

113TH CONGRESS  
2D SESSION

# H. R. 4238

To amend the Immigration and Nationality Act to provide for requirements for employers of H–2B nonimmigrants, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2014

Mr. HARRIS introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to provide for requirements for employers of H–2B nonimmigrants, 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. H-2B NUMERICAL LIMITATIONS.**

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

7 “(A)(i) Except as provided in clause (ii),  
8 and subject to subparagraphs (B) and (C), an  
9 alien who has already been counted toward the  
10 numerical limitation of paragraph (1)(B) shall

1 not again be counted toward such limitation.  
2 Such an alien shall be considered a returning  
3 worker.

4 “(ii) An alien who has already been count-  
5 ed toward the numerical limitation of para-  
6 graph (1)(B) shall again be counted toward  
7 such limitation if such alien departs the United  
8 States for a period of time that is greater than  
9 one year, and has not been counted toward such  
10 limitation in any of the 3 years prior to such  
11 departure.”.

12 (b) EFFECTIVE DATE.—The amendment made by  
13 subsection (a) shall take effect as if enacted on January  
14 1, 2013.

15 **SEC. 2. ADDITIONAL REQUIREMENTS FOR H-2B NON-**  
16 **IMMIGRANT EMPLOYERS.**

17 (a) IN GENERAL.—Chapter 2 of title II of the Immi-  
18 gration and Nationality Act (8 U.S.C. 1181 et seq.) is  
19 amended by inserting after section 218 the following:

20 **“SEC. 218A. REQUIREMENTS FOR H-2B EMPLOYERS.**

21 **“(a) PETITION PROCESS.—**

22 **“(1) IN GENERAL.—**An employer who seeks to  
23 employ an H-2B nonimmigrant shall submit a peti-  
24 tion to the Secretary of Homeland Security in ac-  
25 cordance with this subsection.

1           “(2) CONTENTS.—A petition submitted under  
2 paragraph (1) shall include each of the following:

3           “(A) The number of named and unnamed  
4 H–2B nonimmigrants the employer is seeking  
5 to employ during the applicable period of em-  
6 ployment, and the anticipated dates of entry  
7 (which may be staggered).

8           “(B) The geographic area of intended em-  
9 ployment for the H–2B nonimmigrants, except  
10 that for itinerant industries that do not operate  
11 in a single fixed-site location, an employer may  
12 provide a list of anticipated work locations,  
13 which—

14           “(i) may include an anticipated  
15 itinerary; and

16           “(ii) may be subsequently amended by  
17 the employer, with notice to the Secretary  
18 of Homeland Security.

19           “(C) The anticipated period during which  
20 such employees will be needed, including ex-  
21 pected beginning and ending dates.

22           “(D) The written disclosure of employment  
23 terms and conditions which will be provided to  
24 the proposed H–2B nonimmigrant beneficiary

1 of the petition before the date on which the H-  
2 2B nonimmigrant files a visa application.

3 “(E) Evidence that the employer made ef-  
4 forts to recruit available, qualified, willing, and  
5 able United States workers for any position for  
6 which the employer seeks an H-2B non-  
7 immigrant worker, which the employer shall be  
8 deemed to have satisfied if the employer—

9 “(i) not later than 60 days before the  
10 employer’s date of need for an H-2B non-  
11 immigrant, submits the written disclosure  
12 of employment terms and conditions for  
13 such worker to the local office of the State  
14 workforce agency where the job is located,  
15 or in the case of an itinerant employer,  
16 where the job is to begin, and authorizes  
17 the posting of the written disclosure on the  
18 appropriate Department of Labor Elec-  
19 tronic Job Registry for a period of 45  
20 days, except that nothing in this clause  
21 shall require the employer to file an inter-  
22 state job order under section 653, of title  
23 20, Code of Federal Regulations; and

24 “(ii) keeps a record of all eligible,  
25 able, willing, and qualified United States

1 workers who apply for employment with  
2 the employer for the job for which an H-  
3 2B nonimmigrant is sought.

4 “(3) REVIEW.—

5 “(A) IN GENERAL.—The Secretary of  
6 Homeland Security shall establish a procedure  
7 to process petitions filed under this subsection,  
8 and shall review each petition submitted by an  
9 employer under this subsection for completeness  
10 or obvious inaccuracies.

11 “(B) ACCEPTANCE OF PETITIONS.—Not  
12 later than 7 days after an employer files a peti-  
13 tion, the Secretary of Homeland Security  
14 shall—

15 “(i) accept the petition unless the Sec-  
16 retary determines that the petition is in-  
17 complete or obviously inaccurate;

18 “(ii) submit to the petitioner notice of  
19 acceptance or non-acceptance of the peti-  
20 tion using electronic or other means assur-  
21 ing expedited delivery; and

22 “(iii) in the case of an accepted peti-  
23 tion, submit to the United States consulate  
24 notice of acceptance of the petition using  
25 electronic or other means assuring expe-

1           dited delivery, if the petitioner has indi-  
2           cated that the alien beneficiary or bene-  
3           ficiaries will apply for a visa to the United  
4           States at such consulate.

5           “(4) NUMBER OF POSITIONS NOT REDUCED BY  
6           HIRING UNITED STATES WORKER.—The Secretary of  
7           Homeland Security may not reduce the number of  
8           positions that the Secretary accepts for an employer  
9           pursuant to a petition under this subsection because  
10          the employer hires a United States worker before  
11          date on which the employer indicated it needed  
12          workers on the petition the employer submitted  
13          under this subsection.

14          “(b) TRANSPORTATION COSTS.—

15               “(1) TRANSPORTATION TO THE PLACE OF EM-  
16               PLOYMENT.—Not later than the date on which an  
17               H-2B nonimmigrant completes 50 percent of the  
18               work period set forth in the petition, an employer  
19               who hires an H-2B nonimmigrant shall reimburse  
20               the H-2B nonimmigrant for the cost of transpor-  
21               tation of the most economic and reasonable common  
22               carrier, including documented and reasonable sub-  
23               sistence costs during the period of travel, for that  
24               H-2B nonimmigrant, from the United States con-  
25               sulate issuing the visa to the H-2B nonimmigrant

1 or previous worksite in the United States, if any, to  
2 the place of such nonimmigrant's employment, un-  
3 less the H-2B nonimmigrant has been so reim-  
4 bursed by another employer.

5 “(2) TRANSPORTATION FROM THE PLACE OF  
6 EMPLOYMENT.—If an H-2B nonimmigrant com-  
7 pletes the work period set forth in the petition, and  
8 is not traveling to another worksite in the United  
9 States, not later than the time the H-2B non-  
10 immigrant departs from the worksite, the employer  
11 who hired an H-2B nonimmigrant for that work pe-  
12 riod shall pay for the cost of transportation of the  
13 most economic and reasonable common carrier, in-  
14 cluding an allowance for reasonable subsistence costs  
15 during the period of travel, for that H-2B non-  
16 immigrant, from the place of employment to the  
17 United States consulate that issued the visa to the  
18 H-2B nonimmigrant.

19 “(c) NO DISPLACEMENT OF UNITED STATES WORK-  
20 ERS.—

21 “(1) IN GENERAL.—An employer may not dis-  
22 place a United States worker employed by the em-  
23 ployer, other than for good cause, during the period  
24 of employment of the H-2B nonimmigrant and for  
25 a period of 30 days preceding such period in the oc-

1       cupation and at the location of employment for  
2       which the employer seeks to employ an H-2B non-  
3       immigrant.

4               “(2) LABOR DISPUTE.—An employer may not  
5       employ an H-2B nonimmigrant for a specific job for  
6       which the employer is requesting an H-2B non-  
7       immigrant because the former occupant of the job is  
8       on strike or being locked out in the course of a labor  
9       dispute.

10       “(d) WAGES.—The wages to be paid to H-2B non-  
11       immigrants shall be the greater of—

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

15               “(2) the prevailing wage level for the occupa-  
16       tional classification of the position in the geographic  
17       area in which the H-2B nonimmigrant will be em-  
18       ployed, based on the best information available at  
19       the time of filing the petition.

20       “(e) HOUSING.—An employer is not required to pro-  
21       vide housing or a housing allowance to an H-2B non-  
22       immigrant employee. If an employer does provide housing  
23       or a housing allowance to an H-2B nonimmigrant em-  
24       ployee, the employer may take a wage deduction or credit  
25       in an amount that is equal to the fair value of such hous-



1 ing in accordance with the Fair Labor Standards Act of  
2 1938.

3 “(f) INCENTIVE FOR AN EMPLOYER TO REPORT AN  
4 ABSCONDING H-2B NONIMMIGRANT EMPLOYEE.—If an  
5 H-2B nonimmigrant terminates employment prior to the  
6 end of the work period set forth in the job order, and the  
7 employer provides timely notice of this termination to the  
8 Secretary of Homeland Security, the Secretary of Home-  
9 land Security shall promptly notify the Secretary of State,  
10 and the Secretary of State shall make available to the em-  
11 ployer one additional visa for each such terminating non-  
12 immigrant in order for the employer to hire a replacement  
13 H-2B nonimmigrant for the same job opportunity without  
14 filing an additional petition.

15 “(g) DEFINITIONS.—In this section, the following  
16 definitions apply:

17 “(1) The term ‘H-2B nonimmigrant’ means an  
18 alien admitted to the United States pursuant to sec-  
19 tion 101(a)(15)(H)(ii)(B).

20 “(2) The term ‘United States worker’ means an  
21 employee who—

22 “(A) is a citizen or national of the United  
23 States;

24 “(B) is an alien who is lawfully admitted  
25 for permanent residence, is admitted as a ref-

1           ugee under section 207 of this title, is granted  
2           asylum under section 208, or is an immigrant  
3           otherwise authorized, by this Act or by the Sec-  
4           retary of Homeland Security, to be employed;  
5           or

6                   “(C) an individual who is not an unauthor-  
7           ized alien (as defined in section 274A(h)(3))  
8           with respect to the proposed occupation of the  
9           H-2B nonimmigrant.

10           “(3) The term ‘best information available’, with  
11          respect to determining the prevailing wage for a po-  
12          sition, means—

13                   “(A) a controlling collective bargaining  
14          agreement, where the employer is a signatory to  
15          a collective bargaining agreement that sets  
16          wages for work performed by H-2B non-  
17          immigrants;

18                   “(B) if there is no controlling collective  
19          bargaining agreement as set forth in subpara-  
20          graph (A), the local, State, or Federal pre-  
21          vailing wage laws or ordinances, for any time  
22          period during which the H-2B nonimmigrant  
23          performs work on a project for which payment  
24          of such wages is required by such laws or ordi-

1 nances, and the employer has signed a contract  
2 agreeing to pay such wages on that project; or

3 “(C) if there is no controlling collective  
4 bargaining agreement as set forth in subpara-  
5 graph (A) and the H-2B nonimmigrant is not  
6 performing work governed by a prevailing wage  
7 law or ordinance as set forth in subparagraph  
8 (B)—

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

13 “(ii) a legitimate private wage survey  
14 of the wages paid for such positions in the  
15 geographic area in which the H-2B non-  
16 immigrant will be employed.

17 “(4) The term ‘legitimate private wage survey’  
18 means, in the case of a petition under subsection  
19 (a), a survey of wages by an entity other than the  
20 Federal Government where—

21 “(A) the data has been collected during the  
22 2-year period immediately preceding the date of  
23 the petition;

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

4           “(C) the employer job description is simi-  
5           lar to the survey job description;

6           “(D) the survey is across industries that  
7           employ workers in the occupation;

8           “(E) the wage determination is based on a  
9           weighted or straight average of the relevant  
10          wages or the median of relevant wage levels;  
11          and

12          “(F) the survey identifies a statistically  
13          valid methodology that was used to collect the  
14          data.

15          “(h) RULE OF CONSTRUCTION.—The benefits and  
16          wages provided to an H–2B nonimmigrant, the services  
17          an H–2B nonimmigrant provides to the employer, the em-  
18          ployment opportunities afforded to an H–2B non-  
19          immigrant by the employer, including those employment  
20          opportunities that require a United States worker or an  
21          H–2B nonimmigrant to travel or relocate in order to ac-  
22          cept or perform employment, and other terms or condi-  
23          tions of the employment of an H–2B nonimmigrant pro-  
24          vided for under this section are for the mutual benefit of  
25          the H–2B nonimmigrant and the employer.

1       “(i) EXCLUSIVE RULEMAKING AUTHORITY.—The  
2 Secretary of Homeland Security shall have the exclusive  
3 authority to make rules to implement this section.”.

4       (b) CLERICAL AMENDMENT.—The table of contents  
5 of the Immigration and Nationality Act is amended by in-  
6 serting after the item relating to section 218 the following:

“218A. Requirements for H-2B Nonimmigrant Employers.”.

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