

2/24/12

House Bill 17-234, the Labor Act of 2011, after repealing two existing laws that had defined the CNMI Department of Labor, re-establishes a Department of Labor that is aimed primarily at providing continuing employment to current Department of Labor employees and imposing punitive restrictions on alien workers. In the doing, it imposes numerous burdens on employers, such as the provision in section 4222 requiring employers to employ at least one U.S. citizen; section 4232's requirement that employers keep a record for two years of every position filled by an alien worker for which a U.S. citizen application was rejected, and the reason for his/her rejection; section 4311's requirement that a written contract be executed between employers and each alien worker employed full-time; or section 4316's requirement that employers be held accountable for every alien worker employed during the preceding calendar year, and assuring that the employee's presence is still legal.

The 65-page bill has a 7-page introduction of Findings and Purpose - full of "it is the intent" statements - which smack of a lawyerly attempt to anticipate lawsuits challenging its provisions. Moreover, the bill itself would appear carefully written in an effort to avoid any challenges to its constitutionality as to discrimination with the liberal use of "may" instead of "shall." A good example is found in section 4811(a) which states that "Every alien who remains in the Commonwealth longer than 90 days may by regulation be required to be registered. Registration shall be renewed annually. The parents of legal guardians of aliens under the age of 18 are responsible for such child's registration." The concern is that required registration, per se, might not be legally defensible. The contradiction between "may" be required to register, while registration "shall" be renewed annually is not addressed.....

An indication that the private sector is given short shrift is evident in its section 4321 requirement that employers register all their employees with the Commonwealth Health Corporation and that gives the CHC vast powers to collect on any unpaid medical bills from employers as well as employees, which would seem to cut private sector health care providers out of the picture entirely.

Despite the care with which the bill has been assembled, in its midst is found the totally incomprehensible provision in section 4712 (d): "An employer shall not fail or refuse to hire a qualified U.S. worker who presents himself or herself when a job vacancy exists and when the employer thereafter employs an alien worker to fill the vacant job." The employer is supposed to fire the alien worker after the fact? or?

The bill also has a 14-page draft "Section by Section Analysis" - yet another indication that the bill is the work of a skilled attorney, well-versed in local labor law.

There's been a hearing in the House on the bill. It has not yet been discussed by the Senate.

Copies can be obtained from the House - try 664-8848, 664-8828, or 664-8958 to ask for a copy.

For those who missed it, 'Roilin Froilan Tenorio ran a full-page ad in the *Marianas Variety* this past Monday urging everyone to tell CNMI's senators to pass the casino bill. The ad said that if people didn't support casino gambling the only other place to obtain revenue for the broke government was "your pocket."

In one sense he is probably right. Whatever else is proposed to raise revenue may indeed affect our pockets. To date, however, neither Froilan nor any other casino supporter has provided an

answer to the question of where enough players are going to come from to make the casino(s) profitable. Nor has any casino supporter been able to explain why (a) the Tinian casino hasn't been profitable, or (b) why s/he shouldn't be focusing on making that happen first. If Tinian's casino could be made profitable, maybe we wouldn't even need another casino - on Saipan or elsewhere. But if Tinian's can't be made profitable, it's hard to see how a casino on Saipan could be made profitable.

Moreover, his narrow single-minded focus on casinos as the only possible source of revenue for the CNMI gets in the way of consideration of other alternatives. Of which there are any number. One of them is the suggestion to add a "cost of recovery" fee of \$5 to every pack of cigarettes sold in the CNMI, of 25¢ to every can of beer sold. These would have the added advantage - theoretically, at least - of reducing the number of people who smoked, and thereby incurred later medical costs the government would be expected to pay for; and to a lesser extent, reduce the amount of beer consumed, and the medical costs associated therewith. In addition, the idea of a property tax seems to be gaining ground, as does the idea of a sales tax.

Yes, they do come from one's pocket. But other than gifts from Uncle Sam - not likely - there are few realistic sources of additional revenue. Investor funds are nice to dream about but so far, none have materialized. The CNMI has lived beyond its means, and the time has come - indeed, is past due! - to pay the price.

Though it all may be legal, the basic problem with "Chinese-baby tourism" - or maybe one should just call it "American-baby tourism," since apparently other nationalities are also participating - is, as one reader noted, the resulting product. When these babies grow up and come to the U.S., what kind of citizen will they be? They won't have been raised in the U.S. They won't be familiar with U.S. customs and traditions. They won't share U.S. values (though that may not necessarily be a bad thing!). They will not have contributed to the U.S. economy in any way. Yet, overnight, as it were, they would be entitled to most of the benefits that all U.S. citizens have (they would not immediately be entitled to those benefits that have minimum residence requirements, for example).

It is interesting to speculate just how real the concerns are. How many of those babies born today will even survive until the age of 18? How many of them will be willing and able to travel to the U.S., to give up their place in their own communities to come to a strange new world where they must start over to find a place to live, a means of survival (though there could be friends, similar communities at their destination to help them.....)? How many are there, altogether? With a U.S. population in the millions, what proportion do they constitute?

Maybe the whole thing is just a tempest in a teapot - not worth all the fuss, all the ado? Maybe we should welcome them with open arms, and do our best to make their experience as pleasant as possible? We cater to athletes of various sorts. Why not also cater to pregnant women? Do they spend any less here? To the extent that the athletes probably do not, they at least pay for all the services they consume.....

Short takes:

- Should there be a law that allows the House and Senate to appoint members to the CNMI's

various boards and commissions if the governor fails to do so within a reasonable time frame? Is anyone keeping track of how many boards and commissions are currently incomplete? It may be a good strategy for conserving funds: fewer members, fewer costs. But some boards and commissions are more important than others - the Commonwealth Public Utilities Commission prime among them. Maybe the House and Senate should hold an oversight hearing on just how many of the existing boards and commissions serve any useful purpose? And rank them accordingly?

- It sure is nice to know that the U.S. Air Force felt that the CNMI - specifically, its airport - was suitable as a haven for an aircraft in trouble. One wonders why Saipan was chosen over Guam for the emergency landing of that F-16 Falcon earlier this week, but whatever the reason, the incident proves the value of the CNMI to the U.S military - a role not to be taken lightly, nor quickly forgotten.

- We're glad to see that Kili has admitted that the 60% local hire requirement in his bill in support of a local work force may be a little high. Last week, he introduced H.R.4037, which requires that any federally funded construction projects in the CNMI, costing more than \$100,000, have a workforce with at least 60 percent U.S. workers. A great idea in principle, but perhaps not so easy to put into practice.

- We liked Zaldy Dandan's take, in his "Variations" column in today's *Marianas Variety*, on the decision by the Philippine government to shut down the local consular office. Rather than rant and rave, he takes a more realistic view. Putting things in perspective, he notes that Saipan's Filipino population is far less than that of other countries that will also lose consular offices, adding that its members are not paying Philippine taxes, they remit their money to their families not the government, and "We work abroad not for the sake of our nation, but to help improve the lives of our parents, siblings or children....And we're lucky to still have a job abroad." Having to rely on a visiting "mobile" consulate team from Guam will be inconvenient, he admits, but writes - with a fatalistic, almost visible, shrug - "we'll get used to it."