FEDERAL LAWS AND REGULATIONS WHICH CONSTRAIN GUAM'S DEVELOPMENT

BUREAU OF PLANNING
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INTRODUCTION

Presently, the Reagan Administration through its Program for Economic Recovery is attempting to reduce the Nation's dependence upon the Federal Government and to improve the Nation's economic health by identifying and eliminating those federal laws and regulations which have contributed to the Nation's poor economic health. Guam, in particular, is impacted by a number of federal laws and regulations which directly hinder it from reducing its dependence upon the Federal Government and from realizing its full economic growth. In addition, they also indirectly impact upon the Territory as they cause the Territory to divert its general funds away from developing the infrastructure necessary to attract new industries to the island.

In light of the direction set by the Reagan Administration, it is necessary for the Territory of Guam to first identify those federal constraints which contribute to the island's continued federal dependence before the Territory can seek their elimination. This document was written with the intent of identifying all known federal constraints rather than providing a comprehensive discussion on the nature and impacts of just a few of Guam's constraints. If more information is desired for any of the following constraints, the documents which were utilized to prepare the individual issues are available in the Bureau of Planning Library.

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The one stop restriction for foreign air carriers has adversely affected Guam's economic growth.

Federal Citation: Public Law 85-726; Federal Aviation Act of 1958.
United States Code, Title 49, Section 1508.

The present regulation restricts foreign air carriers from navigating to more than one U.S. point, and as a result, foreign carriers must return to a foreign country before going onward to a second U.S. destination. 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. Guam's proximity to Asia affords great opportunities as a transpacific stopover. However, as a result of the regulation, Guam cannot effectively exploit the opportunity to fully benefit from its unique location in the Pacific. Moreover, because foreign air carriers are not permitted to take on passengers destined to another point within the United States, fewer airline services are available for the people of Guam. Although there are five foreign airlines authorized to serve Guam, only Japan Airlines and Air Nauru are servicing Guam. Deregulating and allowing foreign carriers to service two U.S. points and giving these foreign airlines authorization to take on passengers would certainly increase Guam's tourist industry and decrease its dependence upon Japanese tourists. Additionally, by having more frequent and regular service from other airlines, Guam would attract both foreign and U.S. businesses to operate on the island.

Guam has no control over the admission of permanent resident aliens, yet permanent aliens are entitled to participate in social welfare assistance programs at a cost to the local government.

Federal Citation: U.S. Immigration and Nationality Act of 1952, Section 241a(8) and Title VI Civil Rights Act of 1964.

In order to enter Guam, an alien must obtain an affidavit signed by a sponsor which assures that the alien will not become a public charge for a five year period upon his admission. However, once attaining a permanent resident alien (PRA)Status, an individual is eligible to participate in public assistance welfare programs. In order to become a public charge, the alien must receive public assistance, be billed for the assistance, and refuse to pay the bill. However, federal guidelines which regulate welfare programs state that recipients cannot be billed for the assistance since an additional financial burden will be imposed upon these recipients. Whether intentional or unintentional, these conflicting guidelines have allowed aliens to receive public assistance and have transferred the responsiblity for the well-being of aliens from their sponsors to the local government.

The U.S. Comptroller's audit report on Guam's public assistance programs brought out that during Fiscal Year 1977, $1,049,798 of public assistance was awarded to PRAs who have been in the United States less than five years. Moreover, most of them had applied for and received public assistance within a short time after attaining their status as PRA's. The report went on to state that there were approximately 245 cases of PRA's participating in either the Adult or AFDC programs on Guam, which represent about twelve to thirteen percent of the participants in these programs. The PRA participation percentage is the same or higher for the Food Stamp and Medicaid programs.

The Federal government has imposed a $1.1 million ceiling upon the amount of federal funds which the Government of Guam can receive to provide federal public assistance programs. While the Government of Guam only received $1.1 million in federal funds to provide public assistance to all of Guam's residents, it outlayed over $1 million in public assistance to PRAs alone. The Government of Guam has no voice in the decision to grant a PRA admission to the United States through Guam nor can it deny a PRA public assistance. This being the case, the Federal government should take a more active role in meeting PRAs' needs. If PRAs are to be eligible to participate in public assistance programs immediately upon their arrival on Guam, the U.S. government should reimburse the Government of Guam for all costs that it incurs when providing social welfare programs to the PRA.

This problem is shared by all states. I don't believe there exists justification for Guam receiving special treatment.

Tourist and foreign film crew visa requirements hinder Guam's economic growth.

Federal Citation: Immigration and Nationality Act of 1952, Section 101.

Current regulations require tourists who want to enter Guam from Japan, Hongkong, Taiwan, Singapore, Philippine Islands and other Asian and Pacific countries to obtain entry visas from the American Consulate in their country. As the U.S. government is concerned that tourists from these countries may purposely overstay and in order to prevent the possibility of an influx of illegal aliens, the American Consulates often make it difficult to obtain tourist visas.

Because current visa regulations are overly restrictive, cumbersome and time consuming they have had a negative impact upon Guam's tourism industry. Japanese travel organizations, for example, have emphasized that the elimination of U.S. visas would be an important step in increasing the flow of Japanese visitors to Guam. In addition, the elimination of visa requirements could result in the opening of new tourism markets.

Foreign film crews have also expressed a great desire to come to Guam to use its scenery for films and commercials, but, they are having 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 use 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 visa requirements for tourists visiting Guam for a period of less than ninety days is eliminated there would be an increase in visitors which would be beneficial to Guam's tourism industry. In addition, if the present H visa stipulation for foreign film crews would be eliminated and if they would be allowed to enter Guam under the tourist visa, Guam's tourism industry would be greatly enhanced.

Visa requirements for foreign businessmen hinder Guam's economic growth.

Federal Citation: Immigration and Nationality Act of 1952.

Foreign businessmen with investments on Guam must obtain an entry visa from the American Consulate in their country of origin before they can travel to Guam. The U.S. Consulates when issuing the visas, follow the regulations which are promulgated by the U.S. State Department. When the State Department developed its regulations, it failed to also take into consideration Guam's unique location and socio-economic conditions. As a result, American Consulates often create various burdens for those wishing to invest in Guam. For example, American Consulates tend to issue single entry visas, and a new visa must be obtained for each trip. This, coupled with the problems of inconsistent visa issuances by the Consulates, contributes to stunting the potential economic growth that Guam stands to achieve. If American Consulates issued multi-entry visas to foreign investors, this problem would be eliminated.

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.

Federal Citation: 8 U.S.C. 1101(a)(15)(D)

The current visa stipulations for foreign crewmen in the Immigration and Nationality Act of 1952 do 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 boats 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 Trust Territory residents as crewmen.

The efforts of the Government of Guam to attract the tuna fishing fleet to Guam's waters could be severely impeded if steps are not quickly taken to resolve the matter. During the latter part of 1981, Guam was able to attract a tuna fishing company to Guam from the tuna rich beds of Africa to explore Guam's potential. When a U.S. tuna boat came to Guam's port during February 1982 to off-load its catch, ten of its fifteen alien crew members aboard the ship went ashore. As a consequence, the Immigration and Naturalization Service imposed a $10,000 fine on the tuna boat owners. If foreign crew members continue to be prohibited from coming ashore, tuna companies will seek other

islands with less restrictive immigration laws to off-load their tuna. This will mean a loss of revenue for Guam from both the off-loading activities and from the money the crew members would spend while in port.

Restrictions on the use of Cabras Island are detrimental to Guam's economic growth and in particular the Commercial Port's growth.

Federal Citation: Public Law 96-418, Section 818 (b)(2), which is commonly referred to as the Brooks Amendment.

Public Law 96-418 transfers 927 acres of federal land and submerged areas in the Commercial Port to Government of Guam. The transfer of land was essential in order for the Port to expand its services to meet Guam's expanding economic growth. However, when transferring the land to the Government of Guam, the U.S. Congress placed a stipulation in the law to protect the Federal Government's interests. The stipulation, Section 818(b)(2), requires that any subsequent disposal by the sale or lease of the land by the Government of Guam be equal to or in excess of the fair market value as determined by the General Services Administration. Additionally, the money generated from the sale or lease of the land, less reasonable development costs incurred by the Government of Guam, is to be deposited in the U.S. Treasury.

The fair market value requirement prevents the Government of Guam from enticing businesses to locate in the Port area through the provision of lower rental rates. In addition, the Government of Guam is prevented from utilizing the money generated from the land rentals to upgrade Port facilities and services. Section 818(b)(2) should be amended to permit leases at less than fair market value in order to attract business firms to Guam and to allow Government of Guam to retain the money from the leases in order to promote the Port's growth.

The relocation of the U.S. Navy's ammunition wharf is vital in order for the territory to protect the lives of civilians working in the Cabras Island area and to pursue port related economic growth.

Federal Citation: (Not available).

The U. S. Navy's ammunition wharf is located in Apra Harbor, Guam's only natural deep draft harbor which can accommodate large commercial and military vessels, near Guam's commercial port. Because of the potential dangers which the ammunition wharf poses, the U.S. Navy has placed restrictions upon the types of economic development activities which Guam's Port Authority may pursue in the Apra Harbor area. Not only does the location of the ammunition wharf, which is known as Hotel Wharf, place constraints upon the types of port related economic activities which the Territory may pursue, but it also poses a threat to the lives of those civilians working in the Cabras Island area.

Hotel Wharf currently functions under a safety waiver of three million pounds net explosive weight (NEW) which requires a 7,210-foot explosive safety quality distance (ESQD) zone surrounding the wharf. Additionally, Hotel Wharf functions under a 10,400-foot ESQD arc for nine million pounds NEW, an amount the Navy claims is needed in the future under contingency conditions.

The Navy prohibits the construction of habital buildings on Navy lands within the 10,400-foot ESQD "blast zone" arc because of the potential threat to human lives. As Hotel Wharf is seldom used by the U.S. Navy during times of peace, the Commercial Port, the GEDA Industrial Park and several private companies are currently leasing 62 acres of Navy land which are located within the 7,210-foot ESQD arc. They are, however, leasing the land under a disclaimer of liability for damages resulting from an explosion. Even more important however, is the fact that almost all of the Commercial Port's land and submerged areas are encumbered by the Navy's 10,400-foot ESQD building restrictions. While theoretically development within the 10,400-foot ESQD arc cannot take place, the Navy has given Port Authority a waiver since it will allow the Commercial Port to operate more efficiently.

Since the Commercial Port's creation in 1968, it has grown considerably as its volume has increased from 313,000 revenue tons in 1968 to 834,000 revenue tons in 1979. However, if the Port is to continue growing, more lands are needed to make it a viable transshipment center and to foster the development of a fisheries industry and other port related industries. Presently there are 73 acres within the 7,210-foot ESQD blast zone arc which are to be conveyed to the Port Authority upon the relocation of Hotel Wharf and which the Port can now lease with a waiver of liability. The Port Authority has proposed that these lands be used for the expansion of the Commerical Port, the expansion of port related industries and the development of commerical fisheries which includes vessel support, storage and processing. In addition to these lands, the U.S. Navy has identified an additional 15 acres of land and 233 acres of submerged land which will be conveyed to the Port Authority only upon the relocation of Hotel Wharf; the Navy, however, will not give a waiver for these lands. The expansion of the Commercial Port and its marine oriented industrial area is critically needed as an estimated 2,500 to 3,000 employment opportunities would be generated. These employment opportunities are sorely needed for Guam's residents.

Unless the ammunition wharf is relocated it could prevent the development of the island's port facilities which are vital for the island's overall economic development while, at the same time, endanger the lives of those civilians working at the port and its nearby marine related industrial area. While the Navy has identified the construction of a new $32 million ammunition wharf since 1977 in the Department of Defense's construction budget, the wharf has been given a low priority. It should be noted that the Navy has also identified the construction of a combatant wharf in addition to the ammunition wharf in its budget submissions. As it appears that Congress is not receptive to funding the construction of a new ammunition wharf in Apra Harbor, it may be more receptive to funding a combatant-ammunition wharf as it would cost considerably less to construct a consolidated wharf than to construct two separate wharfs as the

Navy's plan presently identifies. Whether or not the wharves are consolidated, it is imperative that Congress fund the construction of a new ammunition wharf in an area which is uninhabited by civilians and away from Guam's commercial port.

The applicability of U.S. cabotage laws prevent Guam from receiving goods at rates cheaper than those charged by U.S. owned and registered shipping companies.

Federal Citation: Shipping Act of 1916 and the Intercoastal Shipping Act of 1933.

The Shipping Act of 1916 and the Intercoastal Shipping Act of 1933, as amended, have together caused Guam to incur higher shipping costs than it may otherwise incur if it was allowed to receive goods shipped upon foreign vessels. The 1916 Act defines U.S. vessels as those registered in the U.S. and having seventy-five percent of its interest controlled by U.S. citizens, and it states that a shipping corporation lacking these requirements may not engage in commerce from Guam to the continental U.S. and its territories or vice versa. The Intercoastal Shipping Act, which amended the 1916 Act, further regulates shipping vessels engaged in interstate commerce within the United States. The main provision of this Act is the requirement that shipping companies engaged in intercoastal trade have to post all rates, charges and schedules for public inspection and that they cannot make changes without a thirty day notice to the Federal Maritime Commission. The Act also does not allow shipping vessels to charge a rate different than those posted under the Act. The intent of these coastwise laws is to give preferential treatment to U.S. owned vessels and to protect U.S. shipping interests from foreign competition.

The continued applicability of U.S. cabotage (coastwise) laws has had a negative impact upon Guam. They have prevented Guam merchants from receiving goods at lower rates than those charged by U.S. shipping companies. Lower rates would ultimately benefit Guam's residents as the savings realized from lower shipping costs would ultimately be passed on to Guam's consumers. Moreover, during times of strikes affecting U.S. shipping companies, Guam is affected more significantly as other economical forms of transportation are not available.

While the intent of the cabotage laws can be appropriately carried out for U.S. jurisdictions wherein the volume of trade is substantial, the volume of shipping between Guam and U.S. ports is comparatively negligible. Allowing foreign flag vessels to enter the Guam-U.S. trade would not be detrimental to the U.S. maritime industry. Moreover, since fifty percent of the shipping volume between Guam and U.S. ports consists of military cargo which, by federal regulation is required to be transported on U.S. registered and owned vessels, U.S. shipping companies would not be hurt as they are assured a fifty percent share of the Guam-U.S. shipping market.

Concerns have been voiced that by declaring Guam an "open port," the island's quality of shipping services would decrease and the island's cost of shipping would increase. It is felt that the quality of shipping services would decrease as domestic carriers are required to provide a minimum level of service to Guam, but foreign carriers are not similarly regulated and could stop services altogether. Additionally, it is felt that shipping costs would increase since freight rate increases by U.S. carriers are limited to no more than nine percent per year while the freight rates of foreign carriers are not regulated. As a result of deregulating Guam's shipping, it is felt that Guam's consumers would be paying higher prices for goods as merchants would have to maintain significantly larger inventories.

In light of preceding paragraph, this conclusion is suspect.

Federal laws applicable to vessels and maritime trade can be made inapplicable to Guam. As was the case in the Virgin Islands, Guam should be freed from all restrictions imposed by existing coastwise laws because of its distance from the continental U.S. and because Guam is almost totally dependent upon the U.S. for basic necessities. It is in the best interest of the people of Guam, that this Territory be declared an "open port" even if only on a trial basis so all legitimate shipping companies can offer their services at the most reasonable cost and appropriate time schedules.

The ambiguity of the term, "substantial transformation" and the Quota restrictions for watches in Headnote 3(a) of the Tariff Schedules of the United States are impeding Guam's economic development.

Federal Citation: General Headnote 3(a) of the Tariff Schedules of the United States and Section 7.8 of the U.S. Customs Regulations.

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. It outlines the specific requirements for determining whether an article is manufactured or produced within the scope of Headnote 3(a).

Headnote 3(a) allows Guam to export its manufactured goods duty-free into the Customs Territory of the United States where at least fifty percent (thirty percent for watches) of the value of the good has been added in Guam. With the exception of watches and watch movements, the manufactured goods are not subject to quota restrictions. Examples of eligible goods which may enter the U.S. under Headnote 3(a) are: textile and apparel articles, which are subject to textile agreements; watches and watch movements; import sensitive electronic articles; certain footwear articles; and any other article which the President determines to be import-sensitive.

If the materials used to produce the eligible article are not wholly the product or manufacture of Guam, the product must undergo a "substantial transformation" into a new and different article of commerce. Substantial transformation means that a new and different article of commerce must result from the operations performed in the country or territory. In the case of the garment industry, the definition of "substantial transformation" is ambiguous and requires individual rulings to determine whether the transformation process constitutes a substantial transformation. Delayed rulings have had serious consequences for the garment

industry which must adjust to ephemeral styles. The delay and inconsistency in the U.S. Customs rulings have resulted in production delays and companies not meeting the market in time. More importantly, the misinterpretions of the substantial transformation requirement have led to Guam's garment factories completely ceasing operations.

Moreover, the quota restrictions imposed on watches defeat the purpose of Headnote 3(a), which is to develop watch industries in the outlying territories. The quota restrictions have resulted in the closing of Guam's watch factories, and has hampered Guam from developing an industrial base for watches and watch movements.

The Guam Division of Customs and Quarantine acts as the U.S. Customs agent on Guam. The Division gathers the documentation as to what are the import materials and endorses the certificates of origin and manufacture. The Guam Division also issues certification of origin for products manufactured in Guam for shipment to foreign countries. While there has not been a problem in acceptance by foreign officials of items certified by Guam's officials, such is not the case with U.S. Custom officials as they often refuse to accept goods certified by Guam's Custom officials.

In order for Guam to develop a light manufacturing industrial base, it is necessary that quota restrictions be removed from watches and watch movements. Moreover, Guam Customs Officers should be deputized to perform the certification of Headnote 3(a) products and the U.S. Customs should acknowledge the certification of the products as binding for entry into the U.S. Customs Territory. U.S. Customs should also establish one policy defining "substantial transformation" in order to prevent future misinterpretations.

The restriction placed upon the conveyance of the Agana Boat Basin and the Paseo de Susana to the Government of Guam by the Federal government is hindering the Territory's ability to become self-sufficient.

Federal Citation: Public Law 86-664, Sections 2, 3 and 4.

The U.S. Congress, when conveying the Agana Boat Basin and the Paseo de Susana to the Government of Guam, placed the following stipulation on the properties' conveyance:

> (the property conveyed) shall be used solely for civic, park and recreational purposes, and if it shall ever cease to be used for such purposes, or if the government of Guam should ever sell or otherwise dispose of such land or any part thereof, title thereto shall revert to the U.S., which shall have the rights of immediate entry thereon.

The Congressional restriction discourages the Territory's ability to develop agricultural and small fishing industries and the Territory's ability to become more economically self-sufficient.

Presently, the Agana Boat Basin is utilized by both recreational boatsmen and small commercial fishermen. But, as the Boat Basin does not contain a fueling center, recreational boatsmen and fishermen must carry fuel on the most heavily traveled highway in Guam to the Basin and then fuel their boats from containers. It is feared that this practice could result in a disasterous explosion. Moreover, both recreational and commercial fishermen alike have repeatedly expressed the need for a cold storage plant and an ice plant for their fish. Likewise, Guam's residents have expressed the need for more local fresh fish.

During 1978, the Guam Fisherman's Cooperative Association proposed to construct at the Boat Basin, at no cost to the local government, a facility for use by all small boatsman and fishermen that consisted of a fueling center, a cold storage plant, an ice plant, an easy loader, scale platform and headquarters building for retail and wholesale transactions.

Later that year, the Fourteenth Guam Legislature passed P.L. 14-149 which authorized the Government to lease land to the Co-op for one dollar per year for a ten year period, which is renewable at ten year increments up to fifty years. While the Fourteenth Guam Legislature was aware that the lease violated federal law, it was felt that it was more to Guam's benefit to lease the land to the Co-op than to strictly adhere to the conditions of the conveyance.

The Fisherman's Co-op is not the only commercial use on the conveyed lands as there is also the Public Market, which is owned by the Government of Guam. At the Public Market, farmers are able to sell fresh produce to the island residents thereby enhancing Guam's struggling agriculture industry.

As the Fisherman's Co-op and Public Market uses benefit the entire island, P.L. 86-664 should be amended to allow these and other commercial uses that can demonstrate that they enhance the area and benefit Guam's residents directly.

We should consider pursuing Congressional action to remedy this. This restriction is ludicrous.

I disagree as to long term effect of Ex Or

The recent establishment of a Property Review Board may affect Guam's ability to obtain surplus federal property at no cost for public purposes.

Federal Citation: Executive Order 12348 and the Federal Property and Administrative Services Act of 1949 (40 USC 471-544).

On February 25, 1982, President Reagan signed Executive Order 12348 which created a Property Review Board to review all excess and surplus property declarations made by federal agencies as well as all disposals of surplus property to local governments.

Guam became eligible to participate in the Public Benefit Allowance Program authorized by the Federal Property and Administrative Services Act of 1949 in 1975. In 1977, the Navy and Air Force published the Guam Land Use Plan which identified military landholdings on Guam that could be excessed by Department of Defense. Thus far, only five parcels of land totalling 197 acres have been declared surplus out of over 4000 acres identified in the Plan (excluding the Port area). Of these 197 acres, only 22 acres are in the process of being turned over to Government of Guam. Six applications (175 acres) are still pending GSA action which is being postponed until the regulations implementing Executive Order 12348 are finalized.

Finally, 423 acres have gone through the Federal Screening Process but have not been declared surplus while the remaining 3000 plus acres have not even been declared excess.

As a result of Executive Order 12348, the GSA intends to withhold any action on pending applications, proposed excesses and proposed surplus properties until such time as the regulations implementing Executive Order 12348 are finalized.

Guam only had the opportunity to participate in the program since 1975; and since that time, only 22 acres have actually been transferred. The Department of Defense owns one third of Guam's 212 square miles. The importance of releasing lands particularly for public use cannot be overemphasized.

The inequities in the Power Pool Agreement between the Government of Guam and the U.S. Navy have contributed to Guam's civilian community paying high power rates.

Federal Citation: Organic Act of 1950 P.L. 81-630, Section 28(a) and Joint Power Pool Agreement of 1972, as amended.

There are a number of federal constraints impacting upon the Guam Power Authority which have contributed to Guam's civilian community paying one of the highest power rates in the United States. One constraint which has contributed to the high power rate is the circumvention of the Government of Guam's right to own the islandwide power system and the resulting provisions in the Power Pool Agreement which favor the Navy.

The Organic Act of 1950 specified that property employed by the naval government in the administration of civil affairs was to be transferred to the local government. One of the properties the Act identified to be transferred was the utilities. However, the turnover of the power facilities to the Government of Guam was circumvented as the property, through a series of Presidential Executive Orders, was transferred temporarily from the Navy's jurisdiction to the U.S. Department of Interior's and then returned to the Navy after the Organic Act went into effect. As a result of the Navy's continued ownership, Guam is forced to submit to inequities in the power pool agreement with the Navy, which in turn, has forced the Power Authority to seek a 24 percent rate increase and has stifled the island's economic development.

At the time the Power Pool Agreement was conceived, the Navy's power assets were appraised at a rate higher than their value while the Government of Guam's power assets were appraised at a rate lower than their value. As a result of the inequities in the appraisal of power facilities and other contributing factors, the provisions contained in the original power pool agreement and its subsequent amendments have enabled the Navy to save about $7 million a year. In addition,

the Guam Power Authority has to share the Navy's higher power production costs and has to meet the military's reserve power requirements, which are more than what the civilian community needs. It is estimated that as a result of these inequities, Guam has overpaid the Navy as much as $36 million since the original power pool agreement went into effect.

Because the Guam Power Authority is willing and able to operate the islandwide power system, the Power Pool Agreement should be terminated and the Congress should enact legislation transferring clear title to the Navy's power facilities which are required for the islandwide system to the Government of Guam at no cost. Moreover, the undue expenses paid to the Navy by the Guam Power Authority, should be credited toward the payment of GPA's $36 million federally guaranteed loan.

The increase in interest rates from 13.9 percent to 14.2 percent from the Guam Power Authority's refinanced $36 Million loan obligation is contributing to a 24 percent increase in Guam's civilian power rates.

Federal Citation: Omnibus Territories Act of 1980, P.L.96-205 and Guam Power Obligation of 1976, P.L. 94-395.

During 1976 the Guam Power Authority defaulted on $36 million in revenue bonds. P.L.94-395 authorized the Federal Financing Bank to purchase GPA's obligations, but stipulated that the Secretary of Interior would guarantee the loan. The GPA was given until December 1980 to repay the loan principal and interest. As GPA was unable to meet its loan obligation, the U.S. Congress in P.L. 96-205 gave GPA a ten year extension of its loan obligation, but Congress stipulated that GPA was to refinance the obligation at a rate of interest to be determined by the Federal Financing Bank, and it stipulated the loan obligation was to be paid by no later than December 31, 1990. In order to further protect the Federal government's interests, the Congress also authorized the Secretary of the Treasury to deduct from Guam's Section 30 funds any installments of interest or principal of the loan obligation should they become past due.

The Guam Power Authority's original loan obligation was financed at 9 percent interest, but when GPA refinanced the loan obligation at the end of 1980, the interest rate was increased to 13.9 percent. In hopes that the interest rate would decrease, the Guam Power Authority refinanced the loan in the first year of the authorized ten year extension. However, when GPA requested the final nine years of its authorized extension, the Federal Financing Bank increased the interest rate to 14.2 percent rather than the hoped for 13 percent interest. Because the interest rate is calculated on what it would cost the Federal Financing Bank to take out a similar loan for another agency, the interest rate GPA must pay is not negotiable. As a result of the .3 percent increase in the interest rate, GPA will be paying an additional $100,000 a year in interest.

In total, GPA will now have to pay $5.2 million in interest for each of the nine years at the new rate.

Partially as a result of the increased interest rate, the Guam Power Authority is requesting a 24 percent increase in its customer power rates which already is one of the highest rates in the U.S. The Government of Guam is requesting that the $36 million federal loan be cancelled because of the inequities contained in the Joint Power Pool Agreement with the Navy.

Without a permanent Congressional exemption from the Clean Air Act to allow Guam to use an intermittant emission control (burning low sulfur fuel during inversions), Guam's residents will soon no longer be able to afford electrical power and the Territory's efforts to develop an economic base will be severely disrupted.

Federal Citation: Intermittant Control under the Clear Air Act Amendments of 1977, Public Law 95-4 5, Sections 111, 120,123(a) and 123(b); and 40 CFR 60.43(1).

Under the Clean Air Act sections on emission control, all new fossil-fuel fired steam generating facilities[1] are prohibited from discharging into the atmosphere any gases which contain sulfur dioxide (SO_2) in excess of .8 pounds per British Thermal Unit. More specifically, the Clean Air Act Amendments of 1977 requires pollutant emissions to be reduced from stationary sources on a continuous basis in order to minimize atmospheric loading of pollutants to preclude long range pollutant transport and possible acid rainfalls. Further, the Act prohibits stationary sources from reducing their pollutant emissions by extending their smoke stacks or by utilizing,"any other dispersion technique," which includes, "any intermittant or supplemental control of air pollutants varying with atmospheric conditions.'

The U.S. Environmental Protection Agency has found Guam's power generating plants to be emitting sulfur dioxide in excess of the Act's standards. As a result, the Guam Power Authority is required to either continuously burn low sulfur fuel or install smoke scrubbers. Both of these solutions are costly and would cause Guam's power rates to dramatically increase. Moreover, because smog is not a problem on Guam, these solutions would unduly strap Guam's residents economically. Low sulfur fuel is a rare commodity and costs about sixty percent more than high sulfur fuels. It is estimated that if the Government of Guam was forced to use low sulfur fuels, Guam would have to spend, at the least, an additional $1.5 million annually. Likewise, the installation of smoke scrubbers would substantially increase the cost of electrical power.

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[1] A new fossil fuel facility is defined as a facility which has undergone new construction or continuous modification since December 31, 1970.

The installation of one scrubber is estimated to cost between $18 million to $20 million and several smoke scrubbers would have to be installed. Additionally, the estimated installation cost does not take into consideration the maintenance of the scrubbers or their deterioration and depreciation. Costs for such continuous emission controls will impact substantially upon Guam Power Authority's ability to achieve financial sovereignty and upon the island's power consumers who are already burdened with inflated power rates due to increasing costs for fuel oil.

Guam's unique geographical location, climate and trade winds makes pollution of smog an improbability. Monitoring of Guam's prevailing winds shows winds blowing in a westerly direction away from the island toward the Philippine Sea 88.5 percent of the time. Moreover, Guam's climate is consistantly warm and humid; conditions which are conducive for the rapid removal of SO_2 from the atmosphere over the Philippine Sea. Reports and studies, which include conservative modeling techniques and actual meteorological conditions, show that, "sulfur emissions from all sources on Guam cannot be expected to be carried very far by the prevailing (westerly) winds before being precipitated from the air through rain-out or washed out into the ocean." Emissions from the major power generating facilities, Piti/Cabras Power Complex, were estimated to disperse to the limit of detectability for SO_2, and within the range reported for clean ambient air, at a point 60 miles from the power facilities. There are no down-wind land masses nearer than 1,500 miles from that point.

The Guam Power Authority and the U.S. Navy Public Works Center have developed a contingency plan which provides for the burning of low sulfur fuel during those infrequent times when there is an inversion and the winds reverse and blow over the populated areas of the island. Additionally, in cooperation with the Guam

Environmental Protection Agency three meters have been installed in the Cabras area near the power plants to test for SO_2 content in the air. This solution however, has been unacceptable to the U.S. Environmental Protection Agency because of the definitional sections of the Clean Air Act Amendments of 1977 which prohibit from consideration an intermittant control strategy (switching from high sulfur fuel to low sulfur fuel during certain adverse wind conditions) as an approvable method to control SO_2 emissions from power generating facilities. Although the U.S. EPA concedes that intermittant control of emissions from these facilities will permit the achievement of the National Air Quality Standards for SO_2, the fact remains that the Act requires continuous control.

The Government of Guam has been given by the U.S. EPA a six month extension of its present exemption to the Clean Air Act, which will expire in August 1982. It is doubtful, however, that Guam will continue to receive exemptions from the Act by the U.S. EPA as the Act specifically requires stationary sources to meet emission limitations through continuous controls rather than through intermittant controls and as the U.S. EPA does not want to set a precedent for Hawaii, Florida and other similar areas.

Guam should be given a Congressional exemption from the Act which would enable Guam to utilize an intermittant control strategy rather than spending substantial funds for continuous controls, which do not provide additional air quality benefits. At the same time a legislative exemption would still subject Guam to the Clean Air Act, including the adoption and enforcement of requirements to preserve the present ambient air quality. Thus, the intent of the Act would be preserved without unduly burdening the Territory with high power cost. Without a Congressional exemption Guam will either have to comply or pay a high noncompliance fine.

The prohibition against the use of federal funds for the construction of collector sewer lines increases the potential for adverse health effects from improperly discharged effluent.

Federal Citation: Environmental Protection Agency grant application, Subpart C-grants for construction of Wastewater Treatment Works, 40 CFR 35.860 Eligible and Ineligible costs.

Part 35.860 of Volume 40 of the Code of Federal Register identifies those wastewater projects which are eligible for federal funding by the Environmental Protection Agency and those projects which are ineligible. While the design and construction of sewage treatment plants is eligible, the construction of sewer connector lines which collects wastewater from individual homes is not eligible.

The prohibition against the use of federal funds for the construction of collector sewer lines may prevent whole residential areas from enjoying the benefits of a public sewer service. After sewage treatment plants are constructed and the large interceptor lines are laid, individual homes must be connected to the system. Although homeowners are responsible for bearing the cost of their individual connections, the connector line to which they connect to, must first be in place.

All of Guam's needs for sewage treatment plants will soon be met. The major requirement now is the construction of sewage collector lines so that more residential areas in Guam can be served by a public sewer. This will reduce potential adverse health effects from the discharge of improperly treated sewage. Of the 32 projects identified in the Fiscal Year 1982 priority list for the construction of sewer facilities (a requirement for federal funding), fifteen were for collector lines. The estimated construction cost for the lines is $16,178,000. Since these costs are currently defined as ineligible, the entire burden falls upon the Government of Guam. Part 35.860 should be revised to make the construction of sewer collector lines eligible for federal funding.

Inadequate justification for special treatment for Guam

The certification and wage policies which were promulgated for temporary nonimmigrant alien workers employed on Guam have adversely impacted upon the island's economic growth and upon residents' ability to construct affordable typhoon-proof homes.

Federal Citation: Immigration and Nationality Act of 1952, Public Law 82-414 Sections 101(a)(15)(H)(ii) and 214(c); 8CFR 214.2(h)(3)(i); and 20 CFR Part 655.

The H-2 provision in P.L. 82-414 allows an alien having residence in a foreign country, which he has no intention of abandoning, to be admitted temporarily into the United States to perform services or labor that is temporary in nature, if unemployment persons capable of performing such services or labor cannot be found in the U.S. In addition, the Act mandates in Section 214(c) that the U.S. Attorney General, after consultation with appropriate government agencies, is responsible for making decisions regarding the importation of aliens upon receiving a petition from an employer.

As a result of Section 214(c), the U.S. Attorney General designated the U.S. Department of Labor (DOL) as responsible for certifying the unavailability of U.S. workers and the need to admit H-2 workers before final approval by the Immigration and Naturalization Service, an arm of the U.S. Attorney General. In addition, the U.S. Department of Labor was also given the responsibility for developing the regulations governing the H-2 certification process. However, an exception to this policy was made in the case of Guam as the Guam Department of Labor's Employment Service, rather than the U.S. Department of Labor, was given the responsibility for performing the certification function. In July 1977, this exception was revoked by the U.S. Attorney General and the certification function for Guam was returned to the U.S. Department of Labor as a result of abuses within the H-2 program on Guam and the ineffectiveness of the Guam Employment Service to control importation.

As a result of its new responsibilities and the alien worker problems on Guam, the U.S. Department of Labor published its final rules and regulations governing

the certification process for Guam in the September 13, 1977, Federal Register. Although the regulations covered the certification process of H-2 workers in all industries, the regulations primarily focused upon the construction industry as the vast majority of H-2 workers on Guam are recruited for this industry. In particular, the regulations established adverse effect wage rates (AEWR) to be paid both to U.S. and H-2 workers within the construction industry by those contractors that employ a minimum of one H-2 worker. Although wages were not established for other industries, the U.S. Department of Labor reserved the right to do so if it found that H-2 workers adversely affected the wages and working conditions of U.S. workers in other industries. During 1980, the U.S. DOL reclarified its position with regard to those workers who are entitled to receive the AEWR and decided that only those workers employed in a similar occupation in which there is a temporary nonimmigrant alien worker employed, must be paid the AEWR, rather than all of the workers of that company being paid the AEWR.

Since the AEWR was implemented, it has adversely impacted upon the island's overall economic growth. The island's construction industry has been severely affected, as is apparent by the decline in the number of building permit issuances. Building permits have decreased from 2,416 permits during 1977 to 1,076 permits during 1980. This decline represents a revenue loss of $41.3 million. Not only is the construction industry affected, but also Guam's tourism industry. Guam's tourism infrastructure barely meets present demands and if more tourists are to be attracted to Guam, additional hotel rooms and related tourism infrastructure must be constructed. An example of the impact the AEWR policy has had upon the tourism industry is the cancellation of plans to construct a 319 room resort hotel because of the AEWR resulted in a $5 million increase in the hotel construction costs. Moreover, as a direct result of the cancellation of plans to construct the hotel, 450 potential employment opportunities for the island's residents were lost, which could have alleviated the island's employment situation by 13 to 19 percent.

The AEWR has also severely impacted upon residents' ability to construct affordable typhoon-proof homes or to renovate their existing homes. A new three bedroom house now costs $90,033 to construct and of that cost, $23,913 is directly attributable to the AEWR. Since the implementation of the AEWR, the number of construction permit issuances for new homes has declined from 1,023 permits during 1977 to 303 permits during 1980 and permit issuances for renovations for the same periods have declined from 812 permits to 303 permits. These declines represent a revenue loss of $19.5 million for new homes and $7.7 million for renovation.

The AEWR policy was promulgated because the U.S. DOL found that H-2 workers were adversely affecting the wages and working conditions of U.S. workers. Since the promulgation of the policy, the number of H-2 workers has declined from 5,084 H-2 workers during March 1977 to 2,424 H-2 workers during December 1980. In addition, a local labor force comprised of alien journeymen who have attained permanent resident status, indigenous workers and apprentices has emerge. However, if the AEWR continues, it will have an effect opposite of its intent. The slump in the construction industry which the AEWR policy has brought about has not only caused a reduction in the number of H-2 workers but also apprenticeship slots which are desparately needed if Guam is to ever attain a construction labor force which is comprised totally of U.S. indigenous workers.

The certification of applications for H-2 workers should be returned to the Government of Guam as it is in a better position to monitor and guide the workings of Guam's labor market. In addition, the Government of Guam should be designated as the entity responsible for establishing a prevailing wage for the construction industry so that it reflects the Territory's wage structure and its economic and social conditions rather than reflecting the wages of U.S. mainland communities which share little, if nothing in common with Guam geographically, economically, socially or politically.

The Davis-Bacon Act was intended to safeguard the prevailing wage rate of a U.S. locality, but has inflated Guam's local wages for construction workers and adversely affected Guam's construction industry.

Federal Citation: Title 40 USC 276a--276a-5, Public Buildings Property and Works.

The Davis-Bacon Act which was enacted on March 3, 1981 was designed to safeguard U.S. localities from having their local wage conditions depressed by federal construction contracts. The approach taken to carry-out this Act was to require contractors bidding on Federal Government construction projects to pay their laborers and mechanics the wages found to be "prevailing" in that specific locality by the U.S. Secretary of Labor.

The Davis-Bacon Act was never made directly applicable to Guam. It was extended in 1967 to other federally assisted programs, such as grants, loans, and guarantee programs which Guam participated in. In this fashion, the Act became applicable to Guam.

The federally assisted programs mentioned above center on construction activities. Out of 48 federally assisted programs found in the Digest of the Davis-Bacon and Related Acts compiled by the Office of the Solicitor of Labor, all of them fall within the realm of labor activities or Title 40 USC Property and Works, and therefore the Davis-Bacon Act is applicable.

In 1977, the United States Department of Labor (USDOL) implemented the Adverse Effect Wage Rate (AEWR) on Guam which was based on prevailing wages found in major U.S. cities. Since the Davis-Bacon Act wage was enacted to conform to ". . .the wages found by the Secretary of Labor to be prevailing in the locality of the proposed construction project," the AEWR became the Davis-Bacon prevailing wage rate for the construction industry on Guam. Should the AEWR be adjusted to reflect Guam's construction market or should it be altogether eliminated, the Davis-Bacon wage rate--which is independent of the AEWR--should be re-studied to

be consistent with its basic design which is to prevent the Federal Government from depressing (or inflating) the prevailing wage rate of a locality on all federally assisted construction projects.

The Defense Base Act has had a negative impact upon Guam's construction industry as employers are required to pay higher insurance premiums for defense related construction projects.

Federal Citation: The Defense Base Act, P.L. 77-208, as amended.

The Defense Base Act requires contractors working on U.S. government projects outside the continental United States to carry Workman's Compensation Insurance for all their U.S. citizen employees. The intent of the Act was to extend the U.S. Workman Compensation Insurance Laws to U.S. workers outside the continental United States, as host countries or territories did not provide such insurance coverage. The Act is still applicable to Guam, even though the island has participated in a similar program since 1952 and the island's local workman's compensation rates were recently raised to equal those of the continental U.S.

Although the insurance coverage required by the Defense Base Act is generally similar to the local law requirements, it differs in rates as DBA encompasses a longer period of coverage for permanent partial disability. For example, DBA's minimum coverage period paid for a leg lost to an employee is 288 weeks as compared to the local law's minimum coverage period of 248 weeks.

As a result of the longer coverage, DBA insurance premiums are more expensive. U.S. workers are hurt by it because local business cannot afford the insurance, so they either refuse contracts or hire alien workers. Moreover, it gives foreign contractors an advantage in obtaining Department of Defense (DOD) contracts as they are only required to obtain the local Workman's Compensation for their alien workers. In addition, the DBA insurance has also contributed to increased labor cost. For example, in 1980 the DOD experienced $5 to $10 million in extra construction costs as a result of the DBA requirement. Consequently, Guam has become a less favorable site as a future strategic base. In order for Guam to develop a construction industry made up of U.S. construction workers, Guam should be excluded from the Defense Base Act.

The U.S. Department of Transportation's Minority Business Enterprise Regulation is burdensome and costly to administer, and contrary to good business practices.

Federal Citation: Minority Business Enterrpise Program, 49 CFR 23, U.S. Department of Transportation.

The Minority Business Enterprise program (MBE) requires that at least ten percent of prime contracts supported with U.S. Department of Transportation (DOT) funds be subcontracted to minority owned small businesses. In order for the business to qualify as a MBE, at least fifty-one percent of the ownership and management responsibilities must be by minorities and women who are U.S. citizens.

The DOT regulation is burdensome to administer as it requires agencies that are recipients of U.S. DOT grant-in-aid funding to: prepare a complicated, DOT accepted, MBE affirmative action plan; maintain a directory of MBE contractors; monitor non-MBE contractors to ensure they adhere to the MBE stipulations; assist MBE contractors to prepare bids if they require assistance; and to assist MBE contractors to acquire bonding if they cannot do so on their own.

In addition to being burdensome, the regulation is also inflationary. Adherence to the MBE program requires the prime contractor to maintain records concerning its efforts to solicit MBE subcontractors, and to submit periodic status reports to the recipient agency. The prime contractor takes into consideration these additional administrative costs when developing its charges. The recipient agency also incurs additional administrative costs from informing MBE subcontractors and from monitoring and certifying contractors' adherence to the MBE program. Moreover, as the MBE requirements are complex, the services of a legal counsel are necessary to ensure the MBE requirements are reflected in the contract. Lastly, the MBE regulation often contradicts sound business practices and the Government of Guam's policy of awarding contracts to the lowest qualified bidder. The methodology outlined in the regulation for awarding contracts by the bidding process could result in an MBE being awarded the contract over a non-MBE firm

that submits a lower bid, thus compromising the whole intent of competitive bidding and, in effect, spending more public money than would have been necessary if awarded to the low bidder. Furthermore, the regulation encourages a recipient agency to restrict competition to MBEs, without letting the general business community participate.

As the Government of Guam receives less funds than the States, it should receive a waiver from having to participate in the US DOT's MBE program.

The teletypewriter service requirement is an expensive unnecessary expenditure.

Federal Citation: Section 27.71 Federal Aviation Administration.

In receiving federal aid from the Federal Aviation Administration, airports are required to remove all potential barriers to handicap persons and, to supply special electronic devices that permit deaf and/or mute passengers to communicate by telephone. The regulation at present does not provide airports with the opportunity to seek a waiver if it can be shown that teletypewriter (TTY) service would, at any particular air terminal, have minimal or no applicability.

The Guam Airport Authority is required to install TTY equipment in its new passenger terminal. The use of TTY equipment requires that the person called by the handicapped person has the same equipment in order to receive the coded call. However, Guam's businesses do not use the equipment nor do private individuals have the TTY equipment installed in their homes. In the case of long distance communication by telephone, all overseas calls on Guam must go through an operator. As RCA does not have TTY equipment, aid from another person would be necessary to make the call. Lastly, the TTY system is not compatible with Guam's telephone system.

In the history of the Guam International Air Terminal, no one has requested such a service, or inquired if such equipment was available. In those rare instances when a communicative handicapped person requires aid, it is felt that a simple handwritten communication given to airline personnel or ticket agents would suffice as the employee could then make the telephone call on behalf of the handicapped person. Under these present conditions, Guam should be exempted from installing the teletypewriter service.

Guam is designated as being outside the U.S. domestic telephone rate structure, and consequently a higher international long distance telephone rate is imposed.

Federal Citation: Communications Act of 1934; 47 USC 35; 151-609.

The Communications Act of 1934 created the Federal Communications Commission (FCC) to regulate interstate and foreign commerce in communication by wire and radio so as to make available to all Americans "a rapid, efficient communication service with adequate facilities at reasonable charges."

Various regulations and rules promulgated by the FCC designate Guam as being outside the U.S. domestic telephone rate structure. This designation considerably hinders the economic development of the island by the imposition of higher international long distance rates. All local businesses and residents are adversely affected by these high rates. The latter are being denied the substantial savings they would enjoy under the domestic rates. The former, which are already beset by the inflated cost of operating businesses on Guam, are further affected by the high telephone rates.

Restrictions on the uses of radio frequencies impede the smooth operation of radio-dependent local businesses.

Federal Citation: Federal Communications Commission's Rules and Regulations; 47 CFR.

Federal Communications Commission authorizes the use of frequencies in accordance with the provisions set forth in the rules governing the service to which the frequencies are assigned. Various FCC regulations are designed to prevent interference or prohibit overlap on the use of frequencies. Although the need for control cannot be argued, FCC's enforcement of such regulation often puts Guam on the short end of the communication stick. Local Guam businesses, on several occasions, applied for licenses to use particular frequencies. The FCC, with its regulatory power, denied applications based on the fact that the frequency being requested is currently assigned somewhere else in the mainland. The distance of Guam from the mainland will not cause interference for frequencies used in the U.S.

The Federal Impact Aid which Guam receives for educating the children of uniformed military and federal employees does not adequately cover the costs the Territory incurs when educating these children.

Federal Citation: School Assistance in Federally Affected Areas, P.L. 81-874.

Public Law 81-874 provides financial assistance for local education in areas affected by Federal activities. Under the Federal Impact Aid Program, Guam received during Fiscal Year 1981 approximately $827.48 for each student attending a public elementary or secondary school whose parents lived and worked on federal reservations and it received approximately $80.00 for each student whose parents worked but did not reside on federal reservations. The impact aid which Guam receives is considerably less than what it costs the Government of Guam to educate a student. Not including bus transportation, it cost the Government of Guam between $1,300 to $2,000 to educate one child during the Fiscal Year 1981.[1]

During School Year 1980-1981, the Territory provided public education to an average daily attendance of 25,207 pupils and of those pupils, approximately one-third or 9,513 pupils were dependents of uniformed military and federal employees. While almost one-third of the pupils were dependents of uniformed military and federal employees, the Territory's Department of Education received only $3.3 million in impact aid which was only about 15.6 percent of its $51.3 million operating budget.

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[1] The $1,300 figure is based on what the Federal government has determined to be the cost the Government of Guam incurs to provide classroom instruction to one child; whereas, the $2,000 figure is determined locally and takes into consideration auxillary functions, such as administrative services and counselors.

As a result of budget cuts by the Reagan Administration, Guam will receive even less in Federal Impact Aid for Fiscal Years 1982 and 1983. Even though the number of federal dependents in Guam's school system has not decreased, the Government of Guam will receive $534,000 less for Fiscal Year 1982 than it received for Fiscal Year 1981 and the Fiscal Year 1983 payment is estimated to be $895,000 less than Fiscal Year 1982's payment.

It is unfair that Guam be given the same funding formula as other school districts within the continental U.S., as those school districts enjoy a higher purchasing power per budgeted education dollar. It costs Guam considerably more to educate a child because of the high cost of shipping books and educational supplies to Guam. Moreover, if federal impact aid is reduced by the Reagan Administration, the Territory's ability to provide quality education will be severely hampered and the Territory will have to consider other alternatives to make up the gap between what it costs to educate these children and what it receives. Guam's level of impact aid should be increased and not reduced.

The U.S. Congress has not appropriated funds for the acquisition of private properties in the War in the Pacific National Historical Park depriving landowners of developing their property for commercial or residential use.

Federal Citation: Public Law 95-348.

Public Law 95-348 created the War in the Pacific National Historical Park and authorized $16 Million for land acquisition. Government of Guam is in agreement with the creation of the War in the Pacific National Historical Park and has adopted Resolution 214, requesting the U.S. Congress to expedite the appropriation of funds to acquire approximately 242 acres of private property within the park. Only $500,000 was appropriated by Congress for acquisition and operation in Fiscal Year 1980. No funds were appropriated for acquisition in 1981. The lack of funds for acquisition has placed private landowners in a confusing situation as they are not able to develop their lands in the park even though they have not been compensated. The lack of an appropriation by Congress for the acquisition of lands in the park has also compelled the National Park Service (NPS) to consider exchanging releasable federal lands for private lands in the park. Government of Guam objects to this alternative of exchanging releasable federal lands for private property because these releasable federal lands could produce significant public benefits under government ownership.

The only practical action, therefore, is for the U.S. Congress to appropriate the needed amount as quickly as possible so that the goals of the War in the Pacific National Historical Park might be fulfilled, and its significance realized nationally as noted in the first paragraph of Section 6 of Public Law 95-348, that is, ". . .to commemorate the bravery and sacrifice of those participating in the campaigns of the Pacific Theater of World War II and to conserve and interpret outstanding natural, scenic, and historic values and objects on the island of Guam. . . ."

The Government of Guam does not have the financial resources to participate more fully in federal grant-in-aid programs, yet many federally funded programs continue to require the local match.

Federal Citation: Omnibus Territories Act of 1977, Public Law 95-134, Section 501.

Realizing that the U.S. territories and possessions have limited funds at their disposal to enable them to participate in federal grant-in-aid programs, P.L.95-134 authorized:

> The administering authority of any department or agency, in its discretion, may (i) waive any requirement for matching funds otherwise required by law to be provided by the Insular area involved....

While federal departments and agencies have waived the matching requirements for participation in many of their programs, many grant-in-aid programs still continue to require the local match, such as those offered by the U.S. Departments of Education, Health and Human Services, Interior, Agriculture and Commerce. The Government of Guam's financial resources are limited and will become even more limited if the U.S. Congress continues to authorize income tax rate decreases. (Guam's income tax system mirrors the Federal government's system). During Fiscal Year 1981, Guam's local match outlay was an estimated $8.8 million. Rather than using local funds to match federal grant-in-aid programs, the Government of Guam could have better utilized the funds for those capital improvements needed to attract more industries to the island thereby reducing Guam's dependence upon federal grant-in-aid programs. The President could execute an Executive Order mandating that all Executive departments waive matching requirements.

Funding for Crippled Childrens Services is too low causing a decrease in the amount of services available to eligible children.

Federal Citation: 42 U.S.C., Chapter 7, Subchapter V, Section 704.

Grants for crippled children's services may be used for locating crippled children and providing medical, surgical, corrective, and other services for diagnosis, hospitalization, and aftercare for such children and for training professional personnel. Funding may be used to purchase services and care from hospitals and other providers.

Low funding affects many facets of these programs and a proposed reduction of 25 percent by the Reagan Administration will greatly harm these programs. If the funding is reduced, the number of scheduled clinics held by part-time physician specialists for diagnosis and treatment will be reduced. More specifically, the ENT clinic will be reduced by one a week; the cardiac clinic will be reduced by two per month; the eye clinic will be reduced by one per month; the orthopedic clinic will be reduced by one per month; and, the neurological and CCS screening clinic will be reduced by two per week. In addition, the following services will be eliminated: free-of-charge medication, CCS payments for treatment and surgery services, either on Guam or elsewhere for handicapped patients of low income families without medical insurance, orthodontic treatment for cleft lip and palate; and expensive diagnostic tests (e.g., EEG, CT, Scan) and various lab tests (e.g., blood levels for anti-convulsant drugs for epileptic patients).

Guam's funding level for the Crippled Children Services program should be increased by the Federal Government and not reduced by 25 percent.

This and other items concerning level of funding for federally funded programs should be deleted — not relevant to "constraints on Guam's development".

The ceiling on federal assistance for Aid to the Blind is too low, affecting the quality and quantity of services.

Federal Citation: Title 42, Chapter 7, Subchapter X, Section 1203.

The purpose of grants to states for aid to the blind is to enable each state to furnish financial assistance to persons who are blind, and to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support or self-care.

The Department of Public Health and Social Services (DPHSS) is unable to provide all of the services mandated due to the ceiling imposed on this program. Services are provided, but not to all persons under the present funding. For the past two fiscal years, DPHSS has approached the Guam Legislature seeking additional funding so services can be provided to all eligible persons. Guam requests that the ceiling be lifted or increased so Guam recipients may receive the same quality and quantity of services mainland recipients receive.

Ceiling on federal assistance for Aid to the Permanently and Totally Disabled is too low causing a reduction in amount and quality of services.

Federal Citation: Title 42 U.S.C., Chapter 7, Subchapter XIV, Section 1353.

The purpose of aid to the permanently and totally disabled is to enable such persons age 18 or older to return to self-sufficiency through skill training and other rehabilitative services.

The Department of Public Health and Social Services (DPHSS) is unable to provide all of the services due to the ceiling imposed on this program. Services are provided, but not to all persons eligible under the program. For the past two fiscal years, DPHSS has approached the Guam Legislature seeking additional funding so services can be provided to all eligible persons. Guam requests that the ceiling be lifted so recipients can be treated in the same manner as those in the mainland.

Federal assistance for foster care and adoption assistance is not being received by Guam.

Federal Citation: Title 42, Chapter 7, Subchapter IV(E), Section 674.

The purpose of the foster care and adoption assistance programs are two-fold. First, should a situation arise where a child must be removed from the home, the state will place the child with a foster family or state agency, and provide payment to the guardian so basic needs can be provided. Secondly, should an eligible person(s) adopt a foster child, payments to the legal guardian will be made.

Guam has not been receiving funding for this program even though the services are mandated to be provided. As a result, monies from other programs are channeled to this program to provide the most basic services. Guam requests payment for this program.

Federal assistance for child support and establishment of paternity is too low causing a serious drain of local money.

Federal Citation: Title 42 U.S.C., Chapter 7, Section 655.

The child support and establishment of paternity program was designed for the purpose of enabling each state to enforce child support. Enforcement of support can be the result of two situations. Should a parent cease to make child support payments as ordered by the court, the state steps in and begins making payments while looking for the absent parent. The second situation arises when a child is born out of wedlock.

Presently, the Department of Public Health and Social Services (DPHSS) is uncertain as to the status of their Child Support Program. The Reagan Administration has made two proposals regarding this program. The first proposal is to reduce federal participation from 75 percent to 68 percent. The second proposal is to transfer the program to the state. Guam is unable to support the burden of either proposal. There are many participants on the rolls but DPHSS is unable to locate the absent parent. Part of this reason is due to a poor locater service. Guam has difficulty tapping information from mainland agencies.

Should funding be reduced or eliminated completely, Guam cannot assume the financing necessary to keep this program afloat. Guam wishes that federal participation remain at 75 percent.

Federal participation in Old Age Assistance and Medical Assistance for the Aged is too low causing lower quality medical care and very little funding for administrative costs.

Federal Citation: Title 42 U.S.C., Chapter 7, Subchapter I, Section 303.

Old Age Assistance and Medical Assistance for the Aged was designed to enable each state to furnish financial assistance, medical assistance, rehabilitation, and other services to those age 65 and older. Funding may be used for the proper and efficient operation of social services programs to enable eligible individuals to become or remain self-supporting and self-sufficient.

The Department of Public Health and Social Services (DPHSS) has been forced to seek additional funding from the Guam Legislature for the past two fiscal years. Most of the federal funding (100 percent, no matching formula) goes for vendor payments. Very little funding remains for administrative costs. There is no money for quality control of contracted vendors.

The amount of funding authorized by Section 303 of 42 U.S.C., Chapter 7, is based on 1967 per capita figures. Guam requests additional funding for each fiscal year.

The funding for the Work Incentive Program is proposed to be cut causing higher unemployment and reducing low income families to no income families.

Federal Citation: Title 42 U.S.C., Chapter 7, Subchapter IV, Part C.

The Work Incentive Program (WIN) is for those individuals receiving aid under Part A, (Aid to Families with Dependent Children), of the Social Security Act. The purpose of the WIN program is to place recipients on a work training program. Individuals are trained on the job so they will be able to seek employment at higher wage scales. Payments are made to employers who in turn use that money to supplement WIN employee wages. In most cases WIN participants are the sole providers of income to a household.

Should funding be cut to the WIN program several impacts may result. First, it will be more difficult for mothers of small children to seek gainful employment, thus keeping or reducing them to a lower economic level. As employers may be reluctant to assume 100 percent of the wages paid to a WIN participant, the elimination of the program may force the participant to seek other forms of welfare to meet their financial obligations. In addition, counseling services offered by the Guam Department of Labor to the unemployed will no longer be available and the WIN staff will be terminated. The WIN program should continue to be funded by the Federal Government.

The proposed 25 percent funding reduction for the Maternal and Child Health Service Formula Grants, (A) and (B), will result in a decrease in quality and amount of services available to recipients.

Federal Citation: Title 42 U.S.C., Chapter 7, Subchapter V.

The Maternal and Child Health Program (MCH) is designed to provide financial support to states to: (1) extend and improve services for reducing infant mortality and improving the health of mothers and children; and (2) provide programs which offer reasonable assurances of satisfactorily helping to reduce the incidence of mental retardation caused by complications associated with childbearing and promoting the health of young children.

Since funding for the MCH has always been low, some services mandated to be provided have never been provided. Hospitalization during the prenatal, labor, and delivery periods for medical and intensive nursing care for prematurely born and other high-risk infants are among the services that have never been provided.

As a result of a 25 percent funding reduction, the outreach program will be halted, and equipment and supplies cannot be purchased. In addition, lab tests, including X-Rays and drugs will no longer be available, and the Department's full diagnosis and treatment services will suffer. Should a patient need services he/she will no longer be referred to a private doctor if a Public Health doctor is not available. Guam's Maternal Child Health formula grants should not be reduced by 25 percent as proposed.

Federal assistance for Medical Assistance Programs is too low.

Federal Citation: Title 42 U.S.C., Chapter 7, Subchapter XIX, Section 13966.

The purpose of the medical assistance program is to provide medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of medical services. In addition, rehabilitiation and other services are provided to help such families and individuals attain or retain capability for independence or self-care.

The Medicaid Program was authorized by Congress under Title XIX of P.L. 89-97, Social Security Amendments of 1965. It was designed to provide federal matching funds for use by States in State-administered health care programs for the indigent.

Each State Medicaid Program could increase its budget annually based on an increase in the number of eligible recipients and on the rising cost of medical services. Federal matching for each State is generally determined by the State's per-capita income. The percentage of Federal Financial Participation (FFP) for State Medicaid Programs ranged from 50 percent (lowest) to 78 percent (highest). Unlike the States, the Medicaid programs in territories are placed under a federal ceiling by Section 1108 of the Social Security Act, with a flat rate of 50 percent matching funds from the federal and local governments. Federal ceiling for each territory is: $30 Million--Puerto Rico; $1 Million--Virgin Islands; $900,000--Guam; and $900,000--Commonwealth of the Northern Mariana Islands (CNMI). Despite the different funding principles which apply to states and territories, all Medicaid programs are under the same federal laws and regulations which require states or territories to provide the same number of mandatory services to Medicaid recipients.

The Federal Government treats the Medicaid program in each territory differently. First, both Puerto Rico and the Virgin Islands obtained an increase in the

federal ceiling for Medicaid in 1972. Guam, however, never received any adjustment to the federal ceiling since the onset of the program in 1967. Secondly, the Medicaid program in the CNMI, with a federal ceiling of $900,000, is serving approximately 500 eligible recipients. However, Guam Medicaid, receiving the same amount of $900,000 as the CNMI, is providing medical assistance to 7,402 eligible recipients (as of April 1981). Since the CNMI currently has no certified hospital nor physicians to provide necessary medical services to their Medicaid recipients, they are using the hospital and private physicians on Guam as their medical services providers. The provider who supplies the same services is being paid 15 percent to 30 percent more by the CNMI than by the Guam Medicaid program. In the long run, this will affect the quality of health care provided Guam recipients. Moreover, this will place Guam Medicaid in direct competition with CNMI Medicaid, causing providers to prefer CNMI patients over Guam patients.

The Guam Medicaid program was implemented in November 1967. With a budget of $1.8 Million, Medicaid presently has to provide medical services to 7,402 eligible recipients. The average amount allowed to be spent for each recipient is $244 per year. The national per-capita expenditure is $947 per year. The average amount spent per Medicaid recipient in other States in 1980 was $2,000 for Utah; $1,900 for Montana; $1,700 for Nevada; and $1,160 for Hawaii.

Each year on Guam the number of recipients increases about 10 percent, and the medical cost increases about 20 to 25 percent. As a result, the gap between the established budget of $1.8 Million and actual cost has become greater every year. The incurred Medicaid expenses in FY 80 were $3.2 Million. The estimated Medicaid cost for 1982 is $4 Million.

According to federal regulations, Hospital Services, Physicians' Services, Early Periodic Screening, Diagnosis and Treatment (EPSDT), Home Health Services, Laboratory and Radiological Services, Family Planning, and Off-Island Treatment

The elimination of the minimum funding level in pending Congressional legislation will inhibit Guam's ability to manage coastal resources.

Federal Citation: H.R. 5543 and S. 2129 (proposed).

A bill introduced in the House of Representatives included a minimum funding level for Coastal Zone Management (CZM), Coastal Energy Impact Program (CEIP), Sea Grant, and other fishery programs derived from receipts generated from off-shore oil leasing and exploration activities. The recent elimination of the minimum funding level in the House bill and its absence in the Senate bill will result in Guam's inability to fund the above programs.

For CZM and CEIP programs alone, Guam has averaged $600,000 and $75,000 a year respectively. Under the proposed bills, the funding allocation formula would allow Guam and the other territories to receive only $30,000 for all the above programs.

The Government of Guam supports the inclusion of a minimum funding level.

are required to be provided to Medicaid recipients. The cost for these services in 1980 was $2,811,697. Unfortunately, Guam Medicaid was budgeted to receive only $1.8 Million from the federal and local governments, but this amount was not enough to pay for hospital services alone (the cost for hospital services in 1980 was $1.9 Million).

Recently, the Reagan Administration proposed a multi-year capping of Federal Medicaid funds by limiting the FY 82 spending increase to 5 percent of the 1981 level. In order to achieve the original goal of the Medicaid program of providing quality health care to those medically indigent on Guam and to ensure that the Medicaid recipients here receive the same rights as those in the States and other territories, we would like to urge that Congress reevaluate our situation and provide Guam with increased federal funding before placing a cap on the Guam Medicaid Program in FY 82.

Guam requests that the ceiling be raised or eliminated completely.

Pending legislation to pass the costs for maintenance and improvement of Pacific Island Harbors to users of such facilities is inconsistent with efforts to promote economic development.

Federal Citation: National Harbors Improvement and Maintenance Act of 1981, S.1692 (proposed).

The National Harbors Improvement and Maintenance Act of 1981 (S.1692), introduced by Senators Abdnor of South Dakota and Moynihan of New York, would require that after January 1, 1981, 25% of the cost for maintenance and improvement of existing deep draft harbor projects be borne by non-federal interest, i.e., states or territories, and 50% of the cost for new construction for harbor improvements after January 1, 1981 be borne by each non-federal interest. The non-federal interests would not be required to pay more than 50% over the 25% national average cost of maintaining all deep draft vessel harbor of the United States. Furthermore, the Secretary of the Army, through the Corps of Engineers, would be authorized to pay to the non-federal interests, subject to appropriations acts, those costs of such construction directly attributable to national defense. The funds to be provided by the non-federal interests would be collected through the assessment of charges against port users.

The volume of cargo and level of shipping activities experienced historically by insular areas is miniscule compared to the majority of mainland commercial seaports. To expect the relatively small number of users of these ports to bear even half the substantial cost of maintaining and improving these harbors is totally unrealistic.

In other ports in the mainland such costs could be disbursed by these ports' many users amongst a broad base of shippers, businesses and consumers, numbering generally in population from several hundred thousand to several million. However, in the Pacific insular areas, the population base and level of business activity which would be required to directly bear the cost of such projects is very small. Even with the 50% "cap" procedure included in S.1692, these areas would be severely affected by this user charge system.

Most of the Pacific Island harbors have not been developed to nearly the extent as seaports elsewhere in the United States. They virtually all require substantial funds for improvements to conditions satisfactory to accommodate the growing populations they serve. Continued substantial federal assistance, particularly through the Army Corps of Engineers, is imperative to these areas' growth and development. To further limit our access to federal funds, through such measures as proposed in S.1692 could virtually bring seaport development in this region to a complete halt.

A vast number of mainland ports handle bulk commodities such as petroleum products, grain, and ore which result in their volumes being extremely large. This, of course, substantially reduces the per ton charge. However, in Guam's port, which handles virtually no bulk commodity (the bulk cement and petroleum being handled over private piers) and in other surrounding insular seaports, such large bulk shipments for the most part do not occur. This, therefore, drives the per/ton user charge up even further.