

105TH CONGRESS
2D SESSION

S. 1878

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

IN THE SENATE OF THE UNITED STATES

MARCH 27, 1998

Mr. KENNEDY (for himself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

10 “(i) 90,000 in each of fiscal years 1998,
11 1999, and 2000, or

12 “(ii) 65,000 in fiscal year 2001 or any fis-
13 cal year thereafter,

14 except that in each of fiscal years 1999 through
15 2000, not more than 5,000 of the visas or grants of
16 status may be provided to aliens described in section
17 212(a)(5)(C); and

18 “(B) under section 101(a)(15)(H)(ii)(b), may
19 not exceed—

20 “(i) 41,000 in each of fiscal years 1998,
21 1999, and 2000, or

22 “(ii) 66,000 in fiscal year 2001 or any fis-
23 cal year thereafter.”.

1 **SEC. 3. GAO STUDY AND REPORT ON LABOR MARKET**
2 **NEEDS.**

3 (a) STUDY.—The Comptroller General of the United
4 States shall conduct a study assessing labor market needs
5 for workers with high technology skills and the extent to
6 which job openings requiring workers with high technology
7 skills are likely to be unfilled in each of the fiscal years
8 2001 through 2006.

9 (b) REPORT.—Not later than October 1, 2000, the
10 Comptroller General shall submit a report containing the
11 results of the study described in subsection (a) to the
12 Committees on the Judiciary of the House of Representa-
13 tives and the Senate. The report shall also address the
14 effect on the high technology labor market of the follow-
15 ing:

16 (1) The downsizing of the defense sector.

17 (2) The increase in productivity in the com-
18 puter industry.

19 (3) The redeployment of workers dedicated to
20 year 2000 projects.

21 **SEC. 4. INVESTMENT IN TRAINING HIGH TECHNOLOGY**
22 **WORKERS.**

23 (a) IN GENERAL.—There is established in the De-
24 partment of Labor a \$100,000,000 fund to assist United
25 States workers to obtain skills that employers indicate are
26 in short supply as evidenced by filings of Labor Condition

1 Applications filed for aliens described in section
2 101(a)(15)(H)(i)(b) of the Immigration and Nationality
3 Act, of which not less than 85 percent shall be available
4 for the activities described in subsection (b).

5 (b) LOAN PROGRAM.—

6 (1) IN GENERAL.—There is established in the
7 Department of Labor a program to provide individ-
8 uals with loans to obtain training necessary for em-
9 ployment in those occupations which are in high de-
10 mand as evidenced by filings of Labor Condition Ap-
11 plications by employers for aliens described in sec-
12 tion 101(a)(15)(H)(i)(b) of the Immigration and
13 Nationality Act. This loan program shall be adminis-
14 tered from the funds referred to in section
15 212(n)(3)(B). Loans provided under this section
16 shall not exceed \$10,000 a person.

17 (2) PROGRAM REQUIREMENTS.—The Secretary
18 of Labor shall establish criteria for implementing the
19 loan program described in subsection (a), which in-
20 clude the following:

21 (A) QUALIFICATIONS OF INDIVIDUALS.—

22 The loan program shall provide that individuals
23 receiving a loan under this section—

24 (i) have sufficient education or experi-
25 ence to enable them to qualify for employ-

1 ment in high technology industries with
2 limited additional training;

3 (ii) are of working age and are United
4 States citizens or qualified aliens described
5 in section 431 of the Personal Responsibility and Work Reconciliation Act of 1996
6 (8 U.S.C. 1641); and
7

8 (iii) repay the loan in full not later
9 than 4 years after completing the training
10 for which the individual received the loan.

11 (B) CERTIFICATION.—

12 (i) FISCAL YEARS 1999–2001.—For
13 each of fiscal years 1999 through 2001,
14 the loan program shall be available only for
15 training courses that the Secretary of
16 Labor has certified as appropriate to ob-
17 tain employment in high technology indus-
18 tries in the United States.

19 (ii) FISCAL YEAR 2002 AND THERE-
20 AFTER.—For fiscal year 2002, and each
21 fiscal year thereafter, the loan program
22 shall be available only for training courses
23 certified by the Secretary of Labor as ap-
24 propriate to fill the occupations which are
25 in high demand as evidenced by filings of

1 Labor Condition Applications by employers
2 for aliens described in section
3 101(a)(15)(H)(i)(b) of the Immigration
4 and Nationality Act.

5 (C) OTHER CRITERIA.—The Secretary of
6 Labor shall establish such other criteria as the
7 Secretary determines to be appropriate with re-
8 spect to certifying courses that qualify for the
9 loan program, identifying individuals who qual-
10 ify for loans under the program, and carrying
11 out the provisions of this section.

12 (c) LABOR DEPARTMENT GRANT PROGRAM TO CRE-
13 ATE REGIONAL SKILLS ALLIANCES.—

14 (1) IN GENERAL.—The Secretary of Labor, in
15 consultation with the Secretary of Commerce and
16 the Secretary of Education, shall provide “seed”
17 grants to eligible entities described in subsection (b)
18 to assist such entities in creating Regional Skills Al-
19 liances. The purpose of these Regional Skills Alli-
20 ances will be to help industry organize the labor
21 market to better meet their needs by—

22 (A) improving the job skills of American
23 workers necessary for employment in specific
24 industries and occupations; and/or

1 (B) assessing and developing strategies to
 2 address critical skills needs at the local, State,
 3 regional, and national levels.

4 (2) ELIGIBLE ENTITIES.—

5 (A) IN GENERAL.—An eligible entity de-
 6 scribed in this subsection is a consortium that
 7 consists of, but is not limited to, 2 or more of
 8 the following:

9 (i) Employers.

10 (ii) Labor organizations.

11 (iii) State and local governments.

12 (iv) Private Industry Councils or suc-
 13 cessor entities.

14 (v) Postsecondary educational institu-
 15 tions.

16 (vi) Nonprofit organizations that rep-
 17 resent businesses or industries.

18 (vii) Nonprofit training organizations.

19 (B) ADDITIONAL REQUIREMENT.—To the
 20 maximum extent practicable, each business, or-
 21 ganization, or government that forms an eligible
 22 entity under paragraph (1) shall be located in
 23 the same geographic region of the United
 24 States.

1 (3) MAXIMUM AMOUNT AND TIMING OF
2 GRANTS.—The amount of a grant provided to an eli-
3 gible entity under paragraph (1) may not exceed
4 \$2,000,000 for an 18-month grant period and may
5 be provided to that eligible entity only for a maxi-
6 mum of 2 such grant periods.

7 (4) APPLICATION.—The Secretary may not pro-
8 vide a grant under paragraph (1) to an eligible en-
9 tity unless such entity submits to the Secretary an
10 application containing such information as the Sec-
11 retary may reasonably require.

12 (5) USE OF AMOUNTS.—In carrying out the
13 program described in paragraph (1), the eligible en-
14 tity may, to the extent that such activities build on
15 and supplement activities already underway as op-
16 posed to duplicating or substituting for current ac-
17 tivities, provide for—

18 (A) an identification of local, State, re-
19 gional, and national skills needs;

20 (B) an assessment of the extent to which
21 United States workers are being educated and
22 trained in needed critical skills;

23 (C) the development of strategies to better
24 focus existing training and education invest-
25 ments on rapidly expanding occupations;

1 (D) the provision of improved occupational
2 information and projections;

3 (E) an assessment of training and job skill
4 needs for specific industries;

5 (F) development of a sequence of skill
6 standards that are benchmarked to advanced
7 industry practices for specific industries;

8 (G) development of curriculum and train-
9 ing methods;

10 (H) identification and development of
11 training providers;

12 (I) development of apprenticeship pro-
13 grams; and

14 (J) development of training programs for
15 dislocated workers.

16 (6) ADDITIONAL CRITERIA FOR GRANTS.—In
17 making grants under this subsection, the Secretary
18 shall—

19 (A) use a peer review process to award
20 grants;

21 (B) give preference to the extent to which
22 applications provide funds from non-Federal
23 sources to match Federal funds; and

24 (C) give preference to applications that
25 demonstrate significant collaboration with

1 major stakeholders in the State and local work-
 2 force development system, particularly Private
 3 Councils and labor organizations.

4 (7) NATIONAL ALLIANCE FOR HIGH-TECH-
 5 NOLOGY SKILLS.—The grants for Regional Skills al-
 6 liances will be complemented by the establishment of
 7 a National Alliance for High-Technology Skills
 8 which shall consist of national representatives from
 9 government, industry, labor organizations, and edu-
 10 cation. The purpose of the National Alliance will be
 11 to develop and recommend strategies to the Presi-
 12 dent for the education and training of American
 13 workers to meet the demand for high-technology
 14 skills.

15 (8) DEFINITION.—For purposes of this sub-
 16 section, the term “Secretary” means the Secretary
 17 of Labor.

18 **SEC. 5. ENFORCEMENT OF LABOR CONDITIONS FOR NON-**
 19 **IMMIGRANTS.**

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

22 (1) in paragraph (2)(A), by striking the first
 23 sentence and inserting the following: “The Secretary
 24 shall conduct an investigation where there is reason-
 25 able cause to believe that an employer has made a

1 misrepresentation of a material fact on a labor con-
2 dition attestation or has failed to comply with the
3 terms and conditions of an application submitted
4 under paragraph (1) or with the provisions of this
5 section or any rule or regulation pertaining to this
6 section. The Secretary shall establish a process for
7 the receipt, investigation, and disposition of com-
8 plaints or other cases of noncompliance with this
9 section.”;

10 (2) in paragraph (2)(C), by inserting “, or that
11 the employer failed to cooperate in the conduct of
12 the Secretary’s investigation or has intimidated, dis-
13 charged, or otherwise discriminated against any per-
14 son because that person has asserted a right or has
15 cooperated in an investigation under this paragraph”
16 after “a material fact in an application”;

17 (3) by inserting after paragraph (2)(D) the fol-
18 lowing:

19 “(E) Any alien admitted to the United States
20 as a nonimmigrant described in section
21 101(a)(15)(H)(i)(b) of this Act who files a complaint
22 pursuant to this subsection and is otherwise eligible
23 to remain and work in the United States, shall be
24 allowed to seek other employment in the United

1 States for the duration of that alien’s authorized ad-
2 mission, provided that—

3 “(i) the complaint results in finding by the
4 Secretary of Labor of a failure by the employer
5 to meet the conditions in paragraph (2)(C), and

6 “(ii) the alien notifies the Immigration and
7 Naturalization Service of the name and address
8 of his new employer.”;

9 (4) by striking clause (i) of paragraph (2)(C)
10 and inserting the following:

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

21 (5) in paragraph (2), by adding at the end the
22 following new subparagraph:

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

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

11 (6) by adding at the end the following new
12 paragraph:

13 “(3)(A) The Secretary of Labor shall require
14 payment of a fee by the employer for each position
15 for which an application is filed under this sub-
16 section. The fee shall be in an amount prescribed by
17 the Secretary of Labor, and shall be paid to the De-
18 partment of Labor.

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

20 “(I) to defray the cost of processing labor
21 condition applications and for personnel and
22 other costs directly associated with administer-
23 ing and enforcing the requirements applicable
24 to aliens described in section
25 101(a)(15)(H)(i)(b), including the collection,

1 safeguarding, and accounting for fees collected
2 pursuant to and funds obligated or expended
3 pursuant to this subsection; and

4 “(II) to endow the loan program and pro-
5 vide grants established under section 4 of the
6 High-Tech Immigration and United States
7 Worker Protection Act.

8 “(ii) During the period ending September 30,
9 2001, such fee shall not exceed \$250 for each posi-
10 tion.

11 “(iii) Not less than \$5,000,000 of the funds col-
12 lected from the fee authorized under this paragraph
13 shall be available for the purposes described in this
14 subsection and shall cover the costs to the Depart-
15 ment of Labor of conducting regular, random audits
16 relating to the attestations under this subsection and
17 of engaging in other enforcement activities in con-
18 nection with this subsection.

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

24 “(v) It shall be unlawful for an employer to re-
25 quire, as a condition of employment by such em-

1 ployer, that the fee prescribed under this paragraph,
 2 or any part of the fee, be paid directly or indirectly
 3 by the alien whose services are being sought.

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

12 “(vii) Any amount determined to have been
 13 paid, directly or indirectly, toward the filing fee de-
 14 scribed in paragraph (3)(A) by the alien whose serv-
 15 ices were sought, shall be repaid from the fund to
 16 such alien.”.

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

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

24 “(E)(i) The employer, prior to filing the appli-
 25 cation, has taken timely, significant, and effective

1 steps to recruit and retain sufficient United States
 2 workers in the specialty occupation in which the
 3 nonimmigrant whose services are being sought will
 4 be employed. Such steps include good faith recruit-
 5 ment in the United States using procedures that
 6 meet industry-wide standards offering compensation
 7 as required by subparagraph (A) and offering of em-
 8 ployment to any qualified United States worker ap-
 9 plicant or such good faith recruitment must other-
 10 wise be unsuccessful.

11 “(ii) The recruitment requirements of this sub-
 12 paragraph shall not apply to aliens with extraor-
 13 dinary ability, aliens who are outstanding professors
 14 and researchers, and certain multinational executives
 15 and managers described in section 203(b)(1).”.

16 (b) WAGE COMPARABILITY.—Section
 17 212(n)(1)(A)(i)(I) of such Act is amended by inserting
 18 “(including wages, benefits, and all other compensation)”
 19 after “actual wage level”.

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

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

25 “(4)(A) The employer—

1 “(i) has not, within the 6-month period
2 prior to the filing of the application, laid off or
3 otherwise displaced any United States worker
4 (as defined in subparagraph (B), including a
5 worker obtained by contract, employee leasing,
6 temporary help agreement, or other similar
7 basis, who has substantially equivalent quali-
8 fications and experience in the occupation clas-
9 sification for the position in which the non-
10 immigrant is intended to be (or is) employed;
11 and

12 “(ii) will not lay off or otherwise knowingly
13 displace, during the 90-day period following the
14 filing of the application, or during the 90-day
15 period immediately preceding and following the
16 filing of any visa petition supported by the ap-
17 plication, any United States worker, including
18 any worker obtained by contract, who has sub-
19 stantially equivalent qualifications and experi-
20 ence in the occupation classification for the po-
21 sition in which the nonimmigrant is intended to
22 be (or is) employed.

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

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

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

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

7 “(C) For purposes of this subparagraph, the
8 term ‘laid off’, with respect to an employee, means
9 the employee’s loss of employment, other than a dis-
10 charge for cause or a voluntary departure or vol-
11 untary retirement. The term ‘laid off’ does not apply
12 to any case in which employment is relocated to a
13 different geographic area and the affected employee
14 is offered a chance to move to the new location with
15 the same wages and benefits but elects not to move
16 to the new location.”.

17 **SEC. 8. LIMITATION ON PERIOD OF AUTHORIZED ADMIS-**
18 **SION.**

19 Section 214(g)(4) of the Immigration and Nationality
20 Act is amended by striking “6 years” and inserting “3
21 years”.

22 **SEC. 9. APPLICABILITY TO EXECUTIVE AGENCIES.**

23 Section 212(n)(1) of the Immigration and Nationality
24 Act (8 U.S.C. 1182(n)(1)), as amended by adding at the
25 end the following new sentence: “Notwithstanding any

1 other provision of this Act, or any other law, the Secretary
2 shall have authority to require executive agencies as de-
3 fined in 5 U.S.C. 105 to comply with this section, and
4 such agencies shall be subject to the regulations of the
5 Secretary promulgated pursuant to this section.”.

○