

106TH CONGRESS
1ST SESSION

S. 1645

To amend the Immigration and Nationality Act to establish a 5-year pilot program under which certain aliens completing an advanced degree in mathematics, science, engineering, or computer science are permitted to change nonimmigrant classification in order to remain in the United States for a 5-year period for the purpose of working in one of those fields, and to foster partnerships between public schools and private industry to improve mathematics, science, and technology education in public schools.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 1999

Mr. ROBB (for himself, Mr. SCHUMER, Mr. KERRY, Mr. LEAHY, Mr. JOHNSON, and Mr. LIEBERMAN) 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 establish a 5-year pilot program under which certain aliens completing an advanced degree in mathematics, science, engineering, or computer science are permitted to change nonimmigrant classification in order to remain in the United States for a 5-year period for the purpose of working in one of those fields, and to foster partnerships between public schools and private industry to improve mathematics, science, and technology education in public schools.

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 “Helping Improve Tech-
 5 nology Education and Competitiveness Act” or the
 6 “HITEC Act”.

7 **TITLE I—PILOT PROGRAM**

8 **SEC. 101. AUTHORIZING CHANGE IN NONIMMIGRANT STA-**
 9 **TUS FOR EMPLOYMENT-BASED NON-**
 10 **IMMIGRANTS WITH DEGREES IN MATHE-**
 11 **MATICS, SCIENCE, ENGINEERING, OR COM-**
 12 **PUTER SCIENCE.**

13 (a) ESTABLISHMENT OF NONIMMIGRANT CAT-
 14 EGORY.—Section 101(a)(15) of the Immigration and Na-
 15 tionality Act (8 U.S.C. 101(a)(15)) is amended—

16 (1) in subparagraph (R), by striking “or” at
 17 the end;

18 (2) in subparagraph (S), by striking the comma
 19 at the end and inserting “; or”; and

20 (3) by inserting after subparagraph (S) the fol-
 21 lowing:

22 “(T) subject to section 214(n), an alien who is
 23 authorized to change nonimmigrant classification
 24 and remain temporarily in the United States to per-
 25 form services (other than services described in sub-

1 clause (a) of subparagraph (H)(i) during the period
 2 in which such subclause applies, services described in
 3 subclause (ii)(a) of subparagraph (H), or services
 4 described in subparagraph (O) or (P)) in a special
 5 technical occupation described in section 214(n)(2),
 6 who meets the requirements for the occupation spec-
 7 ified in section 214(n)(3), and with respect to whom
 8 the Secretary of Labor determines and certifies to
 9 the Attorney General that the intending employer
 10 has filed with the Secretary an application under
 11 section 212(o)(1);”.

12 (b) PROCESS FOR APPROVAL OF PETITIONS.—Sec-
 13 tion 214(c) of the Immigration and Nationality Act (8
 14 U.S.C. 1184(c)) is amended by adding at the end the fol-
 15 lowing:

16 “(10)(A) The question of providing any alien status
 17 as a nonimmigrant under section 101(a)(15)(T) in any
 18 specific case or specific cases shall be determined by the
 19 Attorney General upon petition of the employer seeking
 20 to employ the alien. Such petition shall be made and ap-
 21 proved before the status is granted, and, in the case of
 22 a petition described in subparagraph (B)(i), the petition
 23 shall be made and approved before the alien obtains the
 24 degree described in subsection (n)(3)(B). The petition
 25 shall be in such form and contain such information as the

1 Attorney General shall prescribe, consistent with sub-
 2 section (n), and shall specify a period of intended employ-
 3 ment. The approval of such a petition shall not, of itself,
 4 be construed as establishing that the alien is a non-
 5 immigrant with such status.

6 “(B) The Attorney General shall impose a fee on an
 7 employer filing a petition under subparagraph (A)—

8 “(i) initially to grant an alien nonimmigrant
 9 status described in section 101(a)(15)(T);

10 “(ii) to extend the stay of an alien having such
 11 status (unless the employer previously has obtained
 12 an extension for such alien); or

13 “(iii) to obtain authorization for an alien having
 14 such status to change employers.

15 “(C) The amount of the fee shall be \$500 for each
 16 petition filed under clause (ii) or (iii) of subparagraph (B)
 17 and \$1,000 for each petition filed under subparagraph
 18 (B)(i).

19 “(D) Fees collected under this paragraph shall be de-
 20 posited in the Treasury in accordance with section
 21 286(t).”.

22 (c) REQUIREMENTS FOR CHANGE OF NONIMMIGRANT
 23 CLASSIFICATION; ENFORCEMENT OF EMPLOYER OBLIGA-
 24 TIONS.—Section 214 of the Immigration and Nationality
 25 Act (8 U.S.C. 1184) is amended—

1 (1) by redesignating the subsection (l) added by
2 section 625(a) of the Illegal Immigration Reform
3 and Immigrant Responsibility Act of 1996 (Public
4 Law 104–208; 110 Stat. 3009–1820) as subsection
5 (m); and

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

7 “(n)(1) Notwithstanding section 248 or 212(e), or
8 any other provision of this Act, the Attorney General may,
9 under such conditions as the Attorney General may pre-
10 scribe consistent with this subsection and subsection
11 (c)(10)(A), authorize a change from a nonimmigrant clas-
12 sification under subparagraph (F) or (J) of section
13 101(a)(15) to a nonimmigrant classification under section
14 101(a)(15)(T) in the case of any alien lawfully admitted
15 to the United States as a nonimmigrant who is continuing
16 to maintain that status and who is not inadmissible under
17 section 212(a)(9)(B)(i) (or whose inadmissibility under
18 such section is waived under section 212(a)(9)(B)(v)).

19 “(2) For purposes of section 101(a)(15)(T) and para-
20 graph (3), the term ‘special technical occupation’ means
21 an occupation in a high-technology field—

22 “(A) that uses the knowledge, skills, and abili-
23 ties possessed by persons attaining a master’s or
24 higher degree with a major in mathematics, science,
25 engineering, or computer science, and requires such

1 knowledge, skills, and abilities as a minimum for
2 entry into the occupation in the United States; and

3 “(B) with respect to which the annual total
4 compensation (including the value of all wages, sal-
5 ary, bonuses, stock, stock options, and any other
6 similar form of remuneration) equals or exceeds
7 \$60,000.

8 “(3) For purposes of section 101(a)(15)(T), the re-
9 quirements of this paragraph, with respect to a special
10 technical occupation, are—

11 “(A) full State licensure to practice in the occu-
12 pation, if such licensure is required to practice in the
13 occupation;

14 “(B) not earlier than 90 days prior to initially
15 obtaining nonimmigrant status under such section,
16 having been graduated, with a degree described in
17 paragraph (2)(A) for the occupation, from an insti-
18 tution of higher education (as defined in section
19 102(a) of the Higher Education Act of 1965 (20
20 U.S.C. 1002(a)) inside the United States whose stu-
21 dents receive loans under part B or D of title IV of
22 such Act (20 U.S.C. 1070 et seq.; 20 U.S.C. 1087a
23 et seq.); and

24 “(C) obtaining a contractual obligation on the
25 part of the employer filing the petition on behalf of

1 the alien under section 214(c)(10)(A) to pay the
2 alien in accordance with paragraph (2)(B) at all
3 times during the period of intended employment in
4 the United States specified in the petition.

5 “(4) In the case of a nonimmigrant described in sec-
6 tion 101(a)(15)(T), the period of authorized stay in the
7 United States as such a nonimmigrant may not exceed 5
8 years.

9 “(5) An employer who has filed a petition under sub-
10 section (c)(10)(A) with respect to an employee having non-
11 immigrant status under section 101(a)(15)(T) annually
12 shall submit to the Secretary of Labor a copy of the most
13 recent statement under section 6051 of the Internal Rev-
14 enue Code of 1986 for the employee. Based on information
15 in any such statement, the Secretary of Labor may initiate
16 an investigation described in section 212(o)(2) concerning
17 a possible failure, misrepresentation, or violation, without
18 a complaint described in such paragraph, if the Secretary
19 of Labor has a reasonable basis for such initiation.

20 “(6)(A) The Attorney General shall submit every 6
21 months to the Committees on the Judiciary of the House
22 of Representatives and of the Senate a report describing,
23 with respect to petitions under section 101(a)(15)(T) for
24 the previous 6-month period, the number aliens granted
25 nonimmigrant status pursuant to such petitions. Such

1 data shall be reported on a monthly basis for each month
2 in the reporting period.

3 “(B) The Attorney General shall submit annually to
4 the Committees on the Judiciary of the House of Rep-
5 resentatives and of the Senate a report describing, with
6 respect to each workers included in such approved peti-
7 tions under section 101(a)(15)(T) for the previous fiscal
8 year, the following:

9 “(i) Occupation.

10 “(ii) Employer.

11 “(iii) Annual total compensation.

12 “(iv) Highest degree completed at an institution
13 of higher education described in paragraph (2)(B).

14 “(v) Name of such institution.

15 “(vi) Concentration or major with respect to
16 such degree.”.

17 **SEC. 102. LABOR CONDITION APPLICATIONS.**

18 (a) IN GENERAL.—Section 212 of the Immigration
19 and Nationality Act (8 U.S.C. 1182) is amended by insert-
20 ing after subsection (n) the following:

21 “(o) LABOR CONDITION APPLICATIONS.—

22 “(1) No alien may be admitted or provided sta-
23 tus as a T nonimmigrant in occupational classifica-
24 tion unless the employer has filed with the Secretary
25 of Labor an application stating the following:

1 “(A) The employer—

2 “(i) is offering and will offer during
3 the period of authorized employment to
4 aliens admitted or provided status as a T
5 non-immigrant wages that are at least—

6 “(I) the actual wage level paid by
7 the employer to all other individuals
8 with similar experience and qualifica-
9 tions for the specific employment in
10 question, or

11 “(II) the prevailing wage level for
12 the occupational classification in the
13 area of employment, whichever is
14 greater, based on the best information
15 available as of the time of filing the
16 application, and

17 “(ii) will provide working conditions
18 for such a nonimmigrant that will not ad-
19 versely affect the working conditions of
20 workers similarly employed.

21 “(B) There is not a strike or lockout in the
22 course of a labor dispute in the special technical
23 occupation at the place of employment.

24 “(C) The employer, at the time of filing
25 the application—

1 “(i) has provided notice of the filing
2 under this paragraph to the bargaining
3 representative (if any) of the employer’s
4 employees in the occupational classification
5 and area for which aliens are sought, or

6 “(ii) if there is no such bargaining
7 representative, has provided notice of filing
8 in the occupational classification through
9 such methods as physical posting in con-
10 spicuous locations at the place of employ-
11 ment or electronic notification to employ-
12 ees in the occupational classification for
13 which T nonimmigrants are sought.

14 “(D) The application shall contain a speci-
15 fication of the number of workers sought, the
16 occupational classification in which the workers
17 will be employed, and wage rate and conditions
18 under which they will be employed.

19 The employer shall make available for public exam-
20 ination, within one working day after the date on
21 which an application under this paragraph is filed,
22 at the employer’s principal place of business or
23 worksite, a copy of each such application (and such
24 accompanying documents as are necessary). The
25 Secretary shall compile, on a current basis, a list (by

1 employer and by occupational classification) of the
2 applications filed under this subsection. Such list
3 shall include the wage rate, number of aliens sought,
4 period of intended employment, and date of need.
5 The Secretary shall make such list available for pub-
6 lic examination in Washington, D.C. The Secretary
7 of Labor shall review such an application only for
8 completeness and obvious inaccuracies. Unless the
9 Secretary finds that the application is incomplete or
10 obviously inaccurate, the Secretary shall provide the
11 certification described in section 101(a)(15)(H)(T)
12 within 7 days of the date of the filing of the applica-
13 tion.

14 “(2)(A) Subject to paragraph (5)(A), the Sec-
15 retary shall establish a process for the receipt, inves-
16 tigation, and disposition of complaints respecting a
17 petitioner’s failure to meet a condition specified in
18 an application submitted under paragraph (1) or a
19 petitioner’s misrepresentation of material facts in
20 such an application. Complaints may be filed by any
21 aggrieved person or organization (including bar-
22 gaining representatives). No investigation or hearing
23 shall be conducted on a complaint concerning such
24 a failure or misrepresentation unless the complaint
25 was filed not later than 12 months after the date of

1 the failure or misrepresentation, respectively. The
2 Secretary shall conduct an investigation under this
3 paragraph if there is reasonable cause to believe that
4 such a failure or misrepresentation has occurred.

5 “(B) Under such process, the Secretary shall
6 provide, within 30 days after the date such a com-
7 plaint is filed, for a determination as to whether or
8 not a reasonable basis exists to make a finding de-
9 scribed in subparagraph (C). If the Secretary deter-
10 mines that such a reasonable basis exists, the Sec-
11 retary shall provide for notice of such determination
12 to the interested parties and an opportunity for a
13 hearing on the complaint, in accordance with section
14 556 of title 5, United States Code, within 60 days
15 after the date of the determination. If such a hear-
16 ing is requested, the Secretary shall make a finding
17 concerning the matter by not later than 60 days
18 after the date of the hearing. In the case of similar
19 complaints respecting the same applicant, the Sec-
20 retary may consolidate the hearings under this sub-
21 paragraph on such complaints.

22 “(C)(i) If the Secretary finds, after notice and
23 opportunity for a hearing, a failure to meet a condi-
24 tion of paragraph (1)(B), a substantial failure to
25 meet a condition of paragraph (1)(C) or (1)(D) or

1 a misrepresentation of material fact in an
2 application—

3 “(I) the Secretary shall notify the Attorney
4 General of such finding and may, in addition,
5 impose such other administrative remedies (in-
6 cluding civil monetary penalties in an amount
7 not to exceed \$1,000 per violation) as the Sec-
8 retary determines to be appropriate; and

9 “(II) the Attorney General shall not ap-
10 prove petitions filed with respect to that em-
11 ployer under section 204 or 214(c) (8 U.S.C.
12 1154 or 1184(c)) during a period of at least 1
13 year for aliens to be employed by the employer.

14 “(ii) If the Secretary finds, after notice and op-
15 portunity for a hearing, a willful failure to meet a
16 condition of paragraph (1), a willful misrepresenta-
17 tion of material fact in an application, or a violation
18 of clause (iv)—

19 “(I) the Secretary shall notify the Attorney
20 General of such finding and may, in addition,
21 impose such other administrative remedies (in-
22 cluding civil monetary penalties in an amount
23 not to exceed \$5,000 per violation) as the Sec-
24 retary determines to be appropriate; and

1 “(II) the Attorney General shall not ap-
2 prove petitions filed with respect to that em-
3 ployer under section 204 or 214(c) (8 U.S.C.
4 1154 or 1184(c)) during a period of at least 2
5 years for aliens to be employed by the employer.

6 “(iii) If the Secretary finds, after notice and op-
7 portunity for a hearing, a willful failure to meet a
8 condition of paragraph (1) or a willful misrepresen-
9 tation of material fact in an application, in the
10 course of which failure or misrepresentation the em-
11 ployer displaced a United States worker employed by
12 the employer within the period beginning 90 days
13 before and ending 90 days after the date of filing of
14 any change in nonimmigrant status supported by the
15 application—

16 “(I) the Secretary shall notify the Attorney
17 General of such finding and may, in addition,
18 impose such other administrative remedies (in-
19 cluding civil monetary penalties in an amount
20 not to exceed \$35,000 per violation) as the Sec-
21 retary determines to be appropriate; and

22 “(II) the Attorney General shall not ap-
23 prove petitions filed with respect to that em-
24 ployer under section 204 or 214(c) (8 U.S.C.
25 1154 or 1184(c)) during a period of at least

1 3 years for aliens to be employed by the em-
2 ployer.

3 “(iv) It is a violation of this clause for an em-
4 ployer who has filed an application under this sub-
5 section to intimidate, threaten, restrain, coerce,
6 blacklist, discharge, or in any other manner discrimi-
7 nate against an employee (which term, for purposes
8 of this clause, includes a former employee and an
9 applicant for employment) because the employee has
10 disclosed information to the employer, or to any
11 other person, that the employee reasonably believes
12 evidences a violation of this subsection, or any rule
13 or regulation pertaining to this subsection, or be-
14 cause the employee cooperates or seeks to cooperate
15 in an investigation or other proceeding concerning
16 the employer’s compliance with the requirements of
17 this subsection or any rule or regulation pertaining
18 to this subsection.

19 “(v) The Secretary of Labor and the Attorney
20 General shall devise a process under which a T non-
21 immigrant who files a complaint regarding a viola-
22 tion of clause (iv) and is otherwise eligible to remain
23 and work in the United States may be allowed to
24 seek other appropriate employment in the United
25 States for a period not to exceed the maximum pe-

1 riod of stay authorized for such nonimmigrant clas-
2 sification.

3 “(vi)(I) It is a violation of this clause for an
4 employer who has filed an application under this
5 subsection to require a T nonimmigrant to pay a
6 penalty for ceasing employment with the employer
7 prior to a date agreed to by the nonimmigrant and
8 the employer. The Secretary shall determine whether
9 a required payment is a penalty (and not liquidated
10 damages) pursuant to relevant State law.

11 “(II) It is a violation of this clause for an em-
12 ployer who has filed an application under this sub-
13 section to require an alien who is the subject of a
14 petition filed under section 214(c)(10)(A), for which
15 a fee is imposed under section 214(c)(10)(B), to re-
16 imburse, or otherwise compensate, the employer for
17 part or all of the cost of such fee. It is a violation
18 of this clause for such an employer otherwise to ac-
19 cept such reimbursement or compensation from such
20 an alien.

21 “(III) If the Secretary finds, after notice and
22 opportunity for a hearing, that an employer has
23 committed a violation of this clause, the Secretary
24 may impose a civil monetary penalty of \$1,000 for
25 each such violation and issue an administrative

1 order requiring the return to the nonimmigrant of
2 any amount paid in violation of this clause, or, if the
3 nonimmigrant cannot be located, requiring payment
4 of any such amount to the general fund of the
5 Treasury.

6 “(vii)(I) It is a failure to meet a condition of
7 paragraph (1)(A) for an employer, who has filed an
8 application under this subsection and who places an
9 T nonimmigrant designated as a full-time employee
10 on the petition filed under section 214(c)(10) by the
11 employer with respect to the nonimmigrant, after
12 the nonimmigrant has entered into employment with
13 the employer, in nonproductive status due to a deci-
14 sion by the employer (based on factors such as lack
15 of work), or due to the nonimmigrant’s lack of a
16 permit or license, to fail to pay the nonimmigrant
17 full-time wages in accordance with paragraph (1)(A)
18 for all such nonproductive time.

19 “(II) It is a failure to meet a condition of para-
20 graph (1)(A) for an employer, who has filed an ap-
21 plication under this subsection and who places a T
22 nonimmigrant designated as a part-time employee
23 on the petition filed under section 214(c)(10) by the
24 employer with respect to the nonimmigrant, after
25 the nonimmigrant has entered into employment with

1 the employer, in nonproductive status under cir-
2 cumstances described in subclause (I), to fail to pay
3 such a nonimmigrant for such hours as are des-
4 ignated on such petition consistent with the rate of
5 pay identified on such petition.

6 “(III) In the case of a T nonimmigrant who has
7 not yet entered into employment with an employer
8 who has had approved an application under this sub-
9 section, and a petition under section 214(c)(10),
10 with respect to the nonimmigrant, the provisions of
11 subclauses (I) and (II) shall apply to the employer
12 beginning 30 days after the date the nonimmigrant
13 first is admitted into the United States pursuant to
14 the petition, or 60 days after the date the non-
15 immigrant becomes eligible to work for the employer
16 (in the case of a nonimmigrant who is present in the
17 United States on the date of the approval of the pe-
18 tition).

19 “(IV) This clause does not apply to a failure to
20 pay wages to a T nonimmigrant for nonproductive
21 time due to non-work-related factors, such as the
22 voluntary request of the nonimmigrant for an ab-
23 sence or circumstances rendering the nonimmigrant
24 unable to work.

1 “(V) This clause shall not be construed as pro-
 2 hibiting an employer that is a school or other edu-
 3 cational institution from applying to a T non-
 4 immigrant an established salary practice of the em-
 5 ployer, under which the employer pays to T non-
 6 immigrants and United States workers in the same
 7 occupational classification an annual salary in dis-
 8 bursements over fewer than 12 months, if—

9 “(aa) the nonimmigrant agrees to the com-
 10 pressed annual salary payments prior to the
 11 commencement of the employment; and

12 “(bb) the application of the salary practice
 13 to the nonimmigrant does not otherwise cause
 14 the nonimmigrant to violate any condition of
 15 the nonimmigrant’s authorization under this
 16 Act to remain in the United States.

17 “(VI) This clause shall not be construed as su-
 18 perseding clause (viii).

19 “(viii) It is a failure to meet a condition of
 20 paragraph (1)(A) for an employer who has filed an
 21 application under this subsection to fail to offer to
 22 a T nonimmigrant, during the nonimmigrant’s pe-
 23 riod of authorized employment, benefits and eligi-
 24 bility for benefits (including the opportunity to par-
 25 ticipate in health, life, disability, and other insurance

1 plans; the opportunity to participate in retirement
2 and savings plans; and cash bonuses and noncash
3 compensation, such as stock options (whether or not
4 based on performance)) on the same basis, and in
5 accordance with the same criteria, as the employer
6 offers to United States workers.

7 “(D) If the Secretary finds, after notice and op-
8 portunity for a hearing, that an employer has not
9 paid wages at the wage level specified under the ap-
10 plication and required under paragraph (1), the Sec-
11 retary shall order the employer to provide for pay-
12 ment of such amounts of back pay as may be re-
13 quired to comply with the requirements of paragraph
14 (1), whether or not a penalty under subparagraph
15 (C) has been imposed.

16 “(E) The Secretary may, on a case-by-case
17 basis, subject an employer to random investigations
18 for a period of up to 5 years, beginning on the date
19 (on or after the date of the enactment of the Amer-
20 ican Competitiveness and Workforce Improvement
21 Act of 1998 (enacted Oct. 21, 1998)) on which the
22 employer is found by the Secretary to have com-
23 mitted a willful failure to meet a condition of para-
24 graph (1) or to have made a willful misrepresenta-
25 tion of material fact in an application. The authority

1 of the Secretary under this subparagraph shall not
2 be construed to be subject to, or limited by, the re-
3 quirements of subparagraph (A).

4 “(F)(i) If the Secretary receives specific cred-
5 ible information from a source, who is likely to have
6 knowledge of an employer’s practices or employment
7 conditions, or an employer’s compliance with the em-
8 ployer’s labor condition application under paragraph
9 (1), and whose identity is known to the Secretary,
10 and such information provides reasonable cause to
11 believe that the employer has committed a willful
12 failure to meet a condition of paragraph (1)(A) or
13 (1)(B), has engaged in a pattern or practice of fail-
14 ures to meet such a condition, or has committed a
15 substantial failure to meet such a condition that af-
16 fects multiple employees, the Secretary may conduct
17 a 30-day investigation into the alleged failure or fail-
18 ures. The Secretary (or the Acting Secretary in the
19 case of the Secretary’s absence or disability) shall
20 personally certify that the requirements for con-
21 ducting such an investigation have been met and
22 shall approve commencement of the investigation.
23 The Secretary may withhold the identity of the
24 source from the employer, and the source’s identity

1 shall not be subject to disclosure under section 552
2 of title 5, United States Code.

3 “(ii) The Secretary shall establish a procedure
4 for any person, desiring to provide to the Secretary
5 information described in clause (i) that may be used,
6 in whole or in part, as the basis for commencement
7 of an investigation described in such clause, to pro-
8 vide the information in writing on a form developed
9 and provided by the Secretary and completed by or
10 on behalf of the person. The person may not be an
11 officer or employee of the Department of Labor, un-
12 less the information satisfies the requirement of
13 clause (iii)(II) (although an officer or employee of
14 the Department of Labor may complete the form on
15 behalf of the person).

16 “(iii) Any investigation initiated or approved by
17 the Secretary under clause (i) shall be based on in-
18 formation that satisfies the requirements of such
19 clause and that (I) originates from a source other
20 than an officer or employee of the Department of
21 Labor, or

22 “(II) was lawfully obtained by the Secretary of
23 Labor in the course of lawfully conducting another
24 Department of Labor investigation under this Act or
25 any other Act.

1 “(iv) The receipt by the Secretary of informa-
2 tion submitted by an employer to the Attorney Gen-
3 eral or the Secretary for purposes of securing the
4 employment of a T nonimmigrant shall not be con-
5 sidered a receipt of information for purposes of
6 clause (i).

7 “(v) No investigation described in clause (i) (or
8 hearing described in clause (vii)) may be conducted
9 with respect to information about a failure to meet
10 a condition described in clause (i), unless the Sec-
11 retary receives the information not later than 12
12 months after the date of the alleged failure.

13 “(vi) The Secretary shall provide notice to an
14 employer with respect to whom the Secretary has re-
15 ceived information described in clause (i), prior to
16 the commencement of an investigation under such
17 clause, of the receipt of the information and of the
18 potential for an investigation. The notice shall be
19 provided in such a manner, and shall contain suffi-
20 cient detail, to permit the employer to respond to the
21 allegations before an investigation is commenced.
22 The Secretary is not required to comply with this
23 clause if the Secretary determines that to do so
24 would interfere with an effort by the Secretary to se-
25 cure compliance by the employer with the require-

1 ments of this subsection. There shall be no judicial
2 review of a determination by the Secretary under
3 this clause.

4 “(vii) If the Secretary determines under this
5 subparagraph that a reasonable basis exists to make
6 a finding that a failure described in clause (i) has
7 occurred, the Secretary shall provide for notice of
8 such determination to the interested parties and an
9 opportunity for a hearing, in accordance with section
10 556 of title 5, United States Code, within 60 days
11 after the date of the determination. If such a hear-
12 ing is requested, the Secretary shall make a finding
13 concerning the matter by not later than 60 days
14 after the date of the hearing.

15 “(H) Nothing in this subsection shall be con-
16 strued as superseding or preempting any other en-
17 forcement-related authority under this Act (such as
18 the authorities under section 274B (8 U.S.C.
19 1324b)), or any other Act.

20 “(3) Notwithstanding any other provision of
21 law, civil money penalties collected under this sub-
22 section shall be deposited in the Treasury in accord-
23 ance with section 286(t).

24 “(4) For purposes of this subsection:

1 “(A) The term ‘area of employment’ means
2 the area within normal commuting distance of
3 the worksite or physical location where the work
4 of the T nonimmigrant is or will be performed.
5 If such worksite or location is within a Metro-
6 politan Statistical Area, any place within such
7 area is deemed to be within the area of employ-
8 ment.

9 “(B) In the case of an application with re-
10 spect to one or more T nonimmigrants by an
11 employer, the employer is considered to ‘dis-
12 place’ a United States worker from a job if the
13 employer lays off the worker from a job that is
14 essentially the equivalent of the job for which
15 the nonimmigrant or nonimmigrants is or are
16 sought. A job shall not be considered to be es-
17 sentially equivalent of another job unless it in-
18 volves essentially the same responsibilities, was
19 held by a United States worker with substan-
20 tially equivalent qualifications and experience,
21 and is located in the same area of employment
22 as the other job.

23 “(C) The term ‘T nonimmigrant’ means an
24 alien admitted or provided status as a non-
25 immigrant described in section 101(a)(15)(T).

1 “(D)(i) The term ‘lays off’, with respect to
2 a worker—

3 “(I) means to cause the worker’s loss
4 of employment, other than through a dis-
5 charge for inadequate performance, viola-
6 tion of workplace rules, cause, voluntary
7 departure, voluntary retirement, or the ex-
8 piration of a grant or contract; but

9 “(II) does not include any situation in
10 which the worker is offered, as an alter-
11 native to such loss of employment, a simi-
12 lar employment opportunity with the same
13 employer at equivalent or higher com-
14 pensation and benefits than the position
15 from which the employee was discharged,
16 regardless of whether or not the employee
17 accepts the offer.

18 “(ii) Nothing in this subparagraph is in-
19 tended to limit an employee’s rights under a
20 collective bargaining agreement or other em-
21 ployment contract.

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

24 “(i) is a citizen or national of the
25 United States; or

1 “(ii) is an alien who is lawfully admit-
 2 ted for permanent residence, is admitted as
 3 a refugee under section 1157 (8 U.S.C.
 4 1157), is granted asylum under section
 5 208 (8 U.S.C. 1158), or is an immigrant
 6 otherwise authorized, by this Act or by the
 7 Attorney General, to be employed.”.

8 (b) CONFORMING AMENDMENT.—Section 212(p) of
 9 the Immigration and Nationality Act (8 U.S.C. 1182(p))
 10 is amended by striking “and (a)(5)(A)” and inserting “,
 11 (a)(5)(A), and (o)(1)(A)(i)(II)”.

12 **SEC. 103. ESTABLISHMENT OF HIGH-TECH EDUCATION**
 13 **FUND ACCOUNT; USE OF FEES.**

14 Section 286 of the Immigration and Nationality Act
 15 (8 U.S.C. 1356) is amended by adding at the end the fol-
 16 lowing:

17 “(t) HIGH-TECH EDUCATION FUND ACCOUNT.—

18 “(1) IN GENERAL.—There is established in the
 19 general fund of the Treasury a separate account,
 20 which shall be known as the ‘High-Tech Education
 21 Fund Account’. Notwithstanding any other provision
 22 of law, there shall be deposited as offsetting receipts
 23 into the account all fees collected under section
 24 214(c)(10) and all civil money penalties collected
 25 under section 214(n)(7)(C).

1 “(2) USE OF FEES FOR K–12 MATHEMATICS,
 2 SCIENCE, AND TECHNOLOGY EDUCATION.—Except
 3 as provided in paragraph (3), amounts deposited
 4 into the High-Tech Education Fund Account shall
 5 remain available to the Secretary of Commerce until
 6 expended to make merit-reviewed grants for pro-
 7 grams that provide opportunities for enrollment in
 8 academic enrichment courses in mathematics,
 9 science, and technology for elementary and sec-
 10 ondary school students, as described in title II of the
 11 HITEC Act.

12 “(3) USE OF FEES FOR DUTIES RELATING TO
 13 PETITIONS.—3 percent of the amounts deposited
 14 into the High-Tech Education Fund Account shall
 15 remain available to the Attorney General until ex-
 16 pended to carry out duties under subsections (c)(10)
 17 and (n) of section 214.”.

18 **SEC. 104. EFFECTIVE DATE; SUNSET.**

19 (a) EFFECTIVE DATE.—The amendments made by
 20 this title shall take effect beginning with fiscal year 2000.

21 (b) SUNSET.—The amendments made by sections
 22 101 and 102 shall cease to be effective on September 30,
 23 2004, except with respect to any alien having non-
 24 immigrant status pursuant to such amendments before
 25 such date. In the case of such an alien, the amendments

1 made by sections 101 and 102 shall remain in effect until
2 the date on which such nonimmigrant status otherwise
3 would expire (disregarding any potential extension of sta-
4 tus).

5 **TITLE II—TECHNOLOGY** 6 **EDUCATION GRANTS**

7 **SEC. 201. AUTHORIZATION.**

8 (a) IN GENERAL.—The Secretary of Commerce, act-
9 ing through the Director of the National Institute of
10 Standards and Technology, and in consultation and co-
11 ordination with the Secretary of Education, shall, subject
12 to the availability of appropriations, provide grants to eli-
13 gible entities described in subsection (b) to assist such en-
14 tities in improving mathematics, science, and technology
15 education in public schools.

16 (b) ELIGIBLE ENTITIES DESCRIBED.—An eligible
17 entity described in this subsection is a consortium that—

18 (1) shall consist of representatives from busi-
19 nesses (or nonprofit organizations that represent
20 businesses); and

21 (2) may consist of representatives from 1 or
22 more of the following:

23 (A) Local education organizations (as de-
24 fined in the Elementary and Secondary Edu-
25 cation Act of 1965).

1 (B) State and local government.

2 (C) Education organizations.

3 (c) MAXIMUM AMOUNT OF GRANT.—The amount of
4 a grant provided to an eligible entity under subsection (a)
5 may not exceed \$500,000 for any fiscal year.

6 **SEC. 202. USE OF AMOUNTS.**

7 (a) IN GENERAL.—The Secretary shall provide
8 grants under section 201 to an eligible entity if such entity
9 agrees to use amounts received from such grant to do one
10 or more of the following:

11 (1) Provide qualified individuals to train teach-
12 ers in public elementary and secondary schools how
13 to—

14 (A) use high-technology equipment;

15 (B) incorporate high-technology into the
16 curriculum (especially using technology to teach
17 core subjects, such as mathematics and
18 science); or

19 (C) use technology to plan lessons, commu-
20 nicate with students or parents, or more effi-
21 ciently complete administrative tasks.

22 (2) Provide qualified individuals to serve as
23 technology support personnel for public elementary
24 and secondary schools to help schools and school di-

1 visions maintain and upgrade their technological ca-
2 pabilities.

3 (3) Provide qualified individuals to assist in the
4 instruction of mathematics, science, and technology
5 education in public secondary schools.

6 (4) Provide expertise and resources to schools
7 or school districts to further enhance both the tech-
8 nological infrastructure within schools and the inno-
9 vative instruction of mathematics, science, and tech-
10 nology education.

11 (b) ADDITIONAL REQUIREMENT.—In carrying out
12 the program described in subsection (a), the eligible entity
13 shall provide for development and tracking of performance
14 outcome measures for the program and the training pro-
15 viders involved in the program.

16 (c) ADMINISTRATIVE COSTS.—The eligible entity
17 may use not more than 5 percent of the amount of a grant
18 to pay for administrative costs associated with the pro-
19 gram described in subsection (a).

20 (d) SPECIAL CONSIDERATION FOR GRANTS.—The
21 Secretary shall give preferential consideration to eligible
22 entities that include more than one of the criteria set out
23 in subsection (a).

1 **SEC. 203. REQUIREMENT OF MATCHING FUNDS.**

2 (a) IN GENERAL.—The Secretary may not provide a
3 grant under section 201 to an eligible entity unless such
4 entity agrees that—

5 (1) the entity will make available non-Federal
6 contributions toward the costs of carrying out activi-
7 ties under section 202 in an amount that is not less
8 than \$2 for each \$1 of Federal funds provided under
9 a grant under section 201; and

10 (2) of such non-Federal contributions, not less
11 than \$1 of each such \$2 shall be from businesses
12 with representatives serving on the eligible entity.

13 (b) EXCEPTION.—For eligible entities formed to as-
14 sist rural schools, Bureau of Indian Affairs schools, and
15 schools whose student population is comprised of at least
16 50 percent of students eligible for services under title I
17 of the Elementary and Secondary Education Act of 1965,
18 the entity shall comply with the requirements of subsection
19 (a), except that the Federal contribution shall be \$2 for
20 every \$2 contributed by the eligible entity.

21 (c) STATUTORY CONSTRUCTION.—Nothing in this
22 title prohibits business representatives of eligible entities
23 from contributing more resources than are required by
24 subsection (a).

1 **SEC. 204. LIMIT ON ADMINISTRATIVE EXPENSES.**

2 The Secretary of Commerce may use not more than
3 5 percent of the funds made available to carry out this
4 title to pay for Federal administrative costs associated
5 with making grants under this title.

6 **SEC. 205. HITEC GOLD MEDAL.**

7 (a) AWARD ESTABLISHED.—

8 (1) IN GENERAL.—The Secretary of Commerce
9 shall carry out a program that recognizes businesses
10 (or nonprofit organizations that represent busi-
11 nesses) that have demonstrated extraordinary com-
12 mitment to improving and enhancing the quality of
13 mathematics, science, and technology education by
14 partnering with public elementary and secondary
15 schools.

16 (2) HITEC GOLD MEDAL.—Each business (or
17 nonprofit organization) recognized under paragraph
18 (1) shall be awarded a “HITEC Gold Medal”. The
19 medal shall be of such design and materials and
20 bear such inscriptions as the Secretary may pre-
21 scribe.

22 (b) LIMITATIONS.—

23 (1) AWARDS.—The Secretary shall not make
24 more than 15 awards under this section for any fis-
25 cal year.

1 (2) ELIGIBILITY.—Any recipient of the award
2 shall be ineligible to receive a second or subsequent
3 award for a period of 3 years.

4 (c) APPLICATIONS.—

5 (1) IN GENERAL.—Each business desiring rec-
6 ognition under subsection (a)(1) shall submit to the
7 Secretary of Commerce an application at such time,
8 in such manner, and accompanied by such informa-
9 tion as the Secretary may reasonably require.

10 (2) CRITERIA FOR CONSIDERATION.—The Sec-
11 retary of Commerce shall, when making award de-
12 terminations, consider the extent to which the
13 applicant—

14 (A) has engaged in innovative partnerships
15 with schools to support the activities described
16 in section 202(a);

17 (B) has helped improve the technological
18 skills of teachers, students, and administrators;
19 and

20 (C) has helped enhance the technological
21 capabilities of school facilities.

22 (3) OTHER CRITERIA.—Other appropriate cri-
23 teria may also be considered, at the discretion of the
24 Secretary of Commerce, if the criteria are consistent

1 with the purpose of this medal, as described in sub-
2 section (a)(1).

3 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated to carry out this section
5 \$250,000 for each of the fiscal years 2000 through 2004.

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