

109TH CONGRESS  
2D SESSION

# S. 2691

To amend the Immigration and Nationality Act to increase competitiveness in the United States, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 2, 2006

Mr. CORNYN (for himself, Mr. ALLEN, Mr. ENZI, Mr. LOTT, Mr. ALLARD, and Mr. BENNETT) 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 increase competitiveness in the United States, and for other purposes.

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; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Securing Knowledge, Innovation, and Leadership Act of  
6       2006” or the “SKIL Act of 2006”.

7       (b) **TABLE OF CONTENTS.**—The table of contents for  
8       this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ACCESS TO HIGH SKILLED FOREIGN WORKERS

Sec. 101. H-1B visa holders.  
 Sec. 102. Market-based visa limits.

## TITLE II—RETAINING FOREIGN WORKERS EDUCATED IN THE UNITED STATES

Sec. 201. United States educated immigrants.  
 Sec. 202. Immigrant visa backlog reduction.  
 Sec. 203. Student visa reform.  
 Sec. 204. L-1 visa holders subject to visa backlog.  
 Sec. 205. Retaining workers subject to green card backlog.

## TITLE III—BUSINESS FACILITATION THROUGH IMMIGRATION REFORM

Sec. 301. Streamlining the adjudication process for established employers.  
 Sec. 302. Providing premium processing of employment-based visa petitions.  
 Sec. 303. Eliminating procedural delays in labor certification process.

## TITLE IV—MISCELLANEOUS

Sec. 401. Completion of background and security checks.  
 Sec. 402. Visa revalidation.  
 Sec. 403. Severability.

# 1           **TITLE I—ACCESS TO HIGH** 2           **SKILLED FOREIGN WORKERS**

## 3   **SEC. 101. H-1B VISA HOLDERS.**

4           (a) IN GENERAL.—Section 214(g)(5) of the Immi-  
 5 gration and Nationality Act (8 U.S.C. 1184(g)(5)) is  
 6 amended—

7           (1) in subparagraph (B)—

8                   (A) by striking “nonprofit research” and  
 9                   inserting “nonprofit”;

10                  (B) by inserting “Federal, State, or local”  
 11                  before “governmental”; and

12                  (C) by striking “or” at the end;

13           (2) in subparagraph (C)—

14                   (A) by striking “a United States institu-  
 15                   tion of higher education (as defined in section

1           101(a) of the Higher Education Act of 1965  
 2           (20 U.S.C. 1001(a)),” and inserting “an insti-  
 3           tution of higher education in a foreign coun-  
 4           try,”; and

5           (B) by striking the period at the end and  
 6           inserting a semicolon;

7           (3) by adding at the end, the following new sub-  
 8           paragraphs:

9           “(D) has earned a master’s or higher degree  
 10          from a United States institution of higher education  
 11          (as defined in section 101(a) of the Higher Edu-  
 12          cation Act of 1965 (20 U.S.C. 1001(a)));

13          “(E) has been awarded medical specialty certifi-  
 14          cation based on post-doctoral training and experi-  
 15          ence in the United States; or”.

16          (b) **APPLICABILITY.**—The amendments made by sub-  
 17          section (a) shall apply to any petition or visa application  
 18          pending on the date of enactment of this Act and any peti-  
 19          tion or visa application filed on or after such date.

20          **SEC. 102. MARKET-BASED VISA LIMITS.**

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

23               (1) in paragraph (1)—

1 (A) in the matter preceding subparagraph  
2 (A), by striking “(beginning with fiscal year  
3 1992)”; and

4 (B) in subparagraph (A)—

5 (i) in clause (vi) by striking “and”;

6 (ii) in clause (vii), by striking “each  
7 succeeding fiscal year; or” and inserting  
8 “each of fiscal years 2004, 2005, and  
9 2006;”; and

10 (iii) by adding after clause (vii) the  
11 following:

12 “(viii) 115,000 in the first fiscal year  
13 beginning after the date of the enactment  
14 of the Securing Knowledge, Innovation,  
15 and Leadership Act of 2006; and

16 “(ix) the number calculated under  
17 paragraph (9) in each fiscal year after the  
18 year described in clause (viii); or”;

19 (2) in paragraph (5), as amended by section  
20 101(a), in the matter preceding subparagraph (A),  
21 by inserting “101(a)(15)(H)(i)(b1) or section” after  
22 “under section”;

23 (3) in paragraph (8), by striking subparagraphs  
24 (B)(iv) and (D);

1 (4) by redesignating paragraphs (9), (10), and  
 2 (11) as paragraphs (10), (11), and (12), respec-  
 3 tively; and

4 (5) by inserting after paragraph (8) the fol-  
 5 lowing:

6 “(9) If the numerical limitation in paragraph  
 7 (1)(A)—

8 “(A) is reached during a given fiscal year,  
 9 the numerical limitation under paragraph  
 10 (1)(A)(ix) for the subsequent fiscal year shall  
 11 be equal to 120 percent of the numerical limita-  
 12 tion of the given fiscal year; or

13 “(B) is not reached during a given fiscal  
 14 year, the numerical limitation under paragraph  
 15 (1)(A)(ix) for the subsequent fiscal year shall  
 16 be equal to the numerical limitation of the given  
 17 fiscal year.”.

## 18 **TITLE II—RETAINING FOREIGN** 19 **WORKERS EDUCATED IN THE** 20 **UNITED STATES**

### 21 **SEC. 201. UNITED STATES EDUCATED IMMIGRANTS.**

22 (a) IN GENERAL.—Section 201(b)(1) of the Immi-  
 23 gration and Nationality Act (8 U.S.C. 1151(b)(1)) is  
 24 amended by adding at the end the following:

1           “(F) Aliens who have earned a master’s or  
2           higher degree from an accredited United States  
3           university.

4           “(G) Aliens who have been awarded med-  
5           ical specialty certification based on post-doc-  
6           toral training and experience in the United  
7           States preceding their application for an immi-  
8           grant visa under section 203(b).

9           “(H) Aliens who will perform labor in  
10          shortage occupations designated by the Sec-  
11          retary of Labor for blanket certification under  
12          section 212(a)(5)(A) as lacking sufficient  
13          United States workers able, willing, qualified,  
14          and available for such occupations and for  
15          which the employment of aliens will not ad-  
16          versely affect the terms and conditions of simi-  
17          larly employed United States workers.

18          “(I) Aliens who have earned a master’s de-  
19          gree or higher in science, technology, engineer-  
20          ing, or math and have been working in a re-  
21          lated field in the United States in a non-  
22          immigrant status during the 3-year period pre-  
23          ceding their application for an immigrant visa  
24          under section 203(b).

1           “(J) Aliens described in subparagraph (A)  
 2           or (B) of section 203(b)(1) or who have re-  
 3           ceived a national interest waiver under section  
 4           203(b)(2)(B).

5           “(K) The spouse and minor children of an  
 6           alien who is admitted as an employment-based  
 7           immigrant under section 203(b).”.

8           (b)           LABOR           CERTIFICATIONS.—Section  
 9           212(a)(5)(A)(ii) of the Immigration and Nationality Act  
 10          (8 U.S.C. 1182(a)(5)(A)(ii)) is amended—

11           (1) by striking “or” at the end of subclause (I);

12           (2) by striking the period at the end of sub-  
 13          clause (II) and inserting “; or”; and

14           (3) by adding at the end the following:

15                           “(I) is a member of the profes-  
 16                           sions and has a master’s degree or  
 17                           higher from an accredited United  
 18                           States university or has been awarded  
 19                           medical specialty certification based  
 20                           on post-doctoral training and experi-  
 21                           ence in the United States.”.

22   **SEC. 202. IMMIGRANT VISA BACKLOG REDUCTION.**

23          Section 201(d) of the Immigration and Nationality  
 24          Act (8 U.S.C. 1151(d)) is amended to read as follows:

1       “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED  
 2 IMMIGRANTS.—The worldwide level of employment-based  
 3 immigrants under this subsection for a fiscal year is equal  
 4 to the sum of—

5               “(1) 290,000;

6               “(2) the difference between—

7                       “(A) the maximum number of visas au-  
 8 thorized to be issued under this subsection dur-  
 9 ing the previous fiscal year; and

10                      “(B) the number of such visas issued dur-  
 11 ing the previous fiscal year; and

12               “(3) the difference between—

13                      “(A) the maximum number of visas au-  
 14 thorized to be issued under this subsection dur-  
 15 ing fiscal years 2001 through 2005 and the  
 16 number of visa numbers issued under this sub-  
 17 section during those fiscal years; and

18                      “(B) the number of visas calculated under  
 19 clause (i) that were issued after fiscal year  
 20 2005.”.

21 **SEC. 203. STUDENT VISA REFORM.**

22       (a) IN GENERAL.—Section 101(a)(15)(F) of the Im-  
 23 migration and Nationality Act (8 U.S.C. 1101(a)(15)(F))  
 24 is amended to read as follows:

25               “(F) an alien—



1 “(i) who—

2 “(I) is a bona fide student qualified to  
3 pursue a full course of study in mathe-  
4 matics, engineering, technology, or the  
5 sciences leading to a bachelors or graduate  
6 degree and who seeks to enter the United  
7 States for the purpose of pursuing such a  
8 course of study consistent with section  
9 214(m) at an institution of higher edu-  
10 cation (as defined by section 101(a) of the  
11 Higher Education Act of 1965 (20 U.S.C.  
12 1001(a))) in the United States, particu-  
13 larly designated by the alien and approved  
14 by the Secretary of Homeland Security,  
15 after consultation with the Secretary of  
16 Education, which institution or place of  
17 study shall have agreed to report to the  
18 Secretary the termination of attendance of  
19 each nonimmigrant student, and if any  
20 such institution of learning or place of  
21 study fails to make reports promptly the  
22 approval shall be withdrawn; or

23 “(II) is engaged in temporary employ-  
24 ment for optional practical training related  
25 to such alien’s area of study following com-

1           pletion of the course of study described in  
2           subclause (I) for a period or periods of not  
3           more than 24 months;

4           “(ii) who—

5                   “(I) has a residence in a foreign coun-  
6           try which the alien has no intention of  
7           abandoning, who is a bona fide student  
8           qualified to pursue a full course of study,  
9           and who seeks to enter the United States  
10          temporarily and solely for the purpose of  
11          pursuing such a course of study consistent  
12          with section 214(m) at an established col-  
13          lege, university, seminary, conservatory,  
14          academic high school, elementary school, or  
15          other academic institution or in a language  
16          training program in the United States,  
17          particularly designated by the alien and  
18          approved by the Secretary of Homeland  
19          Security, after consultation with the Sec-  
20          retary of Education, which institution or  
21          place of study shall have agreed to report  
22          to the Secretary the termination of attend-  
23          ance of each nonimmigrant student, and if  
24          any such institution of learning or place of

1 study fails to make reports promptly the  
2 approval shall be withdrawn; or

3 “(II) is engaged in temporary employ-  
4 ment for optional practical training related  
5 to such alien’s area of study following com-  
6 pletion of the course of study described in  
7 subclause (I) for a period or periods of not  
8 more than 24 months;

9 “(iii) who is the spouse or minor child of  
10 an alien described in clause (i) or (ii) if accom-  
11 panying or following to join such an alien; or

12 “(iv) who—

13 “(I) is a national of Canada or Mex-  
14 ico, who maintains actual residence and  
15 place of abode in the country of nation-  
16 ality, who is described in clause (i) or (ii)  
17 except that the alien’s qualifications for  
18 and actual course of study may be full or  
19 part-time, and who commutes to the  
20 United States institution or place of study  
21 from Canada or Mexico; or

22 “(II) is engaged in temporary employ-  
23 ment for optional practical training related  
24 to such the student’s area of study fol-  
25 lowing completion of the course of study

1                   described in subclause (I) for a period or  
2                   periods of not more than 24 months;”.

3           (b) ADMISSION.—Section 214(b) of the Immigration  
4 and Nationality Act (8 U.S.C. 1184(b)) is amended by in-  
5 serting “(F)(i),” before “(L) or (V)”.

6           (c) CONFORMING AMENDMENT.—Section 214(m)(1)  
7 of the Immigration and Nationality Act (8 U.S.C.  
8 1184(m)(1)) is amended, in the matter preceding subpara-  
9 graph (A), by striking “(i) or” and inserting “(i), (ii), or  
10 (iv)”.

11 **SEC. 204. L-1 VISA HOLDERS SUBJECT TO VISA BACKLOG.**

12           Section 214(c)(2) of the Immigration and Nationality  
13 Act (8 U.S.C. 1184(c)(2)) is amended by adding at the  
14 end the following new subparagraph:

15           “(G) The limitations contained in subparagraph (D)  
16 with respect to the duration of authorized stay shall not  
17 apply to any nonimmigrant alien previously issued a visa  
18 or otherwise provided nonimmigrant status under section  
19 101(a)(15)(L) on whose behalf a petition under section  
20 204(b) to accord the alien immigrant status under section  
21 203(b), or an application for labor certification (if such  
22 certification is required for the alien to obtain status  
23 under such section 203(b)) has been filed, if 365 days or  
24 more have elapsed since such filing. The Secretary of  
25 Homeland Security shall extend the stay of an alien who

1 qualifies for an exemption under this subparagraph until  
 2 such time as a final decision is made on the alien's lawful  
 3 permanent residence.”.

4 **SEC. 205. RETAINING WORKERS SUBJECT TO GREEN CARD**  
 5 **BACKLOG.**

6 (a) ADJUSTMENT OF STATUS.—

7 (1) IN GENERAL.—Section 245(a) of the Immi-  
 8 gration and Nationality Act (8 U.S.C. 1255(a)) is  
 9 amended to read as follows:

10 “(a) ELIGIBILITY.—

11 “(1) IN GENERAL.—The status of an alien who  
 12 was inspected and admitted or paroled into the  
 13 United States or the status of any other alien having  
 14 an approved petition for classification under sub-  
 15 paragraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of sec-  
 16 tion 204(a)(1) may be adjusted by the Secretary of  
 17 Homeland Security or the Attorney General, in the  
 18 discretion of the Secretary or the Attorney General  
 19 under such regulations as the Secretary or Attorney  
 20 General may prescribe, to that of an alien lawfully  
 21 admitted for permanent residence if—

22 “(A) the alien makes an application for  
 23 such adjustment;

1           “(B) the alien is eligible to receive an im-  
2           migrant visa and is admissible to the United  
3           States for permanent residence; and

4           “(C) an immigrant visa is immediately  
5           available to the alien at the time the application  
6           is filed.

7           “(2) SUPPLEMENTAL FEE.—An application  
8           under paragraph (1) that is based on a petition ap-  
9           proved or approvable under subparagraph (E) or (F)  
10          of section 204(a)(1) may be filed without regard to  
11          the limitation set forth in paragraph (1)(C) if a sup-  
12          plemental fee of \$500 is paid by the principal alien  
13          at the time the application is filed. A supplemental  
14          fee may not be required for any dependent alien ac-  
15          companying or following to join the principal alien.

16          “(3) VISA AVAILABILITY.—An application for  
17          adjustment filed under this paragraph may not be  
18          approved until such time as an immigrant visa be-  
19          come available.”.

20          (b) USE OF FEES.—Section 286(v)(1) (8 U.S.C.  
21          1356(v)(1)) is amended by inserting before the period at  
22          the end “and the fees collected under section 245(a)(2).”.

1 **TITLE III—BUSINESS FACILITA-**  
2 **TION THROUGH IMMIGRA-**  
3 **TION REFORM**

4 **SEC. 301. STREAMLINING THE ADJUDICATION PROCESS**  
5 **FOR ESTABLISHED EMPLOYERS.**

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

9 “(1) Not later than 180 days after the date of the  
10 enactment of the Securing Knowledge, Innovation, and  
11 Leadership Act of 2006, the Secretary of Homeland Secu-  
12 rity shall establish a pre-certification procedure for em-  
13 ployers who file multiple petitions described in this sub-  
14 section or section 203(b). Such precertification procedure  
15 shall enable an employer to avoid repeatedly submitting  
16 documentation that is common to multiple petitions and  
17 establish through a single filing criteria relating to the em-  
18 ployer and the offered employment opportunity.”.

19 **SEC. 302. PROVIDING PREMIUM PROCESSING OF EMPLOY-**  
20 **MENT-BASED VISA PETITIONS.**

21 (a) IN GENERAL.—Pursuant to section 286(u) of the  
22 Immigration and Nationality Act (8 U.S.C. 1356(u)), the  
23 Secretary of Homeland Security shall establish and collect  
24 a fee for premium processing of employment-based immi-  
25 grant petitions.

1 (b) APPEALS.—Pursuant to such section 286(u), the  
 2 Secretary of Homeland Security shall establish and collect  
 3 a fee for premium processing of an administrative appeal  
 4 of any decision on a permanent employment-based immi-  
 5 grant petition.

6 **SEC. 303. ELIMINATING PROCEDURAL DELAYS IN LABOR**  
 7 **CERTIFICATION PROCESS.**

8 (a) PREVAILING WAGE RATE.—

9 (1) REQUIREMENT TO PROVIDE.—The Sec-  
 10 retary of Labor shall provide prevailing wage deter-  
 11 minations to employers seeking a labor certification  
 12 for aliens pursuant to part 656 of title 20, Code of  
 13 Federal Regulation (or any successor regulation).  
 14 The Secretary may not delegate this function to any  
 15 agency of a State.

16 (2) SCHEDULE FOR DETERMINATION.—Except  
 17 as provided in paragraph (3), the Secretary of Labor  
 18 shall provide a response to an employer's request for  
 19 a prevailing wage determination in no more than 20  
 20 calendar days from the date of receipt of such re-  
 21 quest. If the Secretary fails to reply during such 20-  
 22 day period, then the wage proposed by the employer  
 23 shall be the valid prevailing wage rate.

24 (3) USE OF SURVEYS.—The Secretary of Labor  
 25 shall accept an alternative wage survey provided by



1 the employer unless the Secretary determines that  
2 the wage component of the Occupational Employ-  
3 ment Statistics Survey is more accurate for the oc-  
4 cupation in the labor market area.

5 (b) PLACEMENT OF JOB ORDER.—The Secretary of  
6 Labor shall maintain a website with links to the official  
7 website of each workforce agency of a State, and such offi-  
8 cial website shall contain instructions on the filing of a  
9 job order in order to satisfy the job order requirements  
10 of section 656.17(e)(1) of title 20, Code of Federal Regu-  
11 lation (or any successor regulation).

12 (c) TECHNICAL CORRECTIONS.—The Secretary of  
13 Labor shall establish a process by which employers seeking  
14 certification under section 212(a)(5) of the Immigration  
15 and Nationality Act (8 U.S.C. 1182(a)(5)), as amended  
16 by section 201(b), may make technical corrections to ap-  
17 plications in order to avoid requiring employers to conduct  
18 additional recruitment to correct an initial technical error.  
19 A technical error shall include any error that would not  
20 have a material effect on the validity of the employer's  
21 recruitment of able, willing, and qualified United States  
22 workers.

23 (d) ADMINISTRATIVE APPEALS.—Motions to recon-  
24 sider, and administrative appeals of, a denial of a perma-  
25 nent labor certification application, shall be decided by the

1 Secretary of Labor not later than 60 days after the date  
2 of the filing of such motion or such appeal.

3 (e) APPLICATIONS UNDER PREVIOUS SYSTEM.—Not  
4 later than 180 days after the date of the enactment of  
5 this Act, the Secretary of Labor shall process and issue  
6 decisions on all applications for permanent alien labor cer-  
7 tification that were filed prior to March 28, 2005.

8 (f) EFFECTIVE DATE.—The provisions of this section  
9 shall take effect 90 days after the date of enactment of  
10 this Act, whether or not the Secretary of Labor has  
11 amended the regulations at part 656 of title 20, Code of  
12 Federal Regulation to implement such changes.

## 13 **TITLE IV—MISCELLANEOUS**

### 14 **SEC. 401. COMPLETION OF BACKGROUND AND SECURITY** 15 **CHECKS.**

16 Section 103 of the Immigration and Nationality Act  
17 (8 U.S.C. 1103) is amended by adding at the end the fol-  
18 lowing new subsection:

19 “(i) REQUIREMENT FOR BACKGROUND CHECKS.—  
20 Notwithstanding any other provision of law, until appro-  
21 priate background and security checks, as determined by  
22 the Secretary of Homeland Security, have been completed,  
23 and the information provided to and assessed by the offi-  
24 cial with jurisdiction to grant or issue the benefit or docu-  
25 mentation, on an in camera basis as may be necessary

1 with respect to classified, law enforcement, or other infor-  
2 mation that cannot be disclosed publicly, the Secretary of  
3 Homeland Security, the Attorney General, or any court  
4 may not—

5 “(1) grant or order the grant of adjustment of  
6 status of an alien to that of an alien lawfully admit-  
7 ted for permanent residence;

8 “(2) grant or order the grant of any other sta-  
9 tus, relief, protection from removal, or other benefit  
10 under the immigration laws; or

11 “(3) issue any documentation evidencing or re-  
12 lated to such grant by the Secretary, the Attorney  
13 General, or any court.

14 “(j) REQUIREMENT TO RESOLVE FRAUD ALLEGA-  
15 TIONS.—Notwithstanding any other provision of law, until  
16 any suspected or alleged fraud relating to the granting of  
17 any status (including the granting of adjustment of sta-  
18 tus), relief, protection from removal, or other benefit  
19 under this Act has been investigated and resolved, the Sec-  
20 retary of Homeland Security and the Attorney General  
21 may not be required to—

22 “(1) grant or order the grant of adjustment of  
23 status of an alien to that of an alien lawfully admit-  
24 ted for permanent residence;

1           “(2) grant or order the grant of any other sta-  
2           tus, relief, protection from removal, or other benefit  
3           under the immigration laws; or

4           “(3) issue any documentation evidencing or re-  
5           lated to such grant by the Secretary, the Attorney  
6           General, or any court.

7           “(k) PROHIBITION OF JUDICIAL ENFORCEMENT.—  
8           Notwithstanding any other provision of law, no court may  
9           require any act described in subsection (i) or (j) to be com-  
10          pleted by a certain time or award any relief for the failure  
11          to complete such acts.”.

12   **SEC. 402. VISA REVALIDATION.**

13          (a) IN GENERAL.—Section 222 of the Immigration  
14          and Nationality Act (8 U.S.C. 1202) is amended by add-  
15          ing at the end the following:

16          “(i) The Secretary of State shall permit an alien  
17          granted a nonimmigrant visa under subparagraph E, H,  
18          I, L, O, or P of section 101(a)(15) to apply for a renewal  
19          of such visa within the United States if—

20                 “(1) such visa expired during the 12-month pe-  
21                 riod ending on the date of such application;

22                 “(2) the alien is seeking a nonimmigrant visa  
23                 under the same subparagraph under which the alien  
24                 had previously received a visa; and

1           “(3) the alien has complied with the immigra-  
2           tion laws and regulations of the United States.”.

3           (b) CONFORMING AMENDMENT.—Section 222(h) of  
4           such Act is amended, in the matter preceding subpara-  
5           graph (1), by inserting “and except as provided under sub-  
6           section (i),” after “Act”.

7           **SEC. 403. SEVERABILITY.**

8           If any provision of this Act, any amendment by this  
9           Act, or the application of such provision or amendment  
10          to any person or circumstance is held to be invalid for  
11          any reason, the remainder of this Act, the amendments  
12          made by this Act, and the applications of such to any  
13          other person or circumstance shall not be affected by such  
14          holding.

○