

Testimony Against Bill 256

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This bill reminds me in so many ways about everything bad that has recently happened to Guam taxpayers as a result of backroom deals that led to the GRRP, Guam YTK, and Layon Tax Credit law suits against the people of Guam.

I have nothing against an egg farm. I think it is a good idea, just as some people thought a fish processing plant was a good idea back in 2000, and some people thought waste to energy was a good idea back in 1986. But we are not here today to talk about good ideas.

We are here today to talk about good stewardship of public assets for the benefit of existing and future generations.

Bill 256 is no different than the bills that led to the creation of the GRRP, Guam YTK, and Layon Tax Credit court cases that have cost taxpayers millions of dollars so far; and have the potential to cost taxpayers millions more.

Bill 256 is not a good example of responsible stewardship of public assets.

After reviewing documents under a FOIA request, I have come to believe there are a number of problems with the way original KU SAN lease was kept artificially alive on life support, that are made worse for the taxpayers by some of the provisions in Bill 256.

Problem #1: This bill starts out codifying the fiction the original KU SAN lease was a fifty (50) year lease. It was not. It was a ten (10) year lease with four (4) ten year extensions contingent upon satisfactory performance executing the terms and conditions of the 1991 ground lease. It was a lease that required written approval for each extension by the Director of Agriculture with the total lease not to exceed fifty (50) years.

The lease also required certification in writing by the Director of Agriculture at the three year point in the first ten year increment that farm was “viable” and “producing” food products according to the lease agreement. I have not found any such signed certification as required in the any of the files I reviewed under my FOIA request.

We only have to look no further than the GRRP and Guam YTK leases to see the risk to public assets and taxpayer funds perpetuating the fiction that the original KU SAN lease was a fifty year lease, and overlooking the missing certifications and requirements.

GRRP is a company that took over a dead development agreement that was resurrected by GEDA. The agreement was dead because the original company defaulted on the terms and

conditions of the lease and never completed the requirements for even the first two extension of their Development Lease and GEDA cancelled the agreement.

Here we are 32 years later still fighting GRRP in court based on actions of the GEDA Board of Directors and Governor Calvo by signing a settlement agreement with GRRP in July of 2015. Now taxpayers are once again in court battling over a defective agreement in an effort to avoid awarding \$20 million taxpayer dollars to the owners of GRRP.

Guam YTK is another company that defaulted on a government issued lease which has been resurrected purely for the purpose of plundering the public purse. The original lease was dead for non-payment and failure to perform. That lease was for a five (5) years, pending legislative approval for permission to activate eight (8) five year extensions not to exceed not to exceed forty (45) years.

We see how badly handled the Guam YTK dead lease is playing out in the courts as taxpayers are in court battling to avoid paying \$20 million dollars, because Governor Calvo refused to intervene on behalf of taxpayers to prevent his cousin's raid on Port Authority of Guam Bank accounts thru the flawed and dead Guam YTK contract.

The Layon tax credit award is another situation where politically well connected supporters (which in this case included members of the Governor's family) were able to use the court system to receive \$23 Million dollars of tax credits without opposition or challenge by the Calvo/Tenorio administration.

With the artificial resurrection of the KU SAN CORPORATION lease we have another situation where once again politically well connected supporters take over another dead government lease for their own personal gain. How many millions of dollars will this sweetheart deal that is the resurrected KU SAN CORPORATON lease agreement going to end up costing taxpayers?

If we use the Guam YTK, GRRP, and Layon Tax Credit cases as benchmarks; the eventual cost to taxpayers could reach close to ONE HUNDRED MILLION DOLLARS.

Problem #2: The original KU SAN lease was died in 1995 for failure to make lease rent payments as required under Section 2 (b) of the lease. The lease was terminated before Lessee completed the requirements necessary to be granted the next TEN YEAR EXTENSION to the lease.

GEDA foreclosed on the lease before the Department of Agriculture extended the lease in writing after certifying all the terms and conditions and reporting requirements were successfully completed.

Problem #3: When loan payments stopped and GEDA foreclosed on the property, the land by law legally reverted back to CLTC as a result of the by the failure of GEDA to make the lease payments after assuming the lease to keep the terms and conditions alive and in force.

In order for the original KU SAN lease to be able to continue with all the original terms and conditions intact; GEDA should have made lease payments of \$150,000 a year under Section 3 of the lease to the Department of Agriculture, or at a minimum required Manhita Farms to make good the back lease payments plus interest to CLTC.

A FOIA search of GEDA and CLTC records showed that GEDA never made any of the required lease payments to keep the original terms and conditions of the lease alive. Nor was any attempt made by GEDA to require Manhita Farms LLC to make the necessary overdue lease payments and late payment fees to keep the existing original KU SAN lease terms and conditions legally alive and enforceable. GEDA has a legal lien on the property, nothing more.

Problem #4: The original KU SAN lease was also legally dead because of failure by GEDA to comply with all the terms and conditions of the lease by allowing the land to be unproductive for a period of time in violation of the terms that the land be used the land for agriculture purposes, and not allowed to sit idle. Instead GEDA allowed the land to sit idle for twenty years.

Problem #5: The original KU SAN lease was also legally dead because of GEDA's lack of compliance with terms and conditions of the lease were waived without authority.

Under Public Law 15-18, the Director of Agriculture had the authority to allow the transfer of ownership of the ground lease for the purposes of financing property improvements, but the law did not give the director authority to waive lease payments or compliance with the terms and conditions of the lease.

Problem #6: The fiction this bill is necessary for financing the egg farm. Manhita Farms LLC knew going into this agreement that there was by law a FIFTY YEAR maximum term on any leases or extensions on the property.

Based on a review of FOIA documents, Manhita Farms has been successful securing loans to develop the property under the existing remaining lease term. That proves the lack of an extension on the fictional lease has not been a barrier for Manhita Farms LLC to get loans for this project.

Problem #7: This bill is a bad deal for taxpayers and the CLTC which will not see a penny of income for use of the property for the next 100 years. Based on the amount of rent paid by Manhita Farms LLC so far for the past two years, which according to CLTC and GEDA records is ZERO Dollars. Continuation of the original lease and extensions to 100 years as

proposed in Bill 256 will result in no money being paid on 50 acres of CLTC property for improvements to other CLTC properties for the next 100 years.

This is a public asset, and the goal for commercial leases on CLTC land is to generate money from rents is to be used to pay for surveys and infrastructure development of other CLTC properties. So why should the 34th legislature consider giving a sweetheart deal to a company that provides no benefit to taxpayers or the CLTC?

Problem #8: Section 2 of Bill 256 extends the lease term to 100 years, and does not require any oversight before approval for each ten year extensions.

We saw happened in the Guam YTK and GRRP leases when the government did not include provisions for evaluation requirements to be met to prior to granting approval of the next leases extension. We see how that lack of extension approval requirements is now playing out in the Guam YTK and GRRP court cases.

Should this bill go forward, it must be in a new lease with well defined terms and conditions that reflect current property values, and provides a mechanism to determine rental increases for each ten year extension to be approved.

Problem #9: This Bill fails to value this property at maximum use potential. This is a blatant rip-off of taxpayers because the property in question is 50 acres of prime developable land less than a mile from the Andersen AFB main Gate and the Northwest Field Main Gate; the future site of the new Marine Base on Guam.

For comparison purposes, I know of a 23 acre property less than two miles from the Navy Base Main Gate that appraised at \$8.5 Million Dollars. Using this example as a basis calculating the lease rent owed to CLTC, Manhita Farms LLC would be paying an annual rent of \$22,174 per acre (minus annual improvements to property) instead of the \$2,995 per acre (minus annual improvements to property) as proposed in this bill.

As of today, CLTC is out of more than a million dollars in lease rents on the property. Lease rents the Director of the Department of Agriculture had no authority to waive. Lease rents; that had they been collected, would have paid for surveys and infrastructure improvements to other CLTC properties for the benefit of eligible residents of Guam. Perpetuating the lease payment schedule under the original lease without collecting the back payments plus interest owed under the original lease is a rip-off of taxpayers, the CLTC, and the people was the CLTC created to serve.

If Manhita Farms wants to continue using the property; a new ground lease needs to be offered and accepted based on a current property appraisal, and a realistic lease rent charged for a

publically owned asset, with money to be used for development of infrastructure on CLTC properties,

A new lease that has as part of the extension approval mechanism a requirement for property re-appraisal to determine any rent adjustments incorporated prior to each extension approval.

The lease rent in Bill 256 does not reflect the value of the CLTC asset being leased, if it is to be approved at the current rate, there must be a provision to collect back rent plus interest or a new lease must be issued to reflect current property values.

Problem # 10: The original KU SAN lease allows for subdivision and rental of property without adjustment to the lease rent payable to CLTC. Under Bill 256, the lessee could build warehouses or office buildings and rent them to companies doing business with Andersen AFB and the Marine Camp, and CLTC and taxpayers would receive no benefits.

Problem #11: Manhita Farms LLC was granted a Qualifying certificate so the company will pay only 25% of the corporate taxes on income earned on this property and 0% of property taxes for this property.

So not only does Manhita Farms get unfettered use 50 acres of prime CLTC land less than a mile from two of the biggest economic engines (The New Marine Base at Northwest Field & Andersen AFB) on the island with no lease payments for 100 years; they don't have to pay taxes on the property or any of the improvements for 10 years. Nor do they have to pay taxes on 75% of their net income. This gives Manhita Farms an unfair competitive advantage against other firms hoping to make investments in the area to do business with the growing military presence in northern Guam.

This bill does not encourage other property owners to make investments that will improve economy or improve the corporate tax base, or increase the property tax base. In fact it does the opposite. How can any competitor hope to make money competing against a developer that has free land, no property taxes, and only has to pay income taxes on its 25% of net profits?

Problem #12: Failure to maximize return on assets. First GEDA sits on the property for twenty years without paying rent. Then offers the property in what can only be characterized as a sweetheart deal to politically well connected supporters.

Offering Manhita Farms LLC rent free land for 100 years/no property tax for 10 years, and minimal corporate taxes for 25 years; without legislative oversight and without public hearings definitely was not in the best interests of the taxpayers of Guam or the CLTC.

Problem #13: This deal is a very bad deal for taxpayers and the CLTC because “Conflicts of Interest” taint the purchase of the original KU SAN lease, and modification thereto under the provisions of Bill 256.

- A. The conflicts begin with a dead lease that was resurrected thru legal fiction.
- B. The dead lease was then secretly acquired when ownership of the original KU SAN lease was transferred without an appropriate and well documented public hearing by GEDA, whose chairman is relative of one of the partners of Manhita Farms.
- C. Both the GEDA Board Chairman (appointed by the Governor) and one of the two Manhita Farm partners are both close relatives of Governor Calvo.
- D. The lease was purchased from GEDA for pennies on the dollar, just like Guam YTK was purchased by another relative of the Governor; who used his relationship with the Governor to resurrect a dead lease with the government.
- E. The new owners of Guam YTK which includes the chairman of GEDA, have used the legal fiction of an enforceable deal between the Port Authority of Guam and Guam YTK to pluck the public purse.
- F. The similarities are frightening for taxpayers. Guam YTK has not made the required lease rents or late payment fees and has not built a fish processing plant as required by the lease. The legislature never approved Guam YTK lease extensions beyond the fifth year. Even so, Guam YTK has used that dead agreement to stick both hands into the public purse in an attempt to extract nearly \$20 million dollars from taxpayers with no resistance from Adelup.
- G. I see no differences in the quality and enforceability of the legal paperwork that underlies GEDA/Manhita Farms deal than I did in the GEDA/GRRP paperwork that GRRP uses as the basis for its claim that taxpayers of Guam owe \$20 million dollars to its owners. I see no differences in the quality and enforceability of the legal paperwork that underlies GEDA/Manhita Farms deal than I did in the quality and enforceability of the paperwork that underlies the Port Authority of Guam/Guam YTK paperwork that Guam YTK uses to support its claim in court that the and taxpayers own the owners of Guam YTK nearly \$20 million dollars.
- H. The taxpayers of Guam are being locked into a 100 year - once sided contract - by law that only benefits politically well connected supporters and taxpayers receive little or no benefits. It begins with GEDA entering into a sweetheart deal with no public oversight
 - a. by resurrecting a dead lease;

- b. and loaning taxpayer funds to an organization to a company being granted a “government sanctioned” competitive edge by granting exclusive use of 50 acres of government property ideally located to benefit from the expansion of the military footprint at Andersen AFB and Northwest Field.
- c. Allowing use of the property rent free for 100 years.
- d. Allowing subdivision of the property with no adjustments in rental income.
- e. Then issuing a Qualifying Certificates so the company can avoid property paying property taxes on land and improvements for ten (10) years.
- f. Also under the QC, the company will be allowed to pay only 25% of the required corporate income tax amounts due on net profits for the next 25 years.

Summary: Everything about this deal screams insider backroom deal at the expense of taxpayers. Just like Bill 433-32 introduced in 2014 attempting to codify the GRRP contract for the benefit of well connected political supporters, Bill 256 attempts to codify the hijacking of a valuable public asset for the benefit of well connected political supporters,



This bill is best summed up by Champ Calvo who in a newspaper interview described the Guam YTK taxpayer rip-off candidly admitting the deal — signed by Gov. Carl Gutierrez, Lt. Gov. Madeleine Bordallo and the attorney general at the time — was a “bad deal for the government. However, as the investor, the provisions of the deal are favorable.” Champ Calvo said.

I agree with Champ Calvo's assessment of Guam YTK Lease. I submit the same analysis applies equally well to Bill 256.

Do you really want to have your names listed as one of the senators who voted in support of the next chapter of the fleecing of Guam taxpayers along with the Guam YTK, GRRP, and Layon Tax Credit taxpayer rip-offs?

Bill 256 is a perfect example of the type of backroom politics and sweetheart deals that keep the level of trust low. The blind trust the public once had in our elected and appointed officials has been thoroughly broken by deals like this one. Recent past examples of backroom political deals like GRRP, Guam YTK, and the Layon Tax Credits are deals the public will use as a measuring stick to gauge the actions of the members of the 34th legislature's on this bill.

Bill 256 must die, and in its place a new bill must be introduced, if the egg farm project is to continue moving forward on CLTC property. It must be a new lease that cures all the flaws that exist in the current illegal deal between GEDA and Manhita Farm LLC.

It should begin with a property appraisal based on "best use" of the public asset involved and set the base rent based on 6% of current land values.

The new lease should be for TEN YEARS with four 10 year extensions. With each extension, the approval in writing will include updating rents based on appraisals. The new lease, with approved extensions, shall not exceed FIFTY YEARS total.

The new lease shall spell out in detail the minimal acceptable level food production and investments required for approval of the next extension.

The new lease must require that any subdivision of the property shall require approval of the CLTC to ensure land use and revenue additional revenue generation are consistent with CLTC goals for rental of CLTC properties.

In the new lease, any subdivision shall require an appropriate adjustment in the lease rent based on an appraisal of market value of the property with the additional improvements granted through approved subdivision.

The public will be watching your actions on this Bill. We the people, will no longer stand idly by while those in power allow politically well connected supporters to harvest the people's assets through GRRP, Guam YTK and Layon Tax Credit type of backroom deals for their own personal enrichment.