

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:



28 ENACTS:

29 **63G-12-101**, Utah Code Annotated 1953

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



38
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) "Pilot project" means the pilot project created under Part 3, Migrant Worker Visa
51 Pilot Project, with the State of Nuevo Leon, Mexico.

52 (3) "Pilot project memorandum of understanding" means the memorandum of
53 understanding described in Section 63G-12-301.

54 (4) (a) "State agency" means an executive, legislative, and judicial branch department,
55 agency, board, commission, or division, or other administrative unit of the state.

56 (b) "State agency" includes a state institution of higher education as defined in Section
57 53B-3-102.

58 (5) "United States nonimmigrant visa" means a visa issued by the federal government

59 as provided in 8 U.S.C. Sec. 1101 and 1184.

60 Section 3. Section **63G-12-201** is enacted to read:

61 **Part 2. Utah Commission on Immigration and Migration**

62 **63G-12-201. Creation of commission.**

63 (1) There is created an advisory commission known as the "Utah Commission on
64 Immigration and Migration." The commission is composed of 27 members as follows:

65 (a) the president of the Senate;

66 (b) the speaker of the House of Representatives;

67 (c) the minority leader of the Senate;

68 (d) the minority leader of the House of Representatives;

69 (e) the governor or, at the discretion of the governor, the lieutenant governor;

70 (f) the attorney general or the attorney general's designee;

71 (g) the commissioner of the Department of Agriculture and Food appointed under
72 Section 4-2-3, or the commissioner's designee;

73 (h) the executive director of the Department of Commerce appointed under Section
74 13-1-3, or the executive director's designee;

75 (i) the executive director of the Department of Community and Culture, or the
76 executive director's designee;

77 (j) the executive director of the Department of Workforce Services appointed under
78 Section 35A-1-201, or the executive director's designee;

79 (k) the director of the Governor's Office of Economic Development appointed under
80 Section 63M-1-202, or the director's designee;

81 (l) three members of the House of Representatives appointed by the speaker of the
82 House of Representatives, not more than two of whom may be from the same political party;

83 (m) three members of the public appointed by the speaker of the House of
84 Representatives in accordance with Subsection (2);

85 (n) three members of the Senate appointed by the president of the Senate, not more
86 than two of whom may be from the same political party;

87 (o) three members of the public appointed by the president of the Senate in accordance
88 with Subsection (2); and

89 (p) four members of the public appointed by the governor in accordance with

90 Subsection (2).

91 (2) (a) The president of the Senate, speaker of the House of Representatives, and the
92 governor shall appoint a member of the public:

93 (i) who is a resident of the state; and

94 (ii) with due regard for:

95 (A) geographic representation;

96 (B) diversity;

97 (C) education, including academic post-graduate level degrees related to the immigrant
98 community in Utah; and

99 (D) knowledge and experience.

100 (b) An appointment by the president of the Senate, the speaker of the House of
101 Representatives, or the governor may include a representative from:

102 (i) an immigrant or immigrant-serving, community-based organization;

103 (ii) a philanthropic organization;

104 (iii) an advocacy group;

105 (iv) a business, including an immigrant entrepreneur;

106 (v) a union;

107 (vi) academia; or

108 (vii) a faith-based organization.

109 (c) The president of the Senate, the speaker of the House of Representatives, and the
110 governor shall appoint a member of the public to a term of three years, except that of the
111 members of the public first appointed:

112 (i) the following are appointed to a three-year term:

113 (A) one member appointed by the president of the Senate;

114 (B) one member appointed by the speaker of the House of Representatives; and

115 (C) one member appointed by the governor;

116 (ii) the following are appointed to a two-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; and

120 (iii) the following are appointed to a one-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) two members appointed by the governor.
124 (d) A member appointed from the public shall serve until a successor is appointed and
125 qualified.
126 (3) A vacancy in the membership of the commission shall be filled for the unexpired
127 term in the manner provided for the original appointment.
128 (4) (a) The governor or, at the discretion of the governor, the lieutenant governor shall
129 chair the commission.
130 (b) A majority of the members of the commission constitute a quorum.
131 (c) A vote of the majority of the commission members present when a quorum is
132 present is an action of the commission.
133 (5) The commission shall meet at the call of the chair, except that the chair shall call a
134 meeting at least quarterly.
135 (6) A member of the commission may not receive compensation or benefits for the
136 member's service, but may receive per diem and travel expenses in accordance with:
137 (a) Section 63A-3-106;
138 (b) Section 63A-3-107; and
139 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
140 63A-3-107.
141 (7) The Office of the Attorney General shall staff the commission.
142 Section 4. Section **63G-12-202** is enacted to read:
143 **63G-12-202. General powers and duties of the commission.**
144 (1) The commission shall:
145 (a) conduct a thorough review of the economic, legal, cultural, and educational impact
146 of illegal immigration on the state and its political subdivisions;
147 (b) conduct a thorough examination of Utah and federal laws relating to immigration,
148 migration, and guest worker programs;
149 (c) develop a comprehensive, coordinated, and sustainable state plan to address:
150 (i) immigration and the use of migrant workers in the state; and
151 (ii) integration of immigrants;

152 (d) make recommendations to the governor and the Legislature as to proposed
153 legislation to implement the state plan described in Subsection (1)(c):
154 (i) consistent with the respective constitutional powers, rights, and responsibilities of
155 the United States and of the state; and
156 (ii) to protect the health, safety, and welfare of the residents of the state;
157 (e) advise the governor and the Legislature on proposed legislation related to
158 immigration:
159 (i) for the purpose of encouraging a comprehensive, coordinated, and sustainable state
160 response to issues related to immigration; and
161 (ii) upon request of:
162 (A) the governor;
163 (B) the president of the Senate;
164 (C) the speaker of the House of Representatives;
165 (D) the minority leader of the Senate; or
166 (E) the minority leader of the House of Representatives; and
167 (f) comply with Part 3, Migrant Worker Visa Pilot Project.
168 (2) (a) The commission may request a state agency to provide the commission with
169 information available to the state agency that the commission considers necessary to discharge
170 the commission's duties under this section.
171 (b) A state agency shall cooperate with the commission to furnish the commission with
172 the information requested under Subsection (2)(a):
173 (i) to the extent not inconsistent with law;
174 (ii) within the limits of the state agency's statutory authority; and
175 (iii) on as timely a basis as is necessary to accomplish the purposes of this chapter.
176 (3) (a) In performing its powers and duties, the commission may invite testimony from
177 the governor, legislators, state agencies, and members of the public.
178 (b) The commission may consult with experts or other knowledgeable individuals in
179 the public or private sector on any matter related to the commission's powers and duties under
180 this section.
181 (c) The commission may hold one or more public hearings that it considers advisable
182 and in locations within the state that it chooses to afford interested persons an opportunity to

183 appear and present views with respect to any subject relating to the commission's powers and
184 duties under this section.

185 (4) (a) The commission shall report periodically to the Legislature and governor on its
186 activities and recommendations.

187 (b) The commission shall submit an initial report to the Legislature and governor no
188 later than six months from the date of the first meeting of the commission.

189 (c) The commission shall submit a first annual report to the Legislature and governor
190 six months from the day on which the initial report is submitted, or as soon as practicable after
191 that date.

192 (d) After the first annual report, the commission shall annually submit reports to the
193 Legislature and the governor.

194 (e) The commission shall provide any report submitted under this Subsection (4) to the
195 public upon request.

196 Section 5. Section **63G-12-203** is enacted to read:

197 **63G-12-203. Collaboration on integration of immigrants.**

198 (1) Consistent with the state plan described in Subsection 63G-12-202(1)(c), the
199 commission shall:

200 (a) work collaboratively with federal, state, and local governments to facilitate
201 integration of immigrants in the state; and

202 (b) work collaboratively with businesses and community organizations to ensure that
203 public input into the process is consistently maintained with regard to integration of
204 immigrants.

205 (2) The commission shall evaluate the structure and organization of government in
206 Utah including state agencies, independent entities, political subdivisions, and school districts,
207 and advise the Legislature and governor on how best to achieve immigrant integration in the
208 delivery of services and programs in a cost neutral manner.

209 (3) In its examination of immigrant integration in the state, the commission shall
210 identify any measures that will bring enhanced lawfulness, economy, efficiency, and
211 accountability to government operations.

212 Section 6. Section **63G-12-301** is enacted to read:

213 **Part 3. Migrant Worker Visa Pilot Project**

214 **63G-12-301. Migrant Worker Visa Pilot Project.**

215 (1) With the assistance of the attorney general, and subject to Section 63G-12-302, the
216 governor may negotiate and enter into a memorandum of understanding with the government
217 of the State of Nuevo Leon, Mexico, through its Migrant Attention Center to create a pilot
218 project known as the "Migrant Worker Visa Pilot Project" under which Utah businesses may
219 obtain legal foreign migrant workers through use of United States nonimmigrant visas.

220 (2) The commission shall recommend to the Legislature and the governor policies and
221 programs that will educate, encourage, support, and facilitate Utah businesses in need of
222 nonimmigrant temporary workers to participate in the pilot project.

223 Section 7. Section **63G-12-302** is enacted to read:

224 **63G-12-302. Requirements for pilot project and pilot project memorandum of**
225 **understanding.**

226 (1) Under the pilot project memorandum of understanding, the governor may commit
227 the state, including the commission, to work directly with officials of the government of the
228 State of Nuevo Leon, Mexico, including the Migrant Attention Center, to encourage, facilitate,
229 and support the migration of legal Mexican migrant workers from the State of Nuevo Leon to
230 Utah for the purpose of filling jobs with Utah businesses most in need of skilled and unskilled
231 migrant labor.

232 (2) The pilot project and the pilot project memorandum of understanding shall:

233 (a) be compatible with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et
234 seq., and federal policies, procedures, and requirements for issuing United States nonimmigrant
235 visas to Mexicans qualified to participate in the pilot project, with particular attention to the
236 following:

237 (i) a Utah business hiring an alien through the pilot project shall demonstrate and
238 certify that there are not sufficient workers where that labor is to be performed who are able,
239 willing, qualified, and available at the time of application for a United States nonimmigrant
240 visa; and

241 (ii) the employment of the alien will not adversely affect the wages and working
242 conditions of workers in Utah who are similarly employed;

243 (b) require that the State of Nuevo Leon will provide Mexican migrant workers to Utah
244 businesses who meet certain requirements, including that each migrant worker:

- 245 (i) meets the legal requirements of federal law with regard to eligibility for a United
246 States nonimmigrant visa;
- 247 (ii) passes a criminal background check;
- 248 (iii) undergoes standardized testing to satisfy the hiring Utah business that the migrant
249 worker possesses the requisite level of education or skill required for the job to be filled;
- 250 (iv) is issued a tamper-proof identification that includes personal information, photo,
251 fingerprint, visa number, and an expiration date; and
- 252 (v) will be notified by the Migrants Attention Center of the State of Nuevo Leon before
253 the expiration date of the United States nonimmigrant visa of the date the migrant worker is
254 required to return to Mexico; and
- 255 (c) if a migrant worker fails to return to Mexico before expiration of the migrant
256 worker's United States nonimmigrant visa, require the Migrants Attention Center of the State of
257 Nuevo Leon to notify:
- 258 (i) the Utah business that hires the migrant worker;
- 259 (ii) the advisory group created in accordance with Section 63G-12-303; and
- 260 (iii) United States Immigration and Custom Enforcement.
- 261 Section 8. Section **63G-12-303** is enacted to read:
- 262 **63G-12-303. Commission advisory group to conduct study -- Commission to**
263 **prepare recommendations.**
- 264 (1) (a) The commission shall create an advisory group to perform the studies required
265 by this section.
- 266 (b) The commission shall appoint at least one member of the commission to the
267 advisory group.
- 268 (c) The advisory group may work jointly with a similar group of the State of Nuevo
269 Leon, Mexico.
- 270 (d) A member of the advisory group may not receive per diem and travel expenses.
- 271 (2) The advisory group shall:
- 272 (a) study the process and results of the pilot project;
- 273 (b) study the impact of existing federal law on the ability to meet the needs of Utah
274 businesses and Mexican migrant workers;
- 275 (c) study the current United States nonimmigrant visa application process from both

276 the employer and employee perspective to understand:

277 (i) the strengths and weaknesses of the existing law; and

278 (ii) the United States nonimmigrant visa process and the implications to regional
279 employment and security;

280 (d) document the state and regional economic impact and security implications of
281 existing law and processes;

282 (e) educate both Utah and the State of Nuevo Leon populations on issues to create
283 alignment around a shared vision; and

284 (f) report its findings annually to the commission in a detailed report that includes
285 recommendations to the commission on how to best address the challenges of immigration,
286 employment, and security.

287 (3) (a) The commission shall use the information generated by the advisory group
288 pursuant to the pilot project to make recommendations to the governor by no later than one
289 year after the day on which the pilot project memorandum of understanding is executed.

290 (b) The commission shall consider including in the recommendations:

291 (i) observations and market recommendations;

292 (ii) one or more proposals to amend existing law as necessary to accomplish the
293 recommendations made by the commission and to meet the realities of current economic
294 necessities;

295 (iii) a recommendation as to whether, and if so, to what extent, the current caps on the
296 H-2B United States nonimmigrant visas should be raised; and

297 (iv) a recommendation as to whether the wait time between receiving H-2 United
298 States nonimmigrant visas should be shortened.

299 (c) The governor may report the recommendations of the commission to the President
300 of the United States, Congress, and the United States Attorney General.

301 Section 9. Section **63G-12-304** is enacted to read:

302 **63G-12-304. Expansion to similar pilot projects.**

303 (1) If one year after the pilot project memorandum of understanding is executed under
304 Section 63G-12-301 the governor determines, after consultation with the commission, that the
305 pilot project is successful, the governor may enter into one or more additional memorandum of
306 understanding to create pilot projects similar to the pilot project with the State of Nuevo Leon,

307 except that the governor may not enter into a similar pilot project memorandum of
308 understanding with a country:

309 (a) designated by the United States State Department as a state sponsor of terrorism in
310 accordance with section 6(j) of the Export Administration Act, section 40 of the Arms Export
311 Control Act, and section 620A of the Foreign Assistance Act;

312 (b) against which the United States has declared war; or

313 (c) against which the United States has imposed sanctions as listed under a sanctions
314 program of the Office of Foreign Assets Control within the United States Department of
315 Treasury.

316 (2) After the governor has entered into one or more additional memorandum of
317 understanding under Subsection (1), the governor, in consultation with the commission, may
318 periodically evaluate whether to enter into additional pilot projects subject to the limitations of
319 Subsections (1)(a) through (c).

320 (3) (a) A memorandum of understanding creating a similar pilot project shall comply
321 with the requirements of Section 63G-12-302.

322 (b) A similar pilot project created under this section shall operate in a manner
323 substantially similar to the pilot project with the State of Nuevo Leon implemented under this
324 part.

Legislative Review Note
as of 3-1-11 3:31 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 466

SHORT TITLE: Migrant Workers and Related Commission Amendments

SPONSOR: Sandstrom, S.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will cost the State \$9,900 in ongoing General Fund beginning in FY 2012 in per diem and travel expenses for members of a newly created Commission in this bill.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	\$9,900	\$9,900
Total Expenditure	\$0	\$9,900	\$9,900
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$9,900)	(\$9,900)
Net Impact, General/Education Funds	\$0	(\$9,900)	(\$9,900)

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.