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SENATE

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NORTHERN MARIANA ISLANDS U.S. WORKFORCE ACT

MARCH 20, 2018.—Ordered to be printed

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

R E P O R T

[To accompany S. 2325]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2325) to incentivize the hiring of United States workers in the Commonwealth of the Northern Mariana Islands, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Northern Mariana Islands U.S. Workforce Act”.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to increase the percentage of United States workers (as defined in section 6(i) of the Joint Resolution entitled “A 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” (48 U.S.C. 1806)) in the total workforce of the Commonwealth of the Northern Mariana Islands, while maintaining the minimum number of workers who are not United States workers to meet the changing demands of the Northern Mariana Islands’ economy;

(2) to encourage the hiring of United States workers into such workforce; and

(3) to ensure that no United States worker—

(A) is at a competitive disadvantage for employment compared to a worker who is not a United States worker; or

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

SEC. 3. TRANSITIONAL PROVISIONS.

(a) IN GENERAL.—Section 6 of the Joint Resolution entitled “A 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” (48 U.S.C. 1806) is amended—

(1) in subsection (a)—

- (A) in paragraph (2), by striking “2019” and inserting “2029”; and
 (B) by amending paragraph (6) to read as follows:
- “(6) FEES FOR TRAINING UNITED STATES WORKERS.—
- “(A) SUPPLEMENTAL FEE.—
- “(i) IN GENERAL.—In addition to fees imposed pursuant to section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) to recover the full costs of adjudication services, the Secretary shall impose an annual supplemental fee of \$200 per nonimmigrant worker on each prospective employer who is issued a permit under subsection (d)(3) during the transition program. A prospective employer that is issued a permit with a validity period of longer than 1 year shall pay the fee for each year of requested validity at the time the permit is issued.
- “(ii) INFLATION ADJUSTMENT.—Beginning in fiscal year 2020, the Secretary, through notice in the Federal Register, may annually adjust the supplemental fee imposed under clause (i) by a percentage equal to the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.
- “(iii) USE OF FUNDS.—Amounts collected pursuant to clause (i) shall be deposited into the Treasury of the Commonwealth Government for the sole and exclusive purpose of funding vocational education, apprenticeships, or other training programs for United States workers.
- “(iv) FRAUD PREVENTION AND DETECTION FEE.—In addition to the fees described in clause (i), the Secretary—
- “(I) shall impose, on each prospective employer filing a petition under this subsection for 1 or more nonimmigrant workers, a \$50 fraud prevention and detection fee; and
- “(II) shall deposit and use the fees collected under subclause (I) in accordance with section 286(v)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(B)).
- “(B) PLAN FOR THE EXPENDITURE OF FUNDS.—Not later than 120 days before the first day of fiscal year 2020, and annually thereafter, the Governor of the Commonwealth Government shall submit to the Secretary of Labor—
- “(i) a plan for the expenditures of amounts deposited under subparagraph (A)(iii);
- “(ii) a projection of the effectiveness of such expenditures in the placement of United States workers into jobs held by non-United States workers; and
- “(iii) a report on the changes in employment of United States workers attributable to expenditures of such amounts during the previous year.
- “(C) DETERMINATION AND REPORT.—Not later than 120 days after receiving each expenditure plan under subparagraph (B)(i), the Secretary of Labor shall—
- “(i) issue a determination on the plan; and
- “(ii) submit a report to Congress that describes the effectiveness of the Commonwealth Government at meeting the goals set forth in such plan.
- “(D) PAYMENT RESTRICTION.—Payments may not be made in a fiscal year from amounts deposited under subparagraph (A)(iii) before the Secretary of Labor has approved the expenditure plan submitted under subparagraph (B)(i) for that fiscal year.”;
- (2) in subsection (b), by adding at the end the following:
- “(3) REPORT.—Not later than December 1, 2027, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate, the Committee on the Judiciary of the Senate, the Committee on Natural Resources of the House of Representatives, and the Committee on the Judiciary of the House of Representatives that—
- “(A) projects the number of asylum claims the Secretary anticipates following the termination of the transition period; and
- “(B) describes the efforts of the Secretary to ensure appropriate interdiction efforts, provide for appropriate treatment of asylum seekers, and prepare to accept and adjudicate asylum claims in the Commonwealth.”;
- (3) in subsection (d)—
- (A) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively;
- (B) by inserting after paragraph (1) the following:
- “(2) PROTECTION FOR UNITED STATES WORKERS.—
- “(A) TEMPORARY LABOR CERTIFICATION.—

“(i) IN GENERAL.—Beginning in fiscal year 2020, a petition to import a nonimmigrant worker under this subsection may not be approved by the Secretary unless the petitioner has applied to the Secretary of Labor for a temporary labor certification confirming that—

“(I) there are not sufficient United States workers in the Commonwealth who are able, willing, qualified, and available at the time and place needed to perform the services or labor involved in the petition; and

“(II) employment of the nonimmigrant worker will not adversely affect the wages and working conditions of similarly employed United States workers.

“(ii) PETITION.—After receiving a temporary labor certification under clause (i), a prospective employer may submit a petition to the Secretary for a Commonwealth Only Transitional Worker permit on behalf of the nonimmigrant worker.

“(B) PREVAILING WAGE SURVEY.—

“(i) IN GENERAL.—In order to effectuate the requirement for a temporary labor certification under subparagraph (A)(i), the Secretary of Labor shall use, or make available to employers, an occupational wage survey conducted by the Governor that the Secretary of Labor has determined meets the statistical standards for determining prevailing wages in the Commonwealth on an annual basis.

“(ii) ALTERNATIVE METHOD FOR DETERMINING THE PREVAILING WAGE.—In the absence of an occupational wage survey approved by the Secretary of Labor under clause (i), the prevailing wage for an occupation in the Commonwealth shall be the arithmetic mean of the wages of workers similarly employed in the territory of Guam according to the wage component of the Occupational Employment Statistics Survey conducted by the Bureau of Labor Statistics.

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

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

“(ii) the Federal minimum wage; or

“(iii) the prevailing wage in the Commonwealth for the occupation in which the worker is employed.”;

(C) by amending paragraph (3), as redesignated, to read as follows:

“(3) PERMITS.—

“(A) IN GENERAL.—The Secretary shall establish, administer, and enforce a system for allocating and determining terms and conditions of permits to be issued to prospective employers for each nonimmigrant worker described in this subsection who would not otherwise be eligible for admission under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

“(B) NUMERICAL CAP.—The number of permits issued under subparagraph (A) may not exceed—

“(i) 13,000 for fiscal year 2019;

“(ii) 12,500 for fiscal year 2020;

“(iii) 12,000 for fiscal year 2021;

“(iv) 11,500 for fiscal year 2022;

“(v) 11,000 for fiscal year 2023;

“(vi) 10,000 for fiscal year 2024;

“(vii) 9,000 for fiscal year 2025;

“(viii) 8,000 for fiscal year 2026;

“(ix) 7,000 for fiscal year 2027;

“(x) 6,000 for fiscal year 2028;

“(xi) 5,000 for fiscal year 2029; and

“(xii) 1,000 for the first quarter of fiscal year 2030.

“(C) REPORTS REGARDING THE PERCENTAGE OF UNITED STATES WORKERS.—

“(i) BY GOVERNOR.—Not later than 60 days before the end of each calendar year, the Governor shall submit a report to the Secretary that identifies the ratio between United States workers and other workers in the Commonwealth’s workforce based on income tax filings with the Commonwealth for the tax year.

“(ii) BY GAO.—Not later than December 31, 2019, and biennially thereafter, the Comptroller General of the United States shall submit a report to the Chair and Ranking Member of the Committee on Energy and Natural Resources of the Senate, the Chair and Ranking Member of the Committee on Natural Resources of the House of Representatives, the Chair and Ranking Member of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chair

and Ranking Member of the Committee on Education and the Workforce of the House of Representatives that identifies the ratio between United States workers and other workers in the Commonwealth's workforce during each of the previous 5 calendar years.

“(D) PETITION; ISSUANCE OF PERMITS.—

“(i) SUBMISSION.—A prospective employer may submit a petition for a permit under this paragraph not earlier than—

“(I) 120 days before the date on which the prospective employer needs the beneficiary's services; or

“(II) if the petition is for the renewal of an existing permit, not earlier than 180 days before the expiration of such permit.

“(ii) EMPLOYMENT VERIFICATION.—The Secretary shall establish a system for each employer of a Commonwealth Only Transitional Worker to submit a semiannual report to the Secretary and the Secretary of Labor that provides evidence to verify the continuing employment and payment of such worker under the terms and conditions set forth in the permit petition that the employer filed on behalf of such worker.

“(iii) REVOCATION.—

“(I) IN GENERAL.—The Secretary, in the Secretary's discretion, may revoke a permit approved under this paragraph for good cause, including if—

“(aa) the employer fails to maintain the continuous employment of the subject worker, fails to pay the subject worker, fails to timely file a semiannual report required under this paragraph, or commits any other violation of the terms and conditions of employment;

“(bb) the beneficiary of such petition does not apply for admission to the Commonwealth by the date that is 10 days after the period of petition validity begins, if the employer has requested consular processing; or

“(cc) the employer fails to provide a former, current, or prospective Commonwealth Only Transitional Worker, not later than 21 business days after receiving a written request from such worker, with the original (or a certified copy of the original) of all petitions, notices, and other written communication related to the worker (other than sensitive financial or proprietary information of the employer, which may be redacted) that has been exchanged between the employer and the Department of Labor, the Department of Homeland Security, or any other Federal agency or department.

“(II) REALLOCATION OF REVOKED PETITION.—Notwithstanding subparagraph (C), for each permit revoked under subclause (I) in a fiscal year, an additional permit shall be made available for use in the subsequent fiscal year.

“(iv) LEGITIMATE BUSINESS.—

“(I) IN GENERAL.—A permit may not be approved for a prospective employer that is not a legitimate business.

“(II) DEFINED TERM.—In this clause, the term ‘legitimate business’ means a real, active, and operating commercial or entrepreneurial undertaking that the Secretary, in the Secretary's sole discretion, determines—

“(aa) produces services or goods for profit, or is a governmental, charitable, or other validly recognized nonprofit entity;

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

“(cc) has substantially complied with wage and hour laws, occupational safety and health requirements, and all other Federal and Commonwealth requirements related to employment during the preceding 5 years;

“(dd) does not directly or indirectly engage in prostitution, human trafficking, or any other activity that is illegal under Federal or Commonwealth law; and

“(ee) is a participant in good standing in the E Verify program.

“(v) CONSTRUCTION OCCUPATIONS.—A permit for Construction and Extraction Occupations (as defined by the Department of Labor as Standard Occupational Classification Group 47-0000) may not be issued for any worker other than a worker described in paragraph (7)(B).”;

(D) in paragraph (4), as redesignated, by inserting “or to Guam for the purpose of transit only” after “except admission to the Commonwealth”;

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

(F) by adding at the end the following:

“(7) REQUIREMENT TO REMAIN OUTSIDE OF THE UNITED STATES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B)—

“(i) a permit for a Commonwealth Only Transitional Worker—

“(I) shall remain valid for a period that may not exceed 1 year; and

“(II) may be renewed for not more than 2 consecutive, 1-year periods; and

“(ii) at the expiration of the second renewal period, an alien may not again be eligible for such a permit until after the alien has remained outside of the United States for a continuous period of at least 30 days.

“(B) LONG-TERM WORKERS.—An alien who was admitted to the Commonwealth as a Commonwealth Only Transitional Worker during fiscal year 2015, and during every subsequent fiscal year beginning before the date of the enactment of the Northern Mariana Islands U.S. Workforce Act, may receive a permit for a Commonwealth Only Transitional Worker that is valid for a period that may not exceed 3 years and may be renewed for additional 3-year periods during the transition period. A permit issued under this subparagraph shall be counted toward the numerical cap for each fiscal year within the period of petition validity.”; and

(4) by adding at the end the following:

“(i) DEFINITIONS.—In this section:

“(1) COMMONWEALTH.—The term ‘Commonwealth’ means the Commonwealth of the Northern Mariana Islands.

“(2) COMMONWEALTH ONLY TRANSITION WORKER.—The term ‘Commonwealth Only Transition Worker’ means an alien who has been admitted into the Commonwealth under the transition program and is eligible for a permit under subsection (d)(3).

“(3) GOVERNOR.—The term ‘Governor’ means the Governor of the Commonwealth of the Northern Mariana Islands.

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

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

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

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

“(B) an alien who has been lawfully admitted for permanent residence;

or

“(C) a citizen of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau (known collectively as the ‘Freely Associated States’) who has been lawfully admitted to the United States pursuant to—

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

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

(b) RULEMAKING.—

(1) SECRETARY OF HOMELAND SECURITY.—Notwithstanding the requirements under section 553(b) of title 5, United States Code, the Secretary of Homeland Security shall publish in the Federal Register, not later than 180 days after the date of the enactment of this Act, an interim final rule that specifies how the Secretary intends to implement the amendments made by subsection (a) that relate to the responsibilities of the Secretary.

(2) SECRETARY OF LABOR.—Notwithstanding the requirements under section 553(b) of title 5, United States Code, the Secretary of Labor shall publish in the Federal Register, not later than 180 days after the date of the enactment of this Act, an interim final rule that specifies how the Secretary intends to implement the amendments made by subsection (a) that relate to the responsibilities of the Secretary.

(3) RECOMMENDATIONS OF THE GOVERNOR.—In developing the interim final rules under paragraphs (1) and (2), the Secretary of Homeland Security and the Secretary of Labor—

(A) shall each consider, in good faith, any written public recommendations regarding the implementation of this Act that are submitted by the Governor of the Commonwealth not later than 60 days after the date of the enactment of this Act; and

(B) may include provisions in such rule that are responsive to any recommendation of the Governor that is not inconsistent with this Act, including a recommendation to reserve a number of permits each year for occupational categories necessary to maintain public health or safety in the Commonwealth.

(c) DEPARTMENT OF THE INTERIOR TECHNICAL ASSISTANCE.—Not later than October 1, 2019, and biennially thereafter, the Secretary of the Interior shall submit a report to Congress that describes the fulfillment of the Department of the Interior's responsibilities to the Commonwealth of the Northern Mariana Islands—

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

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

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

(d) OUTREACH AND TRAINING.—Not later than 120 days after the date on which the Secretary of Labor publishes an interim final rule in the Federal Register in accordance with subsection (b)(2), the Secretary shall conduct outreach and training in the Commonwealth of the Northern Mariana Islands for employers and workers on the foreign labor certification process set forth in section 6 of the Joint Resolution entitled “A 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”, as amended by subsection (b), including the minimum wage requirement set forth in subsection (d)(2)(C) of such section.

PURPOSE

The purpose of S. 2325 is to increase the percentage of United States workers in the total workforce of the Commonwealth of the Northern Mariana Islands (CNMI), while maintaining the minimum number of non-U.S. workers to meet the demands of the CNMI's economy; to encourage the hiring of U.S. workers into the CNMI workforce; and to ensure that no U.S. worker is at a competitive disadvantage compared to a non-U.S. worker or is displaced by a non-U.S. worker.

BACKGROUND AND NEED

The CNMI is a self-governing commonwealth in political union with, and under the sovereignty of, the United States. As such, the CNMI remains an unincorporated territory of the United States, subject to Congress's plenary authority under the Territory Clause, article IV, section 3, clause 2, of the Constitution. Pursuant to the Territory Clause, Congress has the responsibility to “make all needful Rules and Regulations respecting” the insular areas under its jurisdiction.

In 1976, Congress approved the Covenant to Establish the CNMI in Political Union with the United States of America (Public Law 94–241). The Covenant was fully implemented on November 3, 1986, and conferred U.S. citizenship on qualified CNMI residents. The Covenant also exempted the CNMI from most of the provisions of U.S. immigration law so that the CNMI controlled immigration locally. Under this local immigration authority, the CNMI established programs to permit aliens to enter into the CNMI as workers and investors.

Section 503 of the Covenant allows Congress to unilaterally extend U.S. immigration and naturalization laws to the CNMI and this was done under the Consolidated Natural Resources Act of 2008 (CNRA, Public Law 110–229). The CNRA provided for: (1) a five-year transition period until Federal immigration laws would fully apply; (2) a Commonwealth Only Transitional Worker (CW) classification to meet the CNMI’s need for foreign workers who would not otherwise be eligible to enter the CNMI under Federal law; (3) a vocational training fund to support the training of U.S. citizens and legal residents to fill jobs held by foreign workers; and (4) a \$150 fee to be charged to employers for each foreign worker visa to fund vocational training efforts. In 2014, Congress extended the transition period to December 31, 2019 (Public Law 113–235). In 2017, Congress enacted Public Law 115–53, which increased the fee paid for each CW permit to \$200 and banned issuing new CW permits to construction workers.

The CNRA required the U.S. Department of Homeland Security (DHS) to establish a temporary work permit program for foreign workers and to reduce annually the number of permits issued, reaching zero by the end of the transition period. In September 2011, DHS, through the U.S. Citizenship and Immigration Services (USCIS), established the CW permit program. Under the CW program, employers of nonimmigrant workers who are ineligible for other employment-based nonimmigrant visa classifications can apply for temporary permission to employ workers in the CNMI. A CW permit is normally granted for a period of one year. The employer may request an extension of status by filing a new petition. Employers may file a new petition, or renewal petition, up to six months in advance of the employee start date, or up to six months in advance of the previous petition’s expiration. In accordance with the CNRA, the USCIS must annually reduce the number of CW permits to reach zero by the end of calendar year 2019.

A May 2017 report by the Government Accountability Office (GAO), entitled *Commonwealth of the Northern Mariana Islands; Implementation of Federal Minimum Wage and Immigration Laws*, notes that since fiscal year 2013, demand for CW permits has doubled, and in fiscal year 2016, demand exceeded the numerical cap for the first time. Approved CW permits grew from 6,325 in fiscal year 2013 to 13,299 in fiscal year 2016. In 2016, DHS received enough petitions to approve 13,299 CW permits by May 6, 2016, reaching the cap five months prior to the end of the fiscal year. Increased demand for CW permits has resulted from a recent economic expansion due to the construction of casinos and hotels.

On April 11, 2017, USCIS received a sufficient number of petitions to reach the fiscal year 2018 cap of 9,998. As shown in the below chart, the USCIS also announced the cap for the remaining fiscal years of the CW program.

Fiscal Year (FY)	Cap
FY 2018	9,998
FY 2019	4,999
FY 2020 (until Dec. 31, 2019)	2,499

The CNMI business community expressed concern that the reduced levels of available CW permits would have a negative impact on the CNMI’s economy. The GAO report found that in 2015, for-

eign workers (totaling 12,784) made up more than half of the CNMI's workforce and filled 80 percent of all hospitality and construction jobs. The GAO also found that in 2015, if all CW workers were removed from the CNMI's labor market, the CNMI's gross domestic product would be reduced by between 26 and 62 percent. The GAO report noted that the unemployed domestic workforce, estimated at 2,386 in 2016, would be well below the CNMI's demand for labor.

In response to labor abuses by certain employers in the CNMI, some have called for additional labor protections, including higher minimum wage requirements, the potential for revocation, legitimate business requirements, as well as the prohibition on the use of CW permits for construction workers.

LEGISLATIVE HISTORY

S. 2325 was introduced by Senator Lisa Murkowski on January 19, 2018. The Senate Energy and Natural Resources Committee conducted a hearing on S. 2325 on February 6, 2018.

The Committee met in open business session on March 8, 2018, and ordered S. 2325 favorably reported, as amended.

Similar legislation, H.R. 4869, was introduced in the House of Representatives by Rep. Sablan, the Delegate from the CNMI, on January 23, 2018.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on March 8, 2018, by a majority voice vote of a quorum present, recommends that the Senate pass S. 2325, if amended as described herein. Senator Lee asked to be recorded as voting no.

COMMITTEE AMENDMENT

During its consideration of S. 2325, the Committee adopted an amendment in the nature of a substitute. The substitute amendment includes authority for the DHS to impose an antifraud fee for fraud detection and prevention purposes. It refines the foreign labor certification process with the Secretary of Labor, as well as the CNMI Governor's plan for the expenditure of education fee funds to train U.S. workers. The substitute amendment also provides for the specific number of CW permits that would be available for each fiscal year through the end of the transition period, and requires employers to be part of the E-Verify program to be eligible to petition for a CW permit. The amendment also revises the CW-3 permit for long-term workers provided for in the bill as introduced to be part of the existing CW-1 permit. The amendment is further described in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides a short title, the "Northern Mariana Islands U.S. Workforce Act."

Section 2. Purposes

Section 2 provides that the purposes of the bill are to increase the percentage of United States workers in the total workforce of the CNMI while maintaining the minimum number of non-U.S. workers to meet the demands of the CNMI's economy; to encourage the hiring of U.S. workers into the CNMI workforce; and to ensure that no U.S. worker is at a competitive disadvantage compared to a non-U.S. worker or is displaced by a non-U.S. worker.

Section 3. Transitional provisions

Section 3(a) amends section 6 of the Joint Resolution to approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" (48 U.S.C. 1806) to make a number of changes to the transitional provisions.

Section (3)(a)(1)(A) extends the transition period in section 6(a) of the Joint Resolution to December 31, 2029.

Section (3)(a)(1)(B) amends paragraph (6) of section 6(a) of the Joint Resolution. As amended, paragraph (6) will contain four new subparagraphs (A) through (D).

The new subparagraph (A) contains four clauses (i) through (iv).

Clause (i) directs the Secretary of Homeland Security to impose an annual supplemental fee of \$200 per nonimmigrant worker on each prospective employer who is issued a permit during the transition program.

New clauses (ii) and (iii) allow the supplemental education fee established by section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) to be adjusted annually for inflation and require that the monies collected be used for funding vocational education, apprenticeships, or other training programs for U.S. workers.

New clause (iv) establishes a \$50 fraud prevention and detection user fee for each employer filing a petition for a CW.

The new subparagraphs (B) through (D) require the CNMI Governor to submit an annual plan to the U.S. Secretary of Labor for the expenditure of the supplemental education fee and condition the availability of funds on the Labor Secretary's approval of the plan. The Secretary of Labor is further directed to report to Congress on the effectiveness of the CNMI Government in meeting the plan's goals.

Section 3(a)(2) of the bill adds a new paragraph (3) to section 6(b) of the Joint Resolution to direct the Secretary of Homeland Security to submit a report to Congress by December 1, 2027, on the projected number of asylum seekers the Secretary anticipates following the end of the transition period, and efforts made by the Secretary to prepare for those asylum seekers.

Section 3(a)(3) of the bill adds a new paragraph (2) to section 6(d) of the Joint Resolution, and reorders the existing paragraphs accordingly. The new paragraph (2) contains three new subparagraphs (A) through (C).

The new subparagraph (A) requires employers to obtain a temporary labor certification from the U.S. Secretary of Labor that a qualified U.S. worker is not available before filing a petition for a CW permit.

The new subparagraph (B) requires the U.S. Secretary of Labor to make available to employers the prevailing wage level for employment of a CW worker.

The new subparagraph (C) requires the employer to pay a CW worker not less than the greater of the CNMI minimum wage, the federal minimum wage, or the prevailing wage as provided by the Secretary of Labor.

Section 3(a)(3)(C) of the bill amends paragraph (3) of section 6(d) of the Joint Resolution, as redesignated. As amended, section 6(d)(3) will contain four new subparagraphs (A) through (D).

The new subparagraph (A) directs the Secretary of Homeland Security to establish, administer and enforce a permit system for prospective employers for each nonimmigrant worker.

The new subparagraph (B) provides for a numerical cap on the number of CW permits that are to be made available for each of the fiscal years from 2019 through the first quarter of 2030.

The new subparagraph (C) requires reports from the Governor of the CNMI and from GAO on the ratio of U.S. workers to non-U.S. workers in the CNMI.

The new subparagraph (D) contains five new clauses (i) through (v) pertaining to permits.

New clause (i) allows an employer to petition for renewal of a CW permit 180 days before the expiration of the permit, and to petition for a new permit 120 days prior to the need of such permit.

New clause (ii) requires the Secretary of Homeland Security to establish a system for each employer of a CW permit holder to submit semiannual reports for employment verification.

New clause (iii) authorizes the Secretary of Homeland Security to revoke a permit for good cause and reallocate a revoked permit to the following fiscal year. It further authorizes the Secretary to determine what constitutes a legitimate business.

New clause (iv) specifies that only legitimate businesses may apply for a CW permit.

New clause (v) specifies that only workers who meet the qualifications of a long-term worker under paragraph 7(B) may be issued a CW permit for construction occupations.

Section 3(a)(3)(D) of the bill amends paragraph (4) of section 6(d) of the Joint Resolution, as redesignated, to authorize CW permit holders to transit through Guam.

Section 3(a)(3)(E) of the bill amends paragraph (5) of section 6(d) of Joint Resolution, as redesignated, to authorize the portability of CW permit holders between employers in the CNMI in a specific fiscal year without further counting against that fiscal year's numerical cap.

Section 3(a)(3)(F) adds a new paragraph (7) to section 6(d) of the Joint Resolution, as redesignated. The new paragraph (7) contains two subparagraphs.

Subparagraph (A) specifies that except as provided for long-term workers, a CW permit may not exceed one year and may be renewed for an additional year. After two consecutive years, an alien must remain outside of the United States for a continuous period of 30 days before being eligible again for another CW permit.

Subparagraph (B) authorizes long-term workers, including construction workers, who have held a CW permit since fiscal year

2015 to obtain a three-year CW permit that may be renewed for additional three-year periods during the transition period.

Section 3(a)(4) of the bill adds a new subsection (i) to section 6 of the Joint Resolution to define terms used in section 6.

Section 3(b) of the bill directs the Secretaries of Homeland Security and Labor to publish separate interim final rules specifying how they will implement the amendments set forth in subsection (a) relating to their respective responsibilities.

Section 3(c) of the bill requires the Secretary of the Interior to report to Congress on the Department's responsibilities to the CNMI to identify opportunities for economic growth; provide assistance in recruiting, training, and hiring U.S. workers; and provide other technical assistance to the CNMI.

Section 3(d) requires the U.S. Secretary of Labor to conduct outreach and training in the CNMI for employers and workers on the foreign labor certification process.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the internet at *www.cbo.gov*.

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. 2325. The bill requires the Secretary of Homeland Security to carry out a system for allocating and determining terms and conditions of CW permits to be issued to prospective employers. Those employers who petition for a CW permit, and the beneficiaries of such permit, would be impacted by regulations the Secretary of Homeland Security promulgates to carry out this authority. The estimated number of individuals impacted by these regulations is tied to the number of CW permits made available for each fiscal year as provided in section (a)(3)(C) of the substitute amendment. Based on prior year data of employers who successfully petitioned for a CW permit, the estimated number of businesses who would be regulated is 1,350.

CONGRESSIONALLY DIRECTED SPENDING

S. 2325, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the January 19, 2018, hearing on S. 2325 follows:

STATEMENT OF DOUGLAS DOMENECH, ASSISTANT SECRETARY FOR INSULAR AREAS—DEPARTMENT OF THE INTERIOR

Chairman Murkowski, Ranking Member Cantwell, and Members of the Committee, I am Doug Domenech, Assistant Secretary for Insular Areas at the Department of the Interior (Department). Thank you for the opportunity to testify regarding S. 2325, the Northern Mariana Islands U.S. Workforce Act. The Department looks forward to working with Congress and the Committee to assist the Commonwealth of the Northern Mariana Islands (CNMI) to provide a long-term solution to the CNMI's labor needs and economic challenges, to protect and provide Americans and other U.S.-eligible workers job opportunities, and to identify new opportunities for growth and diversification.

PROVISIONS OF S. 2325

S. 2325 would (1) extend the termination date of the transition period for the full application of federal immigration laws by 10 years, (2) allow for the annual adjustment of the supplemental fee of \$200 per nonimmigrant worker on each prospective employer issued a permit to employ such workers, (3) clarify the eligible uses and distribution requirements of supplemental fee funds, (4) raise the annual number of authorized CNMI-only transitional worker (CW-1) visas to 13,000 during fiscal year 2019, (5) seek to increase the percentage of United States workers by creating incentives for the hiring, protection or retention of United States workers, (6) establish new application procedures for the issuance of CW-1 visas, and (7) authorize certain eligible aliens (CW-3 workers) to receive work permits for three years, subject to three year renewal periods during the duration of the transitional period.

Extending the transition period until December 31, 2029 would, in addition to its effects on the CW-1 program, extend: (1) the exception to the otherwise applicable annual caps on H-1B and H-2B nonimmigrant workers for employment in the CNMI or Guam; (2) the E-2C CNMI nonimmigrant category for certain investors in the CNMI; and (3) the bar on asylum applications under section 208 of the Immigration and Nationality Act in the CNMI.

RECENT ECONOMIC HISTORY

The Northern Mariana Islands (NMI) began to be governed under the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the Covenant) and the CNMI Constitution in 1978, with the Covenant fully taking effect in 1986. It was expected that tourism was going to be part of the foundation on which CNMI's economy would be built. In the early 1980s, a garment industry was introduced and, thereafter, expanded rapidly. The garment industry peaked in 1998, with a \$1.1 billion business built on imported foreign labor. By 2009, all the garment fac-

tories were closed causing a significant negative impact on CNMI's economy. CNMI's annual budgets dropped from a high of \$247 million in 1997 to \$102 million in 2012.

Faced with drastic revenue reduction and increasing liabilities, the CNMI government struggled to meet its mandated obligations. With impending financial ruin for CNMI government retirees, CNMI political leaders charted a new economic course for their islands. A contract was signed on August 8, 2014, that made the CNMI an international gambling destination. It was an option which the CNMI leaders found to have greater potential to improve the CNMI's economy quickly and to enable the local government to afford paying its financial obligations.

A new casino broke ground in July 2015. Since then, casino-based revenue has already started to bolster the territory's economy and provide security for its retirees.

Plans from substantially more private and public investment in CNMI were shattered when Typhoon Soudelor made landfall on the island of Saipan in August 2015. The devastation from the typhoon brought extreme competition for supplies and labor and delays in casino and hotel construction.

In addition, the CNMI economy has become increasingly dependent on CW-1 visas, which were authorized by the Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110-229. The statute's mandate for the numerical reduction on CW-1 visas became an issue, considering that for fiscal year 2016 the entire number of available CW-1 visas was fully subscribed in May 2016, and was fully subscribed within two weeks for fiscal year 2017. CNMI's economy remains, admittedly, substantially dependent on what was supposed to be a temporary visa category that has been around for less than 10 years.

CNMI continues to experience labor difficulties. We look forward to working with Congress to fulfill Congress's intent to ensure a gradual, responsible CW-1 visa wind-down, while ensuring policies are in place that allow CNMI to continue its nascent economic progress. The Department looks forward to discussing opportunities to provide a long-term solution and S. 2325 is an important step in that ongoing dialogue.

Billions of dollars are being invested in casino and hotel facilities, increasing the number of civilian construction projects. Without some effort to provide legal labor relief to CNMI, it is anticipated that projected investments in the CNMI will be lost. When slated casinos and hotels finally open, the Marianas Visitors Authority estimates that they will need 18,500 additional employees to run them. A recent report by the U.S. Government Accountability Office projects that without sufficient foreign labor the economy of the NMI would contract by an estimated 26 to 62 percent.

On August 22, 2017, in recognition of the need to address the short-term labor needs of the CNMI, the President signed into law P.L. 115-53, which took the pressure

off of the annual limit of 15,000 on CW-1 visas by requiring that the recent sudden increase in demand for construction be accommodated by issuing H-2B visas.

ADMINISTRATION POSITION

The Administration is committed to working with the leadership and people of CNMI to ensure robust and healthy economic growth, and appreciates that appropriate access to labor is key to such growth. The Administration is also committed to doing all it can to not only follow the laws of our nation, but also to help employ American citizens wherever possible.

The Administration remains open to working with Congress and the Committee to help develop the best legislation for addressing all of the economic and labor needs of the United States and CNMI. The Administration would be open to supporting legislation that facilitates the hiring of Americans and reduces CNMI's overall reliance on foreign labor by requiring a responsible, explicit wind-down of CW-1 visas to zero.

The Department of the Interior, through the Office of Insular Affairs (OIA), has been providing technical assistance to the CNMI as called for under the Consolidated Natural Resources Act of 2008, Public Law 110-229. Under the proposed legislation, the Department would be responsible to compile the aforementioned biennial report. The Department supports the intent and content of this report, but acknowledges that much of the content and work would be done by or in conjunction with the Departments of Homeland Security, Labor and Commerce.

I appreciate the opportunity to speak on behalf of the Department today, and look forward to helping develop a solution that supports the economic growth that we all seek.

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. 2325, 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):

UNITED STATES CODE

Public Law 94-241, as Amended

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.

* * * * *

**TITLE 48—TERRITORIES AND INSULAR
POSSESSIONS**

* * * * *

SEC. 6. § 1806. IMMIGRATION AND TRANSITION.

(a) **APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT AND ESTABLISHMENT OF A TRANSITION PROGRAM.—**

(1) **IN GENERAL.—**Subject to paragraphs (2) and (3), effective on the first day of the first full month commencing 1 year after May 8, 2008 (hereafter referred to as the “transition program effective date”), the provisions of the “immigration laws” (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) shall apply to the Commonwealth of the Northern Mariana Islands (referred to in this section as the “Commonwealth”), except as otherwise provided in this section.

(2) **TRANSITION PERIOD.—**There shall be a transition period beginning on the transition program effective date and ending on December 31, ~~2019~~ 2029, during which the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of the Interior, shall establish, administer, and enforce a transition program to regulate immigration to the Commonwealth, as provided in this section (hereafter referred to as the “transition program”).

(3) **DELAY OF COMMENCEMENT OF TRANSITION PERIOD.—**

(A) **IN GENERAL.—**The Secretary of Homeland Security, in the Secretary’s sole discretion, in consultation with the Secretary of the Interior, the Secretary of Labor, the Secretary of State, the Attorney General, and the Governor of the Commonwealth, may determine that the transition program effective date be delayed for a period not to exceed more than 180 days after such date.

(B) **CONGRESSIONAL NOTIFICATION.—** The Secretary of Homeland Security shall notify the Congress of a determination under subparagraph (A) not later than 30 days prior to the transition program effective date.

(C) **CONGRESSIONAL REVIEW.—** A delay of the transition program effective date shall not take effect until 30 days after the date on which the notification under subparagraph (B) is made.

(4) **REQUIREMENT FOR REGULATIONS.—**The transition program shall be implemented pursuant to regulations to be promulgated, as appropriate, by the head of each agency or department of the United States having responsibilities under the transition program.

(5) **INTERAGENCY AGREEMENTS.—** The Secretary of Homeland Security, the Secretary of State, the Secretary of Labor, and the Secretary of the Interior shall negotiate and implement agreements among their agencies to identify and assign their respective duties so as to ensure timely and proper implementation of the provisions of this section. The agreements should address, at a minimum, procedures to ensure that Commonwealth employers have access to adequate labor, and that four-

ists, students, retirees, and other visitors have access to the Commonwealth without unnecessary delay or impediment. The agreements may also allocate funding between the respective agencies tasked with various responsibilities under this section.

[(6) CERTAIN EDUCATION FUNDING.—In addition to fees charged pursuant to section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) to recover the full costs of providing adjudication services, the Secretary of Homeland Security shall charge an annual supplemental fee of \$200 per nonimmigrant worker to each prospective employer who is issued a permit under subsection (d) of this section during the transition period. Such supplemental fee shall be paid into the Treasury of the Commonwealth government for the purpose of funding ongoing vocational educational curricula and program development by Commonwealth educational entities.]

(6) FEES FOR TRAINING UNITED STATES WORKERS.—

(A) SUPPLEMENTAL FEE.—

(i) IN GENERAL.—*In addition to fees imposed pursuant to section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) to recover the full costs of adjudication services, the Secretary shall impose an annual supplemental fee of \$200 per nonimmigrant worker on each prospective employer who is issued a permit under subsection (d)(3) during the transition program. A prospective employer that is issued a permit with a validity period of longer than 1 year shall pay the fee for each year of requested validity at the time the permit is issued.*

(ii) INFLATION ADJUSTMENT.—*Beginning in fiscal year 2020, the Secretary, through notice in the Federal Register, may annually adjust the supplemental fee imposed under clause (i) by a percentage equal to the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.*

(iii) USE OF FUNDS.—*Amounts collected pursuant to clause (i) shall be deposited into the Treasury of the Commonwealth Government for the sole and exclusive purpose of funding vocational education, apprenticeships, or other training programs for United States workers.*

(iv) FRAUD PREVENTION AND DETECTION FEE.—*In addition to the fees described in clause (i), the Secretary—*

(I) shall impose, on each prospective employer filing a petition under this subsection for 1 or more nonimmigrant workers, a \$50 fraud prevention and detection fee; and

(II) shall deposit and use the fees collected under subclause (I) in accordance with section 286(v)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(B)).

(B) PLAN FOR THE EXPENDITURE OF FUNDS.—*Not later than 120 days before the first day of fiscal year 2020, and*

annually thereafter, the Governor of the Commonwealth Government shall submit to the Secretary of Labor—

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

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

(iii) a report on the changes in employment of United States workers attributable to expenditures of such amounts during the previous year.

(C) DETERMINATION AND REPORT.—Not later than 120 days after receiving each expenditure plan under subparagraph (B)(i), the Secretary of Labor shall—

(i) issue a determination on the plan; and

(ii) submit a report to Congress that describes the effectiveness of the Commonwealth Government at meeting the goals set forth in such plan.

(D) PAYMENT RESTRICTION.—Payments may not be made in a fiscal year from amounts deposited under subparagraph (A)(iii) before the Secretary of Labor has approved the expenditure plan submitted under subparagraph (B)(i) for that fiscal year.”

(7) ASYLUM.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) shall not apply during the transition period to persons physically present in the Commonwealth or arriving in the Commonwealth (whether or not at a designated port of arrival), including persons brought to the Commonwealth after having been interdicted in international or United States waters.

(b) NUMERICAL LIMITATIONS FOR NONIMMIGRANT WORKERS.—

(1) IN GENERAL.—

(A) NONIMMIGRANT WORKERS GENERALLY.—An alien, if otherwise qualified, may seek admission to Guam or to the Commonwealth during the transition program as a non-immigrant worker under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) without counting against the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)).

(B) H-2B WORKERS.—In the case of such an alien who seeks admission under section 101(a)(15)(H)(ii)(b) of such Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)), such alien, if otherwise qualified, may, before October 1, 2023, be admitted under such section for a period of up to 3 years to perform service or labor on Guam or the Commonwealth pursuant to any agreement entered into by a prime contractor or subcontractor calling for services or labor required for performance of a contract or subcontract for construction, repairs, renovations, or facility services that is directly connected to, or associated with, the military realignment occurring on Guam and the Commonwealth, notwithstanding the requirement of such section that the service or labor be temporary.

(2) LIMITATIONS.—

(A) NUMERICAL LIMITATION.—For any fiscal year, not more 4,000 aliens may be admitted to Guam and the Commonwealth pursuant to paragraph (1)(B).

(B) LOCATION.—Paragraph (1)(B) does not apply with respect to the performance of services or labor at a location other than Guam or the Commonwealth.

(3) REPORT.—*Not later than December 1, 2027, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate, the Committee on the Judiciary of the Senate, the Committee on Natural Resources of the House of Representatives, and the Committee on the Judiciary of the House of Representatives that—*

(A) projects the number of asylum claims the Secretary anticipates following the termination of the transition period; and

(B) describes the efforts of the Secretary to ensure appropriate interdiction efforts, provide for appropriate treatment of asylum seekers, and prepare to accept and adjudicate asylum claims in the Commonwealth.

(c) NONIMMIGRANT INVESTOR VISAS.—

(1) IN GENERAL.—Notwithstanding the treaty requirements in section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)), during the transition period, the Secretary of Homeland Security may, upon the application of an alien, classify an alien as a CNMI-only 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 in long-term investor status under the immigration laws of the Commonwealth before the transition program effective date;

(B) has continuously maintained residence in the Commonwealth 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) REQUIREMENT FOR REGULATIONS.—Not later than 60 days before the transition program effective date, the Secretary of Homeland Security shall publish regulations in the Federal Register to implement this subsection.

(d) SPECIAL PROVISION TO ENSURE ADEQUATE EMPLOYMENT; COMMONWEALTH ONLY TRANSITIONAL WORKERS.—An alien who is seeking to enter the Commonwealth as a nonimmigrant worker may be admitted to perform work during the transition period subject to the following requirements:

(1) Such an alien shall be treated as a nonimmigrant described in 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 under this section and section 245 of such Act (8 U.S.C. 1255).

(2) PROTECTION FOR UNITED STATES WORKERS.—

(A) TEMPORARY LABOR CERTIFICATION.—

(i) *IN GENERAL.*—Beginning in fiscal year 2020, a petition to import a nonimmigrant worker under this subsection may not be approved by the Secretary unless the petitioner has applied to the Secretary of Labor for a temporary labor certification confirming that—

(I) there are not sufficient United States workers in the Commonwealth who are able, willing, qualified, and available at the time and place needed to perform the services or labor involved in the petition; and

(II) employment of the nonimmigrant worker will not adversely affect the wages and working conditions of similarly employed United States workers.

(ii) *PETITION.*—After receiving a temporary labor certification under clause (i), a prospective employer may submit a petition to the Secretary for a Commonwealth Only Transitional Worker permit on behalf of the nonimmigrant worker.

(B) *PREVAILING WAGE SURVEY.*—

(i) *IN GENERAL.*—In order to effectuate the requirement for a temporary labor certification under subparagraph (A)(i), the Secretary of Labor shall use, or make available to employers, an occupational wage survey conducted by the Governor that the Secretary of Labor has determined meets the statistical standards for determining prevailing wages in the Commonwealth on an annual basis.

(ii) *ALTERNATIVE METHOD FOR DETERMINING THE PREVAILING WAGE.*—In the absence of an occupational wage survey approved by the Secretary of Labor under clause (i), the prevailing wage for an occupation in the Commonwealth shall be the arithmetic mean of the wages of workers similarly employed in the territory of Guam according to the wage component of the Occupational Employment Statistics Survey conducted by the Bureau of Labor Statistics.

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

(i) the statutory minimum wage in the Commonwealth;

(ii) the Federal minimum wage; or

(iii) the prevailing wage in the Commonwealth for the occupation in which the worker is employed.

[(2) The Secretary of Homeland Security 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 such nonimmigrant worker described in this subsection who would not otherwise be eligible for admission under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), except a permit for construction occupations (as that term is defined by the Department of Labor as Standard Occupational Classification Group 47-0000 or any successor provision) shall only be issued to extend a permit

first issued before October 1, 2015. In adopting and enforcing this system, the Secretary shall also consider, in good faith and not later than 30 days after receipt by the Secretary, any comments and advice submitted by the Governor of the Commonwealth. This system shall provide for a reduction in the allocation of permits for such workers on an annual basis to zero, during a period ending on December 31, 2019, except that for fiscal year 2017 an additional 350 permits shall be made available for extension of existing permits, expiring after August 22, 2017, through September 30, 2017, of which no fewer than 60 shall be reserved for healthcare practitioners and technical operations (as that term is defined by the Department of Labor as Standard Occupational Classification Group 29–0000 or any successor provision), and no fewer than 10 shall be reserved for plant and system operators (as that term is defined by the Department of Labor as Standard Occupational Classification Group 51–8000 or any successor provision). 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 Secretary of Homeland Security to promote the maximum use of, and to prevent adverse effects on wages and working conditions of, workers authorized to be employed in the United States, including lawfully admissible freely associated state citizen labor. No alien shall be granted nonimmigrant classification or a visa under this subsection unless the permit requirements established under this paragraph have been met.】

(3) PERMITS.—

(A) *IN GENERAL.*—*The Secretary shall establish, administer, and enforce a system for allocating and determining terms and conditions of permits to be issued to prospective employers for each nonimmigrant worker described in this subsection who would not otherwise be eligible for admission under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).*

(B) *NUMERICAL CAP.*—*The number of permits issued under subparagraph (A) may not exceed—*

- (i) 13,000 for fiscal year 2019;
- (ii) 12,500 for fiscal year 2020;
- (iii) 12,000 for fiscal year 2021;
- (iv) 11,500 for fiscal year 2022;
- (v) 11,000 for fiscal year 2023;
- (vi) 10,000 for fiscal year 2024;
- (vii) 9,000 for fiscal year 2025;
- (viii) 8,000 for fiscal year 2026;
- (ix) 7,000 for fiscal year 2027;
- (x) 6,000 for fiscal year 2028;
- (xi) 5,000 for fiscal year 2029; and
- (xii) 1,000 for the first quarter of fiscal year 2030.

(C) *REPORTS REGARDING THE PERCENTAGE OF UNITED STATES WORKERS.*—

- (i) *BY GOVERNOR.*—*Not later than 60 days before the end of each calendar year, the Governor shall submit a report to the Secretary that identifies the ratio between United States workers and other workers in the*

Commonwealth's workforce based on income tax filings with the Commonwealth for the tax year.

(ii) BY GAO.—Not later than December 31, 2019, and biennially thereafter, the Comptroller General of the United States shall submit a report to the Chair and Ranking Member of the Committee on Energy and Natural Resources of the Senate, the Chair and Ranking Member of the Committee on Natural Resources of the House of Representatives, the Chair and Ranking Member of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chair and Ranking Member of the Committee on Education and the Workforce of the House of Representatives that identifies the ratio between United States workers and other workers in the Commonwealth's workforce during each of the previous 5 calendar years.

(D) PETITION; ISSUANCE OF PERMITS.—

(i) SUBMISSION.—A prospective employer may submit a petition for a permit under this paragraph not earlier than—

(I) 120 days before the date on which the prospective employer needs the beneficiary's services; or

(II) if the petition is for the renewal of an existing permit, not earlier than 180 days before the expiration of such permit.

(ii) EMPLOYMENT VERIFICATION.—The Secretary shall establish a system for each employer of a Commonwealth Only Transitional Worker to submit a semiannual report to the Secretary and the Secretary of Labor that provides evidence to verify the continuing employment and payment of such worker under the terms and conditions set forth in the permit petition that the employer filed on behalf of such worker.

(iii) REVOCATION.—

(I) IN GENERAL.—The Secretary, in the Secretary's discretion, may revoke a permit approved under this paragraph for good cause, including if—

(aa) the employer fails to maintain the continuous employment of the subject worker, fails to pay the subject worker, fails to timely file a semiannual report required under this paragraph, or commits any other violation of the terms and conditions of employment;

(bb) the beneficiary of such petition does not apply for admission to the Commonwealth by the date that is 10 days after the period of petition validity begins, if the employer has requested consular processing; or

(cc) the employer fails to provide a former, current, or prospective Commonwealth Only Transitional Worker, not later than 21 business days after receiving a written request from such worker, with the original (or a cer-

tified copy of the original) of all petitions, notices, and other written communication related to the worker (other than sensitive financial or proprietary information of the employer, which may be redacted) that has been exchanged between the employer and the Department of Labor, the Department of Homeland Security, or any other Federal agency or department.

(II) *REALLOCATION OF REVOKED PETITION.*—Notwithstanding subparagraph (C), for each permit revoked under subclause (I) in a fiscal year, an additional permit shall be made available for use in the subsequent fiscal year.

(iv) *LEGITIMATE BUSINESS.*—

(I) *IN GENERAL.*—A permit may not be approved for a prospective employer that is not a legitimate business.

(II) *DEFINED TERM.*—In this clause, the term ‘legitimate business’ means a real, active, and operating commercial or entrepreneurial undertaking that the Secretary, in the Secretary’s sole discretion, determines—

(aa) produces services or goods for profit, or is a governmental, charitable, or other validly recognized nonprofit entity;

(bb) meets applicable legal requirements for doing business in the Commonwealth;

(cc) has substantially complied with wage and hour laws, occupational safety and health requirements, and all other Federal and Commonwealth requirements related to employment during the preceding 5 years;

(dd) does not directly or indirectly engage in prostitution, human trafficking, or any other activity that is illegal under Federal or Commonwealth law; and

(ee) is a participant in good standing in the E Verify program.

(v) *CONSTRUCTION OCCUPATIONS.*—A permit for Construction and Extraction Occupations (as defined by the Department of Labor as Standard Occupational Classification Group 47–0000) may not be issued for any worker other than a worker described in paragraph (7)(B).

[(3)] (4) The Secretary of Homeland Security shall set the conditions for admission of such an alien under the transition program, and the Secretary of State shall authorize the issuance of nonimmigrant visas for such an alien. Such a visa 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 admission to the Commonwealth or to Guam for the purpose of transit only. An alien admitted to the Commonwealth on the basis of such a visa shall be permitted to engage in employment only as authorized pursuant to the transition program.

[(4)] (5) Such an alien shall be permitted to transfer between employers in the Commonwealth during the period of such alien's authorized stay therein, without permission of the employee's current or prior employer, within the alien's occupational category or another occupational category the Secretary of Homeland Security has found requires alien workers to supplement the resident workforce. *Approval of a petition filed by the new employer with a start date within the same fiscal year as the current permit shall not count against the numerical limitation for that period.*

[(5)] (6) The Secretary of Homeland Security may authorize the admission of a spouse or minor child accompanying or following to join a worker admitted pursuant to this subsection.

(7) *REQUIREMENT TO REMAIN OUTSIDE OF THE UNITED STATES.—*

(A) *IN GENERAL.—Except as provided in subparagraph*

(B)—

(i) *a permit for a Commonwealth Only Transitional Worker—*

(I) *shall remain valid for a period that may not exceed 1 year; and*

(II) *may be renewed for not more than 2 consecutive, 1-year periods; and*

(ii) *at the expiration of the second renewal period, an alien may not again be eligible for such a permit until after the alien has remained outside of the United States for a continuous period of at least 30 days.*

(B) *LONG-TERM WORKERS.—An alien who was admitted to the Commonwealth as a Commonwealth Only Transitional Worker during fiscal year 2015, and during every subsequent fiscal year beginning before the date of the enactment of the Northern Mariana Islands U.S. Workforce Act, may receive a permit for a Commonwealth Only Transitional Worker that is valid for a period that may not exceed 3 years and may be renewed for additional 3-year periods during the transition period. A permit issued under this subparagraph shall be counted toward the numerical cap for each fiscal year within the period of petition validity.*

(e) *PERSONS LAWFULLY ADMITTED UNDER THE COMMONWEALTH IMMIGRATION LAW.—*

(1) *PROHIBITION ON REMOVAL.—*

(A) *IN GENERAL.—Subject to subparagraph (B), no alien who is lawfully present in the Commonwealth pursuant to the immigration laws of the Commonwealth on the transition program effective date shall be removed from the United States on the grounds that such alien's presence in the Commonwealth is in violation of section 212(a)(6)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(A)), until the earlier of the date—*

(i) *of the completion of the period of the alien's admission under the immigration laws of the Commonwealth; or*

(ii) *that is 2 years after the transition program effective date.*

(B) LIMITATIONS.— Nothing in this subsection shall be construed to prevent or limit the removal under subparagraph 212(a)(6)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(A)) of such an alien at any time, if the alien entered the Commonwealth after May 8, 2008, and the Secretary of Homeland Security has determined that the Government of the Commonwealth has violated section 702(i) of the Consolidated Natural Resources Act of 2008.

(2) EMPLOYMENT AUTHORIZATION.—An alien who is lawfully present and authorized to be employed in the Commonwealth pursuant to the immigration laws of the Commonwealth on the transition program effective date shall be considered authorized by the Secretary of Homeland Security to be employed in the Commonwealth until the earlier of the date—

(A) of expiration of the alien’s employment authorization under the immigration laws of the Commonwealth; or

(B) that is 2 years after the transition program effective date.

(3) REGISTRATION.—The Secretary of Homeland Security may require any alien present in the Commonwealth on or after the transition period effective date to register with the Secretary in such a manner, and according to such schedule, as he may in his discretion require. Paragraphs (1) and (2) of this subsection shall not apply to any alien who fails to comply with such registration requirement. Notwithstanding any other law, the Government of the Commonwealth shall provide to the Secretary all Commonwealth immigration records or other information that the Secretary deems necessary to assist the implementation of this paragraph or other provisions of the Consolidated Natural Resources Act of 2008. Nothing in this paragraph shall modify or limit section 262 of the Immigration and Nationality Act (8 U.S.C. 1302) or other provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to the registration of aliens.

(4) REMOVABLE ALIENS.—Except as specifically provided in paragraph (1)(A) of this subsection, nothing in this subsection shall prohibit or limit the removal of any alien who is removable under the Immigration and Nationality Act.

(5) PRIOR ORDERS OF REMOVAL.—The Secretary of Homeland Security may execute any administratively final order of exclusion, deportation or removal issued under authority of the immigration laws of the United States before, on, or after the transition period effective date, or under authority of the immigration laws of the Commonwealth before the transition period effective date, upon any subject of such order found in the Commonwealth on or after the transition period effective date, regardless whether the alien has previously been removed from the United States or the Commonwealth pursuant to such order.

(f) EFFECT ON OTHER LAWS.—The provisions of this section and of the immigration laws, as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)), shall, on the transition program effective date, supersede and replace all laws, provisions, or programs of the Commonwealth relating to the ad-

mission of aliens and the removal of aliens from the Commonwealth.

(g) ACCRUAL OF TIME FOR PURPOSES OF SECTION 212(A)(9)(B) OF THE IMMIGRATION AND NATIONALITY ACT.—No time that an alien is present in the Commonwealth in violation of the immigration laws of the Commonwealth shall be counted for purposes of inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)).

(h) REPORT ON NONRESIDENT GUESTWORKER POPULATION.—The Secretary of the Interior, in consultation with the Secretary of Homeland Security, and the Governor of the Commonwealth, shall report to the Congress not later than 2 years after May 8, 2008. The report shall include—

- (1) the number of aliens residing in the Commonwealth;
- (2) a description of the legal status (under Federal law) of such aliens;
- (3) the number of years each alien has been residing in the Commonwealth;
- (4) the current and future requirements of the Commonwealth economy for an alien workforce; and (5) such recommendations to the Congress, as the Secretary may deem appropriate, related to whether or not the Congress should consider permitting lawfully admitted guest workers lawfully residing in the Commonwealth on May 8, 2008, to apply for long-term status under the immigration and nationality laws of the United States.

(i) DEFINITIONS.—*In this section:*

(1) COMMONWEALTH.—*The term ‘Commonwealth’ means the Commonwealth of the Northern Mariana Islands.*

(2) COMMONWEALTH ONLY TRANSITION WORKER.—*The term ‘Commonwealth Only Transition Worker’ means an alien who has been admitted into the Commonwealth under the transition program and is eligible for a permit under subsection (d)(3).*

(3) GOVERNOR.—*The term ‘Governor’ means the Governor of the Commonwealth of the Northern Mariana Islands.*

(4) SECRETARY.—*The term ‘Secretary’ means the Secretary of Homeland Security.*

(5) TAX YEAR.—*The term ‘tax year’ means the fiscal year immediately preceding the current fiscal year.*

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

(A) *a citizen or national of the United States;*

(B) *an alien who has been lawfully admitted for permanent residence; or*

(C) *a citizen of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau (known collectively as the ‘Freely Associated States’) who has been lawfully admitted to the United States pursuant to—*

(i) *section 141 of the Compact of Free Association between the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia (48 U.S.C. 1921 note); or*

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

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