

*Territory of Guam  
Territorio de Guam*

OFFICE OF THE GOVERNOR  
LEGISLATIVE BLDG.  
AGANA, GUAM

RECEIVED  
OFFICE OF THE SPEAKER  
DATE: 3/1/94  
TIME: 2:50 PM  
FILED BY: Terry

FEB 24 1994

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

LEGISLATIVE BLDG.  
AGANA, GUAM

Dear Mr. Speaker:

Transmitted herewith is Bill No. 318, which has been designated as Public Law  
No. 22-73.

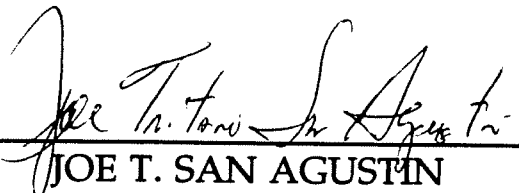
Sincerely yours,  
*Joseph F. Ada*  
JOSEPH F. ADA  
Governor  
220541

Attachment


TWENTY-SECOND GUAM LEGISLATURE  
1994 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

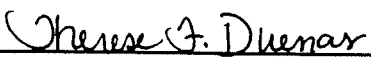
This is to certify that Substitute Bill No. 318 (COR), "AN ACT TO REQUIRE THE GOVERNMENT OF GUAM TO PROPERLY COMPENSATE LANDOWNERS WHOSE PROPERTY HAS BEEN TAKEN FOR PUBLIC USE AND TO MAKE AN APPROPRIATION TO THE GOVERNOR'S OFFICE IN CONNECTION THEREWITH," returned to the Legislature without the approval of the Governor, was reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 16th day of February, 1994, agree to pass said bill notwithstanding the objection of the Governor by a vote of two-thirds or more of all the members thereof, to wit: by a vote of seventeen (17) members.

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

Attested:

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

-----  
This Act was received by the Governor this 23rd day of February, 1994, at  
3:50 o'clock P.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

Public Law No. 22-73

TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 318 (COR)

As amended by the Committee on  
General Governmental Operations  
and Micronesian Affairs and as  
substituted by the Committee on  
Rules

Introduced by:

T. S. Nelson  
H. D. Dierking  
V. C. Pangelinan

---

A. C. Blaz  
T. C. Ada  
J. P. Aguon  
E. P. Arriola  
M. Z. Bordallo  
C. T. C. Gutierrez  
P. C. Lujan  
D. Parkinson  
E. D. Reyes  
J. T. San Agustin  
F. E. Santos  
D. L. G. Shimizu  
J. G. Bamba  
D. F. Brooks  
F. P. Camacho  
M. D. A. Manibusan  
T. V. C. Tanaka  
A. R. Unpingco

AN ACT TO REQUIRE THE GOVERNMENT OF GUAM  
TO PROPERLY COMPENSATE LANDOWNERS  
WHOSE PROPERTY HAS BEEN TAKEN FOR PUBLIC  
USE AND TO MAKE AN APPROPRIATION TO THE  
GOVERNOR'S OFFICE IN CONNECTION  
THEREWITH.

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

2           **Section 1. Legislative intent.** It has long been the practice of the  
3 government of Guam to exchange the private property of individuals for  
4 government land of equal value when the government needed the private  
5 land for public use. This practice has generally been fair and equitable.  
6 However, since 1945, it has also been the practice of the government to take  
7 private property without any compensation or compensatory exchange when  
8 that land has been needed for such purposes as public roads, access to  
9 property, or easements for public utilities, the construction of public schools,  
10 the construction of water wells, and similar projects benefitting the public at  
11 large. This practice must cease immediately because it is contrary to the  
12 principles of eminent domain, justice, and constitutional guarantees of  
13 property rights. The Office of Inspector General of the U. S. Department of  
14 the Interior, in his Audit Report of November, 1992, made eight major  
15 recommendations to the Governor of Guam, among which were the  
16 following: 1. Develop a policy concerning land taken previously for public  
17 roads, or assert government ownership based on the principle of prescriptive  
18 rights or adverse possession; 2. Instruct the Department of Public Works  
19 ("DPW") to develop a program of identifying rights-of-way to be acquired, an  
20 acquisition timetable, as well as needed appropriations; 3. For DPW to  
21 develop a plan to show which lands are needed and which are not needed for  
22 future highways and road projects; 4. For DPW to develop written  
23 guidelines to monitor use of right of entry agreements with a time frame;  
24 5. To instruct the Attorney General to take appropriate action to acquire title  
25 to all properly identified lands that are to be acquired. The Inspector General  
26 has expressed concern that all of his eight recommendations remain undone,  
27 and he believes that Guam may have to pay an additional \$73.3 million in

1 excess costs to properly acquire title to the rights-of-way which have been  
2 taken by the various departments of the government. His Audit Report states  
3 that property owners were not compensated for 375,000 square meters of  
4 land taken over forty years ago, for 12,603 square meters taken since 1988,  
5 and for 28,705 square meters taken on a temporary basis. These figures only  
6 represent land taken for various road projects and do not include land taken  
7 for easements not affected by the road construction.

8 **Section 2. Research on property taken.** The Governor shall  
9 immediately research and compile an exhaustive list of all private property  
10 which has been taken by the various agencies and departments of the  
11 government of Guam since 1945 and for which either no compensation or  
12 grossly inadequate compensation has been given, either in terms of money or  
13 by land exchanges. The Governor may utilize all departments and agencies  
14 of the executive branch to expedite completion of this task. Land so taken  
15 shall include but not be limited to eminent domain, to condemnation, to  
16 outright taking, to all government easements (for any reason), and to all  
17 similar means of taking. The report shall include the legal name of the  
18 property owner, the location of the land, any compensation offered (and  
19 whether or not accepted), the amount of land taken, the date taken, the  
20 current value of the land taken, and all other pertinent information needed to  
21 ensure that justice is done for all. In the process of compiling this report, the  
22 records of the Department of Land Management, the Department of Public  
23 Works, the Guam Power Authority, the Public Utility Agency of Guam, the  
24 Guam Telephone Authority, the Guam Airport Authority, the Department of  
25 Agriculture, and all other agencies which from time to time are involved in  
26 landtakings or in the acquisition of easements, shall be thoroughly and  
27 completely researched and examined. A copy of this report shall be

1 transmitted to the Speaker of the Legislature no later than one hundred  
2 twenty (120) calendar days after enactment of this Act. If additional time is  
3 required to complete the report, a request justifying such an extension shall be  
4 made in writing to the Speaker.

5 **Section 3. Appropriation.** One Hundred Thousand Dollars (\$100,000)  
6 are hereby appropriated from the General Fund to the Office of the  
7 Governor to be used to cover the additional administrative expenses of  
8 initiating and carrying out the research and implementation of the tasks  
9 required by this Act and for publishing the final report to the public.

10 **Section 4. Payments out of Highway Fund and the Territorial Highway**  
11 **Fund.** Within the limits of the requirements of Federal laws applicable to  
12 Guam's highways, and of the bond covenants executed to support the bonds  
13 issued to finance highway construction, the compensation to the private  
14 property owners who have had their land taken for construction, repair,  
15 expansion for public roads, or for rights-of-way of highways shall be paid out  
16 of the funds available in the Territorial Highway Fund. Those private  
17 property owners whose land has been taken for utility easements shall have  
18 compensation paid from the funds of the agency which acquired the property  
19 rights. All other financial compensation shall be paid out of the appropriated  
20 funds of the agency which took the private property.

21 **Section 5. Alternative compensation.** The Governor is authorized to  
22 offer to an affected landowner any one (1) of the following or combination  
23 thereof: (a) Direct compensation at either fair market value of the land when  
24 taken or its current fair market value, as the landowner prefers; (b) value-  
25 for-value exchange; or (c) credit toward territorial income taxes due or to  
26 become due.

1           **Section 6. Removal from tax rolls. (a) Findings.** The Legislature  
2 finds that since the government of Guam has acknowledged over the years  
3 that much private property has been acquired for public use without  
4 compensation being paid to the private owner, as described in this Act, it is  
5 inherently unfair for the government to continue to collect real property taxes  
6 on such land so unlawfully acquired, the frequent situation being that a  
7 private lot will be cut in half by a public highway but will still be taxed as  
8 though it were a complete lot without the highway.

9           **(b) Exemption.** The Director of Revenue and Taxation (the  
10 "Director") shall forthwith remove from the real estate rolls all those pieces  
11 or parcels of what was private property that are used as the sites of  
12 government roadways or utility easements. All landowners whose real  
13 estate tax payments would be reduced by such removal may present to the  
14 Director on forms supplied by the Director, proof by way of affidavit or  
15 otherwise that part of their property upon which they are paying real  
16 property taxes is actually occupied by the government. Upon verification of  
17 the truth of such statements, the Director shall remove such government-  
18 occupied property from the taxpayers' taxable property.

19           **Section 7.** §75119 is added to Title 21, Guam Code Annotated, to read:

20           **"§75119. Identification of land to be exchanged to compensate**  
21 **private landowners.** The Commission, with the assistance of the  
22 Director of Land Management, the Director of Public Works, the  
23 Director of Agriculture, and the Director of Parks and Recreation,  
24 shall identify land under its jurisdiction which may be utilized by the  
25 Governor in exchanging property with private landowners whose  
26 lands have been expropriated by the government of Guam for public

1 purposes prior to December 31, 1993, and for which no compensation  
2 has been paid to such private landowners.”

3 **Section 8.** §15112 is added to Title 21, Guam Code Annotated, to read:

4 “**§15112. Attorney’s fees and costs.** In any inverse  
5 condemnation action instituted by a private landowner to obtain fair  
6 compensation for land that has been expropriated by the  
7 government of Guam for public purposes and for which no action in  
8 eminent domain has been instituted, the court may award the  
9 landowner reasonable attorney’s fees and court costs in addition to  
10 fair compensation.”

11 **Section 9.** §341.1 is added to the Code of Civil Procedure to read:

12 “**§341.1. Inverse condemnation.** Any person whose land was  
13 expropriated for public purposes by the government of Guam  
14 between August 1, 1950, and July 1, 1994, and who has not been  
15 compensated by the government of Guam for such taking may  
16 institute an action for inverse condemnation; **provided,** that such  
17 action is instituted on or before December 31, 1996. In any taking by  
18 the government of Guam after July 1, 1994, in which the government  
19 fails to follow the eminent domain provisions of Title 21 of the Guam  
20 Code Annotated, the person whose land is taken shall have four (4)  
21 years from the time of such taking to institute an action for inverse  
22 condemnation. An action shall lie for the taking of a person’s fee or  
23 for any lesser compensable interest in the property which has been  
24 expropriated by the government of Guam without according the  
25 person due process. In any action for inverse condemnation in which  
26 an award is made to a person for a taking, the court shall also award  
27 reasonable attorney’s fees and costs.”



# TWENTY-SECOND GUAM LEGISLATURE

1994 (SECOND) Regular Session

Date: 2/16/94

## VOTING SHEET (AS REVISED)

Bill No. VB 318

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

Question: "Should R 318 be amended to give law enforcement the right of the Governor"

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 C.	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francis E.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.		✓		

TOTAL                      17    3                      1



Pl. 22-730

Rec'd 1-19-94  
7:27 pm  
by Peter C. Luzan

Territory of Guam  
Territorio Guam

OFFICE OF THE GOVERNOR  
UFISINANI MAGALAH  
AGANA, GUAM 96910 U.S.A.

RECEIVED  
OFFICE OF THE SPEAKER  
DATE: 1-20-94  
TIME: 8:47  
RECD BY: PKK

January 19, 1994

The Honorable Joe T. San Agustin  
Speaker  
Twenty Second Guam Legislature  
Agana, Guam 96910

REFER TO  
LEGISLATIVE RECORDS  
*[Signature]*

Dear Mr. Speaker:

Enclosed herewith is Substitute Bill No. 318 which I have vetoed in its entirety. Although this measure proposes to compensate landowners whose lands were taken and others who agreed to let the government take or use their land; it is in fact nothing more than a raid on the treasury and a recipe for bankruptcy for the government of Guam, the Public Utility Agency of Guam, the Guam Power Authority, the Guam Telephone Authority and the Territorial Highway Fund. The conservative cost for implementing this measure is \$150,000,000 in fees to surveyors, appraisers and lawyers and payments to beneficiaries. If implemented it will risk violation of the bond covenants of GPA and GTA and cause increases in utility rates. It will deter infrastructure development.

Any person who has a claim against the government of Guam for the wrongful taking of his property has the opportunity to raise that claim through an inverse condemnation proceeding. This measure is not necessary to enable claims to be made or paid.

I have met with the Directors of the Departments of Land Management, Law, Public Works, Public Utility Agency, Guam Power Authority and Guam Telephone Authority regarding pending claims against the government for past wrongful takings. Only the Director of the Department of Public Works is aware of a pending claim and that is for a portion of the Maimai Road. The owners of the road are willing to sell it to the government of Guam but the Department of Public Works lacks funds to do a severance map and appraisals of the property in question. Individual claims such as these are being addressed on a case by case basis.

The utilities advise me that there are ongoing negotiations for acquiring title to some parcels and easements through other parcels but no pending claims for past takings.

It appears from Section 1 of this measure that a 1992 report from the Inspector General triggered its enactment. This Administration took strong exception to the Inspector General's conclusions at



Commonwealth Now!

Mr. Speaker  
January 19, 1994

that time and continues to do so. However, that report does not call upon the government of Guam to do what is encompassed in this measure.

This measure does not merely require the government to pay landowners compensation for wrongful takings it appears to require the government to pay for all land and easements used by the government even those voluntarily given for the benefit of the developers and landowners.<sup>1</sup> Such a result is preposterous.

The government has acquired numerous utility easements and secondary roadways from developers who have subdivided property in accordance with 21 GCA Chapter 62. The dedication of the roadways and the utility easements have benefitted not only the developers but the residents who use the roads and are served by the utilities. Once the roads and utilities are turned over to the government it assumes all responsibility for maintenance and uses the roads and utilities to serve the residents. It makes no sense for the government to compensate the developers of the subdivisions who have given the government interests in property.

Similarly, the various utilities have been given easements in order to provide services to the landowners and to benefit the landowners. PUAG estimates that it has 500,000 square feet of easements through private property for its water and sewer lines. These easements were granted by landowners in consideration of the services to be provided by PUAG and the increased value of their properties. Similarly, private owners have given easements to Guam Power Authority and to Guam Telephone Authority in order to receive services from the utilities. If the utilities must pay millions of dollars for the easements that they have received over the years at current fair market value<sup>2</sup> then they will be bankrupt.

Again, landowners have also given the government land to build, improve and maintain roadways in order to provide access to their property and to increase the value of their property. Property that is inaccessible and without utilities is almost valueless.

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<sup>1</sup>See Section 2 which defines "land so taken" to include eminent domain, condemnation, outright taking, all government easements (for any purpose). Section 4 authorizes payment for "all land taken" for utility easements from the funds of the agency acquiring the property.

<sup>2</sup>See Section 5 of the bill which allows the landowner to choose payment at current fair market value.

Mr. Speaker  
January 19, 1994

The government has spent hundreds of millions of dollars for infrastructure bringing access and utility services to many landowners who are unable to pay for such infrastructure on their own. Government funded infrastructure has enabled landowners to prosper by making use or better use of their land.

The government spends millions of dollars maintaining roadways and upgrading utilities to the benefit of the landowners. Consideration is due the taxpayers and ratepayers from these landowners for the benefits that they have received. That is why so many gladly grant easements or make dedications to the government without monetary compensation.

In addition to the strong policy arguments against enactment of this measure, the implementation as set forth in this measure is impossible.

Section 2 requires the Governor to research and list all private property taken by the government of Guam since 1945 (sic) for which no compensation or "grossly inadequate compensation" was given and compile a list including "the legal name of the property owner, the location of the land, the terms of compensation, the amount of land taken, the date taken, the current value of the land taken and "all other pertinent information needed to insure that justice is done for all". My Office is given \$100,000 and 120 days in which to complete this project.

It took years for the federal court to determine owners of property in the land claims cases. It would take years to figure out who might have a claim to a parcel acquired almost fifty years ago. The time frame is impossible.

The \$100,000 appropriation is completely inadequate. In order to determine the amount of land taken, severance maps must be obtained. The Director of Public Works has been told he would need \$1,000,000 and a year's time just to do severance maps for Route 4. The cost to PUAG, GPA and GTA to complete severance maps for all the utilities easements is millions of dollars more.

In order to determine the current value of the land two appraisals are usually required. If there are 25,000 parcels<sup>3</sup> in question then an estimate of the cost for two appraisals for all parcels is

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<sup>3</sup>The 1990 census shows approximately 20,000 detached residential units. An additional 5,000 parcels were added to include commercial buildings, apartments and condominiums.

Mr. Speaker  
January 19, 1994

\$25,000,000.

Thus, in order to compile a comprehensive list of all land and interests in land acquired by the government during the past 43 years would cost tens of millions of dollars just for the surveys and appraisals. The \$100,000 appropriation from the overextended General Fund is nothing but a token and a gross under representation of the cost of this useless undertaking.

Section 4 represents nothing more than empty promises of payment. The Territorial Highway Fund is already committed to development of new roads and bridges and maintenance of existing roads.

PUAG is already heavily subsidized by the General Fund and has no excess funds to pay the private property owners for 500,000 square feet of previously freely given easements. Neither Guam Telephone Authority nor Guam Power Authority has funds to pay private property owners for the easements freely given in exchange for telephone and power services.

If GTA and GPA were required to make the payments it might jeopardize their existing bond covenants. Certainly, these payments will be passed onto their consumers resulting in higher telephone and power rates.

Section 5 changes the fundamental principle of condemnation law that property is valued at the time of the taking. In this section, an owner is given a choice between the value at the time of taking or current fair market value. We elected officials have a duty to protect the ratepayers and taxpayers of this Territory from the frivolous expenditures contemplated in this section.

With respect to Section 6 the Director of the Department of Revenue and Taxation advises me that property dedicated for roadways to the government or shown as rights-of-way on maps is not included in property tax assessments. Since the person who grants an easement still owns his property it is inappropriate to remove land used for utility easements from the tax rolls since the owner still has use of the property.

Section 7 is contrary to the intent of the Chamorro Land Trust. The Chamorro Land Trust Commission has been charged with managing the property within its jurisdiction to the benefit of as many people as possible. It is contrary to the purposes of the Chamorro Land Trust law to now require the Commission to figure out what property can be given away rather than wisely used.

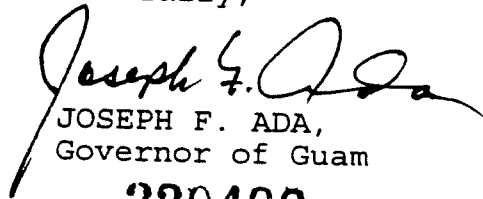
Mr. Speaker  
January 19, 1994

Section 8 gives plaintiffs their attorney's fees and court costs in inverse condemnation cases. Landowners who receive compensation under the terms of this measure will have sufficient funds to pay all attorney fees and costs. The government does not pay owners whose lands are taken in eminent domain proceedings. It is unfair to compensate one group and not the other.

Section 9 requires the government to file eminent domain proceedings in all future land acquisitions. Many acquisitions are made either through donation or as a result of arms length negotiations. Requiring court action on each acquisition and each easement will unnecessarily delay many projects and increase costs to the government.

In conclusion, this measure if it becomes law will have disastrous consequences. It will disrupt the operations of government and our utilities. It will lead to bankruptcy. It will serve as a barrier to future infrastructure development. I urge you to reconsider your actions and leave this issue as is. The government is addressing known claims on a case by case basis. No one who has been wronged will be denied just compensation.

Cordially,

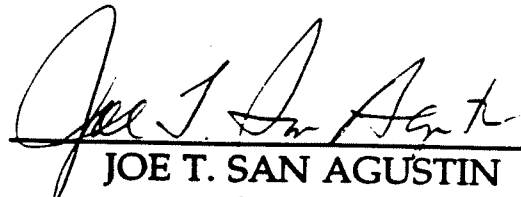
  
JOSEPH F. ADA,  
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220499

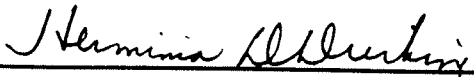
TWENTY-SECOND GUAM LEGISLATURE  
1994 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

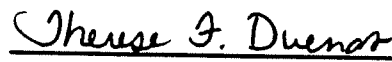
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\_\_\_\_\_  
JOE T. SAN AGUSTIN  
Speaker

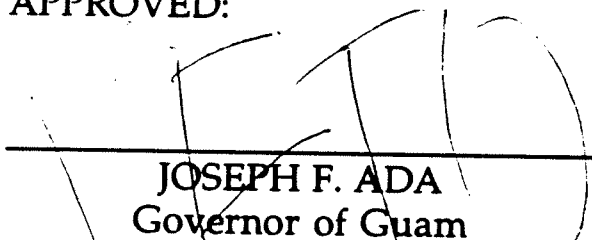
Attested:

  
\_\_\_\_\_  
HERMINIA D. DIERKING  
Senator and Acting Legislative Secretary

-----  
This Act was received by the Governor this 7th day of January,  
1994, at 4:37 o'clock P.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

APPROVED:

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

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 318 (COR)

As amended by the Committee on  
General Governmental Operations  
and Micronesian Affairs and as  
substituted by the Committee on  
Rules

Introduced by:

T. S. Nelson  
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14 of the executive branch to expedite completion of this task. Land so taken  
15 shall include but not be limited to eminent domain, to condemnation, to  
16 outright taking, to all government easements (for any reason), and to all  
17 similar means of taking. The report shall include the legal name of the  
18 property owner, the location of the land, any compensation offered (and  
19 whether or not accepted), the amount of land taken, the date taken, the  
20 current value of the land taken, and all other pertinent information needed to  
21 ensure that justice is done for all. In the process of compiling this report, the  
22 records of the Department of Land Management, the Department of Public  
23 Works, the Guam Power Authority, the Public Utility Agency of Guam, the  
24 Guam Telephone Authority, the Guam Airport Authority, the Department of  
25 Agriculture, and all other agencies which from time to time are involved in  
26 landtakings or in the acquisition of easements, shall be thoroughly and  
27 completely researched and examined. A copy of this report shall be

1 transmitted to the Speaker of the Legislature no later than one hundred  
2 twenty (120) calendar days after enactment of this Act. If additional time is  
3 required to complete the report, a request justifying such an extension shall be  
4 made in writing to the Speaker.

5 **Section 3. Appropriation.** One Hundred Thousand Dollars (\$100,000)  
6 are hereby appropriated from the General Fund to the Office of the  
7 Governor to be used to cover the additional administrative expenses of  
8 initiating and carrying out the research and implementation of the tasks  
9 required by this Act and for publishing the final report to the public.

10 **Section 4. Payments out of Highway Fund and the Territorial Highway**  
11 **Fund.** Within the limits of the requirements of Federal laws applicable to  
12 Guam's highways, and of the bond covenants executed to support the bonds  
13 issued to finance highway construction, the compensation to the private  
14 property owners who have had their land taken for construction, repair,  
15 expansion for public roads, or for rights-of-way of highways shall be paid out  
16 of the funds available in the Territorial Highway Fund. Those private  
17 property owners whose land has been taken for utility easements shall have  
18 compensation paid from the funds of the agency which acquired the property  
19 rights. All other financial compensation shall be paid out of the appropriated  
20 funds of the agency which took the private property.

21 **Section 5. Alternative compensation.** The Governor is authorized to  
22 offer to an affected landowner any one (1) of the following or combination  
23 thereof: (a) Direct compensation at either fair market value of the land when  
24 taken or its current fair market value, as the landowner prefers; (b) value-  
25 for-value exchange; or (c) credit toward territorial income taxes due or to  
26 become due.

1           **Section 6. Removal from tax rolls. (a) Findings.** The Legislature  
2 finds that since the government of Guam has acknowledged over the years  
3 that much private property has been acquired for public use without  
4 compensation being paid to the private owner, as described in this Act, it is  
5 inherently unfair for the government to continue to collect real property taxes  
6 on such land so unlawfully acquired, the frequent situation being that a  
7 private lot will be cut in half by a public highway but will still be taxed as  
8 though it were a complete lot without the highway.

9           **(b) Exemption.** The Director of Revenue and Taxation (the  
10 "Director") shall forthwith remove from the real estate rolls all those pieces  
11 or parcels of what was private property that are used as the sites of  
12 government roadways or utility easements. All landowners whose real  
13 estate tax payments would be reduced by such removal may present to the  
14 Director on forms supplied by the Director, proof by way of affidavit or  
15 otherwise that part of their property upon which they are paying real  
16 property taxes is actually occupied by the government. Upon verification of  
17 the truth of such statements, the Director shall remove such government-  
18 occupied property from the taxpayers' taxable property.

19           **Section 7.** §75119 is added to Title 21, Guam Code Annotated, to read:

20           **"§75119. Identification of land to be exchanged to compensate**  
21 **private landowners.** The Commission, with the assistance of the  
22 Director of Land Management, the Director of Public Works, the  
23 Director of Agriculture, and the Director of Parks and Recreation,  
24 shall identify land under its jurisdiction which may be utilized by the  
25 Governor in exchanging property with private landowners whose  
26 lands have been expropriated by the government of Guam for public

1 purposes prior to December 31, 1993, and for which no compensation  
2 has been paid to such private landowners."

3 **Section 8.** §15112 is added to Title 21, Guam Code Annotated, to read:

4 "§15112. **Attorney's fees and costs.** In any inverse  
5 condemnation action instituted by a private landowner to obtain fair  
6 compensation for land that has been expropriated by the  
7 government of Guam for public purposes and for which no action in  
8 eminent domain has been instituted, the court may award the  
9 landowner reasonable attorney's fees and court costs in addition to  
10 fair compensation."

11 **Section 9.** §341.1 is added to the Code of Civil Procedure to read:

12 "§341.1. **Inverse condemnation.** Any person whose land was  
13 expropriated for public purposes by the government of Guam  
14 between August 1, 1950, and July 1, 1994, and who has not been  
15 compensated by the government of Guam for such taking may  
16 institute an action for inverse condemnation; provided, that such  
17 action is instituted on or before December 31, 1996. In any taking by  
18 the government of Guam after July 1, 1994, in which the government  
19 fails to follow the eminent domain provisions of Title 21 of the Guam  
20 Code Annotated, the person whose land is taken shall have four (4)  
21 years from the time of such taking to institute an action for inverse  
22 condemnation. An action shall lie for the taking of a person's fee or  
23 for any lesser compensable interest in the property which has been  
24 expropriated by the government of Guam without according the  
25 person due process. In any action for inverse condemnation in which  
26 an award is made to a person for a taking, the court shall also award  
27 reasonable attorney's fees and costs."

# TWENTY-SECOND GUAM LEGISLATURE

1994 (SECOND) Regular Session

Date: 1/5/94

## VOTING SHEET (AS REVISED)

Bill No. 318

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 C.	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francis E.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL 21



Committee on General Governmental Operations & Micronesian Affairs

Twenty-Second Guam Legislature  
297-B West O'Brien Drive Agana, Guam 96910

Sen. Ted S. Nelson  
Chairman

Telephones:  
(671) 472-3446-8/472-3501/3569

December 13, 1993

Honorable Joe T. San Agustin  
Speaker  
21st Guam Legislature  
155 Hessler Street  
Agana, Guam 96910

Dear Mr. Speaker:

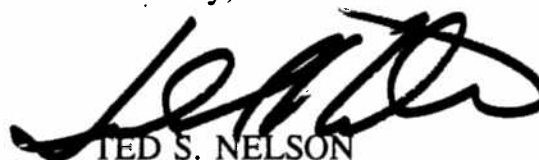
The Committee on General Governmental Operations and Micronesian Affairs, to which was referred **Bill No. 318** (*An Act to require Government of Guam Land Owners whose private property has been taken by the Government for Public Use*) has had the same consideration and now wishes to report back the same with the recommendation to **do pass** as amended by the committee.

The Committee votes are as follows:

To do pass	<u>10</u>
Not to pass	<u>0</u>
To report out only	<u>0</u>
To place in inactive file	<u>0</u>
Other	<u>1</u>

A copy of the Committee Report and other pertinent documents are enclosed for your reference and information.

Sincerely,



TED S. NELSON







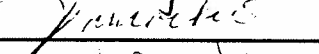

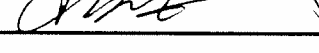
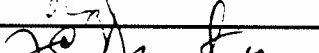
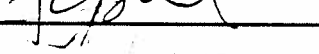
Enclosures

COMMITTEE ON GENERAL GOVERNMENTAL OPERATIONS  
AND MICRONESIAN AFFAIRS

**VOTE SHEET ON BILL NO. 318**

**AN ACT TO REQUIRE GOVERNMENT OF GUAM LAND OWNERS  
WHOSE PRIVATE PROPERTY HAS BEEN TAKEN BY THE  
GOVERNMENT FOR PUBLIC USE.**

**RECOMMENDATION TO DO PASS AS AMENDED**

Committee Members	Signature	To Do Pass	Not to Pass	To Report Out Only	To Place in the Inactive File
Senator Ted S. Nelson <i>Chairman</i>		✓			
Senator Edward D. Reyes <i>Vice-Chairman</i>	 <i>OK if section 5 is deleted</i>				
Speaker Joe T. San Agustin <i>Ex-Officio Member</i>		✓			
Senator Thomas C. Ada		✓			
Senator J. George Bamba		✓			
Senator Anthony C. Blaz		✓			
Senator Felix P. Camacho		✓			
Senator Herminia D. Dierking		✓			
Senator Carl T.C. Gutierrez		✓			
Senator Marilyn D.A. Manibusan					
Senator Vicente C. Pangelinan		✓			
Senator Francis E. Santos		✓			
Senator Thomas V.C. Tanaka					



TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

**Bill No. 318**

As amended by the Committee  
on General Governmental Operations  
and Micronesian Affairs

Introduced by:

T.S. NELSON

*T.S. Nelson*  
VCP  
ACBLAZ

AN ACT TO REQUIRE GOVERNMENT OF GUAM TO PROPERLY  
COMPENSATE LAND OWNERS WHOSE PROPERTY HAS BEEN  
TAKEN BY THE GOVERNMENT FOR PUBLIC USE.

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

2 **Section 1. Legislative intent.** It has long been the practice of the  
3 government of Guam to exchange the private property of individuals for an equal  
4 value of government land when the government needed the private land for public  
5 use. This practice has generally been fair and equitable. However, since 1945,  
6 it has also been the practice of this government to take private property without  
7 any compensation or compensatory exchange when that land has been needed  
8 for such purposes as public roads, access to property or easements for public  
9 utilities, construction of public schools, construction of water wells, and similar  
10 projects benefitting the public at large. This practice must cease immediately  
11 because it is contrary to the principals of eminent domain, justice, and  
12 constitutional guarantees of property rights. The Office of Inspector General of the  
13 U.S. Department of the Interior, in his Audit Report of November 1992 made eight  
14 major recommendations to the Governor of Guam, among which were the  
15 following: 1. develop a policy concerning land taken previously for public roads,

1 concerning land taken previously for public roads, or assert government  
2 ownership based on the principle of prescriptive rights or adverse possession; 2.  
3 instruct the Department of Public Works to develop a program of identifying rights-  
4 of-way to be acquired, an acquisition time table, as well as appropriations for  
5 needed funds; 3. for DPW to develop a plan to show which lands are needed and  
6 which are not needed for future highways and road projects; 4. DPW to develop  
7 written guidelines to monitor use of right of entry agreements with a time frame;  
8 5. instruct the Attorney General to take appropriate action to acquire title to all  
9 properly identified lands that are to be acquired. The Inspector General expressed  
10 the concern that all of his eight recommendations remain unresolved. He feels  
11 that Guam may have to pay an additional \$73.3 million in excess costs to properly  
12 acquire title to the rights-of-way which have been taken by the various  
13 departments of the government. The Audit Report states that property owners  
14 were not compensated for 375,000 square meters of land taken over 40 years  
15 ago, 12,603 square meters taken since 1988 and for 28,705 square meters of land  
16 taken on a temporary basis. These figures only represent land taken for various  
17 road projects and do not include land taken for easements not affected by the  
18 road construction.

19 **Section 2.** The Governor is authorized to immediately research and  
20 compile an exhaustive list of all private property which has been taken by the  
21 various agencies and departments of the government of Guam since 1945 and for  
22 which no compensation or inadequate compensation has been made, either  
23 financial or land exchange. He may utilize any and all departments and agencies  
24 of the executive branch to expedite completion of this tremendous task. The land

1 taken shall include but not be limited to eminent domain, condemnation, outright  
2 taking, all government easements (for any reason), and all similar means of taking.  
3 This list shall include the legal name of the property owner, the location of the  
4 land, any compensation offered (and whether or not accepted), the amount of  
5 land taken, the date taken, current value of land taken, and all other pertinent  
6 information needed to ensure that justice is done for all. In the process of  
7 compiling this list, the records of the Department of Land Management,  
8 Department of Public Works, Guam Power Authority, Public Utility Agency of  
9 Guam, Guam Telephone Authority, Guam Airport Authority, Department of  
10 Agriculture, and any and all other agencies who from time to time are involved in  
11 land taking or acquisition of easements, shall be thoroughly and completely  
12 researched and examined. An official copy of this report shall be transmitted to  
13 the Chairman, Legislative Committee on General Governmental Operations and  
14 Micronesian Affairs no later than one hundred twenty (120) calendar days after  
15 enactment of this Bill into law. If additional time is required to complete the report,  
16 a request for an extension shall be made to the Speaker of the Legislature, with  
17 justification.

18 **Section 3.** The sum of One Hundred Thousand Dollars (\$100,000) is  
19 hereby authorized to be appropriated to the office of the Governor to be used  
20 solely for the purpose of covering the additional administrative expenses of  
21 initiating and carrying out the research and implementation of the tasks required  
22 by this Act and for publishing the final report to the public.

23 **Section 4.** Within the limits of the existing or future requirements of Guam's  
24 Federal Highway Fund, the compensation to the private property owners who

1 have had their land taken for construction, repair, expansion, or for right of way  
2 of highways shall be paid out of the Highway Fund. Those private property  
3 owners whose land has been taken for utility easements shall have compensation  
4 paid from the funds of the agency who acquired the property rights. All other  
5 financial compensation shall be paid out of the appropriated funds of the agency  
6 which took the private property in the first place.

7 **Section 5.** All compensation paid for private property taken by the  
8 government, which has not been previously paid, shall be expeditiously paid at  
9 current fair market value. If payment is made by an exchange of land, fair market  
10 value of both pieces of property shall be taken into consideration. Any land used  
11 in this land exchange program shall be paramount to and supersede any  
12 restrictions implied or stated in the implementation of the Chamorro Land Trust  
13 Act. The Governor, using the skill and competence of the many leaders of  
14 Departments not involved in land taking, is authorized to utilize those individuals  
15 to negotiate with the private property owners whose land has been taken, if there  
16 is any dispute over the value involved. In each case of land taking by the  
17 government, the Governor is authorized to offer any one of the following  
18 alternatives: a) direct compensation at fair market value as explained above; or b)  
19 an exchange of land, value for value; or c) credit toward payment of Guam  
20 Income tax. Any funds paid to private property owners because of this Act shall  
21 be tax free for purposes of Guam's Income tax laws.

**COMMITTEE ON GENERAL GOVERNMENTAL OPERATIONS  
AND MICRONESIAN AFFAIRS  
TWENTY-SECOND GUAM LEGISLATURE  
155 Hessler Street, Agana, Guam 96910**

**COMMITTEE REPORT**

**ON**

**BILL NO. 318**

***AN ACT TO REQUIRE GOVERNMENT OF GUAM LAND  
OWNERS WHOSE PRIVATE PROPERTY HAS BEEN TAKEN  
BY THE GOVERNMENT FOR PUBLIC USE***

**COMMITTEE MEMBERS:**

Chairman: Ted S. Nelson

Vice-Chairman: Edward D. Reyes

Ex-Officio Member: Speaker Joe T. San Agustin

Thomas C. Ada  
Herminia D. Dierking  
Carl T.C. Gutierrez  
Vicente C. Pangelinan  
Francis E. Santos

J. George Bamba  
Anthony C. Blaz  
Felix P. Camacho  
Marilyn D.A. Manibusan  
Thomas V.C. Tanaka

## PUBLIC HEARING ON BILL NO. 318

### I. OVERVIEW

The Committee on General Governmental Operations and Micronesian Affairs conducted a public hearing on **Bill No. 318** (*An Act to require Government of Guam Land Owners whose private property has been taken by the Government for Public Use*) on March 26, 1993 at the Public Hearing Room of the Guam Legislature Temporary Building in Agana.

Present were: Senator Ted S. Nelson, Chairman; Senators Vicente Pangelinan, Anthony Blaz, Thomas Ada and Marilyn Manibusan, Committee Members; and Senator Doris Brooks.

### II. SUMMARY OF TESTIMONIES

Written and oral testimony in favor of speedy passage of Bill No. 318 were presented.

**Mr. Alfred Flores**, a former Senator and a resident of Inarajan, appeared before the Committee. He testified that he fully supports the intent of Bill 318, especially for the southern part of the Island, from Inarajan to Merizo. He stated that it is very unfair that the federal government encroached his property and took away 50 feet of land from him for public roadways. He suggested that if monetary compensation cannot be made by the government to the landowners, then land exchange or tax deduction be considered for compensation.

**Mr. Frank L.G. Castro**, Director of Land Management, submitted written testimony in support of Bill 318. He orally testified that the intent of Bill 318 is a constitutional right and that every private land owner who was involved in a land-taking should be compensated and with that in mind, he added that he does not think anyone attending the public hearing today could argue that constitutional right.

Mr. Castro expressed a concern that this Bill would not interfere with a landowner's right to subdivide his property for his children. He also felt that when the government wanted to condemn or create a public utility easement, the owner should be reimbursed in cash or with equal land.

In closing, Mr. Castro stressed again that he should be entered on record as being in support of the intent of Bill 318.

**Mr. Benny San Nicolas**, a resident of Inarajan, testified in favor of Bill 318. He supported Mr. Castro's testimony that the government should compensate private landowners for land taken for public use. He stated that his family's land were taken by the federal and local government for public use and were never compensated. He commended the sponsor of the bill, Senator Ted Nelson, for introducing this very important bill in a timely manner.

**Mr. Vicente Perez**, a Civil Service Commission Member, also testified in favor of support of Bill No. 318.

**Mr. Juan P. San Nicolas**, a resident of Inarajan, appeared and testified in support of Bill No. 318 to compensate landowners for land taken for public use.

**Mr. Francis Taitano** of the Department of Public Works Highway Division, Rights-of-Way Section, appeared before the Committee and testified that the Department of Public Works supports the concept of Bill No. 318. He stated that the Department practices the policy of just compensation.

**Senator Ted S. Nelson** requested from the Department of Interior, Office of Inspector General, a copy of Audit Report No. 93-I-226 of November 1992. A copy is attached for information.

### III. FINDINGS AND RECOMMENDATIONS

The Committee on General Governmental Operations and Micronesian Affairs, after having a public hearing on **Bill No. 318**, and having heard and considered all testimony presented, both oral and written, recommend to do pass **Bill No. 318** as presented.


*Recommended by [unclear]*



TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 318

Introduced by:



T.S. Nelson

AN ACT TO REQUIRE GOVERNMENT OF GUAM  
TO PROPERLY COMPENSATE LAND OWNERS  
WHOSE PRIVATE PROPERTY HAS BEEN TAKEN  
BY THE GOVERNMENT FOR PUBLIC USE.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF

2 GUAM:

3 Section 1. It has long been the practice of the government of Guam  
4 to exchange the private property of individuals for an equal value of  
5 government land when the government needed the private land for public  
6 use. This practice has generally been fair and equitable. However, since  
7 1945, it has also been the practice of this government to take private  
8 property without any compensation or compensatory exchange when that  
9 land has been needed for such purposes as public roads, access to  
10 property or easements for public utilities. This latter practice must cease  
11 immediately because it is contrary to the principals of eminent domain,  
12 justice, and constitutional guarantees of property rights.

13 Section 2. The Public Defenders Service Corporation is authorized

1 to immediately research and compile an exhaustive list of private property  
2 which has been taken by the government since 1945 and for which no  
3 compensation has been made, either financial or land exchange. This  
4 taking shall include but not be limited to eminent domain, condemnation,  
5 outright taking, all government easements, etc. This list shall include the  
6 legal name of the property owner, the location of the land, any  
7 compensation offered, if below fair market value, the amount of land  
8 taken, the date taken, current value of land taken, and all other pertinent  
9 information needed to ensure that justice is done. In the process of  
10 compiling this list, the records of the Department of Land Management,  
11 Department of Public Works, Guam Power Authority, Public Utility  
12 Agency of Guam, Guam Telephone Authority, and other agencies who  
13 usually are involved in land taking or acquisition of easements, shall be  
14 thoroughly researched and examined. This report shall be transmitted to  
15 the Chairman, Legislative Committee on General Governmental  
16 Operations no later than one hundred twenty (120) days after enactment  
17 of this Bill into law.

18 Section 3. The sum of One Hundred Thousand Dollars (\$100,000)  
19 is hereby authorized to be appropriated to the Public Defenders Service

1 Corporation for the purpose of covering the administrative costs of  
2 initiating and carrying out the research and implementation of this Act.

3 Section 4. Within the limits of any existing or future requirements  
4 of Guam's Federal Highway Fund, the compensation to the private  
5 property owners who have had their land taken shall be paid out of the  
6 Highway Fund. Those private property owners whose land has been  
7 taken for utility easements shall have compensation paid from the funds  
8 of the agency who acquired the property rights.

9 Section 5. All compensation paid for private property taken by the  
10 government shall be paid at current fair market value. If payment is  
11 made by an exchange of land, fair market value of both pieces of property  
12 shall be taken into consideration. The Public Defenders Service  
13 Corporation is authorized to negotiate with the private property owner  
14 whose land has been taken, if there is any dispute over the value  
15 involved. In each case of land taking by the government, the Public  
16 Defender is authorized to offer any one of the following alternatives: (a)  
17 direct compensation at fair market value, as explained above, or (b) an  
18 exchange of land, value for value, or (c) credit toward payment of Guam  
19 Income Tax.



**DEPARTMENT OF LAND MANAGEMENT**

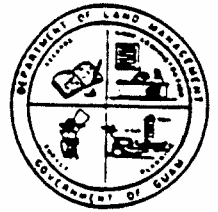
**(DIPATTAMENTON TANO')**

**Government of Guam**

**P.O. Box 2950**

**Agana, Guam 96910**

**Tel: (671) 475-LAND • Fax: (671) 477-0883**



**JOSEPH F. ADA**

*Governor*

**FRANK F. BLAS**

*Lieutenant Governor*

**F. L. G. CASTRO**

*Director*

**JOAQUIN A. ACFALLE**

*Deputy Director*

March 25, 1993

The Honorable Ted S. Nelson  
Chairman, Committee on Governmental  
Operations & Micronesian Affairs  
Twenty-Second Guam Legislature  
Agana, Guam 96910

Subject: Legislative Bill No. 318 - An Act to compensate  
land owners whose properties were taken for public  
uses

Dear Mr. Chairman:

The intent of Bill No. 318 is in fact a constitutional right  
which private property owners are entitle to and with that  
in mind, I do not think that anyone could argue against  
the said intent.

Accordingly, the Department of Land Management must be  
entered on record as saying that we support the said Bill.

Sincerely yours,

F. L.G. CASTRO  
Director, Department of  
Land Management



Commonwealth Now

LAW OFFICES

*Arriola, Cowan & Bordallo*

C & A BUILDING-P. O. BOX X  
AGANA, GUAM 96910

TELEPHONE: (671) 477-9731/3

TELECOPIER: (671) 477-9734

JOAQUIN C. ARRIOLA  
MARK E. COWAN  
OLIVER W. BORDALLO  
ANITA P. ARRIOLA

JOAQUIN C. ARRIOLA, JR.

March 31, 1993

Senator Theodore S. Nelson  
Chairperson  
Committee on General  
Governmental Operations  
and Micronesian Affairs  
Twenty-Second Guam Legislature  
155 Hessler Street  
Agana, Guam 96910

*Rec'd  
April 30  
1993*

Re: Bill No. 318.

Dear Senator Nelson:

I am pleased to furnish you with a copy of the U.S. Department of Interior's Audit Report concerning uncompensated land takings. The November 30, 1992 letter to Governor Ada at the front and pages 11 through 18 are very relevant to your legislation. See especially pages 17 and 18 which contain Interior's recommendations, DPW's response which the Inspector General found totally unsatisfactory, and the Inspector General's final comment which notes, in part, that the Government of Guam is simply ignoring the problem and implicitly refusing to pay fair compensation, although it has prosecuted several individuals for attempting to take government land.

Please include this material in the legislative history on Bill No. 318. If I can be of any assistance, please let me know.

Respectfully,

ARRIOLA, COWAN & BORDALLO

  
OLIVER W. BORDALLO

OWB/mah  
Encls.  
D#1983U