

"BROOKS AMENDMENT"

Prepared by: Bureau of
Planning

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THE BROOKS AMENDMENT

This year, the U.S. Congress passed and the President approved the Military Construction Authorization Act of 1981 which, in part, authorized the conveyance of 927 acres of land in and around Cabras Island to the Government of Guam. Included in the Act were four conditions (The Brooks Amendment) which were proposed by Representative Jack Brooks (D-Texas) who is the Chairman of the Committee on Governmental Operations.¹ The following are highlights of the conditions:

1. If GovGuam sells or leases any of the conveyed property, it must be equal to or above fair market value and the proceeds must be remitted to the federal treasury (Section 818(b)2).
2. The United States shall reserve easements within the conveyed property while GovGuam must bear the cost for relocating federal easements or facilities (Section 818(b)3).
3. All existing third party leases with the Federal Government in the conveyed lands shall continue to be honored after the date of conveyance to their conclusion. The proceeds of these existing leases shall be remitted to GovGuam (Section 818(b)4).
4. All future leases, easements, etc. by GovGuam with third parties shall be subject to the above conditions (Section 818(b)5).

A review of the Congressional Record² clarifies the intent of the Brooks Amendment. As stated, the Amendment was proposed "to achieve the twin goals of permitting economic development in this harbor area. . . . while at the same time protecting the interests of the U.S. Government and the U.S. taxpayer." More specifically,

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The oversight committee of the General Services Administration which is empowered by the Federal Property and Administrative Services Act of 1949 to dispose of excess and surplus federal lands.

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the amendment "permits the Government of Guam to convey the property to third parties, but in a manner that will avoid windfall profits accruing either to Guam or the third party purchasers at the expense of the U.S. taxpayer." In reality, the amendment falls extremely short of promoting economic development, as well as protecting the U.S. taxpayer. In fact, it not only hinders economic growth, but also increases the burden of U.S. taxpayers.

The Brooks Amendment and the Congressional Record raises three questions:

1. Will windfall profits be derived from the sale or lease of conveyed lands?
2. Who should retain these profits?
3. Will Congress' action set a precedent for disposal of lands?

The amendment attempts to prevent windfall profits accruing to the Government of Guam from the sale or lease of conveyed lands. This seemingly innocent provision fails to recognize Government of Guam's intent in obtaining these lands. We hope to attract industrial and port related development by subsidizing investors cost through the provision of inexpensive public land. Our past record will show that the 32 acres of land on Cabras Island deeded to the Government of Guam by the Navy in 1966 for use as an industrial park has never been sold but are being subleased by seven private firms at an average annual cost of \$3,700 per acre, while the Federal Government has estimated the land within this area is valued at \$33,400 per acre.³ As in the past, our intended use of the 927 acres is not to reap immense profits in the short run through sale or leases, but rather to create incentive for investment in order to stimulate long term economic growth.

The ability to offer inexpensive land at the Commercial Port area is central to our economic development efforts. Guam's limited supply of labor and capital already places us at a distinct disadvantage in the economic sphere within which we must compete

for investment. However, we can offer an ideal geographic location, with good access to all of Asia, and a fine natural port with the real potential to become a major facility in the Pacific.

It was the recognition of this potential by the Navy, the Federal Government, and the Government of Guam that induced all of us to begin a process which took nearly ten years to complete--that of obtaining additional land at the port, to be leased at an attractive price, in order to capitalize on one of Guam's few economic advantages that must be utilized if we are to develop the stable and productive economy that is so badly needed by our people. The Brooks Amendment effectively neutralizes this advantage.

Moreover, the amendment calls for the remittance of proceeds to the federal treasury from the sale or lease of conveyed lands. Presently, revenues generated from the leases are channeled back to the Guam Economic Development Authority (GEDA) to finance its activities. These activities include the issuance of Qualifying Certificates for tax abatement and the administration and issuance of low interest loans through the Guam Economic Development Loan Fund (GEDLF).

A Qualifying Certificate provides for real property tax and gross receipts tax abatements up to a maximum term of ten years, corporate income tax rebates of up to 75% for 20 years, and income tax rebates on dividends of up to 75% for five years. For Fiscal Year 1979 and the first three months of Fiscal Year 1980, the firms which were given Qualifying Certificates employed 1,200 persons. They also contributed \$12.3 Million in gross payroll, \$1.4 Million in withholding taxes, and \$700,000 in Social Security taxes. To date, almost \$4.5 Million has been loaned through the GEDLF to finance business development. By remitting all revenues generated from the use of the 927 acres to the Federal Government, the Government of Guam will be forced to seek additional funding for its economic operations and activities elsewhere.

To date, numerous business firms have indicated an interest in developing the port area. Proposals include tuna transshipment facilities, cold storage warehouses, ship repair facilities, canneries, aquaculture, and berthing facilities. The amount of revenues and jobs generated by these activities and their multiplier effects would accelerate Guam's move to greater self-sufficiency.

The amendment also requires Government of Guam to bear the cost of relocating federal facilities and easements. We are concerned that our development plans for the Port will not be realized if the cost proves to be beyond our ability to pay.

I would now like to address the concerns of a few individuals regarding the precedent-setting nature of Congress' action. The Federal Property and Administrative Services Act of 1949 provides for the disposal of federal lands. However, although Guam is subject to the provisions of the Act, the Act does not recognize the uniqueness of the Territory. The insular nature of Guam and its small size (212 square miles) increases the value of land. Alternate sites for development in proximity to necessary infrastructure and amenities are not available. Moreover, the Act currently provides no recognition that on Guam and other territories as well, one of the principal factors in stimulating economic growth is the local government. The relative smallness of the island's population does not currently provide the market for intensive local industry while the existence of numerous federal constraints and regulations hinders our potential for export and transshipment. The Act does not provide for the disposal of federal lands at a discount for many economic purposes in the same fashion as lands for park and recreation purposes which the Act does allow.

In summary, it is apparent that, while I applaud the actions of the Congress and the Executive Branch for authorizing the disposal of lands in the harbor, I must strongly object to the imposition of conditions that are inhibiting and will continue to depress Guam's potential for self-sufficiency. If the U.S. Government is truly committed to a policy of self-sufficiency,⁴ then it appears logical that, if any conditions are applied, then these conditions should necessarily serve to increase Guam's economic potential rather than hinder it. The Brooks Amendment significantly hinders our economic progress.

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"Federal Territorial Policy" Message of President Carter on February 14, 1980 to Congress.

(b) In consideration for the acquisition under subsection (a), the City shall convey to the United States all right, title, and interest of the City in and to a certain tract of land of approximately seven acres owned by the City. If the fair market value of the land conveyed by the City under this subsection is less than the fair market value of the land conveyed by the United States under subsection (a), the City shall pay to the United States the amount of the difference between such fair market values. Any amount received under the preceding sentence shall be covered into the Treasury as miscellaneous receipts.

(c) The conveyances under subsections (a) and (b) shall not be made until a new Army Reserve Center has been constructed on the land to be conveyed to the United States under subsection (b) and the existing Army Reserve Center referred to in subsection (a) has been vacated. Before such conveyances are made, the City shall make available to the Secretary without charge the lands to be conveyed under subsection (b) for the purpose of allowing the construction of the new Army Reserve Center.

(d) The exact acreages and legal descriptions of any property acquired or conveyed under this section shall be determined by surveys which are satisfactory to the Secretary.

(e) The Secretary is authorized to accept and administer any real property conveyed to the United States under this section.

Fair market value.

New Army Reserve Center.

LAND CONVEYANCE, GUAM, MARIANAS ISLANDS

Sec. 818. (a)(1) Subject to subsections (b) and (c) the Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to convey, without monetary consideration, to the Government of Guam all right, title, and interest of the United States in and to the lands (or any part of the lands) described in paragraph (2), together with the improvements thereon.

(2) The lands referred to in paragraph (1) consist of approximately 927 acres of land located on Cabra Island and within the northern portion of the Apra Harbor Naval Complex, Guam, Marianas Islands, as shown and more particularly described on a map entitled "Apra Harbor Complex, Guam, Marianas Islands, Conveyance of 927 Acres of Land to the Government of Guam", on file at the Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii.

(b)(1) Conveyance of the property described in subsection (a) shall be made at such times, and shall be subject to such terms and conditions, as the Secretary considers to be in the interest of national defense.

(2) Conveyance of the property described in subsection (a) shall be subject to the condition that any disposal by sale or lease of any part or all of the property by the Government of Guam shall only be for a monetary consideration equal to or in excess of the fair market value (at the time of the disposal) of the property concerned, or of the leasehold interest therein, as determined by the Administrator of General Services, and any such monetary consideration received by the Government of Guam, minus any reasonable development costs incurred by such Government in preparing the property concerned for disposal, shall be paid to the United States.

(3) The United States shall reserve easements for all existing utilities and navigation aids in the conveyed parcels as exist on the date of conveyance of the property whether or not such utilities and facilities are specifically mentioned in the conveyance documents for the property. The Government of Guam, for as long as it owns the conveyed lands, shall agree to issue easements not interfering with

Easements, reserve.

their facilities and operations to the United States at no cost for the future facility installations including, but not limited to, construction, installation, reconstruction, operation, maintenance, and removal of water, oil, gas, fuel, and other pipelines, drainage and sewage systems, power and telephone transmission lines, water incident thereto, in, on, under, and over the conveyed lands together with all necessary rights and privileges for the full enjoyment of the foregoing, including, without limitation, the right of ingress and egress. The Government of Guam shall agree that for as long as it owns the conveyed lands, it will bear all costs of relocation of existing and future utility lines and other facilities owned by the United States in the conveyed lands requisite to construction on the conveyed lands by the Government of Guam and authorized other parties.

Utility lines and other U.S. owned facility lines, relocation costs.

(4) All leases, licenses, easements, and other property interests affecting the conveyed lands at the time of conveyance issued by the United States shall be honored by the Government of Guam until their final expiration dates. All rents due to be collected under such contracts shall be remitted to the United States for all periods prior to the date the property is conveyed, after which date the rents will be the property of the Government of Guam.

(5) All leases, licenses, easements, conveyances of land, and other real estate interests granted by the Government of Guam after conveyance, shall be subject to the terms, conditions, covenants, and reservations stated in this subsection and shall recite the same in the contractual documents.

(c) The exact acreages and legal descriptions of all lands to be conveyed under this section shall be determined by surveys which are satisfactory to the Secretary. The cost of such surveys, together with all other direct and indirect costs related to any conveyance under this section, shall be borne by the Government of Guam.

Approved October 10, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-1009 (Comm. on Armed Services) and No. 96-1399 (Comm. on Armed Services).
SENATE REPORTS: No. 96-919 (Comm. on Armed Services) and No. 96-919 (Comm. on Armed Services).
CONGRESSIONAL RECORD, Vol. 126 (1980):
Sept. 12, considered and passed House.
Sept. 13, considered and passed Senate, amended, in lieu of S. 3059.
Sept. 30, Senate agreed to conference report.
Oct. 1, House agreed to conference report.