Senate FY 21 DHS Report Language

H–2B Visa Distribution.—The Committee is concerned that the current semiannual distribution of H–2B visas on April 1 and Octo- ber 1 of each year unduly disadvantages certain employers and em- ployees. The Committee directs the Department, in consultation with the Department of Labor, to examine the impacts of the cur- rent H–2B visa semiannual distribution on employers, employees, and agency operations and to provide the Committee with a brief- ing on the study not later than 180 days after the date of enact- ment of this act.

Senate FY 21 Labor-HHS Bill Text

SEC. 109. (a) FLEXIBILITY WITH RESPECT TO THE CROSSING OF H–2B NONIMMIGRANTS WORKING IN THE SEAFOOD INDUSTRY.— (1) IN GENERAL.—Subject to paragraph (2), if a petition for H–2B nonimmigrants filed by an em- ployer in the seafood industry is granted, the em- ployer may bring the nonimmigrants described in the petition into the United States at any time dur- ing the 120-day period beginning on the start date for which the employer is seeking the services of the nonimmigrants without filing another petition.

(2) REQUIREMENTS FOR CROSSINGS AFTER 90TH DAY.—An employer in the seafood industry may not bring H–2B nonimmigrants into the United States after the date that is 90 days after the start date for which the employer is seeking the services of the nonimmigrants unless the employer—

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

(i) listing job orders in local news- papers on 2 separate Sundays; and

(ii) posting the job opportunity on the appropriate Department of Labor Elec- tronic Job Registry and at the employer's place of employment; and

(B) offers the job to an equally or better qualified United States worker who—

(i) applies for the job; and

(ii) will be available at the time and place of need.

(3) EXEMPTION FROM RULES WITH RESPECT TO STAGGERING.—The Secretary of Labor shall not consider an employer in the seafood industry who brings H–2B nonimmigrants into the United States during the 120-day period specified in paragraph (1) to be staggering the date of need in violation of sec- tion 655.20(d) of title 20, Code of Federal Regula- tions, or any other applicable provision of law.

(b) H–2B NONIMMIGRANTS DEFINED.—In this section, the term ''H–2B nonimmigrants'' means

aliens ad- mitted to the United States pursuant to section 101(a)(15)(H)(ii)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(B)).

SEC. 110. The determination of prevailing wage for the purposes of the H–2B program shall be the greater of—(1) the actual wage level paid by the employer to other employees with similar experience and qualifications for such position in the same location; or (2) the prevailing wage level for the occupational classification of the posi-tion in the geographic area in which the H–2B non- immigrant will be employed, based on the best information available at the time of filing the petition. In the deter- mination of prevailing wage for the purposes of the H–2B program, the Secretary shall accept private wage sur- veys even in instances where Occupational Employment Statistics survey data are available unless the Secretary determines that the methodology and data in the provided survey are not statistically supported.

SEC. 111. None of the funds in this Act shall be used to enforce the definition of corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule definition found in 20 CFR 655.20, or any references thereto. Further, for the purpose of regulating admission of temporary workers under the H–2B program, the defi- nition of temporary need shall be that provided in 8 CFR 25 214.2(h)(6)(ii)(B).

House DY 21 DHS Bill Text

SEC. 414. Notwithstanding the numerical limitation set forth in section 214(g)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(B)), the Secretary of Homeland Security, after consultation with the Sec- retary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in fiscal year 2021 with United States workers who are willing, qualified, and able to perform temporary nonagricultural labor, may increase the total number of aliens who may receive a visa under section 101(a)(15)(H)(ii)(b) of such Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) in such fiscal year above such limitation by not more than the highest num- ber of H–2B nonimmigrants who participated in the H– 2B returning worker program in any fiscal year in which returning workers were exempt from such numerical limi- tation.

House FY 21 DHS H-2B Report Language

Unused Visas.—The Committee is concerned that the Depart- ments of Homeland Security and State have neglected their duty under the Immigration and Nationality Act to take affirmative steps to fully allocate all available immigrant visa numbers to pro- spective family- and employment-based immigrants. This inaction is especially concerning given the unprecedented demand for such visa numbers and the availability of ready and willing applicants currently within the United States, including many currently em- ployed in occupations deemed essential by the Department of Homeland Security. Not later than 30 days after the date of enact- ment of this Act, the Committee directs USCIS, in consultation with the Department of State, to brief the Committee on a plan to fully allocate family- and employment-based visas in fiscal year 2021, and a contingency plan to allocate prior year unused visas in the event that such action is required (*see, e.g., Silva* v. *Bell*, 605 F.2d 978 (7th Cir. 1979)).

H–2A and H–2B Visa Program Processes.—The Committee re- minds USCIS of the report on H–2A and H–2B Visa program proc- esses required by the Explanatory Statement accompanying Public Law 116–93.

H–2B Visa Program Oversight.—The recommendation includes a new provision that prohibits certain employers from participating in the H–2B visa program if they have a history of violating certain employment-related laws or regulations. Not later than 120 days after the date of enactment of this Act, the Department shall report to the Committee on the administrative remedies that the Depart- ment of Labor has issued in each of the last three fiscal years against entities or persons who violate H–2B requirements. The re- port should contain, but not be limited to:

(1) a list of entities or persons cited, by industry and viola- tion;

(2) the number of H–2B workers impacted and the nature of those impacts;

(3) the effects on the domestic workforce;

(4) the number of entities or persons debarred from the H– 2B program due to violations;

(5) a description of the criteria and methodology for debar- ment decisions; and

(6) a justification for why repeat offenders, if any, are al- lowed to continue to participate in the program.

H–2B Visa Program Reporting.—Within 120 days of the date of enactment of this Act, the Department shall report to the Com- mittee on the distribution of visas granted through the H–2B pro- gram. The report should contain, but not be limited to, a tabulation of the percent of overall visas issued to the top 15 employers.

House FY 21 Labor HHS Report Language

Within 120 days of enactment of this Act, the Committee directs the Secretary to submit a report to the Committees on Appropria- tions on the number of H–2A visa applications, trends in H–2A re- quests, and the distribution of funding according to the needs of States. The report shall detail how the agency considers costs asso- ciated with administrative and oversight requirements for both the H–2A and H–2B visa programs when determining the allocation. The Committee encourages the Department to continue to monitor the number and scope of requests from the previous year along with projected use in the coming year when determining State funding allocations.

H–2B violations.—The Committee directs the Department to sub- mit a report to the Committees on Appropriations within 120 days of enactment of this Act on the recent history of sanctions and rem- edies that the Department has issued in each of the last three fis- cal years

against employers who violate H–2B provisions, including violations listed in 29 CFR § 503.19(a). The update should contain, but should not be limited to: a list of the employers that were cited and for what violation; how many workers in total have been im- pacted by violations; what impact the violations had on the domes- tic workforce; what industries the violations occurred in; how many employers have been debarred from the H–2B program; the meth- odology used in the decision to debar; and a justification for why repeat offenders continue to receive visas. The Department is also directed to include in such a report the distribution of visas grant- ed by industry and sector through the H–2B program and contain a tabulation of the percentage of overall visas provided to the top 15 employers.