U.S. CHAMBER OF COMMERCE

Brief Summary of Certain High Skilled Green Card and Temporary Worker Program Reforms in the 113th Congress *
H.R. 2131 (House High Skilled bill) and S.744 High Skilled Provisions found in Title II (Green Cards) and Title IV (H-1B, L-1, F-1)

Provision	**Current Law**	**S. 744 (as passed by Senate 6/27/13)**	**SKILLS Visa Act H.R. 2131 (as passed by House Judiciary Committee 6/27/13)**
Green Card Backlog (Employment)	140,000 annual limit, which includes spouses and family members. Actual number of workers is approximately 65,000. Backlog is years for most employment-based green card applicants with employer sponsor who has tested local labor market; for example: Current EB3 backlogs are India 10½ years Rest of World 4½ years Current EB2 backlogs are China 4 years India 5½ years	Retains the 140,000 base, but reduces (or eliminates) the green card backlog through a number of exemptions, including: • Exempting existing EB-1 immigrants from annual cap; • Exempting all PhDs from annual cap (not just STEM); • Exempting all advanced degree STEM holders from U.S. universities; • Recapturing unused green cards from prior years (approx. 210k); • Exempting all family members of foreign workers; and • Eliminating the per-country limits. **Summary:** This will reduce or, in many cases, eliminate the green card backlog for employment-based green card applicants. STEM graduates from U.S. universities will have a fast track to a green card.	Retains the 140,000 base. Creates a new visa category and allocates up to 55,000 additional green cards for: • Graduates of U.S. universities with PhD in STEM field; • Graduates of U.S. universities with master's degree in STEM field. Allocates an additional 30,000 green cards evenly divided between (a) EB-2 (professionals with advanced degrees and persons with exceptional ability) and (b) EB-3 (professionals with a bachelor's degree and others). Added at mark up: a set-a-side of 4,000 green cards for nurses. Eliminates the per-country limits for employment-based immigration. **Summary:** The legislation results in an increase of 85,000 employment based green cards per year. The legislation does not recapture any unused green cards from prior years. It is expected that green card backlogs will remain, particularly for EB-3 immigrants.

* Thanks to the Fragomen and BAL law firms who prepared an initial draft of a similar table.

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F-1 Student Dual Intent	Foreign students may not begin the green card process while in student status and must document intent to return home when beginning studies and whenever requesting updated student visa stamp.	Permits "dual intent" for foreign students so that an employer can start the green card process while the student is still in school or working pursuant to Optional Practical Training. This may allow certain graduates of U.S. universities to avoid the H-1B visa category and move straight to a green card.	Permits "dual intent" for foreign students who are enrolled in course of study in a STEM field.
H-1B Cap Increase	Current H-1B base cap is 65,000 per year. Up to 20,000 U.S. Master's degree or higher (regardless of field) are exempt from the cap. Cap was hit in the first five days of FY 2014, and has been hit before the end of the fiscal year since FY1997 except FY2001-2003, when the cap was 195,000. H-1B workers at institutions of higher education or related or affiliated nonprofit entities,	Raises the H-1B cap by setting a new base of at least 115,000, which could adjust up to 180,000. If the cap is reached before the end of the first quarter of the fiscal year, additional visas (up to 20,000 depending on how early the cap is met) will be made available immediately, and the annual ceiling would be higher in the subsequent fiscal year. No increases to H-1B numerical limits can occur if national occupational unemployment in the "management, professional and related occupations" averaged > 4.5% in prior 12 months. In last 5 years, H-1B cap would not have risen in FY11, FY12, but would go up in FY10, FY13, FY14. Current Master's degree exemption would be increased from 20,000 to 25,000 but limited to	Raises the H-1B annual limit to 155,000. The annual cap does not change from year to year. Increases the exemption for graduates of U.S. universities with graduate degrees (Masters or above) to 40,000 for a total of 195,000 annually, but limits eligibility to STEM graduates.

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	nonprofit research organizations or governmental research organizations are cap exempt.	STEM grads.	
H-1B Portability	No grace period under current law after ending H-1B employment.	Creates a 60-day grace period for H-1B workers who lose their job to obtain H-1B status through another employer.	No provision in bill.
H-4 Spousal Employment	Spouses of H-1B workers are not allowed to work. Only spouses of J-1, L-1, E-1 and E-2 workers are allowed to obtain an Employment Authorization Document.	Authorizes spouses of H-1B visa holders (H-4s) to work, but allows the Secretary of State to deny work authorization to H-4 spouses if their home county does not offer reciprocal treatment to US citizens.	Authorizes spouses of H-1B visa holders (H-4s) to work.
Visa Revalidation by State Dept	Foreign temporary workers must renew their visa outside of the U.S. Ability to revalidate within the U.S. was terminated in 2004, whereby the State Dept could reissue certain work-authorized visa stamps in passports.	Requires the State Dept to allow certain foreign workers to revalidate their work visas in the U.S. This will reduce costs and business delays that often arise when employees are required to renew their visas overseas at U.S. consulates.	No provision in bill.
Green Card Portability	A worker may change jobs or employers if the adjustment of	Any employee who has an approved labor certification or immigrant petition may change jobs	Any employee who is the beneficiary of a labor certification, or an employment-based immigrant visa

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	status application (last stage) has been pending for at least 6 months.	or employers without losing their place in line for a green card. Any employee with an approved immigrant visa petition may change jobs or employers without losing that eligibility, provided that the new job is in the same or a similar occupational classification.	petition that was approvable when filed, shall retain his or her place in line (priority date).
Early Adjustment Filing	A worker may not file an adjustment of status application until the priority date is current.	A worker may file an adjustment of status application irrespective of whether a green card number is available (upon payment of $500 fee). This ensures that if there is a green card backlog, an employee may file an adjustment of status application while waiting for the green card.	Provision added in mark up to allow worker to file adjustment of status application irrespective of whether a green card number is available ($500 fee if visa number unavailable). Different language than Senate bill but is expected to cover most employment-authorized principals, and their dependents, filing for adjustment based on employment-based visa petition.
WAGES, ADMINISTRATIVE BURDENS AND FEES			
Wage Levels for H-1B Workers	4-tier wage levels based on job responsibilities and requirements for the position. The government publishes a wage survey that includes four tiers, ranging from entry-level	Collapses the current 4-tier wage level system into a new 3-tier system. **New Wage System:** Level 1 = mean of bottom 2/3 wages (but no less	Collapses the current 4-tier wage level system into a new 3-tier system. Also applies to TNs, F-1 students working on OPT (Optional Practical Training), and most L-1Bs (any L-1B in the US an aggregate period of 6 months over 24 months).

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	up to fully competent. Level 1 wage is often at about the 15th percentile of surveyed wages.	than 80 percent of Level 2) Level 2 = mean of all wages Level 3 = mean of top 2/3 of wages Dependent employers must pay the new Level 2 wage (mean wage for all workers in the classification), irrespective of the job responsibilities or requirements for the position.	**New Wage System:** Level 1 = mean of bottom 2/3 wages (but no less than 80 percent of Level 2) Level 2 = mean of all wages Level 3 = mean of top 2/3 of wages In mark up, the restrictions in the introduced bill were stricken that had limited level 1 wages solely to those hires who had earned a US degree and had graduated less than 12 months before hire. In mark up, explicit access to private surveys was added, as an alternative to the 3 prevailing wage levels. In mark up, an exception to the prevailing wage requirement was passed that allows an employer to pay according to its internal wage scale in those circumstances where 80% of workers in the occupation in which the foreign H-1B, TN, F-1 OPT or L-1B worker is hired will be employed are American in the area of employment. In such a circumstance, the employer can pay the foreign worker in accordance with the "actual wages paid by the employer to all

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			other individuals with similar experience and qualifications for the specific employment in question." However, for any employer with more than 25 employees hiring an H-1B, TN or F-1 OPT hire, the "80% exception" explicitly requires that wages paid be no lower than the mean of the lowest one-half of wages surveyed (which is slightly higher than current level 1 wages but lower than current level 2 (new level 1) wages).
Wage Levels for L-1 Transfers	Nothing in current law.	No provision in bill.	Requires employer to pay L-1B workers the higher of the actual wage level or either a private wage survey wage level or the new three level prevailing wage system: Level 1 = mean of bottom 2/3 wages (but no less than 80 percent of Level 2) Level 2 = mean of all wages Level 3 = mean of top 2/3 of wages Obligations are triggered if employee will be in the U.S. for a cumulative period in excess of 6 months over a 3 year period. Employer may take into account currency in home

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			country, employer-provided housing or allowance, transportation allowance, or other benefits as an incident of the assignment. Exception added in mark up if 80% of workers in the occupation in which L-1B will be employed are American in the area of employment, in which case the employer can pay according to its internal wage scale ("actual wages paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question").
Base Fees for H-1B and L-1	H-1B if > 25 employees $2,325 H-1B if < 25 employees $1,575 L-1 $825 (incl $500 fraud fee)	H-1B if > 25 employees $4,825 H-1B if < 25 employees $4,075 L-1 $3,325 (incl $500 fraud fee)	H-1B if > 25 employees $2,325 H-1B if < 25 employees $1,575 L-1 $825 (incl $500 fraud fee) As introduced there were higher fees for H-1B, for STEM funding to States, but this was stricken at mark up so that HJC could complete bill action without a referral to Ways and Means.
Fees to the States for STEM Education	Nothing in current law.	An employer would pay a $1,000 fee with each labor certification, which shall go to the States for STEM education and training.	STEM fees removed in mark up. There seemed to be bipartisan support for getting STEM funding to the States for STEM education and training, which might be addressed on the floor. At introduction, bill had $1,000 new fee with each immigrant petition and $1,000 new fee for each H-1B petition, as provided for

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			in the Immigration Innovation Act, with the new fees to go to the States for STEM education and training.
Degree Evaluation	Nothing in current law.	No provision in bill.	Secretary of State shall verify the authenticity of any foreign degree.
Bona Fide Business	Nothing in current law.	No provision in bill.	Requires H-1B employer to be licensed with any applicable State or local business licensing requirements. Requires H-1 employer to have gross assets of at least $50,000.
Subpoena Authority	Nothing in current law.	No provision in bill.	Secretary of Labor is authorized to issue subpoenas as may be necessary to ensure employer compliance.
B-1 in Lieu of H1B	Authorized by Department of State policy guidance (Foreign Affairs Manual).	No provision in bill.	Prohibits issuance of a B-1 visa if applicant will provide services in an H-1B specialty occupation.
Filing Fees for High Volume Users	If company has more than 50 employees in the US and more than 50 percent H-1B or L-1, employer is required to pay an additional $2,250 for certain L-1 petitions and $2000 for certain H-1B petitions.	Eliminates the current level of "50/50" fees (imposed by PL 111-230, passed Aug 2010) and replaces with the following: • For FY2015 through FY2024, company must pay additional $5,000 per L-1 and H-1B application if more than 30 percent and less than 50	No provision in bill.

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		percent of company's employees are H-1B or L-1. • For FY2015 through FY2017, company must pay additional $10,000 per L-1 and H-1B application if more than 50 percent and less than 75 percent of company's employees are H-1B or L-1.	
50/50 Numerical Limitations	There are no numerical limits based on visa usage.	If company employs more than 50 workers: • In FY2015, no more than 75 percent of the U.S. workforce may be in H-1B or L-1 status. • In FY2016, no more than 65 percent of the U.S. workforce may be in H-1B or L-1 status. • In FY2017, no more than 50 percent of the U.S. workforce may be in H-1B or L-1 status. • FY2017 and after, 50 percent limit on H-1B and L-1.	No provision in bill.
Non-Displacement Attestation	Nothing in current law for non-dependent companies. Dependent employer (more than 15 percent H-1B) must attest that it did not displace and will not displace an essentially equivalent U.S.	Every employer must attest that it is not: • displacing a public school teacher; • displacing a U.S. worker at a federal, state, or local government entity where the government entity directs and controls the work of the H-1B worker (excluding universities); • filing the H-1B petition with the intent or purpose of displacing a specific U.S. worker.	No provision in bill.

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	worker within the period 90 days before and after the filing of the petition. The employer does not have to attest if the H-1B worker will be paid at least $60,000 and/or has a master's or higher degree.	H-1B skilled worker dependent (more than 15 percent of skilled positions are filled by H-1B workers) must attest that that the employer did not displace and will not displace a U.S. worker during period 90 days before or after the petition is filed. An employer that is dependent (with more than 15 percent H-1B workers in total) must attest that the employer did not and will not displace a U.S. worker for 180 days before or after the petition is filed.	
U.S. Worker Recruiting Attestation	Nothing in current law for non-dependent companies. Dependent employer (more than 15 percent H-1B) must attest that it has taken good faith steps to recruit and that it offered the job to any U.S. worker who applied and was equally or better qualified. The employer does not have to attest if the H-1B worker will be paid at least $60,000 and/or has	All H-1B employers must document recruitment in the occupation using industry-wide standards, and all H-1B employers must advertise on the DOL Internet site for 30 days. Requires an employer that is an H-1B skilled-worker dependent (more than 15 percent of skilled positions are filled by H-1B workers) to attest that it offered the job to any U.S. worker who applied and who was equally or better qualified for the job. Recruitment attestation applies at the time of initial hire and not for extensions of stay with the same	No provision in bill.

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	a master's or higher degree.	employer.	
H-1B Third Party Placement (outplacement)	Nothing in current law.	Every employer must pay a $500 fee for each petition filed on behalf of an H-1B worker that will be placed at a third-party worksite. An H-1B dependent employer (more than 15 percent of the workforce composed of H-1B workers) may not place an H-1B worker at a third-party worksite.	No provision in bill.
L-1 Third Party Placement (outplacement)	No restriction on placing an L-1 worker at a third-party site if the employer will control and supervise the L-1 worker and the placement does not constitute labor for hire.	Every employer must pay a $500 fee for each petition filed on behalf of an L-1 employee that will be placed at a third-party worksite. An L-1 dependent employer (more than 15 percent L-1) may not place an L-1 worker at a third party worksite.	No provision in bill.

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Disclosure of H-1B and L-1 Information	Annual report regarding country or origin, occupations, educational levels, and compensation paid to H-1B workers during prior fiscal year.	The Bureau of Immigration and Labor Market Research (in USCIS) will publish a report of both H and L information, including but not limited to: • A list of H-1B employers, the occupational classifications for the H-1B positions, and the number of H-1B workers the employer sponsors for a green card; • A list of all H-1B employers that are dependent, skilled-worker dependent, or subject to the 30 percent/50 percent fee; • Gender breakdown by occupation and country of H-1B workers; • A list of employers with more than 15 percent of workers in L-1 status; and • Number of H-1B workers categorized by highest level of education. The Bureau will survey employers on good faith recruitment and report on best practices and recommendations for recruiting steps that employers can take to maximize hiring American workers.	No provision in bill.
State Workforce Agency	Nothing in current law for H-1Bs. For green card sponsorship	For all H-1B positions (for which 30 day posting required on new DOL website), the Secretary of	For green card sponsorship where Labor Certification required, the Secretary of Labor shall facilitate the

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Advertising	where Labor Certification is required, posting required on individual website of the state workforce agency of state where job site located.	Labor shall facilitate the posting of the job on the Internet website of the state workforce agency where the position will be located.	existing required posting at the state workforce agency on a single searchable DOL website.
DEPENDENCY CALCUATIONS			
Dependent Employer Calculation	For purposes of identifying when H-1B dependent, exemptions for any H-1B with Masters or paid greater than $60,000 (which includes a high percentage of H-1B workers).	When calculating H-1B or L-1 dependency, or whether an employer is subject to additional H-1B or L-1 fees, universities are excluded and foreign workers who are in the green card process ("intending immigrants") are excluded from the calculation. However, an employer must file immigrant petitions for at least 90 percent of the workers who are the beneficiaries of approved DOL labor certifications. No exemptions based on salary or education level.	No change to definition of dependent employer.
H-1B Skilled Worker Dependent	Concept of "H-1B Skilled Worker Dependent" is not in current law.	More than 15 percent of total U.S. workers who are in Job Zone 4 or 5 (O*NET) are in H-1B status. Employer may exclude intending immigrants (see above) and universities are excluded altogether. Job Zone 4 (considerable preparation needed): most	No change to definition of dependent employer.

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		occupations require a bachelor's degree, with some exceptions. Position usually requires several years of experience. Examples include: accountants, sales managers, database administrators, teachers, chemists, and environmental engineers. Job Zone 5 (extensive preparation needed): most occupations require graduate degree or college degree and over 5 years experience . Examples include: librarians, lawyers, aerospace engineers, school psychologists, treasurers, and controllers.	
U.S. Workforce Calculation	Currently only applies to H-1B dependency.	Current law on H-1B dependency is applied to all related calculations: When calculating the total number of workers in the United States, all employees in any group treated as a single employer under section 414 of the Internal Revenue Code shall be counted.	No change to definition of dependent employer.