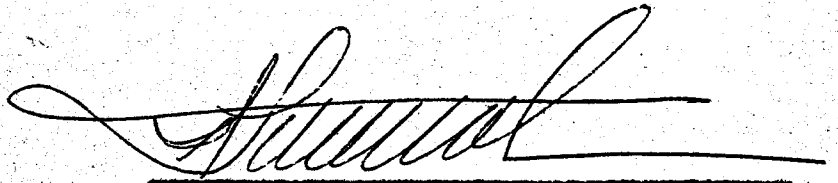


SIXTEENTH GUAM LEGISLATURE  
1982 (SECOND) Regular Session

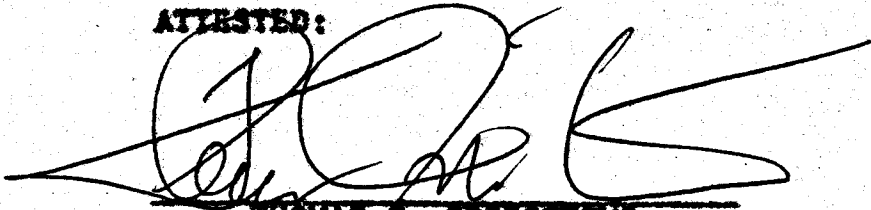
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 267, "An Act to remove the functions of criminal prosecution from the Attorney General's Office and to create the Office of Territorial Prosecutor", 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 5th of March 1982, agree to pass said bill notwithstanding the objections of the Governor by a vote of two-thirds of all the members thereof, to wit: by a vote of 16 members.



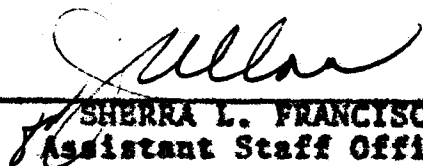
THOMAS V. C. TANAKA  
Speaker

ATTESTED:



THOMAS C. CRISOSTOMO  
Legislative Secretary

-----  
This Act was received by the Governor this 11th day of March, 1982, at 1:10 o'clock P M.



SHERRA L. FRANCISCO  
Assistant Staff Officer  
Governor's Office

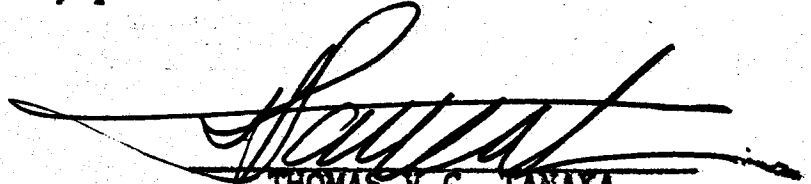
P.L. 16-72  
3/11/82

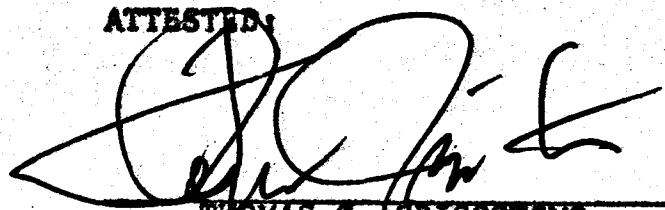
gm

SIXTEENTH GUAM LEGISLATURE  
1982 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 267, "An Act to remove the functions of criminal prosecution from the Attorney General's Office and to create the Office of Territorial Prosecutor", was on the 25th day of January 1982, duly and regularly passed.

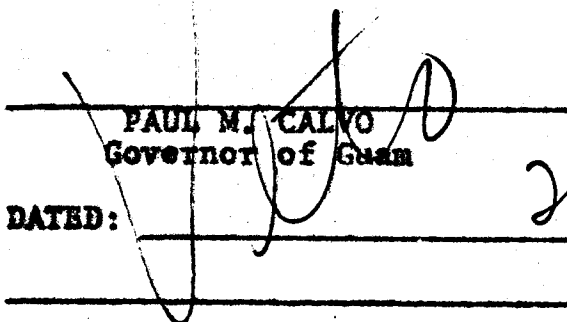
  
THOMAS V.C. TANAKA  
Speaker

ATTESTED:  
  
THOMAS C. CRISOSTOMO  
Legislative Secretary

-----  
This Act was received by the Governor this 28<sup>th</sup> day of January, 1982, at 3:30 o'clock p.M.

  
SHERRA L. FRANCISCO  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
PAUL M. CALVO  
Governor of Guam  
DATED: \_\_\_\_\_  
\_\_\_\_\_

2/8/82  
3:05 p.m.

SIXTEENTH GUAM LEGISLATURE  
1982 (SECOND) Regular Session

Bill No. 267  
(As Substituted by  
Authors)

Introduced by: K. S. Moylan, F. F. Blas, J. H. Underwood

---

J. T. San Agustin  
M. Z. Bordallo  
L. L. Umagat

AN ACT TO REMOVE THE FUNCTIONS OF CRIMINAL  
PROSECUTION FROM THE ATTORNEY GENERAL'S  
OFFICE AND TO CREATE THE OFFICE OF TERRI-  
TORIAL PROSECUTOR.

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

2 Section 1. A new Chapter 2 is added to Title 8 of the  
3 Government Code to read:

4 "CHAPTER 2

5 Territorial Prosecutor

6 Section 7100. Territorial Prosecutor. (a) The  
7 Territorial Prosecutor shall be an attorney admitted to  
8 the practice of law in Guam and who has had experience in  
9 criminal trial practice.

10 (b) The Territorial Prosecutor shall be appointed  
11 by the Governor with the advice and consent of the  
12 Legislature. The Governor may remove the Territorial  
13 Prosecutor, but only for conviction of felony involving  
14 moral turpitude or for willful misconduct in office,  
15 willful and persistent failure to perform prosecutorial  
16 duties, or any conduct which is prejudicial to the  
17 administration of justice or which brings the Territorial  
18 Prosecutor's Office into disrepute. The Territorial  
19 Prosecutor may appeal such removal to the Superior Court.

1 (c) A person appointed and confirmed as Territorial  
2 Prosecutor shall hold office through November 30 of the  
3 first even-numbered year in which a Governor is not to  
4 be elected. If that person desires to continue in the  
5 position of Territorial Prosecutor, no less than sixty (60)  
6 days prior to the general election preceding the expiration  
7 of his term of office, he shall file with the Election  
8 Commission a declaration of candidacy to continue in office.  
9 If such a declaration is filed, the name of the Territorial  
10 Prosecutor shall be submitted at that general election on  
11 a separate ballot, without party designation. The question  
12 to be submitted on the ballot, which shall otherwise be  
13 in such form and contain such instructions as the Election  
14 Commission shall direct, shall be:

15 'Shall \_\_\_\_\_ be

16 (Insert name of Territorial Prosecutor)

17 retained as Territorial Prosecutor?

18 Yes \_\_\_\_\_ No \_\_\_\_\_

19 If a majority of those voting on the question vote  
20 to retain the Territorial Prosecutor, he shall be retained  
21 in office until November 30 of the next even-numbered  
22 year in which a Governor is not elected. There shall  
23 be no limit on the number of times which the voters may  
24 retain a Territorial Prosecutor in office. If a majority  
25 of those voting on the question vote against retaining the  
26 Territorial Prosecutor, the office shall become vacant  
27 November 30 immediately following the election.

28 (d) If a vacancy occurs in the Office of Territorial  
29 Prosecutor for any reason, the position shall be filled  
30 as provided in subsection (b) of this Section and the  
31 person may retain the office only as provided in subsection  
32 (c) of this Section.

1           (e) The election provided for in this Section shall  
2 be nonpartisan. No political party shall directly or  
3 indirectly sponsor or endorse any person for the Office of  
4 Territorial Prosecutor. No person shall solicit funds to  
5 assist, sponsor or support a Territorial Prosecutor who  
6 seeks to be retained in office. All requirements imposed  
7 upon candidates for public office to report contributions  
8 and expenditures under the Election Code (Title 3 of the  
9 Guam Code Annotated) shall be applicable to a Territorial  
10 Prosecutor who seeks to be retained in office.

11           Section 7101. Deputies and Staff. Subject to the  
12 availability of funds, the Territorial Prosecutor may  
13 appoint a Deputy and Assistant Territorial Attorneys, all  
14 of whom shall be appointed to serve at the pleasure of  
15 the Territorial Prosecutor. The Deputy and Assistant  
16 Territorial Prosecutors shall be attorneys admitted  
17 to the practice of law in Guam.

18           Section 7102. Duties of Territorial Prosecutor. The  
19 Territorial Prosecutor, by himself, his Deputy or Assistants,  
20 shall:

21           (a) Except as otherwise provided by this Chapter,  
22 prosecute all offenses against the laws of Guam which  
23 are prosecuted in any of the courts of Guam, the  
24 District Court of Guam, and any appeals therefrom.

25           (b) The Territorial Prosecutor shall prosecute  
26 all offenses against the Territorial Income Tax Law  
27 (Internal Revenue Code of the United States as made  
28 applicable to Guam by Sections 30 and 31 of the Organic  
29 Act of Guam) and such other laws of the United States  
30 as he may be authorized to prosecute, and any appeals  
31 therefrom.

32           (c) Deliver receipts for money or property  
33 received by him in his official capacity and file

1 duplicates thereof with the Director of Administration.

2 (d) As soon as practical after the receipt of  
3 any money in his official capacity, deposit the money  
4 with the Treasurer of Guam, and on the first Monday  
5 of each month, file with the Director of Administration  
6 an account, verified by his oath, of all money received  
7 by him in his official capacity for the government  
8 during the preceding month.

9 Section 7103. Relationship with the Attorney General.

10 (a) The Territorial Prosecutor shall have discretion  
11 to investigate alleged criminal acts, to bring criminal  
12 prosecutions, to compromise or terminate such prosecutions  
13 as allowed by law without being responsible to the Attorney  
14 General for such decisions unless such decisions constitute  
15 grounds for removal from office.

16 (b) The Territorial Prosecutor and the Attorney  
17 General may share offices, equipment, materials and  
18 nonprofessional personnel.

19 Section 7104. Cases of Conflicts of Interest. When  
20 any criminal act constituting a felony is alleged to have  
21 been committed by the Territorial Prosecutor or any person  
22 employed in the Office of the Territorial Prosecutor, the  
23 Governor shall appoint as a special prosecutor, an attorney  
24 admitted to the practice of law in Guam, who shall prosecute  
25 any resulting criminal action. The special prosecutor may  
26 use the staff of the Attorney General and of the Department  
27 of Public Safety, or he may use his own staff.

28 Section 7105. Defense of Persons Accused of Crime  
29 Prohibited. Neither the Territorial Prosecutor nor any  
30 attorney employed by the Office of the Territorial  
31 Prosecutor shall act as counsel for any person, legal or

1 natural, accused of any crime in Guam. No attorney who has  
2 been the Territorial Prosecutor nor employed in the Office  
3 of the Territorial Prosecutor, shall act as counsel for  
4 any person, legal or natural, who was the subject of an  
5 investigation or prosecution by the Office of the Territo-  
6 rial Prosecutor during such person's employment."

7 Section 2. Section 7000 of the Government Code is amended  
8 to read:

9 "Section 7000. Attorney General. The Department of  
10 Law shall be administered by the Attorney General of Guam who  
11 shall be appointed by the Governor with the advice and  
12 consent of the Legislature. The Attorney General shall  
13 serve at the pleasure of the Governor."

14 Section 3. Section 7001 of the Government Code is amended  
15 to read:

16 "Section 7001. Department of Law, cognizance. The  
17 Attorney General shall have cognizance of civil legal  
18 matters in which the government of Guam is in anywise  
19 interested. Where any other law permits any branch,  
20 agency or autonomous public corporation of the government  
21 to retain counsel other than the Attorney General, this  
22 shall not preclude said agency or public corporation from  
23 requesting the services of the Office of the Attorney  
24 General, provided, that said agency or autonomous public  
25 corporation shall reimburse the Office of the Attorney  
26 General for such services from funds of said agency or  
27 autonomous public corporation. Said reimbursement shall  
28 be deposited in the General Fund and credited to the Office  
29 of the Attorney General. In addition, and notwithstanding  
30 any other law to the contrary, any agency or autonomous  
31 public corporation of the government of Guam may advance

1 funds to the Office of the Attorney General for services  
2 and incidental travel to be rendered by said office on  
3 behalf of said agency or autonomous public corporation."

4 Section 4. Section 7002 of the Government Code is amended  
5 to read:

6 "Section 7002. Same. The Attorney General may permit  
7 attorneys admitted to private practice in Guam or licensed  
8 collection agents to collect accounts or other obligations  
9 owing to the government of Guam, or to any agency or  
10 instrumentality thereof, if such procedure would be in  
11 the interest of the government and expedite the collection  
12 of said account or obligation. Any agency or instrumentality  
13 not operating under yearly appropriations from the Legisla-  
14 ture may retain counsel of its choice for the collection  
15 of obligations in the same manner as it may be permitted  
16 to retain counsel in other matters as permitted by its  
17 enabling legislation."

18 Section 5. Section 7003 of the Government Code is repealed.

19 Section 6. Section 7004 of the Government Code is repealed  
20 and reenacted to read:

21 "Section 7004. Divisions of Office. (a) There shall  
22 be such divisions of the Attorney General's Office as the  
23 Attorney General shall determine, provided, however, that  
24 the Consumer Counsel shall remain a separate division of  
25 that office.

26 (b) There shall be one Deputy Attorney General who  
27 shall be in the unclassified service. The divisions of the  
28 Attorney General's Office shall be headed by Assistant  
29 Attorneys General who shall be in the classified service and  
30 who may be referred to as Chief Assistants."



1 Section 7. Subsection (c) is added to Section 7007 of the  
2 Government Code to read:

3 "(c) If there is a conflict between the duty of the  
4 Attorney General to represent a department, agency, or  
5 instrumentality of the government and his representation of  
6 the individual referred to herein, he shall not represent  
7 said individual, but that individual, if he prevails in the  
8 action, shall be reimbursed from funds of his department,  
9 agency, or instrumentality for all costs and legal fees  
10 incurred in his defense."

11 Section 8. Section 7008 of the Government Code is repealed  
12 and reenacted to read:

13 "Section 7008. Attorney General, duties of. The  
14 Attorney General, by himself, a deputy or an assistant,  
15 shall:

16 (a) Conduct, on behalf of the government, all civil  
17 actions in which the government is an interested party,  
18 except as otherwise provided by law and, provided, that  
19 those branches, departments or agencies which are authorized  
20 to employ their own legal counsel may use them instead  
21 of the Attorney General.

22 (b) Deliver receipts for money or property received  
23 by him in his official capacity and file duplicates thereof  
24 with the Director of Administration.

25 (c) As soon as practical after the receipt of any  
26 money in his official capacity, deposit money with the  
27 Treasurer of Guam, and on the first Monday of each month,  
28 file with the Director of Administration an account,  
29 verified by his oath, of all monies received by him in his  
30 official capacity for the government during the preceding  
31 month.

1 (d) Be diligent in protecting the rights and  
2 properties of the government, and refer to the Territorial  
3 Prosecutor all information learned by him indicating an  
4 offense against the laws of Guam or of the laws of the  
5 United States applicable to Guam.

6 (e) Perform such other duties as are required  
7 by law or assigned by the Governor."

8 Section 9. 8 Guam Code Annotated Section 5.55(e) is  
9 amended to read:

10 "(e) The Territorial Prosecutor and those persons  
11 employed by the Territorial Prosecutor's Office whom he  
12 specifically designates."

13 Section 10. Section 5101 of the Government Code is  
14 repealed and reenacted to read:

15 "Section 5101. (a) There is within the Executive  
16 Branch of the government of Guam the Department of Law.

17 (b) There is within the Executive Branch of the government  
18 of Guam the Office of Territorial Prosecutor."

19 Section 11. Section 4106.1 of the Government Code is  
20 repealed and reenacted to read:

21 "Section 4106.1 Salary of Attorney General and  
22 Territorial Prosecutor. The Attorney General and the  
23 Territorial Prosecutor shall each be paid Forty Thousand  
24 Dollars (\$40,000) per annum."

25 Section 12. All references in any law to the Attorney  
26 General shall mean the Territorial Prosecutor where such change  
27 is implied by this Act.

28 Section 13. (a) Thirty (30) days after this Act becomes  
29 law, the Deputy Attorney General in charge of the Criminal  
30 Division of the Department of Law shall, in addition to his

1 duties as Deputy Attorney General, become the Acting  
2 Territorial Prosecutor for the purpose of effectuating the  
3 transfer of functions from the Department of Law to the  
4 Office of the Territorial Prosecutor. He shall continue in  
5 such office until the Territorial Prosecutor is appointed,  
6 confirmed and takes office as provided in this Act.

7 (b) Sixty (60) days after this Act becomes law,  
8 the Office of the Territorial Prosecutor shall be established  
9 for all of the purposes set out in this Act and all functions  
10 specified to be those of the Territorial Prosecutor shall  
11 then be transferred from the Department of Law to the Office  
12 of the Territorial Prosecutor. Unless he declines to  
13 continue as Acting Territorial Prosecutor in order to  
14 assert a right granted to him under Section 14 of this Act,  
15 the Acting Territorial Prosecutor shall cease to be a  
16 Deputy Attorney General sixty (60) days after this  
17 Act becomes law.

18 (c) The Attorney General shall cooperate in all  
19 respects with the Acting Territorial Prosecutor in the  
20 transfer of functions.

21 (d) Not more than ninety (90) days after this Act  
22 becomes law, the Governor of Guam shall appoint a  
23 Territorial Prosecutor and notify the Legislature in writing  
24 of the appointment.

25 Section 14. (a) Upon the transfer of functions, the  
26 Territorial Prosecutor shall be substituted as the attorney of  
27 record for the government in all criminal proceedings in which  
28 the Attorney General has entered an appearance.

1           (b) Upon the transfer of functions, all attorneys  
2 in the Criminal Division of the Department of Law shall  
3 be given the opportunity to transfer to the Office of the  
4 Territorial Prosecutor by accepting appointment in the  
5 unclassified service. Persons who accept such transfer  
6 shall be permitted to transfer accumulated leave and to  
7 maintain their membership in the retirement system and in  
8 government-sponsored insurance programs.

9           (c) Upon the transfer of functions, non-attorneys in  
10 the Criminal Division of the Department of Law shall be  
11 transferred to the Office of the Territorial Prosecutor in  
12 the same grade and step as they hold in the Department of  
13 Law.

14           (d) Where not inconsistent with the purpose of this  
15 Act, the Attorney General and the Territorial Prosecutor  
16 may use non-attorneys in common and apportion the cost of  
17 such services between their offices.

18           (e) Upon the transfer of functions, all files, records  
19 and equipment assigned to the Criminal Division of the  
20 Department of Law shall be transferred to the Office of the  
21 Territorial Prosecutor.

22           (f) Within one hundred twenty (120) days after this  
23 Act becomes law the Territorial Prosecutor or the person  
24 acting in that capacity shall submit to the Legislature a  
25 plan for the organization of the Office of the Territorial  
26 Prosecutor. The plan shall include a proposed staffing  
27 pattern and budget requirements for the remainder of the  
28 fiscal year and for one fiscal year thereafter.

29           Section 15. All appropriations and applicable federal  
30 funds allocated to the Criminal Division of the Department  
31 of Law shall be transferred to the Territorial Prosecutor  
32 at such time as the transfer of functions occurs.

1           Section 16. This Act shall expire November 1, 1984,  
2 and all functions of the Territorial Prosecutor shall then  
3 be performed by the Attorney General. With the exception  
4 of the Territorial Prosecutor, all personnel assigned to  
5 the office, all unexpended funds allocated to it and all  
6 files, records, supplies and equipment then assigned to it  
7 shall be transferred to the Department of Law upon the  
8 expiration of this Act.

9           Section 17. Within one hundred twenty (120) days  
10 after this Act becomes law, the Attorney General shall  
11 submit to the Legislature a plan for the Department of  
12 Law to provide civil legal services to all of the government,  
13 including its agencies, legal entities and authorities.  
14 The plan shall include (1) statistics on the number of  
15 attorneys needed to provide such services and the cost  
16 therefor, including the cost for support personnel, fringe  
17 benefits, offices, equipment and supplies; (2) whether  
18 any federal funds would be lost by implementation of  
19 such a plan; (3) the feasibility of implementing the plan,  
20 including consideration of ethical problems which may arise  
21 because of the representation of all entities by one office;  
22 and (4) such other information the Attorney General believes  
23 would be valuable to the Legislature in considering whether  
24 the plan should be implemented in whole or in part.

25           Section 18. Section 28019.1 of the Government Code is  
26 amended to read:

27           "Section 28019.1. Special Provisions for Government  
28 Attorneys. Upon recommendation of the Attorney General (or  
29 as to such Attorney General upon recommendation of the  
30 Board of Bar Examiners), any person employed by the Office  
31 of the Attorney General, the Office of the Territorial

1           Prosecutor, the Public Defender Service Corporation, the  
2           Guam Legal Services Corporation, and the Department of  
3           Education or the Office of the United States Attorney for  
4           the District of Guam may, in the discretion of the Board of  
5           Bar Examiners, upon application and hearing as hereinafter  
6           specified, be temporarily admitted to practice in this  
7           territory without a written examination if the applicant  
8           meets the qualifications fixed by Subsections (b) through  
9           (f) of Section 28019 of this Code and, in addition, meets  
10          the following requirements:

11                 (a) Be admitted to practice in the highest court  
12                 of a state or territory of the United States upon  
13                 written examination under standards of admission which  
14                 were substantially equivalent to the standards for  
15                 admission in Guam; and

16                 (b) Upon investigation and hearing by the Board  
17                 of Bar Examiners, must satisfy the Board that the  
18                 applicant is professionally, morally, and ethically  
19                 qualified for admission to the Bar of Guam and admission  
20                 of such applicant would be in the best interest of  
21                 the citizens and Bar of Guam. In every such case, the  
22                 burden shall be upon the applicant to establish his  
23                 qualification for admission on motion. A license  
24                 issued pursuant to this Section, shall terminate:  
25                 upon the termination by the licensee of his position  
26                 with the Attorney General, the Territorial Prosecutor,  
27                 the Public Defender Service Corporation, the Guam Legal  
28                 Services Corporation, the Department of Education or  
29                 the Office of the United States Attorney, as the case  
30                 may be. While licensed under the provisions of  
31                 this Section, an attorney shall be classified as an  
32                 active member of the Bar of Guam with all responsibili-  
33                 ties and privileges thereof."

1           Section 19. The Legislature and the Judiciary may each  
2 retain their own legal counsel.

3           Section 20. If any provision of this Act or its application  
4 to any person or circumstance is held invalid and the invalidity  
5 substantially affects other provisions or applications of the  
6 Act, then the provisions of this Act shall not be severable and  
7 the entire Act shall expire by operation of law. Provisions  
8 of existing statutes repealed or amended by this Act shall then  
9 be automatically revived.