

112TH CONGRESS
1ST SESSION

H. R. 3146

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 11, 2011

Mr. LABRADOR (for himself, Mr. GRIFFIN of Arkansas, Mr. ROSS of Florida, Mr. YODER, Mr. SENSENBRENNER, and Mr. DOLD) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Science, Space, and Technology and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Innovation
5 and Education Act of 2011”.

1 **TITLE I—ATTRACTING AND RE-**
2 **TAINING INNOVATORS AND**
3 **JOB CREATORS**

4 **SEC. 101. U.S. GRADUATES IN SCIENCE, TECHNOLOGY, EN-**
5 **GINEERING, AND MATHEMATICS.**

6 (a) **ADVANCED STEM GRADUATES.**—Section
7 203(b)(1) of the Immigration and Nationality Act (8
8 U.S.C. 1153(b)(1)) is amended—

9 (1) in the matter preceding subparagraph (A),
10 by striking “(A) through (C)” and inserting “(A)
11 through (D)”;

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

13 “(D) **ADVANCED GRADUATES IN SCIENCE,**
14 **TECHNOLOGY, ENGINEERING AND MATHE-**
15 **MATICS.**—An alien is described in this subpara-
16 graph if—

17 “(i) the alien possesses a graduate de-
18 gree at the level of master’s or higher in
19 a field of science, technology, engineering,
20 or mathematics from a United States insti-
21 tution of higher education that has been
22 designated by the Director of the National
23 Science Foundation as a research institu-
24 tion or as otherwise excelling at instruction
25 in such fields;

1 “(ii) the alien has an offer of employ-
2 ment from a United States employer in a
3 field related to such degree; and

4 “(iii) the employer is offering and will
5 offer wages that are at least—

6 “(I) the actual wage level paid by
7 the employer to all other individuals
8 with similar experience and qualifica-
9 tions in the same occupational classi-
10 fication; or

11 “(II) the prevailing wage level for
12 the occupational classification in the
13 area of employment;

14 whichever is greater, based on the best in-
15 formation available as of the time of filing
16 the petition.”.

17 (b) CAP EXEMPTION.—Section 201(b)(1) of the Im-
18 migration and Nationality Act (8 U.S.C. 1151(b)(1)) is
19 amended by adding at the end the following:

20 “(F) Aliens described in paragraph (1)(B) or
21 (1)(D) of section 203(b).”.

22 (c) REMOVING VISA HURDLES FOR STUDENTS.—

23 (1) PROVIDING DUAL INTENT.—

24 (A) IN GENERAL.—Section
25 101(a)(15)(F)(i) of the Immigration and Na-

1 tionality Act (8 U.S.C. 1101(a)(15)(F)(i)) is
2 amended by striking “an alien having a resi-
3 dence in a foreign country which he has no in-
4 tention of abandoning, who is a bona fide stu-
5 dent qualified to pursue a full course of study
6 and who” and inserting “an alien who is a bona
7 fide student qualified to pursue a full course of
8 study, who (except for a student qualified to
9 pursue a full course of study at an institution
10 of higher education) has a residence in a for-
11 eign country which the alien has no intention of
12 abandoning, and who”.

13 (B) CONFORMING AMENDMENTS.—

14 (i) Section 214(b) of the Immigration
15 and Nationality Act (8 U.S.C. 1184(b)) is
16 amended by striking “(other than a non-
17 immigrant” and inserting “(other than a
18 nonimmigrant described in section
19 101(a)(15)(F) if the alien is qualified to
20 pursue a full course of study at an institu-
21 tion of higher education, other than a non-
22 immigrant”.

23 (ii) Section 214(h) of the Immigration
24 and Nationality Act (8 U.S.C. 1184(h)) is
25 amended by inserting “(F) (if the alien is

1 qualified to pursue a full course of study at
2 an institution of higher education),” before
3 “H(i)(b)”.

4 (2) DEFINITIONS.—Section 101(a) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1101(a)) is
6 amended by adding at the end the following:

7 “(52) The term ‘institution of higher education’
8 has the meaning given such term in section 101(a)
9 of the Higher Education Act of 1965 (20 U.S.C.
10 1001(a)).

11 “(53) The term ‘employer’ shall include any
12 group treated as a single employer under subsection
13 (b), (c), (m), or (o) of section 414 of the Internal
14 Revenue Code of 1986.”.

15 (d) CONFORMING AMENDMENTS.—Section
16 204(a)(1)(F) of the Immigration and Nationality Act (8
17 U.S.C. 1154(a)(1)(F)) is amended—

18 (1) by inserting “203(b)(1)(D),” after
19 “203(b)(1)(C),”; and

20 (2) by striking “Attorney General” and insert-
21 ing “Secretary of Homeland Security”.

22 **SEC. 102. ELIMINATING GREEN CARD BACKLOGS.**

23 (a) PER COUNTRY LEVELS.—Section 202(a) of the
24 Immigration and Nationality Act (8 U.S.C. 1152(a)) is
25 amended—

1 (1) in paragraph (2)—

2 (A) by striking “, (4), and (5)” and insert-
3 ing “and (4)”;

4 (B) by striking “subsections (a) and (b) of
5 section 203” and inserting “section 203(a)”;

6 (C) by striking “7 percent (in the case of
7 a single foreign state) or 2 percent” and insert-
8 ing “15 percent (in the case of a single foreign
9 state) or 5 percent”; and

10 (D) by striking “such subsections” and in-
11 serting “such section”; and

12 (2) by striking paragraph (5).

13 (b) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
14 Chinese Student Protection Act of 1992 (8 U.S.C. 1255
15 note) is amended—

16 (1) in subsection (a), by striking “subsection
17 (e)” and inserting “subsection (d)”;

18 (2) by striking subsection (d); and

19 (3) by redesignating subsection (e) as sub-
20 section (d).

1 **TITLE II—INVESTING IN THE**
2 **NEXT GENERATION OF**
3 **INNOVATORS AND JOB CRE-**
4 **ATORS**

5 **SEC. 201. INVESTING IN STEM EDUCATION FOR U.S. STU-**
6 **DENTS.**

7 Section 204(a)(1)(F) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1154(a)(1)(F)), as amended by this
9 Act, is further amended—

10 (1) by striking “(F)” and inserting “(F)(i)”;

11 and

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

13 “(ii)(I) The Secretary of Homeland Secu-
14 rity shall impose a fee on an employer (exclud-
15 ing any employer that is a primary or sec-
16 ondary education institution, an institution of
17 higher education, a nonprofit entity related to
18 or affiliated with any such institution, a non-
19 profit entity which engages in established cur-
20 riculum-related clinical training of students reg-
21 istered at any such institution, a nonprofit re-
22 search organization, or a governmental research
23 organization) filing a petition under clause (i)
24 to employ an alien entitled to classification
25 under subparagraph (B) or (D) of section

1 203(b)(1), section 203(b)(2), clause (i) or (ii) of
2 section 203(b)(3)(A), section 203(b)(5) or sec-
3 tion 203(b)(6).

4 “(II) The amount of the fee shall be
5 \$2,000 for each such petition except that the
6 fee shall be half the amount for each such peti-
7 tion by any employer with not more than 25
8 full-time equivalent employees who are em-
9 ployed in the United States.

10 “(III) Fees collected under this clause
11 shall be deposited in the Treasury in accordance
12 with section 286(s).”.

13 **SEC. 202. U.S. STEM EDUCATION AND TRAINING ACCOUNT.**

14 Section 286(s) of the Immigration and Nationality
15 Act (8 U.S.C. 1356(s)) is amended to read as follows:

16 “(s) STEM EDUCATION AND TRAINING ACCOUNT.—

17 “(1) IN GENERAL.—There is established in the
18 general fund of the Treasury a separate account,
19 which shall be known as the ‘STEM Education and
20 Training Account’. Notwithstanding any other sec-
21 tion of this title, there shall be deposited as offset-
22 ting receipts into the account all fees collected under
23 section 204(a)(1)(F)(ii) and paragraphs (9) and
24 (11) of section 214(c).

1 “(2) LOW-INCOME STEM SCHOLARSHIP PRO-
2 GRAM.—60 percent of the amounts deposited into
3 the STEM Education and Training Account shall
4 remain available to the Director of the National
5 Science Foundation until expended for scholarships
6 described in section 414(d) of the American Com-
7 petitiveness and Workforce Improvement Act of
8 1998 for low-income students enrolled in a program
9 of study leading to a degree in science, technology,
10 engineering, or mathematics.

11 “(3) NATIONAL SCIENCE FOUNDATION COM-
12 PETITIVE GRANT PROGRAM FOR K–12 SCIENCE,
13 TECHNOLOGY, ENGINEERING AND MATHEMATICS
14 EDUCATION.—

15 “(A) IN GENERAL.—15 percent of the
16 amounts deposited into the STEM Education
17 and Training Account shall remain available to
18 the Director of the National Science Founda-
19 tion until expended to carry out a direct or
20 matching grant program to support improve-
21 ment in K–12 education, including through pri-
22 vate-public partnerships.

23 “(B) TYPES OF PROGRAMS COVERED.—
24 The Director shall award grants to such pro-
25 grams, including those which support the devel-

1 opment and implementation of standards-based
2 instructional materials models and related stu-
3 dent assessments that enable K–12 students to
4 acquire an understanding of science, technology,
5 engineering, and mathematics, as well as to de-
6 velop critical thinking skills; provide systemic
7 improvement in training K–12 teachers and
8 education for students in science, technology,
9 engineering, and mathematics, including by
10 supporting efforts to promote gender-equality
11 among students receiving such instruction; sup-
12 port the professional development of K–12
13 science, technology, engineering and mathe-
14 matics teachers in the use of technology in the
15 classroom; stimulate system-wide K–12 reform
16 of science, technology, engineering, and mathe-
17 matics in rural, economically disadvantaged re-
18 gions of the United States; provide externships
19 and other opportunities for students to increase
20 their appreciation and understanding of science,
21 technology, engineering, and mathematics (in-
22 cluding summer institutes sponsored by an in-
23 stitution of higher education for students in
24 grades 7–12 that provide instruction in such
25 fields); involve partnerships of industry, edu-

1 cational institutions, and community organiza-
2 tions to address the educational needs of dis-
3 advantaged communities; provide college pre-
4 paratory support to expose and prepare stu-
5 dents for careers in science, technology, engi-
6 neering, and mathematics; and provide for car-
7 rying out systemic reform activities under sec-
8 tion 3(a)(1) of the National Science Foundation
9 Act of 1950 (42 U.S.C. 1862(a)(1)).

10 “(4) STEM CAPACITY BUILDING AT MINORITY-
11 SERVING INSTITUTIONS.—

12 “(A) IN GENERAL.—12 percent of the
13 amounts deposited into the STEM Education
14 and Training Account shall remain available to
15 the Director of the National Science Founda-
16 tion until expended to establish or expand pro-
17 grams to award grants on a competitive, merit-
18 reviewed basis to enhance the quality of under-
19 graduate science, technology, engineering, and
20 mathematics education at minority-serving in-
21 stitutions of higher education and to increase
22 the retention and graduation rates of students
23 pursuing degrees in such fields at such institu-
24 tions.

1 “(B) TYPES OF PROGRAMS COVERED.—
2 Grants awarded under this paragraph shall be
3 awarded to—

4 “(i) minority-serving institutions of
5 higher education for—

6 “(I) activities to improve courses
7 and curriculum in science, technology,
8 engineering, and mathematics;

9 “(II) efforts to promote gender
10 equality among students enrolled in
11 such courses;

12 “(III) faculty development;

13 “(IV) stipends for undergraduate
14 students participating in research;
15 and

16 “(V) other activities consistent
17 with subparagraph (A), as determined
18 by the Director; and

19 “(ii) to other institutions of higher
20 education to partner with the institutions
21 described in clause (i) for—

22 “(I) faculty and student develop-
23 ment and exchange;

24 “(II) research infrastructure de-
25 velopment;

1 “(III) joint research projects;
2 and

3 “(IV) identification and develop-
4 ment of minority and low-income can-
5 didates for graduate studies in
6 science, technology, engineering and
7 mathematics degree programs.

8 “(C) INSTITUTIONS INCLUDED.—In this
9 paragraph, the term ‘minority-serving institu-
10 tions of higher education’ shall include—

11 “(i) colleges eligible to receive funds
12 under the Act of August 30, 1890 (7
13 U.S.C. 321–326a and 328), including
14 Tuskegee University;

15 “(ii) 1994 Institutions, as defined in
16 section 532 of the Equity in Educational
17 Land-Grant Status Act of 1994 (7 U.S.C.
18 301 note); and

19 “(iii) Hispanic-serving institutions, as
20 defined in section 502(a)(5) of the Higher
21 Education Act of 1965 (20 U.S.C.
22 1101a(a)(5)).

23 “(5) STEM JOB TRAINING.—10 percent of
24 amounts deposited into the STEM Education and

1 Training Account shall remain available to the Sec-
2 retary of Labor until expended for—

3 “(A) demonstration programs and projects
4 described in section 414(c) of the American
5 Competitiveness and Workforce Improvement
6 Act of 1998; and

7 “(B) training programs in the fields of
8 science, technology, engineering, and mathe-
9 matics for persons who have served honorably
10 in the Armed Forces of the United States and
11 have retired or are retiring from such service.

12 “(6) USE OF FEES FOR DUTIES RELATING TO
13 PETITIONS.—1.5 percent of the amounts deposited
14 into the STEM Education and Training Account
15 shall remain available to the Secretary of Homeland
16 Security until expended to carry out duties under
17 paragraphs (1) (E) or (F) of section 204(a) (related
18 to petitions for immigrants described in section
19 203(b)) and under paragraphs (1) and (9) of section
20 214(c) (related to petitions made for nonimmigrants
21 described in section 101(a)(15)(H)(i)(b)).

22 “(7) USE OF FEES FOR APPLICATION PROC-
23 ESSING AND ENFORCEMENT.—1.5 percent of the
24 amounts deposited into the STEM Education and
25 Training Account shall remain available to the Sec-

1 retary of Labor until expended for decreasing the
 2 processing time for applications under section
 3 212(a)(5)(A) and section 212(n)(1).”.

4 **TITLE III—REDUCING ADMINIS-**
 5 **TRATIVE HURDLES TO FOS-**
 6 **TER INNOVATION AND JOB**
 7 **CREATION**

8 **SEC. 301. STREAMLINING LABOR CERTIFICATIONS.**

9 (a) IN GENERAL.—Section 212(a)(5)(A) of the Im-
 10 migration and Nationality Act (8 U.S.C. 1182(a)(5)(A))
 11 is amended—

12 (1) in clause (ii)—

13 (A) in subclause (I), by striking “or”;

14 (B) in subclause (II), by striking the pe-
 15 riod and inserting “, or”;

16 (C) by adding at the end the following new
 17 subclause:

18 “(III) is the beneficiary of a
 19 labor certification application filed by
 20 an employer designated as an Estab-
 21 lished U.S. Recruiter under clause
 22 (vii).”; and

23 (2) by adding at the end the following new
 24 clauses:

25 “(v) PROCESSING STANDARDS.—

1 “(I) TIMEFRAMES.—The Sec-
2 retary of Labor shall adjudicate an
3 application for certification under
4 clause (i) not later than 120 days
5 after the date on which the applica-
6 tion is filed. In the event that addi-
7 tional information or documentation is
8 requested by the Secretary during
9 such 120-day period, the Secretary
10 shall adjudicate the application not
11 later than 60 days after the date on
12 which such information or documenta-
13 tion is received.

14 “(II) NOTICE WITHIN 30 DAYS OF
15 DEFICIENCIES.—The employer shall
16 be notified in writing within 30 days
17 of the date of filing if the application
18 does not meet the standards (other
19 than that described in clause (i)(I))
20 for approval. If the application does
21 not meet such standards, the notice
22 shall include the reasons therefor and
23 the Secretary shall provide an oppor-
24 tunity for the prompt resubmission of
25 a modified application.

1 “(vi) FEES.—

2 “(I) APPLICATION FEE.—In ad-
3 dition to any other fees authorized by
4 law, the Secretary of Labor shall im-
5 pose a fee on an employer that sub-
6 mits an application for certification
7 under clause (i). The amount of the
8 fee shall be \$295 for each such appli-
9 cation.

10 “(II) PREMIUM PROCESSING.—
11 The Secretary of Labor is authorized
12 to establish and collect an optional
13 premium fee for processing of applica-
14 tions for certification under clause (i).
15 This fee shall be set at \$1,000 and
16 shall be paid in addition to the appli-
17 cation fee under subclause (I). For an
18 application in which the premium
19 processing fee is paid, the Secretary
20 shall adjudicate the application not
21 later than 30 days after the date on
22 which the application is filed. In the
23 event that additional information or
24 documentation is requested by the
25 Secretary with respect to such appli-

1 cation during the 30-day period, the
2 Secretary shall adjudicate the applica-
3 tion not later than 30 days after the
4 date on which such information or
5 documentation is received. If the Sec-
6 retary does not comply with these
7 timeframes, the Secretary shall refund
8 the premium processing fee to the ap-
9 plicant.

10 “(III) DEPOSIT OF FEES.—Fees
11 collected under subclauses (I) and (II)
12 shall be deposited in the Treasury in
13 accordance with section 286(w).

14 “(IV) PROHIBITION ON EM-
15 PLOYER ACCEPTING REIMBURSEMENT
16 OF FEE.—An employer subject to a
17 fee under this clause shall not require
18 or accept reimbursement of or other
19 compensation for all or part of the
20 cost of such fee, directly or indirectly,
21 from the alien on whose behalf the ap-
22 plication is filed.

23 “(vii) ESTABLISHED U.S. RECRUIT-
24 ERS.—

1 “(I) IN GENERAL.—The Sec-
2 retary of Labor shall establish a proc-
3 ess for employers to apply for des-
4 ignation as an Established U.S. Re-
5 cruiter. An employer seeking such
6 designation must file an application
7 with the Secretary stating the fol-
8 lowing:

9 “(aa) At least 80 percent of
10 the employer’s workforce in the
11 United States are United States
12 workers.

13 “(bb) At least 80 percent of
14 the employer’s new hires in the
15 United States in the 5 years pre-
16 ceding the filing of the applica-
17 tion are United States workers.

18 “(cc) The employer regularly
19 posts employment opportunities
20 on a publicly accessible Internet
21 website and has engaged in at
22 least 3 other forms of active re-
23 cruitment on an annual basis
24 over the preceding 3 years.

1 “(dd) The employer will con-
2 tinue to engage in the recruit-
3 ment efforts described in item
4 (cc) during the certification pe-
5 riod.

6 For the purposes of this clause, the
7 term ‘United States worker’ shall in-
8 clude an alien with a pending or ap-
9 proved petition under subparagraph
10 (E) or (F) of section 204(a)(1).

11 “(II) DESIGNATION.—

12 “(aa) TIMELY ADJUDICA-
13 TIONS.—The Secretary of Labor
14 shall adjudicate an application
15 for designation under subclause
16 (I) not later than 30 days after
17 the date on which the application
18 is filed. In the event that addi-
19 tional information or documenta-
20 tion is requested by the Sec-
21 retary, the Secretary shall adju-
22 dicate the application not later
23 than 30 days after the receipt of
24 such information or documenta-
25 tion.

1 “(bb) APPLICATION FEE.—
2 In addition to any other fees au-
3 thorized by law, the Secretary of
4 Labor may impose a fee on an
5 employer that submits an appli-
6 cation for designation under sub-
7 clause (I). The amount of the fee
8 shall be \$500 for each such ap-
9 plication. Fees collected under
10 this clause shall be deposited in
11 the Treasury in accordance with
12 section 286(w).

13 “(cc) PERIOD OF DESIGNA-
14 TION.—Unless terminated under
15 item (dd), a designation issued
16 under this clause shall be valid
17 for 3 years.

18 “(dd) TERMINATION.—The
19 Secretary of Labor may termi-
20 nate a designation under sub-
21 clause (I) if the Secretary deter-
22 mines that the employer—

23 “(AA) did not fulfill the
24 requirements of such sub-

1 clause at the time the cer-
2 tification was issued; or

3 “(BB) failed to meet
4 the requirements under sub-
5 clause (I)(ee) during the
6 designation period described
7 in item (cc).

8 “(III) ACTIVE RECRUITMENT.—
9 For the purposes of this clause ‘active
10 recruitment’ means any of the fol-
11 lowing:

12 “(aa) EMPLOYEE REFERRAL
13 PROGRAM.—The employer oper-
14 ates an employee referral pro-
15 gram that includes meaningful
16 incentives for employees to refer
17 workers for job openings.

18 “(bb) IN-HOUSE RECRUIT-
19 ERS.—The employer retains an
20 in-house recruiter on a full-time
21 basis to recruit workers for job
22 openings.

23 “(cc) JOB FAIRS.—The em-
24 ployer recruits workers at job
25 fairs that are advertised in news-

1 paper advertisements in which
2 the employer is named as a par-
3 ticipant in such fairs.

4 “(dd) MILITARY RECRUIT-
5 ING.—The employer recruits
6 workers during recruiting events
7 that are organized by the Armed
8 Forces of the United States.

9 “(ee) ON-CAMPUS RECRUIT-
10 ING.—The employer recruits
11 workers at institutions of higher
12 education during recruiting
13 events that are organized by such
14 institutions.

15 “(ff) PRIVATE EMPLOYMENT
16 FIRMS.—The employer regularly
17 engages private employment
18 firms or placement agencies to
19 recruit workers for job openings.

20 “(gg) TRADE OR PROFES-
21 SIONAL ORGANIZATIONS.—The
22 employer regularly advertises
23 with trade or professional organi-
24 zations to recruit workers for job
25 openings.”.

1 (b) ESTABLISHMENT OF ACCOUNT AND USE OF
2 FUNDS.—Section 286 of the Immigration and Nationality
3 Act (8 U.S.C. 1356) is amended by adding at the end the
4 following new subsection:

5 “(w) LABOR CERTIFICATION APPLICATION FEE AC-
6 COUNT.—

7 “(1) IN GENERAL.—There is established in the
8 general fund of the Treasury a separate account,
9 which shall be known as the ‘Labor Certification Ap-
10 plication Fee Account’. Notwithstanding any other
11 section of this title, there shall be deposited as off-
12 setting receipts into the account all fees collected
13 under section 212(a)(5)(A).

14 “(2) USE OF FEES.—Amounts deposited into
15 the Labor Certification Application Fee Account
16 shall remain available to the Secretary of Labor
17 until expended for carrying out labor certification
18 activities under section 212(a)(5)(A) (including pro-
19 viding premium processing services) and to make in-
20 frastructure improvements in the adjudications and
21 customer-service processes related to such activi-
22 ties.”.

1 **SEC. 302. STREAMLINING PETITIONS FOR ESTABLISHED**
2 **EMPLOYERS.**

3 Section 214(c) of the Immigration and Nationality
4 Act (8 U.S.C. 1184) is amended by adding at the end the
5 following:

6 “(15) The Secretary of Homeland Security shall es-
7 tablish a pre-certification procedure for employers who file
8 multiple petitions described in this subsection or section
9 203(b). Such precertification procedure shall enable an
10 employer to avoid repeatedly submitting documentation
11 that is common to multiple petitions and establish,
12 through a single filing, criteria relating to the employer
13 and the offered employment opportunity.”.

14 **SEC. 303. PREMIUM PROCESSING.**

15 Section 286(u) of the Immigration and Nationality
16 Act (8 U.S.C. 1356(u)) is amended—

17 (1) by striking “is authorized to” and inserting
18 “shall”; and

19 (2) at the end of the first sentence, by striking
20 “applications.” and inserting “applications, includ-
21 ing an administrative appeal of any decision on an
22 employment-based immigrant petition.”.

○