIONS.—Section
18 214(e)(2)(C) (8 U.S.C. 1184(e)(2)(C)) is amended by in-
19 serting “or section 101(a)(15)(H)(i)(b)” after “section
20 101(a)(15)(L)”.

21 (d) DETERMINATIONS ON LABOR CONDITION APPLI-
22 CATIONS TO BE MADE BY ATTORNEY GENERAL.—

23 (1) IN GENERAL.—Section 101(a)(15)(H)(i)(b)
24 (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by
25 striking “with respect to whom” and all that follows

1 through “with the Secretary” and inserting “with
2 respect to whom the Attorney General determines
3 that the intending employer has filed with the Attor-
4 ney General”.

5 (2) CONFORMING AMENDMENTS.—Section
6 212(n) (8 U.S.C. 1182(n)(1)) is amended—

7 (A) in paragraph (1)—

8 (i) in the first sentence, by striking
9 “Secretary of Labor” and inserting “Attor-
10 ney General”;

11 (ii) in the sixth and eighth sentences,
12 by inserting “of Labor” after “Secretary”
13 each place it appears;

14 (iii) in the ninth sentence, by striking
15 “Secretary of Labor” and inserting “Attor-
16 ney General”;

17 (iv) by amending the tenth sentence
18 to read as follows: “Unless the Attorney
19 General finds that the application is in-
20 complete or obviously inaccurate, the At-
21 torney General shall provide the certifi-
22 cation described in section
23 101(a)(15)(H)(i)(b) and adjudicate the
24 nonimmigrant visa petition.”; and

1 (v) by inserting in full measure mar-
2 gin after subparagraph (D) the following
3 new sentence: “Such application shall be
4 filed with the employer’s petition for a
5 nonimmigrant visa for the alien, and the
6 Attorney General shall transmit a copy of
7 such application to the Secretary of
8 Labor.”; and

9 (B) in the first sentence of paragraph
10 (2)(A), by striking “Secretary” and inserting
11 “Secretary of Labor”.

12 (c) PREVAILING WAGE CONSIDERATIONS.—Section
13 101(a) (8 U.S.C. 1101(a)) is amended by adding at the
14 end the following:

15 “(50) The term ‘prevailing wage’ means the follow-
16 ing:

17 “(A) If the job opportunity is subject to a wage
18 determination in the area under the Act of March 3,
19 1931 (commonly known as the Davis-Bacon Act (40
20 U.S.C. 276a et seq.)), or the Service Contract Act
21 of 1965 (41 U.S.C. 351 et seq.), the prevailing wage
22 shall be the rate required under such Acts.

23 “(B) If the job opportunity is not covered by a
24 prevailing wage determined under the Acts referred

1 to in subparagraph (A), the prevailing wage shall
2 be—

3 “(i) the rate of wages to be determined, to
4 the extent feasible, by adding the wage paid to
5 workers similarly employed in the area of in-
6 tended employment and dividing the total by
7 the number of such workers, except that the
8 wage set forth in the application shall be con-
9 sidered as meeting the prevailing wage standard
10 if it is within 5 percent of the average rate of
11 wages; or

12 “(ii) if the job opportunity is covered by a
13 collective bargaining agreement, the wage rate
14 set forth in the agreement shall be considered
15 as not adversely affecting the wages of United
16 States workers similarly employed and shall be
17 considered the ‘prevailing wage’.

18 “(C) A prevailing wage determination made
19 pursuant to this section shall not permit an em-
20 ployer to pay a wage lower than that required under
21 any other Federal, State, or local law.

22 “(D) For purposes of this section:

23 “(i) The term ‘similarly employed’ means
24 having substantially comparable jobs in the oc-
25 cupational category in the area of intended em-

1 employment, except that, if no such workers are
2 employed by employers other than the employer
3 applicant in the area of intended employment,
4 the term ‘similarly employed’ means—

5 “(I) having jobs requiring a substan-
6 tially similar level of skills within the area
7 of intended employment; or

8 “(II) if there are no substantially
9 comparable jobs in the area of intended
10 employment, having substantially com-
11 parable jobs with employers outside of the
12 area of intended employment.

13 “(ii) The term ‘substantially comparable
14 jobs’ means jobs with substantially comparable
15 employers, taking into account size, profit or
16 nonprofit classification, start-up or mature
17 business operations, the specific industry, public
18 or private sector, status as an academic institu-
19 tion, or other defining characteristics which the
20 employer can demonstrate result in a distinct
21 wage scale from the industry at large.

22 “(iii) The term ‘similarly employed’ shall
23 be construed to require separate average rates
24 of wage taking into account such factors as
25 years of experience, academic degree, edu-

1 educational institution attended; grade point aver-
2 age; publications or other distinctions; personal
3 traits deemed essential to job performance; spe-
4 cialized training or skills; competitive market
5 factors; or any other factors typically considered
6 by employers within the industry.

7 “(iv) Employers may use either govern-
8 ment or nongovernment published surveys, in-
9 cluding industry, region, or statewide wage sur-
10 veys, to determine the prevailing wage, which
11 shall be considered correct and valid where the
12 employer has maintained a copy of the survey
13 information.”.

14 (f) POSTING REQUIREMENT.—Section
15 ~~212(n)(1)(C)(ii) (8 U.S.C. 1182(n)(1)(C)(ii))~~ is amended
16 to read as follows:

17 “(ii) if there is no such bargaining rep-
18 resentative, has provided notice of filing to the
19 employer’s employees in the occupational classi-
20 fication through such methods as physical post-
21 ing in a conspicuous location at the employer’s
22 place of business; or electronic posting through
23 an internal job bank; or electronic notification
24 available to employees in the occupational clas-
25 sification.”.

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

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

4 “(3) Using data from petitions for visas issued
5 under section 101(a)(15)(H)(i)(b), the Attorney
6 General shall annually submit the following reports
7 to Congress:

8 “(A) Quarterly reports on the numbers of
9 aliens who were provided nonimmigrant status
10 under section 101(a)(15)(H)(i)(b) during the
11 previous quarter and who were subject to the
12 numerical ceiling for the fiscal year established
13 under section 214(g)(1).

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

18 **SEC. 7. LIMITATION ON PER COUNTRY CEILING WITH RE-**
19 **SPECT TO EMPLOYMENT-BASED IMMI-**
20 **GRANTS.**

21 (a) SPECIAL RULES.—Section 202(a) (8 U.S.C.
22 1152(a)) is amended by adding at the end the following
23 new paragraph:

24 “(5) RULES FOR EMPLOYMENT-BASED IMMI-
25 GRANTS.—

1 “(A) EMPLOYMENT-BASED IMMIGRANTS
2 NOT SUBJECT TO PER COUNTRY LIMITATION IF
3 ADDITIONAL VISAS AVAILABLE.—If the total
4 number of visas available under paragraph (1),
5 (2), (3), (4), or (5) of section 203(b) for a cal-
6 endar quarter exceeds the number of qualified
7 immigrants who may otherwise be issued such
8 visas, the visas made available under that para-
9 graph shall be issued without regard to the nu-
10 merical limitation under paragraph (2) of this
11 subsection during the remainder of the calendar
12 quarter.

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

25 (b) CONFORMING AMENDMENTS.—

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

4 (2) Section 202(e)(3) (8 U.S.C. 1152(e)(3)) is
5 amended by striking “the proportion of the visa
6 numbers” and inserting “except as provided in sub-
7 section (a)(5), the proportion of the visa numbers”.

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

11 (1) as of the date of enactment of this Act is
12 a nonimmigrant described in section
13 101(a)(15)(H)(i) of that Act;

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

17 (3) would be subject to the per country limita-
18 tions applicable to immigrants under those para-
19 graphs but for this subsection;

20 may apply for and the Attorney General may grant an
21 extension of such nonimmigrant status until the alien’s
22 application for adjustment of status has been processed
23 and a decision made thereon.

1 **SEC. 8. ACADEMIC HONORARIA.**

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

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

13 **SECTION 1. SHORT TITLE; REFERENCES IN ACT.**

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

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

22 **SEC. 2. FINDINGS.**

23 *Congress makes the following findings:*

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

1 (2) *Companies across America are faced with se-*
2 *vere high skill labor shortages that threaten their com-*
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4 (3) *The National Software Alliance, a consor-*
5 *tium of concerned government, industry, and aca-*
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7 *Navy, and Air Force, has concluded that “The supply*
8 *of computer science graduates is far short of the num-*
9 *ber needed by industry.” The Alliance concludes that*
10 *the current severe understaffing could lead to infla-*
11 *tion and lower productivity.*

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

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

22 (6) *A study conducted by Virginia Tech for the*
23 *Information Technology Association of America esti-*
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2 *ers in American companies.*

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

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

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

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

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25 *grown talent, and if they cannot bring talent to this*

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 3 jobs with them.

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

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

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

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

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

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

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

7 (2) *CONFORMING AMENDMENTS.—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (b) *DATA BANK; TRAINING.*—

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

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

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

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

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

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

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

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

11 **SEC. 5. INCREASED ENFORCEMENT PENALTIES AND IM-**
12 **PROVED OPERATIONS.**

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

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

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

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

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

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

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

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

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

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

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

13 “(ii) For purposes of this subparagraph:

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

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

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

13 *“(III) The term ‘United States worker’*
14 *means—*

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

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

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

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

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

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

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

12 (A) *in paragraph (1)—*

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

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

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

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

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

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

12 (B) in the first sentence of paragraph
13 (2)(A), by striking “Secretary” and inserting
14 “Secretary of Labor”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (5) The following additional issues:

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (b) *CONFORMING AMENDMENTS.—*

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

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

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

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

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

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

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

5 **SEC. 9. ACADEMIC HONORARIA.**

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

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