



American Growth, Recovery, Empowerment and Entrepreneurship Act (AGREE Act)

Senator Chris Coons (D-Del.) and Senator Marco Rubio (R-Fla.) | November 15, 2011

A bill that breaks through the partisan gridlock of Washington and focuses on policy proposals that Democrats and Republicans can agree on to support job creation in America.

Title I: Extending Tax Relief for Small Businesses

Section 101: Extension of 100% Bonus Depreciation Through 2014

Currently, businesses are allowed to depreciate the full cost of qualified investments such as equipment and property, but this provision will lapse to 50% on January 1, 2012 absent Congressional action. The Coons-Rubio bill extends 100% bonus depreciation through 2012 and maintains the \$2 million threshold in current law. President Obama's *American Jobs Act* proposed extending this important provision through 2012, and House Republicans have identified this as an issue of "potential common agreement" with the President. The Coons-Rubio bill also extends the ability of companies to elect the Alternative Minimum Tax (AMT) credit in lieu of utilizing bonus depreciation.

Section 102: Extension of Section 179 Expensing Levels for Small Businesses Through 2014

Section 179 expensing levels allow business to immediately expense or deduct investments in capital, reducing the costs of investment and expansion. Unfortunately, unless Congress acts, Section 179 expensing levels will fall sharply to \$125,000 on January 1, 2012. The AGREE Act proposes extending increased Section 179 expensing levels through 2014, allowing businesses to expense job-creating investments up to \$500,000.

A coalition of 77 business organizations recently wrote Congress in support of extending 100% bonus depreciation and Section 179 expensing levels, noting that "These historic capital investment incentives, which enjoy bipartisan support, have had a positive impact and incentivized business purchasing and job creation." Signatories included the National Association of Manufacturers, the American Iron and Steel Institute, the American Trucking Associations, and the Associated General Contractors of America.

Section 103: Eliminate Taxes on Certain Small Business Stock Through 2014

H.R. 4853, the *Tax Relief, Unemployment Insurance Reauthorization Act of 2010* extended the 100% exclusion for qualified small business stock acquired before January 1, 2012. The Coons-Rubio bill extends the 100% exclusion to stock acquired before January 1, 2015 and held for more than five years, boosting investment and encouraging job creation in small businesses. Without an extension, the capital gains exclusion will lapse to 50% on January 1, 2012.

Title II: Encouraging Cutting-Edge Research and Innovation

Section 201: The American Research and Competitiveness Act

The Coons-Rubio bill includes language from H.R. 942, *the American Research and Competitiveness Act*, bipartisan legislation introduced in the House of Representatives by Congressmen Kevin Brady (R-TX) and John Larson (D-CT). This language:

- Makes the Alternative Simplified Credit (ASC) permanent;
- Increases the Alternative Simplified Credit (ASC) from 14 percent to 20 percent, and;
- Extends the Research & Development tax credit until 2013 for companies still using traditional credit.

H.R. 942 is supported by a wide variety of groups including the R&D Credit Coalition, the U.S. Chamber of Commerce, the National Association of Manufacturers, the Biotechnology Industry Organization, and the Semiconductor Industry Association.

Section 202: Enhanced Research Credit for Domestic Manufacturers

The AGREE Act also incorporates a Domestic Manufacturing Credit from S.825, *the Job Creation Through Innovation Act*, introduced by Senator Coons, which allows businesses that produce their goods domestically to receive a higher R&D credit based on the percentage of gross receipts earned inside of the United States. The Domestic Manufacturing Credit would increase incrementally to reward a higher percentage of domestic production – an additional 2 percentage points for 50% to 60% of sales from domestically-produced goods; up to a 10 percentage point increase for companies with 90% to 100% of their receipts from domestic production.

Taken together, the research and development tax provisions in the Coons-Rubio bill will help American businesses create high-paying jobs and remain competitive globally. Without action, the R&D tax credit will expire on December 31, 2011, for the fifteenth time.

Title III: Providing Common-Sense Tax Incentives for Veterans

Section 301: The Help Veterans Own Franchises Act

Getting veterans back to work is critical to economic growth, and Senators Coons and Rubio support common-sense tax incentives to those who have served our nation in uniform to help invest in a business.

Accordingly, the Coons-Rubio bill includes S.1540/H.R.2888, *the Help Veterans Own Franchises Act*, introduced by Senator Bob Casey (D-Pa.), and Congressmen Aaron Schock (R-Ill.) and Leonard Boswell (D-Iowa). This important bipartisan language provides veterans with a tax credit equal to 25% of the fee associated with starting a franchise up to \$100,000. This legislation is strongly supported by the International Franchise Association, and would provide a strong boost to states like Florida and Delaware, which, combined, are home to 1.75 million veterans.

Title IV: Regulatory Relief for Small Companies

Section 401: Sarbanes-Oxley 404(b) Relief

Audit requirements enacted by Section 404 of *the Sarbanes-Oxley Act of 2002* have placed a high cost of compliance on small public companies. President Obama's Council on Jobs and Competitiveness recommends, "[amending] Sarbanes-Oxley to allow shareholders of public companies with market valuations below \$1 billion to opt out of at least Section 404 compliance."

In particular, Section 404(b) of the act, which requires that "each registered public accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer," has been a burden on small companies seeking to go public. The *Dodd-Frank Wall Street Reform Act* exempted companies with a market capitalization below \$75 million from Section 404(b). However, the Coons-Rubio bill goes further by providing a five-year exemption from Section 404(b) of Sarbanes-Oxley for the first five years of a company going public, or for those below \$250 million in total

gross revenue (whichever comes first). The bill also directs the Securities and Exchange Commission (SEC) to conduct and submit a report to Congress within nine months to:

1. Determine how the SEC could reduce the burden of Section 404(b) for companies with a market capitalization of between \$250 million and \$1 billion, and;
2. Assess the annual compliance costs posed by Section 404(b) for all companies with a market capitalization of below \$1 billion.

Title V: Reducing Barriers to High-Skilled Legal Immigration

Section 501: The Fairness for High-Skilled Immigrants Act

The Coons-Rubio proposal incorporates HR. 3012, *the Fairness for High-Skilled Immigrants Act*, bipartisan legislation introduced by Congressmen Jason Chaffetz (R-Utah) and Lamar Smith (R-Texas), and co-sponsored by Democrats including Congressmen Luis Guterrez (D-Ill.) and Congresswoman Zoe Lofgren (D-Calif.). This legislation was recently passed out of the House Judiciary Committee by voice vote.

This language eliminates the per-country numerical limitation for employment-based immigrant visas and adjusts the limitations on family based visa petitions from 7% per country to 15%. It does not increase the total number of available immigrant visas, nor does it change any of the typical requirements that individual visa applicants must show in order to be granted a visa.

These per-country caps are arbitrary in nature and they are a major factor in causing the backlogs that currently hamstringing our legal immigration system. Particularly in the employment-based context, these limits prevent companies from accessing the top-tier talent they need in order to grow, innovate, and create jobs in the United States. Many of these employment-based visa applicants are educated here in the United States, and we should be harnessing their talents -- not sending them out of the country to compete with us economically. Senators Coons and Rubio are committed to fixing our broken legal immigration system and this proposal is a step in the right direction.

H.R. 3012 is supported by groups including Compete America, the U.S. Chamber of Commerce, Immigration Voice, and the Information Technology Industry Council.

Title VI: Protecting American Businesses Against Illegal Counterfeiting

Section 601: Coons-Rubio-Grassley Amendment to S.1619

The Coons-Rubio bill helps to protect American intellectual property from counterfeit or otherwise infringing commercial activity. Specifically, the bill clarifies the *Trade Secrets Act*, making it explicitly clear that it is not a crime for federal officials, in the performance of their duties, to share information about suspected infringing products with the right holder of a trademarked good.

Clarifying the intent of the *Trade Secrets Act* will enable U.S. Customs and Border Patrol to more effectively monitor and curb cross-border shipments of goods that infringe on American intellectual property. Often, the only way to officially determine if merchandise is legitimate is to ask the owner of the trademark that appears on the product. CPB, however, cannot always act on these suspicions, because it interprets the Trade Secrets Act as making it illegal for agents to share un-redacted photos or product samples with the trademark right holder. The Coons-Rubio bill will end this ambiguity and enhance the protection of American intellectual property from cross border counterfeiting.