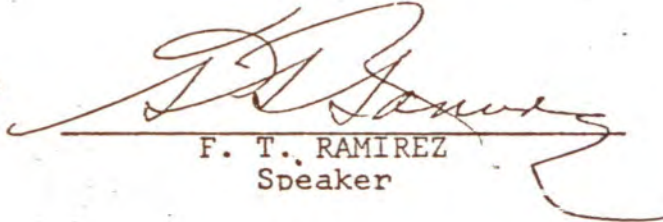


TWELFTH GUAM LEGISLATURE  
1974 (SECOND) Regular Session

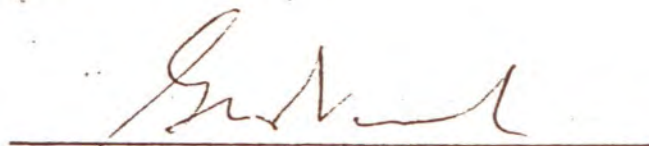
Guam Territorial Law Library  
141 San Ramon Rd.  
Agana, Guam 96910

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 901, "An Act creating the office of Special Prosecutor to investigate and prosecute if necessary allegations of bribery and corruption in the Executive Branch of the government of Guam and authorizing an appropriation therefor", which was heretofore passed and thereafter on September 10, 1974, returned to the Legislature without the approval of the Governor was, in accordance with the Organic Act of Guam, reconsidered by the Legislature and after such reconsideration the Legislature did on the 11th day of September, 1974, agree to pass said bill notwithstanding the objections of the Governor by a vote of more than two-thirds of all the members thereof, to wit: by a vote of 16 members.

  
F. T. RAMIREZ  
Speaker

ATTESTED:

  
G. M. BAMBA  
Legislative Secretary

-----  
This Act was received by the Governor this 19<sup>th</sup> day  
of September, 1974, at 11:02 o'clock a.M.

/s/ RICHARD D. MAGEE

RICHARD D. MAGEE, Acting  
Attorney General of Guam

PL# 12-173

RECEIVED

APR 21 1986

GUAM TERRITORIAL  
LAW LIBRARY

TWELFTH GUAM LEGISLATURE  
1974 (SECOND) Regular Session

Bill No. 901

Introduced by J. U. Torres

AN ACT CREATING THE OFFICE OF SPECIAL  
PROSECUTOR TO INVESTIGATE AND PROSE-  
CUTE IF NECESSARY ALLEGATIONS OF  
BRIBERY AND CORRUPTION IN THE EXECU-  
TIVE BRANCH OF THE GOVERNMENT OF GUAM  
AND AUTHORIZING AN APPROPRIATION  
THEREFOR.

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

2 Section 1. Title. This Act may be cited as the "Independent  
3 Special Prosecutor Act of 1974".

4 Section 2. Findings. The Legislature finds and declares  
5 that:

6 (a) Serious allegations of illegal acts of high  
7 officials of the Executive Branch of the government of  
8 Guam cannot under present extraordinary circumstances be  
9 fully and properly investigated and prosecuted by the  
10 Executive Branch itself.

11 (b) Public confidence in the integrity of the  
12 territory's criminal justice system cannot be maintained  
13 if the investigation of such allegations and prosecution  
14 of illegal acts by high officials of the Executive Branch  
15 of government are carried out under the authority of the  
16 Executive Branch itself.

17 (c) The establishment of a Special Prosecutor  
18 independent of the Executive Branch of government is  
19 necessary and proper under the laws of Guam to insure the  
20 enforcement of the criminal laws and the due administration  
21 of justice through a complete investigation of such  
22 allegations and a vigorous and uncompromised prosecution  
23 of accused offenders.

1 (d) A Special Prosecutor independent of the Executive  
2 Branch of government should properly be appointed by the  
3 Judicial Branch of government, and Section 6 of the Organic  
4 Act of Guam (Chapter 8A, Title 48, U.S.C.A.) provides  
5 authority for the Legislature to vest such appointment  
6 other than in the Governor of Guam.

7 (e) The establishment of an independent Special  
8 Prosecutor is an appropriate exercise by the Legislature  
9 of the power under Section 11 of the Organic Act of Guam  
10 which extends to "all subjects of local application", in  
11 that all such activities are alleged to have occurred in  
12 Guam.

13 Section 3. Appointment. The Chief Judge of the Superior  
14 Court of Guam is authorized and directed to appoint a Special  
15 Prosecutor with the experience, abilities, and reputation  
16 necessary to perform the responsibilities of the office who  
17 shall have the duties and powers prescribed in this Act. The  
18 Chief Judge shall establish the salary for the Special  
19 Prosecutor.

20 Section 4. Vacancies. The Chief Judge shall fill promptly  
21 any vacancy which may occur thereafter in the position of  
22 Special Prosecutor.

23 Section 5. Duties. The Special Prosecutor is authorized  
24 and directed and shall have exclusive jurisdiction, to  
25 investigate, as he deems appropriate, and prosecute against  
26 and in the name of the government of Guam:

27 (1) Offenses alleged to have been committed by any  
28 Governor, Lieutenant Governor, gubernatorial appointees,  
29 their staff and employees, or members of the Governor's  
30 or Lieutenant Governor's staff while holding any such  
31 office; and

32 (2) Offenses relating to or arising out of any such

1 matters, including offenses alleged to have been committed  
2 by close relatives of such executive officers.

3 Section 6. Powers. The Special Prosecutor shall have full  
4 power and authority with respect to the matters set forth in  
5 Section 5 of this Act:

6 (1) To conduct proceedings before grand juries and  
7 other investigations he deems necessary;

8 (2) To review all documentary evidence available from  
9 any source;

10 (3) To determine whether or not to contest the  
11 assertion of Executive Privilege or any other testimonial  
12 privilege;

13 (4) To make application to any court having  
14 jurisdiction for a grant of immunity to any witness,  
15 consistent with applicable statutory requirements, or for  
16 warrants, subpoenas, or other court orders;

17 (5) To initiate and conduct prosecutions in any  
18 court of competent jurisdiction, frame and sign indict-  
19 ments, file informations, and handle all aspects of any  
20 cases over which he has jurisdiction under this Act, in the  
21 name of the government of Guam; and

22 (6) Notwithstanding any other provision of law, to  
23 exercise all other powers as to the conduct of criminal  
24 investigations and prosecutions within his jurisdiction  
25 which would otherwise be vested in the Attorney General  
26 under the laws of Guam, and act as the attorney for the  
27 government of Guam in such investigations and prosecutions  
28 under the Rules of Criminal Procedure.

29 Section 7. Materials to Special Prosecutor. All  
30 materials, tapes, documents, files, work in process, information,  
31 and all other property of whatever kind and description rele-  
32 vant to the duties enumerated in Section 5 hereof, tangible or

1 intangible, collected by, developed by, or in the possession of  
2 the Attorney General or his staff, shall be delivered into the  
3 possession of the Special Prosecutor appointed under this Act.

4 Section 8. Appointment of Staff. The Special Prosecutor  
5 shall have power to appoint, fix the compensation, and assign  
6 the duties of such employees as he deems necessary, including  
7 but not limited to investigators, attorneys, and part-time  
8 consultants, without regard to the provisions of Title 5,  
9 Government Code, governing appointments to government service,  
10 and without regard to Chapter 2 of such Title relating to  
11 classification and pay ranges, but at ranges not in excess of  
12 the maximum rate for pay range 42 of the Pay Range Schedule  
13 under Section 4103 of such Title. The Special Prosecutor is  
14 authorized to request any officer of the Department of Law, or  
15 of the Department of Public Safety, or of any other department  
16 or agency of the government of Guam, to provide on a reimbur-  
17 sable basis such assistance as he deems necessary, and any  
18 such officer shall comply with such request. Assistance by  
19 the Departments of Law and Public Safety shall include but not  
20 be limited to, affording to the Special Prosecutor full access  
21 to any records, files, or other materials relevant to matters  
22 within his jurisdiction and use by the Special Prosecutor of  
23 the investigative and other services, on a priority basis, of  
24 such departments.

25 Section 9. Assistance by Director of Administration. The  
26 Director of Administration shall furnish the Special Prosecutor  
27 with such offices, equipment, supplies, and services as are  
28 authorized to be furnished to any other agency or instrumenta-  
29 lity of the government of Guam.

30 Section 10. Appropriation Requests. Notwithstanding any  
31 other provisions of law, the Special Prosecutor shall submit  
32 to the Legislature directly requests for such funds, facilities,

1 and legislation as he shall consider necessary to carry out  
2 his responsibilities under this Act, and such requests shall  
3 receive priority consideration by the Legislature.

4 Section 11. Term of Office. The Special Prosecutor shall  
5 carry out his duties under this Act within one year, except  
6 as necessary to complete trial or appellate action on indict-  
7 ments then pending.

8 Section 12. Dismissal of Special Prosecutor. The Chief  
9 Judge of the Superior Court has the sole and exclusive power  
10 to dismiss the Special Prosecutor. The only grounds for  
11 removal are gross impropriety, gross dereliction of duty, or  
12 physical or mental disability preventing discharge of his  
13 responsibilities under the Act.

14 Section 13. Special Prosecutor Solely Responsible. The  
15 Special Prosecutor solely shall exercise the powers and perform  
16 the duties specified herein. Neither the Governor or the  
17 Lieutenant Governor, nor any other officer of the government  
18 of Guam shall have any authority to direct, countermand, or  
19 interfere with any action taken by the Special Prosecutor  
20 pursuant to this Act. Neither the Governor of Guam, nor any  
21 other officer of the government of Guam (exclusive of the Chief  
22 Judge of the Superior Court), shall have any authority to  
23 remove the Special Prosecutor from office.

24 Section 14. Reports. The Special Prosecutor is authorized  
25 from time to time to make public such statements or reports  
26 as he deems appropriate and is authorized and directed upon  
27 completion of his duties to submit a final such statement or  
28 report to the Legislature and the Governor.

29 Section 15. Appropriation Authorized. The sum of One  
30 Hundred Fifty Thousand Dollars (\$150,000) is hereby authorized  
31 to be appropriated to carry out the provisions of this Act.

32 Section 16. Expedited Review Procedure. (a) (1) Any

1 objection by a person who is the subject of an indictment or  
2 information to the authority of the Special Prosecutor under  
3 the laws of Guam to frame and sign indictments or informations  
4 and to prosecute offenses in the name of the government of Guam  
5 shall be raised by motion to dismiss the indictment or infor-  
6 mation. Such motion shall be made within twenty (20) days of  
7 notice of the indictment or information, or before entry of  
8 a plea. The making of such a motion shall not preclude the  
9 making of motions on other grounds as permitted by the Rules  
10 of Criminal Procedure.

11 (2) The Superior Court shall immediately certify any  
12 motion made under Subsection (a) (1) to the Supreme Court of  
13 Guam.

14 (3) It shall be the duty of the Supreme Court to advance  
15 on the docket and to expedite to the greatest possible extent  
16 the disposition of any motion filed pursuant to Subsection  
17 (a) (1).

18 (4) Except as provided in this subsection, no court shall  
19 have jurisdiction to consider any objection to the validity  
20 of an indictment or information or a conviction based on the  
21 lack of authority under the laws of Guam of the Special  
22 Prosecutor to frame and to sign indictments and informations  
23 and to prosecute offenses in the name of the government of Guam.

24 (5) The Special Prosecutor and anyone acting on his  
25 behalf shall be deemed a person authorized to be present during  
26 sessions of a grand jury, notwithstanding any later judicial  
27 determination regarding his authority to frame and to sign  
28 indictments and informations and to prosecute offenses in the  
29 name of the government of Guam.

30 (b) (1) A person aggrieved by any act of the Special  
31 Prosecutor may bring an action or file an appropriate motion  
32 challenging his lawful authority under this Act and for

1 appropriate relief. Such an action or motion shall be filed  
2 within twenty (20) days of notice of the act to which objection  
3 is had. The Superior Court shall immediately certify all  
4 questions of legality of this Act to the Supreme Court of Guam.

5 (2) It shall be the duty of the Supreme Court of Guam to  
6 advance on the docket and to expedite to the greatest possible  
7 extent the disposition of any question certified under  
8 Subsection (b) (1).

9 (c) (1) In addition to any other civil or criminal relief  
10 against interference with the performance of his duties to  
11 which the Special Prosecutor appointed under this Act may be  
12 entitled, he may bring an action for injunctive relief against  
13 any interference, or threatened interference, with the per-  
14 formance of his duties or with his exclusive jurisdiction  
15 under this Act, or against failure to cooperate with him as  
16 required by this Act, by any officer of the executive department  
17 of the government of Guam. Any defense to such action which  
18 challenges the authority of the Special Prosecutor under the  
19 laws of Guam, or otherwise calls into question the legality of  
20 this Act shall be interposed within twenty (20) days of the  
21 filing of the complaint.

22 (2) An action pursuant to Subsection (c) (1) shall be  
23 brought in the Superior Court of Guam which shall hear the  
24 matter, sitting en banc. Notwithstanding any other provision  
25 of law or rule any decision on the matter shall be reviewable  
26 by appeal directly to the Supreme Court of Guam. Such appeal  
27 must be brought within ten (10) days of the decision of the  
28 Superior Court.

29 (3) It shall be the duty of the Superior Court and of  
30 the Supreme Court of Guam to advance on the docket and to  
31 expedite to the greatest possible extent the disposition of  
32 any action brought pursuant to Subsection (c) (1).