

OFFICE OF THE LEGISLATIVE SECRETARY  
 ACKNOWLEDGMENT RECEIPT  
 Received By J. Allie  
 Time 10:00 AM  
 Date 5/9/96



OFFICE OF THE GOVERNOR  
 TERRITORY OF GUAM

REFER TO  
 LEGISLATIVE SECRETARY

MAY 08 1996

The Honorable Don Parkinson  
 Speaker  
 Twenty-Third Guam Legislature  
 Guam Legislature Temporary Building  
 155 Hesler Street  
 Agana, Guam 96910

Date/Time Rec'd	5-8-96 2:45 pm
Received by	<u>[Signature]</u>
Exec Ass't	<u>[Signature]</u>
SPEAKER	_____
Chrono Filed by	_____
Orig. Filed at	_____
Copy Filed at	_____
Other Action	_____

Dear Mr. Speaker:

Enclosed please find a copy of Substitute Bill No. 526 (LS), "AN ACT TO AMEND §47143, §47145, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE", which I have signed into law today as **Public Law No. 23-96**.

Copy has also been delivered to the Office of the Legislative Secretary.

Very truly yours,

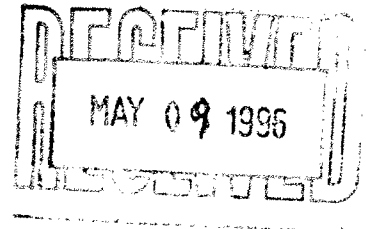
Madeleine Z. Bordallo  
 Madeleine Z. Bordallo  
 Acting Governor of Guam

Attachment

**231121**



OFFICE OF THE GOVERNOR  
TERRITORY OF GUAM



MAY 08 1996

The Honorable Judith Won-Pat Borja  
Legislative Secretary  
Twenty-Third Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY  
ACKNOWLEDGMENT RECEIPT  
Received By [Signature]  
Time 10:00 pm  
Date 5/9/96

Dear Madame Legislative Secretary:

Enclosed please find a copy of Substitute Bill No. 526 (LS), "AN ACT TO AMEND §47143, §47145, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE", which I have signed into law today as **Public Law No. 23-96**.

Copy has also been delivered to the Office of the Speaker.

Very truly yours,

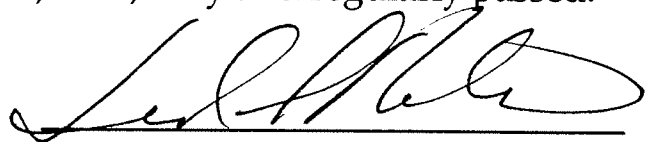
*Madeline Z. Bordallo*  
Madeleine Z. Bordallo  
Acting Governor of Guam

Attachment  
231126 (Same as Doc. No. 231121)

TWENTY-THIRD GUAM LEGISLATURE  
1996 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 526 (LS), "AN ACT TO AMEND §47143, §47145, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE," was on the 19th day of April, 1996, duly and regularly passed.

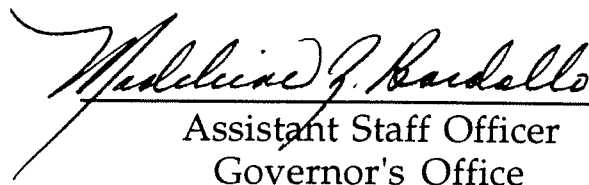


TED S. NELSON  
Acting Speaker

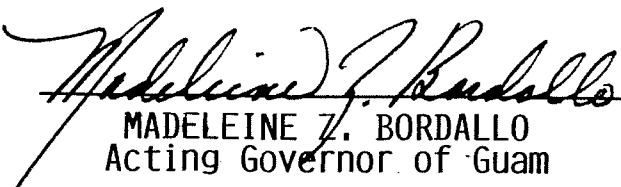
Attested:

  
\_\_\_\_\_  
JUDITH WON PAT-BORJA  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 24 day of April,  
1996, at 6:00 o'clock P.M.

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

APPROVED:

  
\_\_\_\_\_  
MADELEINE Z. BORDALLO  
Acting Governor of Guam

Date: 5/9/96

Public Law No. 23-96

TWENTY-THIRD GUAM LEGISLATURE  
1996 (SECOND) Regular Session

Bill No. 526 (LS)

As substituted by the Author

Introduced by:

M. C. Charfauros  
A. L. G. Santos  
T. S. Nelson  
T. C. Ada  
J. P. Aguon  
E. Barrett-Anderson  
A. C. Blaz  
J. S. Brown  
F. P. Camacho  
H. A. Cristobal  
M. Forbes  
A. C. Lamorena V  
C. Leon Guerrero  
L. Leon Guerrero  
S. L. Orsini  
V. C. Pangelinan  
D. Parkinson  
J. T. San Agustin  
F. E. Santos  
A. R. Unpingco  
J. Won Pat-Borja

AN ACT TO AMEND §47143, §47145, §47149 AND  
§47150, AND REPEAL AND REENACT §47144, ALL OF  
THE GOVERNMENT CODE, RELATIVE TO THE  
CUSTOMS, AGRICULTURE, AND QUARANTINE  
INSPECTION SERVICES CHARGE.

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

2 **Section 1. Legislative Findings.** The Legislature finds that the  
3 Customs, Agriculture, and Quarantine Inspection Services Charge has

1 encountered difficulties in the implementation process since its enactment in  
2 Public Law 23-45; Chapter IV:18. The Legislature finds that amendments are  
3 necessary to clarify both the intent of this Charge and the initial  
4 implementation of such a Charge. The Legislature further finds that there is  
5 a need to clarify the regulation and management of the expenditure of Funds  
6 collected pursuant to this Service Charge.

7 **Section 2. §47143 of the Government Code is hereby amended to read**  
8 **as follows:**

9 **“§47143. Customs, Agriculture, and Quarantine Inspection**  
10 **Services Charge Established.** Each aircraft landing at the Guam  
11 International Air terminal (GIAT) shall be levied a Customs,  
12 Agriculture, and Quarantine Inspection Services Charge reasonably  
13 related to the cost incurred by the Customs and Quarantine Agency and  
14 the Department of Agriculture in providing, maintaining, and  
15 operating the service charge facilities, and shall be allocated among air  
16 carriers in such a manner reasonably related to the relative demand for  
17 such services attributable to each carrier. Each consignment of air and  
18 sea cargo and each passenger landing at a sea port shall also be levied a  
19 Customs, Agriculture, and Quarantine Inspection Services Charge,  
20 except for those passengers which may be exempted under the rules and  
21 regulations promulgated pursuant to Section 47149 of the Government  
22 Code of Guam. Such service charges shall be reasonably related to the  
23 costs incurred by the Customs and Quarantine Agency and the  
24 Department of Agriculture in providing, maintaining, and operating  
25 the service charge facilities.”

26 **Section 3. §47144 of the Government Code is repealed and reenacted to**  
27 **read as follows:**

1           **“§47144. Initial Service Charges.** Until the first Rules and  
2 Regulations required by §47149 have been promulgated, the Guam  
3 Airport Authority is authorized to collect on an interim basis service  
4 charges from air carriers reasonably calculated to recover the costs  
5 incurred by the Customs and Quarantine Agency and the Department  
6 of Agriculture in providing, maintaining, and operating the service  
7 charge facilities. The Customs and Quarantine Agency, or its agents, is  
8 also authorized to collect on an interim basis an initial Customs,  
9 Agriculture, and Quarantine Inspection Services Charge to be levied as  
10 follows:

11                   (a) Upon sea passengers landing at the Port Authority of  
12 Guam a Passenger charge of \$10.00 for each passenger, and a  
13 document charge of \$5.00 upon each consignee or other applicable  
14 party for each consignment of cargo landing in Guam, and \$25.00  
15 upon each consignee or other applicable party for consolidated  
16 consignments of cargo landing in Guam.”

17           **Section 4. §47145 of the Government Code is hereby amended to read**  
18 **as follows:**

19           **“§47145. Authorization for Customs and Quarantine Agency and**  
20 **the Guam Airport Authority to collect Customs, Agriculture, and**  
21 **Quarantine Inspection Services Charges.** The Guam Airport Authority  
22 is authorized to assess and collect, from air carriers, the Customs,  
23 Agriculture, and Quarantine Inspection Services Charge for customs  
24 and agricultural inspection services rendered at GIAT. The Customs  
25 and Quarantine Agency is authorized to assess and collect the Customs,  
26 Agriculture, and Quarantine Inspection Services Charge for Customs,

1 Agriculture, and Quarantine Inspection services rendered at all sea  
2 ports and for such services rendered for air cargo."

3 **Section 5. §47149 of the Government Code is hereby amended to read**  
4 **as follows:**

5 "§47149. Rules and Regulations for Customs, Agriculture, and  
6 Quarantine Inspection Services Charge. The Director of Customs and  
7 Quarantine Agency, subject to the Administrative Adjudication Act,  
8 shall promulgate and adopt rules and regulations to implement the  
9 provisions of Section 47143 through 47151 of this Chapter, including  
10 provisions establishing the procedure for collection of the service  
11 charge, and for periodic review of the costs of providing the services,  
12 the level of the charges levied, and the amount of reimbursement  
13 payable to the Guam Airport Authority, Customs and Quarantine  
14 Agency, the Department of Agriculture and/or their agents reflecting  
15 the administrative cost of collecting and remitting the charges. The  
16 Rules and Regulations shall also provide for such exemptions from the  
17 service charge as may be required by applicable law, other regulations,  
18 or as may be prescribed by the Director of the Customs and Quarantine  
19 Agency. In addition, to the extent the interim charge authorized by  
20 §47144 is determined to have either overcollected or undercollected the  
21 revenue required during the interim period, the final regulations should  
22 adjust the service charges accordingly."

23 **Section 6. §47150 of the Government Code is hereby amended to read**  
24 **as follows:**

25 "§47150. Customs and Agriculture Inspections Services  
26 Fund. There is hereby created, separate and apart from other funds of  
27 the government of Guam, a fund to be known as the 'Customs,

1 Agriculture, and Quarantine Inspection Services Fund (hereinafter  
2 "the Fund"). The Fund shall not be commingled with the General Fund  
3 and shall be kept in a separate bank account. All expenditures of the  
4 Fund shall be made exclusively by appropriation of the Guam  
5 Legislature. Notwithstanding any other provision of law, any funds  
6 appropriated to the Department of Agriculture pursuant to this  
7 Chapter shall be administered by the Director of Agriculture. The  
8 Director of Agriculture shall be the Certifying Officer of such funds.  
9 The Fund shall not be used as a pledge of security or as collateral for  
10 government loans. The Director of Administration shall make a  
11 quarterly report to the Governor and the Legislature of the condition  
12 of, and activity within, the Fund. He shall make a quarterly report to  
13 the Chairman of the Legislature's committee which oversees the  
14 Customs, Agriculture, and Quarantine Inspections Services Fund (the  
15 "Fund") of the condition of, and activity within, the Fund. The Director  
16 of Administration shall further make an annual report which shall be  
17 made available to the general public."



VOTING SHEET

Bill No. 526  
 Resolution No. \_\_\_\_\_  
 Question: \_\_\_\_\_

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.	✓			
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, - MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou	✓			
NELSON, Ted S.	✓			
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.	✓			
UNPINGCO, Antonio R.	✓			
WONPAT-BORJA, Judith	✓			

TOTAL 21 0 0 0

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
 Recording Secretary

23-96  
PV

# Senator Mark C. Charfauros

Chairman

## Committee on Judiciary, Criminal Justice, and Environmental Affairs Twenty-Third Guam Legislature

Ada's Commercial and Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Tel: (671) 472-3342/3/5  
Fax: (671) 472-3440  
E-Mail: markchar@uog9.uog.edu

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April 16, 1996

SPEAKER DON PARKINSON  
Twenty-Third Guam Legislature  
155 Hesler St.  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Judiciary, Criminal Justice and Environmental Affairs to which was referred **Bill No. 526**, wishes to report back to the Legislature with its recommendation to pass **Bill No. 526 As substituted by the author**, "AN ACT TO AMEND §47143, §47145, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE."

The voting record is as follows:

TO PASS	<u>11</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 greatly appreciated.

  
MARK C. CHARFAUROS

Attachments.

# Senator Mark C. Charfauros

Chairman

## Committee on Judiciary, Criminal Justice, and Environmental Affairs Twenty-Third Guam Legislature

Ada's Commercial and Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Tel: (671) 472-3342/3/5  
Fax: (671) 472-3440  
E-Mail: markchar@uog9.uog.edu

April 9, 1996

### MEMORANDUM

TO: Members

FROM: Chairman

SUBJECT: Committee Report - **Bill No. 526 As substituted by the author**, "AN ACT TO AMEND §47143, §47145, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE."

Transmitted herewith for your information and action is the Committee on Judiciary, Criminal Justice and Environmental Affairs' Report on the subject Bill.

The narrative report is accompanied by the following:

1. Original Bill 526; Bill 526 As substituted by the author;
2. Committee Voting Sheet;
3. Testimony and Sign-in Sheet
4. Public Hearing Notice.

Should you have any questions on the narrative report or the accompanying documents, I would be most 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.






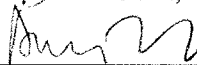
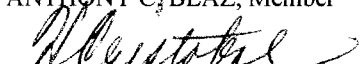


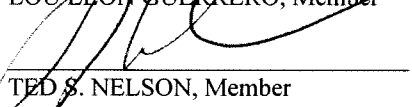
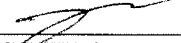
Your attention and cooperation in this matter is greatly appreciated.

  
MARK C. CHARFAUROS

Attachments.

**COMMITTEE ON JUDICIARY, CRIMINAL JUSTICE AND  
ENVIRONMENTAL AFFAIRS  
23rd Guam Legislature  
VOTING RECORD**

**Bill No. 526 As substituted by the author, "AN ACT TO AMEND §47143, §47145, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE."**

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>INACTIVE FILE</u>
 MARK C. CHARFAUROS, Chairman	✓	—	—	—
 JUDITH WONPAT-BORJA, Vice-Chairperson	✓	—	—	—
 THOMAS C. ADA, Member	✓	—	—	—
 ELIZABETH BARRETT-ANDERSON, Member	✓	—	—	—
 JOANNE BROWN, Member	✓	—	—	—
 ANTHONY C. BLAZ, Member	✓	—	—	—
 HOPE CRISTOBAL, Member	✓	—	—	—
 A. TONY LAMORENA, Member	✓	—	—	—
 LOU LEON GUERRERO, Member	✓	—	—	—
 TED S. NELSON, Member	✓	—	—	—
 VICENTE C. PANGELINAN, Member	✓	—	—	—
ANGEL L.G. SANTOS, Member	—	—	—	—
DON PARKINSON, Ex-Officio Member	—	—	—	—

COMMITTEE ON JUDICIARY, CRIMINAL  
JUSTICE AND ENVIRONMENTAL  
AFFAIRS

*Twenty-Third Guam Legislature*

COMMITTEE REPORT

on

Bill No. 526

**As substituted by the author**

“AN ACT TO AMEND §47143, §47145, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE.”

MARCH 18, 1996

## I. OVERVIEW

The Committee on Judiciary, Criminal Justice and Environmental Affairs scheduled a public hearing on March 18, 1996 at 9:30 a.m. at the Legislative Public Hearing Room. Public notice was announced on the March 15, 1996 issue of the PDN. Members present were:

Senator Mark C. Charfauros, Chairman  
Senator Ben Pangelinan  
Senator Ted Nelson  
Senator Lou Leon Guerrero  
Senator Joanne Brown  
Senator Elizabeth Barrett-Anderson  
Senator John Aguon  
Senator Hope Cristobal

Appearing before the Committee to testify on the bill were:

**Duane M.I. Siguenza**, Continental Micronesia, Inc., **written.**  
**Peter L.R. Ewert**, Northwest Airlines, Inc., **written.**  
**Doug Cousineau**, United Airlines, **oral.**  
**John Quinata**, Director, Customs and Quarantine Agency, **oral.**  
**Michael W. Kuhlmann**, Director, Department of Agriculture, **written.**  
**Oliver Bordallo**, Legal Counsel, Guam International Airport Authority, **oral.**  
**Calvin Holloway**, Attorney General, **written.**  
**Mary Eva Candon**, representing the Law firm of Brady & Berliner, **oral.**  
**Clifford Guzman**, representing the Governor's Office, **oral.**

## II. SUMMARY OF TESTIMONY

**Duane M.I. Siguenza**, Continental Micronesia, Inc., **written, attached.**

**Peter L.R. Ewert**, Northwest Airlines, Inc., **written, attached.**

**Doug Cousineau**, United Airlines, testified in support of the testimony submitted by Continental and Northwest Airlines. He stated that Customs officials should justify and explain how the \$10 fee structure was produced; **oral.**

**John Quinata**, Director, Customs and Quarantine Agency, testified in support of Bill 526. He stated that during the last few months, the Customs Agency, the Airport Authority, the airlines, and other members of the public have been working together to implement this program. He stated that Bill 526 would provide several amendments to Public Law 23-45 which would clarify the cost recovery program of the Customs Agency. He further stated that the Bill will strengthen the provisions of the Act to counter any potential challenges to the law. Finally, he asked for the favorable support of Bill 526 and for the continued assistance of the Legislature in implementing this program successfully, **oral.**

**Michael W. Kuhlmann**, Director, Department of Agriculture; **written, attached.**

**Oliver Bordallo**, Legal Counsel, Guam International Airport Authority, responded to a question by the chairman, Senator Mark Charfauros. He stated that the original Bill 200 provided for a User's Fee. He stated that the Bill was changed to a Service Charge as a result of the Anti-Head Tax Law. He stated that such a change subjected the charge on the carriers, as opposed to the passengers. He further stated that the law which was passed as Public Law 23-45, which had the support of certain airlines, already consisted of such changes. He stated that the formula used to arrive at such a charge for the carriers was based on the number of passengers arriving aboard the carrier. He stated that there was an understanding that the passengers would be allowed to pay the charge on arrival for an interim period. He stated that this understanding was based on the need to implement the charge as soon as possible, while considering that the implementation of the charge directly through the carriers would take some time. He stated that the manual collection of the charge from the passengers was only a temporary solution. He further stated that the intention as stated in Public Law 23-45 was to levy the charge on carriers, not passengers. He further stated that in late November, all parties determined that even a temporary passenger collection process would not be possible. He stated that since this time, no agreement has been reached with the airlines to implement the charge, whether on a temporary or permanent basis. He stated that Bill 484, with a 90 day extension proposal, will allow the implementation of the charge to be delayed, giving the government more time to reach a feasible solution to this situation with the airlines. He stated that he believes that the Bill is legal, and has the support of the Federal Aviation Administration. He further stated that since the airlines are likely to challenge this law, Bill 526 would provide amendments to strengthen such law. Specifically, he stated that the Bill would remove the references to passengers, and would instead provide the ability to charge the carriers a fee which is reasonable, but not based on any specific formula. Attorney Bordallo, in responding to a question posed by the Chairman, stated that all changes to the original Bill, from the time of the public hearing to the time it was enacted, were made as a result of FAA concerns and recommendations; **oral.**

**Calvin Holloway**, Attorney General, **written**.

**Mary Eva Candon**, representing the Law firm of Brady & Berliner, stated that the original law as passed does meet FAA concerns and requirements. She stated that the recommended amendments as contained in Bill 526 are intended to strengthen the law if legal challenges are made. She further stated that the changes are merely technical, and not substantive; **oral**.

**Clifford Guzman**, representing the Governor's Office, stated that Bill 526 would clarify the intent of the current statutes, and would strengthen the position of the government if legal challenges are made. He further stated that the Bill would provide further guidance and flexibility to the drafters of the rules and regulations, in order to avoid any confusion and problems with the implementation of this program. Finally, he stated that although the airlines must look out for the interests of its shareholders, the government must also look out for the interests of its taxpayers. He stated that Guam is one of the very few places that pay for its Customs services; **oral**.



### III. FINDING AND RECOMMENDATION

The Committee finds that Bill 526 would provide amendments to Public Law 23-45, regarding the establishment and implementation of the Customs, Agriculture, and Quarantine Inspection Services Charge. The Committee finds that the amendments are necessary in light of ongoing discussions concerning the implementation of the Charge. The Committee finds that there may be legal challenges to the implementation of the Service Charge. The Committee finds that although FAA has maintained its support of the current law, some amendments are necessary to strengthen the language considering the potentiality of it being legally challenged.

The Committee finds that Bill 526 would eliminate references to passengers as the formula for the implementation of the Service Charge. The Committee further finds that Bill 526 would allow the Director of Agriculture to have authority over funds appropriated from the Fund to the Department. The Committee finds that the Bill would also provide further guidance for the drafters of the rules and regulations, in order to avoid confusion or misunderstandings regarding the implementation and collection of this Service Charge. Finally, the Committee finds that amendments to PL 23-45 as provided in Bill 526 is necessary and would reduce the problems associated with the implementation of the Customs Service Charge.

Accordingly, the Committee on Judiciary, Criminal Justice and Environmental Affairs, to which was referred **Bill No. 526**, does hereby submit its findings and recommendation to the Twenty-Third Guam Legislature **TO DO PASS Bill No. 526 As substituted by the author**, "AN ACT TO AMEND §47143, §47145, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE."



# COMMITTEE ON RULES

Twenty-Third Guam Legislature  
155 Hesler St., Agana, Guam 96910

February 26, 1996

## MEMORANDUM

**TO:** Chairman, Committee on Judiciary, Criminal Justice  
and Environmental Affairs

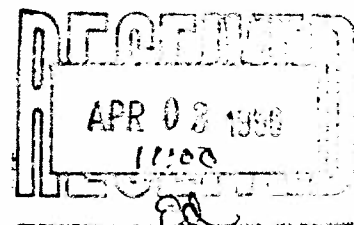
**FROM:** Chairman, Committee on Rules

**SUBJECT:** Referral - Bill No. 526

The above Bill is referred to your Committee as the principal 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.

  
**SONNY LUJAN ORSINI**

Attachment:



TWENTY-THIRD GUAM LEGISLATURE  
1996 (SECOND) REGULAR SESSION

Bill No. 526

Introduced by:

M.C. Charfauros  
A.L.G. Santos  
T.S. Nelson

**AN ACT TO AMEND §47143, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE.**

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

2 **Section 1. Legislative Findings.** The Legislature finds that the Customs, Agriculture, and  
3 Quarantine Inspection Services Charge has encountered difficulties in the implementation process  
4 since its enactment in Public Law 23-45. The Legislature finds that amendments are necessary to  
5 clarify both the intent of this Charge and the initial implementation of such a Charge. The  
6 Legislature further finds that there is a need to clarify the regulation and management of the  
7 expenditure of Funds collected pursuant to this Service Charge.

8 **Section 2. §47143 of the Government Code is hereby amended to read as follows:**

9 **“§47143. Customs, Agriculture, and Quarantine Inspection Services Charge**  
10 **Established.** Each aircraft landing at the Guam International Air terminal (GIAT) shall be levied  
11 a Customs, Agriculture, and Quarantine Inspection Services Charge [~~per passenger and unit of cargo~~  
12 ~~utilizing the Customs, Agriculture, and Quarantine Inspection services provided by the Customs and~~  
13 ~~Quarantine Agency or the Department of Agriculture~~]. Each consignment of cargo and/or passenger  
14 landing at the Port Authority of Guam shall also be levied a Customs, Agriculture, and Quarantine  
15 Inspection Services Charge. Such charges shall be reasonably related to the costs incurred by the  
16 Customs and Quarantine Agency in performing its inspection related services and shall be allocated  
17 among air carriers and water carriers in a manner reasonably related to the relative demand for such  
18 services attributable to each carrier.”

19 **Section 3. §47144 of the Government Code is repealed and reenacted to read as**  
20 **follows:**

1           **“§47144. Initial Service Charges.** Until the first Rules and Regulations required by §47149  
2 have been promulgated, the Guam Airport Authority and the Port Authority of Guam are authorized  
3 to collect on an interim basis service charges from air carriers and vessels reasonably calculated to  
4 recover the costs incurred by the Customs and Quarantine Agency in performing its inspection  
5 related duties.”

6           **Section 4. §47149 of the Government Code is hereby amended to read as follows:**

7           **“§47149. Rules and Regulations for Customs, Agriculture, and Quarantine Inspection**  
8 **Services Charge.** The Director of Customs and Quarantine Agency, subject to the Administrative  
9 Adjudication Act, shall promulgate and adopt rules and regulations to implement the provisions of  
10 Section 47143 through 47151 of this Chapter, including provisions establishing the procedure for  
11 collection of the service charge, and for periodic review of the costs of providing the services, the  
12 level of the charges levied, and the amount of reimbursement payable to the Guam Airport  
13 Authority, Customs and Quarantine Agency, the Department of Agriculture and/or their agents  
14 reflecting the administrative cost of collecting and remitting the charges. The Rules and Regulations  
15 shall also provide for such exemptions from the service charge as may be required by applicable law,  
16 other regulations, or as may be prescribed by the Director of the Customs and Quarantine Agency.  
17 In addition, to the extent the interim charge authorized by §47144 is determined to have either  
18 overcollected or undercollected the revenue required during the interim period, the final regulations  
19 should adjust the service charges accordingly.”

20           **Section 5. §47150 of the Government Code is hereby amended to read as follows:**

21           **“§47150. Customs and Agriculture Inspections Services Fund.** There is hereby created,  
22 separate and apart from other funds of the government of Guam, a fund to be known as the  
23 ‘Customs, Agriculture, and Quarantine Inspection Services Fund’ (hereinafter “the Fund”). The  
24 Fund shall not be commingled with the General Fund and shall be kept in a separate bank account.  
25 All expenditures of the Fund shall be made exclusively by appropriation of the Guam Legislature.  
26 Notwithstanding any other provision of law, any funds appropriated to the Department of  
27 Agriculture pursuant to this Chapter shall be administered by the Director of Agriculture. The  
28 Director of Agriculture shall be the Certifying Officer of such funds. The Fund shall not be used as

1 a pledge of security or as collateral for government loans. The Director of Administration shall  
2 make a quarterly report to the Governor and the Legislature of the condition of, and activity within,  
3 the Fund. He shall make a quarterly report to the Chairman of the Legislature's committee which  
4 oversees the Customs, Agriculture, and Quarantine Inspections Services Fund (the "Fund") of the  
5 condition of, and activity within, the Fund. The Director of Administration shall further make an  
6 annual report which shall be made available to the general public.”

**TWENTY-THIRD GUAM LEGISLATURE  
1996 (SECOND) REGULAR SESSION**

Bill No. 526

As substituted by the author

Introduced by:

M.C. Charfauros

A.L.G. Santos

T.S. Nelson

**AN ACT TO AMEND §47143, §47145, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE.**

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

2 **Section 1. Legislative Findings.** The Legislature finds that the Customs, Agriculture, and  
3 Quarantine Inspection Services Charge has encountered difficulties in the implementation process  
4 since its enactment in Public Law 23-45. The Legislature finds that amendments are necessary to  
5 clarify both the intent of this Charge and the initial implementation of such a Charge. The  
6 Legislature further finds that there is a need to clarify the regulation and management of the  
7 expenditure of Funds collected pursuant to this Service Charge.

8 **Section 2. §47143 of the Government Code is hereby amended to read as follows:**

9 **“§47143. Customs, Agriculture, and Quarantine Inspection Services Charge**  
10 **Established.** Each aircraft landing at the Guam International Air terminal (GIAT) shall be levied  
11 a Customs, Agriculture, and Quarantine Inspection Services Charge reasonably related to the cost  
12 incurred by the Customs and Quarantine Agency and the Department of Agriculture in providing,  
13 maintaining, and operating the service charge facilities, and shall be allocated among air carriers in  
14 such a manner reasonably related to the relative demand for such services attributable to each carrier  
15 [per passenger and unit of cargo utilizing the Customs, Agriculture, and Quarantine Inspection  
16 services provided by the Customs and Quarantine Agency or the Department of Agriculture]. Each  
17 consignment of air and sea cargo and ~~for~~ each passenger landing at ~~[the Port Authority of Guam]~~  
18 a sea port shall also be levied a Customs, Agriculture, and Quarantine Inspection Services Charge,  
19 except for those passengers which may be exempted under the rules and regulations promulgated

1 pursuant to Section 47149 of the Government Code of Guam. Such service charges shall be  
2 reasonably related to the costs incurred by the Customs and Quarantine Agency and the Department  
3 of Agriculture in providing, maintaining, and operating the service charge facilities.”

4 **Section 3. §47144 of the Government Code is repealed and reenacted to read as**  
5 **follows:**

6 “**§47144. Initial Service Charges.** Until the first Rules and Regulations required by §47149  
7 have been promulgated, the Guam Airport Authority [~~and the Port Authority of Guam are~~] is  
8 authorized to collect on an interim basis service charges from air carriers [~~and vessels~~] reasonably  
9 calculated to recover the costs incurred by the Customs and Quarantine Agency and the Department  
10 of Agriculture in providing, maintaining, and operating the service charge facilities. The Customs  
11 and Quarantine Agency, or its agents, is also authorized to collect on an interim basis an initial  
12 Customs, Agriculture, and Quarantine Inspection Services Charge to be levied as follows: [~~in~~  
13 ~~performing its inspection-related duties~~]

14 (a) Upon sea passengers landing at the Port Authority of Guam a Passenger charge  
15 of \$10.00 for each passenger, and a document charge of \$5.00 upon each consignee or other  
16 applicable party for each consignment of cargo landing in Guam, and \$25.00 upon each  
17 consignee or other applicable party for consolidated consignments of cargo landing in  
18 Guam.”

19 **Section 4. §47145 of the Government Code is hereby amended to read as follows:**

20 “**§47145. Authorization for Customs and Quarantine Agency and the Guam Airport**  
21 **Authority to collect Customs, Agriculture, and Quarantine Inspection Services Charges.** The  
22 Guam Airport Authority is authorized to assess and collect, from air carriers, the Customs,  
23 Agriculture, and Quarantine Inspection Services Charge for customs and agricultural inspection  
24 services rendered at GIAT. The Customs and Quarantine Agency is authorized to assess and collect  
25 the Customs, Agriculture, and Quarantine Inspection Services Charge for Customs, Agriculture, and  
26 Quarantine Inspection services rendered at [~~the Port Authority of Guam~~] all sea ports and for such  
27 services rendered for air cargo.

28 **Section 5. §47149 of the Government Code is hereby amended to read as follows:**

1           **“§47149. Rules and Regulations for Customs, Agriculture, and Quarantine Inspection**  
2 **Services Charge.** The Director of Customs and Quarantine Agency, subject to the Administrative  
3 Adjudication Act, shall promulgate and adopt rules and regulations to implement the provisions of  
4 Section 47143 through 47151 of this Chapter, including provisions establishing the procedure for  
5 collection of the service charge, and for periodic review of the costs of providing the services, the  
6 level of the charges levied, and the amount of reimbursement payable to the Guam Airport  
7 Authority, Customs and Quarantine Agency, the Department of Agriculture and/or their agents  
8 reflecting the administrative cost of collecting and remitting the charges. The Rules and Regulations  
9 shall also provide for such exemptions from the service charge as may be required by applicable law,  
10 other regulations, or as may be prescribed by the Director of the Customs and Quarantine Agency.  
11 In addition, to the extent the interim charge authorized by §47144 is determined to have either  
12 overcollected or undercollected the revenue required during the interim period, the final regulations  
13 should adjust the service charges accordingly.”

14           **Section 6. §47150 of the Government Code is hereby amended to read as follows:**

15           **“§47150. Customs and Agriculture Inspections Services Fund.** There is hereby created,  
16 separate and apart from other funds of the government of Guam, a fund to be known as the  
17 ‘Customs, Agriculture, and Quarantine Inspection Services Fund’ (hereinafter “the Fund”). The  
18 Fund shall not be commingled with the General Fund and shall be kept in a separate bank account.  
19 All expenditures of the Fund shall be made exclusively by appropriation of the Guam Legislature.  
20 Notwithstanding any other provision of law, any funds appropriated to the Department of  
21 Agriculture pursuant to this Chapter shall be administered by the Director of Agriculture. The  
22 Director of Agriculture shall be the Certifying Officer of such funds. The Fund shall not be used as  
23 a pledge of security or as collateral for government loans. The Director of Administration shall  
24 make a quarterly report to the Governor and the Legislature of the condition of, and activity within,  
25 the Fund. He shall make a quarterly report to the Chairman of the Legislature's committee which  
26 oversees the Customs, Agriculture, and Quarantine Inspections Services Fund (the "Fund") of the  
27 condition of, and activity within, the Fund. The Director of Administration shall further make an  
28 annual report which shall be made available to the general public.”





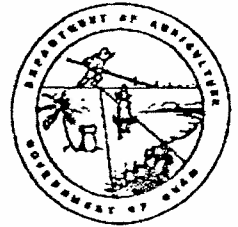
# Department of Agriculture Dipartimento Agrikultura

192 Dairy Road, Mangilao, Guam 96923

Director's Office	734-3942/43; Fax 734-6569
Agricultural Dev. Svs.	734-3946/47; Fax 734-8096
Animal Health	734-3940
Aquatic & Wildlife Resources	735-3955/56; Fax 734-6570
Forestry & Soil Resources	735-3949/50; Fax 734-0111
Plant Nursery	734-3949
Plant Protection & Quarantine	472-1651; 477-7822

Carl T. C. Gutierrez  
Governor

Madeleine Z. Bordallo  
Lt. Governor



Michael W. Kuhlmann  
Director

Joseph G. Sablan  
Deputy Director

TESTIMONY OF  
MICHAEL W. KUHLMANN  
DIRECTOR OF AGRICULTURE  
BEFORE THE  
JUDICIARY, CRIMINAL JUSTICE AND ENVIRONMENTAL AFFAIRS COMMITTEE  
23RD GUAM LEGISLATURE  
MARCH 18, 1996

ON BILLS NO. 484, 526

MR. CHAIRMAN: The Department of Agriculture supports these bills as further refinements of the implementation of the Customs, Agriculture and Quarantine Inspection Services charge.

Bill No. 484 adjusts the implementation date in recognition of the longer than anticipated time required to get this complicated process in place.

Concerning Bill No. 526: Department of Agriculture planning strictly adheres to the principle that expenditures of funds collected for this services charge are related to costs incurred in providing the services; supports that prudent budgeting and spending should apply at all times with fees no higher than is necessary to provide the services; and projects that having funds appropriated to the Department of Agriculture be administered by the Department, with the Director of Agriculture as certifying officer, would markedly streamline the administration process and is fully prepared to perform such responsibilities.

Section 47143 could be further clarified by adding "the Department of Agriculture" after "... Customs and Quarantine Agency ..."

Mr. Chairman, Agriculture has previously presented a budget which complies with the spending limitations of Bill No. 524. The budget was anticipated to begin October 1, 1995, and the tim



Commonwealth Now!

line still applies, although some months delayed because unexpected uncertainties of funding and implementation dates made it prudent to defer new spending.

The first new expansion plan employee, a cashier, was hired this month. This will free a uniformed inspector from office duty. Interviews for a second office worker are scheduled for March 26. The first new uniformed officers should begin work by May 1.

Mr. Chairman, you and the committee can be assured that we at Agriculture will continue do whatever we can to ensure an orderly, economical and effective implementation and operation of this important program.

Thank you.

###



March 18, 1996

HAND-DELIVERY

Don Parkinson, Speaker  
TWENTY-THIRD GUAM LEGISLATURE  
155 Hessler Street  
Agana, Guam 96910

Senator Mark Charfauros, Chairman  
COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE  
TWENTY-THIRD GUAM LEGISLATURE  
155 Hessler Street  
Agana, Guam 96910

RE: PROPOSED AMENDMENT OF PUBLIC LAW 23-45

Dear Gentlemen:

Unfortunately, Continental Micronesia, Inc., (CMI) is forced to oppose the proposed amendments to Public Law 23-45. As discussed herein, it is CMI's position that the imposition of a customs service charge upon CMI and other carriers serving Guam was not the original proposal supported by CMI. The charge should be paid for by passengers, as originally represented by the Government, and not shifted to the airlines as provided in the amendments. For the reasons stated herein, CMI requests that the legislation not be amended and that the implementation of Public Law 23-45 be postponed until the enactment of Congressional legislation allowing Guam to impose a user fee.

History

In early 1995, Donald J. Breeding, President and Chief Executive Officer, CMI, was approached to head a Customs User Fee Task Force ("Task Force Committee"). Mr. Breeding, agreed to participate in the Task Force Committee and for CMI to support the program upon the explicit understanding that the user fee would be solely borne by passengers and would be cost neutral to the airlines. In this respect, establishing a user fee was considered appropriate to address unreasonable customs overtime charges incurred by CMI and the other airlines due to Guam's reluctance to adjust customs shifts. Therefore, it was thought that a

Don Parkinson, Speaker  
TWENTY-THIRD GUAM LEGISLATURE

=====  
Senator Mark Charfauros, Chairman  
COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE  
TWENTY-THIRD GUAM LEGISLATURE

March 18, 1996

page 2

user fee would allow Customs and Quarantine Agency (CQA) to be autonomous of the General Fund and better strengthen drug enforcement and other customs services. In response, the Government representatives agreed that the program would be cost neutral to CMI and other air carriers and that the airlines would be reimbursed for any and all expenses related to implementation and running of the program.

Subsequently, in furtherance of its support of a customs user fee, CMI met and coordinated with representatives of the Guam Airport Authority (GAA) and CQA to review issues related to implementation of the program. These meetings resulted in the parties proposing that CMI hire a contractor on behalf of all airlines to collect said fees from departing passengers at the airport. It was contemplated that CMI's contractor was to manually collect the customs user fee with CMI only being responsible for remittance of funds actually received, less costs of collections. It was further agreed CMI would not have been responsible for any uncollected fees. In reliance upon the parties' discussions and representations, CMI proceeded with hiring an independent consultant to do this. Unfortunately, these efforts were to no avail, as the parties subsequently discovered various aspects of the proposal violated the Anti-Head Tax Act, 49 U.S.C. §40116 (AHTA), a federal law prohibiting per passenger charges by local governments.

While the parties continued to meet in an attempt to restructure the program so as to comply with AHTA, local legislation was introduced in the form of Bill No. 200, providing for establishing a customs service charge. CMI supported Bill No. 200 as it was contemplated that the rules and regulations to be promulgated by CQA would, as previously represented by the Government, authorize collection of the charge manually from incoming passengers and reimbursement of costs. In other words, this proposed charge was still a user fee.

Although the legislation contemplated implementation of the charge in mid-January of this year, the Government of Guam, acknowledging that the program had been substantially restructured and desirous of securing the air carriers support, agreed to postpone implementation of the legislation. During this interim certain other airlines apparently met with FAA to challenge the charge. The FAA apparently determined that Public Law 23-45 was in violation of AHTA. Prior to its March 8, 1996 letter attached hereto, CMI had not yet any contact with the FAA with

Don Parkinson, Speaker  
TWENTY-THIRD GUAM LEGISLATURE

=====  
Senator Mark Charfauros, Chairman  
COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE  
TWENTY-THIRD GUAM LEGISLATURE

March 18, 1996

page 3

respect to Public Law 23-45 and as such is unable to accurately confirm what, if any, action has been taken to date by the FAA. Nonetheless, we believe that the FAA's concerns with Public Law 23-45 resulted in the preparation of the corrective legislation currently before the Guam Legislature today.

#### Opposition/Proposed Solution

While CMI opposes the current legislation, because unlike all other proposals it constitutes a charge on the airline, it remains interested in working with the Government of Guam in implementing a program as originally contemplated. In this respect, we think the best course for the Government of Guam would be to seek Congressional relief allowing it to impose a cost-related customs fee on passengers which would be passed directly to the passenger on the ticket. Northwest Airlines, Inc. and United Air Lines, Inc., have recently contacted CMI to solicit support for such a Congressional amendment. Enclosed are (1) joint March 12, 1996 letter from Northwest Airlines, Inc., and United Air Lines, Inc. (UAL), and (2) UAL's January 19, 1996 letter, and (3) Continental Airlines, Inc. (CAL) and CMI's March 8, 1996 letter, to the FAA.

CMI's Washington D.C. counsel have informed us that the FAA represented late last week that, based on the joint support of all U.S. air carriers servicing Guam, it considered the proposed Congressional amendment quite favorably. Although we are presently unable to provide a specific time frame for the Congress to act, based on prior discussions with our Washington D.C. counsel, it appears possible that the Congressional amendment could be passed by August of this year.

It is our opinion that there are strong arguments to be made in favor of allowing Guam to impose a customs user fee on persons entering Guam from outside the customs territory of the United States. These are based on the fact that Guam sets its own duties, and performs and pays for its own custom services while other state and local governments, covered by the AHTA, rely on the U.S. Customs Service, which is federally funded, to perform customs work. From a policy point of view, there is no good reason to forbid Guam from doing that which U.S. Customs does, particularly in light of the fact that such a fee would be assessed only on persons entering from outside the customs territory of the United

Don Parkinson, Speaker  
TWENTY-THIRD GUAM LEGISLATURE

=====  
Senator Mark Charfauros, Chairman  
COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE  
TWENTY-THIRD GUAM LEGISLATURE

March 18, 1996

page 4

States. This would also allow CMI and its airline partners to accurately disclose to passengers that the user fee is a charge imposed by the Government for customs services.

In conclusion, it is our opinion that the proposed amendments to Public Law 23-45 unfairly and unreasonably shift the burden of financing customs operation from passengers who utilize the services, to airlines. This will adversely affect CMI and its airline partners' ability to service the Island and is unnecessary as Congressional legislation exempting Guam from AHTA can likely be secured in a reasonable time frame that would allow the Government to impose a customs user fee. For these reasons, we respectfully request the Guam Legislature not amend Public Law 23-45 and postpone its implementation until the required Congressional legislation is enacted.

Thank you for allowing me to testify on behalf of CMI.

Sincerely,

CONTINENTAL MICRONESIA, INC.



DUANE M.I. SIGUENZA  
Director, Properties & Facilities

DMIS/mlg  
D#T4LTRS12  
F#C-0135

# Continental Micronesia



DONALD J. BRIDGING  
PRESIDENT  
CHIEF EXECUTIVE OFFICER

Continental Micronesia  
P.O. Box 8778-G  
Tenzoning, Guam 96931  
Tel: (671) 647 6886 / 6  
Fax: (671) 648 6588  
BITA: GUMERCO

March 8, 1996

Nicholas G. Garaufis, Esq.  
Chief Counsel, AGC-600  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, D.C. 20591

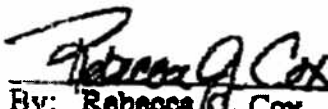
Re: Guam Customs, Agriculture, and Quarantine  
Inspection Services Charge

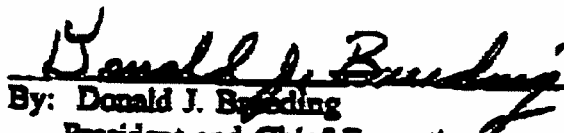
Dear Mr. Garaufis:

Continental Airlines and its subsidiary, Continental Micronesia, support Federal legislation which would enable Guam to collect a Customs, Agriculture, and Quarantine Inspection Services Charge ("Customs Fee") to compensate Guam for costs incurred performing passenger and cargo inspection functions that are performed elsewhere by the Federal government.

In particular, Continental and Continental Micronesia will support Federal legislation which would permit collection from arriving passengers at Guam International Airport and from shippers using Guam International Airport of fees equivalent to existing U.S. Customs and Department of Agriculture fees. The Guam fees would be charged directly to passengers and shippers, but be collected and remitted by the carriers, as is the case with the Federal fees. Such legislation would enable Guam to be compensated for expenses it incurs in performing these functions, authorize carriers to show the Guam fee as a separate charge on tickets and in advertisements, and avoid any question of violating the Anti-Head Tax Act.

Sincerely,

  
By: Rebecca G. Cox  
Vice President-Government Affairs

  
By: Donald J. Bridging  
President and Chief Executive  
Officer

March 12, 1996

Nicholas G. Garaufis, Esq.  
Chief Counsel, AGC-600  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, D.C. 20591

Re: Guam Customs and Agriculture Inspection Fee (the "Customs Fee")

Dear Mr. Garaufis:

The government of Guam recently adopted a Customs Fee that effectively imposes a \$10 per passenger fee on passengers arriving at the Guam International Airport ("GIA") and a \$5.00 per consignment fee on each consignment of airfreight entered at GIA. As explained in detail in a January 9, 1996, letter from United Airlines to David Bennett (a copy of which is attached), these fees violate the Anti-Head Tax Act, 49 U.S.C. § 40116 (the "Tax Act" or "Act"). For that reason, the undersigned carriers have previously requested the FAA's assistance in preventing the Customs Fee from being implemented.

We understand that the FAA considers Guam's situation to be unique. As explained to us, customs and inspections services previously were performed at GIA by the U.S. military. With a reduction in the military's presence in Guam, these services are now the responsibility of the government of Guam. Because Guam is outside the Customs territory of the United States, Guam cannot arrange to have these services performed by the Customs Service and the Department of Agriculture ("DOA"), which normally perform these services and which are authorized by statute to impose user fees to recover the cost involved. See, e.g., 19 U.S.C. § 58c, 21 U.S.C. § 136a and 7 C.F.R. §§ 354.3, 354.4. The result is that the government of Guam is faced with having to perform the same type of inspection services performed elsewhere within U.S. territory by the Customs Service and the DOA. Unlike those agencies, however, Guam is precluded by the Tax Act from charging user fees to reimburse itself for the costs of providing these governmental services. Because of this unique situation, the staff of the Office of Airports appears to be willing to allow Guam to implement the Customs Fee, despite the mandate of the Tax Act. That mandate may not be disregarded, however, even to achieve a result that seems "fair" to the FAA's staff.

Although we are not unsympathetic to the problem faced by the government of Guam, a decision by the FAA to overlook such a clear violation of the Tax Act would set a dangerous precedent and undermine both the FAA's and the industry's ability to enforce the Act in other circumstances. The Customs Fee violates the most basic prohibitions of the Tax Act in that it is a direct tax or fee upon "the transportation of an individual traveling in air commerce" and "the sale of air transportation." 49 U.S.C. § 40116(b). The Customs Fee is not saved by the nominal imposition of the fees on the air carriers serving GIA (as opposed to passengers). Further, there



Nicholas G. Garauña, Esq.  
March 12, 1996  
Page 2

is no exception in the Tax Act permitting a state or territory to charge a tax or fee because the money collected is to be used as reimbursement for the cost of performing governmental functions. Therefore, a decision by the FAA to permit the Customs Fee to be imposed will create a precedent that could be exploited by other governments or domestic airports in circumstances lacking the unique problems faced by the government of Guam.

Further, although the government of Guam intends for carriers to pass the Customs Fees on to the passengers and shippers utilizing GIA, Department of Transportation ("DOT") enforcement policy effectively precludes carriers from doing so. Even though DOT has acknowledged that "passengers benefit from knowing how much they are paying government entities apart from the fares they pay the carriers[.]" DOT Order 88-8-2 at 3, as a matter of enforcement policy, DOT forbids carriers from imposing surcharges to recover passenger-related costs separately from the fare charged a passenger unless the surcharge is levied "directly on passengers by a governmental entity ... [or] specifically approved by the U.S. government as separate per-passenger charges." *Id.* Because the Customs Fee is not imposed by the government of Guam directly on passengers or shippers, and has not been authorized by DOT as a separate per-passenger charge, carriers are effectively precluded from collecting the fee as a separate surcharge and, thereby, informing the traveling public of the basis for the charge. The net result is that carriers will be required to absorb the fees as part of the rate or fare charged for providing transportation to and from Guam. Carriers will be saddled with the cost of funding the customs and agricultural inspection services provided by the government of Guam for the benefit of the residents of Guam. Such a result is unacceptable, and we are prepared, both individually and collectively, to challenge the imposition of the Customs Fee by the government of Guam as a violation of the Tax Act through all available legal channels.

We are also prepared, however, to work with the government of Guam and the FAA to resolve this issue in another way. We would support a solution which addresses the underlying problem -- Guam's performance without compensation of passenger and cargo inspection functions that are performed elsewhere by the Federal government -- without doing irreparable harm to the Tax Act. In particular, we would support Federal legislation that would permit the collection from arriving passengers at GIA and from shippers using GIA of fees equivalent to existing U.S. Customs and DOA inspection fees. Those fees would be charged directly to the passengers and shippers, but collected and remitted by the carriers, just as the U.S. Customs and DOA fees are collected and remitted today. Such a fee collection scheme would be consistent with the Federal Government's policy in favor of user fees where recipients of special benefits can be identified, see "User Charges," 58 FED. REG. 38142 (July 15, 1993), without doing damage to the proscription under the Tax Act of direct taxes on air transportation services.

This solution offers many benefits. It would enable Guam to be compensated for the resources it expends on these inspection functions. As Federal legislation, this charge would not

Nicholas G. Garaufo, Esq.  
March 12, 1996  
Page 3

run afoul of the Tax Act, nor set an undesirable precedent under the Act. It would also permit the carriers accurately to disclose to passengers that the Customs Fee is a government charge related to a particular government purpose. There is, moreover, existing precedent for this approach in that the Federal government already collects duties and income taxes, among others, related to Guam and remits those funds to the treasury of Guam (see 48 U.S.C. § 1421h).


Until this legislative change is made, we urge the FAA to raise these issues with the government of Guam and, as discussed on February 7, 1996, take whatever action is required to persuade the government to postpone the imposition of the Customs Fees until appropriate authorizing Federal legislation is enacted.

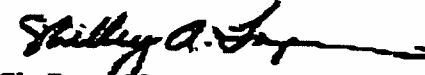
Please contact us at your earliest convenience and advise us if you wish to pursue this proposed solution. We look forward to working with you to resolve this matter in the near future.

Sincerely,

NORTHWEST AIRLINES, INC.

UNITED AIR LINES, INC.

  
Elliott M. Seiden  
Vice President - Law & Government Affairs

  
Shelley A. Longmuir  
Vice President - Governmental Affairs

**UNITED AIRLINES**

**ATTACHMENT**

World Headquarters

January 9, 1996

David L. Bennett  
Assistant Chief Counsel, AGC-600  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Room 922 East  
Washington, D.C. 20591

Dear Mr. Bennett:

I am writing to bring to your attention legislation recently adopted by the Government of Guam that effectively imposes a \$10 per passenger fee on passengers arriving at the Guam International Airport and a \$5 per consignment fee on each consignment of airfreight entered at the Airport. The imposition of these fees is a violation of the Federal Anti-Head Tax Act, now codified at 49 U.S.C. § 40116 (the "Tax Act"). United Airlines requests, therefore, that the FAA promptly advise the Government of Guam that these fees are unlawful and that the FAA is prepared to take whatever action is required to prevent the fees from being collected.

1. The Guam Legislation

The Guam legislation, adopted by Public Law No. 23-45, as amended by Public Law No. 23-46, creates a Customs, Agriculture, and Inspection Services Fund, and directs that a fee per passenger be levied on each aircraft landing at the Guam International Air Terminal ("GIAT"). GUAM GOVERNMENT CODE § 47143. Similar charges are imposed on each "unit of cargo utilizing the Customs, Agriculture, and Quarantine Inspections services provided by the Customs and Quarantine Agency or the Department of Agriculture." *Id.* The legislation further provides that until rules and regulations have been promulgated, the service charge to be collected from each carrier shall be \$10 per passenger and \$5 per airfreight consignment. GUAM GOVERNMENT CODE § 47144.

2. The Guam Legislation Violates The Tax Act

As you know, the Tax Act prohibits, among other things, states (defined to include Guam) from levying or collecting "a tax, fee, head charge, or other charge on -

- (1) an individual traveling in air commerce;
- (2) the transportation of an individual traveling in air commerce; [or]
- (3) the sale of air transportation...."

DAVID L. HENNER

January 3, 1995

Page 2

49 U.S.C. § 40116(b).

The imposition of a fee of \$10 on every passenger arriving at GIAT is a tax or fee "on the transportation of an individual traveling in air commerce"; the imposition of a fee of \$5 on every consignment of airfreight inspected at GIAT likewise constitutes a tax or fee "on the sale of air transportation." Thus, these fees are expressly pre-empted by Section 40116(b).

The fact that the legislation imposes these per passenger and consignment charges on each aircraft landing at GIAT, rather than on the passenger or shipper directly, is irrelevant in determining whether such charges violate the Tax Act. The Tax Act was enacted by Congress to avoid double taxation of airline passengers and shippers by state and local governments, and to prevent states from unduly burdening interstate commerce. Thus, to determine if a fee or charge imposed by a state or local government is prohibited, courts have looked to whether the fee or charge is likely to be passed on to the users of air transportation services already subject to Federal excise taxes.

In Rocky Mountain Airways, Inc. v. Pitkin County, 674 F. Supp. 312 (D. Colo. 1987), the District Court held that landing fees based upon the gross weight of the aircraft and terminal charges assessed to an air carrier were nonetheless head taxes prohibited by the Tax Act because the charges and fees would ultimately be passed on to passengers. As the court concluded:

Since the landing fee is based upon gross weight, a figure which must bear some relation to the number of passengers in the airplane, this fee arguably amounts to an indirect head tax. Moreover, the terminal rental fee, which is ultimately passed on to air travelers in the form of higher fares, constitutes an indirect charge on persons traveling in air commerce. In any event, both charges are clearly a type of indirect charge on the carrying of persons in air commerce.

Rocky Mountain, 674 F. Supp. at 315.

The same conclusion was reached in Denver v. Continental Airlines, Inc., 712 F. Supp. 834 (D. Colo. 1989):

There is no doubt that terminal rental rates and landing fees charged to the airlines ... come within the charges prohibited by [the Tax Act] ... because they are indirect charges on the carrying of persons in air commerce.

Denver, 712 F. Supp. at 839.

David L. Bennett

January 3, 1995

Page 3

Because the charges at issue here are clearly designed to be passed on to the passengers and shippers involved, who are already subject to Federal excise taxes on their transportation to/from Guam, the charges are pre-empted by the Tax Act.

Although a state appellate court reached a somewhat different conclusion as to the scope of Federal preemption under the Tax Act in Alaska Airlines, Inc. v. California Department of Foods and Agriculture, 39 Cal. Rptr. 2d 426 (Cal.App. 1995), cert. denied 64 U.S.L.W. 3392, 3396 (U.S. Dec. 4, 1995)(No. 95-488), that case is inapposite here. The inspection fees at issue in Alaska were not imposed on a per passenger or per consignment basis, but solely on a per landing basis. The fact that the amount of charges a carrier owed did not vary with the number of passengers transported was critical to the court's conclusion that the inspection charges at issue were not preempted by the Tax Act. As the court explained:

The undisputed facts ... establish[] that the fees are based on criteria other than the number of passengers carried; ... that the fees do not vary depending on the number of passengers or passenger receipts; ... that the fee is charged even if the airplane is empty; and that the amount of fee is subject to change or elimination ... under an incentive program in which the airlines may participate ....

These facts establish that the fee is not a direct head tax. It bears no relation to the number of passengers or cargo on the aircraft, nor does it bear direct or indirect relation to persons or the carriage of persons traveling in air commerce, or the receipts derived therefrom.

Id. at 430.

Here, by contrast, the Guam inspection fee is a direct head tax. The amount of the fee due is directly related to the number of passengers and consignments on the aircraft, and no fee would be due if an aircraft arrived empty at GIAT. Indeed, applying the reasoning of the court in the Alaska case, the fees imposed by the Government of Guam are prohibited head taxes.

3. The Guam Inspection Fee Is Not Authorized By  
49 U.S.C. § 40116(b)

The broad proscription imposed by Section 40116(b) on charges that may be collected from carriers that will be passed on to passengers or shippers is ameliorated to some extent by Section 40116(e) of the Tax Act, which permits, among other things, states or political

January 3, 1995

Page 4

subdivisions of states to collect "reasonable ... service charges from aircraft operators for using airport facilities of an airport owned or operated by that state or subdivision." However, this narrow exception to the proscription set forth in Section 40116(b) is wholly inapplicable here because Guam's user fees are not being imposed for the use or operation of airport facilities, but for the provision of various state inspection services. Therefore, even if these charges were imposed directly on aircraft operations and not on the basis of the number of passengers or consignments entered at GIAT, the charges would fall outside the scope of the charges permitted by Section 40116(e).

4. The FAA Has Jurisdiction Over This Matter

The FAA is entrusted by Congress with the responsibility to protect the traveling and shipping public from the imposition of fees or charges that violate the Tax Act. The fees the Government of Guam has imposed violate the limitations Congress has imposed on states' ability to tax air travelers and shippers. Nevertheless, the Manager of the FAA's Airports District Office for the Western-Pacific Region, by letter dated November 13, 1995, advised the Guam Airport Authority that the legislation does not appear to be inconsistent with Federal requirements governing generation and use of revenue at publicly-owned airports, including the Tax Act.

We strongly urge that you review that advice thoroughly. We are confident that, after such review, you will agree that the fees the Government of Guam intends to impose are unlawful. Therefore, we urge the FAA promptly to inform the Government of Guam that, notwithstanding the advice previously provided, the imposition of these fees would violate the Tax Act, and that the FAA is prepared to take whatever action may be required to prevent the fees from being collected.

If you have any questions or need additional information, please call me. If you have any questions or concerns about the correctness of our position, we would appreciate having the opportunity to meet with you to discuss these questions or concerns.

Sincerely,



Michael G. Whitaker  
Director - International and  
Regulatory Affairs



GUAM  
458 South Marine Drive  
Tamuning, Guam 96911, U.S.A.  
Telephones: (671) 649-1665 to 67  
Fax : (671) 649-0942

## NORTHWEST AIRLINES

March 18, 1996

### Comments of Northwest Airlines, Inc.

Northwest Airlines appreciates the opportunity to submit its views and comments on the proposed Bill No. 484 and Bill No. 526.

1. Regarding Bill No. 484

We support the extension of the effective date of implementation of the Customs, Agriculture, and Quarantine Inspection Services Charge. We feel however that the implementation date should be extended indefinitely or until such time that all other options are fully investigated or the concerns of the airlines are addressed. It has been since mid-December that there has been a meeting with Customs, GAA, and the airlines.

2. Proposed Bill No. 526

Although this Bill deletes the reference to the charge being assessed to the carrier on the basis of passengers and units of cargo, that intent remains.

We further maintain that the Charge, even during an interim basis, is excessive. The amount was first derived at when cargo charges were not included and passenger exceptions were allowed. Now there are no exceptions, all cargo will be assessed, which based on 1995 arrivals figures, will be in excess of 13 million dollars. This is based on aircraft passenger arrivals only. Adding air and seaport cargo significantly increases this amount.

In closing, we would like to state that we would be pleased, and are prepared, to work with the Government of Guam and the FAA to resolve this issue in other ways.

Respectfully submitted,

NORTHWEST AIRLINES, INC.

---

Peter L.R. Ewert  
Station Manager, Guam

Calvin E. Holloway, Sr.  
Hinigåt Abugao  
Attorney General



Phone: (671) 475-3324  
Telefax: (671) 472-2493

Gus F. Diaz  
Atkådi, Sigundo Hinigåt Abugao  
Chief Deputy Attorney General

Ufisinan Hinigåt Abugao  
Tiritorian Guåhan

Office of the Attorney General  
Territory of Guam

March 8, 1996

The Honorable Mark C. Charfauros  
Chairman, Committee on Judiciary & Criminal Justice  
and Environmental Affairs  
Twenty-Third Guam Legislature  
Ada's Commercial & Professional Center  
138 East Marine Drive, Suite 101C-Annex  
Agana, Guam 96910

Re: Bill No. 526

Dear Senator Charfauros:

**Buenas yan Saluda!**

This responds to your letter dated February 29, 1996 concerning Bill No. 526. The proposed bill incorporates changes suggested by the Law Firm of Brady and Berliner to address concerns raised by the airlines in their protest of the Customs and Quarantine Service Charge to the FAA. Basically the changes remove any references to how the charges are to be calculated, particularly any references to "per passenger" levies. It also adds a requirement that the charges be reasonably related to the services provided and allocated among the carriers in a manner reasonably related to the carriers demand. We have no objection to these amendments.

With thanks in anticipation of your consideration.

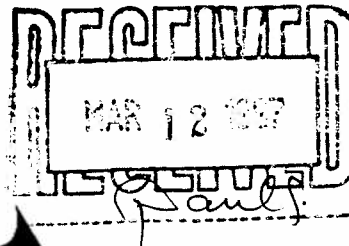
**Dångkolo Na Agradesimento - Thank You Very Much!**

Sincerely yours,

  
CALVIN E. HOLLOWAY, SR.  
Attorney General

cc: Legal Counsel  
Office of the Governor

Dianne Corbett, First Assistant  
Solicitors Division



Commonwealth Now!







## Notice of Public Hearing

23rd Guam Legislature

Senator

**Mark C. Charfauros**

Chairman, Committee on Judiciary, Criminal Justice and  
Environmental Affairs

**9:30 a.m.**

**CONFIRMATION HEARING**

**THE APPOINTMENT OF MR. ALBERT W.C. WONG TO  
THE POSITION OF ACTING MEMBER, GUAM  
ENVIRONMENTAL PROTECTION AGENCY BOARD  
OF DIRECTOR, FOR A TWO-YEAR TERM TO EXPIRE  
MARCH 26, 1998.**

**10:00 a.m.**

**OVERSIGHT HEARING**

**General Operations of the Guam Police  
Department**

**1:30 p.m.**

**PUBLIC HEARING**

**Bill No. 526 - AN ACT TO AMEND §47143, §47149 AND  
§47150, AND REPEAL AND REENACT §47144, ALL OF  
THE GOVERNMENT CODE, RELATIVE TO THE  
CUSTOMS, AGRICULTURE, AND QUARANTINE  
INSPECTION SERVICES CHARGE.**

**Bill No. 484 - AN ACT TO EXTEND THE EFFECTIVE DATE  
FOR THE IMPLEMENTATION OF THE COLLECTION OF  
THE CUSTOMS, AGRICULTURE, AND QUARANTINE  
INSPECTION SERVICES CHARGE, IN ORDER TO ACCOM-  
MODATE REQUIREMENTS OF THE FEDERAL AVIATION  
ADMINISTRATION.**

**Date: Monday, March 18, 1996**

**Place: Public Hearing Room,  
Guam Legislature Temporary Bldg., Agana, Guam**

**The Public is invited to participate**

FEB 21 1996

**TWENTY-THIRD GUAM LEGISLATURE  
1996 (SECOND) REGULAR SESSION**

Bill No. 526 (LS)

Introduced by:

M.C. Charfauros  
A.L.G. Santos  
T.S. Nelson

**AN ACT TO AMEND §47143, §47149 AND §47150, AND REPEAL AND REENACT §47144, ALL OF THE GOVERNMENT CODE, RELATIVE TO THE CUSTOMS, AGRICULTURE, AND QUARANTINE INSPECTION SERVICES CHARGE.**

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

2 **Section 1. Legislative Findings.** The Legislature finds that the Customs, Agriculture, and  
3 Quarantine Inspection Services Charge has encountered difficulties in the implementation process  
4 since its enactment in Public Law 23-45. The Legislature finds that amendments are necessary to  
5 clarify both the intent of this Charge and the initial implementation of such a Charge. The  
6 Legislature further finds that there is a need to clarify the regulation and management of the  
7 expenditure of Funds collected pursuant to this Service Charge.

8 **Section 2. §47143 of the Government Code is hereby amended to read as follows:**

9 “**§47143. Customs, Agriculture, and Quarantine Inspection Services Charge**  
10 **Established.** Each aircraft landing at the Guam International Air terminal (GIAT) shall be levied  
11 a Customs, Agriculture, and Quarantine Inspection Services Charge [~~per passenger and unit of cargo~~  
12 ~~utilizing the Customs, Agriculture, and Quarantine Inspection services provided by the Customs and~~  
13 ~~Quarantine Agency or the Department of Agriculture~~]. Each consignment of cargo and/or passenger  
14 landing at the Port Authority of Guam shall also be levied a Customs, Agriculture, and Quarantine  
15 Inspection Services Charge. Such charges shall be reasonably related to the costs incurred by the  
16 Customs and Quarantine Agency in performing its inspection related services and shall be allocated  
17 among air carriers and water carriers in a manner reasonably related to the relative demand for such  
18 services attributable to each carrier.”

19 **Section 3. §47144 of the Government Code is repealed and reenacted to read as**  
20 **follows:**

1           “§47144. **Initial Service Charges.** Until the first Rules and Regulations required by §47149  
2 have been promulgated, the Guam Airport Authority and the Port Authority of Guam are authorized  
3 to collect on an interim basis service charges from air carriers and vessels reasonably calculated to  
4 recover the costs incurred by the Customs and Quarantine Agency in performing its inspection  
5 related duties.”

6           **Section 4. §47149 of the Government Code is hereby amended to read as follows:**

7           “§47149. **Rules and Regulations for Customs, Agriculture, and Quarantine Inspection**  
8 **Services Charge.** The Director of Customs and Quarantine Agency, subject to the Administrative  
9 Adjudication Act, shall promulgate and adopt rules and regulations to implement the provisions of  
10 Section 47143 through 47151 of this Chapter, including provisions establishing the procedure for  
11 collection of the service charge, and for periodic review of the costs of providing the services, the  
12 level of the charges levied, and the amount of reimbursement payable to the Guam Airport  
13 Authority, Customs and Quarantine Agency, the Department of Agriculture and/or their agents  
14 reflecting the administrative cost of collecting and remitting the charges. The Rules and Regulations  
15 shall also provide for such exemptions from the service charge as may be required by applicable law,  
16 other regulations, or as may be prescribed by the Director of the Customs and Quarantine Agency.  
17 In addition, to the extent the interim charge authorized by §47144 is determined to have either  
18 overcollected or undercollected the revenue required during the interim period, the final regulations  
19 should adjust the service charges accordingly.”

20           **Section 5. §47150 of the Government Code is hereby amended to read as follows:**

21           “§47150. **Customs and Agriculture Inspections Services Fund.** There is hereby created,  
22 separate and apart from other funds of the government of Guam, a fund to be known as the  
23 ‘Customs, Agriculture, and Quarantine Inspection Services Fund’ (hereinafter “the Fund”). The  
24 Fund shall not be commingled with the General Fund and shall be kept in a separate bank account.  
25 All expenditures of the Fund shall be made exclusively by appropriation of the Guam Legislature.  
26 Notwithstanding any other provision of law, any funds appropriated to the Department of  
27 Agriculture pursuant to this Chapter shall be administered by the Director of Agriculture. The  
28 Director of Agriculture shall be the Certifying Officer of such funds. The Fund shall not be used as

1 a pledge of security or as collateral for government loans. The Director of Administration shall  
2 make a quarterly report to the Governor and the Legislature of the condition of, and activity within,  
3 the Fund. He shall make a quarterly report to the Chairman of the Legislature's committee which  
4 oversees the Customs, Agriculture, and Quarantine Inspections Services Fund (the "Fund") of the  
5 condition of, and activity within, the Fund. The Director of Administration shall further make an  
6 annual report which shall be made available to the general public.”