



Territory of Guam
Territorio Guam

OFFICE OF THE GOVERNOR
UFISINAN I MAGA LAHI
AGANA, GUAM 96910 U.S.A.

MAY 24 1994

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

RECEIVED
OFFICE OF THE GOVERNOR
MAY 24 1994
Jm

RECEIVED
OFFICE OF THE SPEAKER
DATE: 5/27/94
TIME: 11:27
RECD BY: [Signature]

Dear Mr. Speaker:

Transmitted herewith is Bill No. 682, which I have signed into law this date as
Public Law 22-128.

Sincerely yours,

Frank F. Blas
FRANK F. BLAS
Governor,
Acting

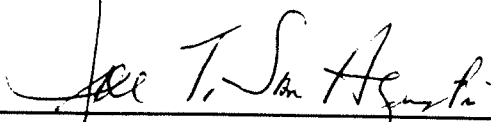
220720

Attachment

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

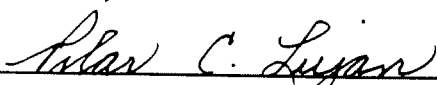
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 682 (LS), "AN ACT TO AMEND §7120 OF TITLE 7, GUAM CODE ANNOTATED, ON THE COPYING AND DISPOSITION OF COURT RECORDS, AND TO REPEAL AND REENACT PARAGRAPH (a) OF §20609 OF TITLE 5, GUAM CODE ANNOTATED, TO AUTHORIZE AGENCY HEADS HAVING CARE AND CUSTODY OF RECORDS TO REPRODUCE THE SAME ON FILM IN COMPUTERIZED FORM, AND TO CITE THE ACT AS THE "MICROFILMING AND DISPOSITION OF COURT RECORDS ACT OF 1994.," was on the 13th day of May, 1994, duly and regularly passed.



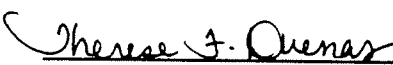
JOE T. SAN AGUSTIN
Speaker

Attested:




PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 19th day of May, 1994, at
3:01 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:



FRANK F. BLAS
Governor of Guam
Acting

Date: MAY 24 1994

Public Law No. 22-128

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 682 (LS)

As substituted by the Committee on
Judiciary and Criminal Justice and as
further substituted by the Committee
on Rules

Introduced by:

P. C. Lujan
T. C. Ada
J. P. Aguon

E. P. Arriola
M. Z. Bordallo
H. D. Dierking
C. T. C. Gutierrez
T. S. Nelson
V. C. Pangelinan
D. Parkinson
E. D. Reyes
J. T. San Agustin
F. E. Santos
D. L. G. Shimizu
J. G. Bamba
A. C. Blaz
D. F. Brooks
F. P. Camacho
M. D. A. Manibusan
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO AMEND §7120 OF TITLE 7, GUAM CODE ANNOTATED, ON THE COPYING AND DISPOSITION OF COURT RECORDS, AND TO REPEAL AND REENACT PARAGRAPH (a) OF §20609 OF TITLE 5, GUAM CODE ANNOTATED, TO AUTHORIZE AGENCY HEADS HAVING CARE AND CUSTODY OF RECORDS TO REPRODUCE THE SAME ON FILM IN COMPUTERIZED FORM, AND TO CITE THE ACT AS

THE "MICROFILMING AND DISPOSITION OF
COURT RECORDS ACT OF 1994."

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

2 **Section 1. Legislative findings and statement.** The Legislature finds
3 that there is a need to enact legislation that would authorize the clerks of the
4 Superior Court and of the Supreme Court of Guam to photograph, microfilm
5 or otherwise reproduce on film their court's records. The Legislature further
6 finds that the photographed, microfilmed or reproduced film should be
7 deemed to be an original record for all purposes, including introduction in
8 evidence in all courts or administrative agencies. More importantly, the
9 Legislature finds that the microfilming and disposition of court records
10 constitute efficient management methods of creating, utilization,
11 maintenance, retention, preservation and disposal of judicial records. The
12 Legislature finally finds that the records photographed, microfilmed or
13 reproduced on film shall be placed in safe, conveniently accessible, files, and
14 that the clerks shall make provision for preserving, examining and using the
15 same.

16 **Section 2. Title.** This Act may be cited or referred to as "The
17 Microfilming and Disposition of Court Records Act of 1994."

18 **Section 3.** §7120 of Title 7, Guam Code Annotated, is hereby amended
19 to read as follows:

20 **"§7120. Copying and disposition of court records.** (a) The
21 clerk of the Superior Court and of the Supreme Court, respectively,
22 may cause any record, paper or document in his care and custody, to
23 be photographed, microphotographed, or otherwise reproduced on
24 film or in computerized form. The storage media shall be durable

1 and the document as recorded shall be one which accurately
2 reproduces the original thereof in all material details.

3 (b) Such photograph, or microphotograph or reproduction
4 shall be deemed to an original record for all purposes, including
5 introduction in evidence in all courts or administrative agencies. A
6 transcript, exemplification, facsimile, or certified copy thereof shall,
7 for all purposes recited herein, be deemed to be a transcript,
8 exemplification, facsimile, or certified copy thereof shall for
9 purposes recited herein, be deemed to be a transcript,
10 exemplification, facsimile, or certified copy of the original record.

11 (c) Such photograph, or microphotograph or reproduction
12 shall be placed in safe conveniently accessible files, or in safe
13 computer storage, and the clerk shall make provisions for preserving
14 the same, and for the public's examining, copying and using the same.
15 The original record, paper or document shall not be destroyed but
16 shall be preserved.

17 (d) The Judicial Council shall promulgate regulations to
18 effectuate this section; **provided**, that the existing Rule 93 of the
19 Guam Rules of Civil Procedure shall be deemed to be in compliance
20 with this section and no additional rules need to be promulgated to
21 enforce this section.

22 (e) (1) When the clerk so establishes computerized storage of
23 records and papers not originally kept in computerized form, he shall
24 keep a parallel microfilm or photographic storage of the same
25 records until such time as established national standards, properly
26 followed, will give the same degree of permanency to the electronic
27 storage as is required for the microfilmed records of a similar

1 category.

2 (2) The documents retrieved from electronic storage of non-
3 electronic originals shall be deemed to be as admissible as records
4 reproduced from any other means of storage provided for in this
5 section."

6 **Section 4.** Paragraph (a) of §20609 of Title 5, Guam Code Annotated, is
7 hereby repealed and reenacted to read:

8 "(a) The head of any agency having the care and custody of
9 any record may cause the same to be photographed,
10 microphotographed, or otherwise reproduced on film or in
11 computerized form. When such head so establishes computerized
12 storage of records and papers not originally kept in computerized
13 form, he shall keep a parallel microfilm or photographic storage of
14 the same records until such time as established national standards,
15 properly followed, will give the same degree of permanency to the
16 electronic storage as is required for the microfilmed records of a
17 similar category. The documents retrieved from electronic storage
18 of non-electronic originals shall be deemed to be as admissible as
19 records reproduced from any other means of storage provided for in
20 this section. The Governor of Guam, with respect to the Executive
21 Branch, and the Committee on Rules, with respect to the Legislative
22 Branch, are charged to make certain that such records shall be
23 readily accessible to the public for examination and copying at
24 reasonable rates."

6

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Date: 5/13/94

VOTING SHEET
(AS REVISED)

Bill No. 682
Resolution No. _____
Question: _____

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George	✓			
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.	✓			
CAMACHO, Felix P.	✓			
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.	✓			
NELSON, Ted S.	✓			
PANGELINAN, Vicente C.	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francis E.				✓
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL

22 0 0 1

Twenty-Second Guam Legislature

Senator Pilar Cruz Lujan

Legislative Secretary

Chairperson - Committee on Judiciary and Criminal Justice

May 4, 1994

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

VIA: Chairperson, Committee on Rules

Dear Mr. Speaker:

The Committee on Judiciary and Criminal Justice, to which was referred Bill No. 682, "An Act to Amend §7120 of Title 7, Guam Code Annotated Pertaining to the Copying and Disposition of Court Records and To Amend Paragraph (a) of §20609 of Title 5, Guam Code Annotated to Authorize Agency Heads Having Care and Custody of Records to Reproduce the Same on Film in Computerized Form, and To Cite the Act as the Microfilming and Disposition of Court Records Act of 1994", wishes to report its findings and recommendation for passage of **Substitute Bill No. 682**.

The Committee voting record is as follows:

<u>11</u>	TO DO CONFIRM
<u>0</u>	NOT TO CONFIRM
<u>0</u>	ABSTAIN
<u>0</u>	TO PLACE IN INACTIVE FILE

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

Sincerely,


PILAR C. LUJAN

TWENTY-FIRST GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 682 (LS)

As substituted by the Committee on
Judiciary and Criminal Justice

Introduced by:

P. C. Lujan

AN ACT TO AMEND §7120 OF TITLE 7, GUAM CODE ANNOTATED PERTAINING TO THE COPYING AND DISPOSITION OF COURT RECORDS AND TO AMEND PARAGRAPH (a) OF §20609 OF TITLE 5, GUAM CODE ANNOTATED TO AUTHORIZE AGENCY HEADS HAVING CARE AND CUSTODY OF RECORDS TO REPRODUCE THE SAME ON FILM IN COMPUTERIZED FORM, AND TO CITE THE ACT AS THE MICROFILMING AND DISPOSITION OF COURT RECORDS ACT OF 1994.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. Legislative Findings and Statement. The Legislature finds
3 that there is a need to enact legislation that would authorize the Clerks of the
4 Superior Court and the Supreme Court of Guam to photograph, microfilm or
5 otherwise reproduce on film court records. The Legislature further finds that
6 the photographed, microfilmed or reproduced film shall be deemed to be an
7 original record for all purposes, including introduction in evidence in all
8 courts or administrative agencies. More importantly, the Legislature finds
9 that the microfilming and disposition of court records is intended to apply to

1 the efficient management methods of creating, utilization, maintenance,
2 retention, preservation and disposal of judicial records. Also, the Legislature
3 finds that the photographed, microfilmed or reproduction on film shall be
4 placed in safe conveniently accessible files and the clerks shall make
5 provisions for preserving, examining and using the same.

6 Section 2. Title. This Act may cited or referred to as "The Microfilming
7 and Disposition of Court Records Act of 1994."

8 Section 3. §7120 of Title 7, Guam Code Annotated is hereby amended to
9 read as follows:

10 "§7120. Copying and Disposition of court records. (a) The clerk of
11 the Superior Court and Supreme Court, respectively, may cause any
12 record, paper or document in his care and custody, to be photographed,
13 microphotographed, or otherwise reproduced on film or in
14 computerized form. The storage media shall be durable and the
15 document as recorded shall be one which accurately reproduces the
16 original thereof in all material details.

17 (b) Such photograph, or microphotograph or reproduction [~~on~~
18 ~~film~~] shall be deemed to an original record for all purposes, including
19 introduction in evidence in all courts or administrative agencies. A
20 transcript, exemplification, facsimile, or certified copy thereof shall, for
21 all purposes recited herein, be deemed to be a transcript,
22 exemplification, facsimile, or certified copy thereof shall for purposes
23 recited herein, be deemed to be a transcript, exemplification, facsimile,
24 or certified copy of the original record.

25 (c) Such photograph, or microphotograph or reproduction [~~on~~
26 ~~film~~] shall be placed in safe conveniently accessible files, or computer
27 storage, and the clerk shall make provisions for preserving, examining

1 and using the same. Thereafter, the clerk, in accordance with
2 procedures and schedules promulgated by the Judicial Council, may
3 cause the original record, paper or document to be destroyed.

4 (d) The Judicial Council shall promulgate regulations to
5 effectuate this section; provided, that the existing Rule 93 of the Guam
6 rules of Civil Procedure shall be deemed to be in compliance with this
7 section and no additional rules need be promulgated to enforce this
8 section.

9 **(e) (1) When the clerk established computerized storage of records**
10 **and papers not originally kept in computerized form, he shall keep a**
11 **parallel microfilm or photographic storage of the same records until**
12 **such time as established national standards, properly followed, will**
13 **give the same degree of permanency to the electronic storage as is**
14 **required for the microfilmed records of a similar category.**

15 **(2) The documents retrieved from electronic storage of non-**
16 **electronic originals shall be deemed to be as admissible as records**
17 **reproduced from any other means of storage provided for in this**
18 **section.**

19 Section 4. Paragraph (a) of §20609 of Title 5, Guam Code Annotated is
20 hereby amended to read as follows:

21 (a) The head of any agency having the care and custody of any
22 record may cause the same to be photographed, microphotographed, or
23 otherwise reproduced on film [-] **in computerized form.**

Committee on Judiciary and Criminal Justice

Report on Substitute Bill No. 682

"AN ACT TO AMEND §7120 OF TITLE 7, GUAM CODE ANNOTATED PERTAINING TO THE COPYING AND DISPOSITION OF COURT RECORDS AND TO AMEND PARAGRAPH (a) OF §20609 OF TITLE 5, GUAM CODE ANNOTATED TO AUTHORIZE AGENCY HEADS HAVING CARE AND CUSTODY OF RECORDS TO REPRODUCE THE SAME ON FILM IN COMPUTERIZED FORM, AND TO CITE THE ACT AS THE MICROFILMING AND DISPOSITION OF COURT RECORDS ACT OF 1994."

Introduced by Senator Pilar C. Lujan

Preface:

The Committee on Judiciary and Criminal Justice, to which was referred Bill No. 682, "AN ACT TO AMEND §7120 OF TITLE 7, GUAM CODE ANNOTATED PERTAINING TO THE COPYING AND DISPOSITION OF COURT RECORDS AND TO AMEND PARAGRAPH (a) OF §20609 OF TITLE 5, GUAM CODE ANNOTATED TO AUTHORIZE AGENCY HEADS HAVING CARE AND CUSTODY OF RECORDS TO REPRODUCE THE SAME ON FILM IN COMPUTERIZED FORM, AND TO CITE THE ACT AS THE MICROFILMING AND DISPOSITION OF COURT RECORDS ACT OF 1994," conducted a public hearing on Thursday, March 3, 1994, at 9:55 a.m. in the Legislative Public Hearing Room. Committee members present were Senator Pilar C. Lujan, Chairperson and Senator Antonio R. Unpingco. Also present were Senators Ted S. Nelson and Marilyn D.A. Manibusan.

Notification:

Letters were sent to the Governor, the Presiding Judge, Superior Court, the Attorney General, the Chief of Police, the Committee members and the news media. The general public was notified via the Legislative Weekly Calendar and a paid notice.

Testimony and Discussion:

At this time, the Chairperson called on Mr. Charles H. Troutman, Compiler of Laws to present testimony. Mr. Troutman applauded the intent of the legislation, while at the same time informed the Committee that the Courts have already adopted Rule 93 under the Rules of Civil Procedure. According to Mr. Troutman, this rule promulgates a schedule of retention and also provides which documents must be kept in their original form, and which may be disposed of after microfilming. Mr. Troutman also informed the Committee that some records should be kept in their original form for their intrinsic value, and that originals should not be destroyed after it has been microfilmed.

Adjournment:

There being no further questions, the Chairperson taking into consideration the comments presented, adjourned the Committee hearing on Bill No. 682.

Findings and Section Analysis:

Please refer to page entitled "Profile on Bill No. 682."

Recommendation:

The Committee on Judiciary and Criminal Justice, to which was referred Bill No. 682, "AN ACT TO AMEND §7120 OF TITLE 7, GUAM CODE ANNOTATED PERTAINING TO THE COPYING AND DISPOSITION OF COURT RECORDS AND TO AMEND PARAGRAPH (a) OF §20609 OF TITLE 5, GUAM CODE ANNOTATED TO AUTHORIZE AGENCY HEADS HAVING CARE AND CUSTODY OF RECORDS TO REPRODUCE THE SAME ON FILM IN COMPUTERIZED FORM, AND TO CITE THE ACT AS THE MICROFILMING AND DISPOSITION OF COURT RECORDS ACT OF 1994.," has had the same under consideration, and now wishes to report back the same with the recommendation to do pass.

Profile on Substitute Bill No. 682

Short Title: "The Microfilming and Disposition of Court Records Act of 1994."

Main Sponsor: Senator Pilar C. Lujan.

Date Introduced: Introduced and ratified by the Legislature on Wednesday, November 3, 1993.

Committee Referral: To the Committee on Judiciary and Criminal Justice on Wednesday, October 13, 1993.

Public Hearing: Thursday, March 3, 1994.

Official Title: "AN ACT TO AMEND §7120 OF TITLE 7, GUAM CODE ANNOTATED PERTAINING TO THE COPYING AND DISPOSITION OF COURT RECORDS AND TO AMEND PARAGRAPH (a) OF §20609 OF TITLE 5, GUAM CODE ANNOTATED TO AUTHORIZE AGENCY HEADS HAVING CARE AND CUSTODY OF RECORDS TO REPRODUCE THE SAME ON FILM IN COMPUTERIZED FORM, AND TO CITE THE ACT AS THE MICROFILMING AND DISPOSITION OF COURT RECORDS ACT OF 1994."

Co-Sponsors:

Recommendation: To do pass as substituted by the Committee.

Legislative Intent

1. Bill No. 682, when enacted, would add a new Section 189 to Chapter IV of Title II of the Civil Procedure Code. It would authorize the Clerk of the Superior Court to have photographed, microphotographed or otherwise reproduced on film court records.

2. The photograph, or microphotograph or reproduction or film shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies.
3. A transcript, exemplification, facsimile, or certified copy shall, for all purposes be deemed to be a certified copy of the original record. The photograph, microphotograph or reproduction on film shall be placed in safe conveniently accessible files and the clerk shall make provisions for preserving, examining and using the same.
4. The microfilming and disposition of court records is intended to apply to the efficient management methods of creating, utilization, maintenance, retention, preservation and disposal of records.
5. The Judicial Council must promulgate the necessary rules and regulations to effectuate the provisions governing the microfilming and disposition of court records.

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 682

Introduced by:

P.C. Lujan *PL*
M.P.A. Manibusan

AN ACT TO ADD A NEW SECTION 189 TO CHAPTER
IV OF TITLE II OF THE CIVIL PROCEDURE CODE
PROVIDING FOR THE MICROFILMING AND
DISPOSITION OF COURT RECORDS, AND FOR OTHER
PURPOSES.

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

2 Section 1. A new Section 189 of Chapter IV of Title II of the
3 Civil Procedure is enacted as follows:

4 "§ 189. Microfilming and disposition of court records.

5 (a) The clerk of the Superior Court may cause any record,
6 paper or document in his care and custody to be photographed,
7 microphotographed or otherwise reproduced on film. The film shall
8 be of durable material and the document on the film shall be one
9 which accurately reproduces the original thereof in all details.

10 (b) Such photograph, or microphotograph or reproduction or
11 film shall be deemed to an original record for all purposes, including
12 introduction in evidence in all courts or administrative agencies. A
13 transcript, exemplification, facsimile, or certified copy thereof shall,
14 for all purposes recited herein, be deemed to be a transcript,
15 exemplification, facsimile or certified copy of the original record.

16 (c) Such photograph, microphotograph, or reproduction on
17 film shall be placed in safe conveniently accessible files and the clerk
18 shall make provisions for preserving, examining and using the same.
19 Thereafter, the clerk, in accordance with procedures and schedules
20 promulgated by the Judicial Council, may cause the original record,
21 paper or document to be destroyed.

22 (d) The Judicial Council shall promulgate regulations to
23 effectuate this section."



October 13, 1993

MEMORANDUM

Committees:

CHAIRPERSON:

Rules

VICE CHAIRPERSON:

Ways & Means

MEMBER:

Economic-
Agricultural
Development,
and Insurance

Education

Electrical
Power and
Consumer
Protection

Federal and
Foreign Affairs

General
Governmental
Operations and
Micronesian Affairs

Health,
Ecology and
Welfare

Judiciary
and
Criminal Justice

Tourism and
Transportation

Youth, Senior
Citizens and
Cultural Affairs

TO: Chairperson, Committee on Judiciary and Criminal Justice

FROM: Chairperson, Committee on Rules

SUBJECT: Referral - Bill No. 682

The above Bill is referred to your Committee as the principle committee. Please note that the referral is subject to ratification by the Committee on Rules at its next meeting. It is recommended you schedule a public hearing at your earliest convenience.

Herminia Dierking
HERMINIA D. DIERKING

Attachment

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT
Received By [Signature]
Time 1:00
Date 12/15/93 # 990



Office of the Attorney General
Territory of Guam

COMPILER OF LAWS DIVISION

PHONE: (671) 475-3324

FAX: (671) 472-6992

COMPU SERVE: 76605,436

Elizabeth Barrett-Anderson
ATTORNEY GENERAL

Donald L. Paillette
CHIEF DEPUTY ATTORNEY GENERAL

March 3, 1994

Charles H. Troutman
COMPILER OF LAWS

Honorable Pilar C. Lujan
Chairperson
Committee on Judiciary & Criminal Justice
22nd Guam Legislature
Agana, Guam

Dear Senator Lujan,

I applaud Bill No. 682 regarding microfilming court records. However, this bill goes both too far and not far enough. The courts have already adopted Rule 93 of the Guam Rules of Civil Procedure. This Rules promulgates a schedule of retention and also provides which documents must be kept in their original form and which may be disposed of after microfilming. Because some records should be kept for their intrinsic value as originals, I believe that no law should permit destruction of all originals after microfilming.

We are not in the electronic age with computerized filing systems which permit scanning documents for storage in electronic form and then retrieving them on a computer screen for viewing or printing on paper. Any court records bill such as this one should also permit this method of storage. However, since computerized storage is not yet proven **archival**, the court should keep microfilm records for permanent record storage and be permitted to keep a parallel set of electronic files, copies of which would have equal validity as those kept on microfilm.

Such is already permitted by implication in 1 GCA §715, where a **writing** "includes printing, typewriting and physical copy from electronic media. The Evidence Code, Title 6, includes as **writings** data stored by magnetic impulse or other data compilation and **originals** are defined to include printouts from data stored in a computer or similar device.

The problem of electronic storage has been addressed in an Attorney General's Opinion, attached, However, I believe that it should be addressed, for clarity, in law applicable to the entire government, in addition to the courts. So, I suggest amendments to this Bill not only for the courts, but an addition to reflect the rest of the government,. The use of private records by private persons and

companies is adequately addressed in law and elsewhere.

Because of the adoption of the Supreme Court law, the Civil Procedure Code has been replaced by Title 7 of the Guam Code Annotated. Therefore, not only must the section number be changed, but reference to the clerk of the Supreme Court be added to this Bill. Therefore, I suggest amending Bill No. 682 to read:

§ 7120. Copying and Disposition of court records. (a) The clerk of the Superior Court and Supreme Court of Guam, respectively, may cause any record, paper or document in his care or custody, to be photographed, microphotographed, or otherwise reproduced on film or in computerized form. The storage media shall be durable and the document as recorded shall be one which accurately reproduces the original thereof in all material details.

(b) Such photograph, or microphotograph, or reproduction [on film] shall be deemed to be an original record for all purposes, including introduction in evidence in all courts and administrative agencies. A transcript, exemplification, facsimile, or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification, facsimile or certified copy of the original record.

(c) Such photograph, microphotograph, or reproduction [on file] shall be placed in safe conveniently accessible files, or computer storage, and the clerk shall make provisions for preserving, examining and using the same. Thereafter, the clerk, in accordance with procedures and schedules promulgated by the Judicial Council, may cause the original record, paper or document to be destroyed.

(d) The Judicial Council shall promulgate regulations to effectuate this section; **provided**, that the existing Rule 93 of the Guam rules of Civil Procedure shall be deemed to be in compliance with this section and no additional rules need be promulgated to enforce this section.

(e) (1) When the clerk established computerized storage of records and papers not originally kept in computerized form, he shall keep a parallel microfilm or photographic storage of the same records until such time as established national standards, properly followed, will give the same degree of permanency to the electronic storage as is required for the microfilmed records of a similar category.

(2) The documents retrieved form electronic storage of non-electronic originals shall be deemed to be as admissible as records reproduced from any other means of storage provided for in this section.

In addition, I suggest you add a section 2 to this Bill to read:

Section 2. 5 GCA §20609(a) is amended to read:

(a) The head of any agency having the care and custody of any record may cause the same to be photographed, microphotographed, or otherwise reproduced on film or in computerized form.

Sincerely yours,

Charles H. Troutman

CHARLES H. TROUTMAN
Compiler of Laws



GOVERNMENT OF GUAM
AGANA, GUAM 96910

September 15, 1989

Memorandum (Informational)

Ref: DLM 89-1136

To: Director, Department of Land Management

From: Attorney General *EEO*

Subject: Optical Disk/Imaging Process

This office is in receipt of your memorandum dated August 14, 1989 in which you requested information on the following:

REQUEST NO. 1: May the Department of Land Management solicit bids for an Optical Disk/Imaging Process?

ANSWER: Yes. See discussion.

REQUEST NO. 2: May the documents be removed from the Department of Land Management to facilitate this task?

ANSWER: No. See discussion.

REQUEST NO. 3: Will the documents printed from an Optical Disk/Imaging Process be admissible in Court?

ANSWER: Yes. See discussion.

STATEMENT OF FACTS:

The Department of Land Management (DLM) is in the process of soliciting bids for an Optical Disk/Imaging Process system to replace the existing microphotography process. Optical Disk/Imaging Process is a recent technological advance. The Administrative Services Officer/Certifying Officer of DLM is inquiring whether the use of the new technology is consistent with Section 13132 of the Government Code.

DISCUSSION OF REQUEST NO. 1:

Government Code (GC) Section 13132 provides in part: "The recorder shall record by legible handwriting, by typewriting, or by photographic reproduction process. A system of microphotography may be used by the recorder as a photographic reproduction process to record some or all instruments, papers and notices that are required or permitted by law to be recorded." [Emphasis added] Government Code Section 13132 was enacted in

1952 and to date, has not been amended. In State v. Tipple, 525 P.2d 1315 (1974), the Court said, "where neither the language of the particular statute nor the general statutory scheme is enlightening, on the interest of the Legislature ... we must try to determine what the Legislature would have done if they had considered the problem."

In this case, the statutory scheme offers no direct help in ascertaining what can be done. The Legislature used the word may, instead of the word must. Thus, it can be inferred that the Legislature did not intend to make it mandatory that only a microphotography system be used. The Legislature could not have anticipated that an Optical Disk/Imaging Process be used because that type of technology did not exist at the time the statute was enacted. Under the rules of statutory construction, we are compelled to determine what the Legislature would have done if they had considered the problem. When the statute was enacted, the most advanced technology available to store information was microphotography. Optical Disk technology was nonexistent. Under statutory construction, we must ask: what would the Legislature do if Optical Disk technology was available at the time the statute was originally enacted? Inasmuch as the Legislature in 1952 chose the most advanced technology of the day to use in recording and storing DLM data, it would be reasonable to infer that given that same choice today, the Legislature would choose the Optical Disk/Imaging Process system.

Consider the advantages of the optical disk system over microphotography: (1) it is cheaper than microphotography, (2) it saves space, (3) information can be retrieved by a push of the button, (4) the Department will have its records updated and (5) maintenance costs will be lower. When the Legislature enacted the statute the intent was to achieve all of these goals by using the microphotography system. That system has now become obsolete. DLM has a continuing duty to carry out the intent of the Legislature and this can best be achieved by using an Optical Disk/Imaging Process system. Enlightening on this point are the words of the Court in State v. Toplin, 247 A.2d 919 (M.E. 1968): Legislative purpose and intent when obvious must be carried out irrespective of rules of interpretation, as the intention of the lawmakers is the law." [citations omitted] Id. at 922.

The Legislature's intent in enacting GC §13132 was to have an efficient recording system at DLM. Although Optical Disk/Imaging Process technology was not available in 1952, it can be inferred that it would be the Legislature's intent that this system be used today. Thus, Optical Disk/Imaging Process may replace microphotography as an appropriate means for keeping records.

DISCUSSION OF REQUEST NO. 2:

GC §13132 also provides in part: "the original copy of the microfilm shall be kept in a safe and separate place for security purposes. A true copy of such film shall be arranged in a suitable place in the office of the recorder to facilitate public inspection." Although Optical Disk technology is not mentioned in the Code, the Legislature does discuss the safety and security of the records kept by the Department. The language is clear and unambiguous; the records must be kept at the Department's office.

Furthermore, the records must always be available for public inspection. If the records were removed for photocopying, they would not be available for public inspection. Thus, DLM cannot remove the documents from its office for processing and must have the documents at DLM.

DISCUSSION OF REQUEST NO. 3:

Under 6 Guam Code Annotated (GCA) §803(8), public records and reports are admissible as an exception to the hearsay rule. 6 GCA §803 defines public records and reports as:

Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal matters observed by police officer and other law enforcement personnel, or (c) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstance indicate lack of trustworthiness. (Emphasis added)

6 GCA §1001(1) provides:

"writings" and "recordings" consist of letters, words or numbers or their equivalent, set down in handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recordings or other form of data compilations. (Emphasis added)

In order to be admitted into evidence as a public record or report, a writing or recording would have to be a record kept by DLM. Moreover, to be admissible in court, the writing or recording would have to have sufficient trustworthiness. The definition of writings and recordings is very broad and includes any form of data compilation. The Optical Disk/Imaging Process is a form of data compilation. Thus, data stored through the Optical Disk/Imaging Process should be admissible as a writing or recording.

6 GCA §1001(4) provides:

A duplicate is a counterpart produced by the same impression as the original, or from the same matrix or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

The language of §1001(4) is broad. So long as the technique used will accurately reproduce the original, the documents should be admissible as duplicates. In this case, the original documents on microfilm will be transferred to computer disks through the Optical Disk/Imaging Process. The identical impression on microfilm will be placed on the computer disk. Thus,

the data stored on the disks should be admissible as a duplicate of the microfilm data.

6 GCA §1001(3) provides:

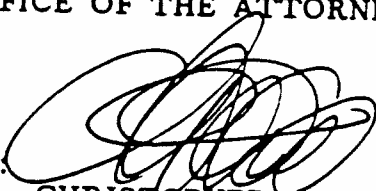
An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

In this case, the documents from the microfilm will be stored on computer disks through the Optical Disk/Imaging Process. Once a document is printed it is readable and reflects the data from the computer disk accurately and will be considered an original. Thus, the document should be admissible in court as an original document once the microfilm records system has been phased out.

This memorandum is issued as an opinion of the Attorney General. For a faster response to any inquiry about this memorandum, please use the reference number shown.

OFFICE OF THE ATTORNEY GENERAL

By:



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INSPECTOR B.A. LEON GUERRERO
 Chief of Staff

MAR 0 2 1994

Senator Pilar C. Lujan
 Legislative Secretary
 Chairperson, Committee on Judiciary
 and Criminal Justice
 Twenty-Second Guam Legislature
 155 Hesler Street
 Agana, Guam 96910

Subject: **BILL NOS. 682, 709, 799 & THE PROPOSED RULES OF APPELLATE PROCEDURE FOR THE SUPREME COURT OF GUAM.**

Dear Chairperson Lujan:

Submitted for your review and consideration by the Committee on Judiciary and Criminal Justice are GPD's comments and positions on Bill Nos. 682, 709, 799 and the Proposed Rules of Appellate Procedure for the Supreme Court of Guam as requested by the Committee.

Bill 682:

GPD supports the adding of a new Section 189 to Chapter IV of Title II of the Civil Procedure Code which provides for the microfilming and disposition of Court records.

Bill 709:

GPD fully supports increasing the penalties for welfare and food stamp fraud. Those people who engage in fraudulent conduct for the purpose of acquiring and/or maintaining welfare and food stamps must receive a clear message that such wrongful conduct is a very serious matter. Many needy people may be deprived of such benefits and assistance because others illegally possess and receive such benefits and entitlements which affects Guam's limited resources. Therefore, stiffening the punishment sends a stronger and better message that Guam will not tolerate welfare and food stamp fraud.



LETTER TO SENATOR PILAR C. LUJAN

Subject: BILL NOS. 682, 709, 799 & THE PROPOSED RULES OF APPELLATE
PROCEDURE FOR THE SUPREME COURT OF GUAM.

Page 2 of 2

Bill 799:

GPD supports the intended amendment of Section 1102 of Title 16.

PROPOSED RULES OF APPELLATE PROCEDURE:

GPD fully supports the adoption, implementation and/or enactment of the Proposed Rules of Appellate Procedure for the Supreme Court of Guam.

Sincerely,



A. P. SGAMBELLURI

**COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE
VOTE SHEET
ON SUBSTITUTE BILL NO. 682**

AN ACT TO AMEND §7120 OF TITLE 7, GUAM CODE ANNOTATED PERTAINING TO THE COPYING AND DISPOSITION OF COURT RECORDS AND TO AMEND PARAGRAPH (a) OF §20609 OF TITLE 5, GUAM CODE ANNOTATED TO AUTHORIZE AGENCY HEADS HAVING CARE AND CUSTODY OF RECORDS TO REPRODUCE THE SAME ON FILM IN COMPUTERIZED FORM, AND TO CITE THE ACT AS THE MICROFILMING AND DISPOSITION OF COURT RECORDS ACT OF 1994.

RECOMMENDATION TO DO PASS

COMMITTEE MEMBERS:	TO DO PASS	NOT TO PASS	INACTIVE FILE:	ABSTAIN:
<u><i>Pedro C. Lujan</i></u> P. C. Lujan, Chairperson	✓	_____	_____	_____
<u><i>F. E. Santos</i></u> F. E. Santos, Vice-Chairperson	✓	_____	_____	_____
<u><i>J. T. San Agustin</i></u> J. T. San Agustin, Speaker & Ex-Officio	✓	_____	_____	_____
<u><i>A. C. Blaz</i></u> A. C. Blaz, Member	✓	_____	_____	_____
<u><i>M. Z. Bordallo</i></u> M. Z. Bordallo, Member	✓	_____	_____	_____
<u><i>H. D. Dierking</i></u> H. D. Dierking, Member	✓	_____	_____	_____
<u><i>C. T.C. Gutierrez</i></u> C. T.C. Gutierrez, Member	✓	_____	_____	_____
<u><i>V. C. Pangelinan</i></u> V. C. Pangelinan, Member	✓	_____	_____	_____
<u><i>D. Parkinson</i></u> D. Parkinson, Member	✓	_____	_____	_____
<u><i>T. V.C. Tanaka</i></u> T. V.C. Tanaka, Member	✓	_____	_____	_____
<u><i>A. R. Unpingco</i></u> A. R. Unpingco, Member	✓	_____	_____	_____

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

NOV 03 '93

Bill No. 682 (LS)

Introduced by:

P.C.Lujan *PCJ*

AN ACT TO ADD A NEW SECTION 189 TO CHAPTER
IV OF TITLE II OF THE CIVIL PROCEDURE CODE
PROVIDING FOR THE MICROFILMING AND
DISPOSITION OF COURT RECORDS, AND FOR OTHER
PURPOSES.

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

2 Section 1. A new Section 189 of Chapter IV of Title II of the
3 Civil Procedure is enacted as follows:

4 "§ 189. Microfilming and disposition of court records.

5 (a) The clerk of the Superior Court may cause any record,
6 paper or document in his care and custody to be photographed,
7 microphotographed or otherwise reproduced on film. The film shall
8 be of durable material and the document on the film shall be one
9 which accurately reproduces the original thereof in all details.

10 (b) Such photograph, or microphotograph or reproduction or
11 film shall be deemed to an original record for all purposes, including
12 introduction in evidence in all courts or administrative agencies. A
13 transcript, exemplification, facsimile, or certified copy thereof shall,
14 for all purposes recited herein, be deemed to be a transcript,
15 exemplification, facsimile or certified copy of the original record.

16 (c) Such photograph, microphotograph, or reproduction on
17 film shall be placed in safe conveniently accessible files and the clerk
18 shall make provisions for preserving, examining and using the same.
19 Thereafter, the clerk, in accordance with procedures and schedules
20 promulgated by the Judicial Council, may cause the original record,
21 paper or document to be destroyed.

22 (d) The Judicial Council shall promulgate regulations to
23 effectuate this section."