

EIGHTEENTH GUAM LEGISLATURE  
1985 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 310 (LS), "AN ACT TO AMEND SECTIONS 6123, 6124 AND 6126 OF THE GOVERNMENT CODE RELATIVE TO THE ISSUANCE OF HIGHWAY BONDS; TO AMEND SECTION 19575.01 AND ADD A NEW SUBSECTION 19543.1021 OF THE GOVERNMENT CODE RELATIVE TO LIQUID FUEL TAX; TO AMEND 12 GCA §§7202(o) AND 7216(a) RELATIVE TO GUAM TELEPHONE AUTHORITY REVENUE BONDS AND TO AMEND SUBSECTION 19541.0102 AND ADD A NEW SUBSECTION 19543.1022 TO THE GOVERNMENT CODE RELATIVE TO GROSS RECEIPTS TAXES FOR WHOLESALERS AND FOR OTHER PURPOSES", was on the 28th day of March 1985, duly and regularly passed.



CARL T. C. GUTIERREZ  
Speaker


Attested:



ELIZABETH P. ARRIOLA  
Senator and Legislative Secretary


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This Act was received by the Governor this 29<sup>th</sup> day of March  
1985, at 1:10 o'clock P.m.



Assistant Staff Officer  
Governor's Office

APPROVED:



RICARDO J. BORDALLO  
Governor of Guam

Date:

3/29/85

Public Law No.

4:10 pm

EIGHTEENTH GUAM LEGISLATURE  
1985 (FIRST) Regular Session

Bill No. 310 (LS)  
Substitute by  
Committee on Ways and Means  
and further Substituted by  
Committee on Rules

Introduced by:

Committee on Ways and Means  
J. T. San Agustin  
F. R. Santos

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C. T. C. Gutierrez  
D. Parkinson  
F. J. Quitugua  
H. D. Dierking  
F. J. Gutierrez  
J. F. Ada  
M. D. A. Manibusan  
A. R. Unpingco  
T. S. Nelson  
F. F. Blas  
J. G. Miles  
P. C. Lujan  
J. P. Aguon  
E. P. Arriola

AN ACT TO AMEND SECTIONS 6123, 6124 AND 6126 OF THE GOVERNMENT CODE RELATIVE TO THE ISSUANCE OF HIGHWAY BONDS; TO AMEND SECTION 19575.01 AND ADD A NEW SUBSECTION 19543.1021 OF THE GOVERNMENT CODE RELATIVE TO LIQUID FUEL TAX; TO AMEND 12 GCA §§7202(o) AND 7216(a) RELATIVE TO GUAM TELEPHONE AUTHORITY REVENUE BONDS AND TO AMEND SUBSECTION 19541.0102 AND ADD A NEW SUBSECTION 19543.1022 TO THE GOVERNMENT CODE RELATIVE TO GROSS RECEIPTS TAXES FOR WHOLESALERS AND FOR OTHER PURPOSES.

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

2 Section 1. Section 6123 of the Government Code is amended to read:

3 "Section 6123. (a) The Governor of Guam is authorized to  
4 create a debt or debts of the government of Guam in aggregate  
5 principal amount not to exceed Thirty-five Million Dollars (\$35,000,000)  
6 for the purposes of implementing capital improvement highway projects;

1 provided, however, that the terms and conditions of the debt or debts  
2 shall be approved by the Legislature by Resolution. The sentence  
3 contained in 12 GCA §2103(k) stating: The failure of the Legislature to  
4 adopt a resolution rejecting the terms and conditions of the issuance of  
5 the bonds for forty-five (45) calendar days of the date of its  
6 submission to the Legislative Secretary shall be concurrence to the  
7 issuance of the bonds, shall not apply to the provisions of this Section  
8 and Section 6124 of the Government Code.

9 (b) Such debt or debts may be created by a loan or other  
10 agreement executed by the Governor containing such terms as are  
11 consistent with this Section and Section 6124 of the Government Code  
12 or may be created by the issuance of bonds in one or more series sold  
13 at such terms as are consistent with this Section and Section 6124 of  
14 the Government Code.

15 (c) Any bonds authorized by this Section shall be issued  
16 pursuant to an indenture executed by the Governor on behalf of the  
17 government of Guam, which indenture shall specify the forms,  
18 amounts, maturity dates, interest rates, interest payment dates,  
19 denominations, places of payment, registration provisions, rights of  
20 exchange, redemption dates and default provisions for such bonds and  
21 shall otherwise provide for the use of proceeds of such bonds and the  
22 security for such bonds, including the pledge authorized by Section  
23 6124 of the Government Code, in a manner not inconsistent with this  
24 Section and Section 6124 of the Government Code.

25 (d) Any debt or debts authorized by this Section shall constitute  
26 the valid and legally binding limited obligation of the government of  
27 Guam payable from and secured by a pledge of the revenues described  
28 in Section 6124 of the Government Code as amended. The validity of  
29 any such debt or debts shall not be affected by the validity or  
30 regularity of any proceedings for the implementation of capital  
31 improvement highway projects funded by the debt or debts."

32 Section 2. Section 6124 of the Government Code is amended to read:

33 "Section 6124. All or any part of the revenues from the taxes  
34 levied pursuant to subchapter D of Chapter VI of Title XX of the

1 Government Code and from the license fees and penalties imposed  
2 pursuant to Sections 23339, 23353, 23361, 23362, 23364, 23365 and  
3 23500 of the Government Code may be pledged to secure the repayment  
4 of any debt or debts created under Section 6123 of the Government  
5 Code. Any pledge made to secure bonds shall be subject to approval  
6 by the Legislature by resolution pursuant to §6123 of the Government  
7 Code and shall be valid and binding from the time the pledge is made.  
8 The revenues pledged and thereafter received by the government or  
9 any trustee, depository or custodian shall be deposited in a separate  
10 account and shall be immediately subject to the lien of such pledge  
11 without any physical delivery thereof or further act, and the lien of  
12 any such pledge shall be valid and binding against all parties having  
13 claims of any kind in tort, contract or otherwise against the  
14 government, such trustee, depository or custodian, irrespective of  
15 whether the parties have notice thereof. The indenture by which such  
16 pledge is created need not be recorded. All such taxes, fees and  
17 penalties, to the extent so pledged, are hereby continuously  
18 appropriated for such purpose. All capital improvement highway  
19 projects to be funded from the provisions of Sections 6123 and 6124 of  
20 the Government Code must be reviewed and approved by the Governor  
21 prior to their implementation."

22 Section 3. Section 6126 of the Government Code is amended to read:

23 "§6126. No contract or subcontract may be awarded to any  
24 contractor providing services on the capital improvement projects  
25 funded from the implementation of Sections 6123 and 6124 of the  
26 Government Code unless Seventy-five percent (75%) of the persons  
27 employed by the contractor to work on such projects are residents of  
28 the Territory of Guam. Any contract awarded in violation of this  
29 section shall be null and void ab initio. No money may be drawn on  
30 for capital improvement projects funded from the implementation of  
31 Sections 6123 and 6124 of the Government Code until the trustee,  
32 depository or custodian of the funds certifies that the contract  
33 awarded is in conformity with the requirements of this Section."

1 Section 4. A new Subsection 19543.1021 is added to the Government  
2 Code to read:

3 ".1021. Amounts received from the sale of liquid fuel to vessels  
4 engaged in commercial fishing."

5 Section 5. Section 19575.01 of the Government Code is amended to  
6 read:

7 "\$19575.01. Exemption. Liquid Fuel refined, manufactured,  
8 produced, blended or compounded in Guam or imported into Guam, or  
9 received in Guam from persons not taxable hereunder, and sold to  
10 vessels engaged in commercial fishing or to the United States, or any  
11 agency or instrumentality thereof, in Guam, shall be excluded from the  
12 computation of liquid fuel tax by the distributor selling such liquid  
13 fuel to vessels engaged in commercial fishing, or to the United States,  
14 or any agency or instrumentality thereof, but shall be reported by  
15 such distribution to the Tax Commissioner."

16 Section 6. A new Subsection .23 is added to Section 19500 of the  
17 Government Code to read:

18 ".23 'vessels engaged in commercial fishing' shall mean those  
19 vessels solely employed in the activity of catching fish for commercial  
20 sale."

21 Section 7. Subsection 19541.0102 of the Government Code is amended  
22 to read:

23 "Section 19541.0102. Provided, that any person engaging or  
24 continuing in business as a retailer and a wholesaler shall pay the tax  
25 required solely on the gross proceeds of sales of the retail business,  
26 and that his books must be kept so as to show separately the gross  
27 proceeds of sale of each business."

28 Section 8. A new Subsection 19543.1022 is added to read:

29 "Section 19543.1022. Amounts received from engaging or  
30 continuing in business as a wholesaler, except that if such persons  
31 are, in addition, engaging or continuing in business as a retailer, the  
32 provisions of this Subchapter and the taxes levied thereunder shall  
33 apply to that part of the businesses of such persons that involve  
34 retail."

1           Section 9. The Department of Commerce shall monitor the prices of  
2 consumer goods distributed by wholesalers and shall report changes in  
3 prices of such goods and commodities to the Legislature within One Hundred  
4 Twenty (120) days of the enactment of this Act. The department shall  
5 include such information in its Consumer Price Index survey for a period of  
6 one year from the enactment of this Act. April 1985 will be the base month  
7 for comparison purposes.

8           Section 10. 12 GCA §7202(o) is amended to read:

9           "(o). 'Trustee' means the trust department of any Federal  
10 Reserve member bank, Federal Deposit Insurance Corporation member  
11 bank or Federal Savings and Loan Insurance Corporation member  
12 institution."

13           Section 11. The heading of 12 GCA §7216 and 12 GCA §7216(a) are  
14 amended to read:

15           "Federal Reserve member bank, Federal Deposit Insurance  
16 Corporation member bank or Federal Savings and Loan Insurance  
17 Corporation member institution as Trustee for Board and Holders of  
18 Bonds.

19           (a). A Federal Reserve member bank, Federal Deposit Insurance  
20 Corporation member bank or Federal Savings and Loan Insurance  
21 Corporation member institution shall act as trustee for the Board and  
22 the holders of bonds issued hereunder, and the Board may authorize  
23 the trustee to act on behalf of the holders of the bonds or any stated  
24 percentage thereof and to exercise and prosecute on behalf of the  
25 holders of the bonds such rights and remedies as may be available to  
26 the holders."

27           Section 12. The sum of Three Thousand Three Hundred Fifty-six  
28 Dollars (\$3,356) is appropriated from the General Fund to the Department of  
29 Youth Affairs for the participation of Guam in the Youth Worldwide  
30 Conference in Jamaica from April 6 to 9, 1985.

31           Section 13. 12 GCA §4103(c) is amended to read:

32           "(c). To encourage and engage in low and moderate income  
33 housing activities, including development of residential subdivisions,  
34 construction of housing for rental or resale, and to make loans to any

1 person for the purchase, construction, improvement or repair of a  
2 home. all loans so made shall be of such sound value or so secured as  
3 reasonably to assure repayment, taking into consideration the policy of  
4 the Legislature that the lending powers of the Housing Corporation  
5 shall be administered as a means for accomplishing the purposes stated  
6 in §4101 of this Chapter, and shall bear interest at a rate to be  
7 determined by the Board of Directors of the Guam Housing Corporation  
8 but not exceeding the Federal Housing Administration rate. Loans  
9 should be made to the residents of Guam to enable them to purchase or  
10 construct permanent homes which are typhoon resistant. All loans for  
11 the purchase or construction of such homes shall not exceed Sixty  
12 Thousand Dollars (\$60,000). An additional sum of not to exceed Ten  
13 Thousand Dollars (\$10,000) may be borrowed for the purchase of land  
14 upon which the building is to be constructed. If the borrower already  
15 owns land upon which to construct a building, the Ten Thousand  
16 Dollars (\$10,000) to be applied to purchase land may be applied for  
17 purchase or construction of a building. Loans shall be given only to  
18 residents who have been unable to obtain conventional financing from  
19 commercial lending institutions including but not limited to banks and  
20 savings and loan associations. At least three (3) written loan refusals  
21 from commercial lending institutions shall be presented upon application  
22 for a Guam Housing Corporation loan."

EIGHTEENTH GUAM LEGISLATURE

ROLL CALL SHEET

S Bill No.: 310

DATE: 3-28-85

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

QUESTION: \_\_\_\_\_

<u>SENATOR</u>	<u>AYE</u>	<u>NAY</u>	<u>VOTING</u>	<u>ABSENT</u>
J. F. Ada	✓			
J. P. Aguon	✓			
E. P. Arriola	✓			
J. G. M. Bamba	✓			
F. F. Blas	✓			
H. D. Dierking	✓			
E. R. Duenas	✓			
C. T. C. Gutierrez	✓			
F. J. Gutierrez	✓			
A. C. Lamorena III	✓			
P. C. Lujan	✓			
M. D. A. Manibusan	✓			
J. Miles	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. Quitugua	✓			
J. M. Rivera	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco				✓





# Office of the Vice-Speaker Eighteenth Guam Legislature

P.O. Box CB-1, Agana  
Territory of Guam, U.S.A. 96910  
Tel: 477-8527/9120

**JOE T. SAN AGUSTIN**  
Vice-Speaker

Chairman, Committee  
on Ways and Means

March 26, 1985

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Honorable Carl T.C. Gutierrez  
Speaker  
Eighteenth Guam Legislature  
P.O. Box CB-1  
Agana, Guam 96910

Vice-Chairman, Committee  
on Federal, Foreign, and  
Legal Affairs

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VIA: Chairman, Committee on Rules

Member, Committee  
on Rules

Dear Mr. Speaker:

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The Committee on Ways & Means, to which Bill No. 310<sup>re. substituted</sup> was referred, wishes to report its findings and recommendation.

Member, Committee  
on Tourism, Transportation,  
and Communication

The Committee voting record is as follows:

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To do pass	<u>7</u>
To not pass	<u>1</u>
Abstentions	<u>0</u>
Off-Island	<u>1</u>

Member, Committee on  
Health, Welfare,  
and Ecology

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Member, Committee  
on Education

A copy of the report and all other pertinent documents are attached for your information.

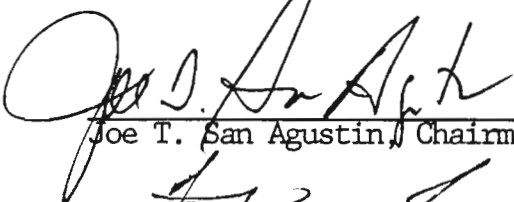
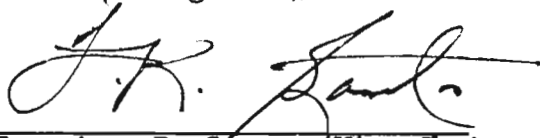
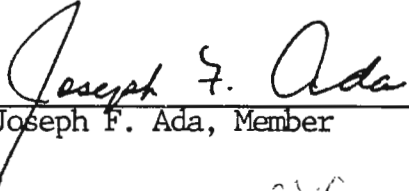
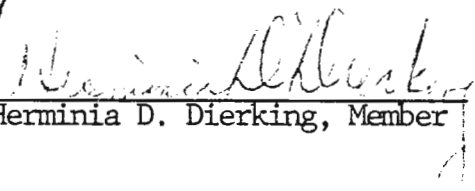

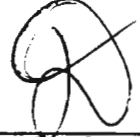
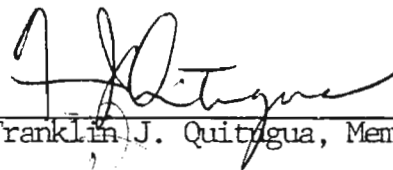
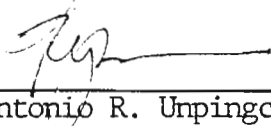
Sincerely yours,

*Joe T. San Agustin*  
JOE T. SAN AGUSTIN

attachments

VOTE SHEET  
 COMMITTEE ON WAYS & MEANS  
 BILL NO. 310:

"AN ACT TO AMEND SECTIONS 6123, 6124, 6126 AND 19571 OF THE  
 GOVERNMENT CODE RELATIVE TO THE ISSUANCE OF HIGHWAY BONDS;  
 TO AMEND SECTION 19575.01 AND ADD A NEW SUBSECTION 19543.1021 OF  
 THE GOVERNMENT CODE RELATIVE TO LIQUID FUEL TAX; AND TO AMEND  
 SUBSECTION 19541.0102 OF THE GOVERNMENT CODE RELATIVE TO GROSS  
 RECEIPTS TAXES FOR WHOLESALERS AND FOR OTHER PURPOSES."

<u>SENATOR</u>	<u>TO DO PASS</u>	<u>TO NOT PASS</u>	<u>ABSTAIN</u>	<u>COMMENTS</u>
 Joe T. San Agustin, Chairman	✓	—	—	—
 Francisco R. Santos, Vice-Chairman	✓	—	—	—
 Joseph F. Ada, Member	✓	—	—	—
 Herminia D. Dierking, Member	✓	—	—	—
Franklin J. Gutierrez, Member	—	—	—	—
 Marilyn D.A. Manibusan, Member	✓	—	—	—
 Don Parkinson, Member	—	—	✓	—
 Franklin J. Quitigua, Member	✓	—	—	—
 Antonio R. Unpingco, Member	✓	—	—	—

COMMITTEE REPORT  
BILL NO. 310  
COMMITTEE ON WAYS & MEANS

The Public hearing for Bill No. 310 was held on Friday, March 15, 1985 at 5:00 PM. in the Legislative Session Hall. It should be noted that the hearing on the various contents and issues within the bill were publicly heard this same day, however, at the time the public announcement was made, a bill number (310) had not been assigned. This was done for the sake of expediency in reporting the Bill out to the floor due to the time constraints regarding the proposed \$35 million bond issuance.

Senators in attendance included the Committee Chairman, Joe T. San Agustin, Francisco R. Santos, Herminia Dierking, Franklin J. Quitugua, Don Parkinson, Franklin J. Gutierrez, Marilyn D.A. Manibusan, Joseph F. Ada, Antonio R. Unpingco.

BACKGROUND

Bill No. 310, (Exhibit "A") incorporates a variety of legislation designed to improve the highways of Guam financed through \$35 million in highway bonds, eliminate the Gross Receipts Tax on wholesale activities, and to exempt the sales of liquid fuel to commercial fishing vessels from the Gross Receipts Tax and Liquid Fuel tax.

Section 1 of the Bill amends Section 6123 of the Government Code whereby the original debt authorization of \$35 million is increased to \$45 million through the issuance of the bonds. The repayment of the proposed debt is to come from the Territorial Highway Fund. The increase of \$10 million was first suggested in order to pay off the Government's present loans with the Bank of

Guam. In the bond presentation, it was brought forth that the Bank of Guam loans would first have to be satisfied because the bank already had first lien on the THF as repayment on the loan. This, in fact, is not the case therefore, the entire \$45 million is no longer needed to fund the capital improvement highway projects.

The list of projects to be funded by the proposed bond issuance are as follows:

85-01	Reconstruction of Route 8, Phase I	\$ 4.0 million
85-02	Reconstruction of Route 1, (from Y-Sengsong Road to Gayinero Road)	6.2 million
85-04	Interchange on Route 1 in Agana	5.0 million
85-05	Reconstruction of Route 2, (from Agat to Umatac)	4.5 million
85-07	Reconstruction of Route 1 (from Route 4 to Route 11 intersection)	6.2 million
85-08	Reconstruction of Route 1 ( (from Route 11 to Route 2A intersection)	4.8 million
85-09	Extension of Chalan Kanton Tutujan in Sinajana to Route 7 (Agana Heights)	<u>2.5 million</u>
	GRAND TOTAL	\$ 33.2 million

It must be noted however that even with the issuance of \$35 million in bonds, the net amount to fund the projects will be approximately \$28.7 million. This was brought out in a report by Touche, Ross & Co. (See Exhibit "B"). If the general consensus of the Committee is to stay at a \$35 million bond issuance, the projects must be trimmed down to a total of \$28.7 million.

In addition, in order to fund the issuance of \$35 million in highway bonds, a minimum of \$8.2 million will be needed from the THF annually. Presently, \$7.4 million is now estimated as revenue in FY'85 and 7.6 is

estimated as revenue in FY'86. If all the highway projects are to be implemented, revenues in the THF will have to be increased by about \$500,000.

According to the same report from Touche, Ross & Co. the shortfall of \$500,000 can be made by increasing the present liquid fuel tax by 1¢ per gallon.

So as it appears, with a \$35 million bond issuance, a 1¢ per gallon increase will be needed as well as a \$4.5 million reduction in the proposed projects to be implemented.

Section 2 of the Bill pledges all revenues in the THF toward repayment of the bond issuance, subject to approval through legislative resolution. In addition, this section establishes guidelines with respect to the custody of the THF Revenues and continuously appropriates all THF revenues toward payment of the bonds.

Section 3 of the bill increases the liquid fuel tax by 3¢ per gallon. This 3¢ per gallon increase, was originally incorporated in the Bill in order to adequately fund a bond issuance of \$45 million. As explained earlier, the \$45 million is no longer needed so the increase in the fuel tax will be less than 3¢ per gallon.

Section 4 of the Bill specifies that for any contract awarded for any of the highway projects, 75% of the employees in the company awarded the contract, must be residents of Guam.

Section 5 to 7 would exempt from the Gross Receipts Tax and Liquid Fuel Tax fuel purchases made by commercial fishing companies. This would encourage fishing companies to remain on island and continue to purchase fuel on Guam instead of on Tinian. Presently the price per gallon of fuel on Guam is \$1.03 while on Tinian it is \$.95.

Section 8 & 9 amends the present Government Code regarding the GRT. Basically, it would exempt all wholesaling companies from the present GRT of 4% made.

#### TESTIMONY

Testimony on Bill No. 310 was heard and presented on March 15, 1985, at 5:00 P.M. in the Legislative Session Hall.

Beginning with Sections 1-4 of the Bill regarding the proposed \$35-\$45 million bond issuance, testimony was only received from Mr. Dave Santos, Director of Revenue & Taxation (Exhibit "C"); and the Guam Chamber of Commerce represented by Ms. Eloise R. Baza, President and Mr. Simon Sanchez III, Chamber Board Member (Exhibit "D").

Mr. Santos testified in favor of the highway bond provisions to fund several major road projects even though it would mean an increase of 1¢ per gallon in Liquid Fuel Taxes. He did however offer an alternative to pledge other fees such as driver's license fees toward the THF in order to add to the payment of the bonds. This however would leave the General Fund short of revenues about \$600,000-\$700,000 annually.

The Chamber's stance on the bond issuance was positive and basically in support of the legislation. However, they questioned that perhaps the projects could probably be funded without increasing the Liquid Fuel Tax.

Also, they suggested reducing the bond amount from \$45 to \$35 million since the repayment status of the Bank of Guam loans has been clarified.

They summarized their position in that the Government of Guam should prioritize the proposed projects and to practice "living within our means." They also suggested that as a result of the recent initiative on taxes where there were 15,345 anti-tax increase votes, "the decision to increase taxes to fund our future capital improvements should rest with the People through the initiative process."

Testimony on Sections 5-7 regarding the exempting of fuel taxes to the fishing industry was received from several concerns.

Initial testimony was received from Mr. John Zuanich, an officer of Zee Enterprises, along with Mr. Lawrence W. Zuanich, President of Zee Enterprises and Mr. Andrew Gayle, local counsel for Zee Enterprises (Exhibit "E"). As expected, they testified in favor of Sections 5 - 7 of the Bill which would ultimately decrease their expenses when purchasing fuel on Guam for their fleet of boats. They stated that at present, they pay \$1.03 per gallon of fuel on Guam versus \$.95 per gallon in Tinian., With their fleet of 7 boats refueling 6 times a year and purchasing an average of 130,000 gallons of fuel per vessel, they would save close to \$500,000 by purchasing the fuel for a lesser price in Tinian. However, Guam's facilities in terms of docking, supplies, repair

shops, etc. are more complete and more able to adequately maintain and supply their vessels.

They summarized their testimony whereby they would much rather be based on Guam because of the infrastructure being much better and able to handle all their needs and requested passage of the Bill.

Written testimony was submitted in favor of Sections 5 - 7 of the Bill regarding the tax exemptions to the Fishing industry, from Mr. Robert E Hahn, President of Maritime Agencies of the Pacific Ltd. (See Exhibit "F"). He mentioned that whether or not Guam exempts the fishing industry from Liquid Fuel Taxes or Gross Receipt Taxes, Guam will lose the tax income anyway. However, he cautioned that along with the tax loss, other Guam businesses will lose income if the fishing industry transfers to Tinian. Private sector businesses that are involved with the fishing industry through purchases and/or services would stand to lose considerable amounts of money amounting to over \$50 million, according to Mr. Hahn. In addition, he estimated 200 people are employed in Guam that are directly related to the Fishing Industry. If all fishing companies relocate to Tinian, Guam would lose taxes, infrastructure industries, and employment.

Also presenting their testimony on behalf of the Fishing Industry were Wanda McWey of Casamar and Mr. Oliver Seth of the Salt Factory. They both voiced their concerns about the loss of business and jobs if the fishing companies go to Tinian and urged passage of the Bill.



Testimony in Sections 8 & 9 which would repeal the Gross Receipt Tax on Wholesale transactions was received from a number of concerns. Mr. Wayne Brown, Chairman of the Retail Merchants Committee, Guam Chamber of Commerce submitted his views on behalf of the Committee (Exhibit "G").

He expressed a sincere "thank-you" for the proposed legislation and it was viewed as a "very positive step in the right direction". He also predicted a very large growth in the wholesaling industry on Guam, an expansion in product lines that are presently on Guam, as well as new items and improved selection in merchandise. Probably the most important part of his testimony was stating that the public will "see retail prices dropping all over the island".

The Chamber of Commerce representatives also had a few comments about the proposed Gross Receipt Tax exemption. They viewed it as "a reflection of genuine governmental advocacy of small business growth." Further, they stated the exemption would foster free market competition, create new jobs, and leverage economic growth. They too urged the passage of this section of the Bill.

Dave Santos in his written testimony did not make any references or comments regarding the Gross Receipt Tax exemption to wholesalers, but he did state orally his support of the proposed legislation on behalf of the Executive Branch. It should be noted that the Governor also suggested the exemption in the State of the Territory Address just recently.

### Committee Mark-Up Meeting

The Committee Mark-Up Meeting on Bill No. 310 was held on March 19, 1985, at 2:00 p.m. in the office of Committee Chairman Senator Joe T. San Agustin. Committee members who attended the meeting were Senators Frank R. Santos, Franklin J. Quitugua, Herminia D. Dierking, Marilyn D.A. Manibusan, Joseph F. Ada, and Antonio R. Unpingco.

Committee Chairman San Agustin started off the meeting by giving a synopsis of what basically is contained in the Bill.

1. \$35 million Highway Bond Project
2. Net proceeds of Bond Issuance - \$28.7 million
3. To pay for the bonds from the Territorial Highway Fund would require a 1¢ per gallon increase in the Liquid Fuel Tax.
4. 1¢ per gallon increase would yield \$500,000 in revenue
5. Exemption of Gross Receipt Tax and Liquid Fuel Tax to commercial fishing industry.
6. Exemption of Gross Receipt Tax to wholesalers.

Discussion first centered on the Highway Bond proposal and the fact that the projects totaled \$33.2 million yet the net amount from the bond sale would be only \$28.7 million - a difference of \$4.5 million. Motions were made and offered to perhaps single out Project No. 85-04 which was the construction of an interchange on Route 1 in Agana costing a total of \$5.0 million. Along the same lines however, funding for this same project should be requested by the Governor from federal sources.

The 1¢ per gallon increase in Liquid Fuel Tax was eliminated after discussions with Mr. Dave Santos, Director of the Department of Revenue & Taxation who joined the meeting later at the request of Committee members. He stated that the Insurance & Issuance costs of the bond may be overstated thus leading to a higher net amount available to fund the highway projects. The original section implementing the increase has been deleted in the Substitute Bill.

Regarding the tax exemptions to the Fishing industry and the overall Gross Receipt Tax exemptions to wholesalers, discussions remained at a standstill because it was believed by several Committee members that a total Gross Receipt Tax exemption on wholesalers would include the island's two major gasoline suppliers. Again, after discussion with the Revenue & Taxation Director, it was clarified that the two companies involved are exempted from paying the 4% Gross Receipt Tax to begin with on gasoline sales only; however, they still pay the Liquid Fuel Tax. In addition, he stated that although the government will lose over \$3.2 million in Gross Receipt Tax wholesale revenue, there will be revenue gains in Corporate Income Taxes, retail Gross Receipt Tax, and an overall growth in the wholesaling industry on Guam. This would mean more jobs, increased consumer purchasing power, and eventually, more tax revenue.

The Committee then decided to keep the tax exemption for the fishing industry and wholesalers in Bill No. 310.

Three other legislative amendments were also allowed to be included in Bill No. 310 during the meeting. These amendments are directed toward the Guam Telephone Authority Revenue Bond Act of 1972.

Presently, the Act specifies that any trustee for the Guam Telephone Authority bond and bondholders must be a Federal Reserve Bank. However, there are no Federal Reserve Banks on Guam so these amendments to the Act will include banks that are members of the Federal Deposit Insurance Corporation as well as savings institutions that are members of the Federal Savings & Loan Insurance Corporation.

#### Committee Findings

The Committee hereby finds that in view of the circumstances regarding the Government's loan with the Bank of Guam, the principal amount of the bond authorization should remain at \$35 million. In addition, the Section regarding the 1¢ per gallon increase in Liquid Fuel Tax should be deleted.

As for Sections 4, 5, and 6 of the Bill, the Committee further finds that in order to protect the investment that the island has in the fishing industry and its support services, the tax exemption for the fishing companies should be accepted and passed by the Legislature.

Also, in the interests of fostering and expanding the wholesale industry on Guam, increasing merchandise selection, and a general improvement in the retail and wholesale industry, the Committee finds that the exemption on the present Gross Receipts Tax on wholesale transactions as found in Sections 8 & 9 be duly passed by this Legislature.

Committee Recommendation

In view of the positive economic impact and the predicted growth of the island's business sector, the Committee hereby recommends the passage of Bill No. 310 in its entirety as amended.

EIGHTEENTH GUAM LEGISLATURE  
1985 (FIRST) Regular Session

Bill No. 310 (LS)  
Substitute  
Committee on Ways and Means

Introduced by:

Committee on Ways and Means  
J. T. San Agustin  
F. R. Santos

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C. T. C. Gutierrez  
D. Parkinson  
F. J. Quitugua  
H. D. Dierking  
F. J. Gutierrez  
J. F. Ada  
M. D. A. Manibusan  
A. R. Unpingco

AN ACT TO AMEND SECTIONS 6123, 6124 AND 6126 OF THE GOVERNMENT CODE RELATIVE TO THE ISSUANCE OF HIGHWAY BONDS; TO AMEND SECTION 19575.01 AND ADD A NEW SUBSECTION 19543.1021 OF THE GOVERNMENT CODE RELATIVE TO LIQUID FUEL TAX; TO AMEND 12 GCA §§7202(o) AND 7216(a) RELATIVE TO GUAM TELEPHONE AUTHORITY REVENUE BONDS AND TO AMEND SUBSECTION 19541.0102 AND ADD A NEW SUBSECTION 19543.1022 TO THE GOVERNMENT CODE RELATIVE TO GROSS RECEIPTS TAXES FOR WHOLESALERS AND FOR OTHER PURPOSES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2 Section 1. Section 6123 of the Government Code is amended to read:  
3 "Section 6123. (a) The Governor of Guam is authorized to  
4 create a debt or debts of the government of Guam in aggregate  
5 principal amount not to exceed Thirty-five Million Dollars (\$35,000,000)  
6 for the purposes of implementing capital improvement highway projects;  
7 provided, however, that the terms and conditions of the debt or debts  
8 shall be approved by the Legislature by Resolution. The sentence  
9 contained in [Section 53552(c) of the Government Code()] 12 GCA  
10 §2103(k) []] stating: 'The failure of the Legislature to adopt a  
11 resolution rejecting the terms and conditions of the issuance of the

1 bonds for forty-five (45) calendar days of the date of its submission  
2 to the Legislative Secretary shall be concurrence to the issuance of the  
3 bonds', shall not apply to the provisions of this Section and Section  
4 6124 of the Government Code.

5 (b) Such debt or debts may be created by a loan or other  
6 agreement executed by the Governor containing such terms as are  
7 consistent with this Section and Section 6124 of the Government Code  
8 or may be created by the issuance of bonds in one or more series sold  
9 at such terms as are consistent with this Section and Section 6124 of  
10 the Government Code.

11 (c) Any bonds authorized by this Section shall be issued  
12 pursuant to an indenture executed by the Governor on behalf of the  
13 government of Guam, which indenture shall specify the forms,  
14 amounts, maturity dates, interest rates, interest payment dates,  
15 denominations, places of payment, registration provisions, rights of  
16 exchange, redemption dates and default provisions for such bonds and  
17 shall otherwise provide for the use of proceeds of such bonds and the  
18 security for such bonds, including the pledge authorized by Section  
19 6124 of the Government Code, in a manner not inconsistent with this  
20 Section and Section 6124 of the Government Code.

21 (d) Any debt or debts authorized by this Section shall constitute  
22 the valid and legally binding limited obligation of the government of  
23 Guam payable from and secured by a pledge of the revenues described  
24 in Section 6124 of the Government Code. The validity of any such  
25 debt or debts shall not be affected by the validity or regularity of any  
26 proceedings for the implementation of capital improvement highway  
27 projects funded by the debt or debts."

28 Section 2. Section 6124 of the Government Code is amended to read:

29 "Section 6124. All or any part of the revenues from the taxes  
30 levied pursuant to subchapter D of Chapter VI of Title XX of the  
31 Government Code and from the license fees and penalties imposed  
32 pursuant to Sections 23339, 23353, 23361, 23362, 23364, 23365 and  
33 23500 of the Government Code may be pledged to secure the repayment  
34 of any debt or debts created under Section 6123 of the Government

1 Code. Any pledge made to secure bonds shall be subject to approval  
2 by the Legislature by resolution pursuant to §6123 of the Government  
3 Code and shall be valid and binding from the time the pledge is made.  
4 The revenues pledged and thereafter received by the government or  
5 any trustee, depository or custodian shall be deposited in a separate  
6 account and shall be immediately subject to the lien of such pledge  
7 without any physical delivery thereof or further act, and the lien of  
8 any such pledge shall be valid and binding against all parties having  
9 claims of any kind in tort, contract or otherwise against the  
10 government, such trustee, depository or custodian, irrespective of  
11 whether the parties have notice thereof. The indenture by which such  
12 pledge is created need not be recorded. All such taxes, fees and  
13 penalties, to the extent so pledged, are hereby continuously  
14 appropriated for such purpose. All capital improvement highway  
15 projects to be funded from the provisions of Sections 6123 and 6124 of  
16 the Government Code must be reviewed and approved by the Governor  
17 prior to their implementation."

18 Section 3. Section 6126 of the Government Code is amended to read:

19 "§6124. No contract or subcontract may be awarded to any  
20 contractor providing services on the capital improvement projects  
21 funded from the implementation of Sections 6123 and 6124 of the  
22 Government Code unless Seventy-five percent (75%) of the persons  
23 employed by the contractor to work on such projects are residents of  
24 the Territory of Guam. Any contract awarded in violation of this  
25 section shall be null and void ab initio. No money may be drawn on  
26 for capital improvement projects funded from the implementation of  
27 Sections 6123 and 6124 of the Government Code until the trustee,  
28 depository or custodian of the funds certifies that the contract  
29 awarded is in conformity with the requirements of this Section."

30 Section 4. A new Subsection 19543.1021 is added to the Government  
31 Code to read:

32 ".1021. Amounts received from the sale of liquid fuel to vessels  
33 engaged in commercial fishing."



1 Section 5. Section 19575.01 of the Government Code is amended to  
2 read:

3 "\$19575.01. Exemption. Liquid Fuel refined, manufactured,  
4 produced, blended or compounded in Guam or imported into Guam, or  
5 received in Guam from persons not taxable hereunder, and sold to  
6 vessels engaged in commercial fishing or to the United States, or any  
7 agency or instrumentality thereof, in Guam, shall be excluded from the  
8 computation of liquid fuel tax by the distributor selling such liquid  
9 fuel to vessels engaged in commercial fishing, or to the United States,  
10 or any agency or instrumentality thereof, but shall be reported by  
11 such distribution to the Tax Commissioner."

12 Section 6. A new Subsection .23 is added to Section 19500 of the  
13 Government Code to read:

14 ".23 'vessels engaged in commercial fishing' shall mean those  
15 vessels solely employed in the activity of catching fish for commercial  
16 sale."

17 Section 7. Subsection 19541.0102 of the Government Code is amended  
18 to read:

19 "Section 19541.0102. Provided, that any person engaging or  
20 continuing in business as a retailer and a wholesaler shall pay the tax  
21 required solely on the gross proceeds of sales of [each such] the  
22 retail business, and that his books must be kept so as to show  
23 separately the gross proceeds of sale of each business."

24 Section 8. A new Subsection 19543.1022 is added to read:

25 "Section 19543.1022. Amounts received from engaging or  
26 continuing in business as a wholesaler, except that if such persons  
27 are, in addition, engaging or continuing in business as a retailer, the  
28 provisions of this Subchapter and the taxes levied thereunder shall  
29 apply to that part of the businesses of such persons that involve  
30 retail."

31 Section 9. 12 GCA §7202(o) is amended to read:

32 "(o). 'Trustee' means the trust department of any Federal  
33 Reserve member bank, Federal Deposit Insurance Corporation member

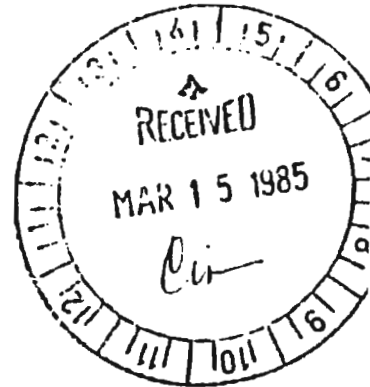
1           bank or Federal Savings and Loan Insurance Corporation member  
2           institution."

3           Section 10. The heading of 12 GCA §7216 and 12 GCA §7216(a) are  
4 amended to read:

5           "Federal Reserve member bank, Federal Deposit Insurance  
6           Corporation member bank or Federal Savings and Loan Insurance  
7           Corporation member institution as Trustee for Board and Holders of  
8           Bonds.

9           (a). A Federal Reserve member bank, Federal Deposit Insurance  
10           Corporation member bank or Federal Savings and Loan Insurance  
11           Corporation member institution shall act as trustee for the Board and  
12           the holders of bonds issued hereunder, and the Board may authorize  
13           the trustee to act on behalf of the holders of the bonds or any stated  
14           percentage thereof and to exercise and prosecute on behalf of the  
15           holders of the bonds such rights and remedies as may be available to  
16           the holders."

March 15, 1985



Honorable Joe T. San Agustin  
 Chairman, Committee on Ways and Means  
 Eighteenth Guam Legislature  
 Agana, Guam 96910

Dear Senator San Agustin:

Pursuant to your request, I have attempted to delineate certain information herein relative to the proposed bond issue for the Territorial Highway Fund. This information is based upon our 1984 audit of the Territorial Highway Fund, the projected statement of revenues and summary of significant assumptions of the Territorial Highway Fund (years ending September 30, 1985 and 1986), and discussions held with Goldman Sachs personnel.

The following summarizes the results of the above data as it pertains to your request:

	<u>Bond Issue Size (in millions of \$'s)</u>		
Less:	\$35.0	\$40.0	\$45.0
Insurance costs	2.7	2.7	2.7
Issuance costs	2.0	2.0	2.0
Bond reserve fund	<u>5.1</u>	<u>5.1</u>	<u>5.1</u>
	25.2	30.2	35.2
Add: Estimated interest earnings to be generated	<u>3.5</u>	<u>3.5</u>	<u>3.5</u>
Amount available to fund projects	<u>\$28.7</u>	<u>\$33.7</u>	<u>\$38.7</u>
Increase in liquid fuels tax necessary to fund the above projects	<u>1c</u>	<u>2c</u>	<u>3.1c</u>

Honorable Joe T. San Agustin  
Chairman, Committee on Ways  
and Means  
Eighteenth Guam Legislature

March 15, 1985

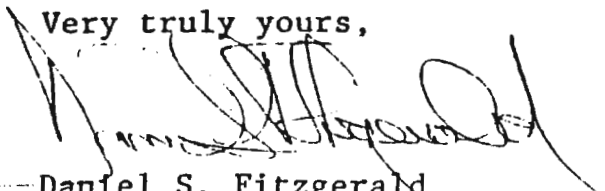
Page 2

As you will note, certain elements of the above have been estimated based on original information provided by Goldman Sachs. It is possible that insurance costs, issuance costs, and estimated interest earnings will vary. However, at this time, it is assumed that such variations will have an off-setting impact.

As you are aware, the above is also predicated on the actual interest rate in effect at the time of the bond issue. Previous discussions with Goldman Sachs indicated that a rate of 9-5/8% - 10% was currently projected.

The above calculations have been estimated for discussion purposes based solely on the information specified in the first paragraph. Actual calculations will be required based ultimately on the desired amount of projects to be funded. I will be pleased to discuss the above with you at your convenience.

Very truly yours,



Daniel S. Fitzgerald  
Director - Audit Operations  
Guam and Micronesia

dfr



TESTIMONY

of

DAVE J. SANTOS

Before the Committee on Ways and Means

On Bills 310 and 19

March 15, 1985

Mr. Chairman, Members of the Committee

Thank you for this opportunity to testify before you on behalf of the Executive Branch.

Tonight, I am testifying as Chairman of the Governor's Fiscal Oversight Committee.

The Administration supports Bill 19 exempting diesel fuel sales to commercial fishing vessels from liquid fuel and gross receipts taxes.

As you are aware, the government of the Commonwealth of the Northern Mariana Islands has enacted into law a bill that exempts all sales of liquid fuel to commercial fishing vessels from taxes, thereby establishing a favorable tax environment that has already begun to lure the tuna fishing fleet to Tinian.

Yesterday, in my role as Tax Commissioner, I issued a tax ruling at the request of a local law firm representing a client in the oil business, that exempts sales of diesel fuel to commercial fishing vessels from gross receipts taxes and allows for a .01 to a full .10 drawback of liquid fuel taxes paid under certain circumstances.

Since the ruling allows for exemptions and drawbacks only under the facts and circumstances as outlined in the request, it is narrow in scope and will not have the same force and effect as a statutory exemption.

What is at stake here is not just the movement of the tuna fishing fleet to Tinian, but the probable loss of a \$59 Million ancillary service industry.

According to our best estimates, at least 200 locally hired individuals are employed in the various support activities that service the commercial fishing industry.

As a result of the CNMI's exempt legislation, we have already lost \$2.1 Million in tax revenues. Bill 19, if passed, will price Guam competitively with our northern neighbors and save the support industry along with 200 jobs and the taxes thereon.

With respect to Bill 310 regarding our efforts to issue a Highway Bond, several alternatives are available which will accomplish the same objectives.

As you know, P.L. 17-79 authorizes the Governor to issue a \$35 Million bond to provide funding for approximately seven major road construction projects.

A proposed amendment to this law authorizes the Governor to issue a \$45 Million bond which was intended not only to cover loss of issuance, credit enhancement costs, but to liquidate the present Bank of Guam loan as well.

Recent information received suggests that the liquid fuel tax increase instituted by P.L. 17-4 may not have been pledged as collateral in the loan agreement between Bank of Guam and the government. In this respect, it may not be necessary that the Bank of Guam loan be paid off. We are currently awaiting an Attorney General's Opinion on this matter.

If this is the case, then it is our opinion that we stay with the original authorization of \$35 Million since the net proceeds after costs will yield approximately \$31 Million or roughly the same net yield as in the proposed \$45 Million issue.

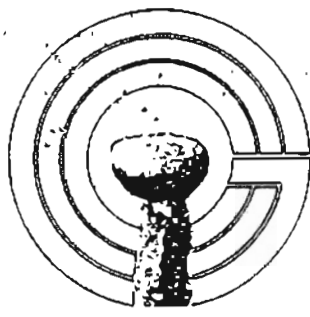
This will mean a required liquid fuel tax rate increase of only 1.1¢ per gallon instead of 3¢ per gallon.

Another alternative is to leave the liquid fuel tax rates as is and pledge other motor vehicle fees such as driver license fees to the Territorial Highway Fund. This, however, will leave the General Fund short of about \$600,000 - \$700,000 in annual revenues. Other alternatives are available and I will be happy to discuss them at a later date.

Thank you for this opportunity to offer testimony on these two issues and I will answer any questions you may have.



**DAVE J. SANTOS**  
Director of Revenue and Taxation



**GUAM CHAMBER OF COMMERCE  
PARTNERS IN PROGRESS**

March 15, 1985

The Honorable Joe T. San Agustin  
Chairman  
Committee on Ways and Means  
Eighteenth Guam Legislature  
P. O. Box CB-1  
Agana, Guam 96910

Mr. Chairman, Ladies and Gentlemen of this Committee:

The Guam Chamber of Commerce is here this evening to testify on Bill 19 the proposed elimination of the gross receipts tax on wholesale transactions, and the proposed increase in the liquid fuel tax to finance a highway bond.

In review of these separate and distinct proposals, the Chamber recognized pertinent issues which underlie each measure. So that our position on these measures is clear to this Committee, allow me to address each measure individually as follows:

**BILL 19: PROPOSED GROSS RECEIPTS AND LIQUID FUEL TAX EXEMPTIONS  
FOR LIQUID FUEL SALES TO COMMERCIAL FISHING VESSELS**

The Bill before you today, as you are aware, is being considered one week after the passage of a similar and even bolder measure by our neighboring Government of the Northern Marianas Commonwealth. As we speak tonight, the residents and business communities of Guam and the Northern Marianas Islands watch and listen to draw their own conclusions on the future outlook of their individual island economies. Ladies and Gentlemen, the ONLY issue before you tonight is just that: THE FUTURE OUTLOOK OF GUAM'S FISHING INDUSTRY!

In substance, Bill 19 follows a practice common among island economies and other mainland coast cities involved with the fishing industry. Bill 19 will protect the existing jobs of at least 200 workers who maintain at least 200 households. The revenue loss from the proposed tax exemptions is rapidly becoming a moot issue since much of the liquid fuel purchases are already occurring away from Guam. Bill 19, however, can staunch and perhaps even reverse the flow of business away from Guam. More importantly, Bill 19 will help preserve the existing level of our fishing industry which accounts for at least the following direct revenue flow to our government:

- 200 jobs at a payroll exceeding \$2 million annually,
- \$2.1 million loss in GRT revenue, and
- \$24.0 million loss in fishing industry ancillary support spending on Guam.



The exemptions proposed by Bill 19 also avoids transfer payments that would result from the lost jobs. In short, Bill 19 proposes an exemption that more than pays for itself.

The \$1.5 million in liquid fuel tax revenues is already lost to Guam. The Bill before you today, however, is YOUR opportunity to save a \$50 million industry that supports ship chandling, provisions suppliers, retailers and wholesalers, net repair, marine hardware, doctors, salt suppliers, husbanding agents, oil suppliers, equipment repair shops, tugs and pilots, airline and travel businesses in this community. With the limited resources on our island, it is the obligation of this Body to preserve economic activities, particularly an activity which relies on our ocean resources. The Chamber of Commerce shares this same obligation and urges the enactment of this measure.

#### PROPOSED GRT EXEMPTION FOR WHOLESALE BUSINESSES

The economic decline that has plagued this island from the prevailing gross receipts tax assessed upon the wholesale industry has been a reality for Guam over many years.

The Administration's recent proposal and this body's desire to enact this long awaited exemption represents a major breakthrough in tax reform. Clearly, small businesses, which are unable to vertically integrate their purchases, and community at large stand to benefit the most from this opportunity to foster an expanded wholesale industry.

In the last 20 years, this island has focused private sector growth initiatives on the attraction of new business and other industries, some of which have come and gone. Our local economy is one in which relies significantly on trade amongst ourselves. The Chamber commends Administration and Legislative proponents of a measure that will enable small owner-operated companies to compete and thrive. The Chamber recognizes this proposal as a reflection of genuine governmental advocacy of small business growth. The Chamber urges your favorable action in adopting this proposal.

#### PROPOSED TAX INCREASE TO FUND A TERRITORIAL HIGHWAY BOND

Capital improvement projects that respond to community growth and expansion undoubtedly foster more economic growth and expansion. Highway improvements go even further in facilitating highway transportation safety and more importantly the very preservation of lives, an economic savings which cannot be estimated. The Chamber of Commerce supports the concept of highway improvements and this Body's recognition of such needs.

Since enactment of Public Law 17-79 and the introduction of this measure, there has been much discussion of proposed tax increases in relation to the proposed highway improvements. Yet, less than six months ago, 15,345 votes were cast in this community to deter and refrain from higher taxation. We too object on principle to the idea of a tax increase.

However, we recognize the significant economic benefits that such a large infusion of capital to be spent on road improvements can bring to our island. Our question: can these projects be funded without raising the liquid fuel tax burden any higher? After 48 hours of discussion among Senator San Agustin, his staff, and Chamber board members, it appears that at least 90% of the proposed projects could be funded without an increase. It also appears that the entire bond issue could be reduced by excluding the repayment of the Bank of Guam loan since other revenue sources have already been identified to repay the debt. We applaud the cooperative effort that it took for the Chamber and the legislature to reduce the cost of funding this bond. We will continue to work together in this manner.

However, this body must now address whether to prioritize the \$31 million in projects or to raise the Liquid Fuel tax slightly to fund all projects. The Liquid Fuel tax revenue projections can finance approximately \$28 million in improvements without an increase. Perhaps now is the time for this Legislature and this Government to practice "living within our means." So far our mutual discussions have already saved the public at least the burden of a 3¢ per gallon increase. The Chamber now hopes that a prioritizing of projects will avoid an increase altogether.

In short, we support the concept of this bond proposal. We feel that a tax increase is not necessarily needed and that 90% of the projects worth \$28 million can be funded at existing revenue levels. Your decision is quite clear: raise taxes further or live within our means.

We have one final suggestion-- the 15,345 anti-tax increase votes that were cast just four months ago was a substantive reflection of the sentiments of the People. In the future, a tax increase of this magnitude, should only be enacted with the concurrence of the people. The Chamber recommends that the decision to increase taxes to fund any future capital improvements should rest with the People through the initiative process. Let the people decide if an increase is or is not to be assessed.

Inasmuch as this Committee addresses three proposed measures today, it must also recognize the pertinent issues which underlie such measures. Bill 19 is an opportunity to save a \$50 million industry that supports a multiple of local businesses, jobs, and households, and defray transfer payments for subsidized programs and services. The gross receipts tax exemption on the wholesale industry is again an opportunity to foster free market competition, create new jobs, and leverage economic growth. With careful planning and cost-efficient governmental operation, territorial highway improvements can be funded without compounding the prevailing tax burden and reducing consumer disposal income.

Sincerely,

  
ELOISE R. BAZA  
President

EXHIBIT E

STATEMENT BY ZEE ENTERPRISES IN FAVOR  
OF THE ENACTMENT OF BILL NO. 19 EXEMPTING  
FROM THE GROSS RECEIPTS TAX AND LIQUID  
FUEL TAXES, DIESEL FUEL SOLD FOR  
COMMERCIAL FISHING PURPOSES

Chairman San Agustin, and members of the Committee on Ways and Means:

My name is John Zuanich. I am an officer of Zee Enterprises which operates seven tuna purse-seiners fishing for tuna in the Western Pacific. With me my father Lawrence W. Zuanich, president of Zee Enterprises, Mr. Andrew Gayle of the firm of Gayle, Teker & Schnabel, our local counsel, and other supporters of the tuna industry.

I would like to preface my remarks by complimenting the committee for the speed with which it has given consideration to this problem of taxing the fuel used by the tuna boats operating out of Guam. We operators realize that the government of Guam has some serious fiscal problems and that you are therefore contemplating tax increases and other methods of raising revenue. For your committee to consider at this time a bill that would exempt us from paying taxes on the diesel fuel that we purchase demonstrates that you are truly concerned about the economic well-being of the territory and that you are able to look at the larger picture of overall island economic activity rather than the narrow question of tax revenue alone.

To bring you up-to-date on the American tuna industry, I regret to advise that it has been in the financial doldrums for the last several years. Many vessels have gone bankrupt, and several West Coast canneries have closed, apparently permanently. In fact, there is no longer any American tuna cannery on the West Coast of the United States. The principal reason for this decline in the American tuna industry has been foreign competition from countries whose crewmen are paid considerably less than those on American vessels and whose other expenses are also frequently lower. Operating a modern twelve hundred ton capacity tuna purse-seiner is a capital-intensive industry and the profit margins are not great. Thus, the difference of a fraction of a cent in various cost items can make an enormous difference in the profitability or even viability of a particular tuna operation. Since the 1973 oil embargo and resulting fuel crisis, the cost of fuel has become one of our major cost items. Each of our vessels purchases one hundred and twenty to one hundred and forty thousand gallons of marine diesel fuel at a time and refuels as many as six times a year. The price of

diesel fuel thus becomes of crucial importance in deciding from which port our vessels are to operate.

For many reasons, we would like to continue to operate from Guam. The local government has been extremely friendly and cooperative in many ways; the port facilities are outstanding; the crew very much enjoys its rest and recreation here; the shops, marine suppliers, financial and insurance facilities are adequate, and the island is under the American flag which means that we are not going to be subjected to arbitrary arrest or seizures or otherwise mistreated. I am also happy to report this evening that it now appears that the tuna we are now catching will be canned in American Samoa which means that we can unload the tuna here in Guam and ship from Guam directly to American Samoa rather than have to go Tinian and unload there for foreign flag carriers. For all of these reasons, we would like to concentrate our activities in Guam; that is, do the unloading here, do all of our resupplying and revictualing here, and purchase all of our fuel here. However, we can do that only if the diesel fuel price is competitive.

As you know, we have had to do a lot of transshipping from Tinian over the last year because of the Jones Act prohibition on using foreign vessels in shipping goods from Guam to Puerto Rico. The government of the Commonwealth of the Northern Mariana Islands, in response to the opportunity, has now made it possible for us to purchase diesel fuel in Tinian at a lower price than it is now available in Guam.

However, if Bill 19 is enacted, I am assured by the suppliers here in Guam that the price of diesel fuel will go down below the current Tinian price, in which case, of course, we will make our purchases here. Please do not misunderstand me. We are not trying to stampede the government of Guam into doing away with its legitimate taxes by threatening to go elsewhere, since we have already operated out of Tinian on a tuna transshipment basis for some time. The question we now have to decide is whether to move our entire operation to Tinian, including the purchase of fuel. What we would prefer to do is concentrate in Guam for both transshipment and refueling and with the enactment of Bill 19, that can be accomplished.

I am aware that by virtue of Business Privilege Tax Ruling No. 85-1, issued March 14, 1985 by the director of Revenue and Taxation, the sale of marine diesel fuel in Guam to purse-seiners for consumption outside of Guam is exempt from the gross receipts tax and is subject to a drawback of the full amount of the tax if transported by

one purse-seiner out to sea for unloading on another outside of Guam. While we certainly welcome the recognition by the director that fuel consumed outside of Guam is not taxable in Guam, we still respectfully urge passage of Bill No. 19 since the relief set out in the Ruling is not nearly as comprehensive as that found in the Bill. In the first place, we cannot operate in such a way as to use one vessel to refuel another at sea. Thus, obtaining the full ten cent drawback would be difficult for us to obtain since our ships are not set up for that type of refueling at sea operation. Additionally, paying the tax and then getting a drawback has never been very satisfactory; it ties up our funds for sometimes considerably periods of time and it complicates our recordkeeping. Finally, the exemption on the gross receipts tax seems to exempt only the fuel that is burned outside of the territorial waters of Guam. Does this mean that we have to calculate how much fuel is expended within the waters of Guam and pay the gross receipts tax on that? If that is the case, how far do the territorial waters of Guam extend? In some legislation it is set at two hundred miles and in others at twelve miles. As you can see, the legal and practical questions in interpreting this Ruling are complex and difficult. We think the cleaner approach would be to do as is provided in Bill No. 19 which is to exempt the fuel from both the gross receipts tax and the liquid fuel tax altogether. If the Bill is enacted in its present form, the price of diesel fuel in Guam will be less than it is in Tinian and a very substantial commercial tuna operation will center itself on Guam. A number of unloaders will be hired, port operations will increase, and a great deal of money will be spent in Guam not only in purchasing fuel but in purchasing other supplies including food and beverages and in provisioning the tuna fleet.


Thank you very much for permitting me to testify and for your attention. If you have any questions, I will be happy to attempt to answer them.

MAR 12 '85

EIGHTEENTH GUAM LEGISLATURE  
1985 (FIRST) Regular Session

Bill No. 310 (LS)

Introduced by:

  
Committee on Ways and Means

AN ACT TO AMEND SECTIONS 6123, 6124, 6126 AND 19571 OF THE GOVERNMENT CODE RELATIVE TO THE ISSUANCE OF HIGHWAY BONDS; TO AMEND SECTION 19575.01 AND ADD A NEW SUBSECTION 19543.1021 OF THE GOVERNMENT CODE RELATIVE TO LIQUID FUEL TAX; AND TO AMEND SUBSECTION 19541.0102 OF THE GOVERNMENT CODE RELATIVE TO GROSS RECEIPTS TAXES FOR WHOLESALERS AND FOR OTHER PURPOSES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2 Section 1. Section 6123 of the Government Code is amended to read:  
3 "Section 6123. (a) The Governor of Guam is authorized to  
4 create a debt or debts of the government of Guam in aggregate  
5 principal amount not to exceed [Thirty-five Million Dollars  
6 (\$35,000,000)] Forty-five Million Dollars (\$45,000,000) for the purposes  
7 of implementing capital improvement highway projects and refunding  
8 debt of the government incurred pursuant to Sections 6120 and 6122 of  
9 the Government Code; provided, however, that the terms and  
10 conditions of the debt or debts shall be approved by the Legislature  
11 by Resolution. The sentence contained in [Section 53552(c) of the  
12 Government Code] 12 GCA §2103(k) [)] stating: 'The failure of the  
13 Legislature to adopt a resolution rejecting the terms and conditions of  
14 the issuance of the bonds for forty-five (45) calendar days of the date  
15 of its submission to the Legislative Secretary shall be concurrence to  
16 the issuance of the bonds', shall not apply to the provisions of this  
17 Section and Section 6124 of the Government Code.  
18 (b) Such debt or debts may be created by a loan or other  
19 agreement executed by the Governor containing such terms as are  
20 consistent with this Section and Section 6124 of the Government Code  
21 or may be created by the issuance of bonds in one or more series sold

1 at such terms as are consistent with this Section and Section 6124 of  
2 the Government Code.

3 (c) Any bonds authorized by this Section shall be issued  
4 pursuant to an indenture executed by the Governor on behalf of the  
5 government of Guam, which indenture shall specify the forms,  
6 amounts, maturity dates, interest rates, interest payment dates,  
7 denominations, places of payment, registration provisions, rights of  
8 exchange, redemption dates and default provisions for such bonds and  
9 shall otherwise provide for the use of proceeds of such bonds and the  
10 security for such bonds, including the pledge authorized by Section  
11 6124 of the Government Code, in a manner not inconsistent with this  
12 Section and Section 6124 of the Government Code.

13 (d) Any debt or debts authorized by this Section shall constitute  
14 the valid and legally binding limited obligation of the government of  
15 Guam payable from and secured by a pledge of the revenues described  
16 in Section 6124 of the Government Code. The validity of any such  
17 debt or debts shall not be affected by the validity or regularity of any  
18 proceedings for the implementation of capital improvement highway  
19 projects funded by the debt or debts."

20 Section 2. Section 6124 of the Government Code is amended to read:

21 "Section 6124. All or any part of the revenues from the taxes  
22 levied pursuant to subchapter D of Chapter VI of Title XX of the  
23 Government Code and from the license fees and penalties imposed  
24 pursuant to Sections 23339, 23353, 23361, 23362, 23364, 23365 and  
25 23500 of the Government Code may be pledged to secure the repayment  
26 of any debt or debts created under Section 6123 of the Government  
27 Code. Any pledge made to secure bonds shall be subject to approval  
28 by the Legislature by resolution pursuant to §6123 of the Government  
29 Code and shall be valid and binding from the time the pledge is made.  
30 The revenues pledged and thereafter received by the government or  
31 any trustee, depository or custodian shall be deposited in a separate  
32 account and shall be immediately subject to the lien of such pledge  
33 without any physical delivery thereof or further act, and the lien of  
34 any such pledge shall be valid and binding against all parties having



1 claims of any kind in tort, contract or otherwise against the  
2 government, such trustee, depository or custodian, irrespective of  
3 whether the parties have notice thereof. The indenture by which such  
4 pledge is created need not be recorded. All such taxes, fees and  
5 penalties, to the extent so pledged, are hereby continuously  
6 appropriated for such purpose. All capital improvement highway  
7 projects to be funded from the provisions of Sections 6123 and 6124 of  
8 the Government Code must be reviewed and approved by the Governor  
9 prior to their implementation."

10 Section 3. Section 19571 of the Government Code is amended to read:

11 "Section 19571. Rates. The following rates shall apply in  
12 computing, assessing and collecting the liquid fuel tax:

13 .01. A tax at the rate of [Ten Cents (\$0.10)] Thirteen and  
14 one tenths of one cents (\$0.131) per gallon on diesel fuel; and

15 .02. A tax at the rate of [Eleven Cents (\$0.11)] Fourteen  
16 and one tenth of one cents (\$0.141) per gallon on other liquid  
17 fuel as defined herein except liquid fuel used for commercial  
18 aviation purposes which is taxed at a rate of four cents (\$0.4)  
19 per gallon."

20 Section 4. Section 6126 of the Government Code is amended to read:

21 "§6124. No contract or subcontract may be awarded to any  
22 contractor providing services on the capital improvement projects  
23 funded from the implementation of Sections 6123 and 6124 of the  
24 Government Code unless Seventy-five percent (75%) of the persons  
25 employed by the contractor to work on such projects are residents of  
26 the Territory of Guam. Any contract awarded in violation of this  
27 section shall be null and void ab initio. No money may be drawn on  
28 for capital improvement projects funded from the implementation of  
29 Sections 6123 and 6124 of the Government Code until the trustee,  
30 depository or custodian of the funds certifies that the contract  
31 awarded is in conformity with the requirements of this Section."

32 Section 5. A new Subsection .1021 is added to Section 19543 of the  
33 Government Code to read:

1           ".1021. Amounts received from the sale of liquid fuel to vessels  
2 engaged in commercial fishing."

3           Section 6. Section 19575.01 of the Government Code is amended to  
4 read:

5           "§19575.01. Exemption. Liquid Fuel refined, manufactured,  
6 produced, blended or compounded in Guam or imported into Guam, or  
7 received in Guam from persons not taxable hereunder, and sold to  
8 vessels engaged in commercial fishing or to the United States, or any  
9 agency or instrumentality thereof, in Guam, shall be excluded from the  
10 computation of liquid fuel tax by the distributor selling such liquid  
11 fuel to vessels engaged in commercial fishing, or to the United States,  
12 or any agency or instrumentality thereof, but shall be reported by  
13 such distribution to the Tax Commissioner."

14           Section 7. A new Subsection .23 is added to Section 19500 of the  
15 Government Code to read:

16           ".23 'vessels engaged in commercial fishing' shall mean those  
17 vessels solely employed in the activity of catching fish for commercial  
18 sale."

19           Section 8. Subsection 19541.0102 of the Government Code is amended  
20 to read:

21           "Section 19541.0102. Provided, that any person engaging or  
22 continuing in business as a retailer and a wholesaler shall pay the tax  
23 required solely on the gross proceeds of sales of [each such] the  
24 retail business, and that his books must be kept so as to show  
25 separately the gross proceeds of sale of each business."

26           Section 9. A new Subsection 19543.1021 is added to read:

27           "Section 19543.1021. Amounts received from engaging or  
28 continuing in business as a wholesaler, except that if such persons  
29 are, in addition, engaging or continuing in business as a retailer, the  
30 provisions of this Subchapter and the taxes levied thereunder shall  
31 apply to that part of the businesses of such persons that involve  
32 retail."