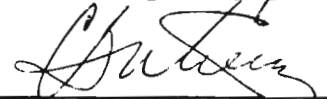


EIGHTEENTH GUAM LEGISLATURE  
1985 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 35, "AN ACT TO ADD A NEW SECTION 8139.1 TO TITLE 4 GCA, TO AMEND SECTION 4222 OF THE GOVERNMENT CODE OF GUAM (4 GCA §8140) AND TO ADD A NEW SUBSECTION (j) TO SECTION 4225 OF THE GOVERNMENT CODE OF GUAM (4 GCA §8143) RELATIVE TO THE RETIREMENT FUND, AND FOR OTHER PURPOSES", was on the 17th day of May, 1985, duly and regularly passed.




CARL T. C. GUTIERREZ  
Speaker

Attested:




ELIZABETH P. ARRIOLA  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 17<sup>th</sup> day of May  
1985, at 5:40 o'clock P.m.

  
R. J. von Pat  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
RICARDO J. BORDALLO  
Governor of Guam

Date: May 28, 1985  
Public Law No. 21 25 pm  
18-5

EIGHTEENTH GUAM LEGISLATURE  
1985 (FIRST) Regular Session

Bill No. 35 (COR)  
Substitute by the  
Committee on Ways & Means  
and further substituted by the  
Committee on Rules

Introduced by:

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

---

AN ACT TO ADD A NEW SECTION 8139.1 TO TITLE 4  
GCA, TO AMEND SECTION 4222 OF THE GOVERNMENT  
CODE OF GUAM (4 GCA §8140) AND TO ADD A NEW  
SUBSECTION (j) TO SECTION 4225 OF THE  
GOVERNMENT CODE OF GUAM (4 GCA §8143)  
RELATIVE TO THE RETIREMENT FUND, AND FOR  
OTHER PURPOSES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2 Section 1. A new Section 8139.1 is added to Title 4 GCA to read:  
3 "Section 8139.1. Fiduciary Duties. (a) The members of the  
4 Board of Trustees stand in a fiduciary relationship to the beneficiaries  
5 of the Retirement Fund in regard to the management of the Fund.  
6 (b) The members of the Board of Trustees shall discharge their  
7 duties with respect to the management of the Retirement Fund solely in  
8 the interest of the members and beneficiaries of the Fund and for the  
9 exclusive purpose of providing benefits to members and beneficiaries  
10 and defraying reasonable expenses of administering the Fund. The  
11 members of the Board of Trustees shall discharge their duties with the  
12 care, skill, prudence and diligence under the circumstances then  
13 prevailing that a prudent person acting in a like capacity and familiar  
14 with such matters would use in the conduct of an enterprise of a like  
15 character and with like aims. The members of the Board of Trustees  
16 shall discharge their duties by diversifying the investments of the  
17 Fund so as to minimize the risk of large losses, unless under the  
18 circumstances it is clearly prudent not to do so. The members of the

1 Board of Trustees shall discharge their duties in accordance with the  
2 documents and instruments governing the fund."

3 Section 2. Section 4222 of the Government Code, codified as §8140 of  
4 Title 4 GCA is amended to read:

5 "Section 8140. Director of Fund. The Director of the fund shall  
6 be appointed by the Board of Trustees which appointment shall be  
7 approved by the Governor with the advice and consent of the  
8 Legislature and shall be in charge of the administration of the detailed  
9 affairs of the Fund. He shall keep all books, records, files and  
10 accounts of the Fund and receive all applications for annuities,  
11 benefits and refunds. He shall prepare periodic reports relative to  
12 the operations of the Fund and an annual report as of the close of  
13 each fiscal year reflecting the results of the financial operations of the  
14 Fund and embodying all important financial statistical data pertinent to  
15 its operations."

16 Section 3. A new Subsection (j) is added to Section 4225 of the  
17 Government Code, codified as §8143 of Title 4 GCA, to read:

18 "Section 8143(j). Before the Board may approve by resolution  
19 the acquisition of real property consisting of physical assets under  
20 Section 4225.16 of the Government Code, as amended, codified as  
21 Section 8159, of Title 4 GCA, the following steps must be taken:

22 (1) the proposed acquisition must be reviewed and  
23 recommendations must be submitted to the Board by an investment  
24 agent as defined under Section 8145 of this Chapter;

25 (2) completion of an in-house evaluation of the proposed  
26 acquisition must be completed;

27 (3) a review of the proposed acquisition as to legal  
28 sufficiency must be made by the Attorney General; and

29 (4) a review and recommendation must be submitted by  
30 three (3) members of the Board of Trustees.

31 At no time shall an acquisition considered under this Section be  
32 made that would provide an immediate investment return which is less  
33 than the average rate of investment return that the Fund is receiving  
34 overall on its alternative investment portfolio."

1 Section 4. A new Section 8139.2 is added to Title 4 GCA to read:

2 "Section 8139.2. Penalty for violation of Fiduciary duty. Any  
3 member of the Board of Trustees who violates the provisions of §8139.1  
4 and §8143(j) of this Chapter shall be removed from the position of  
5 trustee of the retirement fund by the Governor and shall be personally  
6 liable to the retirement fund to the extent of the losses incurred by  
7 the fund. The Attorney General of Guam shall enforce the provisions  
8 of this section to hold such members personally liable."

9 Section 5. 4 GCA Section 8135 (a)(2) is amended to read:

10 "(2) Children. The basic annuity shall be Two Thousand One  
11 Hundred Sixty Dollars (\$2,160) per year for a minor child up to  
12 eighteen (18) years of age. The total basic annual annuity for  
13 children shall not, in any case, exceed Six Thousand Four Hundred  
14 Eighty Dollars (\$6,480) per year for three (3) or more minor  
15 children."

16 Section 6. The sum of One Million Four Hundred Twenty-two  
17 Thousand Two Hundred Five Dollars (\$1,422,205.00) is appropriated from  
18 the General Fund to the Government of Guam Retirement Fund for the  
19 purpose of addressing funding requirements for the continued  
20 implementation of the various supplemental benefits to retirees and  
21 survivors in FY 1985.

22 Section 7. Subsection (a) of 4 GCA §8123 is amended to read:

23 "§8123. Disability. (a). A member less than sixty-five (65)  
24 years of age, who shall become totally and permanently disabled for  
25 service, either mentally or physically, regardless of how or where the  
26 disability shall have occurred shall be entitled to a disability  
27 retirement annuity provided that he is not receiving disability  
28 payments from the United States Government for substantially the same  
29 ailment; and further provided that, to be eligible for a disability  
30 retirement annuity from a non-occupational cause, he shall have had at  
31 least six (6) years of creditable service in the government of Guam  
32 prior thereto, or five (5) years of creditable service in the  
33 government of Guam prior thereto if he has been medically certified to  
34 be terminally ill. A person shall not qualify for a disability retirement

1 annuity if his disability arises from an impairment occurring prior to  
2 his employment by the government of Guam. A total and permanent  
3 disability for the purposes of this Chapter is one which results from  
4 some impairment of body or mind that substantially precludes a person  
5 from performing with reasonable regularity the substantial and material  
6 parts of any gainful work or occupation that he would be competent to  
7 perform were it not for that impairment, and if founded upon  
8 conditions which for that impairment, and if founded upon conditions  
9 which render it reasonably certain that it will continue indefinitely.  
10 As a condition for joining the retirement fund, an employee shall have  
11 a physical examination performed at the employee's expense and a  
12 report of the exam submitted to the retirement fund within sixty (60)  
13 days of choosing to join the fund."

14 Section 8. The sum of One Thousand Five Hundred Dollars (\$1,500) is  
15 appropriated from the General Fund to the Department of Vocational  
16 Rehabilitation for the purposes of obtaining orthopedic prostheses.

17 Section 9. Subsection (a) of Section 11 of Public Law 18-1 is repealed  
18 and reenacted to read:

19 "(a) Any secondary teacher defined pursuant to the present  
20 contract between the Territorial Board of Education and the Guam  
21 Federation of Teachers and assigned to a secondary school between  
22 August 21, 1984 to June 7, 1985 shall receive in compensation for not  
23 receiving their preparation period this school year, payment for that  
24 period using the formula below:

25 (1) To calculate the rate of payment:

26 a. Divide the teacher's annual salary by 900. The  
27 quotient will be the secondary teacher's hourly rate for  
28 purposes of the preparation period pay. Multiply that rate  
29 by 180 to get the compensation due a secondary teacher for  
30 the school year 1984 to 1985.

31 b. The hourly rate obtained in 'a' above shall be paid  
32 to any secondary teacher who was on duty the full day  
33 between August 21, 1984 up to and including June 7, 1985.

1                   (2) All compensation due secondary teachers shall be paid  
2                   by June 7, 1985."

3                   Section 10. The sum of Two Million Five Hundred Thousand Dollars  
4                   (\$2,500,000) is appropriated from the General Fund to the Department of  
5                   Education to implement the provisions of Section 9 of this Act.



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

RICARDO J. BORDALLO  
GOVERNOR

*M. Torres*  
5/28/85 4:35 p.

MAY 28 1985

*Rec'd*



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

Dear Mr. Speaker:

For your information and files, there are enclosed copies  
of Bill No. 35, which has now become Public Law No. 18-5.

Sincerely yours,

RICARDO J. BORDALLO

180146

Enclosures

*Rec'd by Mr. Torres*  
5/28/85 11:55 a.m.

180714

EIGHTEENTH GUAM LEGISLATURE

ROLL CALL SHEET

Sub Bill No.: 35

DATE: 5/17/25

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

QUESTION: Passage

<u>SENATOR</u>	<u>AYE</u>	<u>NAY</u>	<u>NOT 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	✓			

18

3





# 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 13, 1985

\*\*\*

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

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

\*\*\*

VIA: Chairman, Committee on Rules

Member, Committee  
on Rules

Dear Mr. Speaker:

\*\*\*

Member, Committee  
on Tourism, Transportation,  
and Communication

The Committee on Ways & Means, to which Bill No. 35, was referred, wishes to report its findings and recommendation.

The Committee voting record is as follows:

\*\*\*

Member, Committee on  
Health, Welfare,  
and Ecology

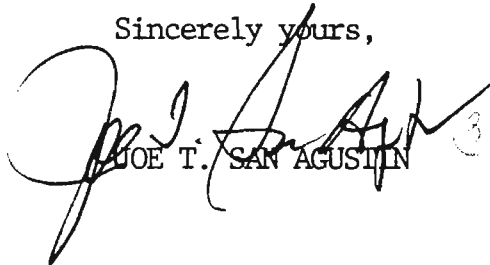
To do pass	<u>9</u>
To not pass	<u>0</u>
Abstentions	<u>0</u>
Off-Island	<u>0</u>

\*\*\*

Member, Committee  
on Education

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

Sincerely yours,



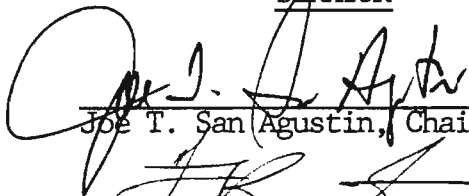
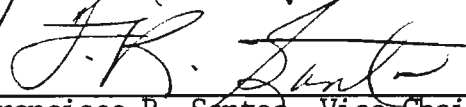
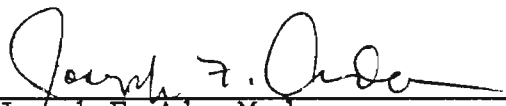
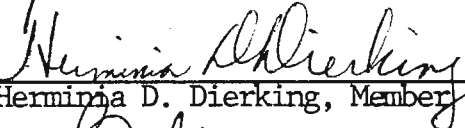
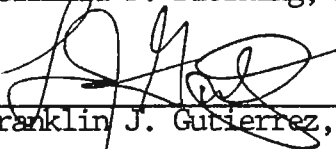

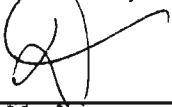
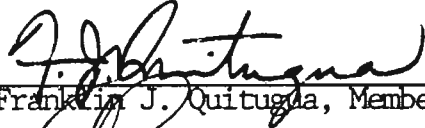
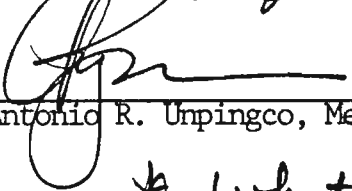
JOE T. SAN AGUSTIN

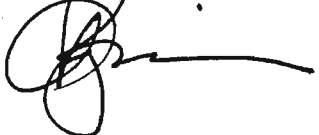
attachments

(1)

VOTE SHEET  
 COMMITTEE ON WAYS & MEANS  
 BILL NO. 35:

AN ACT TO ADD A NEW SECTION 8139.1 TO TITLE  
 4 GCA, TO AMEND SECTION 4222 OF THE GOVERNMENT CODE  
 OF GUAM (4 GCA §8140) AND TO ADD A NEW SUBSECTION (j)  
 TO SECTION 4225 OF THE GOVERNMENT CODE OF GUAM  
 (4 GCA §8143 RELATIVE TO THE RETIREMENT FUND.

<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	✓			opt out
 Franklin J. Quitugua, Member	✓			
 Antonio R. Unpingco, Member	✓		*	

\* What do you mean by "prudent". Need further definition for clarity. 

COMMITTEE REPORT ON

BILL NO. 35:

AN ACT TO ADD A NEW SECTION 8139.1 TO TITLE  
4 GCA, TO AMEND SECTION 4222 OF THE GOVERNMENT CODE  
OF GUAM (4 GCA §8140) AND TO ADD A NEW SUBSECTION (j)  
TO SECTION 4225 OF THE GOVERNMENT CODE OF GUAM  
(4 GCA §8143) RELATIVE TO THE RETIREMENT FUND.

The Committee on Ways & Means held two public hearings on Bill No. 35 on January 22, and January 28, 1985, in the Legislative Session Hall. Testimony was received from Jimmy Duenas, Executive Director of the Retirement Fund.

BACKGROUND

In November, 1983, the Board of Trustees of the Government of Guam Retirement Fund purchased a new building in Maite that will partly be used as office space for the Fund's staff. The remaining office space will be leased out to other government agencies. The purchase was essentially justified though as an investment of the contributions from the Fund's members.

The U.S. Inspector General's Office subsequently conducted an audit review of the transaction. In a letter dated October 4, 1984 (See Exhibit "B"), to Senator Joe T. San Agustin, Chairman of the Committee on Ways & Means, the Inspector General stated in the audit review his office "concluded that the purchase of the Duenas Building by the Retirement Fund was not in the best interests of the beneficiaries of the Retirement Fund. More specifically, the Board of Trustees did not fulfill its fiduciary responsibilities to protect the assets of the Retirement Fund."

The Inspector General specifically criticized the Trustees on three aspects of the transaction: the Trustees purchased a building which was larger than what the Retirement Fund needed, they paid too much for the building, and that

they made a single cash payment for it which may not have been the most economical means of paying for the building.

As a result of their findings, the Inspector General requested the Governor to instruct the Attorney General to review the matter as to whether the Board of Trustees violated their fiduciary responsibilities to the Fund's membership. On December 13, 1984, the Governor formally replied to the Inspector General incorporating the Attorney General's findings (See Exhibit "C"). In his response, the Governor noted that the Attorney General found nothing in Guam's laws governing the fiduciary relationship of the Retirement Fund Board and Fund's membership.

The Governor also stated that "Guam is not a common law jurisdiction" therefore implying that common law fiduciary standards do not apply on Guam either.

In order to respond to the apparent lack of any substantial legal basis for holding the Retirement Fund Board of Trustees responsible for their own actions, Bill No. 35 was introduced (See Exhibit "D"). This legislation establishes the fiduciary duties of the members of the Board of Trustees of the Retirement Fund and provides for personal liability if these duties are violated. The Bill further establishes procedures and standards that must be adhered to before the Fund can purchase any real property. The Bill further provides for the confirmation of the Fund's Executive Director by the Legislature.

A fiscal note waiver was received from the Bureau of Budget and Management Research (See Exhibit "E"). The sponsor of the measure, Senator San Agustin

also submitted for purposes of public record other documents and news clippings regarding the Retirement Fund's 1983 purchase of a new building (See Exhibit "F").

#### TESTIMONY

Although requested to appear before the Committee, the Retirement Fund did not send a representative to the two public hearings held on this Bill on January 22, and January 28, 1985. A letter dated January 28, 1985, was received from Jimmy Duenas, Executive Director of the Retirement Fund, requesting a postponement of public hearing because the Governor's Legislative Review Committee had not had sufficient time to review the Bill (See Exhibit "G"). Mr. Duenas however, did submit his position in a letter dated February 5, 1985 (See Exhibit "H").

In his statement, Mr. Duenas indicated his support for the enactment of standards for the procurement of real property by the Fund. With respect to Section 2 of the Bill providing that the Fund's Executive Director would be subject to legislative confirmation, he expressed no strong objection to that provision but, he stated that he did not consider that it would "appreciably alter the management of the detailed affairs of the Fund."

He also took exception to an aspect of Section 3 of the Bill which set standards and procedures for the purchase of real property of the Fund. Item 4 of this Section provides that before such a purchase can take place, a review and recommendation of the purchase must be submitted by 3 members of the Fund's Board excluding the Chairman. Mr. Duenas, in his statement indicated that he felt the provision was discriminatory and that all members of the Board should

be given full authority to make decisions collectively.

Mr. Duenas also took exception to Section 4 of the Bill which provides that Board members will be held personally liable for their actions. Mr. Duenas stated that, "This may have a chilling effect on filling the Fund's Board positions with qualified candidates."

#### COMMITTEE FINDINGS

The Committee hereby finds that in light of the Attorney General's conclusions of an apparent lack of any legal basis for the fiduciary responsibilities of the Retirement Fund Board of Trustees, this legislation is very much in need to protect the interests of the members of Retirement Fund. The Committee does take note of the Executive Director's view that item (4) of Section 3 in the Bill regarding the requirement for 3 members of the Board to submit a review and recommendation in any proposed purchase of Real Property should be amended to allow the Chairman to qualify as one of the three members. The Committee finds that the substitute Bill should be amended accordingly.

As to the remaining provisions of the Bill, the Committee strongly feels that they should be enacted into law by the full body as soon as possible.

The Committee further finds that Legislative action should be taken to increase the basic retirement annuities granted children 18 yrs and under who are dependents, or survivors of retirees. In the 17th Guam Legislature, the Committee considered such an increase as part of its consideration of Bill No. 331. This Bill was publicly heard by the Committee on July 26, 1983 and reported out for passage on January 24, 1984 (See Exhibit "I"). The bill was

supported by the Retirement Fund Board and by the funds Actuarial Consultant who stated that this legislation would have an "infinitesimal" cost effect on the fund. However, due to other pressing matters, the bill was not brought up for consideration by the full Legislature.

The Committee finds that this increase still merits the approval by the Legislature. Approximately 241 children who are dependents, survivors of retirees would be affected by this increase.

COMMITTEE RECOMMENDATION

The Committee hereby recommends that the full Legislature approve Bill No. 35 as substituted (See Exhibit "A").

EIGHTEENTH GUAM LEGISLATURE  
1985 (FIRST) Regular Session

Bill No. 35  
As Substituted by the  
Committee on Ways & Means

Introduced by: J.T. San Agustin  
C.T.C. Gutierrez  
F.R. Santos

---

AN ACT TO ADD A NEW SECTION 8139.1 TO TITLE 4  
GCA, TO AMEND SECTION 4222 OF THE GOVERNMENT  
CODE OF GUAM (4 GCA §8140) AND TO ADD A NEW  
SUBSECTION (j) TO SECTION 4225 OF THE  
GOVERNMENT CODE OF GUAM (4 GCA §8143)  
RELATIVE TO THE RETIREMENT FUND.

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

Section 1. A new Section 8139.1 is added to Title 4 GCA to read:

"Section 8139.1. Fiduciary Duties. (a) The members of the Board of Trustees stand in a fiduciary relationship to the beneficiaries of the Retirement Fund in regard to the management of the Fund.

(b) The members of the Board of Trustees shall discharge their duties with respect to the management of the Retirement Fund solely in the interest of the members and beneficiaries of the Fund and for the exclusive purpose of providing benefits to members and beneficiaries and defraying reasonable expenses of administering the Fund. The members of the Board of Trustees shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The members of the Board of Trustees shall discharge their duties by diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to



do so. The members of the Board of Trustees shall discharge their duties in accordance with the documents and instruments governing the Fund."

Section 2. Section 422 of the Government Code, codified as §8140 of Title 4 GCA is amended to read:

"Section 8140. Director of Fund. The Director of the fund shall be appointed by the Board of Trustees which appointment shall be approved by the Governor with the advice and consent of the Legislature and shall be in charge of the administration of the detailed affairs of the Fund. He shall keep all books, records, files and accounts of the Fund and receive all applications for annuities, benefits and refunds. He shall prepare periodic reports relative to the operations of the Fund and an annual report as of the close of each fiscal year reflecting the results of the financial operations of the Fund and embodying all important financial statistical data pertinent to its operations."

Section 3. A new Subsection (j) is added to Section 4225 of the Government Code, codified as §8143 of Title 4 GCA, to read:

"Section 8143(j). Before the Board may approve by resolution the acquisition of real property consisting of physical assets under Section 4225.16 of the Government Code, as amended, codified as Section 8159, of Title 4 GCA, the following steps must be taken:

(1) the proposed acquisition must be reviewed and recommendations must be submitted to the Board by an investment agent as defined under Section 8145 of this Chapter;

(2) completion of an in-house evaluation of the proposed acquisition must be completed;

(3) a review of the proposed acquisition as to legal sufficiency must be made by the Attorney General; and

(4) a review and recommendation must be submitted by three (3) members of the Board of Trustees.

At no time shall an acquisition considered under this Section be made that would provide an immediate investment return which is less than the average rate of investment return that the Fund is receiving overall on its alternative investment portfolio."

Section 4. A new Section 8139.2 is added to Title 4 GCA to read:

"§8139.2. Penalty for violation of Fiduciary duty. Any member of the Board of Trustees who violates the provisions of §8139.1 and §8143(j) of this Chapter shall be removed from the position of trustee of the retirement fund by the Governor and shall be personally liable to the retirement fund to the extent of the losses incurred by the fund. The Attorney General of Guam shall enforce the provisions of this section to hold such members personally liable.

Section 5. 4 GCA Section 8135 (a)(2) is amended to read:

"(2) Children. The basic annuity shall be [One Thousand Eighty Dollars (\$1,080)] Two Thousand One Hundred Sixty Dollars (\$2,160) per year for a minor child up to eighteen (18) years of age. The total basic annual annuity for children shall not, in any case, exceed [Three Thousand Two Hundred Forty Dollars (\$3,240)] Six Thousand Four Hundred Eighty Dollars (\$6,480) per year for three (3) or more minor children."



# United States Department of the Interior

OFFICE OF INSPECTOR GENERAL

NORTH PACIFIC REGION  
238 O'HARA STREET  
SUITE 807, PDN BUILDING  
AGANA, GUAM 96910

*Exhibit  
"B"*

October 4, 1984

Senator Joe T. San Agustin  
Office of the Vice-Speaker  
Seventeenth Guam Legislature  
P.O. Box CB-1  
Agana, Guam 96910

Dear Senator San Agustin:

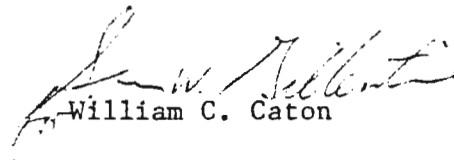
In response to your request of November 17, 1983, attached is a copy of our audit report "Review of the Purchase of the Duenas Building by the Guam Retirement Fund" (N-TG-GUA-19-84).

We concluded that the purchase of the Duenas Building by the Retirement Fund was not in the best interests of the beneficiaries of the Retirement Fund. More specifically, the Board of Trustees did not fulfill its fiduciary responsibilities to protect the assets of the Retirement Fund. The Trustees purchased a building which was larger than what the Retirement Fund needed, and they paid too much for the building. Furthermore, they chose to pay cash for the building. However, a single cash payment may not have been the most economical means of paying for the building.

We discussed a draft of this report with representatives of the Governor, and the Governor instructed the Attorney General to act on our recommendations. The findings of the Attorney General will be forwarded to our office.

We apologize for the delay in getting the report to you. Our Washington office encountered delays in getting it printed and we only recently received our copies.

If you have any questions about the report, or wish to discuss it, please contact me.

  
William C. Caton

Encls.

Bill No: 35

To Initial Date

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

AC	<i>DR</i>	<i>12/13/84</i>
OFP	<i>DR</i>	<i>12/14/84</i>
COS	<i>SW</i>	<i>12/10</i>
Gov	<i>DR</i>	<i>12/3</i>

RICARDO J. BORDALLO  
GOVERNOR

DEC 13 1984

*GREEN*  
*Exhibit*  
*"C"*

Mr. Richard Mulberry  
Inspector General  
United States Department  
of the Interior  
Office of the Inspector General  
Washington, D.C. 20240

Re: N-TG-GUA-19-84

Dear Mr. Mulberry:

I have consulted with General Opper, Attorney General for the Government of Guam, and spoken with him at length on the Audit Report regarding the purchase of the Duenas Building by the Guam Retirement Fund. His office conducted an investigation and came to several conclusions which he asked me to share with you. As will become clearer, he did not feel the Trustees of the Retirement Fund (hereafter Fund) breached their fiduciary obligations to the beneficiaries of the Fund and was therefore disinclined to seek to establish personal liability against the Trustees for their actions.

Guam is not a common law jurisdiction. It is not clear from the record of this transaction that common law standards of fiduciary behavior were breached. Even if it were the case, however, there is further cause to believe the laws of Guam might not support an action against the Trustees of the Fund in their personal capacity. Personal liability is assessable primarily as a result of a statutory, not common-law, obligation in this territory. Statutes provide for such liability only in certain instances (see, for example Government Code of Guam §6118) and a fact pattern such as the instant case does not neatly fit into our statute.

More to the point, however, is the Attorney General's reluctance to agree with your finding that a breach of fiduciary obligations occurred at all. Four basic factors led you to your conclusions, and they are responded to below:

1. The Fund didn't consider alternatives. While the Trustees may have given short shrift to some of the alternatives it is clear from the record that options to an outright purchase were considered. The staff of the Fund developed memoranda outlining a variety of choices, all of which we must assume were considered, even though it appears that a purchase was deemed the most favorable option.

2. The Fund bought a building too large for its needs. As long as space not currently utilized by the Fund can be income productive, it was no breach of prudent dealing to buy more than they now need. All the space not currently used by the fund is, in fact, now leased at competitive rates, improving the cash flow position of the fund and, arguably, inuring to the benefit of the beneficiaries.

3. The Fund paid too much. This is, in General Oppen's opinion, the allegation that comes the closest to confronting a possible breach by the Trustees. Upon examination, however, the allegation is not alone sufficient to establish such a breach. Two appraisals were obtained, with results more than 36% dissimilar. The reliability of appraisals for commercial properties of this magnitude on Guam is therefore immediately called into question. Few comparable sales can be found to base cogent estimates on, and certainty of the resulting appraisal is quite unlikely. The Attorney General found a recent "comparable" where a building with less finished office space and less land was appraised at a higher valuation. Even our local appraisers were ready to admit the limitations of their estimates given the unpredictability and limitations of the local market. The fact that that Fund paid almost 8% more for the building than the higher of the two appraisals cannot, by itself, justify the allegation of wrongdoing or negligence.

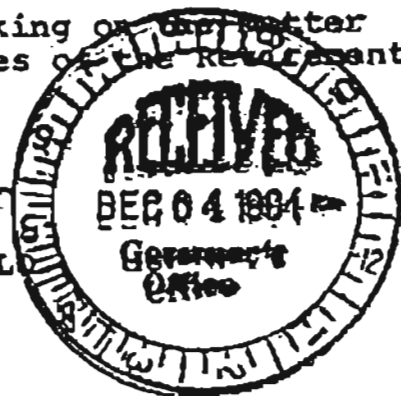
4. The Fund paid cash instead of financing. This seems clearly to have been the wise thing to do, as financing would have cost the fund large and unnecessary interest payments. As the Fund's investment portfolio produced income at a rate of less than 10%, and borrowing would have cost 13 - 15%, there would have been no justification to the strategy at all. On the contrary, the cash purchase was a sound and prudent course of action given the Fund's investment environment. The cash flow of the fund immediately improved and long-term outlook for appreciation of the investment seems good.

In light of his opinion, the Attorney General has not recommended the commencement of any suit. He did inform me, however, that Senator San Agustin introduced a measure in the Seventeenth Guam Legislature (Bill No. 515) to statutorily provide for the definition of Fiduciary Duties as they pertain to Trustees of the Fund. Although the bill does not establish personal liability for a breach, its passage might make the assessment of such liability easier in appropriate cases. Further, Bill No. 515 outlines a series of procedural steps the Trustees must accommodate if they desire to acquire more real estate in the future.

I hope this response clarifies sufficiently our thinking on the matter of the purchase of the Duenas Building by the Trustees of the Retirement Fund.

Sincerely,

/s/ RICARDO J. BORDALL  
RICARDO J. BORDALL



cc: Attorney General of Guam  
Director, Retirement Fund

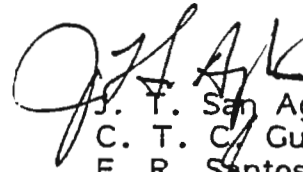
12/13/84

EIGHTEENTH GUAM LEGISLATURE  
1985 (FIRST) Regular Session

Exhibit  
"D"

Bill No. 35 (COR)

Introduced by:

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

AN ACT TO ADD A NEW SECTION 8139.1 TO TITLE 4, GCA, TO AMEND SECTION 4222 OF THE GOVERNMENT CODE OF GUAM (4 GCA §8140) AND TO ADD A NEW SUBSECTION (j) TO SECTION 4225 OF THE GOVERNMENT CODE OF GUAM (4 GCA §8143) RELATIVE TO THE RETIREMENT FUND.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2 Section 1. A new Section 8139.1 is added to Title 4 GCA to read:

3 "Section 8139.1. Fiduciary Duties. (a) The members of the  
4 Board of Trustees stand in a fiduciary relationship to the beneficiaries  
5 of the Retirement Fund in regard to the management of the Fund.

6 (b) The members of the Board of Trustees shall discharge their  
7 duties with respect to the management of the Retirement Fund solely in  
8 the interest of the members and beneficiaries of the Fund and for the  
9 exclusive purposes of providing benefits to members and beneficiaries  
10 and defraying reasonable expenses of administering the Fund. The  
11 members of the Board of Trustees shall discharge their duties with the  
12 care, skill, prudence and diligence under the circumstances then  
13 prevailing that a prudent person acting in a like capacity and familiar  
14 with such matters would use in the conduct of an enterprise of a like  
15 character and with like aims. The members of the Board of Trustees  
16 shall discharge their duties by diversifying the investments of the  
17 Fund so as to minimize the risk of large losses, unless under the  
18 circumstances it is clearly prudent not to do so. The members of the  
19 Board of Trustees shall discharge their duties in accordance with the  
20 documents and instruments governing the Fund."

1 Section 2. Section 4222 of the Government Code, codified as §8140 of  
2 Title 4 GCA is amended to read:

3 "Section 8140. Director of Fund. The Director of the fund shall  
4 be appointed by the Board of Trustees which appointment shall be  
5 approved by the Governor with the advice and consent of the  
6 Legislature and shall be in charge of the administration of the detailed  
7 affairs of the Fund. He shall keep all books, records, files and  
8 accounts of the Fund and receive all applications for annuities,  
9 benefits and refunds. He shall prepare periodic reports relative to  
10 the operations of the Fund and an annual report as of the close of  
11 each fiscal year reflecting the results of the financial operations of the  
12 Fund and embodying all important financial statistical data pertinent to  
13 its operations."

14 Section 3. A new Subsection (j) is added to Section 4225 of the  
15 Government Code, codified as §8143 of Title 4 GCA, to read:

16 "Section 8143(j). Before the Board may approve by resolution  
17 the acquisition of real property consisting of physical assets under  
18 Section 4225.16 of the Government Code, as amended, codified as  
19 Section 8159, of Title 4 GCA, the following steps must be taken:

20 (1) the proposed acquisition must be reviewed and  
21 recommendations must be submitted to the Board by an investment  
22 agent as defined under Section 8145 of this Chapter;

23 (2) completion of an in-house evaluation of the proposed  
24 acquisition must be completed;

25 (3) a review of the proposed acquisition as to legal sufficiency  
26 must be made by the Attorney General; and

27 (4) a review and recommendation must be submitted by three (3)  
28 members of the Board of Trustees, excluding the Chairman, to the  
29 whole Board.

30 At no time shall an acquisition considered under this Section be  
31 made that would provide an immediate investment return which is less  
32 than the average rate of investment return that the Fund is receiving  
33 overall on its alternative investment portfolio."

Section 4. A new Section 8139.2 is added to Title 4 GCA to read:

"§8139.2. Penalty for violation of Fiduciary duty. Any member of the Board of Trustees who violates the provisions of §8139.1 and §8143 (j) of this Chapter shall be removed from the position of trustee of the retirement fund by the Governor and shall be personally liable to the retirement fund to the extent of the losses incurred by the fund. The Attorney General of Guam shall enforce the provisions of this section to hold such members personally liable.





BUREAU OF BUDGET & MANAGEMENT RESEARCH  
OFFICE OF THE GOVERNOR, Post Office Box 2950, Agaña, Guam 96910



PRISCILLA T. MAANAO  
Director

BERTHA L. DUENAS  
Deputy Director

JAN 22 1985

Exhibit  
"E"

The Bureau requests that Bill No. 35 be granted  
a waiver pursuant to Public 12-229 for the following reason(s):

The addition of a new Section 8139.1 to Title 4, GCA, simply states the Fiduciary Duties of the members of the Board of Trustees in regards to the management of the Retirement Fund and does not entail a financial impact on the General fund.

The Amendment of Section 4222 of the Government Code of Guam, codified as §8140 of Title 4 GCA, is also administrative in nature and pertains only to the appointment and duties of the Director of the Retirement Fund.

The addition of a new Subsection (j) to Section 4225 of the Government Code of Guam relative to the Retirement Fund lists the steps the Board of Trustees must take before approving any acquisition of real property consisting of physical assets under Section 4225.16, as amended by Section 8159, of Title 4 GCA.

A miniscule impact on the General Fund may occur as a result of the bonding of members of the Board in light of the additional duties and procedures prescribed by this bill.

PRISCILLA T. MAANAO

1/21  
12/1/85

Exhibit  
"F"

# San Agustin hits AG's disregard of Inspector General's report on retirement fund board violation

By J.B. GUERRERO  
*Guam Tribune Staff*

Despite the Inspector General's report that the Retirement Fund board of trustees violated its fiduciary responsibility the Attorney General has chosen not to pursue the matter, according to Senator Joe T. San Agustin.

San Agustin, who chairs the committee overseeing the Retirement Fund, said Wednesday, "The Inspector General has ruled that there is a clear cut violation of the fiduciary relationship between

the trustees of the Retirement Fund and the beneficiaries. However, the Attorney General chose not to follow through because he said that there's nothing in the statute which governs the fiduciary

relationship of boards and commissions particularly on the trust fund, the Retirement Fund."

A letter dated December 13, 1984 from Governor Ricardo J. Bordallo to Inspector General Richard Mulbury clarified why the Attorney General (AG) did not follow through with the alleged breach of fiduciary relationship.

Regarding the purchase of the Duenas building, the Governor wrote: "...he (AG) did not feel the Trustees of the Retirement Fund (hereafter Fund) breached their fiduciary obligations to the beneficiaries of the Fund and was therefore disinclined to seek to establish personal liability against the Trustees for their actions.

"Guam is not a common law jurisdiction. It is not clear from the record of this transaction that common law standards of fiduciary behavior were breached. Even if it were the case, however, there is further cause to believe the laws of Guam might not support an action against the Trustees of the Fund in their personal capacity. Personal liability is assessable primarily as a result of a statutory, not common-law, obligation in this territory.

# San Agustin hits AG

Continued from page 1

Statutes provide for such liability only in certain instances (see, for example Government Code of Guam §9) and a fact pattern such as the instant case does not neatly fit into our statute.

Moreover, at the point, however, is the Attorney General's reluctance to agree with your finding that a breach of fiduciary obligations occurred at all."

San Agustin, who had not received a copy of the Governor's letter to Mulbury as of last Wednesday, said "As far as the purchase of the Duenas building by the retirement board in October 1983 is concerned, if the Attorney General holds that there's no statutory provision and he chose not to follow the dictates of common law, then I suppose the board of trustees cannot be held personally

liable. For this reason, I am introducing a bill next Monday which, if it becomes law should govern the activities of the Retirement Fund," said the senator.

San Agustin said that the bill not only provides procedural steps in acquiring property, like the Duenas building, but also assures that a policy is set up.

"The conclusion I reached is that the Attorney General is very much aware that there is a violation of the common law dictum but he will not prosecute people on the basis of that. Therefore, I am introducing my bill, as recommended by the Inspector General, to close the gap that he chose to follow. The bill will leave no doubt in the minds of the Attorney General and the board of trustees that in future transactions this kind of action

cannot be repeated," said San Agustin.

On December 26, 1984 the Committee on Ways and Means wrote a letter informing Governor Ricardo J. Bordallo that they were withholding confirmation on the renomination of Dr. Don Warner to the Retirement Fund because of the Inspector General's report.

San Agustin wrote: "...As you are aware, the Inspector General's August, 1984, Audit Report: "Review of the Purchase of the Duenas Building by the Guam Retirement Fund," recommended that the Attorney General review this matter to determine whether the Retirement Board acted in the best interests of the Fund's beneficiaries and in accordance with the fiduciary standards imposed on it by common law. I have been in contact over the past couple months with both the Attorney General and Inspector General's Office. Both have informed me that this matter is still being worked on. Therefore, until this issue is

resolved relative to the Board's actions, the Committee will withhold consideration of Dr. Warner's renomination."

San Agustin said that as of last Wednesday the Committee had not heard from the Governor.

Asked what do they plan to do, he responded, "We will continue to hold back confirmation until such time that the Inspector General and the Attorney General complete their analysis."

## Elsie

Continued from page 1

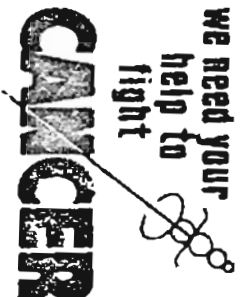
substation," stated Sanchez in a telephone interview late yesterday afternoon. "The lost transmission caused Cabras Island to shut down, and the resulting underfrequency caused Tanguisson and Piti to shut down as well."

Sanchez said that most villages had restored power approximately 3 to 4 hours

later, at 2:30 a.m. Thursday. The Mongmong-Toto-Maite line was restored at 5:00 a.m., and Agana and Sinajana areas at 11:30 a.m.

According to Sanchez, the outage also caused the explosion of a major transmission unit, and as of press time late yesterday, GPA workers were connecting a temporary substation to replace the broken unit. Sanchez said that the crews were "fighting against time" to install it before peak customer load was reached at about 7:00 p.m. He says that the temporary substation will be used until GPA can replace or repair the broken unit.

**We need your help to fight**



**CANCER**

# Retirement officials defend building purchase

By VICTORIA KING  
Daily News Staff

Retirement fund officials say a U.S. Inspector General's audit, criticizing the fund's purchase of an office building, was one-sided and unfair.

The August 1984 audit said the retirement fund's board of trustees had failed in its responsibilities to the fund's recipients by making major mistakes in the purchase of the Duenas Building in Maite.

The audit said the board failed to consider other options, bought too large a building at an inflated price,

and did not consider alternatives to paying cash for the building.

Retirement fund Director Jimmy Duenas said the auditors failed to realize that, although the building is larger than necessary, the Retirement Fund now makes money by renting extra space to tenants.

Before the purchase, the fund paid \$170,000 a year in rent. Since the purchase, the fund has been collecting \$80,000 in annual rent payments, Duenas said.

"With the rental income and the

savings, we'll recapture our investment in five years. After that it will be all profit.

"I think it was a wise decision. Rather than continue renting, we could afford to own our own building," he said.

The board did look into other options before making the decision to buy the Duenas Building, he said, but other buildings lacked sufficient parking space and were not equipped for the handicapped.

Although the purchase price of \$1.45 million was higher than the \$1.4 million appraisal of the building, Duenas said the owner originally wanted \$1.5 million, and was prevailed upon to lower the price.

Duenas said cash was paid for the building because long-term payments would have accrued interest against the fund.

Gov. Ricardo J. Bordallo responded to the Inspector General's audit by saying the fund's trustees had not

made a mistake in the purchase of the building.

"I have concluded that the outright purchase of the Duenas Building was not a mistake," Bordallo said in a letter to the Inspector General.

"I trust you will see the positive aspects over the long-term, that justify the board of trustees' action."

The governor did agree, however, that the negotiation for purchase of the building and consideration of other alternatives was inadequate.

He said he would follow the Inspector General's recommendation that legislation defining the trustees' roles more clearly, be enacted.

The auditors also suggested that the Guam attorney general's office investigate to determine whether the trustees can be held personally responsible for the purchase.

A representative from the attorney general's office said yesterday that no litigation is in progress against the members of the retirement board.

## Power

Continued from Page 1

chase another permanent transformer — \$650,000 for the machine and \$350,000 for shipping and installation — if the transformer needs to be replaced.

"But we don't know yet," he said. "We don't know how bad it really is."

He said the purchase of a new transformer, if found necessary, will not affect the proposed reduction in power rates.

Sanchez said GPA crews are still trying to cross and switch distribution lines to accommodate all customers even though one of its main transformers is down.

"We're jumping lines, trying to find

a way to bypass the transformer and feed the various villages," he said.

Customers, particularly those in Agana and Sinajana, experienced power fluctuations through mid-morning and early afternoon while crews checked to see if they could bypass the damaged transformer and still handle the electrical load.

Sanchez said the dispatcher was forced to cut power to Agana and Sinajana at least three times yesterday to prevent lines from melting.

"We had to dump the load when we felt the lines couldn't handle the capacity," he said.

Sanchez said crews were aiming to resolve the problem by 7 p.m.

## Sigallo

Continued from Page 1

the Northern Marianas, which has been offered a 70,000-dozen limit.

However, Gilliam said he hopes a

Most of the garment workers on Saipan are non-U.S. citizens.

Gilliam said he feels the offer is the federal government's way of



12/30/84

## Poor investments do hurt retirees' fund

Recent revelations about the Government of Guam Retirement Fund seem to indicate that every aspect of the system from benefits to management need a thorough evaluation.

Reports over the last few years have revealed the government's poor track record of forwarding both employer and employee contributions to the fund. The government may be good for the debts, but meanwhile the fund is losing investment opportunities.

An Inspector General's report that the purchase of the Duenas Building in Maite was a poor investment is also disturbing. The Fund doesn't seem like it can absorb too many poor investments, given the sheer number of government employees that will be drawing benefits soon.

In that light, we question the financial wisdom of backing home mortgage loans for the Guam Housing Corporation by the Fund. The need for mortgage money notwithstanding, we feel that a more lucrative investment could be found for \$5 million.

Good investment protects the interest of the beneficiaries of the fund.

Finally, we feel that those beneficiaries are and should be government employees who have made careers of faithful service.

We agree in principle with the idea of withholding benefits to those convicted of official corruption.

Continued from Page 1

Because of those four mistakes, the audit said, it is clear the trustees did not uphold their responsibilities.

The trustees must not have understood that their responsibility is to show undivided loyalty to the beneficiaries of the retirement fund, the report added.

The audit also asked that the attorney general investigate whether the board members can be held personally liable for the four mistakes cited in the report.

Board Legal Counsel Jesus U. Torres said yesterday he had not seen the report and refused to comment on it.

Retirement fund Director Jimmy Duenas could not be reached for comment.

# Audit blasts Retirement Fund deal

By VICTORIA KING

Daily News Staff

A U.S. Inspector General's audit has blasted the government of Guam Retirement Fund board of trustees' \$1.45 million purchase of an office building and asked that the Attorney General determine if board members are personally liable.

The August report obtained by the Daily News said board members

neglected their duties to the retirement fund's beneficiaries by wasting money in the purchase of the Duenas Building in Maite.

At the time of the purchase in November 1983, legislators questioned the deal, saying the retirement fund paid significantly more than the property's appraised value.

The Inspector General's report reinforces questions that were raised

at the time of the purchase.

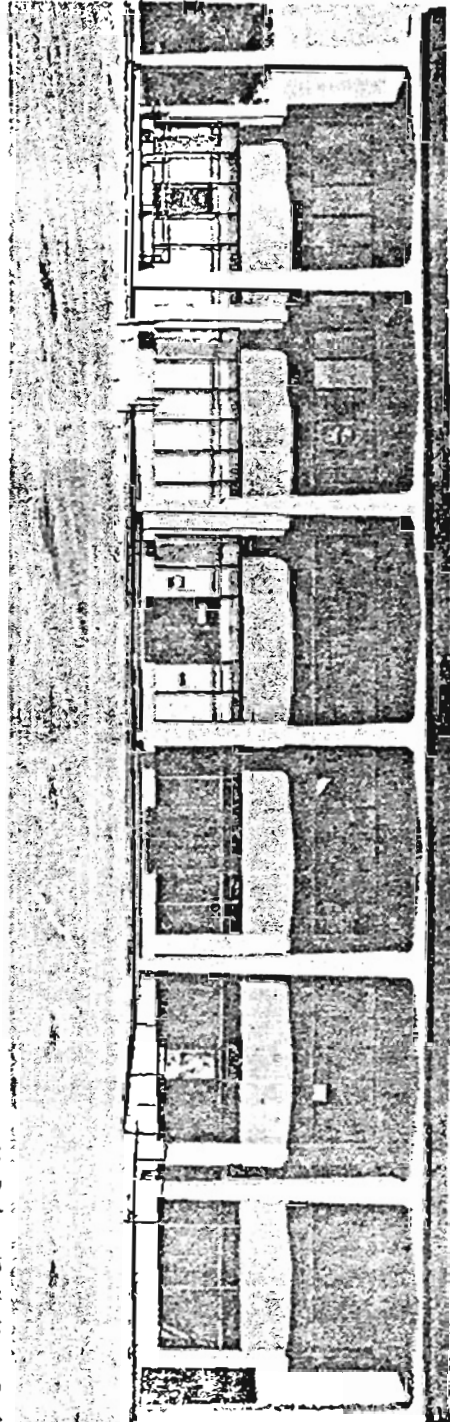
"The trustees did not adequately consider all of their options to obtain the necessary office space before deciding to purchase the Duenas Building," the report said. "As a result, the trustees acquired a larger building than they needed and paid more for it than they should have."

The board members failed their responsibility to the retirement fund

by making four serious mistakes, the report said.

No alternative to a purchase of the Duenas Building was considered, and the trustees purchased a building much larger than the retirement fund needed. The trustees paid too high a price for the building, and did not consider alternatives to paying cash for the building, the report said.

Please see AUDIT, Page 4



The Duenas Building in Maite, recently purchased by the GovGuam retirement fund, used to house the Department of Labor.

Liz DuFour/Daily News Staff

's cube breeds  
ssors, Page 38

Inside

Classified . . . 48	Letters . . . . 27
Comics . . . . 46	Lifestyle . . . . 38
Crossword . . . 47	Movies . . . . 45
Dear Abby . . . 45	Obs Post . . . . 44
Editorials . . . 26	Pipe Dreams . . 27
Horoscope . . . 45	TV listing . . . 45
Islandstyle . . . 44	Weather . . . . 6

# Daily News

35¢ on Guam

WEDNESDAY, NOVEMBER 1, 1983

## Retirement fund land deal probed

By ANDREW EZER  
Daily News Staff

The Guam Retirement Fund board of trustees' purchase of a building and land for \$1.45 million has both Democrat and Republican officials asking questions about the property's sale price.

According to government of Guam Retirement Fund Director Jimmy Duenas, the money to purchase the Duenas Building in Maite came directly from the retirement fund.

He said the building would be used as the agency's office. The Duenas Building currently houses the Department of Labor.

The board voted to adopt a resolution approving the sale. Sitting on the board are Luis M. Camacho, chairman, and board members Frank Cruz, Bertha Duenas, Jesus Paulino and Don Warner.

Several officials, however, were not happy with the purchase and some senators sent letters asking the board to forward copies of all materials related to the sale.

Sens. Joe T. San Agustin, D-Dededo, and Joe Ada, R-Mangilao, questioned the decision to buy the building.

The question most often asked is about the price of the building.

According to real estate appraisers and GovGuam officials, who asked that their names not be used, the Retirement Fund may have paid triple the value of the building and land.

One official estimated the Duenas Building and the approximately 1.5 acres it sits to be worth about \$600,000.

By comparison, an appraiser said the old NAPA Building in Anigua was sold recently to GovGuam for a price between \$600,000 and \$650,000. The appraiser said the NAPA Building is in a better location than the Duenas Building and is three stories with 22,000 square feet of office space.

The Duenas Building has approximately 10,000 square feet of office space.

The Department of Revenue and Taxation is scheduled to move into the NAPA Building next month.

(Please see RETIREMENT, Page 4)

## Retirement

(Continued from Page 1)

Duenas defended the purchase of the building and said it would eventually save the Retirement Fund money.

He said the price the agency paid was "reasonable" but he added he would "reserve opinion" on the purchase until board chairman Camacho returns from a trip.

Duenas said the board did a study earlier this year based on a 1977 development plan devised by the board which was trying to find a per-

manent location.

"We had three options," Duenas said. "We could have continued our lease, built a new building or bought an existing building."

"After looking at several options, the board thought this was the best."

The Retirement Fund is in the final year of a 10-year lease on its present location.

According to the Government Code, the board is empowered to invest retirement funds and make real estate purchases provided the purchases meet specifications.

Duenas said at the end of next September, the agency would have

paid \$1 million in rent with nothing to show for it. And he said if the agency renews its current lease, it would pay \$1.7 million over the next 10 years.

Duenas acknowledged William Lujan is a Guam Economic Development Authority board member.

Mildred T. Duenas, president and treasurer of Duenas Inc., which owns the Duenas Building, said the Retirement Fund had been interested in the building since the beginning of the year.

Duenas, wife of Port Authority Manager Roy Duenas, said she didn't recall the price she paid for the property in 1973.

In 1974 GovGuam estimated the land on which the Duenas Building sits to be worth \$60,000, according to GovGuam documents. GovGuam made the appraisal for computing real estate taxes.

Duenas said the Retirement Fund will get approximately \$70,000 per year on rental of 5,000 square feet of office space at the Duenas Building. The Retirement Fund is currently collecting \$5,000 per month in rent from the Department of Labor.

At the \$70,000 rate it will take the board more than 20 years to recoup the buying price of the Duenas Building, one senator pointed out.

# Duenas building cost more than it's worth

By ANDREW EZER  
Daily News Staff

Trustees of the government of Guam's retirement fund paid significantly more than the appraised value for a building it purchased two weeks ago, according to board documents.

Eduardo dela Pena Sr. estimated the fair market value of the Duenas Building and the property it is on in Maite to be \$1 million.

The trustees paid \$1.45 million in cash for the building and property.

Dela Pena was commissioned to do an appraisal of the property by the trustees.

The appraiser did not wish to comment on the appraisal when contacted.

A second appraisal was made by Rufo Taitano. Taitano estimated the property and building to be worth \$1.37 million, although he said he has not furnished the trustees with a final version of the estimate.

Taitano said his appraisal will "reflect the reproduction cost of the building and the market value of the land."

(Please see RETIREMENT, Page 7)

...ou told the plaintiffs on

---

## Retirement

(Continued from Page 1)

Taitano added market values do not reflect reproduction costs. Reproduction costs represent the total amount needed to construct a new building on existing property.

The trustees paid \$1.45 million in cash to Duenas Inc. for the building and the 1.5 acres it sits on. The Duenas Building currently houses the Department of Labor.

The trustees' decision has aroused criticism from real estate appraisers and government officials who said the trustees may have paid triple the value of the building and land.

One official estimated the Duenas property to be worth \$600,000.

Sen. Joe T. San Agustin, D-Dededo, questioned why the trustees would pay more than the appraised value of the property, a move he said that did not make sense.

"Why did they pay the whole thing off in cash?" San Agustin asked. "Why didn't they spread out mortgage payments and let the income from rent and interest (on what was owed) pay for the investment?"

Retirement fund trustee Don Warner said appraisals are used as guidelines and it is not unusual for a real estate buyer to pay more than the appraisal value.

Warner said the trustees did not consult an investment agent before making an investment on the island.

Also drawing attention are the family ties of Duenas Inc. board members and GovGuam officials.

Mildred T. Duenas, president and treasurer of the company, is the wife of Port Authority Manager Roy E. Duenas.

Joseph T. Duenas, director of the Guam Housing Corp., is Mildred's brother and husband of Lourdes Duenas, another Duenas Inc. board member. Joseph acknowledged he is a former Duenas Inc. board member and at present a stockholder.



# Business



## Briefcase

### Eastern Airlines to repay employees

MIAMI — Eastern Airlines agreed Friday to restore full wages to its 37,000 employees, at least until Jan. 31 when it hopes to have a new wage program developed. Restoration of the 18 to 22 percent paycheck deductions will cost the airline \$22 million for the month of January, but Eastern labor consultant William Usery said lump sum reimbursements are necessary to restore labor peace with Eastern's three unions who have sued the company in U.S. District Court.

Employees got a 25 percent stake in the airline under the 1984 Wage Investment Program, but went to court when Eastern Chairman Frank Borman extended the paycuts beyond Dec. 31 without their approval. The wage cuts saved the airline \$370 million in 1984.

### Pension trustees accountable for \$1.5 million

WASHINGTON — The 24 trustees of two California pension plans were ordered to repay \$1.5 million of their own money because of questionable real estate loans and commitments, the Labor Department announced Friday. The defendants were accused of violating their financial responsibilities to their construction industry pension plans under the Employee Retirement Income Security Act. The action was taken against the Carpenters Pension trust for Southern California; the Retirement Fund Trust of the Plumbing, Heating and Piping Industry of Southern California; and the 24 trustees of the two Los Angeles area pension plans.

## Retirement board OK's investment law

Daily News staff

FEB 15 1985

The board of trustees of the ~~Guam retirement fund~~ yesterday endorsed a bill tightening procedures for purchasing property with retirement funds.

The board, however, objected to a clause in Bill 35 which would hold trustees personally liable for any losses incurred if they violated the new law.

"This is a deterrent from having any board members serve on this board," said the fund's executive director, Jimmy J. Duenas.

"Other than that, I think Bill 35 is a good bill," said chairman Luis Camacho.

Duenas also said he thought the bill should be applied to all government boards with fiduciary responsibilities.

The international insurance firm Lloyd's of

London has agreed to insure the members of the board for up to \$5 million in civil damages. The insurance would protect the government from lawsuits filed against the board or against losses.

The insurance would cost \$8,500 a year, Duenas said.

The fund should receive \$273,656.25 by the end of the month from the Peerless Corp. as the final payments on a loan. The fund 10 years ago loaned money to the company so it could buy two buildings owned by the fund, Duenas said.

The buildings, on Route 8 in Maite, were leased back to the fund, which has been operating them. Once the final payment was made, the fund would no longer be involved in them, he said.

November 10, 1983

RECEIVED NOV 16 1983

Memorandum

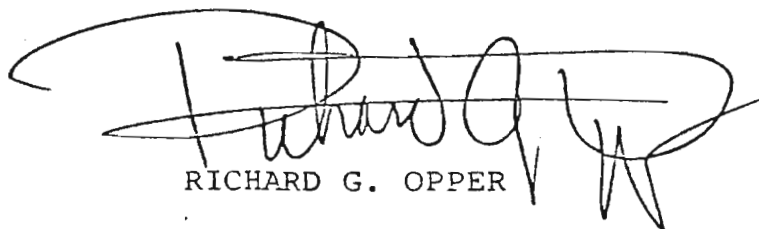
To: The Governor

From: Attorney General

Subject: Acquisition of the Duenas property in Maite  
Governor's Route Slip No. 83-538

I have looked into the matter of the acquisition, by the Retirement Fund, of the Duenas property. I concur with the opinion of J.U. Torres, who is in the process of finalizing his retainer agreement to represent the Retirement Fund, that this transaction was within the legal powers of the Board of Trustees.

My office does not have the expertise to render an opinion with regard to the market value of the property or the wisdom of acquiring real estate as an investment decision. We will not speak to the propriety of the acquisition, but confine our remarks solely to legal authority of the Board of Trustees for the Retirement Fund to acquire real estate as a bonafide investment. This authority, we believe, is vested in them by statute and was not abused when the building in question was purchased.



RICHARD G. OPPER

cc: Retirement Fund ✓

file: Attorney General  
Duenas Building

# Western States' Pension Plans

## Do They Need Federal Regulation?

By A. James Ifflander, Linda J. Martin and Jennie Zesmer Gorrell

Potential regulation of state and local pension plans is an emotionally charged issue. Proponents of regulation believe that state and local public employee pension plans are deficient in the areas to be discussed in this paper. Opponents maintain that most of the proposed federal requirements are already being met by the states. Regulatory legislation is supported by major public employee unions and various retiree and tax-payer groups. Many government officials, however, are opposed to pension regulation, which they view as federal meddling in local affairs.<sup>1</sup> Most state and local government organizations oppose regulation, including The Council of State Governments, the National Governors' Association, the National Conference of State Legislatures, the National League of Cities, the Municipal Finance Association and the United States Conference of Mayors.<sup>2</sup>

There is also a perceived connection between pension regulation and mandatory Social Security coverage.<sup>3</sup> The two issues are not, in fact, related, but the fear of mandatory Social Security arouses the opposition, especially in the more conservative states. The question of the constitutionality of public sector pension regulation remains unresolved. The issue is one of states' rights and whether the federal government can regulate the activities of state and local governments.

The reporting, disclosure and fiduciary standards of defined benefit private pension plans are covered by the federal Employee Retirement Income Security Act of 1974 (ERISA). Although public pension plans were included in the initial drafts of this regulatory legislation, they were omitted from the subsequent law. ERISA, however, mandated a congressional study of public pension plans. This study, published March 15, 1978, concluded that serious problems existed at

the state, county and local levels of government. These problems included standards for funding, plan descriptions, financial reporting, actuarial reporting and fiduciary responsibility.<sup>4</sup>

Proposed legislation covering the public sector has been evolving in Congress for several years. During the course of the congressional study, two bills to provide federal regulatory authority over state and local plans were introduced in the House. A bill introduced in July 1975 would have resulted in an across-the-board extension of private sector laws to the public sector. The other plan, introduced in April 1976, was less comprehensive and extended only the reporting, disclosure and fiduciary standards of ERISA to state and local plans. These bills were dubbed PERISA (public ERISA) and received little consideration, as they were introduced prior to the completion of the congressional study. A third bill, similar to the second, was introduced in the House in September 1978, too late in the session to receive serious consideration. In February 1980, another similar House version of PERISA was introduced. During 1980, however, Congress was considering other pension issues and took no action on PERISA. In November 1981, separate but similar versions of PERISA were introduced in the House. Both bills were reported out of the House Education and Labor Committee in May 1982<sup>5</sup> and were amended to make their provisions identical. During the Committee's consideration, the

---

A. James Ifflander and Linda J. Martin are Assistant Professors of Finance and Jennie Zesmer Gorrell is a doctoral student in Public Administration at Arizona State University in Tempe. This research was funded, in part, by the Morrison Institute for Public Policy, Center for Public Affairs, Arizona State University. The authors express their appreciation to the state pension plan administrators who provided the necessary information and documents for this study.

present a different kind of funding problem. Large population growth will require additional state and municipal workers who will receive retirement benefits in the future. As a result, projected benefits will increase. Will the pension plans be able to support this growth? Funding the plan for the future may be a more crucial issue for the West than for New England. In addition, the generally low property tax rates in the Western states may exacerbate the problem. If other Western states follow the example of California and freeze property taxes, the problem will be more severe.

Capital market conditions may impede the ability of managers to fund their plans. Volatile capital markets may make it difficult to earn the returns assumed by the plan. Poor capital market performance in a particular year may require large increases in actual cash funding from the state to prevent further deterioration of underfunded plans. Unfortunately, periods of poor market conditions often coincide with periods of low tax revenues at the state level. Thus, when capital market performance is minimal (and therefore the earnings from pension plans are low), the flow to the state treasury also may be less than usual. The continuation of these problems over several years could make it difficult for the state to pay benefits. A more likely, but less drastic, problem would be the deterioration of the plan's assets relative to its liabilities.

A high rate of inflation also poses a problem, making it more difficult to earn the real rates of return necessary to maintain plan assets relative to purchasing power. In addition, inflation makes the calculation of the value of the plan's future benefits more difficult.

### Funding

Munnell and Keefe note the hazards of making comparisons among plans due to variations in actuarial cost methods, economic and actuarial assumptions, and asset valuation methods. Although specific comparisons are questionable, it is obvious that the Western plans are better funded. With the exception of Vermont and New Hampshire, the New England states have large unfunded liabilities. Four states—Massachusetts, Connecticut, Rhode Island and Maine—are

funded for less than 35 percent of their actuarial liability. The funding status of the pension plans in the Western states is less critical. New Mexico has the lowest percentage of funded actuarial liability among the Western states (59 percent). Two states, Utah and Wyoming, have assets to cover at least 100 percent of the actuarial liability.

### Plan Descriptions

All of the plan descriptions in the Western states provide the basic information necessary for participants regarding eligibility requirements and procedures for presenting benefit claims. PEPPRA would also mandate full disclosure to participants of circumstances which would result in disqualification, ineligibility, denial or loss of benefits, and the remedies available for redress in the case of denied claims. None of the 11 Western plans currently contains such a provision. Similar provisions were found to be lacking in most of the New England plans.

### Financial Reporting

Ten of the plans in the Western states have audited financial statements. The New Mexico annual report does not say who performed the audit or if, in fact, an audit was conducted. Oregon conducts internal audits. The remaining nine states are audited by public accounting firms. Montana and Wyoming do not publish annual report documents. However, financial statements are available for the pension plans of these two states. In 1983, Wyoming officials stated that they planned to publish an annual report in 1984. The level of reporting in the New England states was similar to the Western states.

All 11 Western plans provide statements of assets and liabilities. In addition, most provide statements of revenues and expenses. Wyoming was the only Western state in our study which did not include revenue/expense statements in the financial reports. In New England, however, Connecticut, Massachusetts and New Hampshire did not include these statements.

More detailed information about specific assets, valuation, leases, contingent liabilities, defaulted loans, etc., is not always provided. Not all the plans give the market values of their assets and liabilities, information which is especially impor-

format that would be required by PEPPRA. The actuarial data required by PEPPRA regarding the present values of benefits and other valuation information are different from those currently provided. Most of the current reports focus on unfunded actuarial liabilities rather than on unfunded accrued benefits. Much of the required actuarial information is in the existing reports, however, it is difficult for laymen to understand because it is written in technical actuarial language.

Table 1 presents the actuarial assumptions, valuation information and funding status of the Western states' pension plans. For each state plan, the table, compiled from the published reports of the 11 Western states, lists all available information (as of June 1983) about the effective dates of the most recent actuarial studies, the names of the actuarial firms, actuarial cost methods, investment return and salary increase assumptions, asset valuation methods, funding provisions, and funding percentages for each state's plan. Table 2 shows the specific actuarial funding information about each plan. Slight variations in format are due to the differences in how the states report the information.

### Fiduciary Responsibility

It is difficult to compare the legal requirements concerning fiduciary responsibility currently enforced by the various Western states with those requirements mandated by the proposed legislation. Idaho, Nevada, Utah and Wyoming have adopted the prudent man rule. The Wyoming Constitution, however, restricts the investment of the retirement fund in equities. The Oregon statute is a constrained prudent man rule, limiting investment in common equity to 35 percent of the assets of the fund. California continues to limit equity investments to a legal list. The director of the Arizona retirement system referred the researchers to rulings by the state attorney general, rather than to the statutes. When we

examined the state statutes, it was difficult to find anything relating to fiduciary liabilities and relief, bonding of fiduciaries, and limits on acquisitions of employer securities.

PEPPRA would require plan managers, trustees and administrators to act solely in the interest of plan members and beneficiaries and would prohibit them from engaging in any transactions which could lead to personal financial gains or be construed as a possible conflict of interest. Munnell and Keefe note that conflict of interest is prohibited by statute, according to plan administrators, in all the states they surveyed; however, they could not specifically find such provision in the statutes of Connecticut and Massachusetts. Montana and Nevada have these statutes on the books. Such provisions, however, are absent in the statutes of several of the other Western states. Plan administrators believe that this provision is unnecessary because requirements are in the state statutes. Examination of the statutes of the New England and Western states, however, does not support such opinions.

### Conclusions

Academicians tend to be concerned about comparability across reporting entities. The acid test of public pension reporting, however, is whether the beneficiary *understands* the data being reported by his or her pension plan. The beneficiary is not concerned with the comparability of data being reported by various plans, but only about the health of his or her own pension plan. As indicated in this study, the individual states already disclose considerable pension plan information. In some cases, it appears that the information is unclear. This problem, however, easily could be resolved by the individual states, on their own, without any federal legislation. Federal legislation will continue to be introduced in Congress until it is passed or until the present concerns about public pensions no longer appear to be a problem, which seems unlikely.



# Office of the Vice-Speaker Seventeenth Guam Legislature

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

*Exhibit  
"I"*

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

January 24, 1984

Chairman, Committee  
on Ways and Means

\*\*\*

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

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

\*\*\*

VIA: Chairman, Committee on Rules

Member, Committee  
on Rules

Dear Mr. Speaker:

\*\*\*

The Committee on Ways & Means, to which Bill No. 331 was referred wishes to report its findings and recommendation.

Member, Committee  
Tourism, Transportation,  
and Communication

The Committee voting record is as follows:

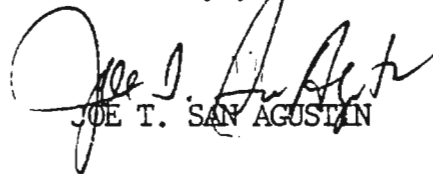
\*\*\*

Ayes	<u>8</u>
Noes	<u>0</u>
Abstentions	<u>0</u>
Off-Island	<u>0</u>

Member, Committee on  
Health, Welfare,  
and Ecology

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

Sincerely yours,

  
JOE T. SAN AGUSTIN

attachments

JAN 14 '85

EIGHTEENTH GUAM LEGISLATURE  
1985 (FIRST) Regular Session

Bill No. 35 (1985)

Introduced by:

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

AN ACT TO ADD A NEW SECTION 8139.1 TO TITLE 4, GCA, TO AMEND SECTION 4222 OF THE GOVERNMENT CODE OF GUAM (4 GCA §8140) AND TO ADD A NEW SUBSECTION (j) TO SECTION 4225 OF THE GOVERNMENT CODE OF GUAM (4 GCA §8143) RELATIVE TO THE RETIREMENT FUND.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2 Section 1. A new Section 8139.1 is added to Title 4 GCA to read:  
3 "Section 8139.1. Fiduciary Duties. (a) The members of the  
4 Board of Trustees stand in a fiduciary relationship to the beneficiaries  
5 of the Retirement Fund in regard to the management of the Fund.  
6 (b) The members of the Board of Trustees shall discharge their  
7 duties with respect to the management of the Retirement Fund solely in  
8 the interest of the members and beneficiaries of the Fund and for the  
9 exclusive purposes of providing benefits to members and beneficiaries  
10 and defraying reasonable expenses of administering the Fund. The  
11 members of the Board of Trustees shall discharge their duties with the  
12 care, skill, prudence and diligence under the circumstances then  
13 prevailing that a prudent person acting in a like capacity and familiar  
14 with such matters would use in the conduct of an enterprise of a like  
15 character and with like aims. The members of the Board of Trustees  
16 shall discharge their duties by diversifying the investments of the  
17 Fund so as to minimize the risk of large losses, unless under the  
18 circumstances it is clearly prudent not to do so. The members of the  
19 Board of Trustees shall discharge their duties in accordance with the  
20 documents and instruments governing the Fund."



1 Section 2. Section 4222 of the Government Code, codified as §8140 of  
2 Title 4 GCA is amended to read:

3 "Section 8140. Director of Fund. The Director of the fund shall  
4 be appointed by the Board of Trustees which appointment shall be  
5 approved by the Governor with the advice and consent of the  
6 Legislature and shall be in charge of the administration of the detailed  
7 affairs of the Fund. He shall keep all books, records, files and  
8 accounts of the Fund and receive all applications for annuities,  
9 benefits and refunds. He shall prepare periodic reports relative to  
10 the operations of the Fund and an annual report as of the close of  
11 each fiscal year reflecting the results of the financial operations of the  
12 Fund and embodying all important financial statistical data pertinent to  
13 its operations."

14 Section 3. A new Subsection (j) is added to Section 4225 of the  
15 Government Code, codified as §8143 of Title 4 GCA, to read:

16 "Section 8143(j). Before the Board may approve by resolution  
17 the acquisition of real property consisting of physical assets under  
18 Section 4225.16 of the Government Code, as amended, codified as  
19 Section 8159, of Title 4 GCA, the following steps must be taken:

20 (1) the proposed acquisition must be reviewed and  
21 recommendations must be submitted to the Board by an investment  
22 agent as defined under Section 8145 of this Chapter;

23 (2) completion of an in-house evaluation of the proposed  
24 acquisition must be completed;

25 (3) a review of the proposed acquisition as to legal sufficiency  
26 must be made by the Attorney General; and

27 (4) a review and recommendation must be submitted by three (3)  
28 members of the Board of Trustees, excluding the Chairman, to the  
29 whole Board.

30 At no time shall an acquisition considered under this Section be  
31 made that would provide an immediate investment return which is less  
32 than the average rate of investment return that the Fund is receiving  
33 overall on its alternative investment portfolio."

Section   4  . A new Section 8139.2 is added to Title 4 GCA to read:

"§8139.2. Penalty for violation of Fiduciary duty. Any member of the Board of Trustees who violates the provisions of §8139.1 and §8143 (j) of this Chapter shall be removed from the position of trustee of the retirement fund by the Governor and shall be personally liable to the retirement fund to the extent of the losses incurred by the fund. The Attorney General of Guam shall enforce the provisions of this section to hold such members personally liable.