



Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
OFISINAN I MAGA'LAHI
AGANA, GUAM 96910 U.S.A.

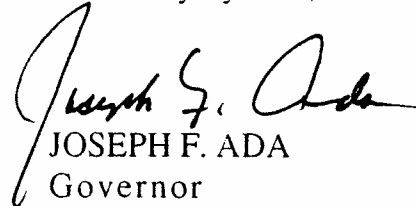
MAR 31 1992

The Honorable Joe T. San Agustin
Speaker, Twenty-First Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Speaker:

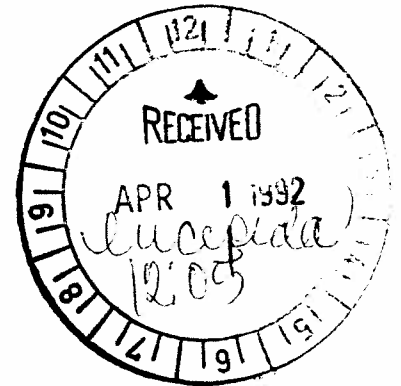
Transmitted herewith is Bill No. 499, which I have signed into law
as Public Law 21-85 .

Sincerely yours,


JOSEPH F. ADA
Governor

210733

Attachment




Commonwealth Now!

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 499 (COR), "AN ACT TO ADD §§44017.1, 44023 AND 44024 TO TITLE XL OF THE GOVERNMENT CODE TO ESTABLISH RULES AND REGULATIONS FOR NON-IMMIGRANT TEMPORARY WORKERS, AND TO PROVIDE PENALTIES FOR VIOLATIONS OF SUCH RULES," was on the 10th day of January, 1992, duly and regularly passed.



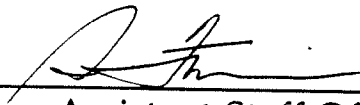
JOE T. SAN AGUSTIN
Speaker

Attested:



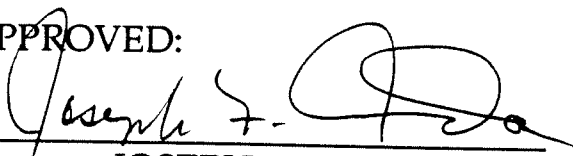
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 15th day of January, 1992,
at 6:05 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: JAN 27 1992

Public Law No. 21-85

TWENTY-FIRST GUAM LEGISLATURE
(1991) FIRST Regular Session

Bill No. 499 (COR)

As substituted by the Committee
on Youth, Senior Citizens and
Cultural Affairs

Introduced by:

C. T. C. Gutierrez
E. P. Arriola
H. D. Dierking

J. P. Aguon
J. G. Bamba
A. C. Blaz
M. Z. Bordallo
D. F. Brooks
E. R. Dueñas
E. M. Espaldon
P. C. Lujan
G. Mailloux
M. D. A. Manibusan
D. Parkinson
M. J. Reidy
M. C. Ruth
J. T. San Agustin
F. R. Santos
D. L. G. Shimizu
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO ADD §§44017.1, 44023 AND 44024 TO
TITLE XL OF THE GOVERNMENT CODE TO
ESTABLISH RULES AND REGULATIONS FOR
NON-IMMIGRANT TEMPORARY WORKERS,
AND TO PROVIDE PENALTIES FOR VIOLATIONS
OF SUCH RULES.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1.** §44107.1 is added to Title XL, Government Code of Guam, to
3 read:

4 **"§44017.1 Temporary labor certification for non-immigrant**
5 **workers; restrictions; penalties.**

6 (a) The Director of Labor, pursuant to the Administrative
7 Adjudication Law, shall promulgate rules and regulations to
8 establish operating guidelines for the certification and
9 employment of non-immigrant alien temporary workers in Guam
10 (the "Rules"). Such Rules shall establish the conditions under
11 which such workers may be temporarily employed and housed in
12 Guam because of a need for their skills which are not readily
13 available in Guam. The Rules shall be periodically reviewed by
14 the Department of Labor (the "Department"), at least once every
15 two (2) years, and shall include the following:

16 (i) A temporary labor certification issued by the
17 Department shall be limited to one (1) employer and only to
18 those projects approved by the Department, shall be non-
19 transferable, and shall be valid only for the specific activity
20 designated in the certificate and only for the occupation
21 specified for each temporary worker covered by the certificate.

22 (ii) Civil penalties for violations of the Rules by an
23 employer or by a temporary worker, not to exceed a fine of
24 Five Hundred Dollars (\$500) per person for each such
25 violation.

26 (b) Any employer who is a persistent violator of the Rules is
27 guilty of a misdemeanor, and upon conviction shall be imprisoned

1 for not more than six (6) months or shall pay a fine of not more
2 than Ten Thousand Dollars (\$10,000), or shall suffer both such
3 imprisonment and fine.

4 (c) "Persistent violator" means an employer who commits,
5 with criminal negligence as defined in §4.30, Title 9, Guam Code
6 Annotated, a second violation of the Rules and who has been cited
7 and fined for a previous violation within any twelve (12) month
8 period immediately preceding the second violation.

9 (d) Any employer with a temporary labor certification
10 found guilty of intentionally or knowingly violating §44017 of this
11 Chapter, or of the Rules, in addition to any sanctions imposed
12 under such §§44017 and 44017.1, may have his temporary labor
13 certification suspended and be disbarred from any temporary
14 labor certification program for a period not exceeding three (3)
15 years.

16 (e) Fines collected by the Department under the provisions
17 of this section shall be deposited in the Manpower Development
18 Fund program account with seventy percent (70%) to be allocated
19 to the Guam Community College for human resources
20 development and thirty percent (30%) for operating support of the
21 Department, which shall be subject to legislative appropriation.

22 (f) A quota for temporary construction workers ("H-2Bs")
23 shall be established by the Governor of Guam to confine the
24 number of such temporary workers to existing job vacancies.

25 (g) No person will be granted a certification to employ such
26 non-immigrant alien workers without first obtaining a permit for
27 a workers' dormitory from the Department of Public Health and

1 Social Services, **except** that employers employing a minimum
2 number of such workers or workers planning to live with relatives
3 may obtain an exemption from the dormitory requirement from
4 the Department. No such permit shall be granted in violation of
5 the zoning law. An applicant for such a permit must submit
6 complete, detailed plans of the dormitory, site plans and must
7 demonstrate compliance with all applicable health and safety
8 requirements. No employer may withhold from his workers'
9 wages any funds to cover the cost of meals and housing unless the
10 workers' housing, the kitchen and dining facilities, and the kitchen
11 workers have all necessary health and Department permits, and
12 only after the written consent of the worker, which consent shall
13 be filed with the Department. The Director of Public Health and
14 Social Services, in coordination with the Guam Environmental
15 Protection Agency and the Department, shall cause to be inspected
16 every workers' dormitory at least once every three (3) months.

17 (h) The Department in cooperation with the Department of
18 Public Health and Social Services, the Guam Environmental
19 Protection Agency, the Department of Revenue and Taxation and
20 the Guam Contractors License Board shall have all necessary
21 investigative powers to carry out the provisions of this section.

22 (i) No employer of temporary workers regulated under this
23 section may withhold such workers' passports, control such
24 workers' behavior during non-working hours, or deduct from
25 such workers' wages taxes due governments other than the
26 government of Guam or of the United States, **except** as such
27 deductions are authorized by treaty.

1 (j) In addition to the other penalties provided in this section,
2 any employer who violates any of the provisions of this section
3 may be sued for civil damages by any worker adversely affected by
4 such violations, and if such damages are established at trial, such
5 damages shall be trebled and the worker shall be entitled to
6 reasonable attorney's fees to be paid by the employer."

7 **Section 2.** A new §44023 is added to the Government Code of Guam to
8 read:

9 "§44023. **Prevailing wages.** The Department of Labor shall
10 disqualify an employer from any non-immigrant worker program
11 if found in violation of the statutory obligation to pay the correct
12 wage rate to the workers employed at such employer's
13 establishment."

14 **Section 3.** A new §44024 is added to the Government Code of Guam to
15 read:

16 "§44024. **Penalties.** The Department of Labor shall impose
17 a penalty of not less than One Thousand Dollars (\$1,000) or more
18 than Twenty-Five Thousand Dollars (\$25,000) and disbarment
19 from employing any aliens under any of the non-immigrant
20 worker programs for a period of two (2) years plus back wages on
21 any employer found in violation of statutory obligations with
22 respect to the employment of aliens."

23 **Section 4.** A new §44025 is hereby added to the Government Code to
24 read:

25 "§44025. **Testing of Temporary Workers' skills.** The
26 Department of Labor shall, on a random basis, test the skills of
27 non-immigrant temporary workers to make certain that they

1 have the skills set out in their labor certification applications.
2 When a non-immigrant temporary worker is found in such
3 random testing to be unskilled, all such temporary workers of such
4 worker's employer shall be tested and disqualified as necessary.
5 The Department of Labor may, if probable cause exists that
6 unqualified non-immigrant temporary workers are employed by a
7 particular employer, test any or all the non-immigrant temporary
8 workers of that particular employer. Where such tests
9 demonstrate a significant lack of the skills they should possess the
10 Department of Labor shall disqualify such employees from further
11 employment on Guam and shall treat such employees' employers
12 as being in violation of this Chapter, **unless** (i) the employer has
13 reported the deficiency to the Department of Labor and (ii) has
14 committed no other violation of this Chapter or any other
15 territorial or Federal labor law. The Director of Labor shall,
16 pursuant to the Administrative Adjudication Law, promulgate all
17 necessary rules and regulation to govern the methods of testing
18 for skills, the languages in which such tests shall be given, and
19 such other matters as are appropriate to such testing program."



Twenty-First Guam Legislature

SENATOR ELIZABETH P. ARRIOLA
Chairperson
Committee on Youth,
Senior Citizens and Cultural Affairs

October 31, 1991

The Honorable Joe T. San Agustin
Speaker
Twenty-First Guam Legislature
155 Hesler Street
Agana, Guam 96910

VIA: Chairman, Committee on Rules

Dear Mr. Speaker:

The *Committee on Youth, Senior Citizens and Cultural Affairs* to which was referred Bill No. 499, "AN ACT TO ADD A NEW SECTION 44017.1 TO THE GOVERNMENT CODE RELATIVE TO ESTABLISHING RULES AND REGULATIONS FOR NON-IMMIGRANT TEMPORARY WORKERS, AND PROVIDING PENALTIES FOR VIOLATIONS OF THOSE RULES AND REGULATIONS" has had the same under consideration and now wishes to report back its recommendation TO DO PASS as substituted by the Committee.

Committee votes received:

<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>REPORT OUT</u>	<u>OTHER</u>
-10-	-0-	-0-	-1-

Attached herewith are the Committee Report and other pertinent documents for your perusal.

Sincerely,

ELIZABETH P. ARRIOLA

Attachments

VOTE SHEET

COMMITTEE ON YOUTH, SENIOR CITIZENS AND CULTURAL AFFAIRS

on
Bill No. 499
As substituted by the Committee

**"AN ACT TO ADD A NEW SECTION 44017.1 TO THE GOVERNMENT CODE
RELATIVE TO ESTABLISHING RULES AND REGULATIONS FOR
NON-IMMIGRANT TEMPORARY WORKERS, AND PROVIDING PENALTIES
FOR VIOLATIONS OF THOSE RULES AND REGULATIONS"**

Chairperson:	To Pass	Not To Pass	Report Out	Inactive File
<u>Elizabeth P. Arriola</u> Elizabeth P. Arriola	✓	_____	_____	_____
Members:				
<u>Frank R. Santos</u> Frank R. Santos	✓	_____	_____	_____
<u>J. George Bamba</u> J. George Bamba	✓	_____	_____	_____
<u>Herminia D. Dierking</u> Herminia D. Dierking	✓	_____	_____	_____
<u>Edward R. Duenas</u> Edward R. Duenas	✓	_____	_____	_____
<u>Ernesto M. Espaldon</u> Ernesto M. Espaldon	✓	_____	_____	_____
<u>Pilar C. Lujan</u> Pilar C. Lujan	_____	_____	_____	_____
<u>Martha C. Ruth</u> Martha C. Ruth	✓ <i>10/25/91</i>	_____	_____	_____
<u>David L. G. Shimizu</u> David L. G. Shimizu	✓	_____	_____	_____
<u>Madeleine Z. Bordallo</u> Madeleine Z. Bordallo	✓	_____	_____	_____
<u>Speaker Joe T. San Agustin</u> Speaker Joe T. San Agustin	✓	_____	_____	_____

COMMITTEE REPORT
of the
**COMMITTEE ON YOUTH, SENIOR CITIZENS
AND CULTURAL AFFAIRS**
on *Bill NO. 499*

***AN ACT TO ADD A NEW SECTION 44017.1 TO THE
GOVERNMENT CODE RELATIVE TO ESTABLISHING
RULES AND REGULATIONS FOR NON-IMMIGRANT
TEMPORARY WORKERS, AND PROVIDING PENALTIES
FOR VIOLATIONS OF THOSE RULES AND
REGULATIONS.***

PREFACE

A public hearing on **Bill No. 499** was held by the Committee on Youth, Senior Citizens and Cultural Affairs on Wednesday, August 21, 1991 at the Public Hearing Room, Pacific Arcade Building, Agana.

Present at the hearing were Chairperson, Senator Elizabeth P. Arriola and attended by Senators Martha C. Ruth and Anthony C. Blaz.

TESTIMONY

Chairperson Arriola began the hearing by inviting testimony from the public. Those who came to testify were:

- Mr. John Vega, Deputy Director, Department of Labor - *in favor of passage of the Bill.*
- Mr. Thomas Nielsen, President, Guam Contractors' Association - *in favor of passage of the Bill.*
- Dr. John C. Salas, Executive Director, Guam Hotel and Restaurant Association - *in favor of passage of the Bill.*
- Mr. Bill Gibson, Executive Director, Guam Employers Council - *in favor of passage of the Bill.*

Mr. Vega read the written testimony submitted by Mr. Edward A. Guerrero, Director, Department of Labor, supporting the Bill. He stated that the Bill would accomplish the following:

- (a) assure job training opportunities to U. S. resident workers on Guam who are available for employment and training;
- (b) non-immigrant alien workers will complete their contracts with the employer who has petitioned them into Guam;
- (c) non-immigrant alien temporary workers cannot be employed in any position other than the specific position for which they have been certified by the Department of Labor; and
- (d) the Department would be provided statutory authority to impose civil fines.

PACIFIC MANAGEMENT RESOURCE GROUP

A PRIVATE, NON-PROFIT CORPORATION

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P.O. Box 528
SAIPAN, COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS
(670) 723-6615
FAX (670) 234-3969

8/15/91

E. L. GIBSON
EXECUTIVE DIRECTOR

Elizabeth P. Arriola
Committee on Youth, Senior Citizens
and Cultural Affairs
Guam Legislature
155 Hesler St.
Agana, GU 96910

August 14, 1991

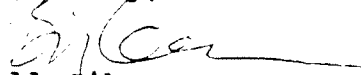
Dear Senator Arriola,

This will acknowledge your invitation to the public hearing
on Bills 499 and ~~347~~
471

I will attend the hearing and support Bill 499; there is a
clear need to tighten up the rules that pertain to alien workers.

We cannot support the proposal to exempt sole proprietors
from our Worker's Compensation law. Bill 471 is poorly drafted.
It does not say (I hope) what the sponsor intends the bill to
remedy. If the Legislature exempts sole proprietors from
Worker's Compensation laws, sole proprietorships will soon be
outnumber all other kinds of business enterprises -- partnerships
and corporations -- in Guam. It should be re-written to meet the
needs of individual, independent contractors or individual,
independent operators who are the sole employee of a licensed
business enterprise.

Sincerely,


Bill Gibson
Executive Director
Guam Employers Council

Mr. Thomas Nielsen suggested amendments to the Bill to improve the enforcement of the Non-Immigrant Temporary Workers Program (attachment).

Dr. John Salas of the Guam Hotel and Restaurant Association, read his testimony supporting the Bill. He stated that the Bill, if enacted, "will clearly show the Territory's intentions of becoming more responsible and accountable for the management of supplemental work force resources vital to the Territory's economy." Dr. Salas recommended technical changes be made on the Bill.

Mr. Bill Gibson stated that Bill No. 499 would tighten up the rules that pertain to alien workers.

There being no further testimony, Chairperson Arriola adjourned the hearing on **Bill No. 499**.

COMMITTEE RECOMMENDATION

The Committee on Youth, Senior Citizens, Cultural Affairs, and Human Resources wishes to report **Bill No. 499**, "***AN ACT TO ADD A NEW SECTION 44017.1 TO THE GOVERNMENT CODE RELATIVE TO ESTABLISHING RULES AND REGULATIONS FOR NON-IMMIGRANT TEMPORARY WORKERS, AND PROVIDING PENALTIES FOR VIOLATIONS OF THOSE RULES AND REGULATIONS***" has had the same under consideration, and now wishes to report back the same with the recommendation ***TO PASS*** as substituted by the Committee.

ATTACHMENTS

1. Written testimony by Mr. Edward A. Guerrero, Director, Department of Labor.
2. Written testimony by Mr. Thomas Nielsen, President, Guam Contractors' Association.
3. Written testimony by Dr. John C. Salas, Executive Director, Guam Hotel and Restaurant Association.
4. Written testimony by Mr. Bill Gibson, Executive Director, Guam Employers Council.

Twenty-First Guam Legislature
1991 (FIRST) Regular Session

Bill No. 499
as substituted by the
Committee on Youth, Senior Citizens and Cultural Affairs

Introduced by:

C. T. C. GUTIERREZ

E. P. ARRIOLA *EP*
Arriola

AN ACT TO ADD A NEW SECTION 44017.1 TO THE GOVERNMENT CODE RELATIVE TO ESTABLISHING RULES AND REGULATIONS FOR NON-IMMIGRANT TEMPORARY WORKERS, AND PROVIDING PENALTIES FOR VIOLATIONS OF THOSE RULES AND REGULATIONS.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1.** A new Section 44017.1 is added to the Government Code to read:

3 **"§44017.1. Temporary labor certification for non-immigrant workers;**
4 **restrictions; penalty for violating same.**

5 (a) The Director of the Department of Labor shall promulgate and amend rules and
6 regulations to establish operating guidelines for the certification and employment of
7 non-immigrant alien temporary workers in Guam. All rules shall be adopted pursuant to the
8 Administration Adjudication Act. Such rules shall contain a provision defining temporary,
9 non-immigrant workers to be temporarily employed only because of a need for their skills
10 and talent when such is not readily available in the Territory. The rules shall be periodically
11 reviewed by the Department of Labor, at least every three (3) years.

12 (b) A temporary labor certification issued by the Department of Labor shall be
13 limited to one (1) employer's specific job opportunity and shall be non-transferable.

14 (c) A temporary labor certification shall be valid for the specific activity designated
15 in the certification and only for the occupation specified for each temporary worker.

1 (d) The rules and regulations governing temporary labor certification may provide
2 civil penalties for violations by an employer or temporary worker, not to exceed a fine of
3 Five Hundred Dollars (\$500.00) for each violation.

4 (e) Any employer who is a persistent violator, as defined by Subsection (f) of this
5 Section, of the rules and regulations governing the certification for employment of
6 non-immigrant alien temporary workers commits a misdemeanor, and upon conviction shall
7 be sentenced to a term of imprisonment of not more than six (6) months or payment of a
8 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

9 (f) As used in Subsection (e) of this Section, a "persistent violator" is an employer
10 who commits, with criminal negligence as defined in 9 GCA §4.30, a third or subsequent
11 violation of the rules and regulations of the Department of Labor governing the
12 certification and employment of non-immigrant alien temporary workers, and who has been
13 cited and fined for two (2) previous violations within any twelve (12) month period
14 immediately preceding the third or subsequent violation.

15 (g) Any employer with a temporary labor certification found guilty of intentionally
16 or unknowingly violating this Section or Section 44017 of this Chapter, or the rules and
17 regulations promulgated under this Section, in addition to any sanctions imposed under
18 these Sections 44017 and 44017.1, may have his temporary labor certification suspended
19 and be barred from any temporary labor certification program for a period not exceeding
20 three (3) years.

21 (h) Fines collected in accordance with Subsection (d) of this Section shall be
22 deposited in the Manpower Development Fund (MDF) program account which seventy
23 percent (70%) will be allocated to Guam Community College for Human Resources
24 Development and the thirty percent (30%) shall be allocated for operating support of the
25 Department of Labor.

26 (i) Quota for (H-2B) construction workers shall be determined by the Governor of
27 Guam in order to control the number of temporary workers on the existing vacancy.



LABOR

DIPATTAMENTON HUMOTNAT

EDWARD A. GUERRERO, Director • JOHN M. VEGA, Deputy Dir

JOSEPH F. ADA
Governor

FRANK F. BLAS
Lieutenant Governor

AUG 20 1991

The Honorable Elizabeth P. Arriola
Chairperson
Committee on Youth,
Senior Citizens and Cultural Affairs
Twenty-First Guam Legislature
155 Mesler Street
Agana, Guam 96910

Dear Ms. Chairperson:

We are the proponent of Bill 499 and we strongly support and recommend passage for the following reasons and purposes:

(a) To establish policy and procedures to implement, process, transfer and monitor the importation and extension of temporary stay on Guam of non-immigrant alien workers under section 101(a)(15)(h)(ii) of the Immigration and Nationality Act of 1952, as amended. It is the intent of this policy to assure maximum job and training opportunities to U.S. resident workers on Guam who are available for employment and training.

(b) It is the policy of the Government of Guam that all non-immigrant alien workers will complete their contracts with the employer who has petitioned them onto Guam. Transfers may only be allowed as a result of a wage and hour investigation in which it is found that monies are due an employee and/or there other compelling reasons for allowing such a transfer.

(c) Non-immigrant alien temporary workers cannot be employed in any position other than the specific position for which they have been certified for by the Department of Labor. However, prior to the end of their validity period, journeymen only will be permitted to be reclassified in a different occupation as per the employer's attachment submitted along with the employer's GDOL 750 Part A (application form) in which the employer indicates according to line 31 "another related occupation", if the employer has approved open slots for those positions. A detail letter requesting the reclassification of those journeymen must be approved by the Department of Labor and Immigration and Naturalization Service.

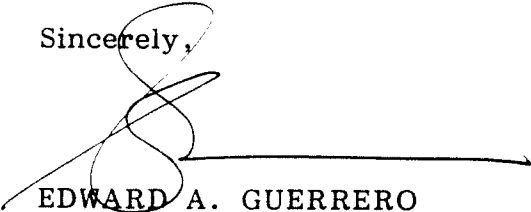


Commonwealth Now!

The Honorable Elizabeth P. Arriola
Page 2

(d) The Attorney General's Office has advised our agency that we may not now impose civil fines for violations of departmental rules or internal administrative policies. Presently, only criminal penalties may be imposed, after a determination by a Court that a crime has been committed. Those criminal penalties are limited to \$500. With the statutory authority provided by this measure, the Department of Labor could impose civil fines of up to \$500 per violation. Furthermore, a criminal penalty of up to \$10,000 could be imposed upon a persistent violator. We believe that a \$500 civil fine, or up to a \$10,000 criminal penalty is appropriate. We note that the Contractors License Board and the Guam Environmental Protection Agency may each levy civil fines of up to \$10,000 for violations of their laws or regulations. In conclusion, we urge that Bill No. 499 be enacted into law to provide our agency with additional flexibility and authority to deal with temporary worker problems.

Sincerely,



EDWARD A. GUERRERO



GUAM CONTRACTORS' ASSOCIATION

August 20, 1991

Senator Elizabeth Arriola
Chairperson, Youth, Senior Citizens & Cultural Affairs
21st Guam Legislature
Agana, Guam 96910

RE: Bill No. 499, An Act to add a New Section 44017.1 to the Government Code to Relative establishing Rules and Regulations for Non-Immigrant Temporary Workers, and Providing Penalties for Violations of those Rules and Regulations.

Dear Madame Senator and Committee Members:

Thank you for this opportunity to testify on Bill No. 499.

The last few years we have seen a vast improvement in the Non-Immigrant Temporary Workers Program, more commonly known as the H-2 program. Processing time has been reduced and become much more professional, abuse of workers has been reduced and the Department of Labor has greatly improved its monitoring and enforcement. I think that we as contractors have proven that the system can work to the benefit of the island as a whole. According to Department of Labor statistics of June 1991, over 4,000 local individuals were employed by the construction industry alongside the H-2 workers.

In order to provide continuity to the program, we believe Bill No. 499 will be helpful. There are always those who attempt to take advantage of the system and therefore get an unfair competitive edge over those who are following the rules.

Our comments on the bill are as follows:

1. Section (a)
Flexibility should be given to the Director of the Department of Labor to make changes to the Rules and Regulations in accordance with the Administrative Adjudication Act.

Senator Carl T. C. Guterrez
Testimony on Bill No. 499
Page 2

2. Section (e)
The Ten Thousand Dollar fine should say "not more than Ten
Thousand Dollars."

We trust this bill will be passed into law.

Sincerely,

GUAM CONTRACTORS' ASSOCIATION



Thomas Nielsen
President



GUAM HOTEL & RESTAURANT ASSOCIATION

148 Apaka Street, Yigo, Guam USA 96929 Tel. (671) 637-2297 Fax (671) 637-2297

Wednesday, August 21, 1991

Honorable Elizabeth P. Arriola, Chairperson
Committee on Youth, Senior Citizens and Cultural Affairs
Twenty-first Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Senator Arriola:

Thank you for your invitation to present testimony to the Committee on Bill 499 "**An Act to Add a New Section 44017.1 to the Government Code Relative to Establishing Rules and Regulations for Non-immigrant Temporary Workers, and Providing Penalties for Violations of Those Rules and Regulations**".

First of all, the Guam Hotel & Restaurant Association, extends its compliments to the bill's author, Senator Carl Guterrez, and the members of your committee, for proposing to incorporate under Territorial Law a subject which has always been considered to be the purview of the federal government. It is our understanding the intent of Bill 499 is to enact statutory Guam requirements governing the certification of temporary, non-immigrant workers, a process currently done by agreement between the Guam and Federal Departments of Labor. This agreement bases its foundation on rules and regulations promulgated by the U. S. Immigration and Naturalization Service which apply to the nation as a whole and often leave the Territory of Guam at a disadvantage. We feel this statute, if enacted, will clearly show the Territory's intentions of becoming more responsible and accountable for the management of supplemental work force resources vital to the Territory's economy.

Secondly, we would recommend language which clearly states temporary, non-immigrant workers are "Guest Workers" in the Territory and have been invited to Guam because of a need for their skills and talent when such is not readily available in the local labor pool. The presence and quantity of these "Guest Workers" should therefore be directly linked by statute to levels of unemployment within the Territory. This provision should allow market and economic forces to determine the viability of worker importation rather than leaving those decisions to artificially - induced quotas or official interpretation. We believe the level of unemployment which allows or disallows certification of temporary workers be set by law so its rules and regulations may procedurally incorporate this control factor into operation.

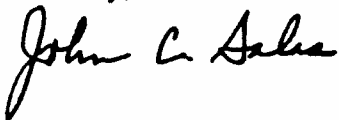
Third, we would further recommend Bill 499 specify the establishment of an escrow fund, managed by the Guam Department of Labor, for the sole purposes of serving as a repatriation fund for those temporary, non-immigrant "Guest" workers to return to their countries at any time. The source of these funds would be employer contributions in social security wages, transportation, and other fees which are either currently the responsibility of employers of temporary, non-immigrant workers or those which are presently exempted by federal statute through Labor Treaty provisions with countries such as the Philippines and Korea. Employers currently pay a fee to the Guam Department of Labor for temporary labor certification, referred to as the Manpower Development Fund. That fund has provided significant improvements in skill development programs at the Guam Community College and Territorial Apprentice Program. We recommend a similar fund be established in this statute for the repatriation of "Guest" workers to prevent the "Yokoi-ing" of the temporary worker.

Lastly, we would recommend the statute include a periodic review of the Guam Department of Labor's rules and regulations; for example, every 3 years. Economic and labor conditions have historically shown a tendency to change rapidly despite extensive planning. This review provision would be expected to prevent government regulations from becoming an impediment to desired growth or economic directions. It would serve to insure these vital regulations indeed remain current and viable for conditions at the times they are needed.

Guam's present economic development is expected to continue its significant growth for the next five years. The human resource factor is a vital element in the investment and development equation. Human resource projections would indicate Guam will be able to provide 70% of the work force needed over the next five years at a 100% employment level of every citizen of the Territory. This 30% resource must be obtained from outside the Territory areas which are affordable, market sensitive, and compatible with the island's social and community infrastructure.

We applaud the Guam Legislature for its foresight in Bill 499. I am available for questions from members of the Committee.

Sincerely,



John C. Salas, Ph.D.
Executive Director

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Bill No. 499

Introduced by:


E.T.C. Gutierrez

YSC
AN ACT TO ADD A NEW SECTION 44017.1 TO THE
GOVERNMENT CODE TO RELATIVE ESTABLISHING
RULES AND REGULATIONS FOR NON-IMMIGRANT
TEMPORARY WORKERS, AND PROVIDING PENALTIES
FOR VIOLATIONS OF THOSE RULES AND
REGULATIONS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. A new Section 44017.1 is added to the Government Code to read.

3

4 "§44017.1. Temporary labor certification for non-immigrant workers
5 restrictions; penalty for violating same.

6 (a) The Director of the Department of Labor shall promulgate rules and
7 regulations to establish operating guidelines for the certification and employment of
8 non-immigrant alien temporary workers in Guam.

9 (b) A temporary labor certification issued by the Department of Labor shall
10 be limited to one (1) employer's specific job opportunity and shall be non-
11 transferable.

12 (c) A temporary labor certification shall be valid for the specific activity
13 designated in the certification and only for the occupation specified for each
14 temporary worker.

15 (d) The rules and regulations governing temporary labor certification may
16 provide civil penalties for violations by an employer or temporary worker, not to
17 exceed a fine of Five Hundred Dollars (\$500) for each violation.

18 (e) Any employer who is a persistent violator, as defined by Subsection (f)
19 of this Section, of the rules and regulations governing the certification for

20 employment of non-immigrant alien temporary workers commits a misdemeanor
21 and upon conviction shall be sentenced to a term of imprisonment of not more
22 than six (6) months or payment of a fine of Ten Thousand Dollars (\$10,000), or both.

23 (f) As used in Subsection (e) of this Section, a "persistent violator" is an
24 employer who commits, with criminal negligence as defined in 9 GCA §4.30, a third
25 or subsequent violation of the rules or regulations of the Department of labor
26 governing the certification and employment of non-immigrant alien temporary
27 workers, and who has been cited and fined for two (2) previous violations within
28 any twelve (12) month period immediately preceding the third or subsequent
29 violation.

30 (g) Any employer with a temporary labor certification found guilty of
31 intentionally or knowingly violating this Section or Section 44017 of this Chapter, or
32 the rules and regulations promulgated under this Section, in addition to any
33 sanctions imposed under these Sections 44017 and 44017.1, may have his temporary
34 labor certification suspended and be barred from any temporary labor certification
35 program for a period not exceeding three (3) years.

Bill No. 499 (COR)

Introduced by:


E.T.C. Gutierrez

AN ACT TO ADD A NEW SECTION 44017.1 TO THE GOVERNMENT CODE TO RELATIVE ESTABLISHING RULES AND REGULATIONS FOR NON-IMMIGRANT TEMPORARY WORKERS, AND PROVIDING PENALTIES FOR VIOLATIONS OF THOSE RULES AND REGULATIONS.

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30 (g) Any employer with a temporary labor certification found guilty of
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32 the rules and regulations promulgated under this Section, in addition to any
33 sanctions imposed under these Sections 44017 and 44017.1, may have his temporary
34 labor certification suspended and be disbarred from any temporary labor certification
35 program for a period not exceeding three (3) years.