

115TH CONGRESS
2D SESSION

H. R. 5956

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

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2018

Mr. BISHOP of Utah (for himself and Mr. SABLON) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

5 lands U.S. Workforce Act of 2018”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to increase the percentage of United States

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

10 lution entitled “A Joint Resolution to approve the

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

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

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

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

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

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

25 (1) in subsection (a)—

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

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

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

7 “(A) SUPPLEMENTAL FEE.—

8 “(i) IN GENERAL.—In addition to fees
9 imposed pursuant to section 286(m) of the
10 Immigration and Nationality Act (8 U.S.C.
11 1356(m)) to recover the full costs of adju-
12 dication services, the Secretary shall im-
13 pose an annual supplemental fee of \$200
14 per nonimmigrant worker on each prospec-
15 tive employer who is issued a permit under
16 subsection (d)(3) during the transition pro-
17 gram. A prospective employer that is
18 issued a permit with a validity period of
19 longer than 1 year shall pay the fee for
20 each year of requested validity at the time
21 the permit is requested.

22 “(ii) INFLATION ADJUSTMENT.—Be-
23 ginning in fiscal year 2020, the Secretary,
24 through notice in the Federal Register,
25 may annually adjust the supplemental fee

1 imposed under clause (i) by a percentage
2 equal to the annual change in the Con-
3 sumer Price Index for All Urban Con-
4 sumers published by the Bureau of Labor
5 Statistics.

6 “(iii) USE OF FUNDS.—Amounts col-
7 lected pursuant to clause (i) shall be de-
8 posited into the Treasury of the Common-
9 wealth Government for the sole and exclu-
10 sive purpose of funding vocational edu-
11 cation, apprenticeships, or other training
12 programs for United States workers.

13 “(iv) FRAUD PREVENTION AND DE-
14TECTION FEE.—In addition to the fees de-
15 scribed in clause (i), the Secretary—

16 “(I) shall impose, on each pro-
17 spective employer filing a petition
18 under this subsection for 1 or more
19 nonimmigrant workers, a \$50 fraud
20 prevention and detection fee; and

21 “(II) shall deposit and use the
22 fees collected under subclause (I) for
23 the sole purpose of preventing and de-
24 tecting immigration benefit fraud in
25 the Northern Mariana Islands, in ac-

1 cordance with section 286(v)(2)(B) of
2 the Immigration and Nationality Act
3 (8 U.S.C. 1356(v)(2)(B)).

4 “(B) PLAN FOR THE EXPENDITURE OF
5 FUNDS.—Not later than 120 days before the
6 first day of fiscal year 2020, and annually
7 thereafter, the Governor of the Commonwealth
8 Government shall submit to the Secretary of
9 Labor—

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

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

17 “(iii) a report on the changes in em-
18 ployment of United States workers attrib-
19 utable to expenditures of such amounts
20 during the previous year.

21 “(C) DETERMINATION AND REPORT.—Not
22 later than 120 days after receiving each ex-
23 penditure plan under subparagraph (B)(i), the
24 Secretary of Labor shall—

1 “(i) issue a determination on the plan;
2 and

3 “(ii) submit a report to Congress that
4 describes the effectiveness of the Common-
5 wealth Government at meeting the goals
6 set forth in such plan.

7 “(D) PAYMENT RESTRICTION.—Payments
8 may not be made in a fiscal year from amounts
9 deposited under subparagraph (A)(iii) before
10 the Secretary of Labor has approved the ex-
11 penditure plan submitted under subparagraph
12 (B)(i) for that fiscal year.”;

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

15 “(3) REPORT.—Not later than December 1,
16 2027, the Secretary shall submit a report to the
17 Committee on Energy and Natural Resources of the
18 Senate, the Committee on the Judiciary of the Sen-
19 ate, the Committee on Natural Resources of the
20 House of Representatives, and the Committee on the
21 Judiciary of the House of Representatives that—

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

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

6 (3) in subsection (d)—

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

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

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

14 “(A) TEMPORARY LABOR CERTIFI-
 15 CATION.—

16 “(i) IN GENERAL.—Beginning with
 17 petitions filed with employment start dates
 18 in fiscal year 2020, a petition to import a
 19 nonimmigrant worker under this sub-
 20 section may not be approved by the Sec-
 21 retary unless the petitioner has applied to
 22 the Secretary of Labor for a temporary
 23 labor certification confirming that—

24 “(I) there are not sufficient
 25 United States workers in the Com-

monwealth who are able, willing,
qualified, and available at the time
and place needed to perform the serv-
ices or labor involved in the petition;
and

“(II) employment of the non-
immigrant worker will not adversely
affect the wages and working condi-
tions 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 Common-
wealth Only Transitional Worker permit on
behalf of the nonimmigrant worker.

“(B) PREVAILING WAGE SURVEY.—

“(i) IN GENERAL.—In order to effec-
tuate the requirement for a temporary
labor certification under subparagraph
(A)(i), the Secretary of Labor shall use, or
make available to employers, an occupa-
tional wage survey conducted by the Gov-
ernor that the Secretary of Labor has de-
termined meets the statistical standards

1 for determining prevailing wages in the
2 Commonwealth on an annual basis.

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

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

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

21 “(ii) the Federal minimum wage; or

22 “(iii) the prevailing wage in the Com-
23 monwealth for the occupation in which the
24 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

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

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

5 “(i) BY GOVERNOR.—Not later than
6 60 days before the end of each calendar
7 year, the Governor shall submit a report to
8 the Secretary that identifies the ratio be-
9 tween United States workers and other
10 workers in the Commonwealth’s workforce
11 based on income tax filings with the Com-
12 monwealth for the tax year.

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

1 and the Workforce of the House of Rep-
2 resentatives that identifies the ratio be-
3 tween United States workers and other
4 workers in the Commonwealth’s workforce
5 during each of the previous 5 calendar
6 years.

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

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

11 “(I) 120 days before the date on
12 which the prospective employer needs
13 the beneficiary’s services; or

14 “(II) if the petition is for the re-
15 newal of an existing permit, not ear-
16 lier than 180 days before the expira-
17 tion of such permit.

18 “(ii) EMPLOYMENT VERIFICATION.—

19 The Secretary shall establish a system for
20 each employer of a Commonwealth Only
21 Transitional Worker to submit a semi-
22 annual report to the Secretary and the
23 Secretary of Labor that provides evidence
24 to verify the continuing employment and
25 payment of such worker under the terms

1 and conditions set forth in the permit peti-
2 tion that the employer filed on behalf of
3 such worker.

4 “(iii) REVOCATION.—

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

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

21 “(bb) the beneficiary of such
22 petition does not apply for admis-
23 sion to the Commonwealth by the
24 date that is 10 days after the pe-
25 riod of petition validity begins, if

1 the employer has requested con-
2 sular processing; or

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

22 “(II) REALLOCATION OF RE-
23 VOKED PETITION.—Notwithstanding
24 subparagraph (C), for each permit re-
25 voked under subclause (I) in a fiscal

1 year, an additional permit shall be
2 made available for use in the subse-
3 quent fiscal year.

4 “(iv) LEGITIMATE BUSINESS.—

5 “(I) IN GENERAL.—A permit
6 may not be approved for a prospective
7 employer that is not a legitimate busi-
8 ness.

9 “(II) DEFINED TERM.—In this
10 clause, the term ‘legitimate business’
11 means a real, active, and operating
12 commercial or entrepreneurial under-
13 taking that the Secretary, in the Sec-
14 retary’s sole discretion, determines—

15 “(aa) produces services or
16 goods for profit, or is a govern-
17 mental, charitable, or other val-
18 idly recognized nonprofit entity;

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

22 “(cc) has substantially com-
23 plied with wage and hour laws,
24 occupational safety and health
25 requirements, and all other Fed-

1 eral, Commonwealth, and local
2 requirements related to employ-
3 ment during the preceding 5
4 years;

5 “(dd) does not directly or in-
6 directly engage in, or knowingly
7 benefit from, prostitution, human
8 trafficking, or any other activity
9 that is illegal under Federal,
10 Commonwealth, or local law; and

11 “(ee) is a participant in
12 good standing in the E-Verify
13 program;

14 “(ff) does not have, as an
15 owner, investor, manager, oper-
16 ator, or person meaningfully in-
17 volved with the undertaking, any
18 individual who has been the
19 owner, investor, manager, oper-
20 ator, or otherwise meaningfully
21 involved with an undertaking
22 that does not comply with item
23 (cc) or (dd), or is the agent of
24 such an individual; and

1 “(gg) is not a successor in
2 interest to an undertaking that
3 does not comply with item (cc) or
4 (dd).

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

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

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

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

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

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

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

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

7 “(II) may be renewed for not
8 more than 2 consecutive, 1-year peri-
9 ods; and

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

17 “(B) LONG-TERM WORKERS.—An alien
18 who was admitted to the Commonwealth as a
19 Commonwealth Only Transitional Worker dur-
20 ing fiscal year 2015, and during every subse-
21 quent fiscal year beginning before the date of
22 the enactment of the Northern Mariana Islands
23 U.S. Workforce Act of 2018, may receive a per-
24 mit for a Commonwealth Only Transitional
25 Worker that is valid for a period that may not

1 exceed 3 years and may be renewed for addi-
2 tional 3-year periods during the transition pe-
3 riod. A permit issued under this subparagraph
4 shall be counted toward the numerical cap for
5 each fiscal year within the period of petition va-
6 lidity.”; and

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

8 “(i) DEFINITIONS.—In this section:

9 “(1) COMMONWEALTH.—The term ‘Common-
10 wealth’ means the Commonwealth of the Northern
11 Mariana Islands.

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

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

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

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

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

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

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

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

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

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

23 (b) RULEMAKING.—

24 (1) SECRETARY OF HOMELAND SECURITY.—
25 Notwithstanding the requirements under section

1 553(b) of title 5, United States Code, the Secretary
2 of Homeland Security shall publish in the Federal
3 Register, not later than 180 days after the date of
4 the enactment of this Act, an interim final rule that
5 specifies how the Secretary intends to implement the
6 amendments made by subsection (a) that relate to
7 the responsibilities of the Secretary.

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

17 (3) RECOMMENDATIONS OF THE GOVERNOR.—
18 In developing the interim final rules under para-
19 graphs (1) and (2), the Secretary of Homeland Se-
20 curity and the Secretary of Labor—

21 (A) shall each consider, in good faith, any
22 written public recommendations regarding the
23 implementation of this Act that are submitted
24 by the Governor of the Commonwealth not later

1 than 60 days after the date of the enactment of
2 this Act; and

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

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

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

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

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

24 (d) OUTREACH AND TRAINING.—Not later than 120
25 days after the date on which the Secretary of Labor pub-

lishes 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.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as specifically otherwise provided, this Act and the amendments made by this Act—

(A) shall take effect on the date of the enactment of this Act; and

(B) shall apply to petitions for Commonwealth Only Transitional Workers filed on or after such date.

(2) AUTHORITY OF SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security, in the Secretary’s discretion, may delay the effective date of any provision of this Act relating to Com-

1 monwealth Only Transition Workers until the effec-
2 tive date of the interim final rule described in sub-
3 section (b), except for provisions providing annual
4 numerical caps for such workers.

○