

## NAYS—50

|              |             |               |
|--------------|-------------|---------------|
| Barrett (WI) | Kind (WI)   | Paul          |
| Bartlett     | Klug        | Payne         |
| Blumenauer   | Kucinich    | Pelosi        |
| Bonior       | Lee         | Petri         |
| Campbell     | Lofgren     | Rangel        |
| Conyers      | Lowe        | Rohrabacher   |
| Davis (IL)   | Luther      | Rush          |
| DeFazio      | McDermott   | Sanders       |
| Delahunt     | McKinney    | Sensenbrenner |
| Filner       | Meeke (NY)  | Shays         |
| Franks (NJ)  | Miller (CA) | Stark         |
| Furse        | Minge       | Velazquez     |
| Goode        | Morella     | Vento         |
| Gutierrez    | Nadler      | Woolsey       |
| Hoekstra     | Oberstar    | Obey          |
| Hooley       | Obey        | Yates         |
| Jackson (IL) | Owens       |               |

## NOT VOTING—11

|            |              |            |
|------------|--------------|------------|
| Aderholt   | Goss         | Pryce (OH) |
| Brady (TX) | Johnson, Sam | Riley      |
| Burton     | Kennelly     | Shaw       |
| Ehrlich    | Poshard      |            |

So the conference report was agreed to.

A motion to reconsider the vote whereby said conference report was agreed to was, by unanimous consent, laid on the table.

*Ordered*, That the Clerk notify the Senate thereof.

¶95.11 PROVIDING FOR THE CONSIDERATION OF H.R. 3736

Mr. DREIER, by direction of the Committee on Rules, called up the following resolution (H. Res. 513):

*Resolved*, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 3736) to amend the Immigration and Nationality Act to make changes relating to H-1B nonimmigrants. The bill shall be considered as read for amendment. In lieu of the amendment recommended by the Committee on the Judiciary now printed in the bill, the amendment in the nature of a substitute printed in the Congressional Record and numbered 1 pursuant to clause 6 of rule XXIII shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; (2) the further amendment printed in the Congressional Record and numbered 2 pursuant to clause 6 of rule XXIII, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

When said resolution was considered. After debate,

Mr. DREIER submitted the following amendment:

At the end of the resolution add the following new section:

"SEC. 2. Notwithstanding any other provision of this resolution, the amendment in the nature of a substitute printed in the Congressional Record and numbered 3 pursuant to clause 6 of rule XXIII shall be considered as adopted in lieu of the amendment in the nature of a substitute printed in the CONGRESSIONAL RECORD and numbered 1."

On motion of Mr. DREIER, the previous question was ordered on the amendment and the resolution, as amended, to their adoption or rejection

and under the operation thereof, the amendment and the resolution, as amended, were agreed to.

A motion to reconsider the vote whereby said resolution, as amended, was agreed to was, by unanimous consent, laid on the table.

¶95.12 WORKFORCE IMPROVEMENT AND PROTECTION

Mr. SMITH of Texas, pursuant to House Resolution 513, called up the bill (H.R. 3736) to amend the Immigration and Nationality Act to make changes relating to H-1B nonimmigrants.

When said bill was considered and read twice.

Pursuant to House Resolution 513, the following amendment in the nature of a substitute was considered as adopted:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.**

(a) SHORT TITLE.—This Act may be cited as the "Temporary Access to Skilled Workers and H-1B Non-immigrant Program Improvement Act of 1998".

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

Sec. 1. Short title; table of contents, amendments to Immigration and Nationality Act.

**TITLE I—PROVISIONS RELATING TO H-1B NONIMMIGRANTS**

Sec. 101. Temporary increase in access to temporary skilled personnel under H-1B program.

Sec. 102. Protection against displacement of United States workers in case of H-1B dependent employers.

Sec. 103. Changes in enforcement and penalties.

Sec. 104. Collection and use of H-1B non-immigrant fees for scholarships for low-income math, engineering, and computer science students and job training of United States workers.

Sec. 105. Computation of prevailing wage level.

Sec. 106. Improving count of H-1B and H-2B nonimmigrants.

Sec. 107. Report on older workers in the information technology field.

Sec. 108. Report on high technology labor market needs, reports on economic impact of increase in H-1B nonimmigrants.

**TITLE II—SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO CIVILIAN EMPLOYEES**

Sec. 201. Special immigrant status for certain NATO civilian employees.

**TITLE III—MISCELLANEOUS PROVISION**

Sec. 301. Academic honoraria.

(c) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this Act, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to that section or other provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

**TITLE I—PROVISIONS RELATING TO H-1B NONIMMIGRANTS**

**SEC. 101. TEMPORARY INCREASE IN ACCESS TO TEMPORARY SKILLED PERSONNEL UNDER H-1B PROGRAM.**

(a) TEMPORARY INCREASE IN SKILLED NON-IMMIGRANT WORKERS.—Paragraph (1)(A) of section 214(g) (8 U.S.C. 1184(g)) is amended to read as follows:

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

"(i) 65,000 in each fiscal year before fiscal year 1999;

"(ii) 115,000 in fiscal year 1999;

"(iii) 115,000 in fiscal year 2000;

"(iv) 107,500 in fiscal year 2001; and

"(v) 65,000 in each succeeding fiscal year; or".

(b) EFFECTIVE DATES.—The amendment made by subsection (a) applies beginning with fiscal year 1998.

**SEC. 102. PROTECTION AGAINST DISPLACEMENT OF UNITED STATES WORKERS IN CASE OF H-1B-DEPENDENT EMPLOYEES**

(a) PROTECTION AGAINST LAYOFF AND REQUIREMENT FOR PRIOR RECRUITMENT OF UNITED STATES WORKERS.—

(1) ADDITIONAL STATEMENTS ON APPLICATION.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (D) the following:

"(E)(i) In the case of an application described in clause (ii), the employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application.

"(ii) An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out this subparagraph, and before October 1, 2001, by an H-1B-dependent employer (as defined in paragraph (3)) or by an employer that has been found under paragraph (2)(C) or (5) to have committed a willful failure or misrepresentation on or after the date of the enactment of this subparagraph. An application is not described in this clause of the only H-1B non-immigrants sought in the application are exempt H-1B nonimmigrants.

"(F) In the case of an application described in subparagraph (E)(ii), the employer will not place the nonimmigrant with another employer (regardless of whether or not such other employer is an H-1B-dependent employer) where—

"(i) the nonimmigrant performs duties in whole or in part at one or more worksites owned, operated, or controlled by such other employer; and

"(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer;

unless the employer has inquired of the other employer as to whether, and has no knowledge that, within the period beginning 90 days before and ending 90 days after the date of the placement of the nonimmigrant with the other employer, the other employer has displaced or intends to displace a United States worker employed by the other employer.

"(G)(i) In the case of an application described in subparagraph (E)(ii), subject to clause (ii), the employer, prior to filing the application—

"(I) has taken good faith steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H-1B non-immigrants under subparagraph (A), United States workers for the job for which the non-immigrant or nonimmigrants is or are sought; and

"(II) has offered the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought.

"(ii) The conditions described in clause (i) shall not apply to an application filed with respect to the employment of an H-1B non-

immigrant who is described in subparagraph (A), (B), or (C) of section 203(b)(1)."

(2) NOTICE ON APPLICATION OF POTENTIAL LIABILITY OF PLACING EMPLOYERS.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by adding at the end the following: "The application form shall include a clear statement explaining the liability under subparagraph (F) of a placing employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph."

(3) CONSTRUCTION.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is further amended by adding at the end the following: "Nothing in subparagraph (G) shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal or customary to the type of job involved, so long as such criteria are not applied in a discriminatory manner."

(b) H-1B-DEPENDENT EMPLOYER AND OTHER DEFINITIONS.—

(1) IN GENERAL.—Section 212(n) (8 U.S.C. 1182(n)) is amended by adding at the end the following:

"(3)(A) For purposes of this subsection, the term 'H-1B-dependent employer' means an employer that—

"(i) (I) has 25 or fewer full-time equivalent employees who are employed in the United States; and (II) employs more than 7 H-1B nonimmigrants;

"(ii) (I) has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States; and (II) employs more than 12 H-1B nonimmigrants; or

"(iii) (I) has at least 51 full-time equivalent employees who are employed in the United States; and (II) employs H-1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

"(B) For purposes of this subsection—

"(i) the term 'exempt H-1B nonimmigrant' means an H-1B nonimmigrant who—

"(I) receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least \$60,000; or

"(II) has attained a master's or higher degree (or its equivalent) in a specialty related to the intended employment; and

"(ii) the term 'Nonexempt H-1B nonimmigrant' means an H-1B nonimmigrant who is not an exempt H-1B nonimmigrant.

"(C) For purposes of subparagraph (A)—

"(i) in computing the number of full-time equivalent employees and the number of H-1B nonimmigrants, exempt H-1B nonimmigrants shall not be taken into account during the longer of—

"(I) the 6-month period beginning on the date of the enactment of the Temporary Access to Skilled Workers and H-1B Nonimmigrant Program Improvement Act of 1998; or

"(II) the period beginning on the date of the enactment of the Temporary Access to Skilled Workers and H-1B Nonimmigrant Program Improvement Act of 1998 and ending on the date final regulations are issued to carry out this paragraph; and

"(ii) any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer.

"(4) For purposes of this subsection:

"(A) The term 'area of employment' means the area within normal commuting distance of the worksite or physical location where the work of the H-1B nonimmigrant is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

"(B) In the case of an application with respect to one or more H-1B nonimmigrants by an employer, the employer is considered to 'displace' a United States worker from a job

if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

"(C) The term 'H-1B nonimmigrant' means an alien admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b).

"(D) The term 'lays off', with respect to a worker—

"(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in subparagraph (E) or (F) of paragraph (1)); but

"(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under paragraph (1)(F), with either employer described in such paragraph) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

"(E) The term 'United States worker' means an employee who—

"(i) is a citizen or national of the United States; or

"(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Attorney General, to be employed."

(2) CONFORMING AMENDMENTS.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by striking "a nonimmigrant described in section 101(a)(15)(H)(i)(b)" each place it appears and inserting "an H-1B nonimmigrant".

(c) IMPROVED POSTING OF NOTICE OF APPLICATION.—Section 212(n)(1)(C)(ii) (8 U.S.C. 1182(n)(1)(C)(ii)) is amended to read as follows:

"(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which H-1B nonimmigrants are sought."

(d) REQUIREMENTS RELATING TO BENEFITS.—(1) IN GENERAL.—Section 212(n)(1)(A) (8 U.S.C. 1182(n)(1)(A)) is amended—

(A) in clause (i), by striking "and" at the end;

(B) in clause (ii), by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following:

"(iii) is offering and will offer to H-1B nonimmigrants, during the period of authorized employment, benefits and eligibility for benefits (including the opportunity to participate in health, life, disability, and other insurance plans; the opportunity to participate in retirement and savings plans; cash bonuses and noncash compensation, such as stock options (whether or not based on performance)) on the same basis, and in accordance with the same criteria, as the employer offers benefits and eligibility for benefits to United States workers."

(2) ORDERS TO PROVIDE BENEFITS.—Section 212(n)(2)(D) (8 U.S.C. 1182(n)(2)(D)) is amended—

(A) by inserting "or has not provided benefits or eligibility for benefits as required under such paragraph," after "required under paragraph (1)."; and

(B) by inserting "or to provide such benefits or eligibility for benefits" after "amounts of back pay".

(e) EFFECTIVE DATES.—The amendments made by subsections (a) and (c) apply to applications filed under section 212(n)(1) of the Immigration and Nationality Act on or after the date final regulations are issued to carry out such amendments, and the amendments made by subsection (b) take effect on the date of the enactment of this Act.

(f) REDUCTION OF PERIOD FOR PUBLIC COMMENT.—In first promulgating regulations to implement the amendments made by this section in a timely manner, the Secretary of Labor and the Attorney General may reduce to not less than 30 days the period of public comment on proposed regulations.

#### SEC. 103. CHANGES IN ENFORCEMENT AND PENALTIES.

(a) INCREASED ENFORCEMENT AND PENALTIES.—Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)(C)) is amended to read as follows:

"(C)(i) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), (1)(E), or (1)(F), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(G)(i)(I), or a misrepresentation of material fact in an application—

"(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate; and

"(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 of 214(c) during a period of at least 1 year for aliens to be employed by the employer.

"(ii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an application, or a violation of clause (iv)—

"(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate; and

"(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer.

"(iii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an application, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application—

"(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$35,000 per violation) as the Secretary determines to be appropriate; and

"(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 3 years for aliens to be employed by the employer.

"(iv) It is a violation of this clause for an employer who has filed an application under

this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

“(v) The Secretary of Labor and the Attorney General shall devise a process under which an H-1B nonimmigrant who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period (not to exceed the duration of the alien's authorized admission as such a nonimmigrant).

“(vi) It is a violation of this clause for an employer who has filed an application under this subsection to require an H-1B nonimmigrant to pay a penalty (as determined under State law) for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. If the Secretary finds, after notice and opportunity for a hearing, that an employer has committed such a violation, the Secretary may impose a civil monetary penalty of \$1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount required to be paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.”

“(b) USE OF ARBITRATION PROCESS FOR DISPUTES INVOLVING QUALIFICATIONS OF UNITED STATES WORKERS NOT HIRED.—

(1) IN GENERAL.—Section 212(n) (8 U.S.C. 1182(n)), as amended by section 102(b), is further amended by adding at the end the following:

“(5)(A) This paragraph shall apply instead of subparagraphs (A) through (E) of paragraph (2) in the case of a violation described in subparagraph (B).

“(B) The Attorney General shall establish a process for the receipt, initial review, and disposition in accordance with this paragraph of complaints respecting an employer's failure to meet the condition of paragraph (1)(G)(i)(II) or a petitioner's misrepresentation of material facts with respect to such condition. Complaints may be filed by an aggrieved individual who has submitted a resume or otherwise applied in a reasonable manner for the job that is the subject of the condition. No proceeding shall be conducted under this paragraph on a complaint concerning such a failure or misrepresentation unless the Attorney General determines that the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively.

“(C) If the Attorney General finds that a complaint has been filed in accordance with subparagraph (B) and there is reasonable cause to believe that such a failure or misrepresentation described in such complaint has occurred, the Attorney General shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the roster of arbitrators maintained by such Service. The procedure and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Attorney General shall pay the fee and expenses of the arbitrator.

“(D)(i) The arbitrator shall make findings respecting whether a failure or misrepresentation described in subparagraph (B) occurred. If the arbitrator concludes that failure or misrepresentation was willful, the arbitrator shall make a finding to that effect. The arbitrator may not find such a failure or misrepresentation (or that such a failure or misrepresentation was willful) unless the complainant demonstrates such a failure or misrepresentation (or its willful character) by clear and convincing evidence. The arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Attorney General. Such findings shall be final and conclusive, and, except as provided in this subparagraph, no official or court of the United States shall have power or jurisdiction to review any such findings.

“(ii) The Attorney General may review and reverse or modify the findings of an arbitrator only on the same bases as an award of an arbitrator may be vacated or modified under section 10 or 11 of title 9, United States Code.

“(iii) With respect to the findings of an arbitrator, a court may review only the actions of the Attorney General under clause (ii) and may set aside such actions only on the grounds described in subparagraph (A), (B), or (C) of section 706(a)(2) of title 5, United States Code. Notwithstanding any other provision of law, such judicial review may only be brought in an appropriate United States court of appeals.

“(E) If the Attorney General receives a finding of an arbitrator under this paragraph that an employer has failed to meet the condition of paragraph (1)(G)(i)(II) or has misrepresented a material fact with respect to such condition, unless the Attorney General reverses or modifies the finding under subparagraph (D)(ii)—

“(i) the Attorney General may impose administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation or \$5,000 per violation in the case of a willful failure or misrepresentation) as the Attorney General determines to be appropriate; and

“(ii) the Attorney General is authorized to not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of not more than 1 year for aliens to be employed by the employer.

“(F) The Attorney General shall not delegate, to any other employee or official of the Department of Justice, any function of the Attorney General under this paragraph, until 60 days after the Attorney General has submitted a plan for such delegation to the Committees on the Judiciary of the United States House of Representatives and the Senate with respect to such delegation.”

(2) CONFORMING AMENDMENT.—The first sentence of section 212(n)(2)(A) (8 U.S.C. 1182(n)(2)(A)) is amended by striking “The Secretary” and inserting “Subject to paragraph (5)(A), the Secretary”.

(c) LIABILITY OF PETITIONING EMPLOYER IN CASE OF PLACEMENT OF H-1B NONIMMIGRANT WITH ANOTHER EMPLOYER.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)) is amended by adding at the end the following:

“(E) If an H-1B-dependent employer places a nonexempt H-1B nonimmigrant with another employer as provided under paragraph (1)(F) and the other employer has displaced or displaces a United States worker employed by such other employer during the period described in such paragraph, such displacement shall be considered for purposes of this paragraph a failure, by the placing employer, to meet a condition specified in an application submitted under paragraph (1); except that the Attorney General may impose a sanction described in subclause (II) of subparagraph (C)(i), (C)(ii), or (C)(iii) only if

the Secretary of Labor found that such placing employer—

“(i) knew or had reason to know of such displacement at the time of the placement of the nonimmigrant with the other employer; or

“(ii) has been subject to a sanction under this subparagraph based upon a previous placement of an H-1B nonimmigrant with the same other employer.”

(d) SPOT INVESTIGATIONS DURING PROBATIONARY PERIOD.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as amended by subsection (c), is further amended by adding at the end the following:

“(F) The Secretary may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date that the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) (or has been found under paragraph (5) to have committed a willful failure to meet the condition of paragraph (1)(G)(i)(II)) or to have made a willful misrepresentation of material fact in an application. The preceding sentence shall apply to an employer regardless of whether or not the employer is an H-1B-dependent employer. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).”

(e) INVESTIGATIVE AUTHORITY.—Section 212(n)(2) (8 U.S.C. §1182(n)(2)) is further amended by adding at the end the following:

(G)(i) If the Secretary receives specific, credible information, from a source likely to have knowledge of an employer's practices, employment conditions or compliance with the employer's labor condition application whose identity is known to the Secretary, that provides reasonable cause to believe that an employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(E), (1)(F), or (1)(G)(i)(I), a pattern and practice of failures to meet the [aforementioned conditions], or a substantial failure to meet the [aforementioned conditions] that affects multiple employees, the Secretary may conduct a 30 day investigation of these allegations, provided that the Secretary personally (or the Acting Secretary in the case of the Secretary's absence or disability) certifies that the requirements for conducting such an investigation have been met and approves commencement of the investigation. At the request of the source, the Secretary may withhold the identity of the source from the employer, and the source's identity shall not be disclosable pursuant to a Freedom of Information Act request.

“(ii) The Secretary shall establish a procedure for any individual who provides the information to DOL that constitutes part of the basis for the commencement of an investigation on the basis described above to provide that information in writing on a form that the Department will provide to be completed by, or on behalf of, the individual.

“(iii) It shall be the policy of the Secretary to provide to the employer notice of the potential initiation of an investigation of an alleged violation under the authority granted in this [ ] with sufficient specificity to allow the employer to respond before the investigation is actually initiated unless in the Secretary's judgment such notice would interfere with efforts to secure compliance.

“(iv) Nothing in this section shall authorize the Secretary to initiate or approve the initiation of an investigation without the receipt of information from a person or persons not employed by the Department of Labor that provides the reasonable cause required by this section. The receipt of the l.c.a. and other materials the employer is required in order to obtain an H-1B visa shall not con-

stitute "receipt of information" for purposes of satisfying this requirement."

**SEC. 104. COLLECTION AND USE OF H-1B NON-IMMIGRANT FEES FOR SCHOLARSHIPS FOR LOW-INCOME MATH, ENGINEERING, AND COMPUTER SCIENCE STUDENTS AND JOB TRAINING OF UNITED STATES WORKERS.**

(a) IMPOSITION OF FEE.—Section 214(c) (8 U.S.C. 1184(c)) is amended by adding at the end the following:

"(9)(A) The Attorney General shall impose a fee on an employer (excluding an employer described in subparagraph (A) or (B) of section 212(p)(1) and an employer filing for new concurrent employment) as a condition for the approval of a petition filed on or after October 1, 1998, and before October 1, 2001, under paragraph (1) —

"(i) initially to grant an alien non-immigrant status described in section 101(a)(15)(H)(i)(b); or

"(ii) to extend for the first time the stay of an alien having such status.

"(B) The amount of the fee shall be \$500 for each such non-immigrant.

"(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(s).

"(D)(i) An employer may not require an alien who is the subject of the petition for which a fee is imposed under this paragraph to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee.

"(ii) Section 274A(g)(2) shall apply to a violation of clause (i) in the same manner as it applies to a violation of section 274A(g)(1)."

(b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—Section 286 (8 U.S.C. 1356) is amended by adding at the end the following:

"(s) H-1B NONIMMIGRANT PETITIONER ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'H-1B Nonimmigrant Petitioner Account'. Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(9).

"(2) USE OF FEES FOR JOB TRAINING.—63 percent of amounts deposited into the H-1B nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 104(c) of the Temporary Access to Skilled Workers and H-1B Nonimmigrant Program Improvement Act of 1998.

"(3) USE OF FEES FOR LOW-INCOME SCHOLARSHIP PROGRAM.—32 percent of the amounts deposited into the H-1B nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended for scholarships described in section 104(d) of the Temporary Access to Skilled Workers and H-1B Nonimmigrant Program Improvement Act of 1998 for low-income students enrolled in a program of study leading to a degree in mathematics, engineering, or computer science.

"(4) USE OF FEES FOR APPLICATION PROCESSING AND ENFORCEMENT.—2.5 percent of the amounts deposited into the H-1B non-immigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 212(n)(1), and 2.5 percent of such amounts shall remain available to such Secretary until expended for carrying out section 212(n)(2). Notwithstanding the preceding sentence, both of the amounts made available for any fiscal year pursuant to the preceding sentence shall be available to such Secretary, and shall remain available until expended, only for carrying out section 212(n)(2) until the Secretary submits to the Congress a report con-

taining a certification that, during the most recently concluded calendar year, the Secretary substantially complied with the requirement in section 212(n)(1) relating to the provision of the certification described in section 101(a)(15)(H)(i)(b) within a 7-day period."

(c) DEMONSTRATION PROGRAMS AND PROJECTS TO PROVIDE TECHNICAL SKILLS TRAINING FOR WORKERS.—

(1) IN GENERAL.—Subject to paragraph (3), in establishing demonstration programs under section 452(c) of the Job Training Partnership Act (29 U.S.C. 1732(c)), as in effect on the date of the enactment of this Act, or demonstration programs or projects under section 171(b) of the Workforce Investment Act of 1998, the Secretary of Labor shall establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

(2) GRANTS.—Subject to paragraph (3), the Secretary of Labor shall award grants to carry out the programs and projects described in paragraph (1) to—

(A)(i) private industry councils established under section 102 of the Job Training Partnership Act (29 U.S.C. 1512), as in effect on the date of the enactment of this Act; or

(ii) local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act of 1998; or

(B) regional consortia of councils or local boards described in subparagraph (A).

(3) LIMITATION.—The Secretary of Labor shall establish programs and projects under paragraph (1), including awarding grants to carry out such programs and projects under paragraph (2), only with funds made available under section 286(s)(2) of the Immigration and Nationality Act, and not with funds made available under the Job Training Partnership Act or the Workforce Investment Act of 1998.

(d) LOW-INCOME SCHOLARSHIP PROGRAM.—

(1) ESTABLISHMENT.—The Director of the National Science Foundation (referred to in this subsection as the "Director") shall award scholarships to low-income individuals to enable such individuals to pursue associate, undergraduate, or graduate level degrees in mathematics, engineering, or computer science.

(2) ELIGIBILITY.—

(A) IN GENERAL.—To be eligible to receive a scholarship under this subsection, an individual—

(i) must be a citizen or national of United States or an alien lawfully admitted to the United States for permanent residence;

(ii) shall prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

(iii) shall certify to the Director that the individual intends to use amounts received under the scholarship to enroll or continue enrollment at an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965) in order to pursue an associate, undergraduate, or graduate level degree in mathematics, engineering, or computer science.

(B) ABILITY.—Awards of scholarships under this subsection shall be made by the Director solely on the basis of the ability of the applicant, except that in any case in which 2 or more applicants for scholarships are deemed by the Director to be possessed of substantially equal ability, and there are not sufficient scholarships available to grant one to each of such applicants, the available scholarship or scholarships shall be awarded to the applicants in a manner that will tend to result in a geographically wide distribution throughout the United States of recipients' places of permanent residence.

(3) LIMITATION.—The amount of a scholarship awarded under this subsection shall be determined by the Director, except that the Director shall not award a scholarship in an amount exceeding \$2,500 per year.

(4) FUNDING.—The Director shall carry out this subsection only with funds made available under section 286(s)(3) of the Immigration and Nationality Act.

**SEC. 105. COMPUTATION OF PREVAILING WAGE LEVEL.**

(a) IN GENERAL.—Section 212 (8 U.S.C. 1182) is amended by adding at the end the following:

"(p)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (n)(1)(A)(i)(II) and (a)(5)(A) in the case of an employee of—

"(A) an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965), or a related or affiliated nonprofit entity; or

"(B) a nonprofit research organization or a Governmental research organization;

the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

"(2) With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules of regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to prevailing wage computations made for applications filed on or after the date of the enactment of this Act.

**SEC. 106. IMPROVING COUNT OF H-1B AND H-2B NONIMMIGRANTS.**

(a) ENSURING ACCURATE COUNT.—The Attorney General shall take such steps as are necessary to maintain an accurate count of the number of aliens subject to the numerical limitations of section 214(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)) who are issued visas or otherwise provided nonimmigrant status.

(b) REVISION OF PETITION FORMS.—The Attorney General shall take such steps as are necessary to revise the forms used for petitions for visas or nonimmigrant status under clause (i)(b) or (ii)(b) of section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) so as to ensure that the forms provide the Attorney General with sufficient information to permit the Attorney General accurately to count the number of aliens subject to the numerical limitations of section 214(g)(1) of such Act (8 U.S.C. 1184(g)(1)) who are issued visas or otherwise provided nonimmigrant status.

(c) REPORTS.—Beginning with fiscal year 1999, the Attorney General shall provide to the Congress—

(1) on a quarterly basis a report on the numbers of individuals who were issued visas or otherwise provided nonimmigrant status during the preceding 3-month period under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)); and

(2) on an annual basis a report on the countries of origin and occupations of, educational levels attained by, and compensation paid to, individuals issued visas or provided nonimmigrant status under such sections during such period.

Each report under paragraph (2) shall include the number of individuals described in paragraph (1) during the year who were issued visas pursuant to petitions filed by institutions or organizations described in section

212(p)(1) of such Act (as added by section 105 of this Act).

**SEC. 107. REPORT ON OLDER WORKERS IN THE INFORMATION TECHNOLOGY FIELD.**

(a) **STUDY.**—The Secretary of Commerce shall enter into a contract with the President of the National Academy of Sciences to conduct a study, using the best available data, assessing the status of older workers in the information technology field. The study shall consider the following:

(1) The existence and extent of age discrimination in the information technology workplace.

(2) The extent to which there is a difference, based on age, in—

- (A) promotion and advancement;
- (B) working hours;
- (C) telecommuting;
- (D) salary; and
- (E) stock options, bonuses, and other benefits.

(3) The relationship between rates of advancement, promotion, and compensation to experience, skill level, education, and age.

(4) Differences in skill level on the basis of age.

(b) **REPORT.**—Not later than October 1, 2000, the Secretary of Commerce shall submit to the Committees on the Judiciary of the United States House of Representatives and the Senate a report containing the results of the study described in subsection (a).

**SEC. 108. REPORT ON HIGH TECHNOLOGY LABOR MARKET NEEDS; REPORTS ON ECONOMIC IMPACT OF INCREASED IN-HIB NONIMMIGRANTS.**

(a) **NATIONAL SCIENCE FOUNDATION STUDY AND REPORT.**—

(1) **IN GENERAL.**—The Director of the National Science Foundation shall conduct a study to assess labor market needs for workers with high technology skills during the next 10 years. The study shall investigate and analyze the following:

(A) Future training and education needs of companies in the high technology and information technology sectors and future training and education needs of United States students to ensure that students' skills at various levels are matched to the needs in such sectors.

(B) An analysis of progress made by educators, employers, and government entities to improve the teaching and educational level of American students in the fields of math, science, computer science, and engineering since 1998.

(C) An analysis of the number of United States workers currently or projected to work overseas in professional, technical, and management capacities.

(D) The relative achievement rates of United States and foreign students in secondary schools in a variety of subjects, including math, science, computer science, English, and history.

(E) The relative performance, by subject area, of United States and foreign students in postsecondary and graduate schools as compared to secondary schools.

(F) The needs of the high technology sector for foreign workers with specific skills and the potential benefits and costs to United States employers, workers, consumers, postsecondary educational institutions, and the United States economy, from the entry of skilled foreign professionals in the fields of science and engineering.

(G) The needs of the high technology sector to adapt products and services for export to particular local markets in foreign countries.

(H) An examination of the amount and trend of moving the production or performance of products and services now occurring in the United States abroad.

(2) **REPORT.**—Not later than October 1, 2000, the Director of the National Science Founda-

tion shall submit to the Committees on the Judiciary of the United States House of Representatives and the Senate a report containing the results of the study described in paragraph (1).

(3) **INVOLVEMENT.**—The study under paragraph (1) shall be conducted in a manner that ensures the participation of individuals representing a variety of points of view.

(b) **REPORTING ON STUDIES SHOWING ECONOMIC IMPACT OF H-1B NONIMMIGRANT INCREASE.**—The Chairman of the Board of Governors of the Federal Reserve System, the Director of the Office of Management and Budget, the Chair of the Council of Economic Advisers, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labor, and any other member of the Cabinet, shall promptly report to the Congress the results of any reliable study that suggests, based on legitimate economic analysis, that the increase effected by section 101(a) of this Act in the number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act has had an impact on any national economic indicator, such as the level of inflation or unemployment, that warrants action by the Congress.

**TITLE II—SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO CIVILIAN EMPLOYEES**

**SEC. 201. SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO CIVILIAN EMPLOYEES.**

(a) **IN GENERAL.**—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended—

(1) by striking “or” at the end of subparagraph (J),

(2) by striking the period at the end of subparagraph (K) and inserting “; or”, and

(3) by adding at the end the following new subparagraph:

“(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

“(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

“(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO-6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the ‘Protocol on the Status of International Military Headquarters’ set up pursuant to the North Atlantic Treaty, or as a dependent); and

“(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the Temporary Access to Skilled Workers and H-1B Nonimmigrant Program Improvement Act of 1998.”

(b) **CONFORMING NONIMMIGRANT STATUS FOR CERTAIN PARENTS OF SPECIAL IMMIGRANT CHILDREN.**—Section 101(a)(15)(N) (8 U.S.C. 1101(a)(15)(N)) is amended—

(1) by inserting “(or under analogous authority under paragraph (27)(L))” after “(27)(I)(i)”, and

(2) by inserting “(or under analogous authority under paragraph (27)(L))” after “(27)(I)”.

**TITLE III—MISCELLANEOUS PROVISION**

**SEC. 301. ACADEMIC HONORARIA.**

(a) **IN GENERAL.**—Section 212 (8 U.S.C. 1182), as amended by section 105, is further amended by adding at the end the following:

“(q) Any alien admitted under section 101(a)(15)(B) may accept an honorarium payment and associated incidental expenses for

a usual academic activity or activities (lasting not longer than 9 days at any single institution), as defined by the Attorney General in consultation with the Secretary of Education, if such payment is offered by an institution or organization described in subsection (p)(1) and is made for services conducted for the benefit of that institution or entity and if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to activities occurring on or after the date of the enactment of this Act.

Pursuant to House Resolution 513, Mr. WATT of North Carolina submitted the following further amendment in the nature of a substitute to the bill, as amended:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Workforce Improvement and Protection Act of 1998”.

**SEC. 2. TEMPORARY INCREASE IN SKILLED FOREIGN WORKERS; TEMPORARY REDUCTION IN H-2B NONIMMIGRANTS.**

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

(1) by amending paragraph (1)(A) to read as follows:

“(A) under section 101(a)(15)(H)(i)(b), subject to paragraph (5), may not exceed—

- “(i) 95,000 in fiscal year 1998;
- “(ii) 105,000 in fiscal year 1999;
- “(iii) 115,000 in fiscal year 2000; and
- “(iv) 65,000 in fiscal year 2001 and any subsequent fiscal year; or”;

(2) by amending paragraph (1)(B) to read as follows:

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

- “(i) 36,000 in fiscal year 1998;
- “(ii) 26,000 in fiscal year 1999;
- “(iii) 16,000 in fiscal year 2000; and
- “(iv) 66,000 in fiscal year 2001 and any subsequent fiscal year.”;

(3) in paragraph (4), by striking “years.” and inserting “years, except that, with respect to each such nonimmigrant issued a visa or otherwise provided nonimmigrant status in each of fiscal years 1998, 1999, and 2000 in excess of 65,000 (per fiscal year), the period of authorized admission as such a nonimmigrant may not exceed 4 years.”; and

(4) by adding at the end the following:

“(5) The total number of aliens described in section 212(a)(5)(C) who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1999) under section 101(a)(15)(H)(i)(b) may not exceed 5,000.”

**SEC. 3. PROTECTION AGAINST DISPLACEMENT OF UNITED STATES WORKERS.**

(a) **IN GENERAL.**—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (D) the following:

“(E)(i) Except as provided in clause (iv), the employer has not laid off or otherwise displaced and will not lay off or otherwise displace, within the period beginning 6 months before and ending 90 days following the date of filing of the application or during the 90 days immediately preceding and following the date of filing of any visa petition supported by the application, any United States worker (as defined in paragraph (3)) (including a worker whose services are obtained by contract, employee leasing, temporary help agreement, or other similar means) who has substantially equivalent qualifications and experience in the specialty occupation, and in the area of employment, for which H-1B nonimmigrants are sought or in which they are employed.

“(ii) Except as provided in clause (iii), in the case of an employer that employs an H-1B nonimmigrant, the employer shall not place the nonimmigrant with another employer where—

“(I) the nonimmigrant performs his or her duties in whole or in part at one or more worksites owned, operated, or controlled by such other employer; and

“(II) there are indicia of an employment relationship between the nonimmigrant and such other employer.

“(iii) Clause (ii) shall not apply to an employer’s placement of an H-1B nonimmigrant with another employer if the other employer has executed an attestation that it satisfies and will satisfy the conditions described in clause (i) during the period described in such clause.

“(iv) This subparagraph shall not apply to an application filed by an employer that is an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965), or a related or affiliated non-profit entity, if the application relates solely to aliens who—

“(I) the employer seeks to employ—

“(aa) as a researcher on a project for which not less than 50 percent of the funding is provided, for a limited period of time, through a grant or contract with an entity other than the employer; or

“(bb) as a professor or instructor under a contract that expires after a limited period of time; and

“(II) have attained a master’s or higher degree (or its equivalent) in a specialty the specific knowledge of which is required for the intended employment.”.

(b) DEFINITIONS.—

(1) IN GENERAL.—Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended by adding at the end the following:

“(3) For purposes of this subsection:

“(A) The term ‘H-1B nonimmigrant’ means an alien admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b).

“(B) The term ‘lay off or otherwise displace’, with respect to an employee—

“(i) means to cause the employee’s loss of employment, other than through a discharge for cause, a voluntary departure, or a voluntary retirement; and

“(ii) does not include any situation in which employment is relocated to a different geographic area and the employee is offered a chance to move to the new location, with wages and benefits that are not less than those at the old location, but elects not to move to the new location.

“(C) The term ‘United States worker’ means—

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

“(ii) an alien lawfully admitted for permanent residence; or

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

(2) CONFORMING AMENDMENTS.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by striking “a nonimmigrant described in section 101(a)(15)(H)(i)(b)” each place such term appears and inserting “an H-1B nonimmigrant”.

**SEC. 4. RECRUITMENT OF UNITED STATES WORKERS PRIOR TO SEEKING NON-IMMIGRANT WORKERS.**

Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)), as amended by section 3, is further amended by inserting after subparagraph (E) the following:

“(F)(i) The employer, prior to filing the application, has taken, in good faith, timely and significant steps to recruit and retain sufficient United States workers in the spe-

cialty occupation for which H-1B nonimmigrants are sought. Such steps shall have included recruitment in the United States, using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H-1B nonimmigrants under subparagraph (A), and offering employment to any United States worker who applies and has the same qualifications as, or better qualifications than, any of the H-1B nonimmigrants sought.

“(ii) The conditions described in clause (i) shall not apply to an employer with respect to the employment of an H-1B nonimmigrant who is described in subparagraph (A), (B), or (C) of section 203(b)(1).”.

**SEC. 5. LIMITATION ON AUTHORITY TO INITIATE COMPLAINTS AND CONDUCT INVESTIGATIONS FOR NON-H-1B-DEPENDENT EMPLOYERS.**

(a) IN GENERAL.—Section 212(n)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

(1) in the second sentence, by striking the period at the end and inserting the following: “, except that the Secretary may only file such a complaint respecting an H-1B-dependent employer (as defined in paragraph (3)), and only if there appears to be a violation of an attestation or a misrepresentation of a material fact in an application.”; and

(2) by inserting after the second sentence the following: “Except as provided in subparagraph (F) (relating to spot investigations during probationary period), no investigation or hearing shall be conducted with respect to an employer except in response to a complaint filed under the previous sentence.”.

(b) DEFINITIONS.—Section 212(n)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)), as added by section 3, is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (E), respectively;

(2) by inserting after “purposes of this subsection:” the following:

“(A) The term ‘H-1B-dependent employer’ means an employer that—

“(i)(I) has fewer than 21 full-time equivalent employees who are employed in the United States; and

(II) employs 4 or more H-1B nonimmigrants; or

“(ii)(I) has at least 21 but not more than 150 full-time equivalent employees who are employed in the United States; and

(II) employs H-1B nonimmigrants in a number that is equal to at least 20 percent of the number of such full-time equivalent employees; or

“(iii)(I) has at least 151 full-time equivalent employees who are employed in the United States; and

(II) employs H-1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

In applying this subparagraph, any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer. Aliens employed under a petition for H-1B nonimmigrants shall be treated as employees, and counted as nonimmigrants under section 101(a)(15)(H)(i)(b) under this subparagraph.”; and

(3) by inserting after subparagraph (C) (as so redesignated) the following:

“(D) The term ‘non-H-1B-dependent employer’ means an employer that is not an H-1B-dependent employer.”.

**SEC. 6. INCREASED ENFORCEMENT AND PENALTIES.**

(a) IN GENERAL.—Section 212(n)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(C)) is amended to read as follows:

“(C)(i) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B) or (1)(E), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(F), or a misrepresentation of material fact in an application—

“(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate; and

“(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

“(ii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an application, or a violation of clause (iv)—

“(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate; and

“(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

“(iii) If the Secretary finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an application, in the course of which failure or misrepresentation the employer also has failed to meet a condition of paragraph (1)(E)—

“(I) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$25,000 per violation) as the Secretary determines to be appropriate; and

“(II) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer.

“(iv) It is a violation of this clause for an employer who has filed an application under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer’s compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.”.

(b) PLACEMENT OF H-1B NONIMMIGRANT WITH OTHER EMPLOYER.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended by adding at the end the following:

“(E) Under regulations of the Secretary, the previous provisions of this paragraph shall apply to a failure of an other employer to comply with an attestation described in

paragraph (1)(E)(iii) in the same manner as they apply to a failure to comply with a condition described in paragraph (1)(E)(i)."

(c) SPOT INVESTIGATIONS DURING PROBATIONARY PERIOD.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)), as amended by subsection (b), is further amended by adding at the end the following:

"(F) The Secretary may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date that the employer is found by the Secretary to have committed a willful failure to meet a condition of paragraph (1) or to have made a misrepresentation of material fact in an application. The preceding sentence shall apply to an employer regardless of whether the employer is an H-1B-dependent employer or a non-H-1B-dependent employer. The authority of the Secretary under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A)."

**SEC. 7. PROHIBITION ON IMPOSITION BY EMPLOYING EMPLOYERS OF EMPLOYMENT CONTRACT PROVISIONS VIOLATING PUBLIC POLICY.**

Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)), as amended by section (6), is further amended by adding at the end the following:

"(G) If the Secretary finds, after notice and opportunity for a hearing, that an employer who has submitted an application under paragraph (1) has requested or required an alien admitted or provided status as a nonimmigrant pursuant to the application, as a condition of the employment, to execute a contract containing a provision that would be considered void as against public policy in the State of intended employment—

"(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$25,000 per violation) as the Secretary determines to be appropriate; and

"(ii) the Attorney General shall not approve petitions filed by the employer under section 214(c) during a period of not more than 10 years for H-1B nonimmigrants to be employed by the employer."

**SEC. 8. COLLECTION AND USE OF H-1B NON-IMMIGRANT FEES FOR STATE STUDENT INCENTIVE GRANT PROGRAMS AND JOB TRAINING OF UNITED STATES WORKERS.**

(a) IMPOSITION OF FEE.—Section 214(c) (8 U.S.C. 1184(c)) is amended by adding at the end the following:

"(9)(A) The Attorney General shall impose a fee on an employer (excluding an employer described in subparagraph (A) or (B) of section 212(p)(1)) as a condition for the approval of a petition filed on or after October 1, 1998, and before October 1, 2002, under paragraph (1) to grant an alien nonimmigrant status described in section 101(a)(15)(H)(i)(b). The amount of the fee shall be \$500 for each such nonimmigrant.

"(B) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(t).

"(C)(i) An employer may not require an alien who is the subject of the petition for which a fee is imposed under this paragraph to reimburse, or otherwise compensate, the employer for part or all of the cost of such fee.

"(ii) Section 274A(g)(2) shall apply to a violation of clause (i) in the same manner as it applies to a violation of section 274A(g)(1)."

(b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—Section 286 (8 U.S.C. 1356) is amended by adding at the end the following:

"(t) H-1B NONIMMIGRANT PETITIONER ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account which shall be known as the 'H-1B Nonimmigrant Petitioner Account'. Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(9).

"(2) USE OF HALF OF FEES BY SECRETARY OF EDUCATION FOR HIGHER EDUCATION GRANTS.—Fifty percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available until expended to the Secretary of Education for additional allotments to States under subpart 4 of chapter 8 of title IV of the Higher Education Act of 1965 but only for the purpose of assisting States in providing grants to eligible students enrolled in a program of study leading to a degree in mathematics, computer science, or engineering.

"(3) USE OF HALF OF FEES BY SECRETARY OF LABOR FOR JOB TRAINING.—Fifty percent of amounts deposited into the deposits into such Account shall remain available until expended to the Secretary of Labor for demonstration programs described in section 104(d) of the Temporary Access to Skilled Workers and H-1B Nonimmigrant Program Improvement Act of 1998."

(c) CONFORMING MODIFICATION OF APPLICATION REQUIREMENTS FOR STATE STUDENT INCENTIVE GRANT PROGRAM.—Section 415C(b) of the Higher Education Act of 1965 (20 U.S.C. 1070c-2(b)) is amended—

(1) in paragraph (9), by striking "and" at the end;

(2) in paragraph (10), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(11) provides that any portion of the allotment to the State for each fiscal year that derives from funds made available under section 286(t)(2) of the Immigration and Nationality Act shall be expended for grants described in paragraph (2)(A) to students enrolled in a program of study leading to a degree in mathematics, computer science, or engineering."

(d) DEMONSTRATION PROGRAMS AND PROJECTS TO PROVIDE TECHNICAL SKILLS TRAINING FOR WORKERS.

(1) IN GENERAL.—Subject to paragraph (3), in establishing demonstration programs under section 452(c) of the Job Training Partnership Act (29 U.S.C. 1732(c)), as in effect on the date of enactment of this Act, or demonstration programs or projects under a successor Federal law, the Secretary of Labor shall establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

(2) GRANTS.—Subject to paragraph (3), the Secretary of Labor shall award grants to carry out the programs and projects described in paragraph (1) to—

(A)(i) private industry councils established under section 102 of the Job Training Partnership Act (29 U.S.C. 1512), as in effect on the date of enactment of this Act; or

(ii) local boards that will carry out such programs or projects through one-stop delivery systems established under a successor Federal law; or

(B) regional consortia of councils or local boards described in subparagraph (A).

(3) LIMITATION.—The Secretary of Labor shall establish programs and projects under paragraph (1), including awarding grants to carry out such programs and projects under paragraph (2), only with funds made available under section 286(t)(3) of the Immigration and Nationality Act, and not with funds made available under the Job Training Partnership Act or a successor Federal law.

**SEC. 9. IMPROVING COUNT OF H-1B AND H-2B NONIMMIGRANTS.**

(a) ENSURING ACCURATE COUNT.—The Attorney General shall take such steps as are necessary to maintain an accurate count of the number of aliens subject to the numerical limitations of section 214(g)(1) of the Immigration and Nationality Act who are issued visas or otherwise provided nonimmigrant status.

(b) REVISION OF PETITION FORMS.—The Attorney General shall take such steps as are necessary to revise the forms used for petitions for visas or nonimmigrant status under clause (i)(b) or (ii)(b) of section 101(a)(15)(H) of the Immigration and Nationality Act so as to ensure that the forms provide the Attorney General with sufficient information to permit the Attorney General accurately to count the number of aliens subject to the numerical limitations of section 214(g)(1) of such Act who are issued visas or otherwise provided nonimmigrant status.

(c) REPORTS.—Beginning with fiscal year 1999, the Attorney General shall provide to the Congress not less than 4 times per year a report on—

(1) the numbers of individuals who were issued visas or otherwise provided nonimmigrant status during the preceding 3-month period under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act;

(2) the numbers of individuals who were issued visas or otherwise provided nonimmigrant status during the preceding 3-month period under section 101(a)(15)(H)(ii)(b) of such Act; and

(3) the countries of origin and occupations of, educational levels attained by, and total compensation (including the value of all wages, salary, bonuses, stock, stock options, and any other similar forms of remuneration) paid to, individuals issued visas or provided nonimmigrant status under such sections during such period.

**SEC. 10. GAO STUDY AND REPORT ON AGE DISCRIMINATION IN THE INFORMATION TECHNOLOGY FIELD.**

(a) STUDY.—The Comptroller General of the United States shall conduct a study assessing age discrimination in the information technology field. The study shall consider the following:

(1) The prevalence of age discrimination in the information technology workplace.

(2) The extent to which there is a difference, based on age, in promotion and advancement; working hours; telecommuting; salary; and stock options, bonuses, or other benefits.

(3) The relationship between rates of advancement, promotion, and compensation to experience, skill level, education, and age.

(4) Differences in skill level on the basis of age.

(b) REPORT.—Not later than October 1, 2000, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the United States House of Representatives and the Senate a report containing the results of the study described in subsection (a). The report shall include any recommendations of the Comptroller General concerning age discrimination in the information technology field.

**SEC. 11. GAO LABOR MARKET STUDY AND REPORT.**

(a) STUDY.—The Comptroller General of the United States shall conduct a labor market study. The study shall investigate and analyze the following:

(1) The overall shortage of available workers in the high-technology, rapid-growth industries.

(2) The multiplier effect growth of high-technology industry on low-technology employment.

(3) The relative achievement rates of United States and foreign students in sec-

ondary school in a variety of subjects, including math, science, computer science, English, and history.

(4) The relative performance, by subject area, of United States and foreign students in postsecondary and graduate schools as compared to secondary schools.

(5) The labor market need for workers with information technology skills and the extent of the deficit of such workers to fill high-technology jobs during the 10-year period beginning on the date of the enactment of this Act.

(6) Future training and education needs of companies in the high-technology sector.

(7) Future training and education needs of United States students to ensure that their skills at various levels match the needs of the high-technology and information technology sectors.

(8) An analysis of which particular skill sets are in demand.

(9) The needs of the high-technology sector for foreign workers with specific skills.

(10) The potential benefits of postsecondary educational institutions, employers, and the United States economy from the entry of skilled professionals in the fields of engineering and science.

(11) The effect on the high-technology labor market of the downsizing of the defense sector, the increase in productivity in the computer industry, and the deployment of workers dedicated to the Year 2000 Project.

(b) REPORT.—Not later than October 1, 2000, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the United States House of Representatives and the Senate a report containing the results of the study described in subsection (a).

SEC. 12. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to applications filed with the Secretary of Labor on or after 30 days after the date of the enactment of this Act, except that the amendments made by section 2 shall apply to applications filed with such Secretary before, on, or after the date of the enactment of this Act.

The question being put, viva voce, Will the House agree to said amendment in the nature of a substitute?

The SPEAKER pro tempore, Mr. SHIMKUS, announced that the nays had it.

Mr. WATT of North Carolina objected to the vote on the ground that a quorum was not present and not voting.

A quorum not being present, The roll was called under clause 4, rule XV, and the call was taken by electronic device.

When there appeared { Yeas ..... 177 Nays ..... 242

95.13

[Roll No. 459]

YEAS—177

Table with 3 columns: Name, State, Name. Lists members of the House of Representatives who voted 'Yeas'.

Table with 3 columns: Name, State, Name. Lists members of the House of Representatives who voted 'Nays'.

NAYS—242

Table with 3 columns: Name, State, Name. Lists members of the House of Representatives who voted 'Nays'.

Table with 3 columns: Name, State, Name. Lists members of the House of Representatives who did not vote.

NOT VOTING—15

Table with 3 columns: Name, State, Name. Lists members of the House of Representatives who did not vote.

So the amendment in the nature of a substitute was not agreed to.

Pursuant to House Resolution 513, the previous question was ordered on the bill, as amended.

The bill, as amended, was ordered to be engrossed and read a third time, was read a third time by title.

The question being put, viva voce, Will the House pass said bill?

The SPEAKER pro tempore, Mr. SHIMKUS, announced that the yeas had it.

Mr. SMITH of Texas demanded a recorded vote on passage of said bill which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the { Yeas ..... 288 affirmative ..... Nays ..... 133

95.14

[Roll No. 460]

AYES—288

Table with 3 columns: Name, State, Name. Lists members of the House of Representatives who voted 'Yeas'.