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A BILL FOR AN ACT

To provide for the regulation of the employment of nonresident workers in the Federated States of Micronesia and for the training and development of resident workers to replace those nonresident workers; to repeal sections 111 through 168 and sections 201 through 207 of title 51 of the Code of the Federated States of Micronesia; and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

CHAPTER 1

GENERAL PROVISIONS

Section 101. Short title. This act may be cited as the "Employment of Nonresident Workers Act of 1983."

Section 102. Statement of policy. It is the policy of the Congress of the Federated States of Micronesia that it is essential to a balanced and stable economy that citizen workers be given preference in employment in the Federated States of Micronesia, with nonresident workers being utilized in employment only when qualified citizen workers are not available.

Section 103. Statement of intent. It is the intent of the Congress of the Federated States of Micronesia to enact this legislation to regulate the employment of nonresident workers, to train and develop resident workers to assume those positions held by nonresident workers, and to enable resident workers to acquire the degree of skill and competence necessary to enable them to compete for job opportunities on the international labor market.

Section 104. Definitions. For the purpose of this act, unless it is otherwise provided or the context requires a different construction, application, or meaning:

(1) "Available" means able to be in the Federated States of Micronesia on the date the employer states that the worker or workers are needed.

(2) "Chief" means the chief of the Division of Labor of the Department of Resources and Development of the National Government

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1 of the Federated States of Micronesia.

2 (3) "Division" means the Division of Labor of the
3 Department of Resources and Development of the National Government
4 of the Federated States of Micronesia.

5 (4) "Employer" means any individual, partnership, associa-
6 tion, or corporation hiring employees in the Federated States of Micro-
7 nesia, but does not include any branch, agency, commission, or authority
8 of the National Government of the Federated States of Micronesia, the
9 State governments of the Federated States of Micronesia, the Government
10 of the United States of America, or the Government of the Trust Terri-
11 tory of the Pacific Islands.

12 (5) "Employment service office" means one of the branch.
13 offices of the Division of Labor.

14 (6) "Employment service officer" means a person in charge
15 of any of the branch offices of the Division of Labor.

16 (7) "Nonresident worker" means any person who is capable
17 of performing services or labor and who is not a citizen of the Federated
18 States of Micronesia, or an immigrant alien admitted to the Federated
19 States of Micronesia for permanent residence pursuant to the applicable
20 laws of the Federated States of Micronesia, including persons acting
21 in a professional, managerial, or executive capacity.

22 (8) "Resident worker" means any person who is capable of
23 performing services or labor and who is a citizen or national of the
24 Federated States of Micronesia, or any immigrant alien admitted to the
25 Federated States of Micronesia for permanent residence pursuant to

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1 applicable laws of the same.

2 Section 105. Establishment; Division of Labor. There is hereby
3 established a Division of Labor within the Department of Resources
4 and Development of the National Government of the Federated States
5 of Micronesia. The division shall be headed by a chief of the
6 Division of Labor, hereinafter referred to as "chief."

7 Section 106. Duties and functions of the division. The divi-
8 sion shall be charged with the responsibility of promoting and imple-
9 menting the provisions of this act and any regulations promulgated
10 thereunder. Toward that end, it shall make periodic review of the laws
11 and all regulations issued thereunder and recommend to the proper
12 authorities any changes which it deems necessary and proper to effect
13 the purpose of this act.

14 Section 107. Establishment; Employment service office. The President of the
15 Federated States of Micronesia is hereby authorized to establish branch
16 offices of the division in each of the States of the Federated States of
17 Micronesia. Each of the employment service offices shall be headed by
18 an employment service officer. The chief may hire other subordinate staff
19 from time to time as may be appropriate, subject to the provisions of
20 applicable laws relating to the budget and the employment ceiling for
21 the Department of Resources and Development.

22 Section 108. Duties and functions of the employment service office.
23 The employment service office is an office of the National Government
24 situated in each of the States of the Federated States of Micronesia
25 created to promote and implement the provisions of this act and any

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1 regulations promulgated thereunder. The employment service
2 officer, acting as the head of the office, shall make monthly reports
3 to the President, through the chief, of matters pertaining to the
4 employment of nonresident workers in his State. He shall
5 make periodic reviews of the laws and all regulations issued thereunder
6 as they relate to the problems of employment of nonresident workers,
7 if any, and recommend to the chief any changes he deems necessary and
8 proper.

9 Section 109. Duties of the chief. It shall be the duty of the
10 chief to see to it that the provisions of this act, and all regulations
11 issued thereunder, are faithfully carried out. Toward that end, his
12 duties shall include, but not be limited to, the following:

13 (1) Planning, developing, and implementing a manpower
14 development program for the Federated States of Micronesia. In dis-
15 charging this responsibility, the chief shall, through or with the
16 consent of the Department of External Affairs, contact the International
17 Labor Organization and seek technical assistance therefrom with respect
18 to the establishment, implementation, management, and administration of
19 the manpower development program. The purpose of this program shall
20 include, but not be limited to, the following:

21 (a) Training citizens of the Federated States of Micro-
22 nesia. This training may consist of at least three levels: the primary
23 level, the intermediate level, and the advanced level.

24 (b) Certifying all trainees who have completed the
25 requisite requirements for each training level. In order to be c

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1 under this subsection, one must pass both a practical and a written
2 test administered to all those who aspire to be certified in a given
3 level.

4 (c) Determining if, in addition to the testing require-
5 ment, a trainee has also met the work experience requirements for each
6 level. The test must be a standardized test administered and recognized
7 by the International Labor Organization.

8 In order to be employed in the Federated States of Micronesia in a given
9 certified level, all nonresident workers who aspire to a job in the
10 Federated States of Micronesia shall meet the requirements in subsection
11 (1)(b) and (c);

12 (2) Advising the President of the Federated States of Micronesia
13 on matters related to employment and replacement of nonresident workers;

14 (3) Receiving, reviewing, processing, approving, or disapproving
15 any application submitted by an employer wishing to employ a nonresident
16 worker in the Federated States of Micronesia; PROVIDED, HOWEVER, that by
17 regulation these duties could be delegated to the employment service officer
18 in charge of each employment service office;

19 (4) Administering, coordinating, and supervising the employment
20 service officers; and

21 (5) Performing such other duties as may be required by law or
22 provided by regulation.

23 Section 110. Duties of the employment service officer. The duties
24 of the employment service officer shall include, but not be limited to,
25 the following:

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1 (1) Serving as administrative head of the employment service
2 office;

3 (2) Receiving, reviewing, processing, and transmitting to
4 the chief for action all employment applications of nonresident workers
5 in the Federated States of Micronesia; PROVIDED, HOWEVER, that he may have
6 authority to approve or disapprove any application for renewal of a non-
7 resident worker's work permit. Any employer who is adversely affected by
8 the decision of the employment service officer shall appeal such adverse
9 decision to the chief within 30 days from the date of the decision; and

10 (3) Performing such other duties as may be prescribed by regulation.

11 Section 111. Regulation. The President of the Federated States of
12 Micronesia is hereby authorized to issue all regulations necessary and
13 proper to implement the provisions of this act.

14 CHAPTER 2

15 IMPORTATION PROCEDURES

16 Section 201. Application required. Any employer who desires to
17 import nonresident workers for employment within the Federated States of
18 Micronesia shall file an application with the chief or with the employment
19 service officer, who shall forward the same to the chief for action. The
20 application shall state the following:

21 (1) Place and nature of employer's business;

22 (2) The number of workers desired and the qualifications of
23 such workers;

24 (3) The wages to be paid such workers;

25 (4) The date on which such workers are desired;

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1 (5) The State or States in which such workers are
2 desired; and

3 (6) Any other relevant information as may be required by
4 the regulations.

5 Section 202. Publication of vacancies.

6 (1) Upon receipt of an application pursuant to the provisions
7 of section 201, the chief shall cause the existence of the vacancies
8 and other applicable information regarding the job to be publicized.
9 The publication shall include the posting of notices in public places
10 in the States, the use of radio and newspaper publicity, whenever
11 appropriate, and such other means as the chief may determine to be
12 feasible. Such publicity shall be given:

13 (a) For a period of 30 days, in the State or States
14 where such employment is to take place, and

15 (b) For a period of 15 days, beginning with the 16th
16 day after the first day on which the first advertisement was made in
17 the State or States in which employment is to take place, in all the
18 other States of the Federated States of Micronesia.

19 (2) Within 7 days after the expiration of 30 days after
20 the first advertisement, the employment service officer, upon a finding
21 that there are no qualified resident workers available to fill all or
22 some of the vacancies, shall notify the chief of those positions for
23 which no resident workers are available. The employer may appeal these
24 findings or request judicial review thereof in accordance with the
25 Administrative Procedure Act.

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1 Section 203. Determination to permit employment of nonresident workers.

2 Upon receipt of notice from the employment service officer of those
3 positions which the employer requires, and for which no resident workers
4 are available, the chief shall determine the terms and conditions under
5 which the employer shall be permitted to hire and the period of time
6 within which the employer shall be allowed to keep the nonresident workers
7 for those positions. Within 7 days after the receipt of notice from the
8 employment service officer, the chief shall notify the employer of his
9 findings.

10 Section 204. Nonresident employment agreements.

11 (1) For those positions for which the chief determined non-
12 resident workers may be hired, he shall require that a nonresident
13 worker's agreement be entered into between the employer and the Govern-
14 ment of the Federated States of Micronesia, which agreement shall authorize
15 the employer to hire nonresident workers.

16 (2) The agreement shall be signed by the chief, as the repre-
17 sentative of the Federated States of Micronesia National Government, and
18 by the employer or his authorized representative.

19 (3) The agreement shall contain such provisions with respect
20 to wages, including minimum wages, benefits, and working conditions as
21 the chief shall determine to be necessary and consistent with the policy
22 and purposes of this act. The agreement shall specifically include:

23 (a) A statement that the employer requires such nonresident
24 workers for immediate employment;

25 (b) A statement of the wages the employer is paying or

1 intends to pay the nonresident workers for each occupational classifica-
2 tion he is importing nonresident workers to fill;

3 (c) A statement of the period of time for which the
4 employer will be allowed to fill each position with a nonresident worker
5 before he shall fill the position with a resident worker by filing a new
6 application with the chief or the employment service officer;

7 (d) A statement of the employer's responsibility for return
8 transportation to the place of origin of each nonresident worker at the
9 expiration or revocation of the worker's entry permit, or upon his death;

10 (e) A statement of the employer's responsibility for the
11 expenses of medical evacuation or other extraordinary medical expenses of
12 each nonresident worker; and

13 (f) A statement of the employer's responsibility for the
14 training of resident workers in the occupational categories for which he
15 is hiring nonresident workers.

16 Section 205. Nonresident worker's agreement legally enforceable.

17 The nonresident worker's agreement entered into by the chief and the
18 employer shall be legally enforceable upon action taken by an aggrieved
19 nonresident employee or on his behalf by the chief or his representative.
20 In any such action taken by the chief or his representative on behalf of
21 an aggrieved nonresident employee, the chief or his representative shall be
22 represented by the Office of the Attorney General of the Federated States
23 of Micronesia.

24 Section 206. Nonresident worker's identification certificate.

25 The chief shall provide each nonresident worker with a copy of the non-

1 and

2 (d) That he has not been convicted of a felony or
3 other crime involving moral turpitude; and

4 (2) The employer of a nonresident worker shall present
5 to the chief or his representative a copy of the nonresident worker's
6 contract of employment, which shall include:

7 (a) A statement of job title;

8 (b) The duration of the contract;

9 (c) Location of work;

10 (d) Weekly hours scheduled;

11 (e) Wage scale for regular and overtime work;

12 (f) Any deductions for living costs; and

13 (g) Such other information or contractual provisions
14 as may be required by the chief.

15 Section 209. Records. On the 10th of each month, or upon demand by
16 the chief or his representative, each employer hiring nonresident
17 employees in the Federated States of Micronesia shall transmit current
18 records to the chief with the following information:

19 (1) The name, address, age, and legal residence of each of
20 his nonresident employees;

21 (2) The classification and wage rate of each of his nonresident
22 employees;

23 (3) Payrolls showing the number of hours worked each week,
24 the compensation earned, and deductions made for each of his nonresident
25 employees;

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1 (4) The educational and experiential background of each
2 of his nonresident employees, to be provided but once for each non-
3 resident employee; and

4 (5) The number of employment-related accidents of each
5 nonresident employee, name of the injured, and disposition by the
6 employer of the injured employee.

7 Section 210. Confidentiality. All employment records are to be
8 kept confidential and may only be used for legitimate purposes by the
9 Division of Labor.

10 Section 211. Investigations ; hearings ; orders.

11 (1) The chief or his representative is hereby authorized to
12 conduct hearings or investigations as he may deem appropriate and
13 necessary to enforce the provisions of this chapter. In connection with
14 such hearings or investigations, the chief or his representative may sub-
15 poena witnesses, records, and documents.

16 (2) Upon the filing of a sworn complaint that any person has
17 violated this chapter or any regulation issued thereunder, the chief or
18 his representative shall investigate the complaint, providing a copy
19 thereof to the person complained against. The chief or his representative
20 shall have the power to schedule a closed or open administrative hearing
21 as deemed appropriate under the circumstances. Adequate notice of the
22 hearing shall be given to all persons involved, and opportunity shall be
23 made available to them to present such evidence as they may desire in
24 person or through counsel of their choice. Upon conclusion of the
25 hearing, the chief or his representative shall have the power to enter

1 an order disposing of the matter, including an order revoking a
2 work permit.

3 Section 212. Appeal. Any person aggrieved by an order of
4 the chief or his representative may appeal said order or request
5 judicial review thereof in accordance with the Administrative
6 Procedure Act. In any such judicial proceeding, the chief or his
7 representative shall be represented by the Office of the Attorney
8 General of the Federated States of Micronesia.

9 Section 213. Deportation. If the chief determines that
10 grounds exist for the deportation of a nonresident worker, he
11 shall refer the matter to the Office of the Attorney General, which
12 may file a lawsuit requesting an order of deportation. Such actions
13 shall have precedence on the Court's docket. No nonresident worker
14 may be involuntarily deported without a court order of deportation.

15 Section 214. Penalties.

16 (1) Any employer who willfully violates any of the pro-
17 visions of this chapter or any of the regulations issued thereunder
18 shall, upon conviction thereof, be fined not more than \$10,000, or
19 imprisoned not more than 2 years, or both.

20 (2) Subject to the provisions of section 14 of Public
21 Law No. 1-130, any nonresident employee who willfully violates any
22 of the provisions of this chapter or any of the regulations issued
23 thereunder shall, upon conviction thereof, be fined not more than
24 \$250.

25 Section 215. Other employment by nonresident workers.

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1 (1) It shall be unlawful for any nonresident worker
2 to engage in any other employment in the Federated States of
3 Micronesia for compensation or for profit other than for the employer
4 who has contracted with the chief for the employment of such nonresident
5 worker, unless a written agreement approving the nonresident worker's
6 employment by additional or subsequent employers shall have been approved
7 by the chief. Any such agreement shall be signed by the new employer
8 and the nonresident worker. Upon the signing of such agreement, the
9 chief shall require the new employer to execute a new nonresident
10 worker's agreement in accordance with section 203 of this chapter, and
11 to provide the chief or his representative with a copy of the nonresident
12 worker's new contract of employment in accordance with section 208(2)
13 of this chapter. The nonresident worker shall provide an affidavit to
14 the chief or his representative in accordance with section 208(1) of
15 this chapter.

16 (2) Notwithstanding the provisions of section 104(4) of
17 this act, this section shall apply to nonresident employees of any
18 branch, agency, commission, or authority of the National Government
19 of the Federated States of Micronesia, the State governments of the
20 Federated States of Micronesia, or the Trust Territory Government.

21 (3) A violation of this section shall constitute grounds
22 for deportation pursuant to section 213 of this chapter, and shall
23 further subject the employer and nonresident employee to the penalties
24 prescribed in section 214 of this chapter.

25 CHAPTER 3

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NONRESIDENT WORKERS' HEALTH CERTIFICATES

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Section 301. Statement of policy. It is the policy of the

Federated States of Micronesia Government to protect the health of

its citizens and prevent the overtaxation of its medical and hospital

facilities and personnel in the care and treatment of nonresident

workers.

Section 302. Health certification required. Every person

admitted for employment under this act and every person admitted as a

dependent of such person shall have in his possession a certificate

of freedom from communicable disease signed by a physician licensed to

practice medicine in the country of origin of that person. The date

of issuance of said certificate shall not be more than 30 days prior

to the entry of such person into the Federated States of Micronesia.

Section 303. Physical examination required.

(1) Within 10 days after his entry into the Federated States

of Micronesia, or as soon thereafter as a physician is available, each

nonresident worker admitted for employment and every person admitted as

a dependent of such nonresident worker shall obtain a physical examination

conducted by a physician licensed in the Federated States of Micronesia.

The cost of the physical examination shall be borne by the employer.

(2) The nonresident worker and his dependents shall provide

the results of their physical examinations to the employer who caused

their importation, who shall provide a copy of said results to the chief

within 10 days after his receipt thereof.

(3) If the chief determines, in consultation with the Director

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1 of Health Services of the Federated States of Micronesia or his representative,
2 that the results of any physical examination submitted to him indicate
3 that the continued presence of the person examined will result in sub-
4 stantial danger to the health of the inhabitants of the
5 Federated States of Micronesia, or in a need for prolonged medical
6 care and treatment for that person while in the Federated States of
7 Micronesia, he may proceed to revoke the entry permit of that person.

8 Section 304. Penalties. The failure of any person to obtain the
9 physical examination required by this act shall be grounds for revocation
10 of his entry permit, and in addition is punishable by a fine not to
11 exceed \$250.

CHAPTER 4

ANNUAL REPORT

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14 Section 401. Annual report. The President of the Federated States
15 of Micronesia shall, not later than 15 days after the end of each fiscal
16 year, transmit to the Congress of the Federated States of Micronesia a
17 complete report of the activities of the Division of Labor over the previous
18 year, together with such other information as shall be required by this section
19 or other sections of this act. The report shall also contain recommenda-
20 tions for legislation by the Congress of the Federated States of Micronesia,
21 and, in particular, legislation devoted to the development of labor skills
22 of citizens of the Federated States of Micronesia and for the reduction of
23 the need for nonresident workers in the Federated States of Micronesia.


CHAPTER 5

REPEALER

1 Section 501. Repealer. Sections 111 through 168 and sections
2 201 through 207 of title 51 of the Code of the Federated States of
3 Micronesia are hereby repealed in their entirety.

4 CHAPTER 6
5 EFFECTIVE DATE

6 Section 601. Effective date. This act shall become law upon
7 approval by the President of the Federated States of Micronesia or
8 upon its becoming law without such approval.

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10 Date: May 28, 1983 Introduced by: 
11 Sasao H. Gouland

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