

with justifications, if they will benefit the territory, improve the economic picture of this territory, then the Legislature will endorse it. The Legislature is ready to act on good proposals coming from the Administration but often wonders why it takes so long for the Administration to make its proposals?

Mr. Crisostomo states the changes were proposed in the last legislature as a part of testimony made before former Sen. Mailloux's committee and Sen. Bordallo initiated these same sets of amendments for which GEDA provided input.

Sen. Nelson stated the urgency wasn't stated then. He said the administration has sponsored numerous economic missions to Asia and within the region. What accomplishments have been achieved in all these economic missions? Mr. Crisostomo stated the last economic mission in 1989 resulted in quite a bit of development that is on the ground right now as a matter of fact. Some of which have and some of which do not have Qualifying Certificates. Another mission is planned for October 1993.

Sen. Nelson stated he would like to see reports given to the Legislature through this Committee concerning developing policies that can address the needs of the types of investors that are identified by these economic missions. The Legislature will be more responsive to those needs that are based on findings made by the economic missions. Without a more organized strategy to attract capital infusion Guam will be bypassed by countries like Japan, Korea, and Taiwan. Peking, Indonesia, including Thailand have more sufficient labor resources and other incentives that will make the market for capital investment more competitive. He asked where the funding for the October Economic Mission will come from? Mr. Crisostomo stated individuals from different entities who participate travel on their own prospective budgets. Neither GEDA nor the GVB has the resources to fund the entire mission.

Sen. Nelson stated the strength of the Japanese yen is causing many, including Japan to consider its economic impact. He said GEDA, the Chamber of Commerce and others should focus on what can be done in Guam to capitalize on this situation. With a \$136,000,000.00 trade surplus, Japan is trying to work closely with Vietnam. Guam needs to think about how we can compete with these other countries and to take advantage of the economic activity and development in Asia. It's where the richest economic new adventures are taking place. All the big democratic countries known as the Big 7 are running out of resources, and are dealing with labor shortages and other problems. Most new businesses opportunities are taking place in Asia.

Sen. Nelson asked what is the situation as far as the economic development in local agriculture and housing industries and whether there were any new businesses being formulated locally or being assisted through the expansion of these industries?

Mr. Crisostomo said he has not seen a lot of progress beyond the local farmers which build and farm on a small scale, many of them on a part time basis. In the last six or eight months, GEDA has recorded a new influx of applications for agricultural loans. GEDA attributes this to promoting its programs out in the villages, in cooperation with the soil conservation service and it has paid off. Farmers are coming in now for loans, however, they are small loans for small scale farming activities. There are still three applications for fairly large financing that are being considered and are being prepared for submission. GEDA is assisting these three applicants, in the three or four hundred thousand dollar financing range. They are probably the biggest agricultural loans that we will see, that we have ever seen come in.

Sen. Nelson asked why statistics from the Departments of Commerce and Agriculture concerning imports of produce, fruits and vegetable and even the local production is difficult to get? Mr Crisostomo stated some figures on local production is available, however, GEDA has not been able to get a consolidated number on imports. Commerce's response to GEDA's request has been it is difficult because the harmonized system was never implemented. The harmonized coding system that Commerce was been trying to implement is a very important system that would make statistic gathering easier. No merchants have resisted it.

Sen. Nelson asked if the potential for agriculture development is still present in Guam's market? Mr. Crisostomo stated the potential is probably limited to Guam's intake and possibly the intake on exports to Micronesia. Sen. Nelson asked how much funding is available in GEDA's agricultural loans. Mr. Crisostomo stated there is \$2 million dollars in the loan fund today.

Sen. Nelson suggested more should be done to promote the program and to educate applicants in this area. He stated one of the biggest obstacles in the Agricultural Revolving Loan Fund is that farmers have to fill out 15 different forms, often requiring the assistance of CPAs. Over hundred thousand dollars at Department of Agriculture for a similar program remains unused. Sen. Nelson stated GEDA should take the lead in educating and assisting applicants to qualify for either program and help Guam's farmers. Sen. Nelson stated more emphasis on agriculture is needed and more can be perhaps be done to assist farmers through the

Q.C. program. Sen. Nelson asked new projects does GEDA currently have in the area of housing?

Mr. Leon Guerrero stated there is still a significant amount of home financing activity, estimating \$5 -15 million possibly \$20 million dollars a month in all the banks put together. But the primary amount that the bulk of that still is the refinancing of existing loans to take advantage of lower rates. There is a growing percentage of that going into purchases of homes as well as new construction, but it's still a small amount. There are three or four developments that are going on right now that are starting up. There's a two hundred unit development moving forward in the northern part of Guam. Several other developments are just starting up, including housing construction based on building permits compared to a year ago. Housing is the single economic activity that is showing any significant activity and its helping the community.

Mr. Crisostomo pointed out one of the amendments in Bill 593 allows for GRT tax abatements for contractors who are building housing for residential use. Mr. Leon Guerrero stated that amendment is targeted for projects at a onetime shot to give them a fighting chance to build affordable housing units.

Sen. Nelson stated his concerns about property owners who don't have the resources to improve their properties could be given government subsidies, perhaps GRT exemptions to build up rental units and homes to meet the housing shortage. Some efforts should be taken to attract both outside investors and but also local property owners who own the land but may not have the financial resources.

Chairman Pangelinan asked when was the Governor's economic mission scheduled? Mr. Crisostomo stated the mission was slated for October 3rd thru the 16th with stops in Japan, Hong Kong, Taipei and Seoul.

Chairman Pangelinan stated his concerns about provisions in the program being targeted toward off-island investments into hard assets in the Territory and perhaps not addressing activities involving technological advances such as bio-technology and bio-chemistry. These types of businesses as well as service bureaus may lease instead of building or owning their own buildings and so would not benefit from the tax rebate on real estate. How can Guam structure provisions to address these types of service industries versus the hard asset construction feature of the Q.C. program?

Mr. Crisostomo stated one of the proposed amendments which lifts the cap on the benefit of rebate on the amount of capital invested would create an incentive to attract those types of businesses under the Q.C.

program. Chairman Pangelinan asked if the government was current in paying back its obligations under the rebate program for its certificate holders? Mr. Crisostomo stated there are current disputes concerning Rev and Tax's interpretation on portions of income deemed ineligible for a rebate.

Chairman Pangelinan stated his concerns about finding a way to amend the program to minimize issues, such as rebates, being subjected to various interpretations. He suggested an amendment to the regulations to have Rev and Tax sign off at the beginning of the Q.C. on exactly the interpretation of what is rebatable and what is not rebatable so that everyone knows what they can expect prior to an investment being made. Total elimination of disputes is not possible, however, minimizing the likelihood of disputes would make the program more effective.

Mr. Crisostomo stated Rev and Tax is a part of the review process for all qualifying certificates and ambiguities in previous Q.C.s where disputes have arisen have been corrected. Mr. McCully stated having Rev and Tax sign off in the beginning and obtaining rulings and opinions can be done ahead of time to minimize disputes in the future.

Chairman Pangelinan asked what types of foreign investments is the Governor targeting with his economic mission? Mr. Crisostomo stated targeted areas include tourism investments, manufactured products where there is a high U.S. tariff schedule, service industries, and producers of housing. GEDA has been working with the Chamber of Commerce and have identified potential in other areas including financial services, telecommunications and small conventions. With hotel facilities able to accommodate 2 to 3 hundred people, the market for business conventions has promise if enough attention is focused in that area.

Chairman Pangelinan asked if there were any industries presently operating in Guam under headnote 3A? Mr. Crisostomo stated with the Sigallo closing, there are currently none on island now.

Chairman Pangelinan asked how would Guam be able to attract light manufacturing assembly under noted changes published in the Federal register? Mr. Crisostomo stated it would be very difficult. The federal changes eliminates assembly operations from the term "value added." Processing would be the term and it would cover only the transformation of raw product to final; some kind of finished product. ie: pipe to bicycles. The changes would not allow a company to bring in pre welded bicycle frames and allow them to assemble them. Chairman Pangelinan requested GEDA to provide the Committee with a copy of the changes.

Mr. Crisostomo stated the GAO is doing an investigative study on Federal regulations that are implementing or impeding the growth in the

insular areas. GEDA will report to GAO that the federal regulation change and the sequence of previously proposed federal regulations that have been impediments to Guam.

Speaker San Agustin asked if GEDA is requesting the Legislature to eliminate the provision added in 1990 requiring rebates be reinvested in the Territory for a period of five years? Mr. Crisostomo stated GEDA had placed that requirement as a condition for one of its Q.C. recipients. When it was added to the program by statute, GEDA has experienced difficulty in implementing it because the language does not specify what five year time period to apply it to. Because it is mandated by statute, GEDA believes it is one less benefit for new applicants.

Speaker San Agustin asked what is the objection for having recipients invest the rebates at least for five years in a local industry? Why would GEDA want to eliminate it from the law?

Mr. Crisostomo stated GEDA would prefer to apply the requirement under a case by case basis, rather than a statutory mandate for all Q.C. recipients. Providing the flexibility for GEDA to do this will allow GEDA to better analyze whether a particular recipient is capable of complying and to possibly direct where that investment would and should go in the Territory.

Speaker San Agustin stated other jurisdictions, particularly Hong Kong has this same requirement and even stricter requirements. This creates more job opportunities, keeps some of the money in the local economy, forces the investor to actually make a commitment to the local economy and protects the community from carpet baggers who would otherwise take that rebate out of the country. Why would GEDA want to eliminate the requirement which obviously is designed to protect Guam?

Mr. Crisostomo stated GEDA reviewed Q.C.s issued in the past and found that recipients are reinvesting in the local economy and would probably continue to do so without the statutory requirement. Because of the 30% withholding law, which is a federal law on earnings within the U.S., recipients who have repatriated some profits to their parent companies are also reinvesting, as in the case if the Nikko, Okura, Dai-Ichi and Reef hotels. GEDA feels it is unnecessary to impose the mandatory requirement when the practice is already occurring. Mr. Crisostomo stated without a mandatory requirement, GEDA would still retain the flexibility and discretion to impose reinvestment in the local economy as a condition in qualifying certificates.

Sen. Camacho concurred, stating a mandatory requirement in the statute does not send out the right message to potential investors. Mr. Crisostomo added the mandatory requirement prevents recipients from

reinvesting profits in neighboring islands in Micronesia, in such investments including air traffic, shipping and other activities. Mr. Crisostomo stated this is something that Guam has said it would like to do: assist in the development of its Micronesian neighbors.

Speaker San Agustin asked why would investors object to such a requirement when reinvestments are actually capital investments, that may also include accounting transactions that can be redirected as an investment? Mr. Crisostomo stated nobody has ever actually objected to the requirement, however, GEDA has taken the position it is poorly written and nonessential. If the Legislature chooses not to remove the requirement, GEDA recommends the provision be rewritten since the current language has been subject to 10 to 20 different interpretations.

Speaker San Agustin stated the law should be rewritten rather than eliminating the provision altogether because it creates a lack of commitment by investors for local commitments. Insurance companies do the same thing, although they do have an option using reserves to invest locally. When Hawaiian Life insurance was working for GovGuam, they invested heavily in other island businesses and they had a choice on the types of investments, including housing. Recipients could invest vertically, ie: have their own laundry system, or set up other services that serve their own industry so as to reap double benefits. Speaker San Agustin stated these options have not been highlighted as advantages under the Q.C. program.

Mr. Crisostomo stated GEDA outlined the very same rationale when they made the option a condition in the Q.C. issued to Miama. He added applying the option as a statutory requirement, however, is not applicable in all cases. GEDA has experienced difficulty applying the requirement in a fisheries operation or in a small businesses. Speaker San Agustin stated he would like to see a mandatory percentage of the rebate reinvested, or some other form of assurance of commitment be required of the recipient in order to protect the territory from potential carpet baggers.

Chairman Pangelinan stated his concerns about mandating the requirement center around the possibility of creating competition for locally businesses that are already established. If all the hotels invested in their own laundry services, what happens to the local laundry services that have been here for the last 20 years? Chairman Pangelinan stated he would be amenable to requiring a percentage reinvested in businesses that are perhaps already locally established. What happens if recipients reinvest by starting up their own banks? This would not be a desirable practice nor should it be allowed as a matter of public policy that is written in a statute. Mr. Crisostomo stated GEDA's enabling statutes

already prohibit them from creating advantages that results in unfair competition. He stated GEDA will attempt to suggest some level of a percentage of reinvestment for future recipients.

Senator Nelson asked if GEDA and the Q.C. program have been adversely affected by the delay in amending the Q.C. statutes? Mr. Crisostomo stated despite support from several senators, the bill never got out of committee two years ago. Over the past 18 months, GEDA has received low Q.C. applications.

Senator Nelson asked if any Q.C. recipients have come back to GEDA with proposals to improve the program based on their first-hand experience? Mr. Crisostomo stated before moving forward with plans to build a new wing, the Reef Hotel came to GEDA and asked to modify their Q.C. In the first 17-20 year period, Reef did not receive a rebate. GEDA responded to their request by prorating the additional construction to their overall operation and gave them a Q.C. with a 45 percent rebate instead. The Guam Hilton's request was addressed by reissuing a Q.C., while the Hotel Okura simply built their tower without any changes to their active Q.C. GEDA has responded generally to these requests by canceling the old Q.C. and issuing a new one for another 20 years.


Mr. Leon Guerrero stated the concept of the Q.C. program is to provide inducement for the investment for twenty years. After 20 years, there comes a time when they no longer need an inducement and the territory should be entitled to receive an appropriate taxable share of their revenues. Mr. Crisostomo stated recipients who come back requesting extensions or modifications have to demonstrate whether they are making a profit.

Senator Nelson asked if GEDA has resolved the problems associated with the Q.C. issued to businessman Mr. Al Ysrael? Mr. McCully stated that Q.C. was revoked. Mr. Crisostomo stated Mr. Ysrael has since reapplied for another project. Senator Nelson expressed concerns why in this instance, the Q.C. program isn't being used to assist a local businessman? Mr. Crisostomo stated applicants must meet eligibility standards. Mr. Ysrael's application involved overlapping properties for other projects and representing the very same lots to meet the standards and requirements for a Q.C.

Senator Ada asked what the status of the housing survey? Mr. Crisostomo stated the survey is experiencing problems with contractors. The data collection phase is essentially complete, but there are problems with the Urban Institute and the local consultants. GEDA is trying to reconstitute that and is looking for a new partner for the team to construct. The data must be analyzed and a report on its

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) REGULAR SESSION

Bill No. 595
Introduced by:


Committee on Economic-Agricultural
Development and Insurance

AN ACT TO RENUMBER AND AMEND ARTICLE 4 OF
CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO
REVISE THE QUALIFYING CERTIFICATE PROGRAM OF THE
GUAM ECONOMIC DEVELOPMENT AUTHORITY.

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1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 SECTION 1. §2400.1 of Article 4, Chapter 2, Title 12, Guam Code
3 Annotated, is renumbered to be §2401.

4 SECTION 2. §2401 of Article 4, Chapter 2, Title 12, Guam Code
5 Annotated, is renumbered to be §§2402 and 2402.1 respectively and
6 amended to read:

7 "§2402. Qualifying Certificate Defined.

8 §§2402.1. A Qualifying Certificate is a contract valid for a given
9 period of time, executed by the Governor upon recommendation of
10 [Board] Authority, on behalf of the Government of Guam and the
11 Beneficiary, who has qualified for certain tax rebates [and] or tax
12 abatements in return for meeting certain employment, [equity]
13 investment, and other requirements as described in this Article and in the
14 Certificate."

15 Section 3. §2402 of Article 4, Chapter 2, Title 12, Guam Code
16 Annotated, is renumbered to be §2402.3 and amended to read:

17 "§2402.3. [Beneficiary, Defined.] The recipient of a Qualifying
18 Certificate shall be known as a Beneficiary."

1 **SECTION 4.** A new §2402.2 is added to Article 4, Chapter 2, Title
2 12, Guam Code Annotated, to read:

3 "§2402.2. A Qualifying Certificate shall entitle the Beneficiary
4 to tax rebates or tax abatements in return for meeting the conditions
5 and requirements prescribed by the Authority in this Article."

6 **SECTION 5.** §2403 of Article 4, Chapter 2, Title 12, Guam Code
7 Annotated, is renumbered to be §§2405, 2406, 2406.1, 2406.2, 2406.3,
8 2406.4, 2406.5, 2407, and 2407.1, respectively and amended to read:

9 "§2405. Eligibility Defined. [The following shall be deemed to
10 be a business eligible for consideration by the Authority for issuance
11 of a Qualifying Certificate:] A Qualifying Certificate shall only be
12 issued to the following entities:

13 (a) Any trust, partnership, sole proprietorship, or corporation
14 formed under the laws of the Territory of Guam as defined in [§2405]
15 §2404, engaged, or about to engage in:

16 [(1)] 1. Agriculture [(not exceeding \$2,000,000 in current and
17 fixed assets; this \$2,000,000 limit shall not apply to U.S. citizens
18 and legal residents residing in Guam)];

19 2. Aquaculture;

20 3. Mariculture;

21 4. Manufacturing [(to include hand and machine manufacturing)];

22 5. Commercial fishing;

23 6. Services; [or]

24 7. Tourism;

25 8. Housing;

26 9. Improvement of real property for purposes which are

1 specifically determined by the [Corporation] Authority to be
2 beneficial, desirable, and necessary for the economic development of
3 Guam; [or]

4 10. Captive insurance business as permitted by Chapter VII,
5 Title XXXIX, Government Code; [and (2) which activity meets (1) or
6 more of the following criteria:]

7 §2406. Promotion of General Economic Improvement. No
8 Qualifying Certificate shall be issued unless the Authority finds that
9 the proposed activities of the Beneficiary shall promote the general
10 economic development of the Territory by:

11 §2406.1. [a.] The creation of new employment;

12 §2406.2. [b.] The replacement of imports;

13 §2406.3. [c.] The reduction [of] in consumer prices;

14 §2406.4. [d.] The creation of vitally needed facilities; or

15 §2406.5. [e.] Increasing the availability of insurance providing
16 for or facilitating the provision of health care to the people of
17 Guam.

18 [f. Procurement of services or products supplied by Guam-
19 licensed vendors if total cost does not exceed one hundred ten percent
20 (110%) of those same services or products available from other
21 vendors.]

22 §2407. Recommendations of the Authority.

23 §2407.1. The [Board] Authority shall [promulgate] adopt
24 regulations containing standards, criteria, and measures of
25 investments by the Qualifying Certificate applicant and benefits for
26 the people of Guam in issuing Qualifying Certificates. Such

1 regulations shall include preference to be extended to applicants
2 which have fifty-one percent (51%) or greater portion of local
3 investment, as controlled by bona fide Guam residents, U.S. citizens
4 or permanent residents. The [Board] Authority shall recognize and
5 take into consideration any and all provisions of law and regulations
6 administered by other government entities that have review or approval
7 authority over the eligible activity. Such regulations shall be
8 adopted in the manner prescribed by the Administrative Adjudication
9 Law."

10 SECTION 6. New §§2407.2 and 2407.3 are added to Article 4,
11 Chapter 2, Title 12, Guam Code Annotated, to read:

12 "§2407.2. In making its recommendation the Authority shall
13 consider and make specific findings on the following:

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

16 (b) The financial risks facing the Beneficiary to undertake the
17 proposed activities;

18 (c) The location of the proposed activities;

19 (d) The importance of the proposed activities to the economy of
20 Guam and the government's officially adopted economic policies.

21 §2407.3. In its recommendation of specific tax benefits the
22 Authority shall consider the following as terms and conditions:

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

25 (b) Varying the rate of tax benefits over the term of the
26 Qualifying Certificate;

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

2 (d) Conditioning the tax benefits upon the Beneficiaries'
3 investment in or creation of public improvements separate from its
4 proposed activities.

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

8 (f) Requiring the Beneficiary to establish profit sharing
9 programs, stock ownership programs and other such benefits for its
10 employees; or

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

14 (h) Requiring the investment of tax rebates and abatements or
15 profits, within the Territory of Guam, by the Beneficiary.

16 (i) Requiring the procurement of services or products supplied
17 by Guam-licensed vendors if total cost does not exceed one hundred ten
18 percent (110%) of those same services or products available from other
19 vendors."

20 SECTION 7. §2403.1 of Article 4, Chapter 2, Title 12, Guam Code
21 Annotated is renumbered to be §2405(a)(11) and amended to read:

22 "11. [Export Trading Company, Eligibility.] [An] Export trading
23 company as defined in §19500.21 of Chapter VI of Title XX of the
24 Government Code [shall be eligible for the full benefits of a
25 qualifying certificate subject to applicable restrictions] if the main
26 office of the export trading company is established on Guam."

1 **SECTION 8.** §§2403.2 and 2403.3 of Article 4, Chapter 2, Title
2 12, Guam Code Annotated, are repealed.

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

5 "§2403. Nature of and Benefits. A Qualifying Certificate, once
6 issued, shall be a contract between the Government of Guam and the
7 Beneficiary, and the tax rebates and abatements enumerated in the
8 Certificate may not be curtailed, limited or impaired without the
9 consent of both parties by any subsequent act, except as provided
10 herein. Once issued and unless suspended, rescinded or revoked, a
11 Qualifying Certificate shall constitute conclusive evidence of
12 entitlement to the tax rebates and/or abatements stated on its face."

13 **SECTION 10.** §2405 of Article 4, Chapter 2, Title 12, Guam Code
14 Annotated, is renumbered to be §2404.

15 **SECTION 11.** §2405.1 of Article 4, Chapter 2, Title 12, Guam Code
16 Annotated, is repealed.

17 **SECTION 12.** §2406 of Article 4, Chapter 2, Title 12, Guam Code
18 Annotated, is renumbered to be §§2409, 2409.1, and 2409.3
19 respectively, and amended to read:

20 "§2409. Grounds for Suspension, Recession or Revocation.

21 §2409.1. A Qualifying Certificate may be suspended, rescinded
22 or revoked by the Governor of Guam upon the recommendation of the
23 [Board] Authority for the following reasons:

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

26 [2.] (b) Failure to comply with any conditions and obligations

1 stated in the Certificate after having been notified by the Authority
2 in writing of such failure to comply and after having been given by
3 the Authority a reasonable period of time within which to correct such
4 failure;

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

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

10 [5.] (e) Any term or provision of, or in the issuance of the
11 Qualifying Certificate being or having been in violation of any
12 provision of this Article or the applicable rules and regulations of
13 the Authority.

14 §2409.3. No recommendation for suspension, recision or
15 revocation shall be made by the [Board] Authority except after a
16 hearing thereon pursuant to the provisions of the Administrative
17 Adjudication Law."

18 SECTION 13. A new §2409.2 is added to Article 4, Chapter 2,
19 Title 12, Guam Code Annotated, to read:

20 "§2409.2. The suspension, recision, or revocation of a Qualifying
21 Certificate may be retroactive to its issuance or for any shorter
22 period recommended by the Authority."

23 SECTION 14. §2407 of Article 4, Chapter 2, Title 12, Guam Code
24 Annotated is renumbered to be §§2408, 2408.1 and 2408.2 respectively
25 and amended to read:

26 "§2408. Disqualifications.

1 §2408.1. [A corporate applicant for a Qualifying Certificate
2 shall, as a condition precedent to qualifying for the same, satisfy
3 the Authority in writing that it shall not transfer, move, relocate
4 or otherwise remove any of its existing business plants to Guam from
5 the continental United States or any of its territories or
6 possessions.] A Qualifying Certificate shall not be issued to any
7 applicant who has not first obtained a license to do business in the
8 Territory of Guam.

9 §2408.2. No [officer] employee of the Authority or member of the
10 [Board] Authority or their spouses and no corporation or any other
11 legal entity in which [an] any [officer] employee or member of the
12 [Board] Authority or their spouses has any financial interest [may
13 qualify] is eligible to apply for a Qualifying Certificate. Neither
14 shall any of the following, during their term of office and for a
15 period of one (1) year after their resignation, termination, or
16 completion of their term of office, directly or indirectly, qualify
17 for a Qualifying Certificate:

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

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

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

23 [c] (d) Judges of the various courts of Guam and their spouses.

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

26 **SECTION 15.** §2408 of Article 4, Chapter 2, Title 12, Guam Code

1 Annotated, is renumbered to be §§2410, 2410.1, 2410.2, and 2410.4
2 respectively and amended to read:

3 "§2410. Employment of United States Citizens and Permanent
4 Residents.

5 §2410.1. [A] Every Qualifying Certificate shall [not be issued
6 to an applicant which is investing One Million Dollars (\$1,000,000)
7 or more unless such applicant commits itself at the time of
8 application for such a Certificate that a management training program
9 shall be established and] include a requirement that the Beneficiary
10 shall submit a plan for a management training program for the approval
11 of the Authority. The plan shall establish a management training
12 program through which the Beneficiary shall have as managers and
13 officers residents of Guam who are United States citizens or permanent
14 residents of the United States. [a copy of that written training
15 program shall be delivered to the Authority within the number of days
16 prescribed in regulations by the Authority so that within a reasonable
17 period of time residents of Guam who are United States citizens or
18 permanent residents of the United States who are otherwise qualified
19 would replace any management personnel or other officers of an
20 industry or business granted a Qualifying Certificate who are not
21 United States citizens or permanent residents of the United States]

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

1 requirements:

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

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

22 (b) The Authority shall be the sole judge of [what constitutes]
23 whether a Beneficiary's employee is management [and] or non-management
24 [levels of employment] but it shall seek advice from the University
25 of Guam, the Guam Community College, the Department of Labor, [the
26 Department of Education,] and such other government agencies as are

1 necessary to fulfill the intent of this Section. The Authority shall
2 establish, by rule and regulation[s adopted pursuant to the
3 Administrative Adjudication Law], requirements for practical and
4 equitable training programs as guidance for the applicant and the
5 reasonable minimum number of persons to be employed on a continuing
6 basis for each applicant in accordance with the specific and normal
7 requirements of the business involved. [Such training program and
8 minimum employment requirement shall be made a condition appearing on
9 the face of the applicable Qualifying Certificate.] The Authority
10 shall annually report to the Legislature the titles and compensation
11 of all trainees, including those placed in management levels, who are
12 employed by the Beneficiaries of Qualifying Certificates.

13 §2410.4. No resident employee of [an industry or business
14 granted a Qualifying Certificate] a Beneficiary shall be paid less
15 than the prevailing wage rate[s] nor shall he be laid off his job nor
16 have his workweek reduced to less than forty (40) hours [for the sole
17 purpose of creating] in order to create employment for non-resident
18 workers. For the purpose of this Section, "prevailing wage rate[s]"
19 [as determined by the] shall mean those established from time to time
20 by the Guam Department of Labor. [shall be used as a guide.] The
21 Department of Labor is hereby empowered to investigate any complaint
22 filed pursuant to this Section and to settle the same by issuance of
23 an appropriate order after notice and hearing pursuant to the
24 provisions of the Administrative Adjudication Law. Any willful
25 violation of this Section, or of any order issued hereunder may be
26 cause for a Beneficiary of a Qualifying Certificate to forfeit the

1 benefits thereof."

2 SECTION 16. A new §2410.3 is added to Article 4, Chapter 2,
3 Title 12, Guam Code Annotated, to read:

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

11 SECTION 17. §2408.1 of Article 4, Chapter 2, Title 12, Guam Code
12 Annotated, is renumbered to be §2411 and amended to read:

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

26 SECTION 18. §2409 of Article 4, Chapter 2, Title 12, Guam Code

1 Annotated, is renumbered to be §§2412, 2412.1 and 2412.2 respectively
2 and amended to read:

3 "§2412. Qualifying Certificate, Non-Transferrable.

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

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

15 SECTION 19. §2410 of Article 4, Chapter 2, Title 12, Guam Code
16 Annotated, is renumbered to be §2413 and §2422 respectively and
17 amended to read:

18 "§2413. Application for Qualifying Certificates. Applications
19 for Qualifying Certificates shall be filed on forms prescribed and
20 furnished by the Authority and shall require such disclosures as the
21 Authority shall deem appropriate.

22 §2422. Monthly Reports. [An applicant] Beneficiaries of a
23 Qualifying Certificate must furnish written monthly reports beginning
24 thirty (30) days after the date of the issuance of the Qualifying
25 Certificate, said reports [to] must include, but not limited to,
26 financial data, employment date and payroll data. All such monthly

1 reports shall be treated as confidential by the Authority."

2 SECTION 20. §2411 of Article 4, Chapter 2, Title 12, Guam Code
3 Annotated, is renumbered to be §2414 and amended to read:

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

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

1 "§2415. Notice of Hearing[s on Applicants] of Applications. A
2 notice of public hearing shall be published at applicants' expense in
3 a local newspaper of general circulation in a form prescribed by the
4 Authority [not less than] at least five (5) days [prior to] but no
5 more than ten (10) days before the scheduled public hearing date. The
6 Authority shall take all reasonable precautions in connection with
7 such public hearings to avoid disclosure of proprietary secrets of the
8 applicant. The Authority may schedule additional public hearings as
9 necessary. The Authority meeting for approval or disapproval of a
10 Qualifying Certificate shall not be held on the same day as a public
11 hearing on the same Qualifying Certificate application."

12 SECTION 22. §2413 of Article 4, Chapter 2, Title 12, Guam Code
13 Annotated, is renumbered to be §2416 and amended to read:

14 "§2416. Recommendations. All recommendations of the [Board]
15 Authority for issuance, modification, revocation and suspension of
16 Qualifying Certificates shall be forwarded to the Governor of Guam,
17 together with a memorandum of the [Board's] Authority's findings in
18 support of its recommendations. [The Governor of Guam within sixty
19 (60) calendar days from his receipt thereof shall either approve or
20 disapprove the Board's recommendations.] Any recommendation of the
21 Authority not approved by the Governor within sixty (60) calendar days
22 from his receipt thereof shall be deemed disapproved on the
23 sixty-first (61st) day following the Governor's receipt thereof."

24 SECTION 23. §2414 of Article 4, Chapter 2, Title 12, Guam
25 Code Annotated, is renumbered to be §§2418, 2418.1, 2418.2, 2418.3,
26 2418.4, and 2418.5 respectively and amended to read:

1 "§2418. Tax Abatements. [The following tax abatements are
2 hereby established and declared, for which Qualifying Certificates may
3 be issued:] Subject to the provisions of this Article, the Governor
4 is authorized to issue a Qualifying Certificate abating the following
5 taxes on the following terms:

6 §2418.1. [(1)] All taxes now levied by virtue of Chapter 24,
7 Title 11 of the Guam Code Annotated (known as the Real Property Tax
8 Law), shall be abated for a period up to ten (10) years from [date of
9 issuance] the effective date of the Qualifying Certificate [thereof,]
10 and as long as said Certificate is in force and effect, provided that
11 the real property on which said tax is assessed is only utilized [for
12 a tax exempt business that has qualified and continues to qualify for
13 a] by the Beneficiary for activities identified in the Qualifying
14 Certificate. [A sum equal to the abated amounts must be invested in
15 Guam for a period of at least five (5) years. The Beneficiary shall
16 provide evidence to the Authority of such investment.]

17 §2418.2. [(2)] All taxes now levied on income derived from the
18 lease of land, buildings, machinery or equipment by virtue of Article
19 2, Chapter 26, Title 11, Guam Code Annotated (known as Gross Receipts
20 Taxes), shall be abated for a period up to ten (10) years, from [date
21 of issuance] the effective date of a Qualifying Certificate,
22 [therefor,] and as long as said Certificate is in force and effect,
23 provided that said income [has been] is derived from the lease of
24 land, building, machinery or equipment to a [tax exempt business that
25 has qualified and continues to qualify for] Beneficiary of a
26 Qualifying Certificate.

1 §2418.3. [(3)] All taxes now levied by virtue of Article 2,
2 Chapter 26, Title 11, Guam Code Annotated (known as the Gross Receipts
3 Taxes), shall be abated for a period up to ten (10) years from [date
4 of issuance] the effective date of a Qualifying Certificate,
5 [therefor,] and as long as said Certificate is in force and effect,
6 provided that the gross receipts on which such tax shall be abated
7 have been derived from the sale of alcoholic beverages manufactured
8 in Guam by the manufacturer thereof and that such manufacturer [has
9 qualified and continues to qualify for] is the Beneficiary of a
10 Qualifying Certificate. [covering such manufacture.]

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

1 §2418.5. [(5)] All taxes now levied by virtue of §43714,
2 Chapter VII, Title XXXIX of the Government Code shall be abated for
3 a period of up to ten (10) years from the [date of issuance] effective
4 date of the Qualifying Certificate therefor and as long as said
5 [certificate is in force and effect; provided that said] premiums are
6 collected by a captive insurance company licensed under Chapter VII
7 of Title XXXIX that has qualified and continues to qualify for a
8 Qualifying Certificate."

9 **SECTION 24.** A new §2418.6 is added to Article 4, Chapter 2,
10 Title 12, Guam Code Annotated to read:

11 "§2418.6. All taxes now levied by virtue of Article 2, Chapter
12 26, Title 11, Guam Code Annotated (known as the Gross Receipts Taxes)
13 shall be abated for a period up to ten (10) years from the effective
14 date of a Qualifying Certificate and as long as said certificate is
15 in force and effect, provided that the gross receipts on which such
16 tax shall be abated have been derived from the sale of new housing
17 units constructed by the Beneficiary after the issuance of a
18 Qualifying Certificate for that activity. A Qualifying Certificate
19 shall only be issued under this section to a Beneficiary developing
20 twenty-five (25) or more housing units."

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

24 "§2419. Income Tax Rebates. Subject to the provisions of this
25 Article, the Governor is authorized to issue a Qualifying Certificate
26 which establishes the following tax rebates:

1 \$2419.1. Income Tax Rebate. A rebate of up to seventy-five
2 percent (75%) of all income tax [payable] paid to the Government of
3 Guam [is hereby established and declared, for] by a Beneficiary on
4 income received from those activities [for which a] identified in the
5 Qualifying Certificate may be issued for [(a)] a period not to
6 exceed[ing a total of] twenty (20) consecutive years from the
7 effective date of a Qualifying Certificate [therefore or; (b) the
8 date of recouping of the amount of initial and subsequent capital
9 invested, up to Thirty Million Dollars (\$30,000,000) whichever occurs
10 first.]

11 \$2419.2. Variable Rates. The percentage of rebate may be made
12 variable by the [Board] Authority so as to permit higher or lower
13 percentages in earlier or later years of the period. In determining
14 the periods up to twenty (20) years and the percentages up to
15 seventy-five percent (75%) [and capital investment,] the [Board]
16 Authority shall take into consideration the financial risks involved
17 in the undertaking as well as the impact on the socio-economic
18 development of Guam by the proposed investment.

19 \$2419.3. Determination of Income. For the purposes of this
20 Section, the term "income tax [payable] paid" shall mean income taxes
21 [applicable to subsequent to] paid on income received on or after the
22 effective date of the applicable Qualifying Certificate. The Director
23 of Revenue and Taxation of the Government of Guam shall have authority
24 to determine any prorations of rebates necessary because of taxable
25 years occurring within the life of the applicable Qualifying
26 Certificate which consist of less than full twelve (12) months period.

1 [All rebated amounts must be invested in Guam for a period of at least
2 five (s) years. The Beneficiary shall provide evidence to the
3 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 "§2421. Taxability of Rebates: Legislative Intent. It is the
7 intent of the Legislature that rebates of income taxes to qualifying
8 entities pursuant to [§2414] §2418 and [2415] 2419 of this Article be
9 rebates on all the taxes owed on the eligible activities identified
10 in the Qualifying Certificate and that no portion of the rebates given
11 be later subject to 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 "§2419.4. Income Tax Rebate on Dividends. A rebate of up to
15 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
19 to 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
21 activities identified in the Qualifying Certificate and only for a
22 period of up to five (5) years.] the shareholders of a corporation on
23 the dividends of that corporation may be granted for a period not to
24 exceed five (5) consecutive years; provided, however, that the
25 corporation paying the dividends is the Beneficiary of a Qualifying
26 Certificate and the dividends are being paid from the corporation's

1 current year's earnings on activities identified in the Qualifying
2 Certificate.

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

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

12 SECTION 28. A new §2419.5 is added to Article 4, Chapter 2,
13 Title 12, Guam Code Annotated, to read:

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

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

24 "§2417. Modification of Tax Benefits. In the event that a
25 Beneficiary proposes to substantially expand or add to its activities
26 and desires to obtain a modification of its original Qualifying

1 Certificate to include its proposed additional activities, then upon
2 findings and recommendations of the Authority, the Governor may modify
3 the original Qualifying Certificate but only subject to the following
4 conditions:

5 (a) The Authority specifically finds that the additional
6 proposed activities of the Beneficiary satisfy the requirements of
7 §§2403 and 2406 and that the Authority makes recommendations required
8 by §2407;

9 (b) The original Qualifying Certificate shall be surrendered and
10 cancelled;

11 (c) The tax benefits applicable to the additional activities may
12 be at rates or for a term different from those tax benefits applicable
13 to the activities described in the original Qualifying Certificate.

14 (d) The new Qualifying Certificate may include terms,
15 conditions, rebates or abatements different from those in the original
16 Qualifying Certificate."

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

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

1 with the corresponding tax returns.]”

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

5 "§2423. Procedure to Claim Abated and Rebated Taxes.

6 §2423.1. [A certified true copy of the corresponding Qualifying
7 Certificate and a certificate of compliance issued by the Authority
8 should be attached to the Beneficiary's tax return when filing each
9 return.] The Authority shall monitor the activities of the
10 Beneficiary and in the event of the Beneficiary's compliance with all
11 of the terms and conditions of the Qualifying Certificate, this
12 Article and the Rules and Regulations of the Authority, it shall
13 issue, annually, its certificate of compliance. No rebate or
14 abatement of any tax shall occur unless the Beneficiary shall have
15 received a Certificate of Compliance for the applicable tax year.

16 §2423.2. When the return for the abated tax is accompanied by
17 a corresponding [Qualifying Certificate, and a] certificate of
18 compliance, the actual payment of the tax in question to the
19 Government shall not be required, and upon review of the tax return,
20 the Tax Commissioner of the Government of Guam shall, within one
21 hundred twenty (120) days from receipt of said tax return, furnish the
22 taxpayer a certification confirming the nature and amount of the tax
23 abated.

24 §2423.3. In the case of an income tax rebate, where the
25 taxpayer's tax return is accompanied by a certificate of compliance,
26 the amount of a tax due prior to rebate shall be deposited with the

1 Government of Guam [as prescribed by the Territorial Income Tax Law.
2 When the return for the tax which may be subject to rebate is
3 accompanied by a corresponding Qualifying Certificate and a
4 certificate of compliance,] at the time of filing the income tax
5 return. The Tax Commissioner of the Government of Guam shall
6 immediately thereafter cause the return to be reviewed [and audited,]
7 and if the rebate is found in order shall cause the amount deposited
8 to be returned to the taxpayer within one hundred eighty (180) days
9 from date of [filing of the income tax return] deposit, without
10 interest."

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

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

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

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

19 SECTION 36. §2424 of Article 4, Chapter 2, Title 12, Guam Code
20 Annotated, is renumbered to be §§2428, and 2428.1, respectively and
21 amended to read:

22 "§2428. Fees.

23 §2428.1. Upon the effective date of this Act and until modified
24 pursuant to [§2425,] §2428.3 of this Article, the following fees shall
25 be assessed against each applicant and recipient of a Qualifying
26 Certificate:

	<u>FILING FEE</u>	<u>ANNUAL SURVEILLANCE FEE</u>
3 "Agriculture, Aquaculture, 4 and Mariculture	\$ 150.00	\$ 500.00
5 [Machine Manufacturing]	[750.00]	[2,000.00]
6 Home Manufacturing	100.00	100.00
7 [Other] Manufacturing	750.00	2,000.00
8 Commercial Fishing	250.00	1,000.00
9 Services	750.00	2,000.00
10 Leasehold Services	Based on Industry	0.75% of
11	Filing Fee	Lease Payment
12 [Tourist Facilities] <u>Tourism</u>	1,000.00	3,000.00
13 <u>Housing</u>		
14 <u>(Less than 25 units)</u>	<u>1,000.00</u>	<u>Based upon the</u>
15		<u>Authority's</u>
16		<u>estimate of</u>
17		<u>processing costs.</u>
18 <u>(More than 25 units)</u>	<u>1,000.00 +</u>	<u>Based upon the</u>
19	<u>500.00 for</u>	<u>Authority's</u>
20	<u>each 25 units</u>	<u>estimate of</u>
21	<u>or any portion</u>	<u>processing costs.</u>
22	<u>thereof.</u>	
23 Captive Insurance Companies	750.00	1,000.00
24 Export Trading Companies	750.00	1,000.00
25 [Industrial Facilities]	[750.00]	[1,000.00]
26 Motels		
27 Under construction	750.00	2,000.00
28 In operation	750.00	\$25 per room
29 Hotels		
30 Under construction	1,500.00	3,000.00
31 In operation	1,500.00	\$45 per room"

32 SECTION 37. A new §2428.2 is added to Article 4, Chapter 2,
33 Title 12, Guam Code Annotated, to read:

1 "§2428.2. In addition to any filing or surveillance fee, the
2 Authority may assess against each applicant or Beneficiary, the
3 reasonable cost and expenses incurred to process the application or
4 monitor the Beneficiary's performance of the terms and conditions of
5 the Qualifying Certificate. Such cost and expenses shall not include
6 the salaries of any employees of the Authority."

7 **SECTION 38.** §2425 of Article 4, Chapter 2, Title 12, Guam Code
8 Annotated, is renumbered to be §2428.3 and amended to read:

9 "§2428.3. Periodic Adjustment of Fees. The [Board] Authority is
10 authorized to adjust the fees listed in [§2424] §2428.1 of this
11 Article on an annual basis, at the beginning of each calendar year,
12 [starting with calendar year 1991,] upon demonstration to the [Board]
13 Authority by the Administrator that the cost of performing the
14 services covered by the fees is greater than the amount of the fees.
15 Fee changes shall be made according to the provisions of the
16 Administrative Adjudication Law."

17 **SECTION 39.** A new §2429 is added to Article 4, Chapter 2, Title
18 12, Guam Code Annotated, to read:

19 "§2429. Rule Making Authority. In accordance with the
20 Administrative Adjudication Act, the Authority shall adopt Rules and
21 Regulations consistent with this Act which provide for, but not
22 limited to, the following: eligibility, minimum investment levels for
23 different industries, the application process, the terms and
24 conditions of the various Qualifying Certificates, the monitoring
25 procedure, and the revocation of Qualifying Certificates."



TESTIMONY

(September 02, 1993)

**BILL 593(LS) - AN ACT TO REVISE
THE QUALIFYING CERTIFICATE PROGRAM
OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY**

Good Morning, Mr. Chairman; esteemed members of the Committee on Economic-Agricultural Development and Insurance; Ladies and Gentlemen; my name is Charles P. Crisostomo, Administrator of the Guam Economic Development Authority. I am here today to testify in favor of Bill 593, an act to renumber and amend Article 4, Chapter 2, Title 12, Guam Code Annotated to revise the Qualifying Certificate Program.

The Qualifying Certificate Program was created by the Eighth Guam Legislature as a program to attract venture capital to the Territory for the principal purpose of creating private business enterprises and industries. Subsequent to its implementation, our island has experienced unparalleled growth. Through the offering of various tax abatements and rebates, we have in fact created a private sector economic base around which the local economy now revolves. The QC Program's focus has been to offer incentives to companies who proposed to build those "core" facilities, essential to the creation of various industries. This strategy envisioned benefits to the Territory's economy by providing employment and business opportunities in the form of support businesses.

Fueled by highly capitalized tourism industry, various support industries, notably commercial, retail, wholesale and financial services, have expanded resulting in new employment opportunities,

TESTIMONY ON BILL 593
September 02, 1993
Page 2

higher overall standard of living and increased government revenues. For example, from FY 1987 through FY 1992 the direct benefits, consisting of monthly payrolls, withholding and FICA taxes, gross receipt taxes, hotel occupancy taxes, use tax, property and corporate income tax, received from the Qualifying Certificate Program have amounted to \$487 million as compared to tax rebates and abatements paid of \$26.3 million or a return of 19 to 1 to the people of Guam. This does not take into consideration the secondary benefits created as a result of the Qualifying Certificate Program, which if considered could be up to ten times the amount of direct benefits.

Since the Program's inception, GEDA has reviewed one hundred nine (109) applications and issued eighty-eight (88) Qualifying Certificates. Throughout its history, the Qualifying Certificate Program has effected the development of numerous hotels/motels and resort facilities (Okura, Pacific Star, Pacific Islands Club, Guam Dai-Ichi Hotel, Palace Hotel, Miyama (Leo Palace Resort), etc.), improved the quality of and reduced consumer rates for telecommunication services (I T & E), augmented commercial fishing operations (Big Eye Helicopter), supported and promoted light manufacturing (Sigallo-Pac and Timewise, Ltd.), established a petroleum refinery (GORCO) as well as chartered Guam's economic growth through various other commercial ventures.

Although many of these beneficiaries continue to exist and operate today, some have been less fortunate. Notwithstanding the benefits afforded through the Qualifying Certificate Program, changes in U.S.



TESTIMONY ON BILL 593
September 02, 1993
Page 3

federal regulations, rulings and customs quotas inevitably caused the demise of Timewise and Sigallo-Pac. The former surrendered its Q.C. in April 20, 1988 and the latter during the first quarter of 1993. Likewise, GORCO's petroleum refining operations ended abruptly due to the severe loss of its most substantive military contract and subsequently surrendered its Q.C. on December 10, 1984. These examples clearly illustrate our vulnerability to changes in federal regulations, rules, and customs quotas and emphasize the overwhelming need for revamping our most valuable economic stimulus tool: the Qualifying Certificate Program.

With respect to tourism, although we have benefited greatly from the economic boon of the late 1980's, the tourism industry we enjoy today is not immune to the whims of capital flight. Because of the recent overheating of Japan's economy, the appreciation of the Yen against the U.S. Dollar, the numerous string of typhoons and after experiencing the largest recorded earthquake in the last four years, regional perception of investment opportunity and the cost of establishing operations in Guam has been substantially impacted. Specifically, because the Territory has suffered from these unforeseen and uncontrollable events, the time is NOW to revitalize and diversify our economy by enticing development capital from within the Asia-Pacific region. In line with this objective, the Office of the Governor, in conjunction with the Guam Economic Development Authority and Guam Visitors Bureau, has organized an Economic Mission specifically



targeting the prime businesses and industry leaders of Hong Kong, Taiwan, Japan, and Korea. As the Qualifying Certificate Program has proven to be an effective economic tool for the Territory in attracting investment and venture capital, it is imperative that Bill No. 593 be adopted, and that the Qualifying Certificate Program be updated prior to the Economic Mission. Passage of Bill No. 593 will enable Guam 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.

Notably, Bill No. 593 modifies the existing Qualifying Certificate Program as follows:

1. Eliminates the \$2 million cap imposed on agricultural businesses.
2. Adds the categories of "Tourism" and "Housing".
3. Establishes certain guidelines for the Authority to use in reaching its recommendation for issuance of a Qualifying Certificate.
4. Repeals the requirement for hotels/motels to publicly offer up to 10% of its voting stock to the residents of Guam at the original price offering, and makes this an optional consideration.
5. Repeals the Hotel Q.C. moratorium.
6. Includes the employees of the Governor's office and their spouses as ineligible to apply for a Qualifying Certificate for a



period of one (1) year after their resignation, termination, or completion of term of office.

7. Mandates the requirement for all Qualifying Certificate recipients to effect a management training program.

8. Clarifies the non-transferability of the Qualifying Certificate.

9. Changes the process of approval or disapproval of a Qualifying Certificate by the Governor.

10. Provides authority to GEDA to recommend and the Governor to grant 50% of said abatements for a period of double the term authorized under the Qualifying Certificate Program.

11. Changes the commencement date of the Qualifying Certificate on real property tax and gross receipt tax abatements or rebates from the issuance date to the effective date of the Qualifying Certificate as determined by GEDA.

12. Eliminates the real property tax abatement requirement to locally invest a sum equal to abated amounts for a period of at least five (5) years.

13. Eliminates the restrictions and caps on the rebate of income tax, especially the cap of \$30 million.

14. Eliminates the income tax rebate requirement to locally invest a sum equal to rebated amounts for a period of at least five (5) years.

15. Includes SubChapter S Corporations as being eligible for up to a maximum 75% income tax rebate.



16. Clarifies the eligibility of income tax rebates of up to a maximum of 75% on Q.C. beneficiary paid dividends.

17. Provides the guidelines for modifying an existing Q.C. by GEDA.

Item no. 13 is of major significance to the Authority as this \$30 million figure appears to have been arbitrarily assigned. Its origin resulted from general public hearing discussion. However, informal discussions with professional engineers relating to project development costs for first-class hotel/resort facilities, indicate that, depending on the location and site development costs, per unit costs range from \$200,000 to \$1 million. The greater impact this cap has is to discourage industry development in areas such as manufacturing, commercial or major agro-business investments. The Coca Cola Corporation in 1991 diverted their investment interest to the Virgin Islands, immediately after the imposition of this cap. Their capital investment of 5-8 million dollars was not the significant benefit; it was to be in their annual production and sales volumes. With their production target of the Asia Pacific region south of Japan, Coca Cola estimated absorbing the 30 million dollar cap in five years or less. Elimination of such cap provides the flexibility and opportunity to attract a wide range of venture capital interests to Guam, inclusive of commercial, manufacturing, agricultural and industrial investors.

A slight change is recommended in the proposed Section 2418.6 (lines 16-18) as follows: "...tax shall be abated have been derived

