



*Territory of Guam  
Territorio de Guam*

SEP 25 1992

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**REFER TO  
LEGISLATIVE SECRETARY**

**SEP 24 1992**

The Honorable Joe T. San Agustin  
Speaker, Twenty-First Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

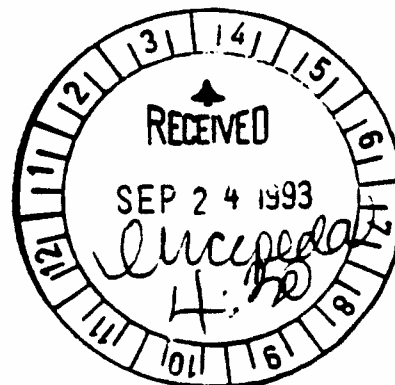
Dear Mr. Speaker:

Transmitted herewith is Bill No. 797 which I have signed into law this date as  
Public Law 21-135.

Sincerely yours,

*Joseph F. Ada*  
JOSEPH F. ADA  
Governor  
**210956**

Attachment



**RECEIVED SEP 24 1992**

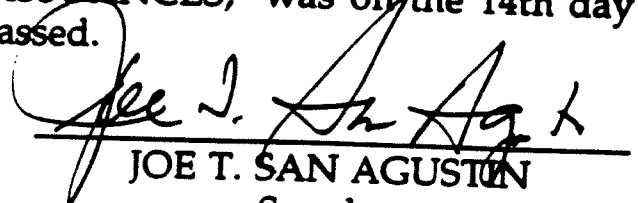
*J. T. San Agustin*



TWENTY-FIRST GUAM LEGISLATURE  
1992 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Substitute Bill No. 797 (LS), "AN ACT TO APPROVE THE TERMS AND CONDITIONS OF THE ISSUANCE OF GUAM AIRPORT AUTHORITY GENERAL REVENUE BONDS, TO ADD A NEW §1203.1, AND TO AMEND §§1202, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1221, AND 1226 OF TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO THE AUTHORITY OF THE GUAM AIRPORT AUTHORITY TO ENTER INTO THESE PARTICULAR BOND ISSUANCES," was on the 14th day of September, 1992, duly and regularly passed.

  
\_\_\_\_\_  
JOE T. SAN AGUSTIN  
Speaker

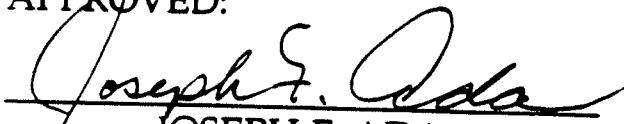
Attested:

  
\_\_\_\_\_  
PILAR C. LUJAN  
Senator and Legislative Secretary

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This Act was received by the Governor this 17<sup>th</sup> day of September, 1992,  
at 11:50 o'clock A.M.

  
\_\_\_\_\_  
Theresa G. Duena  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
\_\_\_\_\_  
JOSEPH F. ADA  
Governor of Guam

Date: SEPTEMBER 24, 1992

Public Law No. 21-135

TWENTY-FIRST GUAM LEGISLATURE  
1992 (SECOND) Regular Session

Bill No. 797 (LS)  
Substitute Bill by Committee on  
Ways and Means

Introduced by:

C. T. C. Gutierrez  
H. D. Dierking  
D. L. G. Shimizu

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J. P. Aguon  
J. T. San Agustin  
E. P. Arriola  
G. Mailloux  
M. Z. Bordallo  
P. C. Lujan  
F. R. Santos  
J. G. Bamba  
A. C. Blaz  
D. F. Brooks  
E. R. Duenas  
E. M. Espaldon  
M. D. A. Manibusan  
M. J. Reidy  
M. C. Ruth  
T. V. C. Tanaka  
A. R. Unpingco

AN ACT TO APPROVE THE TERMS AND  
CONDITIONS OF THE ISSUANCE OF GUAM  
AIRPORT AUTHORITY GENERAL REVENUE  
BONDS, TO ADD A NEW §1203.1, AND TO AMEND  
§§1202, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1221,  
AND 1226 OF TITLE 12, GUAM CODE ANNOTATED,  
RELATIVE TO THE AUTHORITY OF THE GUAM  
AIRPORT AUTHORITY TO ENTER INTO THESE  
PARTICULAR BOND ISSUANCES.

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

2 **Section 1. Legislative findings.** (a) Section 1204 of Title 12, Guam  
3 Code Annotated, provides that the Board of Directors of the Guam Airport  
4 Authority (GAA) is authorized to issue and sell general revenue bonds to  
5 provide money to be used for the cost of acquisition, purchase, construction,  
6 reconstruction, improvement, betterment or extension of the Antonio B. Won  
7 Pat Guam International Air Terminal and related facilities. Section 1216 of  
8 Title 12, Guam Code Annotated, provides that the GAA Board may authorize  
9 the issuance of refunding bonds for the purpose of refunding any bonds then  
10 outstanding and issued under Article 2, Chapter 1 of Title 12, Guam Code  
11 Annotated.

12 (b) Section 2103(k) of Title 12, Guam Code Annotated, provides that  
13 agencies and instrumentalities of the government of Guam shall issue bonds  
14 and other obligations only by means of and through the agency of the Guam  
15 Economic Development Authority (GEDA).

16 (c) Section 2103(k) provides that GEDA shall not sell any bond without  
17 the approval by the Legislature of the terms and conditions of the issuance of  
18 the bonds.

19 (d) The proposed form of indenture pursuant to which the GAA general  
20 revenue bonds are proposed to be issued has been presented to and approved  
21 by the Board of Directors of GEDA and has been presented to the Legislature.

22 (e) The Board of Directors of GEDA has adopted a resolution  
23 approving the sale of GAA general revenue bonds for the purposes of  
24 financing certain additions, betterments, and improvements of the Antonio B.  
25 Won Pat Guam International Air Terminal and related facilities and, as part  
26 of this financing program, refunding the Guam Airport Authority General  
27 Revenue Bonds, Series 1979.

1           **Section 2. Approval of terms and conditions of GAA bonds.** The  
2 following terms and conditions of issuance of GAA general revenue bonds are  
3 approved: (a) The Legislature, pursuant to Section 2103(k) of Title 12,  
4 Guam Code Annotated, approves the terms and conditions of the issuance by  
5 the GAA of its general revenue bonds in one or more series in an aggregate  
6 principal amount not to exceed Three Hundred Million Dollars (\$300,000,000)  
7 with a final maturity not exceeding thirty-five (35) years and bearing interest  
8 at a fixed or variable rate not exceeding twelve percent (12%) per annum if  
9 interest on a series is tax-exempt, and fifteen percent (15%) per annum if  
10 interest on a series is taxable. The bonds shall be issued pursuant to an  
11 indenture, and one or more supplemental indentures for each series, with  
12 terms and conditions similar to the terms and conditions contained in the  
13 form of the indenture presented to the Legislature.

14           (b) The initial series of long term bonds shall not be issued unless  
15 GEDA and GAA have received a report of a qualified airport consultant  
16 estimating the amount of projected net revenues of the airport for each fiscal  
17 year, from the date of issuance of the first series of the bonds, to and including  
18 the third full fiscal year after estimated date of completion of the additions,  
19 betterments, and improvements being financed by the bonds, and in each  
20 fiscal year, the amount of net revenues are projected to be equal to, or greater  
21 than, 1.25 times the amount of annual debt service on the bonds payable from  
22 revenues, and subsequent series, if any, shall not be issued without  
23 compliance with the additional bonds requirements of the indenture.

24           (c) Notwithstanding Subsection (b) of this Section, debt obligations  
25 maturing not more than three (3) years after the date of issuance, or subject to  
26 redemption at par at any time beginning not later than three (3) years after  
27 the date of issuance, may be issued upon satisfaction of only those conditions

1 relating to feasibility as may be required by the purchaser of the obligations or  
2 by the provider of any insurance, letter of credit, or other credit enhancement  
3 for the obligations; and the satisfaction of the conditions shall be evidenced  
4 solely by the issuance of the obligations. Any obligations authorized by this  
5 Subsection shall be secured by revenues to be received under airline  
6 agreements currently in effect, shall be repayable from the proceeds of a  
7 subsequent issuance of bonds as authorized in this Section, and shall be  
8 subordinate to all currently outstanding bonds of the Guam Airport Authority  
9 issued under the Trust Indenture executed by GAA in 1979.

10 (d) Notwithstanding any other provision of law, the bonds and  
11 obligations of GAA under any reimbursement or other similar agreement  
12 shall be limited obligations payable solely from the revenues and other assets  
13 of GAA pledged for that purpose and shall not be a debt or liability of the  
14 government of Guam.

15 (e) The GAA and GEDA shall undertake their best efforts to cause a  
16 portion of the bonds approved by this Section to be offered for sale in the  
17 territory of Guam, as well as in other jurisdictions, if and to the extent that  
18 the offer in the territory of Guam and any sales resulting from the offer do  
19 not increase the cost to the GAA and GEDA of issuing and repaying the  
20 bonds.

21 (f) DFS, the exclusive merchandizing concessionaire at the present  
22 GIAT, has in the past incurred considerable risk in guaranteeing bonds to  
23 construct the present facility at a time when the visitor industry on Guam was  
24 not what it has been over the past few years, or what it is today. In a spirit of  
25 mutual cooperation, DFS has entered into a memorandum of understanding  
26 with the GAA to modify the original agreement, and subsequent to that  
27 memorandum of understanding, has agreed again to increase substantially

1 the amount of rent to be paid when new and larger premises are let to the  
2 concessionaire in the new facility to be financed through this bond issue. This  
3 action indicates DFS' further commitment to Guam, and its continued  
4 confidence in the future economic well-being of the territory, for which the  
5 Legislature, on behalf of the people of Guam, is appreciative.

6 **Section 3.** A new §1203.1 is added to Title 12, Guam Code Annotated,  
7 to read:

8 **"§1203.1. Agreements between GAA and concessions, other**  
9 **businesses, and service providers; agreements between GAA and**  
10 **airlines.** (a) Any agreement between GAA and any other party  
11 concerning the operation of a concession, other business, or a  
12 service provider, at the Antonio B. Won Pat Guam International  
13 Airport shall conform to the following:

14 (i) allow for an exclusive right to sell certain goods or  
15 provide certain services only after a competitive proposal  
16 procedure according to the General Services Administration  
17 rules and regulations and for a duration of no longer than five  
18 (5) years. Any exclusive right for a duration of longer than five  
19 (5) years shall be given by GAA to any party only upon  
20 subsequent approval by the Legislature by statute.

21 (ii) criteria established for the operation of a concession,  
22 other business, or service provider at the Antonio B. Won Pat  
23 Guam International Airport, which criteria shall be reviewed  
24 at a public hearing held within ninety (90) days of the effective  
25 date of this section, and held in accordance with the  
26 Administrative Adjudication Law.

1 (iii) not be extended in duration or otherwise modified  
2 unless the extension or other modification conforms to the  
3 requirements of this Section. Notwithstanding the forgoing  
4 sentence, the exclusive concession agreement between GAA  
5 and DFS, in effect on the effective date of this Section,  
6 modified by a memorandum of understanding, shall be  
7 modified again, but not extended in duration of term, pursuant  
8 to the cooperative efforts of the parties to reach a mutual  
9 understanding in the best interest of the people of Guam.

10 (b) Any agreement between GAA and any airline offering  
11 service to Guam shall charge the airline using GAA air terminal  
12 facilities rates sufficient to cover the operating expenses of the air  
13 terminal and debt service coverage of the bonds authorized to be  
14 issued by this Section, and be in compliance with the requirement  
15 that no one (1) or more airlines shall be unreasonably discriminated  
16 against in comparison with any other airline in these charges."

17 **Section 4.** §1201 of Title 12, Guam Code Annotated, is amended to  
18 read:

19 "§1201. **Definitions.** As used in this Article, unless the context  
20 otherwise requires:

21 (a) 'Airport purposes' means any use which involves the  
22 operation of a facility:

23 (1) by the Authority to support or protect the activities of  
24 an airport as an air transportation facility, including activities  
25 such as the processing of aircraft, passengers, freight, and  
26 ground transport vehicles in an efficient and safe manner;



1 (2) by others to provide services that improve the overall  
2 effectiveness of an airport as an air transportation facility; and

3 (3) which is dependent upon the proximity to an airport  
4 for its effective performance.

5 (b) 'Airports' means the Antonio B. Won Pat Guam  
6 International Air Terminal, together with all related facilities owned  
7 or operated by the Guam Airport Authority, together with any other  
8 airports hereafter owned or operated for civil aviation purposes by  
9 the Authority, whether as a replacement for the existing Guam  
10 International Air Terminal, or otherwise, together with all related  
11 facilities, including all betterments, extensions or improvements  
12 thereon.

13 (c) 'Authority' means the Guam Airport Authority, or a  
14 successor to the rights, powers, functions and duties, with respect to  
15 the management, administration and control of the airports which  
16 are now or hereafter vested in the Authority.

17 (d) 'Board' means the Board of Directors of the Authority.

18 (e) 'Bond' means a Guam Airport Authority revenue bond,  
19 general or special, authorized to be issued by this Article.

20 (f) 'Bondholder' means a holder or registered owner of any  
21 bonds.

22 (g) 'Bond redemption fund' means the Guam Airport Authority  
23 bond redemption fund created by this Article, including any accounts  
24 which are created in that fund after the effective date of this Article.

25 (h) 'Bond resolution' means the resolution or resolutions  
26 authorizing the issuance of the bonds as provided in this Article.

1 (i) 'Construction fund' means the Guam Airport Authority  
2 construction fund created by this Article, including any account  
3 created therein.

4 (j) 'Credit enhancement' means insurance against loss due to  
5 default on bonds.

6 (k) 'Director of Administration' means the Director of  
7 Administration of the government of Guam.

8 (l) 'General revenue bond' means a bond, the repayment of  
9 which is assured by the dedication by the Authority of all or part of  
10 the revenue of the Authority except any revenue which may be  
11 obligated for the payment of a special revenue bond.

12 (m) 'Government' means the Government of the territory of  
13 Guam.

14 (n) 'Revenue' means all income, howsoever derived, received  
15 or collected from the rates, rentals, fees and charges prescribed for  
16 the use and services of, and the facilities and commodities furnished  
17 by, the Authority, including without limitation all income received  
18 from the imposition of any fee or impost for any use, benefit or  
19 privilege exercised at the airports by users, tenants, licenses or  
20 concessionaires thereof, but shall not include income derived from  
21 facilities financed from the proceeds of special revenue bonds except  
22 to the extent provided in the bond resolution authorizing the  
23 issuance of such special revenue bonds.

24 (o) 'Revenue fund' means the Guam Airport Authority revenue  
25 fund created by this Article.

26 (p) 'Special revenue bond' means a bond, the repayment of  
27 which is assured by the dedication by the Authority of a particular

1 source of revenue, which source shall be specified in the resolution  
2 authorizing the issuance of such bond.”

3 **Section 5.** §1203 of Title 12, Guam Code Annotated, is amended to  
4 read:

5 “§1203. **Authority, Additional Powers of.** In addition to the  
6 powers that it may otherwise have, with respect to this Article, the  
7 Authority shall have the power to:

8 (a) Sue and be sued in all actions and proceedings in all courts  
9 and tribunals of competent jurisdiction.

10 (b) Adopt a seal and alter it at its pleasure.

11 (c) Provide, develop, expand and maintain airports and  
12 landing places for aircraft of any kind and the support facilities it  
13 determines to be incidental or necessary to the proper utilization of  
14 such airports and landing places.

15 (d) Acquire by purchase, condemnation, donation, lease, or  
16 otherwise, real or personal property necessary to the full or  
17 convenient exercise of any of its powers or purposes.

18 (e) Operate and maintain the airports, landing places and  
19 support facilities under its jurisdiction for public and private use.

20 (f) Improve, construct or reconstruct, lease, furnish or  
21 refurnish, use, repair, maintain, control, sell or dispose of its  
22 property, including any buildings, structures, lighting equipment and  
23 all other equipment and facilities necessary therefor; and  
24 notwithstanding any other provision of law, make and enter into  
25 contracts, leases, and permits for the use of airport facilities and  
26 properties for airport purposes, and make and enter into airline  
27 agreements, without prior approval of the Legislature, as long as

1 these agreements are in conformity with the provisions of §1203.1 of  
2 this Title.

3 (g) Issue special revenue or general revenue bonds to finance  
4 in whole or in part the cost of acquisition, purchase, construction,  
5 reconstruction, improvement, betterment or extension of the  
6 airports.

7 (h) Impose, prescribe and collect rates, rentals, fees and  
8 charges for the use and services of, and the facilities and  
9 commodities furnished by the Authority for public and private use.

10 (i) Pledge for the punctual payment of the general revenue  
11 bonds and interest thereon all or part of the revenue of the airports  
12 (including improvements, betterments or extension thereto  
13 thereafter constructed or acquired), which shall be sufficient to pay  
14 the principal of and interest on such bonds as they shall become due  
15 and to create and maintain reasonable reserves to pay the principal  
16 thereof and interest thereon, and pledge for the punctual payment of  
17 special revenue bonds and interest thereon all or part of the income  
18 and receipts derived by the Authority from agreements relating to  
19 the loan of the proceeds of such bonds or the lease of facilities  
20 financed from the proceeds of such bonds and the rights and interest  
21 of the Authority in such agreement or lease, which shall be sufficient  
22 to pay the principal of and interest on such bonds as they shall  
23 become due and to create and maintain reasonable reserves to pay  
24 the principal thereof and the interest thereon.

25 (j) Make and enter into agreements with one (1) or more banks  
26 or other credit enhancement providers for the issuance of letters of  
27 credit or such other banking or credit enhancement arrangements as

1 the Authority deems necessary to improve the security and  
2 marketability of general revenue or special revenue bonds;  
3 provided, that the terms and provisions of any such letter of credit or  
4 other banking or credit enhancement arrangement shall be approved  
5 in the bond resolution; and provided, further, that the fees for any  
6 such letter of credit or other banking or credit enhancement  
7 arrangements may be included as a cost of issuance of such bonds.”

8 **Section 6.** §1205 of Title 12, Guam Code Annotated, is amended to  
9 read:

10 “§1205. **Construction Fund, Creation of.** (a) There is created  
11 a special fund of the Authority known as the “Guam Airport  
12 Authority Construction Fund”, into which shall be paid the proceeds  
13 of the sale of the general revenue bonds except for the following:

14 (1) Any accrued interest received, which shall be paid  
15 into the bond redemption fund established by §1207 of this  
16 Article.

17 (2) Proceeds of such bonds required to be deposited as  
18 reserves for such bonds by resolution.

19 (3) Proceeds of any bonds issued to refund any  
20 outstanding bonds, which shall be applied as provided in the  
21 bond resolution authorizing the issuance of such refunding  
22 bonds.

23 (b) The money in the Construction Fund shall be used to pay  
24 the costs of acquiring, constructing, reconstructing, purchasing,  
25 bettering, expanding, improving or maintaining the airports; and all  
26 costs incidental thereto, including the costs of the authorization,  
27 issuance and sale of the general revenue bonds. To the extent

1 provided in the bond resolution, money in the Construction Fund  
2 may also be used for the payment of interest on the general revenue  
3 bonds during the period of actual construction and such further  
4 period, not to exceed six (6) months, after the period of construction.  
5 When all costs required to be paid from the Construction Fund have  
6 been paid, or provision for the payment of such costs have been  
7 made, money remaining on deposit in the Construction Fund may be  
8 applied as provided in the bond resolution authorizing the issuance  
9 of such general revenue bonds.

10 (c) The Board may provide in the bond resolution that money  
11 in the Construction Fund may be invested in any investment  
12 permitted by the bond resolution. The interest earned upon or any  
13 profits derived from the sale of this investment shall be deposited in  
14 and become a part of the Construction Fund.

15 (d) The Board may provide in the bond resolution for the  
16 establishment of such accounts in the Construction Fund as are  
17 necessary.”

18 **Section 7.** §1206 of Title 12, Guam Code Annotated, is amended to  
19 read:

20 “§1206. **Guam Airport Authority Revenue Fund, Creation**  
21 **of.** (a) There is created a special fund of the Authority known as the  
22 “Guam Airport Authority Revenue Fund”, which shall be wholly  
23 segregated and set apart from all other funds of the Government.  
24 The Revenue Fund is and shall be a trust fund for the uses and  
25 purposes provided in this Article, and there shall be paid into the  
26 Revenue Fund all revenue derived by the Authority from the  
27 ownership, lease, use and operation of the airports, facilities and

1 improvements thereof and facilities and improvements used in  
2 connection therewith. The money in the Revenue Fund shall be used  
3 only to pay or secure the payment of:

4 (1) The principal of and interest on the general revenue  
5 bonds.

6 (2) The normal and necessary costs of maintaining and  
7 operating the airports and all of the improvements and  
8 facilities thereof.

9 (3) The costs of renewals, replacements and  
10 extraordinary repairs to the airports and all of the  
11 improvements and facilities of the airports.

12 (4) Any other costs relating to the ownership, use and  
13 operation of the airports.

14 (b) The Board may establish and use such other funds and  
15 accounts as are required to provide for the security of the general  
16 revenue bonds.

17 (c) The Board may provide in the bond resolution that money  
18 in the Revenue Fund or any other fund or account authorized by the  
19 bond resolution may be invested in any investments permitted by the  
20 bond resolution. The interest earned upon or any profit derived from  
21 the sale of any such investment shall be deposited in and become a  
22 part of the Revenue Fund, or, if so provided in the bond resolution, in  
23 the Construction Fund.

24 (d) The Board may establish and use such funds and accounts  
25 as are required to provide for the security of special revenue bonds,  
26 including reserves therefor. The Bond resolution may authorize that  
27 money in such funds or accounts may be invested in any investments

1 permitted by the bond resolution. The interest earned upon or any  
2 profits derived from the sale of this investment shall be deposited in  
3 and become a part of such funds and accounts.”

4 **Section 8.** §1207 of Title 12, Guam Code Annotated, is amended to  
5 read:

6 **“§1207. Revenue Bond Redemption Fund, Establishment**  
7 **of.** (a) There is established a special fund of the Authority, to be  
8 known as the “Guam Airport Authority Bond Redemption Fund”,  
9 which is a trust fund for paying and securing the payment of the  
10 principal of and interest on and redemption premiums, if any, on the  
11 general revenue bonds and which shall be at all times wholly  
12 segregated and set apart from all other funds of the Government. As  
13 may be provided by the Board in the bond resolution, there shall be  
14 set aside and paid into the Bond Redemption Fund an amount of  
15 money sufficient to pay the principal of and interest and redemption  
16 premiums, if any, on the general revenue bonds as such payments  
17 become due and, if so provided by the Board in the bond resolution,  
18 sufficient also to maintain reserves for this purpose. The Bond  
19 Redemption Fund shall be drawn upon for the purposes of paying  
20 the principal of and interest and redemption premiums, if any, on the  
21 general revenue bonds, or for reimbursing any credit enhancement  
22 provider for any such payment.

23 (b) In the event the Authority shall issue general revenue bonds  
24 which are payable junior and subordinate to outstanding general  
25 revenue bonds, the Board may provide in the bond resolution  
26 authorizing such junior and subordinate bonds for the creation and



1 maintenance of such other funds and accounts as are required to  
2 provide for the security of such bonds.”

3 **Section 9.** §1208 of Title 12, Guam Code Annotated, is amended to  
4 read:

5 “§1208. **Bond Resolution, Adoption of; Concurrence Required;**  
6 **Contents of.** (a) No general revenue bonds shall be issued unless  
7 authorized by the Board in a bond resolution adopted by it and unless  
8 the Legislature by statute approves the terms and conditions of the  
9 bonds. Such resolution shall take effect only upon its approval by the  
10 Governor in writing.

11 (b) The Board shall specify in the bond resolution the  
12 denomination or denominations in which the bonds shall be issued,  
13 the interest rate or rates the bonds shall bear or the manner of  
14 determining such interest rate or rates and the frequency with which  
15 interest payments shall be made upon them. The Board may provide  
16 in the bond resolution or any subsequent bond resolution that the  
17 bonds may:

18 (1) Bear the same or different dates.

19 (2) Mature at such time or times not exceeding thirty-  
20 five (35) years from their respective dates.

21 (3) Be paid in certain mediums and at certain places.

22 (4) Contain terms of redemption with such premiums as  
23 may be fixed (but no general revenue bond may be subject to  
24 redemption prior to its fixed maturity date unless such right of  
25 redemption is expressly set forth on the face of the general  
26 revenue bond).

1 (5) Contain terms, covenants and conditions set by the  
2 Authority pursuant to §1209 of this Article, and be in coupon or  
3 registered form.

4 (c) The bond resolution or another resolution adopted by the  
5 Board may authorize the sale of the bonds at either public or private  
6 sale and at a price not less than such price as is set in the resolution  
7 authorizing the sale. If any general revenue bonds are to be sold at  
8 public sale, notice of sale with respect thereto shall be published at  
9 least once not less than five (5) days prior to the date of sale in a  
10 newspaper of general circulation in Guam and in a financial  
11 newspaper published in any of the cities of New York, Chicago,  
12 Illinois, or San Francisco, California.

13 (d) Any provision authorized by this Article to be included in a  
14 bond resolution may be included in an indenture or trust agreement  
15 authorized by the bond resolution to be executed on behalf of the  
16 Authority and incorporated by reference in the bond resolution in  
17 substantially final form."

18 **Section 10.** §1209 of Title 12, Guam Code Annotated, is amended to  
19 read:

20 "§1209. **Bond Covenants; Actions to Enforce.** (a) The Board  
21 may include in any bond resolution authorizing the issuance of  
22 general revenue bonds under this Article covenants as to:

23 (1) The purpose or purposes to which the proceeds or  
24 sale of the bonds shall be applied and the use and disposition  
25 thereof.

26 (2) The use and disposition of the revenue of the  
27 airports, including the creation and maintenance of reserves.

1 (3) The issuance of additional general revenue bonds  
2 payable from the revenue of the airports.

3 (4) The operation, maintenance and repair of the  
4 airports.

5 (5) The insurance to be carried by the Authority and the  
6 use and disposition of insurance moneys.

7 (6) Books of account and the inspection and audit  
8 thereof.

9 (7) Such other matters as are deemed necessary and  
10 required by the Authority in order to properly secure such  
11 bonds.

12 (b) The provisions of this Article and any bond resolution  
13 authorizing the issuance of general revenue bonds shall be a contract  
14 with the bondholders and the duties of the Authority or any person  
15 under this Article and the conditions of any bond resolution shall be  
16 enforceable by any bondholder by injunction, mandamus, or other  
17 appropriate suit, action or proceeding in any court of competent  
18 jurisdiction, subject to any limitations set forth in the bond  
19 resolution."

20 **Section 11.** §1210 of Title 12 of the Guam Code Annotated is amended  
21 to read:

22 "§1210. **Bond Resolution, Adoption of; Concurrence Required;**  
23 **Contents of.** (a) No special revenue bonds shall be issued unless  
24 authorized by the Board in a bond resolution adopted by it. Such  
25 resolution shall take effect only upon its approval by the Governor in  
26 writing and the Legislature by statute.

1 (b) The Board shall specify in the bond resolution the  
2 denomination or denominations in which the bonds shall be issued,  
3 the interest rate or rates the bond shall bear and the frequency with  
4 which interest payments shall be made upon them. The Board may  
5 provide in the bond resolution or any subsequent bond resolution  
6 that the bonds may:

7 (1) Bear the same or different dates.

8 (2) Mature at such time or times not exceeding thirty-  
9 five (35) years from their respective dates.

10 (3) Be paid in certain mediums and at certain places.

11 (4) Contain terms of redemption with such premiums as  
12 may be fixed (but no special revenue bonds may be subject to  
13 redemption prior to its fixed maturity date unless such right of  
14 redemption is expressly set forth on the face of the special  
15 revenue bond).

16 (5) Contain terms, covenants and conditions set by the  
17 Board pursuant to §1211 of this Article, and be in coupon or  
18 registered form.

19 (c) The bonds shall not be sold until the Board shall have  
20 adopted a second resolution authorizing the sale. Such resolution  
21 shall take effect only upon its approval by the Governor and the  
22 Legislature. The sale may be either public or private and shall be at  
23 such price as is set in the resolution authorizing the sale. If any  
24 special revenue bonds are to be sold at public sale, a notice of sale  
25 with respect thereto shall be published at least once not less than five  
26 (5) days prior to the date of sale in a newspaper of general  
27 circulation in Guam and in a financial newspaper published in any of

1 the cities of New York, Chicago, Illinois or San Francisco,  
2 California.”

3 **Section 12.** §1221 of Title 12, Guam Code Annotated is repealed.  
4 (requires all bonds to be issued pursuant to this Article to be tax exempt.)

5 **Section 13.** §1226 of Title 12, Guam Code Annotated, is amended to  
6 read:

7 “§1226. **Pledge and Agreement by Government.** The  
8 Government hereby pledges to and agrees with the holders of any  
9 bonds issued under this Article that the Government will not:

10 (a) Limit or alter the rights hereby vested in the Authority to  
11 fulfill the terms of any agreements made with the bondholders,

12 (b) in any way impair the rights and remedies of the  
13 bondholders,

14 (c) acquire, operate or maintain or permit any instrumentality  
15 of the Government or any other public or private agency, entity or  
16 person to acquire, operate or maintain within the territory an airport  
17 facility competitive with the airports, or

18 (d) transfer any additional non-airport operating  
19 responsibilities to the Authority without providing for the payment  
20 of the costs of such additional responsibilities. The Authority is  
21 authorized to include this pledge and agreement of the Government  
22 in an agreement with the holders of bonds.”

23 **Section 14.** Notwithstanding any other provision of law, the Board of  
24 Director of the Guam Visitors Bureau may utilize such unencumbered and  
25 unexpended funds from their Fiscal Year 1992 Budget Appropriation as they  
26 deem necessary to inform potential visitors that Guam has recovered from  
27 the effects of Typhoon Omar.

Date: 9/14/92

VOTING SHEET

Bill No. 797

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_

	AYE	NO	NOT VOTING	ABSENT/ OUT DURING ROLL CALL
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George	✓			
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.				✓
DIERKING, Herminia D.	✓			
DUENAS, Edward R.				✓
ESPALDON, Ernesto M.	✓			
GUTIERREZ, Carl T.C.	✓			
LUJAN, Pilar C.	✓			
MAILLOUX, Gordon	✓			
MANIBUSAN, Marilyn D.A.	✓			
PARKINSON, Don				✓
REIDY, Michael J.	✓			
RUTH, Martha C.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francisco R.	✓			
SHIMIZU, David L.G.	✓			
TANAKA, Thomas V.C.			✓	
UNPINGCO, Antonio R.	✓			

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1

3

# Twenty-First Guam Legislature

155 Hesler Street  
Pacific Arcade  
Agana, Guam 96910  
Telephone: (671) 472-3407/8/9  
FAX: (671) 477-3161



Chairman, Committee  
on Ways & Means  
  
Vice-Chairman, Committee  
on Tourism & Transportation

**CARL T. C. GUTIERREZ**  
Senator

September 11, 1992

Honorable Speaker Joe T. San Agustin  
Speaker, Twenty-First Guam Legislature  
155 Hesler St.  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Ways & Means wishes to report out its findings on **BILL NO. 797 "AN ACT TO APPROVE THE TERMS AND CONDITIONS OF THE ISSUANCE OF GUAM AIRPORT AUTHORITY GENERAL REVENUE BONDS"** to the full Legislature with the recommendation to do Pass as Substituted by the Committee on Ways and Means and **BILL NO. 798 "AN ACT TO AMEND ARTICLE 2 OF THE GUAM AIRPORT AUTHORITY ACT RELATING TO THE ISSUANCE OF REVENUE BONDS"** to be placed in the Inactive File as the provision of this bill has been incorporated into Bill No. 797.

The Committee Voting Record is as follows:

<u>BILL NO. 797</u>		<u>BILL NO. 798</u>	
TO PASS:	<u>8</u>	TO PASS:	<u>0</u>
NOT TO PASS:	<u>1</u>	NOT TO PASS:	<u>0</u>
ABSTENTIONS:	<u>0</u>	ABSTENTIONS:	<u>0</u>
INACTIVE FILE:	<u>0</u>	INACTIVE FILE:	<u>9</u>

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

Sincerely,

A handwritten signature in black ink, appearing to read "C. Gutierrez".

**CARL T. C. GUTIERREZ**  
Chairman, Committee on Ways & Means

Twenty-First Guam Legislature  
 Committee on Ways & Means  
**VOTING SHEET**

BILL NO.

**797**

AN ACT TO APPROVE THE TERMS AND CONDITIONS OF THE  
 ISSUANCE OF GUAM AIRPORT AUTHORITY GENERAL REVENUE  
 BONDS.

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
<i>[Signature]</i> Senator Carl T. C. GUTIERREZ Chairman	✓			
<i>[Signature]</i> Senator Herminia D. DIERKING Vice-Chairman	✓			
<i>[Signature]</i> Senator John P. AGUON Member	✓			
<i>[Signature]</i> Senator Elizabeth P. ARROLA Member	✓			
<i>[Signature]</i> Senator George BAMBIA Member	✓			
<i>[Signature]</i> Senator Anthony BLAZ Member				
Senator Doris F. BROOKS Member				
Senator Ernesto M. ESPALDON Member				
<i>[Signature]</i> Senator Marilyn MANIBUSAN Member				<i>To report out to discuss 9/14/92</i>
<i>[Signature]</i> Senator Don PARKINSON Member				<i>To discuss 9/14/92 on the floor MR</i>
Senator Michael J. REIDY Member				
<i>[Signature]</i> Senator Martha C. RUTH Member				
<i>[Signature]</i> Senator David SHIMIZU Member	✓			
<i>[Signature]</i> Speaker Joaquin SAN AGUSTIN Ex-Officio Member	✓			



Twenty-First Guam Legislature  
 Committee on Ways & Means  
**VOTING SHEET**

BILL NO.

798

(To be placed in the Inactive File)

AN ACT TO AMEND ARTICLE 2 OF THE GUAM AIRPORT  
 AUTHORITY ACT RELATING TO THE ISSUANCE OF REVENUE  
 BONDS.

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
<i>[Signature]</i> Senator Carl T. C. GUTIERREZ Chairman	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
<i>[Signature]</i> Senator Herminia D. DIERKING Vice-Chairman	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
<i>[Signature]</i> Senator John P. AGUON Member				<input checked="" type="checkbox"/>
<i>[Signature]</i> Senator Elizabeth P. ARRIOLA Member	<input checked="" type="checkbox"/>			
<i>[Signature]</i> Senator George BAMBA Member				<input checked="" type="checkbox"/>
Senator Anthony BLAZ Member				
Senator Doris F. BROOKS Member				
Senator Ernesto M. ESPALDON Member				
<i>[Signature]</i> Senator Marilyn MANIBUSAN Member				<input checked="" type="checkbox"/>
Senator Don PARKINSON Member				
Senator Michael J. REIDY Member				
<i>[Signature]</i> Senator Martha C. RUTH Member				<input checked="" type="checkbox"/>
<i>[Signature]</i> Senator David SHIMIZU Member				<input checked="" type="checkbox"/>
<i>[Signature]</i> Speaker Joe T. SAN AGUSTIN Ex-Officio Member				<input checked="" type="checkbox"/>

**COMMITTEE ON WAYS AND MEANS  
COMMITTEE REPORT ON**

**BILL NO. 797**

**AN ACT TO APPROVE THE TERMS AND CONDITIONS OF  
THE ISSUANCE OF GUAM AIRPORT AUTHORITY  
GENERAL REVENUE BONDS.**

**BILL NO. 798**

**AN ACT TO AMEND ARTICLE 2 OF THE GUAM AIRPORT  
AUTHORITY ACT RELATING TO THE ISSUANCE OF  
REVENUE BONDS.**

**PURPOSE AND ESSENTIAL ELEMENTS**

Bill No. 797 and Bill No. 798 are companion bills authorizing the issuance of general revenue bonds to build an enlarged Guam International Air Terminal and related facilities, as well as amending certain sections of present Guam Airport Authority law.

Bill No. 797 approves the terms and conditions of the issuance by the Guam Airport Authority of General Revenue bonds in one (1) or more series of an aggregate principal amount not to exceed Three Hundred Million Dollars (\$3,000,000) with a final maturity not exceeding thirty-five (35) years and bearing interest at a fixed or variable rate not exceeding twelve percent (12%) per annum if interest on a series is tax-exempt, and fifteen percent (15%) per annum if interest on a series is taxable.

Further provisions of Bill 797 indicate that the bonds are to be issued only upon such conditions relating to feasibility as may be required by the purchaser or providers of any credit enhancement; and that the obligations are secured by revenues under airline agreements which are currently in effect; shall be repayable from the proceeds of a subsequent issuance of bonds; shall be subordinate to all current outstanding bonds of the Guam Airport Authority issued in 1979. Additionally, Bill 797 states that the bonds are limited obligations payable solely from the revenues and other assets of Guam Airport Authority and shall not be a debt or liability of the government of Guam.

Bill No. 798 amends §1201 of Title 12, Guam Code Annotated, adding the definition of "airport purposes", recognizing that the airport is named "Antonio B. Won Pat Guam International Air Terminal", specifying that the airport can be either owned or operated by the Guam Airport Authority, making various technical amendments changing the term "general obligations bond" to "general revenue bond", adding language which allows the GAA to enter into contracts without prior approval of the legislature for use of concession agreements and permits for the use of airport facilities and properties enlarging the ability to issue bonds not only to finance acquisition, purchase, construction, improvement, and so forth, but for "any claims or judgments relating to the airports", making it possible to enter into credit enhancement agreements with providers other than banking associations, enlarging language allowing the board to invest construction fund money in any investment permitted by the bond resolution, eliminating the requirement that a second resolution be adopted by the legislature authorizing the sale, and eliminating redundant language indicating that the bonds will be approved by statute or another resolution adopted by the board to authorize sale of the bonds, allowing any provision in the Article concerning the issuing of bonds to be included in an indenture or trust agreement authorized by the bond resolution to be executed on behalf of the authority and incorporated by reference in the bond resolution in substantially final form, enlarging the maturity date to thirty-five (35) years from the previous twenty-five (25) years, and making the GAA autonomous such that other laws cannot amend the GAA laws unless specifically so named. This is a broad, far reaching provision making the Guam Airport Authority very independent.

### **PUBLIC HEARING**

The Committee on Ways and Means conducted a public hearing on Wednesday, July 29, 1992 at 1:00 o'clock p.m. in the Legislative Public Hearing Room to gather testimony on Bill No. 797 and 798. Present at the hearing were Senator Carl T. C. Gutierrez, Chairman of the Committee, who conducted the hearing, being joined by Senators John Perez Aguon, Anthony C. Blaz, Don Parkinson, and Martha C. Ruth.

### **TESTIMONY**

Mr. Anthony P. Sgro, Chairman of the Guam Airport Authority Board of Directors, testified in favor of the bonds. He submitted written testimony, which is attached, and which he read during the hearing.

His testimony indicates that the Guam Airport Authority expansion is the single largest public works program ever undertaken in the territory of Guam. It is an estimated Three Hundred Million Dollars (\$300,000,000) worth of construction. He indicated that the General Fund would not support the debt service or retirement of the bonds, but that this obligation would come solely from revenue generated from airlines and other airport concessionaires. The signatory airlines support the size of the program.

In regard to the GAA and DFS, Mr. Sgro indicated that they intended to 1) improve the terms of the agreement; 2) adjust revenues in support of expansion finance program; 3) provide an opportunity for other local businesses to sell goods at the airport; and 4) to improve public service for retail facilities in terms of sizing, variety and convenience. Mr. Sgro indicated that the negotiations with DFS were advantageous in light of the fact that otherwise the relationship would have been subjected to judicial interpretations.

At the end of the construction of the terminal in 1997, there are only four (4) more years remaining in the GAA-DFS concession agreement. Mr. Sgro indicated that next time, industry standards for airport concessions will prevail, and among many other improvements, multiple vendors will be accommodated. He indicated that the tourism business cannot grow without expanding and upgrading the airport facilities. Mr. Sgro also introduced to the committee Mr. Michael Moroney, principal from the airport consulting group of KPMG-Peat Marwick in San Mateo, California; Mr. Stan Dirks, bond council on this and several Guam finance projects from the law firm of Orrick, Herrington, and Sutcliffe in San Francisco; Mr. Frank Chin, representing the senior managing underwriter, the firm of Smith Barney; and Mr. Dick Cline, program-construction manager from the Ralph M. Parsons company in Pasadena.

Mr. Charles P. Crisostomo, Administrator of the Guam Economic Development Authority (GEDA) testified in favor of Bills 797 and 798. He read written testimony, which is attached. Mr. Crisostomo's testimony was in favor of the proposed bills authorizing the issuance of the revenue bonds.

Other testimony he presented indicated that the GEDA had complied with the laws concerning requests for proposals for underwriting services and that a selection of underwriters was made by the GEDA board of directors meeting on April 26, 1990. Those firms selected were Smith

Barney Harris Upham and Company as senior manager; and as co-managers Merrill Lynch, Shearson Lehman Hutton, Prudential-Bache, Morgan Stanley Saybrook Capital Corporation-PiperJaffery. The law firm of Orrick, Herrington, and Sutcliffe in San Francisco, California was selected to provide bond counsel services. The Guam Airport Authority Board of Directors adopted Resolution No. 92-02 determining the issue and sale of general revenue bonds, and Resolution No. 92-03 approving the issuance and sale of general revenue bonds and all related documents by the GEDA Board of Directors, on February 21, 1992.

The GEDA Board of Directors concurred and also adopted GEDA Resolution No. 92-02 approving the issuance and sale of GAA general revenue bonds and all related documents, agreements, and actions.

GEDA has formally transmitted all related documents to the Governor.

During additional oral testimony, Mr. Crisostomo indicated that GEDA had some concern on the continuing growth of travelers to Guam in order to support the bond issue. In 1990 the number of tourists dropped. Personnel from GEDA have contacted the statistical section of the Guam Visitor's Bureau and feel confident that there will be a continued growth in the tourist industry on Guam in the years to come to support the bond issuance.

Mr. Joey B. Cepeda, General Manager of the Guam Visitor's Bureau (GVB) testified in favor of the passage of the bills to provide funding necessary to finance the terminal expansion program. Mr. Cepeda provided written testimony which he read into the record and which is attached. He noted that GVB's recommendations on visitor satisfaction have been noted and incorporated into the terminal design.

Mr. Curtis Bourg testified on behalf of Continental Air Micronesia. He testified orally that Continental Air Micronesia does support the expansion of the Air terminal facility, even though there would be substantial increases in costs to that airline. Upon questioning by Senator Gutierrez, Mr. Bourg indicated that the costs would not be excessive and could be covered by the airline.

Chairman Gutierrez then indicated that he had received a letter from Mr. Donald J. Breeding, President and Chief Executive Officer of Continental Air Micronesia, who indicated that Continental Air Micronesia is presently in need of building a sizeable base maintenance hangar, however there does not seem to be enough acreage at the air terminal to build such a facility. Mr. Curtis Bourg indicated that approximately ten (10) acres would be need for an air hangar.

Upon questioning by Chairman Gutierrez, Mr. Bourg indicated that Continental Air Micronesia may need to locate their base maintenance hangar in the Philippines or on Saipan, although their preference is Guam. In asking those in attendance if anyone knew about land which could be utilized for such a facility, Guam Airport Authority board member Mr. Leo Slotnick indicated that there was a portion of Navy land which could be utilized for this purpose. Mr. Michael Moroney indicated that a portion of the capital improvement at the airport would call for access to some of the Navy land.

Vice-Chairman John P. Aguon inquired of the Executive Director of the Guam Airport Authority, Mr. Jess Torres, whether the airport had reviewed the letter from Mr. Breeding that had been given to the Chairman of the Ways and Means Committee and Mr. Torres replied that the board had discussed the issue of access to Navy land prior to this time. He also indicated to Senator Aguon that the master plan did include the facility of a maintenance hangar.

Mr. Torres also indicated that a hundred and twenty-five (125) to a hundred and twenty-eight (128) acres in the plan is Navy property and that about ten (10) to twelve (12) acres is a Navy aircraft maintenance facility.

Chairman Gutierrez indicated that the ten (10) to twelve (12) acres needed for a hangar should be part of the bond and the bonds should be used to purchase this land from the Navy, if necessary. Mr. Torres indicated that he was in favor of the solution and had been pursuing it with Mr. Breeding and with the Navy. He indicated that economics might dictate that Continental Air Micronesia would move its operations elsewhere if it could not obtain such a facility on Guam. He indicated that this facility was a necessity and not a luxury, and that some accommodations would need to be made with various parties and other airlines to produce it. He indicated that, economically speaking, this facility would be very beneficial to the territory.

Chairman Gutierrez questioned Mr. Torres concerning his membership in the Naval Air Station (NAS) Task Force Committee which is studying the problem of getting some NAS land returned. Mr. Torres indicated that the problem is "straight bureaucracy". Further discussion indicated that perhaps money would be a factor, and Chairman Gutierrez indicated that in a Three Hundred Million Dollar (\$300,000,000) bond issue that it would not be difficult to put Five Million Dollars (\$5,000,000) in for land acquisition, if that would be necessary. Mr. Torres concurred. Mr. Torres indicated that the acquisition of land for this necessary facility would be taken care of.

Senator Don Parkinson questioned the persons testifying and explained that he felt that if a maintenance facility for Continental Air Micronesia could not be located on Guam, which is the hub of their operations, that eventually the hub will move. This may mean the hub may move to Saipan or to the Philippines. Senator Parkinson then asked Mr. Torres whether it would impact upon the bond issue if the hub for Continental Air Micronesia moved to another location. Mr. Torres indicated that there would be some impact. There would be an economic impact on the territory in terms of employment. Senator Parkinson also inquired of Mr. Bourg whether there was any land at the airport which was under airport control which could be utilized for maintenance hangar purposes, and he was informed that he was not aware of any.

Mr. Duane Siguenza, Deputy Director of the Airport Authority and Member of the NAS Task Force Committee, testified concerning this issue. He indicated that more land would be needed for the airport expansion project, which would have to be Navy land, to be utilized for terminal parking. This would be needed by 1995. He indicated that the airport currently uses Navy property which is known as the "North Ramp".

Upon questioning by Senator Parkinson, Mr. Siguenza indicated that environmental studies have been done of the area, and are due in September or October of this year regarding contamination from an old sanitary land fill adjacent, but not on, the property. Mr. Siguenza indicated that this parcel was the only available portion of land which does not impact on Naval facilities and would not require relocation of housing. Relocation of housing would cost approximately Fifteen Million Dollars (\$15,000,000) whereas the small portion of land needed would be approximately One Million Dollars (\$1,000,000). This parcel is known as parcel "D". For this parcel, there is no cost for the transfer. The Navy will transfer this portion for free. The Navy did indicate that the GAA could get on the land and do some pre-engineering studies to determine the suitability of placing aprons and the building necessary for a sizable base maintenance base hangar.

Senator Gutierrez suggested that the Airport Authority could have the parcel known as parcel "D" included in the joint use agreement between the Navy and the Guam Airport Authority and would not necessarily need the property to be turned over to to the Guam Airport Authority. Mr. Siguenza thought that this route might lead to negotiations which would be just as lengthy because it would open up the joint use agreement to other issues besides the joint use of that parcel.

Senator Parkinson pointed out that the Governor, Lieutenant Governor, and the Delegate to Congress need to be personally involved in order to get anything done about the situation, particularly to open doors in Washington, otherwise another ten (10) years would go by and nothing will have been done. Senator Parkinson pointed out that many other problems are still around ten (10) years later, nothing having been done about them.

Mr. Carl Taitano pointed out that a Congressional Delegation on base closures would be visiting Guam, however an extra effort could be made.

Senator Parkinson continued to express his concern that if the airlines cost per passenger to operate on Guam is expensive, that if the maintenance facilities for the airlines are not here, that the entire hub for the airline could at some point be moved to the Philippines for economic reasons. Some discussion then ensued concerning graphs presented in the Guam Airport Authority presentation binder and labelling of "airline costs per passenger" on the graph. It was established that the airlines would have to pay Fifteen Dollars (\$15) per head more for the new terminal and this would be a significant increase to the airlines in costs of doing business.

At this point Mr. Mike Moroney interjected that, typically, airlines take their airport costs and exclude those airport cost on a system basis in the calculation of their tarriffs, which are the fares charged to the customer. An increased cost at a particular location does not mean that tickets to that location, such as Guam, would be increased, but that that cost would be included in the calculation of fares throughout the system. Senator Parkinson felt that the costs would not be spread across the entire Continental system, because a new company is going to be operating from Guam over the old Air Micronesia system. Senator Parkinson indicated that he understood that Air Micronesia would be set up as a separate company partially owned by Continental, and considered a separate airline and independent from the parent company, Continental Airlines. This would protect the local company from the bankruptcy proceedings of Continental Airlines.

Senator Parkinson expressed that if the legislature is going to approve this package, one of the conditions of approval has to be that space must be made available for Continental Air Micronesia or other airlines that want to hub on Guam in the future. Senator Parkinson indicated that Guam could not afford to lose Continental to Saipan. He pointed out that Pan Am no longer operates here, and we have lost other air carriers, and that the loss of the hub of Continental Air Micronesia



would make the bond issue not viable. Since the traffic through the air terminal is what is paying the bond issue, whether or not Continental Air Micronesia has a hub here would impact on the viability of the bonds. Attorney Ed Calvo, Jr. indicated that trying to expedite the release of the ten (10) acres as opposed to a larger parcel, would be a desirable procedure.

Senator Parkinson indicated that a statement of policy must be made that Continental Air Micronesia must be supported and that the land needed for its base maintenance hangar is at least as important as the airport terminal itself.

Attorney Peter Sgro, Jr., local counsel to the airport from the law firm of Moore, Ching, and Boertzel, indicated that there was a distinction between Continental Airlines, Inc. and Continental Air Micronesia.

Chairman Gutierrez pointed out that within the next sixty (60) days a new corporation known as Continental-Micronesia, will be formed which will be separate from Continental Airlines and other entities previously operating as Continental Air Micronesia.

Senator Ruth inquired how being a signatory airline to the bond agreement would be affected if the airline companies are changing their structure. Mr. Bourg indicated that that would not affect matters as certification of an airline and ownership of an airline are two (2) separate variables. Presently Continental Airlines is the signatory airline. Attorney Ed Calvo, Jr. explained that the contract then would be with the new entity if a new corporation is formed, and the new corporation will be hubbed on Guam. The contract could also be assigned to the new corporation. Mr. Michael Moroney indicated that what Mr. Calvo said was correct that the oral contract would be assigned to the new corporation and the new corporation would be a direct signatory. Mr. Moroney indicated that the key in the financing would be: will Continental Airlines execute the agreement. Subsequently, other agreements could be made. Attorney Stanley Dirks explained that the key to the financing is that a signature on the new agreements be from the Continental operations, whoever it is, Continental, Continental Air Micronesia or Continental-Micronesia.

Senator Ruth pointed out that the issue with Continental Air lines needing a base maintenance hangar is even more important than the issue with DFS. And she felt that this issue should be dealt with.

Senator Parkinson then engaged in inquiries concerning how gates work at the airport, and whether all airlines were considered signatory. Mr. Bourg responded that not all airlines are signatories, that JAL, ANA, NW, and Continental Air Micronesia are signatories, whereas other airlines such as Thai Airways International are not signatories, but use

gates. Deputy Director Duane Siquenza from the Guam Airport Authority indicated that new carriers who come in enter into agreements with current leaseholders, for example Thai Airways International rents gate space from Continental. Mr. Siquenza also indicated that some carriers use preferential gates, that they are not particularly assigned a gate. There is a formula for working out priorities of gates and times among the airlines.

Senator Parkinson inquired whether the agreement meant that the airline carrier would guarantee a certain amount of airline traffic through the airport to guarantee the bonds. Mr. Michael Moroney indicated that this was not the current way that airport bonds are financed, but rather that standard airport financing agreements now provide that if an airline, such as Continental, flies, the airline provides a revenue stream to the airport equal to their proportion of total activity at the airport. If they do not fly, there is no obligation except for fixed arrangements such as for ticket counter space. The security for the bonds is not the airline itself, but the O and D Airline travel which the airline supports. In other words, should one airline leave and another airline come in, that would not matter except that the passenger stream remain.

Senator Parkinson also questioned regarding other charges, such as ticket counter space, and it was established that ticket counter space is a fixed item that does not depend on how many passengers use the counter. "Use it or lose it" clauses are often used, as well as "use it or share it" clauses in contracts for counter space. Baggage handling is paid for based on activity, which in this case is arrival fee and departure fee. There is also an immigration fee. There are prorated based on passengers. There is also a loading bridge use fee when a loading bridge is used and this is based on the number of usages, not the number of passengers. There is an aircraft parking charge to recover the charge of the apron area that the aircraft sits upon and this is charged per activity, which would be per arrival or per departure. There is also a landing fee for the use of the airfield which is based on so many cents per thousand pounds of take-off weight. This is charged one way, whether arrival or departure. Mr. Moroney further explained that a residual cost-rate making approach is being used, where all of the costs of the airport are off set by all of the non-airline revenues. The net requirement is recovered from the airlines from space rentals and landing fees. The landing fees are the most significant component. The airlines have agreed in the rate making section, and two (2) safety nets, that at such time as the authority determines that it cannot pay when due any obligation when due, then it can increase the landing fees, which would

generate sufficient revenue so that it can pay, when due, all obligations. The key is the landing fees, which is the safety net for the entire deal.

Senator Parkinson indicated that he felt that it was not fair to do this type of arrangement to the airlines, and not do it to DFS, the concessionaire at the airport. Mr. Moroney indicated that this is a typical rate-making approach used broadly. Senator Parkinson indicated that he read in some financial statement that forty-seven percent (47%) of the revenues are obtained from DFS. Mr. Moroney indicated that in Anchorage, Alaska, and in Honolulu, DFS was a major contributor, and there were other locales where unusual revenues are taken to account, such as slot machines in Los Vegas.

Senator Parkinson asked whether there would be a commensurate reduction in the number of landings and takeoffs if Continental reduced its passengers to Guam. In other words, if there were fewer landings and take-offs, the fees would be significantly impacted. Mr. Moroney indicated that if all the airlines reduced their landings by one per year, that that would make the difference in whether the bonds became a break even proposition.

Senator Parkinson inquired whether Continental would be liable to make up any differences in revenues should it remove itself from the market. Mr. Moroney replied, typically, no, that there wouldn't be any liability. They would continue to pay fixed space rental on office space and ticket counters. Mr. Moroney referred to some documents and figures and Senator Parkinson requested a copy of them for examination. Mr. Moroney indicated that Continental was paying presently approximately Seventy Dollars (\$70) per square foot per year. Senator Parkinson compared the Seventy Dollars (\$70) per square foot per year that the airlines are paying, with the approximately Forty-two Dollars (\$42) per square foot per year (\$3.50 per square foot per month) that DFS is paying for its space. He pointed out that DFS would have prime retail space whereas the Continental offices are not luxurious. Mr. Siguenza indicated that costs per square foot are at Seventeen Dollars (\$17) per square foot at the present time. Senator Parkinson indicated that the new office space for airlines would be four (4) or five (5) times as expensive as that which is currently charged.

Senator Parkinson indicated that there were no comparisons of current costs with the projected costs of the new airport facility presented by the Guam Airport Authority in its presentation. Senator Parkinson indicated that he wanted current costs as well as historical costs, at least going back five (5) years. It was pointed out that current passengers at the

Guam International Airport are 1.256 Million for the year 1991. It was then presented that the low forecast of number of passengers for 1995 would be 1.8 Million. Senator Parkinson pointed out that this reflects the current growth which may change over the next few years. Senator Parkinson felt that basic assumptions made in these projections were that Continental or some other airline will hub on Guam and that arrivals and departures will increase in the same way as they have been.

Senator Parkinson asked what the cost per passenger was on Saipan and the information given was that it was approximately ten Dollars (\$10). It was speculated that enplanement costs would be extremely low in a place like Cebu, Philippines. Senator Parkinson indicated that he would be concerned that the package (bonds) be attractive enough that the airlines would want to stay here on Guam. Senator Parkinson indicated that air traffic from Japan-Guam-Japan would be able to absorb higher costs, as the price of tickets in that direction are twice as much as from Guam-Japan-Guam.

Senator Parkinson also indicated that he would like to know the effect if Guam were no longer a hub for Continental Airlines. Mr. Michael Moroney indicated that their projections were based on the assumption that Guam would not be a Continental hub. Mr. Moroney indicated that all of the planning, both financial, and for the terminal, were for expecting Guam to be a destination rather than a hub since being a destination was all that could really be counted upon. Mr. Moroney explained further that Continental is now operating a mini-hub, and that as they expand their services, the operations of the airport will also increase, and this has been planned for in the expansion part of the airport.

Mr. Moroney also indicated that the Guam Airport Authority had been dialoguing with Continental concerning the necessary space for their maintenance operations and Mr. Moroney also indicated that there are other airlines which do not have their maintenance operations in the same location as their hub. Although other airports in the United States have made this arrangement, he indicated that it would be advantageous for Guam to have its maintenance operations where the hub is located because their airlines could pick up what is known as "positioning flights". Some further discussion took place concerning the ability to change from one airline to another over long flights, and wherein this was the practice before 1979, it is now no longer the practice due to different methods of charging air fares.

Mr. Lennie Anderson, Jr. then gave oral testimony as the managing director of Northwest Airlines for Guam and Micronesia. He indicated that

Northwest was behind the expansion of the airport. Mr. Anderson indicated he did not know how Northwest would be in three (3) to five (5) years, however since 1991 the seat capacity per week has increased from two thousand eight hundred (2,800) seats to nine thousand (9,000) seats. Mr. Anderson indicated that he was also concerned about the costs per passenger issue, and that this does have to be addressed if the cost per passenger does go up.

Senator Parkinson brought up the issue of the possibility of using the old airport terminal for a few gates. Mr. Jess Torres indicated that the old terminal is now being used for commuter services such as Freedom Air. Meanwhile the Airport Authority is waiting for the Motor Vehicle Division to move out so the commuter flights can expand.

Senator Parkinson inquired whether there were plans to demolish the old terminal, and Mr. Torres indicated there are no plans to demolish the old terminal, but there are plans to tear out a portion of the new terminal for the new plans. Mr. Jerry Perez, President of DFS, submitted written testimony which he did not read into the record, but which is attached. The written testimony indicated that Mr. Perez is in support of Bill 797 and Bill 798, and that although GAA was not happy with the existing agreement with DFS, DFS expressed their willingness to explore ways to assist GAA, "but felt very strongly about preserving the integrity of a contract which was felt to be already burdensome financially to the company." DFS feels that it has arrived at a compromise package, however. Mr. Perez also indicated in his written testimony that DFS is in general agreement with the projection and basic assumptions given by the authority's financial consultants, and is working closely to ensure that the new terminal would be the best for the "least cost to the people of Guam". Mr. Perez also indicated that from a financing point of view, that the timing is better now to proceed with the project.

Mr. Alan Joynson then gave oral testimony on behalf of LSG Lufthansa Service. His company does airline catering and operates the airport restaurant. Mr. Joynson read from notes that he is in favor of the airport expansion.

Senator Parkinson inquired whether it was usual to have an exclusive contract to supply food to airlines.

Mr. Moroney indicated that it is not usual to have exclusive rights for in-flight food service, and in fact that LSG Lufthansa Service does not have an exclusive contract to provide in-flight food service, but has an exclusive contract for in-terminal food service. Airlines have the right to contract

with vendors of their choice, however no other vendors are supplying in-flight food service here now.

Mr. Angel Caluagay, Jr., General manager for Aeropak, Inc., which is the general sales agent for Thai Airways International testified and indicated that he was speaking on behalf of Mr. Warren Aukanasu. Mr. Caluagay read his written testimony, which is attached. The testimony indicates that several airlines have been using Guam as a vacation spot, an alternate hub to Tokyo, such as Aloha South Pacific Airlines, Hawaiian Airlines, and Northwest Airlines, as well as Garuda, All-Nippon Airways, Philippine Airlines, Korean Airlines, Japan, Asia, and Thai Airways International. Thai Airways International is in favor of fast tracking GAA's plans for expansion in order to envision that Guam would be the international hub south of Tokyo. Thai Airways International presently has only a small space and has been operating since April 1992 from the airport, however, they have plans to increase frequency. Thai Airways International feels that Guam cannot continue to rely on the Japanese markets and must open its doors to other countries particularly by improving Guam's image by expanding and upgrading the airport to U.S. and international standards.

Senator Parkinson asked Mr. Caluagay how the Guam Airport was not on a par with other airports. Mr. Caluagay replied that as a foreign carrier, Thai Airways International uses an air bus, however, there is only one jet way that can accommodate an air bus and the canopies do not fit up to the doors of an air bus, which is very inconvenient in a tropical area where it rains. Mr. Caluagay pointed out other benefits which are given at other airports such as moving runways for passengers so they do not have to walk long distances carrying luggage. Thai Airways International is also quiet inconvenienced in their operations now, as they have no space at the counter, cargo space, and a very small office in the basement. It was indicated, however, the airport is looking into present leases with the signatory airlines in order to attempt to accommodate Thai Airways International with some of its requirements.

A short several minute visual representation was shown on video tape to the committee at this point, indicating what the new terminal plan would look like both inside and outside.

Mr. Jess Torres, Executive Director of the Guam Airport Authority, then presented their explanation of the financing. He called upon Mr. Stan Dirks, the bond counsel, Mr. Frank Chin, Senior Underwriter for the bonds, and Senior Partner with KPMG-Peat Marwick, Mr. Michael Moroney.

Senator Aguon requested that the persons testifying concerning the financial arrangements walk the committee through the procedure. Mr. Michael Moroney then explained the financial arrangements.

He indicated that the Guam Airport Authority has negotiated a revenue financing agreement with the airlines and that final versions of the agreement are with the airlines for their review. He indicated that this agreement would make the requirements of the renovated facility an obligation of the airlines. The basic formula is: total airport requirements less non-airline revenues equals airline obligation to pay. Mr. Moroney explained that prior to 1978 and the deregulation of the airlines that airport bonds were rated based on the financial state of the airlines serving a particular market. After deregulation, there was a realization that the financial condition of the airlines was not the real reason bonds were secured, but rather the strength of the market. First, KPMG will complete a feasibility report which will be submitted to the senior managing underwriters for the preparation of the official bond statement which will go to Standard and Poor's and Moody's for review. Three years of history of financial performance, financial performance during the construction period, and a forecast of operating results for three to five years after the date of occupancy. An overview summary is presented today because the studies are not completed.

Mr. Mark Taylor of Peat Marwick then explained further that the crucial section in the testimony presented was under the section "Air Service", called historical and forecasting originating passengers. The forecasts were made in coordination with GVB, GEDA, Chamber of Commerce, Department of Commerce, the airlines, tour operators, travel agencies in Japan, and a consensus opinion was developed. The expected visitor development is what makes up the high forecast. This is approximately 10% average annual growth in originated passengers for Guam between 1990 and the year 2000. This is consistent with the growth of the last ten years. This projects the forecast of growth as it has been seen. However since there is some uncertainty, there is a range, and the low end of the range anticipates that hotel construction will not progress as expected and other constraints, or visitor demand could interact so that hotel rooms would not be filled. The low forecast is an average annual growth rate of 6% per year the mid point of the range is what number has been used in planning the size and type of facility. The low end of the range is what has been used for the financial analysis. The mid point forecast is consistent with forecasts published as recently as several months ago by the International Air Transport Association.

Senator Ruth inquired whether the planning had included possible military buildup in Guam. It was indicated that that factor would resolve in something closer to the low end of the forecast range.

Senator Parkinson inquired whether they had a breakdown of the projected number of tourists coming to Guam over the next twenty years, starting with historical figures. The consultant replied that they did not make a chart of such projections. Senator Parkinson requested that one be provided.

The consultant continued that the tourism market would make up the consistent percentage of airline traffic. Senator Parkinson requested historical figures going back at least five years. After referring to the information provided, Senator Parkinson indicated that the figures were only projections up to the year 2000, and that it was projected that the number of visitors to the island would be approximately 2 million, up from the 1 million experienced in 1991. Senator Parkinson also inquired concerning the total cost per employment of the entire cost of the airport, not just to the airlines.

He also inquired how long the present contract with DFS would be in effect and the consultant responded that it would expire at the year 2000.

Senator Ruth inquired whether the plans provided were based on the configuration of the present aircraft that the airlines were flying. The consultant replied that they have had detailed discussions with the airlines on aircraft that they now use, have ordered for use, and contemplate ordering for use.

Senator Parkinson inquired whether the projections took into account or proposed an airport departure tax. Mr. Moroney replied that the plan calls for a three-dollar-per-person enplanement airport charge. The application for imposing this charge, as allowed by law, is now in process at the Department of Transportation. Senator Parkinson inquired whether what was the maximum charge that could be charged and Mr. Moroney implied that three dollars (\$3) was the maximum. Senator Parkinson then inquired whether they were absolutely sure that the federal law applied to Guam in allowing Guam to apply such a charge, and Mr. Moroney replied that the GAA had previously noted that the law did not properly encompass the territories and steps have been taken to have the law amended. The FAA has accepted the application to apply this charge, and the application is in process. Senator Parkinson then explored the idea of a toll road leading to the airport as a method of raising revenues, and was informed that that had been explored in other places but that since federal funds are being used here that there must be free access on the road ways.



Chairman Gutierrez inquired whether the Guam Airport Authority had taken his suggestion of increasing the parking area at the airport, as was brought up in the previous meeting with Guam Airport Authority at the Guam Airport Authority building. Chairman Gutierrez pointed out that the extra parking deck was estimated to cost Six Million dollars (\$6,000,000). The consultant replied that they had looked in detail at the parking problem, and had determined that extra parking would not be needed as long as "revenue controls" were instituted in the use of the parking lot.

Senator Gutierrez pointed out that during peak times, all the parking slots will be filled and extra cars would be circulating in the lot looking for spaces. Senator Gutierrez then inquired how much parking had been placed into the plan, and was informed that between 750 to 840 parking spaces had been provided. Senator Gutierrez indicated that this would be for a projected passenger load of two million. The consultant indicated that the amount of parking needed does not relate directly to the amount of passengers, because most of the passengers will not be using the parking lot. Senator Gutierrez pointed out that the plan was not taking the culture of Guam into account because when local people use the airport many family members accompany them to the departures or arrivals. Senator Gutierrez indicated that he felt that the parking was inadequate for accommodating the cultural practices of the island and that even if different amounts were charge for parking that the parking spaces would always be full. He indicated that he would rather have more parking space available than not enough. And that this should be provided for right at the beginning of the bond issue. Mr. Anthony Sgro replied to this issue by indicating that at one time there was a deck for parking in the plan, however, after working with the consultants, the GAA is very cost conscious, and it was felt that the parking facility could be a cost cutting area. Senator Gutierrez indicated that if they did not want to write in the Six Million Dollar (\$6,000,000) cost for the extra parking that it would be mandated in through law. Mr. Sgro indicated that they would go ahead and put the parking lot in.

Senator Parkinson asked what the annual debt service would be on the bond issue. Mr. Moroney replied the aggregate annual debt service when the project is complete would be \$23,573,000 for the first year, assuming a variety of interest for a variety of bond issues ranging from 6 1/2% to 7 1/4%. Senator Parkinson inquired whether such a low interest rate could be obtained. Senator Parkinson pointed out that there was a

10% gap if the bonds were tax free and 15% tax if the bonds were not tax free in the bill.

Senator Parkinson inquired how many square feet Duty Free (DFS) has at the present time at the airport. Mr. Moroney replied that they have a store and a back area which comprises approximately 7,700 square feet on the second level. They also have a warehouse area below that, and a loading dock for which the square foot in each area is not available. Mr. Jerry Perez indicated that the storage and the loading dock were about 10,000 square feet. Senator Parkinson indicated that DFS would have about 81,000 square feet in the new building. It was confirmed that DFS would have about 20,000 square feet of retail space, including the central area and the wings. Senator Parkinson inquired how much the rent would go up for the space? Senator Ruth indicated that the agreement was already signed. Senator Gutierrez indicated that it was a memorandum of understanding. This was concurred by Mr. Perez.

Mr. Jerry Perez indicated that they talked about rent computed on a per square foot basis, but he felt that they were comparing oranges to apples. He indicated that in the agreement that the rent was calculated based on percentage of sales and a guarantee of a fixed amount. It is not actually a payment per square footage. Senator Parkinson inquired what Duty Free's (DFS) sales would be in 1990 as opposed to 1991. Mr. Moroney referred to a graph and indicated that the forecast of revenue from Duty Free (DFS) in the year 1997 would be 8.8 million dollars, then dropping to 8.28 million, then increasing to 10,100,000 then dropping to 9 million then up to 11 million. Senator Parkinson inquired what the amount was for 1991 and was informed 9,342,000. Senator Parkinson inquired whether Duty Free (DFS) would be paying less for three times as much space and was informed by Mr. Moroney that that was correct. Senator Parkinson indicated that this was the most ridiculous thing that he had heard in his life, that we would triple the amount of space for DFS and have them pay less rent. Senator Parkinson indicated that no amount of consultants would convince him that this was not a bad deal. Senator Parkinson inquired why the airport authority was not leaving the amount of space to Duty Free (DFS) to be the same. Chairman Gutierrez indicated that there was an interpretation that there is a clause in the present contract between GAA and DFS that should the airport expand, that DFS should be given additional space. Mr. Jerry Perez testified that this was correct and indicated that although they accounted for approximately 10% of the total space that they provided approximately 40% of the total revenues last year. Mr. Perez indicated that they would go to about double

that, and their space would be paid for. Senator Parkinson indicated that he thought they were releasing DFS from their obligation to pay on the bonds because the bonds would be paid off, and Mr. Moroney indicated that that was correct, the bonds would be paid off. Mr. Perez indicated that even so, the contract was still in effect, period, that the letter of credit would be used for issuing the bonds. Senator Parkinson indicated that that was only for the remaining balance on the bonds and Mr. Moroney indicated that that was correct.

Senator Ruth inquired why they were keeping the letter of credit. Mr. Moroney indicated that the bonds were separate from the contract and that whether or not the bonds were paid off does not change the fact that there is still a contract between GAA and DFS. He indicated that if they took the credit letter back, that nothing in particular would be gained from that.

Senator Ruth inquired whether they had negotiated this problem with DFS since the last meeting and that this should be taken into account in the memorandum of understanding, which apparently it is not.

Senator Parkinson indicated that he felt that the whole expansion plan was merely a design to give DFS more space. He indicated page 4 of Bill 798 as transmitted by the Governor, Subsection (f) he read into the record the following section:

“and notwithstanding any other provision of law, without prior approval of the Legislature, make and enter into contracts, leases, consention agreements and permits for the use of airport facilities and properties for airport purposes”

Senator Parkinson then indicated that this section would appear to give the Guam Airport Authority blanket authority to extend the lease and to take away the Legislature's purview over approving any other leases on airport property. Senator Parkinson also continued that he felt language should be placed into the bill stating that under no circumstances can there be any further amendments or extensions between GAA and DFS. He also expressed that he felt that unless the territory gets fair revenues from DFS that there should be no bond issue. He felt that he would rather not have an airport improvement if the revenues were not there. Senator Parkinson indicated that he agrees with Mr. Leo Slotnick's views and that the bond issue is a plan to give Duty Free double or triple the retail space with less money. Senator Parkinson indicated that he felt that this was one of the most bizarre scenarios he had ever seen in his life and he thought he had seen everything so far. He indicated that every few weeks the Legislature

is receiving bigger and better and more unbelievable agreements that have been negotiated by some board of the government of Guam.

Senator Parkinson then asked Mr. Jerry Perez the following question: By 1998 you will be receiving triple the amount of space and paying less money than you are paying right now, is that correct? Mr. Perez indicated that he had no comment and felt that it was unfair to cast aspersions on a contract that was negotiated in good faith by a lot of good people many years ago when conditions are very different than they are today. Senator Parkinson indicated that he felt that they should not build DFS more space unless they were going to treat people fairly, and Mr. Perez indicated that he felt that DFS had been treating the people of Guam fairly.

Senator Parkinson indicated that he felt that Duty Free was doing the best for Duty Free and squeezing as much as they could out of the government of Guam, however that is not good for the people of Guam. Senator Parkinson indicated that he felt the contract between GAA and DFS should be litigated and that the government of Guam should be prepared to spend 4 or 5 Million dollars to break this contract and its extension.

Senator Parkinson also indicated that the key to the whole arrangement was that the Governor had proposed that the Guam Airport Authority be given blanket authority to go ahead and enter any sort of extension of the present contract with the DFS.

Mr. Michael Moroney then interjected that the ability of the Guam Airport Authority to issue these Guam Airport Bonds is to satisfy a "rate maintenance covenant". This is necessary in order to market their bonds. They must be able to set leases and make rates to produce a certain amount of money. Mr. Moroney indicated that there are no exceptions that he knows of concerning the ability of an airport to enter into contracts for these purposes. Senator Parkinson then pointed out that this situation was not a normal board or agency and the agreement with DFS was not a normal arrangement and didn't Mr. Moroney agree to this, and Mr. Moroney indicated that he did. Mr. Moroney indicated that in some places that there is statutory authority that the airport authority would maximize revenues consistent with the provision of service to the public.

Senator Parkinson indicated that he read at some point where DFS is providing 47% of the revenues to the GAA that by 1998 that this would drop to 10 or 11%. Senator Parkinson asked for the numbers which back up the charts that are presented in the hearing today. It was indicated to him that these lists of numbers would be provided to him.

Senator Parkinson then indicated that in the airport bonds legislation there should be a requirement that if there is a contract in a future time that it would be re-bid and that there will be no exclusive contract to avoid sweetheart deals. He indicated that the bottom line was that the government had given away hundreds of millions of dollars to DFS over the years cause of a disadvantageous contract.

Senator Parkinson also indicated that he felt it was bizarre that the airport authority would be charging a greater rent to the airlines, which are actually providing the service to the island, then they are charging in rents to DFS. He brought up the fact that approximately 50% of the traffic was produced at the airport by Continental, yet they would be forced to pay up to \$70 a square foot per year for office space and Duty Free would be able to get prime retail space at approximately half of the price.

Mr. Moroney indicated that they had provided information to the Guam Airport Authority sometime back concerning the Duty Free contract. Senator Parkinson asked that that information be provided to him and it was agreed that it would be provided. It was indicated that the Guam Airport Authority was trying to implement an airport expansion project in spite of the contract that was previously entered into with DFS, that it was not being done because of the contract.

Senator Parkinson inquired what the contract says about space in regard to DFS. Mr. Moroney replied that Section 2.11 of the contract provides that in an airport expansion situation that they be provided space which is reasonable for the expansion of their business. He indicated that it was a unique clause.

Mr. Tony Sgro indicated that he was not happy with the contract with DFS, and they're even looking into the arrangement now whereby it might be possible that the contract could be interpreted that if Duty Free (DFS) does not sell certain items at its concession that it should not have exclusive rights concerning the selling of items which it is not selling. He indicated a law suit with Duty Free (DFS) would take approximately two (2) to three (3) years. He felt that once the airport is completed there are only four more years left in the DFS contract and that it would be more beneficial to build the airport expansion now and that the revenue returns could be maximized at that later time.

Senator Ruth requested a copy of the memorandum of understanding. She was assured that she would get a copy.

Mr. Sgro indicated that the DFS was forced to operate satellite shops on a long concourse which is proposed, as that would be a

convenience to the passenger. He also indicated that DFS did give up some of its exclusive rights to merchandise at the airport.

Senator Gutierrez then asked if there was room for changes in the memorandum of understanding. Mr. Sgro indicated that he felt that there was, that the attorneys should all get together and get it down in legal form.

Chairman Gutierrez indicated that the airport bonds have to go through the legislative process, and perhaps it would be beneficial for Mr. Jess Torres, Executive Director of the Guam Airport Authority, Mr. Jerry Perez, President of DFS and some senators to sit down and look over the memorandum of understanding and that the parties should work together in order to come to an understanding.

Senator Parkinson inquired what would happen if Duty Free was left with the same space as it presently has, as he felt the language in the contract was somewhat vague.

Mr. Moroney interjected two thoughts. First, the airport authority is trying to position itself to accommodate two and possibly three operators in the year 2002. Second, advice was given to GAA by the Senior Vice President of Continental and the Director of Properties of Northwest Airlines with regard to this contract. The airlines will make up the difference in revenues if DFS does not pay enough. Their advice a year ago was to go ahead and get the terminal built, let the agreement expire, and when it is re-bid, provide for terms in conditions in the airport facilities which are similar to those in other airports.

Senator Parkinson indicated that he was concerned with getting legislative approval for the terms and conditions of concession leases with no further extensions or modifications authorized without approval of the Legislature unless it was done strictly to improve the market share of the airport authority and nothing else.

Mr. Moroney indicated that many airports have a lease and concession policy which is a formal document developed through a hearing process which governs how that particular airport authority let its contracts, leases real estate, and the terms and conditions.

Senator Parkinson inquired whether it was common for city councils to approve these leases and Mr. Moroney responded "yes". Senator Parkinson pointed out that normally states do not administer airports but that counties do, and that in this case the Guam Legislature would be acting as a county, county council or a city council. Senator Parkinson pointed out that the Guam Airport Authority is not essentially as

autonomous as it might seem in that the board and commission all change every time there is an election. For that reason they are not independent.

Mr. Dirks indicated that legally it is feasible to require these terms and conditions. Mr. Dirks indicated that it would be possible to have legislation which would make it impossible for the next layer of government to interfere with the operations of the Guam Airport Authority. Senator Parkinson indicated that in the past this has not taken place. He indicated that the industrial park was not operated in a business-like manner and was a "sweetheart deal".

Senator Gutierrez inquired whether if a provision in the bill was made that concessionaires would need to have their contracts approved by the Legislature, how would that affect the bond issue. Mr. Moroney answered by indicating that the Legislature would have to covenant with the bond holders in that case. The covenant would need to be that the terms and conditions of these contracts would have to be set in order to pay the obligations of the enterprise. At that point, however, it would be a general government pledge instead of a general revenue bond. Chairman Gutierrez then inquired whether the conditions could be approved by the Legislature, not the rates. Mr. Moroney indicated that a policy could be set which would have to be endorsed by all concerned, that the GAA would have a check list which they would go through in approving any lease or concession, and that this is in affect in at least 50 out of the top 100 new United States airports. Mr. Moroney indicated that in the policy would provide certain criteria which must be met. He recommends that no concession be extended without being re-bid. Business-wise, one always does better re-bidding.

Senator Parkinson indicated that he felt that more local people need to be involved in this. He also felt that certain services do not lend themselves to competing with Duty Free, so that there must be certain classes of services. For example, those concessionaires selling paperback books could not pay the same revenues as those concessions selling Rolex watches. Mr. Moroney indicated that the way to handle this situation was to have persons selling like items to bid against each other, not persons selling books bidding against persons selling high end items. Mr. Moroney indicated that once the concessions are bid on a prearranged plan that a list of merchandise is established and that those bidding would need to sell all the items on the list, and only those items on the list.

Senator Parkinson wanted to know how long it would take to prepare such a document, because other airports must have good documents prepared already. Senator Parkinson indicated that would be

an answer to have those parameters defined and have it broad enough so that persons could sell cookies, candy, and other items such as that. In other words, it should be a local business program.

Senator Parkinson indicated that he would like to see fifty percent (50%) of the space reserved for small businesses. This would be able to support a lot of families without competing at all with Duty Free (DFS) because different passengers would be catered to.

Chairman Gutierrez indicated that they would submit such a document and it would be made an attachment to the bill.

Senator Parkinson then inquired concerning technical language in Bill 798, specifically on page 10, Subsection (c), where the language "shall not be sold until the board shall have adopted a second resolution authorizing the sale. Such resolution shall take affect only upon its approval by the Governor and the Legislature" was removed.

Bond Counsel Stan Dirks indicated that the language was redundant because the approval by the Governor also was required in Subsection (a) of that same Section, at the top of page 10.

Senator Parkinson also inquired concerning language on page 2 of the Guam Economic Development Authority Board resolution, in the fourth paragraph, where it indicates that a "report by a qualified airport consultant estimating the amount of projected revenues of the airport for each fiscal year from the date of issuance of the first series of the bonds, to and including the third full fiscal year after estimated date of completion of the additions etc. and indicating that the revenue projections be equal to or greater than 1.25 times the amount of annual debt service". Senator Parkinson asked whether this report has been done yet. Mr. Carl Taitano indicated that that will be the report which KPMG finishes just prior to going to market with the bonds. There is a draft of this report in preparation.

Senator Parkinson indicated that in the agreement allowing concessionaires to bid that there be specific provision for Guam Airport Authority and government accountants to go into the books of the concessionaires.

Senator Parkinson also indicated that rate covenant, Section 6.13 of the bond indenture attached to Bill 798, page 51 may need to be changed. He felt that the rate covenant has to be adjusted, that there has to be some sort of appeal process for the allocation of these rates if the airline or any other person feels that they are aggrieved by the rates. Mr. Stan Dirks indicated that the rate covenant portion needs to be pretty much established as it is although an appeals procedure could be placed in in



addition to that Section. Senator Parkinson indicated that the rate base must be reasonable, and he also felt that the allocation of rates between various classes of consumers must be a reasonable allocation. He indicated the common area fees would be the same regardless of the number of enplanements, for example air-conditioning would be the same. There needs to some type of appeals procedure in the bill.

The consultant indicated that this indenture is the agreement that the GAA has with its bond holders. They do not want included in that document that the revenues would be collected in any particular way. The only thing that they want is to have promise that a certain amount of dollar revenue will be collected. Any agreement to collect revenue in a certain way should be placed outside the bond indenture document. Senator Parkinson indicated that in the utility business, that information would be in the indenture, however it was pointed out that the Guam Airport Authority is not a utility and that rates are not established for these services. The consultant indicated that the utility does not usually negotiate with its customers concerning how the customers are to be charged, yet in the airport situation the airport has extensive negotiation with the airlines concerning how they are to be charged. Mr. Moroney indicated that the rate making procedures are in the contract and there is a provision providing for disclosure of budget in a timely fashion. The airlines can come back to the Guam Airport Authority Board for comments. Once the GAA adopts the budget, then the revenues which are needed for that budget are the responsibility for the airlines. There is a lot of litigation in this area which has established what you can and cannot do.

Senator Parkinson indicated that he felt that it was necessary to put something in the enabling legislation authorizing the Guam Airport Authority to charge the airlines reasonable rates sufficient to cover its operating expenses and debt service coverage, such as is in the public utilities commission law which bond holders are familiar with. Senator Parkinson also indicated that he felt language indicating that no one airline would be unreasonably discriminated against and charges should also be added. Mr. Moroney indicated that in the airline contract there is a favored nation clause that has essentially this language in it, however Senator Parkinson felt that in light of the fact that Guam is seeking to change its status at the present time that he felt that it would be more desirable to have this language directly in the enabling statute.

Next Senator Parkinson took up Section 6.18 on page 54 of the bond indenture. He felt this appears to grant by contract authority to GAA to negotiate without restriction. The bond counsel indicated that that would

not be the case, that the language provides for relationship with the new bond holders, the holders of special facility bonds. Any special revenue bond would, under the enabling statute, need to be approved by the Legislature. This section indicates that they can issue special facility bonds which would be subordinate to the general revenue bonds.

Mr. Moroney indicated that this sort of vehicle, special facility bonds, would be one way of financing other facilities such a maintenance hanger for Continental Airlines and who ever else is interested.

Senator Parkinson then turn his attention to Section 6.20, page 55 of the bond indenture. He felt this would hamper implementation of the private airport and private aviation. Mr. Carl Taitano indicated that the language prohibited airports which would compete with the Guam Airport Authority and that this would be necessary for security of the airport bonds that other airports in competition not be established. Mr. Moroney pointed out that he felt that the language did not preclude small private airports being developed for private aviation but that they would be done under the umbrella of the Guam Airport Authority and be figured into the rate making process. Mr. Dirks indicated that he felt the language did prohibit the development of a private airport.

Chairman Gutierrez asked if this language was considered a boiler plate language and the bond counsel responded that it was. He then felt that language allowing private airplanes could be allowable, however they would like to restrict charters from being part of that. Mr. Dirks was requested to come up some language on this item so that private aviation is not killed on Guam.

Senator Parkinson then inquired whether the Guam Airport Authority received \$21 Million in revenue during 1991 of which a significant portion came from DFS. By 1998 the Guam Airport Authority will be generating approximately \$70 Million from total revenues of which \$64 Million would be coming from the airlines. And the debt service will increase beyond revenues for this period of time. Senator Parkinson feels that the revenue requirements going up approximately five times is a very hefty increase. The consultant pointed out that if the airlines raise their cost to \$20.00 a passenger the rate would go from approximately one-half of 1% to approximately 2% of the total ticket. If they were to grow in their activity for about 2% then the airlines would break even on the increased payments. The projections are that the rates will grow 8% per year, which are considerably more than the revenues needed.

Senator Parkinson still felt that they were projecting that the air traffic would increase at approximately the same level as it has been in the

past 10 years, but that the economy is depending upon the economic condition of Japan and the predilection of Japanese tourists to travel to Guam and the level of military activity on the island, both of which cannot be controlled locally. He felt this makes the Guam Airport on a different footing with other airports in different parts of the country. He also feels that the development boom is receding on Guam, there aren't many new hotels and some will not be in use. He also pointed out the decay in the Nikkei stock market in Japan, indicating problems with the Japanese economy.

With this discussion the public hearing on Bills 797 and 798 was drawn to a close with the proviso that those parties interested in joining the committee members at a mark-up session later to contact the chairman and a meeting will be set up.

## COMMITTEE ACTION

### I

#### Work Sessions

The Chairman of the committee met with members of the board of directors and the management of the airport, as well as with legal counsel for the GAA, bond counsel and representatives of DFS in various work sessions in order to work out language and terms of the proposed airport bond issue which would be satisfactory to all parties involved in the workings of the airport facility, as well as to assess the viability of the bonds in the present market.

### II

#### Agreements

Agreement to various aspects of the bond issuance was brought about as follows:

1) The GAA is in agreement with the addition of a parking deck to the air terminal and area plan to be built as part of the bond issue, in order to accommodate the increased need for parking which is necessary for the expression of the local culture of the people of Guam, who meet in extended families to welcome and to bid farewell to family members who are arriving and departing the island. In recent years it has become possible for many more local residents to travel more frequently, due to the growth in the economy.

2) Prior to the public hearing on bills 797 and 798, DFS entered into a Memorandum of Understanding with the GAA which called for payment of an additional Ten Thousand Dollars (\$10,000) per month over

the present rent for the additional space which is to be given to DFS in the new terminal. (See attachment to this committee report.) After discussion, DFS agreed to amend the Memorandum of Understanding to include another Ten Thousand Dollars (\$10,000) per month for the additional space. (See letter attachment to this committee report.)

3) It was agreed that exclusive agreements range from three (3) to seven (7) years as an industry standard, and that any exclusive agreements at the airport terminal should be for no longer than five (5) years, unless approved by the Legislature by statute.

4) It was agreed that the GAA should form a set of rules and regulations to govern the agreements made between the GAA and concessionaires, other businesses and service providers, to give the public and the business community expected criteria and standards for doing business at the new facility.

### III

#### Changes to Bill No. 797

Bill 797 was kept essentially the same as introduced, with stylistic modifications and technical amendments. One change was added to Section 2 of the bill, a Subsection (f), to give some background concerning the role that DFS has played in the history of their original agreement with GAA, and the changes that have come about to the present new understanding of the relationship between GAA and DFS as it will be in the new terminal. The provisions of Bill 798 were included into Bill 797, and some changes were made to those provisions as follows:

1) A new §1203.1 was added to Title 12, Guam Code Annotated, as provided in Section 3 of the substitute bill reported out by the committee. This Section provides some limitations on the agreements that are to be made between GAA and other parties. It provides that any exclusive right that is granted unless by a competitive proposal procedure, and cannot be for longer than five (5) years, unless approved by the Legislature by statute. It provides that the GAA must establish criteria by rules and regulations according to the Administrative Adjudication Law to provide for the operation of a concession, other business, or service provider at the airport terminal. It provides that agreements shall not be extended or modified without following the criteria set up by rules and regulations, or in the case of exclusive agreements, to be in conformance with the requirements for exclusive agreements mentioned above. It provides that charges to the airlines must not be discriminatory between the airlines.

2) A definition of "credit enhancement" was added to Section 4 of the bill, to be part of §1201 of Title 12, Guam Code Annotated.

3) Although the GAA is a part of the government of Guam according to its enabling statute, references to "government" funds were deleted and the funds related to the bond issuance were designated as funds of GAA in order to enhance the expectancy that the bonds will be paid by the GAA from its revenues and make the GAA responsible for this function independently from the rest of the government of Guam.

Bill 798

It is not necessary to have two bills which are related to the same issue. Although originally Bill 797 contained terms strictly for the authorization of the bonds, and bill 798 contained terms that were amendments to the GAA enabling statute, these subjects, for economy, are more desirable to be placed in the same bill, Bill 797.

**COMMITTEE RECOMMENDATION**

The Committee on Ways and Means recommends that Bill No. 798 be placed in the inactive file, and recommends that Bill No. 797 be reported out to the full legislature to do pass, as substituted.

**TWENTY-FIRST GUAM LEGISLATURE**  
**COMMITTEE ON WAYS & MEANS**  
**PUBLIC HEARING TESTIMONY SIGN-IN ROSTER**

**BILL NO. 797**

**AN ACT TO APPROVE THE TERMS AND CONDITIONS OF THE  
ISSUANCE OF GUAM AIRPORT AUTHORITY GENERAL  
REVENUE BONDS.**

NAME OF WITNESS (Please print clearly)	REPRESENTING	STATEMENT (Written or Oral)	TESTIMONY ( check one) FOR AGAINST	
<i>CHARLES P. CRISOSTOMO</i>	<i>GEON</i>	<i>WRITTEN / ORAL</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Phillip TORRES</i>	<i>HAKUBOTAN</i>	<i>WRITTEN</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>G. PEREZ</i>	<i>DFS</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Jose Cepeda</i>	<i>GURB</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>JESS Q. TORRES</i>	<i>GAA</i>	<i>ORAL</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Bo Scott</i>	<i>/</i>	<i>/</i>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Mike Maroney</i>	<i>KPMG</i>	<i>oral</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>FRANK CHIN</i>	<i>SMITH BARNET</i>	<i>ORAL</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Stanley J. Dirks</i>	<i>Ornick, Kerrington</i>	<i>Oral</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Curt Baumgardner</i>	<i>Continental</i>	<i>oral</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Peter Aguiar Jr</i>	<i>GAA legal counsel</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Duane M.I. Siquenza</i>	<i>GAA</i>	<i>oral</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>EDUARDO A. CALVO</i>	<i>GAA</i>	<i>oral</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Anthony P. Sgro</i>	<i>GAA</i>	<i>written</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>