

FARMWORKER JUSTICE BULLETIN



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Legislative Update

September 2005

Analysis of Rep. Goodlatte's Temporary Agricultural Labor Reform Act, HR 3857

Representative Bob Goodlatte (R-Va.) introduced the Temporary Agricultural Labor Reform Act of 2005 on September 22, 2005. This bill is similar to the bill he introduced in the last Congress. Rep. Goodlatte chairs the House Agriculture Committee and serves on the House Judiciary Committee, which has jurisdiction of immigration issues.

Farmworker wages and working conditions continue to be among the worst in the country, yet Rep. Goodlatte's bill would do nothing to improve farmworkers' lives. If enacted, Rep. Goodlatte's legislation would revise the H-2A agricultural guestworker program by reducing governmental oversight, allowing agricultural employers to displace U.S. workers, and subjecting guestworkers and U.S. workers to substandard wages and working conditions. Further, this bill would not address the immigration crisis in agriculture, in which at least 53% of farmworkers are undocumented. It does not provide a way for undocumented farmworkers in the United States to gain permanent immigration status, thus failing to bring workers out of the shadows and failing to provide a stable and reliable workforce for agriculture. A similarly harsh guestworker proposal by Senators Chambliss (R.-Ga.) and Kyl (R.-Ariz.) was defeated by the Senate 77-21 in April 2005.

Proposed Changes to H-2A Temporary Foreign Agricultural Worker Program

H.R. 3857 would make significant changes to the H-2A temporary foreign agricultural worker program, which permits employers to hire non-immigrant guestworkers to fill agricultural jobs that last no longer than ten months. The most important changes include the following:

- **Employers' application procedure.** The program's application process would be streamlined to become a labor attestation program, rather than the current "labor certification" program and would shift review from the Department of Labor to the Department of Homeland Security (DHS). Under this bill, employers simply promise to comply with certain minimal job terms and other requirements. DHS would have 7 days to approve the employer's petition for foreign workers, and could reject it only if it were "incomplete or obviously inaccurate."
- **Wages.** Currently, H-2A employers must pay workers the highest of three wage rates—the state or federal minimum wage, the "Adverse Effect Wage Rate" (AEWR), or the local prevailing wage. The AEWR was created under the Bracero program as a necessary protection against the depression in prevailing wages that results from guestworker programs. This bill would slash the H-2A program's already inadequate wage rates by abolishing the AEWR. A special "prevailing wage" would apply, and it could be determined by the employers' own prevailing wage survey. Farmworkers, both domestic and foreign, would lose tens of millions of dollars in wages.
- **Transfer of H-2A workers.** This bill would allow employers easily to transfer H-2A workers to another employer without giving guestworkers the right to switch employers.

- **Employee housing.** Currently, H-2A employers must provide free housing to non-local U.S. and foreign workers, but under Rep. Goodlatte's bill employers could choose to provide a monetary housing allowance if the state's Governor has certified that there is sufficient farmworker housing available in that area.
- **Transportation Allowance.** Currently, employers must reimburse workers for their transportation costs to and from their place of recruitment. This bill would limit reimbursement by allowing employers to pay for travel costs to and from the place where the worker was approved to enter the U.S., which could be a U.S. consulate hundreds of miles from the worker's home. In addition, this bill seeks to overrule a U.S. Court of Appeals decision in *Arriaga v. Florida Pacific Farms*, regarding the Fair Labor Standards Act. It would essentially allow H-2A employers to reduce the workers' wages below the federal minimum wage by imposing on the workers the obligation to absorb visa, transportation and other costs related to entering the U.S.
- **Contract violations.** Currently, if an employer violates the H-2A law or the required job terms, the DOL may seek remedies through administrative procedures or in federal court. This bill would restrict the DOL's authority to sue in federal court, and would limit the amount of civil money penalties it could impose on a guilty employer. In addition, the bill would create an "H-2A Ombudsman" in the U.S. Department of Agriculture (USDA) to resolve disputes between workers and their employers. Historically, the USDA has considered its "customers" to be agricultural employers, and therefore is not a neutral party. The H-2A guestworkers would continue to be deprived of the right to bring a federal lawsuit to enforce their employment contracts.
- **Expansion of Special Rules for Certain Industries.** This bill would add goatherders and dairy workers to the special rule allowing the Department of Labor to exempt sheepherders from H-2A labor protections.
- **Legal Services.** Currently, H-2A workers are eligible for assistance from the federally-funded legal-aid programs regarding their employment. This bill would severely restrict H-2A workers' access to legal services in the following ways: by prohibiting legal assistance unless the H-2A guestworker is present in the US at the time the legal assistance is provided; by preventing such programs from bringing a civil action for damages without first making a request for mediation "at least 90 days prior to bringing the action"; and by prohibiting legal services lawyers from entering upon the property of H-2A employers unless they have pre-arranged appointment with specific H-2A workers.
- **Emergency grants to employers.** This bill directs the U.S. Secretary of Agriculture to make grants to employers to help them pay return transportation costs of workers if the season ends prematurely due to a natural disaster.

In contrast to Goodlatte's bill, the Agricultural Job Opportunities, Benefits and Security Act of 2005 ("AgJOBS"), S. 359/H.R. 884, is a bipartisan compromise providing workers with the opportunity to earn legal status and making changes to the H-2A program. AgJOBS offers a sensible, realistic, and humane solution to the broken immigration system in the agricultural context. Rep. Goodlatte apparently hopes to draw agricultural employers and legislators away from AgJOBS by offering them a one-sided, harsh guestworker program, but this tactic has already failed in the Senate.

For more information about guestworker and immigration proposals affecting farmworkers, please go to our web page, www.fwjjustice.org.