

GROWERTALKS

JZ on D.C.

2/1/2020

What Are the Chances the Farm Workforce Modernization Act **ACTUALLY** Becomes Law?

Jennifer Zurko

After the House's historic passage of the Farm Workforce Modernization Act (H.R. 5038) in December, is there any chance that the Senate will actually vote it into law? AmericanHort's Craig Regelbrugge says ... maybe.

According to Craig, he and his team have kept in contact with key Senate allies, keeping them up-to-date on the House negotiations. In December, as the House was preparing to vote, AmericanHort and its coalition allies stepped up Senate meetings.

With the new year, Craig said they're "cautiously hopeful" that a bipartisan group of Senators will agree to craft their own expression of policy on farm labor.

"While it would be easier to simply take up the House bill (and Senate Democrats would prefer that approach), the Republican majority isn't likely to do that," he admitted. "Rather, they will work on a Senate bill that we hope gains a little ground on the handful of areas where H.R. 5038 could really use some improvement."

What are those areas? Craig said on the H-2A part, the main concerns are around economics, access to workers and enforcement rights.

- "On economics, the House process wrestled with ways to make the program more affordable. Many of the streamlining and cost-saving measures are helpful, but only go so far. The methodology by which wages are set is the elephant in the cost-structure room. The caps on annual increases are helpful, but the basic methodology translates to the current year's 'average wage' becoming next year's 'minimum wage.'

"In a more normal wage distribution, pay is mostly influenced by experience and contribution. The current H-2A structure (changed only modestly in H.R. 5038) imposes a 'Lake Wobegon' alternate reality where nobody's pay is below average. And under the current definition of 'corresponding employment,' virtually all U.S. workers are swept into the same Lake Wobegon wage structure, regardless of merit or skill. This is a real problem.

"It's premature to speculate on how the Senate might come at the issue, but we have a number of ideas that would pull the current program (and H.R. 5038) closer to a market-driven approach."

- "On the access-to-workers question, it's mostly a good-news story. We managed to fend off caps on H-2A admissions for temporary and seasonal (less than 10 months) jobs. This is the bulk of the need in horticulture. And

there's a new component that provides visas for non-seasonal (year-round) jobs with a 30-year admission. But this component is capped at 20,000 visas per year, with half dedicated to dairy jobs. This means all of the rest of ag will compete for 10,000 visas per year (30,000 over three years, given the three-year visa length). We'd like to see more bandwidth in this component, which is especially important in warmer-climate areas and some types of greenhouse production."

- "Finally, there are concerns about expansion of the Migrant and Seasonal Agricultural Worker Protection Act to H-2A workers (not currently covered under the statute). We have no love for this complicated law, which was negotiated in the early 1980s by worker advocates and a large general farm organization. But, in our industry, most employers are already covered by these provisions, so the expansion in legal exposure of the H.R. 5038 change is modest. Still, we'd like to see regulatory reform that encourages rapid and low-cost dispute settlement, and discourages litigation, so this will be an AmericanHort priority, too."

It's important to note that Craig was quick to point out that there's way more "good" in H.R. 5038 than "not-so-good."

"The current workforce stabilization provisions are sound, the H-2A reforms could go further and still meet the bipartisan sniff test, and expanded legal immigration opportunities for employer sponsorship of future workers offer a solution that's in the spirit of America's 'nation of immigrants' heritage," he explained.

While AmericanHort's main concerns are with how the bill handles H-2A, some groups that didn't initially support the bill—like the American Farm Bureau—felt that the timeline to phase in mandatory E-verify was too quick. Craig said that, realistically, no bill having to do with getting more ag workers will pass without it; however, AmericanHort would also prefer if the E-verify phase-in had a longer timeframe.

Moving forward

With 2020 being an election year, it won't be easy to find a path for the bill, or a comparable Senate version, to move forward. But Craig believes there may be some opportunities for legislative action between now and the end of the year.

First, the Supreme Court is expected to announce a ruling on the Deferred Action for Childhood Arrivals (DACA) program in June that may determine if it's legal.

"A decision that allows DACA to be ended will create a crisis for hundreds of thousands of young people whose plight has broad public sympathy and support for a resolution," said Craig. "Legislators may see the wisdom of resolving DACA and the agricultural crisis together."

Meanwhile, the new H-2A "adverse effect wage rates" (AEWRs) took effect January 2. The national average increase was 5.6%; Illinois, Indiana and Ohio saw the largest increase, at 9.5%. H.R. 5038 would have frozen the 2019 level for a year and capped future increases at 3.25% for most states, and not more than 4.25% in any state.

AmericanHort will keep us posted on any calls for action on the ag workforce issue as Senate negotiations get underway.

—JZ



Happy Retirement to Drew Gruenburg!

SAF's long-time COO Drew Gruenburg officially retired on December 31, closing a fruitful 38-year career as head of the organization's government relations program, supervising Government Relations and Member Services, and overseeing all internal staff operations.

Congrats, Drew, from all your friends at Ball Publishing!

The Latest on H-2B Cap Relief

The spending bill that Congress passed in mid-December and signed by President Trump to keep the federal government open included H-2B visa cap relief for 2020. It was supported by AmericanHort, the Florida Nursery, Growers & Landscape Association, the National Association of Landscape Professionals, and others in the H-2B Workforce Coalition that rely on seasonal temporary workers, and allows the U.S. Department of Homeland Security (DHS), in consultation with the Department of Labor (DOL), the discretion to release an additional 64,716 visas in fiscal year 2020. This is in addition to the 66,000 visas already authorized by law.



During the last three years, DHS received the same authority from Congress and the process to release the visas took about two months. But this time, the spending package has been enacted into law earlier than in years past, so the hope is that DHS will release additional visas in time for this spring.

To give a little background, 15,000 additional visas were issued in 2017 and again in 2018. For 2019, the total increased to 30,000 additional visas.

The H-2B Workforce Coalition is working with Congress to encourage DHS to quickly release the maximum additional visas authorized by the bill. As of press time, a Congressional letter had been drafted, but not yet sent, to the acting secretary of DHS asking to release all 64,716 additional visas immediately. **GT**