

115TH CONGRESS  
2D SESSION

# S. 2325

To incentivize the hiring of United States workers in the Commonwealth of the Northern Mariana Islands, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 19, 2018

Ms. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To incentivize the hiring of United States workers in the Commonwealth of the Northern Mariana Islands, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Northern Mariana Is-

5       lands U.S. Workforce Act”.

6       **SEC. 2. PURPOSE.**

7       The purpose of this Act is—

8               (1) to increase the percentage of United States

9       workers (as defined in section 6(i) of the Joint Reso-

10       lution entitled “A Joint Resolution to approve the

1       ‘Covenant To Establish a Commonwealth of the  
 2       Northern Mariana Islands in Political Union with  
 3       the United States of America’, and for other pur-  
 4       poses” (48 U.S.C. 1806)) in the total workforce of  
 5       the Commonwealth of the Northern Mariana Is-  
 6       lands, while maintaining the minimum number of  
 7       workers who are not United States workers to meet  
 8       the changing demands of the Northern Mariana Is-  
 9       lands’ economy;

10           (2) to incentivize the hiring of United States  
 11       workers into such workforce; and

12           (3) to ensure that no United States worker—  
 13               (A) is at a competitive disadvantage for  
 14               employment compared to workers who are not  
 15               United States workers; or

16               (B) is displaced by a worker who is not a  
 17               United States worker.

18 **SEC. 3. TRANSITIONAL PROVISIONS.**

19       (a) IN GENERAL.—Section 6 of the Joint Resolution  
 20       entitled “A Joint Resolution to approve the ‘Covenant To  
 21       Establish a Commonwealth of the Northern Mariana Is-  
 22       lands in Political Union with the United States of Amer-  
 23       ica’, and for other purposes” (48 U.S.C. 1806) is amend-  
 24       ed—

25           (1) in subsection (a)—

1 (A) in paragraph (2), by striking “2019”  
2 and inserting “2029”; and

3 (B) by amending paragraph (6) to read as  
4 follows:

5 “(6) FEES FOR TRAINING UNITED STATES  
6 WORKERS.—

7 “(A) SUPPLEMENTAL FEE.—

8 “(i) IN GENERAL.—In addition to fees  
9 imposed pursuant to sections 208(d)(3)  
10 and 245(i), the Immigration and Nation-  
11 ality Act (8 U.S.C. 1158(d)(3) and  
12 1255(i)) to recover the full costs of adju-  
13 dication services, the Secretary shall im-  
14 pose an annual supplemental fee of \$200  
15 per nonimmigrant worker on each prospec-  
16 tive employer who is issued a permit under  
17 subsection (d)(3) during the transition pro-  
18 gram.

19 “(ii) INFLATION ADJUSTMENT.—Be-  
20 ginning in fiscal year 2020, the Secretary  
21 may annually adjust the fee imposed under  
22 clause (i) by a percentage equal to the an-  
23 nual change in the Consumer Price Index  
24 for All Urban Consumers published by the  
25 Bureau of Labor Statistics.

1           “(iii) USE OF FUNDS.—Amounts col-  
 2           lected pursuant to clause (i) shall be annu-  
 3           ally deposited into the Treasury of the  
 4           Commonwealth Government for the sole  
 5           and exclusive purpose of funding vocational  
 6           education, apprenticeships, or other train-  
 7           ing programs for United States workers.

8           “(B) PLAN FOR THE EXPENDITURE OF  
 9           FUNDS.—At the beginning of each calendar  
 10          year, and before any of the supplemental fees  
 11          are deposited into the Treasury of the Com-  
 12          monwealth Government for that calendar year,  
 13          the Commonwealth Government shall submit to  
 14          the Secretary of Labor—

15               “(i) a plan for the expenditures of  
 16               amounts deposited under subparagraph  
 17               (A)(iii);

18               “(ii) a projection of the effectiveness  
 19               of such expenditures in the placement of  
 20               United States workers into jobs held by  
 21               non-United States workers; and

22               “(iii) a report on the changes in em-  
 23               ployment of United States workers attrib-  
 24               utable to expenditures of such amounts  
 25               during the previous year.

1           “(C) PAYMENT RESTRICTION.—Payments  
2           may not be made from amounts deposited  
3           under subparagraph (A)(iii) until after the Sec-  
4           retary of Labor has approved the expenditure  
5           plan submitted under subparagraph (B)(i).

6           “(D) REPORT.—The Secretary of Labor  
7           shall submit an annual report to Congress that  
8           describes the effectiveness of the Common-  
9           wealth Government at meeting the goals set  
10          forth in the expenditure plan submitted under  
11          subparagraph (B)(i).”;

12          (2) in subsection (b), by adding at the end the  
13          following:

14          “(3) REPORT.—Not later than 3 years after the  
15          date of the enactment of the Northern Mariana Is-  
16          lands U.S. Workforce Act, the Secretary shall sub-  
17          mit a report to the Committee on Energy and Nat-  
18          ural Resources of the Senate, the Committee on the  
19          Judiciary of the Senate, the Committee on Natural  
20          Resources of the House of Representatives, and the  
21          Committee on the Judiciary of the House of Rep-  
22          resentatives that—

23                 “(A) projects the number of asylum claims  
24                 the Secretary anticipates following the termi-  
25                 nation of the transition period; and

1 “(B) describes the efforts of the Secretary  
 2 to ensure appropriate interdiction efforts, pro-  
 3 vide for appropriate treatment of asylum seek-  
 4 ers, and prepare to accept and adjudicate asy-  
 5 lum claims in the Commonwealth.”;

6 (3) in subsection (d)—

7 (A) by redesignating paragraphs (2)  
 8 through (5) as paragraphs (3) through (6), re-  
 9 spectively;

10 (B) by inserting after paragraph (1) the  
 11 following:

12 “(2) PROTECTION FOR UNITED STATES WORK-  
 13 ERS.—

14 “(A) FOREIGN LABOR CERTIFICATION.—

15 “(i) IN GENERAL.—Before applying  
 16 for a nonimmigrant worker permit under  
 17 this subsection, a prospective employer  
 18 shall obtain a certification from the De-  
 19 partment of Labor confirming the prospec-  
 20 tive employer’s assertion that—

21 “(I) no qualified United States  
 22 worker is able, willing, qualified, and  
 23 available to accept the proposed job at  
 24 the prevailing wage for that occupa-  
 25 tion in the Commonwealth; and

1                   “(II) employment of the foreign  
 2                   worker will not adversely affect the  
 3                   wages and working conditions of simi-  
 4                   larly employed United States workers.

5                   “(ii) PETITION.—After receiving a  
 6                   certification under clause (i), a prospective  
 7                   employer may submit a petition to U.S.  
 8                   Citizenship and Immigration Services for a  
 9                   Commonwealth Only Transitional Worker  
 10                  permit on behalf of the foreign worker.

11                  “(B) PREVAILING WAGE SURVEY.—In  
 12                  order to effectuate the requirement for foreign  
 13                  labor certification, the Department of Labor  
 14                  shall conduct periodic prevailing wage surveys  
 15                  in the Commonwealth.

16                  “(C) MINIMUM WAGE.—An employer shall  
 17                  pay each Commonwealth Only Transitional  
 18                  Worker a wage that is not less than the greater  
 19                  of—

20                       “(i) the statutory minimum wage in  
 21                       the Commonwealth;

22                       “(ii) the Federal minimum wage;

23                       “(iii) the prevailing wage in the Com-  
 24                       monwealth for the occupation in which the  
 25                       worker is employed; or

1 “(iv) the actual wage level paid by the  
 2 employer to any other individual employed  
 3 in the same occupation.”;

4 (C) by amending paragraph (3), as reded-  
 5 icated, to read as follows:

6 “(3) PERMITS.—

7 “(A) IN GENERAL.—The Secretary shall  
 8 establish, administer, and enforce a system for  
 9 allocating and determining the number, terms,  
 10 and conditions of permits to be issued to pro-  
 11 spective employers for each such nonimmigrant  
 12 worker described in this subsection who would  
 13 not otherwise be eligible for admission under  
 14 the Immigration and Nationality Act (8 U.S.C.  
 15 1101 et seq.).

16 “(B) COMMENTS FROM GOVERNOR.—In  
 17 carrying out this paragraph, the Secretary—

18 “(i) shall consider, in good faith, any  
 19 comments or advice submitted by the Gov-  
 20 ernor of the Commonwealth, including any  
 21 recommendation to reserve a number of  
 22 permits each year for occupational cat-  
 23 egories necessary to maintain public health  
 24 or safety in the Commonwealth;



1 “(ii) shall, not later than 30 days  
2 after the receipt of such comments or ad-  
3 vice, submit a written response to the Gov-  
4 ernor; and

5 “(iii) in the Secretary’s sole discre-  
6 tion, may make the reservation of permits  
7 recommended by the Governor.

8 “(C) NUMERICAL CAP.—The number of  
9 permits issued under subparagraph (A) may  
10 not exceed 13,000 during fiscal year 2019.

11 “(D) ANNUAL ADJUSTMENTS.—Beginning  
12 in fiscal year 2020, and annually thereafter, the  
13 number of permits issued under subparagraph  
14 (A) may not exceed a number that is 500 fewer  
15 than the number of permits that were issued  
16 during the immediately preceding fiscal year.

17 “(E) REPORTS REGARDING THE PERCENT-  
18 AGE OF DOMESTIC WORKERS.—

19 “(i) BY GOVERNOR.—Not later than  
20 60 days before the end of each calendar  
21 year, the Governor shall submit a report to  
22 the Secretary that identifies the ratio be-  
23 tween domestic workers to non-domestic  
24 workers in the Commonwealth’s workforce

1 based on income tax filings with the Com-  
2 monwealth for the tax year.

3 “(ii) BY GAO.—Not later than Decem-  
4 ber 31, 2019, and biennially thereafter, the  
5 Comptroller General of the United States  
6 shall submit a report to the Chair and  
7 Ranking Member of the Committee on En-  
8 ergy and Natural Resources of the Senate  
9 and the Chair and Ranking Member of the  
10 Committee on Natural Resources of the  
11 House of Representatives that identifies  
12 the ratio between domestic workers and  
13 non-domestic workers in the Common-  
14 wealth’s workforce during each of the pre-  
15 vious 5 calendar years.

16 “(F) APPLICATION; ISSUANCE OF PER-  
17 MITS.—

18 “(i) SUBMISSION.—A prospective em-  
19 ployer may submit an application—

20 “(I) for a new permit 180 days  
21 before the beginning of the allocation  
22 year in which the permit will become  
23 effective; or

24 “(II) for the renewal of an exist-  
25 ing permit 180 days before the end of

1 the allocation year in which the exist-  
2 ing permit expires.

3 “(ii) ADJUDICATION.—The Secretary  
4 shall adjudicate an application for a permit  
5 submitted pursuant to clause (i) not later  
6 than 60 days after the receipt of such ap-  
7 plication.

8 “(iii) EMPLOYMENT VERIFICATION.—  
9 The Secretary shall establish a system for  
10 each employer of a Commonwealth Only  
11 Transitional Worker to submit a quarterly  
12 report to the U.S. Immigration and Cus-  
13 toms Enforcement office in the Common-  
14 wealth that provides evidence to verify the  
15 continuing employment and payment of  
16 such worker under the terms and condi-  
17 tions set forth in the permit petition that  
18 the employer filed on behalf of such work-  
19 er.

20 “(iv) REVOCATION.—

21 “(I) IN GENERAL.—The Sec-  
22 retary may revoke a permit approved  
23 under this paragraph if—

24 “(aa) the employer fails to  
25 maintain the continuous employ-

1           ment of the subject worker, fails  
2           to pay the subject worker, or  
3           commits any other violation of  
4           the terms and conditions of em-  
5           ployment; or

6                   “(bb) the beneficiary of such  
7           petition does not apply for a visa  
8           within 60 days after the approval  
9           of such petition.

10                   “(II) USE OF REVOKED PETI-  
11           TION.—A revoked petition under this  
12           paragraph shall be immediately avail-  
13           able for use within the same fiscal  
14           year for which the petition was ap-  
15           proved and shall not be further count-  
16           ed against the numerical limit for that  
17           year.

18                   “(v) LEGITIMATE BUSINESS.—

19                   “(I) IN GENERAL.—A prospective  
20           employer that is not a legitimate busi-  
21           ness may not be granted a petition.

22                   “(II) DEFINED TERM.—In this  
23           clause, the term ‘legitimate business’  
24           means a real, active, and operating  
25           commercial or entrepreneurial under-

1 taking that the Secretary, in the Sec-  
2 retary's sole discretion, determines—

3 “(aa) produces services or  
4 goods for profit, or is a govern-  
5 mental, charitable, or other val-  
6 idly recognized nonprofit entity;

7 “(bb) meets applicable legal  
8 requirements for doing business  
9 in the Commonwealth;

10 “(cc) has substantially com-  
11 plied with wage and hour laws,  
12 occupational safety and health  
13 requirements, and all other Fed-  
14 eral requirements related to em-  
15 ployment during the preceding 5  
16 years; and

17 “(dd) does not directly or in-  
18 directly engage in prostitution,  
19 human trafficking, or any other  
20 activity that is illegal under Fed-  
21 eral or Commonwealth law.

22 “(vi) CONSTRUCTION OCCUPATIONS.—  
23 A permit for Construction and Extraction  
24 Occupations (as defined by the Depart-  
25 ment of Labor as Standard Occupational

1 Classification Group 47–0000) may only be  
2 issued to extend a permit that was first  
3 issued before October 1, 2015.”;

4 (D) in paragraph (4), as redesignated, by  
5 inserting “or to Guam for the purpose of tran-  
6 sit only” after “except admission to the Com-  
7 monwealth”;

8 (E) in paragraph (5), as redesignated, by  
9 adding at the end the following: “Approval of a  
10 petition filed by the new employer within the  
11 same fiscal year as the current permit shall not  
12 count against the numerical limitation for that  
13 period.”; and

14 (F) by adding at the end the following:

15 “(7) CW–3 WORKERS.—

16 “(A) DESIGNATION.—The Secretary shall  
17 designate an alien admitted under this sub-  
18 section as a ‘CW–3 worker’ if the alien—

19 “(i) was admitted to the Common-  
20 wealth as a Commonwealth Only Transi-  
21 tional Worker during fiscal year 2014 and  
22 every subsequent fiscal year beginning be-  
23 fore the date of the enactment of the  
24 Northern Mariana Islands U.S. Workforce  
25 Act; and

1 “(ii) is otherwise admissible.

2 “(B) PERMIT.—

3 “(i) IN GENERAL.—Each CW-3 work-  
4 er shall be deemed to have met the foreign  
5 labor certification requirement under para-  
6 graph (2) and, upon application, shall be  
7 issued a permit to remain in the Common-  
8 wealth during the 3-year period beginning  
9 on the date of the enactment of the North-  
10 ern Mariana Islands U.S. Workforce Act.

11 “(ii) RENEWAL.—The permit issued  
12 under clause (i) may be renewed in 3-year  
13 increments during the transition period de-  
14 scribed in subsection (a)(2) if the alien re-  
15 mains outside of the United States for a  
16 continuous period of not less than 30 days  
17 during the 180-day period immediately  
18 preceding each such renewal.

19 “(iii) NUMERICAL LIMITATION.—Each  
20 permit issued under clause (i) shall count  
21 against the annual numerical limitations  
22 set forth in subparagraphs (C) and (D) of  
23 paragraph (3).

24 “(C) ROSTER.—The Secretary shall main-  
25 tain a roster of aliens in this category.

1           “(D) FEE.—Employers of CW-3 workers  
2           shall be subject to the annual education fee  
3           under subsection (a)(6).

4           “(8) REQUIREMENT TO REMAIN OUTSIDE OF  
5           THE UNITED STATES.—Except as provided in para-  
6           graph (7), the permit for a Commonwealth Only  
7           Transitional Worker may not be renewed for more  
8           than 2 consecutive years. An alien may not again be  
9           eligible for such a permit until after the alien has re-  
10          mained outside of the United States for a contin-  
11          uous period of not less than 30 days.”; and

12           (4) by adding at the end the following:

13          “(i) DEFINITIONS.—In this section:

14           “(1) ALLOCATION YEAR.—The term ‘allocation  
15           year’ means the fiscal year immediately following the  
16           current year.

17           “(2) COMMONWEALTH.—The term ‘Common-  
18           wealth’ means the Commonwealth of the Northern  
19           Mariana Islands.

20           “(3) COMMONWEALTH ONLY TRANSITION  
21           WORKER.—The term ‘Commonwealth Only Transi-  
22           tion Worker’ means an alien who has been admitted  
23           into the Commonwealth under the transition pro-  
24           gram for the purposes of a permit provided under  
25           subsection (d)(3).



1           “(4) CURRENT YEAR.—The term ‘current year’  
 2 means the fiscal year in which an allocation is deter-  
 3 mined for the allocation year.

4           “(5) DOMESTIC WORKER.—The term ‘domestic  
 5 worker’ means any worker who is—

6                   “(A) a United States worker; or

7                   “(B) a citizen of the Republic of the Mar-  
 8 shall Islands, the Federated States of Micro-  
 9 nesia, or the Republic of Palau (known collec-  
 10 tively as the ‘Freely Associated States’) who  
 11 has been lawfully admitted to the United States  
 12 pursuant to—

13                   “(i) section 141 of the Compact of  
 14 Free Association between the Government  
 15 of the United States and the Governments  
 16 of the Marshall Islands and the Federated  
 17 States of Micronesia (48 U.S.C. 1921  
 18 note); or

19                   “(ii) section 141 of the Compact of  
 20 Free Association between the United  
 21 States and the Government of Palau (48  
 22 U.S.C. 1931 note).

23           “(6) GOVERNOR.—The term ‘Governor’ means  
 24 the Governor of the Commonwealth of the Northern  
 25 Mariana Islands.

1           “(7) SECRETARY.—The term ‘Secretary’ means  
2           the Secretary of Homeland Security.

3           “(8) TAX YEAR.—The term ‘tax year’ means  
4           the fiscal year immediately preceding the current  
5           year.

6           “(9) UNITED STATES WORKER.—The term  
7           ‘United States worker’ means any worker who is—

8                   “(A) a citizen or national of the United  
9           States; or

10                   “(B) an alien who has been—

11                           “(i) lawfully admitted for permanent  
12                           residence;

13                           “(ii) admitted as a refugee under sec-  
14                           tion 207 of the Immigration and Nation-  
15                           ality Act (8 U.S.C. 1157); or

16                           “(iii) granted asylum under section  
17                           208 of such Act (8 U.S.C. 1158).”.

18           (b) RULEMAKING.—Not later than 60 days after the  
19           date of the enactment of this Act, the Secretary of Home-  
20           land Security shall publish regulations in the Federal Reg-  
21           ister to implement the amendments made by subsection  
22           (a).

23           (c) DEPARTMENT OF THE INTERIOR TECHNICAL AS-  
24           SISTANCE.—Not later than October 1, 2019, and bienni-  
25           ally thereafter, the Secretary of the Interior shall submit

1 a report to Congress that describes the fulfillment of the  
2 Department of the Interior’s responsibilities to the Com-  
3 monwealth of the Northern Mariana Islands—

4 (1) to identify opportunities for economic  
5 growth and diversification;

6 (2) to provide assistance in recruiting, training,  
7 and hiring United States workers; and

8 (3) to provide such other technical assistance  
9 and consultation as outlined in section 702(e) of the  
10 Consolidated Natural Resources Act of 2008 (48  
11 U.S.C. 1807).

○