

By Ms. MIKULSKI (for herself, Mr. *Specter*, Mr. *Levin*, Mr. *Crapo*, Mr. *Bond*, Mr. *Lieberman*, Mr. *Reed*, Mr. *Kerry*, Mr. *Enzi*, Ms. *Collins*, Mr. *Bennett*, Mr. *Coburn*, Mr. *Whitehouse*, Mr. *Burr*, Ms. *Snowe*, Mr. *Leahy*, Mr. *Carper*, Mr. *Cardin*, Mr. *Hatch*, and Mr. *Barrasso*):

S. 388. A bill to extend the termination date for the exemption of returning workers from the numerical limitations for temporary workers; to the Committee on the Judiciary.

Ms. MIKULSKI. Mr. President, today I rise to introduce a bill that is needed by small and seasonal businesses all over the nation. In 2005 I introduced and the Senate overwhelmingly passed legislation to keep these small and seasonal businesses alive. For many years they have relied on the H-2B visa program to meet these needs, but this year they can't get the temporary labor they need because they have been shut out of the H-2B visa program. That program lets them hire temporary foreign workers when no American workers are available.

So today, I join with my colleague Senator *Specter* to introduce legislation that provides a quick and temporary fix to the H-2B problem. The Save our Small and Seasonal Businesses Act of 2009 will help these employers by extending the H-2B returning worker exemption for three years. It does not raise the cap and keeps the limit at 66,000. I urge my colleagues to work with us to pass this legislation quickly to save these businesses and the thousands of American jobs they provide.

Many in this body know about the H-2B crisis--a real crisis to thousands of small and seasonal businesses who face a shortage of workers as they approach their seasons. These small businesses count on the H-2B visa program to keep their businesses afloat. But this year, because the cap was reached so early in the year, many of these businesses will be unable to get the seasonal workers that they need to survive.

Hitting the cap so early will have a great impact on Maryland. We have a lot of summer seasonal businesses in Maryland on the Eastern Shore, in Ocean City or working the Chesapeake Bay. Many of our businesses use the program year after year. They hire all the American workers they can find, but they need additional help to meet seasonal demands. Because the cap will be reached so early this year summer employers face a disadvantage. They can't use the program, so they can't meet their seasonal needs and many will be forced to limit

services, lay-off permanent U.S. workers or, worse yet, close their doors.

These are family businesses and small businesses in small communities in Maryland. If the business suffers the whole community suffers. For seafood companies like J.M. Clayton, what they do is more than a business, it's a way of life. Started over a century ago and run by the great grandsons of the founder, J.M. Clayton works the waters of the Chesapeake Bay, supplying crabs, crabmeat and other seafood, including Maryland's famous oysters, to restaurants, markets, and wholesalers all over the nation. It is the oldest working crab processing plant in the world and by employing 70 H-2B workers the company can retain over 50 full time American workers.

But its not just seafood companies that have a long history on the Eastern Shore. It's companies like S.E.W. Friel Cannery, which began its business over 100 years ago when there were 300 canneries on the Eastern Shore. But now those others are gone and Friel's is the last corn cannery left. Ten years ago, when the cannery could not find local workers, it turned to the new H-2B visa Program. It has used the program every year since, and many workers are repeat users who come each year and then go home after the season. What's important is that having this help each year has not only allowed the company to maintain its American workforce, but it has paved the way for local workers to return to the cannery.

Now these employers can't just turn to the H-2B program whenever they want seasonal workers. First, employers must try to vigorously recruit U.S. workers. These businesses try to hire American workers-- they would love to hire American workers. In fact, the H-2B program requires these businesses to prove that they have vigorously tried to recruit American workers. They have to advertise for American workers and give American workers a chance to apply. They have to prove to the Department of Labor that there are no U.S. workers available. Only after that are they allowed to fill seasonal vacancies with H-2B visa workers. The workers that they bring in often participate in the H-2B program year after year. They often work for the same companies. But they cannot and do not stay in the U.S. They return to their home countries, to their families and their U.S. employer must go through the whole visa process again the following year to get them back. That means an employer must prove again to the Department of Labor that they cannot get U.S. workers.

This legislative fix keeps that visa process in place. It's a short-term legislative fix to solve the immediate H-2B visa shortage. It does not take the place of comprehensive immigration reform.

This legislation is a temporary 3 year fix. It exempts returning seasonal workers from the cap. These are workers who have already successfully participated in the H-2B visa Program. They received a visa in one of the past 3 years and have returned home to their families after their seasonal employment with a U.S. company.

Everyone must still play by the rules. Employers must go through the whole visa process, prove they need the seasonal help and only after that are returning employees exempt from the cap. Employees must be those who have left the U.S. and are requesting a new H-2B visa to come back for another season. This new system rewards those who have played by the rules, worked hard and successfully participated in the program. The bill gives a helping hand to businesses by allowing them to retain workers who they have already trained to do their seasonal jobs.

This is a quick and simple fix. It lasts three years. And it does not get in the way of comprehensive immigration reform.

I worked with my colleagues to get a bill with strong bi-partisan support. A bill that would work.

This bill is realistic. It provides a temporary solution because immediate action is needed to help these small and seasonal businesses stay in business. Yes--we need to help them now. Their seasons start soon. If they don't get seasonal workers this year, there may not be any businesses around next year to help.

Every member of the Senate who has heard from their constituents--whether they are seafood processors, landscapers, resorts, timber companies, fisheries, pool companies or carnivals--knows the urgency in their voices, knows the immediacy of the problem and knows that the Congress must act now to save these businesses. I urge my colleagues to join this effort, support the Save our Small and Seasonal Businesses Act, and push this Congress to fix the problem today.

Mr. President, I ask unanimous consent that the text of the bill be printed in the *Record*.

There being no objection, the text of the bill was ordered to be printed in the *Record*, as follows:

S. 388

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## **SECTION 1. SHORT TITLE.**

This Act may be cited as the ``Save Our Small and Seasonal Businesses Act of 2009''.

## **SEC. 2. EXTENSION OF RETURNING WORKER EXEMPTION TO H-2B NUMERICAL LIMITATION.**

(a) *In General.*--Section 214(g)(9)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(9)(A)) is amended to read as follows:

``(A) Subject to subparagraphs (B) and (C), an alien who has already been counted toward the numerical limitation under paragraph (1)(B) during any 1 of the 3 fiscal years immediately prior to the fiscal year of the approved start date of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) shall not again be counted toward such limitation for the fiscal year for which the petition is approved. Such an alien shall be considered a returning worker.''

(b) *Effective Date; 3-Year Limitation; Sunset Provision.*--The amendment made by subsection (a) shall--

(1) take effect as if enacted on December 1, 2008;

(2) apply only to petitions with an approved start date in fiscal year 2009, 2010, or 2011; and

(3) terminate on the date that is 3 years after the date of the enactment of this Act.