



# OLR RESEARCH REPORT

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## 2011 STATE EB-5 LAWS, BILLS, & RESOLUTIONS

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You asked for information on the Federal EB-5 visa program and summaries of the following 2011 state bills and resolutions related to it: (1) California AB. 1137; (2) California SCR 33; (3) Maine SP. 10; (4) Ohio H. 220; (5) Oregon H. 2733; and (6) Vermont H. 287.

### SUMMARY

Created by Congress in 1990, the EB-5 visa program is available to certain immigrants seeking to enter the United States in order to invest in a job creating business or company. In addition to individual businesses or companies, the program also allows EB-5 participants to invest in designated regional centers. In 2011 the state legislatures in California, Maine, Ohio, Oregon, and Vermont each introduced bills generally aimed at helping their respective states attract EB-5 immigrant investors by developing EB-5 regional centers or creating other incentives. Of these bills, only Maine's and Vermont's became law.

### EB-5 VISAS

The EB-5 program is administered by the U.S. Citizenship and Immigration Service (USCIS). It offers permanent-resident visa status to foreign investors who have invested, or are actively in the process of investing, at least \$1 million into a new commercial enterprise, including (1) the creation of an original business; (2) the purchase of an existing business to be restructured or reorganized into a new commercial

enterprise; or (3) a significant expansion of an existing business. Applicants for EB-5 visas must prove that their investments will benefit the U.S. economy and directly create at least ten full-time jobs.

Applicants can reduce the investment requirement to \$500,000 by investing in a new commercial enterprise in a targeted employment area (TEA). A TEA is either a high-unemployment area that has experienced an unemployment rate of at least 150% of the national average rate or a rural area (any area outside a metropolitan statistical area designated by the Office of Management and Budget or outside the boundary of any city or town with a population of at least 20,000).

### ***Regional Centers***

The investment requirement is also reduced to \$500,000 for investments in USCIS designated regional centers. A regional center is a public or private entity that promotes economic growth, improved regional productivity, job creation, and increased domestic capital investment. They allow EB-5 applicants to pool their resources and meet investment requirements without directly managing a business (102 P.L. 395; C.F.R. 204.6). Investment in a regional center also allows for a more expansive definition of job creation that includes the indirect creation of jobs.

To be designated a regional center by USCIS, an entity must submit a proposal, supported by economically or statistically valid forecasting tools, showing:

1. how it plans to focus on a geographical region within the United States,
2. how it will promote economic growth in that region,
3. how jobs will be created directly or indirectly through capital investments,
4. the amount and source of capital committed to the regional center,
5. the promotional efforts made and planned for the business project, and
6. how the regional center will have a positive impact on the regional or national economy.

## **ENACTED LAWS IN SELECTED STATES**

### ***Maine 2011 Public Law, Chapter 304 (SP 10)***

This [law](#) requires Maine's Commissioner of Economic and Community Development to collaborate with the state's Finance Authority, International Trade Center, and private business representatives to apply to have the state designated as an EB-5 regional center. It also requires the commissioner to report on the application process and recommend any statutory changes necessary to administer a designated regional center.

### ***Vermont 2011 Acts & Resolves 52 (H. 287)***

This [law](#) creates an EB-5 enterprise fund for the operation of the state's regional center for immigrant investment and authorizes agency fees to support it. It also requires a report on the fund's performance. Vermont is currently the only state with a state-operated EB-5 regional center.

## **BILLS & RESOLUTIONS IN SELECTED STATES**

### ***California AB 1137***

This [bill](#) would have created the California Foreign Investment Program and required the state's secretary of Business, Transportation, and Housing (BT&H) to serve as the lead state entity administering the EB-5 program. It also would have required the secretary to establish reporting and monitoring requirements to identify the number and size of businesses assisted and the number of jobs created and retained.

The bill also would have required any public or private entity applying to become an EB-5 regional center to obtain a letter of support from BT&H stating that the entity has agreed to meet the state's reporting and monitoring requirements.

### ***California SCR 33***

This [resolution](#) stated that it is in California's economic interest to promote opportunities for EB-5 Visa investment in the state.

### **Ohio H. 220**

This [bill](#) would have created a (1) temporary refundable commercial activity tax credit for investment losses by entities that have EB-5 investors and (2) limited liability company (LLC) to determine eligibility for the credit. Under the bill, an EB-5 project could claim a dollar-for-dollar refundable commercial activity tax credit for the amount of loss claimed by its EB-5 investor if (1) the investor had been granted permanent resident status, (2) the project had been approved by the bill's LLC, and (3) the project reported a loss for federal income tax purposes.

### **Oregon H. 2733**

This [bill](#) would have required the Oregon Business Development Department to designate EB-5 targeted employment areas in the state and establish application and eligibility rules for the designation.

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