

On My Mind

3/26/10

Given the oft-repeated assertions by this government that it is committed to improving the economy, to supporting local businesses, to encouraging foreign investors, its passing - almost overnight, it seems - a 70-page labor law would appear to be so contradictory as to be almost unbelievable.

Outside of those who participated in the putting together of this monstrosity, no one has had a chance to see it, read it, comment on it - no members of either the foreign or the local business or legal community, no employers, no workers, no agencies or organizations, no members of either the federal or local government.

There's been no chance to look at its implications, at its longer-range effect, at potential unintended consequences. The same will no doubt be true of the accompanying regulations - which are promised "soon." They will no doubt to be submitted as "emergency regulations," to go into effect immediately - again by-passing normal comment and review opportunities.

It's more than a little disturbing that the very first piece of legislation passed by the new legislature is so political, such a hot potato. It doesn't say much for the deliberation the legislature is supposed to provide in the process of defining the law of the land.

And it's more than a little depressing that the governor - who submitted the bill to the legislature - has chosen to increase the level of confrontation between the U.S. and the CNMI, has chosen to add to the confusion that already exists regarding employment practices in the CNMI, has chosen to exacerbate the problems investors and the business community face in trying to do business here.

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According to the 3/23 *Marianas Variety* the new law, P.L. 17-1, requires, "all documented foreign nationals in the Northern Marianas who have been here for at least three months to register with the Department of Labor so they can get identification cards." On top of the umbrella permits, the work permits, the other ID's they already have? Whatever for?

It continues the present practice of tying workers to their employers, and of denying either party the flexibility to change jobs, change the number of employees, change the nature of the work performed.

In contrast, an article on [www.justia.com](http://www.justia.com), a neat web site I've just discovered, states, "Most employment in the U.S. is an at-will relationship between employer and employee, meaning that either party can terminate the relationship with no liability if there was no express contract for a definite term governing the employment relationship. Although several exceptions to this legal doctrine exist, generally, the employer may freely discharge employees for any legal reason or even with no cause at all, and an employee may leave a job for any reason at any time."

According to an article written by Charles J. Muhl in the January 2001 issue of the *Monthly Labor Review* "the exceptions principally address terminations that, although they technically comply with the employment-at-will requirements, do not seem just."

Apparently, the governor and his lackeys in the legislature have been led to believe that they still have authority and control over foreign workers in the CNMI - despite the passage of the Consolidated Natural Resources Act (CNRA), which has now given control over CNMI immigration to the federal government. However, according to a seasoned attorney, control over immigration in the CNMI also gives the federal government control over the "immigrants" - or foreign workers.

It will be interesting, to put it mildly, to see how this all plays out. Unfortunately, it looks like it may take a while. The regulations will have to be published, then an employer or employee found who refuses to follow this new punitive law, then the Department of Labor will have to issue a fine and a protest will have to be filed, or DoL will have to take that worker or an employer to court, and then a judge will have to issue a decision - all of which could take months and months. In the meantime, uncertainty will continue to reign, and the economy continue to suffer, DoL's specious argument that the new law is good for island citizens notwithstanding.

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What about Article XII, the Constitutional provision that restricts land ownership to those of Northern Marianas descent? Would its abolishment be good for island citizens? Those who support doing away with Article XII claim it would, since it would foster development, and that, in turn, would help the economy.

No developer, they are saying, is willing to invest in the CNMI under present land ownership restrictions. Yet the Hyatt, the Fiesta, the Hafa Dai, the Pacific Islands Club, the World Resort, Coral Ocean Point, Palms Resort, were all developed under present land ownership restrictions. Article XII didn't stop those investors. Why should it be a problem now?

The more fundamental issue is just how much development does the CNMI need, or want? What kind of development? The CNMI has a niche now - it offers green space in contrast to Guam, boonie stomping, golf courses, lovely vistas, water sports, historical landmarks, more diverse restaurants than Guam, Managaha, the lagoon and its wrecks....

What the CNMI needs is not more development; but rather, to maintain and enhance what it already has.

Take the Banzai Cliff tourist site, as just one example. It is a landscaping, an architectural, a visual disaster. There's rust on the temple fence, the roof is already discolored. There isn't a shade tree anywhere in sight. The CNMI does have trees that flourish near water - why couldn't there be several across the road from the monuments themselves? Why couldn't there be attractive pala palas - styled in keeping with the Japanese temple that has been built there, more in keeping with the Japanese ambience

the monuments provide - instead of the stark, ungracious brown and orange-colored one that now sits there? What about sidewalks? The rest-rooms? Couldn't that building have been painted a quieter color, so that it would have blended into the background, rather than standing out like a sore thumb?

Banzai Cliff is a major historical landmark. Yet the monuments that have been built there have not been maintained. Some are pock-marked. Others have corners missing. Or are no longer standing. Not only is this disrespectful to the intent, to the memory, to the people the monuments represent, the disrepair is unattractive, unappealing. Tourists are not apt to tell their friends back home that a dilapidated Banzai Cliff is a "must see" site.

A relatively new and very beautiful monument, larger than most, and more complex, sits there with not a word of explanation as to what all the panels around its sides mean, no information at all that would help a tourist appreciate and understand its significance.

If all the energy and the money that is going into trying to do away with Article XII were put into enhancing the attractions, the historic landmarks that the CNMI already has - so that Banzai Cliff would become a major drawing point, for example - and into providing more activities for tourists, into being more tourism-friendly, the present level of development would not need to increase.

There is real value in the green spaces the CNMI is fortunate enough to have. The answer lies not in eliminating the green space, but in capitalizing on it, learning how to nurture, package and market it, so that the CNMI can remain a jewel of the Pacific.

Besides, given the problems with tourism at the moment, how likely is it that new developers will come in and build big hotels to begin with?

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Short takes:

The Bank of Guam issued a notice recently of changes to its Schedule of Fees. Among them, a \$3.00 charge for excessive withdrawals (more than 6 per month); and a domestic network ATM transaction fee of \$2.00 per withdrawal, \$1.25 per balance inquiry. It took a phone call to the bank to find out that the withdrawal fee related only to withdrawals from savings accounts, that the "transaction fees" applied only if one wasn't using a Bank of Guam ATM. Why couldn't they have said so in the first place????

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To those who might be interested: I am now walking a mile or so two to three times per week - lugging my 12 lb. oxygen canister, no less! And the diagnosis that my lung cancer had metastasized into my lymph nodes turns out to have been in error - my latest x-ray shows that the lymph nodes are no longer enlarged. While glad to be alive, I feel almost guilty - given the two commendations I was recently given - that I did not expire by the end of the year, as had been predicted. Was it Mark Twain who said the story of my [imminent] death has been greatly exaggerated? My goal now is to live long enough to witness the election of Fitial's successor.....

