

1 §2406.5 [e.] Increasing the availability of insurance providing
 2 for or facilitating the provision of health care to the people of Guam.

3 [~~f. Procurement of services or products supplied by Guam licensed~~
 4 ~~vendors if total cost does not exceed one hundred ten percent (100%) of~~
 5 ~~those same services or products available from other vendors]~~

6 §2407 Recommendations of the Authority.

7 §2407.1 The [Board] Authority shall [promulgate] adopt
 8 regulations containing standards, criteria, and measures of investments by
 9 the Qualifying Certificate applicant and benefits for the people of Guam in
 10 issuing Qualifying Certificates. Such regulations shall include preference to
 11 be extended to applicants which have fifty-one percent (51%) or greater
 12 portion of local investment, as controlled by bona fide Guam residents, U.S.
 13 citizens or permanent residents. The [Board] Authority shall recognize and
 14 take into consideration any and all provisions of law and regulations
 15 administered by other government entities that have review or approval
 16 authority over the eligibility activity. Such regulations shall be adopted in
 17 the manner prescribed by the Administrative Adjudication Law."

18 SECTION 7. New §2407.2 and §2407.3 are added to Article 4
 19 Chapter 2 Title 12 Guam Code Annotated to read:

20 "§2407.2 In making its recommendation the Authority shall
 21 consider and make specific findings on the following:

22 (a) The impact of the Beneficiaries proposed activities upon
 23 established business and markets in the Territory;

24 (b) The financial risks facing the beneficiary to undertake the
 25 proposed activities;

26 (c) The location of the proposed activities;

1 (d) The importance of the proposed activities to the economy of
2 Guam and the government's officially adopted economic policies., if any;

3 §2407.3 In its recommendation of specific tax benefits the
4 Authority shall consider the following as terms and conditions:

5 (a) Limiting the tax benefits to a percentage of the capital
6 investment to be made by the Beneficiary within the Territory;

7 (b) Varying the rate of tax benefits over the term of the Qualifying
8 Certificate;

9 (c) Limiting the tax benefits to a fixed dollar amount ;

10 (d) Conditioning the tax benefits upon the Beneficiaries'
11 investment in or creation of public improvements separate from its
12 proposed activities.

13 (e) Requiring the Beneficiary to offer Ten Percent (10%) or more of
14 its corporate equity to qualified residents of the Territory of Guam on
15 terms and conditions to be established by the Authority;

16 (f) Requiring the Beneficiary to establish profit sharing programs,
17 stock ownership programs and other such benefits for its employees;

18 (g) Requiring the Beneficiary to establish in-house training
19 programs or conditioning the tax benefits upon contributions to an outside
20 training or scholarship fund.

21 (h) Requiring the procurement of services or products
22 supplied by Guam-licensed vendors if total cost does not exceed one
23 hundred ten percent (110%) of those same services or products available
24 from other vendors."

25 SECTION 8. §2403.1 of Article 4 Chapter 2 Title 12 Guam Code
26 Annotated is renumbered to be §2405(a)(11) and amended to read:

1 "~~§2403.1~~ §2405(a)11. ~~[Export Trading Company, Eligibility.]~~
2 ~~[An]~~ Export trading company as defined in §19500.21 of Chapter VI of
3 Title XX of the Government Code ~~[shall be eligible for the full benefits of a~~
4 ~~qualifying certificate subject to applicable restrictions for the full benefits~~
5 ~~of a qualifying certificate subject to applicable restrictions]~~ if the main
6 office of the export trading company is established on Guam."

7 SECTION 9. §2403.2 and §2403.3 of Article 4 Chapter 2 Title 12
8 Guam Code Annotated are repealed.

9 SECTION 10. §2404 of Article 4 Chapter 2 Title 12 Guam Code
10 Annotated is renumbered to be §2403 and amended to read:

11 "~~§2404~~ §2403 Nature of and Benefits. A Qualifying Certificate,
12 once issued, shall be a contract between the Government of Guam and the
13 Beneficiary, and the tax rebates and abatements enumerated in the
14 Certificate may not be curtailed, limited or impaired without the consent of
15 both parties by any subsequent act, except as provided herein. Once
16 issued and unless suspended, rescinded or revoked, a Qualifying Certificate
17 shall constitute conclusive evidence of entitlement to the tax rebates
18 and/or abatements stated on its face."

19 SECTION 11. §2405 of Article 4 Chapter 2 Title 12 Guam Code
20 Annotated is renumbered to be §2404.

21 SECTION 12. §2405.1 of Article 4 Chapter 2 Title 12 Guam Code
22 Annotated is repealed.

23 SECTION 13. §2406 of Article 4 Chapter 2 Title 12 Guam Code
24 Annotated is renumbered to be §2409, §2409.1, and §2409.3 respectively,
25 and amended to read:

26 "~~§2406~~ §2409 Grounds for Suspension, Recession or Revocation.

1 §2409.1 A Qualifying Certificate may be suspended, rescinded or
2 revoked by the Governor of Guam upon the recommendation of the [Board]
3 Authority for the following reasons:

4 [1.] (a) Fraud or misrepresentation of any material allegation in
5 the application for such Certificate;

6 [2.] (b) Failure to comply with any conditions and obligations
7 stated in the Certificate after having been notified by the Authority in
8 writing of such failure to comply and after having been given by the
9 Authority a reasonable period of time within which to correct such failure;

10 [3.] (c) The filing by [~~the Beneficiary~~] or against the Beneficiary
11 of a petition for [~~adjudication of~~] bankruptcy; [~~as to said Beneficiary~~
12 wherein the petition has been granted.]

13 [4.] (d) A finding by the Attorney General of [Guam] the
14 Territory that a corporate Beneficiary has been dissolved; or

15 [5.] (e) any term or provision of, or in the issuance of the
16 Qualifying Certificate being or having been in violation of any provision of
17 this Article or the applicable rules and regulations of the Authority.

18 §2409.3 No recommendation for suspension, rescision or revocation
19 shall be made by the [Board] Authority except after a hearing thereon
20 pursuant to the provisions of the Administrative Adjudication Law."

21 SECTION 14. A new §2409.2 is added to Article 4 Chapter 2 Title
22 12 Guam Code Annotated to read:

23 "§2409.2 The suspension, rescision, or revocation of a Qualifying
24 Certificate may be retroactive to its issuance or for any shorter period
25 recommended by the Authority."

1 SECTION 15. §2407 of Article 4 Chapter 2 Title 12 Guam Code
2 Annotated is renumbered to be §2408, §2408.1 and §2408.2 respectively
3 and amended to read:

4 "§2408. Disqualifications.

5 §2408.1 [~~A corporate applicant for a Qualifying Certificate shall, as~~
6 ~~a condition precedent to qualifying for the same, satisfy the Authority in~~
7 ~~writing that it shall not transfer, move relocate or otherwise remove any of~~
8 ~~its existing business plants to Guam from the continental United States or~~
9 ~~any of its territories or possessions.] A Qualifying Certificate shall not be
10 issued to any applicant who has not first obtained a license to do business
11 in *the Territory of* Guam.~~

12 §2408.2 No [~~officer~~] employee of the Authority or member of the
13 [~~Board~~] Authority or their spouses and no corporation or any other legal
14 entity in which [~~an~~] any [~~officer~~] employee or member of the [~~Board~~]
15 Authority or their spouses has any financial interest [~~may qualify~~] is
16 eligible to apply for a Qualifying Certificate. Neither shall any of the
17 following, during their term of office and for a period of one (1) year after
18 their resignation, termination, or completion of their term of office, directly
19 or indirectly, qualify for a Qualifying Certificate:

20 (a) Members of the Legislature and their spouses;

21 (b) Employees of the Executive Branch of the Government of Guam
22 and their spouses from the level of first assistant to the Department
23 Director and up;

24 (c) Employees of the Governor's Office and their spouses;

25 [~~e.~~] (d) Judges of the various courts of Guam and their spouses.

26 Any Qualifying Certificate issued in violation of this Section shall be void
27 ab initio."

1 SECTION 16. §2408 of Article 4 Chapter 2 Title 12 Guam Code
2 Annotated is renumbered to be §2410, §2410.1, §2410.2, and §2410.4
3 respectively and amended to read:

4 "~~§2408~~§2410 Employment of United States Citizens and
5 Permanent Residents.

6 §2410.1 [A] Every Qualifying Certificate shall ~~[not be issued to an~~
7 ~~applicant which is investing One Million (\$1,000,000) or more unless such~~
8 ~~applicant commits itself at the time of application for such a Certificate~~
9 ~~that a management training program shall be established and]~~ include a
10 requirement that the Beneficiary shall submit a plan for a management
11 training program for the approval of the Authority. The plan shall
12 establish a management training program through which the Beneficiary
13 shall have as managers and officers residents of Guam who are United
14 States citizens or permanent residents of the United States. ~~[a copy of that~~
15 ~~written training program shall be delivered to the Authority within the~~
16 ~~number of days prescribed in regulations by the Authority so that within a~~
17 ~~reasonable period of time residents of Guam who are United States citizens~~
18 ~~or permanent residents of the United States who are otherwise qualified~~
19 ~~would replace any management personnel or other officers of an industry~~
20 ~~or business granted a Qualifying Certificate who are not United States~~
21 ~~citizens or permanent residents of the United States]~~

22 §2410.2 (a) ~~[and that it]~~ A Beneficiary shall at all times employ a
23 total ~~[employment force]~~ work force of not less than the minimum full-
24 time equivalent number established by the Authority, as included in the
25 Qualifying Certificate. However , at all times, the work force of a
26 Beneficiary shall meet the following minimum requirements:

1 1. At least seventy-five (75%) of [~~which~~] the Beneficiary's non-
2 managerial employees shall be United States citizens or permanent
3 residents of the United States; and [~~provided, however that for good cause,~~
4 ~~temporary exemptions hereto for specific and limited periods of time, may~~
5 ~~be granted by the Authority, such temporary exemptions, to be~~
6 ~~conditioned upon a training program approved by the Authority designed~~
7 ~~to replace employees who are not either United States citizens or~~
8 ~~permanent residents.~~]

9 2. [~~In addition,~~] After the expiration of three-fourths (3/4) of the
10 period of the Qualifying Certificate or ten (10) years, whichever is sooner,
11 the [~~possessor of the Qualifying Certificate must~~] Beneficiary shall satisfy
12 the seventy-five percent (75%) employment requirement [at] for both
13 management and non-management [~~levels.~~] employees. [~~Hotel/motel~~
14 ~~management staff shall be comprised of a minimum of fifty (50%) United~~
15 ~~States citizens living on Guam or permanent alien residents of Guam. The~~
16 ~~number of U.S. citizens or permanent resident employees at management~~
17 ~~level shall escalate from a minimum of ten percent (10%) of the employees~~
18 ~~by the end of the second year to a minimum of fifty percent (50%) of the~~
19 ~~employees by the end of the fifty year of operation.]~~

20 (b) The Authority shall be the sole judge of [~~what constitutes~~]
21 whether a Beneficiary's employee is management [~~and~~] or non-
22 management [~~levels of employment~~] but it shall seek advice from the
23 University of Guam, the Guam Community College, the Department of
24 Labor, [~~the Department of Education,~~] and such other government agencies
25 as are necessary to fulfill the intent of this Section. The Authority shall
26 establish, by rule and regulation[~~s adopted pursuant to the Administrative~~
27 ~~Adjudication Law~~], requirements for practical and equitable training

1 programs as guidance for the applicant and the reasonable minimum
2 number of persons to be employed on a continuing basis for each applicant
3 in accordance with the specific and normal requirements of the business
4 involved. [~~Such training program and minimum employment requirement~~
5 ~~shall be made a condition appearing on the face of the applicable~~
6 ~~Qualifying Certificate.~~] The Authority shall annually report to the
7 Legislature the titles and compensation of all trainees, including those
8 placed in management levels, who are employed by the Beneficiaries of
9 Qualifying Certificates.

10 §2410.4 No resident employee of [~~an industry or business granted~~
11 ~~a Qualifying Certificate]~~ a Beneficiary shall be paid less than the prevailing
12 wage rate[s] nor shall he be laid off his job nor have his workweek reduced
13 to less than forty (40) hours [~~for the sole purpose of creating]~~ in order to
14 create employment for employees who are not United States citizens or
15 permanent residents of the United States. [~~non-resident workers.~~] For the
16 purpose of this Section, "prevailing wage rate[s]" [~~as determined by the]~~
17 shall mean those established from time to time by the Guam Department of
18 Labor. [~~shall be used as a guide.~~] The Department of Labor is hereby
19 empowered to investigate any complaint filed pursuant to this Section and
20 to settle the same by issuance of an appropriate order after notice and
21 hearing pursuant to the provisions of the Administrative Adjudication
22 Law. Any willful violation of this Section, or of any order issued
23 hereunder may be cause for a Beneficiary of a Qualifying Certificate to
24 forfeit the benefits thereof."

25 SECTION 17. A new §2410.3 is added to Article 4 Chapter 2 Title
26 12 Guam Code Annotated to read:

1 "§2410.3 For purposes of the endorsement percentages of Section
2 2410.2, a Beneficiary may include "Trainees" as that term shall be defined
3 by the Authority's rules and regulation. Additionally, for good cause
4 shown, the Authority may grant specific and limited exemptions to the
5 percentage employment requirements of Section 2410.2 but only if a
6 training program has been implemented by the Beneficiary as required by
7 Section 2410.1"

8 SECTION 18. §2408.1 of Article 4 Chapter 2 Title 12 Guam Code
9 Annotated, is renumbered to be §2411 and amended to read:

10 "~~§2408.1~~§2411 Participation in [~~the Apprenticeship~~] Training
11 Programs. [A] Every Qualifying Certificate [~~shall not be issued to an~~
12 ~~applicant who operates a hotel or restaurant unless the applicant commits~~
13 ~~itself at the time of application for such a certificate] which includes the
14 operation of a hotel or restaurant shall require its Beneficiary to
15 participate in the Hotel/Restaurant Industry Apprenticeship Training
16 Program administered by the Guam Community College or other
17 subsequent and similar programs approved by the Authority [~~—And to~~
18 ~~hire graduates of the apprenticeship program when vacancies exist.] and
19 to participate in the Management and Supervisory Training Program
20 administered by the University of Guam's College of Business and Public
21 Administration or other subsequent and similar programs approved by the
22 Authority. Failure to actively participate in the training programs shall be
23 grounds to revoke or suspend the Qualifying Certificate."~~~~

24 SECTION 19. §2409 of Article 4 Chapter 2 Title 12 Guam Code
25 Annotated is renumbered to be §2412, §2412.1 and §2412.2 respectively
26 and amended to read:

27 "~~§2409~~§2412 Qualifying Certificate, Non-Transferable.

1 §2412.1 A Qualifying Certificate or the benefits thereunder may
2 not be transferred, [or] assigned or conveyed to another person, firm,
3 partnership, or corporation without the written permission of the
4 Authority.

5 §2412.2 For the purposes of this Section, a transfer [or
6 assignment] of benefits shall have occurred at any time that there is a
7 transfer of a majority of the voting stock of the Beneficiary resulting in a
8 change in the identify of the shareholders who control the Beneficiary.
9 Similarly, a transfer of benefits shall occur whenever a Beneficiary shall
10 lease, assign, or transfer any part of its activities outside of the ordinary
11 course of its business."

12 SECTION 20. §2410 of Article 4 Chapter 2 Title 12 Guam Code
13 Annotated is renumbered to be §2413 and §2422 respectively and
14 amended to read:

15 "[~~§2410~~]§2413. Application for Qualifying Certificates. Applications
16 for Qualifying Certificates shall be filed on forms prescribed and furnish by
17 the Authority and shall require such disclosures as the Authority shall
18 deem appropriate.

19 §2422 Monthly Reports. [~~An Applicant~~] Beneficiaries of a
20 Qualifying Certificate must furnish written reports beginning thirty (30)
21 days after the date of the issuance of the Qualifying Certificate, said
22 reports [~~to~~] must include, but not limited to, financial data, employment
23 date and payroll data. All such monthly reports shall be treated as
24 confidential by the Authority."

25 SECTION 21. §2411 of Article 4, Chapter 2, Title 12, Guam Code
26 Annotated, is renumbered to be §2414 and amended to read:

1 "~~§2411~~§2414. Publication[s] of All Applications for Qualifying
 2 Certificates. The Authority shall cause to be published, at applicant's
 3 expense, in a Guam newspaper of general circulation, a brief resume of all
 4 application for Qualifying Certificates, said publication to be made no later
 5 that seven (7) days following submission of an application. The resume
 6 shall be in a form prescribed by the ~~[Board]~~ Authority, and it shall include
 7 ~~[only]~~ the name and address of the applicant, a brief statement of the
 8 proposed investment, a brief summary of the tax rebates and abatements
 9 applied for, and the names and addresses of all ~~[those who are investors at~~
 10 ~~the time the application is submitted to the Board.]~~ the owners, partners,
 11 or shareholders of the Applicant. Following the filing of the application in
 12 due form, payment of the prescribed fees and publication of the resume,
 13 ~~[the holding of]~~ a public hearing ~~[thereon is mandatory]~~ pursuant to the
 14 provisions of the Administrative Adjudication Act shall be held. ~~[The~~
 15 ~~Board shall take all reasonable precautions in connection with such public~~
 16 ~~hearings to avoid disclosure of proprietary secrets of the applicant. The~~
 17 ~~Board may schedule additional public hearings as necessary. The Board~~
 18 ~~meeting for approval of a Qualifying Certificate shall not be held on the~~
 19 ~~same day as a public hearing on the Qualifying Certificate."]~~

20 SECTION 22. §2412 of Article 4, Chapter 2, Title 12, Guam Code
 21 Annotated, is renumbered to be §2415 and amended to read:

22 "~~§2412~~§2415. Notice of Hearing ~~[s on Applicants]~~ of Applications.
 23 Δ notice of public hearing shall be published at applicants' expense in a
 24 local newspaper of general circulation in a form prescribed by the
 25 Authority ~~[not less than]~~ at least five (5) days ~~[prior to]~~ but no more
 26 than ten (10) days before the scheduled public hearing date. The
 27 Authority shall take all reasonable precautions in connection with such

1 public hearings to avoid disclosure of proprietary secrets of the applicant.
 2 The Authority may schedule additional public hearings as necessary. The
 3 Authority meeting for approval or disapproval of a Qualifying Certificate
 4 shall be held on the same day as a public hearing on the same Qualifying
 5 Certificate application."

6 SECTION 23. §2413 of Article 4, Chapter 2, Title 12, Guam Code
 7 Annotated, is renumbered to be §2416 respectively and amended to read:

8 "[~~§2413~~] §2416. Recommendations. All recommendations of the
 9 [~~Board~~] Authority for issuance, modification, renovation and suspension of
 10 Qualifying Certificates shall be forwarded to the Governor of Guam,
 11 together with a memorandum of the [~~Board's~~] Authority's findings in
 12 support of it's recommendations. [~~The Governor of Guam within sixty (60)~~
 13 ~~calendar days from his receipt thereof shall either approve or disapprove~~
 14 ~~the Board's recommendations.] Any recommendation of the Authority not~~
 15 approved by the Governor within sixty (60) calendar days from his receipt
 16 thereof shall be deemed disapproved on the sixty-first (61st) day
 17 following the Governor's receipt thereof."

18 SECTION 24. §2414 of Article 4, Chapter 2, Title 12, Guam Code
 19 Annotated, is renumbered to be §2418, §2418.1, §2418.2, §2418.3,
 20 §2418.4, and §2418.5 respectively and amended to read:

21 "[~~2414~~] §2418. Tax Abatements [~~The following tax abatements are~~
 22 ~~hereby established and declared, for which Qualifying Certificates may be~~
 23 ~~issued:] Subject to the provisions of this Article, the Governor is authorized~~
 24 to issue a Qualifying Certificate abating the following taxes on the following
 25 terms:

26 "§2418.1 [(1)] All taxes now levied by virtue of Chapter 24, Title
 27 11 of the Guam Code Annotated (known as the Real Property Tax Law),

1 shall be abated for a period up to ten (10) years from [~~date of issuance~~] the
2 effective date of the Qualifying Certificate [~~thereof,~~] and as long as said
3 Certificate is in force and effect, provided that the real property on which
4 tax is assessed is only utilized [~~for a tax exempt business that has~~
5 ~~qualified and continues to qualify for a~~] by the Beneficiary for activities
6 identified in the Qualifying Certificate. [~~A sum equal to the abated~~
7 ~~amounts must be invested in Guam for a period of at least five (5) years.~~
8 ~~The Beneficiary shall provide evidence to the Authority of such~~
9 ~~investment.~~]

10 §2418.2. [(2)] All taxes now levied on income derived from the
11 lease of land, buildings machinery or equipment by virtue of Article 2,
12 Chapter 26, Title 11, Guam Code Annotated (known as Gross Receipts
13 Taxes), shall be abated for a period up to ten (10) years, from [~~date of~~
14 ~~issuance~~] the effective date of a Qualifying Certificate, [~~therefor,~~] and as
15 long as said Certificate is in force and effect, provided that said income [~~has~~
16 ~~been~~] is derived from the lease of land, building, machinery or equipment
17 to a [~~tax exempt business that has qualified and continues to qualify for~~]
18 Beneficiary of a Qualifying Certificate.

19 §2418.3. [(3)] All taxes now levied by virtue of Article 2, Chapter
20 26, Title 11, Guam Code Annotated (known as the Gross Receipts Taxes),
21 shall be abated for a period up to ten (10) years from [~~date of issuance~~] the
22 effective date of a Qualifying Certificate, [~~therefor,~~] and as long as said
23 Certificate is in force and effect, provided that the gross receipts on which
24 such tax shall be abated have been derived from the sale of alcoholic
25 beverages manufactured in Guam by the manufacturer thereof and that
26 such manufacturer [~~has qualified and continues to qualify for~~] is the
27 Beneficiary of a Qualifying Certificate. [~~covering such manufacture.~~]

1 §2418.4. [(4)] All taxes levied or paid by virtue of Article 2,
2 Chapter 26, Title 11, of the Guam Code Annotated (known as Gross Receipts
3 Taxes), shall be abated or rebated for a period up to ten (10) years from
4 the effective date of the Qualifying Certificate for those gross receipts
5 derived from the sale of petroleum products manufactured in Guam and
6 sold to agencies or instrumentalities of the United States of America, or
7 agencies or instrumentalities of the Government of Guam, by the
8 manufacturer thereof; provided that a Qualifying Certificate for such a tax
9 rebate or abatement is granted pursuant to the provisions of this
10 Subparagraph, and further provided that at any such time that a
11 manufacturer possessing such a Qualifying Certificate no longer continues
12 to qualify for the certificate, the taxes shall no longer be abated or
13 rebated.~~[A Qualifying Certificate may grant a tax abatement or rebatement~~
14 ~~for up to a ten (10) year period commencing with the date of initial~~
15 ~~commercial production of petroleum products by the manufacture]~~

16 §2418.5 [(5)] All taxes now levied by virtue of §43714, Chapter
17 VII, Title XXXIX of the Government Code shall be abated for a period of up
18 to ten (10) years from the ~~[date of issuance]~~ effective date of the
19 Qualifying Certificate therefor and as long as said ~~[certificate is in force and~~
20 ~~effect; provided that said]~~ premiums are collected by a captive insurance
21 company licensed under Chapter VII of Title XXXIX that has qualified and
22 continues to qualify for a Qualifying Certificate."

23 SECTION 25. §2415 of Article 4, Chapter 2, Title 12, Guam Code
24 Annotated, is renumbered to be §2419, §2419.1, §2419.2, and §2419.3
25 respectively and amended to read:

1 "~~§2415~~ §2419. Income Tax Rebates. Subject to the provisions of
2 this Article, the Governor is authorized to issue a Qualifying Certificate
3 which established the following tax rebates:

4 §2419.1. Income Tax Rebate. A rebate of up to seventy-five
5 percent (75%) of all income tax [~~payable~~] paid to the Government of Guam
6 [~~is hereby established and declared, for~~] by a Beneficiary on income
7 received from those activities [~~for which a~~] identified in the Qualifying
8 Certificate may be issued for [~~(a)~~] a period not to exceed[~~ing a total of~~]
9 twenty (20) consecutive years from the effective date of a Qualifying
10 Certificate [~~therefore or; (b) the date of recouping of the amount of initial~~
11 ~~and subsequent capital invested, up to Thirty Million Dollars (\$30,000,000)~~
12 ~~whichever occurs first.~~]

13 §2419.2. Variable Rates. The percentage of rebate may be made
14 variable by the [~~Board~~] Authority so as to permit higher or lower
15 percentages in earlier or later years of the period. In determining the
16 periods up to twenty (20) years and the percentages up to seventy-five
17 (75%) [~~and capital investment,~~] the [~~Board~~] Authority shall take into
18 consideration the financial risks involved in the undertaking as well as the
19 impact on the socio-economic development of Guam by the proposed
20 investment.

21 §2419.3. Determination of Income. For the purposes of this
22 Section, the term "income tax [~~payable~~] paid " shall mean income taxes
23 [~~applicable to subsequent to~~] paid on income received on or after the
24 effective date of the applicable Qualifying Certificate. The Director of
25 Revenue and Taxation of the Government of Guam shall have authority to
26 determine any prorations of rebated necessary because of taxable years
27 occurring within the life of the applicable Qualifying Certificate which

1 consist of less than full twelve (12) months period.~~[All rebated amounts~~
2 ~~must be invested in Guam for a period of at least five (5) years. The~~
3 ~~Beneficiary shall provide evidence to the Authority of such investment.]~~

4 SECTION 26. §2416 of Article 4, Chapter 2, Title 12, Guam Code
5 Annotated, is renumbered to be §2421 and amended to read:

6 "[~~§2416~~] §2421. Taxability of Rebates: Legislative Intent. It is the
7 intent of the Legislature that rebates of income taxes to qualifying entities
8 pursuant to [~~§2414~~] §2418 and [~~§2415~~] §2419 of this Article be rebates
9 on all the taxes owed on the eligible activities identified in the Qualifying
10 Certificate and that no portion of the rebates given be later subject to
11 income taxation."

12 SECTION 27. §2417 of Article 4, Chapter 2, Title 12, Guam Code
13 Annotated, is renumbered to be §2419.4 and amended to read:

14 "[~~§2417~~] §2419.4. Income Tax Rebate on Dividends. A rebate of
15 up to seventy-five percent (75%) of [~~all corporate~~] the income tax [~~on~~
16 ~~dividends~~] paid by [~~a Corporate Beneficiary is hereby established and~~
17 ~~declared for which a Qualifying Certificate may be issued. The~~
18 ~~shareholders of a corporate Beneficiary may be granted a rebate of up to~~
19 ~~seventy-five (75%) of the income tax due for dividends paid by the~~
20 ~~Beneficiary from its current year's earning derived only from the activities~~
21 ~~identified in the Qualifying Certificate and only for a period of up to five~~
22 ~~(5) years.] the shareholders of a corporation on the dividends of that
23 corporation may be granted for a period not to exceed five (5) consecutive
24 years: provided, however, that the corporation paying the dividends is the
25 Beneficiary of a Qualifying Certificate and the dividends are being paid
26 from the corporation's earnings on activities identified in the Qualifying
27 which were received, on a cash basis, during the five (5) year period.~~

1 ~~[In the case of a corporation that has elected to be taxed as a small~~
2 ~~business corporation commonly known as a "Subchapter S Corporation",~~
3 ~~said income tax rebate shall be passed on to its stockholders in the same~~
4 ~~proportion as their stock interest in the tax-exempt corporation.~~

5 ~~In the case of a stockholder of a Qualifying Certificate not qualifying~~
6 ~~as a small business corporation, the income tax rebate herein provided~~
7 ~~shall be applicable to the dividend income received by the stockholder~~
8 ~~from the tax-exempt corporation."]~~

9 SECTION 28. A new §2419.2 is added to Article 4, Chapter 2,
10 Title 12, Guam Code Annotated, to read:

11 "2419.5. Income Tax Rebates for the Shareholders of A
12 "Subchapter S" Corporation. A rebate of up to seventy-five percent (75%)
13 of all income tax paid by the shareholders of a corporation which has
14 elected to be taxed as a "Subchapter S" Corporation, as defined at 26 USC
15 1361, on the income of the corporation which was received from those
16 activities identified in the Qualifying Certificate, may be granted for a
17 period not to exceed Twenty (20) years following the effective date of the
18 Qualifying Certificate."

19 SECTION 29. A new §2417 of Article 4, Chapter 2, Title 12, Guam
20 Code Annotated, is added to read:

21 "§2417. Modification of Tax Benefits. In the event that a
22 Beneficiary proposes to substantially expand or add to its activities and
23 desires to obtain a modification of its original Qualifying Certificate to
24 include its proposed additional activities, then upon findings and
25 recommendations of the Authority, the Governor may modify the original
26 Qualifying Certificate but only subject to the following conditions:

1 (a) The Authority specifically finds that the additional proposed
 2 activities of the Beneficiary satisfy the requirements of §2403 and §2406
 3 and that the Authority makes recommendations required by §2407;

4 (b) The Original Qualifying Certificate shall be surrendered and
 5 canceled;

6 (c) The tax benefits applicable to the additional activities may be
 7 at rates or for a term different from those tax benefits applicable to the
 8 activities described in the original Qualifying Certificate may include terms,
 9 conditions, rebates or abatements different from those in the original
 10 Qualifying Certificate."

11 SECTION 30. §2418 of Article 4, Chapter 2, Title 12, Guam Code
 12 Annotated is renumbered to be §2420 and amended to read:

13 "~~§2418~~§2420. [Taxpayer's Option] Extended Term. In lieu of
 14 the percentage of tax abatements and rebates [~~granted~~] authorized in this
 15 Chapter, the [~~Beneficiary~~] Authority may [~~elect to enjoy only~~] recommend
 16 and the Governor may grant fifty percent (50%) of said abatements and
 17 rebates for a period of double the term authorized by [~~the Corporation as~~
 18 ~~stated in taxpayer's Qualifying Certificate~~] this Chapter. [~~This option may~~
 19 ~~be exercised by a statement of the taxpayer so stating, together with the~~
 20 ~~consent thereto of the Corporation filed with the corresponding tax~~
 21 ~~returns."~~]

22 SECTION 31. §2419 of Article 4, Chapter 2, Title 12, Guam Code
 23 Annotated, is renumbered to be §2423, §2423.1, §2423.2, and §2423.3
 24 respectively and amended to read:

25 [~~§2419~~] "§2423. Procedure to Claim Abated and Rebated Taxes.

26 §2423.1. [~~A certified true copy of the corresponding Qualifying~~
 27 ~~Certificate and a certificate of compliance issued by the Authority should~~

1 ~~be attached to the Beneficiary's tax return when filing each return.] The~~

2 Authority shall monitor the activities of the Beneficiary's compliance with

3 all of the terms and conditions of the Qualifying Certificate, this Article and

4 the Rules and Regulations of the Authority, it shall issue, annually, its

5 certificate of compliance. No rebate or abatement of any tax shall occur

6 unless the Beneficiary shall have received a Certificate of Compliance for

7 the applicable tax year.

8 §2423.2. When the return for the abated tax is accompanied by a

9 corresponding [~~Qualifying Certificate, and a~~] certificate of compliance for

10 the prevevious year or part thereof, then the actual payment of the tax in

11 question to the Government shall not be required, and upon review of the

12 tax return, the Tax Commissioner of the Government of Guam shall, within

13 one hundred twenty (120) days from receipt of said tax return, furnish the

14 taxpayer a certification confirming the nature and amount of the tax

15 abated.

16 §2423.3. In the case of an income tax rebate, where the taxpayer's

17 tax return is accompanied by a certificate of compliance, the amount of a

18 tax due prior to rebate shall be deposited with the Government of Guam

19 [~~as prescribed by the Territorial Income Tax Law. When the return for the~~

20 ~~tax which may be subject to rebate is accompanied by a corresponding~~

21 ~~Qualifying Certificate and a certificate of compliance.] at the time of filing~~

22 the income tax return. The Tax Commissioner of the Government of Guam

23 shall immediately thereafter cause the return to be reviewed [~~and audited~~]

24 and if the rebate is found in order shall cause the amount deposited to be

25 returned to the taxpayer within one hundred eighty (180) days from date

26 of [~~filing of the income tax return~~]deposit, without interest."

1 SECTION 32. §2420 of Article 4, Chapter 2, Title 12, Guam Code
2 Annotated, is renumbered to be §2424.

3 SECTION 33. §2421 of Article 4, Chapter 2, Title 12, Guam Code
4 Annotated, is renumbered to be §2425.

5 SECTION 34. §2422 of Article 4, Chapter 2, Title 12, Guam Code
6 Annotated, is renumbered to be §2426.

7 SECTION 35. §2423 of Article 4, Chapter 2, Title 12, Guam Code
8 Annotated, is renumbered to be §2427.

9 SECTION 36. A new §2428 is added to Article 4, Chapter 2, Title
10 12, Guam Code Annotated, to read:

11 "§2428. Each Qualifying Certificate shall require a Beneficiary to
12 invest within the Territory no less than fifty percent (50%) of any taxes
13 rebated or abated under §2418 and §2419 of this Act for a period of five
14 (5) years following the rebate or abatement. A Beneficiary shall disclose
15 and report all such investments to the Authority."

16 SECTION 37. §2424 of Article 4, Chapter 2, Title 12, Guam Code
17 Annotated, is renumbered to be §2429, and §2429.1, respectively and
18 amended to read:

19 [§2424] §2429. Fees.

20 §2429.1. Upon the effective date of the Act and until modified
21 pursuant to [§2425,] §2428.3 of this Article, the following fees shall be
22 assessed against each applicant and recipient of a Qualifying Certificate:

	ANNUAL	
	<u>FILING FEE</u>	<u>SURVEILLANCE FEE</u>
25 "Agriculture, Aquaculture,	\$150.00	\$500.00
26 and Mariculture		
27 [Machine Manufacturing]	[\$750.00]	[\$2,000.00]

1	Home Manufacturing	\$100.00	\$100.00
2	{Other}Manufacturing	\$750.00	\$2,000.00
3	Commercial Fishing	\$250.00	\$1,000.00
4	Services	\$750.00	\$2,000.00
5	Leasehold Services	Based on industry	0.75% of
6		Filing Fee	Lease Payment
7	{Tourist Facilities} <i>Tourism</i>	\$1,000.00	\$3,000.00
8	Captive Insurance Companies	\$750.00	\$1,000.00
9	Export Trading Companies	\$750.00	\$1,000.00
10	{Industrial Facilities}	[\$750.00]	[\$1,000.00]
11	Motels		
12	Under construction	\$750.00	\$2,000.00
13	In operation	\$750.00	\$25 per room
14	Hotels		
15	Under construction	\$1,500.00	\$3,000.00
16	In operation	\$1,500.00	\$45 per room"

17 **SECTION 38.** A new §2428.2 is added to Article 4, Chapter 2,
18 Title 12, Guam Code Annotated to read:

19 "§2428.2. In addition to any filing or surveillance fee, the Authority
20 may assess against each applicant or Beneficiary, the reasonable cost and
21 expenses incurred to process the application or monitor the Beneficiary's
22 performance of the terms and conditions of the Qualifying Certificate. Such
23 cost and expenses shall not include the salaries of any employees of the
24 Authority."

25 **SECTION 39.** §2425 of Article 4, Chapter 2, Title 12, Guam Code
26 Annotated, is renumbered to be §2428.3 and amended to read:

1 "§2428.3 Periodic Adjustment of Fees. The [Board] Authority is
2 authorized to adjust the fees listed in [~~§2424~~] §2428.1 of this Article on an
3 annual basis, at the beginning of each calendar year, [~~starting with~~
4 ~~calendar year 1991,~~] upon demonstration to the [Board] Authority by the
5 Administrator that the cost of performing the services covered by the fees
6 is greater than the amount of the fees. Fee changes shall be made
7 according to the provisions of the Administrative Adjudication Law."

8 SECTION 40. A new §2429 is added to Article 4, Chapter 2, Title
9 12, Guam Code Annotated to read:

10 "§2429. Rule Making Authority. In accordance with the
11 Administrative Adjudication Act, the Authority shall adopt Rules and
12 Regulations consistent with this Act which provide for, but not limited to,
13 the following: eligibility, minimum investment levels for different
14 industries, the application process, the terms and conditions of the various
15 Qualifying Certificates, the monitoring procedure, and the revocation of
16 Qualifying Certificates."

COMMITTEE REPORT ON
Bill 593

I. OVERVIEW

The Committee on Economic-Agricultural Development and Insurance having jurisdiction on all matters relating to the Guam Economic Development Authority conducted public hearings on Bill 593 on August 26 and September 2, 1993. Notice of the hearings was published on August 19, 24, 31 and September 2, 1993. Administration officials advised the Committee they would not be present at the August 26th hearing and subsequently the Bill was scheduled for another hearing on September 2, 1993. At the latter hearing, Chairman Senator Vicente C. Pangelinan presided and the following members were present: Vice-Chair and Sen. Tom Ada, Speaker Joe T. San Agustin, Sens. Ted Nelson and Felix Camacho.

A. Background. Bill 593 was introduced by the Committee at the request of Governor Joseph Ada. The bill proposes amendments to the Qualifying Certificate program, administered by the Guam Economic Development Authority. Several years ago, Gov. Ada through Executive Order placed a moratorium on the issuance of qualifying certificates for hotels. The Legislature subsequently affirmed this moratorium in legislation that amended the Qualifying Certificate program. Administration officials have stated the moratorium has virtually rendered the program unusable and is requesting the Legislature to consider amendments proposed in Bill 593.

B. Intent. Bill 593 provides the following changes:

1. Eliminates the \$2 million cap imposed on agricultural businesses;
2. Adds the category of "Tourism" and real property improvement deemed by the Authority to be beneficial desirable and necessary for the economic development of Guam;
3. Establishes certain guidelines for GEDA to issue Q.C.s;
4. Repeals requirement for hotels/motels to publically offer up to 10% of voting stock to residents of Guam at original price offerings, making this an optional consideration;
5. Repeals the Hotel Q.C. moratorium;
6. Includes the employees of Gov.'s office and their spouses as ineligible applicants for QC's for a period of 1 year after their service;
7. Mandates recipients to participate in management training programs;
8. Clarifies the nontransferability of Q.C.s
9. Changes approval process of a Q.C. by the Governor;

10. Authorizes GEDA to recommend and the Gov. to grant 50% of abatements for a period of double the term authorized under the Q.C. program;
11. Changes commencement date of Q.C. on real property tax and gross receipt tax abatements or rebates from the issuance date to the effective date of the Q.C. as determined by GEDA;
12. Requires that Beneficiaries invest within Guam, no less than 50% of abated and rebated taxes for a period of 5 years following the rebate or abatement.
13. Eliminates restrictions and caps on the rebate of income tax, especially the cap of \$30 million;
14. Expands eligible entities to include Subchapter S Corporations, trusts, partnerships and sole proprietorships as being eligible beneficiary's
15. Clarifies the eligibility of income tax rebates of up to a maximum of 75% on Q.C. beneficiary paid dividends;
16. Provides the guidelines for modifying an existing Q.C. by GEDA.

II. FINDINGS AND RECOMMENDATIONS.

The Committee on Economic Agricultural Development and Insurance introduced Bill Number 593 and act to amend the Qualifying Certificate Program of the Guam Economic Development Authority. The bill was necessary since a previous legislature had enacted legislation which placed a moratorium on the granting of qualifying certificates by the Authority.

The Q.C. program is designed and structured to encourage investment in commercial activities deemed beneficial to the territory. The incentive provided for in the program include the rebate of territorial corporate income tax, abatement of real estate taxes, and abatement of taxes on dividend payments.

The program sets criteria for the granting of these rebates and abatements. The activity must be such that it generates employment, the Q.C. recipient must meet requirements on local employment levels within the company, implement or participate in training programs, etc. All of these requirements are designed to provide job opportunities for local residents.

The amendments that are being proposed in the bill are necessary in order to provide the economic incentives necessary to attract the capital investment needed to stimulate the economy out of its present doldrums state.

As Guam seeks to compete for investor's dollars, the Committee recognizes that the amendments being proposed are positive and necessary. The Committee thus reports Bill 593 with a recommendation **TO DO PASS.**

II. SUMMARY OF TESTIMONY

Charles Crisostomo, administrator of the Guam Economic Development Authority appeared before the Committee in support of the bill. He stated enabling legislation in the Eighth Guam Legislature established the Qualifying Certificate Program to attract venture capital to create private business enterprises and industries by offering various tax abatements and rebates as incentives to companies proposing to build "core" facilities, essential to the creation of various industries.

As the administering agency, GEDA has reviewed 109 applications and issued 88 certificates, effecting the development of hotel facilities, telecommunication services, commercial fishing operations, light manufacturing, and establishment of a petroleum refinery. These businesses have contributed to a higher overall standard of living and increased government revenues. GEDA reports for the FY 1987 through FY 1992, direct program benefits consisting of monthly payrolls, withholding and FICA taxes, gross receipt taxes, hotel occupancy taxes, use tax, property and corporate income taxes received from the Q.C. program amounted to \$487 million as compared to tax rebates and abatements paid of \$26.3 million. Notwithstanding the program benefits, Mr. Crisostomo cited changes in federal regulations, rulings and customs quotas caused the demise of two Q.C. recipients, Timewise and Sigallo-Pac. The refining operations of GORCO ended when it lost a large military contract. As a result, all three companies surrendered their Q.C.s.

Mr. Crisostomo stated amendments to the Q.C. program will assist the territory to actively solicit for businesses involved in light manufacturing, commercial fishing and aquaculture, agriculture and other vitally needed facilities such as medical diagnostic centers, medical referral centers, recycling facilities, affordable energy efficient housing and specialized high tech operations. A timely approval of the amendments would enable the Governor to promote investment in Guam during his Economic Mission to Asia in October. Mr. Crisostomo enumerated 17 changes (listed above) proposed by the Administration and stated the program would provide an equal playing field on the international investment market. He further stated language in the bill specifically directs GEDA as to what factors should be considered in granting benefits and allows GEDA the ability to direct and redirect

resources to those sectors in which would provide the most benefit to the community.

Allen A. Pickens, managing director of KPMG Peat Marwick Micronesia, P.C. appeared and testified in favor of Bill 593. He stated the Guam economy needs a continuing stream of investment and must provide incentives to compete for foreign investors. Mr. Pickens suggested five amendments which were incorporated into the amended bill (see attached written testimony).

Duncan McCully, attorney for GEDA stated he helped draft Bill 593 and has represented GEDA in the writing of qualifying certificates. The amendments are necessary because of inconsistencies and ambiguities in the current law. GEDA has experienced difficulties in administering the program designed to encourage capital investment in Guam. The program was amended by Executive Order based on the conclusion that the tourism industry was fully mature and that no more Q.C's for tourism were needed, which resulted in a moratorium being placed on applications for hotel construction.

The Legislature passed a bill which prohibited the moratorium from being lifted; essentially no new QC's for hotels. If the Royal Palm was gonna tear down and build a nice hotel there, neither the Governor nor GEDA can give a Q.C. without coming to Legislature to have the law amended. That is why this bill is important and if having a new hotel in Tumon is important, if you reach that conclusion that a new hotel important then this law has to be amended. Another issue is cap \$30 million cap. This too has to be lifted. These are the most significant changes in this bill.

GEDA Board Chairman, Anthony Leon Guerrero stated Guam's economy badly needs some form of revitalization. This committee should do something in line with what the national Government is doing in terms of streamlining Government operations, making business ventures and business incentives a little more attractive within the competitive environment of Pacific Rim countries. Mr. Leon Guerrero urged the Committee to look into other ways, including the Q.C. revisions in Bill 593, such as streamlining the building permitting and business licensing processes. He stated it has become a nightmare for many just to get a license for a retail operation and even to renew their license. Mr. Leon Guerrero stated Guam is a very attractive location for business investments, if we could keep it attractive by providing an environment that induces investment into the community.

Chairman Pangelinan stated he and Vice-Chairman Tom Ada have already introduced two pieces of legislation, one is to centralize the

building permit process and the other, to centralize the business licensing process. Past administrations under the late Governor Ricky Bordallo, and the Directorship of late David Santos had centralized the business licensing application process administratively without a legislative mandate. Chairman Pangelinan asked Mr. Leon Guerrero to lobbying the Administration to support the two initiatives.

Senator Ada stated he supports GEDA's Qualifying Certificate Program. Referring to page 4 on line 3 where preference is extended to applicants which have 51 percent or greater portion of local investment, as controlled by bonafide Guam residents, Sen. Ada asked how is the term defined?

Mr. McCully stated there is no legal definition for the term bonafide, however, there is sufficient case laws that define its intent. Seven or 8 factors have been recognized by courts: intent, where they live, where they have most of personal business activity, but it is not defined in this Act. It is a word that could be defined, in which courts have defined many times.

Mr. McCully stated that language was put into effect about two and a half years ago and GEDA has looked at it and treated it by using the established court definition of resident.

Sen. Ada asked why the language wasn't specific to prevent the possibility of using different interpretations in each case. Mr. McCully stated that a specific definition could be included. Mr. Crisostomo stated it would require an amendment to the set of regulations that govern the Q.C.. program and GEDA would note Sen. Ada's request for a more specific definition.

Sen. Ada asked if GEDA would need additional staff to implement the Section 6 which outlines new criteria for Q.C. applicants and requires GEDA to make specific findings for the applicant?

Mr. Crisostomo stated if GEDA needed additional staffing to complete its findings in considering an application, GEDA has the authority in its regulations to charge fees to recover those types of costs. However, Mr. Crisostomo stated GEDA would probably not need new staff since the applicant is responsible for making the argument, doing the research and defending the information in their application. GEDA's primary role is to verify the information on the application.

Mr. Leon Guerrero stated the applicant presents detailed analysis which is normally done by professionals and experts in different areas. Q.C. application forms require a feasibility study, projections of all sorts of things and it is usually done by groups such as KPMG, Price Waterhouse or some other readily recognized firms in the field. GEDA

currently has a compliance department that issues monthly reports on the benefits versus cost, and monitors recipients' compliance of the Q.C. agreements. Mr. Crisostomo stated these monitoring reports continue for the active life of the qualifying certificate. Inspections are done twice yearly on a regular basis and on an as needed basis as in the case where complaints are filed or when somebody brings forth something that we didn't follow. Mr. Crisostomo stated this department has responded to reports, including those from Senators, concerning employment levels not being met by a certain Q.C. recipient. A complete examination is done to make sure that they are meeting the statutory requirements.

Senator Ada asked how GEDA would determine the importance of an applicant's proposed activity to the Government's officially adopted economic policy? Has Guam adopted an economic policy?

Mr. Crisostomo stated GEDA does not rely on any one document. They have compiled what they have seen as established policies by existing administrative and legislative directives in the creation of agencies as well as enabling legislation. Mr. Crisostomo stated the TPC has been tasked with developing an economic policy for the Territory and is in the process of developing a comprehensive statement. The Legislature mandated that a sixteen point plan be put together. One of those components was an economic development plan or a strategy. Yet in two fiscal years, we've requested for funding and no support has come to the TPC in that regard. It has been cut from the budget in two consecutive years and so the TPC with GEDA, Commerce and the other members are struggling to try to get that policy developed despite the lack of support.

Sen. Ada expressed concern about establishing criteria for an applicant that refers to guidelines (official economic policy) that really does not exist right now in Guam policy. Sen. Ada asked who is GEDA targeting for the Q.C. program -- big businesses versus the little guy trying to get started? If the tax benefits is amended to be based on a percentage of the capital investment then it seems to benefit more the larger investor as opposed to establishing a flat rate which would benefit smaller investors.

Mr. Crisostomo stated this is not a mandated condition. The target group for this program was expanded in 1991 or 1990 when an amendment allowed for subchapter S corporations, limited partnerships, and the rebate of income tax rather than corporate income tax. This program has never been focused only on the attraction of foreign investment; this program has been made available to local resident applications, local businesses as well as foreign businesses in an effort to

encourage capital investment in the Territory. In considering a small business applicant, GEDA will probably not consider that condition as a requirement. This is merely a standard GEDA uses when it considers the conditions or limitations on the benefits that would be allowed under the Q.C.

Sen. Ada stated this guideline as to how much benefits you are going to give to the applicant, as the amendment is currently written, certainly is more beneficial to the larger investor.

Mr. Leon Guerrero stated because the guideline does not specify the percentage, it provides GEDA with the flexibility to accept both small and large investors. You don't have to limit yourself to 100%. For example a huge hotel that takes a \$100,000,000.00 to develop, maybe we want to induce a garment manufacturer more and they come in with a million dollars give them a 1000% max, the hotel, give them 50%.

Sen. Ada stated the guideline is too nebulous to attract any investor and suggested simplifying the language and giving the Board discretion to decide how much benefits to give and for how long. Mr. McCully stated the intent of this guideline was to provide the Legislature with a structure for the Board's discussion in reviewing an application. Sen. Ada stated a correction should be made to read "does not exceed 10%, and does not exceed 110%."

Sen. Ada asked how GEDA arrived at establishing 75% as a required employment percentage? Mr. Crisostomo responded that percentage has been in the statute since its very early years, however under certain conditions, the GEDA board has raised it to 90% in more recent Qualifying Certificates as in the case of the Hilton Hotel for management, midmanagement and other staff levels.

Sen. Ada asked if it would be appropriate to set the level at 90% for non managerial employees? He stated it is a reasonable number given the anticipated growth of the workforce over the years and the desire to minimize the number of off-island employees hired from Japan or from Taiwan.

Mr. Leon Guerrero stated the GEDA has adopted graduating schedules where employment levels for the first five years being set at 75%, the next five years 80% and the last ten years 90% -- this is written in the Q.C. itself this is where it sets it as a minimum requirement and yet also provides the government with leverage. This allows flexibility to allow considerations for market conditions, such as a tight labor market.

Sen. Ada stated how would putting the requirement in the statute differ from putting it in the qualifying certificate. Mr. McCully stated putting it in the statute would deprive the Agency of using discretionary

authority needed to respond to applicants with varying circumstances. By stipulating 90% right in the statute it may prohibit GEDA from issuing a Q.C. to a well deserving recipient who could not meet the 90% employee requirement.

Al Pickens stated the driving purpose behind the Q.C. Program is not necessarily to provide employment but rather to provide capital infusion. Enabling legislation for the Q.C. program does set employment limits. He expressed caution that any amendments to the program does not limit the GEDA Board to the point where the applicants are turned off because they can not meet this employment situation.

Mr. Crisostomo stated mandating it by statute makes it difficult to change, there is a second stage in the process where we could by regulation put those schedules in and make them more adaptable to economic conditions.. Sen. Ada asked if that problem is not in fact, offset by a Section where the GEDA Board is given the authority to make limited or specific exemptions for some of the statutory requirements.

Mr. Leon Guerrero stated that is not the case when the requirement is specified in the law. Mr. Crisostomo stated there is this period if a recipient can not meet minimum levels for good cause and if they have a specific training program in place, submitted and approved by GEDA then the GEDA Board can exempt for one year from their requirements to meet those levels.

Mr. Leon Guerrero stated besides the infusion or the inducement of capital, one of the other reasons for this Q.C. program to is to bring a transfer of technology and know how. That is where the management level is required and it's always been consistent that we move up and train local residents and then move them out as time goes on. Having that flexibility is a critical factor that makes this possible to achieve.

Sen. Ada asked why does the Authority seek the advice of UOG, GCC and the Dept. of Labor to determine whether a beneficiary's employee is management instead of just from the Dept. of Labor which is the established agency assigned to make certain determinations regarding the workforce? Mr. Crisostomo stated the Dept. of Labor is in fact, the Authority's primary resource on labor issues however, references are also made to the Federal Fair Labor Standards and Practices Act. These two criteria are used to establish the baseline definition of management and non-management positions. Human resources at GCC and UOG, including management labor experts, labor economists and others which also operate management training programs are also used to assist the Authority.

Sen. Ada stated on page 12 Section 2411 refers to the participation of the beneficiary in the management training programs at UOG and at GCC. In what form should this participation be? Provide funds for scholarships? Place employees through the program? Sen. Ada asked for a clarification of this provision. Mr. Crisostomo stated GEDA's interpretation is that the beneficiary has people involved in the program; that they not only send individuals to participate but that they also employ individuals who complete the programs.

Sen. Ada questioned the effectiveness of the in house training programs versus independent training programs. He stated he sees little incentive for the beneficiaries to train replacements. Mr. Crisostomo stated in the case of hotels or restaurants these beneficiaries have identified employees whom they have brought from elsewhere who have more background than graduates from GCC or UOG. These beneficiaries have been able to be more flexible in establishing training that are actually an extension of the local apprenticeship program in each hotel. GEDA has determined these activities *does* constitutes participation in the Q.C. program.

Mr. Pickens stated it is a well known fact that the only way you can move up to the next level is to have somebody replace yourself. Good employees train people to replace themselves and under that premise that's the reason why it is effective. Sen. Ada stated, in principal, Mr. Picken's theory is probably true, however, the reality of the theory is debatable.

Sen. Camacho asked as the bill exists right now and as the program has been administered, is the Q.C. program a viable tool to attract infusion of capital? How does the Q.C. program compare to other incentives, investment incentives in other regions, for example in Hawaii or other destinations in Asia? Is Guam sufficiently competitive in its capital infusion program in comparison to other destinations?

Mr. Crisostomo answered, this program as it exists today is not a viable incentive tool for the territory, now as amended in 1990. Prior to 1990 the program was effective. Since the 1990 amendments, GEDA has not had one single application for a qualifying certificate. Sen. Camacho asked what are the reasons why it is no longer viable? Are other destinations offering incentives that are more beneficial to investors?

Mr. Crisostomo stated that is true in the Asian region. No one else in the Asian region operates under the Internal Revenue Code taxation system. There is no taxation system that imposes the same level of taxation for doing business in the Territory. What the qualifying certificate does essentially, is it equalizes the income tax rate that we

impose, although it is still higher than in some other areas that we compete with. When the 1990 amendments limited the benefit a recipient could get on their return this became apparent to Q.C. applicants, including Coca Cola. As soon as that law was passed, setting 30 million dollars or the amount of capital invested as the limit, Coca Cola determined their limits were going to be 5 to 8 million dollars in total return on investment across whatever the time period was. They were talking about a volume production out of Guam in the Asia-Pacific region south of Japan to the African continent and said Guam was thinking too small. They immediately turned to the Virgin Islands. The Virgin Islands opened their arms, and that is where they are set up today. They were set up there within two and half months after those amendments were passed.

Mr. Leon Guerrero stated the program basically provides for an expansion of our revenue base and what we really are getting is 25% of something that never existed. We're not losing 75% of something that was there, cause it was never there. What we are looking at here and you can see it all over in our benefits reports is that what you are doing is expanding your revenue base. For example if Coca Cola came in they will probably invest 5 million to 10 million here and then be the center for the export throughout Asia for their classic syrup. I mean that would put us on the map and provide quite a lot of funds in terms of export income. How can we measure that compared to the 75% of nothing that we're excluding. That's the basic question here and that's what needs to be discussed.

Mr. McCully stated under existing law, neither the Governor nor GEDA could give a Q.C. to a new hotel that decided to build 200 million dollar hotel somewhere on the island. There could be no Q.C. given to them. No inducement for them to make that significant investment. Within the existing law, there is a statement that says moratorium issued by GEDA can't change that legislative approval. I should take that back, it could only be done by active legislation.

Mr. Crisostomo stated there were a lot limitations placed on the program with amendments made in 1990. One of them was the GEDA board had just imposed the moratorium. We saw a lot of hotel qualifying, hotel projects coming in and we said look this is a lot. This is probably more than the Government with it's infrastructure can turn around and handle. The Governor imposed a moratorium. Now that was the moratorium that the GEDA board could have lifted, had the discretion to lift. But then the legislature followed suit and by statute followed the moratorium.

Chairman Pangelinan reminded the witnesses that the issue of the moratorium was not by legislative decree initially but rather, it was a decision made by GEDA. To blame the fact the governor could not issue a Q.C. because of legislative action is only partially correct. It was a decision by the Governor through an executive order to issue a moratorium on hotel developments. It was his initial foresight that said that the tourism industry is mature. It's a misleading statement in the same manner that GEDA has said they are going to develop the guidelines on this program based on officially adopted economic policies. Mr. Chairman stated he would be willing to develop official economic policies to have them adopted by the Legislature, however, there is also a certain responsibility on the part of the Administration to develop what its economic policies are and have them sanctioned by the Legislature. In the absence of that, Chairman Pangelinan stated his willingness to propose some economic policies for the administration if they don't want to develop any.

Mr. Leon Guerrero said he wanted to clarify that the moratorium that the GEDA Board provided at that point in time was strictly for hotels in the Tumon region area. There was still an ability for Q.C. recipients to build hotels in other areas. Following the sentiment of the leadership at that point, GEDA was attempting to redirect investment, to help provide the infrastructure needs of other areas such as the south. The moratorium at that point was to be on a temporary basis and was designed to be removed if a situation like what we have right now develops. Mr. Leon Guerrero stated he was not blaming the Legislature. GEDA had decided at that point to place a moratorium for those specific reasons and to have the flexibility to move it out. The way the law is structured right now, that cannot be done. The amendments that are added here now would allow the government to do this.

Chairman Pangelinan said that is the reason why the Committee is entertaining Bill 593 because this Legislature recognizes the need to provide that flexibility. We may have overreacted with regards to the issue of hotel developments in the past and not foreseeing the economic downturn that is occurring today. In our wisdom to place a Legislative moratorium also on the authority of GEDA and the Governor, we have that same wisdom today that says we need to re-evaluate that position and perhaps give the flexibility to GEDA.

Sen. Nelson stated it is the responsibility of GEDA and the governor to bring before the Legislature any needed amendments that is crucial, critical or vital to provide an immediate influx of economic impact capital to the territory. If the program requires changes and they are submitted