Industrial Waste

The federal immigration debate has ensnared some of Louisiana's most iconic industries — and the guest workers they rely on.

By JEREMY ALFORD • Photos by ROBIN MAY

You've probably never heard of an H-2B guest worker visa. But you have probably enjoyed the yield it produces. Like one of those melt-in-your-mouth Gold Brick Eggs from Elmer Candy. Or a package of Louisiana-harvested crawfish tails. Or maybe it was a night out in New Orleans, kicked off with drinks at one of the newer hotels.

The federal H-2B program allows American companies to bring in guest workers — legal immigrant labor — to take jobs no one else wants. In fact, for a domestic business to use the program, it must prove that local workers don't want the jobs through aggressive recruiting efforts in its region. The non-agricultural, temporary visa expire after 10 months, at which point the guest workers, typically from Mexico and Central America, must return home.

Nationally, 66,000 H-2B guest workers may enter the country each year. In 2011, Louisiana hosted more than 3,100, largely in seafood processing plants, construction and certain food-preparation jobs. Now, however, some employers in those industries are contemplating closure or relocation — thanks to two new regulations promulgated by the U.S. Department of Labor.

The first new rule, known commonly as the "wage rule," would increase
"When your business depends on a timely harvest with a perishable product, you need extra hands willing to work during that particular season."

— Michael Hensgens, Crawfish Processors Alliance

wages for all H-2B guest workers across the board. In Louisiana, that could mean wage increases ranging from 32 percent to 100 percent, based on a recent economic impact study conducted by the LSU AgCenter.

Secretary of Labor Hilda L. Solis says she's pushing the change-up to "ensure that the program is used as intended by making these jobs more accessible to U.S. workers and providing stronger protections for every worker." The rule would allow wages to be established under an agreed-upon collective bargaining agreement; based upon legislation known as the Davis-Bacon Act or the Service Contract Act; or through a rate determined by the Occupational Employment Statistics wage survey — whichever is highest.

Under the old rule still in effect, H-2B participants have to either pay the prevailing wage, determined by the government and based on average industry wages in the region, or the state or federal minimum wage — again, whichever is highest.

Currently, prevailing wages in South Louisiana eclipse the U.S. minimum wage and even surpass the $8-per-hour threshold during certain times for seafood processors. "I don't know any business that could absorb a 32 percent wage increase and stay solvent," says state Agriculture Commissioner Mike Strain. "If these wage increases are allowed to stand, it will probably put Louisiana's last few remaining crawfish tail meat processors out of business. And that's a shame because Louisiana created the crawfish business."

If you believe the AgCenter study, annual H-2B wages in Louisiana will increase from $13 million to $19.5 million over the span of only 12 months under the wage rule. Meanwhile, the estimated reduction in economic activity in Louisiana resulting from the proposed wage increase could be $40 million to $60 million per year, Strain adds.

It's almost ironic that a program created to help businesses hire seasonal work-

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The House has the first time the H-2B program has been under attack. The bill used to allow more than 60,000 H-2B workers to enter the country — there were roughly 125,000 in 2006 — so the figures have slowly dwindled over time, allowing seafood processors and others to fight for greater numbers.

Michael Hengen of Lafayette, a board member of the Capefish Processors Alliance, says the government is actually running down essential services, including ones for temporary workers, who pay taxes and contribute to the Social Security system. Capefish processors no longer have the same opportunity to buy daily catches and there’s a resulting drop in wages and morale.

The program rule, in particular, could have a devastating impact on the seafood industry, Hengen says. "These efforts by the DOL will severely cripple our coastal industry. Other industries such as logging and shipping play the same role, but they get another pass on a customer who has already paid a steep price with a product, you need to sound the door."

For now, opponents can take comfort in the fact that the two rules have been ruled, although probably not as much as they had hoped. The Labor Department is in the middle of appealing the decision to the court.

The National Federation of Independent Business continues to push against the program, saying the rules:

• The three-quarter provisions would essentially force employers to pay their workers even if the work doesn’t get done.

• Another provision would require that employers pay transportation, Visa, processing and other costs for the workers. And even if all of those costs ended up being paid, if the ship was still as empty, the employer would have to pay for the journey domestically, which could have put it out of business.

The program is the leftover of an idea to provide a manpower strategy to allow the industry to continue to do business.

Frank Randall says his business has experienced a few shortnesses over the past 40 years due to labor shortages and ecological seasons, but not due to regulat-

or service missions. "The Department of Labor is not running rogue on this thing. Congress never intended it to be this way," he says. "And you know who’s going to pay for the mess that it is today? The consumer."

I push eventually comes to a head, Randall says, as has an "opportunity" to move operations to Mexico. It’s a familiar theme, one that has been repeated to as many as 2,000 farm workers by Randall Nelson of The Nelson Corporation, Inc. in Pennington.

Randy Nelson says he needs 175 seasonal workers around Christmas time to prepare his Valentine order — El Wire’s is the largest candy company in the United States in terms of brand name for the February holiday. Out of the 175 seasonal workers in the state, Nelson says he can usually find about 60 local workers. It’s a cheaper prospect for him, since H-2B participants have to pay the $13,000 for every guest worker they want to use. If labor costs increase and the regulatory environment doesn’t change, Nelson says he may have to consider relocating. But he’s only a seven-year-old company. "We’re not looking at signing up. We don’t want to move. We’ve been here for 15 years and we’re not going back to New Orleans, I really don’t know what we’re going to do. Just this thing’s going to become.

On the other side of the issue are groups like Centro de los Derechos del Migrante, a Mexican-based migrant worker rights organization. Executive Director Roberta Salinas has argued that the new rules present new problems and forcing workers to pay for transportation, visa costs and processing fees. Regardless, most workers already pay for transportation, visa costs and processing fees. It’s a way to get the same work.

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