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(Original Signature of Member)

112TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, to eliminate the diversity immigrant program, 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 “STEM Jobs Act of
5 2012”.

1 **SEC. 2. IMMIGRANT VISAS FOR CERTAIN ADVANCED STEM**
2 **GRADUATES.**

3 (a) WORLDWIDE LEVEL OF IMMIGRATION.—Section
4 201(d)(2) of the Immigration and Nationality Act (8
5 U.S.C. 1151(d)(2)) is amended by adding at the end the
6 following:

7 “(D)(i) In addition to the increase provided under
8 subparagraph (C), the number computed under this para-
9 graph for fiscal year 2013 and subsequent fiscal years
10 shall be further increased by the number specified in
11 clause (ii), to be used in accordance with paragraphs (6)
12 and (7) of section 203(b), except that—

13 “(I) immigrant visa numbers made available
14 under this subparagraph but not required for the
15 classes specified in paragraphs (6) and (7) of section
16 203(b) shall not be counted for purposes of sub-
17 section (c)(3)(C); and

18 “(II) for purposes of paragraphs (1) through
19 (5) of section 203(b), the increase under this sub-
20 paragraph shall not be counted for purposes of com-
21 puting any percentage of the worldwide level under
22 this subsection.

23 “(ii) The number specified in this clause is 55,000,
24 reduced for any fiscal year by the number by which the
25 number of visas under section 201(e) would have been re-
26 duced in that year pursuant to section 203(d) of the Nica-

1 ragan Adjustment and Central American Relief Act (8
2 U.S.C. 1151 note) if section 201(e) had not been repealed
3 by section 3 of the STEM Jobs Act of 2012.

4 “(iii) Immigrant visa numbers made available under
5 this subparagraph for fiscal year 2013, but not used for
6 the classes specified in paragraphs (6) and (7) of section
7 203(b) in such year, may be made available in subsequent
8 years as if they were included in the number specified in
9 clause (ii), but only to the extent to which the cumulative
10 number of petitions under section 204(a)(1)(F), and appli-
11 cations for a labor certification under section
12 212(a)(5)(A), filed in fiscal year 2013 with respect to
13 aliens seeking a visa under paragraph (6) or (7) of section
14 203(b) was less than the number specified in clause (ii)
15 for such year. Such immigrant visa numbers may only be
16 made available in fiscal years after fiscal year 2013 in con-
17 nection with a petition under section 204(a)(1)(F), or an
18 application for a labor certification under section
19 212(a)(5)(A), that was filed in fiscal year 2013.

20 “(iv) Immigrant visa numbers made available under
21 this subparagraph for fiscal year 2014, but not used for
22 the classes specified in paragraphs (6) and (7) of section
23 203(b) during such year, may be made available in subse-
24 quent years as if they were included in the number speci-
25 fied in clause (ii), but only to the extent to which the cu-

1 cumulative number of petitions under section 204(a)(1)(F),
2 and applications for a labor certification under section
3 212(a)(5)(A), filed in fiscal year 2014 with respect to
4 aliens seeking a visa under paragraph (6) or (7) of section
5 203(b) was less than the number specified in clause (ii)
6 for such year. Such immigrant visa numbers may only be
7 made available in fiscal years after fiscal year 2014 in con-
8 nection with a petition under section 204(a)(1)(F), or an
9 application for a labor certification under section
10 212(a)(5)(A), that was filed in fiscal year 2014.”.

11 (b) NUMERICAL LIMITATION TO ANY SINGLE FOR-
12 EIGN STATE.—Section 202(a)(5)(A) of such Act (8 U.S.C.
13 1152(a)(5)(A)) is amended by striking “or (5)” and in-
14 serting “(5), (6), or (7)”.

15 (c) PREFERENCE ALLOCATION FOR EMPLOYMENT-
16 BASED IMMIGRANTS.—Section 203(b) of such Act (8
17 U.S.C. 1153(b)) is amended—

18 (1) by redesignating paragraph (6) as para-
19 graph (8); and

20 (2) by inserting after paragraph (5) the fol-
21 lowing:

22 “(6) ALIENS HOLDING DOCTORATE DEGREES
23 FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER
24 EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEER-
25 ING, OR MATHEMATICS.—

1 “(A) IN GENERAL.—Visas shall be made
2 available, in a number not to exceed the number
3 specified in section 201(d)(2)(D)(ii), to quali-
4 fied immigrants who—

5 “(i) hold a doctorate degree in a field
6 of science, technology, engineering, or
7 mathematics from a United States doctoral
8 institution of higher education;

9 “(ii) agree to work for a total of not
10 less than 5 years in the aggregate for the
11 petitioning employer or in the United
12 States in a field of science, technology, en-
13 gineering, or mathematics upon being law-
14 fully admitted for permanent residence;
15 and

16 “(iii) have taken all doctoral courses
17 in a field of science, technology, engineer-
18 ing, or mathematics, including all courses
19 taken by correspondence (including courses
20 offered by telecommunications) or by dis-
21 tance education, while physically present in
22 the United States.

23 “(B) DEFINITIONS.—For purposes of this
24 paragraph, paragraph (7), and sections
25 101(a)(15)(F)(i)(I) and 212(a)(5)(A)(iii)(III):

1 “(i) The term ‘distance education’ has
2 the meaning given such term in section
3 103 of the Higher Education Act of 1965
4 (20 U.S.C. 1003).

5 “(ii) The term ‘field of science, tech-
6 nology, engineering, or mathematics’
7 means a field included in the Department
8 of Education’s Classification of Instruc-
9 tional Programs taxonomy within the sum-
10 mary groups of computer and information
11 sciences and support services, engineering,
12 mathematics and statistics, and physical
13 sciences.

14 “(iii) The term ‘United States doc-
15 toral institution of higher education’ means
16 an institution that—

17 “(I) is described in section
18 101(a) of the Higher Education Act
19 of 1965 (20 U.S.C. 1001(a)) or is a
20 proprietary institution of higher edu-
21 cation (as defined in section 102(b) of
22 such Act (20 U.S.C. 1002(b)));

23 “(II) was classified by the Car-
24 negie Foundation for the Advance-
25 ment of Teaching on January 1,

1 2012, as a doctorate-granting univer-
2 sity with a very high or high level of
3 research activity or classified by the
4 National Science Foundation after the
5 date of enactment of this paragraph,
6 pursuant to an application by the in-
7 stitution, as having equivalent re-
8 search activity to those institutions
9 that had been classified by the Car-
10 negie Foundation as being doctorate-
11 granting universities with a very high
12 or high level of research activity;

13 “(III) has been in existence for
14 at least 10 years;

15 “(IV) does not provide any com-
16 mission, bonus, or other incentive pay-
17 ment based directly or indirectly on
18 success in securing enrollments or fi-
19 nancial aid to any persons or entities
20 engaged in any recruitment or admis-
21 sion activities for nonimmigrant stu-
22 dents or in making decisions regard-
23 ing the award of student financial as-
24 sistance to nonimmigrant students;
25 and

1 “(V) is accredited by an accred-
2 iting body that is itself accredited ei-
3 ther by the Department of Education
4 or by the Council for Higher Edu-
5 cation Accreditation.

6 “(C) LABOR CERTIFICATION REQUIRED.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii), the Secretary of Homeland Security
9 may not approve a petition filed for classi-
10 fication of an alien under subparagraph
11 (A) unless the Secretary of Homeland Se-
12 curity is in receipt of a determination
13 made by the Secretary of Labor pursuant
14 to the provisions of section 212(a)(5)(A),
15 except that the Secretary of Homeland Se-
16 curity may, when the Secretary deems it to
17 be in the national interest, waive this re-
18 quirement.

19 “(ii) REQUIREMENT DEEMED SATIS-
20 FIED.—The requirement of clause (i) shall
21 be deemed satisfied with respect to an em-
22 ployer and an alien in a case in which a
23 certification made under section
24 212(a)(5)(A)(i) has already been obtained
25 with respect to the alien by that employer.

1 “(7) ALIENS HOLDING MASTER’S DEGREES
2 FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER
3 EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEER-
4 ING, OR MATHEMATICS.—

5 “(A) IN GENERAL.—Any visas not required
6 for the class specified in paragraph (6) shall be
7 made available to the class of aliens who—

8 “(i) hold a master’s degree in a field
9 of science, technology, engineering, or
10 mathematics from a United States doctoral
11 institution of higher education that was ei-
12 ther part of a master’s program that re-
13 quired at least 2 years of enrollment or
14 part of a 5-year combined baccalaureate-
15 master’s degree program in such field;

16 “(ii) agree to work for a total of not
17 less than 5 years in the aggregate for the
18 petitioning employer or in the United
19 States in a field of science, technology, en-
20 gineering, or mathematics upon being law-
21 fully admitted for permanent residence;

22 “(iii) have taken all master’s degree
23 courses in a field of science, technology,
24 engineering, or mathematics, including all
25 courses taken by correspondence (including

1 courses offered by telecommunications) or
2 by distance education, while physically
3 present in the United States; and

4 “(iv) hold a baccalaureate degree in a
5 field of science, technology, engineering, or
6 mathematics or in a field included in the
7 Department of Education’s Classification
8 of Instructional Programs taxonomy within
9 the summary group of biological and bio-
10 medical sciences.

11 “(B) LABOR CERTIFICATION REQUIRED.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), the Secretary of Homeland Security
14 may not approve a petition filed for classi-
15 fication of an alien under subparagraph
16 (A) unless the Secretary of Homeland Se-
17 curity is in receipt of a determination
18 made by the Secretary of Labor pursuant
19 to the provisions of section 212(a)(5)(A),
20 except that the Secretary of Homeland Se-
21 curity may, when the Secretary deems it to
22 be in the national interest, waive this re-
23 quirement.

24 “(ii) REQUIREMENT DEEMED SATIS-
25 FIED.—The requirement of clause (i) shall

1 be deemed satisfied with respect to an em-
2 ployer and an alien in a case in which a
3 certification made under section
4 212(a)(5)(A)(i) has already been obtained
5 with respect to the alien by that employer.

6 “(C) DEFINITIONS.—The definitions in
7 paragraph (6)(B) shall apply for purposes of
8 this paragraph.”.

9 (d) PROCEDURE FOR GRANTING IMMIGRANT STA-
10 TUS.—Section 204(a)(1)(F) of such Act (8 U.S.C.
11 1154(a)(1)(F)) is amended—

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

13 (2) by striking “or 203(b)(3)” and inserting
14 “203(b)(3), 203(b)(6), or 203(b)(7)”;

15 (3) by striking “Attorney General” and insert-
16 ing “Secretary of Homeland Security”; and

17 (4) by adding at the end the following:

18 “(ii) The following processing standards shall apply
19 with respect to petitions under clause (i) relating to alien
20 beneficiaries qualifying under paragraph (6) or (7) of sec-
21 tion 203(b):

22 “(I) The Secretary of Homeland Security shall
23 adjudicate such petitions not later than 60 days
24 after the date on which the petition is filed. In the
25 event that additional information or documentation

1 is requested by the Secretary during such 60-day pe-
2 riod, the Secretary shall adjudicate the petition not
3 later than 30 days after the date on which such in-
4 formation or documentation is received.

5 “(II) The petitioner shall be notified in writing
6 within 30 days of the date of filing if the petition
7 does not meet the standards for approval. If the pe-
8 tition does not meet such standards, the notice shall
9 include the reasons therefore and the Secretary shall
10 provide an opportunity for the prompt resubmission
11 of a modified petition.”.

12 (e) LABOR CERTIFICATION AND QUALIFICATION FOR
13 CERTAIN IMMIGRANTS.—Section 212(a)(5) of such Act (8
14 U.S.C. 1182(a)(5)) is amended—

15 (1) in subparagraph (A)—

16 (A) in clause (ii)—

17 (i) in subclause (I), by striking “, or”
18 at the end and inserting a semicolon;

19 (ii) in subclause (II), by striking the
20 period at the end and inserting “; or”; and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(III) holds a doctorate degree in
24 a field of science, technology, engi-
25 neering, or mathematics from a

1 United States doctoral institution of
2 higher education (as defined in section
3 203(b)(6)(B)(iii)).”;

4 (B) by redesignating clauses (ii) through
5 (iv) as clauses (iii) through (v), respectively;

6 (C) by inserting after clause (i) the fol-
7 lowing:

8 “(ii) **JOB ORDER.**—

9 “(I) **IN GENERAL.**—An employer
10 who files an application under clause
11 (i) shall submit a job order for the
12 labor the alien seeks to perform to the
13 State workforce agency in the State in
14 which the alien seeks to perform the
15 labor. The State workforce agency
16 shall post the job order on its official
17 agency website for a minimum of 30
18 days and not later than 3 days after
19 receipt using the employment statis-
20 tics system authorized under section
21 15 of the Wagner-Peyser Act (29
22 U.S.C. 49 et seq.).

23 “(II) **LINKS.**—The Secretary of
24 Labor shall include links to the offi-
25 cial websites of all State workforce

1 agencies on a single webpage of the
2 official website of the Department of
3 Labor.”; and

4 (D) by adding at the end the following:

5 “(vi) PROCESSING STANDARDS FOR
6 ALIEN BENEFICIARIES QUALIFYING UNDER
7 PARAGRAPHS (6) AND (7) OF SECTION
8 203(B).—The following processing stand-
9 ards shall apply with respect to applica-
10 tions under clause (i) relating to alien
11 beneficiaries qualifying under paragraph
12 (6) or (7) of section 203(b):

13 “(I) The Secretary of Labor shall
14 adjudicate such applications not later
15 than 180 days after the date on which
16 the application is filed. In the event
17 that additional information or docu-
18 mentation is requested by the Sec-
19 retary during such 180-day period,
20 the Secretary shall adjudicate the ap-
21 plication not later than 60 days after
22 the date on which such information or
23 documentation is received.

24 “(II) The applicant shall be noti-
25 fied in writing within 60 days of the

1 date of filing if the application does
2 not meet the standards for approval.
3 If the application does not meet such
4 standards, the notice shall include the
5 reasons therefore and the Secretary
6 shall provide an opportunity for the
7 prompt resubmission of a modified ap-
8 plication.”; and

9 (2) in subparagraph (D), by striking “(2) or
10 (3)” and inserting “(2), (3), (6), or (7)”.

11 (f) GAO STUDY.—Not later than June 30, 2017, the
12 Comptroller General of the United States shall provide to
13 the Congress the results of a study on the use by the Na-
14 tional Science Foundation of the classification authority
15 provided under section 203(b)(6)(B)(iii)(II) of the Immi-
16 gration and Nationality Act (8 U.S.C.
17 1153(b)(6)(B)(iii)(II)), as added by this section.

18 (g) PUBLIC INFORMATION.—The Secretary of Home-
19 land Security shall make available to the public on the
20 official website of the Department of Homeland Security,
21 and shall update not less than monthly, the following in-
22 formation (which shall be organized according to month
23 and fiscal year) with respect to aliens granted status
24 under paragraph (6) or (7) of section 203(b) of the Immi-

1 gration and Nationality Act (8 U.S.C. 1153(b)), as added
2 by this section:

3 (1) The name, city, and State of each employer
4 who petitioned pursuant to either of such para-
5 graphs on behalf of one or more aliens who were
6 granted status in the month and fiscal year to date.

7 (2) The number of aliens granted status under
8 either of such paragraphs in the month and fiscal
9 year to date based upon a petition filed by such em-
10 ployer.

11 (3) The occupations for which such alien or
12 aliens were sought by such employer and the job ti-
13 tles listed by such employer on the petition.

14 (h) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on October 1, 2012, and shall
16 apply with respect to fiscal years beginning on or after
17 such date.

18 **SEC. 3. ELIMINATION OF DIVERSITY IMMIGRANT PRO-**
19 **GRAM.**

20 (a) WORLDWIDE LEVEL OF DIVERSITY IMMI-
21 GRANTS.—Section 201 of the Immigration and Nation-
22 ality Act (8 U.S.C. 1151) is amended—

23 (1) in subsection (a)—

24 (A) by inserting “and” at the end of para-
25 graph (1);

1 (B) by striking “; and” at the end of para-
2 graph (2) and inserting a period; and

3 (C) by striking paragraph (3); and
4 (2) by striking subsection (e).

5 (b) ALLOCATION OF DIVERSITY IMMIGRANT VISAS.—
6 Section 203 of such Act (8 U.S.C. 1153) is amended—

7 (1) by striking subsection (c);

8 (2) in subsection (d), by striking “(a), (b), or
9 (c),” and inserting “(a) or (b),”;

10 (3) in subsection (e), by striking paragraph (2)
11 and redesignating paragraph (3) as paragraph (2);

12 (4) in subsection (f), by striking “(a), (b), or
13 (c)” and inserting “(a) or (b)”; and

14 (5) in subsection (g), by striking “(a), (b), and
15 (c)” and inserting “(a) and (b)”.

16 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
17 TUS.—Section 204 of such Act (8 U.S.C. 1154) is amend-
18 ed—

19 (1) by striking subsection (a)(1)(I); and

20 (2) in subsection (e), by striking “(a), (b), or
21 (c)” and inserting “(a) or (b)”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on October 1, 2012, and shall
24 apply with respect to fiscal years beginning on or after
25 such date.

1 **SEC. 4. PERMANENT PRIORITY DATES.**

2 (a) IN GENERAL.—Section 203 of the Immigration
3 and Nationality Act (8 U.S.C. 1153) is amended by add-
4 ing at the end the following:

5 “(i) PERMANENT PRIORITY DATES.—

6 “(1) IN GENERAL.—Subject to subsection
7 (h)(3) and paragraph (2), the priority date for any
8 employment-based petition shall be the date of filing
9 of the petition with the Secretary of Homeland Secu-
10 rity (or the Secretary of State, if applicable), unless
11 the filing of the petition was preceded by the filing
12 of a labor certification with the Secretary of Labor,
13 in which case that date shall constitute the priority
14 date.

15 “(2) SUBSEQUENT EMPLOYMENT-BASED PETI-
16 TIONS.—Subject to subsection (h)(3), an alien who
17 is the beneficiary of any employment-based petition
18 that was approvable when filed (including self-peti-
19 tioners) shall retain the priority date assigned with
20 respect to that petition in the consideration of any
21 subsequently filed employment-based petition (in-
22 cluding self-petitions).”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall take effect on the date of the enact-
25 ment of this Act and shall apply to aliens who are a bene-

1 ficiary of a classification petition pending on or after such
2 date.

3 **SEC. 5. STUDENT VISA REFORM.**

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

7 “(F) an alien—

8 “(i) who—

9 “(I) is a bona fide student qualified to
10 pursue a full course of study in a field of
11 science, technology, engineering, or mathe-
12 matics (as defined in section
13 203(b)(6)(B)(ii)) leading to a bachelors or
14 graduate degree and who seeks to enter
15 the United States for the purpose of pur-
16 suing such a course of study consistent
17 with section 214(m) at an institution of
18 higher education (as described in section
19 101(a) of the Higher Education Act of
20 1965 (20 U.S.C. 1001(a))) or a propri-
21 etary institution of higher education (as
22 defined in section 102(b) of such Act (20
23 U.S.C. 1002(b))) in the United States,
24 particularly designated by the alien and
25 approved by the Secretary of Homeland

1 Security, after consultation with the Sec-
2 retary of Education, which institution shall
3 have agreed to report to the Secretary of
4 Homeland Security the termination of at-
5 tendance of each nonimmigrant student,
6 and if any such institution fails to make
7 reports promptly the approval shall be
8 withdrawn; or

9 “(II) is engaged in temporary employ-
10 ment for optional practical training related
11 to such alien’s area of study following com-
12 pletion of the course of study described in
13 subclause (I);

14 “(ii) who has a residence in a foreign coun-
15 try which the alien has no intention of aban-
16 doning, who is a bona fide student qualified to
17 pursue a full course of study, and who seeks to
18 enter the United States temporarily and solely
19 for the purpose of pursuing such a course of
20 study consistent with section 214(m) at an es-
21 tablished college, university, seminary, conserv-
22 atory, academic high school, elementary school,
23 or other academic institution or in a language
24 training program in the United States, particu-
25 larly designated by the alien and approved by

1 the Secretary of Homeland Security, after con-
2 sultation with the Secretary of Education,
3 which institution of learning or place of study
4 shall have agreed to report to the Secretary of
5 Homeland Security the termination of attend-
6 ance of each nonimmigrant student, and if any
7 such institution of learning or place of study
8 fails to make reports promptly the approval
9 shall be withdrawn;

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

13 “(iv) who is a national of Canada or Mex-
14 ico, who maintains actual residence and place of
15 abode in the country of nationality, who is de-
16 scribed in clause (i) or (ii) except that the
17 alien’s qualifications for and actual course of
18 study may be full or part-time, and who com-
19 mutes to the United States institution or place
20 of study from Canada or Mexico.”.

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

24 (c) CONFORMING AMENDMENT.—Section 214(m)(1)
25 of the Immigration and Nationality Act (8 U.S.C.

1 1184(m)(1)) is amended, in the matter preceding subpara-
2 graph (A), by striking “(i) or (iii)” and inserting “(i), (ii),
3 or (iv)”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the date of the enactment
6 of this Act and shall apply to nonimmigrants who possess
7 or are granted status under section 101(a)(15)(F) of the
8 Immigration and Nationality Act (8 U.S.C.
9 1101(a)(15)(F)) on or after such date.