



TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U.S.A.

RICARDO J. BONDALLO
GOVERNOR

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Karl
11-15-80*

NOV 4 1980 3:20 E

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

Dear Mr. Speaker:

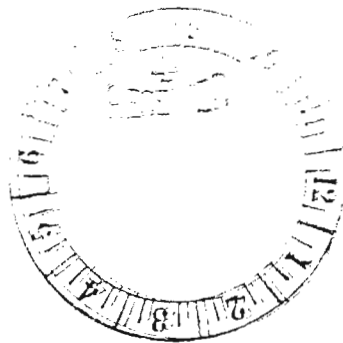
Transmitted herewith for your information and files is Public
Law No. 18-20.

Sincerely,

EDWARD D. REYES
Acting

Enclosure

180259



181171

SEP 16 '85

EIGHTEENTH GUAM LEGISLATURE
1985 (FIRST) Regular Session

Bill No. 628(cs)

Introduced by:


J. T. San Agustin

AN ACT TO APPROVE THE ISSUANCE OF A THREE HUNDRED ONE MILLION NINE HUNDRED THIRTY-FIVE THOUSAND DOLLAR (\$301,935,000) MORTGAGE REVENUE BOND ISSUED BY GUAM ECONOMIC DEVELOPMENT AUTHORITY FOR LOANS TO DEVELOPERS OF MULTI-FAMILY HOUSING.

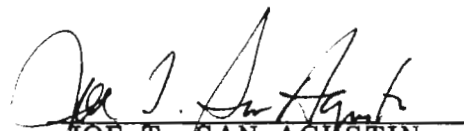
1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. The Legislature approves the terms and conditions of the
3 issuance of the Three Hundred One Million Nine Hundred Thirty-five
4 Thousand Dollar (\$301,935,000) Mortgage Revenue Bond issued by Guam
5 Economic Development Authority for loans to Developers of Multi-family
6 housing as contained in the documents transmitted to the Legislature on
7 September 12, 1985.

EIGHTEENTH GUAM LEGISLATURE
1985 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

Original

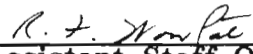
This is to certify that Substitute Bill No. 628 (LS), "AN ACT TO APPROVE THE ISSUANCE OF A MORTGAGE REVENUE BOND ISSUED BY GUAM ECONOMIC DEVELOPMENT AUTHORITY FOR LOANS TO DEVELOPERS OF MULTI-FAMILY HOUSING IN AN AMOUNT NOT MORE THAN THREE HUNDRED MILLION DOLLARS (\$300,000,000) AT AN INTEREST RATE OF NO MORE THAN TWELVE PERCENT (12%)," was on the 24th day of October, 1985, duly and regularly passed.


JOE T. SAN AGUSTIN
Acting Speaker

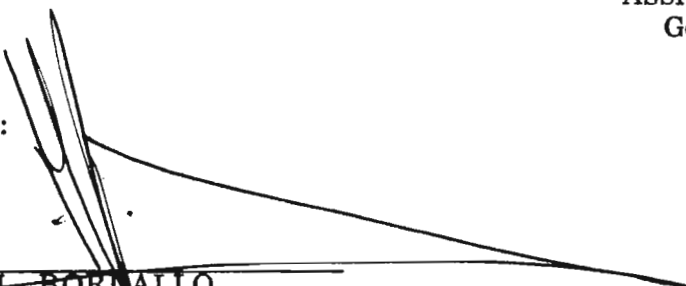
Attested:


ELIZABETH P. ARRIOLA
Senator and Legislative Secretary

This Act was received by the Governor this 25th day of October, 1985, at 12:00 o'clock A.m.


Assistant Staff Officer
Governor's Office

APPROVED:


RICARDO J. BERNALDO
Governor of Guam

Date: 10/26/85

Public Law No. (12:45 PM)
18-20

EIGHTEENTH GUAM LEGISLATURE
1985 (FIRST) Regular Session

Bill No. 628 (LS)
Substitute

Introduced by:

J. T. San Agustin
F. R. Santos
F. J. Gutierrez

F. J. Quitugua
H. D. Dierking
J. F. Ada
M. D. A. Manibusan
A. R. Unpingco
T. S. Nelson
E. P. Arriola

AN ACT TO APPROVE THE ISSUANCE OF A MORTGAGE
REVENUE BOND ISSUED BY GUAM ECONOMIC
DEVELOPMENT AUTHORITY FOR LOANS TO
DEVELOPERS OF MULTI-FAMILY HOUSING IN AN
AMOUNT NOT MORE THAN THREE HUNDRED MILLION
DOLLARS (\$300,000,000) AT AN INTEREST RATE OF
NO MORE THAN TWELVE PERCENT (12%).

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

2 Section 1. (A) The Legislature approves the terms and conditions of
3 the issuance of a Mortgage Revenue Bond to be issued by the Guam
4 Economic Development Authority for loans to developers of multi-family
5 housing as contained in the documents transmitted to the Legislature on
6 September 12, 1985, provided that the following changes and additions are
7 made to the previously transmitted documents:

8 a. The Mortgage Revenue Bond is to be issued for not more
9 than Three Hundred Million Dollars (\$300,000,000);

10 b. The Mortgage Revenue Bond shall be issued at an interest
11 rate of not more than twelve percent (12%);

12 c. Once Alternate Security for a particular Project is delivered
13 to the Trustee together with the other documentation required by
14 Section 5.02 B. of the Indenture at or prior to the appropriate
15 Special Mandatory Tender Date, the Bond proceeds allocated to

1 that particular Project will be set aside and distributed to the
2 institution that is providing the interim construction financing;

3 d. Amendments to the Indenture and all other documents
4 relating to the Bonds shall be permitted without the consent of
5 the Bondholders for the purpose of meeting the requirements of
6 the institutions furnishing either Alternate Security or Interim
7 Construction Financing so long as such amendments do not
8 adversely affect either the tax-exempt status of the Bonds or the
9 rating then in existence for the Bonds;

10 e. A procedure shall be designated for the Trustee to be
11 allowed pre-approval of a commitment for Alternate Security;

12 f. The Remarketing Agent shall hold the aggregate principle
13 amount of Bonds of a certain dollar amount for a certain number
14 of days;

15 g. The institution furnishing Alternate Security shall have the
16 authority to enforce the obligations of the developers with respect
17 to the renting of twenty percent (20%) of the units to
18 low/moderate income persons;

19 h. A Program Development Fund Agreement between Guam
20 Economic Development Authority, the Underwriter, and the
21 Trustee shall be prepared that will include the following:

22 1. An amount to be determined at closing for the Bonds,
23 but in any event no less than Four Million Five
24 Hundred Thousand Dollars (\$4,500,000), shall be
25 established and held by the Trustee for the purpose of
26 assisting in the successful completion of the program;

27 2. The Underwriter shall commit itself to assist in
28 obtaining institutions to participate in furnishing
29 Alternate Security and, to the extent that Alternate
30 Security is obtained, the Underwriter shall receive a
31 fee from amounts in the Program Development Fund for
32 such efforts;

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3. The Special Tax Counsel for the Underwriter shall assist in the obtaining of Alternate Security and shall review all documentation finally prepared to obtain Alternate Security and Interim Construction Financing, particularly with regard to continued compliance with applicable U.S. tax laws and regulations, to maintain the continued tax-exempt status with the Bonds. This assistance will be provided throughout the term of the construction phase of the Project and will be offered, in addition, to developers for each Project;

4. All Trustee fees and expenses, Remarketing Agent fees and expenses, continuing actual expenses of the Guam Economic Development Authority and all other necessary expenses associated with the Program shall be paid from the Program Development Fund and any excess funds on deposit may be available to fund certain infrastructure costs incurred by the Guam Economic Development Authority or the territory of Guam or any of its agencies which are directly related to a specific Project and are not otherwise directly funded from the proceeds of the funds;

i. The developers must obtain commitment from an institution for Alternate Security within six (6) months after the bonds are issued; and

j. Under no circumstances shall the Government of Guam or any of its agencies or instrumentalities be in any way liable or responsible for any default or deficiency arising out of the said bonds, their issuance, and repayment or any default thereon. Notwithstanding any other provision of law, no officer or employee of the Government of Guam, its agencies or instrumentalities has the authority to so bind the Government, its agencies or instrumentalities in any way to make the Government of Guam, its agencies or instrumentalities in any way so liable or responsible. The bond covenants shall, in a prominent manner,

1 recite the foregoing section. Each bond shall bear on its face in
2 bold letters words to the effect:

3 "THE GOVERNMENT OF GUAM, ITS AGENCIES AND
4 INSTRUMENTALITIES ARE NOT RESPONSIBLE IN ANY WAY
5 FOR THE REPAYMENT OF THIS BOND."

6 k. Should the bond issue fall outside the purview of bonds
7 allowed by the Department of the Treasury rules and regulations
8 regarding arbitrage bonds, then the bond counsel and special tax
9 counsel shall agree to indemnify the government of Guam, its
10 agencies and instrumentalities from any damage resulting from the
11 adverse ruling by the Department of the Treasury. The
12 agreement shall also provide that if this bond issue is declared an
13 arbitrage bond issue, then the underwriters, bond counsel and
14 special tax bounsel shall reimburse the government of Guam, its
15 agencies and instrumentalities for all fees and expenses incurred
16 in the issuance of the bonds.

17 (B) The requirement for legislative approval as to terms and
18 conditions of the bond issue contained in 12 GCA §2103(k) shall not
19 apply to mortgage revenue bonds issued pursuant to subsection (A) of
20 this Act.

21 Section 2. Resolution No. 205 (LS), rejecting the terms and conditions
22 of the issuance of the mortgage revenue bond to be issued by the Guam
23 Economic Development Authority for loans to developers of multi-family
24 housing as contained in the documents transmitted to the Legislature on
25 September 12, 1985, shall have no force and effect with respect to issuance
26 of bonds with terms and conditions of mortgage revenue bond as described
27 in Section 1 of this Act including the changes and additions mandated
28 therein.

EIGHTEENTH GUAM LEGISLATURE

⑦ 47
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(P.L. 19-20)

ROLL CALL SHEET

Bill No.: 638

DATE: 10/24/05

Resolution No.: _____

QUESTION: _____

SENATOR	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
<u>J. F. Ada</u>				✓
<u>J. P. Aguon</u>	✓			
<u>E. P. Arriola</u>	✓			
<u>J. G. M. Bamba</u>	✓			
<u>F. F. Blas</u>	✓			
<u>H. D. Dierking</u>	✓			
<u>E. R. Duenas</u>				✓
<u>C. T. C. Gutierrez</u>				✓
<u>F. J. Gutierrez</u>	✓			
<u>A. C. Lamorena III</u>				✓
<u>P. C. Lujan</u>				✓
<u>M. D. A. Manibusan</u>				✓
<u>T. S. Nelson</u>	✓			
<u>D. Parkinson</u>			✓	
<u>F. J. Quitugua</u>	✓			
<u>J. M. Rivera</u>				✓
<u>J. T. San Agustin</u>	✓			
<u>F. R. Santos</u>	✓			
<u>T. V. C. Tanaka</u>	✓			
<u>A. R. Unpingco</u>			✓	

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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

October 23, 1985

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

Member, Committee
on Rules

VIA: Chairman, Committee on Rules

Dear Mr. Speaker:

The Committee on Ways & Means, to which Bill NO. 628, as substituted by the Committee on Ways & Means was referred, wishes to report its findings and recommendations.

Member, Committee
on Tourism, Transportation,
and Communication

The Committee voting record is as follows:

Member, Committee on
Health, Welfare,
and Ecology

To do pass 4

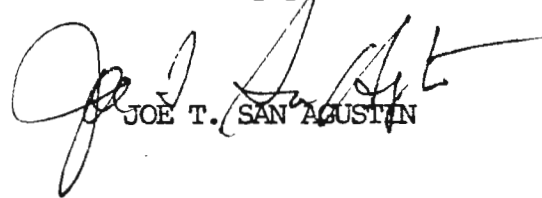
To not pass

To report out 3

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

attachments

VOTE SHEET
 October 23, 1985
 Committee on Ways & Means,
 Bill No. 628

AN ACT TO APPROVE THE ISSUANCE OF A MORTGAGE
 BOND ISSUED BY GUAM ECONOMIC DEVELOPMENT AUTHORITY
 FOR LOANS TO DEVELOPERS OF MULTI-FAMILY
 HOUSING IN AN AMOUNT NOT MORE THAN THREE HUNDRED
 MILLION DOLLARS (\$300,000,000) AT AN INTEREST
 RATE OF NO MORE THAN TWELVE PERCENT (12%)

<u>SENATOR</u>	<u>TO DO PASS</u>	<u>TO NOT PASS</u>	<u>TO REPORT OUT</u>	<u>COMMENTS</u>
<u>Joe T. San Agustin, Chairman</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>Francisco R. Santos, Vice-Chairman</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<u>Joseph F. Ada, Member</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>Herminia D. Dierking, Member</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>Franklin J. Gutierrez, Member</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<u>Marilyn D.A. Manibusan, Member</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>Don Parkinson, Member</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>Franklin J. Quitugua, Member</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<u>Antonio R. Unpingco, Member</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Committee on Ways & Means
Bill No. 628 - Committee Report
AN ACT TO APPROVE THE ISSUANCE OF A MORTGAGE
REVENUE BOND ISSUED BY GUAM ECONOMIC DEVELOPMENT
AUTHORITY FOR LOANS TO DEVELOPERS OF MULTI-FAMILY
HOUSING IN AN AMOUNT NOT MORE THAN THREE HUNDRED
MILLION DOLLARS (\$300,000,000) AT AN INTEREST RATE
OF NO MORE THAN TWELVE PERCENT (12%)

Bill No. 628 introduced by Senator Joe T. San Agustin on September 16, 1985, is an act to approve the issuance of more than \$300 million in mortgage revenue bonds. The funds from the sale of the bonds are to be used for loans to companies planning to construct multi-family housing projects in various parts of the island. The bonds are to be issued by the Guam Economic Development Authority which basically serves as a clearinghouse for all bond issues on Guam.

TESTIMONY

The public hearing for the bond issue was first held on September 24, 1985, at 9:00 a.m. in the Legislative Session Hall. This hearing was conducted to hear the views and comments from applicable government agencies, and the utility agencies that dealt with water, power and telephone services. The Committee's reason for soliciting comments from these agencies was to insure that the infrastructure of the island can absorb the proposed new construction projects and also whether there is in fact a need for these multi-family dwellings. In addition to the government and utility agencies, the public hearing included testimony from the developers themselves.

Testimony was submitted to the Committee from Guam Power Authority, Guam Telephone Authority, Public Utility Agency of Guam, Bureau of Planning, and Land Management from their respective directors with the exception of Public Utility Agency of Guam which submitted written testimony without representation.

The Guam Power Authority, through its Director, Joaquin P. Perez, submitted comments on supporting the bond issue for a variety of reasons. The new projects would lead to additional customers and revenues and ultimately, the costs involved would be distributed over a higher number of customers. Because of this, GPA will experience a "containment of rates" in addition to increased income.

Concerning the distribution of power to these projects, GPA stated a problem would exist only if the developments were all concentrated in the Northern sector of the island because of the additional generation requirements of the Tanguissan power plant. In addition, a minimal increase in costs is expected for meter readers.

The Guam Telephone Authority submitted written testimony stating the additional housing units would be "well within our capacity to serve" in addition to increased revenues for the Authority.

Due to the increase in water demands by the new housing units, the Public Utility Agency of Guam indicated a need to drill for 12 wells costing \$1.8 million and covering a period of 18 months. Also, upgrading of transmission and distribution water lines would be instituted as well as wastewater facilities.

The Bureau of Planning and the Department of Land Management submitted testimony supporting the Bill with regard to helping solve Guam's housing shortage. Both Agencies offered their support and assistance in any way possible.

Representing the Governor's Office and the Administration in general, Mr. Frank R. Perez offered testimony supporting the Bill, as he noted a critical housing problem on Guam and a need for additional housing units. A remedy to this problem, he suggested, would be to fund the proposed projects through the mortgage revenue bonds which would then provide lower interest rates to the developers. Also, the projects would mean increase revenues to the government in the form of increased income taxes, GRT, and Real Property Taxes.

The companies/developers appeared and submitted testimony through their representative Mr. Woodrow W. Gaspard. They stated they have all read the Bond documents and that various aspects of the bond issue have been explained to them and based on that, they are satisfied with the bond proposal. It was brought out in the hearing; however, that the developers must seek interim financing and complete their projects before any long-term low-interest loan from the Bond proceeds are made.

Subsequent hearings were also held on September 25 and 26 to hear testimony from GEDA, the proposed issuer of the bond and from Mr. Edward K. Strauss, bond counsel for Mathews & Wright Inc. the purchasers of ~~the bonds.~~

The Guam Economic Development Authority, gave testimony indicating the need for capital funding on Guam. The Authority, represented by Mr. David D.L. Flores, submitted their testimony stating that the bond issuance would provide a "pool of funds" to be used by developers for construction of residential rental projects to be financed at low interest rates.

The Authority submitted two reports to the Committee detailing and outlining the need for rental units on Guam. The first report was performed by Merrill & Associates, a local consulting company. Their findings concluding the following:

- The current demand for multi-family rental unit is at 1725 units.
- Based on population growth and military demand, the need for the same rental units would be 4186 by 1988.
- There is a present vacancy rate of 1%
- All large multi-family complexes have waiting lists.
- Housing units have not kept up with the increase in population.

In another report performed by Real Estate Research Corp. of California they estimated that by 1988, the demand for rental housing would be from 9,000 to 14,000 units. They too, indicated the need on Guam for more rental units and they base their assumption on increased military activities and an increase in local households.

BOND ISSUE

Bill No. 628 would authorize GEDA to issue multi-family mortgage revenue bonds up to the amount of \$300,000,000. The purchaser of the bonds is Matthews & Wright, Inc., the Trustee is the Pittsburg National Bank, and the Issuer of the bonds is the Guam Economic Development Authority. Although there has been some concern as to the liability of GEDA or the Territory of Guam with respect to the bond issue, a statement indicating that the bond issue does not constitute a debt of GEDA or Guam is to be included in the Indenture and is made a part of the Bill.

The Bonds are to be sold in three different series and redeemed within 3 years as follows:

	<u>Proposed Amount</u>	<u>Special Mandatory Tender Date</u>
Series A	\$ 3,030,000	September 15, 1987
Series B	7,465,000	March 15, 1988
Series C	291,440,000	September 15, 1988

The Bonds will bear interest at a rate not greater than 12% per annum and are subject to a Special Mandatory Tender at par as stated above. In addition, alternate security in the form of FHA insured mortgages, FNMA guaranteed mortgage pass through certificates, FHCMC insured mortgages or other government insured or guaranteed mortgages is required before any proceeds may be drawn on.

Once the Bonds have been tendered on their respective dates, the Bonds are to be remarketed by the remarketing agent who in this case is, Matthews & Wright, Inc. Before remarketing however, each Series of Bonds will be assigned a sub-series as follows:

Sub-Series

- 1 Bonds with alternate security having a minimum term of 5 years
- 2 Bonds with alternate security having a minimum term of 7 years
- 3 Bonds with alternate security having a minimum term of 10 years
- 4 Bonds with alternate security having a minimum term of 12 years
- 5 Bonds with alternate security having a minimum term equal to the respective maturity of Series A, B, or C Bonds

The remarketing of the Bonds will cause the Bonds to bear new interest rates to be set by the remarketing agent. This will be based on the rating of the alternate security and the dates set for the optional and mandatory tender of the Sub-Series.

The proceeds of the Bonds, after the closing costs have been made, are to be invested in certificates of deposit or other similar investments issued by a bank or insurance company. The Trustee shall then hold the deposits to the extent that the amounts from the investments plus the net bond proceeds are sufficient to pay for the principal and interest on the Bonds.

INTERIM FINANCING

In order for a Company/developer to draw Bond proceeds, their construction project must be completed and the Company must provide proof of their alternate security to the Trustee. Because of these conditions, bridge financing and/or interim financing is a necessity as this will provide the companies the needed funds to construct their projects until final completion. However, it is also a requirement of the interim financiers that the developers must obtain alternate security before they receive interim financing. Once completed and conditions as stated in the Indenture are satisfied with the Trustee, the company loan will then be made between the issuer (GEDA) and each individual company.

As stated earlier, the funds from the Bond issue will be issued for long-term low-interest loans to companies constructing and developing rental units throughout the island. Information submitted to the Committee indicated 19 proposed developments at a total cost of \$ 226,283,272 which may be increased through additional housing developments.

<u>PROJECT</u>	<u>LOCATION</u>	<u>UNITS</u>	<u>COST</u>
Royal Towers	Tamuning	38	\$ 2,100,000
Royal Socio	Tamuning	60	2,500,000
Tradewind Gardens		969	74,305,225
Middle Kingdom	Chalan Pago	122	5,958,751
Tamuning Villa	Tamuning	8	378,504
Pago Shores	Pago Bay	50	2,225,322
Windward Hills Development	Windward Hills	770	50,960,042
Y-Paopao Estates	Dededo	700	41,374,759
Imperial Apartments	Tumon	176	17,000,000
Sinajana Hills	Ordot-Sinajana	44	1,609,065
Tamuning West Apartments	Tamuning	45	3,694,084
Santa Cruz Apartments		12	520,311
Equity Townhouse	Harmon	66	2,959,840
Apusento Apartments		130	5,500,000
Donnicker Apartments		49	3,093,377
Dos Amantes Palisades	Dededo	240	16,894,424
Agat Heights Townhouse	Agat	640	23,936,573

Etton Springs	Ordot	<u>256</u>	<u>11,272,995</u>
TOTAL		4,375	\$226,283,272

The companies planning to construct the housing projects have grouped together to form the Guam Association of Developers. They have received a commitment by a private entity to arrange interim financing, however it is only based on the issuance of the Bond. The financial specifics of the interim financing package has not been determined or brought out through previous hearings and discussions, only that alternate security and an escrow account is required before any funds for interim financing are either committed or released.

The interim financing will be used to fund the actual construction of the projects. Once the projects are completed, the institution providing the interim financing will then have its appropriate share of costs paid off by the Bond proceeds through an escrow account held in its name. Of course before any bond proceeds are released, the developers must present the alternate security, loan agreement, company note, regulatory agreement, mortgage and other documents as required by the Indenture, to the Trustee. The escrow account will insure the interim financier is paid after the construction projects are completed.

The key to the developers receiving funds for interim financing to construct their projects is their ability to obtain the alternate security whether it be in the form of FHA, FNMA, FHLMC mortgages or other government guaranteed mortgages. Thru their bond counsel Mr. Edward K. Strauss, Matthews & Wright Inc. has committed themselves to establishing a Program Development Fund for the purpose of assisting the developers in obtaining alternate security and to insure the successful completion of the Bond Program. The amount expected to be deposited in the fund should be no less than \$4.5 million based upon existing market conditions. This Program Development Fund together with the escrow account in the interim financiers name and the Alternate Security will insure the interim financier of being fully paid for all expenses incurred after completion of the construction projects. The alternate security obtained for both the interim financing and long-term financing will then insure the successful completion of the housing projects.

LONG TERM FINANCING

Upon completion of the construction projects, each individual developer will enter into a long-term loan agreement with the bond issuer (GEDA). The proceeds of the loan will be used to pay off the short-term loan granted from the interim financier, insurance costs, and other related expenses. This long-term financing is again dependent on the developers obtaining alternate security as stated earlier, and fulfilling other requirements of the bond indenture.

In previous discussions with Mr. Strauss, he stated the developers should assume using a 9% interest rate for their payback capabilities on the long-term financing arrangements. The repayment schedule using a 9% interest rate would be in addition to the developer's other incidental costs such as building maintenance, utilities, etc. If the interest rate is below 9%, it is suggested by Mr. Strauss the savings be held in reserve with each developer to compensate for any interest rate changes above 9%. Although there is a 12% interest ceiling given in the bill, he indicated the only time it may be imposed is if there's a short-term "glitch" in the bond market.

Recent information received from Mr. Stanley J. Dirks, Bond Counsel for previous Guam Bond issues, revealed important statements that had never been brought forth during the meetings public hearing and discussion on the bond issue. The main focus of Mr. Dirk's concerns was on the eligibility of the interest earned in the bond issue to be tax exempt.

A provision of the bond structure requires that the bond proceeds, after initial delivery costs, are to be invested at rates higher than the rate on the bonds during the initial three year period. This, as previously stated, is required so that the interest earned plus the remaining bond proceeds would be sufficient to redeem all the bonds after the three year period if no alternate security is provided. Mr. Dirks noted certain Internal Revenue Code and Treasury Regulations which must be satisfied before such investments are permitted and that the interest gained on such investments are allowed to be tax exempt. He noted specifically the Arbitrage Rules of Section 103(c) which states: (1) The issuer must reasonably expect, as of the date of issuance of the bonds, to incur within six months after the date of issuance of the bonds a

binding obligation in the amount of at least \$100,000 to commence or acquire the project or projects to be financed by the bonds, (2) The issuer must expect to expend at least 85% of the spendable proceeds of the bonds on the project or projects by the end of three years from the date of issuance of the bonds, and (3) The issuer must as of the date of issuance of the bonds reasonably expect that after a binding obligation to acquire or commence the project or projects is incurred as described above, work on or acquisition of the project or projects must proceed with due diligence to completion.

Basically, he questions whether 85% of the spendable proceeds will be expended within the 3 year period. On this \$300 million bond issue using a discount of 8% (\$24 million), the spendable bond proceeds would be \$276 million of which 85% or \$235 million would have to be spent within the 3 year period assuming the entire \$300 million is sold.

He also pointed out that the remarketing feature of the bond issue would subject GEDA and the developers to any additional risk if there were any tax law changes. In addition he noted the developers would not know the interest rate applied to their loans until the time of remarketing.

FINDINGS AND CONCLUSIONS

As submitted to the Legislature, the bond proposal did not contain certain regulations and provisions in order to protect all parties involved. Consequently, after working with the bond Underwriter and Issuer, these concerns have been addressed and incorporated in the bill to insure they are included in the bond package. These amendments include:

- The inclusion of an interim financier to finance the construction projects until such time as the bonds are re-marketed.
- An escrow account from bond proceeds will be established and held in the interim financiers name to insure payment to such financier pending completion of the construction project.
- Amendments to the Indenture will be permitted to meet requirements of the entities providing alternate security or interim financing provided such amendments do not affect the tax exempt status of the Bonds.
- A provision that will authorize the pre-approval by the Trustee of a

commitment for Alternate Security obtained by the interim financier. This will further provide assurance to the interim financier that bond proceeds are specifically designated for repayment of construction costs.

- The establishment of a certain holding period whereby the Re-marketing Agent must hold a certain amount of bonds for a certain number of days.
- The institution providing the Alternate Security will be authorized to enforce the 20% rental limitation to low/moderate income persons along with GEDA.
- The creation of a Program Development Fund Agreement between GEDA, Matthews & Wright Inc. and Pittsburg National Bank, which shall contain the following provisions:
 1. The fund will be held by the Trustee to assure the successful completion of the bond program with a minimum of \$4.5 million to be deposited into the fund.
 2. Amounts from the fund will be used to assist in obtaining Alternate Security from U.S. financial institutions and will be committed for use in reviewing all legal and tax matters.
 3. The fund will be used to insure compliance with the bond documents and that all expenses incurred are able to be financed from the bond proceeds keeping the tax-exempt status of the bonds intact.
 4. The fund will be used to pay all Trustee fees, Re-marketing Agent fees, and other expenses of GEDA. In addition, if excess funds are available they will be used to fund certain infrastructure cost incurred by either GEDA or the territory of Guam.
- Alternate Security must be obtained by developers before the bonds are issued.
- A section is included which states that the Government of Guam or any of its agencies or instrumentalities shall not be liable or responsible in any way for the repayment of the bonds.

COMMITTEE RECOMMENDATION

In view of the fact that all concerns have been addressed and mandated in the bill, as stated above, the Committee on Ways & Means hereby recommends that Bill No. 628 as substituted be passed.