



FARMWORKER JUSTICE ALERT

Farmworker Justice Fund, Inc. • 1010 Vermont Ave., NW, #915, Washington, DC 20005 • (202) 783-2628 • www.fwjjustice.org

Immigration and Guestworker Policy

March 29, 2006

Sen. Isakson's and Sen. Chambliss's Immigration Proposals Are the Worst of All Worlds in Immigration Policy: Cheap, Exploitable Foreign Labor

Immigration policy generates controversy. But the large majority of people agree on one thing. We should not allow vulnerable foreign workers from poor countries to be brought into the U.S. to take jobs at substandard wages. It hurts U.S. wages, increases poverty, distorts our labor markets, and exploits citizens of poor countries. Yet Sen. Isakson's new bill, with only the thinnest fig leaf to cover it, would set a new standard for abusive, low-wage guestworker programs.

On March 9, 2006, Senator Isakson (R.-Ga.) introduced the Border Security Act of 2006, S. 2394, which includes proposed changes to the H-2A temporary foreign agricultural worker program. The bill would unjustifiably slash the wage rates in the H-2A guestworker program and discourage U.S. workers from taking these jobs. No earned legalization path is offered. Sen. Chambliss's more extensive proposal (S.2087) contains similar language. Both should be opposed. The bipartisan AgJOBS compromise in the Senate Judiciary Committee's immigration bill should be adopted as written.

Wage Provisions in the H-2A Guestworker Program

The H-2A program permits agricultural employer to bring in foreign workers on temporary visas if it can show that there is a labor shortage and that the wages and working conditions being offered will not "adversely affect" the wages and working conditions of similarly employed U.S. workers. H-2A employers must offer the highest of three wage rates:

- the federal or state minimum wage (e.g., the federal rate is \$5.15 per hour);
- the "prevailing wage" in the local area for the particular task (e.g., picking apples) as determined by the Department of Labor using state agency wage surveys.¹
- "adverse effect wage rate or "AEWR." The Department of Labor issues AEWR's for each state based on USDA surveys of the previous year's regional average hourly wage rates for nonsupervisory field and livestock workers combined.

The AEWR was established in the *Bracero* program in recognition that the local "prevailing wage" for a particular task often stagnates and is depressed where vulnerable guestworkers or undocumented workers are concentrated. Guestworkers usually lack the ability to negotiate higher wages because they are dependent on their employers to remain in the country and obtain a visa in

¹The prevailing wage is expressed in the prevailing method of payment (for example, a piece rate or an hourly wage rate). The prevailing wage rate methodology is the local *median* wage for that particular job (half the workers make less and half the workers make more), except where 40% or more of workers receive a single wage rate.

the following season. Undocumented workers also lack bargaining power. Employers who claim a labor shortage should compete for workers by offering a decent wage rate; an artificially low wage that poor undocumented or guest workers will accept does not constitute a reasonable test of the labor market. In many situations, the USDA average wage (the AEW) is higher than the local prevailing wage. For various reasons, we believe the AEW rates are too low.

Senator Isakson's Proposal Would Harm Already Vulnerable Farmworkers.

Senator Isakson's proposal would abolish the Adverse Effect Wage Rate. The result in most places would be a drastic reduction in H-2A wage levels. For example, in some crops in California, the required H-2A wage would drop from \$9.00 per hour (the current AEW) to the state minimum wage of \$6.75 per hour. Farmworkers cannot afford a 25% pay cut.

His bill would authorize the Secretary of Labor to require H-2A employers to pay "the prevailing wage . . . or . . ." the federal or state minimum wage. In other words, no prevailing wage rate would even be required.

If the Secretary required a prevailing wage, Sen. Isakson would create a new definition for the concept that makes it meaningless. The employers could do their own wage survey. In addition, under the bill's definition, **no individual worker would be guaranteed the prevailing hourly wage** and in fact half the workers could be paid less than the prevailing hourly wage; the employer would be permitted to show that, on average, the group of piece-rate employees earned the hourly rate. His bill also would authorize a "task rate" wage, a vague concept that led to the multitude of H-2A abuses and exposés in the Florida sugar cane industry. We should not repeat past abuses.

The AgJOBS amendment (based on Sen. Craig's and Kennedy's S. 359), as included in the Senate Judiciary Committee comprehensive immigration bill, contains a fair compromise on the H-2A program wage rates. AgJOBS would freeze the AEW for three years at the 2002 wage rates, while two studies are performed to examine H-2A wage rates and make recommendations to Congress. If Congress were to fail to enact an adverse effect wage rate formula within 3 years, the AEWs would be adjusted at the end of 3 years, and at the beginning of each year thereafter, based on the previous year's change in the consumer price index, with a maximum increase of 4% per year. AgJOBS imposes a pay cut on farmworkers. In California, the AEW would be lowered from \$9.00 per hour to \$8.02 and would remain there for three years.

The AEW issue is a complex one. The best solution is to leave in place the studies agreed to under AgJOBS. **Senator Isakson's and Chambliss's proposals to slash H-2A wage rates and eliminate effective regulation of them is a one-sided, one-dimensional approach at the expense of vulnerable farmworkers.** Cheap, exploitable foreign labor is not an appropriate policy.

The Farmworker Justice Fund, Inc. is a national advocacy and education organization for migrant and seasonal farmworkers. For more information, please visit www.fwjjustice.org. You may also contact Staff Attorney Adrienne DerVartanian or Executive Director Bruce Goldstein at 202-783-2628.