

115TH CONGRESS  
2D SESSION

# H. R. 5956

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Northern Mariana Is-  
3 lands U.S. Workforce Act of 2018”.

4 **SEC. 2. PURPOSES.**

5       The purposes of this Act are—

6           (1) to increase the percentage of United States  
7 workers (as defined in section 6(i) of the Joint Reso-  
8 lution entitled “A Joint Resolution to approve the  
9 ‘Covenant To Establish a Commonwealth of the  
10 Northern Mariana Islands in Political Union with  
11 the United States of America’, and for other pur-  
12 poses” (48 U.S.C. 1806)) in the total workforce of  
13 the Commonwealth of the Northern Mariana Is-  
14 lands, while maintaining the minimum number of  
15 workers who are not United States workers to meet  
16 the changing demands of the Northern Mariana Is-  
17 lands’ economy;

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

20           (3) to ensure that no United States worker—

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

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

1 **SEC. 3. TRANSITIONAL PROVISIONS.**

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

8 (1) in subsection (a)—

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

11 (B) by amending paragraph (6) to read as  
12 follows:

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

15 “(A) SUPPLEMENTAL FEE.—

16 “(i) IN GENERAL.—In addition to fees  
17 imposed pursuant to section 286(m) of the  
18 Immigration and Nationality Act (8 U.S.C.  
19 1356(m)) to recover the full costs of adju-  
20 dication services, the Secretary shall im-  
21 pose an annual supplemental fee of \$200  
22 per nonimmigrant worker on each prospec-  
23 tive employer who is issued a permit under  
24 subsection (d)(3) during the transition pro-  
25 gram. A prospective employer that is  
26 issued a permit with a validity period of

1 longer than 1 year shall pay the fee for  
2 each year of requested validity at the time  
3 the permit is requested.

4 “(ii) INFLATION ADJUSTMENT.—Be-  
5 ginning in fiscal year 2020, the Secretary,  
6 through notice in the Federal Register,  
7 may annually adjust the supplemental fee  
8 imposed under clause (i) by a percentage  
9 equal to the annual change in the Con-  
10 sumer Price Index for All Urban Con-  
11 sumers published by the Bureau of Labor  
12 Statistics.

13 “(iii) USE OF FUNDS.—Amounts col-  
14 lected pursuant to clause (i) shall be de-  
15 posited into the Treasury of the Common-  
16 wealth Government for the sole and exclu-  
17 sive purpose of funding vocational edu-  
18 cation, apprenticeships, or other training  
19 programs for United States workers.

20 “(iv) FRAUD PREVENTION AND DE-  
21 TECTION FEE.—In addition to the fees de-  
22 scribed in clause (i), the Secretary—

23 “(I) shall impose, on each pro-  
24 spective employer filing a petition  
25 under this subsection for one or more

1 nonimmigrant workers, a \$50 fraud  
2 prevention and detection fee; and

3 “(II) shall deposit and use the  
4 fees collected under subclause (I) for  
5 the sole purpose of preventing and de-  
6 tecting immigration benefit fraud in  
7 the Northern Mariana Islands, in ac-  
8 cordance with section 286(v)(2)(B) of  
9 the Immigration and Nationality Act  
10 (8 U.S.C. 1356(v)(2)(B)).

11 “(B) PLAN FOR THE EXPENDITURE OF  
12 FUNDS.—Not later than 120 days before the  
13 first day of fiscal year 2020, and annually  
14 thereafter, the Governor of the Commonwealth  
15 Government shall submit to the Secretary of  
16 Labor—

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

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

24 “(iii) a report on the changes in em-  
25 ployment of United States workers attrib-

1                   utable to expenditures of such amounts  
2                   during the previous year.

3                   “(C) DETERMINATION AND REPORT.—Not  
4                   later than 120 days after receiving each ex-  
5                   penditure plan under subparagraph (B)(i), the  
6                   Secretary of Labor shall—

7                   “(i) issue a determination on the plan;  
8                   and

9                   “(ii) submit a report to Congress that  
10                  describes the effectiveness of the Common-  
11                  wealth Government at meeting the goals  
12                  set forth in such plan.

13                  “(D) PAYMENT RESTRICTION.—Payments  
14                  may not be made in a fiscal year from amounts  
15                  deposited under subparagraph (A)(iii) before  
16                  the Secretary of Labor has approved the ex-  
17                  penditure plan submitted under subparagraph  
18                  (B)(i) for that fiscal year.”;

19                  (2) in subsection (b), by adding at the end the  
20                  following:

21                  “(3) REPORT.—Not later than December 1,  
22                  2027, the Secretary shall submit a report to the  
23                  Committee on Energy and Natural Resources of the  
24                  Senate, the Committee on the Judiciary of the Sen-  
25                  ate, 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 termi-  
nation of the transition period; and

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

(3) in subsection (d)—

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

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

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

“(A) TEMPORARY LABOR CERTIFI-  
CATION.—

“(i) IN GENERAL.—Beginning with  
petitions filed with employment start dates  
in fiscal year 2020, a petition to import a  
nonimmigrant worker under this sub-  
section may not be approved by the Sec-

1           retary unless the petitioner has applied to  
2           the Secretary of Labor for a temporary  
3           labor certification confirming that—

4                   “(I) there are not sufficient  
5                   United States workers in the Com-  
6                   monwealth who are able, willing,  
7                   qualified, and available at the time  
8                   and place needed to perform the serv-  
9                   ices or labor involved in the petition;  
10                  and

11                   “(II) employment of the non-  
12                   immigrant worker will not adversely  
13                   affect the wages and working condi-  
14                   tions of similarly employed United  
15                   States workers.

16                   “(ii) PETITION.—After receiving a  
17                   temporary labor certification under clause  
18                   (i), a prospective employer may submit a  
19                   petition to the Secretary for a Common-  
20                   wealth Only Transitional Worker permit on  
21                   behalf of the nonimmigrant worker.

22                   “(B) PREVAILING WAGE SURVEY.—

23                   “(i) IN GENERAL.—In order to effec-  
24                   tuate the requirement for a temporary  
25                   labor certification under subparagraph

1 (A)(i), the Secretary of Labor shall use, or  
2 make available to employers, an occupa-  
3 tional wage survey conducted by the Gov-  
4 ernor that the Secretary of Labor has de-  
5 termined meets the statistical standards  
6 for determining prevailing wages in the  
7 Commonwealth on an annual basis.

8 “(ii) ALTERNATIVE METHOD FOR DE-  
9 TERMINING THE PREVAILING WAGE.—In  
10 the absence of an occupational wage survey  
11 approved by the Secretary of Labor under  
12 clause (i), the prevailing wage for an occu-  
13 pation in the Commonwealth shall be the  
14 arithmetic mean of the wages of workers  
15 similarly employed in the territory of  
16 Guam according to the wage component of  
17 the Occupational Employment Statistics  
18 Survey conducted by the Bureau of Labor  
19 Statistics.

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

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

1 “(ii) the Federal minimum wage; or

2 “(iii) the prevailing wage in the Com-  
3 monwealth for the occupation in which the  
4 worker is employed.”;

5 (C) by amending paragraph (3), as redes-  
6 ignated, to read as follows:

7 “(3) PERMITS.—

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

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

19 “(i) 13,000 for fiscal year 2019;

20 “(ii) 12,500 for fiscal year 2020;

21 “(iii) 12,000 for fiscal year 2021;

22 “(iv) 11,500 for fiscal year 2022;

23 “(v) 11,000 for fiscal year 2023;

24 “(vi) 10,000 for fiscal year 2024;

25 “(vii) 9,000 for fiscal year 2025;

1 “(viii) 8,000 for fiscal year 2026;  
2 “(ix) 7,000 for fiscal year 2027;  
3 “(x) 6,000 for fiscal year 2028;  
4 “(xi) 5,000 for fiscal year 2029; and  
5 “(xii) 1,000 for the first quarter of  
6 fiscal year 2030.

7 “(C) REPORTS REGARDING THE PERCENT-  
8 AGE OF UNITED STATES WORKERS.—

9 “(i) BY GOVERNOR.—Not later than  
10 60 days before the end of each calendar  
11 year, the Governor shall submit a report to  
12 the Secretary that identifies the ratio be-  
13 tween United States workers and other  
14 workers in the Commonwealth’s workforce  
15 based on income tax filings with the Com-  
16 monwealth for the tax year.

17 “(ii) BY GAO.—Not later than Decem-  
18 ber 31, 2019, and biennially thereafter, the  
19 Comptroller General of the United States  
20 shall submit a report to the Chair and  
21 Ranking Member of the Committee on En-  
22 ergy and Natural Resources of the Senate,  
23 the Chair and Ranking Member of the  
24 Committee on Natural Resources of the  
25 House of Representatives, the Chair and

1 Ranking Member of the Committee on  
2 Health, Education, Labor, and Pensions of  
3 the Senate and the Chair and Ranking  
4 Member of the Committee on Education  
5 and the Workforce of the House of Rep-  
6 resentatives that identifies the ratio be-  
7 tween United States workers and other  
8 workers in the Commonwealth’s workforce  
9 during each of the previous 5 calendar  
10 years.

11 “(D) PETITION; ISSUANCE OF PERMITS.—

12 “(i) SUBMISSION.—A prospective em-  
13 ployer may submit a petition for a permit  
14 under this paragraph not earlier than—

15 “(I) 120 days before the date on  
16 which the prospective employer needs  
17 the beneficiary’s services; or

18 “(II) if the petition is for the re-  
19 newal of an existing permit, not ear-  
20 lier than 180 days before the expira-  
21 tion of such permit.

22 “(ii) EMPLOYMENT VERIFICATION.—

23 The Secretary shall establish a system for  
24 each employer of a Commonwealth Only  
25 Transitional Worker to submit a semi-

1 annual report to the Secretary and the  
2 Secretary of Labor that provides evidence  
3 to verify the continuing employment and  
4 payment of such worker under the terms  
5 and conditions set forth in the permit peti-  
6 tion that the employer filed on behalf of  
7 such worker.

8 “(iii) REVOCATION.—

9 “(I) IN GENERAL.—The Sec-  
10 retary, in the Secretary’s discretion,  
11 may revoke a permit approved under  
12 this paragraph for good cause, includ-  
13 ing if—

14 “(aa) the employer fails to  
15 maintain the continuous employ-  
16 ment of the subject worker, fails  
17 to pay the subject worker, fails to  
18 timely file a semiannual report  
19 required under this paragraph,  
20 commits any other violation of  
21 the terms and conditions of em-  
22 ployment, or otherwise ceases to  
23 operate as a legitimate business  
24 (as defined in clause (iv)(II));

1           “(bb) the beneficiary of such  
2 petition does not apply for admis-  
3 sion to the Commonwealth by the  
4 date that is 10 days after the pe-  
5 riod of petition validity begins, if  
6 the employer has requested con-  
7 sular processing; or

8           “(cc) the employer fails to  
9 provide a former, current, or pro-  
10 spective Commonwealth Only  
11 Transitional Worker, not later  
12 than 21 business days after re-  
13 ceiving a written request from  
14 such worker, with the original (or  
15 a certified copy of the original) of  
16 all petitions, notices, and other  
17 written communication related to  
18 the worker (other than sensitive  
19 financial or proprietary informa-  
20 tion of the employer, which may  
21 be redacted) that has been ex-  
22 changed between the employer  
23 and the Department of Labor,  
24 the Department of Homeland Se-

1                   curity, or any other Federal  
2                   agency or department.

3                   “(II) REALLOCATION OF RE-  
4                   VOKED PETITION.—Notwithstanding  
5                   subparagraph (C), for each permit re-  
6                   voked under subclause (I) in a fiscal  
7                   year, an additional permit shall be  
8                   made available for use in the subse-  
9                   quent fiscal year.

10                  “(iv) LEGITIMATE BUSINESS.—

11                         “(I) IN GENERAL.—A permit  
12                         may not be approved for a prospective  
13                         employer that is not a legitimate busi-  
14                         ness.

15                         “(II) DEFINED TERM.—In this  
16                         clause, the term ‘legitimate business’  
17                         means a real, active, and operating  
18                         commercial or entrepreneurial under-  
19                         taking that the Secretary, in the Sec-  
20                         retary’s sole discretion, determines—

21                                 “(aa) produces services or  
22                                 goods for profit, or is a govern-  
23                                 mental, charitable, or other val-  
24                                 idly recognized nonprofit entity;

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

4 “(cc) has substantially com-  
5 plied with wage and hour laws,  
6 occupational safety and health  
7 requirements, and all other Fed-  
8 eral, Commonwealth, and local  
9 requirements related to employ-  
10 ment during the preceding 5  
11 years;

12 “(dd) does not directly or in-  
13 directly engage in, or knowingly  
14 benefit from, prostitution, human  
15 trafficking, or any other activity  
16 that is illegal under Federal,  
17 Commonwealth, or local law;

18 “(ee) is a participant in  
19 good standing in the E-Verify  
20 program;

21 “(ff) does not have, as an  
22 owner, investor, manager, oper-  
23 ator, or person meaningfully in-  
24 volved with the undertaking, any  
25 individual who has been the

1 owner, investor, manager, oper-  
2 ator, or otherwise meaningfully  
3 involved with an undertaking  
4 that does not comply with item  
5 (cc) or (dd), or is the agent of  
6 such an individual; and

7 “(gg) is not a successor in  
8 interest to an undertaking that  
9 does not comply with item (cc) or  
10 (dd).

11 “(v) CONSTRUCTION OCCUPATIONS.—

12 A permit for Construction and Extraction  
13 Occupations (as defined by the Depart-  
14 ment of Labor as Standard Occupational  
15 Classification Group 47–0000) may not be  
16 issued for any worker other than a worker  
17 described in paragraph (7)(B).”;

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

22 (E) in paragraph (5), as redesignated, by  
23 adding at the end the following: “Approval of a  
24 petition filed by the new employer with a start  
25 date within the same fiscal year as the current

1 permit shall not count against the numerical  
2 limitation for that period.”; and

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

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

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

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

10 “(I) shall remain valid for a pe-  
11 riod that may not exceed 1 year; and

12 “(II) may be renewed for not  
13 more than two consecutive, 1-year pe-  
14 riods; and

15 “(ii) at the expiration of the second  
16 renewal period, an alien may not again be  
17 eligible for such a permit until after the  
18 alien has remained outside of the United  
19 States for a continuous period of at least  
20 30 days prior to the submission of a re-  
21 newal petition on their behalf.

22 “(B) LONG-TERM WORKERS.—An alien  
23 who was admitted to the Commonwealth as a  
24 Commonwealth Only Transitional Worker dur-  
25 ing fiscal year 2015, and during every subse-

1           quent fiscal year beginning before the date of  
2           the enactment of the Northern Mariana Islands  
3           U.S. Workforce Act of 2018, may receive a per-  
4           mit for a Commonwealth Only Transitional  
5           Worker that is valid for a period that may not  
6           exceed 3 years and may be renewed for addi-  
7           tional 3-year periods during the transition pe-  
8           riod. A permit issued under this subparagraph  
9           shall be counted toward the numerical cap for  
10          each fiscal year within the period of petition va-  
11          lidity.”; and

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

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

14                 “(1) COMMONWEALTH.—The term ‘Common-  
15                 wealth’ means the Commonwealth of the Northern  
16                 Mariana Islands.

17                 “(2) COMMONWEALTH ONLY TRANSITION  
18                 WORKER.—The term ‘Commonwealth Only Transi-  
19                 tion Worker’ means an alien who has been admitted  
20                 into the Commonwealth under the transition pro-  
21                 gram and is eligible for a permit under subsection  
22                 (d)(3).

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

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

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

6           “(6) 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;

10                   “(B) an alien who has been lawfully admit-  
11                   ted for permanent residence; or

12                   “(C) a citizen of the Republic of the Mar-  
13                   shall Islands, the Federated States of Micro-  
14                   nesia, or the Republic of Palau (known collec-  
15                   tively as the ‘Freely Associated States’) who  
16                   has been lawfully admitted to the United States  
17                   pursuant to—

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

24                           “(ii) section 141 of the Compact of  
25                           Free Association between the United

1 States and the Government of Palau (48  
2 U.S.C. 1931 note).”.

3 (b) RULEMAKING.—

4 (1) SECRETARY OF HOMELAND SECURITY.—

5 Notwithstanding the requirements under section  
6 553(b) of title 5, United States Code, the Secretary  
7 of Homeland Security shall publish in the Federal  
8 Register, not later than 180 days after the date of  
9 the enactment of this Act, an interim final rule that  
10 specifies how the Secretary intends to implement the  
11 amendments made by subsection (a) that relate to  
12 the responsibilities of the Secretary.

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

22 (3) RECOMMENDATIONS OF THE GOVERNOR.—

23 In developing the interim final rules under para-  
24 graphs (1) and (2), the Secretary of Homeland Se-  
25 curity and the Secretary of Labor—

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

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

14 (c) DEPARTMENT OF THE INTERIOR TECHNICAL AS-  
15 SISTANCE.—Not later than October 1, 2019, and bienni-  
16 ally thereafter, the Secretary of the Interior shall submit  
17 a report to Congress that describes the fulfillment of the  
18 Department of the Interior’s responsibilities to the Com-  
19 monwealth of the Northern Mariana Islands—

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

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

24 (3) to provide such other technical assistance  
25 and consultation as outlined in section 702(e) of the

1 Consolidated Natural Resources Act of 2008 (48  
2 U.S.C. 1807).

3 (d) OUTREACH AND TRAINING.—Not later than 120  
4 days after the date on which the Secretary of Labor pub-  
5 lishes an interim final rule in the Federal Register in ac-  
6 cordance with subsection (b)(2), the Secretary shall con-  
7 duct outreach and training in the Commonwealth of the  
8 Northern Mariana Islands for employers and workers on  
9 the foreign labor certification process set forth in section  
10 6 of the Joint Resolution entitled “A Joint Resolution to  
11 approve the ‘Covenant To Establish a Commonwealth of  
12 the Northern Mariana Islands in Political Union with the  
13 United States of America’, and for other purposes”, as  
14 amended by subsection (b), including the minimum wage  
15 requirement set forth in subsection (d)(2)(C) of such sec-  
16 tion.

17 (e) EFFECTIVE DATE.—

18 (1) IN GENERAL.—Except as specifically other-  
19 wise provided, this Act and the amendments made  
20 by this Act—

21 (A) shall take effect on the date of the en-  
22 actment of this Act; and

23 (B) shall apply to petitions for Common-  
24 wealth Only Transitional Workers filed on or  
25 after such date.

1           (2) AUTHORITY OF SECRETARY OF HOMELAND  
2       SECURITY.—The Secretary of Homeland Security, in  
3       the Secretary’s discretion, may delay the effective  
4       date of any provision of this Act relating to Com-  
5       monwealth Only Transition Workers until the effec-  
6       tive date of the interim final rule described in sub-  
7       section (b), except for provisions providing annual  
8       numerical caps for such workers.

Passed the House of Representatives June 5, 2018.

Attest:

*Clerk.*



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