Briefing Report on Guam's Federal Constraints Issues

By Bureau of Planning

January 1995

<u>CONTENTS</u>

- **UNEQUAL TREATMENT OF GUAM IN COMPARISON TO THE VIRGIN ISLANDS FOR FUNDING PURPOSES UNDER THE LOCAL CRIME PREVENTION BLOCK GRANT PROGRAM**

- **INTERSTATE BANKING**

- **STATE DEPARTMENT'S POLICY REGARDING GUAM'S MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS**

- **UNFUNDED FEDERAL MANDATES: MANDATORY HIV TESTING, DRINKING AGE OF 21 YEARS, NO CHARGES FOR COURT FILINGS IN DOMESTIC VIOLENCE CASES**

- **IMMIGRATION**

FEDERAL CONSTRAINTS ISSUES

• LACK OF FULL POLITICAL STATUS (COMMONWEALTH STATUS)

Self-Determination lies at the heart of the political status question for the people of Guam. The political status issue has been a significant part of Guam's public debate for almost twenty years. What originally began as a Political Status Commission was subsequently renamed the Commission on Self-Determination, a name change that reflects the changing perceptions and desires of the people of Guam regarding their political relationship the United States. With two plebiscites held in early eighties to determine what political relationship the people of Guam wanted with the United States, it was clear that "U.S. Commonwealth" was the clear choice. Commonwealth status is viewed as an opportunity to structure a better relationship with the United States that could be tailored to meet the unique circumstances that exists on Guam, and which at the same time could meet the growing aspirations of the people of Guam for greater self-sufficiency within a more balanced partnership of interests between Guam and the United States. The people of Guam seek to maximize their participation in the decision-making process that affects their lives and seek access to the benefits and constitutional protection of American citizenship that can be made available under a refined status as an American commonwealth. The "Draft Commonwealth Act of 1988" outlines the people's desire for the inalienable democratic right of self-determination: the right of the decendents of the original Chamorros, to ultimately choose for ourselves the nature and extent of our political relationship with the United States and, implicitly, with the other countries of the world.

One of the most important aspects of the aspired commonwealth status is that the petitions for change do not emanate from Washington, where almost all territorial policy has been handed down. Instead, they come from an evolving political process that began eighty years ago, and which has its historical roots in a self-sufficient Chamorro identity that was arbitrarily ended centuries ago. The people of Guam are inspired by the history of the United States. We can fully appreciate the similar quest by the thirteen colonies of more self-sufficiency over two hundred years ago and share in the frustration that was felt in colonial America which resulted from policies that were dictated from afar, with often little or no input from those directly affected. While recognizing that Guam cannot enjoy direct representation in the Congress or a vote for the Presidency, since these are privileges of citizens of a state, Guam nonetheless desires a more direct participation in developing and administering the policies that affect the lives and future of its children.

• TRANSFER OF ADDITIONAL EXCESS FEDERAL LANDS

The Federal Government continues to control one-third (1/3) of the island's finite availability of land. Most of which remains unused and is considered to be highly developable property. The land is needed to further stimulate the island's economic growth not only for government purposes but to that of the private sector. Moreover, the Government of Guam receives no property taxes from this land - tax money which could be used towards the economic growth of the island through government services or infrastructure improvements.

Perhaps the longest standing issue in the Guam-U.S. relationship, the land issue is inextricably tied to both Guam's most basic interest and to U.S. strategic interests. As a general rule, the people of Guam are not opposed to the U.S. military's use of property in Guam; so long as it is actually used. However, the deep-seeded sense of injustice amongst the Chamorro people that marks the U.S. government's occupation of Guam property and the fact that large amounts of federally-held property are not being actively used, the land issue is as much a political issue as it is an economic one.

The release of NAS is necessary for the continued expansion of the Guam International Airport. This is essential not only for purposes of increased passenger or cargo movement but also to extract the level of service deemed necessary for increased economic expansion in the tourism industry and private sectors.

- **MARITIME LAWS: VESSEL DOCUMENTATION ACT (P.L. 96-594); U.S. COASTWISE LAWS (46 U.S.C. 883 - JONES ACT); AND, 46 U.S.C. 296 - FOREIGN BUILT DREDGE**

The above maritime laws were originally enacted to protect the U.S. shipping industry, however, its restraints weaken the island's potential as a center for trade and commerce by discouraging companies to transship goods through Guam's port. The laws cited prohibit U.S. citizens from using foreign-built boats for purposes of fishing or trade between Guam and other ports. In addition, the Coastwise Laws are only applicable to Guam. They do not apply to American Samoa, the Virgin Islands, the Northern Mariana Islands and the Federated States of Micronesia.

Due to the restrictions imposed, local contractors incur relatively high costs in vessel construction, labor requirements, and in transporting the vessel once construction has been completed. Lower vessel costs will enhance the competitiveness of local fishermen in the export market, encourage foreign competition, improve the level of service, and bring down the general level of ocean freight rates.

The Jones Act guarantees a federally enforced monopoly by U.S. maritime shipping on Guam. This federal law is unfair because it unnecessarily increases the cost of goods shipped to Guam, prevents fair competition among carriers serving the island, drives up the cost of goods to Guam consumers, and Guam is expected to carry the burden of this law when others are not. The repeal of this law as it applies to Guam is vital as we are thousands of miles away from the continental U.S. where the merits of this law make sense, and we will prove though litigation before the Federal Maritime Commission that Guam is being made to subsidize millions of dollars into the two U.S. carriers serving Guam.

- **BROOKS AMENDMENT (P.L. 96-418, Section 818[b][2])**

Public Law 96-418, Section 818(b)(2) authorized the transfer of approximately 927 acres of reclaimed and submerged lands in Apra Harbor to the Government of Guam. The amendment makes the prospect of a locally-initiated development of the land unattractive and unrealistic. The transfer placed prohibitive constraints in allowing the Commercial Port of Guam to provide the necessary infrastructure and capital improvements needed to upgrade and modernize existing facilities. Due to mandates contained within the Brooks Amendment, the profits from the lease or sale will be remitted to the Federal treasury, thus negating any such economic benefit for Guam. It was estimated that the Commercial Port of Guam could realize approximately $3 million from potential lease payments on an annual basis. As a result, there has not been any economic development on the land, development which could otherwise create new jobs and increase the existing tax revenue base for the Government of Guam.

- **EXCLUSIVE ECONOMIC ZONE (EEZ)**

Guam seeks federal government recognition of the island's control over its EEZ based on traditional rights, international convention and by virtue of its own claim. From Guam's perspective, all discussion of benefits from the EEZ and the question of jurisdiction flows from a recognition of Guam's 1981 claim to its inherent jurisdictional right to its ocean resources. Resolution III of the United Nations Convention on the Law of the Sea (UNCLOS) states that territories which have not attained a full measure of self-government or which are not independent are to have the provisions of the UNCLOS implemented for their benefit and the promotion of their well-being and development. The Clinton Administration signed the UNCLOS on July 1994 which will now go before U.S. Senate. However, U.S. State Department believes that the resolution does not apply to U.S. territories.

- **COMPACT IMPACT/COMPACT OF FREE ASSOCIATION (P.L. 99-239)**

The Compact of Free Association between the United States and the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands defines the legal relationship between the two in terms of immigration, defense, trade, U.S. financial assistance and other matters. Given its proximity to neighboring islands in Micronesia and being the largest and most developed area, Guam stands to be heavily affected by the implementation of the compact.

As FSM and Marshall citizens immigrate to Guam for economic opportunities, better education and public services, Guam's social systems and infrastructure could be strained, thus diluting the quality of service to the community as a whole. Another factor of contention is the limited funding appropriated by the Federal Government to provide financial and economic assistance to the Region. As a result, the Government of Guam would have to provide supplemental resources by increasing local spending in order to continue to provide the required services needed.

- **TAXATION: MIRROR IMAGE TAX**

Under current law, federal tax laws apply on Guam in the same way that they apply in the states with proceeds from tax revenue sustained by the federal government. This is referred to as the "mirror image" tax system. Although the present federal tax law gives Guam the option to develop its own tax system appropriate to its revenue and economic needs, approval first must be granted by the federal government. Any changes in federal tax law would automatically apply to Guam. While the changes may work for a larger federal tax system such as the states, they fail to provide the same benefits to the island's revenue and tax base. The system that is in effect does not allow the Government of Guam to promote any economic development in its region in terms of rebate or reduction offered to prospective businesses and in the issuance of bonds or other obligations.

- **LAND ACQUISITION OF THE WAR IN THE PACIFIC NATIONAL HISTORIC PARK (P.L. 95-348)**

Public Law 95-348 created the War in the Pacific National Park in 1978. The law authorized the appropriation of $16 million for the acquisition of the land and $500,000 for the development of the park. Between 1980 and 1991, a total of $3,070,047 was appropriated for the acquisition of privately-owned lands. As of June 1991, 69.13 acres of private lands were acquired by the National Park Service through purchase or exchange.

Congress's designation of the required lands for the Park places an encumbrance on the lands as it prevents the current private property owners from selling, investing, or developing their lands. The Department of Parks and Recreation has estimated that a $98 million appropriation would be needed in order to complete land acquisitions and development of the Park.

- **CEILING IMPOSED ON PUBLIC ASSISTANCE PROGRAMS UNDER THE SOCIAL SECURITY ACT (SSA) AND MEDICAID PROGRAM**

The public assistance programs enable each state to furnish financial assistance to individuals who are in need and to provide rehabilitation and other services to attain or retain the capability for self-support and self-care. The SSA and Medicaid Program provide assistance to the blind, aged, disabled and families of dependent children. The federal ceilings imposed on the above programs has forced the Territory to increasingly overmatch the funding it was allotted.

Under the fifty (50) states and the Commonwealth of the Northern Mariana Islands, assistance is provided through the Supplemental Security Insurance (SSI), a 100% federally funded program. Guam's elderly and handicapped, as well as the other territories, were excluded from the legislation creating the program. Thus, Guam has had to share a greater burden of the cost to provide the help and services to the needy by relying on increased local spending to continue operating the programs its offers. Because of this, program growth and development has been curtailed due to funding limitations.

- **TRADE RELATIONSHIP: IMPORT/EXPORT (HEADNOTE 3[a])**

Since Guam has been recognized as a developing country by the United States, it is eligible to participate under Headnote 3(a) of the Tariff Schedules of the United States (TSUS). Section 7.8 of the U.S. Customs regulations governs the Headnote 3(a) program as it applies to Guam and other insular possessions. The Guam-U.S. trading relationship has long been marred by the unilateralism of the U.S. authority and changes to the Headnote 3(a) program. The effect of arbitrary administrative changes to Headnote 3(a) has negated serious investor interest. The latest administrative change to Headnote 3(a) is indicative of the problems which Guam has had in promoting the program as a basis for economic development.

On July 27, 1993, the U.S. Customs Service published in the Federal Register (58 Fed. Reg. 40095-40103) proposed regulations concerning the duty-free treatment of articles imported from U.S. insular areas. The new regulations, while proposing "to clarify and update the legal requirements and procedure which apply for the purpose of obtaining duty-free treatment on articles imported from insular possessions of the United States" in fact, make progress of importing more difficult than it already is. First, the new regulations, at subsection (a), change the status of good which meets all the requirements from an article that shall be eligible for entry into the U.S., to an article that "may be eligible." Although this proposed change is consistent with the kinds of arbitrary control often manifested by the U.S. Customs Service, it is in conflict with the law establishing the Headnote. Further, at subsection (b) the regulations would provide that the goods shall be considered to be manufactured or produced in an insular area if "The goods become a new or different article of commerce as a result of processing performed in the insular possession." The previous test of a "new and different article of commerce" is clearly much broader that the narrow use of the word "processing." Finally, at subsection (c), the new regulations would implement a test of "double substantial transformation."

The aforementioned gives credence to the folly of Headnote 3(a)'s viability as a tool to implement economic development initiatives. Investors simply do not find the security of a stable trading platform under the current system to commit their resources to enterprises in Guam which involve exporting to the United States.

- ECONOMIC DEVELOPMENT ADMINISTRATION (EDA) FUNDS

For over 10-years, Guam has benefitted from funds received under the U.S. Department of Commerce's EDA Program. Funds were allotted under the: (1) State Planning 301(b) Program; (2) Sudden and Severe Economic Dislocation Program; and (3) Public Works Program. While all have attributed to Guam's economic development, the funding levels have either been reduced or restricted. Complications include an extremely involved application process and the bureaucratic steps involved in the program, to include very stringent pre-qualification economic criteria guidelines (e.g., high unemployment levels, lost of major economic sector, etc.) that eliminates Guam from qualifying to participate.

- DEPARTMENT OF TRANSPORTATION'S ONE-STOP RESTRICTION: CABOTAGE LAW

This restriction, designed to protect American destinations, prohibits foreign carriers from serving two U.S. points with intermediate foreign stops. Exemption from the law, according to Department of Transportation officials "would rebound principally to the benefit of foreign airlines and to the disadvantage of U.S. carriers".

Air transportation is by far an integral part of Guam's economic development by linking Guam with the rest of the world in terms of passenger and cargo movement. This regulation has limited Guam's potential growth in the private sector, in that it has forced foreign carriers to bypass Guam in order to seek more profitable markets within Hawaii and the Continental U.S. with larger populations, more attractive destinations, and more connecting flights from those points. Creating an "Open Sky" determination will enhance Guam's commercial efforts in international trade and will further stimulate Guam's tourism industry in terms of growth and economic development.

Guam's desire to sponsor air service results from the same kinds of cabotage limitations that occur under existing ocean transportation standards. Although Guam's natural geo-economic environment is in the Asia Pacific region (almost 12 hours by air from the mainland United States, and 7 hours from Hawaii), the regulation of opportunities in the air service industry is decided in Washington, D.C. Despite the vast distance between Guam and other points in the U.S., Guam, for the purposes of air transportation is treated as part of the United States.

Since cabotage is prohibited under U.S. law, no foreign carrier traffic that originates or terminates in Guam to or from another U.S. point is permitted. This results in numerous opportunities being lost vis-a-vis stop-over and through foreign carrier traffic from points into or out of the United States, unless the foreign carrier is willing to give up another U.S. destination. Given Guam's small size (and the economies of scale in foreign carriers servicing other U.S. destinations), the reality has been that foreign carriers will not forego other U.S. destinations just to stop in Guam.

Thus, while the Guam market may be small and thus unattractive to foreign carriers as a trade off for other U.S. points, the potential impact of foreign air carrier service is great for Guam. Guam as a stop to through carriers could provide the incipient base for another Asian visitor market. Additionally, frequent and regular service to points beyond Guam in Asia would attract both U.S. and foreign businesses to operate on Guam.

- **FOREIGN FILM CREW VISAS**

Current regulations require that foreign film crews who intend to come to Guam for filming must obtain entry visas from the American Consulate in their country. Foreign film crews have expressed a great desire to come to Guam to use its scenery for films and commercials, but, they experience difficulties entering Guam due to visa restrictions. Presently, these film crews are required to obtain an "H" visa. The "H" visa provision relates to the employment of temporary foreign workers and U.S.-based employers are required to apply for the visa. As foreign film crews only enter Guam to used its scenic background and otherwise have no U.S. ties, it is impossible for foreign film crews to enter Guam. As a result, they now travel to the Commonwealth of the Northern Marianas where entry requirements are easier to meet.

Guam's exclusion as a filming site has resulted in the loss of free advertisement of the island's attractions as well as a loss in revenues from expenditures of the film crews. An amendment to the Immigration and Nationality Act already allows selective visa waivers for visitors who are nationals of contiguous countries or adjacent islands where reciprocity is granted to visitors from the United States. If the present H visa stipulation for foreign film crews were eliminated and crews were allowed to enter as tourists under the Guam Visa Waiver, Guam's tourism industry would be greatly enhanced.

- **FOREIGN CREWMEN SERVING ON FISHING VESSELS**

The current visa stipulations for foreign crewmen in the Immigration and Nationality Act of 1952 doe not grant foreign crewmen serving on U.S.-owned fishing vessels the privilege of leaving the ship while it is in a U.S. port. But, the Act does permit foreign crewmen serving on foreign-owned fishing vessels or on nonfishing U.S.-owned vessels the privilege of leaving the ship while in a U.S. port. It appears that the stipulation was placed in the Act to encourage the hiring of U.S. crewmen and to protect their jobs.

The visa stipulation poses a hardship on Guam's developing tuna transport industry. Guam does not possess a supply of able and experienced U.S. crewmen wanting employment within the fishing industry, therefore, it is not unusual for U.S. owned vessels in this region to employ foreigners as crew members. Moreover, because of the distance from the West Coast to the Western Pacific fishing grounds, U.S. crewmen often hesitate to serve aboard a U.S. fishing vessel engaged in exploratory fishing around Guam and Micronesia. Often U.S. fishing boat operators have to utilize residents from Micronesia to serve as crewmen.

The Immigration and Nationality Act's regulation covering the disembarkment of foreign crewmen serving on U.S.-owned fishing vessels is stifling the growth of Guam's fishing industry, resulting in a loss of revenue for Guam from both the off-loading activities and from the money crew members would spend while in port.

- **SUPPLEMENTAL SECURITY INCOME**

The Social Security Act (SSA) was designed to provide federal matching funds for use by states in State administered health care for the indigent. Public assistance programs under the Act include Aid to the Blind (AB), Aid to Families with Dependent Children (AFDC), Old Age Assistance (OAA), Aid to the Permanently and Totally Disabled (APTD), and Medicaid. However, Department of Public Health and Social Services as the administrative agency, is expected to administer these programs with a $3.8 million federal appropriation ceiling imposed by Section 1108 of the SSA. However, contrary to the federal appropriation, DPHSS anticipates a $10 million expenditure almost yearly, resulting on increased local spending to continue operating the programs it offers.

The purpose of grants to states is to enable each state to furnish financial assistance to individuals who are in need and to furnish rehabilitation and other services to help such individuals attain or retain the capability for self-support and self-care. Under the fifty (50) states and the Commonwealth of the Northern Marianas (CMNI), cash assistance for public programs are provided through the Supplemental Security Insurance (SSI) a 100% federally funded program. The SSI provides monthly payments to the aged, blind, and disabled who have little or no resources and income. Guam's elderly and handicapped residents, as well as the other territories, were excluded from the legislation creating the program. Exclusion from the SSI program has forced Guam to provide assistance to its adult population by using its AFDC funds. Thus, we have had to share a greater burden of the cost to provide the help and services to the needy. Because of this, program growth and development has been curtailed and stunted due to funding limitations. Over the years, Guam has had to tailor the program to the funding it has been allotted and not to the needs of the people it serves.

The $3.8 million Federal Financial Participation expenditure ceiling to Guam is not limited to public assistance payments. The local government is also expected to cover foster care payments. Because of the low ceiling, this program is being funded 100% locally. In addition, transitional child care payments was made effective on April 1, 1990 and a yearly expenditure of about $200,000 is anticipated. This too is to be funded under the $3.8 million ceiling. Moreover, monetary sanctions are also imposed for audit discrepancies cited regarding the Guam child support operations and quality control reviews on about 300 cases on a yearly basis. If error rates are found to exceed 4%, monetary sanctions are imposed.

States are allowed an open ended funding level commensurate with their ability to provide local match. Furthermore, they are allowed to partake in certain funding incentives for such activities as computerization, training and fraud control. Since Guam has to remain within the ceiling imposed, we are precluded from benefitting. With all of the restrictions imposed by the ceiling, the DPHSS is unable to provide all of the services mandated. Thus, the recipients of public assistance are left with limited resources needed to attain the capability for self-support and self-care.

- **WILDLIFE REFUGE OVERLAY - CRITICAL HABITAT**

In August 1987, Governor Ada requested the U.S. Fish and Wildlife Service (FWS) to designate certain areas in northern Guam as Critical Habitat pursuant to Section 4 of the Endangered Species Act. A critical habitat would provide protection of areas occupied by endangered species (e.g., Guam Rail, Mariana Crow, Little Mariana Fruit Bat, etc.) from Federal actions which may adversely impact the habitat, and thus the species. In February 1989, FWS indicated the request was being considered. During meetings between officials a map was developed, however Guam expressed concerns that the proposed designated critical habitat areas would not, in itself, solve the problems with the Brown Tree Snake. Subsequently, alternatives to designation of a critical habitat were raised which led to a proposal for a national wildlife refuge. The new proposal was supported and Governor Ada withdrew his initial request for a critical habitat designation.

Meetings were then held between FWS, the military, and GovGuam to develop a Memorandum of Understanding (MOU) that would establish the refuge. Subsequently, the Navy, Air Force and FWS signed the MOU establishing an overlay wildlife refuge over portions of the Navy-held and Air Force-held lands. However, Governor Ada did not sign the MOU as it failed to address the establishment of the refuge under the following conditions: (1) that the total affected acreage be no more than 17,500 acres; (2) that full and unfettered access be provided to all private land owners who currently have only restricted access to their property; and (3) that in no way would the establishment of any wildlife refuge interfere with the transfer of all current or any future excess federal property to Guam.

- **STRATEGIC PETROLEUM RESERVE (SPR) ACT**

The purpose of U.S. Congress authorizing an establishment of a Strategic Petroleum Reserve in 1975 was to provide an energy insurance for America in case of an oil supply disruption. Its intention was witnessed during the Gulf War crisis, when the President authorized the first emergency drawdown of the SPR on January 16, 1990. Fortunately, the war in the Gulf was short-lived. In the case of a more severe oil supply disruption, these emergency reserves would have protected the Continental United States from severe economic harm. This energy insurance only applies to the Mainland and not to the Pacific Islands under the U.S. jurisdiction. Although ideal to the Continental United States, the SPR does not serve Guam as intended since: (1) the distance between Guam and the gulf of Louisiana and Texas (SPR location) is over 60 shipping days provided the shipping route is through the Panama Canal, thus exceeding Guam's average commercial working inventory of approximately 30 days; (2) shipping rates would be tremendously high if the Jones Act is not lifted during such an emergency; and (3) since SPR stores only crude oil, and with Guam not having a refinery one within reasonable proximity would have to be located, thus adding to a critical waiting period.

Guam had supported past proposal brought about by Hawaii, such as having an SPR located in the Hawaiian Islands. Hawaii's quest for SPR also included an oil reserve for Guam and the U.S. territories in the Pacific. However, no action had been taken by the Federal government to consider establishing a SPR in Hawaii. In 1992, Senator Daniel Akaka of Hawaii proposed two bills that would basically assure Hawaii and the Pacific Islands a guaranteed priority access to the SPR loading docks during an oil supply disruption. Although the islands would be responsible to chartering tankers and refining the SPR crude, these bills if passed would be a step closer to receiving federal support for an oil supply crisis. However, these bill did not pass.

According to Public Law 101-383, Congress requested that the Department of Energy undertake a 3-year test program for storage of refined products in import-dependent regions. Guam expressed interest in participating in such a project and approached the federal government about locating a petroleum reserve of refined products on Guam. Due to funding limitations, this project was not pursued.

When the Insular Area Vulnerability Assessment (P.L. 102-486; Sec. 1406) was being conducted, once again Guam had hopes of obtaining some kind of security to deal with in an oil supply disruption. However, the final report of the study stated several options for the Insular Areas to take during an oil supply disruption, those options were not the direction Guam was looking toward to. It was hoped that the study would undoubtedly show that Guam is uncommonly different than most remote areas becoming even more vulnerable to an oil supply disruption. However, the study suggested that the local government take the leading role in securing its own oil reserve by energy conservation measures and renewable energy resources. The study also discouraged any commitment for the Insular Areas to be tied to the SPR. The bottom line is that the outcome of the study was not only a disappointment but was more of a setback to receive any federal assistance through Congress.

- **UNEQUAL TREATMENT OF GUAM IN COMPARISON TO THE VIRGIN ISLANDS FOR FUNDING PURPOSES UNDER THE LOCAL CRIME PREVENTION BLOCK GRANT PROGRAM (Violent Crime Control and Law Enforcement Act of 1994, Section 30208)**

Under Section 30208 of the Act, Guam, not unlike the other territories is clearly defined as a single "State". However, for the purposes of funding, Guam is combined with American Samoa and the Commonwealth of the Northern Mariana Islands and categorized as one State. Under this definition, Guam's allocated share is 50%, with American Samoa and CMNI each allocated 33% and 17%, respectively. However, unlike the other territories, the Virgin Islands is precluded from this provision and will benefit from its allocation in its entirely. Clearly, this constraint imposes a limit on an important source of funds for the island.

- **INTERSTATE BANKING**

Banks that are chartered on Guam are considered "foreign" banks even though all federal law (e.g., FDIC) that govern the operations of U.S. "domestic" banks equally apply to Guam's banks. Because locally chartered Guam banks are classified as foreign banks, their ability to open branch banks within the continental U.S., Hawaii and Alaska is severely restricted. Recently enacted Congressional legislation only enables Guam's banks to make a foot hold entry as it only permits them to takeover bankrupt minority foreign banks. While Guam's locally chartered banks are prevented from opening branch offices in the U.S., domestic chartered banks are not prohibited by federal law to open branch offices on Guam. Moreover, federal laws permit domestic chartered banks to open unlimited branch offices. The only protection locally chartered banks currently have is a Guam law that limits the number of branch offices a bank not chartered on Guam can have.

- **STATE DEPARTMENT'S POLICY REGARDING GUAM'S MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS**

As we move forward to the 21st Century, changes in policy, foreign affairs, international relations, and regional and insular affairs are slowly changing the manner in which our governmental affairs are being conducted. As island communities in the Pacific, we are inclined to explore opportunities available regionally in fostering economic and social prosperity. In doing so, the Government of Guam is actively involved in a number of regional organizations such as the Pacific Basin Development Council (PBDC), the South Pacific Commission (SPC), the South Pacific Applied Geoscience Commission (SOPAC), and the South Pacific Regional Environmental Program (SPREP). The guiding philosophy of all these organizations is one of service to its island member countries and co-operation with other regional and international organizations, working to improve the economic, social and environmental qualities of the Pacific Region.

The question of membership is currently being pursued by member countries in both the SPREP and SPC. The SPREP was created in the early 1980's as a specific program of SPC. Over the years, it has evolved into a separate regional organization with total autonomy from SPC. In an Intergovernmental meeting of SPREP members in 1990, member governments agreed to pursue a treaty to re-establish SPREP as opposed to a resolution. During the review of the draft treaty, member governments expressed dissatisfaction with the language used specifically on the provision regarding membership in the organization. As it is currently drafted, the treaty would allow territories to become full members of SPREP only with the authorization of their administering powers. Guam and the CMNI are opposed to the language used in that it would not allow the territories to become full and equal members. Through legal context, the Federal government cannot allow its territories to sign international treaties and would not allow its territories to vote, especially it its votes are not the same as the U.S. position. The French government, on the other hand, is in full support of allowing its territories to have full and equal membership rights, although it will sign treaties for its territories.

Through its membership in these organizations, Guam is actively represented in a wide variety of activities designed to foster and enhance economic and social development. Possible courses of action are to solicit support from other South Pacific nations, such as their congressional leaders, for full and equal membership for territories in regional organizations. Yet another course of action is to solicit support from the Clinton Administration on this matter through the Secretary of State.

- **UNFUNDED FEDERAL MANDATES: MANDATORY HIV TESTING, DRINKING AGE OF 21 YEARS, NO CHARGES FOR COURT FILINGS IN DOMESTIC VIOLENCE CASES**

Mandatory HIV Testing

The Crime Control Act of 1990, enacted by the 101st congress, provides that each State and Territory must enact and enforce statutes which require adults and juveniles who are convicted of a sexual assault crime to under mandatory HIV testing to continue to be eligible to receive U.S. Department of Justice administered criminal justice formula grant funds. The HIV mandate also require the states and territories to provide the victim with counseling and referral to health care and support services.

The 22nd Guam Legislature has enacted legislation, juveniles were excluded due to the portion of the Guam Code that the law was appended to. As a result Guam lost over $100,000 in FY 1994. Had Guam been in full compliance Guam would have received an additional $200,000 in FY 1994.

Drinking Age of 21 Years

Public Law 102-240, Section 410, provides for the Secretary of Transportation to make grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting form persons driving while under the influence of alcohol or a controlled substance. One of the requirement of this program is to prevent operators of motor vehicles under age 21 from obtaining alcoholic beverages. The Department of Public Works, Office of Highway Safety is interested in applying for this grant and have met most of the eligibility requirement, however they have not met the drinking age of 21 years requirements.

No Charges for Court Filings in Domestic Cases

Under the Violent Crime Control and Law Enforcement Act of 1994, Title IV, Section 2006, it authorizes funding to the State, Indian tribal government, or unit of local government if it certifies that its laws, policies, and practices do not require that the abused bear the costs associated with the filing of criminal charges against the domestic violence offender, or the cost associated with the issuance or service of a warrant, protection order, or witness subpoena. This section provides for the abused not to bear any cost related with the filing of criminal charges in a domestic violent case.

- **IMMIGRATION**

Agriculture Workers

Section 101(a)(15)(H)(ii)(a) and (b) of the Immigration and Nationality Act regulates the admission to the United States of non-immigrant aliens entering temporarily to perform work of a temporary nature. Whether to grant or deny a visa petition to admit a non-immigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General or designee, the Immigration and Naturalization Service (INS). The H2-A Program is a Labor Certification process between the U.S. Department of Labor and INS for non-immigrant workers to perform work of seasonal or temporary services labor. The exact definition of seasonal or temporary services or labor needs under the H2-A Program is "... short, identified length, limited by an identified event located in time..."

Pursuant to the Immigration Reform and Control Act, the U.S. Attorney General may not approve such a petition from an employer for employment of non-immigrant H2-A alien workers in agriculture unless the certification shows that: (1) there is an insufficient number of individuals who are able, willing and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

Commercial farming has the potential to become a viable economic factor if non-immigrant laborers were allowed to work on Guam. A major stumbling block in Guam's agricultural development is the lack of available farm labor to perform the work involved. The shortage is caused mainly by the perceived low esteem of agricultural work combined with the low wages and benefits offered. The shortage of farm labor at the managerial level has been as severe as the unskilled level. Farm work is considered to be of low social prestige and farmers looking for employees continue to find little response from the labor force aspiring for while-collar work.

Local farmers who run a lucrative operation often find themselves performing much of the manual work involved. Farmers must till, product and market their farm commodity in contrast to large farm operations in the United States where farmers have the luxury of hiring temporary immigrant workers to work the fields. Agricultural farming is usually based on a scheduled timetable for planting and harvesting, however, seasonal constraints and time limitations, more than often, prevents the farmer from keeping abreast of his operations and realizing significant profits. Provisions in the labor law provides for the importation of alien labor for agricultural purposes. However, labor regulations, such as the prevailing wage rates and the specific type of work that is to be performed are too restrictive and inconsistent with the scale of production and the size of the farms operated here on Guam. Under the H2-A Program, farmers must pay at least the minimum wage or comply with Guam labor relations.

The agricultural industry has the potential for growth, however, labor regulations and safety standards must be addressed before significant benefits can be realized. The importation of temporary non-immigrant labor is crucial to the economic progress and development of the island's agricultural industry but federal regulations impose tremendous barriers and impede any development to formulate equitable solutions.

Visa Waiver for Philippines

In July 1994, Congressman Underwood was successful in convincing the INS, the State Department and the Interior Department to make the Guam-only Taiwan Visa Waiver Pilot Program permanent. The pilot program was in effect for one year and was due to expire. The permanent extension now ensures that our visitor industry would continue to benefit from this new market. Congressman Underwood is working with a Task Force to create a pilot program for visitors from the Philippines and is working to address the INS' concerns for accountability. By lifting the Philippine Visa requirement, Guam can capitalize on a viable market source for our visitor industry.

Control

Taking into account Guam's limited resources and close proximity to Asian and Pacific Rim countries, Guam has experienced a significant permanent in-migration of aliens that threatens to undermine Guam's social system, natural resource capabilities, and infrastructure. Temporary alien labor, that which augments Guam's limited labor pool in the on-going economic boom, is in jeopardy of being limited as a result of the Immigration Act of 1990 and the enforcement of the regulations of this Act would undermine needed labor to support construction and other development.

Through Guam's Draft Commonwealth Act, immigration related constraints would be addressed. Guam would no longer be a point for aliens to receive credit for naturalization, thereby reducing Guam's attractiveness as a permanent settlement for aliens. The Commonwealth Act would also provide Guam with the flexibility it needs to fill development driven employment positions with temporary alien labor.