

Statement of Senator Orrin G. Hatch
Before the Senate Committee on the Judiciary
Executive Business Meeting
May 21, 2013

Mr. Chairman, I very much appreciate being able to call up Hatch Amendment 10 and offer a second-degree amendment which consolidates Hatch Amendments 10 through 17 and 20. I know that this relates to Title IV and you are working hard to keep us on track.

This amendment establishes a coherent and constructive approach to high-skilled immigration. It will ensure that the H-1B and L-1 visa categories actually work.

Some of the discussion of this subject that began last week appeared to cast high-skilled immigration in a negative light. I hope that was not intentional because America, and American companies, need more high-skilled immigrants.

Unfortunately, the bill before us would impose fees, increased fines, and Labor Department scrutiny and requires employers who are dependent on H-1B workers to pay even entry-level workers at artificially high levels. These and other elements of S.744 discourage, rather than encourage, the use of these visa categories to attract needed high-skilled workers.

My amendment strikes a better balance. It is consistent with basic requirements in the underlying bill such as requiring every employer to advertise for every H-1B position, engage in good-faith recruitment of U.S. workers, offer positions to any equally or better qualified U.S. worker, and attest that no U.S. worker has been or will be displaced by an H-1B worker.

At the same time, my amendment makes these requirements workable in the real world. The bill prohibits a company from placing an L-1 worker at a third party site unless it continues directly to supervise and control that worker.

At the same time, the bill does not allow a U.S. company to place its own employee, who it does supervise and control, at a client location unless the client attests to its own hiring practices. This makes no sense. My amendment would ensure that U.S. companies can continue to transfer specialized knowledge employees to the U.S.

Second, my amendment makes the bill's recruitment requirement workable. The Labor Department, for example, should be able to review the hiring decisions of companies that do not have a track record of hiring Americans for jobs that are open to H-1B workers. But if a company does have a strong, proven track record, then it should not be subject to unnecessary Labor Department oversight. My amendment sets that sensible and reasonable balance.

Third, the bill's non-displacement language does not require that an H-1B hire be related in any way to a U.S. worker layoff. That is too broad. It would prevent a company from hiring H-1B workers in the context of a corporate reorganization or reinvestment after, for example, closing a business line. That stifles innovation and prevents companies from making sound business decisions, from adapting and growing their business. My amendment preserves the layoff attestation but focuses it where it belongs by prohibiting hiring an H-1B

worker with the intent or purpose of replacing a U.S. worker. In fact, my amendment applies this requirement to every single employer, public as well as private.

In its current form, S.744 actually favors workers who are here illegally over high-skilled workers who would come here legally. Someone who snuck into the United States could get legal status, be hired, and work in a customer worksite without bureaucratic rules or restrictions. But someone with the same skills from the same country who came here legally could not work here unless his employer paid an inflated salary and first offers the job to anyone the company guesses that the Labor Department would think is equally qualified.

Stuart Anderson, a former Immigration and Naturalization Service policy chief who also worked on this committee's staff, represented the National Foundation for American Policy in recent testimony before the Commerce Committee. He observed: "While legalization is necessary, to point out the irony, as written, the bill would give an advantage to anyone who entered the country illegally over skilled foreign nationals who want to work in America in the future." I cannot believe that any of us intend that result.

Finally, Mr. Chairman, my amendment is carefully tailored to make sure that the bill will provide robust protections for American workers. It will make it easier for foreign workers to change jobs or employers while waiting for their green card. It will reward companies that keep workers by paying them well and treating them with respect.

I think that this approach to the high-skilled issue will allow me to support at least reporting this bill to the Senate floor. As the authors of the underlying bill are well aware, however, I do have additional concerns that must be addressed before I can support this legislation on the floor. I will be raising these concerns before the bill is reported.

I particularly want to thank my friends and colleagues, Senators Schumer and Durbin, for their hard work and cooperation on this amendment.

Mr. Chairman, thank you again for allowing me to bring up this package of measures that has been developed by a broad array of industries and business coalitions, small businesses, manufacturers, and of course the tech industry which continues to fuel so much innovation in our economy.