

EIGHTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

PUBLIC LAW NO. 8-23

FIRST REGULAR SESSION, 1992

H. B. NO. 8-14. H.D.3, S.D.1, C.C.D.1

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AN ACT

To impose a tax on new development in the Commonwealth to help pay for infrastructure; to amend 4 CMC, Section 1402 by adding a new Subsection j; to amend 2 CMC, Section 7131(a) (Building Safety Code); to amend 2 CMC, Division 7 (Building Safety Code) by adding a new Section 7134; to amend 4 CMC, Section 8123(m) (Commonwealth Utilities Corporation Act); and for other purposes.

BE IT ENACTED BY THE NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1           Section 1.   Short Title. This Act may be cited as the “Developer Infrastructure  
2 Tax Act of 1993.”

3           Section 2.   Findings and Purpose. The Legislature finds that:

4                   (a)   Existing public infrastructure in the Commonwealth is insufficient to  
5 serve the level of development in the Commonwealth;

6                   (b)   Existing tax resources and other sources of public funds are insufficient  
to finance the infrastructure needed to serve proposed and expected private  
8 development:

9                   (c)   Additional revenues are required to meet the infrastructure demands of  
10 new development;

11                  (d)   It is the purpose of this Act to raise new revenues to defray the costs of  
12 infrastructure.

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1       Section 3. Definitions.

2               (a)     “Building Safety Official” means the Chief of the Building Safety  
3       Division of the Department of Public Works or her or his designee.

4               (b)     “Director” means the Director of the Department of Finance.

5               (c)     “Developer” means any person engaging in the creation of a new  
6       development. For the purposes of this Act, “person” means:

7                     (1)     an individual, estate, firm, corporation, company, joint venture,  
8       association, partnership, trust, receiver, club syndicate, cooperative association  
9       or any other entity;

10                  (2)     A foreign government, the United States, the Trust Territory of  
11       the Pacific Islands or any agency or instrumentality of these entities;

12               (d)     “New development” means the performance of any building or mining  
13       operation in, on, over, or under land, or in, on, over or under submerged land, the  
14       making of any material change in the use of any structure or land, or the division of  
15       land into two or more parcels.

16                     (1)     Without limiting this definition, the following operations or uses  
17       constitute ‘new development’ for the purposes of this Act:

8                             (i)     a change in the type of use of a structure or land;

19                            (ii)    an alteration of the size of a structure;

20                            (iii)   a material increase in the intensity of use of a structure or  
21       land;

22                            (iv)   commencement of excavation on a parcel of land;

23                            (v)    re-establishment of a use which has been abandoned for  
24       one year or more; and

1 (vi) departure from the normal use for which development

2 permission has been granted by a Commonwealth government agency.

3 (2) For purposes of this Act ‘new development’ shall not include

4 any maintenance, alteration, or capital improvement of a public facility

5 developed or carried out by, or on behalf of, any department or agency of the

6 Commonwealth Government.

7 (e) A “multi-family residential structure or development” is one which is

8 designed to be used by three or more families.

9 (f) “Tax credits” means any payments made by developers toward the cost

10 of existing or future infrastructure improvements.

11 (g) “Total project cost” means the aggregate sum to the developer of

12 designing and building any new development covered by the Act. The total project

13 cost, at a minimum, shall consist of:

14 (1) All architectural, engineering, and other associated professional

15 services, including but not limited to environmental impact assessments,

16 hydrology studies, soil samples, that are necessary to design the project and

17 secure all Commonwealth and federal permits as required by law or regulation;

18 (2) The on-site cost of all construction materials used in constructing

19 structures, on-site roads and parking facilities, and on-site water, power,

20 sewer, and incineration systems, if any, as defined in the engineering drawings

21 and complete application for a building permit as submitted to the Building

22 Safety Official;

23 (3) The cost of all labor used in site preparation; project

24 construction; construction of on-site roads; on-site water, power, sewer, or

25 incineration facilities or systems; irrigation systems; lighting systems, parking

26 areas; grounds clearance or landscaping; and any other construction activities

1           undertaken from the time of issuance of a building permit by the Building  
2           Safety Official to the time of issuance of an occupancy permit by the Building  
3           Safety Official. For the purposes of this section, labor costs shall include  
4           construction management, administration, and supervision costs as well as  
5           costs of skilled and unskilled labor.

6           Section 4.   Applicability.

7           (a)       The provisions of this chapter shall apply to all new development, as  
8           defined in Section 3(d) of this Act, which has not received a building permit on the  
9           effective date of this Act. Provided, however, the provisions of this Act shall not apply  
10          to:

11                   (1)     Any new residential construction consisting of two or fewer  
12           dwelling units;

13                   (2)     Alterations or expansion of an existing single family dwelling  
14           unit or duplex where no additional units are created and the use is not changed;

15                   (3)     The construction of accessory buildings or structures which will  
16           not generate additional electrical, water, sewage, or solid waste disposal  
17           demands above those already associated with the existing use of the principal  
18           building or of the land.

19                   (4)     The replacement of a destroyed or partially destroyed multi-  
20           family dwelling or commercial building or structure with a new building or  
21           structure that will use no additional water, sewer, electrical, or solid waste  
22           capacity than the structure being replaced.

23                   (5)     Any change in the type of use of a structure or land which will  
24           not generate additional electrical, water, sewage, or solid waste disposal  
25           demands above those associated with the previous type of use.

1           Section 5.   Amendment. 4 CMC, Section 1402 is amended by adding a new  
2 Subsection (j) to read as follows:

3                       "(j) Solar energy materials and other energy efficient materials,  
                          1% ad valorem."

5           Section 6.   Developer Tax. There is hereby imposed upon a developer as  
6 defined by this Act a tax in the amount of two percent (2%) of the total project cost of new  
7 development as defined in this Act.

8           Section 7.   Statement of Total Construction Costs -Administrative Fee.

9                       (a)   Statement. Upon application for a building permit, a developer shall  
10 submit a statement of estimated total project cost, and evidence of tax credits pursuant  
11 to Section 16 of this Act, to the Building Safety Official who shall verify the accuracy  
12 of the statement. The format of the application shall be specified, by regulation, by the  
13 Director of Finance, in consultation with the Building Safety Official. A copy of the  
14 statement of total project cost and evidence of tax credits shall also be filed with the  
15 Director of Finance.

16                      (b)   Filing Fee. At the time of filing a statement of total project cost and  
17 evidence of tax credits, the developer shall pay to the Department of Finance a non-  
18 refundable administrative fee to be set by regulation.

19           Section 8.   Payment of Developer Tax.

20                      (a)   Estimated Payment. Any person to whom the developer tax under this  
21 chapter applies shall pay an estimated payment of the tax based upon the statement of  
22 total project cost as verified by the Building Safety Official. Such estimated payment  
23 must be paid to the Department of Finance and a receipt therefor presented to the  
24 Building Safety Official prior to the issuance of a building permit by the Building  
25 Safety Official. The Director may authorize by regulation a schedule of payments for

1 payment of the developer tax. Provided however, that the initial payment must be at  
2 least 50 percent of the total estimated developer tax due.

3 (b) If after the estimated developer tax has been paid and the developer  
4 makes a change order which changes the estimated total project cost, the developer shall  
5 submit a statement of the change order(s) to the Director of Finance and pay any  
6 resultant developer tax due at the conclusion of the project.

7 (c) Final Payment. Upon completion of the project, the developer shall  
8 submit a statement of the actual total project cost to the Department of Finance including  
9 any adjustments in total project cost resulting from change orders. The developer shall  
10 make available documentation to the Department of Finance sufficient to substantiate the  
11 total project cost. The developer shall be liable for the total amount of tax owed under  
12 this Act based on this final total project cost less any previous tax payments or credits  
13 which have been received by the Director of Finance and approved for credit against the  
14 developer's tax liability. The Director of Finance may require that the statement be  
15 audited by a Certified Public Accountant. If the Director finds that the estimated total  
16 project cost is less than 85 percent accurate with respect to the actual total project cost,  
17 including change orders, the developer shall pay the remainder tax due plus 10 percent  
18 penalty.

19 An occupancy permit shall not be issued by the Building Safety Division unless  
20 the developer has paid the remainder of the developer tax due.

21 (d) Overpayment of developer tax. Any overpayment of the developer tax  
22 shall be refunded to the developer within 90 days.

23 (e) Unfinished Development. If a developer purchases an unfinished  
24 development in which the previous owner had already paid the estimated developer tax  
25 due, the new owner shall not be required to pay the developer tax provided that he  
26 makes no changes on the original scope of the project.

Section 9. Enforcement.

(a) Administrative Review. Any appeal of the Director of Finance's decision pursuant to this Chapter shall be had in accordance with I CMC, Division 9, Chapter 1 (Administrative Procedure Act).

(b) Judicial Review. Within 20 days after the final decision of the Director is issued, a person aggrieved may appeal the decision to the Superior Court. The Superior Court shall provide an expedited and priority hearing for all cases seeking judicial review of the Director's decision.

(c) Tax Liens-Levy of Executive Authorized. All developer taxes imposed or authorized under this Act shall be a lien upon any property of the developer obligated to pay developer taxes and may be collected by levy upon such property in the manner to be prescribed by regulation by the Director of Finance.

(d) Civil Action of Enforcement. Any developer tax imposed or authorized under this Act may also be collected by a civil suit brought by the Attorney General either in the name of the Commonwealth or in the name of the Director of Finance. In such civil suit, a written statement by the Director or his designee as to the amount of tax due, the fact that it is unpaid, and who is authorized to collect it, shall be sufficient evidence of these matters unless it is expressly shown to the contrary.

(e) Penalties for Willful Violations.

(1) Willful failure to collect or pay over tax. Any government official or employee, required under this Act to collect, account for, and pay over any developer tax imposed or authorized by this Act, who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction, shall be fined not more than \$10,000, or imprisoned not more than two years or both,

1 together with the cost of prosecution. Evidence of personal use of any such  
2 developer tax so collected by the government official or employee charged with  
3 collection, either in his business or otherwise, shall constitute prima facie  
4 evidence for willful failure to truthfully account for and pay over such tax in  
5 violation of this Act.

6 (2) Any person as defined in this Act, or his agent, who willfully  
7 violates the provisions of this Act shall be guilty of a felony punishable by a  
8 fine of not more than \$10,000 or imprisonment of not more than two years, or  
9 both.

10 (3) In addition to the foregoing penalties, any person who  
11 knowingly shall swear to or verify under oath any false or fraudulent statement  
12 with intent to evade any developer tax imposed by this Act, shall be guilty of  
13 perjury and, upon conviction, shall be guilty of a felony, punishable by a fine  
14 of not more than \$10,000 or imprisonment for not more than two years, or  
15 both.

16 (f) Monthly Penalty Upon Taxes. In case of failure to pay any developer  
17 tax levied or imposed by this Act when due, there shall be added to the amount due, ten  
18 percent (10%) of the amount of such developer tax if the period of nonpayment is not  
19 more than one month, with an additional ten percent (10%) for each additional month or  
20 fraction thereof during which nonpayment continues, not exceeding 100 percent in the  
21 aggregate.

## 22 Section 10. Amendments.

23 (a) 2 CMC, Section 713 l(a) (Building Safety Code) is amended to read as  
24 follows:

25 “Section 713 1. (a) Building Permits. Except as exempted by  
26 this Code. before a person commences construction. enlargement, or



1 removal of any building or structure, or engages in new development as  
2 defined by law, such person shall first pay any applicable developer tax  
3 to the Director of Finance and obtain from the Building Safety Official a  
4 separate permit for each building or structure. Prior to the application  
5 for a building permit such person shall first obtain all other applicable  
6 permits required by law from the Division of Environmental Quality,  
7 Historic Preservation Office, Coastal Resources Management Office,  
8 U.S. Army Corps of Engineers, or other Federal or Commonwealth  
9 Government agency regulating the particular activity for which a  
10 building permit will also be required.”

11 (b) 2 CMC Division 7 is amended by adding a new Section 7 134 to read as  
12 follows:

13 “Section 7134. Restriction on Issuance of Occupancy Permit.  
14 The Building Safety Division shall not issue an occupancy permit to a  
15 developer as defined by the “Developer Infrastructure Tax Act” unless  
16 the developer has paid to the Department of Finance the total of the  
17 developer tax due.”

18 Section 11. Segregation of Funds.

19 (a) The Director of Finance shall establish and maintain an interest-bearing  
20 trust account for each senatorial district into which developer tax payments collected  
21 pursuant to this Act ~~shall~~ be deposited. Developer taxes shall be deposited into the trust  
22 account of the senatorial district where the new development shall be located.

23 (b) The Director shall keep a complete and adequate accounting for each  
24 trust account. showing the source and disbursement of all taxes collected pursuant to  
25 this Act. The Public Auditor shall annually audit these accounts in accordance with  
26 CMC, Division 2, Chapter 6.

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1        **Section 12. Use of Funds.**

2                (a)     All developer taxes collected pursuant to this Act shall be used  
3 exclusively for infrastructure improvements for the benefit of the senatorial district in  
4 which the development shall be located. For the purposes of this Act “infrastructure  
5 improvement” shall refer only to infrastructure improvements to the following public  
6 facilities:

7                                (i)     Electrical systems;

8                                (ii)    Water systems;

9                                (iii)   Sewerage systems;

10                               (iv)    Road, drainage and flood control

11                               systems; and

12                               (v)    Solid waste management systems.

13                Such infrastructure improvement is further limited to improvements treated as  
14 capitalized expenses according to generally accepted accounting principles, and does  
15 not include costs associated with the operation, administration, routine or periodic  
16 maintenance, or replacement of infrastructure improvements, but does include the costs  
17 of land, construction, engineering, planning, administration, and legal and financial  
18 consulting fees associated with the acquisition of the land or the acquisition or  
19 construction of the improvement.

20                (b)     The developer taxes collected in each account and the interest earned  
21 shall be spent solely for purposes specified in this section.

22                (c)     Administrative fees collected pursuant to this Chapter shall be used to  
23 defray the administrative costs of the developer tax to be incurred by the Building  
24 Safety Division and the Department of Finance. The Director of Finance may hire  
25 additional staff necessary to implement this Act pursuant to budgetary appropriations.

1       Section 13. Physical Development Plans. The Commonwealth Utilities  
2 Corporation shall prepare and present to the respective legislative delegations for adoption  
3 detailed physical development plans for the electrical, water, and sewerage systems for each  
4 senatorial district. Likewise, the Department of Public Works shall prepare and present to the  
5 respective legislative delegations for adoption detailed physical development plans for the road,  
6 drainage, flood control and solid waste management systems for each senatorial district. These  
7 physical development plans must be submitted to the respective legislative delegations within a  
8 year after the effective date of this Act. The legislative delegations shall use these plans as a  
9 basis for appropriating the dedicated funds in the trust funds established by the Director of  
10 Finance pursuant to Section 11.

11       Section 14. Appropriation Authority. The funds in the accounts established  
12 by the Director of Finance pursuant to this Chapter shall be appropriated by the respective  
13 legislative delegation in accordance with the procedures set forth in 1 CMC, Sections 1403 and  
14 1405.

15       Section 15. Repayment of Infrastructure Loans. Dedicated funds may be  
16 appropriated, and used as a pledge or collateral, to repay or to secure external financing  
17 arrangements for infrastructure loans from private or public lending institutions, or  
18 development authorities incurred after the effective date of this Act. Dedicated funds may also  
19 be used to satisfy federal matching requirements.

20       Section 16. Tax Credits - CUC Connection Fees - CRM Voluntary  
21 Contributions.

22               (a) CUC Fees. Connection fees, in excess of actual cost of connection to  
23 CUC utilities, charged to a developer, prior to the effective date of this Act, by the  
24 Commonwealth Utilities Corporation (CUC) and paid prior to or as a condition of the

1 receipt of a building permit shall be credited against the tax liability created under this  
2 Act. Credits under this subsection shall be applied to the appropriate trust account.

3 (b) CRM Voluntary Contributions. Contributions for infrastructure made  
4 by a developer, prior to the effective date of this Act, to the Coastal Resources  
5 Management Office shall be credited against the tax liability created under this Act.  
6 Credits under this subsection shall be applied to the appropriate trust account.

7 (c) Credits for other Infrastructure Payments. Developer payments toward  
8 infrastructure made, prior to the effective date of this Act, as a condition of receiving a  
9 permit from any agency of the Commonwealth Government or as a condition of  
10 receiving a public land lease, or legislative approval of such a lease, shall be credited  
11 against the tax liability created under this Act and shall apply to the appropriate trust  
12 account. In the event that the amount of available tax credit exceeds the tax liability  
13 created under this Act, the excess tax credit shall not constitute a right to refund or be  
14 used as a credit toward future development projects.

15 (d) Credits for dedicated capital improvements. The value of any capital  
16 improvement that the developer dedicates to the electrical, water, sewer, roads, or  
17 surface water drainage and flood control systems shall be credited against the tax  
18 liability created under this Act and shall apply to the appropriate trust account.  
19 Provided, such dedicated capital improvements are accepted after inspection by the  
20 authorized representative of the appropriate managing agency or department and the  
21 Director of Finance, and are not otherwise reimbursed by the Commonwealth  
22 Government. The value of the dedicated capital improvements shall be determined on  
23 the basis of an appraisal prepared by an appraiser chosen with the consent of the  
24 Director of Finance. In no event shall the value be deemed greater than the reasonable  
25 cost to the developer of the dedicated capital improvement. In the event that the amount  
26 of tax credit exceeds the tax liability created under this Act, the excess tax credit shall

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1 not constitute a right to refund or be used as a credit-toward future development  
2 projects.

3 Section 17. CUC Connection Fees. Nothing in this Act shall be construed to  
4 limit the authority of the Commonwealth Utilities Corporation to impose connection fees for  
5 power, water, sewer services nor to limit the amount of those connection fees; except, that no  
6 connection fee may be charged which is higher than the actual cost to the Commonwealth  
7 Utilities Corporation to connect the customer to CUC facilities.

8 Section 18. Amendment. 4 CMC Section 8123(m) (Commonwealth Utilities  
9 Corporation Act) is amended to read as follows:

10 “(m) To the extent the Corporation deems lawful and necessary, to  
11 review and establish utility rates and other fees for water, sewer, telephone,  
12 cable television, and electrical power. Except that no fees for water, sewer and  
13 electrical power shall be charged which is higher than the actual cost to the  
14 Corporation to connect customers to CUC facilities.”

15 Section 19. Coastal Resources Management Office Fees. Nothing in this  
16 Act shall be construed to limit the authority of the Coastal Resources Management Office to  
17 impose administrative fees; except that the Coastal Resources Management Office shall not  
18 require permit applicants to make contributions for infrastructure improvement.


19 Section 20. Rules and Regulations. The Director, in consultation with the  
20 Building Safety Official, shall promulgate reasonable rules and regulations within 120 days  
21 after the effective date of this Act to carry out the intent and purpose of this Act.

22 Section 21. Severability. If any section of this Act or any regulation issued under  
23 the authority of this Act should be declared invalid or unenforceable by a court of competent  
24 jurisdiction, the judicial determination shall not affect the Act or regulations as a whole, or any  
25 part thereof, other than the particular part declared invalid or unenforceable, ‘and to this extent  
26 the provisions of this Act are severable.

1 Section 22. Effective Date. This Act shall take effect upon its approval by the  
2 Governor or upon its becoming law without such approval.


CERTIFIED BY:

ATTESTED BY:

  
THOMAS P. VILLAGOMEZ  
Speaker of the House

  
EVELYN C. FLEMING  
House Clerk

APPROVED this 19<sup>th</sup> day of July, 1993

  
LOPE S. DELA CRUZ  
Governor  
Commonwealth of the Northern Mariana Islands