

112TH CONGRESS
1ST SESSION

H. R. 2895

To amend the Immigration and Nationality Act to provide for a temporary agricultural worker program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2011

Mr. DANIEL E. LUNGREN of California introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce, Energy and Commerce, and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to provide for a temporary agricultural worker 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 “Legal Agricultural
5 Workforce Act”.

6 **SEC. 2. NONIMMIGRANT AGRICULTURAL PROGRAM.**

7 (a) NEW “W” NONIMMIGRANT CLASSIFICATION FOR
8 NONIMMIGRANT AGRICULTURAL WORKERS.—Section

1 101(a)(15) of the Immigration and Nationality Act (8
2 U.S.C. 1101(a)(15)) is amended—

3 (1) by striking “or” at the end of the subpara-
4 graph (U);

5 (2) by striking the period at the end of sub-
6 paragraph (V) and inserting “; or”; and

7 (3) by adding at the end the following:

8 “(W) an alien having a residence in a for-
9 eign country which the alien has no intention of
10 abandoning who is coming to the United States
11 for a temporary period (as defined in section
12 220(o)) to perform services or labor in agricul-
13 tural employment, as defined in section 3 of the
14 Migrant and Seasonal Agricultural Worker Pro-
15 tection Act (29 U.S.C. 1802), who meets the
16 requirements specified in section 220, and with
17 respect to whom the Secretary of Agriculture
18 has notified the Secretary of Homeland Secu-
19 rity and the Secretary of State that the intend-
20 ing employer has accepted the terms and condi-
21 tions of such employment through successful
22 enrollment in the nonimmigrant agricultural
23 worker program pursuant to section 220(e).”.

24 (b) ESTABLISHMENT OF NONIMMIGRANT AGRICUL-
25 TURAL WORKER PROGRAM.—

1 (1) IN GENERAL.—Chapter 2 of title II of such
2 Act is amended by adding at the end the following:

3 **“SEC. 220. NONIMMIGRANT AGRICULTURAL WORKER PRO-**
4 **GRAM.**

5 “(a) ESTABLISHMENT OF PROGRAM.—

6 “(1) IN GENERAL.—The Secretary of Agri-
7 culture, in consultation with the Secretary of Home-
8 land Security, shall establish a nonimmigrant agri-
9 cultural worker program (in this section referred to
10 as the ‘program’) for the admission into the United
11 States of nonimmigrants described in section
12 101(a)(15)(W) (in this section referred to as a ‘non-
13 immigrant agricultural workers’) and issue all rel-
14 evant regulations implementing the program.

15 “(2) COMPONENTS OF PROGRAM.—The pro-
16 gram shall include the following components:

17 “(A) A process developed by the Secretary
18 of Agriculture for the submission of data and
19 information by agricultural employers that will
20 allow such Secretary to determine the number
21 of nonimmigrant agricultural workers required
22 by month and annually for a 10-month period.

23 “(B) A process developed by the Secretary
24 of Agriculture for the enrollment of qualified
25 agricultural employers in the program that re-

1 quires enrolled employers to abide by the obli-
2 gations described in subsection (f).

3 “(C) A process developed by the Depart-
4 ment of Homeland Security, based upon the de-
5 termination made under subsection (d) by the
6 Secretary of Agriculture, on the need for non-
7 immigrant agricultural workers, for imposition
8 of monthly and annual numerical limitations,
9 established under such subsection, on the
10 issuance of nonimmigrant visas for non-
11 immigrant agricultural employment. These visas
12 shall be made available subject to such limita-
13 tions on such workers in accordance with the
14 preference system established under subsection
15 (g).

16 “(D) A process developed by the Secretary
17 of Homeland Security, in consultation with the
18 Secretary of Agriculture, by which such Secre-
19 taries can determine that persons employing
20 nonimmigrant agricultural workers are enrolled
21 in the program and that the nonimmigrant ag-
22 ricultural workers so employed possess a valid
23 visa pursuant to section 101(a)(15)(W).

24 “(E) A nonimmigrant visa issued pursuant
25 to subsection (g) shall not limit the geo-

1 graphical area within which an alien may be
2 employed or limit the type of agricultural em-
3 ployment the alien may perform, except that
4 the employment shall only be with a qualified
5 agricultural employer enrolled in the program.

6 “(b) PRE-ENROLLMENT REQUIREMENTS.—

7 “(1) RECRUITMENT OF UNITED STATES WORK-
8 ERS.—Not later than 30 days before filing a request
9 to enroll in the nonimmigrant agricultural worker
10 program pursuant to subsection (c), each person fil-
11 ing such a request shall list with the Department of
12 Labor’s Employment and Training Administration’s
13 Electronic Job Registry a description of the antici-
14 pated period for which workers will be needed ex-
15 pected beginning and ending dates), as well as a de-
16 scription of the wages and other terms and condi-
17 tions of agricultural employment that satisfy the dis-
18 closure requirements of sections 201 and 301 of the
19 Migrant and Seasonal Agricultural Worker Protec-
20 tion Act (29 U.S.C. 1821; 1831), except that noth-
21 ing in this paragraph shall cause such listing to be
22 treated as an interstate job order under section 653
23 of title 20, Code of Federal Regulations.

24 “(2) RECORD OF UNITED STATES WORKERS.—

25 A person or entity shall keep a record of all eligible

1 able, willing, and qualified United States workers
2 applying for employment with the person in response
3 to its filing on the Electronic Job Registry and pro-
4 vide such record in its request to enroll filed under
5 subsection (c).

6 “(c) ENROLLMENT IN THE NONIMMIGRANT AGRI-
7 CULTURAL WORKER PROGRAM.—

8 “(1) IN GENERAL.—A person who employs indi-
9 viduals to perform agricultural employment (includ-
10 ing an association of such persons and a person who
11 contracts for the performance of agricultural em-
12 ployment) with respect to agricultural commodities
13 may submit to the Secretary of Agriculture, at such
14 time and in such manner as the Secretary specifies,
15 a request for enrollment in the nonimmigrant agri-
16 cultural worker program.

17 “(2) INFORMATION REQUIRED.—The request
18 must specify for each month concerned—

19 “(A) the total number and qualifications of
20 nonimmigrant agricultural workers required in
21 agricultural employment in each month;

22 “(B) the type of agricultural work required
23 to be performed by these workers;

1 “(C) the anticipated period (expected be-
2 ginning and ending dates) for which workers
3 will be needed;

4 “(D) a copy of the information submitted
5 to the Electronic Job Registry pursuant to sub-
6 section (b)(1); and

7 “(E) the record of United States workers
8 described in subsection (b)(2) at the time of the
9 request.

10 “(3) OPTIONAL INFORMATION ON ALIENS PRE-
11 FERRED.—The person may also include a statement
12 indicating a preference as to country of nationality
13 of aliens (or names of particular aliens) desired to
14 perform agricultural services in any such month.

15 “(d) DETERMINATION OF NUMERICAL LIMITATIONS
16 ON NONIMMIGRANT AGRICULTURAL VISAS BY MONTH
17 AND ANNUALLY.—Based upon requests for enrollment de-
18 scribed in subsection (c), and taking into consideration the
19 historical employment needs of agricultural employers and
20 the reports of United States workers applying for agricul-
21 tural employment listed on requests for enrollment, the
22 Secretary of Agriculture shall advise the Secretary of
23 Homeland Security of a numerical limitation on the
24 issuance of nonimmigrant visas to nonimmigrant agricul-

1 tural workers sufficient to meet the labor needs of agricul-
2 tural employers by month and annually.

3 “(e) STANDARDS FOR APPROVAL OF REQUESTS FOR
4 ENROLLMENT.—

5 “(1) IN GENERAL.—The Secretary of Agri-
6 culture shall approve a request for enrollment sub-
7 mitted under subsection (e)(1) if—

8 “(A) the person is an agricultural employer
9 and the worker is to be employed in agricultural
10 work;

11 “(B) the request complies with the provi-
12 sions of subsection (e) and the request sets
13 forth the need for such workers;

14 “(C) the person has not employed or peti-
15 tioned for a nonimmigrant described in section
16 101(a)(15)(H)(ii)(a) at the time when a request
17 on behalf of the person is pending or granted
18 under this subsection, or during any previous
19 period during which the employer had a request
20 granted under this section; and

21 “(D) the person is not disqualified under
22 subsection (f)(6).

23 “(2) REVIEW OF CERTAIN DENIALS.—Except as
24 provided under subsection (f), a person who is deter-
25 mined not to be eligible under paragraph (1) (other

1 than because of subparagraph (D) thereof) is enti-
2 tled to an expedited review of the determination by
3 the Secretary of Agriculture.

4 “(f) OBLIGATIONS UNDER PROGRAM.—Any person
5 whose request to enroll in the nonimmigrant agricultural
6 worker program has been granted shall ensure as follows:

7 “(1) NO DISPLACEMENT OF THE UNITED
8 STATES WORKERS.—The employer did not displace
9 and will not displace a United States worker em-
10 ployed by the employer, other than for good cause,
11 during the period of employment and for a period of
12 30 days preceding the period of employment in the
13 occupation at the place of employment for which the
14 employer seeks to employ nonimmigrant agricultural
15 workers.

16 “(2) OFFERS TO UNITED STATES WORKERS.—
17 The employer shall offer the job to any eligible
18 United States worker who applies and is equally or
19 better qualified for the job for which the non-
20 immigrant is sought, and will be available at the
21 time and place of need. The employer shall post all
22 such job openings on the Electronic Job Registry ad-
23 ministered by the Employment and Training Admin-
24 istration of the Department of Labor.

1 “(3) WORKERS’ COMPENSATION.—If the job op-
2 portunity is not covered by the State workers’ com-
3 pensation law, the employer will provide, at no cost
4 to United States and nonimmigrant agricultural
5 workers, insurance covering injury and disease aris-
6 ing out of, and in the course of, the worker’s em-
7 ployment which will provide benefits at least equal to
8 those provided under the State’s workers’ compensa-
9 tion law for comparable employment.

10 “(4) LABOR DISPUTE.—The person shall not
11 employ a nonimmigrant agricultural worker for a
12 specific job opportunity for which the employer is re-
13 questing a nonimmigrant agricultural worker be-
14 cause the former occupant of the job is on strike or
15 being locked out in the course of a labor dispute.

16 “(5) NOT USED FOR NONAGRICULTURAL SERV-
17 ICES.—The person shall not employ a nonimmigrant
18 agricultural worker for services other than agricul-
19 tural services.

20 “(6) VIOLATION OF PROGRAM REQUIRE-
21 MENTS.—If the Secretary of Agriculture determines,
22 after an opportunity for a hearing, that an enrolled
23 employer has violated this subsection the Secretary
24 may impose penalties, including fines and, in cases
25 of serious violations, the disqualification of the em-

1 ployer from future enrollment in the program for a
2 period of up to three years.

3 “(g) ALLOCATION OF VISAS.—

4 “(1) PREFERENCE SYSTEM.—Nonimmigrant
5 agricultural workers who are subject to the numer-
6 ical limitations specified in subsection (d) shall be al-
7 lotted nonimmigrant visas and work authority as fol-
8 lows:

9 “(A) IDENTIFIED WORKERS.—Visas shall
10 first be made available to qualified non-
11 immigrant agricultural workers specifically
12 identified pursuant to subsection (c)(3).

13 “(B) PREVIOUSLY EMPLOYED WORKERS.—
14 Visas shall next be made available to qualified
15 nonimmigrant agricultural workers who have
16 previously been employed in agricultural em-
17 ployment in the United States, providing pri-
18 ority in consideration among such workers in
19 the order of the length of time in which they
20 were employed.

21 “(C) ORDER IN WHICH APPLIED.—The re-
22 maining visas shall be made available to other
23 qualified nonimmigrant agricultural workers
24 strictly in the chronological order in which they
25 apply. Waiting lists of applicants shall be main-

1 tained in accordance with regulations prescribed
2 by the Secretary of State.

3 “(2) TREATMENT OF SPOUSES AND CHIL-
4 DREN.—A spouse or child of such a worker is not
5 entitled to visa or such status by virtue of such rela-
6 tionship, but may be provided the same status as
7 such a worker if the spouse or child also is a quali-
8 fied nonimmigrant agricultural worker to perform
9 agricultural employment.

10 “(3) CRIMINAL BACKGROUND CHECK.—In the
11 addition to any other examination required under
12 this Act, no visa or other documentation may be
13 issued to an alien under section 101(a)(15)(W) until
14 the alien has obtained successful clearance of the se-
15 curity and criminal background checks specified by
16 the Secretary of Homeland Security for purposes of
17 this section.

18 “(h) APPLICATION FOR AN INCREASE WHERE EX-
19 TRAORDINARY AND UNUSUAL CIRCUMSTANCES.—

20 “(1) IN GENERAL.—If an agricultural employer
21 (or association or representative thereof) establishes
22 that extraordinary and unusual circumstances have
23 resulted in a significant change in the employer’s
24 need for nonimmigrant agricultural workers speci-
25 fied in the application, or in the availability of do-

1 mestic workers who are able, willing, and qualified
2 to perform agricultural employment, the employer
3 may apply to the Secretary of Agriculture (in such
4 form and manner as the Secretary shall provide) for
5 an increase in the numerical limitations otherwise
6 established under subsection (d) to accommodate
7 such emergency need. If approved, the Secretary
8 shall forward the application to the Secretary of
9 Homeland Security with a recommendation on the
10 additional number of nonimmigrant agricultural
11 worker visas found necessary.

12 “(2) TIMELY DETERMINATION ON APPLICA-
13 TION.—The Secretary of Agriculture shall make a
14 determination on an application under subparagraph
15 (A) and forward its recommendations to the Sec-
16 retary of Homeland Security within 72 hours of the
17 date the application is completed.

18 “(3) INCREASE IN LIMITATION.—To the extent
19 the application is approved, the Secretary of Home-
20 land Security shall provide for an appropriate in-
21 crease in the appropriate numerical limitation within
22 72 hours.

23 “(i) ENTRY OF WORKERS.—

24 “(1) IN GENERAL.—An alien may not be admit-
25 ted to the United States as a nonimmigrant agricul-

1 tural worker during the three-year period beginning
2 on the most recent date (if any) on which the alien
3 violated a material term or condition of a previous
4 admission as a nonimmigrant agricultural worker.

5 “(2) DISQUALIFICATION FOR COMMISSION OF
6 CRIME.—An alien who commits a crime while in the
7 United States as a nonimmigrant agricultural work-
8 er shall be ineligible to retain such status and shall
9 be required to depart from the United States.

10 “(3) CONTINUOUS EMPLOYMENT.—Non-
11 immigrant agricultural workers admitted under this
12 program shall be continuously employed or actively
13 seeking employment in agricultural employment
14 throughout the term of their admission.

15 “(4) DIRECTION OF NONIMMIGRANT AGRICUL-
16 TURAL WORKERS TO EMPLOYMENT OPPORTUNI-
17 TIES.—The Secretary of State and Secretary of Ag-
18 riculture, in consultation with the Secretary of
19 Labor, shall establish a system for providing infor-
20 mation on available agricultural employment oppor-
21 tunities to individuals whose applications for non-
22 immigrant agricultural visas have been approved if
23 those individuals are not named by an employer or
24 do not have a letter of employment opportunity pro-
25 vided by a person enrolled in the program.

1 “(j) APPLICABILITY OF EMPLOYMENT LAWS.—All
2 Federal, State, and local employment related laws applica-
3 ble to United States agricultural workers shall apply to
4 nonimmigrant agricultural workers admitted pursuant to
5 this program.

6 “(k) BIOMETRIC IDENTIFICATION CARD.—The Sec-
7 retary of Homeland Security shall provide each non-
8 immigrant agricultural worker with an identification card
9 that contains—

10 “(1) an encrypted, machine-readable, electronic
11 identification strip that is unique to the alien to
12 whom the card is issued;

13 “(2) biometric identifiers, including fingerprints
14 and a digital photograph; and

15 “(3) physical security features designed to pre-
16 vent tampering, counterfeiting, or duplication of the
17 card for fraudulent purposes.

18 “(l) TRUST FUND.—

19 “(1) ESTABLISHMENT.—The Secretary of Agri-
20 culture shall establish by regulation a trust fund the
21 purpose of which is to provide, without further ap-
22 propriation, funds for the administration and the en-
23 forcement of the program under this section, for the
24 cost of the cards issued under subsection (k), for a
25 monetary incentive for nonimmigrant agricultural

1 workers to return to their country of origin upon ex-
2 piration of their visas under the program, and for
3 payment with respect to emergency medical services
4 furnished to nonimmigrant agricultural workers. The
5 Secretary of Agriculture in consultation with the
6 Secretary of the Treasury shall promulgate such
7 other regulations as may be necessary to carry out
8 this subsection.

9 “(2) PAYMENT OF FICA AND FUTA AMOUNTS
10 INTO TRUST FUND.—In the case of employment of
11 a nonimmigrant agricultural worker—

12 “(A) the employer shall provide for pay-
13 ment into the trust fund established under
14 paragraph (1) of the sum of—

15 “(i) an amount equivalent to the
16 amount of excise taxes which the employer
17 would pay under the chapter 21 of the In-
18 ternal Revenue Code of 1986 with respect
19 to such employment if it were considered
20 employment for the purpose of such Act;
21 and

22 “(ii) an amount equivalent to (and in
23 lieu of) the amount of excise taxes which
24 the employer would otherwise pay under

1 chapter 23 of such Code with respect to
2 such employment; and

3 “(B) there shall be deducted from the
4 wages of the worker and paid into such trust
5 fund an amount equivalent to the amount of ex-
6 cise taxes that the employee would pay under
7 such chapter 21 with respect to such employ-
8 ment if it were considered employment for the
9 purposes of such Act.

10 “(3) EXPENDITURES FROM TRUST FUND.—

11 “(A) USE OF EMPLOYER CONTRIBUTIONS
12 FOR ADMINISTRATION.—Amounts described in
13 paragraph (2)(A) paid into the trust fund shall
14 be used for the purpose of administering and
15 enforcing the program under this section and
16 for the cost of the cards issued under sub-
17 section (k).

18 “(B) USE OF EMPLOYEE CONTRIBUTIONS
19 FOR REPAYMENT OF EMPLOYEE CONTRIBU-
20 TIONS UPON RETURN TO COUNTRY OF ORI-
21 GIN.—Except as provided in subparagraph (C),
22 amounts described in paragraph (2)(B) paid
23 into the trust fund with respect to a non-
24 immigrant agricultural worker shall, upon ap-
25 plication by the worker at the United States

1 consulate nearest the worker's residence in the
2 country of origin, be paid to the worker if the
3 worker demonstrates the compliance of the
4 worker with the terms and conditions of the
5 program.

6 “(C) USE OF EMPLOYEE CONTRIBUTIONS
7 ATTRIBUTABLE TO HI TAXES FOR EMERGENCY
8 MEDICAL SERVICES FOR NONIMMIGRANT AGRI-
9 CULTURAL WORKERS.—

10 “(i) IN GENERAL.—Amounts de-
11 scribed in paragraph (2)(B) paid into the
12 trust fund which relate to excise tax in sec-
13 tion 3101(b) of the Internal Revenue Code
14 of 1986 shall be used to provide payment
15 with respect to emergency medical services
16 (as defined in clause (iii)) for non-
17 immigrant agricultural workers.

18 “(ii) ADMINISTRATION.—The Sec-
19 retary of Agriculture shall establish rules,
20 in consultation with the Secretary of
21 Health and Human Services, with respect
22 to the payments under this subparagraph,
23 including methods for determining quali-
24 fications for payment and the amount of

1 payment to be made with respect to emer-
2 gency medical services.

3 “(iii) EMERGENCY MEDICAL SERVICES
4 DEFINED.—In this subparagraph, the term
5 ‘emergency medical services’ means those
6 items and services required to be provided
7 under section 1867 of the Social Security
8 Act (42 U.S.C. 1395dd) with respect to an
9 individual who is a nonimmigrant agricul-
10 tural worker and does not include items
11 and services for which coverage under
12 workers’ compensation is required under
13 subsection (f)(3) with respect to the work-
14 er.

15 “(m) SEMIANNUAL REPORTS TO CONGRESS.—The
16 Secretary of Agriculture shall report to Congress semi-
17 annually regarding the program under this section. Each
18 such report shall include a statement of the number of
19 nonimmigrant visas issued under the program, an evalua-
20 tion of the effectiveness of the program, a description of
21 any problems related to the enforcement of the program,
22 and any recommendations for legislation relating to the
23 program.

24 “(n) MISCELLANEOUS PROVISIONS.—

1 “(1) DISQUALIFICATION OF NONIMMIGRANT AG-
2 RICULTURAL WORKERS FROM FINANCIAL ASSIST-
3 ANCE.—An alien admitted as a nonimmigrant agri-
4 cultural worker is not eligible for any program of fi-
5 nancial assistance under Federal law (whether
6 through grant, loan, guarantee, or otherwise) on the
7 basis of financial need, as such programs are identi-
8 fied by the Secretary of Agriculture in consultation
9 with other appropriate heads of the various depart-
10 ments and agencies of Government.

11 “(2) EXPANSION OF CONSULATES.—The Sec-
12 retary of State is authorized to take such steps as
13 may be necessary in order to expand and establish
14 consulates in foreign countries in which aliens are
15 likely to apply to become nonimmigrant agricultural
16 workers under the program to the extent such ex-
17 pansion is fully covered by the funds obtained in
18 subsection (l)(3)(A).

19 “(3) PREEMPTION.—The provisions of this sec-
20 tion preempt any State or local law on the same sub-
21 ject.

22 “(o) DEFINITIONS.—For purposes of this section and
23 section 101(a)(15)(W):

24 “(1) AGRICULTURAL EMPLOYMENT.—The term
25 ‘agricultural employment’ has the meaning given

1 such term in section 3 of the Migrant and Seasonal
2 Agricultural Worker Protection Act (29 U.S.C.
3 1802), without regard to whether the specific service
4 or activity is temporary or seasonal.

5 “(2) TEMPORARY PERIOD.—The term ‘tem-
6 porary period’ means that period during which a
7 nonimmigrant agricultural worker may remain in
8 the United States to perform agricultural employ-
9 ment, not to exceed 10 months in any 12 month pe-
10 riod.”.

11 (2) CLERICAL AMENDMENT.—The table of con-
12 tents of such Act is amended by inserting after the
13 item relation to section 219 the following new item:

“Sec. 220. Nonimmigrant agricultural worker program.”.

○