

TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

H. B. NO. 10-48, HD1, SS1

FIRST REGULAR SESSION, 1996

AN ACT

To prohibit the issuance of entry permits and new foreign investment certificates for commercial farming and fishing, except hydroponic agriculture, aquaculture, and mariculture with a minimum investment of \$2,000,000; to require foreign investors to maintain a security deposit of \$100,000 which may be withdrawn only upon dissolution of the business; to enact the current Department of Commerce rules and regulations concerning foreign investment as statutory law; and for other purposes.

BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Findings and Purpose. The Legislature finds that it is vested with the authority to control immigration into the Commonwealth pursuant to Article V, Section 503(a) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. This same authority allows the Commonwealth to regulate foreign investment within its borders. Additional authority for this Act may be found in the general power to regulate commerce in the Commonwealth and the authority to control and conserve natural resources. The purpose of this Act is to ensure that foreign investment in the Commonwealth is in tune with local desires and that the benefits from such investment embrace the widest possible segment of the population.

The Legislature recognizes that foreign investment is a fundamental component of the economic development of the Commonwealth. Foreign investment is appropriate where heavy capitalization or specialized technical skills are required for start-up and in economic ventures characterized by high risk or a significant element of experimentation. Aquaculture, mariculture, and hydroponic agriculture are examples of such ventures. However, foreign investment certificates are being issued for certain business activities even though local firms or individuals are capable of providing the services, and where local money is available for funding the types of business ventures the foreign investors are engaged in.

Further, some aliens are arranging with locals to sharecrop the land for a percentage of the proceeds. This practice is in violation of Public Law 9-5, in that the aliens are engaging in a business venture without obtaining a certificate of foreign investment. Additionally, many businesses are engaging in fishing and farming to feed their employees which comprise almost 20% of the total population of the Commonwealth. These practices are depleting the natural resources of the Commonwealth and depriving local workers and capitalists of access to commercial activities and

investments.

The Commonwealth is currently experiencing an increase in illegal aliens posing as foreign investors to gain entry into the Commonwealth under false pretenses. Illegal aliens cost the Commonwealth in taxes, and take jobs and investment opportunities from lawful residents of the Commonwealth, increases the cost of education and health care, and increase the crime rate.

The purpose of this Act is to encourage and promote orderly economic development by directing the flow of foreign investment to those economic sectors most in need of such stimulation. Additionally, it is the purpose of this Act to provide a more rigorous system for insuring that local workers and capitalists will have access to commercial activities and investments, thereby protecting local resources and economic opportunities, and enhancing the internal stability of our society.

Section 2. Definitions. For purposes of this Act:

(a) "Business" means any individual, estate, firm, company, partnership, joint venture, association, trust, receiver, club, syndicate, cooperative association, corporation or any other entity required to be licensed under 4 CMC, Division 6, Chapter 6.

(b) "Business License" means the permission granted by the Commonwealth, under the authority of 4 CMC, Division 5, Chapter 6, conferring upon the licensee the privilege to engage in business.

(c) "Farming" means the raising of crops, plants, trees, or animals or the carrying on, conducting or managing of agricultural production including hydroponic agriculture.

(d) "Fishing" means the raising, catching, or harvesting of fish or other marine animals or the carrying on, conducting or managing of aquacultural, maricultural, or other means of fish or marine animal acquisition.

Section 3. Foreign Investor Entry Permits. 3 CMC §4331(e) is hereby amended to read:

"(e) No entry permit for non-immigrants applying for nonresident worker or foreign investor classifications shall be issued until such classification has been certified by the Department of Commerce pursuant to law. No entry permit shall be issued or renewed which would allow the applicant to operate a business within the Commonwealth unless the applicant possesses a valid CNMI business license. No entry permit shall be issued for any foreign investor classification which allows a non-immigrant alien to engage in commercial farming or commercial fishing in the Commonwealth, other than the carrying on, conducting, or managing of aquaculture, mariculture, or hydroponic agriculture activities in which the non-immigrant alien as \$2,000,000 or more in investment capital or assets in the commonwealth.

For purposes of this Section:

(1) 'Commercial Farming' means the raising of crops, plants, trees, or animals, or the carrying on, conducting or managing of agricultural production or hydroponic agriculture, including sharecropping (farmers working another's land in return for a share of the crop), for the purpose of selling the produce, fruits, flowers, live animals, meat, other animal products, or other end results of farming, or for the purpose of feeding one's employees who are not members of one's household.

(2) 'Commercial Fishing' means the raising, catching, or harvesting of fish or other marine animals or the carrying on, conducting or managing of aquacultural, maricultural fishing, or other means of fish or marine animal acquisition, for the purpose of selling the whole or processed fish or marine animal or other fish or marine animal products, or for the purpose of feeding one's employees who are not members of one's household."

Section 4. Business Licenses Restricted. 1 CMC §2453(d), as amended by Public Law 10-9, is hereby amended to read:

“(d) To license and regulate businesses engaged in the construction trade and to license businesses which are not otherwise licensed or regulated by any other department, agency, instrumentality, or law of the Commonwealth. Except as otherwise provided by law, the Department of Commerce shall not issue or cause to be issued any business license for the purpose of garment manufacturing or for commercial farming or fishing as defined in 3 CMC §4331(e) and no such business license shall be issued for the purpose of feedings one’s employees who are not members of one’s own household; Provided, that licenses may issue for aquaculture, mariculture, and hydroponic agriculture activities in which the business has \$2,000,000 or more in business capital or assets in the Commonwealth. Renewal of any valid business license existing on September 15, 1996 is not affected by this amendment.

Section 5. Business Licenses Authorized. Licenses for commercial farming and fishing as defined in 3 CMC §4331(e) are authorized for any business which is at least 75 percent owned and controlled by persons lawfully residing in the Commonwealth or the United States of America without restrictions as to business ownership. For determining compliance with this requirement, ownership in a business which engages in commercial farming or fishing, by an individual, estate, firm company, partnership, joint venture, association, trust, receiver, club, syndicate, cooperative association, corporation or any other entity shall be traced to the person actually owning or exercising operational control over the business, and if a corporation, the person voting the shares whether through nominees, trusts or any form which purposely or for any other reason disguises the true owner. In the case of non-corporeal persons, such persons shall be deemed fractional persons to the extent they are owned and controlled by persons lawfully residing in the Commonwealth of the United States.

Section 6. Production for Feeding Own Employees Prohibited. No business employing more than ten persons shall engage in farming or fishing for the purpose of feeding employees of the business or the employees of any other business unless duly licensed to do so. Any person who violates this section, shall, upon conviction, be guilty of a misdemeanor and punished by imprisonment for not more than 6 months or a fine not to exceed \$2,000, or both, for the first such offense, and imprisonment for not more than one year or a fine not to exceed \$5,000, or both for each succeeding offense. The Secretary of the Department of Commerce may bring a civil action in the Superior Court to enjoin any business from violations of this section.

Section 7. Regulations Enacted as Statute.

(a) Except as provided by subsections (b), (c), and (d), the Department of Commerce’s rules and regulations governing foreign investments in the Commonwealth, adopted January 13, 1995, in the Commonwealth Register, Volume 17, Number 1, beginning at page 5, as amended in the Commonwealth Register, Volume 18, Number 8, are hereby incorporated by reference and enacted as statutory law. The Commonwealth Law Revision Commission shall codify these rules and regulations in the appropriate Commonwealth Code statutory format.

(b) Section 1001, B., 3., a., entitled Evaluation Factors - New Enterprises, and Section 1001, B., 3., a., entitled Evaluation Factors - Existing Enterprises, are not incorporated by reference and are rescinded and reenacted to read:

“3. a. The amount of capital invested or to be invested by the Alien Investor, shall not be less than \$150,000.”

“4. a. The amount of capital invested or to be invested by the Alien Investor,

shall be not less than \$150,000 in a public organization or not less than \$250,000, in a private investment.”

(c) Section 1001, A., 1., is not incorporated by reference and is rescinded and reenacted to read:

“1. A holder of a long term business certificate entitles the Alien Investor to lawfully engage in business in the Commonwealth for a period of two (2) years; Provided, however, that the Alien Investor shall provide a security deposit in the sum of \$100,000 on deposit in a banking or trust institution approved by the Secretary of the Department of Finance. Exclusive authorized signature authority for the security deposit shall be the Secretary of the Department of Commerce. The security deposit may be withdrawn only upon dissolution of the business. Any funds remaining on deposit, after all applicable taxes are fully satisfied, shall be used to pay for any and all unpaid accounts with creditors in the Commonwealth. Any funds remaining in the account after taxes and creditors’ claims have been satisfied shall be returned to the certificate holder.”

(d) Section 1101, A., 1., is not incorporated by reference and is rescinded and reenacted to read:

“1. A certificate of Foreign Investment is a certificate issued to an alien who has met all the standards and conditions enumerated in this Part as proof of the holder’s participation as an alien investor in an approved investment in the Commonwealth. The holder shall have the right to lawfully engage in business in the Commonwealth as long as the Alien Investor complies with the terms upon which the certificate was issued; Provided, however, that the Alien Investor shall provide a security deposit in the sum of \$100,000 on deposit in a banking or trust institution approved by the Secretary of the Department of Finance. Exclusive authorized signature authority for the security deposit shall be the Secretary of the Department of Commerce. The security deposit may be withdrawn only upon dissolution of the business. Any funds remaining on deposit, after all applicable taxes are fully satisfied, shall be used to pay for any and all unpaid accounts with creditors in the Commonwealth. Any funds remaining in the account after taxes and creditors’ claims have been satisfied shall be returned to the certificate holder.”

Section 8. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 9. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 10. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

/s/ Diego T. Benavente
DIEGO T. BENAVENTE
Speaker
House of Representatives

ATTESTED BY:

/s/ Evelyn C. Fleming
EVELYN C. FLEMING
House Clerk

Vetoed this 9th day of December, 1996

/s/ Froilan C. Tenorio
FROILAN C. TENORIO
Governor
Commonwealth of the Northern Mariana Islands

Overridden by the House of Representatives on February 4, 1997 and the Senate on February 6, 1997 with the affirmative vote of two-thirds of the members in each house.

CERTIFIED BY:

/s/ Diego T. Benavente
DIEGO T. BENAVENTE
Speaker of the House

/s/ Jesus R. Sablan
JESUS R. SABLAN
President of the Senate

Overridden by the House on : 2/4/97

Overridden by the Senate on : 2/6/97

Became Public Law No. 10-44 on : 2/7/97