



U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

**LEGISLATURE CAPITAL
IMPROVEMENT FUND,
GUAM LEGISLATURE,
GOVERNMENT OF GUAM**

**REPORT NO. 98-I-264
FEBRUARY 1998**



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

MEMORANDUM

FEB 20 1998

TO: The Secretary

FROM: Robert J. Williams *Robert J. Williams*
Acting Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Legislature Capital Improvement Fund, Guam Legislature, Government of Guam" (No. 98-I-264)

Attached for your information is a copy of the subject final audit report. The objective of the audit was to determine whether the Legislature Capital Improvement Fund (1) was used for its intended purpose and in an effective and efficient manner and (2) was properly accounted for and controlled in accordance with applicable laws and regulations.

We concluded that the Fund was not used effectively and efficiently and that in at least one instance, a contracted engineer may have been paid for services that were not included in the contract. In addition, the Legislature did not know the status of the capital improvement funding and did not collect interest on unexpended funds. These conditions occurred because the Legislature (1) did not adequately plan for zoning restrictions before contracting with the architect, (2) did not establish adequate procedures to review contractor invoices before payment, (3) commingled the capital project appropriations and expenditures within the Legislature Operations Fund, and (4) did not establish an interest-bearing account as required by the appropriation law. As a result, the Legislature used more than \$5.7 million of Capital Improvement Fund appropriations for work that will not be used, may have paid \$894,110 for engineering services that were not contracted for, improperly used \$15,000 for legislative operating expenses, and lost interest income of at least \$19,250. In addition, the Legislature was unaware that the Executive Branch had transferred \$3.25 million from Fund appropriations for typhoon-related emergency expenses.

Although Legislature officials, during the exit conference, expressed general agreement with our seven recommendations to address these deficiencies, the Legislature did not submit a written response to our draft audit report. Therefore, the seven recommendations are unresolved.

If you have any questions concerning this audit report, please contact me at (202) 208-5745.

Attachment



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

FEB 20 1998

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
155 Hesler Drive
Agana, Guam 96910

Subject: Audit Report on the Legislature Capital Improvement Fund, Guam Legislature,
Government of Guam (No. 98-I-264)

Dear Speaker Unpingco:

This report presents the results of our review of the Legislature Capital Improvement Fund, which was requested by the Speaker of the 23rd Guam Legislature. The objective of the review was to determine whether the Capital Improvement Fund (1) was used for its intended purpose and in an effective and efficient manner and (2) was properly accounted for and controlled in accordance with applicable laws and regulations.

We found that the Capital Improvement Fund was not used effectively and efficiently and that in at least one instance, a contracted engineer may have been paid for services that were not included in the contract. In addition, the Legislature did not know the status of the capital improvement funding and did not collect interest on unexpended funds. These conditions occurred because the Legislature (1) did not adequately plan for zoning restrictions before contracting with the architect; (2) did not establish adequate procedures to review contractor invoices before payment; (3) commingled the capital project appropriations and expenditures within the Legislature Operations Fund; and (4) did not establish an interest-bearing account as required by the appropriation law. As a result, the Legislature used more than \$5.7 million of Capital Improvement Fund appropriations for work that will not be used, may have paid \$894,110 for engineering services that were not contracted for, improperly used \$15,000 for legislative operating expenses, and lost interest income of at least \$19,250. In addition, the Legislature was unaware that the Executive Branch had transferred \$3.25 million from Capital Improvement Fund appropriations for typhoon-related emergency expenses.

To correct these conditions, we recommended that the Speaker of the 24th Guam Legislature (1) identify a feasible concept for a new legislative complex, taking into consideration available funding and applicable building and zoning laws; (2) develop and implement procedures to ensure that invoices submitted by contractors are adequately reviewed prior to payment for allowability under the contract; (3) instruct the Legislative Legal Counsel to evaluate the project engineer's contract in relation to the apparent overpayments and take appropriate action; (4) account for monies appropriated to the Legislature Capital Improvement Fund in accordance with generally accepted accounting principles and prepare

annual financial statements; (5) establish an interest-bearing account and deposit the remaining Capital Improvement Fund monies into the account; (6) request that the Governor submit to the Legislature an expenditure report showing how the \$3.25 million emergency transfer was used; and (7) instruct the Legal Counsel to determine whether the General Fund should reimburse the Capital Improvement Fund for the \$3.25 million transferred by the Executive Branch.

On September 2, 1997, we discussed the preliminary draft of the report with officials of the Guam Legislature, who expressed general concurrence with the findings and recommendations.

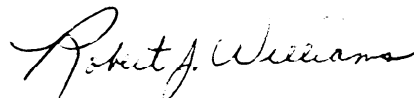
On December 11, 1997, we transmitted a draft of this report to you, as Speaker of the Guam Legislature, requesting your comments by January 30, 1998. However, a response to the draft report has not been provided. Therefore, since this report is being issued without the benefit of your response, all of the recommendations are considered unresolved (see Appendix 3).

The Inspector General Act, Public Law 95-452, Section 5(a)(3), as amended, requires semiannual reporting to the U.S. Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

In view of the above, please provide a response, as required by Public Law 97-357, to this report by March 27, 1998. The response should be addressed to our North Pacific Region, 238 Archbishop F.C. Flores Street, Suite 807, Pacific News Building, Agana, Guam 96910. The response should provide the information requested in Appendix 3.

We appreciate your assistance and the assistance of the Chairman of the Committee on Rules and his staff during the conduct of our audit.

Sincerely,

A handwritten signature in cursive script, reading "Robert J. Williams".

Robert J. Williams
Acting Inspector General

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INTRODUCTION

BACKGROUND

The Guam Legislature was established by Section 10 of the Organic Act of Guam (Title 48, Section 1421, of the United States Code Annotated). The Legislature comprises 21 Senators elected at-large every 2 years. The operations of the Legislature, including administrative rules and procedures, are set forth in the Standing Rules, which are adopted at the beginning of each legislative term. The Legislature's Committee on Rules is responsible for the overall operations of the Legislature, including establishing an annual budget; maintaining, through a Chief Fiscal Officer, an accounting system; and preparing annual financial statements. Under the Rules Committee, an Executive Director administers, through the Central Offices, personnel, payroll, procurement, property control, accounting,¹ legal, protocol, and archival functions. The Legislature has its own annual budget, with funds allotted by the Bureau of Budget and Management Research through the Department of Administration of the Executive Branch.

From 1947 to 1989, the Legislature conducted sessions, committee hearings, and administrative operations at the Legislature building located in the city of Agaña. However, the Legislature building, which was erected in 1947, was in need of renovation. On February 14, 1985, Guam Public Law 18-01 created the Legislature Capital Improvement Fund. Section 3 of Public Law 18-01, in part, states, "All money appropriated for capital improvements and additions for the Legislature building and for the provision of offices while such capital improvements and additions are being made shall be paid directly to the fund and disbursed by the Legislature." During calendar year 1985, the Legislature appropriated \$1.2 million to the Capital Improvement Fund (of which an unencumbered balance of \$536,276 was reappropriated by the Legislature in calendar year 1986), and during calendar years 1985 and 1986, the Legislature charged expenditures totaling \$663,724² against the Capital Improvement Fund. However, actual work did not begin on replacing the existing building until 1989, when the 20th Legislature established a Building Subcommittee under the Rules Committee.

During calendar years 1989 and 1990, the Legislature (1) appropriated \$25.25 million³ to the Fund (reduced by \$15 million in calendar year 1993); (2) contracted with an engineering consultant, at a contract price of \$2.9 million, to provide basic engineering

¹The accounting for day-to-day operating expenses of the Legislature is handled through the Legislature Operations Fund, which was established by Title 2, Section 1121, of the Guam Code Annotated.

²Although \$663,724 was charged against the accounts established for renovation and office relocation during 1985 and 1986, we could not determine, because of the condition of the records, how the funds were actually expended.

³Fund appropriations, expenditures, and other uses are summarized in Appendix 2.

and construction management services during the period of July 1, 1989 to December 31, 1996; and (3) contracted with an architect, at a contract price of \$1.6 million, to provide architectural and interior design services for a new building during an unspecified period beginning on August 31, 1990. Although the Legislature's contracted engineer had recommended that the existing Legislature building be demolished and that a new building be constructed in its place, the Building Subcommittee decided to completely renovate the existing building because of its historical significance, construct a new session hall, and construct a new office building for the administrative staff and the Senators' offices. All three of the structures would make up the overall legislative complex. During renovation/construction of the facilities, the Legislature needed a temporary site to conduct its normal business. Accordingly, a building was leased and remodeled to house the Legislature's administrative offices and session hall. The first legislative session at the temporary location was held on April 23, 1990, and all subsequent sessions through April 30, 1997, were held in this leased building. As of May 2, 1997, construction of the legislative complex had not been completed because of unresolved issues pertaining to parking spaces and the office building height.

OBJECTIVE AND SCOPE

The objective of our review was to determine whether the Capital Improvement Fund (1) was used for its intended purpose and in an effective and efficient manner and (2) was properly accounted for and controlled in accordance with applicable laws and regulations. To accomplish our objective, we reviewed the Legislature's financial and administrative records and reports at the Department of Administration and the Bureau of Budget and Management Research, as well as available documents and reports related to the Fund at the Legislature. We also interviewed former Legislature officials and contractor personnel concerning the use of and control over the Fund.

The audit was made, as applicable, in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. Our review covered the period of January 1985 through December 1996, a 12-year period that included six legislative terms. However, project accounting and administrative records were not available for October through December 1995.

As part of the audit, we evaluated the accounting and management controls over appropriations, allotments, fund transfers, expenditures, contracts, and financial management reporting. We found major internal control weaknesses in all of these areas. The internal control weaknesses are discussed in the Findings and Recommendations section of this report. Our recommendations, if implemented, should improve the internal controls in these areas.

PRIOR AUDIT COVERAGE

During the past 5 years, the General Accounting Office has not issued any audit reports pertaining to the Legislature Capital Improvement Fund. However, in March 1997, the Office of Inspector General issued the audit report “Guam Legislature, Government of Guam” (No. 97-I-591), which dealt with expenditures of the Legislature Operations Fund. Since the Legislature commingled appropriations and expenditures of the Capital Improvement Fund and the Operations Funds, the findings in that report were also applicable to this review. The prior audit report concluded that the Legislature (1) incurred costs for nongovernmental activities and incorrectly charged Senators’ operating expenditures against the Senators’ office renovation accounts; (2) did not prepare required annual financial statements; (3) did not obtain competitive proposals when procuring equipment; and (4) did not account for all of its property. Although the Legislature concurred with the findings, we found during our current review that corrective actions had not been taken on these deficiencies.

FINDINGS AND RECOMMENDATIONS

A. USE OF FUNDS

The Legislature Capital Improvement Fund was not used effectively and efficiently. Specifically, the Fund paid for engineering and architectural services to develop designs that will not be used and for engineering services that were not identified in the official contract requirements. These conditions occurred because the Legislature did not adequately address parking space and building height requirements contained in Title 21, Sections 61401 and 61531, of the Guam Code Annotated before it contracted with the architect to design a new legislative complex and did not have adequate procedures for reviewing contractor invoices before it made payments to the contractor. As a result, the Legislature incurred costs of \$5.8 million, which consisted of \$2.6 million for unused project management and architectural services, \$1.2 million for partial renovations to the existing Legislature building, and \$2 million for rental of an alternate site for the Legislature. The Legislature also made overpayments of \$894,110 for basic engineering and construction management services for the complex.

Legislative Complex

During the planning stage for construction of the new legislative complex, the Legislature did not resolve two critical zoning issues prior to allowing the project engineer and the design architect to proceed with the design of the project. Specifically, the Legislature did not provide the minimum number of parking spaces required or obtain a building height variance to exceed the height restriction imposed by the zoning law. Title 21, Section 61531, of the Guam Code Annotated provides the minimum number of off-street parking spaces required for new business and government office buildings based on square footage and the number of building occupants (based on the criteria in the law, this equates to a requirement for a minimum of 375 parking spaces for the building to be constructed), and Title 21, Section 61401, of the Code provides a building height limitation (at the site where the legislative complex was to be constructed) of six stories, not to exceed 75 feet.

Both the parking and height restrictions were identified in July 1989 in the project engineer's feasibility study, which, after considering the Senators' and the administrative offices' space requirements, stated that a minimum of 375 parking spaces would be needed (which could not be accommodated at the planned location) and that the desired 100,984 square feet of office space at the existing site would require a building of more than six stories. According to the project engineer, the Building Subcommittee recognized the requirement for additional parking and the height limitation but believed that it could pass legislation which would exempt the Legislature's complex from these two requirements. However, the Governor vetoed the two bills the Legislature passed to change the zoning law. The first bill (No. 470 (COR)) was passed on August 30, 1991, and the second bill (No. 631 (LS)) was passed on January 10, 1992. In his January 27, 1992, transmittal letter to the Speaker for the second veto, the Governor cited the overall parking problem

in Agana and the need to address this issue rather than waiving the requirements for the Legislature. Regarding the height restriction, the Governor suggested in the letter that the Legislature apply, as other builders were required to do, for a variance from the Territorial Land Use Commission. After the second veto, the Legislature considered options such as satellite parking, the transfer of the current design to another location, and even the development of another design. However, none of these options were finalized, and work on the project was stopped in February 1992.

At the time of the Governor's second veto in January 1992, the architects, who had been hired in August 1990, had finished their design work for the legislative complex, which included a lo-story office building and a legislative session hall, and submitted their plans and specifications to the Department of Public Works for review. By January 1992, the architects had been paid \$1.94 million of the total of \$1.99 million under the contract.⁴

During our audit, we discussed, with the Chairman, Committee on Rules, 24th Guam Legislature, the prospects of using the design work completed by the project architect. The Chairman stated that the Legislature "would never use the plans." Therefore, the Legislature incurred at least \$2.6 million in architectural (\$1,992,781) and engineering (\$614,843)⁵ services before it ensured that the required changes to the zoning laws would be made.

As of January 27, 1992, work on renovating the existing Legislature building, which was not dependent on any zoning variances, had also stopped. At that time, about \$1.2 million had been spent for engineering and architectural design work (\$435,559) and for demolition, testing, and asbestos removal (\$733,837). On August 31, 1993, the project was left without funding when the Legislature reappropriated \$15 million from the Legislature Capital Improvement Fund to earthquake recovery efforts after the island sustained a major earthquake on August 8, 1993. As of September 1997, the Legislature had not appropriated any additional funds to continue this project. In addition, since the overall project was halted,⁶ the Legislature had to spend \$1,976,875 to continue renting the building used to temporarily house the Legislature's Central Offices and session hall from January 1992 through December 1996.

⁴As of December 31, 1996, the Legislature had paid the architects a total of \$1,992,781 for professional services. On March 22, 1996, the architects submitted two additional bills, totaling \$983,570, which were disputed by the Legislature. As of October 14, 1997, this issue had not been resolved.

⁵As of December 31, 1996, the Legislature had paid the project engineer a total of \$1,944,512 for professional services. Of that amount, \$66,045 was for construction management and \$258,003 was for architectural fees for the renovation of the old Legislature building, \$111,511 was for reimbursable expenses, and \$894,110 was for additional services that we questioned. The remaining \$614,843 was for engineering services related to the new legislative complex.

⁶At the time of the Governor's second veto (January 27, 1992), four options had been developed to address the parking and height restrictions. However, none of the options were finalized.

Payments to Project Engineer

The Guam Legislature paid its consulting project engineer \$1,944,512 for contractual services for the legislative complex from July 1, 1989, through December 31, 1996. However, we determined that \$894,110 was paid for services in excess of contract provisions or for work that was not included in the contract. This occurred because the Legislature did not have procedures to adequately review contractor invoices for allowability in accordance with the scope of work in the contract.

The Legislature's Standing Rules state that the Executive Director is the disbursing officer and the Chief Fiscal Officer is the certifying officer for the Legislature. Specifically, Title 4, Section 14104(2), of the Guam Code Annotated states that the disbursing officer "shall make such examination of vouchers as may be necessary to ascertain whether they are in proper form, duly certified and approved, and correctly computed on the basis of the facts certified,"⁷ and Title 4, Section 14105(a)(1), of the Guam Code Annotated states that the certifying officer "shall be held responsible for the existence and correctness of the facts recited on the certificate or otherwise stated on the voucher or its supporting papers and for the legality of the proposed payments under the appropriation or fund involved." Accordingly, both the Executive Director and the Chief Fiscal Officer are responsible for ensuring that the Legislature's funds are disbursed only for expenditures that are legal liabilities of the Legislature. However, during the period of June 1990 through July 1996, the Legislature approved and processed invoices submitted by the consulting engineer without verifying that the amounts and services billed related to the terms and conditions of the contract between the engineer and the Legislature.

Based on our review of contract payments as they pertained to the contract specifications, we identified \$894,110 for construction management (\$695,340) and basic contract services (\$198,770) that were not covered by the contract. For example, Article 10, Section 10.04b, of the contract between the Legislature and the consulting engineer states that compensation for the engineer during the construction phase of the project would be at a rate of 9 percent of the total construction cost. During the period of July 1, 1991, through March 31, 1993, the Legislature made 17 payments, totaling \$415,231,⁸ to the consulting engineer for construction management services on the restoration work for the existing Legislature building. However, based on our analysis of the project records, we determined that renovation work totaling \$733,837 had been performed as of March 31, 1993, which equated to earned construction management fees of \$66,045,⁹ thus resulting in an overbilling of \$349,186. We also found that the consulting engineer billed \$346,154 for construction management on the new legislative complex, although construction on the

⁷A voucher is an internal control document used to record the verification of accounting information and approvals needed to process an invoice for payment.

⁸The Legislature was able to provide invoices supporting only 13 of the 17 payments made to the engineer.

⁹The \$66,045 is 9 percent of the \$733,837 for actual renovation work.

complex was never started, and \$198,770 for basic services, which was in excess of the amounts provided under the original contract and a subsequent contract amendment.

We asked the consulting engineer about the billings, and he stated that, although the renovation project was never completed, the billings were for additional work that was requested by the Building Subcommittee but was not covered by the contract. The engineer also stated that the Subcommittee told him that the additional work would be compensated for through the 9 percent construction management fee for the renovation project. The engineer did not document this instruction through an amendment to the contract, a memorandum of understanding, or a notation on the invoices. Moreover, we did not find any documentation within the Legislature's project records, such as minutes of Subcommittee meetings, indicating that this additional work had been directed.

We asked the former Executive Director and the Chief Fiscal Officer why they approved payments for work that did not appear to be covered under the consulting engineer's contract or approved through supplemental records. The former Executive Director stated that he "did not understand the contract" and "trusted" the Chief Fiscal Officer to check the accuracy and propriety of the billings. However, the former Chief Fiscal Officer stated that she was only "certifying that funds were available" and relied on the Executive Director to determine the applicability and correctness of the billings for payment. During our review of the \$1.94 million of payments made to the consulting engineer, we did not find any records to indicate that the engineer's billings were analyzed as they pertained to the contract specifications. Specifically, the contract payment file contained a copy of each billing statement signed by the former Executive Director and the former Chief Fiscal Officer and a working paper showing the individual contract payments made against the total amount obligated for the contract. The individual billings did not indicate that the amounts billed were reviewed for mathematical accuracy or applicability under the contract. Accordingly, we believe that the contract overpayments occurred because of the lack of effective procedures for reviewing and approving contractors' invoices before payment.

Recommendations

We recommend that the Speaker of the Guam Legislature:

1. **Conduct a study to identify a feasible concept for a new legislative complex or for finishing the renovation of the original Legislature building, taking into consideration available funding and zoning law requirements.**
2. **Develop and implement procedures to ensure that invoices submitted by contractors are adequately reviewed prior to payment to determine that the services billed for were performed and that the amounts billed were in accordance with contract terms and conditions.**

3. Instruct the Legislative Legal Counsel to evaluate the project engineer's contract as it pertains to the apparent overpayments identified in this report and, if appropriate, recover any overpayments made to the project engineer.

Guam Legislature Response and Office of Inspector General Reply

The Guam Legislature did not provide a response to the draft report. Therefore, all of the recommendations are considered unresolved (see Appendix 3).

B. CONTROL OVER FUNDS

The Guam Legislature did not adequately control the Legislature's capital improvement funding and did not collect interest on unexpended funds. These conditions occurred because the Legislature (1) did not account for the Capital Improvement Fund separately from the Operations Fund and did not record all transactions related to the Fund, as required by Guam Public Law 18-01, and (2) did not establish an interest-bearing account, as required by Guam Public Law 20-41. As a result, the Legislature had no assurance that expenditures of \$7 million, including \$15,000 specifically used for Legislature operations, were for the intended purposes of the Capital Improvement Fund, and it lost at least \$19,250 in interest income. Also, the Legislature was unaware that the Executive Branch had transferred \$3.25 million from the Capital Improvement Fund for use in the recovery from Typhoon Omar.

Legislature Capital Improvement Fund

Guam Public Law 18-01, Section 3, states:

There is hereby created a special fund to be known as the "Legislature Capital Improvement Fund," such fund to be administered by the Legislature. All money appropriated for capital improvements and additions for the Legislature building and for the provision of offices while such capital improvements and additions are being made shall be paid directly to the fund and disbursed by the Legislature.

However, contrary to the requirement to establish a separate fund, the Legislature commingled Capital Improvement Fund appropriations of \$26.5 million and expenditures of \$7 million¹⁰ in one account within the Legislature's Operations Fund. As stated in our March 1997 audit report on expenditures of the Guam Legislature,¹¹ no financial statements were issued for the Operations Fund from 1986 through 1995, and the accounting system was not in compliance with generally accepted accounting principles. Because of the commingling of funds and the lack of financial statements, the Legislature did not have adequate control of either the Operations Fund or the amounts appropriated for the Capital Improvement Fund.

The Legislature's former Chief Fiscal Officer for the period of 1989 through 1994 stated that she was "uncertain" why a separate fund had not been established to account for the

¹⁰As shown in Appendix 2, \$26,450,000 was appropriated to the Legislature Capital Improvement Fund, but \$15,536,276 was subsequently reappropriated, \$3,250,000 was transferred out of the Fund by the Executive Branch, and \$15,000 was expended for noncapital improvement purposes, leaving a net expendable appropriation of \$7,648,724. Of that amount, \$7,019,452 was expended for the Legislature building project, leaving an available balance of \$629,272.

¹¹"Guam Legislature, Government of Guam" (Report No. 97-I-591), issued in March 1997.

Legislature Capital Improvement appropriations and expenditures. However, the loss of control that resulted from the commingling of appropriations and expenditures is illustrated as follows:

- In July 1989, the former Executive Director authorized the transfer of \$15,000 from the Legislature building appropriation/expenditure account to an account established for a Special Ethics Committee. Based on our review of available records, we concluded that the Special Ethics Committee had no legislative responsibility for or involvement with the Legislature building project. If the Legislature had established a separate fund to account for the Capital Improvement Fund appropriations, as provided by law, the \$15,000 transfer could have been properly accounted for as a loan, which would have resulted in a receivable in the Capital Improvement Fund with a corresponding payable in the Legislature Operations Fund.

- In a May 17, 1996, letter to the Director of the Bureau of Budget and Management Research, the Chairman of the Committee on Rules of the 23rd Guam Legislature requested information to determine the “true and correct” status of all appropriations, allotments, and fund transfers applicable to the Capital Improvement Fund and the Operations Fund for the prior 5 years. Based on the reconciliation that was subsequently performed between the Legislature, the Bureau of Budget and Management Research, and the Department of Administration, the Legislature found that its accounting records had not recorded Capital Improvement Fund monies totaling \$3.75 million that had been transferred to the Legislature from the Department of Administration. The \$3.75 million error would have been detected and corrected in September or October 1992 as part of the year-end financial statement preparation process had the Legislature separately maintained a Capital Improvement Fund and an Operations Fund and issued the required annual financial statements for both funds.

Interest-Bearing Account

Guam Public Law 20-41, Chapter III, Section 3 (enacted on September 13, 1989), appropriated \$6 million for the Legislature Capital Improvement Fund and stated:

The said amount [\$6 million] shall be placed in an interest-bearing account or time certificate of deposit by the Committee on Rules in a bank or savings and loan association on Guam which will pay the highest rate of interest. . . . All interest shall accrue to the Legislature Capital Improvement Fund and shall be used for the construction of a new legislative building.

However, contrary to this requirement, the interest-bearing account was not established. The Legislature’s former Chief Fiscal Officer told us that an interest-bearing account was not established because the Department of Administration “was slow” in transferring funds for the new legislative complex to the Legislature. As a result, expenditures were paid from funds in the Operations Fund, and when funds specifically appropriated for capital

improvements were transferred to the Legislature, they were used to reimburse the Operations Fund appropriations.

Based on our analysis of fund transfers and expenditures for the Legislature building, we determined that there was a negative cash flow between fund transfers for the Capital Improvement Fund and expenditures from the Fund for 69 out of 88 months between September 1989, when Public Law 20-41 was enacted, through December 1996. However, we determined that, during the periods of January through September 1990 and March through December 1996, there was a positive cash flow between fund transfers and expenditures that could have earned interest of \$2,973 and \$16,277 for the respective time periods, for a total of \$19,250.¹²

We also found that by delaying requests for the transfer of Capital Improvement Fund allotments,¹³ the Legislature may have contributed to the resultant negative cash flow. Specifically, funds appropriated to the Legislature were allotted by the Bureau of Budget and Management Research and then transferred to the Legislature by the Department of Administration after the funds were requested by the Legislature. Actual fund transfers were also contingent on sufficient government funds being available. We determined that requests for the funds transfers did not coincide with the appropriations. For example, the \$6 million appropriated under Public Law 20-41 (enacted in September 1989) was transferred to the Legislature over a 7-year period (fiscal years 1990 to 1996), with \$2.57 million transferred during fiscal years 1995 and 1996, more than 3 years after the Governor's second veto of legislation that exempted the Legislature from zoning requirements, which effectively stopped the construction project. In reviewing the transfer documents for the \$2.57 million at the Department of Administration, we did not find any indication that these funds had been requested by the Legislature before January 1995. If these funds had been requested, received, and deposited before the end of 1994 into an account earning interest at a rate of 3 percent per year, compounded monthly, the Legislature could have increased the interest earned by an additional \$27,819, for a total of \$47,069.

Transfer of Funds

Title 5, Section 22402, of the Guam Code Annotated ("Emergency Expenses") authorizes the Governor of Guam to

¹²The potential interest income of \$19,250 was computed based on the Capital Improvement funds being deposited into a savings account at a Guam bank earning 3 percent per year compounded monthly.

¹³An "appropriation" is a legal authorization by a legislative body (the Guam Legislature) to spend money within specified restrictions, such as amount, time period, or purpose. An "allotment" is an administrative release by a budget control agency (the Guam Bureau of Budget and Management Research) of a portion of funds that were previously appropriated. Allotments are usually made on a quarterly basis and are used to control the amount and timing of obligations and expenditures during a fiscal year.

utilize any part or portion, not to exceed Two Hundred Fifty Thousand Dollars [\$250,000] of outstanding appropriations within the General Fund for expenses caused by civil defense, public safety or health emergencies. Whenever this authorization is used by the Governor, he shall report the expenditure thereunder to the Legislature within five days.

As a result of damage caused by Typhoon Omar, on August 28, 1992, the Governor used this provision of the law to transfer a total of \$3.25 million of appropriations for the Capital Improvement Fund through the issuance of 13 Executive Orders on August 29, 1992. Each Executive Order authorized the transfer of \$250,000 to various agencies and departments of the Government of Guam for debris cleanup, typhoon damage repair, or emergency services to the public. This amount was in addition to the \$15 million transferred from the Capital Improvement Fund appropriations by the Legislature for earthquake recovery efforts.

The Acting Chief Fiscal Officer of the 23rd Guam Legislature told us that the \$3.25 million transfer was not recorded in the Legislature's accounting records and that she only became aware of the transfer in 1995 (more than 2 years after the transfer took place) when her staff was trying to determine how much money the Legislature had and was informed by the Department of Administration of the transfer. The Controller, Department of Administration, told us that he did not think that the required expenditure report on how the \$3.25 million was spent had been prepared and submitted to the Legislature. We believe that the combined effect of commingling the Capital Improvement Fund appropriations, allotments, and expenditures with the Operations Fund and the lack of annual financial statements for the two funds contributed to a general loss of control over the Capital Improvement Fund appropriations, which allowed the emergency transfer to occur without the Legislature's knowledge.

The Governor's 13 Executive Orders were issued on August 29, 1992. However, we were unable to determine whether the use of multiple Executive Orders to transfer the \$3.25 million from appropriations of the Capital Improvement Fund was appropriate; that is, whether the Governor had the authority to transfer more than \$250,000 at any one time. On September 3, 1992, Guam Public Law 21435 was enacted to authorize the Governor to use up to \$10 million of appropriations available in fiscal years 1992 and 1993 for disaster relief from Typhoon Omar. The Public Law further stated that if any of the funds expended from the appropriation were subsequently reimbursed by the Federal Government, the reimbursement was to be deposited to the General Fund and be available for appropriation. According to the Controller of the Department of Administration, the Government of Guam received approximately \$9.1 million from the Federal Emergency Management Agency (FEMA) for damage caused by Typhoon Omar. Therefore, we believe that the Legislature should address whether the \$3.25 million should be repaid to the Capital Improvement Fund because of the FEMA reimbursement and/or the lack of Executive transfer authority.

Recommendations

We recommend that the Speaker of the Guam Legislature:

1. Account for monies appropriated to the Legislature Capital Improvement Fund and Operations Fund in accordance with generally accepted accounting principles and prepare annual financial statements for the funds as of December 31, 1996.
2. Establish an interest-bearing account and deposit all available Legislature Capital Improvement Fund monies into the account.
3. Request that the Governor submit to the Legislature an expenditure report showing how the \$3.25 million emergency transfer was used.
4. Instruct the Legislative Legal Counsel to determine whether the General Fund should reimburse the Legislature Capital Improvement Fund for all or part of the \$3.25 million transferred by the Executive Branch.

Guam Legislature Response and Office of Inspector General Reply

The Guam Legislature did not provide a response to the draft report. Therefore, all of the recommendations are considered unresolved (see Appendix 3).

CLASSIFICATION OF MONETARY AMOUNTS

<u>Finding Areas</u>	<u>Funds To Be Put To Better Use*</u>	<u>Lost Revenues*</u>
A. Use of Funds		
Legislative Complex	\$5,753,895	
Payments to Project Engineer	894,110	
B. Control Over Funds		
Legislature Capital Improvement Fund	15,000	
Interest-Bearing Account		\$19,250
Transfer of Funds	<u>3,250,000</u>	<u> </u>
Total	<u>\$9,913,005</u>	<u>\$19,250</u>

*Amounts represent local funds.

APPENDIX 2

**APPROPRIATIONS, EXPENDITURES, AND OTHER USES OF THE
LEGISLATURE CAPITAL IMPROVEMENT FUND
FROM JANUARY 1, 1985, THROUGH DECEMBER 31, 1996**

Col. 1 Calendar Year	Col. 2 Beginning Balance	Col. 3 Appropriations To Fund	Col. 4 Appropriations From Fund	Col. 5 Total Funds Available (Cols. 2 + 3 - 4)	Col. 6 Expenditures	Col. 7 Other Uses *	Col. 8 Total Expenditures & Other Uses (Cols. 6 + 7)	Col. 9 Ending Balance (Cols. 5 - 8)
1985	0	\$1,200,000	0	\$1,200,000	\$273,457	0	\$273,457	\$926,543
1986	\$926,543	0	(\$536,276)	390,267	390,267	0	390,267	0
1987	0	0	0	0	0	0	0	0
1988	0	0	0	0	0	0	0	0
1989	0	6,050,000	0	6,050,000	269,476	\$15,000	284,476	5765,524
1990	5,765,524	19,200,000	0	24,965,524	1,319,872	0	1,319,872	23,645,652
1991	23645,652	0	0	23645,652	3,598,913	0	3,598,913	20,046,739
1992	20,046,739	0	0	20,046,739	687,626	3,250,000	3,937,626	16,109,113
1993	16,109,113	0	(15,000,000)	1,109,113	353,355	0	353,355	755,758
1994	755,758	0	0	755,758	43,813	0	43,813	711,945
1995	711,945	0	0	711,945	5,806	0	5,806	706,139
1996	706,139	0	0	706,139	76,867	0	76,867	629,272
TOTAL		<u>\$26,450,000</u>	<u>(\$15,536,276)</u>		<u>\$7,019,452</u>	<u>\$3,265,000</u>	<u>\$10,284,452</u>	

* The \$15,000 was used to fund an Ethics Committee, and the \$3.25 million was an emergency transfer of funds to assist in the recovery after Typhoon Omar.

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/Recommendation Reference	status	Action Required
A. 1-A.3 and B. 1-B.4	Unresolved.	Provide a response to each recommendation indicating concurrence or nonconcurrence. If concurrence is indicated, provide an action plan that identifies the target date and the title of the office responsible for implementation. If nonconcurrence is indicated, provide specific reasons for the nonconcurrence.

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