

# Southeast Construction

## Florida Immigration Legislation: From "Fixing Stupid" to "Dumb and Dumber"

[www.southeast.construction.com](http://www.southeast.construction.com)

By John P. Horan

The writer examines the reasons why some legislation aimed at addressing the immigration issue is filled with bad ideas.

**Congress's efforts** at national immigration reform remind me of the comic warning, "You can't fix stupid." Now some states, including Florida, are trying to address the problem, and their efforts might well be categorized as "dumb and dumber."

A "nation of immigrants" should be able to pass sensible laws that secure our borders and allow a reasonable flow of needed labor. However, decades of immigration policies that have not met our nation's security and labor needs appear too much to overcome, especially when the issue is fueled by the inflammatory rhetoric of election-year politics.

There may be as many as 15 million undocumented persons in this country, many of whom are performing unskilled or lower-wage jobs. Many have been in the United States for years and have been allowed to stay through a combination of neglect, inertia and perceived necessity. The forces of supply and demand know no borders. So the workers came and many stayed. And our nation appears clueless about what to do with them, or how to prevent more of them from coming.

Immigrants have always been willing to work at lower-paying jobs. In recent decades, changes occurred. The proportion of European immigrants decreased. For decades the government has been granting disproportionate numbers of visas to engineers, health care workers, physicians, doc-

tors and technicians, instead of to immigrants needed for lower-wage jobs.

The construction industry operates in the wake of what these forces have wrought. Consistently, construction accounts for about 10% of the nation's gross domestic product and is one of the top three employers. Still, despite continued efforts to promote workforce recruitment, there remains a drastic shortage of construction workers at every level, both skilled and unskilled.

Current law provides construction companies the ability to bring in workers to perform unskilled tasks in non-agricultural



John P. Horan is a partner with Foley & Lardner LLP in Orlando. He is the founding chairman and a current member of the Construction Practice.

industries through the H-2B visa program. Unfortunately, annually there are less than 75,000 of these visas available and >>

## Construction Law

---

workers with these visas may only stay for less than one year. Even so, the program is used to its full capacity. For example, in 2005, the annual cap for H-2B visas was exhausted on January 4, so no more applications were accepted for the rest of that year.

In the early 20th century, these "illegal" immigrants would have been granted visas to work under standards that then existed. We know them. They are our parents, grandparents and great-grandparents. They helped build this great nation. And they continue to come for a better life; but today they exist in the shadows. Is it time for them to be brought into the light?

Last year, Congress failed to pass laws which secure the borders, and impose criminal penalties on illegal immigrants and those that assist them. Similarly, Congress failed to pass legislation that would allow guest or temporary workers, or provide a credible identification system that would allow employers, as well as government officials, to electronically verify and track workers.

Undaunted, the Florida legislature has now entered the fray. Thirteen bills were introduced this year by various legislators that seek to address immigration in one form or another. These proposed measures have as their cornerstone the presumption that the business community should enforce the immigration laws. The centerpiece of these measures is the punishment of those who employ an "illegal" worker.

This is government saying that it cannot stop illegal immigrants from entering the country; but what it can do is punish businesses for creating the jobs that attracted them in the first place. How nuts is that? Employers should not be the immigration police. Government needs to do its job and not delegate its responsibility.

Comprehensive legislation is needed to fix our outdated immigration policies. Our nation should expect its lawmakers to secure our borders and provide for a market-driven flow of legal immigrants that are needed to fill jobs for the American economy. <<