

112TH CONGRESS  
1ST SESSION

# H. R. 3443

To reform the H-2A program for nonimmigrant agricultural workers, and  
for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2011

Mr. KINGSTON (for himself and Mr. WESTMORELAND) introduced the  
following bill; which was referred to the Committee on the Judiciary

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## A BILL

To reform the H-2A program for nonimmigrant agricultural  
workers, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as—

5               (1) the “Better Agriculture Resources Now

6       Act”; or

7               (2) the “BARN Act”.

1 **SEC. 2. H-2A PROGRAM REFORMS.**

2 (a) DEFINITION OF AGRICULTURAL LABOR OR SERV-  
3 ICES.—Section 101(a)(15)(H)(ii)(a) of such Act (8 U.S.C.  
4 1101(a)(15)(H)(ii)(a)) is amended—

5 (1) by striking “and the pressing” and insert-  
6 ing “the pressing”; and

7 (2) by striking “of a temporary” and all that  
8 follows through the end and inserting “, and the  
9 handling, planting, drying, packing, packaging, proc-  
10 essing, freezing, grading, storing, or delivering to  
11 storage or to market or to a carrier for transpor-  
12 tation to market, in its unmanufactured state, any  
13 agricultural or horticultural commodity, or”.

14 (b) DEEMED APPROVAL.—Section 218(c)(3)(A) of  
15 such Act (8 U.S.C. 1188(c)(3)(A)) is amended by insert-  
16 ing before “In considering” the following: “The Secretary  
17 of Labor shall review such application and shall provide  
18 a determination on the application within 30 days of the  
19 date of the filing of the application. If the Secretary does  
20 not comply with the deadline in the preceding sentence,  
21 the application shall be deemed approved.”.

22 (c) EXPERIENCE REQUIREMENT.—Section  
23 218(c)(3)(A) of such Act (8 U.S.C. 1188(c)(3)(A)), as  
24 amended by subsection (b), is further amended by adding  
25 at the end the following: “A job offer may contain an expe-

1 rience requirement as long as work performed in an illegal  
2 status may not be counted towards such requirement.”.

3 (d) ELIMINATION OF 50 PERCENT RULE.—Section  
4 218(c)(3) of such Act (8 U.S.C. 1188(c)(3)) is amended—

5 (1) by striking “(A)”; and

6 (2) by striking subparagraph (B).

7 (e) WAGE RATE.—Section 218(a)(1)(B) of such Act  
8 (8 U.S.C. 1188(a)(1)(B)) is amended by striking the pe-  
9 riod at the end and inserting “, except that no employer  
10 shall be required to pay a wage rate greater than 115 per-  
11 cent of the greatest of the Federal, State, and local min-  
12 imum wage rates.”.

13 (f) DEADLINE FOR FILING APPLICATIONS.—Section  
14 218(c)(1) of such Act (8 U.S.C. 1188(c)(1)) is amended  
15 by striking “45” and inserting “30”.

16 (g) PERIOD OF AUTHORIZED NONIMMIGRANT STA-  
17 TUS.—Section 218(h) of such Act (8 U.S.C. 1188(h)) is  
18 amended by adding at the end the following:

19 “(3) The initial period of authorized status as a non-  
20 immigrant described in section 101(a)(15)(H)(ii)(a) shall  
21 not exceed 1 year. Such period may be extended once by  
22 the Secretary of Homeland Security for a period of up  
23 to 1 year, except that such extension may be granted only  
24 if the Secretary of Labor determines that the employer  
25 has engaged in the positive recruitment efforts described

1 in subsection (b)(4) (including the obligation to circulate  
2 the employer’s job offer through the interstate employ-  
3 ment service system). In the case of a nonimmigrant who  
4 has remained in the United States for the full 2-year pe-  
5 riod, the nonimmigrant shall be obliged to depart the  
6 United States and shall not be eligible to re-apply for a  
7 visa to re-enter the United States as such a nonimmigrant  
8 for a period of 2 months. If at any time during a period  
9 of authorized admission the alien has a work lapse period  
10 of 60 days or more, the visa of the alien shall be deemed  
11 revoked and the alien shall be required to depart from the  
12 United States, except that if an employer has applied for  
13 a certification under subsection (a)(1) with respect to an  
14 alien who has a work lapse of 60 days or less, such period  
15 shall not begin until after the Secretary has made a deter-  
16 mination on the application consistent with subsection  
17 (c).”.

18 (h) HOUSING.—Section 218(c)(4) of such Act (8  
19 U.S.C. 1188(c)(4)) is amended to read as follows:

20 “(4) HOUSING REQUIREMENT.—

21 “(A) IN GENERAL.—Except as provided  
22 under subparagraph (F), each employer apply-  
23 ing for workers under subsection (b) shall offer  
24 to provide housing at no cost to—

1           “(i) all workers in job opportunities  
2           for which the employer has applied; and

3           “(ii) all other workers in the same oc-  
4           cupation at the same place of employment  
5           whose place of residence is beyond normal  
6           commuting distance.

7           “(B) COMPLIANCE.—An employer meets  
8           the requirement under subparagraph (A) if the  
9           employer—

10           “(i) provides the workers with housing  
11           that meets applicable Federal standards  
12           for temporary labor camps; or

13           “(ii) secures housing for the workers  
14           that—

15           “(I) meets applicable local stand-  
16           ards for rental or public accommoda-  
17           tion housing, or other substantially  
18           similar class of habitation; or

19           “(II) in the absence of applicable  
20           local standards, meets State stand-  
21           ards for rental or public accommoda-  
22           tion housing or other substantially  
23           similar class of habitation.

24           “(C) INSPECTION.—

1           “(i) REQUEST.—At the time an em-  
2           ployer that plans to provide housing de-  
3           scribed in subparagraph (B) to H-2A  
4           workers files an application for H-2A  
5           workers with the Secretary of Labor, the  
6           employer shall request a certificate of in-  
7           spection by an approved Federal or State  
8           agency.

9           “(ii) INSPECTION; FOLLOW UP.—Not  
10          later than 28 days after the receipt of a re-  
11          quest under clause (i), the Secretary of Ag-  
12          riculture shall ensure that—

13                   “(I) such an inspection has been  
14                   conducted; and

15                   “(II) any necessary follow up has  
16                   been scheduled to ensure compliance  
17                   with the requirements under this  
18                   paragraph.

19          “(iii) DELAY PROHIBITED.—The Sec-  
20          retary of Agriculture may not delay the ap-  
21          proval of an application for failing to com-  
22          ply with the deadlines set forth in clause  
23          (iii).

24          “(D) RULEMAKING.—The Secretary of Ag-  
25          riculture shall issue regulations that address

1 the specific requirements for the provision of  
2 housing to workers engaged in the range pro-  
3 duction of livestock.

4 “(E) HOUSING ALLOWANCE.—

5 “(i) AUTHORITY.—If the Governor of  
6 a State certifies to the Secretary of Agri-  
7 culture that there is adequate housing  
8 available in the area of intended employ-  
9 ment for migrant farm workers and H-2A  
10 workers who are seeking temporary hous-  
11 ing while employed in agricultural work, an  
12 employer in such State may provide a rea-  
13 sonable housing allowance instead of offer-  
14 ing housing pursuant to subparagraph (A).  
15 An employer who provides a housing allow-  
16 ance to a worker shall not be required to  
17 reserve housing accommodations for the  
18 worker.

19 “(ii) ASSISTANCE IN LOCATING HOUS-  
20 ING.—Upon the request of a worker seek-  
21 ing assistance in locating housing, an em-  
22 ployer providing a housing allowance under  
23 clause (i) shall make a good faith effort to  
24 assist the worker in identifying and locat-

1           ing housing in the area of intended em-  
2           ployment.

3           “(iii) LIMITATION.—A housing allow-  
4           ance may not be used for housing that is  
5           owned or controlled by the employer. An  
6           employer who offers a housing allowance to  
7           a worker, or assists a worker in locating  
8           housing which the worker occupies under  
9           this subparagraph shall not be deemed a  
10          housing provider under section 203 of the  
11          Migrant and Seasonal Agricultural Worker  
12          Protect Act (29 U.S.C. 1823) solely by vir-  
13          tue of providing such housing allowance.

14          “(iv) OTHER REQUIREMENTS.—

15                 “(I) NONMETROPOLITAN COUN-  
16                 TY.—If the place of employment of  
17                 the workers provided an allowance  
18                 under this subparagraph is a non-  
19                 metropolitan county, the amount of  
20                 the housing allowance under this sub-  
21                 paragraph shall be equal to the state-  
22                 wide average fair market rental for  
23                 existing housing for nonmetropolitan  
24                 counties for the State, as established  
25                 by the Secretary of Housing and



1 Urban Development pursuant to sec-  
2 tion 8(c) of the United States Hous-  
3 ing Act of 1937 (42 U.S.C. 1437f(c)),  
4 based on a 2-bedroom dwelling unit  
5 and an assumption of 2 persons per  
6 bedroom.

7 “(II) METROPOLITAN COUNTY.—

8 If the place of employment of the  
9 workers provided an allowance under  
10 this subparagraph is in a metropolitan  
11 county, the amount of the housing al-  
12 lowance under this subparagraph shall  
13 be equal to the statewide average fair  
14 market rental for existing housing for  
15 metropolitan counties for the State, as  
16 established by the Secretary of Hous-  
17 ing and Urban Development pursuant  
18 to section 8(c) of the United States  
19 Housing Act of 1937 (42 U.S.C.  
20 1437f(c)), based on a 2-bedroom  
21 dwelling unit and an assumption of 2  
22 persons per bedroom.

23 “(v) INFORMATION.—If the employer  
24 provides a housing allowance to H-2A em-  
25 ployees, the employer shall provide a list of

1           the names and local addresses of such  
2           workers to the Secretary of Agriculture  
3           and the Secretary of Homeland Security  
4           once per contract period.”.

5           (i) LEGAL ASSISTANCE FROM THE LEGAL SERVICES  
6 CORPORATION.—Section 218(h) of such Act (8 U.S.C.  
7 1188(h)), as amended by subsection (g), is further amend-  
8 ed by adding at the end the following:

9           “(4)(A) The Legal Services Corporation may not pro-  
10 vide legal assistance for, or on behalf of, any alien, and  
11 may not provide financial assistance to any person or enti-  
12 ty that provides legal assistance for, or on behalf of, any  
13 alien, unless—

14           “(i) the alien is present in the United States at  
15 the time the legal assistance is provided; and

16           “(ii) the parties to the dispute have attempted,  
17 in good faith, mediation or other non-binding dis-  
18 pute resolution of all issues involving all such par-  
19 ties.

20           “(B) If an employer and a nonimmigrant having sta-  
21 tus under section 101(a)(15)(H)(ii)(a) have an arbitration  
22 arrangement, the Legal Services Corporation shall respect  
23 the arbitration process and outcome.

24           “(C) No employer of a nonimmigrant having status  
25 under section 101(a)(15)(H)(ii)(a) shall be required to

1 permit any recipient of a grant or contract under section  
2 1007 of the Legal Services Corporation Act (42 U.S.C.  
3 2996f), or any employee of such a recipient, to enter upon  
4 the employer's property, unless such recipient or employee  
5 has a pre-arranged appointment with a specific non-  
6 immigrant having such status.”.

7 (j) EFFECT OF VIOLATIONS WHILE IN UNITED  
8 STATES.—Section 218(f) of such Act (8 U.S.C. 1188(f))  
9 is amended to read as follows:

10 “(f) EFFECT OF VIOLATIONS.—

11 “(1) OVERSTAYS.—An alien may not be admit-  
12 ted to the United States as a nonimmigrant having  
13 status under section 101(a)(15)(H)(ii)(a) if the alien  
14 was admitted to the United States as such a non-  
15 immigrant within the previous 5-year period and the  
16 alien remained after the alien's period of authorized  
17 admission expired or otherwise violated a term or  
18 condition of such previous admission.

19 “(2) FRAUD.—An alien may not be admitted to  
20 the United States as a nonimmigrant having status  
21 under section 101(a)(15)(H)(ii)(a) if the alien was  
22 admitted to the United States as such a non-  
23 immigrant on the basis of fraud.

24 “(3) OTHER CRIMES.—An alien may not be ad-  
25 mitted to the United States as a nonimmigrant hav-

1       ing status under section 101(a)(15)(H)(ii)(a) if the  
2       alien was admitted to the United States as such a  
3       nonimmigrant and committed an offense that ren-  
4       dered the alien deportable while in the United States  
5       pursuant to such admission.

6               “(4) EMPLOYER BAR.—The Secretary of Labor  
7       may not issue a certification under subsection (a)  
8       with respect to an employer if the Secretary finds,  
9       after notice and an opportunity for a hearing, that  
10       the employer knowingly hired an H-2A worker  
11       whose period of authorized admission had expired or  
12       that the employer otherwise engaged in fraud or  
13       misrepresentation with respect to the program for  
14       the admission of such workers into the United  
15       States. The Secretary of Homeland Security shall  
16       not thereafter approve petitions filed by such em-  
17       ployer under section 214(c). An employer that estab-  
18       lishes that it has complied in good faith with the re-  
19       quirements of this Act has established an affirmative  
20       defense in an action brought under this paragraph.”.

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