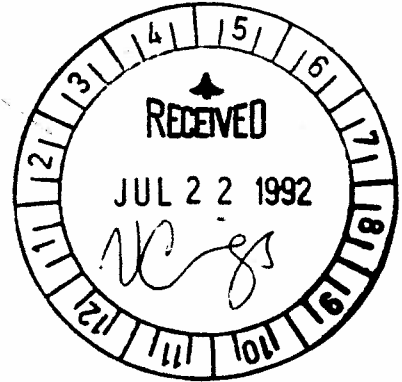




Territory of Guam
Territorio de Guam

MEMORANDUM FOR THE GOVERNOR
OFFICE OF THE GOVERNOR
AGANA, GUAM

JUL 20 1992

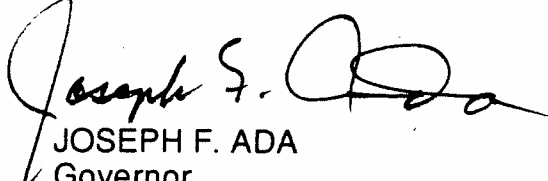


The Honorable Joe T. San Agustin
Speaker, Twenty-First Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 911 which I have signed into law this date as
Public Law 21-122.

Sincerely yours,


JOSEPH F. ADA
Governor

Attachment

210892



TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

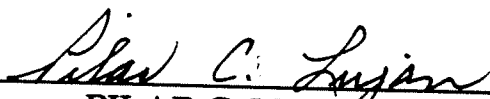
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 911 (LS), "AN ACT TO ADD A NEW CHAPTER 19 TO TITLE 1, GUAM CODE ANNOTATED, TO CREATE THE OFFICE OF PUBLIC AUDITOR," was on the 10th day of July, 1992, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



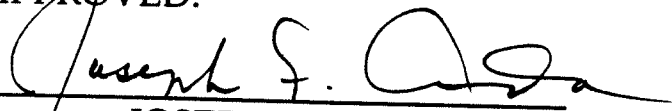
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 16th day of July, 1992,
at 4:55 o'clock P.M.



Theresa J. Duenas
Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: JUL 20 1992

Public Law No.: 21-122

TWENTY-FIRST GUAM LEGISLATURE
1992 (SECOND) Regular Session

Bill No. 911 (LS)

Introduced by:

C. T. C. Gutierrez
M. D. A. Manibusan
M. Z. Bordallo

J. P. Aguon
E. P. Arriola
J. G. Bamba
A. C. Blaz
D. F. Brooks
H. D. Dierking
E. R. Dueñas
E. M. Espaldon
P. C. Lujan
G. Mailloux
D. Parkinson
M. J. Reidy
M. C. Ruth
J. T. San Agustin
F. R. Santos
D. L. G. Shimizu
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO ADD A NEW CHAPTER 19 TO TITLE 1, GUAM
CODE ANNOTATED, TO CREATE THE OFFICE OF PUBLIC
AUDITOR.

- 1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**
2 **Section 1.** A new Chapter 19 is added to Title 1, Guam Code
3 Annotated, to read:

1 **§1902. Public Auditor. Selection.**

2 Whenever a vacancy shall occur in the office of the Public
3 Auditor, the Governor shall fill such vacancy by appointing a
4 person with the advice and consent of the Legislature and in
5 conformance with the requirements of this Chapter. Within
6 fifteen (15) calendar days before the expiration of the term of a
7 Public Auditor whose office has not been filled pursuant to §1903
8 of this Chapter, the Governor shall submit his appointment for
9 said office to the Legislature for its consideration. Should a Public
10 Auditor vacate the office before the term expires, the Governor
11 shall submit an appointment for that office to the Legislature
12 within ninety (90) days for its advice and consent.

13 **§1903. Tenure; Declarations of Candidacy; form of Public**
14 **Auditor Ballot; Rejection and Retention.** A person appointed and
15 confirmed as Public Auditor shall hold office through November
16 30 of the sixth year after the year in which that person's
17 appointment was confirmed. No less than sixty (60) days prior to
18 the holding of the general election next preceding the expiration
19 of the term of office of the Public Auditor, the Public Auditor may
20 file in the office of the Guam Election Commission a declaration
21 of candidacy for election to succeed himself or herself. If a
22 declaration is not filed, the vacancy resulting from the expiration
23 of the term of office shall be filled by appointment pursuant to
24 §1902 of this Chapter. If such a declaration is filed, the name of
25 the Public Auditor shall be submitted at said next general election

1 on a separate Public Auditor Ballot, without party designation,
2 reading:

3 "Shall _____

4 (Insert name of Public Auditor)

5 be retained as Public Auditor?

6 YES _____ NO _____"

7 If a majority of those voting on the question vote to retain
8 the Public Auditor, the Public Auditor shall be retained in office for
9 another six (6) year term ending on November 30 of the sixth year
10 following the year in which the election results are certified.
11 There shall be no limit on the number of times which the voters
12 may retain a Public Auditor in office. If a majority of those voting
13 on the question vote against retaining the Public Auditor, the
14 Office shall become vacant November 30 immediately following
15 the election.

16 **§1904. Certification of Name Upon Declaration; Law**
17 **Applicable to Election.** Whenever a declaration of candidacy for
18 election to succeed himself or herself is filed by a Public Auditor
19 under this Chapter, the Guam Election Commission shall certify
20 the name of the Public Auditor and Public Auditor Ballots shall be
21 prepared, printed, published and distributed, and the election
22 upon the question of the Public Auditor in office shall be conducted
23 and the votes counted, canvassed, returned, certified and
24 proclaimed by such public officials in such manner as is now
25 provided by the Election Law (Title 3, Guam Code Annotated).

1 **§1905. Election and Office of Public Auditor to be**
2 **nonpartisan.**

3 (a) The election provided for in §1903 of this Chapter shall
4 be nonpartisan. No political party shall directly or indirectly
5 sponsor or endorse any person for the office of Public Auditor. No
6 person shall solicit funds to assist, sponsor or support a Public
7 Auditor who seeks to be retained in office. All requirements
8 imposed upon candidates for public office to report contributions
9 and expenditures under the Election Law (Title 3, Guam Code
10 Annotated) shall be applicable to a Public Auditor who seeks to be
11 retained in office.

12 (b) No Public Auditor or employee of the Office of Public
13 Auditor shall directly or indirectly make any contribution to or
14 hold any office in a political party or organization, or take part in
15 any political campaign.

16 **§1906. Qualifications.** The Public Auditor shall be a person
17 who is a United States citizen and resident of Guam for the five
18 (5) years preceding his or her appointment and:

19 (1) is an attorney admitted to the practice of law in
20 the territory of Guam for at least five (5) years; or

21 (2) a certified public accountant admitted to practice
22 in the territory of Guam who has engaged in the practice
23 for at least five (5) years.

24 **§1907. Deputies and Staff.** (a) Subject to the availability of
25 funds, the Public Auditor may appoint a Deputy Public Auditor,

1 who shall be appointed to serve at the pleasure of the Public
2 Auditor.

3 (b) The salaries of the Public Auditor and his or her staff
4 shall be fixed by the Civil Service Commission in accordance with
5 the methodology recommended by the Hay Study adopted by the
6 Legislature and effective October 1, 1991, and shall not be
7 diminished during the Auditor's term of office.

8 §1908. Public Audit. The Public Auditor shall, annually,
9 audit or cause to be conducted postaudits of all the transactions
10 and accounts of all departments, offices, corporations,
11 authorities, and agencies in all of the branches of the government
12 of Guam. The Public Auditor may conduct or cause to be
13 conducted such other audits or reviews as he or she deems
14 necessary. With respect to the line departments of the executive,
15 the legislative and the judicial branches, the Public Auditor may
16 conduct the audit through his or her staff or may retain the
17 services of an independent audit firm or organization, which
18 audit shall be under the direction and supervision of the Public
19 Auditor. With respect to corporations, authorities or agencies,
20 including autonomous agencies and instrumentalities, which
21 obtain independent audits, the Public Auditor shall make the
22 selection of the auditing firm or organization and the scope of the
23 audit, the audits of such autonomous agencies or
24 instrumentalities to be at the cost of the agencies or
25 instrumentalities. In the event any entity of the United States
26 government, such as the Inspector General, makes an audit of the

1 government of Guam accounts and financial transactions, the
2 Public Auditor need not cause another audit to be done for that
3 particular year as long as the audit is made available to the Public
4 Auditor.

5 **§1909. Duties of Public Auditor.** The Public Auditor shall
6 have the following powers and duties:

7 (a) To direct and supervise all financial and management
8 audits conducted pursuant to §1908 of this Chapter so that annual
9 audits are completed for the prior fiscal year no later than June
10 30.

11 (b) To settle, in accordance with law and administrative
12 regulations, the accounts of Disbursing Officers and Certifying
13 Officers who are accountable for the proper payment of vouchers
14 certified and presented to them for payment and for cash and
15 related assets in their custody and control. This authority shall
16 not extend to the collection of income taxes; however, once the
17 taxes are collected, the authority shall extend to the disbursement
18 or transfer of such revenues. This authority shall not be construed
19 so as to repeal any provision of the Government Claims Act.

20 (c) To communicate directly with any person or with any
21 department, officer or person having official relations with the
22 office in any matter relating to the expenditures of government
23 funds and property or to the settlement thereof.

24 (d) To conduct public hearings, to subpoena witnesses, to
25 conduct depositions, to administer oaths, to require the
26 production of any books, records or documents in the exercise of

1 the powers of the Public Auditor in the carrying out of the Public
2 Auditor's duties under this Chapter and other laws of Guam. In
3 doing any of the activities in this subsection, the Public Auditor
4 may, at his discretion, utilize the services of the Attorney General
5 or an attorney in private practice.

6 (e) To carry out other duties and powers as may be
7 designated to the Office of the Public Auditor by law.

8 (f) To submit annual reports to the Governor and the
9 Legislature within ninety (90) days after the close of each
10 government fiscal year, such reports to include recommendations
11 for necessary legislation to improve and to protect the integrity of
12 the financial transactions and condition of the government.

13 (g) To make rules and regulations, subject to the provisions
14 of the Administrative Adjudication Law, as may be necessary to
15 carry out the duties and powers of the Office.

16 (h) To report to the Attorney General of Guam for
17 prosecution of violations of law regarding violations coming to
18 the Public Auditor's attention, where such violations pertain to the
19 expenditures of funds and property of the government of Guam,
20 including its autonomous agencies and instrumentalities,
21 including those pertaining to trust funds held by the government
22 of Guam; or for such other civil or criminal action as the Attorney
23 General may determine.

24 (i) Subject to the availability of funds provided by annual
25 appropriation by the Legislature, to employ such necessary staff
26 to carry out the functions and responsibility of the office.

1 (j) Provide copies of all audits to the Director of
2 Administration, the Director of the Bureau of Budget and
3 Management Research, to the Chairperson of the Committee on
4 Rules of the Legislature, and to the Controller of the Superior
5 Court of Guam. Copies of all audits shall also be available to
6 members of the public.

7 **§1910. Removal of Public Auditor.**

8 (a) Recall. The Public Auditor may be removed from office
9 in the same manner as that provided by the Organic Act for the
10 removal of the Governor. In determining the number of
11 signatures on the Petition for Recall, and in determining whether
12 enough votes are cast for recall, the numbers shall be the same as
13 if the Governor were the officer being recalled.

14 (b) Removal. The Governor may remove the Public
15 Auditor for conviction of a felony or any crime involving moral
16 turpitude, willful misconduct in office, persistent failure to
17 perform the duties of the office, or for any disability which renders
18 the Public Auditor unable to perform his or her duties for a period
19 greater than six (6) months, but the Auditor may retire under
20 disability retirement if eligible under the laws of the Government
21 of Guam Retirement Fund. The Public Auditor may appeal such
22 removal to the Superior Court of Guam, but shall not perform
23 Auditor duties pending the outcome of such appeal. The Superior
24 Court of Guam may sustain the Governor's action, or reinstate
25 the Public Auditor, in which latter event, the Public Auditor shall
26 be awarded all back pay and benefits.

1 **§1911. Budget Approval.** The Public Auditor shall annually,
2 at the same time as that provided for the Executive Branch,
3 submit a proposed budget for the ensuing fiscal year directly to the
4 Legislature.

5 **§1912. Executive, Legislative and Judicial branches to**
6 **implement financial recommendations of the audits prepared and**
7 **transmitted by the Public Auditor.** The Governor, the Committee
8 on Rules of the Legislature, and the Presiding Judge of the
9 Superior Court of Guam:

10 (a) shall prepare corrective action plans, as contemplated
11 by "Government Auditing Standards" promulgated by the
12 General Accounting Office; and

13 (b) shall document the progress in implementing the
14 recommendations of the audits prepared and transmitted to them
15 by the Public Auditor; and

16 (c) shall endeavor to have implementation completed no
17 later than the beginning of the next fiscal year.

18 If implementation is determined not to be feasible by the
19 Governor, the Committee on Rules of the Legislature, or the
20 Presiding Judge of the Superior Court of Guam, the reasons
21 therefor shall be communicated in writing to the Public Auditor,
22 who shall then either concur with non-implementation, or take
23 action under §1913 of this Chapter.

24 **§1913. Implementation of Recommendation.** In the event
25 the Governor, the Committee on Rules of the Legislature, or the
26 Presiding Judge of the Superior Court of Guam:

1 (a) fails to implement the required corrective action plan;

2 or

3 (b) fails to provide a satisfactory explanation as to why
4 such recommendations have not been implemented to the Public
5 Auditor; or

6 (c) the Public Auditor has not concurred with the non-
7 implementation on account of the provided explanation;

8 the Public Auditor may file in the Superior Court of Guam an
9 action for a Writ of Mandate to force the implementation of the
10 recommendations and the attendant corrective action plan.

11 Nothing in this Section shall dilute any authority granted by
12 law or rule to the Governor, the Committee on Rules of the
13 Legislature, or the Presiding Judge of the Superior Court of
14 Guam, to exercise their managerial authority in their respective
15 branches of government."

16 Section 2. §1400 of the Government Code, added in Section 12 of
17 Public Law 17-49, is repealed.

18 Section 3. Upon the effective date of this Act, the Commission
19 established pursuant to §1901 of Title 1, Guam Code Annotated, enacted in
20 Section 1 of this Act, shall accept applications for the Office of Public Auditor.
21 The Commission shall send the names of the nominees to the Governor
22 within ninety (90) days of the effective date of this Act, which shall be January
23 15, 1993.

24 Section 4. Within twenty (20) days after the Public Auditor is confirmed
25 by the Legislature, he shall submit to the Legislature a plan for the
26 organization for the office of Public Auditor. The plan shall include a

- 1 proposed staffing pattern, a salary schedule for the professional staff of the
- 2 office and budget requirements for the remainder of the fiscal year and for
- 3 one (1) fiscal year thereafter.

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Date: 7/10/92

VOTING SHEET

Bill No. 911

Resolution No. _____

Question: _____

	<u>AYE</u>	<u>NO</u>	<u>NOT VOTING</u>	<u>ABSENT/ OUT DURING ROLL CALL</u>
<u>AGUON, John P.</u>	✓			
<u>ARRIOLA, Elizabeth P.</u>	✓			
<u>BAMBA, J. George</u>				✓
<u>BLAZ, Anthony C.</u> /	✓			
<u>BORDALLO, Madeleine Z.</u>	✓			
<u>BROOKS, Doris F.</u>	✓			
<u>DIERKING, Herminia D.</u>	✓			
<u>DUENAS, Edward R.</u>	✓			
<u>ESPALDON, Ernesto M.</u>	✓			
<u>GUTIERREZ, Carl T.C.</u>	✓			
<u>LUJAN, Pilar C.</u>	✓			
<u>MAILLOUX, Gordon</u>	✓			
<u>MANIBUSAN, Marilyn D.A.</u>	✓			
<u>PARKINSON, Don</u>	✓			
<u>REIDY, Michael J.</u>	✓			
<u>RUTH, Martha C.</u>	✓			
<u>SAN AGUSTIN, Joe T.</u>	✓			
<u>SANTOS, Francisco R.</u>	✓			
<u>SHIMIZU, David L.G.</u>				✓
<u>TANAKA, Thomas V.C.</u>		✓		
<u>UNPINGCO, Antonio R.</u>		✓		

Twenty-First Guam Legislature

155 Hesler Street
Pacific Arcade
Agana, Guam 96910
Telephone: (671) 472-3407/8/9
FAX: (671) 477-3161



Chairman, Committee
on Ways & Means

Vice-Chairman, Committee
on Tourism & Transportation

CARL T. C. GUTIERREZ
Senator

May 8, 1992

Honorable Speaker Joe T. San Agustin
Speaker, Twenty-First Guam Legislature
155 Hesler St.
Agana, Guam 96910

Dear Mr. Speaker:


The Committee on Ways & Means wishes to report out its findings on BILL NO. 2 "AN ACT TO ADD A NEW 1 GCA CHAPTER 19 TO CREATE THE OFFICE OF PUBLIC AUDITOR." to the full Legislature with the recommendation to do Pass as Substituted by the Committee on Ways and Means.

The Committee Voting Record is as follows:

TO PASS:	<u>13</u>
NOT TO PASS:	<u>0</u>
ABSTENTIONS:	<u>0</u>
INACTIVE FILE:	<u>0</u>

Copies of the Committee Report and all pertinent documents are attached for your information.

Sincerely,


CARL T. C. GUTIERREZ
Chairman, Committee on
Ways & Means

Twenty-first Guam Legislature
 Committee on Ways & Means
VOTING SHEET

BILL NO.

2

AN ACT TO ADD A NEW 1 GCA CHAPTER 19 TO
 CREATE THE OFFICE OF PUBLIC AUDITOR.

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
<i>[Signature]</i> Senator Carl T. C. GUTIERREZ Chairman	✓			
<i>[Signature]</i> Senator Herminia D. DIERKING Vice-Chairman	✓			
<i>[Signature]</i> Senator John P. AGUON Member	✓			
<i>[Signature]</i> Senator Elizabeth P. ARRIOLA Member	✓			
<i>[Signature]</i> Senator George BAMBA Member	✓			
<i>[Signature]</i> Senator Anthony BLAZ Member	✓			
Senator Doris F. BROOKS Member				
<i>[Signature]</i> Senator Ernesto M. ESPALDON Member	✓			
<i>[Signature]</i> Senator Marilyn MANIBUSAN Member	✓ 5/11/92 Mm			
<i>[Signature]</i> Senator Don PARKINSON Member	✓			
<i>[Signature]</i> Senator Michael J. REIDY Member	✓			
<i>[Signature]</i> Senator Martha C. RUTH Member	✓ 5/11/92 mm			
<i>[Signature]</i> Senator David SHIMIZU Member	✓			
<i>[Signature]</i> Speaker Joe T. SAN AGUSTIN Ex-Officio Member	✓			

**COMMITTEE ON WAYS AND MEANS
COMMITTEE REPORT ON**

BILL NO. 2

**AN ACT TO ADD A NEW 1 GCA CHAPTER 19 TO
CREATE THE OFFICE OF PUBLIC AUDITOR.**

PURPOSE AND ESSENTIAL ELEMENTS

Bill No. 2 came about as a result of an amendment to the Organic Act of Guam which was effected in 1986. The amendment allowed the Legislature of the territory of Guam to enact legislation authorizing an Independent Auditor, an Independent Prosecutor, and an Independent Civil Service Commission. They do not all have to be created at the same time.

Bill No. 2 was introduced in the Eighteenth, Nineteenth, Twentieth, and Twenty-First Guam Legislatures, yet did not gather the necessary support for passage during these times, until the second hearing was held during the Twenty-First Guam Legislature by the Committee on Ways and Means, and the Administration finally offered support for the bill, with modification.

Bill No. 2 creates the office of Public Auditor, and sets out a plan for setting up a commission to make recommendations to the Governor for selection of the Public Auditor. The Public Auditor must be selected from the recommendations. After selection, the Public Auditor-select is then given over to the Legislature for its advise and consent. Thereafter, the Public Auditor holds office for a term of six (6) years under the Missouri Plan, which means that at the end of the six-year term the Public Auditor must stand for election, which is on a retain/no retain basis. A Public Auditor may be retained in office by the voters any number of times.

The elections held to retain or not retain the Public Auditor are non-partisan, and are conducted by the Guam Election Commission.

The qualifications for Public Auditor are that the person be either one of the following: an attorney admitted to the practice of law by the District Court of Guam, a certified public accountant, a certified internal auditor, or a public accountant admitted to the practice of public accountancy in Guam.

The Public Auditor may appoint a Deputy Public Auditor to serve at the pleasure of the Public Auditor.

The Public Auditor's duties are to audit all the accounts of the government of Guam, or contract out this duty. The Public Auditor has specific duties set out in the bill.

A Public Auditor may be removed by recall as provided in the Organic Act for the removal of the Governor. The Public Auditor may also be removed for conviction of a felony or a crime of moral turpitude, willful misconduct, persistent failure to perform duties of office, or disability rendering the Public Auditor from performing his duties. A Public Auditor who is removed may appeal the removal to the Superior Court of Guam.

Upon enactment of a system of Public Auditor, the Guam Legislature would no longer perform the function of auditing the accounts of the government of Guam.

It is felt that the Office of Public Auditor, independent of the three branches of government, would provide the needed check and balance on the keeping of accounts and the expenditures of funds of the government, to insure the highest quality of accounting for the public's funds. It would also take the job of accounting for the public's funds as far away from the realm of politics as is possible in a political world.

PUBLIC HEARING

The Committee on Ways and Means conducted a second public hearing on Bill No. 2 on Thursday, May 7, 1992 at 9:00 o'clock a.m. in the Legislative Public Hearing Room to gather testimony on Bill No. 2. Present at the hearing were Senator Carl T. C. Gutierrez, Chairman of the Committee, who conducted the hearing, being joined by Senators A.C. Blaz, M.J. Reidy, and J. G. Bamba.

Mr. Todd S. Smith, Managing Partner of Deloitte & Touche, submitted written testimony before the hearing in favor of Bill No.2. The testimony is attached.

Ms. Kathy Maraman appeared and presented both oral and written testimony on behalf of the Governor and the Lieutenant Governor, in favor of the passage of Bill No. 2. She stated that both the Governor and Lieutenant Governor support the concept of creating the Office of Public Auditor, however some changes in the Bill were recommended. She stated, also, that the Governor and Lieutenant Governor join the Chairman of the Committee on Ways and Means in seeing that timely audits are completed on the government of Guam.

Chairman Gutierrez questioned Ms. Maraman concerning the recommendations, stating that he had no objection to clarifying that all three branches of government, Executive, Legislative, and Judicial, would be subject to the audits.

Ms. Maraman also recommended a less politically composed commission to submit recommendations for Public Auditor, and the Chairman responded that the suggestion would be taken, along with those of Deloitte & Touche that advice from the Guam Society of CPAs and the Territorial Board of Accountancy be taken into account also.

The suggestion that the persons who are eligible to be Public Auditor have a requirement of residency on Guam for five (5) years, as is presently the case for the appointment of judges was also endorsed by Chairman Gutierrez.

Since the Bill was drafted before the Hay Study implementation of salaries, the suggestion that the Civil Service Commission set the salaries was also taken into account by Chairman Gutierrez.

Ms. Maraman also recommended that the Public Auditor perform or contract out for completion of what is now called the Single Audit, which covers the line items of the Executive, Legislative, and Judicial Branches, and supervise and devise the scope of work for all the other agencies that traditionally do their own audits, such as the authorities and corporations of the government. After some discussion on this subject, it was agreed

that it might be better to have the Public Auditor make the actual selection of who will be performing the audits in the autonomous agencies of the government.

The Administration also asked that the provision be left in that provides that if an agency of the United States Government does an audit on something, that the Public Auditor does not have to necessarily audit the same thing.

Another recommendation of the Administration is that the audits be completed no later than July 31st of a given year, which gives ten months after a year's end to complete the audit, and makes the audit useful for the budgeting process. Chairman Gutierrez preferred the date of June 30th for completion of the audit.

The final recommendation was that copies of the audits be given to the Director of Administration and the Director of the Bureau of Budget and Management Research. This is to clarify that even though the bill provides for a report to be made, that the actual audits themselves be delivered to these officials. After discussion, Chairman Gutierrez felt the audits needed to be delivered also to the appropriate committee of the Guam Legislature and to the appropriate official at the Superior Court of Guam.

Senator Bamba indicated that members of the public should also be able to obtain copies of the audits at a nominal cost, perhaps.

The Administration's position also is contrary to that of Deloitte & Touche in that the Administration recommends against transferring the internal audit division of the Bureau of Budget and Management Research to the new Office of Public Auditor.

Senator Bamba questioned whether the language in the bill required that the Public Auditor refrain from auditing anything that an agency of the United States Government had audited. Ms. Maraman indicated that the language is permissive in that the Public Auditor could either audit or not audit what has already been done by another agency. She recommended that another audit not be necessary so long as the information from the Inspector General or any other agency is made available to the Public Auditor. The reason for this is that the Inspector General may find problems in an audit and not choose to pursue them, whereas the local Public

Auditor may want to follow up on the problems either in a criminal or civil action. Senator Bamba and Chairman Gutierrez felt that language should be included to make problems which are found in an audit be referred to the Attorney General's office for either criminal or civil disposition.

Chairman Gutierrez then informed the committee and the public that he was the one responsible for going to the United States Congress and getting amendments made to the Organic Act of Guam which would allow for Independent Auditor, Independent Prosecutor, and Independent Civil Service Commission, and was also involved in the amendment allowing for an elected Board of Education.

The Chairman thanked Ms. Maraman for representing that the Governor and the Lieutenant Governor are in support of this bill and indicated that he agrees with most of the recommendations of the Administration for changes to the bill. Chairman Gutierrez indicated that he feels this system will provide for a better government, no matter who is governor.

Senator Blaz indicated he was in favor of the bill as a step towards greater self government.

Senator Reidy then discussed the audits presently being conducted by the government, and indicated that our government would benefit from an accurate accounting of the government's finances. Chairman Gutierrez indicated that in the past there has been difficulty getting information from various departments and agencies, which is being cleared up by more cooperation from the various departments and agencies.

Senator Bamba indicated that maybe there should be a provision requiring that recommendations in the audits should be followed up, to avoid audits being done and then left on the shelf to gather dust. Ms. Maraman indicated that the Inspector General many times recommends policy considerations in addition to financial recommendations. She recommends that financial recommendations, only, be followed up. Chairman Gutierrez indicated that policy should be left to the Governor, otherwise the Public Auditor would be running everything. This was agreed upon by the Committee and the representative from the Administration.

COMMITTEE ACTION

After discussion, it was decided that the recommendations made by the Administration be incorporated into the bill, with the change that the Public Auditor be the one who selects who will perform audits in the autonomous agencies and corporations of the government as well as the other portions of the government. It was decided that professional groups be involved in the committee to select a Public Auditor, as recommended by Deloitte & Touche, that problems uncovered by audits be forwarded to the Attorney General for criminal or civil disposition, and that copies of the audits be sent to the Director of the Department of Administration, the Director of the Bureau of Budget and Management Research, the appropriate committee of the Legislature, the appropriate official at the Superior Court of Guam, and be available to the public and that the recommendations of the Public Auditor be followed up by the Executive, Legislative and Judicial Branches of government in the area of financial recommendations, but that management and policy recommendations be implemented at their discretion.

COMMITTEE RECOMMENDATION

The Committee on Ways and Means, after incorporating the recommendations listed above in the section concerning Committee Action, recommends that Bill No. 2 be reported out to the full legislature to do pass, as substituted.

1 (4) The majority and minority leaders of the Legislature.

2 (b) The commission established in Subsection (a) of this
3 Section shall seek advice from the Guam Society of Certified Public Accountants and
4 the Territorial Board of Accountancy and then recommend at least three (3)
5 individuals. The Governor may ask the commission to recommend additional
6 individuals.

7 (c) Only those persons recommended by the commission
8 shall be eligible to be Public Auditor.

9 **§1902. Public Auditor. Selection.**

10 Whenever a vacancy shall occur in the office of the Public Auditor, the
11 Governor shall fill such vacancy by appointing a person with the advice and consent
12 of the Legislature and in conformance with the requirements of this Chapter.
13 Within fifteen (15) calendar days before the expiration of the term of a Public
14 Auditor whose office has not been filled pursuant to §1903 of this Chapter, the
15 Governor shall submit his appointment for said office to the Legislature for its
16 consideration. Should a Public Auditor vacate the office before the term expires, the
17 Governor shall submit an appointment for that office to the Legislature for its
18 advice and consent.

19 **§1903. Tenure; Declarations of Candidacy; form of Public Auditor Ballot;**
20 **Rejection and Retention.** A person appointed and confirmed as Public Auditor shall
21 hold office through November 30 of the sixth year after the year in which that
22 person's appointment was confirmed. No less than sixty (60) days prior to the
23 holding of the general election next preceding the expiration of the term of office of
24 the Public Auditor, the Public Auditor may file in the office of the Guam Election
25 Commission a declaration of candidacy for election to succeed himself or herself. If a
26 declaration is not filed, the vacancy resulting from the expiration of the term of
27 office shall be filled by appointment pursuant to §1902 of this Chapter. If such a

1 declaration is filed, the name of the Public Auditor shall be submitted at said next
2 general election on a separate Public Auditor Ballot, without party designation,
3 reading:

4 "Shall _____

5 (Insert name of Public Auditor)

6 be retained as Public Auditor?

7 YES _____ NO _____

8 If a majority of those voting on the question vote to retain the Public
9 Auditor, the Public Auditor shall be retained in office for another six (6) year term
10 ending on November 30 of the sixth year following the year in which the election
11 results are certified. There shall be no limit on the number of times which the
12 voters may retain a Public Auditor in office. If a majority of those voting on the
13 question vote against retaining the Public Auditor, the Office shall become vacant
14 November 30 immediately following the election.

15 **§1904. Certification of Name Upon Declaration; Law Applicable to**
16 **Election.** Whenever a declaration of candidacy for election to succeed himself or
17 herself is filed by a Public Auditor under this Chapter, the Guam Election
18 Commission shall certify the name of the Public Auditor and Public Auditor Ballots
19 shall be prepared, printed, published and distributed, and the election upon the
20 question of the Public Auditor in office shall be conducted and the votes counted,
21 canvassed, returned, certified and proclaimed by such public officials in such
22 manner as is now provided by the Election Laws (Title 3, Guam Code Annotated).

23 **§1905. Election and Office of Public Auditor to be nonpartisan.**

24 (a) The election provided for in §1903 of this Chapter shall be
25 nonpartisan. No political party shall directly or indirectly sponsor or endorse any
26 person for the office of Public Auditor. No person shall solicit funds to assist,
27 sponsor or support a Public Auditor who seeks to be retained in office. All

1 requirements imposed upon candidates for public office to report contributions and
2 expenditures under the Election Laws (Title 3, Guam Code Annotated) shall be
3 applicable to a Public Auditor who seeks to be retained in office.

4 (b) No Public Auditor or employee of the Office of Public Auditor
5 shall directly or indirectly make any contribution to or hold any office in a political
6 party or organization, or take part in any political campaign.

7 **§1906. Qualifications.** The Public Auditor shall be a person who is a
8 United States Citizen and resident of Guam for the five (5) years preceding his or
9 her appointment and:

- 10 (1) is an attorney admitted to the practice of law in the
11 territory of Guam for at least five (5) years; or
- 12 (2) a certified public accountant admitted to practice in the
13 territory of Guam who has engaged in the practice for at
14 least five (5) years; or
- 15 (3) a certified internal auditor admitted to practice in the
16 territory of Guam who has engaged in the practice for at
17 least five (5) years; or
- 18 (4) a public accountant admitted to the practice of public
19 accountancy in Guam who has engaged in the practice for
20 at least five (5) years.

21 **§1907. Deputies and Staff.** (a) Subject to the availability of funds, the
22 Public Auditor may appoint a Deputy Public Auditor, who shall be appointed to
23 serve at the pleasure of the Public Auditor. The Deputy Public Auditor shall meet
24 the same qualifications set by law for the Public Auditor.

25 (b) The salaries of the Public Auditor and his or her staff shall be fixed
26 by the Civil Service Commission in accordance with the methodology

1 recommended by the Hay Study adopted by the legislature and effective October 1,
2 1991, and shall not be diminished during the Auditor's term of office.

3 **§1908. Public Audit.** The Public Auditors shall, annually, audit or
4 cause to be conducted postaudits of all the transactions and accounts of all
5 departments, offices, corporations, authorities, and agencies in all of the branches of
6 the government of Guam. With respect to the line departments of the executive
7 branch, the legislative and the judicial branch, the Public Auditor may conduct the
8 audit through his or her staff or may retain the services of an independent audit
9 firm or organization, which audit shall be under the direction and supervision of
10 the Public Auditor. With respect to corporations, authorities or agencies which
11 obtain independent audits, the Public Auditor shall make the selection of the
12 auditing firm or organization and the scope of the audit. In the event any entity of
13 the United States Government, such as the Inspector General, makes an audit of the
14 government of Guam accounts and financial transactions, the Public Auditor need
15 not cause another audit to be done for that particular year as long as the audit is
16 made available to the Public Auditor.

17 **§1909. Duties of Public Auditor.** The Public Auditor shall have
18 the following powers and duties:

19 (a) To direct and supervise all public audits conducted
20 pursuant to §1908 of this Chapter so that annual audits are completed for
21 the prior fiscal year no later than June 30.

22 (b) To settle, in accordance with law and administrative
23 regulations, the accounts of Disbursing Officers and Certifying Officers
24 who are accountable for the proper payment of vouchers certified and
25 presented to them for payment and for cash and related assets in their
26 custody and control. This authority shall not extend to the collection of

1 taxes, and shall not be construed so as to repeal any provisions of the
2 Government Claims Act.

3 (c) To communicate directly with any person or with any
4 department, officer or person having official relations with the office in
5 any matter relating to the expenditures of government funds and
6 property or to the settlement thereof.

7 (d) To require the production of any books, records or
8 documents in the exercise of the powers of the Public Auditor in the
9 carrying out of the Public Auditor's duties under this Chapter and other
10 laws of Guam.

11 (e) To carry out other duties and powers as may be designated
12 to the Office of the Public Auditor by law.

13 (f) To submit annual reports to the Governor and the
14 Legislature within ninety (90) days after the close of each government
15 fiscal year, such reports to include recommendations for necessary
16 legislation to improve and to protect the integrity of the financial
17 transactions and condition of the government.

18 (g) To make rules and regulations, subject to the provisions of
19 the Administrative Adjudication Act, as may be necessary to carry out
20 the duties and powers of the Office.

21 (h) To report to the Attorney General of Guam for prosecution
22 of violations of law regarding violations coming to the Public Auditor's
23 attention, where such violations pertain to the expenditures of funds
24 and property of the government of Guam, including those pertaining to
25 trust funds held by the government of Guam; or for such other civil
26 action as the Attorney General may determine.

1 (i) Subject to the availability of funds provided by annual
2 appropriation by the Legislature, to employ such necessary staff to carry
3 out the functions and responsibility of the office.

4 (j) Provide copies of all audits to the Director of Administration, the
5 Director of the Bureau of Budget and Management Research, to the Chairperson of
6 the Committee on Rules of the Legislature, and to the Controller of the Superior
7 Court of Guam. Copies of all audits shall also be available to members of the public.

8 **§1910. Removal of Public Auditor.**

9 (a) Recall. The Public Auditor may be removed from office in
10 the same manner as that provided by the Organic Act for the removal of the
11 Governor. In determining the number of signatures on the Petition for Recall, and
12 in determining whether enough votes are cast for recall, the numbers shall be the
13 same as if the Governor were the officer being recalled.

14 (b) Removal. The Governor may remove the Public Auditor for
15 conviction of a felony or any crime involving moral turpitude, willful misconduct
16 in office, persistent failure to perform the duties of the office, or for any disability
17 which renders the Public Auditor unable to perform his or her duties for a period
18 greater than six (6) months, but the Auditor may retire under disability retirement if
19 eligible under the laws of the Government of Guam Retirement Fund. The Public
20 Auditor may appeal such removal to the Superior Court of Guam, but shall not
21 perform Auditor duties pending the outcome of such appeal. The Superior Court of
22 Guam may sustain the Governor's action, or reinstate the Public Auditor, in which
23 latter event, the Public Auditor shall be awarded all back pay and benefits.

24 **§1911. Budget Approval.** The Public Auditor shall annually, at the
25 same time as that provided for the Executive Branch, submit a proposed budget for
26 the ensuing fiscal year to the Legislature.

1 §1912. Executive, Legislative and Judicial branches to implement
2 financial recommendations of the audits prepared and transmitted by the Public
3 Auditor. The Governor, the Committee on Rules of the Guam Legislature, and the
4 Presiding Judge of the Superior Court of Guam shall implement the financial
5 recommendations of the audits prepared and transmitted to them by the Public
6 Auditor, but may implement management and policy recommendations at their
7 descretion."

8 Section 2. Section 1400 of the Government Code, added in Section 12 of
9 Public Law 17-49, is repealed.

10 Section 3. Upon the effective date of this Act, the Commission established
11 pursuant to §1901 of Title 1, Guam Code Annotated, enacted in Section 1 of this Act,
12 shall accept applications for the Office of Public Auditor. The Commission shall
13 send the names of the nominees to the Governor within ninety (90) days of the
14 effective date of this Act, which shall be January 15, 1995.

15 Section 4. Within twenty (20) days after the Public Auditor is confirmed by
16 the Legislature, he shall submit to the Legislature a plan for the organization for the
17 office of Public Auditor. The plan shall include a proposed staffing pattern, a salary
18 schedule for the professional staff of the office and budget requirements for the
19 remainder of the fiscal year and for one (1) fiscal year thereafter.

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Bill No. 2

Introduced by:


C. T. GUTIERREZ

AN ACT TO ADD A NEW 1 GCA CHAPTER 19 TO CREATE
THE OFFICE OF PUBLIC AUDITOR.

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

2 Section 1. A new 1 GCA Chapter 19 is hereby added to read:

3 "Chapter 19

4 PUBLIC AUDITOR

5 §1900. Office of Public Auditor. There is an
6 instrumentality of the government of Guam independent of the
7 executive departments known as the Office of the Public
8 Auditor.

9 §1901. Commission to Recommend Nominees;
10 Persons Qualified to be Nominees to Office of Public
11 Auditor.

12 (a) When a vacancy occurs in the Office of Public
13 Auditor, a commission is established to recommend individuals
14 to the Governor for appointment to the vacant office. The
15 Commissions shall be composed of:

- 16 (1) The Speaker of the Legislature;
- 17 (2) The Chairperson of the Committee of the Legislature
18 having oversight of the financial affairs of the
19 government;

1 (3) The Chairperson of the Committee of the Legislature
2 having oversight of the financial management of
3 the Legislature;

4 (4) The majority and minority leaders of the
5 Legislature.

6 (b) The commission established in Subsection (a)
7 of this Section shall recommend at least three (3) individuals.
8 The Governor may ask the commission to recommend
9 additional individuals.

10 (c) Only those persons recommended by the
11 commission shall be eligible to be Public Auditor.

12 **§1902. Public Auditor. Selection.**

13 Whenever a vacancy shall occur in the office of the Public
14 Auditor, the Governor shall fill such vacancy by appointing a
15 person with the advice and consent of the Legislature and in
16 conformance with the requirements of this Chapter. Within
17 fifteen (15) calendar days before the expiration of the term of
18 a Public Auditor whose office has not been filled pursuant to
19 §1903 of this Chapter, the Governor shall submit his
20 appointment for said office to the Legislature for its
21 consideration. Should a Public Auditor vacate his office before
22 his term expires, the Governor shall submit his appointment for
23 that office to the Legislature for its advice and consent.

24 **§1903. Tenure; Declarations of Candidacy; form**
25 **of Public Auditor Ballot; Rejection and Retention.** A
26 person appointed and confirmed as Public Auditor shall hold
27 office through November 30 of the sixth year after the year in
28 which that person's appointment was confirmed. No less than

1 sixty (60) days prior to the holding of the general election next
2 preceding the expiration of the term of office of the Public
3 Auditor, the Public Auditor may file in the office of the Election
4 Commission a declaration of candidacy for election to succeed
5 himself. If a declaration is not filed, the vacancy resulting
6 from the expiration of his term of office shall be filled by
7 appointment pursuant to §1902 of this Chapter. If such a
8 declaration is filed, the name of the Public Auditor shall be
9 submitted at said next general election on a separate Public
10 Auditor Ballot, without party designation, reading:

11 "Shall _____

12 (Insert name of Public Auditor)

13 be retained as Public Auditor?

14 YES _____ NO _____

15 If a majority of those voting on the question vote to
16 retain the Public Auditor, he shall be retained in office for
17 another six (6) year term ending on November 30 of the sixth
18 year following the year in which the election results are
19 certified. There shall be no limit on the number of times
20 which the voters may retain a Public Auditor in office. If a
21 majority of those voting on the question vote against retaining
22 the Public Auditor, the Office shall become vacant November
23 30 immediately following the election.

24 **§1904. Certification of Name Upon Declaration;**
25 **Law Applicable to Election.** Whenever a declaration of
26 candidacy for election to succeed himself is filed by a Public
27 Auditor under this Chapter, the Election Commission shall
28 certify the name of the Public Auditor and Public Auditor

1 Ballots shall be prepared, printed, published and distributed,
2 and the election upon the question of the Public Auditor in
3 office shall be conducted and the votes counted, canvassed,
4 returned, certified and proclaimed by such public officials in
5 such manner as is now provided by the Election Laws (3 GCA).

6 **§1905. Election and Office of Public Auditor to**
7 **be nonpartisan.**

8 (a) The election provided for in §1903 of this
9 Chapter shall be nonpartisan. No political party shall directly
10 or indirectly sponsor or endorse any person for the office of
11 Public Auditor. No person shall solicit funds to assist, sponsor
12 or support a Public Auditor who seeks to be retained in office.
13 All requirements imposed upon candidates for public office to
14 report contributions and expenditures under the Election Laws
15 (3 GCA) shall be applicable to a Public Auditor who seeks to be
16 retained in office.

17 (b) No Public Auditor or employee of the Office of
18 Public Auditor shall directly or indirectly make any
19 contribution to or hold any office in a political party or
20 organization, or take part in any political campaign.

21 **§1906. Qualifications.** The Public Auditor shall be a
22 person who:

- 23 (1) is an attorney admitted to the practice of law
24 by the District Court of Guam; or
25 (2) a certified public accountant; or
26 (3) a certified internal auditor; or
27 (4) a public accountant admitted to the practice
28 of public accountancy in Guam.

1 §1907. Deputies and Staff. Subject to the
2 availability of funds, the Public Auditor may appoint a Deputy
3 Public Auditor, who shall be appointed to serve at the pleasure
4 of the Public Auditor. The Deputy Public Auditor shall meet
5 the same qualifications set by law for the Public Auditor.

6 §1908. Public Audit. The Public Auditors, shall,
7 annually, audit or cause an audit to be made of all government
8 of Guam accounts and financial transactions by an independent
9 audit firm or organization, which audit shall be under the
10 direction and supervision of the public auditor. In the event
11 the United States General Accounting Office makes an audit of
12 government of Guam accounts and financial transactions, the
13 Public Auditor need not cause an independent audit of its own
14 to be made for that particular year so audited by the United
15 States General Accounting Office.

16 §1909. Duties of Public Auditor. The Public
17 Auditor shall have the following powers and duties:

18 (a) To direct and supervise all public audits
19 conducted pursuant to §1908 of this Chapter.

20 (b) To settle in accordance with law and
21 administrative regulations, the accounts of Disbursing
22 Officers and Certifying Officers who are accountable for
23 the proper payment of vouchers certified and presented
24 to them for payment and for cash and related assets in
25 their custody and control. This authority shall not
26 extend to the collection of taxes and shall not be
27 construed so as to repeal any provisions of the
28 Government Claims Act.

1 (c) To communicate directly with any person or
2 with any department, officer or person having official
3 relations with the office in any matter relating to the
4 expenditures of government funds and property or to the
5 settlement thereof.

6 (d) To require the production of any books,
7 records or documents in the exercise of his powers in the
8 carrying out of his duties under this Chapter and other
9 laws of Guam.

10 (e) To carry out other duties and powers as may
11 be designated to him by law.

12 (f) To submit annual reports to the Governor and
13 the Legislature within ninety (90) days after the close of
14 each government fiscal year, such reports to include
15 recommendations for necessary legislation, to improve,
16 and to protect the integrity of the financial transactions
17 and condition of the government.

18 (g) To make rules and regulations, subject to the
19 provisions of the Administrative Adjudication Act, as
20 may be necessary to carry out the duties and powers of
21 the office.

22 (h) To report to the Public Prosecutor of Guam for
23 prosecution of violations of law coming to his attention
24 where such violations pertain to the expenditures of
25 funds and property of the government of Guam, including
26 those pertaining to trust funds held by the government of
27 Guam.

1 (i) Subject to the availability of funds provided
2 by annual appropriation by the Legislature, to employ
3 such necessary staff to carry out the functions and
4 responsibility of the office.

5 **§1910. Removal of Public Auditor.**

6 (a) Recall. The Public Auditor may be
7 removed from office in the same manner as that
8 provided by the Organic Act for the removal of the
9 Governor. In determining the number of signatures on
10 the Petition for Recall, and in determining whether
11 enough votes are cast for recall, the numbers shall be the
12 same as if the Governor were the officer being recalled.

13 (b) Removal. The Governor may remove the
14 Public Auditor for conviction of a felony or any crime
15 involving moral turpitude, willful misconduct in office,
16 persistent failure to perform prosecutorial duties, or for
17 any disability which renders the Public Auditor unable to
18 perform his duties for a period greater than six (6)
19 months, but the Auditor may retire under disability
20 retirement if he is eligible under the laws of the
21 Government of Guam Retirement Fund. The Public
22 Auditor may appeal such removal to the Superior Court,
23 but shall not perform Auditor duties pending the
24 outcome of such appeal. The Superior Court may sustain
25 the Governor's action, or reinstate the Public Auditor, in
26 which latter event, the Public Auditor shall be awarded
27 all back pay and benefits.

1 **§1911. Budget Approval.** The Public Auditor
2 shall annually, at the same time as that provided for the
3 Executive Branch, submit a proposed budget for the ensuing
4 fiscal year to the Legislature in the same manner as that
5 followed by other Departments of the Executive Branch."

6 **Section 2.** Section 1400 of the Government Code, added in
7 Section 12 of Public Law 17-49, is repealed.

8 **Section 3.** A new 4 GCA §6225 is hereby added to read:

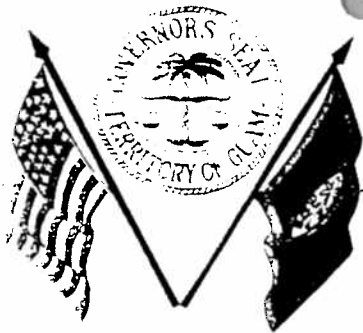
9 §6225. Salary of Public Auditor and Deputy Public Auditor.

10 The salary of the Public Auditor shall be _____ Dollars (\$_____).

11 The salary of the Deputy Auditor shall be _____ Dollars (\$_____)."

12 **Section 4.** Upon enactment of this Law, the commission
13 established pursuant to 1 GCA §1901 enacted in Section 1 of this Act shall
14 accept applications for the office of Public Auditor. The commission shall
15 send the names of the nominees to the Governor by _____, 1991,
16 and the Governor shall transmit the name of the individual selected to be
17 Public Auditor to the Legislature by _____, 1991.

18 **Section 5.** Within twenty (20) days after the Public Auditor is
19 confirmed by the Legislature, he shall submit to the Legislature a plan for
20 the organization for the office of Pubic Auditor. The plan shall include a
21 proposed staffing pattern, a salary schedule for the professional staff of
22 the office and budget requirements for the remainder of the fiscal year
23 and for one (1) fiscal year thereafter.



Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
LESIAN UMAYUMBE
AGANA GUAM 96910

May 7, 1992

The Honorable Carl T.C. Gutierrez
Chairman
Committee on Ways & Means
155 Hesler Street
Pacific Arcade
Agana, Guam 96910

Dear Mr. Chairman:

The Governor and the Lieutenant Governor have asked me to inform the Committee on Ways and Means of their support of the creation of the Office of Public Auditor. This position has been authorized by the United States Congress in an amendment to the Organic Act passed in 1986.

However, there are recommendations for changes to some of the provisions of Bill No. 2 being heard today.

In order to make it clear that the office is independent of all of the branches of government with authority to review all government expenditures and as non-political as possible, the following amendments are requested:

1. On page 1, at line 7 delete the word "departments" and insert in lieu thereof "legislative and judicial branches".

2. On pages 1 and 2, Section 1901 (a) should be revised to create a non-partisan commission. As presently constituted, the Commission would have 4 members from one party and 1 from the other. This composition is inconsistent with Section 1905 which calls for a non-partisan election.

In order to provide qualified candidates for the position of public auditor the following changes are requested:

3. On page 4, line 22 insert after "who:" the following "is a United States citizen and resident of Guam for the ___ years preceding his or her appointment and:"

4. On page 4, line 24 delete "by the District Court of Guam" and insert in lieu thereof: "in the Territory of Guam who has engaged in the practice of law for at least ___ years."

5. On page 4, line 25 insert after "accountant" the following "admitted to practice in the Territory of Guam who has engaged in the practice for at least ___ years."



Mr. Chairman
May 7, 1992
Page Two

6. On page 4, line 26 insert after "auditor" the following "admitted to practice in the Territory of Guam who has engaged in the practice for at least ___ years."

7. On page 4, line 28 insert after "Guam" the following "who has engaged in the practice for at least ___ years."

8. On page 5, insert a second paragraph in Section 1907 to read: "The salaries of the public auditor and his or her staff shall be fixed by the Civil Service Commission and shall not be diminished during the auditor's term of office."

It is important that audits of all financial transactions be completed in a timely manner. In order to be more precise about the duties of the Public Auditor it is recommended that the following changes be made:

9. On page 5, revise Section 1908 to read:

"Section 1908. Public Audit. The public auditor shall cause to be conducted postaudits of all of the transactions and accounts of all departments, offices, corporations, authorities, and agencies in all of the branches of the government of Guam. With respect to the line departments of the executive branch, the legislature and judicial branch the public auditor may conduct the audit through his staff or may retain the services of an independent audit firm or organization, which audit shall be under the direction and supervision of the public auditor. With respect to corporations, authorities or agencies which obtain independent audits the public auditor shall supervise the selection of the auditing firm or organization and the scope of the audit. In the event any entity of the United States government such as the Inspector General makes an audit of government of Guam accounts and financial transactions, the Public Auditor need not cause another audit to be done for that particular year."

10. On page 5, line 19 add after "Chapter" the following "so that annual audits are completed for the prior fiscal year no later than July 31".

11. On page 7, line 4 add a new paragraph (j) to Section 1909 to read:


"(j) provide copies of all audits to the Director of Administration and the Director of the Bureau of Budget and Management Research."

Mr. Chairman
May 7, 1992
Page Three

If the amendment proposed in item 8 is made then Section 3 should be deleted.

Thank you for the opportunity to provide testimony regarding the creation of the Office of Public Auditor.

Cordially,


KATHERINE A. MARAMAN
Legal Advisor

Deloitte & Touche



May 4, 1992

Senator Carl T.C. Gutierrez
21st Guam Legislature

Dear Senator Gutierrez:

Thank you for your letter of April 27, 1992 regarding the hearing on Bill 2 and our testimony.

Our firm supports the concept of a Public Auditor that is independent from the legislative and executive branches of GovGuam. We also support the initial selection process, but believe the Commission should seek advice from the Guam Society of CPA's and the Territorial Board of Accountancy similar to the input received from the Bar Association on appointments to the Superior Court of Guam. We further suggest that the Commission include representation from the Guam Society of CPA's and the Territorial Board of Accountancy. Further, we support lifetime appointments as opposed to six year terms.

To avoid possible duplication of costs to the government, we suggest that the feasibility of transferring the internal audit group under BBMR to the Public Auditor's office should be examined prior to moving forward with the proposed legislation.

Additionally, we believe that the bill should be specific as to the role and duties of the Public Auditor with respect to enterprise funds and the College and University funds of the Territory of Guam. Current terminology does not appear to address this issue.

Another aspect that has assumed significant attention in other Pacific Region Governments is the manner in which the Public Auditor's office is to be funded. Current legislation states that an annual appropriation must be obtained from the Legislature. Such could be construed as potentially impacting the independence of the Public Auditor. It may be of benefit to review the past history of the Office of the Public Auditor within the CNMI. We recommend reexamination of this critical point.

If you have any questions with respect to the above, please contact Mr. Dan Fitzgerald or myself.

Very truly yours,

Todd S. Smith
Managing Partner
Deloitte & Touche

810 GCIC Building
414 W. Soledad Avenue
Agana, Guam 96910
Telephone: (671) 477-9041/2

Facsimile: (671) 477-3334
Telex: 6312TRCO GM

- 1 (3) A member of the Guam Society of Certified Public Accountants, chosen
2 by the Society;
- 3 (4) A member of the Territorial Board of Accountancy, chosen by the
4 Board; and
- 5 (5) A member of the Guam Bar Association, chosen by the Association.

6 (b) The commission established in Subsection (a) of this Section
7 shall recommend at least three (3) individuals. The Governor may ask the
8 commission to recommend additional individuals.

9 (c) Only those persons recommended by the commission shall be
10 eligible to be Public Auditor.

11 **§1902. Public Auditor. Selection.**

12 Whenever a vacancy shall occur in the office of the Public Auditor, the
13 Governor shall fill such vacancy by appointing a person with the advice and consent
14 of the Legislature and in conformance with the requirements of this Chapter.
15 Within fifteen (15) calendar days before the expiration of the term of a Public
16 Auditor whose office has not been filled pursuant to §1903 of this Chapter, the
17 Governor shall submit his appointment for said office to the Legislature for its
18 consideration. Should a Public Auditor vacate the office before the term expires, the
19 Governor shall submit an appointment for that office to the Legislature within
20 ninety (90) days for its advice and consent.

21 **§1903. Tenure; Declarations of Candidacy; form of Public Auditor Ballot;**
22 **Rejection and Retention.** A person appointed and confirmed as Public Auditor shall
23 hold office through November 30 of the sixth year after the year in which that
24 person's appointment was confirmed. No less than sixty (60) days prior to the
25 holding of the general election next preceding the expiration of the term of office of

1 the Public Auditor, the Public Auditor may file in the office of the Guam Election
2 Commission a declaration of candidacy for election to succeed himself or herself. If a
3 declaration is not filed, the vacancy resulting from the expiration of the term of
4 office shall be filled by appointment pursuant to §1902 of this Chapter. If such a
5 declaration is filed, the name of the Public Auditor shall be submitted at said next
6 general election on a separate Public Auditor Ballot, without party designation,
7 reading:

8 "Shall _____
9 (Insert name of Public Auditor)

10 be retained as Public Auditor?

11 YES _____ NO _____

12 If a majority of those voting on the question vote to retain the Public
13 Auditor, the Public Auditor shall be retained in office for another six (6) year term
14 ending on November 30 of the sixth year following the year in which the election
15 results are certified. There shall be no limit on the number of times which the
16 voters may retain a Public Auditor in office. If a majority of those voting on the
17 question vote against retaining the Public Auditor, the Office shall become vacant
18 November 30 immediately following the election.

19 **§1904. Certification of Name Upon Declaration; Law Applicable to**
20 **Election.** Whenever a declaration of candidacy for election to succeed himself or
21 herself is filed by a Public Auditor under this Chapter, the Guam Election
22 Commission shall certify the name of the Public Auditor and Public Auditor Ballots
23 shall be prepared, printed, published and distributed, and the election upon the
24 question of the Public Auditor in office shall be conducted and the votes counted,

1 canvassed, returned, certified and proclaimed by such public officials in such
2 manner as is now provided by the Election Laws (Title 3, Guam Code Annotated).

3 **§1905. Election and Office of Public Auditor to be nonpartisan.**

4 (a) The election provided for in §1903 of this Chapter shall be
5 nonpartisan. No political party shall directly or indirectly sponsor or endorse any
6 person for the office of Public Auditor. No person shall solicit funds to assist,
7 sponsor or support a Public Auditor who seeks to be retained in office. All
8 requirements imposed upon candidates for public office to report contributions and
9 expenditures under the Election Laws (Title 3, Guam Code Annotated) shall be
10 applicable to a Public Auditor who seeks to be retained in office.

11 (b) No Public Auditor or employee of the Office of Public Auditor
12 shall directly or indirectly make any contribution to or hold any office in a political
13 party or organization, or take part in any political campaign.

14 **§1906. Qualifications.** The Public Auditor shall be a person who is a
15 United States Citizen and resident of Guam for the five (5) years preceding his or
16 her appointment and:

- 17 (1) is an attorney admitted to the practice of law in the
18 territory of Guam for at least five (5) years; or
19 (2) a certified public accountant admitted to practice in the
20 territory of Guam who has engaged in the practice for at
21 least five (5) years.

22 **§1907. Deputies and Staff.** (a) Subject to the availability of funds, the
23 Public Auditor may appoint a Deputy Public Auditor, who shall be appointed to
24 serve at the pleasure of the Public Auditor.

1 (b) The salaries of the Public Auditor and his or her staff shall be
2 fixed by the Civil Service Commission in accordance with the methodology
3 recommended by the Hay Study adopted by the legislature and effective October 1,
4 1991, and shall not be diminished during the Auditor's term of office.

5 **§1908. Public Audit.** The Public Auditor shall, annually, audit or
6 cause to be conducted postaudits of all the transactions and accounts of all
7 departments, offices, corporations, authorities, and agencies in all of the branches of
8 the government of Guam. The Public Auditor may conduct or cause to be conducted
9 such other audits or reviews as he or she deems necessary. With respect to the line
10 departments of the executive branch, the legislative and the judicial branch, the
11 Public Auditor may conduct the audit through his or her staff or may retain the
12 services of an independent audit firm or organization, which audit shall be under
13 the direction and supervision of the Public Auditor. With respect to corporations,
14 authorities or agencies, including autonomous agencies and instrumentalities,
15 which obtain independent audits, the Public Auditor shall make the selection of the
16 auditing firm or organization and the scope of the audit, the audits of such
17 autonomous agencies or instrumentalities to be at the cost of the agencies or
18 instrumentalities. In the event any entity of the United States Government, such as
19 the Inspector General, makes an audit of the government of Guam accounts and
20 financial transactions, the Public Auditor need not cause another audit to be done for
21 that particular year as long as the audit is made available to the Public Auditor.

22 **§1909. Duties of Public Auditor.** The Public Auditor shall have
23 the following powers and duties:

1 (a) To direct and supervise all financial and management
2 audits conducted pursuant to §1908 of this Chapter so that annual audits
3 are completed for the prior fiscal year no later than June 30.

4 (b) To settle, in accordance with law and administrative
5 regulations, the accounts of Disbursing Officers and Certifying Officers
6 who are accountable for the proper payment of vouchers certified and
7 presented to them for payment and for cash and related assets in their
8 custody and control. This authority shall not extend to the collection of
9 income taxes; however, once the taxes are collected, the authority shall
10 extend to the disbursement or transfer of such revenues. This authority
11 shall not be construed so as to repeal any provision of the Government
12 Claims Act.

13 (c) To communicate directly with any person or with any
14 department, officer or person having official relations with the office in
15 any matter relating to the expenditures of government funds and
16 property or to the settlement thereof.

17 (d) To conduct public hearings, to subpoena witnesses, to
18 conduct depositions to administer oaths, to require the production of
19 any books, records or documents in the exercise of the powers of the
20 Public Auditor in the carrying out of the Public Auditor's duties under
21 this Chapter and other laws of Guam. In doing any of the activities in
22 this Subsection, the Public Auditor may, at his discretion, utilize the
23 services of the Attorney General or an attorney in private practice.

24 (e) To carry out other duties and powers as may be designated
25 to the Office of the Public Auditor by law.

1 (f) To submit annual reports to the Governor and the
2 Legislature within ninety (90) days after the close of each government
3 fiscal year, such reports to include recommendations for necessary
4 legislation to improve and to protect the integrity of the financial
5 transactions and condition of the government.

6 (g) To make rules and regulations, subject to the provisions of
7 the Administrative Adjudication Act, as may be necessary to carry out
8 the duties and powers of the Office.

9 (h) To report to the Attorney General of Guam for prosecution
10 of violations of law regarding violations coming to the Public Auditor's
11 attention, where such violations pertain to the expenditures of funds
12 and property of the government of Guam, including its autonomous
13 agencies and instrumentalities, including those pertaining to trust funds
14 held by the government of Guam; or for such other civil or criminal
15 action as the Attorney General may determine.

16 (i) Subject to the availability of funds provided by annual
17 appropriation by the Legislature, to employ such necessary staff to carry
18 out the functions and responsibility of the office.

19 (j) Provide copies of all audits to the Director of Administration, the
20 Director of the Bureau of Budget and Management Research, to the Chairperson of
21 the Committee on Rules of the Legislature, and to the Controller of the Superior
22 Court of Guam. Copies of all audits shall also be available to members of the public.

23 **§1910. Removal of Public Auditor.**

24 (a) Recall. The Public Auditor may be removed from office in
25 the same manner as that provided by the Organic Act for the removal of the

1 Governor. In determining the number of signatures on the Petition for Recall, and
2 in determining whether enough votes are cast for recall, the numbers shall be the
3 same as if the Governor were the officer being recalled.

4 (b) Removal. The Governor may remove the Public Auditor for
5 conviction of a felony or any crime involving moral turpitude, willful misconduct
6 in office, persistent failure to perform the duties of the office, or for any disability
7 which renders the Public Auditor unable to perform his or her duties for a period
8 greater than six (6) months, but the Auditor may retire under disability retirement if
9 eligible under the laws of the Government of Guam Retirement Fund. The Public
10 Auditor may appeal such removal to the Superior Court of Guam, but shall not
11 perform Auditor duties pending the outcome of such appeal. The Superior Court of
12 Guam may sustain the Governor's action, or reinstate the Public Auditor, in which
13 latter event, the Public Auditor shall be awarded all back pay and benefits.

14 **§1911. Budget Approval.** The Public Auditor shall annually, at the
15 same time as that provided for the Executive Branch, submit a proposed budget for
16 the ensuing fiscal year directly to the Legislature.

17 **§1912. Executive, Legislative and Judicial branches to implement**
18 **financial recommendations of the audits prepared and transmitted by the Public**
19 **Auditor.** The Governor, the Committee on Rules of the Guam Legislature, and the
20 Presiding Judge of the Superior Court of Guam:

- 21 (a) shall prepare corrective action plans, as contemplated by
22 "Government Auditing Standards" promulgated by the
23 General Accounting Office; and

1 (b) shall document the progress in implementing the recommendations
2 of the audits prepared and transmitted to them by the Public
3 Auditor; and

4 (c) shall endeavor to have implementation completed no later than the
5 beginning of the next fiscal year.

6 If implementation is determined not to be feasible by the Governor, the
7 Committee on Rules of the Guam Legislature, or the Presiding Judge of the Superior
8 Court of Guam, the reasons therefore shall be communicated in writing to the Public
9 Auditor, who shall then either concur with non-implementation, or take action
10 under §1913 of this Chapter.

11 **§1913. Implementation of Recommendation.** In the event the
12 Governor, the Committee on Rules of the Guam Legislature, or the Presiding Judge
13 of the Superior Court of Guam:

14 (a) fails to implement the required corrective action plan; or

15 (b) fails to provide a satisfactory explanation as to why such
16 recommendations have not been implemented to the Public
17 Auditor; or

18 (c) the Public Auditor has not concurred with the non-implementation
19 on account of the provided explanation;

20 the Public Auditor may file in the Superior Court of Guam an action for a Writ of
21 Mandate to force the implementation of the recommendations and the attendant
22 corrective action plan.

23 Nothing in this Section shall dilute any authority granted by law or rule to the
24 Governor, the Committee on Rules of the Guam Legislature, or the Presiding Judge

1 of the Superior Court of Guam, to exercise their managerial authority in their
2 respective branches of government.

3 **Section 2.** Section 1400 of the Government Code, added in Section 12 of Public
4 Law 17-49, is repealed.

5 **Section 3.** Upon the effective date of this Act, the Commission established
6 pursuant to §1901 of Title 1, Guam Code Annotated, enacted in Section 1 of this Act,
7 shall accept applications for the Office of Public Auditor. The Commission shall
8 send the names of the nominees to the Governor within ninety (90) days of the
9 effective date of this Act, which shall be January 15, 1993.

10 **Section 4.** Within twenty (20) days after the Public Auditor is confirmed by
11 the Legislature, he shall submit to the Legislature a plan for the organization for the
12 office of Public Auditor. The plan shall include a proposed staffing pattern, a salary
13 schedule for the professional staff of the office and budget requirements for the
14 remainder of the fiscal year and for one (1) fiscal year thereafter.