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 1985."

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 or the Department of Resources and Development of the National Government of the
Federated States of Micronesia;

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

(4) "Employer" means any individual, partnership, association, or corporation hiring employees in the Federated States of Micronesia, but does not include any branch, agency, commission, or other authority of the National Government of the Federated States of Micronesia, the State governments of the Federated States of Micronesia, the Government of the United States of America, or the Government of the Trust Territory of the Pacific Islands;

(5) "Employment service office" means one of the branch offices of the Division of Labor;

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

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

(8) "Resident worker" means any person who is capable of performing services or labor and who is a citizen or national of the Federated States of Micronesia, or any immigrant alien admitted to the Federated States of Micronesia for permanent residence pursuant to
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 and
4 Development of the National Government of the Federated States of Micronesia. The division shall be headed by a chief of the Division of
5 Labor, hereinafter referred to as "chief."

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

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

20 Section 108. Duties and functions of the employment service
21 office. The employment service office is an office of the National
22 Government situated in each of the States of the Federated States of
23 Micronesia created to promote and implement the provisions of this act
24 and any regulations promulgated thereunder. The employment service
officer, acting as the head of the office, shall make monthly reports to
the President, through the chief, of matters pertaining to the employment
of nonresident workers in his State. He shall make periodic reviews of
the laws and all regulations issued thereunder as they relate to the
problems of employment of nonresident workers, if any, and recommend to the
chief any changes he deems necessary and proper.

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

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

(a) Training citizens of the Federated States of
Micronesia. This training may consist of at least three levels; the
primary level, the intermediate level, and the advanced level.

(b) Certifying all trainees who have completed the
requisite requirements for each training level. In order to be certified
under this subsection, one must pass both a practical and a written test
administered to all those who aspire to be certified in a given level.
(c) Determining if, in addition to the testing requirement, a trainee has also met the work experience requirements for each level. The test must be a standardized test administered and recognized by the International Labor Organization.

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

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

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

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

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

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

(1) Serving as administrative head of the employment service office;
(2) Receiving, reviewing, processing, and transmitting to the chief for action all employment applications of nonresident workers in the Federated States of Micronesia; PROVIDED, however, that he may have authority to approve or disapprove any application for renewal of a nonresident worker's work permit. Any employer who is adversely affected by the decision of the employment service officer shall appeal such adverse decision to the chief within 30 days from the date of the decision; and

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

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

CHAPTER 2

IMPORTATION PROCEDURES

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

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

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

(3) The wages to be paid such workers;

(4) The date on which such workers are desired;
(5) The State or States in which such workers are desired; and

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

Section 202. Publication of vacancies.

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

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

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

(2) Within 7 days after the expiration of 30 days after the first advertisement, the employment service officer, upon a finding that there are no qualified resident workers available to fill all or some of the vacancies, shall notify the chief of those positions for which no resident workers are available. The employer may appeal these findings or request judicial review thereof in accordance with the Administrative Procedure Act.
Section 203. Determination to permit employment of nonresident workers. Upon receipt of notice from the employment service officer of those positions which the employer requires, and for which no resident workers are available, the chief shall determine the terms and conditions under which the employer shall be permitted to hire and the period of time within which the employer shall be allowed to keep the nonresident workers for those positions. Within 7 days after the receipt of notice from the employment service officer, the chief shall notify the employer of his findings.

Section 204. Nonresident employment agreements.

(1) For those positions for which the chief determined nonresident workers may be hired, he shall require that a nonresident worker's agreement be entered into between the employer and the Government of the Federated States of Micronesia, which agreement shall authorize the employer to hire nonresident workers.

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

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

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

(b) A statement of the wages the employer is paying or
intends to pay the nonresident workers for each occupational
classification he is importing nonresident workers to fill;

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

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

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

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

Section 205. Nonresident worker's agreement legally enforceable.
The nonresident worker's agreement entered into by the chief and the
employer shall be legally enforceable upon action taken by an aggrieved
nonresident employee or on his behalf by the chief or his representative.
In any such action taken by the chief or his representative on behalf of
an aggrieved nonresident employee, the chief or his representative shall
be represented by the Office of the Attorney General of the Federated
States of Micronesia.

Section 206. Nonresident worker's identification certificate. The
chief shall provide each nonresident worker with a copy of the nonresident
worker's agreement which authorized his employer to hire him, and a
nonresident worker's entry permit. The entry permit, also known as a work
permit, shall contain the nonresident worker's name, his employer's name,
his job classification, his country of origin or citizenship, and the
date of expiration of his entry permit. The nonresident worker shall be
required to produce such entry permit as soon as possible after a request
to inspect it by the chief or his representative.

Section 207. Expiration of nonresident employment agreements for
failure of performance. A nonresident employment agreement entered into
by the chief with an employer shall expire 90 days from the date thereof,
unless the nonresident worker is present and employed in the Federated
States of Micronesia within such time.

Section 208. Entry requirements. Prior to entry of any nonresident
worker into the Federated States of Micronesia for employment under the
provisions of this chapter the following requirements shall be met:

(1) Each nonresident worker shall present to the chief or his
representative a sworn affidavit, executed by him, on a form issued by the
Division of Labor, and such other evidence as the chief may require, which
indicates:

(a) A minimum of 3 years experience in the line of work
for which he is being hired;

(b) Marital status;

(c) If married, the name of the spouse, number and
ages of dependent children and the addresses of the spouse and dependent
children; and

(d) That he has not been convicted of a felony or other crime involving moral turpitude.

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

(a) A statement of job title;
(b) The duration of the contract;
(c) Location of work;
(d) Weekly hours scheduled;
(e) Wage scale for regular and overtime work;
(f) Any deductions for living costs; and
(g) Such other information or contractual provisions as may be required by the chief.

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

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

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

(3) Payrolls showing the number of hours worked each week, the compensation earned, and deductions made for each of his nonresident employees;
(4) The educational and experiential background of each of his nonresident employees, to be provided but once for each nonresident employee; and

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

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

Section 211. Investigations; Hearings; Orders.

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

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

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

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

Section 214. Penalties.

(1) Any employer who willfully violates any of the provisions of this chapter or any of the regulations issued thereunder shall, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than 2 years, or both.

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

Section 215. Other employment by nonresident workers.

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

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

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

CHAPTER 3

NONRESIDENT WORKERS' HEALTH CERTIFICATES

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

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

CHAPTER 4

ANNUAL REPORT

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

CHAPTER 5

REPEALER

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

CHAPTER 6
EFFECTIVE DATE

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

Date: 5/2/85

Introduced by: Jack Fritz

[Signature]

PETER CHRISTIAN