

1 **SEC. ____.** **WORKFORCE ISSUES FOR RELOCATION OF MARINES TO GUAM.**

2 (a) AMENDMENTS TO THE MILITARY CONSTRUCTION AUTHORIZATION ACT FOR FISCAL
3 YEAR 2009.—Subsection 2824(c)(6)(D) of the Military Authorization Construction Act for
4 Fiscal Year 2009 (division B of Public Law 110-417; 10 U.S.C. 2687 note) is amended—

5 (1) by inserting “and the Secretary of Veterans Affairs” after “the Secretary of
6 Labor” each place it appears; and

7 (2) in the last sentence, by striking “determines” and inserting “determine”.

8 (b) AMENDMENT TO JOINT RESOLUTION APPROVING THE COVENANT ESTABLISHING
9 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—Section 6(b) of the Joint
10 Resolution entitled “A Joint Resolution to approve the ‘Covenant To Establish a
11 Commonwealth of the Northern Mariana Islands in Political Union With the United States
12 of America’, and for other purposes”, approved March 24, 1976 (48 U.S.C. 1806(b)) is
13 amended to read as follows:

14 “(b) NUMERICAL LIMITATIONS FOR NONIMMIGRANT WORKERS.—

15 “(1) IN GENERAL.—An alien, if otherwise qualified, may, before December
16 31, 2023, seek admission to Guam or to the Commonwealth as a nonimmigrant
17 worker under section 101(a)(15)(H) of the Immigration and Nationality Act (8
18 U.S.C. 1101(a)(15)(H)) without counting against the numerical limitations set forth
19 in section 214(g) of such Act (8 U.S.C. 1184(g)). An alien, if otherwise qualified,
20 may, before December 31, 2023, be admitted under section 101(a)(15)(H)(ii)(b) of
21 such Act for a period of up to 3 years to perform services or labor on Guam pursuant
22 to any agreement entered into by a prime contractor or subcontractor calling for
23 services or labor required for performance of the contract or subcontract in direct

1 support of all military-funded construction, repairs, renovation, and facilities
2 services necessary to enable the Marine Corps realignment in the Pacific,
3 notwithstanding the requirement of such section that the service or labor be
4 temporary. This subsection does not apply to any employment to be performed
5 outside of Guam or the Commonwealth.

6 “(2) APPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements of section
7 2824(c) of the Military Construction Act for Fiscal Year 2009 (division B of Public
8 Law 110-417; 10 U.S.C. note) shall apply to this subsection.”.

9 (c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect on
10 the date that is 120 days after the date of enactment of this Act.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

Section 702 of the Consolidated Natural Resources Act (CNRA) added a section 6 to the Joint Resolution entitled “A 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”, approved March 24, 1976 (48 U.S.C. 1806). Currently under section 6(b) of such Joint Resolution there is an exemption to the otherwise applicable numerical caps for H-1B and H-2B nonimmigrant workers until December 31, 2019, for employment solely in the Commonwealth of the Northern Mariana Islands (CNMI) or Guam. This is commonly known as the H cap exemption. Congress established the cap exemption in part to support the military relocation to Guam and the Commonwealth.

As background, Congress approved The Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America by Joint Resolution on March 24, 1976. Section 6 of the Joint Resolution, as added in 2008, established a transition program ending on December 31, 2014, to regulate immigration to the CNMI. Section 6(b) specifically provided that an alien, if otherwise qualified, may seek admission to Guam or to the CNMI during the transition program as a nonimmigrant worker under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) without counting towards the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)). In 2014, as part of the Consolidated and Further Continuing Appropriations Act for Fiscal Year 2015, Congress set the current expiration date of the transition program as December 31, 2019.

This proposal would support all Department of Defense construction, repairs, renovation, and facilities services during the period of the Guam military relocation and Commonwealth defense initiatives by extending that H cap exemption until the end of 2023. It would also provide that H-2B workers could be admitted until the end of 2023 to fill positions on Guam directly supporting military-funded activities on Guam to enable the Marine Corps realignment in the Pacific notwithstanding the otherwise applicable statutory requirement that H-2B workers can only be employed to perform “temporary” service or labor. While the positions would no longer need to be temporary, the period of authorized admission for these H-2B workers would still be temporary, and would be limited to no more than 3 years at a time. The proposal also removes an old and misplaced reporting provision. There is a 120-day delayed effective date to provide time to develop implementation guidance.

Importantly, this proposal requires construction contractors to continue following recruitment standards set by the National Defense Authorization Act for Fiscal Year 2010 (FY10 NDAA) when recruiting U.S. workers for Guam military base realignment projects. Under the FY10 NDAA, no Marine Corps realignment in the Pacific related work or services may be performed by a person holding an H-2B visa under the Immigration and Nationality Act until the contractor complies with the Department of Labor’s Contractor Recruitment Standards, and the Governor of Guam certifies that: (1) there is an insufficient number of U.S. workers that are able, willing, qualified, and available to perform the work; and (2) the employment of workers holding H-2B visas will not have an adverse effect on either the wages or the working conditions of workers in Guam.

Budget Implications: The volume of Guam Marine Corps relocation-related construction is expected to gradually increase, creating a step increase in the demand for construction workers through Fiscal Year 2028. The table below details the Department of Defense estimates of H-2B workers needed for direct construction of facilities for the Guam military relocation. Failure to enact this proposal would result in the expiration of the current cap exemption on December 31, 2019, resulting in estimated cost increases for the Guam Marine Corps relocation-related construction in the amount of \$1.2B (FY12\$). Enactment of this proposal would extend the expiration of the cap exemption and exclusion from the temporary work requirement until December 31, 2023, resulting in estimated cost increases beginning in January, 2024, for the Guam Marine Corps relocation-related construction in the amount of \$876M (FY12\$).

H-2B WORKERS NEEDED TO SUPPORT THE GUAM MILITARY RELOCATION												
2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
114	761	1,634	2,291	2,039	1,837	2,255	2,114	1,566	959	438	33	0

Changes to Existing Law:

(1) This proposal would make the following changes to paragraph (6) of section 2824(c) of the Military Construction Act for Fiscal Year 2009 (division B of Public Law 110-417; 10 U.S.C. note):

**SECTION 2834. COMPOSITION OF WORKFORCE FOR CONSTRUCTION
PROJECTS FUNDED THROUGH THE SUPPORT FOR UNITED STATES
RELOCATION TO GUAM ACCOUNT**

(6) COMPOSITION OF WORKFORCE FOR CONSTRUCTION PROJECTS.—

(A) LIMITATION.—With respect to each construction project that is carried out using amounts described in subparagraph (B), no work may be performed by a person holding a visa described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) unless—

(i) the application for that visa has been approved pursuant to the issuance of a temporary labor certification by the Governor of Guam as provided under section 214.2 of title 8, Code of Federal Regulations; and

(ii) the Governor of Guam makes the certification described in subparagraph (C) to the Secretary of Defense.

(B) SOURCE OF FUNDS.—Subparagraph (A) applies to—

(i) amounts in the Account used for projects associated with the realignment of military installations and the relocation of military personnel on Guam;

(ii) funds associated with activities under section 2821 of this Act; and

(iii) funds for authorized military construction projects.

(C) CERTIFICATION.—The certification referred to in subparagraph (A) is a certification, in addition to the certifications required by section 214.2 of title 8, Code of Federal Regulations, that—

(i) there are not sufficient United States workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the persons holding visas described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) are to perform such skilled or unskilled labor; and

(ii) the employment of such persons holding visas described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) will not adversely affect the wages and working conditions of workers in Guam similarly employed.

(D) SOLICITATION OF WORKERS—In order to ensure compliance with subparagraph (A), as a condition of a contract covered by such subparagraph, the contractor shall be required to advertise and solicit for construction workers in the United States, including Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico, in accordance with a recruitment plan approved by the Secretary of Labor and the Secretary of Veterans Affairs. The contractor shall submit a copy of the employment offer, including a description of wages and other terms and conditions of employment, to the Secretary of Labor and Secretary of Veterans Affairs at least 60 days before the start date of the workers under a contract. The contractor shall authorize the Secretary of Labor and the Secretary of Veterans Affairs to post a notice of the employment offer on a website, with State, territorial, and local job banks, with State and territorial workforce agencies, and with any other referral and recruitment sources the Secretary of Labor and the Secretary of Veterans Affairs ~~determines~~ determine may be pertinent to the employment opportunity.

(E) RECRUITMENT PERIOD.—The Secretary of Labor shall ensure that a contractor's recruitment of construction workers complies with the recruitment plan required by subparagraph (D) for a period beginning 60 days before the start date of workers under a contract and continuing for the next 28 days. During the recruitment period, the contractor shall interview all qualified and available United States construction workers who have applied for the employment opportunity, and, at the close of the recruitment period, the contractor shall provide the Secretary of Labor with a recruitment report providing any reasons for which the contractor did not hire an applicant who is a qualified United States construction worker. Not later than 21 days before the start date of the workers under a contract, the Secretary of Labor shall certify to the Governor of Guam whether the contractor has satisfied the recruitment plan created under subparagraph (D).

(F) LIMITATION.—An employer, its attorney or agent, the Secretary of Labor, the Governor of Guam, and any designee thereof, may not seek or receive payment of any kind from any worker for any activity related to obtaining an H-2B labor certification with respect to any construction project that is carried out using amounts described in subparagraph (B).'

(2) This proposal would make the following changes to subsection (b) of 48 U.S.C. 1806:

SECTION 1806. IMMIGRATION AND TRANSITION.

(b) NUMERICAL LIMITATIONS FOR NONIMMIGRANT WORKERS—

~~An alien, if otherwise qualified, may seek admission to Guam or to the Commonwealth during the transition program as a nonimmigrant worker under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) without counting against the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)). This subsection does not apply to any employment to be performed outside of Guam or the Commonwealth. Not later than 3 years following the transition program effective date, the Secretary of Homeland Security shall issue a report to the Committee on Energy and Natural Resources and the Committee on the Judiciary of the Senate and the Committee on Natural Resources and the Committee on the Judiciary of the House of Representatives projecting the number of asylum claims the Secretary anticipates following the termination of the transition period, the efforts the Secretary has made to ensure appropriate interdiction efforts, provide for appropriate treatment of asylum seekers, and prepare to accept and adjudicate asylum claims in the Commonwealth.~~

(1) IN GENERAL.—An alien, if otherwise qualified, may, before December 31, 2023, seek admission to Guam or to the Commonwealth as a nonimmigrant worker under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) without counting against the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)). An alien, if otherwise qualified, may, before December 31, 2023, be admitted under section 101(a)(15)(H)(ii)(b) of such Act for a period of up to 3 years to perform services or labor on Guam pursuant to any agreement entered into by a prime contractor or subcontractor calling for services or labor required for performance of the contract or subcontract in direct support of all military-funded construction, repairs, renovation, and facilities services necessary to support the realignment of Marines in the Pacific, notwithstanding the requirement of such section that the service or labor be temporary. This subsection does not apply to any employment to be performed outside of Guam or the Commonwealth.

(2) APPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements of section 2824(c) of the Military Construction Act for Fiscal Year 2009 (division B of Public Law 110-417; 10 U.S.C. note) shall apply to this subsection.
