

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 170
OFFERED BY MR. ISSA OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Protect and Grow
3 American Jobs Act”.

**4 SEC. 2. PROHIBITION ON DISPLACEMENT OF UNITED
5 STATES WORKERS.**

6 Section 212(n)(1) of the Immigration and Nationality
7 Act (8 U.S.C. 1182(n)(1)) is amended—

8 (1) in subparagraph (E)—

9 (A) in clause (i), by striking “within the
10 period beginning 90 days before and ending 90
11 days after the date of filing of any visa petition
12 supported by the application.” and inserting
13 “during the period beginning 90 days before the
14 date of filing of any visa petition supported by
15 the application and ending on the last day of
16 the employer’s employment of any alien as an
17 H-1B nonimmigrant pursuant to such visa peti-

1 tion or any extension of such visa petition.”;

2 and

3 (B) in clause (ii), by striking the last sen-

4 tence; and

5 (2) by amending subparagraph (F) to read as

6 follows:

7 “(F)(i) Except as provided in clause (ii), in the

8 case of an application described in subparagraph

9 (E)(ii), the employer will not place the non-

10 immigrant with another employer (regardless of

11 whether or not such other employer is an H-1B-de-

12 pendent employer) where—

13 “(I) the nonimmigrant performs duties, in

14 whole or in part, at one or more worksites—

15 “(aa) owned, operated, or controlled

16 by such other employer; or

17 “(bb) physically located within, adja-

18 cent to, or in close proximity to, a worksite

19 described in item (aa) for the purpose of

20 avoiding the requirements of this subpara-

21 graph; and

22 “(II) there are indicia of an employment

23 relationship between the nonimmigrant and

24 such other employer.

1 “(ii) Clause (i) shall not apply if the em-
2 ployer—

3 “(I) has received written assurance from
4 the other employer that, during the period be-
5 ginning 90 days before the date of the place-
6 ment of the nonimmigrant with the other em-
7 ployer and ending at the conclusion of such
8 placement, the other employer—

9 “(aa) has not and does not intend to
10 displace a United States worker employed
11 by the other employer; and

12 “(bb) will inform the employer with-
13 out delay if the other employer displaces a
14 United States worker employed by the
15 other employer during such period;

16 “(II) will, if it learns that the other em-
17 ployer has displaced a United States worker
18 employed by the other employer during the pe-
19 riod specified in subclause (I), without delay—

20 “(aa) inform the Secretary of such
21 displacement;

22 “(bb) cease the placement with the
23 other employer of the nonimmigrant and
24 other H-1B nonimmigrants employed by
25 the employer in jobs that are essentially

1 the equivalent of the job for which the H-
2 1B nonimmigrant was sought (as described
3 in paragraph (4)(B)); and

4 “(cc) cease the performance of any
5 services for the benefit of the other em-
6 ployer by the nonimmigrant and other H-
7 1B nonimmigrants employed by the em-
8 ployer in jobs that are essentially the
9 equivalent of the job for which the H-1B
10 nonimmigrant was sought (as described in
11 paragraph (4)(B)); and

12 “(III) has received written assurance from
13 the other employer that the other employer will
14 provide the Secretary with such reasonable in-
15 formation as the Secretary may request to carry
16 out investigations pursuant to subparagraphs
17 (A) and (F) of paragraph (2) regarding the em-
18 ployer.”.

19 **SEC. 3. REQUIRED RECRUITMENT OF UNITED STATES**
20 **WORKERS.**

21 Section 212(n)(1)(G)(i) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1182(n)(1)(G)(i)) is amended—

23 (1) in subclause (I), by striking “and” at the
24 end;

1 (2) in subclause (II), by striking the period at
2 the end and inserting “; and”; and

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

4 “(III) has submitted with the application a
5 report summarizing recruitment efforts made,
6 including—

7 “(aa) the good faith steps taken to re-
8 cruit United States workers under sub-
9 clause (I);

10 “(bb) the number of United States
11 workers who applied for the job;

12 “(cc) the number of such workers who
13 were offered the job and, if so, whether the
14 workers accepted the offers; and

15 “(dd) for each worker under item (bb)
16 who was not offered the job, the reason
17 why the job was not offered.”.

18 **SEC. 4. REQUIRED WAGES.**

19 Section 212(n)(1)(A)(i) of the Immigration and Na-
20 tionality Act (8 U.S.C. 1182(n)(1)(A)(i)) is amended—

21 (1) by striking “, or” at the end of subclause
22 (I) and inserting a semicolon;

23 (2) by striking the comma at the end of sub-
24 clause (II) and inserting “; or”;

25 (3) in the matter following subclause (II)—

1 (A) by striking “greater,” and inserting
2 “greatest,”; and

3 (B) by striking “, and” at the end and in-
4 serting “; and”; and

5 (4) by inserting after subclause (II) the fol-
6 lowing:

7 “(III) the mean wage level for the oc-
8 cupational classification in the area of em-
9 ployment, but only in the case of an H-1B-
10 dependent employer (as defined in para-
11 graph (3)(A)) that places an H-1B non-
12 immigrant with another employer in a situ-
13 ation described in subparagraph
14 (F)(i)(I);”.

15 **SEC. 5. ENFORCEMENT.**

16 (a) **FAILURE TO MEET CONDITIONS.**—Section
17 212(n)(2) of the Immigration and Nationality Act (8
18 U.S.C. 1182(n)(2)) is amended—

19 (1) in subparagraph (C)(iii), in the matter pre-
20 ceding subclause (I), by striking “within the period
21 beginning 90 days before and ending 90 days after
22 the date of filing of any visa petition supported by
23 the application—” and inserting “during the period
24 beginning 90 days before the date of filing of any
25 visa petition supported by the application and end-

1 ing on the last day of the employer’s employment of
2 any alien as an H-1B nonimmigrant pursuant to
3 such visa petition or any extension of such visa peti-
4 tion, or during the period beginning 90 days before
5 the date of the placement and ending at the conclu-
6 sion of such placement, but only in the case of an
7 H-1B-dependent employer (as defined in paragraph
8 (3)(A)) that places an H-1B nonimmigrant with an-
9 other employer in a situation described in paragraph
10 (1)(F) and the H-1B-dependent employer has not
11 complied with the requirements of paragraph
12 (1)(F)(ii)—”;

13 (2) in subparagraph (E)—

14 (A) by striking “a nonexempt” and insert-
15 ing “an”; and

16 (B) by striking “(1); except that” and all
17 that follows through the period at the end and
18 inserting “(1).”; and

19 (3) in subparagraph (F)—

20 (A) by striking “(F)” and inserting
21 “(F)(i)”;

22 (B) by striking the last sentence; and

23 (C) by adding at the end the following:

24 “(ii) The Secretary may—

1 “(I) on a case-by-case basis, subject an H-1B-
2 dependent employer to random investigations; and

3 “(II) shall conduct investigations of at least 5
4 percent of H-1B-dependent employers annually.

5 “(iii) The authority of the Secretary under this sub-
6 paragraph shall not be construed to be subject to, or lim-
7 ited by, the requirements of subparagraph (A).”.

8 (b) FEE TO ENSURE EFFECTIVE ENFORCEMENT OF
9 THE H-1B PROGRAM.—

10 (1) IMPOSITION OF FEE.—Section 214(c) of the
11 Immigration and Nationality Act (8 U.S.C. 1184(c))
12 is amended by adding at the end the following:

13 “(15)(A) In addition to any other fees authorized by
14 law, the Secretary of Homeland Security shall impose a
15 fee to ensure effective enforcement on an H-1B-dependent
16 employer (as defined in section 212(n)(3)(A)) filing a peti-
17 tion under paragraph (1)—

18 “(i) initially to grant an alien nonimmigrant
19 status described in section 101(a)(15)(H)(i)(b); or

20 “(ii) to obtain authorization for an alien having
21 such status to change employers.

22 “(B) The initial amount of the fee imposed under
23 subparagraph (A) shall be \$495. The Secretary of Labor
24 periodically may recommend to the Secretary of Homeland
25 Security that such fee be adjusted as necessary to ensure

1 recovery of the full costs of carrying out the enforcement
2 programs and activities described in section
3 212(n)(2)(F)(ii), and the Secretary of Homeland Security
4 by rule (under section 553 of title 5, United States Code)
5 may adjust the fee pursuant to such recommendation.

6 “(C) The fee imposed under subparagraph (A) shall
7 only apply to principal aliens and not to the spouses or
8 children who are accompanying or following to join such
9 principal aliens.

10 “(D) Fees collected under this paragraph shall be de-
11 posited in the Treasury in accordance with section
12 286(w).”.

13 (2) ESTABLISHMENT OF ACCOUNT; USE OF
14 FEES.—Section 286 of the Immigration and Nation-
15 ality Act (8 U.S.C. 1356) is amended by adding at
16 the end the following:

17 “(w) FEE TO ENSURE EFFECTIVE ENFORCEMENT
18 OF THE H-1B PROGRAM ACCOUNT.—

19 “(1) IN GENERAL.—There is established in the
20 general fund of the Treasury a separate account,
21 which shall be known as the ‘Fee to Ensure Effec-
22 tive Enforcement of the H-1B Program Account’.
23 Notwithstanding any other provision of law, there
24 shall be deposited as offsetting receipts into the ac-
25 count all fees collected under section 214(c)(15).

1 “(2) USE OF FEES.—Amounts deposited into
2 the Fee to Ensure Effective Enforcement of the H-
3 1B Program Account shall remain available to the
4 Secretary of Labor until expended for enforcement
5 programs and activities described in section
6 212(n)(2)(F)(ii).”.

7 **SEC. 6. H-1B DEPENDENT EMPLOYER DEFINED.**

8 Section 212(n)(3)(A)(iii)(II) of the Immigration and
9 Nationality Act (8 U.S.C. 1182(n)(3)(A)(iii)(II)) is
10 amended by striking “15” and inserting “20”.

11 **SEC. 7. EXEMPT H-1B NONIMMIGRANT DEFINED.**

12 Section 212(n)(3)(B) of the Immigration and Nation-
13 ality Act (8 U.S.C. 1182(n)(3)(B)) is amended—

14 (1) by amending clause (i) to read as follows:

15 “(i) the term ‘exempt H-1B nonimmigrant’
16 means an H-1B nonimmigrant who receives wages
17 (including cash bonuses and similar compensation)
18 at an annual rate equal to at least—

19 “(I) during the 1-year period beginning on
20 the date of the enactment of the Protect and
21 Grow American Jobs Act, the lesser of \$90,000
22 and the mean wage level for the occupational
23 classification in the area of employment; and

24 “(II) after such 1-year period, the lesser
25 of—

1 “(aa) \$135,000 (or any applicable ad-
2 justed amount under clause (iii)); and

3 “(bb) the greater of \$90,000 (or any
4 applicable adjusted amount under clause
5 (iii)) and the mean wage level for the occu-
6 pational classification in the area of em-
7 ployment;”;

8 (2) in clause (ii), by striking the period at the
9 end and inserting “; and”; and

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

11 “(iii) the dollar amounts described
12 clause (i)(II) (as of the last increase to
13 such amount) shall be increased, effective
14 for the third fiscal year that begins after
15 the date of the enactment of this clause
16 and for every third fiscal year thereafter,
17 by the percentage (if any) by which the
18 Consumer Price Index for the month of
19 June preceding the date on which such in-
20 crease takes effect exceeds the Consumer
21 Price Index for the same month of the
22 third preceding calendar year.”.

23 **SEC. 8. REPORT ON H-1B-DEPENDENT EMPLOYERS.**

24 (a) IN GENERAL.—The Secretary of Labor and the
25 Secretary of Homeland Security annually shall publish a

1 joint report on the use of the H-1B program by employers
2 that are H-1B-dependent employers. The report shall in-
3 clude information on the following:

4 (1) Each H-1B-dependent-employer that filed
5 an application under section 212(n)(1) of such Act
6 (8 U.S.C. 1182(n)(1)).

7 (2) The occupational classifications and re-
8 quired wages listed in such applications.

9 (3) The worksites at which the nonimmigrants
10 sought in such applications were to be employed or
11 placed.

12 (4) Each investigation conducted pursuant to
13 section 212(n)(2)(A) of such Act (8 U.S.C.
14 1182(n)(2)(A)) regarding an H-1B-dependent em-
15 ployer and the outcomes of such investigations.

16 (5) Each investigation conducted pursuant to
17 section 212(n)(2)(F)(ii) of such Act, as added by
18 section 5(a)(3) of this Act, and the outcomes of such
19 investigations.

20 (b) DEFINITION.—For purposes of subsection (a),
21 the term “H-1B-dependent employer” has the meaning
22 given such term in section 212(n)(3)(A) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1182(a)(3)(A)).

1 **SEC. 9. EFFECTIVE DATE.**

2 (a) **IN GENERAL.**—The amendments made by sec-
3 tions 2 through 7 of this Act shall take effect on the date
4 of the enactment of this Act and shall apply with respect
5 to applications filed pursuant to section 212(n)(1) of the
6 Immigration and Nationality Act (8 U.S.C. 1182(n)(1))
7 on or after such date.

8 (b) **EXCEPTION.**—The fee imposed under section
9 214(c)(15) of the Immigration and Nationality Act (8
10 U.S.C. 1184(c)(15)), as added by section 5(b) of this Act,
11 shall apply to petitions filed under section 214(c)(1) of
12 the Immigration and Nationality Act (8 U.S.C.
13 1184(c)(1)) on or after the date that is 90 days after the
14 date of the enactment of this Act.

Amend the title so as to read: “A bill to amend the
Immigration and Nationality Act to modify certain re-
quirements for employment of H-1B nonimmigrants by
H-1B-dependent employers to ensure the protection of
the workforce in the United States.”.

