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105TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 105-201

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NORTHERN MARIANA ISLANDS COVENANT  
IMPLEMENTATION ACT

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JUNE 5, 1998.—Ordered to be printed

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

**REPORT**

together with

**ADDITIONAL VIEWS**

[To accompany S. 1275]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1275) to implement further the Act (Public Law 94-241) approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Northern Mariana Islands Covenant Implementation Act”.

**SEC. 2. IMMIGRATION REFORM FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.**

(a) AMENDMENTS TO ACT APPROVING THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA.—Public Law 94-241 (90 Stat. 263), as amended, is further amended by adding at the end thereof the following:

**TRANSITION PROGRAM**

“SEC. 6. (a) ATTORNEY GENERAL FINDINGS.—

“(1) MINIMUM STANDARDS.—Within ninety days after the date of enactment of the Northern Mariana Islands Covenant Implementation Act, the Attorney Gen-

eral shall determine, and publish by notice in the Federal Register, minimum standards that the Attorney General deems necessary to ensure an effective system of immigration control for the Commonwealth of the Northern Mariana Islands. The determination of such minimum standards shall rest within the sole discretion of the Attorney General, shall not be subject to the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 533–557), and may be reviewed solely pursuant to paragraph (3) of this subsection.

“(2) FINDINGS.—One year after the date of enactment of the Northern Mariana Islands Covenant Implementation Act, or, if applicable, ninety days after the issuance of a final judicial determination pursuant to paragraph (3), whichever is later, the Attorney General, after consultation with the Government of the Commonwealth of the Northern Mariana Islands, shall make the following findings:

“(A) whether the Government of the Commonwealth of Northern Mariana Islands possesses the institutional capability to administer an effective system of immigration control, consistent with the minimum standards established under paragraph (1), and

“(B) if the Attorney General determines that the Government of the Commonwealth of the Northern Marianas possesses such institutional capability, whether the Government of the Commonwealth of the Northern Mariana Islands has demonstrated a genuine commitment to enforce an effective system of immigration control consistent with the minimum standards established under paragraph (1). The findings by the Attorney General regarding the institutional capability of the Government of the Commonwealth of the Northern Mariana Islands, and if applicable, the genuine commitment of the Government of the Commonwealth of the Northern Mariana Islands to enforce an effective system of immigration control, shall be published in the Federal Register in a timely manner.

“(3) ACCELERATED JUDICIAL REVIEW OF MINIMUM STANDARDS.—Except for review in the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any complaint of the Government of the Commonwealth of the Northern Mariana Islands seeking review of the minimum standards established under paragraph (1). No other person or entity shall have the right to seek review of these minimum standards. For purposes of this paragraph, a petition for review will be deemed to have been timely filed only if it is made within ninety days after publication of the standards in the Federal Register. It shall be the duty of the reviewing court to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under this paragraph. In the event that there is issued a final judicial determination invalidating the minimum standards, the Attorney General shall have published in the Federal Register new minimum standards within ninety days of such final judicial determination. Such new minimum standards shall be reviewable solely pursuant to this paragraph.

“(4) ACCELERATED JUDICIAL REVIEW OF THE FINDINGS OF THE ATTORNEY GENERAL.—The findings of the Attorney General described in subparagraphs (A) and (B) of paragraph (2) shall be deemed to be final upon publication in the Federal Register, unless the Government of the Commonwealth of the Northern Mariana Islands seeks review of these findings by filing a timely petition for review, pursuant to this paragraph, with the United States Court of Appeals for the District of Columbia Circuit. No other person or entity shall have the right to seek review of the findings of the Attorney General. For purposes of this paragraph, a petition for a review will be deemed to have been timely filed only if it is made within ninety days of publication of the findings of the Attorney General in the Federal Register. Except for review in the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any review of the findings of the Attorney General. It shall be the duty of the reviewing court to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under this paragraph. In the event that there is issued a final judicial determination upholding the findings of the Attorney General, then the provisions of subsections (b) through (j) shall take effect 180 days after the date of such a final judicial determination. In the event that there is a final judicial determination invalidating the findings of the Attorney General, subject to subparagraph (6), then the provisions of subsections (b) through (j) shall not take effect. Nothing in this paragraph shall limit the authority of the Attorney General to make new findings pursuant to paragraph (2)(B) at any time after such a final judicial determination.

“(5) EFFECTIVE DATE.—Subject to paragraphs (4) and (6), if the Attorney General finds either that the Commonwealth of the Northern Mariana Islands does not have the institutional capability to meet the minimum standards described in paragraph (2)(A) or has not demonstrated a genuine commitment to enforce an effective system of immigration control consistent with the minimum standards required in paragraph (2)(B), then subsections (b) through (j) shall take effect 180 days after the finding is published. If the Attorney General determines that the Government of the Commonwealth of Northern Mariana Islands has such institutional capability and genuine commitment, subject to paragraph (6), then the provisions of subsections (b) through (j) shall not take effect.

“(6) SUBSEQUENT FINDINGS.—If the Attorney General finds that the Government of the Commonwealth of the Northern Mariana Islands meets the requirements of subparagraphs (A) and (B) of paragraph (2), the Attorney General, every three years thereafter, shall make findings with respect to whether the Government of the Commonwealth of Northern Mariana Islands continues to meet the requirements of such subparagraphs. The subsequent findings of the Attorney General shall be reviewable solely pursuant to paragraph (4).

“(b) APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT AND ESTABLISHMENT OF A TRANSITION PROGRAM.—Except as provided in subsection (c), the provisions of the Immigration and Nationality Act (8 U.S.C. 1101) shall apply to the Commonwealth of the Northern Mariana Islands: *Provided* That there shall be a transition period not to exceed ten years following the effective date of the provisions of subsections (b) through (j) of this section (except for subsection (e)(2)(I), if needed), during which the Attorney General, in consultation with the Secretaries of State, Labor, and the Interior, shall establish, administer, and enforce a transition program for immigration to the Commonwealth of the Northern Mariana Islands (the “transition program”). The transition program established pursuant to this section shall provide for the issuance of nonimmigrant temporary alien worker visas pursuant to subsection (d), and, under the circumstances set forth in subsection (e), for family-sponsored and employment-based immigrant visas. The transition program shall be implemented pursuant to regulations to be promulgated as appropriate by each agency having responsibilities under the transition program.

“(c) EXEMPTION FROM NUMERICAL LIMITATIONS FOR H-2B TEMPORARY WORKERS.—An alien, if otherwise qualified, may seek admission to the Commonwealth of the Northern Mariana Islands as a temporary worker under section 101(a)(15)(H)(ii)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(B)) without regard to the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)).

“(d) TEMPORARY ALIEN WORKERS.—The transition program shall conform to the following requirements with respect to temporary alien workers who would otherwise not be eligible for nonimmigrant classification under the Immigration and Nationality Act:

“(1) Aliens admitted under this subsection shall have the same privileges as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1258), including the ability to apply, if otherwise eligible, for a change of nonimmigrant status under section 248 of such Act (8 U.S.C. 1258), or adjustment of status, if eligible therefor, under this section and section 245(e) of such Act (8 U.S.C. 1255(e)).

“(2)(A) The Secretary of Labor 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 temporary alien worker who would not otherwise be eligible for admission under the Immigration and Nationality Act. This system shall provide for a reduction in the allocation of permits for such workers on an annual basis, to zero, over a period not to exceed ten years. 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 Labor to promote the maximum use of, and to prevent adverse effects on wages and working conditions of, persons authorized to work in the United States under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a), and lawfully admissible freely associated state citizen labor.

“(B) The Secretary of Labor is authorized to establish and collect appropriate user fees for the purpose of this section. Amounts collected pursuant to this section shall be deposited in a special fund of the Treasury. Such amounts shall be available, to the extent and in the amounts as provided in advance in appropriations acts, for the purposes of administering this section. Such amounts are authorized to be appropriated to remain available until expended.

“(3) The Attorney General shall set the conditions for admission of non-immigrant temporary alien workers under the transition program, and the Secretary of State shall authorize the issuance of nonimmigrant visas for aliens to engage in employment only as authorized in this subsection: *Provided*, That such visas 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 the Commonwealth of the Northern Mariana Islands. An alien admitted to the Commonwealth of the Northern Mariana Islands on the basis of such a nonimmigrant visa shall be permitted to engage in employment only as authorized pursuant to the transition program. No alien shall be granted non-immigrant classification or a visa under this subsection unless the permit requirements established under paragraph (2) have been met.

“(4) An alien admitted as a nonimmigrant pursuant to this subsection shall be permitted to transfer between employers in the Commonwealth of the Northern Mariana Islands during the period of such alien’s authorized stay therein to the extent that such transfer is authorized by the Attorney General in accordance with criteria established by the Attorney General and the Secretary of Labor.

“(e) IMMIGRANTS.—With the exception of immediate relatives (as defined in section 201(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)) and, except as provided in paragraphs (1) and (2), no alien shall be granted initial admission as a lawful permanent resident of the United States at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating as the Commonwealth of the Northern Mariana Islands.

“(1) FAMILY-SPONSORED IMMIGRANT VISA.—The Attorney General, based on a joint recommendation of the Governor and Legislature of the Commonwealth of the Northern Mariana Islands, and in consultation with appropriate federal agencies, may establish a specific number of additional initial admissions as a family-sponsored immigrant at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands, pursuant to sections 202 and 203(a) of the Immigration and Nationality Act (8 U.S.C. 1152 and 1153(a)) during the following year.

“(2) EMPLOYMENT-BASED IMMIGRANT VISAS.—

“(A) If the Secretary of Labor, upon receipt of a joint recommendation of the Governor and Legislature of the Commonwealth of the Northern Mariana Islands, finds that exceptional circumstances exist with respect to the inability of employers in the Commonwealth of the Northern Mariana Islands to obtain sufficient work-authorized labor, the Attorney General may establish a specific number of employment-based immigrant visas to be made available during the following fiscal year under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)).

“(B) Upon notification by the Attorney General that a number has been established pursuant to subparagraph (a), the Secretary of State may allocate up to that number of visas without regard to the numerical limitations set forth in sections 202 and 203(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1152 and 1153(b)(3)(B)). Visa numbers allocated under this subparagraph shall be allocated first from the number of visas available under section 203(b)(3) of such Act (8 U.S.C. 1153(b)(3)), or, if such visa numbers are not available, from the number of visas available under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

“(C) Persons granted employment-based immigrant visas under the transition program may be admitted initially at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands, as lawful permanent resident of the United States.

“(D) Any immigrant visa issued pursuant to this paragraph shall be valid only for application for initial admission to the Commonwealth of the Northern Mariana Islands. The admission of any alien pursuant to such an immigrant visa shall be an admission for lawful permanent residence and employment only in the Commonwealth of the Northern Mariana Islands during the first five years after such admission. Such admission shall not authorize permanent residence or employment in any other part of the United States during such five-year period. An alien admitted for permanent residence pursuant to this paragraph shall be issued appropriate documentation identifying the person as having been admitted pursuant to the terms and conditions of this transition program, and shall be required to comply with a system for the registration and reporting of aliens admitted

for permanent residence under the transition program, to be established by the Attorney General, by regulation, consistent with the Attorney General authority under Chapter 7 of Title II of the Immigration and Nationality Act (8 U.S.C. 1301–1306).

“(E) Nothing in this paragraph shall preclude an alien who has obtained lawful permanent resident status pursuant to this paragraph from applying, if otherwise eligible under this section and under the Immigration and Nationality for an immigrant visa or admission as a lawful permanent resident under the Immigration and Nationality Act.

“(F) Any alien admitted under this subsection, who violates the provisions of this paragraph, or who is found removable or inadmissible under section 237(a)(8) U.S.C. 1227(a), or paragraphs (1), (2), (3), (4)(A), (4)(B), (6), (7), (8), or (9) of section 212(a) (8 U.S.C. 1182(a)), shall be removed from the United States pursuant to sections 239, 240, and 241 of the Immigration and Nationality Act (8 U.S.C. 1229, 1230, and 1231).

“(G) The Attorney General may establish by regulation a procedure by which an alien who has obtained lawful permanent resident status pursuant to this paragraph may apply for a waiver of the limitations on the terms and conditions of such status. The Attorney General may grant the application for waiver, in the discretion of the Attorney General, if—

“(i) the alien is not in removal proceedings,

“(ii) the alien has been a person of good moral character for the preceding five years,

“(iii) the alien has not violated the terms and conditions of the alien’s permanent resident status, and

“(iv) the alien would suffer exceptional and extremely unusual hardship were such terms and conditions not waived.

“(H) The limitations on the terms and conditions of an alien’s permanent residence set forth in this paragraph shall expire at the end of five years after the alien’s admission to the Commonwealth of the Northern Mariana Islands as a permanent resident and the alien is thereafter fully subject to the provisions of the Immigration and Nationality Act. Following the expiration of such limitations, the permanent resident alien may engage in any lawful activity, including employment, anywhere in the United States. Such an alien, if otherwise eligible for naturalization, may count the five-year period in the Commonwealth of the Northern Mariana Islands towards time in the United States for purposes of meeting the residence requirements of Title III of the Immigration and Nationality Act.

“(I) SPECIAL PROVISION TO ENSURE ADEQUATE EMPLOYMENT IN THE HOTEL INDUSTRY AFTER THE TRANSITION PERIOD ENDS.—During the fiscal year preceding the ninth anniversary of the effective date of this subsection, and in the fourth year of any extension thereafter, the Attorney General and the Secretary of Labor shall consult with the Governor of the Commonwealth of the Northern Mariana Islands to ascertain the current and future labor needs of the hotel industry in the Commonwealth of the Northern Mariana Islands, and to determine whether a five-year extension of the provisions of this paragraph would be necessary to ensure an adequate number of workers in the hotel industry. If the Attorney General and Secretary of Labor determine that such an extension is necessary to ensure an adequate number of workers in the hotel industry, the Attorney General shall provide notice by publication in the Federal Register that the provisions of this paragraph will be extended for a five-year period with respect to the hotel industry only. The Attorney General may authorize further extensions of this paragraph with respect to the hotel industry in the Commonwealth of the Northern Mariana Islands if, after the Attorney General and the Secretary of Labor have consulted with the Governor of the Commonwealth of the Northern Mariana Islands, the Attorney General determines that a further extension is required to ensure an adequate number of workers in the hotel industry in the Commonwealth of the Northern Mariana Islands.

“(f) INVESTOR VISAS.—The following requirements shall apply to aliens who have been admitted to the Commonwealth of the Northern Mariana Islands in long-term investor status under the immigration laws of the Commonwealth of the Northern Mariana Islands on or before the effective date of the Northern Mariana Islands Covenant Implementation Act and who have continuously maintained residence in the Commonwealth of the Northern Mariana Islands pursuant to such status:

“(1) Such aliens may apply to the Attorney General or a consular officer for classification as a nonimmigrant under the transition program. Any non-

immigrant status granted as a result of such application shall terminate not later than December 31, 2008.

“(2) During the six-month period beginning January 1, 2008, and ending June 30, 2008, any alien granted nonimmigrant status pursuant to paragraph (1) shall be permitted to apply to the Attorney General for status as a lawful permanent resident of the United States effective on or after January 1, 2009, and may be granted such status if otherwise admissible. Upon granting permanent residence to any such alien, the Attorney General shall advise the Secretary of State who shall reduce by one number, during the fiscal year in which the grant of status becomes effective, the total number of immigrant visas available to natives of the country of the alien’s chargeability under section 202(b) of the Immigration and Nationality Act (8 U.S.C. 1152(b)).

“(g) PERSONS LAWFULLY ADMITTED UNDER THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IMMIGRATION LAW.—Notwithstanding subsection (d) of this section, persons who would have been lawfully present in the Commonwealth of the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands on the effective date of this subsection, shall be permitted to remain in the Commonwealth of the Northern Mariana Islands for the completion of the period of admission under such laws, or for two years, whichever is less.

“(h) TRAVEL RESTRICTIONS FOR CERTAIN APPLICANTS FOR ASYLUM.—Any alien admitted to the Commonwealth of the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands or pursuant to subsections (d) or (e) of this section who files an application seeking asylum in the United States shall be required, pursuant to regulations established by the Attorney General, to remain in the Commonwealth of the Northern Mariana Islands, during the period of time the application is being adjudicated or during any appeals filed subsequent to such adjudication. An applicant for asylum who, during the time his application is being adjudicated or during any appeals filed subsequent to such adjudication, leaves the Commonwealth of the Northern Mariana Islands of his own will without prior authorization by the Attorney General thereby abandons the application.

“(i) EFFECT ON OTHER LAWS.—The provisions of this section and the Immigration and Nationality Act, as amended by the Northern Mariana Islands Covenant Implementation Act, shall supersede and replace all laws, provisions, or programs of the Commonwealth of the Northern Mariana Islands relating to the admission of aliens and the removal of aliens from the Commonwealth of the Northern Mariana Islands.

“(j) ACCRUAL OF TIME FOR PURPOSES OF SECTION 212 (A) (9)(B) OF THE IMMIGRATION AND NATIONALITY ACT.—No time that an alien was present in violation of the laws of the Commonwealth of the Northern Mariana Islands shall be counted for purposes of the ground of inadmissibility in section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)) prior to the date of enactment of this subsection.”

(b) CONFORMING AMENDMENTS.—(1) Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 101(a)) is amended:

(A) in paragraph (36), by deleting “and the Virgin Islands of the United States.” and substituting “the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands”, and;

(B) in paragraph (38), by deleting “and the Virgin Islands of the United States,” and substituting “the Virgin Island of the United States, and the Commonwealth of the Northern Mariana Islands”.

(2) Section 212(l) of the Immigration and Nationality Act (8 U.S.C. 1182(l)) is amended—

(A) in paragraph (1)—

(i) by striking “stay on Guam”, and inserting “stay on Guam and the Commonwealth of the Northern Mariana Islands”,

(ii) by inserting “a total of” after “exceed”, and,

(iii) by striking the words “after consultation with the Governor of Guam,” and inserting “after respective consultation with the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands.”;

(B) in paragraph (1)(A), by striking “on Guam”, and inserting “on Guam or the Commonwealth of the Northern Mariana Islands, respectively.”;

(C) in paragraph (2)(A), by striking “on Guam”, and inserting “on Guam or the Commonwealth of the Northern Mariana Islands, respectively.”;

(D) in paragraph (3), by striking “Government of Guam” and inserting “Government of Guam or the Government of the Commonwealth of the Northern Mariana Islands”.

(3) The amendments to the Immigration and Naturalization Act made by this subsection shall take effect when sections 6(b) through 6(j) of Public Law 94-241 take effect.

(c) TECHNICAL ASSISTANCE PROGRAM.—The Secretaries of Interior and Labor, in consultation with the Commonwealth of the Northern Mariana Islands, shall develop a program of technical assistance, including recruitment and training, to aid employers in securing employees from among United States labor or lawfully admissible freely associated state citizen labor.

(d) DEPARTMENT OF JUSTICE AND DEPARTMENT OF LABOR OPERATIONS.—The Attorney General and the Department of Labor are authorized to establish and maintain Immigration and Naturalization Service, Executive Office of Immigration Review, and Department of Labor operations in the Commonwealth of the Northern Mariana Islands for the purpose of performing their responsibilities under the Immigration and Nationality Act, as amended, and under the transition program. To the extent practicable and consistent with the satisfactory performance of their assigned responsibilities under applicable law, the Departments of Justice and Labor shall recruit and hire from among qualified applicants resident in the Commonwealth of the Northern Mariana Islands for staffing such operations.

(e) REPORT TO THE CONGRESS.—The President shall report to the Senate Committee on Energy and Natural Resources, and the House Committee on Resources, within six months after the fifth anniversary of the enactment of this Act, evaluating the overall effect of the transition program and the Immigration and Nationality Act on the Commonwealth of the Northern Mariana Islands, and at other times as the President deems appropriate.

(f) LIMITATION ON NUMBER OF TEMPORARY WORKERS PRIOR TO FINDINGS OF THE ATTORNEY GENERAL OR APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT, AND ESTABLISHMENT OF THE TRANSITION PROGRAM.—During the period between enactment of this Act and either the date that the Attorney General finds that the Government of the Commonwealth of the Northern Mariana Islands possesses the institutional capability and genuine commitment to enforce an effective system of immigration control under section 6(a)(2) of Public Law 94-241 (as amended by this Act), or, if the Attorney General finds that the Government of the Commonwealth of Northern Marianas fails to meet such conditions, the effective date of the transition program established under section 6 of such Act, the Government of the Commonwealth of the Northern Mariana Islands shall not permit an increase in the total number of temporary alien workers who are legally present in the Commonwealth of the Northern Mariana Islands on the date of enactment of this section.

(g) APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section and of the Immigration and Nationality Act with respect to the Commonwealth of the Northern Mariana Islands.

(h) EFFECTIVE DATE.—Subsections (c) through (g) of this section shall take effect when sections 6(b) through 6(j) of Public Law 94-241 take effect.

### SEC. 3. INDUSTRY COMMITTEE.

The Fair Labor Standards Act of 1938 (52 Stat. 1062, 29 U.S.C. 201) is amended as follows:

(1) in section 5 (29 U.S.C. 205), by inserting “or the Northern Mariana Islands, respectively,” after “American Samoa,” each place it appears;

(2) in paragraph 6(a)(3) (29 U.S.C. 206(a)(3))—

(A) by inserting “or the Northern Mariana Islands,” after “American Samoa,”

(B) by inserting “, except that, in the case of the Northern Mariana Islands, the rate shall not be raised more than fifty cents per year” after “of this subsection” and before the semicolon;

(3) in section 8 (29 U.S.C. 208), by inserting “or the Northern Mariana Islands, respectively,” after “American Samoa,” each place it appears; and

(4) in subsection 13(f) (29 U.S.C. 213(f)), by inserting “the Northern Mariana Islands;” after “American Samoa;”.

### PURPOSE OF THE MEASURE

The legislation, as introduced, extends the provisions of the Immigration and Nationality Act to the CNMI one year following enactment with special transition provisions. The legislation also sets the minimum wage in the CNMI at \$3.35/hour effective one month after enactment with 30 cent/hour increases each year thereafter

until the federal level is reached. The legislation amends General Note 3(a) of the Tariff Schedules to limit the duty free entry of textile or apparel product made in the CNMI unless the product has 50% U.S. labor content (phased in over three years) with a similar limitation on the use of “Made in the USA” label.

The Committee amendment would delete the amendment to the Tariff Schedules and the labor requirement for labeling. In addition, the Committee amendment would substitute an industry committee under the Fair Labor Standards Act to establish minimum wages and would condition extension of federal immigration law on a finding by the Attorney General after one year that the Commonwealth either did not have an effective immigration program or had not demonstrated a commitment to enforce one.

#### BACKGROUND AND NEED

The Commonwealth of the Northern Mariana Islands is a three hundred mile archipelago consisting of fourteen islands stretching north of Guam. The largest inhabited islands are Saipan, Rota, and Tinian. Magellan landed at Saipan in 1521 and the area was controlled by Spain until the end of the Spanish American War. Guam, the southernmost of the Marianas, was ceded to the United States following the Spanish-American War and the balance sold to Germany together with the remainder of Germany’s possessions in the Caroline and Marshall Islands.

Japan seized the area during World War I and became the mandatory power under a League of Nations Mandate for German’s possessions north of the equator on December 17, 1920. By the 1930’s, Japan had developed major portions of the area and begun to fortify the islands. Guam was invaded by Japanese forces from Saipan in 1941. The Marianas were secured after heavy fighting in 1944 and the bases on Tinian were used for the invasion of Okinawa and for raids on Japan, including the nuclear missions on Hiroshima and Nagasaki. In 1947, the Mandated islands were placed under the United Nations trusteeship system as the Trust Territory of the Pacific Islands (TTPI) and the United States was appointed as the Administering Authority. The area was divided into six administrative districts with the headquarters located in Hawaii and then in Guam. The TTPI was the only “strategic” trusteeship with review by the Security Council rather than the General Assembly of the United Nations. The Navy administered the Trusteeship, together with Guam, until 1951, when administrative jurisdiction was transferred to the Department of the Interior. The Northern Marianas, however, were returned to Navy jurisdiction from 1952–1962. In 1963, administrative headquarters were moved to Saipan.

With the establishment of the Congress of Micronesia in 1965, efforts to reach an agreement on the future political status of the area began. Attempts to maintain a political unity within the TTPI were unsuccessful, and each of the administrative districts (Kosrae eventually separated from Pohnpei District in the Carolines) sought to retain its separate identity. Four of the districts became the Federated States of Micronesia, the Marshalls became the Republic of the Marshall Islands, and Palau became the Republic of Palau, all sovereign countries in free association with the United

States under Compacts of Free Association. The Marianas had sought reunification with Guam and U.S. territorial status from the beginning of the Trusteeship. Separate negotiations with the Marianas began in December 1972 and concluded in 1975.

In 1976, Congress approved a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (P.L. 94-241). The Covenant had been approved in a United Nations observed plebescite in the Northern Mariana Islands and formed the basis for the termination of the United Nations Trusteeship with respect to the Northern Mariana Islands in 1986 together with the Republic of the Marshall Islands and the Federated States of Micronesia. Prior to termination, those provisions of the Covenant that were not inconsistent with the status of the area (such as extension of U.S. sovereignty) were made applicable by the United States as Administering Authority. Upon termination of the Trusteeship, the CNMI became a territory of the United States and its residents became United States citizens. Under the terms of the Covenant certain federal laws would be inapplicable in the CNMI, including minimum wage to take into consideration the relative economic situation of the islands and their relation to other east Asian countries.

Although the population of the CNMI was only 15,000 people in 1976 when the Covenant went into effect, the population now exceeds 60,000 and U.S. citizens are a minority. The resident population is probably about 24,000 with 28,000 alien workers and estimates of at least 10,000 illegal aliens. Permits for non-resident workers were reported at 22,500 for 1994, the largest category being for manufacturing. Tourism has climbed from about 230,000 visitors in 1987 to almost 600,000 in 1994. Total revenues for the CNMI for 1993 were estimated at \$157 million.

The 1995 census statistics from the Commonwealth list unemployment at 7.1%, with CNMI born at 14.2% and Asia born at 4.5%. Since no guest workers should be on island without jobs, the 4.5% suggests a serious problem in the CNMI. The 14.2% local unemployment suggests that either guest workers are taking jobs from local residents, or the wage rates or types of occupation are not adequate to attract local workers.

The Covenant established a unique system in the CNMI under which the local government controlled immigration and minimum wage levels and also had the benefit of duty and quota free entry of manufactured goods under the provisions of General Note 3(a) of the Harmonized Tariff Schedules. The Section by Section analysis of the Committee Report on the Covenant provides in part:

SECTION 503.—This section deals with certain laws of the United States which are not now applicable to the Northern Mariana Islands and provides that they will remain inapplicable except in the manner and to the extent that they are made applicable by specific legislation enacted after the termination of the Trusteeship. These laws are:

The Immigration and Naturalization Laws (subsection (a)). The reason this provision is included is to cope with the problems which unrestricted immigration may impose upon small island communities. Congress is aware of those

problems. \* \* \* It may well be that these problems will have been solved by the time of the termination of the Trusteeship Agreement and that the Immigration and Nationality Act containing adequate protective provisions can then be introduced to the Northern Mariana Islands. \* \* \*

The same consideration applies to the introduction of the Minimum Wage Laws. (Subsection (c)). Congress realizes that the special conditions prevailing in the various territories require different treatment. \* \* \* In these circumstances, it would be inappropriate to introduce the Act to the Northern Mariana Islands without preliminary studies. There is nothing which would prevent the Northern Mariana Islands from enacting their own Minimum Wage Legislation. Moreover, as set forth in section 502(b), the activities of the United States and its contractors in the Northern Mariana Islands will be subject to existing pertinent Federal Wages and Hours Legislation. (S. Rept. 94-433, pp. 77-78)

The Committee anticipated that by the termination of the Trusteeship, the Federal Government would have found some way of preventing a large influx of persons into the Marianas, recognizing the Constitutional limitations on restrictions on travel. In part, the Covenant attempted to deal with that possibility by enacting a restraint on land alienation for twenty-five years, subject to extension by the CNMI. The minimum wage issue was more difficult, especially in light of the Committee's experience in the Pacific. The extension of minimum wage to Kwajalein was a proximate cause of the overcrowding at Ebeye in the Kwajalein Atoll as hundreds of Marshallese moved to the small island in hope of obtaining a job at the Missile Range. The CNMI, at the time the Covenant was negotiated, had a limited private sector economy and was under the overall Trust Territory minimum wage, which was considerably lower than the federal minimum wage. The Marianas also had been a closed security area until the early 1960's, further limiting development.

Shortly after the Covenant went into effect, the CNMI began to experience a growth in tourism and a need for workers in both the tourist and construction industries. Interest also began to grow in the possibility of textile production. Initial interest was in production of sweaters made of cotton, wool and synthetic fibers. The CNMI, like the other territories, except for Puerto Rico, is outside the U.S. customs territory but can import products manufactured in the territory duty free provided that the products meet a certain value added amount under General Note 3(a) of the Tariff Schedules (then called Headnote 3(a)). The first company began operation in October 1983 and within a year was joined by two other companies. Total employment for the three firms was 250 of which 100 were local residents. At the time, Guam had a single firm, Sigallo-Pac, also engaged in sweater manufacture with 275 workers, all of whom, however, were U.S. citizens.

Attempts by territories to develop textile or apparel industries have traditionally met resistance from Stateside industries. The use of alien labor in the CNMI intensified that concern, and efforts began in 1984 to sharply cut back or eliminate the availability of

duty free treatment for the territories. The concerns also complicated Senate consideration of the Compacts of Free Association in 1985 and led to a delay of several months in floor consideration when some Members sought to attach textile legislation to the Compact legislation. By 1986, conditions led the Assistant Secretary, Territorial and International Affairs of the Department of the Interior to write the Governor on the situation and that “[w]ithout timely and effective action to reverse the current situation, I must consider proposing Congressional enactment of U.S. Immigration and Naturalization requirements for the NMI”.

By 1990, the population of the CNMI was estimated at 43,345 of whom only 16,752 had been born in the CNMI. Of the 26,593 born elsewhere, 2,491 had entered from 1980–1984, 2,591 had entered in 1985 or 1986, 6,438 had entered in 1987 or 1988, and 12,955 had entered in 1989 or 1990. Of the population in 1990, 21,332 were classified as Asian. The labor force (all persons 16+years including temporary alien labor) grew from 9,599 in 1980 to 32,522 in 1990. Manufacturing grew from 1.9% of the workforce in 1980 to 21.9% in 1990, only slightly behind construction which grew from 16.8% to 22.2% in the same time frame. The construction numbers track a major increase in hotel construction. At the same time, increases in the minimum wage were halted although wages paid to U.S. citizens (mainly public sector and management) exceeded federal levels.

In 1993, in response to Congressional concerns, the CNMI stated that it proposed to enact legislation to raise the wage rates from \$2.15 to Federal levels by stages and that legislation would be enacted to prevent any abuse of workers.

Repeated allegations of violations of applicable Federal laws relating to worker health and safety concerns with respect to immigration problems, including the admission of undesirable aliens, and reports of worker abuse, especially in the domestic and garment worker sectors, led to the inclusion of a \$7 million set aside in appropriations in 1994 to support Federal agency presence in the CNMI. The Department of the Interior reported to the Committee on April 24, 1995 that:

(1) \$3 million would be used by the CNMI for a computerized immigration identification and tracking system and for local projects;

(2) \$2.2 million would be used by the Department of Justice to strengthen law enforcement, including the hiring of an additional FBI agent and Assistant U.S. Attorney;

(3) \$1.6 million would be used by Labor for two senior investigators as well as for training; and

(4) \$200,000 would be used by Treasury for assistance in investigating violations of Federal law with respect to firearms, organized crime, and counterfeiting.

In addition, the report recommended that Federal law be enacted to phase in the current CNMI minimum wage rates to the federal minimum wage level in 30 cent increments (as then provided by CNMI legislation), end mandatory assistance to the CNMI when the current agreement was fulfilled, continue annual support of federal agencies at a \$3 million/year level (which would include

funding for a detention facility that meets Federal standards), and possible federal take-over of immigration.

During the 104th Congress, the Senate passed S. 638, legislation supported by the Administration, that in part would have enacted the phase in of the CNMI minimum wage rate to U.S. levels in 30 cent increments. No action was taken by the House, and in the interim, the CNMI delayed the scheduled increases and then instituted a limited increase of 30 cents/hour except for the garment and construction industries where the increase was limited to 15 cents/hour. The legislation also required the Commonwealth "to cooperate in the identification and, if necessary, exclusion or deportation from the Commonwealth of the Northern Mariana Islands of persons who represent security or law enforcement risks to the Commonwealth of the Northern Mariana Islands or the United States." (Section 4 of S. 638) At the same time that Congress began to consider legislation on minimum wage and immigration issues, concern over the commitment of Federal agencies to administer and enforce those Federal laws already applicable to the CNMI led the Committee to include a provision in S. 638 that the annual report on the law enforcement initiative also include: "(6) the reasons why Federal agencies are unable or unwilling to fully and effectively enforce Federal laws applicable within the Commonwealth of the Northern Mariana Islands unless such activities are funded by the Secretary of the Interior." (Section 3 of S. 638)

In February 1996, Members of the Committee visited the CNMI and met with local and Federal officials as well as inspected a garment factory and meeting with Bangladesh security guards who had not been paid and who were living in substandard conditions. As a result of the meetings and continued expressions of concern over conditions, the Committee held an oversight hearing on June 26, 1996, to review the situation in the CNMI. At the hearing, the acting Attorney General of the Commonwealth requested that the Committee delay any action on legislation until the Commonwealth could complete a study on minimum wage and promised that the study would be completed by January. That timing would have enabled the Committee to revisit the issue in the April-May 1997 period after the Administration had transmitted its annual report on the law enforcement initiative. While the CNMI Study was not finally transmitted until April, the Administration did not transmit its annual report, which was due in April, until July. On May 30, 1997, the President wrote the Governor of the Northern Marianas that he was concerned over activities in the Commonwealth and had concluded that Federal immigration, naturalization, and minimum wage laws should apply.

Given the reaction that followed the President's letter, the Chairman of the Committee asked the Administration to provide a drafting service of the language needed to implement the recommendations in the annual report and informed the Governor of the Commonwealth of the request and that the Committee intended to consider the legislation after the Commonwealth had an opportunity to review it. The drafting service was not provided until October 6, 1997, and was introduced on October 8, 1997, shortly before the elections in the CNMI. The Committee deferred hearings so as not to intrude unnecessarily into local politics and to allow the CNMI

an opportunity to review and comment on the legislation after the local elections.

The U.S. Commission on Immigration Reform conducted a site visit to the Northern Marianas in July 1997 and issued a report which, in general, supports the need to address immigration. The report, however, also raises some concerns with the extension of U.S. immigration laws. The report found problems in the CNMI “ranging from bureaucratic inefficiencies to labor abuses to an unsustainable economic, social and political system that is antithetical to most American values” but “a willingness on the part of some CNMI officials and business leaders to address the various problems”. The report expressed some concerns over the extension of Federal immigration laws, but also noted that absent the threat of Federal extension, “the CNMI is unlikely on its own to correct the problems inherent in its immigration system”. The report recommended that specific benchmarks for an effective immigration system be negotiated and that the “benchmarks should be codified in statute, with provision for immediate imposition of Federal law if the benchmarks are not met within the prescribed time.” Specifically the report recommended that “[s]hould the CNMI fail to negotiate expeditiously and in good faith, or renege on the negotiated agreements, we agree that imposition of federal law by Congress would be required.” (Emphasis in original).

While the outright exception from the minimum wage provisions of Federal law in the Covenant is an anomaly, so also is the direct phase in to Federal levels contained in the legislation as introduced. Congress has generally recognized the different economic circumstances of the territories and provided for a “special industry committee”. The objective of an industry committee is to set wage rates by industry “to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the [Federal] minimum wage rate” (29 U.S.C. 209(a)). The committees may make classifications within industries. Such committees were established for Puerto Rico and the Virgin Islands in 1940 and continued until Congress provided for step increases in 1977 for the remaining covered industries. An industry committee has been applicable in American Samoa since 1956. In 1992, the Department of the Interior provided formal Administration opposition to legislation that would have extended Federal minimum wage rates to Samoa stating that “[i]mposition of the United States mainland minimum wage on American Samoa would have a serious, perhaps devastating effect on the territorial economy and jobs”. The industry committee for Samoa set rates for 1996 that ranged from \$2.45/hour for local government employees to \$3.75/hour for the subclass of stevedoring and lighterage. Wages for the canneries was set at \$3.10/hour.

While the economic situation of the CNMI is considerably different from that of American Samoa, it is not absolutely clear that all segments of all industries in the CNMI are capable of sustaining Federal minimum wage rates. Unlike American Samoa, the minimum wage issue in the CNMI appears to involve only temporary non-immigrant workers. All U.S. citizens resident in the CNMI appear to be earning at or above Federal minimum wage levels. The CNMI completed a minimum wage analysis in April

1997 by the HayGroup. The analysis recommended against a change in current wage rates for at least three years and planning to accommodate growth. An industry committee would be able to assess the merits of claims by individual industries and structure a system that takes into account the individual needs of particular industries or sub-classes.

#### LEGISLATIVE HISTORY

S. 1275 was transmitted by the Administration on October 6, 1997, and introduced on October 8, 1997. Similar legislation, S. 1100, was introduced on July 31, 1997. Similar legislation, H.R. 1450, was also introduced in the House on April 24, 1997. A hearing was conducted before the full Committee on March 31, 1998. During the 104th Congress, the Committee considered S. 638, which passed the Senate on July 20, 1995. That legislation contained provisions dealing with immigration and minimum wage in the Commonwealth of the Northern Mariana Islands.

At the business meeting on May 20, 1998, the Committee on Energy and Natural Resources ordered S. 1275, as amended, favorably reported.

#### COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on May 20, 1998, by a majority vote of a quorum present, recommends that the Senate pass S. 1275, if amended as described herein.

The roll call vote on reporting the measure was 16 yeas, 3 nays, as follows:

YEAS	NAYS
Mr. Murkowski	Mr. Nickles*
Mr. Domenici	Mr. Kyl*
Mr. Campbell*	Mr. Grams
Mr. Thomas	
Mr. Smith*	
Mr. Gorton	
Mr. Burns	
Mr. Bumpers	
Mr. Ford*	
Mr. Bingaman	
Mr. Akaka	
Mr. Dorgan	
Mr. Graham*	
Mr. Wyden*	
Mr. Johnson	
Ms. Landrieu	

\* Indicates voted by proxy.

#### SUMMARY AND EXPLANATION OF COMMITTEE AMENDMENT

The Committee substitute amendment deletes all provisions of S. 1275 dealing with tariff treatment and use of "Made in the USA" label, substitutes a special industry committee for the provisions mandating a scheduled increase in minimum wage levels to

federal levels, and modifies the provisions extending the Federal immigration laws to provide the Northern Marianas with a final opportunity to establish effective immigration control. In the event that Federal immigration laws are extended, the amendment includes special provisions that critical labor needs will be met.

The Committee amendment deletes the provisions of S. 1275 that would impose a labor requirement on apparel products from the Northern Marianas to be eligible for duty free treatment under General Note 3(a) of the tariff schedules and for use of the "Made in the USA" label. The Committee recognizes the unique situation in the Northern Marianas, but believes that further review should occur before such a requirement is enacted. U.S. trade policy has always been expressed in terms of value added in a territory or possession for duty free treatment under General Note 3(a) and not in terms of who added the value. With the exception of Puerto Rico, all the territories lie outside the customs territory of the United States. They have all been permitted to establish industries and bring manufactured products into the U.S. customs territory duty free provided a certain amount of the value of the product was added in the territory. The overriding purpose of General Note 3(a) is to attract and promote economic development in the territories. Those territories outside the customs territory of the United States are in a delicate economic situation and Congress needs to be careful that, in seeking to prevent the islands from having an unfair advantage over other domestic manufacturing within the customs territory, we do not place the territories at a disadvantage against foreign countries. Under NAFTA, the Caribbean Basin Initiative, the Andean Trade Preference Act, and the proposed Africa trade arrangement, several countries are able to import textiles and apparel manufactured with alien labor. The labor requirements proposed in S. 1275 are not simply novel for treatment of U.S. territories, but could also create an unknown precedent for consideration of general trade policy.

The Committee amendment substitutes an industry committee for the mandatory phase in of Federal minimum wage as proposed in S. 1275. While the outright exception from the minimum wage provisions of Federal law in the Covenant is an anomaly, so also is the proposal in S. 1275. Congress has recognized the different economic circumstances of the territories and generally provided for a "special industry committee" to establish reasonable wage levels. The objective of an industry committee is to set wage rates by industry "to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the [Federal] minimum wage rate" (29 U.S.C. 208(a)). The committees may make classifications within industries. Such committees were established for Puerto Rico and the Virgin Islands in 1940 and continued until 1977. An industry committee has been applicable in American Samoa since 1956. In 1992, the Department of the Interior provided formal Administration opposition to legislation that would have extended Federal minimum wage rates to Samoa stating that "[i]mposition of the United States mainland minimum wage on American Samoa would have a serious, perhaps devastating effect on the territorial economy and jobs". The industry committee for Samoa set rates for 1996 that ranged from \$2.45/hour for local gov-

ernment employees to \$3.75/hour for the subclass of stevedoring and lighterage. Wages for the canneries was set at \$3.10/hour.

The Committee is aware, however, that in 1995 the Administrator of the Wage and Hour Division testified in opposition to such a committee for the Marianas, stating that:

The American Samoa biennial effort costs approximately \$40,000. A similar effort in the CNMI would cost more than \$200,000 and would require the expertise of valuable personnel for extended periods of time and would take six to nine months to complete.

The Committee disagrees and believes that the modest cost of an industry committee is a worthwhile expenditure. If the Administration is wrong in its estimate of the ability of the Northern Marianas economy to absorb wage increases, the cost to the Federal Government could be far more than \$200,000 every two years. Over the initial seven-year period of Covenant funding (1977-84), Congress provided over \$113 million for government operations. The Northern Marianas has not received operational grants for several years, and the Committee does not want to return to those days. The Committee believes that an industry committee will be sufficiently responsive to the needs of the Northern Marianas.

The Committee amendment also provides for full extension of the Immigration and Nationality Act contingent on the Attorney General finding that (1) the Northern Marianas does not possess the institutional capacity to administer an effective system of immigration control or (2) the Northern Marianas does not have a genuine commitment to enforce the system. The Committee does not question the commitment of the current administration of the Northern Marianas to attempt to rectify the problems that led to this legislation, but is mindful that commitments have been made in the past and then ignored. The Committee also recognizes that the Commission on Immigration Reform and others have concluded that some of the problem is structural and that a local government simply may not have the capability to maintain an effective immigration program within our Federal system. As a result, the Committee has adopted a provision that will take effect without further Congressional action if the requisite findings are made. The Committee views this as a last opportunity for the local government and has provided that the Attorney General must promptly issue standards so that the Marianas is on full notice of what will be required.

If, however, it does become necessary to extend Federal law, the Committee has also adopted amendments to the bill as introduced to ensure that those industries, especially construction, that depend on temporary workers for temporary jobs will have full access to alien labor as necessary. The Committee is also mindful of the concern by the hotel industry over access to workers, and accordingly has adopted a provision that would permit the transition provisions to be extended for additional five year periods as long as necessary. The Committee amendment requires the Attorney General and the Secretary of Labor to consult with the Northern Marianas one year prior to the expiration of the transition period, and at 5-year intervals thereafter, to determine whether the provisions will continue to be needed. The Committee expects that any uncer-

tainty be resolved in favor of the Northern Marianas. If the provisions are extended, a similar consultation will occur in the fourth year of the extension to decide if further extensions are warranted.

The Committee reluctantly adopts these provisions because it believes that conditions in the Northern Marianas leave no alternative. Extension of additional Federal laws, however, will not resolve the problems if Federal agencies do not maintain their present commitment to administration and enforcement of Federal law. A continuation of these efforts by the present administration of the Northern Marianas will also be necessary. The Committee expects that Federal agencies will continue to absorb all costs of administration and enforcement of Federal laws within their budgets. The Committee has repeatedly questioned the need for the Department of the Interior to underwrite the costs of Federal agencies administering their programs. The perception that neither the Northern Marianas nor the Federal Government have been enforcing applicable laws has contributed to the current conditions and the Committee expects that both the Federal and local governments will maintain their present commitment irrespective of whether the Federal immigration laws are extended.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section is self-explanatory.

##### *Sec. 2. Immigration reform for the Commonwealth of the Northern Mariana Islands*

Subsection (a) amends Public Law 94-241 (90 Stat. 263, 48 U.S.C. 1801) (the "Covenant Act") which approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the "Covenant") by adding a new section 6 at the end.

The new Section 6 provides: (1) the CNMI with an opportunity to establish to the satisfaction of the United States Attorney General that it is capable and willing to maintain an effective system of immigration control; (2) that if the CNMI fails to meet either of these requirements, for the extension of the Immigration and Nationality Act, as amended (the "INA") to the CNMI with a transition program to shift the CNMI's current contract worker program to a program consistent with the INA, and (3) a "fail-safe" mechanism to ensure that, in the event of labor shortages, the CNMI would be still be able to meet its labor needs under the INA.

Subsection (a) is self-explanatory.

Subsection (b) provides, except as provided in subsection (c) of this section, for a transition program not to exceed ten years following the effective date to provide for the issuance of: nonimmigrant temporary alien worker; family-sponsored, and employment-based immigrant visas. The Committee intends that the Federal Government will develop and administer the transition program in a manner which is sensitive to the legitimate economic needs and unique circumstances of the CNMI.

Subsection (c) addresses the special problems faced by employers in the CNMI due to the Commonwealth's unique geographical and

labor circumstances by providing an exemption from the normal numerical limitations on the admission of H-2B temporary workers found in the INA. This subsection would enable CNMI employers to obtain sufficient temporary workers, if United States labor and lawfully admissible freely associated state citizen labor are unavailable, for labor sensitive industries such as the construction industry.

Subsection (d) sets forth several requirements during the transition program which must be met with respect to temporary alien workers who would otherwise not be eligible for nonimmigrant classification under the INA. The intent of this subsection is to provide a smooth transition from the CNMI's current system.

Subsection (e) provides general limitations on the initial admission of most family-sponsored and employment-based immigrants to the CNMI, as well as a mechanism by which the CNMI may recommend exemptions to these general limitations. This subsection is intended to address the concerns expressed by this Committee, in approving the Covenant in 1976, regarding the effect that uncontrolled immigration may have on small island communities. This subsection further provides for a "fail-safe" mechanism to enable the CNMI to request, in cases of labor shortages, that certain unskilled immigrant worker visas intended for the CNMI be exempted from the normal worldwide and per-country limitations found in the INA for such unskilled workers. This subsection does not increase the overall number of aliens who may immigrate to the United States each year.

Paragraph (1) of this subsection authorizes the Attorney General, based on a request by the CNMI and in consultation with other Federal Government agencies, to exempt certain family-sponsored immigrants who intend to reside in the CNMI from the general limitations on initial admission at a port-of-entry in the CNMI or in Guam. For example, unless the CNMI recommends otherwise, most aliens seeking to immigrate to the CNMI on the basis of a family-relationship with a United States citizen or lawful permanent resident would be required to be admitted as a lawful permanent resident at a port-of-entry other than the CNMI or in Guam, such as Honolulu.

Paragraph (2) generally provides the Attorney General with the authority to admit, under certain exceptional circumstances and at the request of the CNMI, a limited number of employment-based immigrants without regard to the normal numerical limitations under the INA. The purpose of this provision is to provide a "fail-safe" mechanism during the transition program in the event the CNMI is unable to obtain sufficient workers who are otherwise authorized to work under United States law. This paragraph would also provide a mechanism for extending the "fail-safe" mechanism beyond the end of the transition program with respect to the hotel industry in the CNMI.

Subparagraph (A) provides that the Secretary of Labor, upon receipt of a joint recommendation of the Governor and Legislature of the CNMI, may find that exceptional circumstances exist which preclude employers in the CNMI from obtaining sufficient work-authorized labor. If the Secretary of Labor makes such a finding, the Attorney General may establish a specific number of employment-

based immigrant visas to be made available under section 203(b) of the INA during the following fiscal year.

Subparagraph (B) permits the Secretary of State to allocate up to the number of visas requested by the Attorney General without regard to the normal per-country or “other worker” employment-based third preference numerical limitations on visa issuance. These visas would be allocated first from unused employment-based third preference visa numbers, and then, if necessary, from unused alien entrepreneur visa numbers.

Subparagraph (C) is self-explanatory.

Subparagraph (D) provides that any immigrant visa issued pursuant to this paragraph shall be valid only to apply for initial admission to the CNMI. Any employment-based immigrant visas issued on the basis of a finding of “exceptional circumstances” as described in subparagraph (A) above, would be valid for admission for lawful permanent residence and employment only in the CNMI during the first five years after initial admission. Such visas would not authorize permanent residence or employment in any other part of the United States during this five-year period. The subparagraph also provides for the issuance of appropriate documentation of such admission, and, consistent with the INA, requires an alien to register and report to the Attorney General during the five-year periods. This five-year condition is intended to prevent an alien from using the CNMI-only transition program as a loophole to gain employment in another part of the United States. Without this condition, such an alien, as a lawful permanent resident, would be eligible to work anywhere in the United States, thereby avoiding the lengthy (seven years or longer) waiting period currently faced by other aliens seeking unskilled immigrant worker visas.

Subparagraph (E) provides that an alien who is subject to the five-year limitation under this paragraph may, if he or she is otherwise eligible, apply for an immigrant visa or admission as a lawful permanent resident on another basis under the INA.

Subparagraph (F) provides for the removal from the United States of any alien subject to the five-year limitation if the alien violates the provisions of this paragraph, or if the alien is found to be removable or inadmissible under applicable provisions of the INA.

Subparagraph (G) provides the Attorney General with the authority to grant a waiver of the five-year limitation in certain extraordinary situations where the Attorney General finds that the alien would suffer exceptional and extremely unusual hardship were such conditions not waived. The benefits of this provision would be unavailable to a person who has violated the terms and conditions of his or her permanent resident status, such as an alien who has engaged in the unauthorized employment.

Subparagraph (H) is self-explanatory.

Subparagraph (I) provides for five-year extensions, as necessary, of the employment-based immigrant visa provisions of this paragraph, with respect to workers in the hotel industry. The Committee recognizes that the hotel industry plays a central role in the economy of the CNMI. Accordingly, this provision is designed to ensure that there be a sufficient number of workers available to fill positions in the hotel industry after the transition period ends.

Under this subparagraph, the Attorney General and the Secretary of Labor are required to consult with the Government of the CNMI during the ninth year of the transition program, and at five-year intervals thereafter, for the specific purpose of ascertaining the current and future needs of the CNMI's hotel industry. If the Attorney General and the Secretary of Labor determine, after such consultations, that an extension is required, the Attorney General will have published in the Federal Register a notice extending the provisions of this paragraph for a five-year period. The Committee intends that the Federal government consider sympathetically a request by the Governor of the CNMI for extension of this special feature of the transition program and resolve any uncertainties in favor of the Northern Marianas.

Subsection (f) is self-explanatory.

Subsection (g) is self-explanatory.

Subsection (h) is self-explanatory.

Subsection (i) is self-explanatory.

Subsection (j) is self-explanatory.

Section 2, subsection (b) provides for three conforming amendments to the INA.

Section 2, subsection (c) is self-explanatory.

Section 2, subsection (d) is self-explanatory.

Section 2, subsection (e) is self-explanatory.

Section 2, subsection (f) is self-explanatory.

Section 2, subsection (g) is self-explanatory.

Section 2, subsection (h) is self-explanatory.

### *Sec. 3. Industry committee*

This section extends to the CNMI the provisions of the Fair Labor Standards Act for a biennial special industry committee as has been applicable to American Samoa since 1956 and limits any recommended increase to 50 cents per year.

## COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

## 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. 1275, as reported. The bill is a regulatory measure and would impose Government-established standards by establishing an industry committee under the Fair Labor Standards Act to establish minimum wage levels in the Commonwealth of the Northern Mariana Islands.

The legislation contemplates the possibility of extension of the Federal immigrant laws. To the extent that personal information is obtained as part of the normal administration of the program elsewhere in the United States, the same provisions would apply

in the Northern Mariana Islands. If the Commonwealth administers and enforces an effective immigration system under current law and federal law is not extended, it is likely that the same information would be obtained. Therefore, there would be no additional impact on personal privacy.

Some additional paperwork would result from the enactment of S. 1275, as ordered reported, but the Committee does not believe that it would be significant.

#### EXECUTIVE COMMUNICATIONS

The pertinent communication by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 1275 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, DC, October 6, 1997.*

Hon. FRANK H. MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This is in response to your letter of July 16, 1997, requesting a drafting service that would implement the Administration's recommendations for the Commonwealth of Northern Mariana Islands (CNMI) contained in the Administration's July 1997 report on the Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement. Pursuant to your request, I have enclosed a legislative proposal that addresses the recommendations in the Administration's report. The Administration strongly supports the enactment of this proposal.

While we are firm in our commitment to the proposals outlined in the recommendations, the Administration is, however, willing to consider amendments. A Federal policy framework is needed to respond to the use of the CNMI as a platform for circumvention of United States' garment duties and quotas, the CNMI's ineffective immigration control, and the unhealthy and unsustainable dependence on temporary low-paid foreign workers in the islands.

President Clinton, in his May 30, 1997 letter to Governor Froilan Tenorio, stated that his Administration would consult with the Governor and other representatives of the Commonwealth regarding the application of laws to the CNMI. Following through on the President's commitment, the Departments of Labor, Justice (INS), State, Commerce, and Interior sent senior representatives to the CNMI in August to discuss legislative implementation of the recommendations contained in the report. While the Governor did not meet with this Federal delegation, it was able to convey to many local government and business leaders the long-standing concerns of the Federal government regarding the CNMI's garment and foreign labor policies, discuss details of the Administration's recommendations for addressing these problems, and hear local concerns regarding the recommendations. The information gained on the trip was carefully considered. In closing, let me note that the Administration looks forward to working with you and the CNMI to enact legislation that will reconcile Federal responsibilities with the CNMI's needs.

The Office of Management and Budget advises that there is no obligation to the presentation of this proposal to Congress, and that its enactment would be in accord with the Administration's program.

Sincerely,

ALLEN P. STAYMAN,  
*Director, Office of Insular Affairs.*

## ADDITIONAL VIEWS OF SENATOR BUMPERS

I was a cosponsor of S. 1100, the first bill that Senator Akaka introduced during the 105th Congress to implement reforms in the Commonwealth of the Northern Mariana Islands (CNMI). As such, I also supported S. 1275 as introduced.

During consideration of S. 1275, the Committee adopted a compromise amendment in the nature of a substitute that modifies some provisions of the bill and deletes other provisions in their entirety. Overall, the Committee reported bill is weaker than the introduced version of S. 1275. While I understand the reasons for making the changes, I believe that the amendment adopted by the Committee represents the minimum Congressional action that must be taken with respect to implementing reforms in the CNMI.

As time passes, the situation in the CNMI continues to worsen. Three events have occurred since the Committee's hearing on March 31, 1998, that underscore the importance of enacting reforms in the CNMI. First, Bangladesh has sent a protest to the U.S. State Department expressing official concern regarding the treatment of Bangladeshi workers in the CNMI (Nepal and Sri Lanka filed similar protests in the recent past). Second, local CNMI officials deported two Sri Lankan nationals from the CNMI even though the United Nations High Commissioner on Refugees contacted the CNMI government requesting that they be able to present claims for refugee protection. This action was a violation of U.S. international treaty obligations. Third, the Chairman of the Saipan Garment Manufacturers Association is under investigation following the discovery and arrest of 20 illegal alien workers who were building this house.

In addition, I disagree with that portion of the "Summary and Explanation of Committee Amendment" section of this report that characterizes my vote to report S. 1275 as a "reluctant" step. As the Chairman pointed out during the business meeting, "this action that we have taken by reporting out this bill is far overdue relative to the inability, because of internal pressures within Saipan, to address meaningful reforms controlling immigration and wage conditions in that area." The Chairman also listed the numerous times since 1986 that we have expressed concern, either through correspondence or legislation, about the situation in the CNMI. It is clear that the time has come for Congress to enact meaningful reforms and I look forward to the bill's expedient consideration by the full Senate.

DALE BUMPERS.

## 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.

XXX, 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):

[Public Law 94-241]

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.

\* \* \* \* \*

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

\* \* \* \* \*

"SECTION 503. The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

"(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;

"(b) except as otherwise provided in Subsection (b) of Section 502, the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

"(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

\* \* \* \* \*

TRANSITION PROGRAM

SEC. 6. (a) ATTORNEY GENERAL FINDINGS.—

(1) MINIMUM STANDARDS.—*Within ninety days after the date of enactment of the Northern Mariana Islands Covenant Implementation Act, the Attorney General shall determine, and publish by notice in the Federal Register, minimum standards that the Attorney General deems necessary to ensure an effective system of immigration control for the Commonwealth of the Northern Mariana Islands. The determination of such minimum standards shall rest within the sole discretion of the Attorney General, shall not be subject to the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 533-557), and may be reviewed solely pursuant to paragraph (3) of this subsection.*

(2) FINDINGS.—*One year after the date of enactment of the Northern Mariana Islands Covenant Implementation Act, or, if applicable, ninety days after the issuance of a final judicial determination pursuant to paragraph (3), whichever is later, the Attorney General, after consultation with the Government of the Commonwealth of the Northern Mariana Islands, shall make the following findings:*

(A) whether the Government of the Commonwealth of the Northern Mariana Islands possesses the institutional capability to administer an effective system of immigration control, consistent with the minimum standards established under paragraph (1), and

(B) if the Attorney General determines that the Government of the Commonwealth of the Northern Marianas possesses such institutional capability, whether the Government of the Commonwealth of the Northern Mariana Islands has demonstrated a genuine commitment to enforce an effective system of immigration control consistent with the minimum standards established under paragraph (1). The findings by the Attorney General regarding the institutional capability of the Government of the Commonwealth of the Northern Mariana Islands, and if applicable, the genuine commitment of the Government of the Commonwealth of the Northern Mariana Islands to enforce an effective system of immigration control, shall be published in the Federal Register in a timely manner.

(3) ACCELERATED JUDICIAL REVIEW OF MINIMUM STANDARDS.—Except for review in the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any complaint of the Government of the Commonwealth of the Northern Mariana Islands seeking review of the minimum standards established under paragraph (1). No other person or entity shall have the right to seek review of these minimum standard. For purposes of this paragraph, a petition for review will be deemed to have been timely filed only if it is made within ninety days after publication of the standards in the Federal Register. It shall be the duty of the reviewing court to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under this paragraph. In the event that there is issued a final judicial determination invalidating the minimum standards, the Attorney General shall have published in the Federal Register new minimum standards within ninety days of such final judicial determination. Such new minimum standards shall be reviewable solely pursuant to this paragraph.

(4) ACCELERATED JUDICIAL REVIEW OF THE FINDINGS OF THE ATTORNEY GENERAL.—The findings of the Attorney General described in subparagraphs (A) and (B) of paragraph (2) shall be deemed to be final upon publication in the Federal Register, unless the Government of the Commonwealth of the Northern Mariana Islands seeks review of these findings by filing a timely petition for review, pursuant to this paragraph, with the United States Court of Appeals for the District of Columbia Circuit. No other person or entity shall have the right to seek review of the findings of the Attorney General. For purposes of this paragraph, a petition for review will be deemed to have been timely filed only if it is made within ninety days of publication of the findings of the Attorney General in the Federal Register. Except for review in the Supreme Court of the United States, the United States Court of Appeals for the District of Co-

*lumbia Circuit shall have original and exclusive jurisdiction over any review of the findings of the Attorney General. It shall be the duty of the reviewing court to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under this paragraph. In the event that there is issued a final judicial determination upholding the findings of the Attorney General, then the provisions of subsections (b) through (j) shall take effect 180 days after the date of such a final judicial determination. In the event that there is a final judicial determination invalidating the findings of the Attorney General, subject to subparagraph (6), then the provisions of subsections (b) through (j) shall not take effect. Nothing in this paragraph shall limit the authority of the Attorney General to make new findings pursuant to paragraph (2)(B) at any time after such a final judicial determination.*

*(5) EFFECTIVE DATE.—Subject to paragraphs (4) and (6), if the Attorney General finds either that the Commonwealth of the Northern Mariana Islands does not have the institutional capability to meet the minimum standards described in paragraph (2)(A) or has not demonstrated a genuine commitment to enforce an effective system of immigration control consistent with the minimum standards required in paragraph (2)(b), then subsections (b) through (j) shall take effect 180 days after the finding is published. If the Attorney General determines that the Government of the Commonwealth of the Northern Mariana Islands has such institutional capability and genuine commitment, subject to paragraph (6), then the provisions of subsections (b) through (j) shall not take effect.*

*(6) SUBSEQUENT FINDINGS.—If the Attorney General finds that the Government of the Commonwealth of the Northern Mariana Islands meets the requirements of subparagraphs (A) and (B) of paragraph (2), the Attorney General, every three years thereafter, shall make findings with respect to whether the Government of the Commonwealth of the Northern Mariana Islands continues to meet the requirements of such subparagraphs. The subsequent findings of the Attorney General shall be reviewable solely pursuant to paragraph (4).*

*(b) APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT AND ESTABLISHMENT OF A TRANSITION PROGRAM.—Except as provided in subsection (c), the provisions of the Immigration and Nationality Act (8 U.S.C. 1101) shall apply to the Commonwealth of the Northern Mariana Islands: Provided That there shall be a transition period not to exceed ten years following the effective date of the provisions of subsections (b) through (j) of this section (except for subsection (e)(2)(1), if needed), during which the Attorney General, in consultation with the Secretaries of State, Labor, and the Interior, shall establish, administer, and enforce a transition program for immigration to the Commonwealth of the Northern Mariana Islands (the “transition program”). The transition program established pursuant to this section shall provide for the issuance of non-immigrant temporary alien worker visas pursuant to subsection (d), and, under the circumstances set forth in subsection (e), for family-sponsored and employment-based immigrant visas. The transition program shall be implemented pursuant to regulations to be pro-*

mulgated as appropriate by each agency having responsibilities under the transition program.

(c) *EXEMPTION FROM NUMERICAL LIMITATIONS FOR H-2B TEMPORARY WORKERS.*—An alien, if otherwise qualified, may seek admission to the Commonwealth of Northern Mariana Islands as a temporary worker under section 101(a)(15)(H)(ii)(B) of the Immigration and National Act (8 U.S.C. 1101(a)(15)(H)(ii)(B)) without regard to the numerical limitation set forth in section 214(g) of such Act (8 U.S.C. 1184(g)).

(d) *TEMPORARY ALIEN WORKERS.*—The transition program shall conform to the following requirements with respect to temporary alien workers who would otherwise not be eligible for nonimmigrant classification under the Immigration and National Act:

(1) Aliens admitted under this subsection shall have the same privileges as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1258), including the ability to apply, if otherwise eligible, for a change of nonimmigrant status under section 248 of such Act (8 U.S.C. 1258), or adjustment of status, if eligible therefor, under this section and section 245(e) of such Act (8 U.S.C. 1255(e)).

(2)(A) The Secretary of Labor 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 temporary alien worker who would not otherwise be eligible for admission under the Immigration and Nationality Act. This system shall provide for a reduction in the allocation of permits for such workers on an annual basis, to zero, over a period not to exceed ten years. 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 Labor to promote the maximum use of, and to prevent adverse effects on wages and working conditions of, persons authorized to work in the United States under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a), and lawfully admissible freely associated state citizen labor.

(B) The Secretary of Labor is authorized to establish and collect appropriate user fees for the purpose of this section. Amounts collected pursuant to this section shall be deposited in a special fund of the Treasury. Such amounts shall be available, to the extent and in the amounts as provided in advance in appropriations acts, for the purposes of administering this section. Such amounts are authorized to be appropriated to remain available until expended.

(3) The Attorney General shall set the conditions for admission of nonimmigrant temporary alien workers under the transition program, and the Secretary of State shall authorize the issuance of nonimmigrant visas for aliens to engage in employment only as authorized in this subsection: Provided, That such visas 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 the Commonwealth of Northern Mariana Islands on the basis of such a nonimmigrant visa shall be permitted to engage in employment only as author-

ized pursuant to the transition program. No alien shall be granted nonimmigrant classification or a visa under this subsection unless the permit requirements established under paragraph (2) have been met.

(4) An alien admitted as a nonimmigrant pursuant to this subsection shall be permitted to transfer between employers in the Commonwealth of Northern Mariana Islands during the period of such alien's authorized stay therein to the extent that such transfer is authorized by the Attorney General in accordance with criteria established by the Attorney General and the Secretary of Labor.

(e) IMMIGRANTS.—With the except of immediate relatives (as defined in section 201(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2))) and, except as provided in paragraphs (1) and (2), no alien shall be granted initial admission as a lawful permanent resident of the United States at a port-of-entry in the Commonwealth of Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of Northern Mariana Islands.

(1) FAMILY-SPONSORED IMMIGRANT VISAS—The Attorney General, based on a joint recommendation of the Governor and Legislature of the Commonwealth of Northern Mariana Islands, and in consultation with appropriate federal agencies, may establish a specific number of additional initial admissions as a family-sponsored immigrant at a port-of-entry in the Commonwealth of Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of Northern Mariana Islands, pursuant to sections 202 and 203(a) of the Immigration and Nationality Act (8 U.S.C. 1152 and 1153(a)) during the following fiscal year.

(2) EMPLOYMENT-BASED IMMIGRANT VISAS.—

(A) If the Secretary of Labor, upon receipt of a joint recommendation of the Governor and Legislature of the Commonwealth of Northern Mariana Islands, finds that exceptional circumstances exist with respect to the inability of employers in the Commonwealth of Northern Mariana Islands to obtain sufficient work-authorized labor, the Attorney General may establish a specific number of employment-based immigrant visas to be made available during the following fiscal year under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)).

(B) Upon notification by the Attorney General that a number has been established pursuant to subparagraph (A), the Secretary of State may allocate up to that number of visas without regard to the numerical limitations set forth in sections 202 and 203(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1152 and 1153(b)(3)(B)). Visa numbers allocated under this subparagraph shall be allocated first from the number of visas available under section 203(b)(3) of such Act (8 U.S.C. 1153(b)(3)), or, if such visa numbers are not available, from the number of visas available under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

(C) *Persons granted employment-based immigrant visas under the transition program may be admitted initially at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands, as lawful permanent residents of the United States.*

(D) *Any immigrant visa issued pursuant to this paragraph shall be valid only for application for initial admission to the Commonwealth of the Northern Mariana Islands. The admission of any alien pursuant to such an immigrant visa shall be an admission for lawful permanent residence and employment only in the Commonwealth of the Northern Mariana Islands during the first five years after such admission. Such admission shall not authorize permanent residence or employment in any other part of the United States during such five-year period. An alien admitted for permanent residence pursuant to this paragraph shall be issued appropriate documentation identifying the person as having been admitted pursuant to the terms and conditions of this transition program, and shall be required to comply with a system for the registration and reporting of aliens admitted for permanent residence under the transition program, to be established by the Attorney General, by regulation, consistent with the Attorney General's authority under Chapter 7 of Title II of the Immigration and Nationality Act (8 U.S.C. 1301–1306).*

(E) *Nothing in this paragraph shall preclude an alien who has obtained lawful permanent resident status pursuant to this paragraph from applying, if otherwise eligible under this section and under the Immigration and Nationality Act for an immigrant visa or admission as a lawful permanent resident under the Immigration and Nationality Act.*

(F) *Any alien admitted under this subsection, who violates the provisions of this paragraph, or who is found removable or inadmissible under section 237(a) (8 U.S.C. 1227(a)), or paragraphs (1), (2), (3), (4)(A), (4)(B), (6), (7), (8), or (9) or section 212(a) (8 U.S.C. 1182(a)), shall be removed from the United States pursuant to sections 239, 240, and 241 of the Immigration and Nationality Act (8 U.S.C. 1229, 1230, and 1231).*

(G) *The Attorney General may establish by regulation a procedure by which an alien who has obtained lawful permanent resident status pursuant to this paragraph may apply for a waiver of the limitations on the terms and conditions of such status. The Attorney General may grant the application for waiver, in the discretion of the Attorney General, if—*

- (i) the alien is not in removal proceedings,*
- (ii) the alien has been a person of good moral character for the preceding five years,*
- (iii) the alien has not violated the terms and conditions of the alien's permanent resident status, and*

(iv) the alien would suffer exceptional and extremely unusual hardship were such terms and conditions not waived.

(H) The limitations on the terms and conditions of an alien's permanent residence set forth in this paragraph shall expire at the end of five years after the alien's admission to the Commonwealth of the Northern Mariana Islands as a permanent resident and the alien is thereafter fully subject to the provisions of the Immigration and Nationality Act. Following the expiration of such limitations, the permanent resident alien may engage in any lawful activity, including employment, anywhere in the United States. Such an alien, if otherwise eligible for naturalization, may count the five-year period in the Commonwealth of the Northern Mariana Islands towards time in the United States for purposes of meeting the residence requirements of Title III of the Immigration and Nationality Act.

(I) SPECIAL PROVISION TO ENSURE ADEQUATE EMPLOYMENT IN THE HOTEL INDUSTRY AFTER THE TRANSITION PERIOD ENDS.—During the fiscal year preceding the ninth anniversary of the effective date of this subsection, and in the fourth year of any extension thereafter, the Attorney General and the Secretary of Labor shall consult with the Governor of the Commonwealth of the Northern Mariana Islands to ascertain the current and future labor needs of the hotel industry in the Commonwealth of the Northern Mariana Islands, and to determine whether a five-year extension of the provisions of this paragraph would be necessary to ensure an adequate number of workers in the hotel industry. If the Attorney General and Secretary of Labor determine that such an extension is necessary to ensure an adequate number of workers in the hotel industry, the Attorney General shall provide notice by publication in the Federal Register that the provisions of this paragraph will be extended for a five-year period with respect to the hotel industry only. The Attorney General may authorize further extensions of this paragraph with respect to the hotel industry in the Commonwealth of the Northern Mariana Islands if, after the Attorney General and the Secretary of Labor have consulted with the Governor of the Commonwealth of the Northern Mariana Islands, the Attorney General determines that a further extension is required to ensure an adequate number of workers in the hotel industry in the Commonwealth of the Northern Mariana Islands.

(f) INVESTOR VISAS.—The following requirements shall apply to aliens who have been admitted to the Commonwealth of the Northern Mariana Islands in long-term investor status under the immigration laws of the Commonwealth of the Northern Mariana Islands on or before the effective date of the Northern Mariana Islands Covenant Implementation Act and who have continuously maintained residence in the Commonwealth of the Northern Mariana Islands pursuant to such status:

(1) Such aliens may apply to the Attorney General or a consular officer for classification as a nonimmigrant under the

transition program. Any nonimmigrant status granted as a result of such application shall terminate not later than December 31, 2008.

(2) During the six-month period beginning January 1, 2008, and ending June 30, 2008, any alien granted nonimmigrant status pursuant to paragraph (1) shall be permitted to apply to the Attorney General for status as a lawful permanent resident of the United States effective on or after January 1, 2009, and may be granted such status if otherwise admissible. Upon granting permanent residence to any such alien, the Attorney General shall advise the Secretary of State who shall reduce by one number, during the fiscal year in which the grant of status becomes effective, the total number of immigrant visas available to natives of the country of the alien's chargeability under section 202(b) of the Immigration and Nationality Act (8 U.S.C. 1152(b)).

(g) **PERSONS LAWFULLY ADMITTED UNDER THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IMMIGRATION LAW.**—Notwithstanding subsection (d) of this section, persons who would have been lawfully present in the Commonwealth of the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands on the effective date of this subsection, shall be permitted to remain in the Commonwealth of the Northern Mariana Islands for the completion of the period of admission under such laws, or for two years, whichever is less.

(h) **TRAVEL RESTRICTIONS FOR CERTAIN APPLICANTS FOR ASYLUM.**—Any alien admitted to the Commonwealth of the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands or pursuant to subsections (d) or (e) of this section who files an application seeking asylum in the United States shall be required, pursuant to regulations established by the Attorney General, to remain in the Commonwealth of the Northern Mariana Islands, during the period of time the application is being adjudicated or during any appeals filed subsequent to such adjudication. An applicant for asylum who, during the time his application is being adjudicated or during any appeals filed subsequent to such adjudication, leaves the Commonwealth of the Northern Mariana Islands of his own will without prior authorization by the Attorney General thereby abandons the application.

(i) **EFFECT ON OTHER LAWS.**—The provisions of this section and the Immigration and Nationality Act, as amended by the Northern Mariana Islands Covenant Implementation Act, shall supersede and replace all laws, provisions, or programs of the Commonwealth of the Northern Mariana Islands relating to the admission of aliens and the removal of aliens from the Commonwealth of the Northern Mariana Islands.

(j) **ACCRUAL OF TIME FOR PURPOSES OF SECTION 212(A)(9)(B) OF THE IMMIGRATION AND NATIONALITY ACT.**—No time that an alien was present in violation of the laws of the Commonwealth of the Northern Mariana Islands shall be counted for purposes of the ground of inadmissibility in section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)) prior to the date of enactment of this subsection.

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## [Public Law 414—June 27, 1952]

AN ACT To revise the laws relating to immigration, naturalization, and nationality; and for other purposes

\* \* \* \* \*

## SEC. 101. (a) \* \* \*

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(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, [and the Virgin Islands of the United States.] *the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.*

\* \* \* \* \*

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, [and the Virgin Islands of the United States.] *the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.*

\* \* \* \* \*

(1) GUAM; WAIVER OF REQUIREMENTS FOR NONIMMIGRANT VISITORS; CONDITIONS OF WAIVER; ACCEPTANCE OF FUNDS FROM GUAM.—

(1) The requirement of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a non-immigrant visitor for business or pleasure and solely for entry into and [stay on Guam] *stay on Guam and the Commonwealth of the Northern Mariana Islands* for a period not to exceed a total of fifteen days, if the Attorney General, the Secretary of the State and the Secretary of the Interior, [after consultation with the Governor of Guam,] *after respective consultation with the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands*, jointly determine that—

(A) an adequate arrival and departure control system has been developed [on Guam,] *on Guam or the Commonwealth of the Northern Mariana Islands, respectively*, and

(B) such as waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) An alien may not be provided a waiver under the this subsection unless the alien has waived any right—

(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry [into Guam,] *into Guam or the Commonwealth of the Northern Mariana Islands, respectively*, or

(B)— to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(3) If adequate appropriated funds to carry out this subsection are not otherwise available, the Attorney General is au-

thorized to accept from the [Government of Guam] *Government of Guam or the Government of Commonwealth of the Northern Mariana Islands* such funds as may be tendered to cover all or any part of the cost of administration and enforcement of this subsection.

[PUBLIC LAWS—CH. 676—JUNE 25, 1938]

AN ACT To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the “Fair Labor Standards Act of 1938”.

\* \* \* \* \*

SEC. 5. (a) The Secretary of Labor shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in American Samoa or the Northern Mariana Islands, respectively, engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce, or the Secretary may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of American Samoa *or the Northern Mariana Islands, respectively*, where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of American Samoa *or the Northern Mariana Islands, respectively*. In determining the minimum rate or rates of wages to be paid, and in determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees shall be subject to the provisions of section 8.

\* \* \* \* \*

SEC. 6. \* \* \*

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(3) if such employee is employed in American Samoa, *or the Northern Mariana Islands*, in lieu of the rate or rates provided by this subsection or subsection (b), not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint pursuant to sections 5 and 8. The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection, *except that, in the case of the Northern Mariana Islands, the rate shall not be raised more than fifty cents per year;*

\* \* \* \* \*

SEC. 8. (a) The policy of this Act with respect to industries or enterprises in American Samoa, *or the Northern Mariana Islands, respectively*, engaged in commerce or in the production of goods for

commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 6(a) but for section 6(c).

The Secretary of Labor shall from time to time convene an industry committee or committees, appointed pursuant to section 5, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers in American Samoa, *or the Northern Mariana Islands, respectively*, engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classification therein, and who but for section 6(a)(3) would be subject to the minimum wage requirements of section 6(a)(1). Minimum rates of wages established in accordance with this section which are not equal to the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) or section 6(a) shall be reviewed by such a committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) Upon the convening of any such industry committee, the Secretary shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Secretary the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in American Samoa, *or the Northern Mariana Islands, respectively*, a competitive advantage over any industry in the United States outside American Samoa, *or the Northern Mariana Islands, respectively*; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a) or 6(b), which would be applicable but for section 6(a)(3), unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.

\* \* \* \* \*

(f) The provisions of sections 6, 7, 11, 12, shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; *the Northern Mariana Islands*; Guam; Wake Island; Eniwetok Atoll, Kwajalein Atoll; and Johnston Island.