

GENE WHISNANT
STATE REPRESENTATIVE
DISTRICT 53



HOUSE OF REPRESENTATIVES

HB 3315 House Business & Labor Committee

April 5, 2013

Dear Chair Dougherty and honorable committee member:

Rep. Witt and I appreciate you hearing HB 3315 and hope you will pass it to help employ Oregonians.

This bill addresses "abuse of the H2B visa program" which prevented the employment of Oregonians.

We have provided you

- 1) a copy of the Oct. 20, 2011 Oregonian article titled "Federal stimulus money for Oregon jobs hired foreign workers."
- 2) A copy of a press release by Congressman DeFazio describing action by him and Senator Merkley introducing legislation to reform the "Temporary Visa Program."
- 3) A letter from Oregon Employment Director Laurie Warner after I requested her assistance and after meetings with her and the Governor's staff on this issue.

The issue is complicated but one which must be corrected.

Director Warner's letter indicated her willingness to work with the Federal Government on this issue.

However, we have no Oregon legislation addressing this issue. Thus, Rep. Witt and I submitted HB 3315 which formalized Director Warner's commitment.

The Oregon Employment Office has requested some changes which they will address to limit the financial impact.

This is a necessary bill to demonstrate the Oregon legislature and the executive branch's commitment to support Oregon workers.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gene Whisnant".

Gene Whisnant



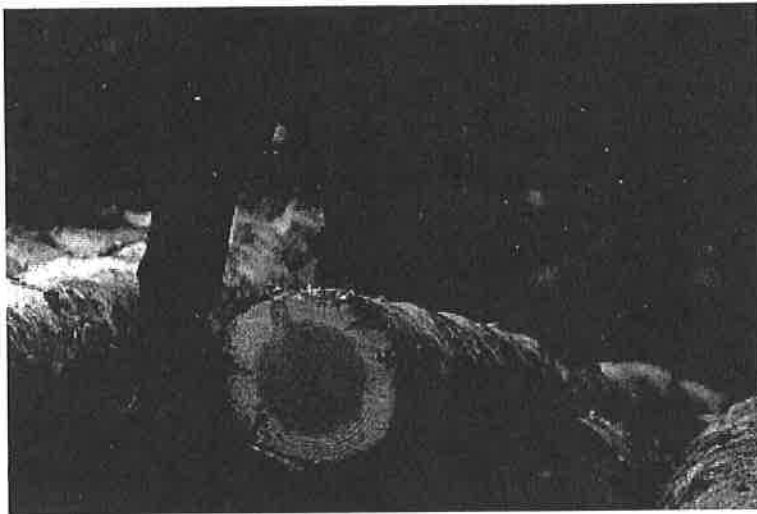
Federal stimulus money for Oregon jobs hired foreign workers

Published: Thursday, October 20, 2011, 6:47 PM Updated: Friday, October 21, 2011, 5:47 AM



Charles Pope, The Oregonian

By



Brian Feulner/The Oregonian

Timber jobs were once a mainstay of the Oregon economy.

WASHINGTON -- At least \$7 million in federal stimulus money intended to provide jobs to unemployed Oregonians instead paid wages to 254 foreign workers, federal investigators have concluded.

The money was for forest clean-up jobs in central Oregon where thousands of experienced workers were idle. When the contracts were announced in 2009, Oregon had the third-highest unemployment rate in the nation at 11.1 percent, with rates in the state's rural forest counties nearly 15 percent and higher.

Even so, the contractors told federal regulators they could not find enough local workers for the jobs.

That came as a surprise to local officials, who said they often got hundreds of responses to every job opening.

"This is a timber area and we hadn't been cutting trees for years," said state **Sen. Chris Telfer, R-Bend**. "It really ticked off a lot of people here."

In a report on the investigation this week, the Department of Labor's Inspector General found that contractors who brought in foreign workers violated no laws or regulations, but used legal loopholes to hire foreign workers.

While legal, the hiring practices appear to violate the spirit and purpose of the \$840 billion American Recovery and Reinvestment Act of 2009, better known as the stimulus, which was designed to create jobs that would jumpstart the country out of recession.

"The goal of the stimulus bill was to put Americans back to work, not foreign nationals," said **Rep. Peter DeFazio, D-Ore.**, who asked for the investigation in September 2010.

"It is obscene that U.S. companies were rewarded for abusing our American workers and immigration laws to undercut competition and squeeze more profits out of contracts," DeFazio said. "Oregonians have been logging for over a century, our workforce is one of the best in the world, and these contracts should have been awarded to companies that hire Oregon loggers."

The federal investigation looked at 14 contracts to clear federal forests in central Oregon. The contracts were controlled by four Oregon companies: Medford Cutting Edge Forestry, Summitt Forestry, Ponderosa Reforestations, and G.E. Forestry. All hired foreign workers, according to the report, though they didn't all handle hiring in the same way.

The contractors applied for H-2B visas allowing them to hire workers for seasonal jobs, according to the report. In order to get clearance, contractors must prove the jobs can't be filled with local residents and that pay won't dilute local prevailing wages.

But there is a loophole. Under federal rules, notice of the job openings must be made where the job "originates." And while the bulk of the work took place in Oregon, smaller jobs originated in other states.

According to reports by The Bend Bulletin, which revealed the foreign hires in a series of stories last year that triggered DeFazio's call for an investigation, contractors advertised the jobs in tiny newspapers in California and Washington state for several days.

"Employers were not required to recruit U.S. workers in Oregon, and we were provided no evidence that they did," federal investigators said. "Workers in Oregon were likely unaware that these job opportunities were available."

In fact, although 146 U.S. workers were contacted for possible employment, investigators found that none was hired.

Contractors used another regulation to dampen response from Oregon residents, the report said. The visa regulations allowed the contractors to do all their hiring four months before work started. That made unemployed workers who needed jobs immediately reluctant to commit to temporary jobs four months later.

Despite the barriers, 29 U.S. workers learned of the jobs and asked about employment. The report did not say if they were from Oregon.

"We verified with the employers that none of these workers actually began employment with them," the report says.

The reason?

"We spoke with two workers who reported that the employer used discouraging language, such as references to age and inquiries about speaking another language, which are not valid conditions of employment," the report says.

The report does not address the nationality of the workers who were hired.

As required, the employers also notified state workforce agencies of the openings. But just as with obscure newspaper ads, the state postings were far-afield, with the notices sent to Arizona, California, Idaho, Washington and Wyoming.

The Labor Department did not respond to a request for comment, but agency officials have announced plans to revise regulations dealing with H-2B visas.

Congress is likely to act, too. Aides to DeFazio said he is closely monitoring the Labor Department's proposals for fixing the problems and is not ruling out other action. And in the Senate, **Oregon Democrat Ron Wyden** said he is watching as well.

"Right now there are 14 million job seekers in the U.S. and three million job openings." Wyden said. "Given those numbers, there is absolutely no reason why hard-working Oregonians should be passed over en masse for Oregon jobs in favor of foreign workers."

-- **Charles Pope**

© 2011 OregonLive.com. All rights reserved.

Merkley, DeFazio Introduce Bill to Ensure Americans Get Hired for Forest Work



Legislation Will Reform Temporary Visa Program

WASHINGTON – Today, Oregon’s Senator Jeff Merkley and Rep. Peter DeFazio introduced The American Jobs in American Forests Act to tighten restrictions on a visa program that was used to hire foreign workers at the expense of Oregon forest workers.

Last year, a Department of Labor investigation found federal stimulus funds were awarded to contractors in Oregon who underbid competition by using foreign laborers under the H-2B visa program. After Merkley and DeFazio requested changes to the program last year, the Department of Labor agreed to certain reforms that will go into effect next month. The Merkley-DeFazio bill would further reform the H-2B process to ensure that contractors are held to even tougher standards.

“Nobody could claim with a straight face that there weren’t Oregonians available to do forest thinning work in 2009 and 2010,” said Merkley. “It’s obvious that the H-2B visa program is being abused and that stricter standards are necessary to ensure Americans have a full opportunity to fill these jobs.”

“The Department of Labor has made some common sense changes, but we need to do more to ensure that federal dollars that go to federal projects hire American workers,” said DeFazio. “Companies that game the system and exploit immigration loopholes to undercut competition should not be awarded federal contracts. Many of the DOL’s failings have been addressed, but our legislation will further strengthen their rule changes to protect American workers.”

“Unscrupulous contractors used loopholes within the H-2B program to get around hiring qualified Oregonian workers,” said Mike Wheelock, owner of Grayback Forestry in Merlin. “Grayback received over a 1000 applications during this time period from hardworking Oregonians who were desperate for work. Sadly, companies like ours were adversely impacted by negligent efforts to enforce the H-2B regulations. I want to thank Senator Merkley for his vigilant efforts to put pressure on the US Department of Labor and for the proposing of corrective legislation to close these loopholes within the H-2B guest worker system.”

In 2010, *The Bend Bulletin* ran a series of articles highlighting possible H-2B Visa irregularities related to Forest Service contacts in Central Oregon funded by the American Recovery and Reinvestment Act. The H-2B visa program allows employers to temporarily hire foreign workers if they can establish that no Americans are qualified or available for the work. In the case of the contractors involved with the 2009 stimulus funding, no meaningful effort was made to hire Oregonians.

DeFazio asked the DOL’s Inspector General (IG) to review these irregularities and their investigation found federal stimulus funds were awarded to contractors in Oregon who underbid competition by using foreign laborers. The IG report can be found here:

<http://www.oig.dol.gov/public/reports/oa/2012/17-12-001-03-321.pdf>.

Merkley and DeFazio previously called on the Department of Labor, the Office of Management and Budget, and the U.S. Forest Service to make changes to how the program is administered and how the Forest Service conducts oversight of contractors performing work in federal forests.

The American Jobs in American Forests Act would make three key changes to the DOL's H-2B visa program:

- 1) **Enhanced recruitment:** Employers, before submitting a petition to hire H-2B workers, would have to conduct robust recruitment of U.S. workers including advertising at job fairs, with local and state workforce agencies and nonprofits (and other appropriate entities), advertising on local radio and reputable Internet job-search sites, and other recruitment strategies that the state workforce agency considers appropriate.
- 2) **State Workforce Agencies:** Before the Secretary of Labor could grant a temporary labor certification to an employer to hire H-2B workers, the Director of the state workforce agency must certify that the employer has complied with all recruitment requirements and must make a formal determination that Americans are unavailable to fill the employment opportunities offered by the prospective H-2B employer.
- 3) **Itineraries covering multiple states:** If an employer seeks to be certified for a work itinerary that covers multiple states and if the work outside the primary state lasts for seven days or longer, the employer will have to submit a separate application for the work planned in the other state or states.

According to a February 15 letter from Laurie Warner, Director of the Oregon Employment Department, to U.S. Labor Secretary Hilda Solis, Oregon's job seeker database includes 4,110 Forest and Conservation Workers and 1,237 Forest and Conservation Technicians actively seeking work.

###

 [ShareThis](#)

Rep Whisnant

From: Laurie A WARNER <laurie.a.warner@state.or.us>
Sent: Friday, February 17, 2012 5:25 PM
To: Rep Whisnant
Cc: BOOKER James.H
Subject: H - 2B Meeting Follow-up
Attachments: USDOL H-2B Ltr_0001.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Representative Whisnant,

Thank you for facilitating the meeting about the recently announced Collaborative Forest Landscape Restoration (CFLR) program and the concern that Oregonians would have the chance to get these jobs.

As promised, the Oregon Employment Department has developed a strategy to increase the opportunities for Oregon's workers to obtain CLFR jobs and hopefully decrease abuses of contractors using the H-2B Temporary Non-Agricultural, Non-immigrant Foreign Worker program in bidding for these jobs. OED actions:

- OED will confirm each job listing for forest maintenance activities for H-2B status with the employers that list with us to counter them not revealing that it is an H-2B Job Listing
- OED will share H-2B job listing information with union halls and appropriate community partners and the USDOL
- OED will contact past H-2B employers and inform them of the availability of US workers in their area
- OED will publicly display H-2B job listings to get maximum community exposure
- I have sent a letter to Secretary Hilda Solis asking USDOL CO @ CNPC to cooperate with OED to insure Oregon workers get the 1st opportunity to apply for the jobs (see attached)

If there is anything else we can do, please let me know.

Laurie Warner
Director
Oregon Employment Department
503-947-1477

www.WorkingInOregon.org

