

**DEADLINE EXTENDED UNTIL 6:00 PM
TUESDAY, SEPTEMBER 29**

Congress of the United States

Washington, DC 20515

Dear Colleague,

Do you want to protect agricultural jobs and wages for American workers while ensuring that any foreign workers, who do receive temporary work visas, have decent housing and sufficient wages to prevent them from becoming the financial responsibility of local communities while in the United States? If so, please sign the following letter asking the Conferees to strike the Senate Agricultural Guestworker amendment to the Commerce, Justice, State, Judiciary appropriations bill.

September 24, 1998

The Honorable Harold Rogers, Chairman
Subcommittee on Commerce, Justice, State and the Judiciary
H309 Capitol
Washington, DC 20515-6017

The Honorable Alan Mollohan, Ranking Member
Subcommittee on Commerce, Justice, State and the Judiciary
2346 Rayburn House Office Building
Washington, DC 20515-4801

Dear Chairman Rogers and Ranking Member Mollohan,

As you begin negotiations with the Senate on the fiscal year 1999 Commerce, Justice, State (CJS) appropriations bill, we respectfully urge you to strike the agricultural guestworker amendment passed in the Senate. This provision will displace American workers, lead to lower wages, aggravate already substandard housing conditions for foreign, temporary workers, exploit those workers who obtain guestworker status and potentially burden local governments with the responsibility of providing for workers who lose the ability to work.

The current H-2A "guestworker" program allows the temporary admission of foreign agricultural workers. However, the Senate agricultural guestworker amendment would establish a new temporary agricultural worker program, which would result in major increases in the use of guestworkers and substantially weaken H-2A protections for both American and foreign agricultural workers. There is no justification for this. *The General Accounting Office reported last December that no farm labor shortage exists in the United States.* To bring in more foreign workers would threaten American workers' jobs and the protection of agricultural workers' basic needs.

The Senate agricultural guestworker amendment would weaken key provisions of the H-2A program as follows:

Displaces American Workers and Eliminates the 50% Rule: under the current H-2A program, agricultural employers are required to hire American workers first, before hiring H-2A guestworkers. In addition, growers are required to hire U. S. agricultural workers who show up for work during the first half of a harvest season, and cannot displace them with

OVER →

foreign workers (the "50% Rule.") However, under the Senate agricultural guestworker amendment, growers would not be required to hire U.S. workers first, and could refuse to hire U.S. workers who show up for work during the first half of the harvest season. Unlike current law, this program would not require growers to engage in private recruitment efforts to find U.S. agricultural workers.

Lowers Wages: under the current H-2A program, employers must pay the highest of the federal or state minimum wage, local prevailing wage, or the H-2A Adverse Effect Wage Rate (AEWR) which compensates for wage depression caused by the presence of guestworkers. However, under the Senate agricultural guestworker amendment, employers would only need to pay the locally prevailing wage plus 5%, resulting in lower wages.

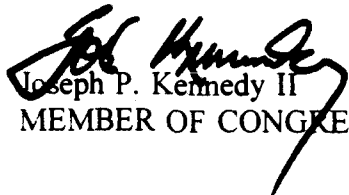
No Housing Requirement: under the current H-2A program, employers are required to provide free housing for guestworkers. However, under the Senate agricultural guestworker amendment, employers would no longer be required to provide free housing, but rather a housing voucher. Given the scarcity of decent, safe and affordable housing in many rural areas, housing vouchers are an unrealistic approach that will leave many guestworkers homeless.

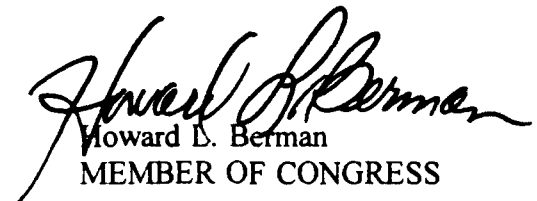
Eliminates the Minimum Work Guarantee: under the current H-2A program, employers are required to pay U.S. workers and guestworkers for at least 75% of the contract. However, under the Senate agricultural guestworker amendment, there is no requirement for a minimum work guarantee. *Nothing prevents over-recruiting in order to create a surplus of labor and drive down wages.*

The Senate agricultural guestworker amendment threatens American workers' jobs and drives down wages and living conditions for all agricultural workers. Therefore, we respectfully ask you to strike this provision from the CJS conference report.

Thank you for your consideration. If you have any questions, please feel free to contact us or Liza Mientus of Mr. Kennedy's staff at 5-5111; Laura Arciniega of Mr. Becerra's staff at 5-6235; Bari Schwartz of Mr. Berman's staff at 5-4695; or Rob Vanasek of Mr. Minge's staff at 5-2331.

Sincerely,


Joseph P. Kennedy II
MEMBER OF CONGRESS

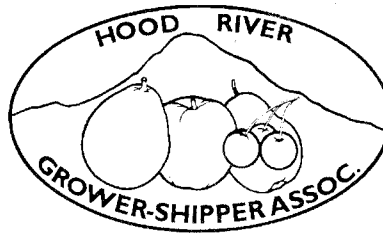

Howard L. Berman
MEMBER OF CONGRESS


Xavier Becerra
MEMBER OF CONGRESS


David Minge
MEMBER OF CONGRESS

To co-sign, call any of the following staff by 6:00 PM, Monday, September 28:
Liza Mientus x5-5111; Laura Arciniega x5-6235; Bari Schwartz x5-4695; Rob Vanasek x5-2331

P. O. Box 168
3136 Odell Highway
Odell, Oregon 97044



Phone (541) 354-2565
FAX (541) 354-2379

September 29, 1998

Representative Darlene Hooley
1419 Longworth House Office Building
Washington, DC 20515-3705

Dear Representative Hooley;

Subject: Asking for support for AgJOBS /Representative Bob Smith letter

Our organization continues to be concerned about adequate harvest labor. This years harvest which is 60% complete, is experiencing a tighter labor supply than last year. One grower remarked to me "how much tighter can it (harvest labor) get without causing problems with fruit quality". My answer was it will only continue to get tighter.

A guest worker program/modified H2A program is critical to our industry. Growers who need 10 pickers and have only 6 are very concerned - growers that have 25 pickers and need 35 are nervous.

This year I am estimating we are 200 pickers short -- where last year we peaked at 100 short. Also, the shortage this year was for much of the harvest as opposed to just the peak of harvest last year. We will have a complete report after we receive all the harvest data from the receivers -- which we will share with you. Needless to say, next year will be very scary.

On top of this, growers are concerned with INS/SS Administration activity. Nationally, the GAO study showed 30% + of the workforce as illegal (although documented to the employer). If the INS were to visit a grower, the effect would be devastating.

An example might be to compare this with your own congressional offices - your harvest season can be several times during the year - and to operate with a reduced staff during peak time because there is no one to do the job, as well as have the concern of a visit by an agency that could instantly remove 30% + of your employees - would be something that would always be at the back of your mind.

Ag employers do want a legal work force. We are again asking for your continued support for a solution - the AgJOBS legislation.



HOOD RIVER GROWER-SHIPPER ASSOCIATION

House Agriculture Committee Chairman Bob Smith is sending a letter to the House Commerce, Justice, State Appropriations Subcommittee Chairman Hal Rogers (R-KY) in support of the AgJobs language. Contact Monique Brown of the House Agriculture Committee at 202-225-2342 to sign on to the letter.

We would appreciate your support by signing on to the letter. Thank you for your past support.

Best regards,

A handwritten signature in cursive script that reads "Thom Nelson". The signature is written in dark ink and is positioned above the printed name.

Thom Nelson
Executive Director



NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS ISSUE PAPER

HOW THE AGJOBS BIPARTISAN H-2A REFORM BILL WORKS

1. **U.S. WORKERS GET FIRST CHANCE FOR JOBS. ALIEN WORKERS ARE ADMITTED ONLY AFTER A NATIONAL REGISTRY SEARCH FOR U.S. WORKERS.** *An existing national computer registry administered by the Department of Labor matches grower requests for U.S. workers with U.S. worker requests for farm jobs.*

A nationwide job bank present in all states (to be called the registry) will more effectively match domestic workers seeking jobs in all states with grower requests for farm workers. Only domestic workers determined to be legally authorized to work will be able to seek jobs on the registry. The structure for this simple but efficient system already exists. It will make it easier for domestic workers to find farm jobs anywhere in the country and give them the first chance to obtain such jobs. It will replace the current labor certification process that GAO has found to be an overly complex and bureaucratic bottleneck impeding the current H-2A program's effectiveness.

Growers apply to the registry 21 days in advance of the need for workers, rather than 60 days, as under current system. Only when the registry determines that there are insufficient domestic workers to meet a grower's needs will DOL authorize the use of temporary and seasonal alien workers. Alternative procedures exist in the event DOL fails to act in a timely manner.

2. **TO OBTAIN ALIEN WORKERS, GROWERS COMMIT TO EXTENSIVE BUT REASONABLE WAGES AND BENEFITS FOR U.S. AND ALIEN WORKERS.** *Growers cannot use the registry unless they commit to the following wages and benefits to be provided to both domestic and alien workers:*

Premium Prevailing Wage. A prevailing wage must be paid to domestic and alien workers. While a premium wage, it replaces the current H-2A program's adverse effect wage rate which is unaffordable by most growers because it is arbitrarily set by DOL without reference to wages paid for the specific job in the area of employment.

Housing. Housing or a housing allowance must be provided domestic and alien workers. More flexibility is provided during a transition period established to allow the building of housing where insufficient housing exists.

Transportation. Growers must reimburse reasonable transportation costs to domestic and alien workers for inbound and outbound transportation if the workers complete the required work commitments.

Workers' Compensation. Workers' compensation coverage must be provided to all domestic and alien workers.

Unemployment Insurance. Employers participating in the program must provide unemployment insurance to domestic workers.

3. **THE PROGRAM HAS STRONG COMPLIANCE MEASURES FOR GROWERS AND ALIENS.** *Growers must comply with registry, wage and benefit requirements, and alien workers are obligated to return to their homes after their visas expire.*

Growers who fail to comply with registry and wage and benefit requirements are subject to fines, backpay obligations, and debarment from future program use. Department of Labor has authority to enforce these provisions.

Alien workers who fail to return home as required by their temporary and seasonal visas can be prohibited from participating in the program in the future. A tamper- and counterfeit-proof visa tied to government databases will determine whether workers return home in a timely manner and complied with laws in U.S..

4. PROGRAM PERFORMANCE IS FACILITATED THROUGH PHASED-IN VISA LIMITATIONS AND MANDATORY CONGRESSIONAL REVIEW OF PROGRAM AND DECISION ON ITS CONTINUATION. *Visas are initially limited and Congress must decide whether the program terminates.*

The current H-2A program does not limit the number of visas available. The reformed program places limits on the number of visas during the first 4 years of its implementation. The number of workers admitted would be based on the number of unauthorized workers in agriculture determined by DOL surveys.

GAO is required to issue reports 3 and 5 years after enactment. At the end of 5 years Congress gets a report from GAO recommending whether the program continue or terminate. An expedited joint resolution procedure would allow Congress to act quickly terminate the program should it prove to be unworkable. Should Congress terminate the reformed H-2A program, then the current H-2A program would continue in its current form. If the reformed program continues after 5 years, then the current H-2A program would terminate.

5. GROWERS PAY FOR THE COST OF THE PROGRAM. *The program would be funded by a user's fee paid by participating employers.*



David Blair
82717

Oregon Association of Nurserymen, Inc.

September 16, 1998

Congressman Earl Blumenauer
1113 Longworth Office Building
Washington, D.C. 20515-3703

Dear Earl:

Although surprised and disappointed, I want thank you for your letter of September 9 expressing your intention to withhold your support for the H2A guestworker legislation which was recently passed by the Senate, and now awaits House action.

At the same time, I would request that you reconsider your decision and take a closer look at what actually will happen, and what benefits will actually occur if the much needed over-haul of the current H2A program takes place. The air has been so poisoned by special interest groups opposing any guestworker action by Congress it is easy to understand why you and others may have some questions. The disinformation program being promoted by both government agency and labor advocates has been successful, at least up to this point.

But I doubt it will be successful once people start taking a closer look at what today's agricultural world is really like. As just one example, and I assume this may be one of the concerns you have about unacceptable agricultural labor conditions, it might be interesting to know when and where the photographs *The Oregonian* used to support its child labor abuse story two weeks ago were taken.

For your information, year before last the Oregon nursery industry was targeted by the U.S. Department of Labor's Wage and Hour Division for child labor violations, as well as others. On the wall of the OAN office reception area you will find a DOL Wage and Hour Vision Award for outstanding compliance of labor regulations and laws. The OAN didn't earn this award, and a clean bill of health from the local DOL office, our members, who are agricultural employers, earned it.

Be assured, Earl, the OAN is just as concerned as you over the very few, and growing fewer year by year, of those employers who misuse or abuse their employees. Contrary to some of the disinformation being distributed today, legalized workers are far less at risk of mistreatment than illegals. You know full well the vast majority of agricultural workers in the United States are improperly documented, despite the less than accurate story as portrayed in the December 1997 GAO report to Congress. The proposed H2A revision plan will take a big step in reducing the number of illegal workers, and will provide a much improved working environment for those workers.

As you well know, I could provide much more documentation of facts in support of the Wyden/Smith bipartisan legislation. Please keep in mind, what we are supporting, and asking you to endorse, is the original bill as presented to the Senate before procedural moves deleted key parts of the package. I, as well as others, have been assured those safeguards will be restored to the bill when it is acted upon by the House. I trust this restoration effort will meet with your approval.

Again, I call upon you to reconsider your decision to withhold support for this bill. If it is restored to the point it was presented to the Senate in the first place, it deserves your

Congressman Earl Blumenauer/H2A Revision
September 16, 1998
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support. Please do not be misled by those who have personal agendas which are not in the best interest of Oregon agriculture.

Let me suggest you make contact with the folks at J. Frank Schmidt & Son and learn first-hand about their latest effort to comply with the current H2A program. You should be concerned when one of your constituents attempts to hire a handful of workers through the H2A program only to be shot down and denied over the fact they used the word "nurserymen" in the application, as well as DOL attempting to tell one of America's leading nursery operators how they must define specific job openings.

As we have said over and over, instead of attempting to help the employer with a program that provides controlled assistance to the employer and employee, the current H2A program is unworkable. Don't take my word for it, Earl, pick up the phone and talk with Frank Schmidt III, or Norbert Kinen, two very responsible individuals within your district. Ask them how much they are now forced to pay in legal fees to develop a 40-odd page response to DOL in order to fill the very few positions they were requesting. The phone number is 503-663-4128.

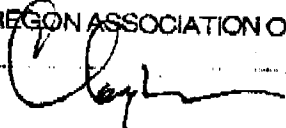
Then ask yourself who is being mistreated.

Earl, although many will disagree with our efforts to keep the door open to work cooperatively with you on this and other issues, it is our plan to do so. We have fought uphill battles before, and will face more in the future. You'll find we are difficult to shake when we feel we have a just cause and facts to support it. The revision of the current H2A program is one of those causes.

Thank you for taking another look at the real facts and needs behind this very important issue.

Sincerely,

OREGON ASSOCIATION OF NURSERYMEN, INC.,


Clayton W. Hannon
Executive Director

cc: Norbert Kinen, J. Frank Schmidt & Son
Clint Smith, Four Mile Nursery
Senator Ron Wyden
Senator Gordon Smith
Congressman Bob Smith
Congresswoman Darlene Hooley
Governor John Kitzhaber
Bruce Andrews, Director, Oregon Dept. of Agriculture

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**COMPARISON OF SENATE-PASSED H-2A REFORM AGJOBS AMENDMENT
TO S. 2260 WITH PROPOSED CONFERENCE CHANGES**

Senate-Passed Amendment

**Proposed Conference
Changes**

**Limitation on Covered Job
Opportunities (Section 2)**

Changes definition of "agriculture" to clarify that packinghouse and food processing jobs currently excluded from H-2A program are excluded from reformed program.

Wages (Section 2)

Clarifies that the premium prevailing wage rate cannot be less than the federal or applicable State minimum wage. (per CRS)

Housing (Section 7)

Requires employers to make a good faith effort to locate housing where a housing allowance is provided. Also shortens the period for State determinations of the sufficiency of housing from 3 to 1 year and requires that housing be provided 4 years rather than 5 years after a finding of insufficient housing.

Transportation (Section 7)

Eliminates any ambiguity that employers must reimburse inbound and outbound transportation costs after the required work commitments are met.

**Department of Labor Investigations,
Enforcement and Penalties (Section 8)**

Requires DOL to conduct expedited investigations and make findings within 10 days if a worker alleges the following serious violations: 1) violation of existing child labor laws; 2) failure to make wage payments; 3) failure to pay housing allowance; and 4) providing housing in violation of government housing safety standards that pose an immediate threat of serious bodily injury or death to workers. Hearing process provided if violation found.

**Transfer of Workers Dissatisfied with
Employer (Section 8)**

-Applies to Foreign worker

Provides DOL discretion to transfer a worker who has filed a complaint alleging an employer has violated program terms to another employer approved to participate in the program. Provides that employer from whom the worker is transferred must first obtain replacement worker and clarifies responsibility for transportation reimbursement in transfer situation.

**State Department Issuance of
Visas (Section 6)**

Clarifies that employers may voluntarily agree to transfer workers to other qualified employers.

Clarified alien workers may return home at any time
Clarifies that if the Secretary of Labor fails to act on an employer application within statutory timeframes that the Secretary of State may approve an application, but only if the employer meets all program requirements.

**Limitation on the Number of Visas
(Section 6)**

Places caps on the number of visas allowed during the first 4 years after the effective date as follows: 10%; 20%; 40% and ~~70%~~ ^{50%} of the number of unauthorized workers found working in agriculture by DOL's most recent National Agricultural Worker Survey. ^{Wyden wants some limit in out years} After 4th year there is no cap. Secretary of Agriculture ensures that visas are allocated on a geographically diverse basis, considering seasonal demands in all parts of the country.

**Establishment of Employer/Worker
Advisory Board (Section 13)**

Establishes advisory board to consult with GAO in preparation of its reports on program operation. 4 employer representatives are selected by Secretary of Agriculture and 4 workers representatives are selected by Secretary of Labor.

Termination of Program (Section 13)

Requires reports to Congress by GAO on operation of program, including recommendations on program improvements and the continuation or termination of the program at the end of 5 years. If GAO recommends termination of program, an expedited and privileged joint resolution procedure is provided for prompt congressional action on termination. If Congress passes resolution ending reformed program, the existing H-2A will not sunset and will continue in its current form.

Effective Date of Program (Section 14)

The effective date for the program is 1 year rather 6 months after enactment to allow more time for government agencies to implement program. DOL is mandated to issue report within 6 months regarding measures being taken and progress made in implementation.

Initial Waiver of Ineligibility (Section 9)

States that otherwise admissible aliens are not deemed inadmissible to participate in program if they leave the US no later than within 1-year after the 4-year phase-in period.

Removal by Attorney General of Aliens Violating Program Terms (Section 9)

Requires AG to remove workers who abandon employment and fail to maintain legal status in US.

Identification Document and Document System (Section 9)

Establishes tamper- and counterfeit-proof identification document to verify employment eligibility of aliens. Such document must be compatible with existing government law enforcement and benefit eligibility databases and must measure whether aliens depart US as required by their visas.

Permanent Resident Status (Previous Section 10)

No

Provision providing employment-based preference for permanent resident status for aliens working 4 years in program is deleted.

NOT AGREED

User's Fee (Section 12)

Establishment of user's fee is being drafted by Legislative Counsel subject to Congressional Budget Office input.

Unemployment Insurance (Section 4)

Provision requiring payment of unemployment insurance to domestic workers as a condition of program participation is being considered by Legislative Counsel subject to Congressional Budget Office input.



Congress of the United States
House of Representatives
Washington, DC

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email: write.earl@mail.house.gov
website: <http://www.house.gov/blumenauer>

September 9, 1998

The Honorable Ron Wyden
United States Senator
259 Russell Office Building
Washington, D.C. 20510

Dear Ron:


Although we never quite got around to our conversation about the Guestworker immigration policy, I have been doing a great deal of thinking about it and have interviewed dozens of people. I understand your frustration and appreciate the work you are doing in an effort to improve a situation which is unfair, arbitrary, puts at risk vulnerable people and puts employers who play by the rules at a serious disadvantage. I, like you, am committed to finding solutions, but I do not feel comfortable supporting your proposal. I wanted to share my reservations in the hope that they might provide some feedback to assist in your future efforts or perhaps identify areas where we could work together.

As you know, I agreed to co-sponsor Congressman Smith's original Guestworker legislation to signal my frustration, dissatisfaction and willingness to seek new directions. It was a pilot project which was to be closely monitored and re-evaluated in two years. In an area this complex, I don't feel comfortable employing a rider on an appropriations bill that would enact permanent changes to the law. While this is usually a bad idea, given the complexity, controversy and emotion, I feel it is a particularly bad idea and completely inappropriate. I'm also having great difficulty reconciling the H1B and H2A (high tech vs. migrant worker). Why should we treat the migrant workers so much less favorably when, despite the difference in economic earning power, the employment dynamics appear to be very similar?

Finally, I am troubled by repeated and consistent reports that the Department of Labor, the Oregon Department of Agriculture, the Employment Division and especially the INS appear to be wildly inconsistent, and some would say arbitrary, in the enforcement of existing laws. They are not adequately staffed, funded, nor apparently managed for this purpose. It would appear these deficiencies need to be addressed before embarking on a new comprehensive program.

I continue to be willing to work with you to shake things up. Even though I don't feel comfortable with this proposal, I look forward to brainstorming with you in the future. I have not shared this analysis with any of the parties with whom I've been meeting, although I do feel the need to get back to them. I also think it is appropriate to communicate with members of the House delegation to minimize any surprise and frustration. If you have any further thoughts or someone on your staff wishes to contact Joyce Fleming on my staff, additional information would, as always, be appreciated.

Sincerely,



Earl Blumenauer
Member of Congress

September 18, 1998

TO: LA's to Senators Baucus, Biden, Bingaman, Breaux, Bryan, Bumpers, Cleland, Hollings, Kerrey, Moynihan, Reid, and Robb

FR: David Blair, LA, Senator Wyden (4-3163); Carole Grunberg, LD, Senator Wyden(4-5244); Caroline Berver, LA, Senator Graham (4-0852); Diane Trewin, Senator Graham (4-6545)

RE: Commerce-Justice-State H-2A amendment

On behalf of our bosses, we want to express our deep appreciation for your Senator's support for legislation to reform the "H-2A" farm worker program, and to give you a progress report on the work we have done since Senate passage to continue refining this legislation.

As you know, the "H-2A" amendment to the FY99 Commerce-Justice-State Appropriations bill was the product of seven months of intense work. Our goal was to craft an approach that we believe would improve the lives of farm workers and be usable by our farm producers. With Senate passage of this bill - on a vote of 68 to 31 - we are clearly very close to enacting a reform package.

In order for the amendment to be in order and in compliance with the Budget Act, it was necessary to make last minute revisions to the user fee and other provisions of the bill. In many ways, our difficulty was a classic example of the extraordinary illogic of the budget rules, because what was deemed out of order was a provision in which growers would pay a user fee for each foreign H-2A worker visa, on the basis of the normal federal tax withholdings, amounting to eight percent of a worker's salary. Because the user fee finances the worker registry established by the bill, the transportation reimbursements for workers, and the construction of new farm worker housing, those provisions had to be modified as well. We want to reiterate our commitment to the restoration of these items to the extent possible in an appropriations bill.

You may also have heard that the United Brotherhood of Teamsters and the United Food and Commercial Workers have expressed concern that our amendment would allow the expansion of the H-2A program into new economic sectors, such as meat packing and food processing. We do not believe our amendment does this, but have secured changes in the bill to assure there is no question that this legislation allows the use of H-2A only by those sectors of agriculture that use the current program. Period.

In response to concerns that the development of the worker registry and the other procedures of the bill should be more fully tested before allowing full implementation, we have added several provisions. First, we have extended the time until implementation from 6 months to 1 year after enactment. Second, we are directing the Secretaries of Labor and Agriculture to phase in the program on the basis of a percentage - starting with 10% - of the annual Department of Labor agricultural worker survey, which estimates the number of illegal workers. And third, we are requiring the General Accounting Office to closely monitor implementation, with reports to

Congress at years 3 and 5. GAO is directed to particularly focus its attention on the setting of wage rates under the bill; whether persons granted H-2A visas are complying the entry and exit requirements of the program; the effectiveness of the housing provisions; and any other area GAO wishes to address. We have also required formation of an advisory group of growers and worker advocates to guide implementation of the program and to identify issues for GAO review.

In response to concerns that the relationship between a worker who is here on an H-2A visa and their grower sponsor could conceivably characterize "involuntary servitude," we have added a specific grievance process for the H-2A worker, enabling the Secretary to allow the immediate transferral of the worker to an alternative H-2A employer. Of course, any worker may at any time leave an employer with whom they are dissatisfied.

In response to concerns that workers will not depart the country upon completion of the work period under their H-2A visa, we have adopted a provision requiring an identification card that is capable of validating the entry and exit of the specific individual.

We have adopted a provision setting up an expedited enforcement process for Flagrant Violations. Flagrant violations will be things like failure to pay wages; violation of child labor laws, and other serious violations of worker protection laws.

We are continuing to work with other Democratic Senators, the Administration, and our worker advocate constituents to fine tune this legislation.

Please consider this an invitation to participate in these discussions at any time. Further, if issues have arisen in your state that you believe we should address, we would be more than happy to discuss those with you. For your further information we are enclosing materials about the bill that we have prepared in recent weeks.

SECTION BY SECTION SUMMARY

S. 2337

AGRICULTURAL JOB OPPORTUNITY, BENEFITS, AND SECURITY ACT OF 1998

SECTION 1: Title, Table of Contents

SECTION 2: Definitions

- Defines Adverse Effect Wage Rate at 5% above the prevailing wage level;
- Defines Prevailing Wage as the rate of wages that is the 51st percentile of employees for the activity in the area of intended employment.

SECTION 3: Agricultural Worker Registries

- Directs Sec. of Labor to establish a system of registries containing a database of eligible U.S. workers seeking farm work; requires the registries to ensure that U.S. workers are informed of work opportunities; to maximize employment for eligible workers; to provide U.S. workers timely referral to job opportunities; and to require employment of all qualified U.S. workers referred.
- Directs organization of the system of registries in consultation with the states, and according to logical labor market regions (ie. Pacific Northwest, Southeast, etc.)
- Allows any individual to be included in the registry, and allows them to identify skills, areas, crops, or other information that the worker wants taken into account in determining the kinds of referrals they want to receive.
- Requires the registry to validate the employment eligibility of each person listed;
- Requires advertising and other means to promote the use of the registry;

SECTION 4: Employer Application and Assurances

- Applications are made to the Secretary of Labor for a referral of U.S. workers via a search of the registry;
- The employer must specify the terms and conditions of the work, its duration, the number of jobs, the bona fide occupational qualifications, and the wages offered;
- Application must be made 21 days before workers are needed at the job site;
- Requires the employer to make the following assurances:
 - that the work is temporary or seasonal;
 - that the job is not a result of a labor dispute;
 - that the employer will provide the wages and benefits required under the Act;
 - that the employer will comply with all labor laws, including the Migrant and Seasonal Worker Protection Act, Fair Labor Standards Act, etc.
- Requires notification of all workers employed in the previous season of the job opportunity;

- Requires the provision of Worker's Compensation insurance;
- Requires that the employer independently provide Unemployment Insurance (if operating in a state that does not require UI for farm workers)
- The Secretary may approve or reject the application for workers;
- The Secretary shall reject the application for previous program violations;

SECTION 5: Search of Registry

-Upon approval of the employer application, requires the Secretary to search the registry and identify registered workers with appropriate qualifications; Secretary shall contact each qualified registered worker and determine if the worker will accept the job and commit to the employment; employer **MUST** hire all qualified workers and may only release a worker for a lawful job-related reason.

-No later than 7 days before the date on which the employer needs workers, the Secretary must provide the employer with the list of workers who committed to the work; if there are insufficient workers to fulfill the request, the Secretary shall notify the Attorney General to initiate the Visa issuance process for the remaining need.

SECTION 6: Issuance of Visas and Admission of Aliens

- Directs the Secretary of State to issue the number of H-2A visas necessary to remainder of the request for workers;
- If the employer has not received a referral from the Secretary of Labor within the required time frame (2 weeks), the employer may directly apply for alien workers to the Secretary of State, who shall issue the requested visas within 5 days, after consultation with the Secretary of Labor and the Attorney General;
- Provides for a redetermination of need if workers referred by the registry do not actually show up at the job site;
- Provides expedited procedure for unexpected emergencies.

ADDED SINCE JULY: The total number of allowable H-2A visas is capped during the first four years of the program on the basis of a percentage of the total number of illegal agricultural workers estimate under the National Agricultural Workers Survey conducted by the Dept of Labor, as follows: 10% the first year, 20% the second, 40% the third, 70% the fourth.

SECTION 7: Employment Requirements:

- Requires payment of the prevailing wage rate PLUS 5%, unless the wages are more than the annual average wage rate for field and livestock workers in the area (currently the Adverse Effect Wage Rate), in which case the employer shall pay the prevailing wage;
- Describes the wage survey methods appropriate to determine wage rates.
- Requires that the AEWR shall not be less than either the state or federal minimum wage, and that subminimum wage rates may not be used in calculating a prevailing wage rate.

HOUSING:

- Requires the employer to either provide housing at no cost, or to provide a housing allowance where sufficient housing is available. Allowance to be based on the average HUD fair market rental rates for 2 bedroom dwellings for rural counties in a state, assuming 2 persons per bedroom; Governor determines the sufficiency of housing.
- Allows reasonable charges for utilities, damages, and for a no more than \$50 security deposit for employer-provided housing;
- Requires the employer to, on request of the worker, make a good faith effort to assist the worker in locating housing in the area.

TRANSPORTATION:

- Requires reimbursement by the grower for the worker's inbound transportation cost if 50 percent of the work contract period is completed; and reimbursement for the outbound travel to either a place of subsequent employment or to the worker's home, upon completion of the entire work period;

50% RULE:

- Requires an H-2A employer to offer any U.S. worker a job during the first 50% of the employment period, unless there are job opportunities through the registry of similar pay and conditions in the local area;

SECTION 8: Enforcement and Penalties

- Provides for the investigation of complaints and for enforcement at the initiative of the Secretary;
- Provides remedies for violations at the rate of \$1000 per violation, per worker;
- Establishes criteria for program violations and debarment from the program;

ADDED SINCE JULY:

- Establishes a process for complaints by an H-2A foreign worker; allows transfer of a foreign worker to another H-2A certified employer;
- Establishes expedited process for review of flagrant violations, which include violation of child labor, wage, and housing rules.

SECTION 9. Alternative Program for the Admission of temporary H-2A workers

The purpose of the section is to assist the Immigration and Naturalization Service in controlling the admission and repatriation of aliens admitted under this program; to disqualify any alien who fails to depart at the completion of the work contract or upon abandonment of the job; to limit the admission period to the employment period or 10 months, whichever is less; to require employers to report premature job abandonment; to issue to H-2A workers counterfeit- and tamper-resistant identification cards; to provide procedures for an extension of the alien's stay or a change in the alien's authorized employment; for the Attorney General to conduct a study to determine whether H-2A aliens depart the United States in a timely manner; and to prohibit family members from accompanying H-2A workers to the United States.

ADDITIONS TO THE SECTION SINCE PASSAGE OF SENATE BILL:

-Requirement for H-2A visa holders to be given an identification document that verifies the individuals eligibility for employment, and to verify the individual's departure from the U.S. upon completion of the work period.

SECTION 10: Migrant and Seasonal Head Start

-Increases the allocation of funds to the Migrant and Seasonal Head Start Program; removes barriers to participation for the families of migrant farm workers.

SECTION 11: Conforming amendments

SECTION 12: Funding (new provision)

Makes all proceeds from the payment of user fees available (not subject to appropriation) to reimburse the Secretaries of Labor, State, Agriculture and the Attorney General for their costs in carrying out the new program.

Authorizes start up costs under the Wagner Peyser Act.

SECTION 13 Report to Congress (new provision)

-Requires a GAO report to Congress at years 3 and 5 after the effective date, on implementation and compliance of/with the program requirements. Report shall address:

- whether program has assured timely placement of workers;
- whether admitted aliens stay in the authorized employment and timely depart the U.S.;
- whether program is ensuring that aliens are not displacing U.S. workers or diminishing the wages or other employment conditions for U.S. workers;
- to compare the wages and benefits of workers in the program with those of unauthorized agricultural workers;
- to review implementation of the housing requirements;
- to recommend improvements to the program;
- to recommend whether the program should continue or be terminated.

-establishes an advisory board of representatives of workers and growers to advise the GAO in preparation of the reports.

-establishes expedited procedures for Congressional resolution of GAO recommendations.

IMPORTANT CONSIDERATIONS

- ◆ The current H-2A program involves a package of worker protections that would be ideal - if any workers actually received those protections. Perhaps 40,000 farm workers - 25,000 foreign, and about 15,000 domestic - receive the benefits of the current program. Yet there are more than 1.6 million farm workers in the United States. This legislation was drafted under the philosophy that if we could develop a program that growers would actually use, while still assuring important worker protections, then we could extend those protections to hundreds of thousands of workers, instead of just thousands.
- ◆ Farm worker wages will go up on farms that participate in the program. Currently the only wage standard applicable to 98.5% of U.S. farm workers is the minimum wage. Workers covered by this bill would have a higher minimum wage called the prevailing wage; the prevailing wage takes the average wage of the farm workers in a region, and sets the mid point as the minimum wage; any economist will tell you that the effect of that is to raise the wages of all workers covered by the standard.
- ◆ This bill bears no resemblance to the Bracero program:
 - the only similarity between the Bracero program and this bill is that both programs involve agriculture.
 - Bracero was a treaty between the U.S. and Mexico, a basically open-ended program in which employers simply requested worker permits from the government, and the government provided them. It was formed in response to the WWII labor shortage.
 - contained no requirements to give US workers right of first refusal to jobs.
 - predated most labor laws that now apply to agricultural employers, and contained nowhere near the level of worker protections and benefits included in the bill.
- ◆ Growers face a real crisis in farm labor **which was implicitly validated by the GAO.** GAO concluded that there was no crisis in farm labor as long as there was no crackdown on illegal aliens. There is, however, a very real crackdown involving the validation of employee data by the Social Security Administration. The SSA is turning information about invalid numbers over to IRS, which in turn sanctions employers for inaccurate W-2 filings. Increasingly, growers are having to choose between getting their crops in or paying fines for inaccurate data filings to the IRS. Growers fear that it is only a matter of time before the INS makes use of this data in enforcement efforts.

This, of course, says nothing about GAO's tacit acceptance of what is now a wholly illegal nature of farm work.



NATIONAL
COUNCIL OF
AGRICULTURAL
EMPLOYERS

Date: September 15, 1998

To: Press Secretary/Communications Director

From: Sharon Hughes, CAE
Executive Vice President

Re: Bi-Partisan AgJOBS Reform Communications Kit

The National Council of Agricultural Employers (NCAE) again would like to extend its appreciation for the Representative's support of H.R. 3410, Representative Bob Smith's agricultural guestworker legislation as passed by the House Immigration Subcommittee. The Senate passed similar bi-partisan legislation known as the AgJOBS amendment to the Commerce, Justice, State Appropriations bill in July. Since passage, the media has written many articles on this reform proposal. With the Conference Committee preparing to consider the legislation in the near future, we expect increased coverage on this important issue. To help you with your media inquiries, we have prepared the enclosed Communications Kit. It includes background information on the need for a reformed H-2A temporary agricultural worker program, the benefits it affords farmworkers as well as agricultural employers, and answers to commonly asked questions about the bi-partisan reform bill.

If you have any questions, please feel free to contact me at the phone number below or by e-mail at ncae@erols.com. Please also feel free to use me as a further resource for the media.

Thank you and the Representative for your continued support of American agriculture.

Enclosure: Bi-Partisan AgJOBS Communications Kit

FAIRNESS FOR FARMWORKERS

Congress needs to act now to improve benefits and protections for U.S. farmworkers. The bi-partisan AgJOBS proposal to reform the INS H-2A program strikes a fair balance between the needs of workers and the requirements of farmers.

	Current Situation for Workers	Bi-partisan reforms
Housing & Transportation benefits for both U.S. & foreign workers?	No	Yes
Workers guaranteed prevailing wage or higher?	No	Yes
Expanded access to Head Start?	No	Yes
Legal U.S. workers get first crack at jobs?	No	Yes

Check the facts. Support the bi-partisan AgJOBS bill.

Farm-labor bill faces uncertainty in Congress

■ A bill by Oregon's senators seeks to improve conditions for workers and growers, but the plan is sure to be modified as the session wraps up

BY ALEX PULASKI and JIM BARNETT
of The Oregonian staff

PA 9/8

Farm worker Portino Garcia is weary of his borrowed life: furtive border crossings, purchased identities, immigration authorities lurking in lime-green vans just around the next corner.

Washington County berry packer Roy

ers, legal residents and undocumented ones, while guaranteeing growers easy access to a documented and reliable work force.

Smith and Wyden are pushing hard to make their plan law in the waning days of this Congress. The plan won an important early vote in the Senate, and it is likely to be sent to President Clinton in some form.

But an unusual alliance of farm-worker advocates and Republican legislators is moving against it, although for widely different reasons.

The Republicans say it would encourage illegal immigration and create a never-ending demand for more foreign workers. Farm worker representatives see it as organized slavery, a throwback to the Bracero program of the 1940s and '50s. The program died in part because of revelations of the degree to which Mexican workers were exploited.

As it exists, the bill would speed up time

Please turn to
FARM WORKERS, Page A11

■ Continued from Page One

lines in guest-worker law, set up a job registry of documented workers that employers would be obligated to consult with before hiring foreigners, provide transportation and housing allowances for guest workers and guarantee that the "prevailing wage" — a figure the employer could potentially determine — be paid.

◆ During the next month, the Senate and the House of Representatives will relaunch the Smith-Wyden plan. How it is molded could fundamentally change the system of farm labor in the United States.

History of foreign workers

American farmers have a long history of importing the hands needed to pick the crops we eat.

Since the turn of the century, Chinese, Japanese, Filipino and Mexican workers have been drawn to the United States to perform field work. People fleeing the Dust Bowl briefly replaced them, until World War II created steady and better-paying jobs.

By 1942, farmers clamored for a means of providing cheap and steady field labor. The Bracero program was born, and in the two decades that followed, 4.6 million Mexicans were granted temporary permits to work here in agriculture.

Author John Steinbeck, while conducting research before writing "The Grapes of Wrath," concluded in 1936 that the importation and treatment of foreign labor in the West had been "a disgraceful picture of greed and cruelty."

By 1963, in part because of news reports that treatment of foreign workers continued to be horrendous, and in part because Americans resented their presence here, the Bracero program ended.

But the connection between poor Mexicans and field jobs in the North had been established, despite massive deportations of illegal immigrants under a federal government operation in the 1950s.

The illegal immigration continued. It was so prevalent by the 1980s that Congress passed an immigration amnesty program in 1986, allowing more than 3 million undocumented residents to gain legal status and a shot at U.S. citizenship.

Agricultural interests feared those newly legalized residents would no longer want to pick grapes and strawberries, and in large part they were right. But new waves of undocumented workers continued to stream past border crossings in Tijuana, Juarez and Mexicali.

Today, various estimates indicate that 50 percent or more of this country's agricultural workers are here illegally. Most buy fake immigration

THE BILL

■ **WHAT:** A streamlined version of current H-2A visa provisions that would make it easier for agricultural employers to bring guest workers into this country. Its proponents also argue that it would help workers — the thousands illegally working in the United States — by setting up an organized and legal system of getting them to the United States.

■ **THE DETAILS:** Establishes a job registry of legal U.S. residents that employers would have to check with before hiring foreigners. Pays "prevailing wage" in the hired crop rather than current higher standard, called the average regional wage rate. Instead of the current requirement to provide housing, employer must pay a "housing allowance." Allows for guest workers to apply for permanent residency after four years, although other provisions for durations of stays and exit limitations appear to make permanent status a pipe dream.

■ **THE OPPOSITION:** Conservative House Republicans will not support a bill that could lead to guest workers receiving permanent legal status. Farm-worker advocates, including key House Democrats, say it would create a slave system, be unwieldy and lead to legal residents losing job opportunities.

■ **WHERE IT STANDS:** Passed the Senate in July. Now in conference with the House, where modifications are probable before a final vote expected this month. The Clinton administration is on record as strongly opposing the plan but is working with Sens. Gordon Smith and Ron Wyden; a veto has not been threatened.

documents that they pass off to employers when applying for jobs.

The percentage of Oregon's 150,000 migrant workers who are illegally here might be much higher than 50 percent, however. A reporter for The Oregonian found this summer that in the berry and strawberry harvests, undocumented workers predominated.

Malensky, who owns Oregon Berry Packing Co. in Hillsboro, doesn't dispute those conclusions. In fact, the Social Security Administration notified him last year that at least 70 percent of his pickers appeared to be using faulty Social Security numbers.

He also was notified that at least 40 percent of workers packing for him were using apparently fraudulent Social Security documents. The two operations employ about 400 people.

The Immigration and Naturalization Service has not reviewed his



Roy Malensky of Oregon Berry Packing Co. in Hillsboro says the proposed guest-worker program would alleviate worries about undocumented farm workers being pulled from jobs by immigration authorities.

ROBERT BACH
The Oregonian

company's records but could order workers fired and deported if they had used false documents. Growers, even when presented false documents, don't break any laws by hiring those workers, provided they are not aware the documents are false.

Malensky says the possibility of losing his work force drives his support for the Smith-Wyden bill.

"I don't like to have this thing hanging over my head that at any time the INS could come in and shut us down," he said.

Farmers had earlier argued that a worker shortage existed but switched strategies when they could not provide credible evidence of that.

Instead, agricultural groups argue that immigration laws encourage foreign workers to illegally cross the border.

"This is not a good way to run a farm with all this illegal activity going on," said Ken Bailey, a cherry farmer in The Dalles and president of the National Council of Agricultural Employers, the trade group primarily pushing the bill.

Benefits stripped away

Immigration — whom to allow into the country and why — traditionally has been one of the most inflammatory and divisive issues facing Congress. Most members would rather ignore it.

But Smith, a Republican, and Wyden, a Democrat, had a strategy to force the issue on a reluctant Congress.

Two days after the senators un-

veiled their plan in July, they offered it as an amendment to an annual spending bill scheduled for approval this month. Without the bill, several government agencies would have to close on Oct. 1.

The amendment passed the Senate by a veto-proof 68-31 ratio, with Democrats providing all the opposing votes. There were no hearings and little debate.

But the senators had traded certainty for speed. With only a month left until adjournment, the Smith-Wyden plan will be tossed into the legislative grinder with dozens of other handshake deals among members.

Already, Smith and Wyden have had to strip away some worker benefits — at least temporarily — to comply with budget rules. Guaranteed unemployment insurance, transportation paid by growers and incentives for new housing all were cut.

Senate leaders promised Smith and Wyden that they would restore those provisions in a conference with the House. But they could become bargaining chips as other worker benefits come under attack in the Senate-House conference.

House Republicans are likely to target a provision that lets immigrant workers qualify for permanent, legal residency in the United States. Another possibility is adding a cap on the number of foreign workers allowed for farm work.

A group of 72 Republicans expressed their concerns in an Aug. 4 letter to Rep. Harold Rogers, R-Ky., their leader in the conference.

"This will only further burden our communities without providing a long-term solution to the labor needs of the agricultural industry," the members wrote.

Smith and Wyden said they are willing to continue bargaining because the existing system is so unworkable, and almost any change would be an improvement.

Fear of blacklisting

But if farm workers' opinions of the plan are mixed, their advocates are steadfastly opposed. Rather than create a new system, they said, the senators should work for better enforcement of benefits of the existing system, known as H-2A, named for the type of visa issued to foreign field workers.

"The fundamental concept of Wyden's proposal was wrong to begin with," said Ramon Ramirez, president of the Woodburn-based Northwest Treeplanters and Farmworkers United. "It guts the worker-protection standards in the current H-2A law, when our position is that they need to be strengthened."

Farm-worker advocates such as Michael Dale, an attorney with the Oregon Law Center, suggest that a fundamental part of any guest-worker bill should hold out the realistic promise that someday the laborer could obtain permanent legal residency. He and Bruce Goldstein, executive director of the Farmworker Justice Fund, also say any widespread guest-worker program would lead to exploitation.

"We are going to have workers who are employed under what can be compared to South Africa's apartheid system," said Dale. "If someone treats you bad, you can't complain, join a union or even walk down to the next job."

"You end up working here 11

months a year, accruing no rights to stay. And when you're too old or broken, you go back home."

Roman Ramos, an attorney's assistant with Texas Rural Legal Aid, said abuses are common under the stringent standards of current H-2A law.

They include requirements by some recruiters that prospective workers pay \$400 to \$500 to get on hiring lists. Ramos said employers commonly cut short the work period promised under contracts, refuse to pay full transportation costs and do not report compensable worker injuries so that insurance costs don't rise.

"Any worker that protests will be blacklisted and will not come into the program again," Ramos said.

Undocumented workers such as Garcia say they would be willing to run that risk, weighed against having to pay \$1,200 to be smuggled to Los Angeles and living here in fear of being discovered and deported.

Pablo Martinez, 30, and Juan Mendoza, 21, were caught crossing the border this year, detained for a few hours, and were back on the U.S. side an hour later in Chula Vista, Calif., after a brisk run from the Border Patrol. They ended up picking berries and strawberries in Marion County and grapes in Central California.

Mendoza doesn't like the idea of being contracted directly to an employer who could cheat him or mistreat him and leave him little recourse but a trip back home.

But Martinez thinks otherwise.

"We already have to fight the mountains and hide from the Border Patrol to come here," he said. "At least this way the people could come openly."

FACT SHEET/TALKING POINTS

The Labor Shortage on America's Farms The Problems and Solution

THE PROBLEMS:

U.S. Farmworkers Have Little Protection Under Current Law

- ◆ Under current law, pay for agricultural workers is based on the minimum wage.
- ◆ Current law does not provide U.S. and legal foreign workers with housing and transportation benefits.
- ◆ Legal U.S. workers currently do not get the first crack at agricultural jobs. Farmers have no way of being sure if they are hiring only legal workers.

While Immigration Laws Continue to be Broken, U.S. Farmers Are Facing a Shortage of Legal Workers

- ◆ Farmers across America are facing local, regional and crop-specific shortages of legal workers.

According to a December 31, 1997 General Accounting Office report ("H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers"), approximately 600,000 of America's 1.6 million agricultural workers are undocumented.

- ◆ Recent database checks by the Social Security Administration indicate that a large percentage of agricultural workers have invalid Social Security numbers.

Both INS and agricultural employers agree that high quality fraudulent documents make it virtually impossible for employers diligently reviewing work documents as required by law to be certain that they have not hired illegally documented workers.

- ◆ The prevalence of unauthorized and fraudulently documented agricultural workers leaves “individual growers vulnerable to sudden labor shortages if INS does target its enforcement efforts on their establishments,” according to the GAO.
- ◆ An improved economy together with a tighter labor market, increased border patrols and INS enforcement has forced many farmers to hire temporary alien workers through the H-2A program, a program created by the Immigration Reform and Control Act of 1986 under which agricultural employers may bring workers into the country on a temporary, nonimmigrant basis.

The H2-A Program Doesn't Work

- ◆ The existing H-2A program is an ineffective and confusing maze of conflicting rules and jurisdictions requiring employers “to interact with multiple agencies at different levels of government, a process that can seem very confusing and difficult to navigate.” (GAO report)
- ◆ Lengthy procedures and excessive bureaucracy result in decisions that are too late to help producers of perishable fruits and vegetables harvest and market their crops.
- ◆ The H2-A program is not working. Growers can't get the legal workers they need when they need them. In short, there is currently no way an agricultural employer can assure a legal workforce, even if the workers are secured through the government's employment offices, because the legal status of their referrals is not checked.

THE SOLUTION:

Protect Agricultural Workers and Provide Them with Better Benefits

- ◆ The legislation assures that legal U.S. workers get referred to available jobs before any foreign workers are admitted.
- ◆ The legislation provides that U.S. agricultural workers will be paid prevailing wages or higher -- wages that exceed the minimum wage.
- ◆ The legislation provides for housing and transportation benefits for both legal U.S. and temporary foreign workers.
- ◆ The legislation expands access for U.S. farm workers to Head Start.

Reduce Bureaucracy and Integrate 21st Century Technology

- ◆ The legislation establishes a national registry -- a computer database -- of legal domestic farm workers that not only simplifies the application process for growers to find workers but will make it much easier to match labor needs with worker availability.
- ◆ The legislation overhauls the current complex, bureaucratic system that results in delayed decisions by making it easier for employers to identify and hire seasonal agricultural workers.

Americans and Legal Workers Get First Crack at Jobs

- ◆ The legislation provides that legal U.S. agricultural workers will get the first crack at jobs.
- ◆ By having their names readily available on a national registry and by requiring the use of this registry before seeking foreign workers, U.S. agricultural workers can be assured of being matched with available work opportunities.

QUESTIONS AND ANSWERS

On the Bi-Partisan AgJOBS Bill

- Q. Does this legislation hurt the nation's agricultural workers?
- A. This legislation is designed to improve the ability of U.S. farmworkers and temporary immigrant workers who are legally certified to find jobs on America's farms and orchards. It is also designed to provide workers with premium wages that exceed the minimum wage and enable workers to obtain housing.
- Q. Some argue that there is no shortage of workers and that therefore there is no need for this legislation. Is there a shortage?
- A. The issue is not whether or not there is an "aggregate shortage of workers," but rather whether there are local, regional, and crop specific shortages of legal workers. Those who argue that there is no shortage include in their analysis the 600,000 undocumented workers identified by a recent General Accounting Office report on the issue. The existence of illegal workers in the "workforce" obscures the fact that many farmers cannot find the legal workers they need.
- Q. Why isn't the current system for using so-called "guest workers" adequate to deal with the problem?
- A. The current system known as H-2A is confusing, complex, bureaucratic, and results in delayed decisions to certify temporary immigrant workers. Legislative reforms are designed to streamline the system, make it easier for employers to locate and hire legal U.S. workers and to allow the hiring of foreign workers when U.S. workers are unavailable.
- Q. Are advocates for farmworkers correct when they say that farmers are not using the H-2A program because it reformed the abuses that existed prior to its adoption and contains protections for workers?
- A. Certainly, the H-2A program was designed to reform the so-called "Bracero" program which we all agree had many shortcomings. On the other hand, those opposing this legislation fail to acknowledge the difficulties farmers and growers face in finding legal workers and assuring that their documents are not fraudulent. While no solution is perfect, this legislation does create new legal rights and benefits for farmworkers.
- Q. Does this legislation provide more benefits to growers at the expense of workers?
- A. No. This legislation is a balanced and fair approach to a vexing problem. It has bi-partisan congressional support. On the one hand it will allow growers to find the workers they need when they need them. At the same time, it will provide both legal

domestic and foreign workers reasonable wage and working condition protection.

Q. Will this legislation cause the loss of jobs among tens of thousands of farm workers who are already experiencing high rates of unemployment?

A. No. This bill guarantees a preference for legal U.S. workers. Only when U.S. workers do not take jobs, then only those foreign workers approved for temporary employment can be hired. If all jobs available are filled by U.S. workers, then no foreign workers will be admitted. Under the bill, the U.S. Department of Labor will match legal domestic workers with agricultural jobs.

Q. Isn't the registry just a convenient way for growers to hire cheap foreign workers at the expense of U.S. workers?

A. The idea for a registry was first proposed by advocates for farm workers who wanted a way for domestic workers to get available agricultural jobs. Using 21st century computer database technology, the registry is an effective way to help workers get jobs and employers get workers on a timely basis. Employers who use the registry must pay premium wages and must provide benefits not required of employers who do not use the program. If anything it is a more costly, not a cheaper, workforce.