Senate Bill Gives U.S. Workers First Dibs on H-1B Jobs

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One of the longest-running defenses of the hotly debated H-1B temporary worker visa program is that there are simply not enough U.S. workers to fill out many corporations' programming, engineering and back-office positions, leaving them no choice but to hire workers from overseas.

A new Senate bill - introduced in the final moments before Congress departed for its spring recess at the end of last week - takes this argument to task, demanding that employers make a "good faith" effort to hire a U.S. worker before bringing in a H-1B worker.

The Senate Bill, introduced by Sens. Chuck Grassley (R-Iowa) and Dick Durbin (D-Ill.), puts the onus on employers to prove that they have gone to lengths to ensure that the visa-holder would not be displacing a prospective U.S. employee.

In addition to making a "good faith" effort to hire a U.S. worker, employers will be required to advertise job openings for 30 days on the Department of Labor's Web site before submitting applications to hire H-1B workers. The DOL would also be required to post on its site summaries of all the H-1B applications it receives.

Employers would also be prohibited from advertising positions only to H-1B holders. Though this practice is already considered illegal, many argue that that this type of discrimination against U.S. workers does indeed exist. - In June 2006, the Programmers Guild, an IT worker

interest group, announced that they'd filed 300 discrimination complaints already that year against companies alleged to have posted "H-1B visa holders only" ads on job boards. -

Other stipulations of the Senate bill demand that companies with 50 or more workers are not allowed to employ more than half of their staff through H-1B visas.

Companies that take advantage of the H-1B program would also have to prove that they were paying H-1B workers the prevailing wage for their positions. The new measure would calculate wages differently, raising the minimum for each position from its current dollar amount.

The Senate bill would also increase the power of the DOL to conduct random audits of employers that use H-1B visas. Currently, they can only investigate applications for "completeness and obvious inaccuracies." If these new provisions are passed, the DOL would be check for clear indicators of fraud and misrepresentations of fact. It would also double the review period for each application from one to two weeks.

Finally, the measure would authorize the DOL to hire 200 additional employees to administer, oversee and enforce the H-1B program.

Opponents of the temporary worker visa programs - typically worker protection groups - were quick to applaud the Senate bill.

"Introduction of this bill explodes the myth that these job openings had to be competed on the domestic job market first," said Donna Conroy, brightfuturejobs.org, a Chicago-based lobbying IT and white-collar lobbying group. "The H-1B and L-1 visa programs are a license to exclude U.S. workers for at least a quarter-of-a million, top-dollar, white-collar jobs per year."

Yet supporters of the program - predominantly large software companies and their trade groups - have been just as quick to decry these additional measures as overly protectionist, setting the U.S. behind in a global job market. They cite a shortage of H-1B visas, evidencing how quickly the available supply is depleted each year.

"The shortage of H-1Bs is hitting a critical point and that isn't good news for U.S. employers who may now have to cancel projects or send the projects overseas," said Carlina Tapia-Ruano, President of the Washington-based American Immigration Lawyers Association. "These high-skilled workers are vital to U.S. competitiveness, and we should welcome their contributions to U.S. economic growth."

In 2004, the cap on available H-1B visas was reduced from a record high of 195,000 to 65,000 per year. Each year since, the filing period has become increasingly shortened, and supply is depleted in less and less time. Those available for the 2008 fiscal year were made available on April 5, and were all accounted for by the following day.