

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 2325

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE.**

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

5 lands U.S. Workforce Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to increase the percentage of United States

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

10 lution entitled “A Joint Resolution to approve the

11 ‘Covenant To Establish a Commonwealth of the

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

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

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

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

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

17 **SEC. 3. TRANSITIONAL PROVISIONS.**

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

24 (1) in subsection (a)—

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

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

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

7 “(A) SUPPLEMENTAL FEE.—

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

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

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

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

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

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

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

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

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

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

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

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

22 “(i) issue a determination on the plan;
23 and

24 “(ii) submit a report to Congress that
25 describes the effectiveness of the Common-

1 wealth Government at meeting the goals
2 set forth in such plan.

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

9 (2) in subsection (b), by adding at the end the
10 following:

11 “(3) REPORT.—Not later than December 1,
12 2027, the Secretary shall submit a report to the
13 Committee on Energy and Natural Resources of the
14 Senate, the Committee on the Judiciary of the Sen-
15 ate, the Committee on Natural Resources of the
16 House of Representatives, and the Committee on the
17 Judiciary of the House of Representatives that—

18 “(A) projects the number of asylum claims
19 the Secretary anticipates following the termi-
20 nation of the transition period; and

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

1 (3) in subsection (d)—

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

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

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

9 “(A) TEMPORARY LABOR CERTIFI-
10 CATION.—

11 “(i) IN GENERAL.—Beginning in fis-
12 cal year 2020, a petition to import a non-
13 immigrant worker under this subsection
14 may not be approved by the Secretary un-
15 less the petitioner has applied to the Sec-
16 retary of Labor for a temporary labor cer-
17 tification confirming that—

18 “(I) there are not sufficient
19 United States workers in the Com-
20 monwealth who are able, willing,
21 qualified, and available at the time
22 and place needed to perform the serv-
23 ices or labor involved in the petition;
24 and

1 “(II) employment of the non-
2 immigrant worker will not adversely
3 affect the wages and working condi-
4 tions of similarly employed United
5 States workers.

6 “(ii) PETITION.—After receiving a
7 temporary labor certification under clause
8 (i), a prospective employer may submit a
9 petition to the Secretary for a Common-
10 wealth Only Transitional Worker permit on
11 behalf of the nonimmigrant worker.

12 “(B) PREVAILING WAGE SURVEY.—

13 “(i) IN GENERAL.—In order to effec-
14 tuate the requirement for a temporary
15 labor certification under subparagraph
16 (A)(i), the Secretary of Labor shall use, or
17 make available to employers, an occupa-
18 tional wage survey conducted by the Gov-
19 ernor that the Secretary of Labor has de-
20 termined meets the statistical standards
21 for determining prevailing wages in the
22 Commonwealth on an annual basis.

23 “(ii) ALTERNATIVE METHOD FOR DE-
24 TERMINING THE PREVAILING WAGE.—In
25 the absence of an occupational wage survey

1 approved by the Secretary of Labor under
2 clause (i), the prevailing wage for an occu-
3 pation in the Commonwealth shall be the
4 arithmetic mean of the wages of workers
5 similarly employed in the territory of
6 Guam according to the wage component of
7 the Occupational Employment Statistics
8 Survey conducted by the Bureau of Labor
9 Statistics.

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

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

15 “(ii) the Federal minimum wage; or

16 “(iii) the prevailing wage in the Com-
17 monwealth for the occupation in which the
18 worker is employed.”;

19 (C) by amending paragraph (3), as redес-
20 igned, to read as follows:

21 “(3) PERMITS.—

22 “(A) IN GENERAL.—The Secretary shall
23 establish, administer, and enforce a system for
24 allocating and determining terms and condi-
25 tions of permits to be issued to prospective em-

1 ployers for each nonimmigrant worker described
2 in this subsection who would not otherwise be
3 eligible for admission under the Immigration
4 and Nationality Act (8 U.S.C. 1101 et seq.).

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

8 “(i) 13,000 for fiscal year 2019;

9 “(ii) 12,500 for fiscal year 2020;

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

11 “(iv) 11,500 for fiscal year 2022;

12 “(v) 11,000 for fiscal year 2023;

13 “(vi) 10,000 for fiscal year 2024;

14 “(vii) 9,000 for fiscal year 2025;

15 “(viii) 8,000 for fiscal year 2026;

16 “(ix) 7,000 for fiscal year 2027;

17 “(x) 6,000 for fiscal year 2028;

18 “(xi) 5,000 for fiscal year 2029; and

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

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

23 “(i) BY GOVERNOR.—Not later than
24 60 days before the end of each calendar
25 year, the Governor shall submit a report to

1 the Secretary that identifies the ratio be-
2 tween United States workers and other
3 workers in the Commonwealth's workforce
4 based on income tax filings with the Com-
5 monwealth for the tax year.

6 “(ii) BY GAO.—Not later than Decem-
7 ber 31, 2019, and biennially thereafter, the
8 Comptroller General of the United States
9 shall submit a report to the Chair and
10 Ranking Member of the Committee on En-
11 ergy and Natural Resources of the Senate,
12 the Chair and Ranking Member of the
13 Committee on Natural Resources of the
14 House of Representatives, the Chair and
15 Ranking Member of the Committee on
16 Health, Education, Labor, and Pensions of
17 the Senate and the Chair and Ranking
18 Member of the Committee on Education
19 and the Workforce of the House of Rep-
20 resentatives that identifies the ratio be-
21 tween United States workers and other
22 workers in the Commonwealth's workforce
23 during each of the previous 5 calendar
24 years.

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

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

4 “(I) 120 days before the date on
5 which the prospective employer needs
6 the beneficiary’s services; or

7 “(II) if the petition is for the re-
8 newal of an existing permit, not ear-
9 lier than 180 days before the expira-
10 tion of such permit.

11 “(ii) EMPLOYMENT VERIFICATION.—
12 The Secretary shall establish a system for
13 each employer of a Commonwealth Only
14 Transitional Worker to submit a semi-
15 annual report to the Secretary and the
16 Secretary of Labor that provides evidence
17 to verify the continuing employment and
18 payment of such worker under the terms
19 and conditions set forth in the permit peti-
20 tion that the employer filed on behalf of
21 such worker.

22 “(iii) REVOCATION.—

23 “(I) IN GENERAL.—The Sec-
24 retary, in the Secretary’s discretion,
25 may revoke a permit approved under

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this paragraph for good cause, including if—

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

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

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

1 a certified copy of the original) of
2 all petitions, notices, and other
3 written communication related to
4 the worker (other than sensitive
5 financial or proprietary informa-
6 tion of the employer, which may
7 be redacted) that has been ex-
8 changed between the employer
9 and the Department of Labor,
10 the Department of Homeland Se-
11 curity, or any other Federal
12 agency or department.

13 “(II) REALLOCATION OF RE-
14 VOKED PETITION.—Notwithstanding
15 subparagraph (C), for each permit re-
16 voked under subclause (I) in a fiscal
17 year, an additional permit shall be
18 made available for use in the subse-
19 quent fiscal year.

20 “(iv) LEGITIMATE BUSINESS.—

21 “(I) IN GENERAL.—A permit
22 may not be approved for a prospective
23 employer that is not a legitimate busi-
24 ness.

1 “(II) DEFINED TERM.—In this
2 clause, the term ‘legitimate business’
3 means a real, active, and operating
4 commercial or entrepreneurial under-
5 taking that the Secretary, in the Sec-
6 retary’s sole discretion, determines—

7 “(aa) produces services or
8 goods for profit, or is a govern-
9 mental, charitable, or other val-
10 idly recognized nonprofit entity;

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

14 “(cc) has substantially com-
15 plied with wage and hour laws,
16 occupational safety and health
17 requirements, and all other Fed-
18 eral and Commonwealth require-
19 ments related to employment
20 during the preceding 5 years;

21 “(dd) does not directly or in-
22 directly engage in prostitution,
23 human trafficking, or any other
24 activity that is illegal under Fed-
25 eral or Commonwealth law; and

1 “(ee) is a participant in
2 good standing in the E-Verify
3 program.

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

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

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

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

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

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

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

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

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

8 “(ii) at the expiration of the second
9 renewal period, an alien may not again be
10 eligible for such a permit until after the
11 alien has remained outside of the United
12 States for a continuous period of at least
13 30 days.

14 “(B) LONG-TERM WORKERS.—An alien
15 who was admitted to the Commonwealth as a
16 Commonwealth Only Transitional Worker dur-
17 ing fiscal year 2015, and during every subse-
18 quent fiscal year beginning before the date of
19 the enactment of the Northern Mariana Islands
20 U.S. Workforce Act, may receive a permit for
21 a Commonwealth Only Transitional Worker
22 that is valid for a period that may not exceed
23 3 years and may be renewed for additional 3-
24 year periods during the transition period. A
25 permit issued under this subparagraph shall be

1 counted toward the numerical cap for each fis-
2 cal year within the period of petition validity.”;

3 and

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

5 “(i) DEFINITIONS.—In this section:

6 “(1) COMMONWEALTH.—The term ‘Common-
7 wealth’ means the Commonwealth of the Northern
8 Mariana Islands.

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

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

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

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

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

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

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

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

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

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

21 (b) RULEMAKING.—

22 (1) SECRETARY OF HOMELAND SECURITY.—
23 Notwithstanding the requirements under section
24 553(b) of title 5, United States Code, the Secretary
25 of Homeland Security shall publish in the Federal

1 Register, not later than 180 days after the date of
2 the enactment of this Act, an interim final rule that
3 specifies how the Secretary intends to implement the
4 amendments made by subsection (a) that relate to
5 the responsibilities of the Secretary.

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

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

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

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

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

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

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

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

22 (d) OUTREACH AND TRAINING.—Not later than 120
23 days after the date on which the Secretary of Labor pub-
24 lishes an interim final rule in the Federal Register in ac-
25 cordance with subsection (b)(2), the Secretary shall con-

1 duct outreach and training in the Commonwealth of the
2 Northern Mariana Islands for employers and workers on
3 the foreign labor certification process set forth in section
4 6 of the Joint Resolution entitled “A Joint Resolution to
5 approve the ‘Covenant To Establish a Commonwealth of
6 the Northern Mariana Islands in Political Union with the
7 United States of America’, and for other purposes”, as
8 amended by subsection (b), including the minimum wage
9 requirement set forth in subsection (d)(2)(C) of such sec-
10 tion.