MIGRANT WORKERS AND RELATED COMMISSION AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions related to government in general to enact the Utah Commission on Immigration and Migration Act.

Highlighted Provisions:

This bill:

- enacts the Utah Commission on Immigration and Migration Act, including:
  - defining terms;
  - creating the commission;
  - outlining the general powers and duties of the commission;
  - addressing integration of immigrants in the state;
  - providing for the creation of the Migrant Worker Visa Pilot Program;
  - requiring monitoring of the pilot program and reporting on information gained; and
  - providing for implementation of similar migrant worker visa pilot programs.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

63G-12-101, Utah Code Annotated 1953

AILA InfoNet Doc. No. 11052760. (Posted 05/27/11)

30 **63G-12-102**, Utah Code Annotated 1953
31 **63G-12-201**, Utah Code Annotated 1953
32 **63G-12-202**, Utah Code Annotated 1953
33 **63G-12-203**, Utah Code Annotated 1953
34 **63G-12-301**, Utah Code Annotated 1953
35 **63G-12-302**, Utah Code Annotated 1953
36 **63G-12-303**, Utah Code Annotated 1953
37 **63G-12-304**, Utah Code Annotated 1953
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39 *Be it enacted by the Legislature of the state of Utah:*
40 Section 1. Section **63G-12-101** is enacted to read:
41 **CHAPTER 12. UTAH COMMISSION ON IMMIGRATION AND MIGRATION ACT**
42 **Part 1. General Provisions**
43 **63G-12-101. Title.**
44 This chapter is known as the "Utah Commission on Immigration and Migration Act."
45 Section 2. Section **63G-12-102** is enacted to read:
46 **63G-12-102. Definitions.**
47 As used in this chapter:
48 (1) "Commission" means the Utah Commission on Immigration and Migration created
49 in Section 63G-12-201.
50 (2) "Migrant worker" means an individual who leaves the individual's country of origin
51 for employment of a seasonal or other temporary nature.
52 (3) "Pilot project" means the pilot project created under Part 3, Migrant Worker Visa
53 Pilot Project, with the State of Nuevo Leon, Mexico.
54 (4) "Pilot project memorandum of understanding" means the memorandum of
55 understanding described in Section 63G-12-301.
56 (5) (a) "State agency" means an executive, legislative, and judicial branch department,
57 agency, board, commission, or division, or other administrative unit of the state.

58 (b) "State agency" includes a state institution of higher education as defined in Section
59 53B-3-102.
60 (6) "United States nonimmigrant visa" means a visa issued by the federal government
61 as provided in 8 U.S.C. Sec. 1101 and 1184.
62 Section 3. Section **63G-12-201** is enacted to read:
63 **Part 2. Utah Commission on Immigration and Migration**
64 **63G-12-201. Creation of commission.**
65 (1) There is created an advisory commission known as the "Utah Commission on
66 Immigration and Migration." The commission is composed of 27 members as follows:
67 (a) the president of the Senate;
68 (b) the speaker of the House of Representatives;
69 (c) the minority leader of the Senate;
70 (d) the minority leader of the House of Representatives;
71 (e) the governor or, at the discretion of the governor, the lieutenant governor;
72 (f) the attorney general or the attorney general's designee;
73 (g) the commissioner of the Department of Agriculture and Food appointed under
74 Section 4-2-3, or the commissioner's designee;
75 (h) the executive director of the Department of Commerce appointed under Section
76 13-1-3, or the executive director's designee;
77 (i) the executive director of the Department of Community and Culture, or the
78 executive director's designee;
79 (j) the executive director of the Department of Workforce Services appointed under
80 Section 35A-1-201, or the executive director's designee;
81 (k) the director of the Governor's Office of Economic Development appointed under
82 Section 63M-1-202, or the director's designee;
83 (l) three members of the House of Representatives appointed by the speaker of the
84 House of Representatives, not more than two of whom may be from the same political party;
85 (m) three members of the public appointed by the speaker of the House of

86 Representatives in accordance with Subsection (2);
87 (n) three members of the Senate appointed by the president of the Senate, not more
88 than two of whom may be from the same political party;
89 (o) three members of the public appointed by the president of the Senate in accordance
90 with Subsection (2); and
91 (p) four members of the public appointed by the governor in accordance with
92 Subsection (2), except that at least one of the four members appointed by the governor shall
93 represent a migrant education program of the Utah State Board of Education, a school district,
94 or charter school.
95 (2) (a) The president of the Senate, speaker of the House of Representatives, and the
96 governor shall appoint a member of the public:
97 (i) who is a resident of the state; and
98 (ii) with due regard for:
99 (A) geographic representation;
100 (B) diversity;
101 (C) education, including academic post-graduate level degrees related to the immigrant
102 community in Utah; and
103 (D) knowledge and experience.
104 (b) An appointment by the president of the Senate, the speaker of the House of
105 Representatives, or the governor may include a representative from:
106 (i) an immigrant or immigrant-serving, community-based organization;
107 (ii) a philanthropic organization;
108 (iii) an advocacy group;
109 (iv) a business, including an immigrant entrepreneur;
110 (v) a union;
111 (vi) academia; or
112 (vii) a faith-based organization.
113 (c) The president of the Senate, the speaker of the House of Representatives, and the

114 governor shall appoint a member of the public to a term of three years, except that of the
115 members of the public first appointed:
116 (i) the following are appointed to a three-year term:
117 (A) one member appointed by the president of the Senate;
118 (B) one member appointed by the speaker of the House of Representatives; and
119 (C) one member appointed by the governor;
120 (ii) the following are appointed to a two-year term:
121 (A) one member appointed by the president of the Senate;
122 (B) one member appointed by the speaker of the House of Representatives; and
123 (C) one member appointed by the governor; and
124 (iii) the following are appointed to a one-year term:
125 (A) one member appointed by the president of the Senate;
126 (B) one member appointed by the speaker of the House of Representatives; and
127 (C) two members appointed by the governor.
128 (d) A member appointed from the public shall serve until a successor is appointed and
129 qualified.
130 (3) A vacancy in the membership of the commission shall be filled for the unexpired
131 term in the manner provided for the original appointment.
132 (4) (a) The governor or, at the discretion of the governor, the lieutenant governor shall
133 chair the commission.
134 (b) A majority of the members of the commission constitute a quorum.
135 (c) A vote of the majority of the commission members present when a quorum is
136 present is an action of the commission.
137 (5) The commission shall meet at the call of the chair, except that the chair shall call a
138 meeting at least quarterly.
139 (6) A member of the commission may not receive compensation or benefits for the
140 member's service, but may receive per diem and travel expenses in accordance with:
141 (a) Section 63A-3-106;

142 (b) Section 63A-3-107; and
143 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
144 63A-3-107.
145 (7) The Office of the Attorney General shall staff the commission.
146 Section 4. Section **63G-12-202** is enacted to read:
147 **63G-12-202. General powers and duties of the commission.**
148 (1) The commission shall:
149 (a) conduct a thorough review of the economic, legal, cultural, and educational impact
150 of illegal immigration on the state and its political subdivisions;
151 (b) conduct a thorough examination of Utah and federal laws relating to immigration,
152 migration, and guest worker programs;
153 (c) develop a comprehensive, coordinated, and sustainable state plan to address:
154 (i) immigration and the use of migrant workers in the state; and
155 (ii) integration of immigrants;
156 (d) make recommendations to the governor and the Legislature as to proposed
157 legislation to implement the state plan described in Subsection (1)(c):
158 (i) consistent with the respective constitutional powers, rights, and responsibilities of
159 the United States and of the state; and
160 (ii) to protect the health, safety, and welfare of the residents of the state;
161 (e) advise the governor and the Legislature on proposed legislation related to
162 immigration:
163 (i) for the purpose of encouraging a comprehensive, coordinated, and sustainable state
164 response to issues related to immigration; and
165 (ii) upon request of:
166 (A) the governor;
167 (B) the president of the Senate;
168 (C) the speaker of the House of Representatives;
169 (D) the minority leader of the Senate; or

170 (E) the minority leader of the House of Representatives; and
171 (f) comply with Part 3, Migrant Worker Visa Pilot Project.
172 (2) (a) The commission may request a state agency to provide the commission with
173 information available to the state agency that the commission considers necessary to discharge
174 the commission's duties under this section.
175 (b) A state agency shall cooperate with the commission to furnish the commission with
176 the information requested under Subsection (2)(a):
177 (i) to the extent not inconsistent with law;
178 (ii) within the limits of the state agency's statutory authority; and
179 (iii) on as timely a basis as is necessary to accomplish the purposes of this chapter.
180 (3) (a) In performing its powers and duties, the commission may invite testimony from
181 the governor, legislators, state agencies, and members of the public.
182 (b) The commission may consult with experts or other knowledgeable individuals in
183 the public or private sector on any matter related to the commission's powers and duties under
184 this section.
185 (c) The commission may hold one or more public hearings that it considers advisable
186 and in locations within the state that it chooses to afford interested persons an opportunity to
187 appear and present views with respect to any subject relating to the commission's powers and
188 duties under this section.
189 (4) (a) The commission shall report periodically to the Legislature and governor on its
190 activities and recommendations.
191 (b) The commission shall submit an initial report to the Legislature and governor no
192 later than six months from the date of the first meeting of the commission.
193 (c) The commission shall submit a first annual report to the Legislature and governor
194 six months from the day on which the initial report is submitted, or as soon as practicable after
195 that date.
196 (d) After the first annual report, the commission shall annually submit reports to the
197 Legislature and the governor.

198 (e) The commission shall provide any report submitted under this Subsection (4) to the
199 public upon request.
200 Section 5. Section **63G-12-203** is enacted to read:
201 **63G-12-203. Collaboration on integration of immigrants.**
202 (1) Consistent with the state plan described in Subsection 63G-12-202(1)(c), the
203 commission shall:
204 (a) work collaboratively with federal, state, and local governments to facilitate
205 integration of immigrants in the state; and
206 (b) work collaboratively with businesses and community organizations to ensure that
207 public input into the process is consistently maintained with regard to integration of
208 immigrants.
209 (2) The commission shall evaluate the structure and organization of government in
210 Utah including state agencies, independent entities, political subdivisions, and school districts,
211 and advise the Legislature and governor on how best to achieve immigrant integration in the
212 delivery of services and programs in a cost neutral manner.
213 (3) In its examination of immigrant integration in the state, the commission shall
214 identify any measures that will bring enhanced lawfulness, economy, efficiency, and
215 accountability to government operations.
216 Section 6. Section **63G-12-301** is enacted to read:
217 **Part 3. Migrant Worker Visa Pilot Project**
218 **63G-12-301. Migrant Worker Visa Pilot Project.**
219 (1) With the assistance of the attorney general, and subject to Section 63G-12-302, the
220 governor may negotiate and enter into a memorandum of understanding with the government
221 of the State of Nuevo Leon, Mexico, through its Migrant Attention Center to create a pilot
222 project known as the "Migrant Worker Visa Pilot Project" under which Utah businesses may
223 obtain legal foreign migrant workers through use of United States nonimmigrant visas.
224 (2) The commission shall recommend to the Legislature and the governor policies and
225 programs that will educate, encourage, support, and facilitate Utah businesses in need of

226 nonimmigrant temporary workers to participate in the pilot project.
227 Section 7. Section **63G-12-302** is enacted to read:
228 **63G-12-302. Requirements for pilot project and pilot project memorandum of**
229 **understanding.**
230 (1) Under the pilot project memorandum of understanding, the governor may commit
231 the state, including the commission, to work directly with officials of the government of the
232 State of Nuevo Leon, Mexico, including the Migrant Attention Center, to encourage, facilitate,
233 and support the migration of legal Mexican migrant workers from the State of Nuevo Leon to
234 Utah for the purpose of filling jobs with Utah businesses most in need of skilled and unskilled
235 migrant labor.
236 (2) The pilot project and the pilot project memorandum of understanding shall:
237 (a) be compatible with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et
238 seq., and federal policies, procedures, and requirements for issuing United States nonimmigrant
239 visas to Mexicans qualified to participate in the pilot project, with particular attention to the
240 following:
241 (i) a Utah business hiring an alien through the pilot project shall demonstrate and
242 certify that there are not sufficient workers where that labor is to be performed who are able,
243 willing, qualified, and available at the time of application for a United States nonimmigrant
244 visa; and
245 (ii) the employment of the alien will not adversely affect the wages and working
246 conditions of workers in Utah who are similarly employed;
247 (b) require that the State of Nuevo Leon will provide Mexican migrant workers to Utah
248 businesses who meet certain requirements, including that each migrant worker:
249 (i) meets the legal requirements of federal law with regard to eligibility for a United
250 States nonimmigrant visa;
251 (ii) passes a criminal background check;
252 (iii) undergoes standardized testing to satisfy the hiring Utah business that the migrant
253 worker possesses the requisite level of education or skill required for the job to be filled;

254 (iv) is issued a tamper-proof identification that includes personal information, photo,
255 fingerprint, visa number, and an expiration date; and
256 (v) will be notified by the Migrants Attention Center of the State of Nuevo Leon before
257 the expiration date of the United States nonimmigrant visa of the date the migrant worker is
258 required to return to Mexico; and
259 (c) if a migrant worker fails to return to Mexico before expiration of the migrant
260 worker's United States nonimmigrant visa, require the Migrants Attention Center of the State of
261 Nuevo Leon to notify:
262 (i) the Utah business that hires the migrant worker;
263 (ii) the advisory group created in accordance with Section 63G-12-303; and
264 (iii) United States Immigration and Custom Enforcement.
265 Section 8. Section **63G-12-303** is enacted to read:
266 **63G-12-303. Commission advisory group to conduct study -- Commission to**
267 **prepare recommendations.**
268 (1) (a) The commission shall create an advisory group to perform the studies required
269 by this section.
270 (b) The commission shall appoint at least one member of the commission to the
271 advisory group.
272 (c) The advisory group may work jointly with a similar group of the State of Nuevo
273 Leon, Mexico.
274 (d) A member of the advisory group may not receive per diem and travel expenses.
275 (2) The advisory group shall:
276 (a) study the process and results of the pilot project;
277 (b) study the impact of existing federal law on the ability to meet the needs of Utah
278 businesses and Mexican migrant workers;
279 (c) study the current United States nonimmigrant visa application process from both
280 the employer and employee perspective to understand:
281 (i) the strengths and weaknesses of the existing law; and

282 (ii) the United States nonimmigrant visa process and the implications to regional
283 employment and security;
284 (d) document the state and regional economic impact and security implications of
285 existing law and processes;
286 (e) educate both Utah and the State of Nuevo Leon populations on issues to create
287 alignment around a shared vision; and
288 (f) report its findings annually to the commission in a detailed report that includes
289 recommendations to the commission on how to best address the challenges of immigration,
290 employment, and security.
291 (3) (a) The commission shall use the information generated by the advisory group
292 pursuant to the pilot project to make recommendations to the governor by no later than one
293 year after the day on which the pilot project memorandum of understanding is executed.
294 (b) The commission shall consider including in the recommendations:
295 (i) observations and market recommendations;
296 (ii) one or more proposals to amend existing law as necessary to accomplish the
297 recommendations made by the commission and to meet the realities of current economic
298 necessities;
299 (iii) a recommendation as to whether, and if so, to what extent, the current caps on the
300 H-2B United States nonimmigrant visas should be raised; and
301 (iv) a recommendation as to whether the wait time between receiving H-2 United
302 States nonimmigrant visas should be shortened.
303 (c) The governor may report the recommendations of the commission to the President
304 of the United States, Congress, and the United States Attorney General.
305 Section 9. Section **63G-12-304** is enacted to read:
306 **63G-12-304. Expansion to similar pilot projects.**
307 (1) If one year after the pilot project memorandum of understanding is executed under
308 Section 63G-12-301 the governor determines, after consultation with the commission, that the
309 pilot project is successful, the governor may enter into one or more additional memorandum of

310 understanding to create pilot projects similar to the pilot project with the State of Nuevo Leon,
311 except that the governor may not enter into a similar pilot project memorandum of
312 understanding with a country:
313 (a) designated by the United States State Department as a state sponsor of terrorism in
314 accordance with section 6(j) of the Export Administration Act, section 40 of the Arms Export
315 Control Act, and section 620A of the Foreign Assistance Act;
316 (b) against which the United States has declared war; or
317 (c) against which the United States has imposed sanctions as listed under a sanctions
318 program of the Office of Foreign Assets Control within the United States Department of
319 Treasury.
320 (2) After the governor has entered into one or more additional memorandum of
321 understanding under Subsection (1), the governor, in consultation with the commission, may
322 periodically evaluate whether to enter into additional pilot projects subject to the limitations of
323 Subsections (1)(a) through (c).
324 (3) (a) A memorandum of understanding creating a similar pilot project shall comply
325 with the requirements of Section 63G-12-302.
326 (b) A similar pilot project created under this section shall operate in a manner
327 substantially similar to the pilot project with the State of Nuevo Leon implemented under this
328 part.