

105TH CONGRESS  
2D SESSION

# S. 1723

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 6, 1998

Mr. ABRAHAM (for himself, Mr. HATCH, Mr. MCCAIN, Mr. DEWINE and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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”.

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

7 **SEC. 2. FINDINGS.**

8 Congress makes the following findings:

9 (1) American companies today are engaged in  
10 fierce competition in global markets.

11 (2) Companies across America are faced with  
12 severe high skill labor shortages that threaten their  
13 competitiveness.

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

22 (4) The Department of Labor projects that the  
23 United States economy will produce more than  
24 130,000 information technology jobs in each of the  
25 next 10 years, for a total of more than 1,300,000.

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

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

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

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

20           (9) In fiscal year 1997, United States compa-  
21 nies and universities reached the cap of 65,000 on  
22 H-1B temporary visas a month before the end of  
23 the fiscal year. In fiscal year 1998 the cap is ex-  
24 pected to be reached as early as May if Congress  
25 takes no action. And it will be hit earlier each year

1       until backlogs develop of such a magnitude as to  
 2       prevent United States companies and researchers  
 3       from having any timely access to skilled foreign-born  
 4       professionals.

5           (10) It is vital that more American young peo-  
 6       ple be encouraged and equipped to enter technical  
 7       fields, such as mathematics, engineering, and com-  
 8       puter science.

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

14          (12) Inaction in these areas will carry signifi-  
 15      cant consequences for the future of American com-  
 16      petitiveness around the world and will seriously un-  
 17      dermine efforts to create and keep jobs in the  
 18      United States.

19 **SEC. 3. INCREASED ACCESS TO SKILLED PERSONNEL FOR**  
 20                   **UNITED STATES COMPANIES AND UNIVER-**  
 21                   **SITIES.**

22       (a) ESTABLISHMENT OF H1-C NONIMMIGRANT CAT-  
 23      EGORY.—

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

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

4 (B) by inserting after “section 212(n)(1)”  
5 the following: “, or (c) who is coming tempo-  
6 rarily to the United States to perform labor as  
7 a health care worker, other than a physician, if  
8 the alien qualifies for the exemption from the  
9 grounds of inadmissibility described in section  
10 212(a)(5)(C)”.

11 (2) TRANSITION RULE.—Any petition filed  
12 prior to the date of enactment of this Act, for  
13 issuance of a visa under section 101(a)(15)(H)(i)(b)  
14 of the Immigration and Nationality Act on behalf of  
15 an alien described in the amendment made by para-  
16 graph (1)(B) shall, on and after that date, be treat-  
17 ed as a petition filed under section  
18 101(a)(15)(H)(i)(c) of that Act, as added by para-  
19 graph (1).

20 (b) ANNUAL CEILINGS FOR H1-B AND H1-C WORK-  
21 ERS.—

22 (1) AMENDMENT OF THE INA.—Section  
23 214(g)(1) (8 U.S.C. 1184(g)(1)) is amended to read  
24 as follows:

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

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

5               “(i) for each of fiscal years 1992 through  
6 1997, may not exceed 65,000,

7               “(ii) for fiscal year 1998, may not exceed  
8 2 times the number of aliens issued visas or  
9 otherwise provided nonimmigrant status be-  
10 tween October 1, 1997, and March 31, 1998,

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

17               “(iv) for fiscal year 2000 and each applica-  
18 ble fiscal year thereafter, may not exceed the  
19 number determined for fiscal year 1998 under  
20 such section, minus 10,000, plus the number of  
21 unused visas under subparagraph (B) for the  
22 fiscal year preceding the applicable fiscal year,  
23 plus the number of unused visas under subpara-  
24 graph (C) for the fiscal year preceding the ap-  
25 plicable fiscal year;

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

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

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

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

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

3 (a) DEGREES IN MATHEMATICS, COMPUTER  
 4 SCIENCE, AND ENGINEERING.—Subpart 4 of part A of  
 5 title IV of the Higher Education Act of 1965 (20 U.S.C.  
 6 1070c et seq.) 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  
 11 fiscal 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  
 15 to carry out section 415F for the fiscal year”  
 16 before 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 al-  
 23 lotments to States to enable the States to pay not more  
 24 than 50 percent of the amount of grants awarded to low-  
 25 income students in the States.

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

7       “(c) COMPARABILITY.—The Secretary shall make al-  
8 lotments and grants shall be awarded under this section  
9 in 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  
19 the 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 sessed 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  
7 years—

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

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

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

14 (a) INCREASED PENALTIES FOR VIOLATIONS OF H1-  
15 B OR H1-C PROGRAM.—Section 212(n)(2)(C) (8 U.S.C.  
16 1182(n)(2)(C)) is amended—

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

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

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

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

6 (2) by inserting after subparagraph (C) the fol-  
7 lowing:

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

15 (c) EXPEDITED REVIEWS AND DECISIONS.—Section  
16 214(c)(2)(C) (8 U.S.C. 1184(c)(2)(C)) is amended by in-  
17 serting “or section 101(a)(15)(H)(i)(b)” after “section  
18 101(a)(15)(L)”.

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

21 (1) IN GENERAL.—Section 101(a)(15)(H)(i)(b)  
22 (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by  
23 striking “with respect to whom” and all that follows  
24 through “with the Secretary” and inserting “with  
25 respect to whom the Attorney General determines

1 that the intending employer has filed with the Attor-  
2 ney General”.

3 (2) CONFORMING AMENDMENTS.—Section  
4 212(n) (8 U.S.C. 1182(n)(1)) is amended—

5 (A) in paragraph (1)—

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

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

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

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

23 (v) by inserting in full measure mar-  
24 gin after subparagraph (D) the following  
25 new sentence: “Such application shall be

1 filed with the employer’s petition for a  
2 nonimmigrant visa for the alien, and the  
3 Attorney General shall transmit a copy of  
4 such application to the Secretary of  
5 Labor.”; and

6 (B) in the first sentence of paragraph  
7 (2)(A), by striking “Secretary” and inserting  
8 “Secretary of Labor”.

9 (e) PREVAILING WAGE CONSIDERATIONS.—Section  
10 101(a) (8 U.S.C. 1101(a)) is amended by adding at the  
11 end the following:

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

14 “(A) If the job opportunity is subject to a wage  
15 determination in the area under the Act of March 3,  
16 1931 (commonly known as the Davis-Bacon Act (40  
17 U.S.C. 276a et seq.)), or the Service Contract Act  
18 of 1965 (41 U.S.C. 351 et seq.), the prevailing wage  
19 shall be the rate required under such Acts.

20 “(B) If the job opportunity is not covered by a  
21 prevailing wage determined under the Acts referred  
22 to in subparagraph (A), the prevailing wage shall  
23 be—

24 “(i) the rate of wages to be determined, to  
25 the extent feasible, by adding the wage paid to

1 workers similarly employed in the area of in-  
2 tended employment and dividing the total by  
3 the number of such workers, except that the  
4 wage set forth in the application shall be con-  
5 sidered as meeting the prevailing wage standard  
6 if it is within 5 percent of the average rate of  
7 wages; or

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

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

18 “(D) For purposes of this section:

19 “(i) The term ‘similarly employed’ means  
20 having substantially comparable jobs in the oc-  
21 cupational category in the area of intended em-  
22 ployment, except that, if no such workers are  
23 employed by employers other than the employer  
24 applicant in the area of intended employment,  
25 the term ‘similarly employed’ means—

1           “(I) having jobs requiring a substan-  
2           tially similar level of skills within the area  
3           of intended employment; or

4           “(II) if there are no substantially  
5           comparable jobs in the area of intended  
6           employment, having substantially com-  
7           parable jobs with employers outside of the  
8           area of intended employment.

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

18          “(iii) The term ‘similarly employed’ shall  
19          be construed to require separate average rates  
20          of wage taking into account such factors as  
21          years of experience, academic degree, edu-  
22          cational institution attended, grade point aver-  
23          age, publications or other distinctions, personal  
24          traits deemed essential to job performance, spe-  
25          cialized training or skills, competitive market

1 factors, or any other factors typically considered  
2 by employers within the industry.

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

10 (f) POSTING REQUIREMENT.—Section  
11 212(n)(1)(C)(ii) (8 U.S.C. 1182(n)(1)(C)(ii)) is amended  
12 to read as follows:

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

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

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

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

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

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

15 **SEC. 7. LIMITATION ON PER COUNTRY CEILING WITH RE-**  
16 **SPECT TO EMPLOYMENT-BASED IMMI-**  
17 **GRANTS.**

18           (a) SPECIAL RULES.—Section 202(a) (8 U.S.C.  
19 1152(a)) is amended by adding at the end the following  
20 new paragraph:

21           “(5) RULES FOR EMPLOYMENT-BASED IMMI-  
22 GRANTS.—

23           “(A) EMPLOYMENT-BASED IMMIGRANTS  
24 NOT SUBJECT TO PER COUNTRY LIMITATION IF  
25 ADDITIONAL VISAS AVAILABLE.—If the total

1 number of visas available under paragraph (1),  
2 (2), (3), (4), or (5) of section 203(b) for a cal-  
3 endar quarter exceeds the number of qualified  
4 immigrants who may otherwise be issued such  
5 visas, the visas made available under that para-  
6 graph shall be issued without regard to the nu-  
7 merical limitation under paragraph (2) of this  
8 subsection during the remainder of the calendar  
9 quarter.

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

22 (b) CONFORMING AMENDMENTS.—

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

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

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

8           (1) as of the date of enactment of this Act is  
9           a nonimmigrant described in section  
10          101(a)(15)(H)(i) of that Act;

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

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

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

21       **SEC. 8. ACADEMIC HONORARIA.**

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

24          “(p) Any alien admitted under section 101(a)(15)(B)  
25          may accept an honorarium payment and associated inci-

1 dental expenses for a usual academic activity or activities,  
2 as defined by the Attorney General in consultation with  
3 the Secretary of Education, if such payment is offered by  
4 an institution of higher education (as defined in section  
5 1201(a) of the Higher Education Act of 1965) or other  
6 nonprofit entity and is made for services conducted for  
7 the benefit of that institution or entity.”.

○