

115TH CONGRESS
1ST SESSION

S. 792

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

MARCH 30, 2017

Mr. TILLIS (for himself, Mr. KING, Mr. THUNE, Ms. COLLINS, Mr. ROUNDS, Mr. CORNYN, Ms. MURKOWSKI, and Mr. BLUNT) 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 2017”.

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 under paragraphs (2) and (6) of sec-
 4 tion 214.2(h) of title 8, Code of Federal Regulations
 5 (or similar successor regulation), and is approved
 6 subject to determining whether visas are available
 7 for such nonimmigrants within 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 under section 655.11 of title 20, Code of Fed-
 13 eral Regulations (or similar successor regulation),
 14 and 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 during the fiscal year and shall be considered a re-
 19 turning 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;

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

3 “(III) violated his or her status during the au-
4 thorized period of stay.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall take effect as if enacted on January
7 1, 2017.

8 **SEC. 4. H-2B TEMPORARY NON-AGRICULTURAL WORK VISA**
9 **PROGRAM.**

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

14 **“SEC. 218A. ADMISSION OF TEMPORARY H-2B NON-**
15 **IMMIGRANTS.**

16 “(a) DEFINITIONS.—In this section:

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

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

1 “(B) absent a controlling collective bar-
2 gaining agreement described in subparagraph
3 (A), the applicable Federal, State, or local pre-
4 vailing wage laws for any time period during
5 which the H-2B nonimmigrant performs work
6 on a governmental project for which payment of
7 such wages is required by such laws or ordi-
8 nances if the employer has signed a contract
9 agreeing to pay such wages on such project; or

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

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

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

23 “(2) DISPLACE.—The term ‘displace’ means to
24 lay off a United States worker from a job that is es-

1 sentially equivalent to the job for which an employer
2 seeks an H-2B nonimmigrant.

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

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

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

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

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

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

16 or

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

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

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

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

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

19 “(7) OTHER TEMPORARY SERVICE OR LABOR.—
 20 The term ‘other temporary service or labor’ means
 21 that an employer’s need for particular labor will
 22 last—

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

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

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

7 “(A) the data has been collected during the
8 2-year period immediately preceding the date of
9 the petition;

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

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

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

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

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

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

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

4 “(B) an alien who is—

5 “(i) lawfully admitted for permanent
6 residence;

7 “(ii) admitted as a refugee under sec-
8 tion 207;

9 “(iii) granted asylum under section
10 208; or

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

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

16 “(b) PETITIONS.—

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

21 “(2) CONTENTS.—A petition filed under this
22 subsection shall include—

23 “(A) the reason for the employer’s need for
24 other temporary service or labor and the full

1 time need for the H-2B nonimmigrants and the
2 occupations sought;

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

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

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

13 “(ii) may be subsequently amended by
14 the employer, with notice to the Secretary;

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

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

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

4 “(A) the employer’s need for labor is for
5 other temporary service or labor and for full-
6 time employment;

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

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

15 “(D) the employer, not later than the date
16 on which the H–2B nonimmigrant presents
17 himself or herself to the consular office, will
18 provide each H–2B nonimmigrant covered by
19 the petition with written disclosure of the terms
20 and conditions of their employment, including
21 individualized expected dates of entry and de-
22 parture;

23 “(E) the employer—

1 “(i) conducted recruitment for United
2 States workers in accordance with para-
3 graph (4) before filing the petition; and

4 “(ii) was unsuccessful in locating suf-
5 ficient qualified United States workers for
6 the job opportunity for which the H-2B
7 nonimmigrant is sought;

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

19 “(ii) the employer has contractually forbid-
20 den any agent, attorney, facilitator, recruiter,
21 or similar employment service from collecting
22 such fees; and

23 “(iii) if the employer learns or has reason
24 to know that any agent, attorney, facilitator, re-
25 cruiter, or similar employment service has been

1 paid such fees, the employer will fully reimburse
2 such fees to the H-2B nonimmigrant;

3 “(G) the employer has not and will not dis-
4 place any United States worker employed by
5 the employer as long as an H-2B non-
6 immigrant is employed for a period of 30 days
7 preceding such period in the occupation and at
8 the area of employment set forth in the peti-
9 tion; and

10 “(H) the specific job opportunity that is
11 the subject of the petition is not vacant because
12 the former worker in that job is on strike or
13 locked out in the course of a labor dispute.

14 “(4) RECRUITMENT REQUIREMENTS.—

15 “(A) WRITTEN DISCLOSURE.—

16 “(i) IN GENERAL.—Not later than 60
17 days before the date on which an employer
18 intends to hire an H-2B nonimmigrant,
19 the employer—

20 “(I) shall submit a written disclo-
21 sure of the employment terms and
22 conditions for such worker to—

23 “(aa) the local office of the
24 State workforce agency where the
25 job is located; or

1 “(bb) in the case of an
2 itinerant employer, the local of-
3 fice of the State workforce agen-
4 cy where the job is to begin; and

5 “(II) shall authorize the posting
6 of such disclosure on the appropriate
7 electronic job registry of the Depart-
8 ment of Labor for a period of 45
9 days.

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

15 “(B) BENEFITS, WAGES, AND WORKING
16 CONDITIONS.—For a job opportunity for which
17 an H-2B worker is sought, the employer shall
18 offer any United States worker applying for
19 such job not less than the same benefits, wages,
20 and working conditions that the employer is of-
21 fering, intends to offer, or will provide to an H-
22 2B nonimmigrant. The job offer may not im-
23 pose on any United States worker any restric-
24 tions or obligations which will not be imposed
25 on the employer’s H-2B nonimmigrants.

1 “(C) JOB OFFERS.—Unless the employer
 2 has a lawful, job-related reason not to do so,
 3 the employer shall offer the job for which an
 4 H–2B nonimmigrant is sought to any eligible
 5 United States worker who—

6 “(i) applies;

7 “(ii) is qualified for the job; and

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

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

15 “(E) SAVINGS PROVISION.—H–2B employ-
 16 ers may not be required to file an interstate job
 17 order under sections 655.16 and 655.18 of title
 18 20, Code of Federal Regulations.

19 “(c) HOUSING AND OTHER FACILITIES.—

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

23 “(2) WAGE DEDUCTION.—If an employer does
 24 provide housing, a housing allowance, or other facili-
 25 ties to an H–2B nonimmigrant, the employer may

1 take a wage deduction or credit toward satisfying
2 the responsibility to pay prescribed wages in an
3 amount that is equal to the fair value of such hous-
4 ing or other facility in accordance with the Fair
5 Labor Standards Act of 1938 (29 U.S.C. 201 et
6 seq.) or other applicable law.

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

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

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

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

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

23 “(e) TRANSPORTATION.—

24 “(1) TRANSPORTATION TO THE PLACE OF EM-
25 PLOYMENT.—Not later than the date on which an

1 H-2B nonimmigrant completes 50 percent of the
2 work period set forth in the petition, the employer
3 shall reimburse the H-2B nonimmigrant for the cost
4 of transportation for that H-2B nonimmigrant from
5 the United States consulate that issued the visa to
6 the H-2B nonimmigrant, or the previous worksite in
7 the United States, if any, to the place of employ-
8 ment of such H-2B nonimmigrant, unless the H-2B
9 nonimmigrant has been previously reimbursed by an-
10 other employer. The amount of reimbursement
11 under this paragraph shall be not more than the
12 cost incurred through the most economical and rea-
13 sonable common carrier, and shall include docu-
14 mented and reasonable subsistence costs during the
15 period of travel.

16 “(2) TRANSPORTATION FROM THE PLACE OF
17 EMPLOYMENT.—If an H-2B nonimmigrant com-
18 pletes the work period set forth in the petition for
19 an employer, and is not traveling to another work-
20 site in the United States, the employer, not later
21 than the time the H-2B nonimmigrant departs from
22 the worksite, shall pay for the cost of transportation
23 for that H-2B nonimmigrant, from the place of em-
24 ployment to the United States consulate that issued
25 the visa to the H-2B nonimmigrant. The cost re-

1 quired to be paid under this paragraph shall be not
 2 more than the cost incurred through the most eco-
 3 nomical and reasonable common carrier, and shall
 4 include reasonable subsistence costs during the pe-
 5 riod of travel.

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

14 “(f) REPORTING ABSCONDING WORKERS.—

15 “(1) REQUIREMENT TO NOTIFY.—An employer
 16 shall notify the Secretary of Homeland Security not
 17 later than 2 work days after—

18 “(A) an H-2B nonimmigrant fails to re-
 19 port for work within 5 work days after the em-
 20 ployee’s expected start date, as stated on the
 21 petition, or the reasonably anticipated start
 22 date in the event of exigent circumstances;

23 “(B) the labor or services for which the H-
 24 2B nonimmigrant was hired is completed more
 25 than 30 days early; or

1 “(C) the employer discovers that an H–2B
2 nonimmigrant has absconded from the worksite
3 by failing to report for work at the regularly
4 scheduled time for 5 consecutive working days
5 without the consent of the employer.

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

18 “(g) ADMISSION OF AN H–2B NONIMMIGRANT.—An
19 H–2B nonimmigrant is authorized to be admitted to the
20 United States during the period beginning 10 days before
21 the first day of the validity period and ending 10 days
22 after the last day of the validity period. An H–2B non-
23 immigrant is not authorized to be employed except during
24 the work period set forth in the petition.

1 “(h) LIMITATION ON AN H-2B NONIMMIGRANT’S
 2 STAY IN STATUS.—An H-2B nonimmigrant who was
 3 present in the United States for 3 years under subpara-
 4 graph (H) of section 101(a)(15) may not seek extension
 5 of stay, change of status, or be readmitted to the United
 6 States pursuant to such subparagraph unless the alien has
 7 resided and been physically present outside the United
 8 States for the immediately preceding 3 months. This limi-
 9 tation shall not apply to aliens who did not reside contin-
 10 ually in the United States for 3 years and whose employ-
 11 ment in the United States was seasonal or intermittent
 12 or was for an aggregate of 6 months or less per year.

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

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

24 “(2) REQUIREMENTS FOR CROSSINGS AFTER
 25 90TH DAY.—An employer may not bring H-2B non-

1 immigrants into the United States under paragraph
2 (1) after the date that is 90 days after the start
3 date for which the employer is seeking the services
4 of the nonimmigrants unless the employer—

5 “(A) completes a new assessment of the
6 local labor market by—

7 “(i) publishing notice of the job offer
8 in a local newspaper in not less than 2
9 Sunday editions of such newspaper; and

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

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

19 “(3) EXEMPTION FROM RULES WITH RESPECT
20 TO STAGGERING.—The Secretary of Homeland Secu-
21 rity shall not consider an employer who brings H-
22 2B nonimmigrants into the United States during the
23 120-day period specified in paragraph (1) to be stag-
24 gering the date of need in violation of any applicable
25 provision of law.”.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table
 2 of contents of the Immigration and Nationality Act is
 3 amended by inserting after the item relating to section
 4 218 the following:

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

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

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

18 (b) ACCEPTANCE OF PETITIONS.—

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

1 (A) review the petition and make a prima
2 facie determination as to whether the petition is
3 potentially approvable, which shall be based on
4 whether—

5 (i) the employer has established the
6 need for non-agricultural services or labor
7 to be performed is temporary in nature;

8 (ii) the number of workers being re-
9 quested is justified;

10 (iii) the employer has made the attes-
11 tations required under section 218A of the
12 Immigration and Nationality Act, as added
13 by section 4(a); and

14 (iv) the employer has complied with—

15 (I) all of the requirements under
16 such section 218A;

17 (II) other provisions of the Immi-
18 gration and Nationality Act (8 U.S.C.
19 1101 et seq.); and

20 (III) this Act;

21 (B) submit to the petitioner notice of ac-
22 ceptance or nonacceptance of the petition using
23 electronic or other means assuring expedited de-
24 livery; and

1 (C) if the petition is accepted, submit to
2 the relevant United States consulate notice of
3 acceptance of the petition using electronic or
4 other means assuring expedited delivery if the
5 petitioner has indicated that the alien bene-
6 ficiaries will apply for United States visas at
7 such consulate.

8 (2) PROHIBITION ON CERTAIN REDUCTIONS.—

9 The Secretary may not reduce the number of posi-
10 tions an employer will receive pursuant to a petition
11 that the Secretary accepts pursuant to this sub-
12 section because the employer hires or offers employ-
13 ment to a United States worker for the position be-
14 fore the date on which the employer indicated in the
15 petition that workers were needed to begin work.

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

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

8 (5) FINAL APPROVAL.—

9 (A) IN GENERAL.—Final approvals shall
 10 be issued in the order in which the petitions
 11 were conditionally approved.

12 (B) REFUND OF FEES.—The Secretary
 13 shall refund any fee submitted for a premium
 14 processing petition for a fiscal year that was
 15 submitted after the date the Secretary deter-
 16 mines that the statutory cap has been met for
 17 that fiscal year.

18 **SEC. 6. COORDINATION BETWEEN THE DEPARTMENT OF**
 19 **HOMELAND SECURITY AND THE DEPART-**
 20 **MENT OF STATE.**

21 (a) ELECTRONIC NOTIFICATION.—The Secretary
 22 shall consult with the Secretary of State to develop an
 23 electronic notification system to notify the Department of
 24 State not later than 48 hours after the final approval of
 25 a petition for an H-2B nonimmigrant. Each such notifica-

1 tion shall include information indicating whether the H–
2 2B nonimmigrant is subject to the statutory cap, whether
3 the H–2B nonimmigrant has previously entered the
4 United States under H–2B nonimmigrant visa status, as
5 well as any relevant biographic information included in the
6 employer’s petition for each approved worker.

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

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

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

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

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

22 **SEC. 7. TRANSPARENCY MEASURES.**

23 The Secretary shall update weekly and make pub-
24 lically available on the website of the Department of
25 Homeland Security—

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

5 (2) the annual target number of beneficiaries to
6 be issued visas as H-2B nonimmigrants for the fis-
7 cal year;

8 (3) the number of petitions for H-2B non-
9 immigrants approved by the Department in each
10 half of the fiscal year, including the aggregated
11 number of beneficiaries contained in the approved
12 petitions;

13 (4) the number of petitions pending approval or
14 denial by the Secretary;

15 (5) the number of visas that are not exempt
16 from the statutory cap issued by the Secretary of
17 State;

18 (6) disclosure of the methodology and raw data
19 used to determine when the statutory cap has been
20 reached, including notification whenever the method-
21 ology to make this determination changes at any
22 time during the fiscal year; and

23 (7) the number of petitions for H-2B non-
24 immigrants that have received conditional approval
25 once the statutory cap has been met, including the

1 aggregated number of beneficiaries contained in the
 2 conditionally approved petitions.

3 **SEC. 8. GAO REPORTS.**

4 (a) REPORT ON METHODOLOGY FOR STATUTORY
 5 CAP.—

6 (1) IN GENERAL.—Not later than 6 months
 7 after the date on which the Secretary issues regula-
 8 tions to carry out this Act and the amendments
 9 made by this Act, the Comptroller General of the
 10 United States shall publish a report that describes
 11 the methodology used by the Secretary to determine
 12 that the statutory cap for H-2B nonimmigrants is
 13 met and the accuracy of such methodology.

14 (2) CONTENT.—The report required under
 15 paragraph (1) shall include an assessment of—

16 (A) the efficiencies and inefficiencies in the
 17 processing and approval of petitions for H-2B
 18 nonimmigrants; and

19 (B) the effectiveness of data sharing be-
 20 tween the Secretary and the Secretary of State.

21 (b) ASSESSMENT.—Not later than four years after
 22 the date of the enactment of this Act, the Comptroller
 23 General of the United States shall submit to Congress an
 24 assessment of the effect of the amendment made by sec-
 25 tion 3(a) on the domestic workforce, including data to in-

1 dicate any relationship between an increase of H–2B non-
2 immigrants and changes in domestic employment or earn-
3 ings.

4 **SEC. 9. RULE OF CONSTRUCTION.**

5 The benefits and wages provided to an H–2B non-
6 immigrant, the services an H–2B nonimmigrant provides
7 to the employer, the employment opportunities afforded to
8 an H–2B nonimmigrant by the employer, including those
9 employment opportunities that require a United States
10 worker or an H–2B nonimmigrant to travel or relocate
11 in order to accept or perform employment, and other
12 terms or conditions of the employment of an H–2B non-
13 immigrant provided for under this Act, or the amendments
14 made by this Act, are not primarily for the benefit of ei-
15 ther the H–2B nonimmigrant or the employer and are for
16 the equal mutual benefit for the H–2B worker and the
17 employer.

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