

**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 amount of the fee imposed under subpara-  
23           graph (A) shall be \$495.

24           “(C) The fee imposed under subparagraph (A) shall  
25           only apply to principal aliens and not to the spouses or



1 children who are accompanying or following to join such  
2 principal aliens.

3 “(D) Fees collected under this paragraph shall be de-  
4 posited in the Treasury in accordance with section  
5 286(w).”.

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

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

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

19 “(2) USE OF FEES.—Amounts deposited into  
20 the Fee to Ensure Effective Enforcement of the H-  
21 1B Program Account shall remain available to the  
22 Secretary of Labor until expended for enforcement  
23 programs and activities described in section  
24 212(n)(2)(F)(ii).”.

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

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

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

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

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

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

13 “(I) during the 1-year period beginning on  
14 the date of the enactment of the Protect and  
15 Grow American Jobs Act, the lesser of \$90,000  
16 and the mean wage level for the occupational  
17 classification in the area of employment; and

18 “(II) after such 1-year period, the lesser  
19 of—

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

22 “(bb) the greater of \$90,000 (or any  
23 applicable adjusted amount under clause  
24 (iii)) and the mean wage level for the occu-  
25 pational classification in the area of em-  
26 ployment;”;

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

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

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

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

17           (a) IN GENERAL.—The Secretary of Labor and the  
18           Secretary of Homeland Security annually shall publish a  
19           joint report on the use of the H-1B program by employers  
20           that are H-1B-dependent employers. The report shall in-  
21           clude information on the following:

22                   (1) Each H-1B-dependent-employer that filed  
23                   an application under section 212(n)(1) of such Act  
24                   (8 U.S.C. 1182(n)(1)).

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

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

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

10          (5) Each investigation conducted pursuant to  
11          section 212(n)(2)(F)(ii) of such Act, as added by  
12          section 5(a)(3) of this Act, and the outcomes of such  
13          investigations.

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

18          **SEC. 9. EFFECTIVE DATE.**

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

1 (b) EXCEPTION.—The fee imposed under section  
2 214(c)(15) of the Immigration and Nationality Act (8  
3 U.S.C. 1184(c)(15)), as added by section 5(b) of this Act,  
4 shall apply to petitions filed under section 214(c)(1) of  
5 the Immigration and Nationality Act (8 U.S.C.  
6 1184(c)(1)) on or after the date that is 90 days after the  
7 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 requirements for employment of H-1B nonimmigrants by H-1B-dependent employers to ensure the protection of the workforce in the United States.”.

