



Territory of Guam

Territorial Guam

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

11/17/89

DEC 30 1988

The Honorable Franklin J.A. Quitugua
Speaker, Nineteenth Guam Legislature
Post Office Box CB-1
Agana, Guam 96910

Dear Mr. Speaker :

Transmitted herewith is Bill No. 750, which I have signed into law, as Public Law 19-47. As you are aware, the administration has worked long and hard to implement a system by which developers in this Territory will cover their fair share ... in the form of an assessment ... for the impact that development has upon all areas of infrastructure and public service on Guam, including water systems, sewer systems and other utilities ... as well as services such as education, public safety, parks, etc.

We congratulate Senator Martha Ruth who has labored diligently on this issue, as well as all the senators who support this initiative.

Indeed, the administration eagerly solicits the support of the legislature in expanding the concept contained in this excellent bill, to include more than water and sewer systems impact, but an assessment fee that will comprehensively address all areas that are impacted by development, such as education, roads, utilities, parks, police and fire services, storm drainage, etc., as well as water and wastewater systems. The administration will be shortly forwarding suggested language to the legislature for its consideration that will create a comprehensive impact assessment fee that will address all these areas, including water and sewage systems.

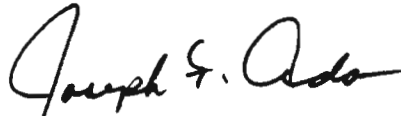
The administration will immediately begin the process of drafting specific regulations to address water, wastewater, roads, education, drainage, public safety, parks and other infrastructural and service impact by developers, as well as begin work on establishing a formalized commission to comprehensively plan and address infrastructure and service requirements in development areas throughout the island.

Honorable Franklin J.A. Quitugua
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This bill is an excellent beginning, and is demonstrative of what we can achieve through cooperation in this issue which is of such importance to the future of our people.

Once again, congratulations.

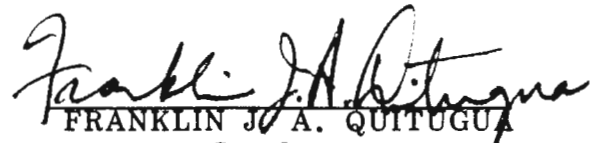
Sincerely,


JOSEPH F. ADA
Governor

NINETEENTH GUAM LEGISLATURE
1988 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 750, "AN ACT TO ADD A NEW SECTION TO CHAPTER III TITLE XXII OF THE GOVERNMENT CODE RELATIVE TO THE PUBLIC UTILITY AGENCY OF GUAM ESTABLISHING WATER AND SEWER SYSTEM DEVELOPMENT CHARGES," was on the 19th day of December, 1988, duly and regularly passed.

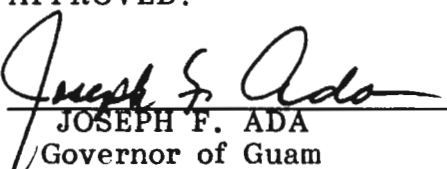

FRANKLIN J. A. QUITUGUA
Speaker

Attested:

A. J. SONNY SHELTON
Senator and Acting Legislative Secretary

This Act was received by the Governor this 19 day of Dec, 1988,
at 10:15 o'clock p.m.


Assistant Staff Officer
Governor's Office

APPROVED:

JOSEPH F. ADA
Governor of Guam

Date: DEC 30 1988

Public Law No. 19-47

NINETEENTH GUAM LEGISLATURE
1988 (SECOND) Regular Session



Bill No. 750
As Substituted 12/19/88

Introduced by:

M. C. Ruth
D. Parkinson

T. S. Nelson
A. C. Lamorena III
F. J. Quitugua
J. G. Bamba
J. M. Rivera
E. M. Espaldon
M. D.A. Manibusan
E. R. Duenas
F. J. Gutierrez
J. F. Quan
P. C. Lujan
H. D. Dierking
J. T. San Agustin
M. K. Hartsock
M. Z. Bordallo
E. P. Arriola
A. J. Shelton

AN ACT TO ADD A NEW SECTION TO CHAPTER
III TITLE XXII OF THE GOVERNMENT CODE
RELATIVE TO THE PUBLIC UTILITY AGENCY OF
GUAM ESTABLISHING WATER AND SEWER SYSTEM
DEVELOPMENT CHARGES.

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

2 Section 1. Legislative Findings.

3 (a) The southern part and many other areas of Guam are not served or are
4 inadequately served by existing water and sewer systems causing hardships for those
5 living in the areas and creating potential health hazards.

6 (b) One of the most pressing needs confronting our island community is to
7 expand, upgrade or repair water and water sewer facilities to accommodate the
8 substantial growth in Guam's economic activity and overall population base.

1 (c) Some of the island's existing populated areas and Guam's continued growth
2 and development may be jeopardized unless the Public Utility Agency of Guam can
3 provide adequate water and sewer services.

4 (d) With federal funds becoming more difficult to obtain, the Public Utility
5 Agency of Guam and island political and business leaders are faced with the dilemma
6 of how to raise the large amounts of capital necessary to develop and improve the
7 island's water and sewer systems.

8 (e) A fee schedule must be developed and implemented whereby new users of
9 Guam's water and wastewater systems are assessed a reasonable and fair share for
10 capital improvements so that the additional cost of extending services to the new
11 customers should not place a burden on existing customers.

12 Section 2. A new section 21206.2 of the Government Code is added to read:

13 §21206.2. Water and Sewer System Development Charge.

14 (1) The Public Utility Agency of Guam shall establish and implement a water
15 and sewer system development charge schedule, which charges shall be assessed on
16 each user who is for the first time connecting the property into the island's water
17 or wastewater system or to each builder if the density of development on existing
18 connection is increased. Such charge schedule shall take into account existing
19 infrastructure on the property, present and future user demands, requirements for
20 water and/or sewer services and installation of infrastructure to be done by the
21 builder. No charge shall be assessed for connection to property used exclusively
22 for agriculture or aquaculture purposes. Should agriculture-zoned property be rezoned
23 or converted to a different usage, the water and sewer system development charges
24 shall be applied.

25 (2) Notwithstanding any other provision of law, all revenues generated by the
26 water and sewer system development charges shall be deposited into the "Island Water
27 and Sewer Infrastructure Development Fund." Such funds shall be administered by
28 the Public Utility Agency of Guam. The Agency shall obtain approval from the
29 Legislature for any appropriation from the fund.

1 (3) The fund shall be expended only for expanding, upgrading or repairing
2 water and wastewater facilities on Guam.

3 (4) Fees shall be paid concurrent with the issuance of a building construction
4 permit or within fifteen (15) days upon approval of the fee schedule.

5 (5) Pending the development, approval, and full implementation of the water
6 and sewer system development charge schedule, the "Island Water and Sewer
7 Infrastructure Development Fund" is hereby created and into such fund monies
8 collected from willing developers upon enactment of this act shall be deposited for
9 specified infrastructural projects in order that current construction timetables may
10 be met by such developers. Said fees collected shall be for specified water and
11 sewer projects to be determined by the Public Utility Agency of Guam. Developers
12 opting to provide such funding before the impact of fee is established, shall still
13 be subject to assessment when the schedule of fee is established, however, once the
14 impact fee is established, the developer who opted to provide such funds shall be
15 assessed only that portion which is the difference between the amount provided
16 earlier and the amount as shown on the approved fee schedule. Should the amount
17 contributed be greater than the approved fee schedule, the developer shall be
18 compensated the difference through an abatement of gross receipts tax equal to
19 the differential.

ROLL CALL SHEET

Bill No. 150
 Res No. _____

DATE: 12/19/88

QUESTION: _____

	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
E. P. Arriola	✓			
J. G. Bamba	✓			
M. Z. Bordallo	✓			
H. D. Dierking	✓			
E. R. Duenas	✓			
E. M. Espaldon	✓			
F. J. Gutierrez	✓			
M. K. Hartsock	✓			
P. C. Lujan				✓
M. D. A. Manibusan	✓			
J. G. Miles	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
J. M. Rivera	✓			
M. C. Ruth	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
A. J. Shelton	✓			

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SENATOR DON PARKINSON
19th GUAM LEGISLATURE
163 CHALAN SANTO PAPA STREET
AGANA, GUAM 96910

December 18, 1988

Honorable Franklin Quitugua
Speaker, 19th Guam Legislature
P.O. Box CB-1
Agana, Guam 96910

Dear Speaker:


The Committee on Energy, Utilities and Consumer Protection wishes to report out its findings on Bill No. 750: AN ACT TO ADD A NEW SECTION TO CHAPTER III TITLE XXII OF THE GOVERNMENT CODE RELATIVE TO THE PUBLIC UTILITY AGENCY OF GUAM ESTABLISHING WATER AND SEWER SYSTEM DEVELOPMENT CHARGES.

The Committee voting record is as follows:

AYES	-10-
NAYS	-0-
ABSTENTIONS	-2- (Not Voting)
REPORT OUT	-0-
OFF-ISLAND	-0-

A copy of the Committee Report and all pertinent documents are attached for your information.

Sincerely,


Senator Don Parkinson
Chairman, Committee on
Energy, Utilities and
Consumer Protection

COMMITTEE ON ENERGY, UTILITIES AND CONSUMER
PROTECTION

Voting Sheet on Bill No. 750:

"AN ACT TO ADD A NEW SECTION TO CHAPTER III TITLE XXII OF THE GOVERNMENT CODE RELATIVE TO THE PUBLIC UTILITY AGENCY OF GUAM ESTABLISHING WATER AND SEWER SYSTEM DEVELOPMENT CHARGES.

<u>COMMITTEE MEMBERS</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>COMMENT</u>
Sen. Don Parkinson	<i>[Signature]</i>	_____	_____	_____
Sen. A.J. Sonny Shelton	<i>[Signature]</i>	_____	_____	_____
Sen. Franklin Gutierrez	<i>[Signature]</i>	_____	_____	_____
Sen. Herminia Dierking	<i>[Signature]</i>	_____	_____	_____
Sen. Marilyn Manibusan	<i>[Signature]</i>	_____	_____	_____
Sen. Martha Ruth	<i>[Signature]</i>	_____	_____	_____
Sen. Marcia Hartsock	<i>[Signature]</i>	_____	_____	_____
Sen. Jerry Rivera	<i>[Signature]</i>	_____	_____	_____
Sen. George Bamba	<i>[Signature]</i>	_____	_____	_____
Sen. Madeleine Bordallo	_____	_____	_____	_____
Sen. Jim Miles	<i>[Signature]</i>	_____	_____	_____
Speaker Quitugua	<i>[Signature]</i>	_____	_____	_____

REPORT OF THE COMMITTEE ON ENERGY, UTILITIES AND CONSUMER
PROTECTION ON BILL NO. 750.

PREFACE

The Committee on Energy, Utilities and Consumer Protection conducted a public hearing on Tuesday, March 8, 1988 at 3:00 p.m. in the Legislative Session Hall on Bill No. 750: An act to add a new section to Chapter III Title XXII of the Government Code relative to the Public Utility Agency of Guam establishing water and sewer system development charges. The Committee members present at the public hearing were: Senator Parkinson, Chairman; Senator Dierking, Senator Rivera, Senator F. Gutierrez, Senator Lamorena III, Senator Espaldon, Senator Arriola, Senator Lujan, Senator San Agustin, Senator Hartsock, Speaker Quitugua, Senator Nelson, Senator Bordallo, Senator Ruth and Senator Bamba.

TESTIMONY

Appearing before the Committee to testify was Mr. William Blair. Mr. Blair testified that he believes that the money is provided by the fund and be placed in. The bill will not help the developers, like himself and requests that the Legislative operation should identify projects and build at own cost, be paid through gross receipt tax. He also suggests a second revision with the understanding to pay the fee up front.

Also testifying on behalf of Public Utility Agency of Guam was Mr. Anthony Blaz. Mr. Blaz testified that many areas of Guam are not serviced or are inadequately served by existing water and sewer systems causing hardships to many residents in the northern, central, and most especially the southern villages of Guam. Mr. Blaz was in favor of the bill. He attached to his testimony his recommended addition to Bill 750 (New item 5 under Section 2). In his written testimony, Mr. Blaz said the table of charges will allow GovGuam: (1) to generate capital to pay costs associated with extending service to new customers; (2) to generate new revenues for GovGuam to fund water and sewer capital improvement projects either directly or through long-term financing; (3) to use the revenues generated by a system development charge to service long-term financing thereby demonstrating to capital market participants our capability to service debt.

COMMITTEE RECOMMENDATIONS

The Committee on Energy, Utilities and Consumer Protection hereby finds that the necessity of the development charges will ensure that all villages, namely the southern will be provided with adequate water and sewer services. Therefore the Committee on Energy, Utilities and Consumer Protection hereby recommends passage of the Bill No. 750, by the Nineteenth Guam Legislature.

EXHIBITS

Exhibit "A" Written testimony submitted by Mr. William J. Blair.

Exhibit "B" Written testimony submitted by Mr. Anthony C. Blaz, Chief Officer, Public Utility Agency of Guam

TESTIMONY OF WILLIAM J. BLAIR
RE BILL NO. 750

MY NAME IS WILLIAM BLAIR. I AM AN ATTORNEY WITH THE LAW FIRM OF KLEMM, BLAIR, STERLING & JOHNSON, P.C. I AM APPEARING ON BEHALF OF GUAM PALACE CORPORATION AND ITS PARENT COMPANY, PALACE HOTEL CO., LTD. OF JAPAN ("PALACE" OR "PALACE HOTEL").

PALACE HOTEL GENERALLY SUPPORTS THE INTENT BEHIND BILL 750. HOWEVER, WE FEEL THE BILL IS INADEQUATE TO ADDRESS CERTAIN IMMEDIATE PROBLEMS FACING COMPANIES SUCH AS PALACE HOTEL AS WELL AS FACING THE TERRITORY IN GENERAL. WE WOULD, THEREFORE, LIKE TO PROPOSE FOR CONSIDERATION BY THE LEGISLATURE CERTAIN AMENDMENTS TO THE BILL.

BEFORE GETTING INTO THE SPECIFICS OF OUR PROPOSALS, HOWEVER, I WOULD LIKE TO PUT THEM IN THEIR PROPER PERSPECTIVE.

FIRST, WE START FROM THE PERSPECTIVE, WHICH IS NOT SHARED BY EVERYONE, THAT FURTHER DEVELOPMENT IS GOOD FOR GUAM --- THAT IT CREATES NEW JOBS AND GENERATES NEW REVENUES WHICH THE GOVERNMENT OF GUAM --- THIS LEGISLATURE --- CAN USE FOR WHATEVER PURPOSES IT SEES FIT. AS A CONSEQUENCE, WE BELIEVE THE GOVERNMENT OF GUAM SHOULD CONTINUE TO ENCOURAGE,

Exhibit "A"

NOT DISCOURAGE, PROSPECTIVE INVESTORS. FURTHERMORE, WE BELIEVE THE TYPES OF DEVELOPMENT WHICH PROVIDE THE GREATEST LONG-TERM BENEFITS TO GUAM AND WHICH ARE THEREFORE MOST DESERVING OF GOVERNMENT SUPPORT ARE IN THE TOURISM INDUSTRY. FOR EXAMPLE, IN OUR CASE, PALACE HOTEL RECENTLY PRESENTED FINANCIAL PROJECTIONS TO THE BOARD OF GEDA SHOWING THAT IN ITS FIRST TWENTY YEARS THE PALACE PROJECT WILL GENERATE NEARLY \$170 MILLION IN TAXES ALONE TO THE GOVERNMENT OF GUAM. THIS FIGURE WAS BASED ON CONSERVATIVE ASSUMPTIONS. THE TAXES WHICH WOULD ACTUALLY BE GENERATED WOULD PROBABLY BE EVEN GREATER.

WE PRESENTED THESE FIGURES TO GEDA AS PART OF OUR REQUEST FOR CERTAIN TAX CONCESSIONS FROM THE GOVERNMENT OF GUAM. THESE TAX CONCESSIONS WOULD BE AN INCENTIVE TO PALACE TO PROCEED WITH ITS PROJECT. AS I LIKE TO THINK OF IT, SUCH INCENTIVES GIVEN TO PROSPECTIVE DEVELOPERS, LIKE PALACE, ARE INVESTMENTS BY THE GOVERNMENT OF GUAM ITSELF IN THE FUTURE OF THE TERRITORY. THESE INVESTMENTS ARE MADE WITH THE EXPECTATION THAT THE PEOPLE OF GUAM WILL RECEIVE A CERTAIN RETURN ON THEIR INVESTMENT IN THE FORM OF JOBS, TAX REVENUES, AND AN OVERALL ENHANCEMENT OF THE ISLAND. THE INVESTMENT INCENTIVES ALSO MAY BE SEEN AS A FORM OF SUBSIDIZATION BY THE GOVERNMENT IN ORDER TO ENCOURAGE A PROSPECTIVE INVESTOR TO INVEST IN GUAM.

BILL 750 CALLS FOR THE ASSESSMENT OF DEVELOPERS FOR CERTAIN INFRASTRUCTURE IMPROVEMENTS. AS A STARTING POINT IN ANY DISCUSSION, IT MUST BE RECOGNIZED THAT THE PURPOSE BEHIND SUCH AN ASSESSMENT RUNS DIRECTLY COUNTER TO THE PURPOSE BEHIND GEDA TAX INCENTIVES. I FIND IT NOT A LITTLE IRONIC THAT WITHIN A SPAN OF ONE WEEK I WILL HAVE TESTIFIED BEFORE ONE ARM OF THE GOVERNMENT OF GUAM TO JUSTIFY WHY THE GOVERNMENT SHOULD INVEST IN OUR PROJECT THROUGH TAX INCENTIVES AND BEFORE ANOTHER ARM ON A BILL WHICH, IN ITS PRESENT FORM, WOULD INCREASE THE COSTS OF INVESTING HERE.

WE BELIEVE THE LEGISLATURE SHOULD ATTEMPT TO RECONCILE THE DIRECTLY CONTRADICTORY SIGNALS TO INVESTORS THESE DIFFERENT PROGRAMS WOULD REPRESENT.

BILL 750 PROPOSES TO AUTHORIZE PUAG TO DEVELOP A METHOD OF ASSESSING PROSPECTIVE DEVELOPERS, SUCH AS PALACE, A FEE --- AN INFRASTRUCTURE IMPACT FEE --- TO FUND OR TO HELP DEFRAY THE FUNDING OF INFRASTRUCTURE IMPROVEMENTS NECESSARY TO ACCOMMODATE FUTURE DEVELOPMENT.

THE REASON WHY SUCH A FEE IS SAID TO BE NEEDED IS BECAUSE CERTAIN INFRASTRUCTURE IMPROVEMENTS ARE NECESSARY TO ACCOMMODATE ADDITIONAL DEVELOPMENT, BUT THE GOVERNMENT OF GUAM IS SAID TO LACK THE FUNDS TO PAY FOR THEM.

I WOULD LIKE TO STATE ONCE MORE FOR THE RECORD THAT PALACE HOTEL DOES NOT DISPUTE THAT INFRASTRUCTURE IMPROVEMENTS ARE NECESSARY TO ACCOMMODATE ADDITIONAL DEVELOPMENT. THIS IS ESPECIALLY TRUE WITH RESPECT TO THE SEWER AND WATER SYSTEMS IN THE CAMP WATKINS ROAD/FARENHOLT AVENUE AREA WHICH WOULD BE DIRECTLY IMPACTED BY PALACE'S PROPOSED PROJECT. PALACE DOES NOT DISPUTE THAT SUCH A PROBLEM EXISTS FOR THE SIMPLE REASON THAT A STUDY FUNDED BY PALACE ITSELF, AT A COST OF NEARLY \$30,000, FULLY DEMONSTRATED THAT IT DID.

OF COURSE, THE PEOPLE WHO LIVE IN THE VICINITY OF DUNGCA'S BEACH, CAMP WATKINS ROAD AND FARENHOLT AVENUE, OR WHO WORK AT TONY ROMA'S DID NOT NEED THE PALACE STUDY TO TELL THEM THERE WAS A PROBLEM WITH THEIR SEWERS. THEY WERE ALL ACUTELY AWARE BECAUSE OF THEIR OWN EXPERIENCES.

FOR THE PURPOSES OF UNDERSTANDING PALACE'S POSITION ON THIS BILL, IT MUST BE RECOGNIZED THAT THE SEWAGE THAT PERIODICALLY POLLUTES THE DUNGCA'S BEACH AREA OF AGANA BAY DOES NOT COME FROM THE PALACE HOTEL. IT DOES NOT COME FROM OKA TOWERS, IT DOES NOT COME FROM THE PALOMO FAMILY PROPERTY, OR THE AGANA BAY CONDOMINIUM. THE SEWAGE THAT POLLUTES AGANA BAY COMES FROM EXISTING USERS OF THE DUNGA'S BEACH SEWER LINE --- THE BIGGEST OF WHICH, I SUPPOSE, WOULD BE THE ALUPANG COVE CONDOMINIUM.

LIKewise, THE SEWAGE THAT BACKS UP INTO THE KITCHEN OF TONY ROMA'S OR INTO THE SHOWERS AND BATHROOMS OF APARTMENTS AND HOMES ALONG FARENHOLT AVENUE DOES NOT COME FROM PALACE HOTEL OR ANY OF THE PROPOSED PROJECTS. IT COMES FROM EXISTING USERS.

IN OTHER WORDS, THERE IS ALREADY A PROBLEM. THE PALACE HOTEL, OR OKA TOWERS WILL NOT CREATE THE PROBLEM; IF BUILT, THEY WOULD SIMPLY EXACERBATE IT. THIS MEANS THAT WHETHER BILL 750 IS PASSED OR NOT, WHETHER ANY MORE PROJECTS ARE ALLOWED TO BE BUILT OR NOT --- YOU --- THE GUAM LEGISLATURE --- HAVE A JOB TO DO. THE MARINE DRIVE SEWER REVERSAL, THE EXPANSION OF THE CAPACITY OF THE CAMP WATKINS ROAD AND FARENHOLT AVENUE SEWER SYSTEMS, AND THE COMPLETE REPLACEMENT OF THE DUNGCA'S BEACH SEWER ARE ALL PROJECTS WHICH MUST BE UNDERTAKEN.

YOUR PROBLEM IS TO FIND FUNDING FOR THESE IMPROVEMENTS. BILL 750, WHICH, AS I PREVIOUSLY NOTED, WOULD CREATE AN OBVIOUS DISINCENTIVE TO INVESTMENT IN GUAM, HAS BEEN PROPOSED AS A MEANS TO PROVIDE SUCH FUNDING. BUT WHETHER BILL 750 PASSES OR NOT, YOU WILL HAVE TO IDENTIFY FUNDING FOR THESE IMPROVEMENTS.

BILL 750 PROPOSES TO ASSESS FUTURE DEVELOPERS TO CREATE A FUND WHICH WOULD BE USED TO PAY FOR IMPROVEMENTS TO THE VARIOUS INFRASTRUCTURE SYSTEMS --- I.E., UPGRADING AND EXPANSION OF THOSE SYSTEMS. THE BILL DOES NOT SEEK TO ASSESS EXISTING USERS, SUCH AS, FOR EXAMPLE, ALUPANG COVE, EVEN THOUGH THERE IS ALREADY A SERIOUS ENVIRONMENTAL PROBLEM TO WHICH ALUPANG COVE SIGNIFICANTLY CONTRIBUTES. PALACE HOTEL QUESTIONS THE FAIRNESS OF THIS APPROACH. WE ARE NOT TALKING ABOUT A PROBLEM PALACE HAS CREATED. THE GUAM PALACE HOTEL DOES NOT YET EXIST. TONY ROMA'S SEWER PROBLEM DOES. THE AGANA BAY POLLUTION PROBLEM DOES.

AGAIN, I WANT TO EMPHASIZE THAT PALACE HOTEL DOES NOT DISPUTE THE NEED FOR THE IMPROVEMENTS. HOWEVER, BY PASSING BILL 750, THE LEGISLATURE WOULD BE REQUIRING PALACE AND OTHER DEVELOPERS TO PAY FOR THE GOVERNMENT OF GUAM'S EFFORTS TO UPGRADE THE CURRENT SYSTEM --- TO REBUILD OR REPLACE EXISTING BUT ALREADY OVERBURDENED SEWER AND WATER SYSTEMS. RATHER THAN ENCOURAGING FURTHER INVESTMENT BY COMPANIES SUCH AS PALACE BY SUBSIDIZING THEM THROUGH LIMITED TAX BREAKS, THE GOVERNMENT WOULD BE ASKING TO BE ITSELF SUBSIDIZED.

MY CLIENT QUESTIONS THE WISDOM OF THIS APPROACH.

THERE SEEMS TO BE AN ATTITUDE AMONGST THE GENERAL PUBLIC, THE MEDIA, AND SOME LEGISLATORS THAT DEVELOPERS, LIKE PALACE, ARE EASY MARKS. THEY SEEM TO BELIEVE THAT

BECAUSE PALACE HAS MADE PLANS TO INVEST IN GUAM, THERE IS NOTHING THAT THE GOVERNMENT OF GUAM CAN DO THAT WILL MAKE IT UNATTRACTIVE OR UNFEASIBLE. I AM HERE TO TELL YOU THAT THAT ATTITUDE IS SIMPLY WRONG.

PALACE HOTEL'S DESIRE TO BUILD A HOTEL IN GUAM IS THE RESULT OF A CALCULATED BUSINESS DECISION. PALACE DOES NOT INTEND TO BUILD A HOTEL AS A HOBBY OR AS SOME KIND OF FOREIGN AID PROJECT. IT WANTS TO BUILD A HOTEL IN GUAM BECAUSE IT BELIEVES THAT THE INVESTMENT OF ITS CAPITAL IN GUAM WILL PRODUCE A RETURN ON THAT INVESTMENT WHICH MAKES IT WORTH ITS WHILE.

THIS IS DESPITE THE FACT THAT, AS THE PROJECTIONS THAT HAVE BEEN PROVIDED TO GEDA SHOW, PALACE DOES NOT EXPECT TO ACHIEVE A BREAK EVEN POINT FOR 11 OR 12 YEARS. THIS IS ASSUMING PALACE GETS THE TAX BREAKS IT HAS REQUESTED FROM GEDA. EVEN WITH THE TAX BREAKS WORKED INTO THE PROJECTIONS, THE INVESTMENT DOES PROVIDE A RETURN THAT IS OUTSTANDING. WITHOUT THE TAX BREAKS, THE PROJECTED RETURN ON INVESTMENT BECOMES VERY MARGINAL, PERHAPS UNACCEPTABLE.

NOW, BILL 750 CONTEMPLATES ADDING A NEW COST TO THE PALACE PROJECT, A COST WHICH RIGHT NOW IS COMPLETELY UNKNOWN. EVEN IF THE LEGISLATION WAS PASSED, IT WOULD BE MONTHS BEFORE PALACE KNEW WHAT ITS "FEE" WOULD BE. NO

BUSINESS CAN MAKE A RATIONAL BUSINESS DECISION TO INVEST IN A PROJECT WHEN THIS TYPE OF COST FACTOR REMAINS UNDETERMINED, EVEN IF IT WERE WILLING TO INCUR REASONABLE COSTS TO DEVELOP THE NECESSARY INFRASTRUCTURE.

MY CLIENT HAS COME TO GUAM TO BUILD A FIRST-CLASS RESORT HOTEL, AND, HOPEFULLY, ONE DAY TO TURN A PROFIT. IT DID NOT COME HERE TO BECOME AN ADJUNCT PUBLIC WORKS DEPARTMENT FOR THE GOVERNMENT OF GUAM.

HAVING SAID SO MUCH, I WOULD NOW LIKE TO STATE THAT PALACE IS WILLING TO PAY A FAIR AMOUNT TO HELP WITH THE INFRASTRUCTURE PROBLEMS. AS A BUSINESS, PALACE RECOGNIZES THAT CERTAIN IMPROVEMENTS ARE ESSENTIAL IF ITS PLANS ARE TO PROCEED. WHILE IT IS NOT WILLING TO COMPLETELY SUBSIDIZE THE SOLUTION OF A PROBLEM WHICH IS NOT ENTIRELY OF ITS MAKING, PALACE IS WILLING TO BE ASSESSED A "FAIR SHARE," REFLECTIVE ^{OF} ~~IS~~ ITS CONTRIBUTION TO THE PROBLEM.

BILL 750 CONTEMPLATES THE ESTABLISHMENT OF A FAIR ASSESSMENT FORMULA. TO THAT EXTENT, PALACE SUPPORTS BILL 750.

THE PROBLEM WITH THIS BILL, HOWEVER, IS THAT PALACE AND THE OTHER DEVELOPERS CANNOT WAIT FOR THE PUAG AND THE PUC TO ACT. THE GOVERNMENT OF GUAM HAS A PROBLEM IDENTIFYING

FUNDING. PALACE AND THE OTHER DEVELOPERS HAVE ANOTHER PROBLEM. THEIR PROBLEM IS NOT FUNDING OF THE CONSTRUCTION OF IMPROVEMENTS --- IT IS THE TIMING OF THOSE IMPROVEMENTS.

EACH DAY THAT GOES BY COSTS PALACE AND OTHER DEVELOPERS MONEY. AS A CONSEQUENCE, THE TIME FRAMES PROPOSED BY BILL 750 ARE NOT ACCEPTABLE TO PALACE. WE CANNOT AFFORD TO WAIT FOR THE GOVERNMENT OF GUAM. WE HAVE ALREADY BEEN WAITING SEVERAL MONTHS. THOSE MONTHS HAVE COST PALACE A LOT.

GOVERNOR ADA AND LT. GOVERNOR BLAS AND THEIR ADVISERS HAVE REALIZED THIS DILEMMA OF THE DEVELOPERS. AS A CONSEQUENCE, THEY HAVE ENCOURAGED PALACE AND CERTAIN OTHER DEVELOPERS TO PROCEED ON THEIR OWN WITH CERTAIN ABSOLUTELY ESSENTIAL IMPROVEMENTS IN THE CAMP WATKINS ROAD AREA --- THE ONES THAT ARE DEEMED MOST CRITICAL TO FURTHER DEVELOPMENT. PALACE IS GRATEFUL TO THE GOVERNOR'S WILLINGNESS TO ALLOW US TO PROCEED ON THIS BASIS.

IN ESSENCE, THOUGH, WHAT THE GOVERNOR AND LT. GOVERNOR HAVE ASKED PALACE AND THE OTHERS TO DO IS FUND THE REBUILDING OF THE FARENHOLT AND CAMP WATKINS SEWER AND WATER SYSTEMS AT OUR OWN COST. THEY HAVE ALSO ASKED US TO INCLUDE THE DUNGCA'S BEACH SEWER LINE. AS WELL INTENTIONED AS THIS PROPOSAL IS, PALACE FEELS IT IS UNFAIR.

WE BELIEVE IT IS UNFAIR, FIRST OF ALL, BECAUSE PALACE AND THE OTHER DEVELOPERS HAVE BEEN SINGLED OUT SIMPLY BECAUSE WE ARE THE MOST VISIBLE DEVELOPERS AT THIS POINT IN TIME. TO OUR KNOWLEDGE, NO OTHER DEVELOPERS HAVE EVER BEEN ASKED TO DO WHAT WE ARE BEING TOLD WE MUST DO IF WE WANT TO AVOID FURTHER DELAYS.

WE HAVE BEEN ASSURED THAT, IF WE PROCEEDED, THE FUNDS ADVANCED BY US ON THESE PROJECTS COULD BE OFFSET AGAINST OUR DEVELOPMENT IMPACT FEE. BILL 750, HOWEVER, PROVIDES FOR NO OFFSET. OUR FIRST SUGGESTED AMENDMENT WOULD BE TO PROVIDE SUCH OFFSETS FOR ANY PUBLIC WORKS PROJECTS FUNDED BY DEVELOPERS.

WE HAVE OTHER PROBLEMS WITH THE APPROACH SUGGESTED.

1. THERE IS NOT YET ANY DEVELOPMENT FEE, AND THERE MAY NEVER BE.

2. THE IMPROVEMENTS WE HAVE BEEN ASKED TO BUILD AND FINANCE ARE RELATED TO OUR PROJECTS, BUT THEY GO WELL BEYOND WHAT IS NEEDED IF MEASURED AGAINST OUR ANTICIPATED IMPACT ON THE INFRASTRUCTURE. FOR EXAMPLE, THE PROPOSED REBUILDING AND EXPANDING OF THE EXISTING CAMP WATKINS AND FARENHOLT SEWER LINES WOULD TAKE CARE OF NOT ONLY OUR PROJECTS, BUT ALL FUTURE ANTICIPATED DEVELOPMENT. FUTURE

DEVELOPERS WOULD NOT BE FACED WITH THIS PARTICULAR PROBLEM BECAUSE WE WOULD HAVE ALREADY CURED IT. IN ADDITION, WE WOULD BE CURING AN EXISTING PROBLEM TO WHICH WE HAD NOT CONTRIBUTED ANYTHING AND THE EXISTING USERS, WHOSE PROBLEM IT ALREADY IS, WOULD GET OFF COMPLETELY.

WHY SHOULD PALACE, FOR EXAMPLE, BE ASKED TO REBUILD THE ALREADY DETERIORATED DUNGCA'S BEACH SEWER LINE WHICH WE WILL NEVER USE?

PALACE AGAIN QUESTIONS THE "FAIRNESS" OF THIS PROPOSAL.

DESPITE ALL THIS, PALACE STILL WANTS TO BUILD ITS HOTEL. AND PALACE REALIZES THAT IN ORDER FOR THAT TO OCCUR, THE CAMP WATKINS SEWER WILL HAVE TO BE REBUILT. FURTHERMORE, PALACE REALIZES THAT IF THE GOVERNMENT OF GUAM CANNOT FUND THE SEWER PROJECT, PALACE WILL EITHER HAVE TO WAIT UNTIL THE GOVERNMENT CAN (WHICH IS UNACCEPTABLE) OR ELSE COME UP WITH ANOTHER FUNDING PROPOSAL.

IN THIS REGARD, WE BELIEVE THAT THERE ARE OTHER FUNDING MECHANISMS WHICH SHOULD BE ACCEPTABLE TO THE LEGISLATURE, AND WE WOULD PROPOSE THAT BILL 750 BE AMENDED TO PROVIDE AN ALTERNATIVE TO THE DEVELOPMENT FEE APPROACH ON AT LEAST SOME STOP GAP BASIS IN ORDER TO FUND IMPROVEMENTS WHILE A DEVELOPMENT FEE PROGRAM IS ESTABLISHED.

WE WOULD PROPOSE THAT THE LEGISLATURE ENACT LEGISLATION WHICH WOULD GRANT A CREDIT AGAINST FUTURE GROSS RECEIPTS TAXES TO DEVELOPERS WHO FINANCE INFRASTRUCTURE IMPROVEMENTS IDENTIFIED BY THE GOVERNMENT AS BEING ESSENTIAL. WITH SUCH LEGISLATIVE AUTHORIZATION, PALACE, EITHER ALONE OR IN CONJUNCTION WITH OTHER DEVELOPERS, COULD PROCEED WITH THE CAMP WATKINS/FARENHOLT AVENUE SEWER AND WATER PROJECTS. THE FUNDS ADVANCED BY THEM, TOGETHER WITH A REASONABLE INTEREST RATE, WOULD BE PAID BACK THROUGH CREDITS AGAINST FUTURE GRT WHICH WOULD BECOME DUE AS A RESULT OF ITS OPERATIONS. SECOND, IN ORDER TO SPEED UP THE REPAYMENT TO DEVELOPERS, DEVELOPERS COULD ALSO BE PAID BACK FROM THE GROSS RECEIPTS TAXES PAID BY THE CONTRACTORS WHO BUILD THE PROJECTS. THIS WOULD HAVE THE EFFECT OF REDUCING THE INTEREST EXPENSE TO THE GOVERNMENT.

IT IS IMPORTANT TO NOTE THAT NONE OF THESE TAXES WOULD BE GENERATED UNLESS THE DEVELOPMENTS GO FORWARD. IF PALACE HOTEL CANNOT BUILD ITS PLANNED HOTEL BECAUSE OF INFRASTRUCTURE PROBLEMS, IT WILL NEVER GENERATE ANY REVENUE AND NO CONTRACTOR WILL EVER BE PAID. IN A SENSE, THE INFRASTRUCTURE PROJECTS WOULD BE PAYING FOR THEMSELVES.

PALACE HOTEL BELIEVES THAT THIS APPROACH WOULD BE THE FAIREST TO THE GOVERNMENT AND TO THE DEVELOPERS. THE DEVELOPERS IN THE CAMP WATKINS ROAD AREA WOULD NOT BE SINGLED OUT AS THE OPPORTUNITY TO FUND NECESSARY

INFRASTRUCTURE IMPROVEMENTS WOULD BE MADE AVAILABLE TO DEVELOPERS WHERE EVER THEIR PROJECTS MIGHT BE LOCATED. FURTHERMORE, THE OPPORTUNITY COULD BE MADE AVAILABLE TO FUTURE DEVELOPERS AS WELL AS THE ONES WHO HAVE ALREADY BEEN APPROACHED BY THE GOVERNOR. THE GOVERNMENT, ON THE OTHER HAND, WOULD HAVE NEEDED IMPROVEMENTS BUILT WITHOUT HAVING TO GO OUT-OF-POCKET WITH RESPECT TO ANY ACTUAL OR CURRENTLY PROJECTED REVENUES, SINCE NO TAXES OF ANY KIND WILL BE GENERATED UNLESS AND UNTIL THE PROJECTS GO FORWARD.

THE APPROACH WE HAVE SUGGESTED IS NOT UNPRECEDENTED. AS I UNDERSTAND IT, AT ONE TIME THE LEGISLATURE AUTHORIZED AN EXEMPTION FROM GRT FOR REVENUES RECEIVED BY CONTRACTORS FOR CONSTRUCTING HOTELS AND RELATED TOURIST FACILITIES.

ALSO, THIS LEGISLATURE VERY RECENTLY PASSED LEGISLATION WHICH PROVIDES A MECHANISM WHEREBY A CREDITOR OF THE GOVERNMENT OF GUAM CAN REQUEST A PROMISSORY NOTE, WHICH BEARS INTEREST AT 7%, IN LIEU OF IMMEDIATE PAYMENT ON A DEBT OF THE GOVERNMENT. THIS NOTE CAN BE USED FOR PAYMENT OF TAX OR OTHER OBLIGATIONS DUE THE GOVERNMENT. THIS IS GOVERNMENT CODE §6131, AS ENACTED BY P.L. 19-10, §33.

A SIMILAR TYPE OF NOTE COULD BE GIVEN TO DEVELOPERS (OR PERHAPS CONTRACTORS) WHO WOULD BE WILLING TO ADVANCE THE

FUNDING OF INFRASTRUCTURE PROJECTS THE GOVERNMENT FINDS ITSELF UNABLE IMMEDIATELY TO FUND.

IF THIS TYPE OF CREDIT WAS AUTHORIZED, THE GOVERNMENT COULD PROCEED TO DEVELOP A FAIR AND EQUITABLE ASSESSMENT FEE. PALACE WOULD PAY THIS FEE OR ACCEPT A CREDIT AGAINST IT FOR FUNDS PREVIOUSLY ADVANCED.

IN CONCLUSION, WE WOULD URGE THAT BILL 750 BE AMENDED TO INCLUDE A PROVISION AUTHORIZING A CREDIT AGAINST FUTURE GRT FOR FUNDS ADVANCED TO BUILD NECESSARY INFRASTRUCTURE IMPROVEMENTS.

SUCH ADVANCES COULD ALSO BE OFFSET AGAINST DEVELOPMENT IMPACT FEES WHICH MAY BE ASSESSED AFTER A FEE SCHEDULE WHICH IS FAIR AND EQUITABLE TO ALL DEVELOPERS IS ESTABLISHED.

THANK YOU.

G22/09811-02
WD0095(L)



PUBLIC UTILITY AGENCY OF GUAM

GOVERNMENT OF GUAM
POST OFFICE BOX 3010, AGANA
GUAM, U.S.A. 96910

TESTIMONY IN FAVOR OF BILL 750

AN ACT TO ADD A NEW SECTION TO CHAPTER III
TITLE XXII OF THE GOVERNMENT CODE RELATIVE TO THE
PUBLIC UTILITY AGENCY OF GUAM ESTABLISHING WATER AND SEWER
SYSTEM DEVELOPMENT CHARGES.

Submitted by
Anthony C. Blaz
Chief Officer, Public Utility Agency of Guam
March 8, 1988

Good afternoon, Mr. Chairman and members of the Legislative Committee on Energy, Utilities, and Consumer Protection. I am here today to testify in favor of Bill 750: An act to add a new section to Chapter III, Title XXII, of the Government Code relative to the Public Utility Agency of Guam establishing WATER AND SEWER SYSTEM DEVELOPMENT CHARGES.

The legislative findings as outlined in Bill 750, Section 1, are true to the letter. Many areas of Guam are not serviced or are inadequately served by existing water and sewer systems causing hardships to many residents in the northern, central, and most especially the southern villages of Guam.

It is also true that the most pressing issue, or perhaps better put, a perennial issue that besets our island leaders is the need to expand, to upgrade, and to repair the water and sewer facilities to accommodate the growth and development that are taking place on our island.

Exhibit "B"

In the past our island has relied on the federal government to provide us with massive capital to fund our infrastructural needs in water and sewer. Mr. Chairman, those days are gone! Federal funds have become virtually nonexistent forcing us into a dilemma of finding a viable revenue source to pay for the necessary improvements to our waterworks system and to pay for system expansion necessitated by the phenomenal growth in economic activity.

The SYSTEM-DEVELOPMENT CHARGE, I believe, is a concept whose time has come!! Mr. Chairman, I am very pleased that you and your committee members recognize the dire need to address the inadequacies of our water and wastewater facilities as evidenced by Bill 750. I totally support the intent of Bill 750, which will mandate the Public Utility Agency of Guam to establish and implement a schedule of charges to assess new users hooking up for the first time to our island's water and sewer system.

Upon learning that this legislative body was contemplating initiation of a bill to establish water and sewer system development charges, my staff and I took the initiative of doing a preliminary assessment to understand the concept and its applicability to Guam.

We've learned that the concept of a system development charge is not new. Water utilities in Hawaii and other states in the country have turned to their customers for their capital needs, which is what a system development charge is.

The concept basically recognizes that all new customers or users of a facility should contribute a fair share of capital for improvements to the facility so that the additional costs of extending services to new customers should not be a burden placed on existing customers.

Sometimes called a facility charge, a plant investment fee, or an impact fee, a system development charge is essentially a contribution of capital towards the development of water and wastewater system facilities required because of new customer growth. Its purpose is to prevent or reduce the inequity to existing customers that results when these customers must pay for rate increases that are needed to pay for added plant costs for new customers.

After new customers have paid their fair share of capital contribution toward new plant addition, they become equivalent to existing customers and share the responsibility for system operation and maintenance through user charges.

It is no secret to everyone in this room and in the community, as well, that the hotel and condominium developments have the greatest impact on our water and sewer system. Although it is recognized that tourism is Guam's vital industry, the question in everybody's mind is: Why should Tan Maria and Tun Jose in Malojloj have to pay for water and sewer improvement and expansion required by these developers, while at the same time suffer from the present inadequacies and inconveniences inherent in the system?

It is, therefore, our desire at PUAG, that as we develop the framework for a table of charges, to shift the greater portion of the burden of an impact fee or system development charge from the community in general to the developers with the potential for greater impact on our water and sewer system.

Earlier I spoke of the dilemma that faces our Governor and YOU, our legislators, regarding an identifiable source of revenue for water and sewer projects. Mr. Chairman, the implementation of a system development charge would provide us with the necessary monies to pay for these capital projects, either directly or through long-term financing.

Mr. Chairman, there ought not to be a question in anyone's mind as to the priority and commitment that the Administration has given to the expansion and development of the water and sewer systems. Meeting the water and sewer demands of our southern villages and of the hotel and condominium developments to support the tourist industry are critical issues that our Governor has pledged to resolve.

Just last week we broke ground for the Pago Bay-Togcha water transmission line that will alleviate the water pressure problems for some of our southern villages. We still need \$5.0M to pay for a WATER SYSTEM IMPROVEMENTS project for the village of Agat/Umatac, and \$4.5M to pay for the REPLACEMENT OF WATER DISTRIBUTION LINE in Agat--just to mention a few. Where is this legislative body and our Governor going to secure funds for these projects?? We certainly have little hope of securing funds from the federal government. We have no choice but to turn to our water and sewer customers for our capital needs through the mechanism of a system development charge.

Mr. Chairman, I say that now is the time to implement such an assessment fee as proposed by Bill 750. But, in addition to what the bill proposes, Mr. Chairman, I would like to recommend to this body for Bill 750 to contain a provision to allow willing multi-million dollar developers to provide funding for specified infrastructural projects before the system development charge is fully established and implemented. Such a provision would allow developers to proceed with their construction timetable while the system development charge works its way through the Public Utilities Commission and this Legislative body for approval prior to implementation. I have attached to my testimony a recommendation for such a provision.

In closing, I reiterate that I wholeheartedly support Bill 750 for PUAG to develop and present to this legislative body and the PUC for approval a system development charge. The table of charges will allow GovGuam:

- * to generate capital to pay costs associated with extending service to new customers;
- * to generate new revenues for GovGuam to fund water and sewer capital improvement projects either directly or through long-term financing,
- * to use the revenues generated by a system development charge to service long-term financing thereby demonstrating to capital market participants our capability to service debt.

On behalf of the Governor and PUAG, I thank you for the opportunity to attest to your committee our support for the establishment of water and sewer system development charges and urge passage of Bill 750.

ANTHONY C. BLAZ

Attachment

RECOMMENDED ADDITION TO BILL 750

Add New Item 5 Under Section 2:

(5) In the interim, pending the development, approval, and full implementation of the water and sewer system development charge schedule, the "Island Water and Sewer Infrastructure Development Fund" is hereby created and into such fund monies collected from willing developers shall be deposited for specified infrastructural projects in order that critical construction timetable may be met by such developers. Said fees collected shall be for specified water and sewer projects to be approved beforehand by the Legislature, and that developers opting to provide such funding before the development impact fee is finally established shall still be subject to assessment once the impact fee is established. However, once the impact fee is established, the developer who opted to provide such funds shall be assessed only that portion which is the difference between the amount provided earlier and the amount as shown on the approved fee schedule. Should the amount contributed be greater than the approved fee schedule, the developer shall be compensated the difference through an abatement of gross receipts tax equal to the differential.

* * * * *

FEB 11 '88

Bill No. 75D(45)

Introduced by:

Ruth F. J. Gutierrez

 J. C. Miles

 J.M. RIVERA

 E.M. ESPALON

 J.G. RAMPAOK

 F. I. ...

AN ACT TO ADD A NEW SECTION TO CHAPTER III
TITLE XXII OF THE GOVERNMENT CODE RELATIVE
TO THE PUBLIC UTILITY AGENCY OF GUAM
ESTABLISHING WATER AND SEWER SYSTEM
DEVELOPMENT CHARGES.

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

Section 1. Legislative Findings.

(a) The southern part and many other areas of Guam are not served or are inadequately served by existing water and sewer systems causing hardships for those living in the areas and creating potential health hazards.

(b) One of the most pressing needs confronting our island community is to expand, upgrade or repair water and sewer facilities to accommodate the substantial growth in Guam's economic activity and overall population base.

(c) Some of the island's existing populated areas and Guam's continued growth and development may be jeopardized unless the Public Utility Agency of Guam can provide adequate water and sewer services.

(d) With federal funds becoming more difficult to obtain, the Public Utility Agency of Guam and island political and business leaders are faced with the dilemma of how to raise the large amounts of capital necessary to develop and improve the island's water and sewer systems.

(e) A fee schedule must be developed and implemented whereby new users of Guam's water and wastewater systems are assessed a reasonable and fair share for capital improvements so that the additional cost of extending services to the new customers should not place a burden on existing customers.

1 Section 2. A new section 21206.2 of the Government Code is added to read:

2 §21206.2. Water and Sewer System Development Charge.

3 (1) The Public Utility Agency of Guam shall establish and implement a
4 water and sewer system development charge schedule, which charges shall be
5 assessed on each user who is for the first time connecting the property into
6 the island's water or wastewater system or to each builder if the density of
7 development on existing connection is increased. Such charge schedule shall
8 take into account existing infrastructure on the property, present and future
9 user demands, requirements for water and/or sewer services and installation
10 of infrastructure to be done by the builder. No charge shall be assessed for
11 connection to property used exclusively for agriculture or aquaculture
12 purposes. Should agriculture-zoned property be rezoned or converted to a
13 different usage, the water and sewer system development charges shall be
14 applied.

15 (2) No later than October 1, 1988, the Agency shall submit the water
16 and sewer system development charge schedule and rules governing its use
17 to the Public Utilities Commission for its action.

18 (3) Notwithstanding any other provision of law, all revenues generated
19 by the water and sewer system development charges shall be deposited into
20 the "Island Water and Sewer Infrastructure Development Fund." Such funds
21 shall be administered by the Public Utility Agency of Guam. The Agency shall
22 obtain approval from the legislature for any appropriation from the fund.

23 (4) The fund shall be expended only for expanding, upgrading
24 or repairing water and wastewater facilities on Guam.