

115TH CONGRESS
2D SESSION

H. R. 5956

IN THE SENATE OF THE UNITED STATES

JUNE 6, 2018

Received

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:

KAREN L. HAAS,

Clerk.