

111TH CONGRESS  
1ST SESSION

# H. R. 4259

To facilitate foreign investment by permanently reauthorizing the EB-5 regional center program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 10, 2009

Mr. POLIS of Colorado introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To facilitate foreign investment by permanently reauthorizing the EB-5 regional center 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 “Employment Benefit  
5 Act”.

6 **SEC. 2. PERMANENT REAUTHORIZATION OF EB-5 RE-**  
7 **REGIONAL CENTER PROGRAM; APPLICATION**  
8 **FEE.**

9 (a) IN GENERAL.—Section 610 of the Departments  
10 of Commerce, Justice, and State, the Judiciary, and Re-

1 lated Agencies Appropriations Act, 1993 (8 U.S.C. 1153  
2 note) is amended—

3 (1) by striking “pilot” each place it appears;

4 (2) in subsection (b), by striking “for 15  
5 years”; and

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

7 “(e) In addition to any other fees authorized by law,  
8 the Secretary of Homeland Security shall impose a fee of  
9 \$2,500 to apply for designation as a regional center under  
10 this section. Fees collected under this subsection shall be  
11 deposited in the Treasury in accordance with section  
12 286(w) of the Immigration and Nationality Act (8 U.S.C.  
13 1356(w)).”.

14 (b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—  
15 Section 286 of the Immigration and Nationality Act (8  
16 U.S.C. 1356) is amended by adding at the end the fol-  
17 lowing:

18 “(w) IMMIGRANT ENTREPRENEUR REGIONAL CEN-  
19 TER ACCOUNT.—

20 “(1) IN GENERAL.—There is established in the  
21 general fund of the Treasury a separate account,  
22 which shall be known as the ‘Immigrant Entre-  
23 preneur Regional Center Account’. Notwithstanding  
24 any other provision of law, there shall be deposited  
25 as offsetting receipts into the account all fees col-

1 lected under section 610(b) of the Departments of  
2 Commerce, Justice, and State, the Judiciary, and  
3 Related Agencies Appropriations Act, 1993 (8  
4 U.S.C. 1153 note) and any fees collected in connec-  
5 tion with forms I-526 or I-829.

6 “(2) USE OF FEES.—Fees collected under this  
7 section may only be used by the Secretary of Home-  
8 land Security to administer and operate the employ-  
9 ment creation program described in section  
10 203(b)(5).”.

11 (c) RULEMAKING.—Not later than 120 days after the  
12 date of the enactment of this Act, the Secretary of Home-  
13 land Security shall prescribe regulations to implement the  
14 amendments made by this section.

15 (d) EFFECTIVE DATE.—The amendments made by  
16 subsections (a)(3) and (b) shall take effect on the effective  
17 date of the regulations prescribed pursuant to subsection  
18 (c). The remaining amendments made by this section shall  
19 take effect on the date of the enactment of this Act.

20 **SEC. 3. PREMIUM PROCESSING FEE FOR EB-5 IMMIGRANT**  
21 **INVESTORS.**

22 Section 286(u) of the Immigration and Nationality  
23 Act (8 U.S.C. 1356(u)) is amended by adding at the end  
24 the following: “In the case of a petition filed under section  
25 204(a)(1)(H) for classification under section 203(b)(5), if

1 the petitioner desires a guarantee of a decision on the peti-  
 2 tion in 60 days or less, the premium fee under this sub-  
 3 section shall be set at \$2,500 and shall be deposited as  
 4 offsetting receipts in the Immigrant Entrepreneur Re-  
 5 gional Center Account established under subsection (w).”.

6 **SEC. 4. CONCURRENT FILING OF EB-5 PETITIONS AND AP-**  
 7 **PLICATIONS FOR ADJUSTMENT OF STATUS.**

8 Section 245 of the Immigration and Nationality Act  
 9 (8 U.S.C. 1255) is amended by adding at the end the fol-  
 10 lowing:

11 “(n) If, at the time a petition is filed for classification  
 12 through a regional center under section 203(b)(5), ap-  
 13 proval of the petition would make a visa immediately avail-  
 14 able to the alien beneficiary, the alien beneficiary’s adjust-  
 15 ment application under this section shall be considered to  
 16 be properly filed whether the application is submitted con-  
 17 currently with, or subsequent to, the visa petition.”.

18 **SEC. 5. IMPROVED SET-ASIDE FOR TARGETED EMPLOY-**  
 19 **MENT AREAS.**

20 Section 203(b)(5)(B) of the Immigration and Nation-  
 21 ality Act (8 U.S.C. 1153(b)(5)(B)) is amended as follows:

22 (1) TARGETED EMPLOYMENT AREA DEFINED.—

23 Clause (ii) is amended to read as follows:

24 “(ii) TARGETED EMPLOYMENT AREA  
 25 DEFINED.—In this paragraph, the term

1 ‘targeted employment area’ means, at the  
2 time a petition for classification under this  
3 paragraph is filed, any of the following:

4 “(I) A rural area.

5 “(II) An area that has experi-  
6 enced high unemployment (of at least  
7 150 percent of the national average  
8 rate).

9 “(III) A county that has had a  
10 20 percent or more decrease in popu-  
11 lation since 1970.

12 “(IV) An area that is within the  
13 boundaries established for purposes of  
14 a State or Federal economic develop-  
15 ment incentive program, including  
16 areas defined as Enterprise Zones,  
17 Renewal Communities and Empower-  
18 ment Zones.

19 “(V) An area designated by a  
20 State agency to which the Governor  
21 has delegated the authority to des-  
22 ignate targeted employment areas  
23 within the State.”.

1           (2) RURAL AREA DEFINED.—Clause (iii) is  
2           amended by striking “other than an area within a  
3           metropolitan statistical area or”.

4           (3) EFFECT OF PRIOR DETERMINATION.—Such  
5           section is amended by adding at the end the fol-  
6           lowing:

7                           “(iv) EFFECT OF PRIOR DETERMINA-  
8                           TION.—In a case in which a geographic  
9                           area is determined under clause (ii) to be  
10                          a targeted employment area, such deter-  
11                          mination shall remain in effect during the  
12                          2-year period beginning on the date of the  
13                          determination for purposes of any alien  
14                          seeking a visa reserved under this subpara-  
15                          graph.”.

16 **SEC. 6. SET-ASIDE OF VISAS FOR REGIONAL CENTER PRO-**  
17 **GRAM.**

18           Section 610(b) of the Departments of Commerce,  
19           Justice, and State, the Judiciary, and Related Agencies  
20           Appropriations Act, 1993 (8 U.S.C. 1153 note) is amend-  
21           ed by striking “3,000” and inserting “10,000”.

22 **SEC. 7. EXTENSION.**

23           Subparagraph (A) of section 216A(d)(2) of the Immi-  
24           gration and Nationality Act (8 U.S.C. 1186b(d)(2)(A)) is  
25           amended by adding the following at the end thereof: “A

1 date specified by the applicant (but not later than the  
2 fourth anniversary) shall be substituted for the second an-  
3 niversary in applying the preceding sentence if the appli-  
4 cant demonstrates that he has attempted to follow his  
5 business model in good faith, provides an explanation for  
6 the delay in filing the petition that is based on cir-  
7 cumstances outside of his control, and demonstrates that  
8 such circumstances will be able to be resolved within the  
9 specified period.”.

10 **SEC. 8. STUDY.**

11 (a) IN GENERAL.—The Secretary of the Department  
12 of Homeland Security, in appropriate consultation with  
13 the Secretary of Commerce and other interested parties,  
14 shall conduct a study concerning the following:

15 (1) Current job creation counting methodology  
16 and initial projections under section 203(b)(5) of the  
17 Immigration and Nationality Act (8 U.S.C.  
18 1153(b)(5)).

19 (2) How best to promote the employment cre-  
20 ation program described in such section overseas to  
21 potential immigrant investors.

22 (b) REPORT.—The Secretary of Homeland Security  
23 shall submit a report to the Congress not later than 1  
24 year after the date of the enactment of this Act containing  
25 the results of the study conducted under subsection (a).

1 **SEC. 9. FULL-TIME EQUIVALENTS.**

2 (a) IN GENERAL.—Section 203(b)(5)(A)(ii) of the  
3 Immigration and Nationality Act (8 U.S.C.  
4 1153(b)(5)(A)(ii)) is amended by inserting “(or full-time  
5 equivalent)” after “full-time”.

6 (b) DEFINITION.—Section 203(b)(5)(D) of such Act  
7 (8 U.S.C. 1153(b)(5)(D)) is amended to read as follows:

8 “(D) EMPLOYMENT-RELATED DEFINI-  
9 TIONS.—

10 “(i) FULL-TIME EMPLOYMENT DE-  
11 FINED.—In this paragraph, the term ‘full-  
12 time employment’ means employment in a  
13 position that requires at least 35 hours of  
14 service per week at any time, regardless of  
15 who fills the position.

16 “(ii) FULL-TIME EQUIVALENT EM-  
17 PLOYMENT DEFINED.—In this paragraph,  
18 the term ‘full-time equivalent employment’  
19 means employment representing the num-  
20 ber of full-time employees that could have  
21 been employed if the reported number of  
22 hours worked by part-time employees had  
23 been worked by full-time employees. This  
24 shall be calculated by dividing the part-  
25 time hours paid by the standard number of  
26 hours for full-time employees.”

1 **SEC. 10. ELIGIBILITY FOR ADJUSTMENT OF STATUS.**

2 Section 245(k) of the Immigration and Nationality  
3 Act (8 U.S.C. 1255(k)) is amended, in the matter pre-  
4 ceding paragraph (1), by striking “(1), (2), or (3)” and  
5 inserting “(1), (2), (3), or (5)”.

6 **SEC. 11. EXPANSION OF EB-5 ELIGIBILITY TO INCLUDE**  
7 **QUALIFIED IMMIGRANTS WHO COMPLETE IN-**  
8 **VESTMENT AGREEMENTS.**

9 (a) **CHANGES TO INVESTMENT CRITERIA.**—Section  
10 203(b)(5)(A) of the Immigration and Nationality Act (8  
11 U.S.C. 1153(b)(5)(A)) is amended—

12 (1) in the matter preceding clause (i), by strik-  
13 ing “partnership)—” and inserting “partnership) as  
14 follows:”

15 (2) in clause (i)—

16 (A) by striking “(i) in which” and insert-  
17 ing the following:

18 “(i) A new commercial enterprise—

19 “(I) in which”;

20 (B) by striking “, and” at the end and in-  
21 serting a semicolon; and

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

23 “(II) with respect to which such  
24 alien has completed an investment  
25 agreement with a qualified venture  
26 capital operating company for an in-

1 vestment in the enterprise of an  
2 amount not less than the amount  
3 specified in subparagraph (C); or

4 “(III) with respect to which such  
5 alien has completed an investment  
6 agreement with 1 or more angel inves-  
7 tors for an investment in the enter-  
8 prise of an amount not less than the  
9 amount specified in subparagraph  
10 (C).”; and

11 (3) in clause (ii)—

12 (A) by striking “(ii) which will” and insert-  
13 ing the following:

14 “(ii) In the case of an enterprise—

15 “(I) described in clause (i)(I),  
16 which will”;

17 (B) by striking the period at the end and  
18 inserting “; or”; and

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

20 “(II) described in subparagraph  
21 (II) or (III) of clause (i), which will  
22 benefit the United States economy  
23 and create full-time employment for  
24 not fewer than 5 United States citi-  
25 zens or aliens lawfully admitted for

1 permanent residence or other immi-  
2 grants lawfully authorized to be em-  
3 ployed in the United States (other  
4 than the immigrant and the immi-  
5 grant’s spouse, sons, or daughters).”.

6 (b) CHANGES TO CAPITAL REQUIREMENTS.—Section  
7 203(b)(5)(C)(i) of such Act (8 U.S.C. 1153(b)(5)(C)(i))  
8 is amended by inserting after “\$1,000,000” the following:  
9 “in the case of an enterprise described in subparagraph  
10 (A)(i)(I), \$250,000 in the case of an enterprise described  
11 in subparagraph (A)(i)(II), and \$100,000 in the case of  
12 an enterprise described in subparagraph (A)(i)(III)”.

13 (c) DEFINITIONS.—Section 203(b)(5) of such Act (8  
14 U.S.C. 1153(b)(5)) is amended by adding at the end the  
15 following:

16 “(E) QUALIFIED VENTURE CAPITAL OPER-  
17 ATING COMPANY DEFINED.—In this paragraph,  
18 the term ‘qualified venture capital operating  
19 company’ means an entity that—

20 “(i) is registered under the Invest-  
21 ment Company Act of 1940 (15 U.S.C.  
22 80a–1 et seq.); or

23 “(ii) is an investment company, as de-  
24 fined in subsection (a)(1) of section 3 of  
25 such Act (15 U.S.C. 80a–3), that is ex-

1           empt from registration under subsection  
2           (c)(1) or (c)(7) of such section, is not reg-  
3           istered, and—

4                   “(I) is organized or incorporated,  
5                   and domiciled, in the United States,  
6                   and the majority ownership of which  
7                   is composed of United States citizens  
8                   or aliens lawfully admitted to the  
9                   United States for permanent resi-  
10                  dence; or

11                   “(II) is owned or controlled by an  
12                   entity that is organized or incor-  
13                   porated, and domiciled, in the United  
14                   States, and the majority ownership of  
15                   that entity is composed of United  
16                   States citizens or aliens lawfully ad-  
17                   mitted to the United States for per-  
18                   manent residence.

19                   “(F) ANGEL INVESTOR DEFINED.—In this  
20                  paragraph, the term ‘angel investor’ means—

21                   “(i) any individual who is a United  
22                   States citizen or an alien lawfully admitted  
23                   to the United States for permanent resi-  
24                   dence, or any entity wholly owned and con-  
25                   trolled by United States citizens or aliens

1 lawfully admitted to the United States for  
2 permanent residence; or

3 “(ii) any entity that has made at least  
4 5 angel investments totaling at least  
5 \$250,000 during the 3 years preceding the  
6 completion of an investment agreement de-  
7 scribed in subparagraph (A)(i)(III).

8 “(G) ANGEL INVESTMENT.—In this para-  
9 graph, the term ‘angel investment’ means an in-  
10 vestment made in a commercial enterprise that,  
11 prior to such investment, was not owned or con-  
12 trolled by—

13 “(i) the investor;

14 “(ii) any member of the immediate  
15 family of the investor; or

16 “(iii) any entity owned or controlled  
17 by any member of the immediate family of  
18 the investor.”.

19 (d) CONFORMING AMENDMENTS TO CONDITIONAL  
20 PERMANENT STATUS PROVISIONS.—

21 (1) TERMINATION OF STATUS IF FINDING THAT  
22 QUALIFYING ENTREPRENEURSHIP IMPROPER.—Sec-  
23 tion 216A(b)(1)(B) of such Act (8 U.S.C.  
24 1186b(b)(1)(B)) is amended to read as follows:

25 “(B)(i) the alien—

1           “(I) did not invest, or was not actively  
2           in the process of investing, the requisite  
3           capital described in section  
4           203(b)(5)(A)(i)(I), or was not sustaining  
5           such actions throughout the period of the  
6           alien’s residence in the United States; or

7           “(II) did not complete an investment  
8           agreement described in subclause (II) or  
9           (III) of section 203(b)(5)(A)(i), or such  
10          agreement was not carried out or was not  
11          actively in the process of being carried out;  
12          or

13          “(ii) the commercial enterprise did not—

14                 “(I) create the minimum number of  
15                 jobs required to be created under section  
16                 203(b)(5)(A)(ii); or

17                 “(II) generate a profit and at least  
18                 \$1,000,000 in revenue; or”.

19           (2)   CONTENTS   OF   PETITION.—Section  
20           216A(d)(1) of such Act (8 U.S.C. 1186b(d)(1)) is  
21           amended—

22                 (A) in the matter preceding subparagraph  
23                 (A), by striking “that the alien—” and insert-  
24                 ing “that—”;

1 (B) by amending subparagraph (A) to read  
2 as follows:

3 “(A)(i) the alien—

4 “(I) invested, or was actively in the  
5 process of investing, the requisite capital  
6 described in section 203(b)(5)(A)(i)(I), and  
7 sustained such actions throughout the pe-  
8 riod of the alien’s residence in the United  
9 States; or

10 “(II) completed an investment agree-  
11 ment described in subclause (II) or (III) of  
12 section 203(b)(5)(A)(i), and such agree-  
13 ment was carried out or was actively in the  
14 process of being carried out; and

15 “(ii) the commercial enterprise—

16 “(I) created the minimum number of  
17 jobs required to be created under section  
18 203(b)(5)(A)(ii); or

19 “(II) generated a profit and at least  
20 \$1,000,000 in revenue; and”; and

21 (C) in subparagraph (B), by inserting “the  
22 alien” before “is otherwise”.

○