GROWERTALKS

JZ on D.C.

7/1/2021

Ag & Immigration in the Buckeye State

Jennifer Zurko

AmericanHort's legislative team isn't just busy planning for Cultivate'21 and its Impact Washington event in September; the association is also working behind the scenes to continue to reach out to policy makers.

In early June, AmericanHort held a virtual meeting that focused on agriculture and immigration in Ohio, including a few minutes at the end discussing faith-based organizations that focus on helping foreign-born people.

The plan was to have Congresswoman Marcy Kaptur (D-OH) in the meeting to share her thoughts on immigration issues, especially since Corso's—which was raided by U.S. Immigration & Customs Enforcement in 2018—is in her district. But a personal issue prevented her from joining us. Instead, one of her aides went over some of the issues that the congresswoman has been focused on, which includes being heavily involved in getting co-sponsors for the Farm Workforce Moderniza-tion Act (FWMA), and working with the USDA on labor and ag worker safety.

The other guests well-represented the different sectors of agriculture for the state of Ohio: Bill Dodd of Hillcrest Orchards, a fourth-generation apple grower in Amhurst; Kathy Davis of Ayers Farms, a seventh-generation dairy farmer in Perrysville; and Kyle Natorp of Natorp's Nursery Outlet & Landscaping, a third-generation grower and landscaper in Mason. The panel was moderated by AmericanHort's Craig Regelbrugge.

Some thoughts from the panelists:

• Bill's orchard includes a retail store and a pick-your-own component to his business, so he said agri-tourism is very important. He believes the rules of getting foreign seasonal labor need to be "a little more relaxed" to suit their needs. Hillcrest also has a liquor license, so they host a lot of parties and weddings. This requires their workforce to wear a lot of hats—not just growing and harvesting, but helping out at the events and even landscaping the grounds. The Ohio state legislature has recently passed bills to offer more protection for agri-tourism businesses, but Bill said they need more support for seasonal ag labor.

• Kathy said her family's dairy farm relies on a small number of foreign-born workers to help milk the cows and provide good, quality product to their customers. Her business is all-year-round, so not having a good pool of workers can be a hinderance in getting their product out on time and keeping their prices competitive. And it isn't just a small-farm or large-farm problem, she said; it affects all ag businesses.

"We all have to remember that at one time we were all immigrants," said Kathy.

• Kyle said they employ 66 workers at peak and everything they do is dependent on seasonal labor. The H-2A visa

program plays a large part in keeping their business going with workers and he believes the improvements to the program that are included in the FWMA are a step in the right direction. One of Ohio's senators, Rob Portman, actually worked at Natorp's for a season while he was college, so Kyle is hoping that he and Senator Sherrod Brown will support the bill.

As a refresher, the FWMA passed the House for the second time in March and is now waiting for the Senate to bring it to the floor for a vote. Co-sponsor House members have been busy campaigning to get Senators to support it, but the public support for it is there. Craig cited a recent Ipsos poll where opinions for creating a path to citizenship for foreign seasonal workers was the highest it's ever been—85% among Democrats, 61% among Republicans and 71% for Independents.

Craig is hopeful that the improvements to security and enforcement will entice more members of the Senate to support the bill, which will also provide more integrity to the hiring process for employers.

"The base of the bill has the pillars to move forward with a good workforce," he said.
—JZ

AmericanHort Seeks to Protect Important Tax Provision

AmericanHort has joined another coalition effort to protect the "step up in basis" tax provision, this time with the Family Business Estate Tax Coalition. These efforts are intended to sway Congress to not remove the step up in basis from inherited assets in a potential legislative package. As previously noted, President Biden's recently released budget included the removal, but provided some protections to family farms and businesses as long as they remained family-owned and operated.

A coalition letter was sent in late May to the leadership of the Ways and Means Committee in the House and Finance Committee in the Senate, with 116 organizations joining the effort.

—Tal Coley, Director of Government Affairs, AmericanHort

The Latest on H-2B Visas

On May 25, the Departments of Homeland Security and Labor released a temporary final rule making additional H-2B visas available for FY 21. The rule provides for 22,000 supplemental H-2B visas, 6,000 of which are reserved for workers from El Salvador, Guatemala and Honduras. The remaining 16,000 visas are available only to returning workers from other countries who held an H-2B visa in one of the past three fiscal years. If the 6,000 Northern Triangle H-2B visas go unused by July 8 they'll then be made available to returning workers from other countries.

Employers were able to begin applying for the visas on May 25. Per regulations, if the number of requested visas in the first five days of filing exceeds the supplemental allocation, a lottery will be held to determine which petitions will be processed.

The rule requires employers to do the following:

• No later than one business day after filing the petition, place a new job order with the relevant State Workforce Agency (SWA) for at least 15 calendar days

• Contact the nearest American Job Center serving the geographic area where work will commence and request staff assistance in recruiting qualified U.S. workers

• Contact the employer's former U.S. workers, including those the employer furloughed or laid off beginning on January 1, 2019, and until the date the H-2B petition is filed, disclose the terms of the job order and solicit their return to the job

• Provide written notification of the job opportunity to the bargaining representative for the employer's employees in the occupation and area of employment, or post notice of the job opportunity at the anticipated worksite if there's no bargaining representative

• Hire any qualified U.S. worker who applies or is referred for the job opportunity until the later of either (1) the date on which the last H-2B worker departs for the place of employment, or (2) 30 days after the last date of the SWA job order posting.

In addition, employers must submit an attestation form stating the business will suffer "irreparable harm" if it cannot employ the requested H-2B workers before the end of the fiscal year and that it's seeking to employ returning workers only, unless the worker is eligible under the 6,000 visa Northern Triangle allotment. The rule advises employers to maintain documentation to support the attestation in the event of an audit. The rule also requires employers to comply with applicable labor laws, including those related to COVID protections.

Finally, the rule includes a provision that would allow H-2B workers in the United States in valid H-2B status to begin work with a new employer after an H-2B petition (supported by a valid temporary labor certification) is filed and before the petition is approved generally for a period of up to 60 days.

Additional details on the required recruitment and attestation can be found at uscis.gov.

Reform bill coming?

In other H-2B news, Rep. Henry Cuellar (D-TX) and a bipartisan group of lawmakers are planning to introduce an H-2B reform bill that would provide permanent cap relief. The legislation would create a permanent returning worker exemption and require the Departments of Homeland Labor, Homeland Security (DHS) and State to create a single online filing portal that would eliminate the need to express mail paper documents. The bill also includes some program integrity measures and would increase the maximum penalties that could be levied against employers who willingly and repeatedly violate the program's requirements.

Once the bill is introduced, we'll encourage members and partners to reach out to representatives in the House to support the legislation.

—Laurie Flanagan, Chair of the H-2B Workforce Coalition, and Craig Regelbrugge, VP of Government Relations & Research, AmericanHort



Legislator Visit Alert!

Christa Orum-Keller and her team at Midwest Groundcovers hosted their representative, Congresswoman Lauren Underwood (D-IL-14), in May at their Virgil, Illinois, nursery. The district visit was an opportunity to discuss agricultural workforce and other hort industry issues.

Christa learned the art of political outreach from the best: her dad, Peter Orum, who's been active in government affairs for our industry for many years.

Said Christa, "We're grateful for Rep. Underwood's support and for investing her time to be with us."

—Source: AmericanHort's The Capitol Wire newsletter

Pictured: Christa Orum-Keller (left) talks with Rep. Lauren Underwood (D-IL) during the congresswoman's visit to one of Midwest Groundcovers' locations.

Tax the Miles Driven by Trucks?

For the second time in two years, there's some chatter in Washington about levying as much as a 25-cent tax on trucks for every mile driven. The proposal went nowhere in 2019 and, presumably, it will meet a similar fate this time. The federal Highway Trust Fund is the primary way state governments handle their roads, however, the excise tax on gasoline hasn't been increased since 1993.

Fueled by nearly 30 years of inflation and better vehicle miles-per-gallon efficiency, the Highway Trust Fund has run deficits for several years. This funding picture is complicated even further by the Biden Administration's push for more electric cars and vehicles, which do not pay into the Highway Trust Fund, at least as of now.

This concept of a tax on miles driven only by trucks is seen by some as a way to stabilize the funding for the Highway Trust Fund. As expected, this approach has met very loud opposition by the trucking industry, which charges it imposes a disproportionate burden on truckers. Stay tuned!

—Ben Bolusky, CEO, Florida Nursery, Growers & Landscape Association