

House Bill 08-1325

2010 General Assembly Report (August 8, 2008 – December 31, 2009)

Submitted to:

**The Colorado Senate Committee on Business, Labor, and Technology
The Colorado Senate Committee on Agriculture, Natural Resources, and Energy
The Colorado House Committee on Business Affairs and Labor
Colorado House Committee on Agriculture, Livestock and Natural Resources**

By:

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And

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Prepared in compliance with Colorado Revised Statutes 8-3.5-111 by staff of the Colorado Department of Labor and Employment and the Colorado Department of Agriculture

February 1, 2010

Colorado Revised Statutes 8-3.5-111 Reporting Requirements

Colorado Revised Statutes 8-3.5-111 requires the Colorado Department of Labor and Employment, in conjunction with the Colorado Department of Agriculture, to submit the following report by February 1, 2010, providing status on the:

- Progress of the Colorado Nonimmigrant Agricultural Seasonal Worker Pilot Program.
- Any recommended legislative changes.

This report complies with these requirements.

PART I. OVERVIEW AND SUMMARY

On June 7, 2008, Governor Ritter signed into law Colorado House Bill 08-1325. This law established the Colorado Nonimmigrant Agricultural Seasonal Worker Pilot Program (Pilot Program) to be implemented by the Colorado Department of Labor and Employment (CDLE) beginning August 8, 2008.

The bill created the Pilot Program for the purpose of expediting recruitment, application, and approval of workers through the federal H-2A certification process.

H-2A Process. Employers who anticipate a shortage of agricultural workers are eligible to apply for the H-2A program administered by three federal agencies: the U.S. Department of Labor, the Department of Homeland Security, and the Department of State. The H-2A program was designed to allow foreign nationals entry into the U.S. to work in the agricultural industry to meet needs that are temporary and seasonal in nature without displacing U.S. workers.

CDLE operates as an agent of the U.S. Department of Labor to deliver a portion of the H-2A certification process requirements. The initial H-2A application is filed with the U.S. Department of Labor, which forwards the request to CDLE. Each agency is responsible for different parts of the application process as follows:

U.S. Department of Labor

- Forwards application to CDLE.
- Determines adverse effect wage for the positions offered.
- Establishes employer requirements for positive recruitment of U.S. workers.
- Certifies number of foreign workers needed.
- If certified, forwards application to U.S. Citizenship and Immigration Services.

Colorado Department of Labor and Employment

- Enters a job order in the Colorado workforce system.
- Inspects housing provided by employer for workers under the H-2A program.

U.S. Citizenship and Immigration Services

- Conducts background checks on names submitted by the employer.
- Approves or disapproves individual named workers from the employer's application.
- For approved workers, forwards worker names to the Department of State.

Department of State

- Processes visa applications for workers approved by the U.S. Citizenship and Immigration Services.
- Issues visas for those workers able to provide proper identification and other documents.

PART II. THE CREATION AND PROMOTION OF THE COLORADO NONIMMIGRANT AGRICULTURAL SEASONAL WORKER PILOT PROGRAM

Colorado Nonimmigrant Agricultural Seasonal Worker Pilot Program Requirements.

- Implement the Pilot Program.
- Establish cash fund to receive revenues from participating employers.
- Promulgate rules for the Pilot Program.
- Work with employers participating in the Pilot Program to expedite the H-2A visa application, approval, and recruitment process.
- Report to general assembly on the progress of the Pilot Program.

Progress on each of these requirements is outlined below:

Implement the Colorado Nonimmigrant Agricultural Seasonal Worker Pilot Program

- In September 2008, a request for quotation for services (RFQ) from agents interested in participating in the Pilot Program was issued.
- On January 12, 2009, CDLE assigned a full-time employee to the Pilot Program with the title of Guest Worker Coordinator.

Establish cash fund to receive revenues from participating employers

- In January 2009, a cash fund to receive fees paid by employers was created by CDLE's finance division as required by Colorado Revised Statutes 8-3.5-108.
- To date, no employers have signed up for the program. Since the cash fund is funded entirely by employer enrollment fees, no funds have been deposited.

Promulgate rules for the Colorado Nonimmigrant Agricultural Seasonal Worker Pilot Program

- In accordance with Colorado Revised Statutes 8-3.5-104, an advisory council for the Pilot Program was created.
- Emergency rules were put in place until the council was able to meet and comment on the final rules for the program.
- The council met on January 16, 2009 at the Colorado State Capitol.
- A rules hearing was held on January 30, 2009, and the final rule governing the Pilot Program was put into effect on March 2, 2009 per Colorado Revised Statutes 8-3.5-112.

Work with employers participating in the Colorado Nonimmigrant Agricultural Seasonal Worker Pilot Program to expedite the H-2A visa application, approval, and recruitment process

- Pre-qualified agents' services and fee schedules were posted on a website for review by employers.

- Agents wishing to participate in the Pilot Program were required to:
 - Provide a list of their pricing and services.
 - Provide a description of services provided.
 - Provide at least three references from employers whom the agents have helped obtain workers through the H-2A program in the previous 36 months.
 - Sign an affidavit of compliance stating that the agent was not prohibited by the U.S. Department of Labor or any state department of labor from filing H-2A applications.

Report to general assembly on the progress of the Colorado Nonimmigrant Agricultural Seasonal Worker Pilot Program

- CDLE created a database to facilitate the required compilation of information gathered from employers and agents participating in the Pilot Program.

Colorado Nonimmigrant Agricultural Seasonal Worker Pilot Program Outreach Activities. CDLE, in conjunction with the Colorado Department of Agriculture, utilized a variety of methods to promote the Pilot Program to the agricultural employer community in Colorado throughout 2009. A sampling of outreach activities is bulleted below.

Colorado Department of Agriculture Outreach.

- Created a flyer which was used to promote the Pilot Program in a variety of venues.
- Promoted the Pilot Program through its monthly e-letter, “Inside Ag”, which is distributed to a wide range of subscribing employers.
- Provided links from the Colorado Department of Agriculture website to the website of the Pilot Program.
- Distributed Pilot Program information at the Colorado State Fair, the Colorado Farm Show, the National Western Stock Show, and the Governor’s Forum on Colorado Agriculture.

Colorado Department of Labor and Employment Outreach.

- Presented on the Pilot Program at the National Association of State Workforce Agencies’ conference.
- Participated in a panel dedicated to the Pilot Program at the Governor’s Forum on Colorado Agriculture.
- Presented at several conferences in Colorado and Texas on the Pilot Program.
- Rural workforce regions placed links to the Pilot Program on their websites.
- Attended a variety of employers’ meetings and events such as the Colorado State Fair, the Society for Human Resource Managers’ biennial conference, the Colorado Entrepreneurship Marketplace, and the Economic Development Council of Colorado’s Conference to provide information on the Pilot Program.

Employer feedback. During these outreach activities both CDLE and the Colorado Department of Agriculture received feedback from many agricultural employers on the Pilot Program. Common themes include:

- Employers saw a benefit in having a list where they could compare prices offered by agents and view a list of agents who had provided the assurances required under the Pilot Program.
- Employers expressed concern about the added expense of the Pilot Program (\$100 per requested worker).
- Employers were concerned about the additional level of requirements added on to the H-2A program.
- Several employers commented that they used the list to contract an agent without enrolling in the fee-based part of the Pilot Program.

Challenges. The H-2A process is fully controlled by Federal law (8 U.S.C. Sec. 1101 et seq.). CDLE's role in the H-2A process is limited to posting the positions for U.S. workers within the workforce system and performing housing inspections. As noted in the Employer Feedback section above, employers indicated that the cost and delay issues they have experienced are part of the process controlled by the federal agencies.

Also as noted above, employers found the cost for the enrollment portion of the program to be prohibitive. Employers noted that the costs of the H-2A program (Federal application fees, required housing and advertisements) already make the process very expensive. In feedback received by both departments, employers expressed that they did not see sufficient benefits in the enrollment portion of the Pilot Program to justify the additional expense.

Employers also noted that the additional requirements placed on them by the Pilot Program discouraged them from enrolling in the program.

PART III. RECOMMENDATIONS

1. Use existing Federal funds for the non-enrollment based portion of the program that pre-qualifies agents and provides their service and fee schedules.
 - Federal funds available to CDLE can be used for labor exchange functions.
 - Both agricultural employers and agents have found value in the pre-qualified agent list.
2. Continue to offer the enrollment based portion of the Pilot Program to any interested employers, supporting it with the fees generated.
 - Federal funds cannot be used for this function as it falls outside the labor exchange purpose of those funds.
 - As the economy recovers, agricultural employers could choose to access this portion of the program. The fee charged for participation in this portion of the program would cover the costs incurred.