



OFFICE OF THE GOVERNOR
TERRITORY OF GUAM

JUN 24 1996

The Honorable Ted S. Nelson
Acting Speaker
Twenty-Third Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

Office of VICE-SPEAKER TED S. NELSON	
Received by	
<u>bobbi</u>	<u>b</u>
Print Name	Initial
Date: <u>6-25-96</u>	Time: <u>10:45a</u>

Dear Speaker Nelson:

Enclosed please find a copy of Substitute Bill No. 110 (LS), "AN ACT TO ADD A NEW SECTION 2105 TO TITLE 5, GUAM CODE ANNOTATED, TO PROVIDE AN ENVIRONMENTAL CLEARINGHOUSE FOR THE REVIEW OF FEDERAL REAL PROPERTY TRANSFERS TO THE GOVERNMENT OF GUAM UNDER THE DIRECTION OF THE LIEUTENANT GOVERNOR", which I have **signed** into law today as **Public Law No. 23-101**.

This legislation provides that more local agencies review and become aware of the circumstances surrounding the return of federal land to the local government. I believe that even though more layers of review will be added to that already taking place under the purview of Guam Environmental Protection Agency, that the more intensive review will be beneficial to Guam.

A copy of the legislation and the message has also been delivered to the Office of the Legislative Secretary.

Very truly yours,

Madeleine Z. Bordallo
Madeleine Z. Bordallo
Acting Governor of Guam

Attachment
231197

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Time	<u>9:21 am.</u>
Date	<u>6-26-96</u>



OFFICE OF THE GOVERNOR
TERRITORY OF GUAM

JUN 24 1996


The Honorable Judith Won-Pat Borja
Legislative Secretary
Twenty-Third Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

Dear Madame Legislative Secretary:

Enclosed please find a copy of Substitute Bill No. 110 (LS), "AN ACT TO ADD A NEW SECTION 2105 TO TITLE 5, GUAM CODE ANNOTATED, TO PROVIDE AN ENVIRONMENTAL CLEARINGHOUSE FOR THE REVIEW OF FEDERAL REAL PROPERTY TRANSFERS TO THE GOVERNMENT OF GUAM UNDER THE DIRECTION OF THE LIEUTENANT GOVERNOR", which I have **signed** into law today as **Public Law No. 23-101**.


A copy of this legislation and the message have also been delivered to the Office of the Speaker.

Very truly yours,


Madeleine Z. Bordallo
Acting Governor of Guam

Attachments
231192

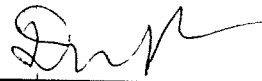
(For file purposes only
Same as Dec. No. 231197)

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT/RECEIPT	
Received By	
Time	11:00am
Date	6-25-96

TWENTY-THIRD GUAM LEGISLATURE
1996 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 110 (LS), "AN ACT TO ADD A NEW SECTION 2105 TO TITLE 5, GUAM CODE ANNOTATED, TO PROVIDE AN ENVIRONMENTAL CLEARINGHOUSE FOR THE REVIEW OF FEDERAL REAL PROPERTY TRANSFERS TO THE GOVERNMENT OF GUAM UNDER THE DIRECTION OF THE LIEUTENANT GOVERNOR," was on the 8th day of June, 1996, duly and regularly passed.



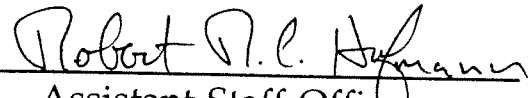
DON PARKINSON
Speaker

Attested:



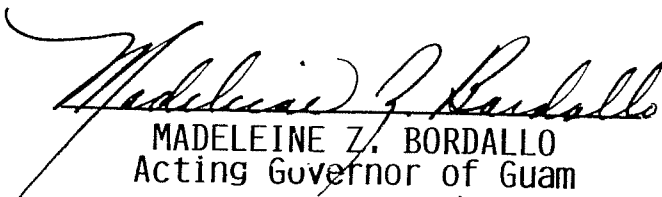
JUDITH WON PAT-BORJA
Senator and Legislative Secretary

This Act was received by the Governor this 12th day of June,
1996, at 9:50 o'clock A.M.



Assistant Staff Officer
Governor's Office

APPROVED:



MADELEINE Z. BORDALLO
Acting Governor of Guam

Date: 6/24/96

Public Law No. 23-101

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. 110 (LS)

As substituted by the Author

Introduced by:

J. M. S. Brown
A. L. G. Santos
J. P. Aguon

T. S. Nelson
T. C. Ada
E. Barrett-Anderson
A. C. Blaz
F. P. Camacho
M. C. Charfauros
H. A. Cristobal
M. Forbes
A. C. Lamorena V
C. Leon Guerrero
L. Leon Guerrero
S. L. Orsini
V. C. Pangelinan
D. Parkinson
J. T. San Agustin
F. E. Santos
A. R. Unpingco
J. Won Pat-Borja

AN ACT TO ADD A NEW SECTION 2105 TO TITLE 5,
GUAM CODE ANNOTATED, TO PROVIDE AN
ENVIRONMENTAL CLEARINGHOUSE FOR THE
REVIEW OF FEDERAL REAL PROPERTY TRANSFERS
TO THE GOVERNMENT OF GUAM UNDER THE
DIRECTION OF THE LIEUTENANT GOVERNOR.

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

1 **Section 1. Legislative findings and intent.** The Legislature recognizes
2 the utmost importance of returning federally-held excess lands on Guam to
3 the people of Guam and the need for the Government of Guam to work
4 steadfastly with appropriate federal agencies to expedite the return of excess
5 lands. The Legislature further finds:

6 (a) Public Law 23-23, enacted May 30, 1995, created the Guam
7 Land Repatriation Commission to actively work on the return of
8 federal lands that are deemed excess. There are at least approximately
9 three thousand two hundred (3,200) acres of releasable federal lands
10 and more will be considered excess with trends of cutbacks and
11 deactivation of military operations based out of Guam.

12 (b) Most of these lands were taken soon after World War II and
13 later became unused for decades. The lapse of time and lack of
14 environmental regulations and other controls on past military activities
15 as well as general lack of presence and security in these areas raise
16 serious questions and concerns as to their actual environmental and
17 sanitary condition. These conditions have complicated the timely and
18 rightful return of releasable federal excess lands. The Government of
19 Guam must assuredly work at ensuring that proper and essential
20 federal environmental actions are actively pursued to expedite land
21 transfers.

22 (1) Environmental concerns and problems have surfaced
23 and have had to be addressed after lands were transferred for the
24 northern and southern high schools. Environmental baseline
25 studies and reviews were ill-considered and substantially lacking
26 on quitclaim deed transfers for the southern and northern high
27 school sites. The discovery of soil contamination and evidence of

1 waste dumps sites in November 1994 at the southern high school
2 construction site and the need for further evaluation of the
3 northern site point out the important need for effective
4 environmental evaluation prior to the transfer of federal excess
5 lands to the Government of Guam.

6 (2) Andersen Air Force Base (AAFB) and former Naval Air
7 Station (NAS), Agana, now Tiyan, have been two of the island's
8 most operationally extensive military bases, both undergoing
9 major environmental investigatory and remedial actions going
10 back prior to 1985. Activities driven by federal statutory and
11 regulatory processes towards achieving acceptable base cleanup
12 have been intensified over the past five (5) years based on
13 significant findings or assessments and realignment or draw
14 down of military operations on Guam.

15 (i) Andersen Air Force Base following several years of
16 investigations and assessments was placed on the National
17 Priority List (NPL) for cleanup on October 1992. This places
18 the base on a higher priority for the appropriation of federal
19 funds for environmental restoration and cleanup. A Federal
20 Facility Agreement (FFA) between the United States Air
21 Force, United States Environmental Protection Agency and
22 Guam Environmental Protection Agency prescribes the
23 nature and scope of work on base cleanup which conceivably
24 can span to over fifty (50) study sites.

25 (ii) With the operational closure in April 1995 of NAS
26 Agana, and eventual total closure under the Base
27 Realignment and Closure (BRAC) process, approximately

1 one thousand eight hundred (1,800) acres of land may
2 become releasable. Several concurrent environmental
3 investigations are being conducted throughout the former
4 Naval Air Station under a BRAC Cleanup Plan (BCP) that
5 will eventually cover a current list of twenty-three (23) sites,
6 assessing the presence or absence of contamination, the
7 nature and extent of environmental contamination if
8 present, and providing an assessment of potential risks to
9 human health and the environmental.

10 (3) Incidences of trespassing and illegal dumping on
11 uncontrolled military property are becoming problematic and
12 cause for greater environmental scrutiny.

13 (4) The U. S. Army Corps of Engineers continues to do
14 evaluation and clean up work on Formerly Used Defense Sites
15 (FUDS) on Guam under the Defense Environmental Restoration
16 Program (DERP).

17 (5) The identification of military sites where there may have
18 been releases or threatened releases of hazardous substances,
19 pollutants or contaminants which may present a danger to public
20 health or the environment will continue indefinitely.

21 (c) Presently, the military through statutory mandates and
22 generally under the Department of Defense Installation Restoration
23 Program (IRP) is firmly involved in identifying several areas under their
24 jurisdiction where, in the past, chemicals may have spilled, leaked, or
25 where hazardous wastes were disposed of. These areas include:
26 unlined landfills, waste piles, drum storage and disposal, chemical
27 storage, fire training, waste storage, electrical transformer storage,

1 laundry, industrial, flight line, as well as naval or marine related
2 operations.

3 (d) Despite rigorous environmental statutes, rules and
4 regulations, and protocols now in place for the military, substantial
5 implementation and completion and a track of reliability and success
6 still need to be established. The Comprehensive Environmental
7 Response, Compensation and Liability Act of 1980, (CERCLA),
8 Superfund Amendments and Reauthorization Act of 1986 (SARA), Public
9 Law 120-426 Community Environment Response Facilities Act (CERFA)
10 Amendments and as further amended, together with regulations
11 promulgated under these federal statutes, establish the basis for
12 assessment and response actions.

13 (e) With continued cutbacks and downsizing of the military
14 presence on Guam, it becomes imperative that the Government of
15 Guam vigilantly executes environmental review and evaluation
16 protocols and procedures for federal transfer of real property.
17 Furthermore, decreasing federal funding stands to limit and jeopardize
18 federal environmental clean up efforts possibly making the
19 Government of Guam position difficult and burdensome.

20 (f) The legislative intent is definitely not to delay transfers but to
21 ensure proper environmental evaluations of federal properties to
22 protect the health, safety, welfare and quality of life of the people of
23 Guam.

24 **Section 2.** A new §2105 is added to Title 5, Guam Code Annotated, to
25 read:

26 "§2105. **Environmental Clearinghouse for Federal Land**
27 **Transfers.** The Office of Lieutenant Governor shall be designated the

1 Environmental Clearinghouse for all federal land transfers as they
2 relate specifically to Environmental review and restoration concerns.
3 All Environmental review for clean-up of federal land transfers must
4 have the initial review of the Bureau of Planning, the Department of
5 Land Management, the Guam Environmental Protection Agency, the
6 Department of Law and any affected agency of the government of
7 Guam as determined by the Lieutenant Governor.

8 (a) The Bureau of Planning shall serve as the lead agency under
9 the direction of the Lieutenant Governor for overall Environmental
10 Clearinghouse transactions and shall collect and distribute records,
11 reports and other relevant information essential for review and
12 ensuring compliance with federal and Government of Guam statutes
13 and regulations.

14 (b) The Department of Land Management shall authenticate and
15 evaluate land related documents and data.

16 (c) The Guam Environmental Protection Agency shall evaluate
17 environmental studies and other associated documents and data and
18 generally carry out its role as the lead Government of Guam agency for
19 environmental matters. In particular, Environmental Baseline Surveys
20 conducted under federal CERCLA and CERFA shall be thoroughly
21 evaluated and appropriate recommendations shall be formulated and
22 submitted to the Lieutenant Governor of Guam.

23 (d) The Department of Law shall review and advise on the
24 acceptability of land deed agreements with respect to environmental
25 clean-up actions as they apply to Guam laws and federal laws.

26 (e) Agencies involved in the Environmental Clearinghouse
27 review shall conduct necessary inquiries, fact finding investigations and

1 evaluations as directed by the Lieutenant Governor and submit findings
2 and recommendations to the Bureau of Planning.

3 (f) The Bureau of Planning shall prepare the Environmental
4 Clearinghouse review summary report under the title
5 CLEARINGHOUSE RECORD OF REVIEW for the signature of the
6 Lieutenant Governor. This report shall be filed with land records
7 documentation at the Department of Land Management.

8 (g) Additionally, the Guam Environmental Protection Agency
9 shall prepare for the Office of the Governor and the Guam Legislature
10 an annual assessment report due the following March 31st of the
11 reporting year. The purpose of the report is to ensure proper follow-up
12 and monitoring for satisfactory progress on any and all outstanding
13 environmental restoration work or actions as mandated by law and
14 regulations regarding lands that have been transferred from the federal
15 government.

16 (h) The Environmental Clearinghouse shall ensure proper and
17 expeditious return of federally-held excess lands and, furthermore,
18 strive to ensure that all necessary and essential environmental
19 evaluation and restoration works are effectively carried out."

PL 23-101



Senator Hope Alvarez Cristobal
Twenty-Third Guam Legislature
Chairperson, Committee on Federal and Foreign Affairs

February 14, 1996

Speaker Don Parkinson
Twenty-Third Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Mr. Speaker:


The Committee on Federal & Foreign Affairs which was referred Bill #110, AN ACT TO ADD A NEW SUBSECTION 2104 TO TITLE 5, GUAM CODE ANNOTATED TO PROVIDE FOR A CLEARINGHOUSE FOR THE ENVIRONMENTAL REVIEW OF FEDERAL PROPERTY TRANSFERS TO THE GOVERNMENT OF GUAM UNDER THE DIRECTION OF THE LIEUTENANT GOVERNOR, submits its Committee Report to the Legislature with the recommendation TO PASS

The voting is as follows:

To Pass	07
Not to Pass	00
To Abstain	00
To Place in Inactive File	00
Not Available for Signature	00

Your immediate attention in this matter is greatly appreciated.

Si Yu'os ma'ase,


HOPE ALVAREZ CRISTOBAL
Senator

attachments/lrm



Senator Hope Alvarez Cristobal
Twenty-Third Guam Legislature
Chairperson, Committee on Federal and Foreign Affairs

February 13, 1996

MEMORANDUM

TO: All Members
FROM: Senator Hope A. Cristobal, Chair
RE: Committee Report on Bill #110

In reference to the Public Hearing conducted on June 1, 1995, the attached voting sheet is accompanied by the following supplements:

- (1) Written testimonies submitted to the Committee,
- (2) the Committee Report (Overview, Findings & Recommendations), and
- (3) Bill #110 as substituted by the Committee on Federal & Foreign Affairs.

Please contact my office if you should have any additional comments or concerns.

Si Yu'os ma'ase,

HOPE ALVAREZ CRISTOBAL

attachments/lrm

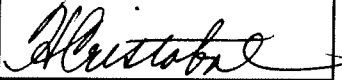

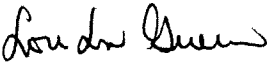
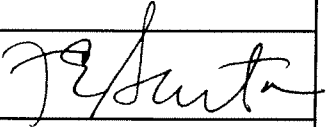


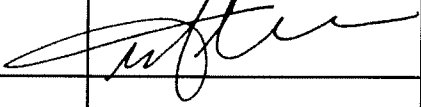
155 Hesler Street, Agana, Guam 96910 * Telephone: (671) 472-3581/2/3 * Facsimile: (671) 472-3585

Vice-Chairperson, Committee on Education * Member, Committee on Health, Welfare & Senior Citizens * Member, Committee on Judiciary & Criminal Justice, and Environmental Affairs * Member, Committee on General Governmental Operations and Micronesian Affairs * Member, Committee on Community, Housing & Cultural Affairs * Member, Committee on Youth, Labor and Parks & Recreation * Member, Commission on Self Determination * Member, Political Status Education Coordinating Commission * Member, Guam Finance Commission * Alternate Secretary General, Asian-Pacific Parliamentarians' Union * Member, Komitea Para Tiyan

COMMITTEE ON FEDERAL & FOREIGN AFFAIRS

VOTING SHEET

BILL 110 (as substituted by the Committee on Federal & Foreign Affairs): AN ACT TO ADD NEW SUBSECTION 2104 TO TITLE 5, GUAM CODE ANNOTATED TO PROVIDE A CLEARINGHOUSE FOR THE ENVIRONMENTAL REVIEW OF FEDERAL PROPERTY TRANSFERS TO THE GOVERNMENT OF GUAM UNDER THE DIRECTION OF THE LIEUTENANT GOVERNOR.

Committee Members	To PASS	NOT to PASS	To ABSTAIN	To Place in INACTIVE FILE	SIGNATURE
Sen. Hope A. CRISTOBAL Chairperson	✓				
Senator Angel SANTOS Vice-Chairperson	✓				
Senator Tom ADA Member					
Senator J. WON PAT-BORJA Member					
Senator Mark CHARFAUROS Member					
Senator L. LEON GUERRERO Member	✓				
Senator V. PANGELINAN Member					
Senator Francis SANTOS Member	✓				
Senator E. BARRETT-ANDERSON Member	✓				
Senator Anthony BLAZ Member	✓				
Senator Mark FORBES Member	✓				
Senator C. LEON GUERRERO Member					

**TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session**

Bill No. 110

(as substituted by the Committee on
Federal & Foreign Affairs)

Introduced by:

J.M.S. Brown

**AN ACT TO ADD A NEW SUBSECTION 2104 TO TITLE 5, GUAM CODE
ANNOTATED TO PROVIDE A CLEARINGHOUSE FOR THE
ENVIRONMENTAL REVIEW OF FEDERAL PROPERTY TRANSFERS TO
THE GOVERNMENT OF GUAM UNDER THE DIRECTION OF THE
LIEUTENANT GOVERNOR.**

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM.

1 **Section 1. Legislative Findings and Intent.** The Legislature recognizes the utmost
2 importance of returning Federal property in an environmentally acceptable condition to the people
3 of Guam. Recent events concerning the transfer of federal properties through Quitclaim Deeds
4 for the Southern and Northern High Schools have raised concern that appropriate baseline studies
5 for environmental reviews were not conducted by the Federal government prior to transferring
6 these properties to the Government of Guam. The discovery of a hazardous waste site in
7 November of 1994 at the Southern High School construction site has made evident the need to
8 ensure that appropriate studies are funded and conducted by the federal government prior to
9 transferring property to the Government of Guam. The legislative intent is not to delay property
10 transfers but to ensure that property is returned without any threat to the health and welfare of the
11 people of Guam.

12 **Section 2. 5 GCA §2104 is added to read:**

13 The Office of the Lieutenant Governor shall be designated the environmental clearinghouse

14 for all Federal properties being returned to the Government of Guam. The Office of the
15 Lieutenant Governor shall implement the environmental clearinghouse process to include the
16 Bureau of Planning, the Guam Environmental Protection Agency, the office of the Attorney
17 General and any affected agency of the Government of Guam. The Guam Environmental
18 Protection Agency shall determine from Environmental Baseline Surveys and other reports or
19 studies the type of clean up actions necessary as required by the Federal Comprehensive
20 Environmental Response, Compensation and Liability Act (CERCLA) 120H3 and 120H4 as
21 amended by Public Law 102-426 Community Environment Response Facilities Act (CERFA)
22 Amendments and Guam laws and advise the Governor of its findings to ensure the property is
23 clean for transfer to the Government of Guam. The Attorney General shall review and advise the
24 Governor on the acceptability of land deed agreements with respect to environmental clean-up
25 actions as they apply to Guam laws and federal laws. The Governor is authorized to accept in
26 writing the federal property transfers where environmental clean-ups have been performed.
27 Nothing contained herein shall be interpreted to alter the legitimate power of the Guam Legislature
28 to review plans and dispose of lands as authorized by statute.

Committee on Federal & Foreign Affairs

Committee Report on Bill #110

OVERVIEW

The Committee on Federal & Foreign Affairs having purview over all matters relating to Federal lands and all matters relating to the federal-territorial relationship between Guam and the United States of America publicly heard Bill 110 on June 1, 1995.

Present at the hearing were Senator Hope Cristobal, Vice-Speaker Ted S. Nelson, Senator Joanne Brown, Senator A. Santos and Senator Mark Forbes.

Bill 110 was introduced by Senator Joanne M.S. Brown.

Citizens presenting testimony before the Committee were:

Mr. Mike Cruz - Bureau of Planning; Mr. Joe Borja - Chamorro Land Trust Commission; Mr. Joaquin Perez - Office of the Lt. Governor; Mr. Edward Artero - Mayor of Yigo, representing the Yigo Municipal Planning Council; Mr. Gus F. Diaz - Chief Deputy Attorney General; Victor M. Perez, M.D.

FINDINGS & RECOMMENDATIONS

The original version of Bill 110 submitted by the author sought to amend Section 1508, Title 5 GCA to provide for a clearinghouse for the review of federal property transfers to the Government of Guam under the Governor's Office.

After the Public Hearing conducted by the Committee on Federal & Foreign Affairs, the author submitted a substitute Bill 110 which sought to amend a different section of the law, namely §2104 of Title 5 of the Guam Code Annotated and placing the clearinghouse under the Lt. Governor's Office. The substituted version of Bill 110 as substituted by the author contained an overload on the Legislative intent which was felt would probably add confusion to the measure.

The Committee on Federal & Foreign Affairs reviewed the above two versions and determined that while there is some ambiguity as to whether Bill 110 had some interest in federal land transfers beyond the environmental issues decided that the substance of Bill 110 is concerned about "environmental clearinghouse review." There were references in the title and bill sections which seemed to focus on a review of federal land transfers and the granting of some roles and powers for the Department of Land Management, Attorney General's office and Bureau of Planning beyond "environmental concerns."

The Committee on Federal & Foreign Affairs in its initial review of the bill thought the "referral" was made because of the reference to "clearinghouse" and "federal lands transfer" which

would fall under the Committee's jurisdiction. But upon further review of the specific references in the bill it seems the bill was more concerned about insuring that appropriate environmental review is conducted by certain agencies to insure the necessary clean-up or remedial actions takes place on excess federal properties being returned back to the Government of Guam. The Committee on Federal & Foreign Affairs decided to take the original version of the bill and modify that version since it was a more clear bill.

The bill designates the Lt. Governor's Office as the environmental clearinghouse entity and allows it to implement an environmental clearinghouse process which includes Bureau of Planning, Guam Environmental Protection Agency, the Attorney General's Office and other affected agencies of the Government of Guam. It authorizes Guam Environmental Protection Agency to determine the clean up actions required in consonance with CERCLA and CERFA, two federal laws dealing with legislation on environmental matters which are a part of the laws affecting excess land transfers under BRAC and GSA prompted returns. The bill also authorizes the Governor to accept properties where environmental clean up have been performed.

**THE COMMITTEE ON FEDERAL & FOREIGN AFFAIRS SUBMITS
THE ATTACHED BILL NO. 110 AND STRONGLY SUPPORTS ITS
PASSAGE.**

FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH

Bill No. 110 (Substitute Bill) Date Received: 12/26/95
 Amendatory Bill: Yes Date Reviewed: 01/02/96

Department/Agency Affected: Office of the Governor
 Department/Agency Head: Governor Carl TC Gutierrez
 Total FY Appropriation to Date: \$6,620,323

Bill Title (preamble): **AN ACT TO ADD A NEW SECTION 2104 TO TITLE 5, GUAM CODE ANNOTATED TO PROVIDE AN ENVIRONMENTAL CLEARINGHOUSE FOR THE REVIEW OF FEDERAL REAL PROPERTY TRANSFERS TO THE GOVERNMENT OF GUAM UNDER THE DIRECTION OF THE LIEUTENANT GOVERNOR.**

Change in Law: Adds a new Section 2104 to Title 5, Guam Code Annotated.

Bill's Impact on Present Program Funding:
 Increase _____ Decrease _____ Reallocation _____ No Change X

Bill is for:
 Operations: X Capital Improvement: _____ Other: _____

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
Program Category	General Fund	OTHER	TOTAL
Government-wide Support	1/		1/

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)							
FUND	1st	2nd	3rd	4th	5th	Total	
GENERAL FUND	1/	\$0	\$0	\$0	\$0	\$0	1/
OTHER							
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? No funds appropriated.

IF NO, ADDITIONAL AMOUNT REQUIRED: 1/

AGENCY/PERSON/DATE CONTACTED: Bureau of Planning / Machelie Craig-Leon Guerrero, Acting Chief Planner / 01-08-96

ESTIMATED POTENTIAL MULTI-YEAR REVENUES (Per Bill)							
FUND	1st	2nd	3rd	4th	5th	Total	
GENERAL FUND	0	0	0	0	0	0	0
OTHER							
TOTAL	0	0	0	0	0	0	0

ANALYST: William P. Taitingfong DATE: 1/9/96

DIRECTOR: Joseph E. Rivera, Acting DATE: 1/11/96

FOOTNOTE: 1/ See Attached.

1/ Substitute Bill No. 110 intends to add a new Section 2104 to Title 5, Guam Code Annotated to provide an environmental clearinghouse for the review of Federal real property transfers to the Government of Guam under the direction of the Lieutenant Governor.

The Office of the Lieutenant Governor is presently mandated by Section 2101 of Title 5, Guam Code Annotated as the clearinghouse for all federal aid programs for Guam, which includes all federal program commitments, state plans, applications and all federally-aided programs or projects. Substitute Bill No. 110 proposes to include an environmental clearinghouse review of Federal real property transfers to the Government of Guam.

According to information from the Bureau of Planning, which is designated the lead agency under the direction of the Lieutenant Governor for overall clearinghouse transactions under the proposed measure has commented that the Substitute Bill No. 110 appear to be unnecessary as Federal real property transfers and its clearinghouse review responsibilities are covered under Section 2101 of Title 5, Guam Code Annotated. In addition, there is currently a directive that designates the Bureau of Planning as the federal lands coordinator. It requires all agencies applying for releasable federal lands to coordinate their efforts with the Bureau. This directive has been issued by each succeeding Governor since the Calvo Administration.

Substitute Bill 110 may cause a financial impact on the current operating budgets of the departments and agencies involved in the initial review of all federal land transfers. Although the department and agencies are already mandated with the responsibilities noted, additional funds may be required in the conduct of necessary inquiries, fact finding investigations and evaluations as directed by the Lieutenant Governor for which can not be funded by their current operating budgets. In addition, Bill 110 provides for a Clearinghouse Review Summary Report be prepared by the Bureau of Planning and that the Guam Environmental Protection Agency prepare and submit an annual assessment report for the Office of the Governor and the Legislature due the following March 31st of the reporting year. As such, funds may be required in the preparation of these reports should their operating budgets cannot absorb such costs. These costs cannot be determined at this time as it is dependent on the projects, such as the identity of the of federal lands that are deemed excess and to be returned and the individual reviews, surveys or studies to be performed by the respective departments and agencies involved in the environmental clearinghouse review process.

BILL 110: TRANSCRIPTION

Senator Cristobal:

Yes, you can respond to the committee. Thank you very much, I'm glad that all this is coming out and I hope we can get to the bottom of it. You can rest assured Guardsmen that we will be looking out for your behalf. Thank you very much. At this point I would like to call on people who are giving testimony on Bill 110. Bill 110 is An act to add a new section 1508 to title 5 GCA to provide a clearing house for Federal property transfers to the government of Guam under the direction of the Governor. We have Mr. Mike Cruz from Bureau of Planning, Gus Diaz from the A.G.'s office, and Joe Borja from the Chamorro Land Trust Commission. So if we could start with Mike Cruz please.

Mike Cruz:

Good morning Senators, I am the chief planner at the Bureau of Planning, I believe you have a copy of the testimony I am presenting today. (See written testimony).

Joe Borja:

Thank you madam Chair for allowing us the opportunity to testify on this bill. The Chamorro Land Trust Commission supports environmental issues and a genuine concern for these types of issues. I am the Director of the CLTC and I am also a member for the Komatea para Tiyan also a member of the environmental committee in Tiyan RAB restoration Advisory board which is in charge of overseeing the analysis, inspection and clean up of NAS. I have about four concerns on the bill number one, on the very last line of page 1 line 14, I would suggest that something be placed in there that says no financial burden shall be placed on the people of Guam for cleanup. I know that the federal government has about 4 million dollars and a couple of funds for cleanup of these return excess lands. The second concern is the philosophical aspect of not accepting these lands. What happens if these lands are contaminated do we say no we will not accept it? Maybe dirty land is better than no land at all at least we have a chance, even if it's dirty we do own it and we can decide what to do with it. Third, is the standard of line 17 page 2 what is considered clean. What standards do you use as a level of cleanliness, there are some standards that are guidelines the experts will probably know this better than I do. The forth is line 7 page 2, seems grammatically incorrect. I think it probably has reviewed and concurred with the transfer, the next sentence there where it says the Bureau of Planning designate which departments seems to be redundant. The previous sentence seems to address the Bureau of Planning in there and I believe also in line 11 where it says and record federal land transfers I believe that is also redundant I believe Land Management records all land transfers concerning property. On line 13, I don't think concur was the right word; maybe conduct should be there. Concur seems to be grammatically uncomfortable. Just as a last suggestion just when I read the title of the bill; it gave me the impression of who would take over these lands or who would review or who would reserve these properties as a suggestion I think the title of the bill should read, An act to add a new section 1508 to title 5 GCA to provide an environmental clearing house under the direction of the governor for the review of federal property transfers to the government of Guam. That suggestion is to clarify that the clearing house is not a clearing house

to title or whether it should go to the original owner or to a department but an environmental clearing house that is under the direction of the Governor. This would clarify that it is an environmental clearing house under the direction of the governor and not the title exchange. Thank you.

Senator Cristobal:

Thank you for your testimony, I'm sure that Senator Brown has something to say.

Senator Brown:

Thank you very much madam chair, I want to clarify a few points I welcome the suggestions. There are points we can add on to enhance the bill and there are major concerns that need to be addressed. I think in recent case and from coming from the previous administration I'm well aware of how some of these property transfers occur, most recently with the northern and southern high school property. We have seen how there is not a thorough review within the government of Guam with key agencies that should be reviewing these transfers. The government is paying for it. In the case of the southern high school we are probably going to pay and additional 4-5 million dollars because it didn't go through proper review before the property was transferred and accepted by the government of Guam and construction commence on it. In the case of the southern high school property an environmental impact assessment had to be done before the property would be reviewed by them. That EIA did not go through the appropriate agencies that have the technical expertise to review that EIA and concur with the findings of the consultant that did it. Then the issue of the wetlands and the contamination surfaced. That EIA was never transferred to GEPA who have the technical expertise to review that. That document remained with the Bureau of Planning. It was probably the Bureau of Planning and the Administration that reviewed the property. Then we ended up with that situation. The most recent one that concerns me, because what the Bureau says that there is already a system in place concerns me, having worked directly with these issues. I know it has not been common practice in the past. The northern high school property was accepted by the director of DOE in October of 1992; within thirty days GovGuam entered into an agreement with Anderson and Federal EPA to approve the federal facilities agreement after Anderson was put on super fund identifying Anderson as one of the top 100 contaminated sites within the U.S. and it's territories. We accepted 80 acres of property to construct a northern high school without a thorough environmental baseline study of that property, yet everything around it including the Marbo annex which are one of the areas that have key sites that are currently being reviewed and also Anderson. I'm very familiar with these sites that are being investigated for clean up. We accepted that property within a 30 day time period. Yet the key agency which was in negotiations with Anderson, which I used to work for was not included in the discussion. We were at one end of the table negotiating the federal facilities agreement to address cleanup of Anderson and another department DOE who have no background on the concerns of these properties in northern Guam accepted that property on behalf of the government of Guam. I've never seen a document from the director of education with a signature of acceptance to form from the A.G.'s office. I believe Senator Anderson was the Attorney General at that time. Language in that particular deed that we accepted specified that if we had sat down and discussed this; that if there is any contamination on the property it becomes the responsibility of the grantee of the Government of Guam. I'm very well aware of federal law as far as environmental

responsibilities are of the federal government and the language in the bill that says concur, my interpretation is not that the government of Guam pay for it, it's the Government of Guam as we were doing with the federal facilities agreement, will review any work that the consultants or contractors do for the military to insure that the information they are telling us, when they tell us that it is clean, our intent is to review that and say we do or do not agree in reviewing your findings. I can understand to a certain extent any reservation the administration will have in anything that requires the governor to follow a certain procedure before he can accept property. I can understand that, but I think our track record has not been very good. I think that the two last situations that we're dealing with have not demonstrated yet that we are up to that standard and I'm talking about with respect of agencies that should be involved. It's not that we don't have the talents, we have the talents, but the coordination has not been common in the past. I personally have asked Anderson Air Force Base to do an environmental baseline survey on property that has already been transferred to the government of Guam and they've concurred to do that. But it doesn't make sense at one end that we're sitting down and signing our name including the administration, agreeing that the federal lands up there are critically in need in terms of clean up and agreeing to that and at the other end we're accepting eighty acres of property that stood in the heart of this Marbo annex that's being investigated and the key agencies that should be involved in advising the administration were never included in that process. So I just want to get some feedback from you on that whole situation.

Mike Cruz:

There are a number of points that you addressed and clearly your facts are correct in terms of the timing and involvement of agencies. Let me first say I am not speaking on behalf of the administration on Bill 110, I'm speaking on behalf of the Bureau of Planning. The point that we're trying to make is that it is not the government of Guam agencies that were at fault in the transfer of the northern high school or the southern high school. As you had indicated there was a federal facilities agreement that was signed in February of 1993. After the properties were transferred, or at least after the northern high school was transferred in October of 1992, so while the GEPA was working out the federal facilities agreement, a transfer was occurring. However, while it may not have been generally known within the government that EPA was working out a federal facilities agreement, it was the responsibility of the Air Force to follow federal requirements that mandated that they prepare an environmental baseline survey. I know that it's not the bills position to transfer the costs of preparing that environmental baseline survey to the government of Guam or to the GEPA. But, it was a federal responsibility and not a GovGuam responsibility to develop that document. I would imagine that under normal GEPA laws and regulations, they would be required to review that environmental baseline survey, but the Air Force never developed one, so during the time that the federal facilities agreement was being negotiated, and the transfer occurred, I believe that it was the Air Forces responsibility to make sure that they carried out the requirements of federal law that requires them to develop an environmental baseline survey and submit it to the government of Guam. One other point on this, it's my understanding that in environmental impact assessment, which is as you had indicated, required by the federal government as a document in support of the transfer of a particular piece of property to the government of Guam. EIA, EIS, is required in that transfer process, but it's also my understanding that an environmental impact assessment is not the document that will determine whether there is environmental contamination on the sight. An

environmental impact assessment and an environmental impact statement, simply determines whether the proposed use of that property such as in this case, the school, will create adverse impacts onto the environment. It is not the document that will determine whether there is environmental contamination, that document is the environmental baseline survey as I'm sure your aware, which is the responsibility of the federal government and not the government of Guam.

Senator Brown:

Madam Chair, if I could clarify a point because we did specifically discuss the environmental impact assessment and I'm not relating that specifically to the environmental baseline survey which are two separate things. I just want to point out that in the lack of involvement in reviewing these documents, and again, there are key agencies in the government of Guam that have the technical expertise that other agencies don't have. That particular error in that environmental impact assessment which BOP had in it's possession, that stated that there are no wetlands, consequently the government of Guam designed the southern high school plan based on that fact according to that document that there were no wetlands. I'm just using that as an example, and that subsequently is going to cost us several million dollars including the subsequent delay of that high school by a year almost until the government of Guam could go back through DOE and get the consultant to go back out there and correct that error. I'm simply using that as an example. The EIA to correct another point, it doesn't always guarantee you can specify that there is contamination but in most cases it requires a background as to identify what the previous use of that property is and I think in recent years in Guam we're becoming more sensitized to the reality. There are large numbers of property on this island, be it through the Navy, Air Force, or whatever previous military activity that has occurred on both federal government or private lands, but there are a number of these areas that do exist. If we were to take a map of Guam and plot every current area of Guam that were being investigated by the Navy or by Anderson, I think a lot of our residents would be surprised as to the significance of the amount of sights being investigated on. My point is and my own experience has shown me, I'm not comfortable with assuming that the federal government is going do things in our best interests. All this bill intends to, it doesn't intend to add on any cost, it simply asks the government to simply do what it should be doing anyway. To clarify your point, you brought up that we're asking EPA to spend money or do the survey and your right, your very exact and I'm very glad that we're getting that message clear in our government. That the federal government has the obligation to address environmental impact surveys and address the payment of that. I'm glad that language is very clear with us. I'm only asking that we make sure that's done before we say no problem, hand me the deed, that's all we're asking. When I use the word concur and that is why I didn't use the word conduct; they have different meaning. Concur means we review their analysis and say we agree with it or wait a minute there is something here we don't agree with we would like to evaluate that so that we are not back to the old practice of standing outside the fence and looking in and them telling us "it's clean," trust me. These recent incidents and property transfer there hasn't been a single piece of federal property transfer to the government of Guam that has ever gone through an appropriate review. I'm very pleased I met with Congressman Underwood yesterday and we've talked about these 3200 acres of federal property. That's the first time your talking about environmental funding dedicated to evaluating these properties before they are turned over. I just want to clarify that point, my intent is not to pass

additional cost just to go through the checklist and make sure that these points are all met before we okay let's have it.

Senator Cristobal:

I think perhaps there can be other ways we can address this problem. I think the Southern and northern high school properties are a lesson learned. Hoping the administration see to it that we do not repeat these mistakes. There may be other ways to handle a situation like this, also Mike if you could make yourself available I would really appreciate in the deliberations on what this bill will turn out to be. I appreciate your assistance in that.

Mike Cruz:

No problem senator

Senator Cristobal:

The next guy on the line is Senator Nelson.

Senator Nelson:

Old practices, are costing this government millions and millions of dollars. I cannot really believe that this government, previous administration would put us in this mess, we have EPA, we have all kinds of resources, we have all kinds of expertise out there. How in the world could we get ourselves in this mess. When we accept federal property we accept it under certain conditions the federal government knows the conditions everybody knows the law by then. God, the Governor with all the experts and all the assistance that were available then, I don't know what happen maybe the election was to close to start a ground breaking, this is really sad and appalling. We knew what it is to get federal government, federal government knows what it is to transfer properties back to the original land owners or another government under cercla and all these other federal requirements. We all know this that they are responsible for the clean up and so forth. Who ever are signing these documents or who ever advising these people, now to say that 8 years is too long, it is but it probably too costly. My concern, I don't want to politicize this, but we had GEPA have that responsibility before the government accepts, that is there responsibility to find out just what we're getting. They're supposed to work it out with the federal officials, work it out with DOD to make sure we're not getting a Hydrogen bomb underneath a certain area. With the southern high school we knew we were going to get that 10-15 years ago. The government knew about it, I think since Governor Ricky Bordallo. We have all these official that are suppose to be working with the federal government in order to address the environmental situation to make sure it's clean or what not. The federal government has responsible for certain things that's the law, the same thing with the southern high school. DOD was suppose to clean it up but in our rush, don't worry we'll hire private contractor and let them do it so we can do it faster. Your going to find out that it's not that easy, no matter who the clearing house is, if it is done through political reason and through proper practical approaches in all the lands that were getting back from the federal government we're going to find ourselves in this mess. Now, the IEUtenant Governor has been the clearing house for all these activities and all these federal programs. There is no way to explain to the people of Guam just what happen just like any other problem. It's complete neglect of duties in the past. God almighty, if we are going to wait 8 years to do something at the cost of 45 million dollars this is a sad state of affair. I'm sure now with this new administration, Mike you know what you have to do, GEPA knows

what to do, Joe you know what to do, everybody knows what to do, but you know a governor is a governor, if the governor says do this do that perhaps that could be the short cut whereby you say no governor you can't do this but the governor says yes, I'm the governor and I'll do it. This is creating all the problem we are facing today. Our people are suffering, our children are suffering, the school costing us millions and millions of dollars, we don't know yet what it's going to cost us. I can't accept that we don't have the capability or the resources we have the jurisdiction in the first place it is our responsibility, those people in power. I put the heavy burden right on GEPA, that is there responsibility to work with the federal government and make sure because they have the jurisdiction even though the governor says this and says that GEPA should come in even the federal, but apparently even DOD, they are playing all kinds of politics just like all these other funding that we're getting. I'm really confused again as to what we are trying to do here. What we should do then madam chair, is make sure this is under your oversight jurisdiction, make sure appropriate agencies perform their duties according to the law, and federal laws and guidelines according to the statute, local statute in order that we don't repeat the old problem of 8 years of practically destroying what ever we want to do for the next 20 years, we may not get a northern high school cause every body knows that marble annex has been with the military a long time ago. We all know the situation. Everybody knows that Toto, Mongmong-Toto, Santa Rita were all military domicides. So we all know this. Somehow it escapes us, perhaps there can be other motives. I think Madam Chairman you certainly have a big responsibility and this applies also to tiyan and whatever we're getting, I don't know what we're getting but tiyan to me is going to be a hell of mess. It's costing millions and millions of dollars to operate it and yet we don't even know what we're getting as far as clean up or the environmental impact. I don't know wether this bill is going to resolve this situation but Madam Chairman since this is the oversight think it requires more scrutiny. Try to find out just what went wrong and perhaps try to avoid not to repeat these things because it is costly and its costing us a lot of money and anguish, and we may be fooling a lot of people about getting their original land returned. Keep in mink that the US Congress has reduced the circular funding all over the world. They are reducing all kinds of environmental impact conditions in order to save money. So we may find ourselves in a deeper mess. So I want to thank you Joe and Mike.

Senator Cristobal:

Thank you Senator Nelson. I think what is coming to light here Mike is that we all know the imbalance of power between the Executive branch and the Legislative branch. For us here at the Legislature this is the least that we can do is perhaps provide a process so that you don't have only the governor deciding what the standard should be and how it should go about so that the next governor that comes in decides to do it a different way. And I think what we want to do is through this bill is establish the process and try to keep people to the process on behalf of the people of Guam for the benefit and the good of the people of the island. At the same time I share the about the possible delay of the federal land transfers to the government and I think that's a real concern and what we want to do is have our cake and eat it too right Senator Brown?

Senator Brown:

Madam Chairperson I just want to clarify this issue of delay and I'm very well aware that would have been the obvious point anyone would have hit with a clearing house process on accepting Federal Land. That was probably the biggest language I would see as this is another tactic to

delay the acceptance of the property. The Governor has considerable authority. The Governor also is in a position to instruct the attorney general, the administrator of the Guam Environmental Protection Agency, the director of Land Management to expedite the review of any of these Federal properties that are being transferred. So again I think that is in the jurisdiction of the administration to expedite any review of property and I would assume that would be the desire. Any delay would be on the part Government of Guam.

Who's this?

I think again one of the concerns is what are talking about in terms of land transfers?

Senator Cristobal:

Hold on just a second...Sir you can have the floor now Senator.

Senator Nelson:

Forbes can tell us what the death rate is.

Senator Forbes:

Yeah I think actually that is one of the concerns that I have is that especially with new public law 23-23, formerly Bill 128, the Land Repatriation Committee now being law. We have the Gov. of Guam making as part of law a mechanism to aggressively pursue the transfer of properties through a variety of mechanisms whatever mechanism happens to be opportunistic and the one that works at that particular moment and the more I'm listening the more I'm starting to think there is again the confusion between 'title' and 'use' which is something that happens in the Gov. of Guam a lot. You can have a position that says all title should revert to the Government of Guam tomorrow and still be interested in regulating use and sometimes I think that distinction is lost. Mike you don't have an objection to the theory that the Legislature has the authority to establish on a policy that a particular review process should go into affect I mean I'm not hearing that.

Mike Cruz:

No.

Senator Forbes:

There's no fundamental philosophical objection of the Legislative authority to establish that process right? and I think its clear that such a process is necessary. But maybe one of the ways we can clarify the situation and not cause any heart-ache is to determine where and when that process should interdict the process of return. Should it interdict the process of return prior to a transfer through whatever mechanism or should it interdict the process prior to a decision for the use of the property.

Mike Cruz:

Because I understand it, the responsibility for clean-up gets transferred in effect when you begin to utilize the property. So for instance.. if the Gov of Guam uses the property then the Navy or the Air force can come in and claim that the contamination is a result of Gov Guam use of that property. And they've done that and we are seeing that with NAS right now. If the Gov of Guam

goes in and uses that property..

Senator Brown:

I want to clarify a point on the circular requirements on the return of these Federal Lands.

Senator Brown

... part to either identify the contamination so we know who's accepting the property and who's required to address the clean-up.

Mike Cruz

Which they did not do.

Joanne Brown

I can understand this point and we could say well if the property has already been transferred to us, like in the case of the southern high school, it's been transferred to the Government of Guam. In that particular case because the mechanisms change within the federal process on who's going to address the clean-up and I think Governor Gutierrez ultimately had to jump a lot of hurdles to determine that the federal government would not expedite the clean-up... to continue construction on the school which was costing us quite a lot of money everyday the construction was not occurring. The government is now in a position to go back to the federal government with a bill, like we are with a number of other issues that the U.S. has made decisions on to impact Guam. The federal government may or may not, in a timely fashion, pay that bill. We're talking close to about a half a million dollars. Three hundred thousand alone for the assessment. That doesn't include the costs in moving the material off island. That's the position we're put in a tremendous disadvantage after the fact because we don't insure that these properties get clean before they get to us.

Senator Forbes

But isn't the logical time to intercede and make sure that all these things our done, wouldn't the logical time be prior to the use of the property as oppose to the transfer?

Mike Cruz

I believe that's the case.

Senator Brown

If you can guarantee that the federal government is actually going to come out and address clean-up then....

Senator Forbes

Well you can't guarantee anything under any circumstances.

Senator Brown

Yes, but my point is, in cases where these concerns can be identified and we do have the ability for the most part to assess these properties. It's not like they can't go out there and determine that at all or look into that issue. There's nothing to constrain them from doing that. There federal laws require that they do that. All I'm simply asking is that we know they're doing what they're supposed to be doing so that the burden does not, as in the case of the southern high school, fall upon the people of Guam to have to pay for the clean-up and we have had to put the money up. We've had to dig up three hundred thousand dollars that was never intended to be used for contaminated clean-up to address the assessment of that property. The Government of

Guam has had to pay for that. After having to look at the realities of what we've had to go through to go back to the federal government to try and get them to expedite that. They have not been able to do that.

Senator Forbes

Here's the modification I'm suggesting since we're using the southern high school as an example. In the case of the southern high school we could have put this process in effect prior to the transfer in which case in all likelihood that would have been federal land today. Or what we could do is mandate on your bill Joanne and make it very clear that prior any use of the property by the Government of Guam, whatever that use may be, that this review process has to happen. That way if there's a delay the delay is in the use and not in the title transfer. That I think is the only concern. I don't think there's any heartache about the legislature mandating a process. I think it's a question of what point in the process of transfer do you come in so you don't accidentally mess yourself up. If there were a piece of property that was so contaminated it would have to take twenty-five years to clean it up I would still rather have the title. Once you've established that then it's your land and they still have an obligation to clean it. You're not waiting an entire generation to get that title because God knows what happens in that next generation.

Senator Cristobal

And who knows the intended use may change.

Senator Nelson

It would wipe out all the Chamorros by then. Since everybody seems to be jumping in let me add a few things. I have documentation whereby DOD was responsible for the clean-up of the southern high school. It was just a matter of administrative choice whether they agreed with the Admiral to pursue with the clean-up. This doesn't really free the navy from the possible dangers that may come. The same thing with NAS. You're not trying to say that now that we're using NAS that the navy has been waved of all liabilities including environmental dangers. We're up there at NAS using it and if anybody has been affected by any dangerous or hazardous materials then somebody has to be liable. I don't know if Mr. Perez from the clearinghouse is here to testify. Mike is your testimony approved by LRC?

Mike Cruz

I did pass a copy up to the Governor.

Senator Nelson

Did they approve it?

Mike Cruz

Yes sir.

Senator Nelson

I just wanted to make sure. So Ok Madame Chair thank you very much.

Senator Cristobal

Thank you. Go ahead Mr. Borja.

Joe Borja

Just as a suggestion; the legislature might also want to consider reviewing the transfer of the GCC property at the Barrigada sight near the back road to Anderson. I believe that also was a direct transfer from federal DOE to GCC that may not have incorporated environmental impact studies. Hopefully I'm wrong.

Senator Cristobal

I think also, Senator Brown, that we all know that's there's all sorts of stipulations and mandates out there that the federal government is suppose to pay this or pay that and there are no guarantees that we will ever get any money from them. Look at what's happening with the Compact Impact. So I don't know what it is we could do to get the U.S. Government to live up to their fair share of responsibilities. I do agree that we must have a process there to protect the people and to make sure that we are doing are share to make sure things get looked at, reviewed, and inspected. If there was a process there we could call you Mike and say you did not do your fair share here.

Mike Cruz

I think that one message I would like to see the bill have is that it is the federal governments responsibility.

Senator Nelson

That's federal law. We can't change federal law.

Mike Cruz

What I'm saying is that in the bill being heard by the legislature or any bill that comes out of this, that the legislature send a strong message to the military that it's there responsibility and not cloud that by having a review process or anything like that. It is the federal governments responsibility to determine whether these properties are contaminated and to be responsible for the clean-up.

Senator Brown

I think I can acknowledge that and strengthen the language. My point also in this land transfer and I think we gage with where things are going and the expectations of our leadership that were going to expect more of these federal lands transferred back to our local government. The other reality is that the Government of Guam has not, been in the past, geared up to review these documents. All I'm saying is I want to know what we are getting when we get it. I think that is a fair expectation and in the past we have not done that.

Senator Forbes

I just want to focus in on this. If the point is to try and find out what we are getting I'm still not clear why that can't happen after the transfer and before the use. The reason why I bring that up is let's say that a piece of property X to be transferred has some sort of contamination.

Senator Brown

Why doesn't property X, for example, be NAS because I think that's a very good classic example of contaminated property.

Senator Forbes

Ok let's use NAS as an example. So we find out that NAS has all sorts of contamination. Would that have stopped us for ten seconds from accepting title for NAS.

Senator Brown

We don't have title of NAS.

Senator Forbes

That's not my point.

Senator Brown

My point is just looking at a current situation we do not have title of NAS primarily based on environmental related factors.

Senator Cristobal

I think we can argue that in committee meeting after the hearing.

Senator Forbes

Now I'm confused about what the intent of the bill really is. Is the purpose of the bill to identify or is it a way to force the federal government to clean-up prior to the transfer?

Senator Brown

I think the main intent is to insure that the federal government cleans up prior to transfer because the other reality is, like the case of the southern high school, we are left in a situation of having to pick up the bill.

Senator Forbes

Let me get the author's intent of the bill real clear here. So if the piece of property has contamination the author does not wish the Government of Guam to have that property until the clean-up is finished.

Senator Brown

I think that could be arguable. If you're looking at amending it to that then at least let's know what we are accepting. If you are willing to accept contaminated property that may or may not be cleaned-up by the federal government down the road because they make many mandates of what they are going to do but the Government of Guam can't force them if they choose not too. Then we must accept the reality that government along with the people may have to pay for clean-up just like we had to do with the southern high school.

Senator Forbes

If it's used. That's why I'm saying that "use" is the appropriate time to be looking at

stuff.

Senator Brown

There are other factors in addition to use. We can look at northern Guam. There may be many properties up there transferred to us that we do not use for many years for any purpose to construct anything on it. The contamination that may exist on this property may be a threat, for example, like under super fund with Anderson, may be a threat to our northern Guam water lands.

So there are other factors involved besides what you put on top of the property. There may also be factors of what's in the property that may go into the ground that may contaminate our water system.

Senator Forbes

So it is the intent of the author that if a piece of property has potential contamination that it should remain in federal hands and not be transferred to the Government of Guam and the people of Guam. That's my concern. My assumption has been, up until to this very second, that wasn't the intent.

Senator Brown

I think our intent is to make sure that we don't get stuck with the bill and the problem.

Senator Forbes

To the extent in which we refuse to accept lands, to the extent in which we encourage continued federal possession.

Senator Brown

I would not be entirely disagreeable in amending that if that's a policy view of a number of leaders that they will be willing to accept contaminated property with the other reality that the Government of Guam may end up with the bill.

Senator Forbes

I don't accept that.

Senator Cristobal

Do we have a choice? Kin would you please identify yourself for the record.

Kin Perez

My name is Kin Perez. I'm the Chief of staff to the Lt. Governor. Senator Brown and Forbes are both correct in regards to the southern high school. The problem that was created with the southern high school was the transfer; the conveyance instrument contained language to the fact the Government of Guam accepted the property as is where is. If we did not have that it would not have created it. Later on we found out that CERCLA prevented that type of language to take effect. That the federal government was still responsible for the clean-up because of the CERCA laws. As far as NAS and Tiyan are concerned the navy is preparing documents, findings of suitability to lease, and other documents that will trigger EIS studies.

This may create a situation in which we do not get the property conveyance of title within six to eight years, but we could enter and will enter into long term leases that would permit us to use that property. We will shortly be going into public hearings for the ultimate land use for Tiyan. That will determine what the land uses are which will trigger the environmental studies that have to be made by the federal government. If we were to use the airport area primarily for runways then the environmental study does not have to be that extensive as opposed to using the property for a high school. Using that for a high school would trigger a tremendous EIS requirement. There are mechanisms in the federal government that requires them to make this type of clean-up. There are also mechanisms in which we can insure that those areas we are taking over on a long term lease basis which would affectively give us ownership. We could have the lease and further of conveyance and make sure that we get immediate use of the land rather than wait the entire eight years so long as we do not disturb the ultimate clean-up efforts. In other words, if we were to block out the landfill area and say we're not going to accept this, it doesn't mean we can't take the rest of Tiyan and use it for the benefit of the people.

Senator Cristobal

Even if it was emitting radiation.

Kin Perez

That would have to go in the study. This is why that it is incumbent of GovGuam and the people of Guam to make sure that the studies we do is complete and as thorough as we can make it; to make sure we identify everything they're liable for. When GPA accept the transfer of the Piti Power Plant those people be prepared because the findings down there are not pretty. That's not only inside but the areas surrounding the power plant. I think what's happening here is that we're learning a good lesson. Sometimes it takes legislation like this to put this process in a mechanism that will protect the people of Guam. If the navy had a choice they would just give it to us lock, stock, and barrel. More so now my office received communications that Congress is going to wack over three-hundred million dollars in clean-up money. This is why they think they might need BRAC further from '95 because environmental clean-up funds are being drastically reduced. This is scary and that's why we need protective measures but we should not be prevented from taking possession the property and using it in the meantime so long as we do not disrupt those clean-up efforts.

Senator Brown

Would you be amendable to looking at some language because Mike brought up a good point about some properties which we have lease agreements on. We may not have the title but we may have lease of the property for example. Would it be preferable for you to know what's on the property. In the case of NAS we do know what's being investigated. When the government accepted property there even though we do not have title, in terms of temporary transferring to the government, we know what's up there to be investigated.

Kin Perez

Right now we are in the process of negotiating the airport lease. That lease would be for thirty-five years because there's no way we can make economic use of it because there's no

investor that would touch us for a short term lease. That lease would be virtually voluminous. In that lease every "I" would be dotted and "t" crossed relative to the environment. Our biggest stick up is the environmental sections.

Senator Brown

What in the case of the power plant. What is agreeable to you. Is the Administration going to accept the land knowing full well it's contaminated or not? Or do you want an assessment to know what's there and if it's there determine to accept it but set agreements whereby certain clean-ups will occur even if you accept title. Not every federal property goes through the outline like we did for NAS where there are some very clear agreements written.

Senator Cristobal

Let me just ask you this question Mike? Is CERCA only applicable to federal military land transfers?

Senator Brown

It's applicable to federal properties and not just military properties.

Senator Cristobal

And not for deeds or turnovers like.....so we still have the CERCA then to rely on.

Senator Brown

Right, but it's dependent upon whether or not we can insure the federal government follows through.

Kin Perez

You have to make sure you don't accept it because if you do accept it....

Senator Brown

How do we demand them to follow through on anything they say they're going to do. I mean there are so many issues which we can look at where they don't pay their bills on.

Senator Forbes

Again, if you accept it, so long as you don't use it, if contamination is discovered on the property there is no indemnification procedure in which the federal government is forgiven.

Kin Perez

Senator let me bring up one point that we had in the discussions with the army core on the southern high school. When the General of the Army Corps said that they had to go back and clearly legally research the transfer to determine whether there was any liability because of the language.

Senator Forbes

What I'm saying is if you do not indemnify them....

Kin Perez

According to CERCA they are still liable.

Senator Forbes

They are still liable. So as long as you don't wind up using the property yourself so that in litigation the federal government can say well wait a minute, this isn't our contamination.

Kin Perez

As long as you don't add to the contamination. That's one of the problems with NAS. How do you separate the contamination? How do they make sure that what we do at the airport does not add to the contamination that's already there. We're talking basically about the ponding basins. I think we can get good protection for the people on that one. I think that the process has to exist and it's going to be incumbent of the legislature to develop this process. Even in the U.S. Constitution territorial clause puts the disposition on all U.S. lands in the hands of Congress. Similarly, in the Organic Act, all disposition of lands are put in the hands of the legislature. The legislature can not abrogate that responsibility. That is why the late Senator Santos and I was adamant of the fact that even in rezoning the legislature has the ultimate say. Rezoning done by the TLUC still have to come here for approval. The legislature is the ultimate determiner of what to do with GovGuam lands, not the Governor, but the legislature.

Senator Forbes

I don't think there's any disagreement with the panel so far that the standards have already been put in place. I don't think there's an disagreement to the theory to the greatest extent possible, if not one-hundred percent, we want to make the federal government responsible for any clean-up that is required. I'm making an assumption that it's equally everyone's intent at all to give the federal government a convenient way of denying us for future transfers of property by simply refusing to clean it up.

Kin Perez

The approval works two ways. Right now in order for the Governor to approve a land lease to a private corporation this legislature has to approve it. Similarly, if the legislature so desires, I think the mechanism to put in there if the Government were to enter into a lease agreement with the U.S. Government that a process or mechanism be put in place either by resolution or statute.

Senator Forbes

I suspect that in the next fifteen years there will be far less land transfers through lease agreements and the GSA process. We are going to see the beginning of wholesale transfers of land through Congressional action. I think we're going to be seeing much more of that and under those circumstances whereby you have an entirely different mechanism where land is transferred on Guam where Congress just says we've passed a law that says 8,000 acres goes back. I think the only concern is let's not create a time bomb for ourselves in that some new federal bureaucrat who has a hard time dealing with new reality that land is coming back and says oops we first have to do da da da da before this comes in effect.

Kin Perez

I think if it was by statute the hurdles are easier to get over rather than this BRAC process which has hurdles that are almost insurmountable at times. When the decision comes on SRF, FISC, and PWC if it's to close it then the environmental work that will be required would be horrendous.

Senator Forbes

The last point and this is it; what kind of process can we take to make sure that we don't have these time bombs in there.

Senator Brown

I'm open to an amendment. I think we want to make the mechanism workable so we don't restrain ourselves but at the same time I think the reality is here, that the factor of environmental clean-up needs to be addressed. Kin brought up a good point even in talking with Congressman Underwood even for him to get the money for 3,200 acres for environmental review he had to go to BRAC to make that request. We have almost no guarantee that the federal government is going to come back, even if it's own laws require them to insure that these properties are clean, I just want to make sure that our government makes every effort to insure that they meet this obligation. If you feel it's going to be a restraint that the government shouldn't accept the property because you're right, they can simply say that they don't have the money for the environmental clean-up so we're not giving the land back to you. I can understand the intent behind that but at the other end I don't think we want to be kept holding the bag like we have recently with the southern high school. As you mentioned the army core came back and told the Governor that they could not meet the time scheduled and that it was not a priority on their list because they had more critical sites. We don't want to be left in that situation where they determine what's a priority for us. I just want to make sure we're not left in a similar situation.

Senator Cristobal

Thank you Senator Brown. At this point I would like to ask Senator Angel Santos if he has any questions or comments.

Senator A. Santos

Bill 110 in mandating that there will be a clearinghouse to review all transfers of excess lands from the federal government to the local government I think is the beginning in addressing this ongoing problem that has been facing this government for years and years. I think that this legislature is working hard collectively with the introduction of bill 110 and similar legislation in sending a message to the federal government that enough is enough. What we have to look at is reports that are file at Washington D.C. where there are two general accounting office reports dated in 1986 that was very comprehensive in it's language that many of these lands are no longer usable for the different purposes such as residential, educational, farming, parks and recreation. There is one page that I noticed in the GAO report where it has at the very top a title "Future Land Use" in where you have LCF1 all the way to LCF16 which identifies all the different military dump sites on the northern part of Guam. There is no future land use for these purposes so I don't know whether these lands would come back to us based upon the

comprehensive listing. I think the first step that has to be taken by the federal government is to appropriate billions of dollars as was the case on a base in the east coast which was published in the PDN several days ago. We have a long ways to go. I think bill 110 is the beginning, in principle, of telling the federal government that the time is now.

Senator Cristobal

Thank you all very much for coming forward today and presenting testimony and showing your interest on behalf of the people of Guam. I'd like to take into consideration all the written testimonies that were provided. This concludes our hearing.



Calvin E. Holloway, Sr.
Attorney General

Phone: (671) 475-3324
Telefax: (671) 472-2493

Office of the Attorney General
Territory of Guam

Gus F. Diaz
Chief Deputy Attorney General

May 31, 1995

The Honorable Hope Alvarez Cristobal
Chairperson of the Committee on Federal
and Foreign Affairs
Twenty-Third Guam Legislature
155 Hesler Street
Agana, Guam 96910

Re: Bill Nos. 110 and 260

Dear Senator Cristobal:

Hafa Adai!

This letter is to inform you of the oral testimony I will present on Bill No. 110 relating to federal property transfers to the government of Guam, and Bill No. 260 relating to annual leave in connection with Guam National Guard duty. The Attorney General regrets that he cannot attend the hearing due to a prior commitment.

We have no objection to Bill No. 110, and our only concern would be that it could lead to delays in federal properties being transferred to the government of Guam.

As to Bill No. 260, we recommend the following changes in two statutes:

To enable Government employees who are members of the National Guard to take annual leave in the event that the statutory entitlement of 15 days of military leave is exceeded by assigned training or duty, both 10 GCA §63106 and 4 GCA §4119 would have to be amended.



Commonwealth Now!

May 31, 1995
Drf 4:30 pm

Letter to Senator Hope Alvarez Cristobal
May 31, 1995
Page 2

In 10 GCA §63106, the second sentence should be amended to read:

The officers and employees shall be entitled to military leave with pay for such active duty not to exceed fifteen (15) workdays per fiscal year, and thereafter, the officers and employees shall receive, at their election, annual leave or leave without pay.

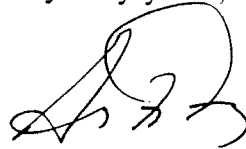
In 4 GCA §4119, the second sentence should be amended to read:

Such employees shall be entitled to military leave with pay while performing such duty not to exceed fifteen (15) working days per government of Guam fiscal year, and thereafter, the officers and employees shall receive, at their election, annual leave or leave without pay.

We applaud your efforts in both areas under consideration in the foregoing bills.
With thanks in anticipation of your consideration.

Dangkolo Na Agradesimento - Thank You Very Much!

Very truly yours,



GUS F. DIAZ
Chief Deputy Attorney General

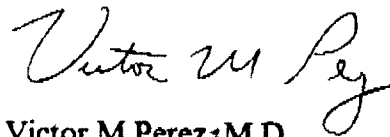
Victor M.Perez,M.D.
238 Archbishop Flores Street
Suite 403-C
Agana Guam,96910
(671) 477-4619

May 28, 1995

Dear Senators,

I would like to submit this written testimony in support of Bill 110 sponsored by Senator Joann Brown. As a person who had to endure for many months the possibility that the soil I received from the Southern High School may have been contaminated with toxic waste, I can tell you that these environmental issues are of the utmost importance for all of us. Fortunately the soil tests later confirmed that it was safe, but we may not be so lucky next time. While I may not be able to suggest the most proper procedure for establishing a "clearinghouse", I feel that having a mechanism to review federal government land transfers will help the community in making sure that our environment is safe. As a physician, I have seen all too often situations where a lack of proper considerations and efforts regarding maintaining a healthy environment resulted in pain and costly correction efforts. I hope that our laws will create a safer and healthier island.

Respectfully Yours,



Victor M.Perez,M.D.

YIGO MUNICIPAL PLANNING COUNCIL
MUNICIPALITY YIGO

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Loloanie C. Moniz

Introduced by Senator Joanne Brown

Testimony


Relative to bill No. 110 to provide a Clearinghouse for the review of federal property transfers to the government of Guam under the direction of the governor.

1. The Guam Legislature recognizes the utmost importance of returning Federal property on Guam to the people of Guam. The transfer of federal properties through Quitclaim Deeds for the Southern and Northern High Schools have raised concern that appropriate baseline studies for environmental reviews were not conducted by the Federal government prior to transferring these properties to the Government of Guam. The discovery of a hazardous waste site in November of 1994 at the Southern High School construction site has made clearly evident the need to ensure that appropriate studies are funded and conducted by the federal government prior to transferring property to the Government of Guam. The legislative intent is to ensure that property is returned without any threat to the health and welfare of the people of Guam.
2. The office of the Governor shall be designated the clearinghouse for all Federal properties being returned to the Government of Guam.
3. The Bureau of Planning shall designate which department or agency shall review any proposed transfer of federal properties to the Government of Guam.
4. The Department of Land Management shall advise the Governor on the confirmation of property boundaries and record federal land transfers to the Government of Guam.

5. The Guam Environmental Protection Agency shall concur Environment Baseline Surveys required by the federal Comprehensive Environmental Response, Compensation and Liability Act.
6. The Attorney General shall review and advise the Governor on the acceptance of land deed agreements as they apply to Guam laws and federal laws.
7. The Governor is authorized to accept in writing the federal property transfers upon completion of appropriate agency reviews.

The Chairman and the Yigo Municipal Planning Council Members do hereby certify to support Bill 110.

On this day 31st May, 1995.



ELSA B. TAMONTE, MPC SECRETARY



EDWARD C. ARTERO, MPC CHAIRMAN
Mayor, Municipality of Yigo



SETBESION MAMPLANEHA
Bureau of Planning
GOVERNMENT OF GUAM
AGANA, GUAM 96910

TESTIMONY OF MICHAEL J. CRUZ
CHIEF PLANNER, BUREAU OF PLANNING
ON BILL 110

JUNE 1, 1995

Thank you for the opportunity to provide testimony to your Committee with regards to Bill No. 110, "An Act to add a new Section 1508 to Title 5, Guam Code Annotated; to provide a clearinghouse for the review of federal property transfers to the Government of Guam under the direction of the Governor."

The Bureau of Planning has the following general concerns about Bill 110. The Bureau agrees that federal property should be returned without any threat to the health and welfare of the people of Guam. In Section 2, Bill 110 provides that federal land transfers can not be accepted by GovGuam until such transfers have been reviewed and concurred by the Bureau of Planning (BoP), the Department of Land Management (DLM), the Guam Environmental Protection Agency (GEPA), the Office of the Attorney General (AG) and any affected GovGuam agency. While this requirement provides a review process for proposed federal land transfers prior to their actual transfer, it should be noted that it is currently standard practice by the Governor to designate an agency or agencies to review federal property transfers. Spelling out a review process in Bill 110 may restrict the process already exercised by the Governor.

Bill 110 raises questions when reviewed in light of 5 GCA Section 2101 which designates the Office of the Lieutenant Governor as the clearinghouse. While this section emphasizes federally funded programs, it also applies to federal projects and federal development, which federal property transfers could be interpreted to be.

Bill 110 should also be reviewed in light of the recently enacted Bill 128 (PL 23-23) which empowers the Guam Land Repatriation Commission with the authority "to pursue whatever strategies it determines" to accomplish the goal of returning federal properties. While we do not believe that PL 23-23 or Bill 110 intends to relieve the federal government of its responsibility for environmental cleanup, we are concerned that Bill 110 may affect operations of the Commission even before it begins to operate.



We also have some specific comments:

Bill 110 provides that "the Bureau of Planning shall designate which department or agency shall review any proposed transfer of federal properties..." This provision seems to be unnecessary since the bill names the agencies (BoP, DLM, GEPA and the AG) required to review federal land transfers unless it applies to "other affected agencies."

Bill 110 is somewhat unclear in that it seems to require GEPA to incur the cost of preparing Environmental Baseline Surveys which currently is a responsibility of the federal government. Clarification of this responsibility should be made.

Bill 110's statement that "no land shall be accepted" is vague. It should be noted that the federal government transfers federal property through various instruments which include licenses, leases, grants of easement and deeds. The intent of the bill should make it clear if all these federal property transactions are to be included.

A typographical error is noted on page 2, line 1 of the bill. It should read, "Section 2. 5 GCA §1508 is added to read:"

Thank you for the opportunity to provide testimony.


MICHAEL J. CRUZ
Chief Planner

REPORT OF THE
MAY 16 1995

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No.: 110 (LS)

Introduced by:

J.M.S. Browne *JMB*

**AN ACT TO ADD A NEW SECTION 1508 TO TITLE 5,
GUAM CODE ANNOTATED. TO PROVIDE A
CLEARINGHOUSE FOR THE REVIEW OF
FEDERAL PROPERTY TRANSFERS TO THE
GOVERNMENT OF GUAM UNDER THE
DIRECTION OF THE GOVERNOR**

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

2 **Section 1.** Legislative Intent: The Guam Legislature recognizes the
3 utmost importance of returning Federal property on Guam to the people of
4 Guam. Recent events concerning the transfer of federal properties through
5 Quitclaim Deeds for the Southern and Northern High Schools have raised
6 concern that appropriate baseline studies for environmental reviews were
7 not conducted by the Federal government prior to transferring these
8 properties to the Government of Guam. The discovery of a hazardous waste
9 site in November of 1994 at the Southern High School construction site has
10 made clearly evident the need to ensure that appropriate studies are funded
11 and conducted by the federal government prior to transferring property to
12 the Government of Guam. The legislative intent is not to delay property
13 transfers but to ensure that property is returned without any threat to the
14 health and welfare of the people of Guam.

1 **"Section 2. 5 GCA §1058 is added to read:**

2 The office of the Governor shall be designated the clearinghouse for all
3 Federal properties being returned to the Government of Guam. No land
4 shall be accepted by the Government of Guam until the Bureau of Planning,
5 the Department of Land Management, the Guam Environmental Protection
6 Agency, the office of the Attorney General and any affected agency of the
7 Government of Guam have reviewed and concurred the transfer. The Bureau
8 of Planning shall designate which department or agency shall review any
9 proposed transfer of federal properties to the Government of Guam. The
10 Department of Land Management shall advise the Governor on the
11 confirmation of property boundaries and record federal land transfers to the
12 Government of Guam. The Guam Environmental Protection Agency shall
13 concur Environmental Baseline Surveys required by the federal
14 Comprehensive Environmental Response, Compensation and Liability Act
15 (CERCLA) 120H3 and 120H4 as amended by Public Law 102-426 Community
16 Environment Response Facilities Act (CERFA) Amendments and advise the
17 Governor of its findings to ensure the property is clean for transfer to the
18 Government of Guam. The Attorney General shall review and advise the
19 Governor on the acceptance of land deed agreements as they apply to Guam
20 laws and federal laws. The Governor is authorized to accept in writing the
21 federal property transfers upon completion of appropriate agency reviews."

Introduced

MAR 13 1995

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No.: 110 (LS)

Introduced by:

J.M.S. Brown 

**AN ACT TO ADD A NEW SECTION 1508 TO TITLE 5,
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