

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2847
OFFERED BY MR. DANIEL E. LUNGREN OF
CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Legal Agricultural
3 Workforce Act”.

4 **SEC. 2. NONIMMIGRANT AGRICULTURAL PROGRAM.**

5 (a) NEW “W” NONIMMIGRANT CLASSIFICATION FOR
6 NONIMMIGRANT AGRICULTURAL WORKERS.—Section
7 101(a)(15) of the Immigration and Nationality Act (8
8 U.S.C. 1101(a)(15)) is amended—

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

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

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

14 “(W) an alien having a residence in a for-
15 eign country which the alien has no intention of
16 abandoning who is coming to the United States
17 for a temporary period (as defined in section

1 101(a)(15)(W) (in this section referred to as a ‘non-
2 immigrant agricultural workers’) and issue all rel-
3 evant regulations implementing the program.

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

6 “(A) A process developed by the Secretary
7 of Agriculture for the submission of data and
8 information by agricultural employers that will
9 allow such Secretary to determine the number
10 of nonimmigrant agricultural workers required
11 by month and annually for a 10-month period.

12 “(B) A process developed by the Secretary
13 of Agriculture for the enrollment of qualified
14 agricultural employers in the program that re-
15 quires enrolled employers to abide by the obli-
16 gations described in subsection (f).

17 “(C) A process developed by the Depart-
18 ment of Homeland Security, based upon the de-
19 termination made under subsection (d) by the
20 Secretary of Agriculture, on the need for non-
21 immigrant agricultural workers, for imposition
22 of monthly and annual numerical limitations,
23 established under such subsection, on the
24 issuance of nonimmigrant visas for non-
25 immigrant agricultural employment. These visas

1 shall be made available subject to such limita-
2 tions on such workers in accordance with the
3 preference system established under subsection
4 (g).

5 “(D) A process developed by the Secretary
6 of Homeland Security, in consultation with the
7 Secretary of Agriculture, by which such Secre-
8 taries can determine that persons employing
9 nonimmigrant agricultural workers are enrolled
10 in the program and that the nonimmigrant ag-
11 ricultural workers so employed possess a valid
12 visa pursuant to section 101(a)(15)(W).

13 “(E) A nonimmigrant visa issued pursuant
14 to subsection (g) shall not limit the geo-
15 graphical area within which an alien may be
16 employed or limit the type of agricultural em-
17 ployment the alien may perform, except that
18 the employment shall only be with a qualified
19 agricultural employer enrolled in the program.

20 “(b) PRE-ENROLLMENT REQUIREMENTS.—

21 “(1) RECRUITMENT OF UNITED STATES WORK-
22 ERS.—Not later than 30 days before filing a request
23 to enroll in the nonimmigrant agricultural worker
24 program pursuant to subsection (c), each person fil-
25 ing such a request shall list with the Department of

1 Labor's Employment and Training Administration's
2 Electronic Job Registry a description of the antici-
3 pated period for which workers will be needed ex-
4 pected beginning and ending dates) , as well as a de-
5 scription of the wages and other terms and condi-
6 tions of agricultural employment that satisfy the dis-
7 closure requirements of sections 201 and 301 of the
8 Migrant and Seasonal Agricultural Worker Protec-
9 tion Act (29 U.S.C. 1821; 1831), except that noth-
10 ing in this paragraph shall cause such listing to be
11 treated as an interstate job order under section 653
12 of title 20, Code of Federal Regulations.

13 “(2) RECORD OF UNITED STATES WORKERS.—
14 A person or entity shall keep a record of all eligible
15 able, willing, and qualified United States workers
16 applying for employment with the person in response
17 to its filing on the Electronic Job Registry and pro-
18 vide such record in its request to enroll filed under
19 subsection (c).

20 “(c) ENROLLMENT IN THE NONIMMIGRANT AGRI-
21 CULTURAL WORKER PROGRAM.—

22 “(1) IN GENERAL.—A person who employs indi-
23 viduals to perform agricultural employment (includ-
24 ing an association of such persons and a person who
25 contracts for the performance of agricultural em-

1 ployment) with respect to agricultural commodities
2 may submit to the Secretary of Agriculture, at such
3 time and in such manner as the Secretary specifies,
4 a request for enrollment in the nonimmigrant agri-
5 cultural worker program.

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

8 “(A) the total number and qualifications of
9 nonimmigrant agricultural workers required in
10 agricultural employment in each month;

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

13 “(C) the anticipated period (expected be-
14 ginning and ending dates) for which workers
15 will be needed;

16 “(D) a copy of the information submitted
17 to the Electronic Job Registry pursuant to sub-
18 section (b)(1); and

19 “(E) the record of United States workers
20 described in subsection (b)(2) at the time of the
21 request.

22 “(3) OPTIONAL INFORMATION ON ALIENS PRE-
23 ferred.—The person may also include a statement
24 indicating a preference as to country of nationality

1 of aliens (or names of particular aliens) desired to
2 perform agricultural services in any such month.

3 “(d) DETERMINATION OF NUMERICAL LIMITATIONS
4 ON NONIMMIGRANT AGRICULTURAL VISAS BY MONTH
5 AND ANNUALLY.—Based upon requests for enrollment de-
6 scribed in subsection (c), and taking into consideration the
7 historical employment needs of agricultural employers and
8 the reports of United States workers applying for agricul-
9 tural employment listed on requests for enrollment, the
10 Secretary of Agriculture shall advise the Secretary of
11 Homeland Security of a numerical limitation on the
12 issuance of nonimmigrant visas to nonimmigrant agricul-
13 tural workers sufficient to meet the labor needs of agricul-
14 tural employers by month and annually.

15 “(e) STANDARDS FOR APPROVAL OF REQUESTS FOR
16 ENROLLMENT.—

17 “(1) IN GENERAL.—The Secretary of Agri-
18 culture shall approve a request for enrollment sub-
19 mitted under subsection (c)(1) if—

20 “(A) the person is an agricultural employer
21 and the worker is to be employed in agricultural
22 work;

23 “(B) the request complies with the provi-
24 sions of subsection (c) and the request sets
25 forth the need for such workers;

1 “(C) the person has not employed or peti-
2 tioned for a nonimmigrant described in section
3 101(a)(15)(H)(ii)(a) at the time when a request
4 on behalf of the person is pending or granted
5 under this subsection, or during any previous
6 period during which the employer had a request
7 granted under this section; and

8 “(D) the person is not disqualified under
9 subsection (f)(6).

10 “(2) REVIEW OF CERTAIN DENIALS.—Except as
11 provided under subsection (f), a person who is deter-
12 mined not to be eligible under paragraph (1) (other
13 than because of subparagraph (D) thereof) is enti-
14 tled to an expedited review of the determination by
15 the Secretary of Agriculture.

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

19 “(1) NO DISPLACEMENT OF THE UNITED
20 STATES WORKERS.—The employer did not displace
21 and will not displace a United States worker em-
22 ployed by the employer, other than for good cause,
23 during the period of employment and for a period of
24 30 days preceding the period of employment in the
25 occupation at the place of employment for which the

1 employer seeks to employ nonimmigrant agricultural
2 workers.

3 “(2) OFFERS TO UNITED STATES WORKERS.—
4 The employer shall offer the job to any eligible
5 United States worker who applies and is equally or
6 better qualified for the job for which the non-
7 immigrant is sought, and will be available at the
8 time and place of need. The employer shall post all
9 such job openings on the Electronic Job Registry ad-
10 ministered by the Employment and Training Admin-
11 istration of the Department of Labor.

12 “(3) WORKERS’ COMPENSATION.—If the job op-
13 portunity is not covered by the State workers’ com-
14 pensation law, the employer will provide, at no cost
15 to United States and nonimmigrant agricultural
16 workers, insurance covering injury and disease aris-
17 ing out of, and in the course of, the worker’s em-
18 ployment which will provide benefits at least equal to
19 those provided under the State’s workers’ compensa-
20 tion law for comparable employment.

21 “(4) LABOR DISPUTE.—The person shall not
22 employ a nonimmigrant agricultural worker for a
23 specific job opportunity for which the employer is re-
24 questing a nonimmigrant agricultural worker be-

1 cause the former occupant of the job is on strike or
2 being locked out in the course of a labor dispute.

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

7 “(6) VIOLATION OF PROGRAM REQUIRE-
8 MENTS.—If the Secretary of Agriculture determines,
9 after an opportunity for a hearing, that an enrolled
10 employer has violated this subsection the Secretary
11 may impose penalties, including fines and, in cases
12 of serious violations, the disqualification of the em-
13 ployer from future enrollment in the program for a
14 period of up to three years.

15 “(g) ALLOCATION OF VISAS.—

16 “(1) PREFERENCE SYSTEM.—Nonimmigrant
17 agricultural workers who are subject to the numer-
18 ical limitations specified in subsection (d) shall be al-
19 lotted nonimmigrant visas and work authority as fol-
20 lows:

21 “(A) IDENTIFIED WORKERS.—Visas shall
22 first be made available to qualified non-
23 immigrant agricultural workers specifically
24 identified pursuant to subsection (c)(3).

1 “(B) PREVIOUSLY EMPLOYED WORKERS.—
2 Visas shall next be made available to qualified
3 nonimmigrant agricultural workers who have
4 previously been employed in agricultural em-
5 ployment in the United States, providing pri-
6 ority in consideration among such workers in
7 the order of the length of time in which they
8 were employed.

9 “(C) ORDER IN WHICH APPLIED.—The re-
10 maining visas shall be made available to other
11 qualified nonimmigrant agricultural workers
12 strictly in the chronological order in which they
13 apply. Waiting lists of applicants shall be main-
14 tained in accordance with regulations prescribed
15 by the Secretary of State.

16 “(2) TREATMENT OF SPOUSES AND CHIL-
17 DREN.—A spouse or child of such a worker is not
18 entitled to visa or such status by virtue of such rela-
19 tionship, but may be provided the same status as
20 such a worker if the spouse or child also is a quali-
21 fied nonimmigrant agricultural worker to perform
22 agricultural employment.

23 “(3) CRIMINAL BACKGROUND CHECK.—In the
24 addition to any other examination required under
25 this Act, no visa or other documentation may be

1 issued to an alien under section 101(a)(15)(W) until
2 the alien has obtained successful clearance of the se-
3 curity and criminal background checks specified by
4 the Secretary of Homeland Security for purposes of
5 this section.

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

8 “(1) IN GENERAL.—If an agricultural employer
9 (or association or representative thereof) establishes
10 that extraordinary and unusual circumstances have
11 resulted in a significant change in the employer’s
12 need for nonimmigrant agricultural workers speci-
13 fied in the application, or in the availability of do-
14 mestic workers who are able, willing, and qualified
15 to perform agricultural employment, the employer
16 may apply to the Secretary of Agriculture (in such
17 form and manner as the Secretary shall provide) for
18 an increase in the numerical limitations otherwise
19 established under subsection (d) to accommodate
20 such emergency need. If approved, the Secretary
21 shall forward the application to the Secretary of
22 Homeland Security with a recommendation on the
23 additional number of nonimmigrant agricultural
24 worker visas found necessary.

1 “(2) TIMELY DETERMINATION ON APPLICA-
2 TION.—The Secretary of Agriculture shall make a
3 determination on an application under subparagraph
4 (A) and forward its recommendations to the Sec-
5 retary of Homeland Security within 72 hours of the
6 date the application is completed.

7 “(3) INCREASE IN LIMITATION.—To the extent
8 the application is approved, the Secretary of Home-
9 land Security shall provide for an appropriate in-
10 crease in the appropriate numerical limitation within
11 72 hours.

12 “(i) ENTRY OF WORKERS.—

13 “(1) IN GENERAL.—An alien may not be admit-
14 ted to the United States as a nonimmigrant agricul-
15 tural worker during the three-year period beginning
16 on the most recent date (if any) on which the alien
17 violated a material term or condition of a previous
18 admission as a nonimmigrant agricultural worker.

19 “(2) DISQUALIFICATION FOR COMMISSION OF
20 CRIME.—An alien who commits a crime while in the
21 United States as a nonimmigrant agricultural work-
22 er shall be ineligible to retain such status and shall
23 be required to depart from the United States.

24 “(3) CONTINUOUS EMPLOYMENT.—Non-
25 immigrant agricultural workers admitted under this

1 program shall be continuously employed or actively
2 seeking employment in agricultural employment
3 throughout the term of their admission.

4 “(4) DIRECTION OF NONIMMIGRANT AGRICUL-
5 TURAL WORKERS TO EMPLOYMENT OPPORTUNI-
6 TIES.—The Secretary of State and Secretary of Ag-
7 riculture, in consultation with the Secretary of
8 Labor, shall establish a system for providing infor-
9 mation on available agricultural employment oppor-
10 tunities to individuals whose applications for non-
11 immigrant agricultural visas have been approved if
12 those individuals are not named by an employer or
13 do not have a letter of employment opportunity pro-
14 vided by a person enrolled in the program.

15 “(j) APPLICABILITY OF EMPLOYMENT LAWS.—All
16 Federal, State, and local employment related laws applica-
17 ble to United States agricultural workers shall apply to
18 nonimmigrant agricultural workers admitted pursuant to
19 this program.

20 “(k) BIOMETRIC IDENTIFICATION CARD.—The Sec-
21 retary of Homeland Security shall provide each non-
22 immigrant agricultural worker with an identification card
23 that contains—

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

4 “(2) biometric identifiers, including fingerprints
5 and a digital photograph; and

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

9 “(1) TRUST FUND.—

10 “(1) ESTABLISHMENT.—The Secretary of Agri-
11 culture shall establish by regulation a trust fund the
12 purpose of which is to provide, without further ap-
13 propriation, funds for the administration and the en-
14 forcement of the program under this section, for the
15 cost of the cards issued under subsection (k), for a
16 monetary incentive for nonimmigrant agricultural
17 workers to return to their country of origin upon ex-
18 piration of their visas under the program, and for
19 payment with respect to emergency medical services
20 furnished to nonimmigrant agricultural workers. The
21 Secretary of Agriculture in consultation with the
22 Secretary of the Treasury shall promulgate such
23 other regulations as may be necessary to carry out
24 this subsection.

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

4 “(A) the employer shall provide for pay-
5 ment into the trust fund established under
6 paragraph (1) of the sum of—

7 “(i) an amount equivalent to the
8 amount of excise taxes which the employer
9 would pay under the chapter 21 of the In-
10 ternal Revenue Code of 1986 with respect
11 to such employment if it were considered
12 employment for the purpose of such Act;
13 and

14 “(ii) an amount equivalent to (and in
15 lieu of) the amount of excise taxes which
16 the employer would otherwise pay under
17 chapter 23 of such Code with respect to
18 such employment: and

19 “(B) there shall be deducted from the
20 wages of the worker and paid into such trust
21 fund an amount equivalent to the amount of ex-
22 cise taxes that the employee would pay under
23 such chapter 21 with respect to such employ-
24 ment if it were considered employment for the
25 purposes of such Act.

1 “(3) EXPENDITURES FROM TRUST FUND.—

2 “(A) USE OF EMPLOYER CONTRIBUTIONS
3 FOR ADMINISTRATION.—Amounts described in
4 paragraph (2)(A) paid into the trust fund shall
5 be used for the purpose of administering and
6 enforcing the program under this section and
7 for the cost of the cards issued under sub-
8 section (k).

9 “(B) USE OF EMPLOYEE CONTRIBUTIONS
10 FOR REPAYMENT OF EMPLOYEE CONTRIBU-
11 TIONS UPON RETURN TO COUNTRY OF ORI-
12 GIN.—Except as provided in subparagraph (C),
13 amounts described in paragraph (2)(B) paid
14 into the trust fund with respect to a non-
15 immigrant agricultural worker shall, upon ap-
16 plication by the worker at the United States
17 consulate nearest the worker’s residence in the
18 country of origin, be paid to the worker if the
19 worker demonstrates the compliance of the
20 worker with the terms and conditions of the
21 program.

22 “(C) USE OF EMPLOYEE CONTRIBUTIONS
23 ATTRIBUTABLE TO HI TAXES FOR EMERGENCY
24 MEDICAL SERVICES FOR NONIMMIGRANT AGRI-
25 CULTURAL WORKERS.—

1 “(i) IN GENERAL.—Amounts de-
2 scribed in paragraph (2)(B) paid into the
3 trust fund which relate to excise tax in sec-
4 tion 3101(b) of the Internal Revenue Code
5 of 1986 shall be used to provide payment
6 with respect to emergency medical services
7 (as defined in clause (iii)) for non-
8 immigrant agricultural workers.

9 “(ii) ADMINISTRATION.—The Sec-
10 retary of Agriculture shall establish rules,
11 in consultation with the Secretary of
12 Health and Human Services, with respect
13 to the payments under this subparagraph,
14 including methods for determining quali-
15 fications for payment and the amount of
16 payment to be made with respect to emer-
17 gency medical services.

18 “(iii) EMERGENCY MEDICAL SERVICES
19 DEFINED.—In this subparagraph, the term
20 ‘emergency medical services’ means those
21 items and services required to be provided
22 under section 1867 of the Social Security
23 Act (42 U.S.C. 1395dd) with respect to an
24 individual who is a nonimmigrant agricul-
25 tural worker and does not include items

1 and services for which coverage under
2 workers' compensation is required under
3 subsection (f)(3) with respect to the work-
4 er.

5 “(m) SEMIANNUAL REPORTS TO CONGRESS.—The
6 Secretary of Agriculture shall report to Congress semi-
7 annually regarding the program under this section. Each
8 such report shall include a statement of the number of
9 nonimmigrant visas issued under the program, an evalua-
10 tion of the effectiveness of the program, a description of
11 any problems related to the enforcement of the program,
12 and any recommendations for legislation relating to the
13 program.

14 “(n) MISCELLANEOUS PROVISIONS.—

15 “(1) DISQUALIFICATION OF NONIMMIGRANT AG-
16 RICULTURAL WORKERS FROM FINANCIAL ASSIST-
17 ANCE.—An alien admitted as a nonimmigrant agri-
18 cultural worker is not eligible for any program of fi-
19 nancial assistance under Federal law (whether
20 through grant, loan, guarantee, or otherwise) on the
21 basis of financial need, as such programs are identi-
22 fied by the Secretary of Agriculture in consultation
23 with other appropriate heads of the various depart-
24 ments and agencies of Government.

1 “(2) EXPANSION OF CONSULATES.—The Sec-
2 retary of State is authorized to take such steps as
3 may be necessary in order to expand and establish
4 consulates in foreign countries in which aliens are
5 likely to apply to become nonimmigrant agricultural
6 workers under the program to the extent such ex-
7 pansion is fully covered by the funds obtained in
8 subsection (1)(3)(A).

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

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

14 “(1) AGRICULTURAL EMPLOYMENT.—The term
15 ‘agricultural employment’ has the meaning given
16 such term in section 3 of the Migrant and Seasonal
17 Agricultural Worker Protection Act (29 U.S.C.
18 1802), without regard to whether the specific service
19 or activity is temporary or seasonal.

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

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

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

