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NORTHERN MARIANA ISLANDS COVENANT IMPLEMENTATION ACT

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Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 507]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 507) to implement further the Act (Public Law 94–241) approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

S. 507 is identical to S. 1052 as passed by the Senate during the 106th Congress. S. 507 amends the legislation approving the Covenant for the Commonwealth of the Northern Mariana Islands (CNMI) to—

(1) extend federal immigration law to the CNMI;

(2) provide a transition period ending December 31, 2009 with provisions during that period for issuance of non-immigrant temporary alien worker visas, imposition of user fees, and applicable authorization for aliens previously admitted under the temporary worker program of the CNMI to remain for the remainder of their contract or two years, whichever is less;

(3) permit the Attorney General to extend the transition period for legitimate businesses in the tourist industry for not more than two successive five year periods and for one five year period for legitimate businesses in other industries;

(4) provide a one-time grandfather provision for individuals who have worked in legitimate businesses for the past four years; and

(5) require the Secretary of Commerce to provide technical and financial assistance to encourage growth and diversification of the local economy and the Secretary of Labor to provide technical and financial assistance to recruit, train, and hire local residents and residents of the freely associated states (persons authorized to work in the United States).

BACKGROUND AND NEED

SUMMARY AND NEED

The issue of when and how to extend Federal immigration laws to the Commonwealth of the Northern Mariana Islands has been before the Committee since the early 1970's, when the Committee was consulted on the issue during the negotiations that led to the Covenant that would make the Northern Marianas a territory of the United States. At the time, the Northern Marianas was a district of the Trust Territory of the Pacific Islands, a United Nations Trusteeship with the United States as Administering Authority. Although originally Federal immigration laws were to apply immediately upon approval of the Covenant, that position changed when the United States decided that it would not seek immediate termination of the United Nations' Trusteeship for the Trust Territory of the Pacific Islands solely for the Northern Mariana Islands. Immigration and naturalization are an essential aspect of United States sovereignty and immediate extension of those laws upon approval of the Covenant would have been inconsistent with the legal status of the Marianas, which would remain a part of the United Nations Trust Territory of the Pacific Islands until termination of the Trusteeship. Given the delay, the Covenant provided that federal immigration laws would not apply until after the Trusteeship terminated and formal US sovereignty was extended over the area.

In addition, there were concerns over how Federal immigration laws would operate and whether changes to federal immigration laws might be needed to protect the islands from being overrun and to ensure adequate access to workers. At the time, a study on immigration was underway, and the Committee noted in its report its expectation that "[i]t may well be that these problems will have been solved by the time of the termination of the Trusteeship Agreement and that the Immigration and Nationality Act containing adequate protective provisions can then be introduced to the Northern Marianas Islands." (S. Rept. 94–433, p. 78) At the time of termination of the Trusteeship for the Commonwealth in 1986, however, Congress did not take action to extend Federal immigration laws. A result of that inaction was the development of an economy based in large part on imported labor using short-term contracts. Over the years increasing reports of worker abuse and other problems led Congress in 1994 to earmark funds for enhanced Federal agency presence, specifically from the Departments of Justice, Labor, and Treasury, in the Commonwealth.

While there has been a genuine commitment by the present Governor to deal with worker abuse problems of the past and the problems associated with the limited local resources and capabilities in

running a full scale immigration system, the economy of the Commonwealth remains dominated by an alien workforce who cannot participate in the community while unemployment among United States citizen residents remains about 15%. Furthermore, the record demonstrates that even with good faith and an honest commitment, there are substantive and procedural problems that the local government simply cannot handle. For example, procedurally, the Commonwealth cannot replicate the resources of the Federal Government in issuing visas, screening individuals, and applying a double-check on persons seeking to enter the United States to prevent the entry of criminals or others who should be excluded, such as persons with communicable diseases. The Commonwealth also has problems tracking individuals. The recent amnesty program produced about 3,000 persons who were on the island illegally.

On a substantive basis, aspects of the Commonwealth immigration system are also simply inconsistent with Federal policy. Among those is the policy that persons admitted into the United States to fill permanent jobs do so as immigrants with the ability to become United States citizens. Also, the Commonwealth cannot enforce Federal requirements under international agreements, such as the treatment of persons seeking amnesty. As a general matter, Federal laws should apply and be enforced in the territories as in the rest of the United States with such changes and modifications as are justified to take into account the individual situation of each of the territories. That was the Committee expectation when it first considered the Covenant, as stated in its report to accompany the Joint Resolution approving the Covenant. The Commonwealth is not a foreign country and should not be treated as such. Federal immigration laws should apply to the Commonwealth but should be extended in an orderly manner with a commitment by Federal agencies to mitigate any potential adverse effects and encourage diversification and growth of the local economy.

BACKGROUND

The Commonwealth of the Northern Mariana Islands is a three hundred mile archipelago consisting of fourteen islands stretching north of Guam. The largest inhabited islands are Saipan, Rota, and Tinian. Magellan landed at Saipan in 1521 and the area was controlled by Spain until the end of the Spanish-American War. Guam, the southernmost of the Mariana islands, was ceded to the United States following the Spanish-American War and the balance sold to Germany together with the remainder of Germany's possessions in the Caroline and Marshall Islands.

Japan seized the area during World War I and became the mandatory power under a League of Nations Mandate for Germany's possessions north of the equator on December 17, 1920. By the 1930's Japan had developed major portions of the area and began to fortify the islands. Guam was invaded by Japanese forces from Saipan in 1941. The Marianas were secured after heavy fighting in 1944 and the bases on Tinian were used for the invasion of Okinawa and for raids on Japan, including the nuclear missions on Hiroshima and Nagasaki. In 1947, the Mandated islands were placed under the United Nations trusteeship system as the Trust Territory of the Pacific Islands (TTPI) and the United States was appointed as the Administering authority. The area was divided

into six administrative districts with the headquarters located in Hawaii and then in Guam. The TTPI was the only "strategic" trusteeship with review by the Security Council rather than the General Assembly of the United Nations. The Navy administered the Trusteeship, together with Guam, until 1951, when administrative jurisdiction was transferred to the Department of the Interior. The Northern Marianas, however, were returned to Navy jurisdiction from 1952–1962. In 1963, administrative headquarters were moved to Saipan.

With the establishment of the Congress of Micronesia in 1965, efforts to reach an agreement on the future political status of the area began. Attempts to maintain a political unity within the TTPI were unsuccessful, and each of the administrative districts (Kosrae eventually separated from Pohnpei District in the Carolines) sought to retain its separate identity. Four of the districts became the Federated States of Micronesia, the Marshalls became the Republic of the Marshall Islands, and Palau became the Republic of Palau, all sovereign countries in free association with the United States under Compacts of Free Association. The Marianas had sought reunification with Guam and United States territorial status from the beginning of the Trusteeship. Separate negotiations with the Marianas began in December 1972 and concluded in 1975.

In 1976, Congress approved a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political union with the United States (PL 94–241). The Covenant had been approved in a United Nations observed plebiscite in the Northern Mariana Islands and formed the basis for the termination of the United Nations Trusteeship with respect to the Northern Mariana Islands. In general, and with few exceptions, the Covenant provided for the application of Federal laws to the CNMI as those laws applied to Guam. Although the CNMI had sought an exemption from Federal immigration law, the U.S. position that those laws would apply prevailed and the CNMI negotiators agreed. However, when the United States decided not to seek separate termination of the Trusteeship for the CNMI only, the CNMI again raised the question of the application of Federal immigration law since application implicated U.S. sovereignty. The United States would not agree to an exemption, but rather proposed deferral of application. Termination finally occurred in 1986 for the CNMI and for the Republic of the Marshall Islands and the Federated States of Micronesia. Prior to termination, those provisions of the Covenant that were consistent with the status of the area were made applicable by the U.S. as Administering authority. Other provisions (such as the extension of U.S. sovereignty) were not made applicable. Section 503 of the Covenant provides in pertinent part that:

> The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:
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> (a) except as otherwise provided in Section 506 [which dealt with certain children born abroad and immediate relatives], the immigration and naturalization laws of the United States; . . .

(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

The Covenant permitted a unique system in the CNMI under which the local Government controlled immigration and minimum wage levels until Congress decided to extend Federal legislation and also had the benefit of duty and quota free entry of manufactured goods under the provisions of General Note 3(a) of the Harmonized Tariff Schedules. Although certain provisions of the Covenant, such as the provisions on citizenship, are explicitly made subject to mutual consent, these provisions can be modified or repealed by the Congress. The Section by Section analysis of the Committee Report on the Covenant provides in part:

> Section 503.—This section deals with certain laws of the United States which are not now applicable to the Northern Mariana Islands and provides that they will remain inapplicable except in the manner and to the extent that they are made applicable by specific legislation enacted after the termination of the Trusteeship. These laws are:
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> The Immigration and Naturalization Laws (subsection (a)). The reason this provision is included is to cope with the problems which unrestricted immigration may impose upon small island communities. Congress is aware of those problems. . . . It may well be that these problems will have been solved by the time of the termination of the Trusteeship Agreement and that the Immigration and Nationality Act containing adequate protective provisions can then be introduced to the Northern Mariana Islands.
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> The same consideration applies to the introduction of the Minimum Wage Laws. (Subsection (c)). Congress realizes that the special conditions prevailing in the various territories require different treatment. . . . In these circumstances, it would be inappropriate to introduce the Act to the Northern Mariana Islands without preliminary studies. There is nothing which would prevent the Northern Mariana Islands from enacting their own Minimum Wage Legislation. Moreover, as set forth in section 502(b), the activities of the United States and its contractors in the Northern Mariana Islands will be subject to existing pertinent Federal Wages and Hours Legislation. (S. Rept. 94–433, pp. 77–78)

The Committee anticipated that by the termination of the Trusteeship, the Federal Government would have addressed the potential problems, and that Federal legislation would then be extended. The primary need for alien workers was likely to be in construction, temporary jobs that could be accommodated under federal immigration laws. At the time the Covenant was negotiated, prospects for economic development focused on tourism and anticipated Department of Defense use of Tinian.

Upon termination of the Trusteeship for the CNMI in 1986, the CNMI became a territory of the United States under US sovereignty and its residents became United States citizens. Although the population of the CNMI was only 15,000 people in 1976 when

the Covenant was approved, the population (as of July 1999) is estimated at 79,429. The rapid increase in population coincides with the assumption of immigration control by the CNMI. According to the most recent statistical survey by the CNMI, 78% of the CNMI population were United States citizens in 1980. That figure had declined to less than 47% by 1990 and to 42% by 1991. In 1980, total non-US citizen residents totaled only 3,753 of whom 1,593 were citizens of the freely associated states and only 2,160 came from outside Micronesia.

Shortly after the Covenant went into effect, the CNMI began to experience a growth in tourism and a need for workers in both the tourist and construction industries. Interest also began to grow in the possibility of textile production in both the CNMI and Guam. Initial interest was in production of sweaters made of cotton, wool and synthetic fibers. The CNMI, like the other territories except for Puerto Rico, is outside the U.S. customs territory but can import products manufactured in the territory duty free provided that the products meet a certain value added amount under General Note 3(a) of the Tariff Schedules (then called Headnote 3(a)). The first company began operation in October, 1983 and within a year was joined by two other companies. Total employment for the three firms was 250 of which 100 were local residents. At the time, Guam had a single firm, Sigallo-Pac, also engaged in sweater manufacture with 275 workers, all of whom, however, were U.S. citizens.

Attempts by territories to develop textile or apparel industries have traditionally met resistance from Stateside industries. The use of alien labor in the CNMI intensified that concern, and efforts began in 1984 to sharply cut back or eliminate the availability of duty free treatment for the territories. The concerns also complicated Senate consideration of the Compacts of Free Association in 1985 and led to a delay of several months in floor consideration when some Members sought to attach textile legislation to the Compact legislation. The response from the CNMI was that they would look to limitations on immigration and increased requirements for use of local labor.

The labor force (all persons 16 years or older including temporary alien labor) grew from 9,599 in 1980 to 32,522 in 1990. Manufacturing grew from 1.9% of the workforce in 1980 to 21.9% in 1990, only slightly behind construction which grew from 16.8% to 22.2% in the same time frame. The construction numbers track a major increase in hotel construction. At the same time, increases in the local minimum wage were halted, as the CNMI began to increasingly rely on imported temporary workers.

The majority of the population resides on Saipan, which is the economic and government center of the CNMI. The most recent statistics (March 1999) from the CNMI estimate the population of Saipan at 71,790. U.S. citizens are estimated at 30,154 of whom 24,710 are CNMI born. There are 41,636 aliens of whom about 4,000 are from the freely associated states.

There is also a significant population of illegal aliens with estimates ranging from 3,00 to as high as 7,000 persons. The April 1999 CNMI report on the joint Federal-CNMI initiative on Labor, Immigration, and Law Enforcement noted that a limited immunity program enacted in September 1998 had resulted in almost 2,000

illegal aliens registering by March of 1999. The CNMI relies on its Central Statistics Division to estimate the illegal alien population at less than 3,000. The 1998 report from the Administration on the law enforcement initiative (fourth report) estimated the number of unauthorized aliens at 7,000.

The 1995 census statistics from the Commonwealth lists total unemployment at 7.1%, with CNMI born at 14.2% and Asia born at 4.5%. The draft 1999 second quarter report from the CNMI Central Statistics Division lists unemployment among CNMI-born U.S. citizens at 15.3% with non-resident non-citizen unemployment at 3.1%. Of the 15,251 United States residents above 16 years in the CNMI, 10,438 are in the labor force with employment of 9,039. The local U.S. citizen unemployment rate suggests that guest workers are taking jobs from local residents.

The percentage of non-U.S. citizens in the labor force has increased from 27.5% in 1973 to 37.8% in 1980 to 74.9% in 1990 with a decline to 73.3% in 1995. Recent statistics indicate that non-US citizens represent 77.4% of the labor force on Saipan in the first quarter of 1999. The comparable figure for Saipan for 1995 was 74.9%. The figures, however, are more striking when the composition of the public versus private sector is examined. For the first quarter of 1999, the public sector on Saipan had a workforce of 2,463 of whom only 9% were non-U.S. citizens. For the private sector on Saipan during the same period, 84% of the workforce were non-US citizens.

While jobs in the garment industry are unattractive to local residents, local businesses are using the guest worker program and the willingness of alien workers to work for lower wages to fill skilled managerial and professional positions (including plumbers and electricians, as well as accountants) with foreign workers. For example, the June 14, 1999 Marianas Variety listed a variety of job offers, including: Plumber—$3.25/hr; Accountant—$3.05/hr; Carpenter—$3.05/hr; and Electrician—$4.15/hr.

One result of this situation is that the public sector, where average wages exceed both the local and federal minimum wage, has become a primary employer for local residents. What job creation exists in the private sector goes to foreign workers. The ability to obtain skilled foreign workers at low wages effectively forecloses opportunities for United States residents in both entry and skilled positions. The private sector job market for recent CNMI graduates is better in Guam than in the CNMI. Another consequence is that there is little incentive for specialized or graduate training since companies can readily obtain experienced workers from foreign countries at wage levels that are unattractive to CNMI residents. A by-product of this situation has been increased pressure on the public sector to expand solely to provide jobs. The average wage rate for the public sector for the first quarter of 1999 was reported by the CNMI Department of Commerce as $12.89/hr. For the CNMI, the lack of private sector jobs for local residents has frustrated efforts to trim the public sector budget. As the CNMI becomes more dependent on local revenues to pay the wages of public sector employees, it also becomes more dependent on a system of imported labor at the expense of local jobs in the private sector. This situation was neither intended nor contemplated by either side in the negotiations that led to the Covenant.

Repeated allegations of violations of applicable federal laws relating to worker health and safety, concerns with respect to immigration problems, including the admission of undesirable aliens, and reports of worker abuse, especially in the domestic and garment worker sectors, led to the inclusion of a $7 million set aside in appropriations in 1994 to the Department of the Interior to support Federal agency presence in the CNMI. The Department of the Interior reported to the Committee on April 24, 1995 that:

(1) $3 million would be used by the CNMI for a computerized immigration identification and tracking system and for local projects;

(2) $2.2 million would be used by the Department of Justice to strengthen law enforcement, including the hiring of an additional FBI agent and Assistant US Attorney;

(3) $1.6 million would be used by Labor for two senior investigators as well as training; and

(4) $200,000 would be used by Treasury for assistance in investigating violations of federal law with respect to firearms, organized crime, and counterfeiting.

In addition, the report recommended that Federal law be enacted to phase in the current CNMI minimum wage rates to the Federal minimum wage level in 30 cent increments as then provided by CNMI legislation, end mandatory assistance to the CNMI when the current agreement was fulfilled, continue annual support of federal agencies at a $3 million/year level (which would include funding for a detention facility that meets Federal standards), and possible extension of Federal immigration laws.

During the 104th Congress, the Senate passed S. 638, legislation supported by the Administration. Concern over the effectiveness of the CNMI immigration laws and reports of the entry of organized criminal elements from Japan and China led the Committee to include a provision to require the Commonwealth "to cooperate in the identification and, if necessary, exclusion or deportation from the Commonwealth of the Northern Mariana Islands of persons who represent security or law enforcement risks to the Commonwealth of the Northern Mariana Islands or the United States." (Sec. 4 of S. 638) No action was taken by the House.

In February 1996, Members of the Committee visited the CNMI and met with local and Federal officials. In addition, the Members inspected a garment factory and met with Bangladesh security guards who had not been paid and who were living in substandard conditions. As a result of the meetings and continued expressions of concern over conditions, the Committee held an oversight hearing on June 26, 1996, to review the situation in the CNMI. At the hearing, the acting Attorney General of the Commonwealth requested that the Committee delay any action on legislation until the Commonwealth completed a study on minimum wage and promised that the study would be completed by January. That timing would have enabled the Committee to revisit the issue in the April-May 1997 period after the Administration had transmitted its annual report on the law enforcement initiative. While the CNMI Study was not finally transmitted until April, the Administration did not transmit its annual report, which was due in April, until July. On May 30, 1997, the President wrote the Governor of the Northern Marianas that he was concerned over activities in the

Commonwealth and had concluded that federal immigration, naturalization, and minimum wage laws should apply.

Given the reaction that followed the President's letter, the Chairman of the Committee asked the Administration to provide a drafting service of the language needed to implement the recommendations in the annual report and informed the Governor of the Commonwealth of the request and that the Committee intended to consider the legislation after the Commonwealth had an opportunity to review it. The drafting service was not provided until October 6, 1997 and was introduced on October 8, 1997, as S. 1275, shortly before the elections in the CNMI. The Committee deferred hearings so as not to intrude unnecessarily into local politics and to allow the CNMI an opportunity to review and comment on the legislation after the local elections.

The United States Commission on Immigration Reform conducted a site visit to the Northern Marianas in July 1997 and issued a report which in general supported extension of immigration laws. The report, however, also raised some concerns with the extension of U.S. immigration laws. The report found problems in the CNMI "ranging from bureaucratic inefficiencies to labor abuses to an unsustainable economic, social and political system that is antithetical to most American values" but "a willingness on the part of some CNMI officials and business leaders to address the various problems".

The Report found that:

—The CNMI Department of Labor and Immigration "does not have the capacity, nor is it likely to develop one, to prescreen applicants for entry prior to their arrival on CNMI territory." This leads to the situation of the Bangladesh workers who arrive and find there is no work as well as to the entry of those with criminal or other disqualifying records. Federal law enforcement officials are mentioned as not providing information to the CNMI due to concerns over security and corruption.

—The levels of immigration led to dependence on government employment or benefits for United States residents unable to find work and younger residents having to leave to find work. The Report also noted that those on welfare could still hire domestics.

—The economy is unsustainable because there will be no advantage for the garment industry when the multi-fibre agreement comes into force in 2005. Others also share the view that the garment industry presence in the CNMI is temporary. In September 1997, the bank of Hawaii concluded that the presence of the garment industry was a result of "a unique and temporary comparative economic advantage" and that the CNMI should begin to plan for a "transition to an exclusively tourism-driven economy".

—Foreign workers are exploited with retaliation against protestors, failure of the CNMI government to prosecute, unreliable bonding companies, exorbitant recruitment fees, suppression of basic freedoms, and flagrant abuses of household workers, agricultural workers, and bar girls.

—The CNMI has entered into agreements dealing with trade and immigration with the Philippines and China over United States State Department objections.

—The CNMI has no asylum policy or procedure placing the United States in violation of international obligations.

—The temporary guest worker for permanent jobs creates major policy problems as well as creating a two class system where the majority of workers are denied political and social rights. In the US proper, such workers would be admitted for residence and could become citizens. Worse, the children of these workers are United States citizens. The children of foreign mothers now account for 16% of United States citizens.

The Report, however, also raised some concerns over an immediate imposition of U.S. immigration laws:

—Absent a transition, few workers would be eligible for a visa and there would be an impact on the economy.

—The federal government is not positioned to take over and enforce immigration laws. The Report cited INS officials indicating a need for 60 positions and the general disinterest of federal agencies such as INS, OSHA, and Labor in enforcing federal law unless Interior underwrote the cost.

—The relationship between INS and the local Department was very bad and the United States Department of State has no operational relations with CNMI immigration. Without local cooperation, federal enforcement would be more difficult.

The Report noted that the CNMI was not likely to take any corrective action absent a threat of federal takeover. The Report recommended that the United States and CNMI negotiate an agreement to eliminate abuses, backed by the threat of United States takeover. Specifically, the Report recommended:

—phase out (3–5 years) foreign contract workers in explotive industries (garment workers, domestic, bar girls);

—adopt specific provisions for professionals and executives (Mainly wages);

—limited provisions for temporary workers in permanent construction, hotel, and restaurant jobs with phase in of wages to Guam levels and decreasing slots for foreign workers;

—guaranteed access to asylum procedures;

—legal permanent resident status to contract workers who would be eligible for such status elsewhere in the US;

—effective prescreening of foreign contract workers as is done elsewhere in the US;

—control of recruitment fees;

—vigorous enforcement of local laws, especially on payment of wages and working conditions;

—increase inspections; and

—increased federal training.

The Committee conducted a hearing on March 31, 1998 on S. 1275 and S. 1100, similar legislation introduced by Senator Akaka and others. The Committee heard from the Administration, the government of the CNMI, workers and representatives of the local industry, as well as public witnesses.

On May 20, 1998, the Committee ordered S. 1275 favorably reported with amendments. The Committee amendments deleted provisions altering General Note 3(a) of the tariff schedules and provisions dealing with the "Made in the USA" label. The Committee also deleted the provisions that directly phased in minimum wage rates to the federal rate in favor of an industry committee as had been the practice in other territories. The Committee adopted the provisions for extension of federal immigration laws with several

changes. In response to the Governor's request that he be given an opportunity to prove that the CNMI could implement an effective immigration program, the Committee made extension contingent upon a finding by the Attorney General that the CNMI had either not adopted an effective immigration system or had not demonstrated a commitment to enforce it.

On October 6, 1998, the Secretaries of Labor, Commerce, the Interior, and the Attorney General wrote a letter to the Committee urging action on the Administration's proposal, but the Senate was not able to consider the legislation prior to adjournment. On May 13, 1999, Senator Murkowski, for himself and Senators Akaka and Bingaman, introduced S. 1052, incorporating the Committee reported immigration provisions from the previous Congress, with a minor amendment.

The presence of a large alien population in the CNMI is not simply a matter of local concern. Althoughe temporary workers admitted into the CNMI may not enter elsewhere in the United States and their presence in the CNMI does not constitute residence for the purpose of obtaining U.S. citizenship, that limitation does not apply to their children. Persons born in the CNMI obtain United States citizenship by birth and eventually will be able to bring their immediate families into the United States. There is an increasing number of births to non-citizen mothers. In 1985, of 675 births, 260 were to non-citizen mothers. While the number of United States citizen mothers remained relatively constant, the number of non-citizen mothers increased to 581 by 1990, 701 in 1991, 859 in 1992, and continued around 900–1000 with the exception of 1,409 in 1996. For that year, total births were 1,890 with the percentage of United States citizen mothers at 25%. While some of the presumed non-citizen mothers are likely to be married to CNMI residents, others are not and all entered outside of Federal immigration laws. The result is that there is an increasing number of persons obtaining United States citizenship outside the boundaries of United States immigration and naturalization law. There are also incidental effects on various Federal programs, such as education, that the children and their immediate relatives will be eligible for. To the extent that the current CNMI immigration and wage system results in structural unemployment among resident United States citizens, there are also effects on federal programs providing assistance to the poor.

The Commission on Immigration Reform noted most of the elements that have been mentioned in various reports. The use of temporary workers to fill permanent jobs is a direct policy issue for the Federal Government. The CNMI does not have an asylum policy, which is a Federal obligation. Earlier this year, an organized operation from China attempted to smuggle individuals into Guam. Eventually, the Federal Government adopted a policy of intercepting boats at sea and diverting them to the Northern Marianas prior to repatriating the individuals and prosecuting the smugglers. Although Federal immigration laws did not apply, Federal agencies did consider any requests for asylum, but the absence of Federal law complicated consideration.

Concerns have also arisen over the use of the Northern Marianas for importation and transhipment of drugs. The June 17, 1999 Marianas Variety reported the Finance Department's Division of

Customs to have confiscated over $2.5 million of crystal metamphetamine in 1998 with an increasing number of drug arrests. A related concern raised by the Administration has been the ability of the CNMI to exclude individuals, especially members of organized crime from Japan and China. The CNMI does not have a data base to screen immigrants, and accomplishes most of its screening on arrival. The Federal Government, however, for those countries that require visas, does its screening in the foreign country. Federal law enforcement agencies have cited security concerns as a major impediment to sharing information with the CNMI government.

Another concern has been increase in the level of communicable diseases, especially tuberculosis. The April 1999 CNMI report on Law Enforcement noted that the CNMI has committed to require screening of all workers and that under current regulations, "if a worker is diagnosed with a communicable disease within ninety days of entry into the CNMI, they are deported back to their country of origin." The report did note that they were attempting to deal with individuals who "once diagnosed would become illegal and disappear rather than come in for treatment." The report also states that most cases are reactivation disease. "That is they are infected with TB but have not signs of TB upon entry into the CNMI. After being in the CNMI for 2–5 years, their TB reactivates and they become contagious." (p.49) Both Guam and the CNMI have rates of active TB well in excess of the North American average of 9 cases per 100,000. The 1995 Division of Public Health assessed the mean for the CNMI from 1991–1995 at 77.9 cases per 100,000 population, the majority among the non-resident contract workers.

The Committee held a hearing on S. 1052 on September 14, 1999. After considering the testimony from the Governor and others from the CNMI and from the Administration, the Committee considered S. 1052 at a business meeting on October 20, 1999. The Committee responded to the concerns raised by both the representatives from the CNMI and the Administration by adopting an amendment in the nature of a substitute. The Committee described its action as follows:

> The Committee amendment makes several changes to the legislation as introduced. The most significant is the elimination of provisions recommended by the Committee last Congress that would have conditioned extension of Federal immigration laws on a finding by the Attorney General that the Commonwealth of the Northern Mariana Islands (CNMI) did not have the institutional capability to meet immigration standards or had not demonstrated a genuine commitment to do so. The Representatives of the CNMI testified that they did not trust the Administration to promulgate reasonable standards or do a fair evaluation. The CNMI believed that since the Administration supported extension of Federal law, the Attorney General's conclusion was predetermined. On the other side, the Administration opposed the provision because they believed that the CNMI would only use the promulgation of standards and the finding as excuses to litigate and delay extension of federal laws. While there is a limited possibility

that a local immigration system could be implemented in a manner consistent with Federal policies, there does not appear to be a way to reach that result. As a result, the Committee amendment deletes the contingency and provides that Federal immigration laws will apply to the CNMI.

The Committee has adopted a series of additional amendments to provide for a smooth transition to address some of the concerns expressed by the CNMI. The Committee has adopted a Statement of Purpose to guide Federal agencies in implementing the legislation. The Statement makes clear that the Committee expects the transition to be orderly and that Federal agencies should seek to minimize potential adverse effects. Some impact is unavoidable, but the CNMI has a considerable economic potential. A commitment by Federal agencies to support local legitimate businesses in tourism and encourage diversification will not only limit adverse effects, but may also serve to bring more of the local residents into the work-force.

The legislation as introduced provided for a transition period of not more than ten years. The CNMI expressed concern that federal agencies would use the flexibility to sacrifice the local economy to a precipitous implementation. The Committee amendment eliminates that uncertainty by specifying that the transition period will extend to December 31, 2009. The amendment provides that each agency having responsibilities during the transition shall promulgate regulations. In adopting such regulations, the agency should be guided by the Statement of Purpose and not solely by administrative convenience.

During the transition period, the Secretary of Labor will provide for a system to allocate permits for temporary labor that will be reduced to zero by the end of the transition period. The amendment does not require the Secretary to adopt any particular system, but the Secretary should adopt a system that in the Secretary's estimation is most consistent with the Statement of Purpose. The Secretary is not required to use the entire transition period not to adopt an even percentage reduction over the period, however the Secretary should work closely with other Federal agencies and the CNMI to coordinate the annual allocation with efforts to recruit, train, and hire persons authorized to work in the United States. To the extent the Secretary of Labor is successful in using the technical assistance language in the Committee amendment (sec. 2(c)) and other authorities to obtain such workers, the Secretary will be able to reduce the need for temporary alien workers. The objective remains an orderly and smooth transition to the full application of Federal laws.

The legislation, as introduced, contained a provision that would extend the transition provisions for the hotel industry for five year periods if the Attorney General determined that there was a continuing need for such workers. The Administration requested that the provision be limited to a single period of five years or less. The CNMI, on the

other hand, noted that if the Committee intended to protect the tourism industry, that industry was broader than just hotels. The CNMI also expressed concern that such a provision might be necessary for any new industries that might be developed. The Committee amendment broadens the provision to include legitimate businesses in the tourism industry and provides that no more than two five year extensions may be granted. The Attorney General should provide an expansive definition to the term "tourism" to include not only those businesses exclusively engaged in tourist activities, but also those businesses that support or depend on such activities, such as laundries. The Attorney General should construe the term "legitimate" narrowly and exclude any business that engages "directly or indirectly" in prostitution or any activity that is illegal under federal or local law. Operations that are merely fronts for other activities should also be excluded. The determination by the Attorney General is within the Attorney general's sole discretion and is not reviewable. This provision provides a safety net for those firms and employers who are engaged in legitimate businesses in tourism. The Committee amendment also provides for a one-time five year extension for other industries if the Secretary of Commerce concludes that such an extension is necessary for growth or diversification. Effective implementation of federal and local agency authority during the transition should obviate the need for any extension. The Committee amendment also require the Attorney General to report to the Committee if any extension is granted on the reasons for the extension, and whether further authority should be enacted for an additional extension. At this time the Committee cannot estimate what the needs will be for workers in the CNMI by 2015, but hopes that both federal and local authorities will use the transition period wisely.

One criticism of the CNMI was that certain aliens were hired and remained in the CNMI for extended periods without the political and civic rights normally extended to aliens admitted into the United States under Federal laws. The CNMI sought to deal with that concern by enacting legislation to limit the time an alien could remain in the CNMI to three years. That provision, however, frustrates legitimate businesses who seek to retain workers who they have hired and trained. While the overall objective of the legislation is to eventually replace the present temporary contract workers with persons admitted on a permanent basis under Federal law, there are equities for both workers and employers where individuals have been working continuously in legitimate businesses in the CNMI. Accordingly, the Committee amendment provides a one-time grandfather provision that would allow an employer to petition for any employee who has been employed in that business for the past five years to have the employee classified as an employment-based immigrant under Federal law. The Committee amendment provides for certain checks on the authority. The business must be legitimate,

using the same narrow definition applicable for the transition extension provisions. The employee must have been employed by that business for five years and the business must have a reasonable expectation of making sufficient revenues to continue to employ the alien. This provision applies only to individuals employed in a business, and would therefore exclude individuals employed as domestics by a family or individual (unless the individual were an employee of a business that provided cleaning or domestics and had been employed directly by that business for the prior five years and not by individuals). The provision also excludes individuals who may be on the payroll of a business, but who in fact do not work in the business, such as a domestic whose salary is paid from a business owned or operated by the family with the domestic. This provision will assist legitimate businesses in the transition. To the extent that legitimate businesses can retain current workers, the need for additional alien temporary workers during the transition period will be reduced.

The Committee has expanded the technical assistance provisions contained in the legislation to specifically charge the Secretary of Commerce to provide assistance to encourage growth and diversification of the local economy and the Secretary of Labor to provide assistance to recruit, train, and hire persons authorized to work in the United States. There is concern over the level of unemployment among local residents in the CNMI. Specific actions should be taken to provide employment opportunities. The transition period also offers a chance to provide employment opportunities for residents of the freely associated states. The CNMI also expressed concern that the United States was not promoting the CNMI as a tourist destination. The Committee amendment requires the Administration to submit a report to Congress within five years after the date of enactment of the Act to review progress in implementing this legislation and state what efforts have been made to diversify and strengthen the local economy, including promoting the CNMI as a tourist destination.

There are important reasons that require that the United States control entry into its territory in the CNMI. If Federal agencies charged with responsibilities under this legislation for extending those laws do so with sensitivity to local economic needs, a commitment to diversifying the local economy, and with dedication to recruiting, training, and hiring local residents and citizens of the freely associated states, the end result will be a stronger local economy and local government. (S. Rept. 106–204, pp.20–23)

During consideration by the Senate, several minor changes were made to the legislation. Most notably, the grandfather provision was expanded to require that an employee needed to have been employed only for four rather than five years; provisions for borrowing from other categories of visas that are not completely used so as not to increase the overall authorized total of immigrants were deleted and a provision inserted that visas issued under this act

would simply not count against any numerical limitation; provisions making certain determinations non-reviewable were deleted although the language providing that a decision was within the sole discretion of the Attorney General was retained; certain limiting terms and conditions attached to visas restricting permanent residency and ability to work only to the CNMI were deleted as were travel restrictions on aliens applying for asylum under federal law.

CONCLUSION

The Committee continues to believe that Federal immigration laws should be extended to the Commonwealth at this time. The Covenant provided only for a deferral of the application of federal immigration laws as a result of the decision to postpone termination of the Trusteeship. The Covenant contemplated that the laws would be extended at some point after termination, and further delay can only serve to exacerbate current problems and the burden on local government in trying to replicate federal capabilities and conform to Federal policies. The Committee is sensitive to the concerns raised by the government of the Commonwealth and from various individuals and firms in the Commonwealth over the potential effects of this extension. The legislation, as passed by the Senate during the last Congress, addresses those concerns and significantly expands the provisions contained in the measure reported during the previous Congress. This legislation also specifically addresses the need for Federal agencies, notably the Departments of Commerce and Labor, to take a more active and aggressive role in helping the local government diversify and strengthen the local economy and recruit, train, and hire local residents and residents of the freely associated states. A transition to full application of Federal immigration laws can be accomplished in an orderly manner and limited disruption to the local economy, especially if federal agencies consult closely with the local elected officials in the implementation and enforcement of Federal laws.

LEGISLATIVE HISTORY

S. 507 is identical to S. 1052 of the 106th Congress as passed by the Senate. S. 1052 was introduced on May 13, 1999 and was similar to sections 1 and 2 of S. 1275 as reported by the Committee during the 105th Congress. A hearing was held on S. 1052 on September 14, 1999. At the business meeting on October 20, 1999, the Committee on Energy and Natural Resources ordered S. 1052, as amended, favorably reported. On February 7, 2000, the Senate debated the measure (CR S355–367, S369–373), and unanimously passed the legislation and minor amendments to the Committee amendment. On February 15, 2000, the legislation was referred to the Committee on Resources of the House of Representatives. The House took no further action on S. 1052.

S. 507 was introduced by Senators Murkowski, Akaka, and Bingaman on March 8, 2001. At the business meeting on May 23, 2001, the Committee on Energy and Natural Resources ordered S. 507 favorably reported without amendment.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on May 23, 2001, by a majority vote of a quorum present, recommends that the Senate pass S. 507, if amended as described herein.

The rollcall vote on reporting the measure was 18 yeas, 4 nays, as follows:

YEAS	NAYS
Mr. Murkowski	Mr. Nickles*
Mr. Domenici*	Mr. Thomas
Mr. Craig	Mr. Burns
Mr. Campbell	Mr. Kyl
Mr. Shelby*	
Mr. Hagel	
Mr. Smith	
Mr. Bingaman	
Mr. Akaka	
Mr. Dorgan	
Mr. Graham	
Mr. Wyden	
Mr. Johnson	
Ms. Landrieu	
Mr. Bayh	
Mrs. Feinstein*	
Mr. Shumer*	
Ms. Cantwell	

*Indicates voted by proxy.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE AND PURPOSE

This section is self-explanatory. The statement of purpose, while not referenced directly in the amendments to Public Law 94–241, is intended to guide and direct federal agencies in implementing the provisions of this Act.

SECTION 2. IMMIGRATION REFORM FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Subsection (a) amends Public Law 94–241 (90 Stat. 263, 48 U.S.C. 1801) (the "Covenant Act") which approved the Covenant to Establish of Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the "Covenant") by adding a new section 6 at the end.

The new section 6 provides for the orderly extension of Federal immigration laws to the CNMI under a transition program designed to minimize adverse effects on the economy. Specific provisions are made to ensure access to workers in legitimate businesses after the end of the transition and for the adjustment of those foreign workers who are presently in the CNMI and who have been continuously employed in a legitimate business for the past five years.

Subsection (a) provides, except for any extensions that may be provided by the Attorney General to specific industries in accordance with the provisions of subsection (d), for a transition program

ending on December 31, 2009 to provide for the issuance of: nonimmigrant temporary alien workers; family-sponsored, and employment-based immigrant visas.

Subsection (b) addresses the special problems faced by employers in the CNMI due to the Commonwealth's unique geographical and labor circumstances by providing an exemption from the normal numerical limitations on the admission of H–2B temporary workers found in the INA. This subsection enables CNMI employers to obtain sufficient temporary workers, if United States labor and lawfully admissible freely associated state citizen labor are unavailable, for labor sensitive industries such as the construction industry.

Subsection (c) sets forth several requirements during the transition program which must be met with respect to temporary alien workers who would otherwise not be eligible for nonimmigrant classification under the INA. The intent of this subsection is to provide a smooth transition from the CNMI's current system. The Secretary of Labor will be guided by the Act, including the Statement of Purpose and the excerpt from pages 20–23 of Senate Report 106–204 set forth in the Background and Need portion of this Report in establishing the system for the allocating and determining the number of permits. Subsection (j) provides for petitions to adjust the status of certain long-term employees. If any petitions are granted under subsection (j), the number of permits are to be reduced accordingly to the extent that the system adopted by the Secretary of Labor assumed an allocation of permits for the positions held by persons whose status is adjusted under subsection (j).

Subsection (d) provides general limitations on the initial admission of most family-sponsored and employment-based immigrants to the CNMI, as well as a mechanism for exemptions to these general limitations. This subsection is intended to address the concerns expressed by this Committee, in approving the Covenant in 1976, regarding the effect that uncontrolled immigration may have on small island communities.

Paragraph (1) of this subsection authorizes the Attorney General, after consultation with the governor and the leadership of the Legislature of the CNMI and in consultation with other Federal Government agencies, to exempt certain family-sponsored immigrants who intend to reside in the CNMI from the general limitations on initial admission at a port-of-entry in the CNMI or in Guam. For example, unless the CNMI recommends otherwise, most aliens seeking to immigrate to the CNMI on the basis of a family-relationship with a United States citizen or lawful permanent resident would be required to be admitted as a lawful permanent resident at a port-of-entry other than the CNMI or in Guam, such as Honolulu.

Paragraph (2) generally provides the Attorney General with the authority to admit, under certain exceptional circumstances and after consultation with federal and local officials, a limited number of employment-based immigrants without regard to the normal numerical limitations under the INA. The purpose of this provision is to provide a "fail-safe" mechanism during the transition program in the event the CNMI is unable to obtain sufficient workers who are otherwise authorized to work under United States law. This paragraph would also provide a mechanism for extending the "fail-safe"

mechanism beyond the end of the transition program, for a specified period of time, with respect to legitimate businesses in the CNMI.

Subparagraph (A) provides that the Attorney General, after consultation with the Secretary of Labor and the Governor and leadership of the Legislature of the CNMI, may find that exceptional circumstances exist which preclude employers in the CNMI from obtaining sufficient work-authorized labor. If such a finding is made, the Attorney General may establish a specific number of employment-based immigrant visas to be made available under section 203(b) of the INA during the following fiscal year. The labor certification requirements of section 212(a)(5) will not apply to an alien seeking benefits under this subsection.

Subparagraph (B) deals with entry of persons with employment-based immigrant visas and is self-explanatory. Persons who are otherwise eligible for lawful permanent residence under the transition program may have their status adjusted in the CNMI.

Subparagraph (C) provides that an alien who has obtained lawful permanent resident status under this paragraph may, if he or she is otherwise eligible, apply for an immigrant visa or admission as a lawful permanent resident on another basis under the INA.

Subparagraph (D) provides for not more than two five-year extensions, as necessary, of the employment-based immigrant visa provisions of this paragraph, with respect to workers in legitimate businesses in the tourism industry. This provision is designed to ensure that there be a sufficient number of workers available to fill positions in the tourism industry after the transition period ends. The subparagraph also permits a single five-year extension for legitimate businesses in other industries. The provisions are explained more fully in the excerpt from last Congress'

Report discussing the amendment adopted by the Committee.

Subsection (e) deals with nonimmigrant investor visas and self-explanatory.

Subsection (f) deals with persons lawfully admitted into the CNMI under local law and is self-explanatory.

Subsection (g) deals with the effect of these provisions on other law and is self-explanatory.

Subsection (h) provides that no time spent by an alien in the CNMI in violation of CNMI law would count towards admission and is self-explanatory.

Subsection (i) provides a one-time grandfather for certain long-term employees and is more fully discussed in the excerpt from the Report from last Congress describing the Committee amendment.

Subsection (j) provides that any visa issued under this section shall not count against any numerical limitation under the Immigration and Nationality Act.

Section 2, subsection (b) provides for three conforming amendments to the INA.

Section 2, subsection (c) provides for technical assistance and is discussed more fully in the excerpt from pages 20–23 of the Committee's Report from the last Congress on S. 1052 (S. Rept, 106–204) set forth in the Background and Need section of this Report. The requirement that all expenditures require a non-Federal matching contribution of 50 percent applies only to expenditures involving the additional incremental funding and is to be read to

require that those expenditures be at least 50 percent non-Federal. The provision should not be read to cap non-Federal contributions, but to require that, at a minimum, each Federal dollar of the additional funding be matched by a dollar of non-Federal funds.

Section 2, Subsection (d) provides administrative authority for the Departments of Justice and Labor to implement the statute and is self-explanatory.

Section 2, subsection (e) provides for a report to Congress and is discussed more fully in the excerpt from pages 20–23 of the Committee's Report from the last Congress on S. 1052 (S. Rept. 106–204) set forth in the Background and Need section of this Report.

Section 2, subsection (f) limits the number of alien workers present in the CNMI prior to the transition program effective date and is self-explanatory.

Section 2, subsection (g) authorizes appropriations and is self-explanatory.

Cost and Budgetary Considerations

The Congressional Budget Office cost estimate report had not been received at the time the report was filed. When the report becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate. On November 19, 1999, the Congressional Budget Office submitted a cost estimate for S. 1052, legislation that is virtually identical to S. 507. At that time, CBO estimated that enactment of S. 1052 would, assuming appropriations, increase costs, mostly at the Immigration and Naturalization Service by about $6 million over the 2000–2004 period. It also found that there would be direct spending as a result of INS being able to spend fees that it collected although there would be no significant net budgetary impact. CBO also concluded that S. 1052 contained insignificant intergovernmental mandates and private sector mandates.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 507. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

The legislation contemplates the possibility of extension of the Federal immigration laws. To the extent that personal information is obtained as part of the normal administration of the program elsewhere in the United States, the same provisions would apply in the Northern Marina Islands. If the Commonwealth administers and enforces and effective immigration system under current law and Federal law is not extended, it is likely that the same information would be obtained. Therefore, there would be no additional impact on personal privacy.

Some additional paperwork would result from the enactment of S. 507, as ordered reported, but the Committee does not believe that it would be significant.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of Justice setting forth Executive agency recommendations relating to S. 507 is set forth below:

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 15, 2001.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on S. 507, the "Northern Mariana Islands Covenant Act." We strongly support S. 507.

S. 507 would extend the Immigration and Nationality Act to the Commonwealth of the Northern Mariana Islands ("CNMI"). It contains special provisions to allow for the orderly application of national immigration law, taking into account the local economy in this newest United States territory. S. 507 is identical to S. 1052 from the 106th Congress.[1]

We believe that S. 507 would improve immigration policy by guarding against the exploitation and abuse of individuals, by helping to ensure that the United States adheres to its international treaty obligation to protect refugees, and by further hindering the entry into United States territory of aliens engaged in international organized crime, terrorism, or other such activities. Consequently, we support S. 507 and urge its passage.

This bill has resource implications for the Executive branch. If it passes, we look forward to working with the appropriate committees to ensure that the necessary resources are dedicated to achieve the purpose of the bill.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that, from the standpoint of the Administration's program, there is no objection to the submission of this letter.

Sincerely,

DANIEL J. BRYANT,
Assistant Attorney General.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 507, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

[1] The Senate passed S. 1052, but the House of Representatives did not act on the bill.

[Public Law 92–241]

JOINT RESOLUTION To approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", and for other purposes

* * * * * * *

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

* * * * * * *

SEC. 503. The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;

(b) except as otherwise provided in Subsection (b) of Section 502, the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

* * * * * * *

SEC. 6. IMMIGRATION AND TRANSITION.

(a) APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT AND ESTABLISHMENT OF A TRANSITION PROGRAM.—Effective on the first day of the first full month commencing one year after the date of enactment of the Northern Mariana Islands Covenant Implementation Act (hereafter the "transition program effective date"), the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 110 et seq.) shall apply to the Commonwealth of the Northern Mariana Islands: Provided, That there shall be a transition period ending December 31, 2009 (except for subsection (d)(2)(D)) following the transition program effective date, during which the Attorney General of the United States (hereafter "Attorney General"), in consultation with the United States Secretaries of State, Labor, and the Interior, shall establish, administer, and enforce a transition program for immigration to the Commonwealth of the Northern Mariana Islands provided in subsections (b), (c), (d), (e), (f), and (i) of this section (hereafter the "transition program"). The transition program shall be implemented pursuant to regulations to be promulgated as appropriate by each agency having responsibilities under the transition program.

(b) EXEMPTION FROM NUMERICAL LIMITATIONS FOR H-2B TEMPORARY WORKERS.—An alien, if otherwise qualified, may seek admission to the Commonwealth of the Northern Mariana Islands as a temporary worker under section 101(a)(15)(H)(ii)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(B)) without counting against the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)).

(c) TEMPORARY ALIEN WORKERS.—The transition program shall conform to the following requirements with respect to temporary alien workers who would otherwise not be eligible for nonimmigrant classification under the Immigration and Nationality Act:

(1) Aliens admitted under this subsection shall be treated as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), including the ability to apply, if otherwise eligible, for a change of nonimmigrant classification under section 248 of such Act (8 U.S.C. 1258), or adjustment of status, if eligible therefor, under this section and section 245 of such Act (8 U.S.C. 1255).

(2)(A) The United States Secretary of Labor shall establish, administer, and enforce a system for allocating and determining the number, terms, and conditions of permits to be issued to prospective employers for each temporary alien worker who would not otherwise be eligible for admission under the Immigration and Nationality Act. This system shall provide for a reduction in the allocation of permits for such workers on an annual basis, to zero, over a period not to extend beyond December 31, 2009 and shall take into account the number of petitions granted under subsection (i). In no event shall a permit be valid beyond the expiration of the transition period. This system may be based on any reasonable method and criteria determined by the United States Secretary of Labor to promote the maximum use of, and to prevent adverse effects on wages and working conditions of, persons authorized to work in the United States, including lawfully admissible freely associated state citizen labor, taking into consideration the objective of providing as smooth a transition as possible to the full application of federal laws.

(B) The United States Secretary of Labor is authorized to establish and collect appropriate user fees for the purpose of this section. Amounts collected pursuant to this section shall be deposited in a special fund of the Treasury. Such amounts shall be available, to the extent and in the amounts as provided in advance in appropriations acts, for the purposes of administering this section. Such amounts are authorized to be appropriated to remain available until expended.

(3) The Attorney General shall set the conditions for admission of nonimmigrant temporary alien workers under the transition program, and the United States Secretary of State shall authorize the issuance of nonimmigrant visas for aliens to engage in employment only as authorized in this subsection: Provided, That such visas shall not be valid for admission to the United States, as defined in section 101(a)(38) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(38)), except the Commonwealth of the Northern Mariana Islands. An alien admitted to the Commonwealth of the Northern Mariana Islands on the basis of such a nonimmigrant visa shall be permitted to engage in employment only as authorized pursuant to the transition program. No alien shall be granted nonimmigrant classification or a visa under this subsection unless the permit requirements established under paragraph (2) have been met.

(4) An alien admitted as a nonimmigrant pursuant to this subsection shall be permitted to transfer between employers in

the Commonwealth of the Northern Mariana Islands during the period of such alien's authorized stay therein, without advance permission of the employee's current or prior employer, to the extent that such transfer is authorized by the Attorney General in accordance with criteria established by the Attorney General and the Untied States Secretary of Labor.

(d) IMMIGRANTS.—With the exception of immediate relatives (as defined in section 201(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)) and persons granted an immigrant visa as provided in paragraphs (1) and (2) of this subsection, no alien shall be granted initial admission as a lawful permanent resident of the United States at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands.

(1) FAMILY-SPONSORED IMMIGRANT VISAS.—For any fiscal year during which the transition program will be in effect, the Attorney General, after consultation with the Governor and the leadership of the Legislature of the Commonwealth of the Northern Mariana Islands, and in consultation with appropriate federal agencies, may establish a specific number of additional initial admissions as a family-sponsored immigrant at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands, pursuant to sections 202 and 203(a) of the Immigration and Nationality Act (8 U.S.C. 1152 and 1153(a)).

(2) EMPLOYMENT-BASED IMMIGRANT VISAS.—

(A) If the Attorney General, after consultation with the United States Secretary of Labor and the Governor and the leadership of the Legislature of the Commonwealth of the Northern Mariana Islands, finds that exceptional circumstances exist with respect to the inability of employers in the Commonwealth of the Northern Mariana Islands to obtain sufficient work-authorized labor, the Attorney General may establish a specific number of employment-based immigrant visas to be made available during the following fiscal year under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)). The labor certification requirements of section 212(a)(5) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(a)(5)) shall not apply to an alien seeking immigration benefits under this subsection.

(B) Persons granted employment-based immigrant visas under the transition program may be admitted initially at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands, as lawful permanent residents of the United States. Persons who would otherwise be eligible for lawful permanent residence under the transition program, and who would otherwise be eligible for an adjustment of status, may have their status adjusted within the Commonwealth of the Northern Mariana Islands to that of an alien lawfully admitted for permanent residence.

(C) Nothing in this paragraph shall preclude an alien who has obtained lawful permanent resident status pursuant to this paragraph from applying, if otherwise eligible, under this section and under the Immigration and Nationality Act for an immigrant visa or admission as a lawful permanent resident under the Immigration and Nationality Act.

(D) SPECIAL PROVISION TO ENSURE ADEQUATE EMPLOYMENT IN THE TOURISM INDUSTRY AFTER THE TRANSITION PERIOD ENDS.—

(i) During 2008, and in 2014 if a five year extension was granted, the Attorney General and the United States Secretary of Labor shall consult with the Governor of the Commonwealth of the Northern Mariana Islands and tourism businesses in the Commonwealth of the Northern Mariana Islands to ascertain the current and future labor needs of the tourism industry in the Commonwealth of the Northern Mariana Islands, and to determine whether a five-year extension of the provisions of this paragraph (d)(2) would be necessary to ensure an adequate number of workers for legitimate businesses in the tourism industry. For the purpose of this section, a business shall not be considered legitimate if it engages directly or indirectly in prostitution or any activity that is illegal under federal or local law. The determination of whether a business is legitimate and whether it is sufficiently related to the tourism industry shall be made by the Attorney General in his sole discretion and shall not be reviewable. If the Attorney General after consultation with the United States Secretary of Labor determines, in the Attorney General's sole discretion, that such an extension is necessary to ensure an adequate number of workers for legitimate businesses in the tourism industry, the Attorney General shall provide notice by publication in the Federal Register that the provisions of this paragraph will be extended for a five-year period with respect to the tourism industry only. The Attorney General may authorize one further extension of this paragraph with respect to the tourism industry in the Commonwealth of the Northern Mariana Islands if, after the Attorney General consults with the United States Secretary of Labor and the Governor of the Commonwealth of the Northern Mariana Islands, and local tourism businesses, the Attorney general determines, in the Attorney General's sole discretion, that a further extension is required to ensure an adequate number of workers for legitimate businesses in the tourism industry in the Commonwealth of the Northern Mariana Islands.

(ii) The Attorney General, after consultation with the Governor of the Commonwealth of the Northern Mariana Islands and the United States Secretary of Labor and the United States Secretary of Commerce, may extend the provisions of this paragraph (d)(2) to legitimate businesses in industries outside the tourism in-

dustry for a single five year period if the Attorney General, in the Attorney General's sole discretion, concludes that such extension is necessary to ensure an adequate number of workers in that industry and that the industry is important to growth or diversification of the local economy.

(iii) In making his determination for the tourism industry or for industries outside the tourism industry, the Attorney General shall take into consideration the extent to which a training and recruitment program has been implemented to hire persons authorized to work in the United States, including lawfully admissible freely associated state citizen labor to work in such industry. No additional extension beyond the initial five year period may be granted for any industry outside the tourism industry or for the tourism industry beyond a second extension. If an extension is granted, the Attorney General shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives setting forth the reasons for the extension and whether he believes authority for additional extensions should be enacted.

(e) NONIMMIGRANT INVESTOR VISAS.—

(1) Notwithstanding the treaty requirements in section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(15)(E)), the Attorney General may, upon the application of the alien, classify an alien as a nonimmigrant under section 101(a)(15)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii)) if the alien—

(A) has been admitted to the Commonwealth of the Northern Mariana Islands in long-term investor status under the immigration laws of the Commonwealth of the Northern Mariana Islands before the transition program effective date;

(B) has continuously maintained residence in the Commonwealth of the Northern Mariana Islands under long-term investor status;

(C) is otherwise admissible; and

(D) maintains the investment or investments that formed the basis for such long-term investor status.

(2) Within 180 days after the transition program effective date, the Attorney General and the United States Secretary of State shall jointly publish regulations in the Federal Register to implement this subsection.

(3) The Attorney General shall treat an alien who meets the requirements of paragraph (1) as a nonimmigrant under section (101(a)(15)(E)(ii)) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii)) until the regulations implementing this subsection are published.

(f) PERSONS LAWFULLY ADMITTED UNDER THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IMMIGRATION LAW.—

(1) No alien who is lawfully present in the Commonwealth of the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands on

the transition program effective date shall be removed from the United States on the ground that such alien's presence in the Commonwealth of the Northern Mariana Islands is in violation of subparagraph 212(a)(6)(A) of the Immigration and Nationality Act, as amended, until completion of the period of the alien's admission under the immigration laws of the Commonwealth of the Northern Mariana Islands, or the second anniversary of the transition program effective date, whichever comes first. Nothing in this subsection shall be construed to prevent or limit the removal under subparagraph 212(a)(6)(A) of such an alien at any time, if the alien entered the Commonwealth of the Northern Mariana Islands after the date of enactment of the Northern Mariana Islands Covenant Implementation Act, and the Attorney General has determined that the Government of the Commonwealth of the Northern Mariana Islands violated subsection (f) of such Act.

(2) Any alien who is lawfully present and authorized to be employed in the Commonwealth of the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands on the transition program effective date shall be considered authorized by the Attorney General to be employed in the Commonwealth of the Northern Mariana Islands until the expiration of the alien's employment authorization under the immigration laws of the Commonwealth of the Northern Mariana Islands, or the second anniversary of the transition program effective date, whichever comes first.

(g) EFFECT ON OTHER LAWS.—The provisions of this section and the Immigration and Nationality Act, as amended by the Northern Mariana Islands Covenant Implementation Act, shall, on the transition program effective date, supersede and replace all laws, provisions, or programs of the Commonwealth of the Northern Mariana Islands relating to the admission of aliens and the removal of aliens from the Commonwealth of the Northern Mariana Islands.

(h) ACCRUAL OF TIME FOR PURPOSES OF SECTION 212(A)(9)(B) OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED.—No time that an alien is present in violation of the immigration laws of the Commonwealth of the Northern Mariana Islands shall by reason of such violation be counted for purposes of the ground of inadmissibility in section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)).

(i) ONE-TIME GRANDFATHER PROVISION FOR CERTAIN LONG-TERM EMPLOYEES.—

(1) An alien may be granted an immigrant visa, or have his or her status adjusted in the Commonwealth of the Northern Mariana Islands to that of an alien lawfully admitted for permanent residence, without regard to the numerical limitations set forth in sections 202 and 203(b) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1152, 1153(b)) and subject to the limiting terms and conditions of an alien's permanent residence set forth in paragraphs (B) and (C) of subsection (d)(2), if:

(A) the alien is employed directly by an employer in a business that the Attorney General has determined is legitimate;

(B) the employer has filed a petition for classification of the alien as an employment-based immigrant with the Attorney General pursuant to section 204 of the Immigration and Nationality Act, as amended, not later than 180 days following the transition program effective date;

(C) the alien has been lawfully present in the Commonwealth of the Northern Mariana Islands and authorized to be employed in the Commonwealth of the Northern Mariana Islands for the five-year period immediately preceding the filing of the petition;

(D) the alien has been employed continuously in that business by the petitioning employer for the 4-year period immediately preceding the filing of the petition;

(E) the alien continues to be employed in that business by the petitioning employer at the time the immigrant visa is granted or the alien's status is adjusted to permanent resident;

(F) the petitioner's business has a reasonable expectation of generating sufficient revenue to continue to employ the alien in that business for the succeeding four years, and

(G) the alien is otherwise eligible for admission to the United States under the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 1101, et seq.).

(2) The labor certification requirements of section 212(a)(5) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(a)(5)) shall not apply to an alien seeking immigration benefits under this subsection.

(3) The fact that an alien is the beneficiary of an application for a preference status that was filed with the Attorney General under section 204 of the Immigration and Nationality Act, as amended (8 U.S.C. 1154) for the purpose of obtaining benefits under this subsection, or has otherwise sought permanent residence pursuant to this subsection, shall not render the alien ineligible to obtain or maintain the status of a nonimmigrant under this Act or the Immigration and Nationality Act, as amended, if the alien is otherwise eligible for such nonimmigrant status.

(j) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to count the issuance of any visa to an alien, or the grant of any admission of an alien, under this section toward any numerical limitation contained in the Immigration and Nationality Act.

[Public Law 414—June 27, 1952]

AN ACT To revise the laws relating to immigration, naturalization, and nationality; and for other purposes.

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SEC. 101. (a) * * *

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(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, [and the Virgin Islands of the United

States.] *the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.*

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(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, [and the Virgin Islands of the United States.] *the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.*

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(1) GUAM: WAIVER OF REQUIREMENTS FOR NONIMMIGRANT VISITORS: CONDITIONS OF WAIVER; ACCEPTANCE OF FUNDS FROM GUAM.—

(1) The requirement of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and [stay on Guam] *stay on Guam and the Commonwealth of the Northern Mariana Islands* for a period not to exceed a total of fifteen days, if the Attorney General, the Secretary of State, and the Secretary of the Interior, [after consultation with the Governor of Guam,] *after respective consultation with the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands,* jointly determine that—

(A) an adequate arrival and departure control system has been developed [on Guam,] *on Guam or the Commonwealth of the Northern Mariana Islands, respectively,* and

(B) such as waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) an alien may not be provided a waiver under this subsection unless the alien has waived any right—

(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry [into Guam] *into Guam or the Commonwealth of the Northern Mariana Islands, respectively,* or

(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(3) If adequate appropriated funds to carry out this subsection are not otherwise available, the Attorney General is authorized to accept from the [Government of Guam] *Government of Guam, or the Government of the Commonwealth of the Northern Mariana Islands* such as may be tendered to cover all or any part of the cost of administration and enforcement of this subsection.

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