

I Mina'Trentai Dos Na Liheslaturan Received
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
289-32 (COR)	B.J.F. Cruz	AN ACT TO AMEND SUBSECTION 5121(E) OF PART C, ARTICLE 2, CHAPTER 5, TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO PERMITTING ALTERNATIVE DISPUTE RESOLUTION IN CONTRACTS APPROVED BY THE GOVERNMENT OF GUAM RETIREMENT FUND	03/07/14 4:18 p.m.	03/07/14	Committee on General Governmental Operations and Cultural Affairs	3/18/14 9:00a.m.	4/14/14 4:02 P.M.	Fiscal Note Request 3/10/14 Fiscal Note Received 3/19/14



April 14, 2014

The Honorable Judith T. Won Pat
Speaker
I Mina' Trentai Dos Na Liheslaturan Guahan
32nd Guam Legislature
155 Hesler Place
Hagåtña, Guam 96910

2014 APR 14 PM 4:02
MB

VIA: The Honorable Rory J. Respicio
Chairperson, Committee on Rules

RE: Committee Report on Bill No. 289-32 (COR)

Dear Speaker Won Pat:

Transmitted herewith is the Report of the Committee on General Government Operations and Cultural Affairs on Bill No. 289-32 (COR)-B.J.F. Cruz- An act to amend subsection 5121(E) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund.

Committee votes are as follows:

- 2 TO DO PASS
- _____ TO NOT PASS
- 4 TO REPORT OUT ONLY
- _____ TO ABSTAIN
- _____ TO PLACE IN INACTIVE FILE

Sincerely,

BENJAMIN J.F. CRUZ
Chairperson



April 3, 2014

MEMORANDUM

TO: All Members

FROM: Vice Speaker Benjamin J.F. Cruz
Committee on General Government Operations and Cultural Affairs

SUBJECT: Committee Report on Bill No. 289-32 (COR)

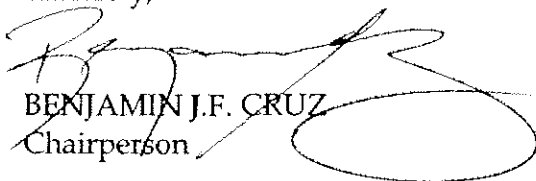
Transmitted herewith for your consideration is the Committee Report on Bill No. 289-32 (COR) - B.J.F. Cruz - An act to amend subsection 5121(E) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund.

This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Bill No. 289-32 (COR)
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony & Supporting Documents
- COR Referral of Bill No. 289-32 (COR)
- Fiscal Note Requirement
- Notices of Public Hearing
- Public Hearing Agenda
- Related News Reports

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


BENJAMIN J.F. CRUZ
Chairperson



COMMITTEE REPORT

Bill No. 289-32 (COR)

An act to amend subsection 5121(E) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund.



COMMITTEE VOTING SHEET

Bill No. 289-32 (COR) - B.J.F. Cruz - An act to amend subsection 5121(E) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund.

COMMITTEE MEMBERS	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
CRUZ, BENJAMIN J.F. Chairperson		✓				
MUÑA BARNES, TINA ROSE Vice-Chairperson		✓				
WON PAT, JUDITH T. Speaker and Ex-Officio Member						
ADA, THOMAS C. Member						
PANGELINAN, C. VICENTE Member						
RESPICIO, RORY J. Member						
RODRIGUEZ, DENNIS G. JR. Member						
SAN NICOLAS, MICHAEL, F.Q. Member	 4/14/14			✓		
AGUON, Jr., FRANK B. Member						
ADA, V. ANTHONY Member				4-14 ✓		
Morrison, Thomas Member				✓		
McCreadie, Brant Member						
YAMASHITA, ALINE Member				4/14/14		



COMMITTEE REPORT DIGEST

Bill No. 289-32 (COR), As Introduced: An act to amend subsection 5121(E) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund.

I. OVERVIEW

Bill No. 289-32 (COR) was introduced by Vice Speaker Benjamin J.F. Cruz on March 7, 2014, and subsequently referred to the Committee on General Government Operations and Cultural Affairs on the same day.

The Committee on General Government Operations and Cultural Affairs convened a public hearing on Tuesday, March 18, 2014, at 9:00AM in the Guam Legislature Public Hearing Room of *I Liheslatura*. The hearing for Bill No. 289-32 (COR) began at 9:04AM and ended at 9:23AM.

Public Notice Requirements

All legal requirements for public notices were met, with requests for publication sent to all media and all Senators on March 11, 2014, and March 14, 2014, via email. Copies of the hearing notices are appended to the report.

Committee Members and Senators Present

Senator Benjamin J.F. Cruz, *Chairperson*
Senator Vicente C. Pangelinan, *Member*
Senator Thomas C. Ada, *Member*
Senator Michael F.Q. San Nicolas, *Member*
Senator Dennis G. Rodriguez, Jr., *Member*
Senator Brant T. McCreadie, *Member*
Senator Thomas Morrison, *Member*
Senator Christopher M. Duenas

Appearing before the Committee

Paula M. Blas, *Director, Government of Guam Retirement Fund*
Joanne L. Grimes, *Legal Counsel, Government of Guam Retirement Fund*
Vince C. Camacho, *Legal Counsel, Government of Guam Retirement Fund*

Written Testimonies Submitted

Joe T. San Agustin, *Chairman, Government of Guam Retirement Fund*

II. TESTIMONY & DISCUSSION

Chairman Benjamin J.F. Cruz announced Bill No. 289-32 (COR). As the bill's sponsor, he stated that the bill was introduced at the request of the Government of Guam Retirement Fund (GGRF) to resolve its issues with its financial advisors. He acknowledged the presence of Ms. Paula M. Blas and Ms. Joanne L. Grimes.

Paula M. Blas, GGRF director, greeted Chairman Cruz and members of the Committee, introduced herself and read the first paragraph of the GGRF position statement (*appended to this report*) in support of Bill No. 289-32 (COR). She noted that GGRF legal counsels Ms. Joanne L. Grimes and Mr. Vince C. Camacho of Carlsmith Ball LLP are present to answer the Committee's questions.

Joanne L. Grimes, GGRF legal counsel, thanked Chairman Cruz and greeted the members of the Committee. She proceeded to distill and summarize the GGRF position statement:

"This bill pertains to the procurement statute but is very narrow in scope and impact. It pertains only to the retirement fund as the only agency, procurement professional providers, does not pertain to the fund's purchase of chairs, computers, etc. It is just very narrow. It pertains only to post contract controversies that may arise, so it does not involve the procurement process, the selection, and retention of professional service providers. It arises post contract. It deals with issues that cannot be resolved between the fund and contractors between mutual consent. I want to point out that there is no litigation history between the fund and its professional service providers. This is not intended to pertain to us specifically. What this bill will do is expand section (e). The Board of Trustees was given the exclusive authority to approve and disprove all contracts. However, Guam procurement law mandates that in all government contracts, they must contain certain clauses. Among those clauses is a legal and contractual remedies clause and it provides the process for resolving disputes if they cannot be resolved by mutual consent. There's no real authority for the parties to seek resolution. Where in contrast, 7 GUAM CODE ANN. CHAP. 42-B is supported by the judiciary and allows for alternative dispute resolutions (ADR) in the form of mediation or arbitration. It is encouraged in cases filed at the Superior Court of Guam. So for non-government cases, alternative dispute cases are encouraged, but for government cases, there is no provision. I am not sure if the law has not caught up with ADR as a means for dispute resolution, but that's the way that it is. As stated in the bill, the ADR has many advantages—particularly, to the certainty for dispute resolution processes that may be confusing or slightly ambiguous under the current procurement code. As stated in the bill, ADR provides many opportunities for the parties to resolve controversies before experienced fact-finders knowledgeable in the subject matter of the dispute. This is important because actuarial or custodial matters

may be difficult to explain for people who are not experienced in that area. It will reduce some of the litigation costs typically arising from protracted administrative and judicial proceedings. It will reduce review and decision appeal and provide greater certainty to jurisdiction. All of which are more likely to reduce competition and reduce fees and costs. As I mentioned before, this is all theoretical and there has never been a dispute between the provider and its professional services, but the market environment for defined benefit plans is very risky, especially for underfunded plans. The insurance companies that insure the service providers look at the risks and for certainty of dispute resolution. We do not know what goes into the risk pool, but it is possible that they can put Guam in the same risk pool category. However, this bill would calm things down and provide some certainty in the unlikely event of a dispute. Hopefully, nothing will have to come to litigation. Lastly, this bill is not intended to provide any favorable treatment to professional service providers. It deals with a process not substantial to law. None of the law changes in terms of what constitutes liability or damages. It really just provides flexibility."

Chairman Cruz thanked Ms. Grimes and invited **Vince C. Camacho**, GGRF legal counsel, to speak but Mr. Camacho declined, stating that he did not have anything to add. Wishing to underscore a fact, the Chairman verified with Ms. Grimes that there has not been ongoing litigation nor is there current litigation with the fund and its providers. He added:

"I really do think that when you mentioned ADR, Senator [Tom] Ada is amending the procurement statute and there is some discussion on catching-up with the judiciary that is encouraging alternative dispute resolutions. We hope to do that. I want to make sure that we address this issue in the retirement fund. This is specific to the GGRF and post-contract disputes if there are any and there has not been. I just want that to be clear on the record. Do any of my colleagues have any comments?"

Senator Christopher M. Duenas thanked Chairman Cruz and asked if Bill No. 289-32 (COR) would "address the concern that the retirement fund in regard to dispute resolution and what was contained in prior legislation on procurement reform."

Mr. Camacho replied:

"Not at all. I mean there is a difference between ADR pre-contract and post-contract. We will submit a subsequent testimony at a later time."

Senator Duenas said that additional testimony would help since the legislature will be addressing that issue during next session. He added that he just wanted to make sure that was clear on the schedule, and thanked Chairman Cruz.

Senator Vicente C. Pangelinan greeted the panel and addressed Ms. Grimes:

"Can you give us ballpark figures of what possible savings can we have in two

scenarios in a dispute of a contract under ADR? What would the cost be to the fund on a dispute resolution that goes to trial?"

Ms. Grimes thanked Senator Pangelinan and replied:

"I am not sure if the savings on litigation versus ADR in that narrow context has substantially different costs for the actual litigation of substantive issues. What gets eliminated is a lot of procedural time on jurisdiction. Part of the savings is to eliminate confusion and uncertainty to get the issue to the decision maker as fast as possible. So with the ADR versus the litigation, you still have the same cost associated with discovery and exchange of information."

Senator Pangelinan continued his line of inquiry:

"Let's just say that we already know the costs associated with, for example, the time between you file your protest and OPA makes the decision. So that pre-Superior Court post-protest is a cost there. Let's say that we take that cost and we assign whatever we want to assign. Once you get to the litigation stage, what is the cost of going through that litigation process versus going through ADR? Do you intend ADR to be binding, not appealable in that respect?"

Ms. Grimes stated that she wanted to clarify that the issue at hand involves disputes after contracts. She explained further:

"A protest would not be at all an issue here. It would be that the contract is already awarded, there has been performance for a while and at some point, somebody has a dispute over the performance. The contractor might have an issue because they have not gotten paid or the agent against the fund has an issue against performance, which is again very unusual."

Senator Pangelinan continued:

"That's why I asked because you had mentioned the protest and the OPA that is post award. What would it take to litigate a case and how much do you think that will cost, versus going through ADR and arguing a case before a resolution board?"

Ms. Grimes answered that the cost would be the same but she stated that disagrees that that should be the issue. She explained:

"People contemplate that there is going to be the legal cost of litigation. Of course there are concerns of damages. On contractor claims against fees, the reason I do not think it is going to happen is because there is a practical impact. What the issue is here, in terms of the risk, is claims by the government. The scenario for having that resolved is the real risk nationwide. In all of these underfunded benefit plans, whether there has been wrongdoing or not, the public sector will look at deep pockets. So this is what it is about—ensuring that there is a fair process for resolving it."

underfunded benefit plans, whether there has been wrongdoing or not, the public sector will look at deep pockets. So this is what it is about—ensuring that there is a fair process for resolving it.”

Senator Pangelinan stated that he brought up that concern because he wants to be that enactment of Bill No. 289-32 (COR) is really to the benefit of the government and not to the service providers, to which Ms. Grimes concurred. He added:

“So the idea is when you handle contractual disputes, which opens up the field of possible bidders clears the price or account for that. So that you don’t say that I am just going to walk away from a million-dollar bill for a practical purpose. It is the law, but it gives an alternative process for the government that may allow it to open up its field of competition. I wanted to make that clear.”

Chairman Cruz thanked the panel and, on the account that there was no one else present to provide oral testimony or questions for the panel, adjourned the public hearing for Bill No. 289-32 (COR).


III. FINDINGS AND RECOMMENDATIONS

The Committee on General Government Operations and Cultural Affairs to which was referred “Bill No. 289-32 (COR) - B.J.F. Cruz - An act to amend subsection 5121(E) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund” hereby submits these findings to *I Mina’ Trentai Dos na Liheslaturan Guåhan* and reports out Bill No. 289-32 (COR) with a recommendation TO Report out only.

I MINA'TRENTAI DOS NA LIHESLATURAN GUÁHAN
2014 (SECOND) Regular Session

Bill No. ~~289-32~~ (COR)

Introduced by:

B.J.F. Cruz 

2014 MAR -7 PM 4:18 

**AN ACT TO AMEND SUBSECTION 5121(E) OF PART C,
ARTICLE 2, CHAPTER 5, TITLE 5 OF THE GUAM CODE
ANNOTATED RELATIVE TO PERMITTING ALTERNATIVE
DISPUTE RESOLUTION IN CONTRACTS APPROVED BY THE
GOVERNMENT OF GUAM RETIREMENT FUND**

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

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Section 1. Legislative Findings. *I Liheslaturan Guahan* finds that Public Law No. 28-188 added a new Subsection 5121(e) to Guam's Procurement Statute to permit the Board of Trustees of the Retirement Fund to retain a certain level of autonomy with respect to procurement matters involving its retention of professional service providers. *I Liheslaturan Guahan* further finds that it also is in the best interests of the Retirement Fund to ensure an orderly and efficient process for the prompt resolution of disputes and controversies that may occur between the Retirement Fund and its personal service providers. *I Liheslaturan Guahan* further finds that alternative dispute resolution provides opportunities (a) for the parties to resolve controversies before experienced fact-finders knowledgeable in the subject matter of the dispute; (b) to reduce some of the litigation costs

1 typically arising from protracted administrative and judicial proceedings; (c)
2 to reduce duplicative review, decision, and appeal; and (d) to provide the
3 parties with greater certainty as to jurisdiction, venue, finality, and
4 procedural timeframes; all of which are more likely to enhance competition
5 and potentially reduce fees and costs in connection with the solicitation and
6 retention of professional services.

7 **Section 2. Legislative Intent.** *I Liheslaturan Guahan* intends to
8 authorize the Board of Trustees of the Government of Guam Retirement
9 Fund to determine if it is in the best interests of the Retirement Fund to
10 solicit and enter into contracts for professional services under which
11 controversies may be resolved by mediation, arbitration, or other alternative
12 dispute resolution.

13 **Section 3.** Subsection 5121(e) of Part C, Article 2, Chapter 5, Title 5
14 of the Guam Code Annotated, added by Public Law No. 28-188, is hereby
15 further *amended* to read:

16 **(e) Approval of Contracts by Government of Guam**
17 **Retirement Fund.** Notwithstanding any other provision
18 of law, the Board of Trustees of the Government of
19 Guam Retirement Fund shall have exclusive authority to
20 approve and execute all contracts for the procurement of
21 professional services associated with the operation of the
22 Fund. The Board may enter into contracts providing for
23 alternative dispute resolution (including mediation and
24 arbitration) of controversies arising between the
25 Retirement Fund and its professional service contractors,

1 if, in the Board's discretion, alternative dispute resolution
2 is determined to be in the best interests of the Retirement
3 Fund.

4 **Section 4. Effective Date.** This Act shall be effective upon
5 enactment.

6

SENATOR BENJAMIN J.F. CRUZ, VICE SPEAKER
 Chairman, Committee on General Government Operations
 and Cultural Affairs
 Web Address: www.senatorbjcruz.com



IMINA'TRENTAI DOS NA LIHESLATURAN GUAHAN
 The 32nd Guam Legislature • senator@senatorbjcruz.com
 155 Hesler Place, Hagatna, Guam 96910
 Telephone: (671) 477-2520/1 • Fax: (671) 477-2522

PUBLIC HEARING SIGN-IN SHEET

Tuesday, March 18, 2014 - 9:00AM

Guam Legislature Public Hearing Room • Hagåtña, Guam

Bill No. 289-32 (COR) – B.J.F. Cruz – “An act to amend subsection 5121(e) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund.”

NAME	AGENCY OR ORGANIZATION	POSITION		TESTIMONY		PHONE NO.	EMAIL ADDRESS
		SUPPORT	OPPOSE	WRITTEN	ORAL		
PAULA BLAS	GORE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4758900	
JOANNE GRIMES	GORE COUNSEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4726813	
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GOVERNMENT OF GUAM
RETIREMENT FUND
 STABILITY · SECURITY · REWARDS

Eddie Baza Calvo
 Governor

Ray Tenorio
 Lieutenant Governor

Paula M. Blas
 Director

Trustees:

Joe T. San Agustin
 Chairman

Wilfred P. Leon Guerrero, Ed.D.
 Vice-Chairman
 Investment Committee, Chairman

Antolina S. Leon Guerrero
 Secretary

Gerard A. Cruz
 Treasurer
 Audit & Operations Committee,
 Chairman

Katherine T.E. Taitano
 Trustee

James R.F. Duenas
 Trustee

David M. O'Brien
 Trustee

**GOVERNMENT OF GUAM RETIREMENT FUND
 POSITION STATEMENT ON BILL 289-32**

March 18, 2014

I. Support for Bill 289-32

The Government of Guam Retirement Fund supports Bill 289-32. If enacted into law, Bill 289-32 would provide the Board of Trustees of the Retirement Fund with greater flexibility and discretion in matters involving the Fund's solicitation, selection, and retention of professional service providers. Specifically, Bill 289-32 would authorize the use of alternative dispute resolution ("ADR") in contracts between the Retirement Fund and its professional service providers. If agreed to by the parties, ADR will ensure that, in the unlikely event of a contract performance dispute that cannot be resolved by mutual consent, there will be a predictable, orderly, efficient, and fair process for prompt resolution. Bill 289-32 is not intended to favor professional services contractors; it is intended only to bring certainty to the process for resolving controversies, which under current procurement law is ambiguous and confusing, making risk assessment and contract pricing difficult. By clarifying ADR as an authorized process for resolving contract disputes, the Retirement Fund anticipates that it will encourage a greater pool of potential qualified service providers and lead to more competitive pricing.

II. Relevant Legislative History Related to Retirement Fund Procurement and ADR

A. Retirement Fund Has Exclusive Authority To Procure Professional Services

Guam's procurement statute was amended in 2007 to permit the Board of Trustees of the Retirement Fund to retain a certain level of autonomy with respect to procurement matters involving its retention of professional service providers. Public Law No. 28-188 added a new subsection (e) to 5 GCA § 5121 to expressly confer exclusive authority the Board of Trustees to approve and execute all contracts for the procurement of professional services associated with the operation of the Fund.

B. Procurement Law Limits Legal and Contractual Remedies in all Government Contracts, and Does Not Permit ADR

Guam's procurement statute and regulations require certain mandatory provisions to be included in all government contracts, including contract clauses for legal and contractual remedies. See, e.g., Title 2, Division 4, Chapter 9 of the Guam Administrative Rules and Regulations. Although Section 5121(e) confers exclusive authority on the Board of Trustees to approve contracts, under the procurement law, the Board does not have the authority or flexibility to negotiate for ADR in circumstances that could benefit the Fund.

C. Guam Policy Encourages Alternative Dispute Resolution

As a threshold matter, it should be noted that the Board of Trustees cannot recall being involved in post-contract litigation involving its professional service contractors, and it does not expect to be in a position where a dispute cannot be resolved by mutual consent without the need to resort to litigation. However, even though litigation is a remote possibility, the environment surrounding public sector defined benefit plans nationwide has become riskier, particularly with underfunded plans. With this risk comes heightened scrutiny and pricing for professional service contracts. Risks can be reduced if there is greater certainty as to the process for resolving disputes, particularly potential claims by the Retirement Fund against contractors for alleged breaches of contract. Current procurement statute and regulations regarding the process for resolving disputes is far from clear as to the parties authorized to determine claims according to the type of claim (monetary vs. non-monetary; claims for money owed vs. claims for money damages), and the process and anticipated timelines for appeals of those decisions, and the persons authorized to hear those appeals. To reduce these ambiguities to provide a more stable environment for risk assessment, the Fund encourages legislation, particularly Bill 289-32, that recognizes the riskier environment, takes steps to reduce those risks, and allows the Fund to remain competitive in the marketplace and attract qualified vendors.

Unfortunately, Guam's procurement law has not kept pace with policy encouraging ADR to resolve controversies, as it is encouraged in Guam for non-governmental contract disputes. For example, arbitration and alternative dispute resolution was recognized by the Legislature and the Guam Supreme Court to have great potential for relieving congestion within the Superior Court of Guam. *See, e.g.*, Title 7, Division 3, Chapter 42-B of the Guam Code Annotated, enacting court-referred arbitration and alternative dispute resolution for cases filed in the Guam Superior Court. *See, also*, March 25, 2004 Committee Report on Bill 172 (enacted as Public Law No. 27-81; and February 16, 2004 letter from Guam Supreme Court Chief Justice Carbullido to Senator Cunliffe, Chairman, Committee on Judiciary & Transportation. ADR is typically reflected in other U.S. public sector contracts involving professional service providers that perform consulting, actuary, and investment services.

If enacted, Bill 289-32 will provide opportunities for the parties to resolve controversies before experienced fact-finders knowledgeable in the subject matter of the dispute; to reduce some of the litigation costs typically arising from protracted administrative and judicial proceedings; to reduce duplicative review, decision, and appeal; and to provide greater certainty as to jurisdiction, venue, finality, and procedural timeframes, all of which are more likely to enhance competition and potentially reduce fees and costs in the solicitation and retention of professional services.

D. Uncertainty About Procurement Legislation Increases Risks

Bill 289-32 appears to be the 12th procurement-bill introduced by the 32nd Legislature. The number of procurement-related bills illustrates that the procurement process, including post-contract dispute resolution, can change from time to time, impacting how contractors evaluate doing business with the government of Guam. Ambiguity about the dispute resolution process can impede competition and impact pricing. To the extent that ADR serves to provide greater certainty about the process, there is greater opportunity for more competition and competitive pricing.

III. Support for Only Procedural Changes, Not Substantive Changes

Bill 289-32 expands the options involving the process for resolving disputes, but does not change the law applicable for determining liability or damages. The Board of Trustees will not be required to agree to ADR, but it will have the flexibility to determine if, under the circumstances, ADR is in the best interest of the Fund. For these reasons, the Retirement Fund supports the passage of Bill 289-32.


 JOE T. SAN AGUSTIN
 Chairman



SUPREME COURT OF GUAM

SUITE 300 GUAM JUDICIAL CENTER
120 WEST O'BRIEN DRIVE, HAGÄTÑA, GUAM 96910-5174
(671) 475-3413 (671) 475-3164 FAX

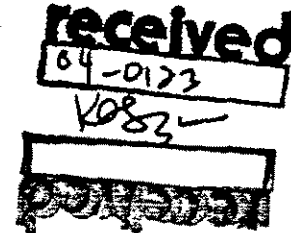


F. PHILIP CARBULLIDO
CHIEF JUSTICE

fpcarbullido@guamsupremecourt.com
www.guamsupremecourt.com

February 16, 2004

Honorable F. Randall Cunliffe
I Mina' Bente Siete Na Liheslaturan Guåhan
Chairman, Committee on Judiciary & Transportation
215 Chalan Santo Papa, Suite 106 & 107F
Hagätña, Guam 96910



Re: Bills Numbered 172 and 185 Regarding Arbitration and Mediation

Dear Mr. Chairman:

As you know, the Supreme Court's Subcommittee on Alternative Dispute Resolution has focused its attention in recent months on review of current Bills 172 and 185 regarding international arbitration and mediation as well as domestic court-referred alternative dispute resolution. The Governor originally submitted his proposed legislation to the Legislature on August 1, 2003, which was then assigned to your Committee. The legislation will establish a comprehensive statutory framework for the arbitration and mediation of international and domestic disputes on Guam. The members of the subcommittee are in universal agreement that this legislation is very important and have dedicated significant time, thought and effort in their review and consideration of the proposed legislation.

Transmitted herewith is proposed substitute Bill 172 that the Supreme Court's subcommittee recommends take the place of both current Bills 172 and 185. As will be explained more fully below, the proposed substitute Bill 172 merges both current Bills 172 and 185. Thus, no further action on Bill 185 will be necessary if the enclosed proposed substitute Bill 172 is adopted. We have also enclosed a redline version of proposed substitute Bill 172 as compared to current Bill 172 for your ready reference.

As mentioned above, Governor Camacho originally submitted two pieces of proposed legislation to the Legislature on August 1, 2003, which became Bills 172 and 185. The Governor's legal counsel, Ms. Shannon Taitano, sits on our subcommittee and has been involved in the work we have done which has resulted in our recommended substitute Bill 172. We are informed that Ms. Taitano, on behalf of the Governor, fully supports the enclosed proposal as it will achieve the Governor's goals which were originally addressed by his initial submission in August, 2003.

The members of the subcommittee have taken their review of Bills 172 and 185 very

Honorable F. Randall Cunliffe

February 16, 2004

Page 2

seriously and have come to the enclosed recommended substitute Bill 172 after extensive work to this end. The subcommittee was originally chaired by Justice Frances Tydingco-Gatewood and co-chaired by Judge Michael J. Bordallo and included as members retired Chief Justice Benjamin J.F. Cruz, Sister Mary John Cristobal and attorneys Patrick Wolff, Eduardo Calvo, Vicki Renacia, Shannon Taitano, Tricia Ada, John Weisenberger, Kristan Finney, Ignacio Aguigui, Thomas Roberts and Thomas Tarpley. Subsequently attorneys Bruce Bradley, Jennifer Calvo and Raymond Souza joined the subcommittee.

After the subcommittee's initial review of Bills 172 and 185, the co-chairs decided to split the subcommittee into separate groups to fully consider each of the proposed bills. At that time, Chief Justice F. Philip Carbullido joined the subcommittee and took the lead regarding review of proposed Bill 172. Bill 172 focused primarily on international arbitration but also contemplated domestic court-referred arbitration. Attorneys Ed Calvo, Ray Souza, Ike Aguigui, Bruce Bradley, Tom Tarpley, Tim Roberts and Jennifer Calvo joined the Chief Justice. Upon his investiture, Justice Robert Torres also joined this component of the subcommittee as co-chair. The remaining members of the subcommittee were then able to focus on proposed Bill 185 regarding mediation.

As will be evident upon your review of the enclosed proposed substitute Bill 172, it now includes both of the Governor's originally proposed bills which are currently Bill 172, regarding arbitration, and Bill 185, regarding mediation. Proposed substitute Bill 172 will accomplish several goals simultaneously. Current Guam law regarding arbitration and mediation is found in Chapters 42 and 43 of Title 7, Guam Code Annotated. Proposed substitute Bill 172 will repeal both Chapters 42 and 43 and will enact language to be codified in its place. Thus, Guam law regarding arbitration and mediation will still be found in Chapters 42 and 43, respectively. Specifically, proposed substitute Bill 172 will create Chapters 42-A and 42-B regarding arbitration as well as other forms of alternative dispute resolution and Chapters 43-A and 43-B regarding mediation.

Proposed Chapter 42-A will address international arbitration and proposed Chapter 43-A will address international mediation. These two chapters will be instrumental in the creation of Guam's International Mediation and Arbitration Center," which will be known as "GIMAC." Proposed Chapter 42-B will specifically address local court-referred arbitration and alternative dispute resolution and proposed Chapter 43-B will specifically address local court-referred mediation. The Supreme Court of Guam will be charged with establishing and promulgating rules and procedures to achieve the goals of both proposed Chapters 42-B and 43-B. The subcommittee believes that there is great potential for relieving congestion within the Superior Court of Guam through implementation of various alternative dispute resolution models. Proposed Chapters 42-B and 43-B will provide the statutory basis for such achievements.

Honorable F. Randall Cunliffe

February 16, 2004

Page 3


As is evident from the above explanation as well as from review of the enclosed documents, the subcommittee has devoted considerable time and energy to its efforts regarding the proposed alternative dispute resolution legislation. The members have done so in hopes of assisting as much as possible in the process of updating Guam's laws in this area to better serve the needs of the parties availing themselves of the courts and to help alleviate the perennial problem of congestion in the courts. Guam has the potential to benefit greatly from this legislation in many ways and we respectfully request that your Committee and the Legislature as a whole act expeditiously in its consideration of our proposed substitute Bill 172 to replace current Bills 172 and 185.

We look forward to your support and the favorable consideration of your colleagues

Sincerely,



F. Philip Carbullido
Chief Justice and Co-Chair,
Subcommittee On Alternative Dispute
Resolution (Arbitration)



Robert J. Torres
Justice and Co-Chair, Subcommittee on
Alternative Dispute Resolution (Arbitration)

Enclosure:

cc: Justice Frances Tydingco-Gatewood
Judge Michael J. Bordallo
All Committee Members

MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
COMMITTEE ON JUDICIARY & TRANSPORTATION
SENATOR F. RANDALL CUNLIFFE - CHAIRMAN



COMMITTEE REPORT

ON

BILL 172(LS) AN ACT TO REPEAL §§ 42101 THROUGH 42111 OF CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B RELATIVE TO COURT-REFERRED ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION, TO REPEAL §§ 43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT A NEW CHAPTER 43-A RELATIVE TO INTERNATIONAL COMMERCIAL MEDIATION AND TO ENACT A NEW CHAPTER 43-B RELATIVE TO COURT-REFERRED MEDIATION, ALL CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED, AS SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION

Introduced by the Committee on Judiciary & Transportation
By Request of I Maga'láhen Guåhan, the Governor of Guam,
In Accordance with the Organic Act of Guam

March 25, 2004

OVERVIEW

The Committee on Judiciary and Transportation held a public hearing at 9:00 a.m. on November 14, 2003 on the following measure:

BILL 172(LS) – AN ACT TO REPEAL AND REENACT §42101 THROUGH §42106, TO REPEAL §42107 THROUGH §42111, AND TO ADD NEW SECTIONS §42201 THROUGH §42909, ALL IN CHAPTER 42 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND DOMESTIC ARBITRATIONS

SENATORS PRESENT AT THE PUBLIC HEARING WERE:

Judiciary Chairman F. Randall Cunliffe
Vice Chairman John Quinata
Senator Robert Klitzkie
Senator Lou Leon Guerrero
Senator Rory J. Respicio

I. SYNOPSIS OF BILL

On August 1, 2003, Governor Felix P. Camacho transmitted proposed legislation to establish a comprehensive statutory framework for the arbitration and mediation of domestic and international disputes on Guam. Citing the movement of various states and the federal government to adopt laws providing mechanisms for Alternative Dispute Resolution (ADR) and the enactment of the Federal Arbitration Act (FAA), the Governor proposed that Guam follow suit and adopt two statutes to accomplish the following:

- (1) The establishment of the Guam International Mediation and Arbitration Center;
- (2) The repeal and reenactment of the local civil arbitration law found in Chapter 42 of Title 7 of the Guam Code Annotated, which would revise and establish an framework for arbitration; and
- (3) The repeal and reenactment of the local mediation statutes to establish a framework for the mediation of civil cases found in Chapter 43 of Title 7 of the Guam Code Annotated.

The first bill, introduced by the Committee on Judiciary and Transportation as Bill 172(LS) is relative to Arbitration while the second bill, also introduced by the Committee on Judiciary & Transportation as **Bill 185(COR)** AN ACT TO REPEAL AND REENACT SECTIONS §43101 THROUGH §43108, AND TO ADD NEW §43201 THROUGH §43604, ALL IN CHAPTER 43 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY RESOLUTION OF DISPUTES THROUGH MEDIATION, is relative to mediation.

II. SUMMARY OF TESTIMONY

The Committee on Judiciary & Transportation held a hearing for Bill 172(LS) and Bill 185(COR) on November 14, 2003. Although the bills were heard independently, it became clear that the legislation would have to be addressed together, as Bill 185(COR) made references to the Guam International Mediation and Arbitration Center proposed in Bill 172 (LS). Therefore, the Committee includes the transcripts of the hearings for both bills in this Committee Report. The substitute version of Bill 172 (LS) merges the intent and content of both Bill 172 and Bill 185.

The following individuals provided testimony to the Committee relative to Bill 172(LS):

- Mr. Gerald Perez, Administrator of the Guam Economic Development & Commerce Authority (GEDCA) provided written testimony IN FAVOR of the legislation
- Mr. Bruce Bradley, a Research Attorney employed with the Supreme Court of Guam provided oral testimony IN FAVOR of the legislation
- Attorney Richard A. Pipes provided written testimony IN OPPOSITION of the legislation

The following individuals provided testimony to the Committee relative to Bill 185(COR):

- Mr. Gerald Perez, Administrator of the Guam Economic Development & Commerce Authority (GEDCA) provided written testimony IN FAVOR of the legislation
- Mr. Bruce Bradley, a Research Attorney employed with the Supreme Court of Guam provided oral testimony IN FAVOR of the legislation
- Attorney Patrick Wolff of Inafa' Maolek, provided oral and written testimony IN OPPOSITION of the legislation as currently drafted, but IN SUPPORT of the intent
- Attorney Dan Sommerfleck, Director of Guam Legal Services, provided oral testimony IN FAVOR of the legislation

In Governor Camacho's correspondence, he expressed his position that passage of the proposed legislation would accomplish the following:

- Provide much-needed relief for congested court dockets
- Provide flexible alternatives for conflict resolution
- Facilitate the establishment and marketing of Guam as a center for the conduct of international commercial arbitration

The Governor emphasized that the establishment of the Guam International Mediation and Arbitration Center is one component of his economic recovery plan. The Governor believes that Guam is well positioned to operate the center due to its geographic location between the United States and Asia and will attract additional visitors to Guam. According to the Governor, the draft legislation is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, as well as California law. The Governor pointed to the review of the draft law by Justice Francis Tydingco-Gatewood and Judge Michael J. Bordallo, who are chairing the Supreme Court of Guam's Subcommittee on Alternative Dispute Resolution.

Bill 172(LS) Hearing

During the hearing, Attorney Bradley reported that there was an ongoing review of Bill 172 & Bill 185 by the Subcommittee on Alternative Dispute Resolution, which includes a dozen attorneys, judges and justices and Retired Chief Justice Benjamin J.F. Cruz. However, he indicated that the Unified Judiciary is in support of Bill 172(LS) and Bill 185(COR) subject to ongoing technical review by the Subcommittee.

Senator Klitzkie indicated his support for the legislation.

Senator Leon Guerrero indicated her position that the Committee suspend action on Bill 172 pending the position submitted by the Supreme Court of Guam.

Attorney Richard Pipes submitted written testimony opining that as drafted, Bill 172 would be unconstitutional and inorganic because it unreasonably restricts a person's right of access to the Superior Court of Guam. "Specifically, Section 42901 requires that all cases with amounts in controversy less than \$250,000 be referred for involuntary "arbitration or mediation" at the Guam International Mediation and Arbitration Center (GIMAC)." Attorney Pipes further stated that the decision by the Presiding Judge to refer a case to GIMAC is not appealable and noted that the proposed charges are in excess of the current fee structure of the Superior Court of Guam. Attorney Pipes questioned the sustainability of the GIMAC and requested that the bill be rejected in its current form.

GEDCA Administrator Gerald Perez provided written testimony in favor of the legislation citing the following:

- Guam as a stable US flag domicile would be a favored "neutral" location and a forum of choice for US and Asian contract disputes
- Industry trend shows decline in use of Asian based arbitration centers with a correlating increase in European center usage
- Asian centers are encountering credibility issues, for example Hong Kong is viewed as an extension of China and is thus not an acceptable dispute resolution center for US corporations
- Japanese attorneys prefer locations such as Guam as they are at a competitive disadvantage in Hong Kong and Singapore centers where they compete against large in-country law firms
- Japan's arbitration process is too slow, expensive and based on antiquated arbitration rules
- Rising cost of litigation in USA court system and time delays caused by court scheduling system
- US Court mandated arbitration for smaller (dollar value) cases

Mr. Perez reiterated his support for the passage of both Bill 172 and 185.

Bill 185(COR) Hearing

Attorney Patrick Wolff of Inafa' Maolek requested that §43105, §43501, §43202, §43601, §43602, §43603, §43604 be revisited. He emphasized and elaborated his position which is stated as follows:

1. §43105: Representative Participation in Mediation is not a good idea. Mediation in its pure form calls for active participation by the disputants (real parties to the conflict). Rare exceptions (e.g. incapacitation) to party participation are allowed on a case-by-case bases, but §43105 would dangerously reverse the presumptions of disputant empowerment in mediation.
2. §43501 is well intended, but fails to recognize that a MED-ARB process may indeed be the process desired by the disputant.
3. §43202: Mediators should not be prevented from routinely providing to the referral source a cover letter acknowledging that a mediation occurred and attaching any Agreement reached by the parties.
4. §43601: There should be no preference for referrals to GIMAC. Judges should not be burdened with the need to justify why cases are not referred to GIMAC for mediation.
5. §43602: Must be changed to allow for co-mediation (as practiced by Inafa' Maolek). Referral to Inafa' Maolek does not necessitate the selection of a particular mediator. Inafa' Maolek will screen the referral at the intake state and select mediators, from Inafa' Maolek's pool of mediators to match the dispute/disputants. Please do not get locked into a GIMA approach inconsistent with the above.
6. §43603: Inafa' Maolek's flat fee approach to each mediation session provides a less expensive alternative. This option must be included in any Bill 185 language.
7. §43604: Notion of "recommended settlement" is inconsistent with the definition of mediation and the role of the mediator. We philosophically object to this provision as the norm for mediation.

Attorney Dan Sommerfleck of Guam Legal Services expressed concern with §43601 (b) & (d). Attorney Sommerfleck spoke in length about government contracts and suits against the government and the potential for resolution of such cases to be delayed unnecessarily by the mediation process. Attorney Sommerfleck expressed his position that domestic cases would not be resolved under the GIMAC format.

Senator Lou Leon Guerrero raised questions relative to the role of GIMAC for medical malpractice arbitration. In response to her question, Attorney Sommerfleck responded that it is based on whether the parties are willing to reach an agreement.

Attorney Bradley stated his agreement with the statements made by Attorney Sommerfleck and pointed to Attorney Wolff's membership on the Unified Judiciary Subcommittee reviewing both bills. Attorney Bradley stated that the Supreme Court would incorporate there concerns in their official position.

Supreme Court Position

Chairman Cunliffe left the proceedings on Bill 172(LS) and Bill 185(COR) open in anticipation of the position of the Supreme Court of Guam. On February 16, 2004, Chief Justice F. Philip Carbullido submitted the Supreme Court's position on Bill 172 & Bill 185. Chief Justice Carbullido submitted a revised Substitute Bill No. 172 (LS) which would take the place of both Bill 172 and Bill 185. Chief Justice Carbullido emphasized the membership of the Governor's Legal Counsel on the subcommittee. Chief Justice Carbullido listed the membership of the Subcommittee as follows:

- Chief Justice F. Philip Carbullido
- Justice Frances Tydingco-Gatewood
- Justice Robert Torres
- Judge Michael J. Bordallo
- Retired Chief Justice Benjamin J.F. Cruz
- Sister Mary John Cristobal
- Attorney Patrick Wolff
- Attorney Eduardo Calvo
- Attorney Vicki Renacia
- Attorney Shannon Taitano
- Attorney Tricia Ada
- Attorney John Weisenberger
- Attorney Kristan Finney
- Attorney Ignacio Aguigui
- Attorney Thomas Roberts
- Attorney Thomas Tarpley
- Attorney Bruce Bradley
- Attorney Jennifer Calvo
- Attorney Raymond Souza

Chief Justice Carbullido submitted the following guide to the Subcommittee's proposed Substitute:

1. Chapter 42 of Title 7 relative to Arbitration is repealed and reenacted as Chapter 42-A and 42-B regarding arbitration and other forms of alternative dispute resolution
2. Chapter 43 relative to Mediation is repealed and reenacted as Chapter 43-A and 43-B regarding Mediation.
3. Chapter 42-A would address international arbitration
4. Chapter 43-A would address international mediation
5. Chapter 42-B would address local court-referred arbitration and alternative dispute resolution
6. Chapter 43-B would address local court-referred mediation
7. The Supreme Court of Guam is charged with establishing and promulgating rules and procedures to achieve the goals of the proposed Chapter 42-B and 43-B

Chief Justice Carbullido stated that it was the Subcommittee belief that the enactment of Chapters 42-B and 43-B would relieve congestion of cases currently within the Superior Court of Guam through the implementation of various alternative dispute resolution models. Chief Justice Carbullido reiterated his support for the legislature's passage of the proposed Substitute Bill 172(LS) as submitted by the Supreme Court of Guam.

- * **The Governor's correspondence of August 1, 2003 transmitting the proposed legislation introduced as Bill 172(LS) and Bill 185(COR) is attached with this Committee Report.**
- * **Chief Justice Carbullido's letter of February 16, 2004 relative to Bill 172(LS) and Bill 185(COR) is attached with this Committee Report.**
- * **Transcripts and written testimony for Bill 172(LS) and Bill 185(COR) are included with this Committee Report.**

III. FINDINGS AND RECOMMENDATION

The Committee on Judiciary and Transportation finds favor with the proposed Substitute Bill 172(LS) as offered by the Supreme Court of Guam Subcommittee and has made further amendments relative to technical corrections. Therefore, the Committee on Judiciary & Transportation makes a recommendation that Bill 172(LS), As Substituted by the Committee on Judiciary & Transportation DO PASS.



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

March 19, 2014

Memorandum

To: Rennae Meno
Clerk of the Legislature

From: Senator Rory J. Respicio
Majority Leader & Rules Chair

Subject: Waivers

Hafa Adai!

Attached please find the waivers for the bill numbers listed below. Please note that the fiscal notes, or waivers, are issued on the bills as introduced.

WAIVERS:

- Bill No. 272-32(COR)
- Bill No. 273-32(COR)
- Bill No. 289-32(COR)

Please forward the same to MIS for posting on our website. Please contact our office should you have any questions regarding this matter.

Si Yu'os ma'åse'!

2014 MAR 19 PM 9:22

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932EDDIE BAZA CALVO
GOVERNORJOHN A. RIOS
DIRECTORRAY TENORIO
LIEUTENANT GOVERNORJOSE S. CALVO
DEPUTY DIRECTOR

MAR 18 2014

Senator Rory J. Respicio
Chairperson, Committee on Rules
I Mina'trentai Dos na Liheslaturan Guåhan
The 32nd Guam Legislature
155 Hesler Place
Hagåtña, Guam 96932

Hafa Adai Senator Respicio:

Transmitted herewith is Fiscal Note Waiver on the following Bill Nos.: 272-32(COR), 273-32(COR),
and 289-32(COR).

If you have any question(s), please do not hesitate to call the office at 475-9412/9106.

A handwritten signature in black ink, appearing to read "John A. Rios".

JOHN A. RIOS
Director

Enclosures
cc: Senator Vicente (ben) Pangelinan

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

EDDIE BAZA CALVO
GOVERNOR

RAY TENORIO
LIEUTENANT GOVERNOR

JOHN A. RIOS
DIRECTOR

JOSE S. CALVO
DEPUTY DIRECTOR

MAR 18 2014

The Bureau requests that Bill No(s). 289-32 (COR) be granted a waiver pursuant to Public Law 12-229 as amended for the following reason(s):

Bill No. 289-32 is an Act to amend Subsection 5121(e) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated, relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund. The intent of the aforementioned bill is administrative in nature in that the proposed amendment authorizes the Board of Trustees of the Government of Guam Retirement Fund to determine if it is in the best interests of the Retirement Fund to solicit and enter into contracts for professional services under which controversies may be resolved by mediation, arbitration, or other alternative dispute resolution.


JOHN A. RIOS
Director



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
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Senator
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Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

March 7, 2014

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Rory J. Respicio**
Chairperson of the Committee on Rules

Subject: Referral of Bill No. 289-32(COR)

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 289-32(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

I Mina'Trentai Dos Na Liheslaturan Guahan
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
289-32 (COR)	B.J.F. Cruz	AN ACT TO AMEND SUBSECTION 5121(E) OF PART C, ARTICLE 2, CHAPTER 5, TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO PERMITTING ALTERNATIVE DISPUTE RESOLUTION IN CONTRACTS APPROVED BY THE GOVERNMENT OF GUAM RETIREMENT FUND	03/07/14 4:18 p.m.	03/07/14	Committee on General Governmental Operations and Cultural Affairs			



FIRST NOTICE of Public Hearings – March 18, 2014

1 message

Cheerful Catunao <cheerful@senatorbjcruz.com>

Tue, Mar 11, 2014 at 8:00 AM

To: phnotice@guamlegislature.org

Cc: clerks@guamlegislature.org, mis@guamlegislature.org

March 11, 2014

MEMORANDUM**To: All Members / All Senators****From: Vice Speaker Benjamin J.F. Cruz, Chairman****Re: FIRST NOTICE of Public Hearings – March 18, 2014**

Håfa Adai! The Committee on General Government Operations and Cultural Affairs will conduct Public Hearing of Bills beginning at **9:00AM** on **Tuesday, March 18, 2014**, in the *I Liheslatura* Public Hearing Room with the following agenda:

9:00AM

- **Bill No. 289-32 (COR)** – B.J.F. Cruz – “An act to amend subsection 5121(e) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund.”
- **Bill No. 262-32 (COR)** – B.T. McCreadie – “An act to amend §77107 and to add a new §77135 to Chapter 77, Title 10, Guam Code Annotated relative to establishing a public-private partnership for vehicle impoundment.”
- **Bill No. 284-32 (COR)** – D.G. Rodriguez, Jr. – “An act to establish the position of Chief Medical Director, Department of Public Health & Social Services; and to provide for collateral duty as Medical Director, Bureau of Communicable Disease Control, by adding a new § 1104, § 1105 and § 1106 to Chapter 1 - Administration, Title 10, Guam Code Annotated.”
- **Bill No. 286-32 (COR)** – T. Morrison / V.A. Ada / C.M. Duenas / F.B. Aguon, Jr. / B.T. McCreadie – “An act to amend §1001 of 1GCA relative to establishing Guam History and Chamorro Heritage Day as a legal holiday on Guam.”

Testimonies may be submitted via hand delivery to the Office of Vice Speaker Benjamin J.F Cruz at the Guam Legislature; via postal mail to 155 Hesler Street, Hagåtña Guam 96910; via facsimile to 477-2522; or via e-mail to senator@senatorbjcruz.com. Please submit testimonies at least one day prior to the date of the hearing.

All government activities, programs, and services are accessible for people with disabilities in compliance with Title II of the Americans with Disabilities Act (ADA). Should you or interested parties require assistance or special accommodations to fully participate in this public hearing, please contact Mr. Carlo J. Branch at the Office of the Vice Speaker at 477-2521 or via e-mail at carlo.branch@senatorbjcruz.com.

We look forward to your attendance and participation.

cc: Clerks

COR
MIS
Media

2 attachments

 **FIRST NOTICE Memo PH 03182014.pdf**
161K

 **FIRST NOTICE PR PH 03182014.pdf**
144K



March 11, 2014

MEMORANDUM

To: All Members / All Senators
From: Vice Speaker Benjamin J.F. Cruz, Chairman

Re: **FIRST NOTICE of Public Hearings - March 18, 2014**

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All government activities, programs, and services are accessible for people with disabilities in compliance with Title II of the Americans with Disabilities Act (ADA). Should you or interested parties require assistance or special accommodations to fully participate in this public hearing, please contact Mr. Carlo J. Branch at the Office of the Vice Speaker at 477-2521 or via e-mail at carlo.branch@senatorbjcruz.com.

We look forward to your attendance and participation.



FOR IMMEDIATE RELEASE
March 11, 2014

FIRST NOTICE OF PUBLIC HEARING

In accordance with the Open Government Law, P.L. 24-109, relative to notice for public meetings, let this release serve as five (5) days' notice for Public Hearings by the *Committee on General Government Operations and Cultural Affairs* scheduled on **Tuesday, March 18, 2014**, in the Guam Legislature Hearing Room in Hagåtña, on the following:

9:00AM

- **Bill No. 289-32 (COR)** - B.J.F. Cruz - "An act to amend subsection 5121(e) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund."
- **Bill No. 262-32 (COR)** - B.T. McCreadie - "An act to amend §77107 and to add a new §77135 to Chapter 77, Title 10, Guam Code Annotated relative to establishing a public-private partnership for vehicle impoundment."
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Testimonies may be submitted in person to the Office of Vice Speaker Benjamin J.F. Cruz at the Guam Legislature; by postal mail to 155 Hesler Place, Hagåtña Guam 96910; by facsimile to 477-2522; or by e-mail to senator@senatorbjcruz.com. Copies of written testimonies received at least one day before the scheduled date will be available at the hearing.

Individuals requiring assistance or special accommodations should contact Mr. Carlo J. Branch at the Office of the Vice Speaker at 477-2521, or by e-mail at carlo.branch@senatorbjcruz.com.

###



SECOND NOTICE of Public Hearing – March 18, 2014

1 message

Cheerful Catunao <cheerful@senatorbjcruz.com>

Sun, Mar 16, 2014 at 8:30 AM

To: phnotice@guamlegislature.org

Cc: mis@guamlegislature.org, clerks@guamlegislature.org

March 16, 2014

MEMORANDUM

To: All Members / All Senators

From: Vice Speaker Benjamin J.F. Cruz, Chairman

Re: SECOND NOTICE of Public Hearing – March 18, 2014

Håfa Adai! The Committee on General Government Operations and Cultural Affairs will conduct Public Hearing of Bills beginning at **9:00AM** on **Tuesday, March 18, 2014**, in the *I Liheslatura* Public Hearing Room with the following agenda:

9:00AM

- **Bill No. 289-32 (COR)** – B.J.F. Cruz – “An act to amend subsection 5121(e) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund.”
- **Bill No. 262-32 (COR)** – B.T. McCreddie – “An act to amend §77107 and to add a new §77135 to Chapter 77, Title 10, Guam Code Annotated relative to establishing a public-private partnership for vehicle impoundment.”
- **Bill No. 284-32 (COR)** – D.G. Rodriguez, Jr. – “An act to establish the position of Chief Medical Director, Department of Public Health & Social Services; and to provide for collateral duty as Medical Director, Bureau of Communicable Disease Control, by adding a new § 1104, § 1105 and § 1106 to Chapter 1 - Administration, Title 10, Guam Code Annotated.”
- **Bill No. 286-32 (COR)** – T. Morrison / V.A. Ada / C.M. Duenas / F.B. Aguon, Jr. / B.T. McCreddie – “An act to amend §1001 of 1GCA relative to establishing Guam History and Chamorro Heritage Day as a legal holiday on Guam.”

Testimonies may be submitted via hand delivery to the Office of Vice Speaker Benjamin J.F Cruz at the Guam Legislature; via postal mail to 155 Hesler Street, Hagåtña Guam 96910; via facsimile to 477-2522; or via e-mail to senator@senatorbjcruz.com. Please submit testimonies at least one day prior to the date of the hearing.

All government activities, programs, and services are accessible for people with disabilities in compliance with Title II of the Americans with Disabilities Act (ADA). Should you or interested parties require assistance or special accommodations to fully participate in this public hearing, please contact Mr. Carlo J. Branch at the Office of the Vice Speaker at 477-2521 or via e-mail at carlo.branch@senatorbjcruz.com.

We look forward to your attendance and participation.

cc: Clerks
COR

MIS
Media

2 attachments

 **SECOND NOTICE Memo Cmte Reporting Req 03182014.pdf**
161K

 **SECOND NOTICE PR Cmte Reporting Req 03182014.pdf**
145K



March 16, 2014

MEMORANDUM

To: All Members/ All Senators
From: Vice Speaker Benjamin J.F. Cruz, Chairman
Re: **SECOND NOTICE of Public Hearing – March 18, 2014**

Håfa Adai! The Committee on General Government Operations and Cultural Affairs will conduct a Public Hearing of Bills beginning at 9:00AM on **Tuesday, March 18, 2014**, in the *I Liheslatura Public Hearing Room* with the following agenda:

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We look forward to your attendance and participation.



FOR IMMEDIATE RELEASE
March 16, 2014

SECOND NOTICE OF PUBLIC HEARING

In accordance with the Open Government Law, P.L. 24-109, relative to notice for public meetings, let this release serve as forty-eight (48) hours' notice for a Public Hearing of Bills by the *Committee on General Government Operations and Cultural Affairs* scheduled on **Tuesday, March 18, 2014**, in the Guam Legislature Hearing Room in Hagåtña, on the following:

9:00AM

- **Bill No. 289-32 (COR)** – B.J.F. Cruz – “An act to amend subsection 5121(e) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund.”
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Testimonies may be submitted in person to the Office of Vice Speaker Benjamin J.F Cruz at the Guam Legislature; by postal mail to 155 Hesler Place, Hagåtña Guam 96910; by facsimile to 477-2522; or by e-mail to senator@senatorbjcruz.com. Copies of written testimonies received at least one day before the scheduled date will be available at the hearing.

Individuals requiring assistance or special accommodations should contact Mr. Carlo J. Branch at the Office of the Vice Speaker at 477-2521, or by e-mail at carlo.branch@senatorbjcruz.com.

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PUBLIC HEARING AGENDA

Tuesday, March 18, 2014

Guam Legislature Public Hearing Room • Hagåtña, Guam

9:00AM

Bill No. 289-32 (COR) - B.J.F. Cruz - "An act to amend subsection 5121(e) of Part C, Article 2, Chapter 5, Title 5 of the Guam Code Annotated relative to permitting alternative dispute resolution in contracts approved by the Government of Guam Retirement Fund."

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COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

March 10, 2014

VIA E-MAIL

john.rios@bbmr.guam.gov

John A. Rios
Director
Bureau of Budget & Management Research
P.O. Box 2950
Hagåtña, Guam 96910

RE: Request for Fiscal Notes– Bill Nos. 285-32 (COR) through 289-32(COR)

Hafa Adai Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

Si Yu'os ma'åse' for your attention to this matter.

Very Truly Yours,

Senator Rory J. Respicio
Chairperson of the Committee on Rules

Attachment (1)

Cc: Clerk of the Legislature

Bill Nos.	Sponsors	Title
285-32 (COR)	T. R. MUÑA BARNES	AN ACT MAKING AN APPROPRIATION FROM THE GENERAL FUND TO THE DEPARTMENT OF ADMINISTRATION (DOA) FOR WESTCARE PACIFIC ISLANDS FOR THE SPECIFIC PURPOSES OF CONDUCTING INTENSE OUTREACH ACTIVITIES, PROVIDING INFORMATIONAL AND REFERRAL SERVICES TO ALL VETERANS ON GUAM.
286-32 (COR)	Tommy Morrison V. Anthony Ada Chris M. Duenas FRANK B. AGUON, JR. Brant T. McCreadie	AN ACT TO AMEND §1001 OF 1GCA RELATIVE TO ESTABLISHING GIJAM HISTORY AND CHAMORRO HERITAGE DAY AS A LEGAL HOLIDAY OF THE GOVERNMENT OF GUAM.
287-32 (COR)	T. R. MUÑA BARNES	AN ACT TO AUTHORIZE I MAGA'LAHEN GUÅHAN TO EXCHANGE GOVERNMENT- OWNED PROPERTY IN ASINAN ORDOT-CHALAN PAGO RESERVED FOR THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES FOR GOVERNMENT- OWNED PROPERTY IN DEDEDO OWNED BY THE CHAMORRO LAND TRUST.
288-32 (COR)	Michael F.Q. San Nicolas B.J.F. Cruz	AN ACT TO SUSPEND ALL TAX CREDITS, EXCEPT AS AUTHORIZED PROSPECTIVE TO THIS ACT, AS CONTRACTUALLY OBLIGATED, OR AS AUTHORIZED UNDER THE INTERNAL REVENUE CODE.
289-32 (COR)	B.J.F. Cruz	AN ACT TO AMEND SUBSECTION 5121(E) OF PART C, ARTICLE 2, CHAPTER 5, TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO PERMITTING ALTERNATIVE DISPUTE RESOLUTION IN CONTRACTS APPROVED BY THE GOVERNMENT OF GUAM RETIREMENT FUND.



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
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Senator
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Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

March 7, 2014

MEMORANDUM

To: Rennae Meno
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: Senator Rory J. Respicio
Chairperson of the Committee on Rules

Subject: Referral of Bill No. 289-32(COR)

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 289-32(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.


Si Yu'os Ma'åse!

Attachment

I MINA'TRENTAI DOS NA LIHESLATURAN GUÁHAN
2014 (SECOND) Regular Session

Bill No. 289-32 (COR)

Introduced by:

B.J.F. Cruz 

AN ACT TO AMEND SUBSECTION 5121(E) OF PART C, ARTICLE 2, CHAPTER 5, TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO PERMITTING ALTERNATIVE DISPUTE RESOLUTION IN CONTRACTS APPROVED BY THE GOVERNMENT OF GUAM RETIREMENT FUND

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings. *I Liheslaturan Guahan* finds

that Public Law No. 28-188 added a new Subsection 5121(e) to Guam's Procurement Statute to permit the Board of Trustees of the Retirement Fund to retain a certain level of autonomy with respect to procurement matters involving its retention of professional service providers. *I Liheslaturan Guahan* further finds that it also is in the best interests of the Retirement Fund to ensure an orderly and efficient process for the prompt resolution of disputes and controversies that may occur between the Retirement Fund and its personal service providers. *I Liheslaturan Guahan* further finds that alternative dispute resolution provides opportunities (a) for the parties to resolve controversies before experienced fact-finders knowledgeable in the subject matter of the dispute; (b) to reduce some of the litigation costs

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1 typically arising from protracted administrative and judicial proceedings; (c)
2 to reduce duplicative review, decision, and appeal; and (d) to provide the
3 parties with greater certainty as to jurisdiction, venue, finality, and
4 procedural timeframes; all of which are more likely to enhance competition
5 and potentially reduce fees and costs in connection with the solicitation and
6 retention of professional services.

7 **Section 2. Legislative Intent.** *I Liheslaturan Guahan* intends to
8 authorize the Board of Trustees of the Government of Guam Retirement
9 Fund to determine if it is in the best interests of the Retirement Fund to
10 solicit and enter into contracts for professional services under which
11 controversies may be resolved by mediation, arbitration, or other alternative
12 dispute resolution.

13 **Section 3.** Subsection 5121(e) of Part C, Article 2, Chapter 5, Title 5
14 of the Guam Code Annotated, added by Public Law No. 28-188, is hereby
15 further *amended* to read:

16 **(e) Approval of Contracts by Government of Guam**
17 **Retirement Fund.** Notwithstanding any other provision
18 of law, the Board of Trustees of the Government of
19 Guam Retirement Fund shall have exclusive authority to
20 approve and execute all contracts for the procurement of
21 professional services associated with the operation of the
22 Fund. The Board may enter into contracts providing for
23 alternative dispute resolution (including mediation and
24 arbitration) of controversies arising between the
25 Retirement Fund and its professional service contractors,

1 if, in the Board's discretion, alternative dispute resolution
2 is determined to be in the best interests of the Retirement
3 Fund.

4 **Section 4. Effective Date.** This Act shall be effective upon
5 enactment.

6