COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

FROILAN C. TENORIO
Governor

JESUS C. BORJA
Lt. Governor

The Honorable Diego T. Benavente
Speaker of the House of Representatives
Tenth Northern Marianas
Commonwealth Legislature
Saipan, MP  96950

The Honorable Jesus R. Sablan
President of the Senate
Tenth Northern Marianas
Commonwealth Legislature
Saipan, MP  96950

Dear Mr. Speaker and Mr. President:

This is to inform you that I have signed into law House Bill No. 10-173 ("H.B. 10-173"), entitled the "Nonresident Worker Extension Act of 1996," which was passed by the Tenth Northern Marianas Commonwealth Legislature.

I appreciate the Legislature's quick action (perhaps too quick) in reconsidering and approving this revised version of H.D.1, SD2 ("H.B. 10-65") which I vetoed on February 13, 1996. Notwithstanding, I must state (as I stated in my veto message to H.B. 10-65) that I still do not think the government should be in the business of hiring nonresident workers. To the greatest extent possible and practicable, the Commonwealth Government's focus should be committed to hiring indigenous residents and other U.S. citizens. Of course, where there is no viable alternative, exceptions (such as those set forth in H.B. 10-173) must be made.

I am pleased that the Legislature removed the provision in H.B. 10-65 which would have prohibited the Department of Public Health and PSS from having the option to contract with manpower service agencies. This Administration has already demonstrated that utilizing manpower services can, in certain circumstances, save the government substantial amounts of money and management resources. In this light, I am somewhat disturbed that the Legislature inserted a new line to the "Findings and Purpose" section which provides that "[t]he Legislature further finds that it was the intent of Public Law 7-45 to restrict the Commonwealth Government from hiring nonresident workers both directly and indirectly through the use of manpower services or agencies." This finding is somewhat perplexing and leaves me wondering how it was actually "found". I do not recall there being any public hearings on this particular interpretation of P.L. 7-45 either prior to, or after, H.B. 10-173 was introduced and there are no committee reports that discuss this particular insertion. What is perhaps most disturbing is that nowhere within P.L. 7-45 is there any reference to manpower agencies. I simply do not understand how the Tenth Legislature can "define" the intent of the Seventh Legislature when P.L. 7-45 was enacted back on December 10, 1991. The bottom line is that this new "finding" set forth in H.B. 10-173 appears to be wholly unsubstantiated.

Given the Legislature's desire to repeal and re-enact 3 CMC §4434(e)(1) (as set forth in Section 4 of H.B. 10-173), I am directing the Director of Labor to vigorously enforce this provision which
prohibits the issuance of nonresident worker certificates to taxi cab drivers, secretaries, bookkeepers, accounting clerks, messengers, receptionists, surface tour boat operators, bus and tour bus drivers, and telephone switchboard operators. Although it will undoubtedly work a hardship on some segments of the private sector, I will leave it to the Legislature to consider amending this provision if and when the business community demands change.

Given the Legislature's further desire to repeal and re-enact 3 CMC §4434(e)(2) as set forth in Section 4 of H.B. 10-173, which requires an applicant to hire at least an equal number of resident workers before being allowed to hire nonresident workers as retail trade clerks, retail trade cashiers, hotel front desk clerks, janitors, security guards, custodians, and tour guides, and assuming that public hearings have been held to support this increase, I am further directing the Director of Labor to scrutinize each and every application submitted requesting nonresident workers be hired for one of the above-cited job categories. The Director of Labor should be placed in the position of frequently having to conditionally waive this restriction pursuant to 3 CMC §4436(b). The Legislature should set the relative percentages at "realistic" levels after duly considering the demand for labor in all job classifications and after considering the availability of local residents who "might" want to work at low minimum wages that were kept low by the Ninth Legislature (which effectively rolled back the $.30 minimum wage increase that was scheduled to have taken effect on January 1, 1996), and by the Tenth Legislature which is yet to consider increasing the minimum wage despite support for the increase from the U.S. Congress, the U.S. Department of the Interior, the Chamber of Commerce, and the Executive Branch.

On a related matter, it should be noted that the Executive Branch is currently evaluating the legal status of Micronesians (pursuant to applicable Commonwealth and federal law) who are residing and employed within the Commonwealth.

It is my hope that H.B. 10-173 will be a starting point for further consideration by the Legislature before the possible onus of another actual or perceived crisis which (given by this bill's extension of the sunset provision application to all government positions (other than doctors, dentists and midwives at the Department of Public Health)), could very well arise on September 30, 2000. As I have stated before, I would have preferred for the Legislature to eliminate the sunset provision altogether and let each Legislative body (as the Commonwealth employment situation and labor pool changes) consider the need for legislation restricting nonresident workers from being employed by the Government. In some respects, all this legislation does is defer the decision of the Tenth Legislature to the Twelfth Legislature. Furthermore, I would hope that the Tenth Legislature considers amending Section 5 of H.B. 10-173 to exempt out other critical positions currently held by nonresident workers.

Other provisions of H.B. 10-65 which I found either objectionable or that I believe needed further clarification (as set forth in my veto message to H.B. 10-65) were unfortunately left unaddressed and intact. However, given the assurance I have received from the Attorney General's Office with respect to the legal effect of the questionable "finding" described above, and given the pressing need to redress the shortage of professional staff at both CHC and the Public Auditor's Office, I have decided to sign H.B. 10-173.


Sincerely,

[Signature]

FROILAN C. TENORIO
HOUSE OF REPRESENTATIVES

TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
FIRST REGULAR SESSION, 1996

PUBLIC LAW NO. 10-4
HOUSE BILL NO. 10-173

AN ACT

To repeal and reenact 3 CMC Section 4434 (e) and (i); and for other purposes.

Offered by Representatives: P. Michael P. Tenorio, Pete P. Reyes, Manuel A. Tenorio, and Jesus T. Attao,

Date: February 22, 1996

HOUSE ACTION

Standing Committee Report: None

First and Final Reading: February 22, 1996

SENATE ACTION

Standing Committee Report: None

Second and Final Reading: February 23, 1996

Evelyn C. Fleming
House Clerk
AN ACT

To repeal and reenact 3 CMC Section 4434 (e) and (i); and for other purposes.

BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Title. This Act may be known as the "Nonresident Worker Extension Act of 1996."

Section 2. Findings and Purpose. The Legislature finds that current law exempts particular departments, agencies and other entities from the blanket prohibition on the hiring of nonresident workers by the Commonwealth Government and allows these entities to hire nonresident workers with limited restrictions. The Legislature also finds that sound social policy dictates that the Commonwealth Government reduce and eventually phase out its reliance on nonresident labor.

The Legislature further finds that, in accordance with Public Law 7-45, the exemptions for some of the entities have expired on September 30, 1995. The Legislature also recognizes that there is yet an insufficient locally available labor pool to supply the professional and technical needs for some of these Commonwealth government entities. For example, the local labor pool is presently incapable of supplying sufficient numbers of doctors, dentists, nurses, auditors, mechanics and teachers. To accommodate both the social policy of phasing out nonresident labor and the economic reality of current continued need, it is the purpose of this legislation to provide a mechanism whereby the number of nonresident workers employed by the Commonwealth government will be reduced by governmental responsibility and accountability. This legislation will extend the sunset provision imposed by Public Law 7-45 to September 30, 2000. The Legislature further finds that it was the intent of Public Law 7-45 to restrict the Commonwealth government from hiring nonresident workers both directly and indirectly through the use of manpower services or agencies.

It is the further purpose of this legislation to insure that all exempted government entities are actively working toward phasing out the reliance on nonresident workers.
Therefore, this legislation requires each of the exempt government entities to develop a comprehensive manpower training and education plan in coordination with the Northern Marianas College and the Office of Personnel Management. This plan must include a management intern program for employees to receive the necessary job-skills training and/or education to eventually fill the positions currently occupied by non-resident workers. Furthermore, each government entity authorized under this Act to hire nonresident workers shall report annually, in writing, to the presiding officers of each house of the Legislature on the progress and status of this plan.

Section 3. **Amendment.** 3 CMC Section 4436 is hereby amended to add a new subsection (e) to read as follows:

"(e) A Nonresident Worker Certificate shall not be issued or renewed for any position for employment with the Commonwealth government unless the Office of Personnel Management, the President of the Northern Marianas College, or the Commissioner of Education, as the case may be, certifies that no resident worker is available to fill the position."

Section 4. **Repealer and Reenactment.** 3 CMC Section 4434 (e) is hereby repealed and reenacted to read as follows:

"(1) The Director of Labor shall not approve Nonresident Worker Certificates for the following job classifications: taxi cab driver, secretary, bookkeeper, accounting clerk, messenger, receptionist, surface tour boat operator, bus driver, including tour bus driver, and telephone switchboard operator.

(2) The Director shall not approve Nonresident Worker Certificates for employment unless the number of resident workers employed by the applicant employer is at least equal to the number of nonresident workers employed by the applicant employer in any of the following job classifications: retail trade clerk, retail trade cashier, hotel front desk clerk, janitor, security guard, custodian, and tour guide. However, the Director may conditionally waive this restriction in accordance with provisions of 3 CMC § 4436 (b).

(3) The Director, or his/her designated representative, shall insure that job classifications established by the employer, together with occupational qualifications and experience, are reasonable for the position being applied for, and in the event the Director, or his/her designated representative, determines that such job classification or occupational qualifications or experience is not reasonable for such position, the Nonresident Worker Certificate shall not be approved."
Section 5. **Repealer and Reenactment.** 3 CMC Section 4434 (i) is hereby repealed and reenacted to read as follows:

“(i) The Director shall not approve Nonresident Worker Certificates for any position for employment within the Commonwealth government except for employment within the following government entities and under the following conditions:

(A) In the Public School System for persons employed as of the effective date of this Act; provided, however, that nonresident workers employed as classroom teachers or supervisory personnel of classroom teachers, including but not limited to coordinators of special education programs, and education specialists must be a graduate of college or university in the United States, or which are accredited by the United States accrediting associations, or alternatively, must be graduate of a college or university and shall pass, prior to being issued a Nonresident Worker Certificate, a “BESTE” test for English proficiency or its functional equivalent as designated by the Board of Education;

(B) In the Department of Public Health. Applicants for nursing positions shall be graduates of recognized colleges or universities with a degree in nursing science in his/her country of origin and shall successfully satisfy all-in-country licensing requirements prerequisite to employment as board licensed and registered nurses.

(C) In the office of the Public Auditor; provided, however, that such nonresident workers shall meet minimal professional qualifications imposed by the Public Auditor.

(D) For technical and professional employees in the Technical Services Division and the Division of Environmental Quality of the Department of Public Works; provided, however, that such nonresident workers must meet professional qualifications imposed by the Secretary of the Department of Public Works.

(E) For instructors, research scientists and other technical and professional employees at the Northern Marianas College; provided, however, that such nonresident workers must be graduates of colleges or universities in the United States, or colleges or universities which are accredited by the United States accrediting association, or, alternatively, that such nonresident workers
are doctoral degree holders issued by colleges or universities in the United
States, or colleges or universities which are accredited by the United States
accreditation association.

(F) In the Commonwealth Utilities Corporation for technical and
professional employees.

(G) In the Department of Commerce for temporary or part-time
employees as needed for censuses and statistical surveys.

(2) In coordination with the Office of Personnel Management, the Northern
Marianas College or the Public School System, as the case may be, each
Commonwealth government entity authorized to hire nonresident workers pursuant to
this Act shall develop a comprehensive manpower training and education plan. This
plan must include a management intern program for employees to receive the necessary
job-skills training and/or education to eventually fill the positions currently occupied by
non-resident workers. At least 60 days prior to the beginning of each fiscal year, the
hiring government entity shall report annually, in writing, to the presiding officers of
each house of the Legislature on the progress and status of this plan together with a
funding request necessary to implement the plan. Failure of the government hiring
authority to comply with this provision shall be grounds to suspend the privilege of
hiring non-resident workers by the non complying entity.

(3) Except for the employment of medical doctors, midwives, and dentists by
the Department of Public Health, the exceptions authorized herein shall expire on
September 30, 2000.”

Section 6. 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 7. 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 8. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

DIEGO T. HENAVENTE
Speaker
House of Representatives

ATTESTED BY:

EVELYN C. FLEMING
House Clerk

Approved this 6th day of March, 1996

FROILAN C. TENORIO
Governor
Commonwealth of the Northern Mariana Islands
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MEMORANDUM

TO : Secretary of Labor and Immigration
                  Director of the Division of Labor

FROM : Governor

SUBJECT : P.L. 10-4 - the Nonresident Worker Extension Act of 1996

Attached for your review are the following documents: (1) Transmittal letter to the Legislature dated March 6, 1995; (2) Letter to the Commissioner of Education dated March 7, 1996; (3) Acting Attorney General's legal opinion dated March 7, 1996; (4) Letter to the Legislature dated March 14, 1996

I want to make it perfectly clear that I expect the Division of Labor to vigorously enforce all provisions of the Nonresident Workers Act (3 CMC §§4311 et seq., as amended).

As I stated in my transmittal letter to the Legislature, I am directing the Director of Labor to scrutinize each and every application submitted requesting nonresident workers be hired for those positions set forth in 3 CMC §4434(e)(2). The Director of Labor shall not conditionally waive the restrictions set forth in 3 CMC §4434(e)(2) unless an applicant has duly provided evidence that reasonable efforts have been made to hire "available resident workers" as such workers are defined in 3 CMC §4412(n) (further analyzed in the Acting Attorney General's opinion cited above). This means that it will not be enough for a private employer to advertise available positions solely within the Commonwealth before being able to ask for a waiver should such employer not be able to fill at least one half of those positions (set forth in 3 CMC §4434(e)(2)) with Commonwealth residents. Pursuant to 3 CMC §4412(n), the employer must make a reasonable good faith effort to hire available U.S. citizens from outside the Commonwealth:

Pursuant to the Legislature's repeal and re-enactment of 3 CMC §4434(e)(1), I am further directing you to make sure that all nonresident worker certificates are issued or renewed for those job categories set forth in 3 CMC §4434(e)(1). I would also like you to conduct an audit of all current nonresident worker permits that have been correctly issued for these categories. Please make sure that any such issued permits are not renewed.

As discussed in my letter to the Legislature (dated March 14, 1996) and the Acting Attorney General's legal opinion (dated March 7, 1996), I am further directing the Director of Labor to scrutinize each certification made pursuant to 3 CMC §4436(e)) by the President of NMC, the Commissioner of Education, and the Director of Personnel Management. I expect that the Department of Labor and Immigration will adopt guidelines applicable to both the private and public sectors for the Director of Labor to follow in determining whether a private employer has made a reasonable effort to hire an available resident worker (to meet the required ratio of resident to nonresident workers) and whether the public officials set forth above have made reasonable efforts to hire U.S. citizens prior to attempting to hire nonresident workers from within those categories set forth in 3 CMC §4434(i)).

No nonresident worker certificates will be issued to either private employers or public offices unless the recruiting/hiring effort satisfies duly adopted guidelines/regulations. Please forward to my office a copy of such proposed guidelines/regulations no later than April 4, 1996.

FROILAN C. TENORIO

cc: Senate President, Speaker of the House of Representatives, Acting Attorney General
The Honorable Diego T. Benavente  
Speaker of the House of Representatives  
Tenth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

The Honorable Jesus R. Sablan  
President of the Senate  
Tenth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

Dear Mr. Speaker and Mr. President:

This is to inform you that I have signed into law House Bill No. 10-173 ("H.B. 10-173"), entitled the "Nonresident Worker Extension Act of 1996," which was passed by the Tenth Northern Marianas Commonwealth Legislature.

I appreciate the Legislature’s quick action (perhaps too quick) in reconsidering and approving this revised version of H.D.1, SD2 ("H.B. 10-65") which I vetoed on February 15, 1996.

Notwithstanding, I must state (as I stated in my veto message to H.B. 10-65) that I still do not think the government should be in the business of hiring nonresident workers. To the greatest extent possible and practicable, the Commonwealth Government’s focus should be committed to hiring indigenous residents and other U.S. citizens. Of course, where there is no viable alternative, exceptions (such as those set forth in H.B. 10-173) must be made.

I am pleased that the Legislature removed the provision in H.B. 10-65 which would have prohibited the Department of Public Health and PSS from having the option to contract with manpower service agencies. This Administration has already demonstrated that utilizing manpower services can, in certain circumstances, save the government substantial amounts of money and management resources. In this light, I am somewhat disturbed that the Legislature inserted a new line to the "Findings and Purpose" section which provides that "[t]he Legislature further finds that it was the intent of Public Law 745 to restrict the Commonwealth Government from hiring nonresident workers both directly and indirectly through the use of manpower services or agencies." This finding is somewhat perplexing and leaves me wondering how it was actually "found." I do not recall there being any public hearings on this particular interpretation of P.L. 7-45 either prior to, or after, H.B. 10-173 was introduced and there are no committee reports that discuss this particular insertion. What is perhaps most disturbing is that nowhere within P.L. 7-45 is there my reference to manpower agencies. I simply do not understand how the Tenth Legislature can "define" the intent of the Seventh Legislature when P.L. 745 was enacted back on December 10, 1991. The bottom line is that this new "finding" set forth in H.B. 10-173 appears to be wholly unsubstantiated.

Given the Legislature’s desire to repeal and re-enact 3 CMC §4434(e)(1) (as set forth in Section 4 of H.B. 10-173), I am directing the Director of Labor to vigorously enforce this provision which
prohibits the issuance of nonresident worker certificates to taxi cab drivers, secretaries, bookkeepers, accounting clerks, messengers, receptionists, surface tour boat operators, bus and tour bus drivers, and telephone switchboard operators. Although it will undoubtedly work a hardship on some segments of the private sector, I will leave it to the Legislature to consider amending this provision if and when the business community demands change.

Given the Legislature's further desire to repeal and re-enact 3 CMC §4434(e)(2) as set forth in Section 4 of H.B. 10-173, which requires an applicant to hire at least an equal number of resident workers before being allowed to hire nonresident workers as retail trade clerks, retail trade cashiers, hotel front desk clerks, janitors, security guards, custodians, and tour guides, and assuming that public hearings have been held to support this increase, I am further directing the Director of Labor to scrutinize each and every application submitted requesting nonresident workers be hired for one of the above-cited job categories. The Director of Labor should not be placed in the position of frequently having to conditionally waive this restriction pursuant to 3 CMC §4436(b). The Legislature should set the relative percentages at "realistic" levels after duly considering the demand for labor in all job classifications and after considering the availability of local residents who "might" want to work at low minimum wages that were kept low by the Ninth Legislature (which effectively rolled back the $.30 minimum wage increase that was scheduled to have taken effect on January 1, 1996), and by the Tenth Legislature which is yet to consider increasing the minimum wage despite support for the increase from the U.S. Congress, the U.S. Department of the Interior, the Chamber of Commerce, and the Executive Branch.

On a related matter, it should be noted that the Executive Branch is currently evaluating the legal status of Micronesians (pursuant to applicable Commonwealth and federal law) who are residing and employed within the Commonwealth.

I hope that H.B. 10-173 will be a starting point for further consideration by the Legislature of the possible onus of another actual or perceived crisis which (given this bill's extension of the sunset provision application to all government positions) could very well arise on September 30, 2000. As I stated before, I would have preferred the Legislature to eliminate the sunset provision as proposed before, I would have preferred for the Legislature to eliminate the sunset provision...

In other and let each Legislative body (as the Commonwealth employment situation and labor changes consider the need for legislation restricting nonresident workers from being employed by the Government. In some respects, all this legislation does is defer the decision of the Ninth Legislature to the Twelfth Legislature. Furthermore, I would hope that the Tenth Legislature considers amending Section 5 of H.B. 10-173 to exempt out other critical positions currently held by nonresident workers.

I use provisions of H.B. 10-65 which I found either objectionable or that I feel needed further protection (as set forth in my veto message to H.B. 10-65) were unfortunately left unaddressed by it. However, given the assurance I have received from the Attorney General's Office with respect to the legal effect of the questionable "finding" described above, and given the pressing need to address the shonage of professional staff at both CHC and the Public Auditor's Office, I have decided to sign H.B. 10-173.

E.3 10-173 becomes Public Law No 10-4.

Sincerely,

FROILAN C. TENORIO
Mr. William S. Torres
Commissioner of Education
P.G. Box 1370
Saipan, MP 96950

Dear Commissioner Torres:

Re: P.L. 10-4 - The Nonresident Worker Extension Act of 1996

By now you should have received the legal opinion prepared by the Office of the Attorney General (dated March 7, 1996) which addressed your request for guidance in determining how P.L. 10-4 would affect the hiring of teachers by PSS. This letter shall serve to notify you that the Office of the Governor and the Executive Branch firmly stand behind this opinion.

Although it may have been the intent of the Legislature to exempt out those nonresident teachers currently employed by PSS (via 3 CMC §4434(i)(A)), the renewal of such teachers' nonresident workers' certificates is premised upon your "reasonable" certification that no resident worker (as defined in 3 CMC §4412(n)) is available to fill the position. Therefore, the consequence of P.L. 10-4's requirement that PSS give preference to "available resident workers" is that PSS may lose many, if not most, of its current nonresident teachers, some of whom have been with PSS for many years.

Given the newly enacted certification requirements set forth in 3 CMC §4436, I have no choice but to direct the Department of Labor and Immigration through its Director of the Division of Labor to carefully scrutinize each and every certification made pursuant to 3 CMC §4436 and determine whether reasonable efforts were made by PSS, NMC and the Office of Personnel Management to hire available resident workers (defined in 3 CMC §4412(n)). Only upon being satisfied that reasonable efforts were made to hire available resident workers will the Director of the Division of Labor be authorized to issue nonresident worker certificates to nonresidents seeking to fill those government positions set forth in 3 CMC §4434(i).

I realize that certain hardships may arise as the result of the certification process. However, to effectuate the intent of the Legislature that this Government direct its hiring efforts toward available local residents (which statute only include all U.S. citizens regardless of whether they are physically present in the Commonwealth), the certification of nonresident workers will be subject to scrutiny. Since it is my understanding that PSS is currently directing its recruiting efforts within the Commonwealth, Guam, Hawaii and the Mainland, it would appear that P.L. 10-4's impact on PSS will be limited to those nonresident PSS employees seeking renewal of their nonresident workers' certificates.
If you should have any question about this letter, please feel free to contact my office.

Sincerely,

FROILAN C. TENORIO

cc: President of the Senate
     Speaker of the House of Representatives
     President, NMC
     Director, OPM
     Acting Attorney General
     Secretary of Labor and Immigration
     Director of the Division of Labor
     Chairman, CNMI Council of PTA
March 7, 1996

William S. Torres
Commissioner of Education
P.O. Box 1370 CX
Saipan, MP 96950

In Re: P. L. 10-4 - The Won-resident Worker Extension Act of 1996

Dear Commissioner Torres:

You have requested the guidance of this office in determining how the above-referenced Public Law which became effective March 6, 1996 will affect the hiring of teachers by the Public school System (PSS). Several portions of this bill are specifically directed at PSS. To assist you in reviewing this matter, a copy of P.L. 10-4 is attached.

Section 3 at p. 2, lines 9 - 15, amends 3 CMC § 4436 by adding thereto a new subsection (e), Insofar as PSS is concerned a Nonresident Worker’s Certificate may not be issued to a nonresident teacher hired by PSS until the Commissioner of Education certifies to the Department of Labor "that no resident worker is available to fill the position." Pursuant to 3 CMC § 4412(n), a "resident worker" is:

[A]ny available individual who is capable of performing services or labor desired an employer and, who is a citizen or national of the United States as defined in the Constitution of the Northern Mariana Islands or who has been granted national or citizenship status pursuant to Commonwealth law or who is legally residing without restrictions as to employment in the Commonwealth.

You will note from this definition one does not have to be actually physically present in the CNMI to be a "resident worker." Pursuant to 3 CMC § 4412(i), a "nonresident worker" is any individual 18 years of age who is capable of performing services or labor desired by an employee and who is not, pursuant to the definition of 3 CMC § 4412(n) a resident worker. The classification on a nonresident worker excludes any immediate relative, spouse, or children of a U.S. citizen or foreign investor.

Based on these definitions, 3 CMC § 4436(e) as amended requires that the Commissioner of Education certify that no U.S. citizen or
national of the United States or resident legally residing in the CNMI without employment restrictions is able to fill the position (teaching or otherwise) which would be offered to the nonresident worker.

Section 5 of P.L. 10-4 at p. 3, lines 1 - 16 repeals and reenacts 3 CMC § 4434(i) regarding the approval and issuance of a Nonresident Worker's Certificate by the Director of Tar. As reenacted 3 CMC § 4434(i) (A) permits PSS (assuming the requirements of 3 CMC 5 4436(e) discussed above are met - i.e. there is no qualified "resident worker" available) to hire nonresident workers or extend the contract of nonresident worker's currently employed. This statute further requires that the nonresident worker, if employed as a classroom teacher or supervisory personnel of classroom teacher must either: (1) be a graduate of a college or university in the United States; or (2) be a graduate of a college or university which is accredited by the United States accrediting associations or; (3) must be the graduate of a college or university and passed the "BESTE" test for English proficiency or a functional equivalent as designated by the CNMI Board of Education.

If you have any further questions regarding this matter prior to the return of Special Assistant Attorney General Sean Frink to PSS, please feel free to contact me. In my absence, please discuss matters set forth in this opinion with Assistant Attorney General Elliott Sattler.

'Se:' Truly Yours,

[Signature]

C. SEBASTIAN ALOOT
Attorney General (Acting)
March 7, 1996

William S. Torres
Commissioner of Education
P.O. Box 1370 CK
Saipan, MP 96950

In Re: P. L. 10-4 - The "Non-resident Worker Extension Act of 1996"

Dear Commissioner Torres:

You have requested the guidance of this office in determining how the above-referenced Public Law which became effective March 6, 1996 will affect the hiring of teachers by the Public School System (PSS). Several portions of this bill are specifically directed at PSS. To assist you in reviewing this matter, a copy of P.L. 10-4 is attached.

Section 3 at p. 2, lines 9 - 15, amends 3 CMC § 4436 by adding thereto a new subsection (e). Insofar as PSS is concerned a Nonresident Worker's Certificate may not be issued to a nonresident teacher hired by PSS until the Commissioner of Education certifies to the Department of Labor "that no resident worker is available to fill the position." Pursuant to 3 CMC § 4412(n), a "resident worker" is:

[...] any available individual who is capable of performing services or labor desired an employer and, who is a citizen or national of the United States as defined in the Constitution of the Northern Mariana Islands or who has been granted national or citizenship status pursuant to Commonwealth law or who is legally residing without restrictions as to employment in the Commonwealth.

You will note from this definition one does not have to be actually physically present in the CNMI to be a "resident worker." Pursuant to 3 CMC § 4412(i), a "nonresident worker" is any individual 18 years of age who is capable of performing services or labor desired by an employee and who is not, pursuant to the definition of 3 CMC § 4412(n) a resident worker. The classification on a nonresident worker excludes any immediate relative, spouse, or children of a U.S. citizen or foreign investor.

Based on these definitions, 3 CMC § 4436(e) as amended requires that the Commissioner of Education certify that no U.S. citizen or
Commissioner William S. Torres  
March 7, 1996  
Page 2

national of the United States or resident legally residing in the CNMI without employment restrictions is able to fill the position (teaching or otherwise) which would be offered to the nonresident worker.

Section 5 of P.L. 10-4 at p. 3, lines 1 - 16 repeals and reenacts 3 CMC § 4434(i) regarding the approval and issuance of a Nonresident Worker's Certificate by the Director of Labor. As reenacted 3 CMC § 4434(i)(A) permits PSS (assuming the requirements of 3 CMC § 4436(e) discussed above are met - i.e. there is no qualified "resident worker" available) to hire nonresident workers or extend the contract of nonresident worker's currently employed. This statute further requires that the nonresident worker, if employed as a classroom teacher or supervisory personnel of classroom teacher must either: (1) be a graduate of a college or university in the United States; or (2) be a graduate of a college or university which is accredited by the United States accrediting associations or; (3) must be the graduate of a college or university and passed the "BESTE" test for English proficiency or a functional equivalent as designated by the CNMI Board of Education.

If you have any further questions regarding this matter prior to the return of Special Assistant Attorney General Sean Frink to PSS, please feel free to contact me. In my absence, please discuss matters set forth in this opinion with Assistant Attorney General Elliott Sattler.

Very Truly Yours,

[Signature]

S. SEBASTIAN ALOOT  
Attorney General (Acting)
The Honorable Diego T. Benavente  
Speaker of the House of Representatives  
Tenth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

The Honorable Jesus R. Sablan  
President of the Senate  
Tenth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

Dear Mr. Speaker and Mr. President:

Since P.L. 10-4’s enactment on March 6, 1996, several questions and concerns have arisen regarding the effect of certain of its provisions. Although P.L. 10-4 sets forth certain government positions that can be filled by nonresident workers (Section 5 - amending 3 CMC §4434(i)) if such positions are certified as not being able to be filled by available local residents (Section 3 - adding 3 CMC §4436(e)), other critical/hard-to-fill positions that were being filled by nonresident workers were not included within those positions set forth in Section 5.

Enclosed is a copy of a letter I recently received from Paul Steere, Director of the Joeten-Kiyu Public Library. Mr. Steere’s letter rather convincingly sets forth the reasons why Mrs. Wendy Sullivan, a nonresident "Technical services Librarian" should be retained on the Library’s staff. However, given the limited exemptions set forth in Section 5, Mrs. Sullivan’s nonresident worker’s certificate can only be renewed if P.L. 10-4 is amended to include her position at the Library. It appears that, unless an amendment is made in the near future, the library users, which include many of our youth, will continue to be underserved until such time that the Library, at a rather large and arguably unnecessary additional expense, can recruit and hire a qualified librarian (who will need to be a U.S. citizen and who most likely will need to be hired from outside the Commonwealth).

There are, undoubtedly, other positions that should also be considered for exemption from the ban on government employment. It should be remembered that, irrespective of the exemptions set forth in 3 CMC §4434(i), the government is still first required to attempt to hire available resident workers before the Commissioner of Education. the President of NMC, or the Director of Personnel Management (as set forth in 3 CMC §4436(e)) can certify that no resident worker is available to fill vacant positions. Also enclosed is a copy of a letter I sent to the Commissioner of Education informing him as to how, in light of the Acting Attorney General’s legal opinion (also enclosed), the Executive Branch through the Division of Labor will scrutinize all 3 CMC §4436(e) certifications made by the Commissioner of Education, the President of NMC, and the Director of Personnel Management.

Sincerely,

FROILAN C. TENORIO
March 4, 1996

The Honorable Froilan C. Tenorio,
Governor of the Commonwealth of the Northern Mariana Islands
Caller Box 10007
Saipan, MP 96950

Dear Governor:

I truly regret raising a problem so soon after arriving on the island and meeting you, but I need to ask for advice on a politically sensitive matter.

I am worried that the present controversy on employment of Canadian and other aliens may cause unintended but serious harm to the public library. I have been informed that the one Canadian professional librarian on my staff may not have her job permit renewed. She has been employed in the past year and documents for renewal of her contract were submitted on January 23, 1996. Her contract and job permit have now expired on February 23, 1996.

Yet, according to the files, this was not a problem when Miss Wendy Jean Sullivan was employed. At that time, the public library was recognized as an "Autonomous Agency" and she was hired under "INC Regs. Section 706B," as the Technical Services Librarian (Workers Agreement No. 95-S81594). Incidentally, her husband, Dr. Stephen Sullivan, is a physician with the Commonwealth Health Center and holds a contract that is valid through September 30, 1996.

Mrs. Sullivan's duties involve complex aspects of computerized cataloging and classification which require knowledge of Anglo-American Cataloging Rules, experience with Library of Congress subject headings, and using Dynix systems for computer terminals. Hiring a replacement from the ILS is estimated at $25,800—an additional cost that almost equals the position's $29,700. Moreover, the library has started several new programs, such as the Information Technology Center, without a corresponding increase in full-time staff. To do without a key professional at this time would exacerbate an already serious staffing situation with the likely result of reduced library hours, services, and materials. Unfortunately, it would be the library users—present and future—who would be hurt.

I want to ask if you have any suggestions as to what steps can be taken to extend or renew Mrs. Sullivan's contract and job permit.

Please be assured that you will always have my full cooperation and dedication in assisting your administration and meeting the CNMI goals for an outstanding public library.

Sincerely,

Paul J. Steere
Library Director