



Territory of Guam
Territorion Guam

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

RECEIVED
OFFICE OF THE SPEAKER
DATE: 8/19/94
TIME: 4:50 PM
RECD BY: [Signature]

AUG 19 1994

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

A handwritten signature in cursive script, likely belonging to Joe T. San Agustin.

Dear Mr. Speaker:

Transmitted herewith is Bill No. 1098 which I have signed into law this date as Public Law 22-138.

Sincerely yours,

A handwritten signature in cursive script, likely belonging to Joseph F. Ada.

JOSEPH F. ADA
Governor of Guam

220826

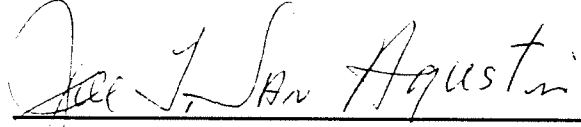


Commonwealth Now!

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 1098 (LS), "AN ACT TO ADD §22440 TO TITLE 5, GUAM CODE ANNOTATED, TO PAY LOCAL INCOME TAX REFUNDS BY ISSUING GENERAL OBLIGATION BONDS OR BY BORROWING THE NECESSARY FUNDS FROM LOCAL BANKS," was on the 18th day of August, 1994, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



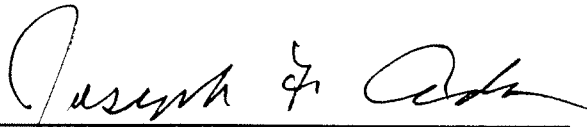
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 19th day of August,
1994, at 11:19 o'clock a.M.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: August 19, 1994

Public Law No. 22-138

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Bill No. 1098 (LS)

As substituted by the Committee on
Economic and Agricultural Development
and Insurance

Introduced by:

At the request of the Governor

H. D. Dierking

C. T. C. Gutierrez

T. S. Nelson

E. P. Arriola

T. C. Ada

J. P. Aguon

J. G. Bamba

A. C. Blaz

M. Z. Bordallo

D. F. Brooks

F. P. Camacho

P. C. Lujan

M. D. A. Manibusan

E. D. Reyes

J. T. San Agustin

F. E. Santos

D. L. G. Shimizu

T. V. C. Tanaka

A. R. Unpingco

AN ACT TO ADD §22440 TO TITLE 5, GUAM CODE
ANNOTATED, TO PAY LOCAL INCOME TAX
REFUNDS BY ISSUING GENERAL OBLIGATION
BONDS OR BY BORROWING THE NECESSARY
FUNDS FROM LOCAL BANKS.

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

1 **Section 1. Bonds or loans for tax refunds.** §22440 is hereby added to
2 Title 5, Guam Code Annotated, to read:

3 "**§22440. Tax and revenue anticipation bonds or bank loans;**
4 **authorization of issuance of bonds or making of loans to pay**
5 **refunds.** In order to fund the payment of income tax refunds due to
6 local taxpayers, the Governor of Guam is authorized to either (i)
7 enter into one (1) or more loan agreements with local banks, as
8 provided in subsection .02 of this §22440, or (ii) issue one (1) or more
9 series of general obligation bonds of the government of Guam (the
10 "Bonds"), in anticipation of the receipt of taxes and other revenue.

11 **.01. Bonds; size of issue.** The Bonds shall have an aggregate
12 principal amount at any one time outstanding not to exceed Forty-
13 Five Million Dollars (\$45,000,000); **provided**, however, that the
14 issuance of the Bonds shall **not** cause a violation of the debt
15 limitation provisions of the Organic Act of Guam (48 U.S.C. 1423a).
16 The Bonds may be issued and the proceeds expended to allow the
17 government of Guam to pay for the cost of their issuance and
18 discharge its obligation to pay refunds owed to taxpayers who have
19 filed their income tax forms with the government of Guam in
20 accordance with the Organic Act of Guam.

21 **.0101. Terms and conditions of the Bonds; Governor's**
22 **certificate.** The Governor has assured the Legislature that interest
23 rates in the nation's capital markets are more favorable than the
24 current six per cent (6%) required to be paid on income tax refunds
25 owed, and that such rates vary between three and nine-tenths
26 percent (3.9%) and five and three-quarters percent (5.75%). In the
27 event the Governor elects to issue the Bonds their terms and

1 conditions shall be determined by the Governor upon or prior to their
2 issuance by his execution of a certificate authorizing such issuance.
3 The certificate shall contain such terms and conditions as are
4 consistent with this §22440. The Bonds shall mature at such times as
5 are not later than sixty (60) months after the date of their issuance,
6 and shall bear interest at a fixed or variable rate, not exceeding a net
7 effective yield of seven percent (7%) per annum.

8 **.0102. Valid and binding general obligation; pledge of**
9 **revenues.** Any Bonds authorized by this §22440 shall constitute valid
10 and binding general obligations of the government of Guam, which
11 pledges its full faith and credit for the punctual payment of both
12 principal of and interest on the Bonds. There shall be collected
13 annually in the same manner and at the same time as government
14 revenue for other purposes is collected, such sum as is required to
15 pay the principal of and interest on the Bonds. All officers charged by
16 law with any duty in the collection of the revenues of the government
17 of Guam shall do every lawful thing necessary to collect such sum. In
18 addition, all or part of the revenues derived by the government of
19 Guam under Section 30 of the Organic Act of Guam may, if
20 determined by the Governor to be necessary or desirable, be pledged
21 to secure the repayment of any Bonds issued under this §22440 and to
22 pay the costs incurred in their issuance or administration. Any
23 pledge made to secure the Bonds shall be valid and binding for the
24 term of the pledge. The revenues pledged and thereafter received by
25 the government of Guam or by any trustee, depository or custodian
26 shall be deposited in a separate account and shall be immediately
27 subject to the lien of such pledge without physical delivery thereof or

1 further act, and the lien of such pledge shall be valid and binding
2 against all parties having claims of any kind in tort, contract or
3 otherwise against the government of Guam or against such trustee,
4 depository or custodian, irrespective of whether the parties have
5 notice thereof. The certificate or agreement by which such pledge is
6 created need not be recorded. All such revenues, to the extent so
7 pledged, are hereby continuously appropriated for such purpose.

8 **.0103. Appropriation from the General Fund.** There are
9 hereby appropriated from the General Fund such sums as will equal
10 in each year the amount of money necessary to pay the principal of
11 and interest on the Bonds.

12 **.0104. Additional bonds.** Nothing in this §22440 shall be
13 construed to prevent the government of Guam from issuing,
14 pursuant to appropriate enabling legislation, other obligations of the
15 government secured with the Bonds by the general obligation of the
16 government on a parity with the Bonds authorized by this §22440.

17 **.0105. Waiver of immunity.** Notwithstanding any substantive
18 or procedural provision of Chapter 6, Title 5, Guam Code
19 Annotated, the government of Guam hereby waives immunity from
20 any suit or action in contract on the Bonds, but does **not** waive
21 sovereign immunity as to the personal liability of elected or
22 appointed officials and employees of the government of Guam.

23 **.0106. Form of Bonds; covenants; appointment of**
24 **fiduciaries.** The technical form and language of the Bonds including
25 provisions for execution, exchange, transfer, registration, paying
26 agency, lost or mutilated Bonds, negotiability, cancellation and other
27 terms or conditions not inconsistent with this §22440, shall be as

1 specified in the certificate executed by the Governor authorizing
2 their issuance. The certificate may contain the appointment by the
3 Governor of one (1) or more trustees or other fiduciaries authorized
4 to receive and hold in trust the proceeds of the Bonds, and moneys
5 relating thereto, to protect the rights of the bondholders and to
6 perform such other duties as may be specified in the certificate. The
7 Governor is also authorized to execute, on behalf of the government
8 of Guam, any appropriate agreements, certificates or other
9 instruments relating to the Bonds and their sale.

10 **.0107. Authorization for credit enhancement.** The Governor is
11 authorized to enter into such contracts or agreements with such
12 banks, insurance companies or other financial institutions as he
13 determines are necessary or desirable to improve the security and
14 marketability of the Bonds issued under this §22440. Such contracts
15 or agreements may contain an obligation to reimburse, with interest,
16 any such banks, insurance companies or other financial institution
17 for advances used to pay principal of or interest on the Bonds. Any
18 such reimbursement obligation shall be a general obligation of the
19 government of Guam and any such advance, if necessary, shall be
20 treated as creating a reimbursement obligation issued to refund the
21 Bonds.

22 **.0108. Use of proceeds from the sale of the Bonds.** Proceeds
23 from the sale of the Bonds shall be used for the purpose for which the
24 government of Guam is authorized to use and expend moneys as set
25 forth in subsection .01 of this §22440 and for payment of expenses
26 relating to the authorization, sale and issuance of the Bonds,
27 including, without limitation, printing costs, costs of reproducing

1 documents, bond insurance premiums, underwriting, legal and
2 accounting fees and charges, fees paid to banks or other financial
3 institution providing credit enhancement, costs of credit ratings, fees
4 and charges for execution, transportation and safekeeping of Bonds
5 and other costs, charges and fees in connection with the issuance,
6 sale and delivery of the Bonds. Fees charged by the Guam Economic
7 Development Authority ("GEDA") for a bond issuance are hereby
8 waived.

9 **.0109. No personal liability.** No employee or appointed or
10 elected official of the government of Guam shall be individually or
11 personally liable for the payment of any amounts due on any of the
12 Bonds issued under this §22440, or for any other liability arising in
13 connection with the Bonds; **provided**, however, that nothing in this
14 subsection .0109 shall relieve any employee or appointed or elected
15 official from the performance of any ministerial duty required by
16 law.

17 **.0110. Selection of participants.** In view of the urgency for the
18 issuance of the Bonds, at any time such issuance may be necessary,
19 the Governor is hereby authorized to utilize such method as he
20 deems appropriate for the selection of all participants in connection
21 with the issuance and sale of the Bonds, including trustees, paying
22 agents, underwriters, counsel, any credit enhancement provider and
23 any other participants; **provided**, however, that such selection shall
24 be subject to any provision of law which requires bidding, other
25 competitive process, or any other procedure with respect to such
26 selection, **except** the Governor may limit the requests for proposals

1 for services associated with the issuance of the Bonds to those firms
2 that have previously participated in bond issues for Guam.

3 **.0111. Approval of GEDA.** Subparagraph (k) of §2103 of Title
4 12, Guam Code Annotated, provides that agencies and
5 instrumentalities of the government of Guam shall issue obligations
6 only by means of and through the agency of GEDA, and that GEDA
7 shall not sell any obligation without the approval of the Legislature
8 on its terms and conditions. In view of the urgency for the issuance
9 of the Bonds, at any time such issuance may be necessary, the Bonds
10 issued hereunder are hereby exempted from the requirement of said
11 subparagraph (k) that the Legislature further approve the terms and
12 conditions of the issuance of the Bonds.

13 **.0112. Local sale of Bonds.** The Governor of Guam shall
14 undertake his best efforts to cause a portion of any Bonds issued
15 pursuant to this §22440 to be offered for sale in Guam, if and to the
16 extent that such offer and any sales resulting from such offer do not
17 increase the cost to the government of Guam of issuing and repaying
18 the Bonds.

19 **.02. Authorization for loans.** As authorized in this §22440, the
20 Governor is authorized to enter into loan agreements with local
21 banks for the purpose of paying income tax refunds owed to
22 taxpayers (the "Loans"). The terms and conditions of the Loans shall
23 be as negotiated by the Governor **except** that (i) the interest rate
24 thereon shall not exceed a net effective yield of seven percent (7%)
25 per annum, (ii) the term of the Loans shall not exceed sixty (60)
26 months, and (iii) interest on the Loans shall be exempt from taxation
27 by the government of Guam.

1 .0201. Valid and binding general obligations; pledge of
2 revenues. The Loans authorized by this §22440 shall constitute valid
3 and binding general obligations of the government of Guam, which
4 pledges its full faith and credit for the punctual payment of both
5 principal of and interest on the Loans. There shall be collected
6 annually in the same manner and at the same time as government
7 revenue for other purposes is collected, such sum as is required to
8 pay the principal of and interest on the Loans. All officers charged by
9 law with any duty in the collection of the revenues of the government
10 shall do every lawful thing necessary to collect such sum.

11 In addition, all or part of the revenues derived by the
12 government of Guam under Section 30 of the Organic Act of Guam
13 may, if determined by the Governor to be necessary or desirable, be
14 pledged to secure the repayment of the Loans and to pay the costs
15 incurred in their issuance or administration. Any pledge made to
16 secure the Loans shall be valid and binding for the term of the pledge.
17 The revenues pledged and thereafter received by the government of
18 Guam or by any trustee, depository or custodian shall be deposited in
19 a separate account and shall be immediately subject to the lien of
20 such pledge without physical delivery thereof or further act, and the
21 lien of such pledge shall be valid and binding against all parties
22 having claims of any kind in tort, contract or otherwise against the
23 government of Guam or such trustee, depository or custodian,
24 irrespective of whether the parties have notice thereof. The
25 certificate or agreement by which such pledge is created need not be
26 recorded. All such revenues, to the extent so pledged, are hereby
27 continuously appropriated for such purpose.

1 **.0202. Appropriation from the General Fund.** There are
2 hereby appropriated from the General Fund such sums as will equal
3 in each year the amount of money necessary to pay the principal of
4 and interest on the Loans.

5 **.0203. Waiver of immunity.** Notwithstanding any substantive
6 or procedural provision of Chapter 6, Title 5, Guam Code
7 Annotated, the government of Guam hereby waives immunity from
8 any suit or action in contract on the Loans, but does **not** waive
9 sovereign immunity as to the personal liability of elected or
10 appointed officials and employees of the government of Guam.

11 **.0204. Form of Loans.** The form and language of the loan
12 agreements supporting the Loans including provisions for execution,
13 negotiability, termination, defaults, and other terms or conditions
14 not inconsistent with this §22440, shall be as negotiated by the
15 Governor authorizing their execution. The Governor is authorized
16 to execute, on behalf of the government of Guam, the loan
17 agreements and any other appropriate agreements, certificates or
18 other instruments relating to the Loans and their payment.

19 **.0205. Use of proceeds from the Loans.** Proceeds from the
20 Loans shall be used for the purpose for which the government of
21 Guam is authorized to use and expend moneys as set forth in
22 subsection .01 of this §22440 and for payment of expenses relating to
23 the negotiation and execution of the Loans, including, without
24 limitation, costs of reproducing documents, legal and accounting fees
25 and charges, commitment and other fees paid to the lenders, costs of
26 credit ratings, fees and other costs, charges and fees in connection
27 with the execution and delivery of the Loans.

1 **.0206. No personal liability.** No employee or appointed or
2 elected official of the government of Guam shall be individually or
3 personally liable for the payment of any amounts due on any of the
4 Loans made under this §22440, or for any other liability arising in
5 connection with the Loans; **provided**, however, that nothing in this
6 subsection .0206 shall relieve any employee or appointed or elected
7 official from the performance of any ministerial duty required by
8 law.

9 **.0207. Approval of GEDA.** Subparagraph (k) of §2103 of Title
10 12, Guam Code Annotated, provides that agencies and
11 instrumentalities of the government of Guam shall issue obligations
12 only by means of and through the agency of GEDA, and that GEDA
13 shall not sell any obligation without the approval of the Legislature
14 on its terms and conditions. In view of the urgency for the execution
15 of the Loans, at any time such execution may be necessary, the Loans
16 made hereunder are hereby exempted from the requirement of said
17 subparagraph (k) that the Legislature further approve the terms and
18 conditions of the issuance of the Loans.

19 **.03. Either Bonds or Loans.** In paying the income tax refunds due to
20 Guam taxpayers, the government of Guam may utilize only **one (1)**
21 of the two (2) alternatives authorized by this §22440: Either the
22 Bonds or the Loans, but not both, and shall choose that alternative
23 that is determined to be the less expensive and the more expeditious.

24 **.04. Maximum borrowing.** Whether the Bonds or the Loans are
25 utilized, the maximum borrowing under either shall not exceed
26 Forty-Five Million Dollars (\$45,000,000).

1 **.05. Excess proceeds.** In the event the proceeds of either the Bonds
2 or the Loans are in excess of the amounts needed to pay all the tax
3 refunds due and to pay for the costs of issuance and administration
4 of such Bonds or Loans, such excess shall only be used to redeem the
5 Bonds or to repay the Loans."

69

TWENTY-SECOND GUAM LEGISLATURE

1993 (FIRST) Regular Session

Date: 8/18/94

VOTING SHEET (AS REVISED)

Bill No. 1098

Resolution No. _____

Question: _____

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George	✓			
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.				✓
BROOKS, Doris F.	✓			
CAMACHO, Felix P.	✓			
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.	✓			
NELSON, Ted S.	✓			
PANGELINAN, Vicente		✓		
PARKINSON, Don		✓		
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francis E.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL

18 2 _____ 1

Office of



The People

Senator Vicente C. Pangelinan
Twenty-Second Guam Legislature

Chairman, Committee on Economic-Agricultural Development and Insurance
130 Aspinall Avenue • Suite 101 • Agana Guam • 96910 Phone (671) 472-3552-4 Fax (671) 472-3556

17 August 1994

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

Dear Mr. Speaker,

The Committee on Economic-Agricultural Development and Insurance, to which was referred Bill 1098 wishes to report back to the Legislature with its recommendation **TO DO PASS** as substituted by the Committee. The voting record is as follows:

TO PASS	<u>12</u>
NOT TO PASS	<u>0</u>
ABSTAIN	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached. Your attention to this matter is appreciated.

Sincerely,


vicente c. pangelinan
Chairman

Attachments.

Office of



The People

Senator Vicente C. Pangelinan
Twenty-Second Guam Legislature

Chairman, Committee on Economic-Agricultural Development and Insurance
130 Aspinall Avenue • Suite 101 • Agana Guam • 96910 Phone (671) 472-3552-4 Fax (671) 472-3556

COMMITTEE VOTING SHEET

SUBJECT: Committee Report on Bill 1098 An act to add §22430 to Title 5 of the Guam Code Annotated to authorize the issuance of General Obligation Tax and Revenue Anticipation Notes of the Government of Guam and for other purposes.

Committee Members	Initials	To Pass	Not To To Pass	Abstain	To Place In Inactive File
V.C. Pangelinan	<i>VCP</i>	✓	-----	-----	-----
T.C. Ada	<i>TA</i>	✓	-----	-----	-----
A.C. Blaz	<i>AB</i>	✓	-----	-----	-----
F.P. Camacho	<i>FC</i>	✓	-----	-----	-----
H.D. Dierking	<i>HD</i>	✓	-----	-----	-----
P.C. Lujan	<i>PL</i>	✓	-----	-----	-----
M.D.A. Manibusan	<i>MDA</i>	✓	-----	-----	-----
T.S. Nelson	<i>TSN</i>	✓	-----	-----	-----
E.D. Reyes	<i>EDR</i>	✓	-----	-----	-----
J.T. San Agustin	<i>JTSA</i>	✓	-----	-----	-----
F.E. Santos	<i>FES</i>	✓	-----	-----	-----
T.V.C. Tanaka	<i>TVC</i>	✓	-----	-----	-----

Office of



The People

Senator Vicente C. Pangelinan
Twenty-Second Guam Legislature

Chairman, Committee on Economic-Agricultural Development and Insurance
130 Aspinall Avenue • Suite 101 • Agana Guam • 96910 Phone (671) 472-3552-4 Fax (671) 472-3556

August 15, 1994

MEMORANDUM

TO: Members, Committee on
Economic-Agricultural Development & Insurance

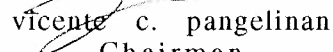
FROM: Sen. Vicente C. Pangelinan

SUBJECT: Committee Report and Voting Sheet

Transmitted herewith for your information and action is the Committee Report concerning Bill 1098. The narrative report is accompanied by the following:

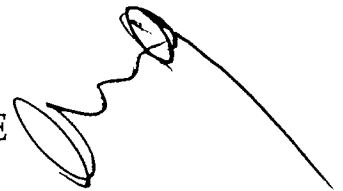
1. Committee Voting Sheet
2. Written Testimony
3. Evidentiary Materials

Should you have any questions on the narrative report or the accompanying documents, I would be happy to answer any of them. Please take the appropriate action on the attached voting sheet and return the documents to my office for transmittal to the other members. Your prompt attention and cooperation in this matter is greatly appreciated.


vicente c. pangelinan
Chairman

attachments.

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session



Bill No. 1098 (LS)

As substituted by the Committee on
Economic and Agricultural Development
and Insurance

Introduced by:

At the request of the Governor
H. D. Dierking
C. T. C. Gutierrez
T. S. Nelson
E. P. Arriola

AN ACT TO ADD §22430 TO TITLE 5, GUAM CODE ANNOTATED, TO PAY LOCAL INCOME TAX REFUNDS BY ISSUING GENERAL OBLIGATION BONDS OR BY BORROWING THE NECESSARY FUNDS FROM LOCAL BANKS.

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

2 **Section 1. Bonds or loans for tax refunds.** §22430 is hereby added to
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4 **"§22430. Tax and revenue anticipation bonds or bank loans;**
5 **authorization of issuance of bonds or making of loans to pay**
6 **refunds.** In order to fund the payment of income tax refunds due to
7 local taxpayers, the Governor of Guam is authorized to either (i)
8 enter into one (1) or more loan agreements with local banks, as
9 provided in subsection .02 of this §22430, or (ii) issue one (1) or more
10 series of general obligation bonds of the government of Guam (the
11 "Bonds"), in anticipation of the receipt of taxes and other revenue.

1 **.01. Bonds; size of issue.** The Bonds shall have an aggregate
2 principal amount at any one time outstanding not to exceed Forty-
3 Five Million Dollars (\$45,000,000); **provided**, however, that the
4 issuance of the Bonds shall **not** cause a violation of the debt
5 limitation provisions of the Organic Act of Guam (48 U.S.C. 1423a).
6 The Bonds may be issued and the proceeds expended to allow the
7 government of Guam to pay for the cost of their issuance and
8 discharge its obligation to pay refunds owed to taxpayers who have
9 filed their income tax forms with the government of Guam in
10 accordance with the Organic Act of Guam.

11 **.0101. Terms and conditions of the Bonds; Governor's**
12 **certificate.** The Governor has assured the Legislature that interest
13 rates in the nation's capital markets are more favorable than the
14 current six per cent (6%) required to be paid on income tax refunds
15 owed, and that such rates vary between three and nine-tenths
16 percent (3.9%) and five and three-quarters percent (5.75%). In the
17 event the Governor elects to issue the Bonds their terms and
18 conditions shall be determined by the Governor upon or prior to their
19 issuance by his execution of a certificate authorizing such issuance.
20 The certificate shall contain such terms and conditions as are
21 consistent with this §22430. The Bonds shall mature at such times as
22 are not later than sixty (60) months after the date of their issuance,
23 and shall bear interest at a fixed or variable rate, not exceeding a net
24 effective yield of six percent (6%) per annum.

25 **.0102. Valid and binding general obligation; pledge of**
26 **revenues.** Any Bonds authorized by this §22430 shall constitute valid
27 and binding general obligations of the government of Guam, which

1 pledges its full faith and credit for the punctual payment of both
2 principal of and interest on the Bonds. There shall be collected
3 annually in the same manner and at the same time as government
4 revenue for other purposes is collected, such sum as is required to
5 pay the principal of and interest on the Bonds. All officers charged by
6 law with any duty in the collection of the revenues of the government
7 of Guam shall do every lawful thing necessary to collect such sum. In
8 addition, all or part of the revenues derived by the government of
9 Guam under Section 30 of the Organic Act of Guam may, if
10 determined by the Governor to be necessary or desirable, be pledged
11 to secure the repayment of any Bonds issued under this §22430 and to
12 pay the costs incurred in their issuance or administration. Any
13 pledge made to secure the Bonds shall be valid and binding for the
14 term of the pledge. The revenues pledged and thereafter received by
15 the government of Guam or by any trustee, depository or custodian
16 shall be deposited in a separate account and shall be immediately
17 subject to the lien of such pledge without physical delivery thereof or
18 further act, and the lien of such pledge shall be valid and binding
19 against all parties having claims of any kind in tort, contract or
20 otherwise against the government of Guam or against such trustee,
21 depository or custodian, irrespective of whether the parties have
22 notice thereof. The certificate or agreement by which such pledge is
23 created need not be recorded. All such revenues, to the extent so
24 pledged, are hereby continuously appropriated for such purpose.

25 **.0103. Appropriation from the General Fund.** There are
26 hereby appropriated from the General Fund such sums as will equal

1 in each year the amount of money necessary to pay the principal of
2 and interest on the Bonds.

3 **.0104. Additional bonds.** Nothing in this §22430 shall be
4 construed to prevent the government of Guam from issuing, after
5 appropriate enabling legislation, other obligations of the
6 government secured with the Bonds by the general obligation of the
7 government on a parity with the Bonds authorized by this §22430.

8 **.0105. Waiver of immunity.** Notwithstanding any substantive
9 or procedural provision of Chapter 6, Title 5, Guam Code
10 Annotated, the government of Guam hereby waives immunity from
11 any suit or action in contract on the Bonds, but does not waive
12 sovereign immunity as to the personal liability of elected or
13 appointed officials and employees of the government of Guam.

14 **.0106. Form of Bonds; covenants; appointment of**
15 **fiduciaries.** The technical form and language of the Bonds including
16 provisions for execution, exchange, transfer, registration, paying
17 agency, lost or mutilated Bonds, negotiability, cancellation and other
18 terms or conditions not inconsistent with this §22430, shall be as
19 specified in the certificate executed by the Governor authorizing
20 their issuance. The certificate may appoint one (1) or more trustees
21 or other fiduciaries authorized to receive and hold in trust the
22 proceeds of the Bonds, and moneys relating thereto, to protect the
23 rights of the bondholders and to perform such other duties as may be
24 specified in the certificate. The Governor is also authorized to
25 execute, on behalf of the government of Guam, any appropriate
26 agreements, certificates or other instruments relating to the Bonds
27 and their sale.

1 **.0107. Authorization for credit enhancement.** The Governor is
2 authorized to enter into such contracts or agreements with such
3 banks, insurance companies or other financial institutions as he
4 determines are necessary or desirable to improve the security and
5 marketability of the Bonds issued under this §22430. Such contracts
6 or agreements may contain an obligation to reimburse, with interest,
7 any such banks, insurance companies or other financial institution
8 for advances used to pay principal of or interest on the Bonds. Any
9 such reimbursement obligation shall be a general obligation of the
10 government of Guam and any such advance, if necessary, shall be
11 treated as creating a reimbursement obligation issued to refund the
12 Bonds.

13 **.0108. Use of proceeds from the sale of the Bonds.** Proceeds
14 from the sale of the Bonds shall be used for the purpose for which the
15 government of Guam is authorized to use and expend moneys as set
16 forth in subsection .01 of this §22430 and for payment of expenses
17 relating to the authorization, sale and issuance of the Bonds,
18 including, without limitation, printing costs, costs of reproducing
19 documents, bond insurance premiums, underwriting, legal and
20 accounting fees and charges, fees paid to banks or other financial
21 institution providing credit enhancement, costs of credit ratings, fees
22 and charges for execution, transportation and safekeeping of Bonds
23 and other costs, charges and fees in connection with the issuance,
24 sale and delivery of the Bonds. Fees charged by the Guam Economic
25 Development Authority ("GEDA") for a bond issuance are hereby
26 waived.

1 **.0109. No personal liability.** No employee or appointed or
2 elected official of the government of Guam shall be individually or
3 personally liable for the payment of any amounts due on any of the
4 Bonds issued under this §22430, or for any other liability arising in
5 connection with the Bonds; **provided**, however, that nothing in this
6 subsection .0109 shall relieve any employee or appointed or elected
7 official from the performance of any ministerial duty required by
8 law.

9 **.0110. Selection of participants.** In view of the urgency for the
10 issuance of the Bonds, at any time such issuance may be necessary,
11 the Governor is hereby authorized to utilize such method as he
12 deems appropriate for the selection of all participants in connection
13 with the issuance and sale of the Bonds, including trustees, paying
14 agents, underwriters, counsel, any credit enhancement provider and
15 any other participants; **provided**, however, that such selection shall
16 be subject to any provision of law which requires bidding, other
17 competitive process, or any other procedure with respect to such
18 selection, **except** the Governor may limit the requests for proposals
19 for services associated with the issuance of the Bonds to those firms
20 that have previously participated in bonds issues for Guam.

21 **.0111. Approval of GEDA.** Subparagraph (k) of §2103 of Title
22 12, Guam Code Annotated, provides that agencies and
23 instrumentalities of the government of Guam shall issue obligations
24 only by means of and through the agency of GEDA, and that GEDA
25 shall not sell any obligation without the approval of the Legislature
26 on their terms and conditions. In view of the urgency for the
27 issuance of the Bonds, at any time such issuance may be necessary,

1 the Bonds issued hereunder are hereby exempted from the
2 requirement of said subparagraph (k) that the Legislature further
3 approve the terms and conditions of the issuance of the Bonds.

4 **.0112. Local sale of Bonds.** The Governor of Guam shall
5 undertake his best efforts to cause a portion of any Bonds issued
6 pursuant to this §22430, to be offered for sale in Guam, if and to the
7 extent that such offer and any sales resulting from such offer do not
8 increase the cost to the government of Guam of issuing and repaying
9 the Bonds.

10 **.02. Authorization for loans.** As authorized in this §22430, the
11 Governor is authorized to enter into loan agreements with local
12 banks for the purpose of paying income tax refunds owed to
13 taxpayers (the "Loans"). The terms and conditions of the Loans shall
14 be as negotiated by the Governor **except** that (i) the interest rate
15 thereon shall not exceed a net effective yield of six percent (6%) per
16 annum, (ii) the term of the Loans shall not exceed sixty (60) months,
17 and (iii) interest on the Loans shall be exempt from taxation by the
18 government of Guam.

19 **.0201. Valid and binding general obligations; pledge of**
20 **revenues.** The Loans authorized by this §22430 shall constitute valid
21 and binding general obligations of the government of Guam, which
22 pledges its full faith and credit for the punctual payment of both
23 principal of and interest on the Loans. There shall be collected
24 annually in the same manner and at the same time as government
25 revenue for other purposes is collected, such sum as is required to
26 pay the principal of and interest on the Loans. All officers charged by

1 law with any duty in the collection of the revenues of the government
2 shall do every lawful thing necessary to collect such sum.

3 In addition, all or part of the revenues derived by the
4 government of Guam under Section 30 of the Organic Act of Guam
5 may, if determined by the Governor to be necessary or desirable, be
6 pledged to secure the repayment of the Loans and to pay the costs
7 incurred in their issuance or administration. Any pledge made to
8 secure the Loans shall be valid and binding for the term of the pledge.
9 The revenues pledged and thereafter received by the government of
10 Guam or by any trustee, depository or custodian shall be deposited in
11 a separate account and shall be immediately subject to the lien of
12 such pledge without physical delivery thereof or further act, and the
13 lien of such pledge shall be valid and binding against all parties
14 having claims of any kind in tort, contract or otherwise against the
15 government of Guam or such trustee, depository or custodian,
16 irrespective of whether the parties have notice thereof. The
17 certificate or agreement by which such pledge is created need not be
18 recorded. All such revenues, to the extent so pledged, are hereby
19 continuously appropriated for such purpose.

20 **.0202. Appropriation from the General Fund.** There are
21 hereby appropriated from the General Fund such sums as will equal
22 in each year the amount of money necessary to pay the principal of
23 and interest on the Loans.

24 **.0203. Waiver of immunity.** Notwithstanding any substantive
25 or procedural provision of Chapter 6, Title 5, Guam Code
26 Annotated, the government of Guam hereby waives immunity from
27 any suit or action in contract on the Loans, but does not waive

1 sovereign immunity as to the personal liability of elected or
2 appointed officials and employees of the government of Guam.

3 **.0204. Form of Loans.** The form and language of the loan
4 agreements supporting the Loans including provisions for execution,
5 negotiability, termination, defaults, and other terms or conditions
6 not inconsistent with this §22430, shall be as negotiated by the
7 Governor authorizing their execution. The Governor is authorized
8 to execute, on behalf of the government of Guam, the loan
9 agreements and any other appropriate agreements, certificates or
10 other instruments relating to the Loans and their payment.

11 **.0205. Use of proceeds from the Loans.** Proceeds from the
12 Loans shall be used for the purpose for which the government of
13 Guam is authorized to use and expend moneys as set forth in
14 subsection .01 of this §22430 and for payment of expenses relating to
15 the negotiation and execution of the Loans, including, without
16 limitation, costs of reproducing documents, legal and accounting fees
17 and charges, commitment and other fees paid to the lenders, costs of
18 credit ratings, fees and other costs, charges and fees in connection
19 with the execution and delivery of the Loans.

20 **.0206. No personal liability.** No employee or appointed or
21 elected official of the government of Guam shall be individually or
22 personally liable for the payment of any amounts due on any of the
23 Loans made under this §22430, or for any other liability arising in
24 connection with the Loans; **provided**, however, that nothing in this
25 subsection .0109 shall relieve any employee or appointed or elected
26 official from the performance of any ministerial duty required by
27 law.

1 **.0207. Approval of GEDA.** Subparagraph (k) of §2103 of Title
2 12, Guam Code Annotated, provides that agencies and
3 instrumentalities of the government of Guam shall issue obligations
4 only by means of and through the agency of GEDA, and that GEDA
5 shall not sell any obligation without the approval of the Legislature
6 on their terms and conditions. In view of the urgency for the
7 execution of the Loans, at any time such execution may be necessary,
8 the Loans made hereunder are hereby exempted from the
9 requirement of said subparagraph (k) that the Legislature further
10 approve the terms and conditions of the issuance of the Loans.

11 **.03. Either Bonds or Loans.** In paying the income tax refunds due to
12 Guam taxpayers, the government of Guam may utilize only **one (1)**
13 of the two (2) alternatives authorized by this §22430: Either the
14 Bonds or the Loans, but not both.

15 **.04. Maximum borrowing.** Whether the Bonds or the Loans are
16 utilized, the maximum borrowing under either shall not exceed
17 Forty-Five Million Dollars (\$45,000,000).

18 **.05. Excess proceeds.** In the event the proceeds of either the Bonds
19 or the Loans are in excess of the amounts needed to pay all the tax
20 refunds due and to pay for the costs of issuance and administration
21 of such Bonds or Loans, such excess shall only be used to redeem the
22 Bonds or to repay the Loans."

Committee on Economic-Agricultural
Development and Insurance
Committee Report on
Bill 1098

An act to add §22430 to Title 5 of the Guam Code Annotated to authorize the issuance of General Obligation Tax and Revenue Anticipation Notes of the Government of Guam and for other purposes. *Introduced at the request of the Governor.*

I. Overview

The Committee on Economic-Agricultural Development and Insurance having jurisdiction over public bond issues and having been referred Bill 1098 conducted a public hearing on Wednesday, August 10, 1994 in the Public Hearing Room, Guam Legislature Temporary Building in Agana. Notice was published in the Pacific Daily News. Chairman Ben Pangelinan presided and the following members were present: Sens. Francis E. Santos, Edward Reyes, Anthony Blaz, Marilyn Manibusan, Ted Nelson, Herminia Dierking, Felix Camacho, and Thomas Tanaka. Also present were: Sens. George Bamba and John P. Aguon.

A. Background

1. Referral. At introduction, Bill 1098 was referred to Committee on Ways and Means. At a public hearing, by the same, the Governor requested that all references to "notes" be replaced with "bonds". Legislative Legal Counsel issued a legal opinion that Bill 1098 be referred to the Committee on Economic-Agricultural Development and Insurance, and the public hearing must be conducted by the same, and the request by the Governor to replace all references to "notes"

2. Major Provisions. Bill 1098 calls for approval of 5 major issues:
- Authorization to float a \$45 million general obligation bond;
 - Authorization to use unencumbered balances in the Tourist Attraction Fund and the Territorial Highway Fund;
 - Repeal of the cost of living allowance or COLA payments to Government of Guam retirees retroactive to January 1, 1989;
 - Postpones the establishment of the Customs and Quarantine Agency from October 1, 1994 to October 1, 1995; and
 - Approves the proposed fee schedule changes of the Guam Police Department and the Department of Agriculture.

II. Summary of Testimony

Witnesses present were Director of Dept. of Revenue & Taxation Mr. Joaquin G. Blaz, Director of Bureau of Budget Management Resources Mr. Giovanni Sgambelluri, and Director of Administration Mr. Wilfred Aflague. No written testimony was submitted at the hearing.

Mr. Sgambelluri stated each of the agencies represented support the passage of Bill 1098 for the purposes of paying outstanding tax refunds and assisting the government with its cash needs. The proposed bond issue will provide the necessary infusion of cash into the economy.

Chairman Pangelinan stated that during deliberations to approve the \$175 million school bond in 1993, the Governor's office reported 10% of the valuation of property as of 10/11-6/1/93 was \$366,000,000.00. After the issuance of general obligations bonds for the '86 water, the '89, infrastructure in '89 and the '92 highway bonds totalling \$157,785 left debt capacity availability of \$209,000,000.00. The \$175 million school bond reduced that available capacity to \$34 million. He asked will the issuance of the \$45 million debt allow the Gov't of Guam to remain within the legal debt ceiling limitations set by Section 11 of the Organic Act?

Mr. Blaz stated the debt capacity of the Government has increased. Based on a July 26, 1994 letter to the Governor, the Board of Equalization established the total aggregate appraised

value of all taxable properties to be approximately \$4.2 billion, as of October 1993. Ten percent of that would be \$425,000,000.00. Mr. Blaz stated the passage of Bill 1098 would not exceed the debt ceiling established in the Organic Act.

Chairman Pangelinan asked if the government floated the proposed \$45 million bond, would the government general obligation debt be up to approximately \$370,000,000.00? Mr. Blaz affirmed and stated the government would not exceed the ceiling.

Chairman Pangelinan stated by the Board's action the ceiling has been set at \$420 million, leaving a cushion of \$55 million. He asked if the increase was based on reviewing construction projects and adding improvements on the tax rolls instead of any real estate tax assessments? Mr. Blaz affirmed stating the triennial evaluation will not be completed until late this year. He stated the evaluation would probably increase to between \$10 and \$12 billion.

Chairman Pangelinan asked what other obligations are outstanding for the Government of Guam? Are there any reclassifications required under the Hay Study still pending? What is the amount owed to employees whose salaries were upgraded and have not been paid for work they have already performed?

Mr. Sgambelluri stated over 90% of the Hay reclassifications have been paid. In some line agencies, the money came from internal budget cuts because no appropriations were made to address them. ie: Revenue and Taxation made internal cuts within its own department to effectuate Hay reclassifications for employees working at Revenue and Taxation.

Chairman asked what is the remaining balance? Mr. Aflague stated the remaining balance is approximately about \$1.2 million, overall. Chairman Pangelinan asked if this amount has been budgeted in the next fiscal year budget for payment? Mr. Aflague affirmed stated the amount is probably less than \$1.2 million because several more agencies have completed their internal cuts.

Chairman Pangelinan asked if various government agencies owe GPA approximately \$4 million? How much is owed by agencies supported by the general fund to autonomous agencies for services? Mr. Sgambelluri affirmed. He stated of the four largest ticket items owed to GPA each amount to over a million: Public Works for street lights, the Department of Education, the Mayor's Council and various Mayor's offices, and PUAG's water wells. Each of these items are being addressed and should be resolved soon.

Chairman Pangelinan asked if the government has the money to pay these obligations? Mr. Aflague stated by prioritizing spending, the Dept. of Administration is making vendor payments in the line agencies. Mr. Sgambelluri stated PUAG has been granted mitigation funding that can be used to offset its liabilities to GPA.

Chairman Pangelinan asked how the Governor intends to address the estimated \$10 to \$20 million shortfall in the construction of the southern high school? Has the Governor incorporated the shortfall in his \$510 million budget request? Mr. Sgambelluri stated he could not confirm whether it was included in the FY'95 budget request.

Chairman Pangelinan stated official cash flow and budget estimates submitted by the Governor shows a DOE budget for FY'94 of \$150,871,000.00, yet the DOE is asking for \$208 million which leaves a difference of \$58 million for that same budget year. How does the Governor propose to find that additional \$58 million for next year, given cash flow projections of \$540 million with a budget limitation for the executive branch of \$510 million and his request to borrow and add an additional debt service for the \$45 million bond on top of next year's budget?

Mr. Sgambelluri stated the inclusion of the DOE expenditures in this proforma takes into account a very conservative average of the 3 yrs budget. This figure or the difference between the two is DOE's direct request to the Legislature which includes the administration's figure. Under new mandate, the executive branch no longer has purview over DOE.

Chairman Pangelinan stated the Legislature is going to either cut the DOE budget or find additional money and not appropriate any other projects and funds over and above the projected cash collections. He stated the administration's reports have a beginning cash balance on this proforma of (zero) 0, and asked does that mean that Governor isn't going to pay any of the 177-178 million dollars that we say, is a cash deficit of the Government of Guam owed for last fiscal year and prior years' obligations?

Mr. Aflague stated he had wished the Dept. of Administration staff did not start out with (zero) 0, but rather with a minus \$30 million. The cash flow projection report was based on two assumptions:

1. That the Governor's request to use the authorized \$20 million and
2. That the \$10 million retirement annuity contribution from the General Fund be negotiated into a note with retirement fund officials.

Chairman Pangelinan asked has the Gov't of Guam been making it's share of contribution required under the retirement law and what is that amount of the obligation? Mr. Aflague affirmed contributions for line agencies have been paid every quarter. He could not confirm whether autonomous agencies have kept up payments.

Senator Aguon asked what about the \$5 million that listed on this transmittal on the obligation to pay, using TAF? It says \$5 million to the retirement fund, is this different?

Mr. Aflague affirmed and stated the government's contribution of payroll retirement deductions are current. It is the appropriation from the general fund for the annuity benefits payments that go out, that has not been paid. Dept. of Administration is making the government's contributions of the retirement fund for employees but doesn't have enough cash to pay for annuity benefits. Dept of Administration is behind in monthly annuity benefits; regular bi-weekly payroll, government's contribution share is current with the line agencies.

Chairman Pangelinan reiterated facts established by the witnesses' testimony:

1. New debt capacity with \$55 million cushion is sufficient to issue \$45 million bond
2. Other obligations Gov't of Guam obligations, excluding current tax refunds, ie vendor payments, additional CIP's of approximately \$25-\$30 million, will have to be addressed in next year's fiscal budget.
3. Established cash flow projections by the Governor's office does not take into account payments for any of the prior years' vendor payments and obligations.
4. The Governor's projections does not recognize pending obligations in fiscal year 1994-1995.
5. If the Governor's budgets and the cash projections come true, by the end of FY '95 another \$44 million will be added to the government's obligations, bringing the deficit to over \$200 million.

Mr. Aflague stated repayment of the bond will be spread over a five years. In using Section 30 funds, interest payments will be made in the first year. For accounting purposes, under this repayment plan, the deficit would be reduced because the proceeds of the bonds would remove the obligation. Cash needs for the first year would be just over \$2.2 to \$2.3 million for the first payment of the bond which would be paid out over five years.

Revenue statements for the first seven months of FY '94 through April, show collections behind last years revenue projections. For the months May, June and July , revenues were slightly over last years periods. Every month that revenues exceed projections, the deficit is being cut down and more payments against the deficit are being made. Current accounting deficit is approximately \$161 million. He stated economic indicators could very well support the cash flow projections by the Department of Administration.

Chairman Pangelinan stated the Governor's \$510 million budget and his cash flow projections still does not recognize the \$161 million in prior year obligations. What is going to be sacrificed within that \$510 budget to pay bills from a year ago? Where are we going to cut that?

Mr. Blaz stated the bond proposal does not increase the deficit, because you know what we are borrowing is what is already taken into consideration as a deficit. The economic outlook is pretty good at this time, everybody is talking of tourists swarming back and you have big companies like K-mart opening up. The military, despite all the talk about downsizing, is building a \$52 million complex, 300 units - housing and a power plant, worth \$13 million down at Orote Point.

Chairman Pangelinan asked how will the \$45 million bond affect the marketing of the \$102 million bond approved for Cabras No. 4 and for the four substations? Is the governor going to issue the \$45 million bond first?

He stated GPA came before the legislature with an August 30th deadline because its cash requirements based on their contract with Korea Heavy Industries. Has the Governor asked GPA to hold back on their bond issuance?

Mr. Blaz stated he had no knowledge of that happening. Even if both issuances were put out on the market, it would not be a problem because GPA's bond is a separate type of instrument based on separate revenue source. He stated he saw no problem if both bonds were issued at the same time.

Mr. Sgambelluri stated he was unaware of change. Aflague stated he has no information regarding the change.

Senator Blaz asked if the outstanding \$1.2 million Hay study obligation and the \$4 million GPA back payments will be resolved? Mr. Aflague stated the Governor has asked each agency to complete the internal processing of these payments.

Senator Blaz stated it is important to note that the Administration has implemented a plan to resolve those obligations and anticipated shortfalls. He asked if each agency has sufficient money in their budgets to make cutbacks internally without any appropriations to meet their Hay study reclassifications. Mr. Sgambelluri affirmed.

Senator Blaz asked how far behind is the government in paying its vendor payments? Mr. Aflague stated line agencies are running 90 days behind their vendor payments.

Sen. Blaz stated the \$45 million tax refund bond situation is a priority as well as the GPA bond issue. Which takes precedence, it is neither here nor there they would both do very well once it goes out into the government. But this is a big priority with the people, we have taxpayers out there that need their money back and they deserve it. Thank you Mr. Chairman.

Chairman Pangelinan asked if the government is ninety days behind in vendor payments, and is meeting its obligations, why can't tax refunds payments be accelerated? And have we been able to accelerate the tax refunds, if we in fact we don't have any obligation and we're current with our vendors, are we accelerating the income tax refunds?

Mr. Aflague stated DOA is processing payments but they are processing them slowly because of lack of cash. Chairman Pangelinan stated, DOA's testimony leaves the impression there is no real lack of cash. Mr. Aflague disagreed stating the lack of cash required the \$45 million bond proposal.

Mr. Sgambelluri stated the premise behind the bond proposal will allow Mr. Aflague, to use \$45 million in general fund revenues for operations and that is the upside of this. Even the flip side where the interest payments is loaded on the front end it still allows Mr. Aflague to use \$45 million theoretically, for operations and the \$45 million for the tax refund to address Mr. Blaz's payables.

Senator Bamba stated the \$45 million owed in tax refunds is a priority obligation that has to be paid. He stated he cannot recall this event ever happening in the government's history. A precedent in borrowing to pay current obligations and operations was set during the Bordallo/Reyes administration -- a \$45 million (correct figure is 36 million) bond was floated to pay the retirement fund.

He stated the Governor's bill would have to be amended to read bond instead of notes. He stated the government will have to cut expenditures and grow the economy. The \$45 million bond proposed in Bill 1098 does not address next year's refunds. He stated the administration will have find \$45 million in cuts now to pay for next year's refunds.

Mr. Aflague stated DOA is worrying about next year's refunds now. DOA will have to accrue sufficient monies -- that's why revenue projections are net of reserves for refunds. Next year's figure is already been estimated at between \$55 to \$57 million.

Senator Bamba stated he quit trusting the accuracy of revenue projections. He stated the government still has to come up with \$45 million after it floats the bond. The only alternative is to just reduce expenditures or hope the economy grows substantially to generate the needed revenues for operations. He stated the Administration projected refunds for '93 at \$55 million, and has paid \$16 million, outstanding \$39 million, outstanding prior year \$15 million. Can you explain what the \$15 million is, outstanding prior year? Are these as the result of the tax rebates that the government owes after the loss of the lawsuit?

Mr. Blaz stated these are outstanding audits and claims that have been and are still under review and consideration.

Senator Bamba asked what is the government's liability as the result of the court case that was lost? Mr. Blaz answered \$5 million and stated he plans to appeal the court decision.

Senator Bamba asked if the outstanding estimate is \$55 million, where is the government going to make up the shortfall if it is only borrowing \$45 million? Mr. Blaz stated he believes the \$45 million bond would resolve the tax refund liability and will not completely wipe out the \$55 million.

Senator Bamba asked will the \$45million cover everybody? Mr. Blaz stated he wasn't sure. Senator Bamba asked has Section 30 money been received yet? Mr. Aflague stated he expects to receive the money, about \$37 million on October 1st or September 30th.

Senator Bamba asked what are the uses of Section 30 money? Mr. Aflague stated prior to the current fiscal year, DOA used to plan out cash expenditures -- revenues and cash outlays so that that Section 30 money was doled out over the course of the entire fiscal year. In FY'94, DOA doled out all of Section 30 money by the first quarter, Dec. 31st, most of it covered COLA payments for the retirees. There was a great pressure to release it. FY'94 was the first year where DOA had to spend for operation needs and demands.

Senator Bamba asked if the Legislature does not approve Bill 1098, can that \$37 million be used to pay the tax refunds? Where would the damage be then, if that is the case? Mr. Aflague stated the damage would just be a further slowing down of payments for other operational needs, releases to autonomous agencies, releases to the court, to the legislature. Senator Bamba asked if the Administration has identified other areas that could be cut or revenues could be generated to make up for the shortfall?

Mr. Aflague stated BBMR and DOA has worked closely to control spending by line agencies. Senator Bamba asked has the administration been working on a plan to identify where areas or which expenditures can be cut to be able to meet to stay within our operational revenue stream? Mr. Aflague stated the Governor's priorities are payroll, then vendor payments, then releases to everybody else.

Mr. Sgambelluri stated line agencies have already paid their share in cuts -- 15 percent in reserves impounded, a four percent cut in two previous budgets, and then the last 8 percent cut. Autonomous agencies are the ones who are screaming because the reality of the situation is the general fund transfers significant amounts to autonomous agencies. One of the biggest cuts that we found beginning in '93, was the cut of 450 object category- capital outlay- that alone was a \$60 million cut, in other words no equipment and that was built into the three year budget format. I think the cuts have been happening, it's just that we all have to cut. The Legislature was also involved in the 8% cut. Recipients of the cash disbursements of the General Fund are not necessarily line agencies, there are also the autonomous agencies, which need these payments to protect its autonomous status.

Senator Reyes stated although it's bad business to borrow money to pay operating debts, he fully supports the idea of paying debts to taxpayers. Floating \$45 million is perhaps one solution. Are there any underwriters or potential purchasers of this bond who are willing to buy this bond in light of the fact that their customer, the entity that is floating the bond is completely broke and operating under a deficit? Is the bond marketable based on the government's financial situation? Will it have to be discounted to entice people to buy it?

Senator Reyes stated the Chairman's Bill 1121 might be a better compromise. He asked how did the Administration conveniently arrive at meeting the requirements of the Organic Act -- 10 % of its assets to determine sufficient debt ceiling? Has the Administration increased the established debt ceiling cushion from \$34 to \$55 million just to accommodate the \$45 million bond plan?

He stated the last triennial assessment was in 1987 and the Administration has missed two triennials already resulting in a tremendous revenue implication. Since then property values either have plateaued out or has come down. Had the government completed its triennials on time, Senator Reyes stated it would probably reflect a downward trend in property value. He

stated the \$34 million cushion established last year is probably a more accurate figure than the new \$55 debt ceiling cushion.

Mr. Blaz stated the new cushion was certified by the Board of Equalization last October based on increases in property valuations occurring during last year. The certification was not made to accommodate Bill 1098; the board does a certification every year and this was done in October and this was the number the Dept. came up with. Mr. Blaz stated the law prescribes that the Board makes annual certifications of the increases in valuations. The triennial is a mass appraisal, it redoes the entire island and then upgrades the valuations.

Mr. Blaz stated there is an established methodology for appraising properties for the triennial assessment and the yearly certification by the Board. He disagreed that evaluations would be downward, instead they would be spiralling.

Senator Reyes asked why are there two processes (the annual board certifications and the triennial assessments)? Mr. Blaz stated there is a justification for mass appraisals occurring every three years. Senator Reyes asked if the Board of Equalization's certification regarding the \$55 million cushion be affirmed in the courts? Mr. Blaz affirmed.

Senator Reyes asked if in fact, the properties went up in 1990, what should have been a triennial, 1993, what should have been another triennial? If in fact the property values went up, isn't that screwing the Gov't in terms of additional property taxes? If in fact it went down, wouldn't that be screwing the property owners because they are paying more than what they should be paying in terms of lower assessed valuation? He stated the failure to comply with the law to do the triennial every three years had financial and fiscal implications because property taxes are based on assessed valuation of properties. Either way you cut it, you will be okay if the values of property will be going on a straight line, but if it goes up it affects one part of our island, if it goes down it affects the other. How do you respond to that? What are the Board's plans to do another triennial?

Mr. Blaz stated the tax roll is increasing every year. What is in the roll already as whatever the value of the property is and 35 % of that is subject to the tax. So that is constant unless your values go up. After appraisals are completed, every piece of property will have its value elevated resulting in increasing the tax consequence. He conceded missing the past two scheduled triennials does have financial implications in that tax increases would have occurred earlier.

Senator Reyes stated most financial institutions require some sort of deficit elimination plan, if the borrower is in a hole. Senator Reyes requested Mr. Sgambelluri to provide a deficit elimination plan before the bond is issued. A deficit elimination plan would probably make the bond more attractive to investors. Senator Reyes stated despite the millions of dollars spent on financial experts, the territory does not have an accurate fiscal picture.

Chairman Pangelinan asked what are the current collections of real estate taxes? What are the estimated losses in collections due to not having completed the triennial?

Mr. Blaz stated he did not know but said he could provide that information to the Committee.

Senator Santos stated he was concerned that no bond agreement has been reached and yet DOA has already agreed to front end the interest payments on the bond? Mr. Sgambelluri stated the performa submitted to the Legislature, includes both principal and interest as extended over the five years.

Senator Santos stated the performa at year end 95, the reports shows a huge increase that goes from zero to \$2.4 million in department fee increases. Can the witnesses elaborate on that item and tell the Committee exactly what departments are going to increase their fees to the tune of \$2.4 million?

Mr. Blaz stated \$2.4 million is a conservative figure and that it could actually be as much as \$6 to \$7 million. Mr. Sgambelluri stated Agriculture, the Police Department and other agencies are submitting increased fee schedules.

Senator Santos asked how much of the outstanding tax refunds due are corporate and individual? Mr. Blas stated 10 percent is corporate and 90 percent is individual. Senator Santos asked if Revenue and Taxation can negotiate with corporate tax holders to defray payments or

apply payments to next year's taxes? Mr. Blaz affirmed stating it is a bad policy to do so. He stated applying for credit for next year's taxes is normally being done by corporate tax holders. The bulk of outstanding refunds are owed to individuals.

Senator Santos stated it doesn't make good business sense to borrow to pay for general obligations. He stated he is uncomfortable with approving the Administration's bill without any provisions for cuts in spending to help the government come to terms with the new debt. Senator Santos agreed that a deficit elimination plan has to be done to provide for obligations next year.

Mr. Sgambelluri concurred and stated the perform only addresses current year budget requirements. He stated he would provide the information requested by the Chairman as well as the deficit elimination plan requested by Senator Reyes.

Senator Aguon asked for a breakdown in the Dept. of Administration's June 30, 1994 financial report on the Tourist Attraction Fund. What is the balance in the Fund? What does the item (\$359,678) three hundred fifty nine thousand six hundred seventy eight in cash and equivalence mean?

Mr. Aflague stated those are cash and equivalence in depository accounts. These is cash that we have deposited in the banks at certain accounts. Equivalence means the same thing as cash, they are liquid assets being held in the bank account. Senator Aguon asked for detailed listing of which banks the money is located and Arlene (DOA staff) stated she would provide the information. Senator Aguon asked which bank is the \$13.5 at and what are interest rates? Mr. Aflague stated \$6 million Bank of Hawaii and \$7.5 is with the Bank of Guam and that he would provide the Committee with the information.

Senator Aguon asked what is the item \$ 257,000. tax receivable? Arlene stated it is the occupancy taxes owed. Senator Aguon asked what are interfund receivables? Arlene stated these are receivables owed to other CIP projects or the debt service, or the general funds. She stated interfund receivable means these accounts are related between the capital projects and the debt service and the general fund account. I.E. if there's an operational expense from GVB that needs to be paid, DOA can cut a check on the general fund side and then a reimbursement from the Trustee and that will be a D22 from between the special departments. Senator Aguon asked why is that necessary when there are money in the bank on the unreserved balance?

Mr. Aflague stated requests are made to cut a check right away - a check is cut from the General Fund and then it is processed. DOA takes 24 to 48 hours to draw money from the bank and that's why an interfund relationship between the General Fund and the TAF exists.

Senator Aguon requested an example. Mr. Aflague stated he would have to go back and look at a specific check on a disbursement amount. Senator Aguon stated it was unnecessary practice.

Senator Aguon asked for a breakdown on related encumbrances item 1.1 and a breakdown on continuing appropriations amounting to \$9.5 million and Mr. Aflague stated he would provide the information to his office. Mr. Aflague stated total liabilities of the Tourist Attraction Fund equity is \$15.7 as of June 30.

Senator Aguon asked for an estimated projection schedule for the fund. He stated if has DOA taken into consideration the existing obligations and the cash revenue of the Fund? Mr. Aflague estimated collections in for the next three months remaining the Fiscal Year at \$3.5 million .

Sen. Aguon stated the Governor is asking to spend about \$20 million from the fund. Has DOA examined and analyzed this Fund as it relates to how much is available and how much is its existing obligations? Estimates are \$20 million but \$9.7 is available leaving \$10.3 million. Sen. Aguon asked how much more does DOA have to release to provide the operation of the Guam Visitor's Bureau in terms of their budget? How much have they already released to date? Mr. Aflague stated about a million dollars for the rest of the fiscal year and did not know how much as already been released.

Sen. Aguon stated he needed that figure today. Then you have your debt service. It's already paid for this term. [Aflague: Right] Okay, then you have your obligation for the training of our kids in the 2 plus 2 program at Guam Community College, which is 125.

[Aflague: Right.] Then you have to take into consideration the decline in revenue collection on the tourist attraction fund for this fiscal year, estimated to be \$15 million. But, in the information that I received that you're only collecting \$12 million. Okay, then you got to look at \$12 million for the operation of GVB.

Senator Aguon stated DOA's figures just don't add up. He stated there are many obligations needed to pay out of the tourist attraction fund and yet DOA statements indicate a decline in revenue. He stated the government may have to prepare for a technical default on its outstanding bond because it is based on revenues.

Mr. Aflague stated the \$20 million figure breakdown from DOA is: \$7 to 8 million from the TAF and \$11 to \$12 million from the Highway Fund. Senator Aguon asked if the government borrows \$7 million from the TAF, where is it going to find the money to pay for existing TAF obligations? He stated while he recognizes the need to pay tax refunds, money from the TAF must first and foremost be used to pay for what is mandated by law and especially to take care of the obligations of that fund.

Senator Aguon asked What would be the priority of this government? What's the purpose of that T.A.F. as defined by law? Why has some of the projects that were mandated by this legislature not been implemented by the administration as far as the money coming out from the T.A.F.? Is the Administration complying with the laws specifically mandating the use of these funds? Why hasn't the funds for these outstanding projects been released? It's not a question of priority anymore. It's a question of mandate. Several projects that are underway now that I'm very familiar with, for example, one of the major concerns is the lighting system in Tumon. That's the number one problem, as far as the tourists are concerned, safety and a whole lot of things. Another project that has been in the books for quite some time is the Nimitz Beach Project. That has been passed for over a year or maybe two years. But why hasn't the money been released to take care of that? The law states the government cannot use it for any other purpose other than for the project itself. And, you know that that would be a tremendous boost for the tourism concerns here. Why are some of these projects not being released? Is there any reason why they haven't been implemented?

Mr. Sgambelluri stated it has been a question of allocation releases. Meetings have been held with the DPW and there has not been any intent to without releases for particular project for any reason other than we just go through the list of projects and its mandated priorities, be it sewage, or infrastructure. The answer is just why we didn't release the fund at this point is that we just haven't.

Senator Aguon stated the TAF is not like the General Fund. Priorities have already been mandated by law and the Governor does not have the same control to prioritize the funds as he does with the General Fund.

Mr. Sgambelluri stated he would look into the outstanding projects and delays in the release of mandated funding from the TAF.

Sen. Aguon stated he wanted BBMR to look into the outstanding mandated TAF projects and to start minusing the amounts from DOA's financial statements for the TAF. This particular fund is very different. And, it rightfully so should be treated differently because the mandated source of its funding is --unique. Senator Aguon requested the complete listing be provided before the session to deliberate on Bill 1098. Mr. Aflague conceded stating the \$20 million figure has to be reduced. He added he would provide the information to Senator AGuon through the Governor's office of the adjusted figure.

Sen. Aguon asked the witnesses to also address in their transmittal of the information requested the question of how can money borrowed from the TAF by the General Fund be refunded back? He stated the language prepared in the Governor's Bill 1098 appears that the \$7 million will not be paid back.

Senator Tanaka stated he supports the bond proposal to ensure the income tax refunds but concurred that a deficit reduction plan was needed. He expressed reservations on accepting the Administration's revenue projections.

He stated the Administration's Section 30 Repayment Plan over a five year period may be too short. How much local banks can afford to lend for a possible hybrid loan from participating

local banks isn't known. He stated DOE's \$208 million budget has not been reviewed by either the administration nor the legislature.

He stated while Bill 1098 addresses immediate cash needs, it does not other problems and the shortfalls that are anticipated. He asked if all outstanding obligations, including the repayment for \$45 million bond, how much money do we have to work this? He stated the problem has been expenditures rather than revenues.

He stated the estimated \$36 million in Section 30 monies is a dramatic drop from the last year's \$45 million. Mr. Aflague stated there hasn't been much change in the military economy. Sen. Tanaka asked why has caused the disparity in the Section 30 estimates?

Mr. Aflague stated because there has been some reductions in the certifications, DOA has reduced estimates from \$45 to between \$37 and \$40 million.

Mr. Blaz stated after taking out payments for GPA obligations, the net amount of Section 30 money for last year was \$40 million. He stated Guam also collected all previously owed payments under a 1984 federal law sponsored by Congressman Won Pat. Sen. Tanaka asked if it was reflected as part of the \$40 million?

Mr. Blaz stated certification already approved by IRS and accepted by the Dept. of Interior amount to about \$45 million so far. He stated he did not anticipate any reductions even though advances of \$37 million have been received.

Sen. Tanaka stated he would like the Administration to look a hard look at expenditures. In 1993, the government spent \$91 million more than was received and seems to be faced with repeating that this year.

Senator Santos asked for a more detailed breakdown of payments the Governor is proposing to use restricted funds. Is the \$2.5 million listed for payroll? For Operations? Mr. Aflague stated the Governor needs \$2.5 million from restricted funds for subsidies which are just transfers out to autonomous agencies and other government branches. A detailed breakdown would cover payroll, vendor payments, payroll deductions and other operating expenses.

III. Findings and Recommendations

That certain sections are not germane to the bond proposal:

The Committee finds Rule 6 of the Standing Rules allows for one subject in any bill. The following sections are not sufficiently germane to the bond proposal nor does the Committee on Economic-Agricultural Development and Insurance have jurisdictions over these issues. Therefore, the Committee finds it necessary to deleting the following: Section 4, Section 5, Section 6, and Section 7 are not germane The Committee finds it necessary to repeal the following sections of Bill 1098:

The Committee finds that giving the Governor the authority to borrow using three different financing instruments such as a straight loan from local banks, the issuance of local income tax refunds bonds may be more advantageous for the territory by keeping the interest paid on these instruments within the local economy. However, the Committee also recognizes the merit of issuing bonds in the capital market. Therefore the Committee ammended the bill to allow the Governor to secure financing using any of the three intruments, upon his determination of the most cost effective, advantageous and expeditious manner to meet the needs and obligations of the territory.

The Committee reports out Bill 1098 as amended by the Committee with a recommendation **TO DO PASS**.

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Bill No. 1098
Introduced by:

At the request of the Governor

and as substituted by the
Committee on Economic and Agricultural
Development and Insurance

AN ACT TO ADD §22430 TO TITLE 5 OF THE GUAM CODE ANNOTATED TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION TAX AND REVENUE ANTICIPATION [~~NOTES~~] BONDS, LOANS OR LOCAL INCOME TAX REFUNDS BONDS, OF THE GOVERNMENT OF GUAM AND FOR OTHER PURPOSES.

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

1 **Section 1.** §22430 is added to Title 5 of the Guam Code Annotated to read:

2 **Section 22430.** Tax and Revenue Anticipation [~~Notes~~] Bonds, loans or local income tax refund
3 bonds.

4 (a) **Authorization of Issuance of [~~Notes~~] Bonds, Loans or local income tax refunds bonds.**

5 The Governor of Guam is authorized to issue one or more series of general obligation [~~Notes~~] Bonds ;
6 loans or local income tax refunds bonds, of the government of Guam as provided in this Section, in
7 anticipation of the receipt of taxes and other revenues, in an aggregate principal amount at any one time
8 outstanding not to exceed Forty Five Million Dollars (\$45,000,000); provided, however, that the
9 issuance of the [~~Notes~~] Bonds ; loans or local income tax refunds bonds. shall not cause a violation of
0 the debt limitation provision of 48. U.S.C.1423a. The [~~Notes~~] Bonds ; loans or local income tax refunds
1 bonds. may be issued and the proceeds expended for the purpose of allowing the Government of Guam
2 to pay for the cost of issuance of the [~~Notes~~] Bonds; loans or local income tax refunds bonds, and to
3 discharge its obligation to pay refunds owed to taxpayers who have filed their income tax forms with the
4 government of Guam in accordance with 48 U.S.C. 1421i.

1 interest, any such banks, insurance companies or other financial institution for advances used to pay
2 principal of or interest on the [Notes] Bonds. Any such reimbursement obligation shall be a general
3 obligation of the government of Guam [~~of the same character, and shall be payable from the same~~
4 ~~sources, as authorized hereunder for the notes]~~ and any such advance, if necessary shall be treated as
5 creating a reimbursement obligation issued to refund the bonds.

6 (i) **Use of Proceeds from the Sale of the [Notes] Bonds.** Proceeds from the sale of the [Notes]
7 Bonds [~~may~~] shall be used for the purpose for which the government of Guam is authorized to use and
8 expend moneys, as set forth in Subsection (a) of this Section and for payment of expenses relating to the
9 authorization, sale and issuance of the [Notes] Bonds, including, without limitation, printing costs, costs
0 of reproducing documents, [~~Note~~] Bond insurance premiums, underwriting, legal and accounting fees
1 and charges, fees paid to banks or other financial institution providing credit enhancement, costs of
2 credit ratings, fees and charges for execution, transportation and safekeeping of [Notes] Bonds and other
3 costs, charges and fees in connection with the issuance, sale and delivery of the [Notes] Bonds. The fees
4 charged by the Guam Economic Development Authority for this bond issuance shall be waived.

5 (j) **No Personal Liability.** No employee or elected official of the government of Guam shall be
6 individually or personally liable for the payment of any amounts due on any [Notes] Bonds issued under
7 this Section, or for any other liability arising in connection with [Notes] Bonds; provided, however, that
8 nothing in this Section shall relieve any employee or elected official from the performance of any
9 ministerial duty required by law.

0 (k) **Selection of Participants.** In view of the urgency for the issuance of [Notes] Bonds
1 pursuant to this Section at any time such issuance may be necessary, the Governor is hereby authorized
2 to utilize such method as he deems appropriate for the selection of all participants in connection with the
3 issuance and sale of the [Notes] Bonds, including trustees, paying agents, underwriters, counsel, any
4 credit enhancement provider and any other participants; [~~and~~] however, such selection shall [~~not~~] be
5 subject to any provision of [~~any other~~] law which [~~may~~] require bidding, [~~any~~] other competitive
6 process, or any other procedure with respect to such selection. In view of the urgency for the issuance of

1 the bonds, the Governor may limit the request for proposal for services associated with the issuance of
 2 the bonds to those firms that have previously participated in bonds issues for the territory.

3 (l) **Approval of GEDA.** §2103 (k) of Title 12, Guam Code Annotated, provides that
 4 agencies and instrumentalities of the government of Guam shall issue obligations only by means of and
 5 through the agency of the Guam Economic Development Authority (GEDA) and that GEDA shall not
 6 sell any obligation without the approval of the Legislature of the terms and conditions of the issuance of
 7 the obligations. In view of the urgency for the issuance of [Notes] Bonds, pursuant to this Section at any
 8 time issuance may be necessary, [Notes] Bonds, issued hereunder are exempted from the requirement of
 9 said §2103 (k) that the Legislature further approves the terms and conditions of the issuance of the
 0 obligations.

1 (m) **Permitted investments.** The proceeds of [Notes] Bonds, issued pursuant to this Section,
 2 and any revenues relating to such [Notes] Bonds, may be invested in, but only in, the types of
 3 investments permitted by the certificate of the Governor pursuant to which the [Notes] Bonds, are
 4 issued. provided that there are no outstanding income tax refunds due to taxpayers that are not under
 5 examination review by the Department of Revenue and Taxation."

6 **Section 2. Local Sale of [Notes] Bonds.** The Governor of Guam shall undertake his best efforts
 7 to cause a portion of any [Notes] Bonds issued pursuant to Section 22430 of Title 5 of the Guam Code
 8 Annotated, to be offered for sale in Guam, as well as in other jurisdictions, if and to the extent that such
 9 offer and any sales resulting from such offer do not increase the cost to the government of Guam of
 0 issuing and repaying such [Notes] Bonds.

1 ~~[Section 3 Use of restricted funds. (a) During fiscal year 1994, the Governor of Guam may~~
 2 ~~expend the unencumbered balances of the following funds:~~

3 ~~(1) The Tourist Attraction Fund, and~~

4 ~~(2) The Territorial Highway Fund.~~

5 ~~(b) The funds shall be expended for any purpose for which the government of Guam is authorized to~~
 6 ~~use and expend moneys, including but not limited to current expenses, capital expenditures and the~~
 7 ~~discharge of any obligation of indebtedness of the government.~~

1 ~~(c) The Director of Administration shall submit a report to the Legislature showing how much~~
 2 ~~money was expended from each fund and for what purpose.~~

3 ~~(d) There is appropriated from the General Fund such sums as will equal the amount of money~~
 4 ~~necessary to reimburse the FUNDS any money expended therefrom. If reimbursement has not been~~
 5 ~~made by the end of the fiscal year 1996 then the obligation to reimburse the funds is extinguished on~~
 6 ~~September 30, 1996.~~

7 ~~Section 4~~ GCA §8137.1 is repealed. The effective date of this Section is January 1, 1989.

8 ~~Section 5~~ Section 5 of Public Law 22-112 is amended to read:

9 "Section 5. Effective dates. ~~Section 2 of this Act and subsections (a) and (b) of Section 3 of this~~
 0 ~~Act shall take effect on October 1 [1994] 1995. All other sections and subsections of this Act shall take~~
 1 ~~effect on enactment."~~

2 ~~Section 6~~ The rules and regulations of the Guam Police Department as set out in the document
 3 entitled, "Government of Guam Fees Schedule, Guam Police Department" attached hereto as Exhibit 1
 4 and incorporated in this Act by this reference are approved.

5 ~~Section 7.~~ The rules and regulations of the Department of Agriculture as set out in the document
 6 entitled, "Government of Guam Proposed fees Schedule, Department of Agriculture." attached hereto as
 7 Exhibit 2 and incorporated in this Act by this reference are approved.]

8 Section 3. (a) Legislative Findings: The Legislature finds that it is desirable for the
 9 government of Guam to provide the option to taxpayers owed income tax refunds to receive payment in
 0 the form of a local income tax refund bond, issued by the government of Guam. Such option shall be
 1 voluntary and at the sole option of the taxpayer. A Local Income Tax Refund Bond is an obligatory note
 2 of payment by the government, of a specified amount at a pre-determined rate and maturity, which is
 3 backed by the anticipated tax revenues of the territory. These bonds, ideal for this particular financial
 4 liability, have an incurred cost of debt far below that of alternative means of government borrowing,
 5 thus saving GovGuam millions of dollars. A public bond issue floated for five (5) years at a rate as low
 6 as 5.5% would incur upon the taxpayers an annual interest burden of 2.5 million dollars for a total of
 7 8.5 to 8.9 million dollars. By issuing Local Income Tax Refund Bonds that are negotiable directly to the

1 taxpayer for the amount of the refund plus interest at 6% to April 15, 1997, a significant reduction in
2 the cost of indebtedness will be realized.

3 Tax refundees shall be able to utilize the income tax refund bonds within the parameters of the laws
4 associated with the exchange of other monetary debt instruments. Any future or existing tax liabilities
5 such as individual withholding tax or business privilege tax could be honored with these notes by the
6 original recipient or any redeemer bearing the endorsed, transferred note.

7 **(b). Authorization of issuance of Local income tax refund bonds for income tax refund liability.**

8 As authorized for in Section 1 and for the purpose of satisfying the obligation to Guam taxpayers whom
9 are eligible for income tax refunds, the Governor of Guam is authorized to issue government of Guam
0 local income tax refund bonds in an aggregate principal amount not to exceed Forty-five Million
1 Dollars (\$45,000,000); provided, that the bonds shall not be issued without an unqualified opinion of
2 legal counsel holding that interest on the notes would be tax-exempt. The bonds shall mature at such
3 times not later than April 15, 1997, shall bear interest at such rates not exceeding six percent (6%) per
4 annum, shall be in such denominations as are consistent to the individual recipient, shall be subject to
5 redemption at such times and upon payment of such premium not exceeding four percent (4%) of the
6 principal amount thereof and shall be sold at public or private sale for such price not less than ninety-
7 six percent (96%) of the principal amount thereof plus accrued interest, all as determined by the
8 Governor by execution of one or more certificates upon or prior to the issuance of the local bonds.

9 Any such local income tax refund bonds may be used by the bearer at the face value plus accrued
0 interest for payment of tax or other obligation due the government of Guam. If only part of the bond is
1 used for such purpose, the Director of Revenue and Taxation may make a notation of partial redemption
2 on the back of the bond indicating amount redeemed, date, balance due, etc., or may issue a new local
3 income tax refund bond with the same maturity date for the balance due. At the request of the bearer,
4 any excess amount may be credited against future obligations at no additional interest. The local income
5 tax refund bond may not be used in payment of sums due autonomous agencies or instrumentalities of
6 the Government of Guam.

1 Section 4. (a) Authorization for Execution of Loans to Pay Income Tax Refunds. As authorized
2 for in Section 1, the Governor is authorized to enter into loan agreements with local banks for the
3 purpose of paying income tax refunds owed to taxpayers. The terms and conditions of such loans shall
4 be as negotiated by the Governor, provided that the interest rate shall not exceed 6 % per annum and
5 the terms of the loan shall not be for more than sixty (60) months.

6 (b) Valid and Binding General Obligation; Pledge of Revenues. Any [Notes] loan
7 authorized by this Section shall constitute the valid and binding general obligations of the government of
8 Guam. The government of Guam pledges its full faith and credit for the punctual payment of both
9 principal of and interest on the [Notes] loan . There shall be collected annually in the same manner and
0 at the same time as government revenue for other purposes is collected, such sum as is required to pay
1 the principal of and interest on the [Notes] loan . All officers charged by law with any duty in the
2 collection of the revenues of the government shall do every lawful thing necessary to collect such sum.

3 In addition, all or part of the revenues derived by the government of Guam under Section 30 of
4 the Organic Act may, if determined by the Governor to be necessary or desirable be pledged to secure
5 the repayment of any loan issued under this Section and to pay the costs incurred in the issuance or
6 administration of the loan . Any pledge made to secure the loan shall be valid and binding for the time
7 the pledge is made. The revenues pledged and thereafter received by the government of Guam or by any
8 trustee, depository or custodian shall be deposited in a separate account and shall be immediately
9 subject to the lien or such pledge without physical delivery thereof or further act, and the lien of such
0 pledge shall be valid and binding against all parties having claims of any kind in tort, contract or
1 otherwise against the government of Guam or such trustee, depository or custodian, irrespective of
2 whether the parties have notice thereof. The certificate or agreement by which such pledge is created
3 need not be recorded. All such revenues, to the extent so pledged, are hereby continuously appropriated
4 for such purpose.

5 Section 5. Maximum Aggregate Amounts of Bonds, Loans and Local Income Tax Refund Bonds. If
6 the Governor elects to utilize a combination of bonds, loans and local income tax refunds bonds to

1 satisfy the obligations of tax refunds owed to taxpayers, the total borrowing shall not exceed \$45 million
2 dollars.

3

4



Committees:

MEMORANDUM

08/03/94

CHAIRPERSON:

Rules

VICE CHAIRPERSON:

Ways & Means

MEMBER:

Economic-
Agricultural
Development,
and Insurance

Education

Electrical
Power and
Consumer
Protection

Federal and
Foreign Affairs

General
Governmental
Operations and
Micronesia Affairs

Health,
Ecology and
Welfare

Judiciary
and
Criminal Justice

Tourism and
Transportation

Youth, Senior
Citizens and
Cultural Affairs

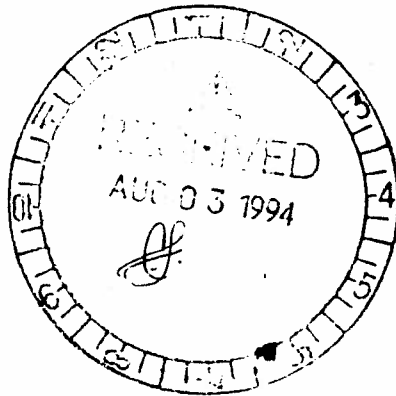
TO: Chairperson, Committee on Economic-Agricultural
Development and Insurance

FROM: Acting Chairperson, Committee on Rules

SUBJECT: Re-Referral of Bill 1098

As Acting Chairperson of the Committee on Rules, the above Bill is being referred to you as the principle committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting. It is recommended you schedule a public hearing at your earliest convenience.

If you have any questions, please call my office.



Carl T.C. Gutierrez
CARL T.C. GUTIERREZ

JUL 05 '94

Bill No. 1098 (13)

Introduced by:

Albert King
At the request of the Governor

AN ACT TO ADD §22430 TO TITLE 5 OF THE GUAM CODE
ANNOTATED TO AUTHORIZE THE ISSUANCE OF GENERAL
OBLIGATION TAX AND REVENUE ANTICIPATION NOTES OF THE
GOVERNMENT OF GUAM AND FOR OTHER PURPOSES.

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

1 Section 1. §22430 is added to Title 5 of the Guam Code
2 Annotated to read:

3 "Section 22430. Tax and Revenue Anticipation Notes.

4 (a) Authorization of Issuance of Notes. The Governor
5 of Guam is authorized to issue one or more series of general
6 obligation notes of the government of Guam as provided in
7 this Section, in anticipation of the receipt of taxes and
8 other revenues, in an aggregate principal amount at any one
9 time outstanding not to exceed Forty Five Million Dollars
10 (\$45,000,000); provided, however, that the issuance of the
11 notes shall not cause a violation of the debt limitation
12 provisions of 48 U.S.C. 1423a. The notes may be issued and
13 the proceeds expended for the purpose of allowing the
14 Government of Guam to pay for the costs of issuance of the
15 notes and to discharge its obligation to pay refunds owed to
16 taxpayers who have filed their income tax forms with the
17 government of Guam in accordance with 48 U.S.C. §1421i.

1 (b) **Terms and Conditions Determined by Certificate.**

2 The terms and conditions of the notes shall be as determined
3 by the Governor by the execution of a certificate
4 authorizing the issuance of the notes upon or prior to the
5 issuance of the notes. The certificate shall contain such
6 terms and conditions as are consistent with this Section.
7 The notes shall mature at such times not later than sixty
8 (60) months after the date of issuance thereof, and shall
9 bear interest at such rate or rates and be sold for such
10 price or prices as shall be determined by the Governor.

11 (c) **Valid and Binding General Obligation; Pledge of**
12 **Revenues.** Any notes authorized by this Section shall
13 constitute the valid and binding general obligations of the
14 government of Guam. The government of Guam pledges its full
15 faith and credit for the punctual payment of both principal
16 of and interest on the notes. There shall be collected
17 annually in the same manner and at the same time as
18 government revenue for other purposes is collected, such sum
19 as is required to pay the principal of and interest on the
20 notes. All officers charged by law with any duty in the
21 collection of the revenues of the government shall do every
22 lawful thing necessary to collect such sum.

23 (d) **Appropriation from the General Fund.** There are
24 hereby appropriated from the General Fund such sums as will
25 equal in each year the amount of money necessary to pay the
26 principal of and interest on such notes.

1 (e) **Additional Parity Obligations.** The government of
2 Guam, after appropriate enabling legislation, may issue
3 other general obligations of the government secured on a
4 parity with such notes by the general obligation of the
5 government.

6 (f) **Waiver of Immunity.** Notwithstanding any
7 substantive or procedural provision of Chapter 6 of Title 5,
8 Guam Code Annotated, the government of Guam waives immunity
9 from any suit or action in contract on the notes, but does
10 not waive sovereign immunity as to the personal liability of
11 elected officials and employees of the government of Guam.

12 (g) **Form of Notes; Covenants; Appointment of**
13 **Fiduciaries.** The technical form and language of the notes,
14 including provisions for execution, exchange, transfer,
15 registration, paying agency, lost or mutilated notes,
16 negotiability, cancellation and other terms or conditions
17 not inconsistent with this Section, shall be as specified in
18 the certificate executed by the Governor authorizing the
19 issuance of the notes. The certificate may appoint one or
20 more trustees or other fiduciaries authorized to receive and
21 hold in trust the proceeds of the notes and moneys relating
22 thereto, to protect the rights of noteholders and to perform
23 such other duties as may be specified in the certificate.
24 The Governor is also authorized to execute, on behalf of the
25 government of Guam, any appropriate agreements, certificates
26 or other instruments relating to the notes and the sale of
27 the notes.

1 (h) Authorization for Credit Enhancement. The
2 Governor is authorized to enter into such contracts or
3 agreements with such banks, insurance companies or other
4 financial institutions as he determines are necessary or
5 desirable to improve the security and marketability of the
6 notes issued under this Section. Such contracts or
7 agreements may contain an obligation to reimburse, with
8 interest, any such banks, insurance companies or other
9 financial institutions for advances used to pay principal of
10 or interest on the notes. Any such reimbursement obligation
11 shall be an obligation of the government of Guam of the same
12 character, and shall be payable from the same sources, as
13 authorized hereunder for the notes.

14 (i) Use of Proceeds from the Sale of the Notes.

15 Proceeds from the sale of the notes may be used for the
16 purpose for which the government of Guam is authorized to
17 use and expend moneys, as set forth in Subsection (a) of
18 this Section and for payment of expenses relating to the
19 authorization, sale and issuance of the notes, including,
20 without limitation, printing costs, costs of reproducing
21 documents, note insurance premiums, underwriting, legal and
22 accounting fees and charges, fees paid to banks or other
23 financial institutions providing credit enhancement, costs
24 of credit ratings, fees and charges for execution,
25 transportation and safekeeping of notes and other costs,
26 charges and fees in connection with the issuance, sale and
27 delivery of the notes.

1 (j) **No Personal Liability.** No employee or elected
2 official of the government of Guam shall be individually or
3 personally liable for the payment of any amounts due on any
4 notes issued under this Section, or for any other liability
5 arising in connection with the notes; provided, however,
6 that nothing in this Section shall relieve any employee or
7 elected official from the performance of any ministerial
8 duty required by law.

9 (k) **Selection of Participants.** In view of the urgency
10 for the issuance of notes pursuant to this Section at any
11 time such issuance may be necessary, the Governor is hereby
12 authorized to utilize such method as he deems appropriate
13 for the selection of all participants in connection with the
14 issuance and sale of the notes, including trustees, paying
15 agents, underwriters, counsel, any credit enhancement
16 provider and any other participants; and such selection
17 shall not be subject to any provision of any other law which
18 may require bidding, any other competitive process, or any
19 other procedure with respect to such selection.

20 (l) **Approval of GEDA.** §2103(k) of Title 12, Guam Code
21 Annotated, provides that agencies and instrumentalities of
22 the government of Guam shall issue obligations only by means
23 of and through the agency of the Guam Economic Development
24 Authority ("GEDA"), and that GEDA shall not sell any
25 obligation without the approval of the Legislature of the
26 terms and conditions of the issuance of the obligations. In
27 view of the urgency for the issuance of notes pursuant to

1 this Section at any time such issuance may be necessary,
2 notes issued hereunder are exempted from the requirement of
3 said §2103(k) that the Legislature further approve the terms
4 and conditions of the issuance of the obligations.

5 (m) **Permitted Investments.** The proceeds of notes
6 issued pursuant to this Section, and any revenues relating
7 to such notes, may be invested in, but only in, the types of
8 investments permitted by the certificate of the Governor
9 pursuant to which the notes are issued."

10 **Section 2. Local Sale of Notes.** The Governor of Guam
11 shall undertake his best efforts to cause a portion of any notes
12 issued pursuant to Section 22430 of Title 5 of the Guam Code
13 Annotated, to be offered for sale in Guam, as well as in other
14 jurisdictions, if and to the extent that such offer and any sales
15 resulting from such offer do not increase the cost to the
16 government of Guam of issuing and repaying such notes.

17 **Section 3. Use of Restricted Funds.** (a) During
18 fiscal year 1994, the Governor of Guam may expend the
19 unencumbered balances of the following funds:

- 20 (1) the Tourist Attraction Fund, and
21 (2) the Territorial Highway Fund.

22 (b) The funds shall be expended for any purpose for which
23 the government of Guam is authorized to use and expend moneys,
24 including but not limited to current expenses, capital
25 expenditures and the discharge of any obligation of indebtedness
26 of the government.

1 (c) The Director of Administration shall submit a report to
2 the Legislature showing how much money was expended from each
3 fund and for what purpose.

4 (d) There is appropriated from the General Fund such sums
5 as will equal the amount of money necessary to reimburse the
6 Funds any money expended therefrom. If reimbursement has not
7 been made by the end of Fiscal Year 1996 then the obligation to
8 reimburse the Funds is extinguished on September 30, 1996.

9 Section 4. 4 GCA §8137.1 is repealed. The effective
10 date of this Section is January 1, 1989.

11 Section 5. Section 5 of Public Law 22-112 is amended
12 to read:

13 **"Section 5. Effective Dates.** Section 2 of this Act
14 and subsections (a) and (b) of Section 3 of this Act shall take
15 effect on October 1, [~~1994~~] 1995. All other sections and
16 subsections of this Act shall take effect on enactment."

17 Section 6. The rules and regulations of the Guam
18 Police Department as set out in the document entitled,
19 "Government of Guam Proposed Fees Schedule, Guam Police
20 Department," attached hereto as Exhibit 1 and incorporated in
21 this Act by this reference are approved.

22 Section 7. The rules and regulations of the Department
23 of Agriculture as set out in the document entitled, "Government
24 of Guam Proposed Fees Schedule, Department of Agriculture,"
25 attached hereto as Exhibit 2 and incorporated in this Act by this
26 reference are approved.



JOSEPH F. ADA
Governor

FRANK F. BLAS
Lieutenant Governor

DEPARTMENT OF

REVENUE & TAXATION

GOVERNMENT OF GUAM

JOAQUIN G. BLAZ, Director • V.M. CONCEPCION, Deputy Director

MEMORANDUM

JUL 26 1994

To: Governor of Guam

From: Director of Revenue and Taxation

Subject: Response to Items 6 and 10 per Facsimile Message from Carl Taitano

Transmitted herewith is the information in response to Items No. 6 and 10 of Senator Carl T. C. Gutierrez's letter:

1. Income Tax Refund Status as of July 1994:

Projected Refunds for 1993	\$55,000,000.00 ✓
Refunds Paid As of 7/7/94	<u>16,323,282.00</u>
Outstanding Refunds for 1993	39,676,718.00
Outstanding Prior Years	<u>15,299,088.00*</u>
Total Outstanding Refunds	\$54,975,806.00 ✓

*NOTE: \$11 Million currently under examination review.

- Copy of summary sheet for the 1993 Tax Roll as certified by the Board of Equalization. The most recent total aggregate appraised value of all taxable properties on Guam is approximately \$4,255,669,653.00.
- Explanation for the raise in total appraised values and corresponding tax base.
- The current authorized amount of debt ceiling within the limitation of the Organic Act of Guam is ten percent (10%) of the aggregate appraised value of all taxable properties on Guam.

1993 Aggregate Value: \$4,255,669,653.00

10% Debt Limitation: \$ 425,566,965.30 →



VICENTE M. CONCEPCION
Acting Director

Attachments

ATTACHMENT #6

**INCOME TAX REFUND STATUS
AS OF JULY 1994**

PROJECTED REFUNDS FOR 1993	\$55,000,000.00
REFUNDS PAID AS 7/7/94	16,323,282.00
OUTSTANDING REFUNDS FOR 1993	<u>39,676,718.00</u>
OUTSTANDING PRIOR YEAR	15,299,088.00*
TOTAL OUTSTANDING REFUNDS	<u>\$54,975,806.00</u>

* NOTE: \$11 MILLION CURRENTLY UNDER EXAMINATION REVIEW

UNPAID INCOME TAX REFUND STATUS
JULY 1994

DESCRIPTION	INDIVIDUAL	CORPORATE	TOTAL
Unpaid prior years	\$3,738,219	\$11,560,927	
Unpaid current year			
February	10,292,710	3,874,273	
March	11,570,062		
April	13,939,673		
	<u>39,540,664</u>	<u>* 15,435,200</u>	\$54,975,864

* 11 MILLION CURRENTLY UNDER EXAMINATION REVIEW

How many TNY per ?

What Read -

Committee on Economic-Agricultural
Development and Insurance
Committee Report on
Bill 1098

An act to add §22430 to Title 5 of the Guam Code Annotated to authorize the issuance of General Obligation Tax and Revenue Anticipation Notes of the Government of Guam and for other purposes. *Introduced at the request of the Governor.*

I. Overview

The Committee on Economic-Agricultural Development and Insurance having jurisdiction over public bond issues and having been referred Bill 1098 conducted a public hearing on Wednesday, August 10, 1994 in the Public Hearing Room, Guam Legislature Temporary Building in Agana. Notice was published in the Pacific Daily News. Chairman Ben Pangelinan presided and the following members were present: Sens. Francis E. Santos, Edward Reyes, Anthony Blaz, Marilyn Manibusan, Ted Nelson, Herminia Dierking, Felix Camacho, and Thomas Tanaka. Also present were: Sens. George Bamba and John P. Aguon.

A. Background

1. Referral. At introduction, Bill 1098 was referred to Committee on Ways and Means. At a public hearing, by the same, the Governor requested that all references to "notes" be replaced with "bonds". Legislative Legal Counsel issued a legal opinion that Bill 1098 be referred to the Committee on Economic-Agricultural Development and Insurance, and the public hearing must be conducted by the same, and the request by the Governor to replace all references to "notes"

2. Major Provisions. Bill 1098 calls for approval of 5 major issues:
- Authorization to float a \$45 million general obligation bond;
 - Authorization to use unencumbered balances in the Tourist Attraction Fund and the Territorial Highway Fund;
 - Repeal of the cost of living allowance or COLA payments to Government of Guam retirees retroactive to January 1, 1989;
 - Postpones the establishment of the Customs and Quarantine Agency from October 1, 1994 to October 1, 1995; and
 - Approves the proposed fee schedule changes of the Guam Police Department and the Department of Agriculture.

II. Summary of Testimony

Witnesses present were Director of Dept. of Revenue & Taxation Mr. Joaquin G. Blaz, Director of Bureau of Budget Management Resources Mr. Giovanni Sgambelluri, and Director of Administration Mr. Wilfred Aflague. No written testimony was submitted at the hearing.

Mr. Sgambelluri stated each of the agencies represented support the passage of Bill 1098 for the purposes of paying outstanding tax refunds and assisting the government with its cash needs. The proposed bond issue will provide the necessary infusion of cash into the economy.

Chairman Pangelinan stated that during deliberations to approve the \$175 million school bond in 1993, the Governor's office reported 10% of the valuation of property as of 10/11-6/1/93 was \$366,000,000.00. After the issuance of general obligations bonds for the '86 water, the '89, infrastructure in '89 and the '92 highway bonds totalling \$157,785 left debt capacity availability of \$209,000,000.00. The \$175 million school bond reduced that available capacity to \$34 million. He asked will the issuance of the \$45 million debt allow the Gov't of Guam to remain within the legal debt ceiling limitations set by Section 11 of the Organic Act?

Mr. Blaz stated the debt capacity of the Government has increased. Based on a July 26, 1994 letter to the Governor, the Board of Equalization established the total aggregate appraised

value of all taxable properties to be approximately \$4.2 billion, as of October 1993. Ten percent of that would be \$425,000,000.00. Mr. Blaz stated the passage of Bill 1098 would not exceed the debt ceiling established in the Organic Act.

Chairman Pangelinan asked if the government floated the proposed \$45 million bond, would the government general obligation debt be up to approximately \$370,000,000.00? Mr. Blaz affirmed and stated the government would not exceed the ceiling.

Chairman Pangelinan stated by the Board's action the ceiling has been set at \$420 million, leaving a cushion of \$55 million. He asked if the increase was based on reviewing construction projects and adding improvements on the tax rolls instead of any real estate tax assessments? Mr. Blaz affirmed stating the triennial evaluation will not be completed until late this year. He stated the evaluation would probably increase to between \$10 and \$12 billion.

Chairman Pangelinan asked what other obligations are outstanding for the Government of Guam? Are there any reclassifications required under the Hay Study still pending? What is the amount owed to employees whose salaries were upgraded and have not been paid for work they have already performed?

Mr. Sgambelluri stated over 90% of the Hay reclassifications have been paid. In some line agencies, the money came from internal budget cuts because no appropriations were made to address them. ie: Revenue and Taxation made internal cuts within its own department to effectuate Hay reclassifications for employees working at Revenue and Taxation.

Chairman asked what is the remaining balance? Mr. Aflague stated the remaining balance is approximately about \$1.2 million, overall. Chairman Pangelinan asked if this amount has been budgeted in the next fiscal year budget for payment? Mr. Aflague affirmed stated the amount is probably less than \$1.2 million because several more agencies have completed their internal cuts.

Chairman Pangelinan asked if various government agencies owe GPA approximately \$4 million? How much is owed by agencies supported by the general fund to autonomous agencies for services? Mr. Sgambelluri affirmed. He stated of the four largest ticket items owed to GPA each amount to over a million: Public Works for street lights, the Department of Education, the Mayor's Council and various Mayor's offices, and PUAG's water wells. Each of these items are being addressed and should be resolved soon.

Chairman Pangelinan asked if the government has the money to pay these obligations? Mr. Aflague stated by prioritizing spending, the Dept. of Administration is making vendor payments in the line agencies. Mr. Sgambelluri stated PUAG has been granted mitigation funding that can be used to offset its liabilities to GPA.

Chairman Pangelinan asked how the Governor intends to address the estimated \$10 to \$20 million shortfall in the construction of the southern high school? Has the Governor incorporated the shortfall in his \$510 million budget request? Mr. Sgambelluri stated he could not confirm whether it was included in the FY'95 budget request.

Chairman Pangelinan stated official cash flow and budget estimates submitted by the Governor shows a DOE budget for FY'94 of \$150,871,000.00, yet the DOE is asking for \$208 million which leaves a difference of \$58 million for that same budget year. How does the Governor propose to find that additional \$58 million for next year, given cash flow projections of \$540 million with a budget limitation for the executive branch of \$510 million and his request to borrow and add an additional debt service for the \$45 million bond on top of next year's budget?

Mr. Sgambelluri stated the inclusion of the DOE expenditures in this proforma takes into account a very conservative average of the 3 yrs budget. This figure or the difference between the two is DOE's direct request to the Legislature which includes the administration's figure. Under new mandate, the executive branch no longer has purview over DOE.

Chairman Pangelinan stated the Legislature is going to either cut the DOE budget or find additional money and not appropriate any other projects and funds over and above the projected cash collections. He stated the administration's reports have a beginning cash balance on this proforma of (zero) 0, and asked does that mean that Governor isn't going to pay any of the 177-178 million dollars that we say, is a cash deficit of the Government of Guam owed for last fiscal year and prior years' obligations?

Mr. Aflague stated he had wished the Dept. of Administration staff did not start out with (zero) 0, but rather with a minus \$30 million. The cash flow projection report was based on two assumptions:

1. That the Governor's request to use the authorized \$20 million and
2. That the \$10 million retirement annuity contribution from the General Fund be negotiated into a note with retirement fund officials.

Chairman Pangelinan asked has the Gov't of Guam been making it's share of contribution required under the retirement law and what is that amount of the obligation? Mr. Aflague affirmed contributions for line agencies have been paid every quarter. He could not confirm whether autonomous agencies have kept up payments.

Senator Aguon asked what about the \$5 million that listed on this transmittal on the obligation to pay, using TAF? It says \$5 million to the retirement fund, is this different?

Mr. Aflague affirmed and stated the government's contribution of payroll retirement deductions are current. It is the appropriation from the general fund for the annuity benefits payments that go out, that has not been paid. Dept. of Administration is making the government's contributions of the retirement fund for employees but doesn't have enough cash to pay for annuity benefits. Dept of Administration is behind in monthly annuity benefits; regular bi-weekly payroll, government's contribution share is current with the line agencies.

Chairman Pangelinan reiterated facts established by the witnesses' testimony:

1. New debt capacity with \$55 million cushion is sufficient to issue \$45 million bond
2. Other obligations Gov't of Guam obligations, excluding current tax refunds, ie vendor payments, additional CIP's of approximately \$25-\$30 million, will have to be addressed in next year's fiscal budget.
3. Established cash flow projections by the Governor's office does not take into account payments for any of the prior years' vendor payments and obligations.
4. The Governor's projections does not recognize pending obligations in fiscal year 1994-1995.
5. If the Governor's budgets and the cash projections come true, by the end of FY '95 another \$44 million will be added to the government's obligations, bringing the deficit to over \$200 million.

Mr. Aflague stated repayment of the bond will be spread over a five years. In using Section 30 funds, interest payments will be made in the first year. For accounting purposes, under this repayment plan, the deficit would be reduced because the proceeds of the bonds would remove the obligation. Cash needs for the first year would be just over \$2.2 to \$2.3 million for the first payment of the bond which would be paid out over five years.

Revenue statements for the first seven months of FY '94 through April, show collections behind last years revenue projections. For the months May, June and July , revenues were slightly over last years periods. Every month that revenues exceed projections, the deficit is being cut down and more payments against the deficit are being made. Current accounting deficit is approximately \$161 million. He stated economic indicators could very well support the cash flow projections by the Department of Administration.

Chairman Pangelinan stated the Governor's \$510 million budget and his cash flow projections still does not recognize the \$161 million in prior year obligations. What is going to be sacrificed within that \$510 budget to pay bills from a year ago? Where are we going to cut that?

Mr. Blaz stated the bond proposal does not increase the deficit, because you know what we are borrowing is what is already taken into consideration as a deficit. The economic outlook is pretty good at this time, everybody is talking of tourists swarming back and you have big companies like K-mart opening up. The military, despite all the talk about downsizing, is building a \$52 million complex, 300 units - housing and a power plant, worth \$13 million down at Orote Point.

Chairman Pangelinan asked how will the \$45 million bond affect the marketing of the \$102 million bond approved for Cabras No. 4 and for the four substations? Is the governor going to issue the \$45 million bond first?

He stated GPA came before the legislature with an August 30th deadline because its cash requirements based on their contract with Korea Heavy Industries. Has the Governor asked GPA to hold back on their bond issuance?

Mr. Blaz stated he had no knowledge of that happening. Even if both issuances were put out on the market, it would not be a problem because GPA's bond is a separate type of instrument based on separate revenue source. He stated he saw no problem if both bonds were issued at the same time.

Mr. Sgambelluri stated he was unaware of change. Aflague stated he has no information regarding the change.

Senator Blaz asked if the outstanding \$1.2 million Hay study obligation and the \$4 million GPA back payments will be resolved? Mr. Aflague stated the Governor has asked each agency to complete the internal processing of these payments.

Senator Blaz stated it is important to note that the Administration has implemented a plan to resolve those obligations and anticipated shortfalls. He asked if each agency has sufficient money in their budgets to make cutbacks internally without any appropriations to meet their Hay study reclassifications. Mr. Sgambelluri affirmed.

Senator Blaz asked how far behind is the government in paying its vendor payments? Mr. Aflague stated line agencies are running 90 days behind their vendor payments.

Sen. Blaz stated the \$45 million tax refund bond situation is a priority as well as the GPA bond issue. Which takes precedence, it is neither here nor there they would both do very well once it goes out into the government. But this is a big priority with the people, we have taxpayers out there that need their money back and they deserve it. Thank you Mr. Chairman.

Chairman Pangelinan asked if the government is ninety days behind in vendor payments, and is meeting its obligations, why can't tax refunds payments be accelerated? And have we been able to accelerate the tax refunds, if we in fact we don't have any obligation and we're current with our vendors, are we accelerating the income tax refunds?

Mr. Aflague stated DOA is processing payments but they are processing them slowly because of lack of cash. Chairman Pangelinan stated, DOA's testimony leaves the impression there is no real lack of cash. Mr. Aflague disagreed stating the lack of cash required the \$45 million bond proposal.

Mr. Sgambelluri stated the premise behind the bond proposal will allow Mr. Aflague, to use \$45 million in general fund revenues for operations and that is the upside of this. Even the flip side where the interest payments is loaded on the front end it still allows Mr. Aflague to use \$45 million theoretically, for operations and the \$45 million for the tax refund to address Mr. Blaz's payables.

Senator Bamba stated the \$45 million owed in tax refunds is a priority obligation that has to be paid. He stated he cannot recall this event ever happening in the government's history. A precedent in borrowing to pay current obligations and operations was set during the Bordallo/Reyes administration -- a \$45 million (correct figure is 36 million) bond was floated to pay the retirement fund.

He stated the Governor's bill would have to be amended to read bond instead of notes. He stated the government will have to cut expenditures and grow the economy. The \$45 million bond proposed in Bill 1098 does not address next year's refunds. He stated the administration will have find \$45 million in cuts now to pay for next year's refunds.

Mr. Aflague stated DOA is worrying about next year's refunds now. DOA will have to accrue sufficient monies -- that's why revenue projections are net of reserves for refunds. Next year's figure is already been estimated at between \$55 to \$57 million.

Senator Bamba stated he quit trusting the accuracy of revenue projections. He stated the government still has to come up with \$45 million after it floats the bond. The only alternative is to just reduce expenditures or hope the economy grows substantially to generate the needed revenues for operations. He stated the Administration projected refunds for '93 at \$55 million, and has paid \$16 million, outstanding \$39 million, outstanding prior year \$15 million. Can you explain what the \$15 million is, outstanding prior year? Are these as the result of the tax rebates that the government owes after the loss of the lawsuit?

Mr. Blaz stated these are outstanding audits and claims that have been and are still under review and consideration.

Senator Bamba asked what is the government's liability as the result of the court case that was lost? Mr. Blaz answered \$5 million and stated he plans to appeal the court decision.

Senator Bamba asked if the outstanding estimate is \$55 million, where is the government going to make up the shortfall if it is only borrowing \$45 million? Mr. Blaz stated he believes the \$45 million bond would resolve the tax refund liability and will not completely wipe out the \$55 million.

Senator Bamba asked will the \$45 million cover everybody? Mr. Blaz stated he wasn't sure. Senator Bamba asked has Section 30 money been received yet? Mr. Aflague stated he expects to receive the money, about \$37 million on October 1st or September 30th.

Senator Bamba asked what are the uses of Section 30 money? Mr. Aflague stated prior to the current fiscal year, DOA used to plan out cash expenditures -- revenues and cash outlays so that that Section 30 money was doled out over the course of the entire fiscal year. In FY'94, DOA doled out all of Section 30 money by the first quarter, Dec. 31st, most of it covered COLA payments for the retirees. There was a great pressure to release it. FY'94 was the first year where DOA had to spend for operation needs and demands.

Senator Bamba asked if the Legislature does not approve Bill 1098, can that \$37 million be used to pay the tax refunds? Where would the damage be then, if that is the case? Mr. Aflague stated the damage would just be a further slowing down of payments for other operational needs, releases to autonomous agencies, releases to the court, to the legislature. Senator Bamba asked if the Administration has identified other areas that could be cut or revenues could be generated to make up for the shortfall?

Mr. Aflague stated BMR and DOA has worked closely to control spending by line agencies. Senator Bamba asked has the administration been working on a plan to identify where areas or which expenditures can be cut to be able to meet to stay within our operational revenue stream? Mr. Aflague stated the Governor's priorities are payroll, then vendor payments, then releases to everybody else.

Mr. Sgambelluri stated line agencies have already paid their share in cuts -- 15 percent in reserves impounded, a four percent cut in two previous budgets, and then the last 8 percent cut. Autonomous agencies are the ones who are screaming because the reality of the situation is the general fund transfers significant amounts to autonomous agencies. One of the biggest cuts that we found beginning in '93, was the cut of 450 object category- capital outlay- that alone was a \$60 million cut, in other words no equipment and that was built into the three year budget format. I think the cuts have been happening, it's just that we all have to cut. The Legislature was also involved in the 8% cut. Recipients of the cash disbursements of the General Fund are not necessarily line agencies, there are also the autonomous agencies, which need these payments to protect its autonomous status.

Senator Reyes stated although it's bad business to borrow money to pay operating debts, he fully supports the idea of paying debts to taxpayers. Floating \$45 million is perhaps one solution. Are there any underwriters or potential purchasers of this bond who are willing to buy this bond in light of the fact that their customer, the entity that is floating the bond is completely broke and operating under a deficit? Is the bond marketable based on the government's financial situation? Will it have to be discounted to entice people to buy it?

Senator Reyes stated the Chairman's Bill 1121 might be a better compromise. He asked how did the Administration conveniently arrive at meeting the requirements of the Organic Act -- 10 % of its assets to determine sufficient debt ceiling? Has the Administration increased the established debt ceiling cushion from \$34 to \$55 million just to accommodate the \$45 million bond plan?

He stated the last triennial assessment was in 1987 and the Administration has missed two triennials already resulting in a tremendous revenue implication. Since then property values either have plateaued out or has come down. Had the government completed its triennials on time, Senator Reyes stated it would probably reflect a downward trend in property value. He

stated the \$34 million cushion established last year is probably a more accurate figure than the new \$55 debt ceiling cushion.

Mr. Blaz stated the new cushion was certified by the Board of Equalization last October based on increases in property valuations occurring during last year. The certification was not made to accommodate Bill 1098; the board does a certification every year and this was done in October and this was the number the Dept. came up with. Mr. Blaz stated the law prescribes that the Board makes annual certifications of the increases in valuations. The triennial is a mass appraisal, it redoes the entire island and then upgrades the valuations.

Mr. Blaz stated there is an established methodology for appraising properties for the triennial assessment and the yearly certification by the Board. He disagreed that evaluations would be downward, instead they would be spiralling.

Senator Reyes asked why are there two processes (the annual board certifications and the triennial assessments)? Mr. Blaz stated there is a justification for mass appraisals occurring every three years. Senator Reyes asked if the Board of Equalization's certification regarding the \$55 million cushion be affirmed in the courts? Mr. Blaz affirmed.

Senator Reyes asked if in fact, the properties went up in 1990, what should have been a triennial, 1993, what should have been another triennial? If in fact the property values went up, isn't that screwing the Gov't in terms of additional property taxes? If in fact it went down, wouldn't that be screwing the property owners because they are paying more than what they should be paying in terms of lower assessed valuation? He stated the failure to comply with the law to do the triennial every three years had financial and fiscal implications because property taxes are based on assessed valuation of properties. Either way you cut it, you will be okay if the values of property will be going on a straight line, but if it goes up it affects one part of our island, if it goes down it affects the other. How do you respond to that? What are the Board's plans to do another triennial?

Mr. Blaz stated the tax roll is increasing every year. What is in the roll already as whatever the value of the property is and 35 % of that is subject to the tax. So that is constant unless your values go up. After appraisals are completed, every piece of property will have its value elevated resulting in increasing the tax consequence. He conceded missing the past two scheduled triennials does have financial implications in that tax increases would have occurred earlier.

Senator Reyes stated most financial institutions require some sort of deficit elimination plan, if the borrower is in a hole. Senator Reyes requested Mr. Sgambelluri to provide a deficit elimination plan before the bond is issued. A deficit elimination plan would probably make the bond more attractive to investors. Senator Reyes stated despite the millions of dollars spent on financial experts, the territory does not have an accurate fiscal picture.

Chairman Pangelinan asked what is the current collections of real estate taxes? What is the estimated losses in collections due to not having completed the triennial?

Mr. Blaz stated he did not know but said he could provide that information to the Committee.

Senator Santos stated he was concerned that no bond agreement has been reached and yet DOA has already agreed to front end the interest payments on the bond? Mr. Sgambelluri stated the performa submitted to the Legislature, includes both principal and interest as extended over the five years.

Senator Santos stated the performa at year end 95, the reports shows a huge increase that goes from zero to \$2.4 million in department fee increases. Can the witnesses elaborate on that item and tell the Committee exactly what departments are going to increase their fees to the tune of \$2.4 million?

Mr. Blaz stated \$2.4 million is a conservative figure and that it could actually be as much as \$6 to \$7 million. Mr. Sgambelluri stated Agriculture, the Police Department and other agencies are submitting increased fee schedules.

Senator Santos asked how much of the outstanding tax refunds due are corporate and individual? Mr. Blas stated 10 percent is corporate and 90 percent is individual. Senator Santos asked if Revenue and Taxation can negotiate with corporate tax holders to defray payments or

apply payments to next year's taxes? Mr. Blaz affirmed stating it is a bad policy to do so. He stated applying for credit for next year's taxes is normally being done by corporate tax holders. The bulk of outstanding refunds are owed to individuals.

Senator Santos stated it doesn't make good business sense to borrow to pay for general obligations. He stated he is uncomfortable with approving the Administration's bill without any provisions for cuts in spending to help the government come to terms with the new debt. Senator Santos agreed that a deficit elimination plan has to be done to provide for obligations next year.

Mr. Sgambelluri concurred and stated the performa only addresses current year budget requirements. He stated he would provide the information requested by the Chairman as well as the deficit elimination plan requested by Senator Reyes.

Senator Aguon asked for a breakdown in the Dept. of Administration's June 30, 1994 financial report on the Tourist Attraction Fund. What is the balance in the Fund? What does the item (\$359,678) three hundred fifty nine thousand six hundred seventy eight in cash and equivalence mean?

Mr. Aflague stated those are cash and equivalence in depository accounts. These is cash that we have deposited in the banks at certain accounts. Equivalence means the same thing as cash, they are liquid assets being held in the bank account. Senator Aguon asked for detailed listing of which banks the money is located and Arlene (DOA staff) stated she would provide the information. Senator Aguon asked which bank is the \$13.5 at and what are interest rates? Mr. Aflague stated \$6 million Bank of Hawaii and \$7.5 is with the Bank of Guam and that he would provide the Committee with the information.

Senator Aguon asked what is the item \$ 257,000. tax receivable? Arlene stated it is the occupancy taxes owed. Senator Aguon asked what are interfund receivables? Arlene stated these are receivables owed to other CIP projects or the debt service, or the general funds. She stated interfund receivable means these accounts are related between the capital projects and the debt service and the general fund account. I.E. if there's an operational expense from GVB that needs to be paid, DOA can cut a check on the general fund side and then a reimbursement from the Trustee and that will be a D22 from between the special departments. Senator Aguon asked why is that necessary when there are money in the bank on the unreserved balance?

Mr. Aflague stated requests are made to cut a check right away - a check is cut from the General Fund and then it is processed. DOA takes 24 to 48 hours to draw money from the bank and that's why an interfund relationship between the General Fund and the TAF exists.

Senator Aguon requested an example. Mr. Aflague stated he would have to go back and look at a specific check on a disbursement amount. Senator Aguon stated it was unnecessary practice.

Senator Aguon asked for a breakdown on related encumberances item 1.1 and a breakdown on continuing appropriations amounting to \$9.5 million and Mr. Aflague stated he would provide the information to his office. Mr. Aflague stated total liabilities of the Tourist Attraction Fund equity is \$15.7 as of June 30.

Senator Aguon asked for an estimated projection schedule for the fund. He stated if has DOA taken into consideration the existing obligations and the cash revenue of the Fund? Mr. Aflague estimated collections in for the next three months remaining the Fiscal Year at \$3.5 million .

Sen. Aguon stated the Governor is asking to spend about \$20 million from the fund. Has DOA examined and analyzed this Fund as it relates to how much is available and how much is its existing obligations? Estimates are \$20 million but \$9.7 is available leaving \$10.3 million. Sen. Aguon asked how much more does DOA have to release to provide the operation of the Guam Visitor's Bureau in terms of their budget? How much have they already released to date? Mr. Aflague stated about a million dollars for the rest of the fiscal year and did not know how much as already been released.

Sen. Aguon stated he needed that figure today. Then you have your debt service. It's already paid for this term. [Aflague: Right] Okay, then you have your obligation for the training of our kids in the 2 plus 2 program at Guam Community College, which is 125.

[Aflague: Right.] Then you have to take into consideration the decline in revenue collection on the tourist attraction fund for this fiscal year, estimated to be \$15 million. But, in the information that I received that you're only collecting \$12 million. Okay, then you got to look at \$12 million for the operation of GVB.

Senator Aguon stated DOA's figures just don't add up. He stated there are many obligations needed to pay out of the tourist attraction fund and yet DOA statements indicate a decline in revenue. He stated the government may have to prepare for a technical default on its outstanding bond because it is based on revenues.

Mr. Aflague stated the \$20 million figure breakdown from DOA is: \$7 to 8 million from the TAF and \$11 to \$12 million from the Highway Fund. Senator Aguon asked if the government borrows \$7 million from the TAF, where is the it going to find the money to pay for existing TAF obligations? He stated while he recognizes the need to pay tax refunds, money from the TAF must first and foremost be used to pay for what is mandated by law and especially to take care of the obligations of that fund.

Senator Aguon asked What would be the priority of this government? What's the purpose of that T.A.F. as defined by law? Why has some of the projects that were mandated by this legislature not been implemented byby the administration as far as the money coming out from the T.A.F.? Is the Administration complying with the laws specifically mandating the use of these funds? Why hasn't the funds for these outstanding projects been released? It's not a question of priority anymore. It's a question of mandate. Several projects that are underway now that I'm very familiar with, for example, one of the major concerns is the lighting system in Tumon. That's the number one problem , as far as the tourists are concerned, safety and a whole lot of things. Another project that has been in the books for quite some time is the Nimitz Beach Project. That has been passed for over a year or maybe two years. But why hasn't the money been released to take care of that? The law states the government cannot use it for any other purpose other than for the project itself. And, you know that that would be a tremendous boost for the tourism concerns here. Why are some of these projects not being released? Is there any reason why they haven't been implemented?

Mr. Sgambelluri stated it has been a question of allocation releases. Meetings have been held with the DPW and there has not been any intent to without releases for particular project for any reason other than we just go through the list of projects and its mandated priorities, be it sewage, or infrastructure. The answer is just why we didn't release the fund at this point is that we just haven't.

Senator Aguon stated the TAF is not like the General Fund. Priorities have already been mandated by law and the Governor does not have the same control to prioritize the funds as he does with the General Fund.

Mr. Sgambelluri stated he would look into the outstanding projects and delays in the release of mandated funding from the TAF.

Sen. Aguon stated he wanted BBMR to look into the outstanding mandated TAF projects and to start minusing the amounts from DOA's financial statements for the TAF. This particular fund is very different. And, it rightfully so should be treated differently because the mandated source of its funding is --unique. Senator Aguon requested the complete listing be provided before the session to deliberate on Bill 1098. Mr. Aflague conceded stating the \$20 million figure has to be reduced. He added he would provide the information to Senator AGuon through the Governor's office of the adjusted figure.

Sen. Aguon asked the witnesses to also address in their transmittal of the information requested the question of how can money borrowed from the TAF by the General Fund be refunded back? He stated the language tprepared in the Governor's Bill 1098 appears that the \$7 million will not be paid back.

Senator Tanaka stated he supports the bond proposal to ensure the income tax refunds but concurred that a deficit reduction plan was needed. He expressed reservations on accepting the Administration's revenue projections.

He stated the Administration's Section 30 Repayment Plan over a five year period may be too short. How much local banks can afford to lend for a possible hybrid loan from participating

local banks isn't known. He stated DOE's \$208 million budget has not been reviewed by either the administration nor the legislature.

He stated while Bill 1098 addresses immediate cash needs, it does not other problems and the shortfalls that are anticipated. He asked if all outstanding obligations, including the repayment for \$45 million bond, how much money do we have to work this? He stated the problem has been expenditures rather than revenues.

He stated the estimated \$36 million in Section 30 monies is a dramatic drop from the last year's \$45 million. Mr. Aflague stated there hasn't been much change in the military economy. Sen. Tanaka asked why has caused the disparity in the Section 30 estimates?

Mr. Aflague stated because there has been some reductions in the certifications, DOA has reduced estimates from \$45 to between \$37 and \$40 million.

Mr. Blaz stated after taking out payments for GPA obligations, the net amount of Section 30 money for last year was \$40 million. He stated Guam also collected all previously owed payments under a 1984 federal law sponsored by Congressman Won Pat. Sen. Tanaka asked if it was reflected as part of the \$40 million?

Mr. Blaz stated certification already approved by IRS and accepted by the Dept. of Interior amount to about \$45 million so far. He stated he did not anticipate any reductions even though advances of \$37 million have been received.

Sen. Tanaka stated he would like the Administration to look a hard look at expenditures. In 1993, the government spent \$91 million more than was received and seems to be faced with repeating that this year.

Senator Santos asked for a more detailed breakdown of payments the Governor is proposing to use restricted funds. Is the \$2.5 million listed for payroll? For Operations? Mr. Aflague stated the Governor needs \$2.5 million from restricted funds for subsidies which are just transfers out to autonomous agencies and other government branches. A detailed breakdown would cover payroll, vendor payments, payroll deductions and other operating expenses.

III. Findings and Recommendations

That certain sections are not germane to the bond proposal:

In applying Rule 6 of the Standing Rules which allows for one subject matter in any one bill, the Committee finds certain sections of the bill are not sufficiently germane to the bond proposal nor does the Committee on Economic-Agricultural Development and Insurance have jurisdiction over these issues. Therefore, the Committee recommends the deletions of the following: Section 3, Section 4, Section 5, Section 6, and Section 7.

That furthermore, as Section 3 of the Bill which provides the authority to use unencumbered funds in the Tourist Attraction Fund and the Territorial Highway Fund accounts should be deleted because of insufficient testimony and evidence that any unencumbered funds exists in these accounts:

Based on the recommendation of the Chairman of the Committee on Tourism and Transportation, which has jurisdiction over the Tourism Attraction Fund, and the absence of sufficient testimony and evidence and proper Committee jurisdiction over both the Territorial Highway Fund and the Tourism Attraction Fund accounts, and the specific administration over General Fund accounts, the Committee finds it necessary to delete these sections entirely from the bill.

The Committee finds that by giving the Governor the authority to borrow using two different financing instruments such as a straight loan from local banks and the issuance of a general obligation bond will be advantageous for the territory by keeping the interest paid on these instruments within the local economy. Therefore the Committee amended the bill to allow the Governor to secure financing using any of the two instruments, upon his determination of the most cost effective, advantageous and expeditious manner to meet the needs and obligations of the territory.

The Committee reports out Bill 1098 as amended by the Committee with a recommendation **TO DO PASS**.



MEMORANDUM

08/03/94

Committees:

CHAIRPERSON:

Rules

VICE CHAIRPERSON:

Ways & Means

MEMBER:

Economic-Agricultural Development, and Insurance

Education

Electrical Power and Consumer Protection

Federal and Foreign Affairs

General Governmental Operations and Micronesia Affairs

Health, Ecology and Welfare

Judiciary and Criminal Justice

Tourism and Transportation

Youth, Senior Citizens and Cultural Affairs

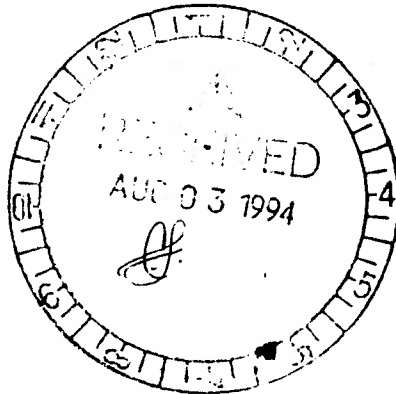
TO: Chairperson, Committee on Economic-Agricultural Development and Insurance

FROM: Acting Chairperson, Committee on Rules

SUBJECT: Re-Referral of Bill 1098

As Acting Chairperson of the Committee on Rules, the above Bill is being referred to you as the principle committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting. It is recommended you schedule a public hearing at your earliest convenience.

If you have any questions, please call my office.



Carl T.C. Gutierrez
CARL T.C. GUTIERREZ

JUL 05 '94

Bill No. 1098 (23)

Introduced by:

W. H. ...
At the request of the Governor

AN ACT TO ADD §22430 TO TITLE 5 OF THE GUAM CODE
ANNOTATED TO AUTHORIZE THE ISSUANCE OF GENERAL
OBLIGATION TAX AND REVENUE ANTICIPATION NOTES OF THE
GOVERNMENT OF GUAM AND FOR OTHER PURPOSES.

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

1 Section 1. §22430 is added to Title 5 of the Guam Code
2 Annotated to read:

3 "Section 22430. Tax and Revenue Anticipation Notes.

4 (a) Authorization of Issuance of Notes. The Governor
5 of Guam is authorized to issue one or more series of general
6 obligation notes of the government of Guam as provided in
7 this Section, in anticipation of the receipt of taxes and
8 other revenues, in an aggregate principal amount at any one
9 time outstanding not to exceed Forty Five Million Dollars
10 (\$45,000,000); provided, however, that the issuance of the
11 notes shall not cause a violation of the debt limitation
12 provisions of 48 U.S.C. 1423a. The notes may be issued and
13 the proceeds expended for the purpose of allowing the
14 Government of Guam to pay for the costs of issuance of the
15 notes and to discharge its obligation to pay refunds owed to
16 taxpayers who have filed their income tax forms with the
17 government of Guam in accordance with 48 U.S.C. §1421i.

1 (b) **Terms and Conditions Determined by Certificate.**

2 The terms and conditions of the notes shall be as determined
3 by the Governor by the execution of a certificate
4 authorizing the issuance of the notes upon or prior to the
5 issuance of the notes. The certificate shall contain such
6 terms and conditions as are consistent with this Section.
7 The notes shall mature at such times not later than sixty
8 (60) months after the date of issuance thereof, and shall
9 bear interest at such rate or rates and be sold for such
10 price or prices as shall be determined by the Governor.

11 (c) **Valid and Binding General Obligation; Pledge of**
12 **Revenues.** Any notes authorized by this Section shall
13 constitute the valid and binding general obligations of the
14 government of Guam. The government of Guam pledges its full
15 faith and credit for the punctual payment of both principal
16 of and interest on the notes. There shall be collected
17 annually in the same manner and at the same time as
18 government revenue for other purposes is collected, such sum
19 as is required to pay the principal of and interest on the
20 notes. All officers charged by law with any duty in the
21 collection of the revenues of the government shall do every
22 lawful thing necessary to collect such sum.

23 (d) **Appropriation from the General Fund.** There are
24 hereby appropriated from the General Fund such sums as will
25 equal in each year the amount of money necessary to pay the
26 principal of and interest on such notes.

1 (e) **Additional Parity Obligations.** The government of
2 Guam, after appropriate enabling legislation, may issue
3 other general obligations of the government secured on a
4 parity with such notes by the general obligation of the
5 government.

6 (f) **Waiver of Immunity.** Notwithstanding any
7 substantive or procedural provision of Chapter 6 of Title 5,
8 Guam Code Annotated, the government of Guam waives immunity
9 from any suit or action in contract on the notes, but does
10 not waive sovereign immunity as to the personal liability of
11 elected officials and employees of the government of Guam.

12 (g) **Form of Notes; Covenants; Appointment of**
13 **Fiduciaries.** The technical form and language of the notes,
14 including provisions for execution, exchange, transfer,
15 registration, paying agency, lost or mutilated notes,
16 negotiability, cancellation and other terms or conditions
17 not inconsistent with this Section, shall be as specified in
18 the certificate executed by the Governor authorizing the
19 issuance of the notes. The certificate may appoint one or
20 more trustees or other fiduciaries authorized to receive and
21 hold in trust the proceeds of the notes and moneys relating
22 thereto, to protect the rights of noteholders and to perform
23 such other duties as may be specified in the certificate.
24 The Governor is also authorized to execute, on behalf of the
25 government of Guam, any appropriate agreements, certificates
26 or other instruments relating to the notes and the sale of
27 the notes.

1 (h) Authorization for Credit Enhancement. The
2 Governor is authorized to enter into such contracts or
3 agreements with such banks, insurance companies or other
4 financial institutions as he determines are necessary or
5 desirable to improve the security and marketability of the
6 notes issued under this Section. Such contracts or
7 agreements may contain an obligation to reimburse, with
8 interest, any such banks, insurance companies or other
9 financial institutions for advances used to pay principal of
10 or interest on the notes. Any such reimbursement obligation
11 shall be an obligation of the government of Guam of the same
12 character, and shall be payable from the same sources, as
13 authorized hereunder for the notes.

14 (i) Use of Proceeds from the Sale of the Notes.

15 Proceeds from the sale of the notes may be used for the
16 purpose for which the government of Guam is authorized to
17 use and expend moneys, as set forth in Subsection (a) of
18 this Section and for payment of expenses relating to the
19 authorization, sale and issuance of the notes, including,
20 without limitation, printing costs, costs of reproducing
21 documents, note insurance premiums, underwriting, legal and
22 accounting fees and charges, fees paid to banks or other
23 financial institutions providing credit enhancement, costs
24 of credit ratings, fees and charges for execution,
25 transportation and safekeeping of notes and other costs,
26 charges and fees in connection with the issuance, sale and
27 delivery of the notes.

1 (j) **No Personal Liability.** No employee or elected
2 official of the government of Guam shall be individually or
3 personally liable for the payment of any amounts due on any
4 notes issued under this Section, or for any other liability
5 arising in connection with the notes; provided, however,
6 that nothing in this Section shall relieve any employee or
7 elected official from the performance of any ministerial
8 duty required by law.

9 (k) **Selection of Participants.** In view of the urgency
10 for the issuance of notes pursuant to this Section at any
11 time such issuance may be necessary, the Governor is hereby
12 authorized to utilize such method as he deems appropriate
13 for the selection of all participants in connection with the
14 issuance and sale of the notes, including trustees, paying
15 agents, underwriters, counsel, any credit enhancement
16 provider and any other participants; and such selection
17 shall not be subject to any provision of any other law which
18 may require bidding, any other competitive process, or any
19 other procedure with respect to such selection.

20 (l) **Approval of GEDA.** §2103(k) of Title 12, Guam Code
21 Annotated, provides that agencies and instrumentalities of
22 the government of Guam shall issue obligations only by means
23 of and through the agency of the Guam Economic Development
24 Authority ("GEDA"), and that GEDA shall not sell any
25 obligation without the approval of the Legislature of the
26 terms and conditions of the issuance of the obligations. In
27 view of the urgency for the issuance of notes pursuant to

1 this Section at any time such issuance may be necessary,
2 notes issued hereunder are exempted from the requirement of
3 said §2103(k) that the Legislature further approve the terms
4 and conditions of the issuance of the obligations.

5 (m) **Permitted Investments.** The proceeds of notes
6 issued pursuant to this Section, and any revenues relating
7 to such notes, may be invested in, but only in, the types of
8 investments permitted by the certificate of the Governor
9 pursuant to which the notes are issued."

10 **Section 2. Local Sale of Notes.** The Governor of Guam
11 shall undertake his best efforts to cause a portion of any notes
12 issued pursuant to Section 22430 of Title 5 of the Guam Code
13 Annotated, to be offered for sale in Guam, as well as in other
14 jurisdictions, if and to the extent that such offer and any sales
15 resulting from such offer do not increase the cost to the
16 government of Guam of issuing and repaying such notes.

17 **Section 3. Use of Restricted Funds.** (a) During
18 fiscal year 1994, the Governor of Guam may expend the
19 unencumbered balances of the following funds:

- 20 (1) the Tourist Attraction Fund, and
21 (2) the Territorial Highway Fund.

22 (b) The funds shall be expended for any purpose for which
23 the government of Guam is authorized to use and expend moneys,
24 including but not limited to current expenses, capital
25 expenditures and the discharge of any obligation of indebtedness
26 of the government.

1 (c) The Director of Administration shall submit a report to
2 the Legislature showing how much money was expended from each
3 fund and for what purpose.

4 (d) There is appropriated from the General Fund such sums
5 as will equal the amount of money necessary to reimburse the
6 Funds any money expended therefrom. If reimbursement has not
7 been made by the end of Fiscal Year 1996 then the obligation to
8 reimburse the Funds is extinguished on September 30, 1996.

9 Section 4. 4 GCA §8137.1 is repealed. The effective
10 date of this Section is January 1, 1989.

11 Section 5. Section 5 of Public Law 22-112 is amended
12 to read:

13 **"Section 5. Effective Dates.** Section 2 of this Act
14 and subsections (a) and (b) of Section 3 of this Act shall take
15 effect on October 1, [~~1994~~] 1995. All other sections and
16 subsections of this Act shall take effect on enactment."

17 Section 6. The rules and regulations of the Guam
18 Police Department as set out in the document entitled,
19 "Government of Guam Proposed Fees Schedule, Guam Police
20 Department," attached hereto as Exhibit 1 and incorporated in
21 this Act by this reference are approved.

22 Section 7. The rules and regulations of the Department
23 of Agriculture as set out in the document entitled, "Government
24 of Guam Proposed Fees Schedule, Department of Agriculture,"
25 attached hereto as Exhibit 2 and incorporated in this Act by this
26 reference are approved.



BUREAU OF BUDGET & MANAGEMENT RESEARCH

OFFICE OF THE GOVERNOR, Post Office Box 2950, Agana, Guam 96910

JOSEPH F. ADA
GOVERNOR

FRANK F. BLAS
I.T. GOVERNOR

AUG 16 1994

GIOVANNI T. SGAMBELLURI
DIRECTOR

Senator Vicente C. Pangelinan
Chairman, Committee on Economic-
Agricultural Development and Insurance
Twenty-Second Guam Legislature
130 Aspinall Avenue
Suite 101
Agana, Guam 96910

Dear Senator Pangelinan:

Enclosed are technical amendments to proposed Bill No. 1098 relative to the issuance of a General Obligation Bond for the repayment of tax refunds. The amendments encompass the following:

1. Replace all designation of "Note" to "Bond".
2. Change description of obligation to: 1994 Series A General Obligation Bond.
3. Pledge Section 30 Funds.
4. Exempt Bond from GEDA approval.
5. Correct Citation in Section 1 and in Preamble of Bill.

Your assistance in this matter will be greatly appreciated.

GIOVANNI T. SGAMBELLURI

Enclosure

cc: Speaker Twenty-Second Guam Legislature
Chairman, Committee on Ways and Means
Chairman, Committee on Tourism & Transportation



- Replace all designation of "NOTE" with "BOND" throughout Bill 1098.

- Replace Preamble

AN ACT TO ADD § _____ TO TITLE 5 OF THE GUAM CODE ANNOTATED
TO AUTHORIZE THE ISSUANCE OF 1994 SERIES A GENERAL OBLIGATION BOND
OF THE GOVERNMENT OF GUAM AND FOR OTHER PURPOSES.

- Correct: Section 1. § _____ is added to TITLE 5 of the Guam Code Annotated
to read:

"Section _____. 1994 Series A General Obligation Bond...

- Add to Subsection (c) of Section 1 a second paragraph as follows:

In addition, all or any part of the revenues derived by the Government of Guam under Section 30 of the Organic Act may, if determined by the Governor to be necessary or desirable, be pledged to secure the repayment of any bonds issued under this Section and to pay costs incurred in the issuance or administration of the bonds. Any pledge made to secure the bonds shall be valid and binding from the time the pledge is made. The revenues pledged and thereafter received by the Government of Guam or by any trustee, depository or custodian shall be deposited in a separate account and shall be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The certificate or agreement by which such pledge is created need not be recorded. All such revenues, to the extent so pledged, are hereby continuously appropriated for such purpose.

- Replace Subsection (1) of Section 1 with the following:

(1) Approval of GEDA. 2103(k) of Title 12, Guam Code Annotated, provides that agencies and instrumentalities of the Government of Guam shall issue obligations only by means of and through the agency of the Guam Economic Development Authority ("GEDA"), and that GEDA shall not sell any obligation without the approval of the Legislature of the terms and conditions of the issuance of the obligations. In view of the urgency for the issuance of bonds pursuant to this Section at any time such issuance may be necessary, bonds issued hereunder are exempted from all such requirements of said 2103(k).

- Correct citation under Section 2: Section _____ of Title 5...