

114TH CONGRESS
1ST SESSION

S. 2122

To increase the worldwide level of employment-based immigrants and to reauthorize the EB–5 regional center program.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2015

Mr. PAUL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To increase the worldwide level of employment-based immigrants and to reauthorize the EB–5 regional center program.

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 “Invest in Our Commu-
5 nities Act”.

1 **SEC. 2. EXEMPTION OF DEPENDENTS FROM BEING COUNT-**
 2 **ED TOWARDS WORLDWIDE EMPLOYMENT-**
 3 **BASED IMMIGRATION LEVEL.**

4 Section 201(b)(1) of the Immigration and Nationality
 5 Act (8 U.S.C. 1151(b)(1)) is amended by adding at the
 6 end the following:

7 “(F) Aliens who are spouses or children of an
 8 alien admitted as an employment-based immigrant
 9 under section 203(b)(5).”.

10 **SEC. 3. WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMI-**
 11 **GRANTS.**

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

14 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
 15 IMMIGRANTS.—

16 “(1) IN GENERAL.—The worldwide level of em-
 17 ployment-based immigrants under this subsection for
 18 a fiscal year is equal to the sum of—

19 “(A) 150,000; and

20 “(B) the number computed under para-
 21 graph (2).

22 “(2) ADJUSTMENT.—The number computed
 23 under this paragraph for fiscal year 2015 and each
 24 subsequent fiscal year is the difference (if any) be-
 25 tween—

1 “(A) the maximum number of visas which
 2 may be issued under section 203(a) (relating to
 3 family-sponsored immigrants) during the pre-
 4 vious fiscal year; and

5 “(B) the number of visas issued under that
 6 section during that year.”.

7 **SEC. 4. EXCLUSION OF EB-5 VISAS FROM COUNTRY CAPS.**

8 Section 202(a)(5) of the Immigration and Nationality
 9 Act (8 U.S.C. 1152(a)(5)) is amended by adding at the
 10 end the following:

11 “(C) EXCLUSION OF EB-5 VISAS FROM
 12 PER COUNTRY LIMITATION.—Visas issued under
 13 section 203(b)(5) shall not be counted toward
 14 the numerical limitation under paragraph (2).”.

15 **SEC. 5. PERMANENT REAUTHORIZATION OF EMPLOYMENT**
 16 **CREATION REGIONAL CENTERS.**

17 Section 203(b)(5) of the Immigration and Nationality
 18 Act (8 U.S.C. 1153(b)(5)) is amended—

19 (1) by redesignating subparagraph (D) as sub-
 20 paragraph (H); and

21 (2) by inserting after subparagraph (C) the fol-
 22 lowing:

23 “(D) EMPLOYMENT CREATION REGIONAL
 24 CENTERS.—

“(i) IN GENERAL.—Visas under this paragraph shall be made available to qualified immigrants who participate in a program involving a regional center in the United States, which has been designated by the Secretary of Homeland Security, in consultation with the Secretary of Commerce, on the basis of a general proposal filed with the Secretary of Homeland Security, for the promotion of economic growth, including—

“(I) increased exports;

“(II) improved regional productivity;

“(III) job creation; and

“(IV) increased domestic capital investment.

“(ii) JURISDICTION.—A regional center shall have jurisdiction over a specific geographic area, which shall be—

“(I) described in the proposal filed under clause (i); and

“(II) consistent with the purpose of concentrating pooled investment in defined economic zones.

1 “(iii) GENERAL PREDICTIONS.—The
2 establishment of a regional center under
3 this subparagraph may be based on gen-
4 eral predictions contained in the proposal
5 concerning—

6 “(I) the kinds of new commercial
7 enterprises that will receive capital
8 from aliens;

9 “(II) the jobs that will be created
10 directly or indirectly as a result of
11 such investments; and

12 “(III) other positive economic ef-
13 fects such investments will have.

14 “(iv) METHODOLOGIES FOR DETER-
15 MINING JOB CREATION.—Notwithstanding
16 requirements applicable to investors not in-
17 volved in a regional center, in determining
18 compliance with this subparagraph, the
19 Secretary of Homeland Security shall rec-
20 ognize reasonable methodologies for deter-
21 mining the number of jobs created by a
22 designated regional center, including jobs
23 that are estimated to have been created in-
24 directly through revenues generated
25 from—

1 “(I) increased exports;

2 “(II) improved regional produc-
3 tivity; or

4 “(III) increased domestic capital
5 investment resulting from the regional
6 center.

7 “(v) SPECIAL PROCEDURES.—

8 “(I) PREAPPROVAL OF NEW COM-
9 Mercial Enterprises.—The Sec-
10 retary of Homeland Security shall es-
11 tablish a preapproval procedure for
12 new commercial enterprises that—

13 “(aa) allows a regional cen-
14 ter or potential regional center to
15 apply to the Secretary for
16 preapproval of a new commercial
17 enterprise before any alien files a
18 petition for classification under
19 this paragraph by reason of in-
20 vestment in the new commercial
21 enterprise;

22 “(bb) allows the applicant to
23 address and cure any deficiencies
24 identified by the Secretary in the

1 application before a final deter-
2 mination on the application;

3 “(cc) requires that the Sec-
4 retary make final decisions on all
5 issues under this paragraph other
6 than those issues unique to each
7 individual investor in the new
8 commercial enterprise; and

9 “(dd) requires that the Sec-
10 retary eliminate the need for the
11 repeated submission of docu-
12 mentation that is common to
13 multiple petitions for classifica-
14 tion under this paragraph
15 through a regional center.

16 “(II) DEFERENCE TO PRIOR
17 RULINGS.—Absent material change,
18 fraud, or legal deficiency, the Sec-
19 retary of Homeland Security shall
20 give deference to, and not revisit, fa-
21 vorable determinations made per-
22 taining to a commercial enterprise
23 during the adjudication of—

24 “(aa) petitions filed by im-
25 migrants investing in the com-

1 commercial enterprise under this sub-
2 paragraph; and

3 “(bb) petitions filed by such
4 immigrants under section 216A
5 for the removal of conditional
6 basis.

7 “(vi) PROCESSING TIMES.—

8 “(I) IN GENERAL.—The Sec-
9 retary of Homeland Security shall
10 make determinations on a proposal
11 filed under clause (i) or an application
12 filed under clause (v) not later than
13 180 days after the date on which the
14 proposal or application is filed.

15 “(II) ADDITIONAL INFORMA-
16 TION.—If the Secretary determines
17 that an initial filing under this section
18 does not meet the standards for ap-
19 proval, the Secretary shall—

20 “(aa) not later than 30 days
21 after the date of such filing, no-
22 tify the applicant of the reasons
23 such proposal or application was
24 not approved and the additional

1 information or documentation
2 that is required for approval;

3 “(bb) permit the applicant
4 to promptly resubmit a modified
5 filing; and

6 “(cc) adjudicate the modi-
7 fied proposal or application not
8 later than 30 days after it is re-
9 ceived.”.

10 **SEC. 6. SECURITY REFORMS.**

11 Section 203(b)(5) of the Immigration and Nationality
12 Act (8 U.S.C. 1153(b)(5)), as amended by section 5, is
13 further amended by adding at the end the following:

14 “(E) APPELLATE RIGHTS.—

15 “(i) IN GENERAL.—Any person sub-
16 ject to the suspension or termination of
17 rights under this paragraph, if such deci-
18 sion was under the discretion of the Sec-
19 retary of Homeland Security, may appeal
20 such decision and be entitled to a hearing
21 before an administrative law judge.

22 “(ii) APPELLANT’S RIGHTS.—An ap-
23 pellant under this subparagraph has the
24 right—

1 “(I) to access the facts and docu-
 2 mentation underlying the allegations
 3 that are the basis of the suspension or
 4 termination referred to in clause (i);
 5 and

6 “(II) to cross-examine witnesses
 7 during proceedings.

8 “(iii) BURDEN OF PROOF.—In a hear-
 9 ing under this subparagraph, the Secretary
 10 has the burden to prove, by a preponder-
 11 ance of the evidence, that the suspension
 12 or termination was valid under applicable
 13 law.

14 “(iv) FINALITY.—A determination of
 15 the administrative law judge in an appeal
 16 under this subparagraph shall be final and
 17 may not be subject to judicial review.”.

18 **SEC. 7. REGIONAL CENTERS.**

19 (a) IN GENERAL.—Section 203(b)(5) of the Immi-
 20 gration and Nationality Act (8 U.S.C. 1153(b)(5)), as
 21 amended by sections 5 and 6, is further amended by add-
 22 ing at the end the following:

23 “(F) BONA FIDES OF PERSONS ASSOCI-
 24 ATED WITH REGIONAL CENTERS OR REGIONAL

1 CENTER ASSOCIATED COMMERCIAL ENTER-
2 PRISES.—

3 “(i) IN GENERAL.—No person shall be
4 permitted by any regional center or re-
5 gional center associated commercial enter-
6 prise to be directly or indirectly involved
7 with the regional center or commercial en-
8 terprise as its principal, representative, ad-
9 ministrators, owner, officer, board member,
10 manager, executive, general partner, fidu-
11 ciary, marketer, promoter, or other similar
12 position of substantive authority for the
13 operations, management, or promotion of
14 the regional center or commercial enter-
15 prise if—

16 “(I) the person has been found
17 liable within the previous 5 years for
18 any criminal or civil violation of any
19 law relating to fraud or deceit, or at
20 any time if such violation involved a
21 civil liability in excess of \$1,000,000,
22 a criminal conviction with a term of
23 imprisonment of more than 1 year or
24 a criminal or civil violation of any law
25 or agency regulation in connection

1 with the offer, purchase, or sale of a
2 security;

3 “(II) the person is subject to a
4 final order of a State securities com-
5 mission (or an agency or officer of a
6 State who performs similar functions),
7 a State authority that supervises or
8 examines banks, savings associations,
9 or credit unions, a State insurance
10 commission (or an agency of or officer
11 of a State who performs similar func-
12 tions), an appropriate Federal bank-
13 ing agency, the Commodity Futures
14 Trading Commission, or the National
15 Credit Union Administration, which is
16 based on a violation of any law or reg-
17 ulation that—

18 “(aa) prohibits fraudulent,
19 manipulative, or deceptive con-
20 duct; or

21 “(bb) bars the person
22 from—

23 “(AA) association with
24 an entity regulated by such

1 commission, authority, agen-
2 cy, or officer;

3 “(BB) engaging in the
4 business of securities, insur-
5 ance, or banking; or

6 “(CC) engaging in sav-
7 ings association or credit
8 union activities;

9 “(III) the person has been con-
10 victed of—

11 “(aa) any activity relating to
12 espionage, sabotage, or theft of
13 intellectual property;

14 “(bb) any activity related to
15 money laundering (as described
16 in section 1956 or 1957 of title
17 18, United States Code);

18 “(cc) any terrorist activity
19 (as defined in clauses (iii) and
20 (iv) of section 212(a)(3)(B)); or

21 “(dd) any activity related to
22 human trafficking or a human
23 rights offense; or

24 “(IV) the person—

1 “(aa) is, or during the pre-
 2 ceding 5 years has been, included
 3 on the Department of Justice’s
 4 List of Currently Disciplined
 5 Practitioners; or

6 “(bb) during the preceding 5
 7 years, has received a reprimand
 8 or otherwise been publicly dis-
 9 ciplined by a bar association of
 10 which the person is or was a
 11 member.

12 “(ii) STATUS OF REGIONAL CENTER
 13 PRINCIPALS.—

14 “(I) LAWFUL STATUS RE-
 15 QUIRED.—No person may be directly
 16 or indirectly involved with a regional
 17 center as its principal, administrator,
 18 owner, officer, board member, man-
 19 ager, executive, general partner, fidu-
 20 ciary, or other similar position of sig-
 21 nificant authority for the operations
 22 or management of the regional center
 23 unless the person is a national of the
 24 United States or an individual who

1 has been lawfully admitted for perma-
2 nent residence.

3 “(II) FOREIGN GOVERNMENTS.—

4 No foreign government entity may be
5 directly or indirectly involved with the
6 ownership or administration of a re-
7 gional center.

8 “(iii) INFORMATION REQUIRED.—The
9 Secretary of Homeland Security shall re-
10 quire such attestations and information,
11 including the submission of fingerprints or
12 other biometrics to the Federal Bureau of
13 Investigation, and shall perform such
14 criminal record checks and other back-
15 ground checks with respect to a regional
16 center or regional center associated com-
17 mercial enterprise, and persons involved in
18 a regional center or regional center associ-
19 ated commercial enterprise, to determine
20 whether such regional center or regional
21 center associated commercial enterprise is
22 in compliance with clauses (i) and (ii).

23 “(iv) TERMINATION.—The Secretary
24 shall terminate any regional center or re-
25 gional center associated commercial enter-

1 prise from the regional center program if
2 the Secretary determines that—

3 “(I) the regional center or re-
4 gional center associated commercial
5 enterprise has violated clause (i);

6 “(II) the regional center has vio-
7 lated clause (ii); or

8 “(III) the regional center, a re-
9 gional center associated commercial
10 enterprise, or any person involved
11 with the regional center or regional
12 center associated commercial enter-
13 prise—

14 “(aa) fails to provide an at-
15 testation or information re-
16 quested by the Secretary;

17 “(bb) provides any false at-
18 testation or information under
19 clause (iii);

20 “(cc) has engaged in fraud,
21 misrepresentation, or criminal
22 misuse; or

23 “(dd) poses a threat to pub-
24 lic safety or national security.

1 “(G) COMPLIANCE WITH SECURITIES
2 LAWS.—

3 “(i) JURISDICTION.—In view of the
4 objective of promoting investment in the
5 United States, in an action filed by the Se-
6 curities and Exchange Commission, the
7 purchase or sale of securities offered or
8 sold by any regional center or any party
9 associated with a regional center shall be
10 deemed to have occurred within the terri-
11 tory of the United States for purposes of
12 the securities laws, and subject matter ju-
13 risdiction shall also lie within the United
14 States.

15 “(ii) REGIONAL CENTER CERTIFI-
16 CATIONS REQUIRED.—

17 “(I) INITIAL CERTIFICATION.—

18 The Secretary of Homeland Security
19 may not approve an application for re-
20 gional center designation or regional
21 center amendment unless the regional
22 center certifies that the regional cen-
23 ter is in compliance with and has poli-
24 cies and procedures reasonably de-
25 signed to ensure that all parties asso-

1 ciated with the regional center remain
2 in compliance with the securities laws
3 of the United States and of any State
4 in which the regional center operates
5 in connection with the offer, purchase,
6 or sale of securities or the provision of
7 investment advice by the regional cen-
8 ter or parties associated with the re-
9 gional center.

10 “(II) REISSUE.—A regional cen-
11 ter shall annually reissue a certifi-
12 cation described in subclause (I). An-
13 nual certifications under this sub-
14 clause shall certify compliance with
15 clause (iii) by stating that—

16 “(aa) the certifier is in a po-
17 sition to have knowledge of the
18 offers, purchases, and sales of se-
19 curities or the provision of invest-
20 ment advice by parties associated
21 with the regional center; and

22 “(bb) to the best of the cer-
23 tifier’s knowledge, after reason-
24 able investigation—

1 “(AA) all such offers,
 2 purchases, and sales of secu-
 3 rities or the provision of in-
 4 vestment advice complied
 5 with securities laws of the
 6 United States; and

7 “(BB) records, data,
 8 and information related to
 9 such offers, purchases, and
 10 sales have been maintained.

11 “(III) EFFECT OF NONCOMPLI-
 12 ANCE.—If a regional center, through
 13 its due diligence, discovered during
 14 the previous fiscal year that the re-
 15 gional center or any party associated
 16 with the regional center was not in
 17 compliance with the securities laws of
 18 the United States, the certifier shall—

19 “(aa) describe the activities
 20 that led to noncompliance;

21 “(bb) describe the actions
 22 taken to remedy the noncompli-
 23 ance; and

24 “(cc) certify that the re-
 25 gional center and all parties asso-

1 ciated with the regional center
2 are currently in compliance.

3 “(iii) OVERSIGHT REQUIRED.—Each
4 regional center shall—

5 “(I) monitor and supervise all of-
6 fers, purchases, and sales of, and ad-
7 vice relating to, securities made by
8 parties associated with the regional
9 center to ensure compliance with the
10 securities laws of the United States;

11 “(II) maintain records, data, and
12 information relating to all such offers,
13 purchases, sales, and advice during
14 the 5-year period beginning on the
15 date of their creation; and

16 “(III) make such records, data,
17 and information available to the Secu-
18 rities and Exchange Commission and
19 to the Secretary upon the receipt of a
20 subpoena from the Securities and Ex-
21 change Commission.

22 “(iv) SUSPENSION OR TERMI-
23 NATION.—The Secretary, in the Sec-
24 retary’s unreviewable discretion, shall sus-
25 pend or terminate the designation of any

1 regional center that does not provide the
2 certification described in clause (ii). The
3 Secretary, in the Secretary’s unreviewable
4 discretion, may suspend or terminate the
5 designation of any regional center or im-
6 pose other sanctions against the regional
7 center if the regional center or any parties
8 associated with the regional center—

9 “(I) are permanently or tempo-
10 rarily enjoined by order, judgment, or
11 decree of any court of competent ju-
12 risdiction in connection with the offer,
13 purchase, or sale of a security or the
14 provision of investment advice;

15 “(II) are subject to any final
16 order of the Securities and Exchange
17 Commission that—

18 “(aa) bars such person from
19 association with an entity regu-
20 lated by the Securities and Ex-
21 change Commission; or

22 “(bb) constitutes a final
23 order based on violations in con-
24 nection with the offer, purchase,

1 or sale of, or advice relating to, a
2 security; or

3 “(III) knowingly submitted or
4 caused to be submitted a certification
5 described in clause (ii) that contained
6 an untrue statement of a material fact
7 or omitted to state a material fact
8 necessary in order to make the state-
9 ments made, in light of the cir-
10 cumstances under which they were
11 made, not misleading.

12 “(v) SAVINGS PROVISION.—Nothing in
13 this subparagraph may be construed to im-
14 pair or limit the authority of the Securities
15 and Exchange Commission under the Fed-
16 eral securities laws.

17 “(vi) DEFINED TERM.—In this sub-
18 paragraph, the term ‘parties associated
19 with a regional center’ means—

20 “(I) the regional center;

21 “(II) any commercial enterprise
22 associated with the regional center;

23 “(III) the regional center’s and
24 associated commercial enterprise’s
25 owners, officers, directors, managers,

1 partners, broker-dealers, employees,
2 and attorneys; and

3 “(IV) any person in active con-
4 cert or participation with the regional
5 center or directly or indirectly control-
6 ling, controlled by, or under common
7 control with the regional center.”.

8 (b) STUDY AND REPORT.—

9 (1) IN GENERAL.—Not later than 2 years after
10 the date of the enactment of this Act, the Secretary
11 of Homeland Security, in coordination with the Sec-
12 retary of Commerce and after consultation with rel-
13 evant Federal agencies, shall submit a report to the
14 Committee on the Judiciary of the Senate and the
15 Committee on the Judiciary of the House of Rep-
16 resentatives that describes—

17 (A) the percentage of completed and pend-
18 ing capital investment projects, within the scope
19 of business plans both approved and awaiting
20 approval—

21 (i) in targeted rural employment
22 areas;

23 (ii) in targeted high unemployment
24 areas;

25 (iii) in high poverty areas;

1 (iv) for infrastructure projects; and

2 (v) not included in the areas described

3 in clauses (i) through (iii);

4 (B) whether other Federal financial assist-
5 ance programs, such as economic development
6 programs administered by the Department of
7 Agriculture, the Department of Housing and
8 Urban Development, or the Community Devel-
9 opment Financial Institutions Fund, are also
10 used or intended to support projects described
11 in subparagraph (A); and

12 (C) whether market demands to approve
13 projects described in subparagraph (A) exceed
14 the number of visas allowed under section
15 203(b)(5)(F) of the Immigration and Nation-
16 ality Act, as added by subsection (a).

17 (2) PUBLIC INPUT.—Not later than 60 days be-
18 fore the submission of the report under paragraph
19 (1), the public shall receive notice and an oppor-
20 tunity to comment on such draft study.

21 **SEC. 8. AGE DETERMINATION FOR CHILDREN OF ALIEN IN-**
22 **VESTORS.**

23 Section 203(h) of the Immigration and Nationality
24 Act (8 U.S.C. 1153(h)) is amended by adding at the end
25 the following:

1 “(5) AGE DETERMINATION FOR CHILDREN OF
2 ALIEN INVESTORS.—

3 “(A) IN GENERAL.—Subject to subpara-
4 graph (B), an alien admitted under subsection
5 (d) as a lawful permanent resident on a condi-
6 tional basis as the child of an alien lawfully ad-
7 mitted for permanent residence under sub-
8 section (b)(5), whose lawful permanent resident
9 status on a conditional basis is terminated
10 under section 216A, shall continue to be consid-
11 ered a child of the principal alien for the pur-
12 pose of a subsequent immigrant petition by
13 such alien under subsection (b)(5) if—

14 “(i) the alien remains unmarried; and

15 “(ii) the subsequent petition is filed
16 by the principal alien not later than 1 year
17 after the termination of conditional lawful
18 permanent resident status.

19 “(B) EXCEPTION.—An alien shall not be
20 considered a child under this paragraph with
21 respect to more than 1 petition filed after the
22 alien reaches 21 years of age.”.

○