

114TH CONGRESS  
1ST SESSION

# S. 2225

To amend the Immigration and Nationality Act to establish an H-2B temporary non-agricultural work visa program and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2015

Mr. TILLIS (for himself, Ms. MIKULSKI, Mr. CASSIDY, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To amend the Immigration and Nationality Act to establish an H-2B temporary non-agricultural work visa 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 “Save Our Small and  
5 Seasonal Businesses Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **CONDITIONAL APPROVAL.**—The term “con-  
9 ditional approval” means, with respect to a petition

1 for admission of H-2B nonimmigrants, the Sec-  
2 retary has determined that such petition has met all  
3 the conditions of section 655.11 of title 20, Code of  
4 Federal Regulations (or similar successor regula-  
5 tion), and is approved subject to determining wheth-  
6 er visas are available for such nonimmigrants within  
7 the statutory cap.

8 (2) FINAL APPROVAL.—The term “final ap-  
9 proval” means, with respect to a petition for admis-  
10 sion of H-2B nonimmigrants, the Secretary has de-  
11 termined that such petition has met all the condi-  
12 tions of section 655.11 of title 20, Code of Federal  
13 Regulations (or similar successor regulation), and  
14 that visas are available for such nonimmigrants  
15 within the statutory cap.

16 (3) H-2B NONIMMIGRANT.—The term “H-2B  
17 nonimmigrant” means a nonimmigrant described in  
18 section 101(a)(15)(H)(ii)(b) of the Immigration and  
19 Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)).

20 (4) PREMIUM PROCESSING PETITION.—The  
21 term “premium processing petition” means a peti-  
22 tion for an H-2B nonimmigrant for which the peti-  
23 tioner pays a premium fee pursuant to section  
24 286(u) of the Immigration and Nationality Act (8  
25 U.S.C. 1356).

1           (5) SECRETARY.—Except as otherwise specifi-  
2 cally provided, the term “Secretary” means the Sec-  
3 retary of Homeland Security.

4           (6) STATUTORY CAP.—The term “statutory  
5 cap” means the maximum number of aliens who  
6 may be issued visas or otherwise provided non-  
7 immigrant status during any fiscal year under sec-  
8 tion 214(g)(1)(B) of the Immigration and Nation-  
9 ality Act (8 U.S.C. 1184(g)(1)(B)).

10 **SEC. 3. RETURNING WORKERS.**

11           (a) IN GENERAL.—Section 214(g)(9)(A) of the Im-  
12 migration and Nationality Act (8 U.S.C. 1184(g)(9)(A))  
13 is amended to read as follows:

14           “(A)(i) Except as provided in clause (ii), and subject  
15 to subparagraphs (B) and (C), an alien who has already  
16 been counted toward the numerical limitation under para-  
17 graph (1)(B) shall not be counted again toward such limi-  
18 tation in the current fiscal year and shall be considered  
19 a returning worker.

20           “(ii) An alien who has already been counted toward  
21 the numerical limitation under paragraph (1)(B) shall be  
22 counted again toward such limitation if such alien—

23           “(I) departs the United States for a period  
24 longer than 1 year; or

1           “(II) was not counted toward such limitation in  
2           any of the 3 most recent fiscal years.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 subsection (a) shall take effect as if enacted on January  
5 1, 2015.

6 **SEC. 4. H-2B TEMPORARY NON-AGRICULTURAL WORK VISA**  
7 **PROGRAM.**

8           (a) **ADMISSION OF TEMPORARY H-2B NON-**  
9 **IMMIGRANTS.**—Chapter 2 of title II of the Immigration  
10 and Nationality Act (8 U.S.C. 1181 et seq.) is amended  
11 by inserting after section 218 the following:

12 **“SEC. 218A. ADMISSION OF TEMPORARY H-2B NON-**  
13 **IMMIGRANTS.**

14           “(a) **DEFINITIONS.**—In this section:

15           “(1) **BEST INFORMATION AVAILABLE.**—The  
16 term ‘best information available’, with respect to de-  
17 termining the prevailing wage for a position,  
18 means—

19           “(A) a controlling collective bargaining  
20 agreement that sets wages for work performed  
21 by H-2B nonimmigrants and in which the em-  
22 ployer is a signatory;

23           “(B) absent a controlling collective bar-  
24 gaining agreement described in subparagraph  
25 (A), the applicable Federal, State, or local pre-

1            prevailing wage laws for any time period during  
2            which the H-2B nonimmigrant performs work  
3            on a governmental project for which payment of  
4            such wages is required by such laws or ordi-  
5            nances if the employer has signed a contract  
6            agreeing to pay such wages on such project; or

7            “(C) absent a controlling collective bar-  
8            gaining agreement described in subparagraph  
9            (A) or the performance of work by the H-2B  
10           nonimmigrant that is governed by a prevailing  
11           wage law described in subparagraph (B)—

12                    “(i) the wage level commensurate with  
13                    the experience, training, and supervision  
14                    required for the job based on Bureau of  
15                    Labor Statistics data; or

16                    “(ii) a private wage survey of the  
17                    wages paid for such positions in the geo-  
18                    graphic area in which the H-2B non-  
19                    immigrant will be employed.

20            “(2) DISPLACE.—The term ‘displace’ means to  
21            lay off a United States worker from a job that is es-  
22            sentially equivalent to the job for which an employer  
23            seeks an H-2B nonimmigrant.

1           “(3) ESSENTIALLY EQUIVALENT.—A job shall  
2 be considered ‘essentially equivalent’ to another job  
3 offered by an employer if the job—

4           “(A) involves the same essential respon-  
5 sibilities as such other job;

6           “(B) is held by a United States worker  
7 with substantially equivalent qualifications and  
8 experience; and

9           “(C) is located in the same area of employ-  
10 ment as the other job.

11          “(4) FULL-TIME.—The term ‘full-time employ-  
12 ment’ means—

13           “(A) 30 or more hours of work per week;  
14 or

15           “(B) for any occupation in which a State  
16 or an established industry practice defines full-  
17 time employment as less than 30 hours per  
18 week, the number of weekly work hours estab-  
19 lished by the State or industry.

20          “(5) H-2B NONIMMIGRANT.—The term ‘H-2B  
21 nonimmigrant’ means a nonimmigrant described in  
22 section 101(a)(15)(H)(ii)(b).

23          “(6) LAYOFF.—The term ‘layoff’ means—

24           “(A) to cause a United States worker’s  
25 loss of employment before the scheduled ces-

1 sation of the employer’s need, other than  
2 through a discharge for inadequate perform-  
3 ance, violation of workplace rules, cause, vol-  
4 untary departure, voluntary retirement, or the  
5 expiration of a grant or contract (other than a  
6 temporary employment contract entered into in  
7 order to evade a condition described in sub-  
8 section (b)(3)(G)); and

9 “(B) does not include any situation in  
10 which the worker is offered, as an alternative to  
11 such loss of employment, a similar employment  
12 opportunity with the same employer at equiva-  
13 lent or higher compensation and benefits than  
14 the position from which the employee was dis-  
15 charged, regardless of whether the employee ac-  
16 cepts the offer.

17 “(7) OTHER TEMPORARY SERVICE OR LABOR.—

18 The term ‘other temporary service or labor’ means  
19 that an employer’s need for particular labor will  
20 last—

21 “(A) if peak load or intermittent, for not  
22 more than 1 year, unless it is a one-time occur-  
23 rence lasting no longer than 3 years; or

24 “(B) if the employer’s need is seasonal, for  
25 not more than 10 months.

1           “(8) PRIVATE WAGE SURVEY.—The term ‘pri-  
2 vate wage survey’ means, in the case of a petition  
3 under subsection (b), a survey of wages by an entity  
4 other than the Federal Government for which—

5           “(A) the data has been collected during the  
6 2-year period immediately preceding the date of  
7 the petition;

8           “(B) if a published survey, the survey has  
9 been published during the 2-year period imme-  
10 diately preceding the date of the petition;

11           “(C) the job description for the position  
12 being offered by the employer is similar to the  
13 job description for which the survey was con-  
14 ducted;

15           “(D) the survey is across industries that  
16 employ workers in the job description;

17           “(E) the wage determination is based on a  
18 weighted or straight average of the relevant  
19 wages or the median of relevant wage levels;  
20 and

21           “(F) a statistically valid methodology that  
22 was used to collect the data is identified.

23           “(9) UNITED STATES WORKER.—The term  
24 ‘United States worker’ means any worker who is—

25           “(A) a national of the United States; or



1 “(B) an alien who is—

2 “(i) lawfully admitted for permanent  
3 residence;

4 “(ii) admitted as a refugee under sec-  
5 tion 207;

6 “(iii) granted asylum under section  
7 208; or

8 “(iv) is an immigrant otherwise au-  
9 thorized to be employed under this Act.

10 “(10) WORK PERIOD.—The term ‘work period’  
11 means the time period during which the H–2B non-  
12 immigrants will be needed by an employer.

13 “(b) PETITIONS.—

14 “(1) REQUIREMENT FOR PETITIONS.—An em-  
15 ployer seeking to employ an H–2B nonimmigrant  
16 shall file a petition with the Secretary of Homeland  
17 Security in accordance with this subsection.

18 “(2) CONTENTS.—A petition filed under this  
19 subsection shall include—

20 “(A) the reason for the employer’s need for  
21 other temporary service or labor and the full  
22 time need for the H–2B nonimmigrants and the  
23 occupations sought;

1           “(B) the number of named and unnamed  
2 H-2B nonimmigrants the employer is seeking  
3 to employ during the work period;

4           “(C) the area of employment and worksites  
5 of the H-2B nonimmigrants, except that  
6 itinerant employers who do not operate in a sin-  
7 gle fixed-site location, shall provide a list of  
8 work locations that—

9                   “(i) may include an itinerary antici-  
10 pated at the time of petitioning; and

11                   “(ii) may be subsequently amended by  
12 the employer, with notice to the Secretary  
13 of Homeland Security;

14           “(D) the anticipated work period, including  
15 expected beginning and ending dates and an in-  
16 dication if actual entry or departure will be  
17 staggered; and

18           “(E) the written disclosure of employment  
19 terms and conditions that the employer chooses  
20 to provide to each proposed H-2B non-  
21 immigrant before the date on which the H-2B  
22 nonimmigrant files a visa application.

23           “(3) ATTESTATION.—A petition filed under this  
24 subsection shall include an attestation by the em-  
25 ployer that—

1           “(A) the employer’s need for labor is for  
2 other temporary service or labor and for full-  
3 time employment;

4           “(B) the work period, the reason for tem-  
5 porary need, and the anticipated number of po-  
6 sitions needed and being requested have been  
7 truly and accurately stated in the petition;

8           “(C) the employer is offering terms and  
9 working conditions normal to United States  
10 workers similarly employed in the area or areas  
11 of intended employment;

12           “(D) the employer, no later than when the  
13 H–2B nonimmigrant presents himself or herself  
14 to the consular office, will provide each H–2B  
15 nonimmigrant covered by the petition with writ-  
16 ten disclosure of the terms and conditions of  
17 their employment, including individualized ex-  
18 pected dates of entry and departure;

19           “(E) the employer—

20               “(i) conducted recruitment for United  
21 States workers in accordance with para-  
22 graph (4) before filing the petition; and

23               “(ii) was unsuccessful in locating suf-  
24 ficient qualified United States workers for

1           the job opportunity for which the H-2B  
2           nonimmigrant is sought;

3           “(F)(i) the employer has not collected and  
4           will not collect any job placement fee, payment  
5           for any activity related to preparing or filing  
6           the petition, or other compensation from a ben-  
7           eficiary of an H-2B petition as a condition of  
8           H-2B employment or an offer of H-2B employ-  
9           ment (other than any Government-mandated  
10          charges, such as passport, visa or inspection  
11          fees, or other expenses for which reimbursement  
12          is not prohibited by the Fair Labor Standards  
13          Act of 1938 (29 U.S.C. 201 et seq.);

14          “(ii) the employer has contractually forbid-  
15          den any agent, attorney, facilitator, recruiter,  
16          or similar employment service from collecting  
17          such fees; and

18          “(iii) if the employer learns or has reason  
19          to know that any agent, attorney, facilitator, re-  
20          cruiter, or similar employment service has been  
21          paid such fees, the employer will fully reimburse  
22          such fees;

23          “(G) the employer has not and will not dis-  
24          place any United States worker employed by  
25          the employer as long as an H-2B non-

1 immigrant is employed for a period of 30 days  
2 preceding such period in the occupation and at  
3 the area of employment set forth in the peti-  
4 tion; and

5 “(H) the specific job opportunity that is  
6 the subject of the petition is not vacant because  
7 the former worker in that job is on strike or  
8 locked out in the course of a labor dispute.

9 “(4) RECRUITMENT REQUIREMENTS.—

10 “(A) WRITTEN DISCLOSURE.—

11 “(i) IN GENERAL.—Not later than 60  
12 days before the date on which an employer  
13 intends to hire an H-2B nonimmigrant,  
14 the employer—

15 “(I) shall submit a written disclo-  
16 sure of the employment terms and  
17 conditions for such worker to—

18 “(aa) the local office of the  
19 State workforce agency where the  
20 job is located; or

21 “(bb) in the case of an  
22 itinerant employer, the local of-  
23 fice of the State workforce agen-  
24 cy where the job is to begin; and

1           “(II) shall authorize the posting  
2           of such disclosure on the appropriate  
3           electronic job registry of the Depart-  
4           ment of Labor for a period of 45  
5           days.

6           “(ii) POSTING BY SECRETARY OF  
7           LABOR.—The Secretary of Labor shall  
8           promptly post each such disclosure without  
9           requiring the employer to meet any other  
10          condition or carry out any other action.

11          “(B) BENEFITS, WAGES, AND WORKING  
12          CONDITIONS.—For a job opportunity for which  
13          an H-2B worker is sought, the employer shall  
14          offer any United States worker applying for  
15          such job not less than the same benefits, wages,  
16          and working conditions that the employer is of-  
17          fering, intends to offer, or will provide to an H-  
18          2B nonimmigrant. The job offer may not im-  
19          pose on any United States worker any restric-  
20          tions or obligations which will not be imposed  
21          on the employer’s H-2B nonimmigrants.

22          “(C) JOB OFFERS.—Unless the employer  
23          has a lawful, job-related reason not to do so,  
24          the employer shall offer the job for which an

1 H-2B nonimmigrant is sought to any eligible  
2 United States worker who—

3 “(i) applies;

4 “(ii) is qualified for the job; and

5 “(iii) will be available at the time and  
6 place and for the duration of need.

7 “(D) RECORDS.—The employer shall keep  
8 a record of all eligible, able, willing, and quali-  
9 fied United States workers who apply for em-  
10 ployment with the employer for the job for  
11 which an H-2B nonimmigrant is sought.

12 “(E) SAVINGS PROVISION.—H-2B employ-  
13 ers may not be required to file an interstate job  
14 order under section 653 of title 20, Code of  
15 Federal Regulations.

16 “(c) HOUSING AND OTHER FACILITIES.—

17 “(1) IN GENERAL.—An employer is not re-  
18 quired to provide housing, a housing allowance, or  
19 other facilities to an H-2B nonimmigrant.

20 “(2) WAGE DEDUCTION.—If an employer does  
21 provide housing, a housing allowance, or other facili-  
22 ties to an H-2B nonimmigrant, the employer may  
23 take a wage deduction or credit toward satisfying  
24 the responsibility to pay prescribed wages in an  
25 amount that is equal to the fair value of such hous-

1 ing or other facility in accordance with the Fair  
2 Labor Standards Act of 1938 (29 U.S.C. 201 et  
3 seq.) or other applicable law.

4 “(3) LOCATING HOUSING.—If an employer does  
5 not provide housing to H-2B nonimmigrants, the  
6 employer shall make reasonable efforts to assist the  
7 H-2B nonimmigrants to locate appropriate housing.

8 “(d) WAGES.—H-2B nonimmigrants shall be paid  
9 wages that are not less than the greater of—

10 “(1) the actual wage level paid by the employer  
11 to other employees with similar experience and quali-  
12 fications for such position in the same location;

13 “(2) the applicable Federal, State, or local min-  
14 imum wage; or

15 “(3) the prevailing wage level for the job de-  
16 scription of the position in the geographic area in  
17 which the H-2B nonimmigrant will be employed,  
18 based on the best information available at the time  
19 of filing the petition.

20 “(e) TRANSPORTATION.—

21 “(1) TRANSPORTATION TO THE PLACE OF EM-  
22 PLOYMENT.—Not later than the date on which an  
23 H-2B nonimmigrant completes 50 percent of the  
24 work period set forth in the petition, the employer  
25 shall reimburse the H-2B nonimmigrant for the cost



1 of transportation for that H-2B nonimmigrant from  
2 the United States consulate that issued the visa to  
3 the H-2B nonimmigrant, or the previous worksite in  
4 the United States, if any, to the place of employ-  
5 ment of such H-2B nonimmigrant, unless the H-2B  
6 nonimmigrant has been previously reimbursed by an-  
7 other employer. The amount of reimbursement  
8 under this paragraph shall be not more than the  
9 cost incurred through the most economical and rea-  
10 sonable common carrier, and shall include docu-  
11 mented and reasonable subsistence costs during the  
12 period of travel.

13 “(2) TRANSPORTATION FROM THE PLACE OF  
14 EMPLOYMENT.—If an H-2B nonimmigrant com-  
15 pletes the work period set forth in the petition for  
16 an employer, and is not traveling to another work-  
17 site in the United States, the employer, not later  
18 than the time the H-2B nonimmigrant departs from  
19 the worksite, shall pay for the cost of transportation  
20 for that H-2B nonimmigrant, from the place of em-  
21 ployment to the United States consulate that issued  
22 the visa to the H-2B nonimmigrant. The cost re-  
23 quired to be paid under this paragraph shall be not  
24 more than the cost incurred through the most eco-  
25 nomical and reasonable common carrier, and shall

1 include reasonable subsistence costs during the pe-  
2 riod of travel.

3 “(3) NO OBLIGATION TO PROVIDE TRANSPOR-  
4 TATION COSTS.—Notwithstanding any other provi-  
5 sion of law, an employer shall have no obligation to  
6 provide or reimburse any transportation-related  
7 costs incurred by an alien seeking to be an H-2B  
8 nonimmigrant between the such alien’s home and  
9 the consulate or embassy and between the consulate  
10 or embassy and such alien’s home.

11 “(f) REPORTING ABSCONDING WORKERS.—

12 “(1) REQUIREMENT TO NOTIFY.—An employer  
13 shall notify the Secretary of Homeland Security  
14 within 2 work days—

15 “(A) of an H-2B nonimmigrant who fails  
16 to report for work within 5 work days after the  
17 employment’s expected start date stated on the  
18 petition or the reasonably anticipated start date  
19 in the event of exigent circumstances;

20 “(B) if the labor or services for which the  
21 H-2B nonimmigrant was hired is completed  
22 more than 30 days early; or

23 “(C) if the employer discovers that an H-  
24 2B nonimmigrant has absconded from the  
25 worksite by failing to report for work at the

1           regularly scheduled time for 5 consecutive work-  
2           ing days without the consent of the employer.

3           “(2) REPLACEMENT WORKERS.—Notwith-  
4           standing the numerical limitation under section  
5           214(g)(1)(B), if an employer notifies the Secretary  
6           of Homeland Security of a situation described in  
7           subparagraph (A) or (C) of paragraph (1), the Sec-  
8           retary shall promptly notify the Secretary of State,  
9           who shall make available to the employer 1 addi-  
10          tional visa for the employer to hire a replacement  
11          H–2B nonimmigrant for the same job opportunity,  
12          without filing an additional petition, for each H–2B  
13          nonimmigrant who fails to report to work or who ab-  
14          sconds from work.

15          “(g) ADMISSION OF AN H–2B NONIMMIGRANT.—An  
16          H–2B nonimmigrant is authorized to be admitted to the  
17          United States up to 10 days before the first day of the  
18          work period described in the petition and no later than  
19          10 days after the last day of such work period. An H–  
20          2B nonimmigrant is not authorized to be employed except  
21          during the work period set forth in the petition.

22          “(h) LIMITATION ON AN H–2B NONIMMIGRANT’S  
23          STAY IN STATUS.—An H–2B nonimmigrant who was  
24          present in the United States for 3 years under subpara-  
25          graph (H) of section 101(a)(15) may not seek extension

1 of stay, change of status, or be readmitted to the United  
2 States pursuant to such subparagraph unless the alien has  
3 resided and been physically present outside the United  
4 States for the immediately preceding 3 months. This limi-  
5 tation shall not apply to aliens who did not reside contin-  
6 ually in the United States for 3 years and whose employ-  
7 ment in the United States was seasonal or intermittent  
8 or was for an aggregate of 6 months or less per year.

9 “(i) FLEXIBILITY WITH RESPECT TO CROSSING OF  
10 H-2B NONIMMIGRANTS.—

11 “(1) IN GENERAL.—Subject to paragraph (2),  
12 if an employer files a petition for H-2B non-  
13 immigrants and that petition is granted, the em-  
14 ployer may bring the H-2B nonimmigrants for  
15 which the petition was granted into the United  
16 States at any time during the 120-day period begin-  
17 ning on the start date for which the employer is  
18 seeking the services of the nonimmigrants without  
19 filing another petition.

20 “(2) REQUIREMENTS FOR CROSSINGS AFTER  
21 90TH DAY.—An employer may not bring H-2B non-  
22 immigrants into the United States under paragraph  
23 (1) after the date that is 90 days after the start  
24 date for which the employer is seeking the services  
25 of the nonimmigrants unless the employer—

1           “(A) completes a new assessment of the  
2 local labor market by—

3           “(i) publishing notice of the job offer  
4 in a local newspaper in not less than 2  
5 Sunday editions of such newspaper; and

6           “(ii) posting the job opportunity on  
7 the appropriate electronic job registry of  
8 the Department of Labor pursuant to sub-  
9 section (b)(4)(A) and at the employer’s  
10 place of employment; and

11          “(B) offers the job to an equally or better  
12 qualified United States worker who will be  
13 available at the time and place and for the du-  
14 ration of need and who applies for the job.

15          “(3) EXEMPTION FROM RULES WITH RESPECT  
16 TO STAGGERING.—The Secretary of Labor shall not  
17 consider an employer who brings H-2B non-  
18 immigrants into the United States during the 120-  
19 day period specified in paragraph (1) to be stag-  
20 gering the date of need in violation of any applicable  
21 provision of law.”.

22          (b) TABLE OF CONTENTS AMENDMENT.—The table  
23 of contents of the Immigration and Nationality Act is  
24 amended by inserting after the item relating to section  
25 218 the following:

“218A. Admission of temporary H-2B nonimmigrants.”.

1 **SEC. 5. PROCESSING OF H-2B VISA PETITIONS BY THE DE-**  
2 **PARTMENT OF HOMELAND SECURITY.**

3 (a) RULEMAKING.—Not later than 180 days after the  
4 date of the enactment of this Act, the Secretary, in con-  
5 sultation with the Secretary of Labor, shall issue regula-  
6 tions that establish the necessary procedures for proc-  
7 essing visa petitions for H-2B nonimmigrants in accord-  
8 ance with the provisions of this Act and the amendments  
9 made by this Act. The Secretary shall have exclusive au-  
10 thority, which may not be delegated outside the Depart-  
11 ment of Homeland Security, to issue rules and final deter-  
12 minations with respect to the visa program for H-2B non-  
13 immigrants.

14 (b) ACCEPTANCE OF PETITIONS.—

15 (1) IN GENERAL.—Not later than 5 business  
16 days after the date an employer files a premium  
17 processing petition and not later than 15 business  
18 days after the date an employer files any other peti-  
19 tion for an H-2B nonimmigrant, the Secretary  
20 shall—

21 (A) accept the petition if the Secretary has  
22 determined that—

23 (i) the employer has established the  
24 need for non-agricultural services or labor  
25 to be performed is temporary in nature;

1 (ii) the number of workers being re-  
2 quested is justified;

3 (iii) the employer has made the attes-  
4 tations required under section 218A of the  
5 Immigration and Nationality Act, as added  
6 by section 4(a); and

7 (iv) the employer has complied with—

8 (I) all of the requirements under  
9 such section 218A;

10 (II) other provisions of the Immi-  
11 gration and Nationality Act (8 U.S.C.  
12 1101 et seq.); and

13 (III) this Act;

14 (B) submit to the petitioner notice of ac-  
15 ceptance or nonacceptance of the petition using  
16 electronic or other means assuring expedited de-  
17 livery; and

18 (C) if the petition is accepted, submit to  
19 the relevant United States consulate notice of  
20 acceptance of the petition using electronic or  
21 other means assuring expedited delivery if the  
22 petitioner has indicated that the alien bene-  
23 ficiaries will apply for United States visas at  
24 such consulate.

1           (2) PROHIBITION ON CERTAIN REDUCTIONS.—

2           The Secretary may not reduce the number of posi-  
3           tions an employer will receive pursuant to a petition  
4           that the Secretary accepts pursuant to this sub-  
5           section because the employer hires or offers employ-  
6           ment to a United States worker for the position be-  
7           fore the date on which the employer indicated in the  
8           petition that workers were needed to begin work.

9           (3) CONDITIONAL APPROVAL.—Once the Sec-  
10          retary determines that a sufficient number of peti-  
11          tions for H-2B nonimmigrants have been received to  
12          result in a likely fulfillment of the statutory cap, the  
13          Secretary shall continue to receive such petitions for  
14          that fiscal year and issue conditional approvals, un-  
15          less the beneficiaries for visas for H-2B non-  
16          immigrants are not subject to the statutory cap, in  
17          which event the Secretary will issue final approval.

18          (4) ASSESSMENT OF ISSUED VISAS.—The Sec-  
19          retary shall consult with the Secretary of State and  
20          continually report the number of visas actually  
21          issued to H-2B nonimmigrants at United States  
22          embassies and consulate offices to determine if the  
23          employers that received conditional approval under  
24          paragraph (3) may be issued final approvals.

25          (5) FINAL APPROVAL.—



1 (A) IN GENERAL.—Final approvals shall  
2 be issued in the order in which the petitions  
3 were conditionally approved.

4 (B) REFUND OF FEES.—The Secretary  
5 shall refund any fee submitted for a premium  
6 processing petition for a fiscal year that was  
7 submitted after the date the Secretary deter-  
8 mines that the statutory cap has been met for  
9 that fiscal year.

10 **SEC. 6. COORDINATION BETWEEN THE DEPARTMENT OF**  
11 **HOMELAND SECURITY AND THE DEPART-**  
12 **MENT OF STATE.**

13 (a) ELECTRONIC NOTIFICATION.—The Secretary  
14 shall consult with the Secretary of State to develop an  
15 electronic notification system to notify the Department of  
16 State not later than 48 hours after the final approval of  
17 a petition for an H-2B nonimmigrant. Each such notifica-  
18 tion shall include information indicating whether the H-  
19 2B nonimmigrant is subject to the statutory cap, whether  
20 the H-2B nonimmigrant has previously entered the  
21 United States under H-2B nonimmigrant visa status, as  
22 well as any relevant biographic information included in the  
23 employer's petition for each approved worker.

24 (b) WEEKLY REPORT.—The Secretary of State shall  
25 submit a weekly report to the Secretary that includes—

1           (1) the total number of H–2B nonimmigrant  
2 visas issued during the past week and during the fis-  
3 cal year to date;

4           (2) of such visas, the total number of visas that  
5 were exempt from the statutory cap; and

6           (3) all relevant information regarding the iden-  
7 tity of the beneficiary who was issued an H–2B non-  
8 immigrant visa.

9           (c) WAIVER OF INTERVIEWS FOR RETURNING WORK-  
10 ERS.—The Secretary of State may waive the in-person  
11 visa interview requirement for an individual applying for  
12 an H–2B nonimmigrant visa who previously traveled to  
13 the United States on H–2B nonimmigrant visa status.

14 **SEC. 7. TRANSPARENCY MEASURES.**

15           The Secretary shall update weekly and make pub-  
16 lically available on the website of the Department of  
17 Homeland Security—

18           (1) five years of historical data of H–2B non-  
19 immigrant petitions received and approved and the  
20 number of visas for H–2B nonimmigrants that were  
21 not subject to the statutory cap;

22           (2) the annual target number of beneficiaries to  
23 be issued visas as H–2B nonimmigrants for the fis-  
24 cal year;

1           (3) the number of petitions for H-2B non-  
2 immigrants approved by the Department in each  
3 half of the fiscal year, including the aggregated  
4 number of beneficiaries contained in the approved  
5 petitions;

6           (4) the number of petitions pending approval or  
7 denial by the Secretary;

8           (5) the number of visas that are not exempt  
9 from the statutory cap issued by the Secretary of  
10 State;

11          (6) disclosure of the methodology and raw data  
12 used to determine when the statutory cap has been  
13 reached, including notification whenever the method-  
14 ology to make this determination changes at any  
15 time during the fiscal year; and

16          (7) the number of petitions for H-2B non-  
17 immigrants that have received conditional approval  
18 once the statutory cap has been met, including the  
19 aggregated number of beneficiaries contained in the  
20 conditionally approved petitions.

21 **SEC. 8. GAO REPORTS.**

22          (a) REPORT ON METHODOLOGY FOR STATUTORY  
23 CAP.—

24           (1) IN GENERAL.—Not later than 6 months  
25 after the date on which the Secretary issues regula-

1 tions to carry out this Act and the amendments  
2 made by this Act, the Comptroller General of the  
3 United States shall publish a report that describes  
4 the methodology used by the Secretary to determine  
5 that the statutory cap for H-2B nonimmigrants is  
6 met and the accuracy of such methodology.

7 (2) CONTENT.—The report required by para-  
8 graph (1) shall include an assessment of—

9 (A) the efficiencies and inefficiencies in the  
10 processing and approval of petitions for H-2B  
11 nonimmigrants; and

12 (B) the effectiveness of data sharing be-  
13 tween the Secretary and the Secretary of State.

14 (b) ASSESSMENT.—Not later than 4 years after the  
15 date of the enactment of this Act, the Comptroller General  
16 of the United States shall submit to Congress an assess-  
17 ment of the effect of the amendment made by section 3(a)  
18 on the domestic workforce, including data to indicate any  
19 relationship between an increase of H-2B nonimmigrants  
20 and changes in domestic employment or earnings.

21 **SEC. 9. RULE OF CONSTRUCTION.**

22 The benefits and wages provided to an H-2B non-  
23 immigrant, the services an H-2B nonimmigrant provides  
24 to the employer, the employment opportunities afforded to  
25 an H-2B nonimmigrant by the employer, including those

1 employment opportunities that require a United States  
2 worker or an H-2B nonimmigrant to travel or relocate  
3 in order to accept or perform employment, and other  
4 terms or conditions of the employment of an H-2B non-  
5 immigrant provided for under this Act, or the amendments  
6 made by this Act, are not primarily for the benefit of ei-  
7 ther the H-2B nonimmigrant or the employer and are for  
8 the equal mutual benefit for the H-2B worker and the  
9 employer.

○