



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

REFER TO
LEGISLATIVE SECRETARY

SEP 29 1995

OFFICE OF THE SPEAKER	
Date:	<u>9-29-95</u>
Time:	<u>1:45 PM</u>
Received By:	<u>[Signature]</u>
Print Name:	<u>Mark [Signature]</u>

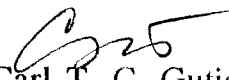
The Honorable Don Parkinson
Speaker
Twenty-Third Guam Legislature
424 West O'Brien Drive
Julale Center - Suite 222
Agana, Guam 96910

Dear Speaker Parkinson:

Enclosed please find a copy of Substitute Bill No. 260 (LS), "AN ACT TO REPEAL §63106 OF CHAPTER 63, TITLE 10, GUAM CODE ANNOTATED, AND TO AMEND §4119 OF CHAPTER 4, GUAM CODE ANNOTATED, RELATIVE TO THE UTILIZATION OF ANNUAL LEAVE BY GOVERNMENT OF GUAM EMPLOYEES FOR PURPOSES RELATING TO THEIR ACTIVE MEMBERSHIP IN THE GUAM NATIONAL GUARD", which I have signed into law today as **Public Law No. 23-41**.

This legislation clarifies that persons who are away from their regular employment for purposes relating to their active membership in the Guam National Guard are allowed 15 days of military leave, and after that time may use either their accrued annual leave or may take leave without pay.

Very truly yours,


Carl T. C. Gutierrez

Attachment

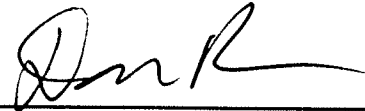
230639

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By:	<u>[Signature]</u>
Time:	<u>12:25 PM</u>
Date:	<u>9-29-95</u>

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 260 (LS), "AN ACT TO REPEAL §63106 OF CHAPTER 63, TITLE 10, GUAM CODE ANNOTATED, AND TO AMEND §4119 OF CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO THE UTILIZATION OF ANNUAL LEAVE BY GOVERNMENT OF GUAM EMPLOYEES FOR PURPOSES RELATING TO THEIR ACTIVE MEMBERSHIP IN THE GUAM NATIONAL GUARD," was on the 19th day of September, 1995, duly and regularly passed.



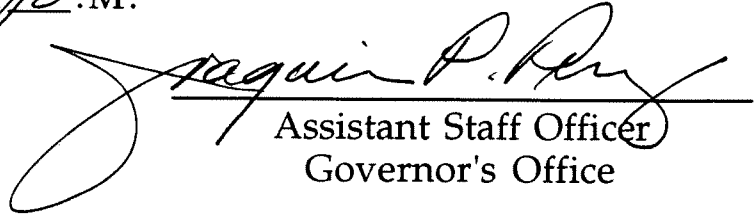
DON PARKINSON
Speaker

Attested:



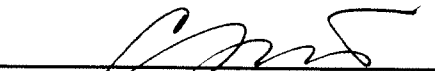
JUDITH WON PAT-BORJA
Senator and Legislative Secretary

This Act was received by the Governor this 19th day of Sept.
1995, at 6:11 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ
Governor of Guam

Date: 9-29-95

Public Law No. 23-41

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. 260 (LS)

As substituted by the Author
and further amended on the floor.

Introduced by:

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

AN ACT TO REPEAL §63106 OF CHAPTER 63, TITLE 10,
GUAM CODE ANNOTATED, AND TO AMEND §4119
OF CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED,
RELATIVE TO THE UTILIZATION OF ANNUAL LEAVE
BY GOVERNMENT OF GUAM EMPLOYEES FOR
PURPOSES RELATING TO THEIR ACTIVE
MEMBERSHIP IN THE GUAM NATIONAL GUARD.

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

1 **Section 1. Legislative statement.** The Legislature finds that there is a
2 need to recognize our members of the Reserve Components of the
3 Department of Defense and the Department of Transportation and their
4 ongoing efforts through military skills training and continuous "contingency"
5 exercises in order to attain excellence and preserve the maximum level of
6 military readiness required for national security.

7 The Legislature further finds that essential training available to
8 Reserve Component members at times extends beyond fifteen (15) workdays.
9 Current law limits paid military leave for the purposes of training and duty
10 obligations to fifteen (15) days. Presently, any training time exceeding fifteen
11 (15) days must be undertaken by Reserve Component members under the
12 status of "Leave without pay".

13 The Legislature finds that this situation poses unfavorable
14 circumstances to these dedicated individuals who seek to advance their skills
15 through training and have chosen to serve and defend this Territory in a time
16 of need.

17 **Section 2. §63106 of Chapter 63, Title 10, Guam Code Annotated, is**
18 **hereby repealed.**

19 **Section 3. §4119 of Chapter 4, Title 4, Guam Code Annotated, is hereby**
20 **amended to read:**

21 "§4119. Military leaves of absence: National Guard or Reserves. All
22 employees of the government of Guam who are members of the reserve
23 components of the Departments of Defense or Transportation, including but
24 not limited to the United States Army, the United States Navy, the United
25 States Marine Corps, the United States Air Force, the Army National Guard,
26 the Air National Guard, and the United States Coast Guard, shall be entitled
27 to leaves of absence from their respective duties with the government of

1 Guam without losses of time or efficiency ratings on all days during which
2 they are engaged in active military duty ordered or authorized under the laws
3 of the United States. Such employees shall be entitled to military leave with
4 pay while performing such duty not to exceed fifteen (15) working days per
5 government of Guam fiscal year, and thereafter, the officers and employees
6 shall elect annual leave or leave without pay. The provisions of this section
7 shall be retroactive to October 01, 1994."

PL 23-41



Senator Hope Alvarez Cristobal

Twenty-Third Guam Legislature

Chairperson, Committee on Federal and Foreign Affairs

September 08, 1995

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 260:

AN ACT TO REPEAL §63106 OF TITLE 10 GUAM CODE ANNOTATED, CHAPTER 63, AND AMEND §4119 OF TITLE 4 GUAM CODE ANNOTATED, CHAPTER 4, RELATIVE TO ADDRESSING THE UTILIZATION OF ANNUAL LEAVE FOR GOVERNMENT OF GUAM EMPLOYEES FOR PURPOSES RELATING TO THEIR ACTIVE MEMBERSHIP IN THE GUAM NATIONAL GUARD (as substituted by the author).

submits its Committee Report to the Legislature with the recommendation TO PASS.

The voting record is as follows:

To Pass	10
Not To Pass	00
To Abstain	00
To place in Inactive File	00
Not Available for Signature	02

Your immediate attention to this matter is greatly appreciated.

Si Yu'os ma'ase,

HOPE ALVAREZ CRISTOBAL
Senator

attachment: committee report/clq

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 Micronesia 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



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

September 01, 1995

MEMORANDUM

To: All Members

From: Senator Hope A. Cristobal, Chair
Committee on Federal & Foreign Affairs


Re: Voting on Bill # 260 as substituted by the author.

In reference to to the Public Hearing conducted on June 01, 1995, the attached voting sheet is accompanied by the following supplements:

- 1) a digest of testimonies,
- 2) Committee Members Dialogue,
- 3) Committee Report (Overview, Findings & Recommendations),
- 4) Bill 260 (original),
- 5) Bill 260 (as substituted by the author), and
- 6) pertinent documents.

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

Si Yu'os ma'ase,


HOPE ALVAREZ CRISTOBAL
Senator

clq/attachments

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 Fara Tiyan

Committee on Federal & Foreign Affairs

VOTING SHEET

Bill No. 260: AN ACT TO REPEAL §63106 OF TITLE 10 GUAM CODE ANNOTATED, CHAPTER 63, AND AMEND §4119 OF TITLE 4, GUAM CODE ANNOTATED, CHAPTER 4, RELATIVE TO ADDRESSING THE UTILIZATION OF ANNUAL LEAVE FOR GOVERNMENT OF GUAM EMPLOYEES FOR PURPOSES RELATING TO THEIR ACTIVE MEMBERSHIP IN THE GUAM NATIONAL GUARD (as substituted by author).

Committee Members	To PASS	NOT to PASS	To ABSTAIN	To Place in INACTIVE FILE	SIGNATURE
Sen. Hope A. CRISTOBAL Chairperson	✓				<i>Alcristobal</i>
Senator Angel SANTOS Vice-Chairperson	✓				<i>ASANTOS</i>
Senator Tom ADA Member	✓				<i>Tom ADA</i>
Senator J. WON PAT-BORJA Member					
Senator Mark CHARFAUROS Member	✓				<i>Mark Charfauros</i>
Senator L. LEON GUERRERO Member	✓				<i>Leon Guerrero</i>
Senator V. PANGELINAN Member	✓				<i>V. Pangelinan</i>
Senator Francis SANTOS Member	✓				<i>Francis Santos</i>
Sen. E. BARRETT-ANDERSON Member	✓	<i>to report out only</i>			<i>E. Barrett-Anderson</i>
Senator Anthony BLAZ Member	✓				<i>Anthony Blaz</i>
Senator Mark FORBES Member					
Senator C. LEON GUERRERO Member	✓				<i>Carlette Leon Guerrero</i>

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

Bill No. 260
(as substituted by the author)
Introduced by:

H. CRISTOBAL *HC*
M. CHARFAUROS *MC*
T. ADA *TA*
V. P. *VP*
L. L. *LL*

AN ACT TO REPEAL §63106 OF TITLE 10 GUAM CODE ANNOTATED, CHAPTER 63, AND AMEND §4119 OF TITLE 4 GUAM CODE ANNOTATED, CHAPTER 4, RELATIVE TO ADDRESSING THE UTILIZATION OF ANNUAL LEAVE FOR GOVERNMENT OF GUAM EMPLOYEES FOR PURPOSES RELATING TO THEIR ACTIVE MEMBERSHIP IN THE GUAM NATIONAL GUARD.

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

SECTION 1. Legislative statement. The Legislature finds that there is a need to recognize our members of the Reserve Components of the Department of Defense and the Department of Transportation and their ongoing efforts through military skills training and continuous "contingency" exercises in order to attain excellence and preserve the maximum level of military readiness required for national security.

The Legislature further finds that essential training available to Reserve Component members at times extends beyond the fifteen (15) workdays. Current law limits paid military leave for the purposes of training and duty obligations to fifteen (15) days. Presently, any training time exceeding fifteen (15) days must be undertaken by Reserve Component members under the status of "leave without pay".

The Legislature finds that this situation poses unfavorable circumstances to these dedicated individuals who seek to advance their skills through training and have chosen to serve and defend this Territory in a time of need.

SECTION 2. Title 10, Chapter 63, §63106 of Guam Code Annotated is hereby repealed:

~~"§63106 Leaves of absence. All officers and employees of the government of Guam who are members of the Guam National Guard shall be entitled to leaves of absence from their respective duties without loss of time or efficiency rating on all days during which they shall be engaged on duty ordered or authorized under the laws of the United States or under this Chapter. The officers and employees shall be entitled to leave with pay for such active duty not to exceed fifteen (15) workdays per fiscal year and thereafter the officers and employees~~

27 ~~shall receive, leave without pay. Leave under this section accrues for an employee or~~
28 ~~individual at the rate of fifteen (15) workdays per fiscal year and, to the extent not used in a~~
29 ~~fiscal year, accumulates in the succeeding fiscal year until it totals fifteen (15) days at the~~
30 ~~beginning of a fiscal year. "~~

SECTION 3. Title 4, Chapter 4, §4119 of Guam Code Annotated is hereby amended to read:

"Military leaves of absence: National Guard or Reserves. All employees of the government of Guam who are members of the reserve components of the Departments of Defense or Transportation, including but not limited to the United States Army, the United States Navy, the United States Marine Corps, the United States Air Force, the Army National Guard, the Air National Guard, and the United States Coast Guard, shall be entitled to leaves of absence from their respective duties with the government of Guam without losses of time or efficiency ratings on all days during which they are engaged in active military duty ordered or authorized under the laws of the United States. 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, with the approval of their appointing authority, annual leave or leave without pay. The provisions of this act shall be retroactive to October 01, 1994.**

FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH AUG 03 1995

BMRF/7

Bill No. 260
 Amendatory Bill: Yes
 Department/Agency Affected: Department of Military Affairs
 Department/Agency Head: Ramon Q. Sudo

Date Received: 7/20/95
 Date Reviewed: 8/2/95

Total FY 1995 Appropriation to Date: \$502,425

Bill Title (preamble): AN ACT TO REPEAL SECTION 63106 OF TITLE 10 GUAM CODE ANNOTATED, CHAPTER 63, AND AMEND SECTION 4119 OF TITLE 4 GUAM CODE ANNOTATED, CHAPTER 4, RELATIVE TO ADDRESSING THE UTILIZATION OF ANNUAL LEAVE FOR GOVERNMENT OF GUAM EMPLOYEES FOR PURPOSES RELATING TO THEIR ACTIVE MEMBERSHIP IN THE GUAM NATIONAL GUARD .

Change in Law: To repeal Section 63106 of 10 GCA; to amend Section 4119 of 4 GCA

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

Bill is for:
 Operations Capital Improvement _____ Other _____

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
Public Safety	1/		1/

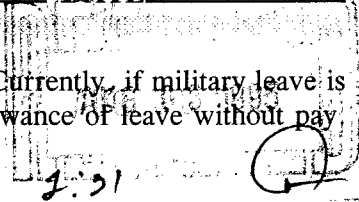
ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND						
OTHER						
TOTAL	1/					1/

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? IF NO, ADD'L AMOUNT REQUIRED \$ 1/
 AGENCY/PERSON/DATE CONTACTED: _____

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND						
OTHER						
TOTAL						N/A

ANALYST Angela F. Merfalen DATE 8/2/95 DIRECTOR Joseph E. Rivera, Acting DATE AUG 03 1995

FOOTNOTES: 1/ Bill No. 260 entails use of annual leave upon exhaustion of military leave. Currently, if military leave is exhausted, respective department/agency heads have the discretion to approve or disapprove allowance of leave without pay. The proposed Bill will entitle such employees to take annual leave or to go on leave without pay.





COMMITTEE ON RULES

Twenty-Third Guam Legislature
155 Hesler St., Agana, Guam 96910

May 18, 1995

MEMORANDUM

TO: Chairman, Committee on Federal and Foreign Affairs

FROM: Chairman, Committee on Rules

SUBJECT: Referral - Bill No. 260

The above Bill is referred to your Committee as the principal 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.


SONNY LUJAN ORSINI

5/18/95 Bpn

TWENTY-THIRD GUAM LEGISLATURE

1995 (FIRST) Regular Session


STAT 19 AM 9:31

Bill No. 260

Introduced by:

H. CRISTOBAL 

T. ADA 

M. CHARFAUROS 

AN ACT TO AMEND §63106 OF TITLE 10 GUAM CODE ANNOTATED, CHAPTER 63 RELATIVE TO ALLOWING FOR ALL GOVERNMENT OF GUAM EMPLOYEES WHO ARE MEMBERS OF THE NATIONAL GUARD THE ABILITY TO UTILIZE THEIR ANNUAL LEAVE IN THE EVENT THAT THE ASSIGNED TRAINING OR DUTY SESSION EXCEEDS THE EXISTING GOVERNMENT OF GUAM ENTITLEMENT.

1 BE IT ENACTED BY THE PEOPLE OF THE
2 UNINCORPORATED TERRITORY OF GUAM:
3

4 SECTION 1. **Legislative statement.** The Legislature finds that there is a need to recognize
5 our National Guard members and their ongoing efforts through military basic skills training
6 and continuous "contingency" exercises in order to attain and preserve the maximum level of
7 military readiness required for national security.

8 The Legislature further finds that essential training available to National Guard members
9 often extends beyond the fifteen (15) days. Current law limits military paid leave for the
10 purposes of training and duty obligations to fifteen (15) days. Presently, any training time
11 exceeding fifteen (15) days must be undertaken by a national guardsman under the status of
12 "leave without pay".

13 The Legislature finds that this situation poses unfavorable circumstances to these
14 dedicated individuals who seek to advance their skills through training and have chosen to
15 serve and defend this Territory in a time of need.
16

17 SECTION 2. §63106 of Guam Code Annotated is hereby amended to read:
18

19 "**§63106 Leaves of absence.** All officers and employees of the government of Guam
20 who are members of the Guam National Guard shall be entitled to leaves of absence from
21 their respective duties without loss of time or efficiency rating on all days during which they
22 shall be engaged on duty ordered or authorized under the laws of the United States or under
23 this Chapter. The officers and employees shall be entitled to **military** leave with pay for such
24 active duty not to exceed fifteen (15) workdays per fiscal year [~~and thereafter the officers and~~
25 ~~employees shall receive leave without pay.] When an employee is granted leave for military
26 training or duty, such leave should be charged first to paid military leave until the employee's~~

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entitlement to paid military leave has been exhausted. When the employee's entitlement to paid military leave has been exhausted, the employee may elect to use accrued annual leave; provided that said leave is in connection with pertinent military training, or to take an unpaid leave of absence. If the employee chooses not to use annual leave, or when the employee's annual leave has been exhausted, the employee should be placed on unpaid leave. Leave under this section accrues for an employee or individual at the rate of fifteen (15) workdays per fiscal year and, to the extent not used in a fiscal year, accumulates in the succeeding fiscal year until it totals fifteen (15) days at the beginning of a fiscal year."

FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH

BBMR - F7

JUN 01 1995

Bill No. 260

Date Received: 5/30/95

Amendatory Bill: Yes

Date Reviewed: 5/31/95

Department/Agency Affected: Military Affairs

Department/Agency Head: Ramon Q. Sudo

Total FY 1995 Appropriation to Date: \$502,425

Bill Title (preamble): AN ACT TO AMEND SECTION 63106 OF TITLE 10 GUAM CODE ANNOTATED, CHAPTER 63 RELATIVE TO ALLOWING FOR ALL GOVERNMENT OF GUAM EMPLOYEES WHO ARE MEMBERS OF THE NATIONAL GUARD THE ABILITY TO UTILIZE THEIR ANNUAL LEAVE IN THE EVENT THAT THE ASSIGNED TRAINING OR DUTY SESSION EXCEEDS THE EXISTING GOVERNMENT OF GUAM ENTITLEMENT.

Change in Law: To amend 10 GCA Section 63106

Bill's Impact on Present Program Funding:

Increase _____ Decrease x _____ Reallocation _____ No Change _____

Bill is for:

Operations x _____ Capital Improvement _____ Other _____

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
Public Safety			1/

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

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? 1/ IF NO, ADD'L AMOUNT REQUIRED \$ 1/
 AGENCY/PERSON/DATE CONTACTED: DOA/C TERLAIE/5-31-95

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND						N/A
OTHER						
TOTAL						

ANALYST Angela F. Merialen DATE 5/31/95 DIRECTOR Francisco Balajadia DATE JUN 01 1995
Joseph E. Rivera, Acting

FOOTNOTES: 1/ Bill No. 260 does not include an appropriation measure. The proposed Bill entails use of annual leave upon exhaustion of military leave. Currently, an employee is on leave without pay status, if military leave is exhausted, and the Government of Guam bears the cost for continuation of such employees health benefits. Bill No. 260 entails a financial impact as it relates to costs for annual leave, leave with pay status, and continuation of health benefits under leave without pay status. However, a comparative assessment cannot be made at this time.

It is noted that presently, the General Fund appropriation level totals \$545 million and the FY 1995 revenue forecast is \$527 million resulting in an \$18 million deficiency for Fiscal Year 1995.

Handwritten notes:
 2
 10:40 AM

Committee on Federal & Foreign Affairs

Committee Report on Bill #260

OVERVIEW

The Committee on Federal & Foreign Affairs having purview over all matters relating to the relationship between the government of Guam and the military forces stationed on Guam, publicly heard Bill 260 on June 01, 1995.

Present at the hearing were: Senator Hope Cristobal, Senator Tom Ada, Senator Mark Forbes, Senator Ted Nelson, Senator Joanne Brown, Senator Liz Barrett-Anderson, and Senator Angel Santos.

Bill 260 was introduced by Senator Hope A. Cristobal and co-sponsored by Senators T. Ada and M. Charfauros.

Citizens presenting testimony before the Committee were: Mr. Gus Diaz, Col. Robert Cockey, Command Sergeant Major Taitano, Mr. John Cruz, and Mr. George Quichocho.

The intent of Bill 260, with its passage, is to allow for those government of Guam employees who are members of the National Guard the ability to utilize their annual leave in the event that the training or duty assignment exceeds the existing government of Guam entitlement.

FINDINGS & RECOMMENDATIONS

This Committee finds that:

Mr. John Cruz, a member of the Guam Air National Guard, and a full-time government of Guam employee with the Guam Fire Department, on November 03, 1994 submitted a memorandum to the then-acting Fire Chief J. B. Reyes, requesting for leave in order to attend a Technical Training School at Sheppard AFB, Texas for a three month period, so that he could meet the requirements for promotion to the grade of Senior Master Sergeant (E-8).

Documents clearly indicate an approval by Acting Chief Reyes and then-Governor Joseph F. Ada for Administrative leave with pay for the period beginning December 12, 1994 and ending March 03, 1995.

Mr. Cruz departed for school on December 12, 1994. While attending school he received word from his wife on Guam that his leave status had been reevaluated and that the Attorney General's office had interpreted the approval to be incorrect,-- thus invalid based on the language of current Guam law which reads,

"...shall receive leave without pay." (10 GCA §63106.)

According to the AG's opinion, Mr. Cruz should not have been allowed to use his annual leave and was required to pay back his leave. Approximately, three thousand two hundred dollars. Mr. Cruz testified that the Department withheld his first paycheck and subsequent checks for three consecutive pay periods, threatened to assess a nine percent interest charge, and then, garnished Mr. Cruz's pay until the full amount was repaid.

The Committee also finds that with the intent of the proposed legislation is to prevent predicaments such as Mr. Cruz's from occurring in the future. The Committee finds that:

- 1) the essence of annual leave is not to be interpreted to be a right rather than a privilege,
- 2) the basic minimum requirements for participation by guard members is the mandatory drill weekends once a month and the fifteen days of annual tour and any training or assignment which exceeds the basic minimum requirements must be settled through an arrangement agreed upon by his/her employer,

- 3) every testimony present at to the Committee, including the testimony provided by Mr. Gus Diaz of the Attorney General's office, was in support of the intent of the proposed legislation,

Mr. Gus Diaz, stated "...The Attorney General's office fully supports the intent of bill 260...",

Col Cockey stated his support for bill 260 stating issues of morality and fairness in regards to the old laws in the GCA,

Command Sergeant-Major Taitano expressed support urged the passage of bill 260,

Mr. George Quichocho explained to the Committee that he was, at the time, Director of the Air National Guard Personnel Division entertained the concerns of Mr. Cruz and one other individual which he refused to name at that moment. Mr. Quichocho went on to elaborate on his assessment of Mr. Cruz's situation,

- 4) there exists a concern of "prejudgment attachment of wages" which may have been inappropriately executed in Mr. Cruz's case, and

- 5) current Guam law concerning annual leave presents unfair situations and obstacles to those government of Guam employees who are members of the National Guard and strive to advance their career aspirations with the National Guard.

THE COMMITTEE ON FEDERAL & FOREIGN AFFAIRS WITH ITS FINDINGS SUBMITS THE ATTACHED BILL NO. 260 AND STRONGLY RECOMMENDS AND SUPPORTS ITS PASSAGE.

PUBLIC HEARING

CFFA

June 01, 1994

BILL 260

Senator Cristobal:

Buenas and good morning and welcome to the public hearing by the Committee on Federal and Foreign Affairs. I call this hearing to order and I would like to begin. Today's copy of the agenda and the submitted written testimonies are available and my staff are over here to my left, at the table. If you could avail yourself to it. I ask those who are present here and wish to give testimony to see my staff and they'll assist you in signing up and making the necessary number of copies of your testimony, if you wish to submit that for the record. My office will continue to accept written testimonies submitted for the record after this hearing and we ask that you submit that as soon as possible. In the interest of time and order each of the presenters will be allowed ten minutes this morning to present their testimony and my time keeper will indicate your last minute remaining, at that time I'm going to ask you to bring your testimony to a close. The Committee on Federal & Foreign Affairs will now here testimony on bill 260 which is the Guard bill. Bill 260 as introduced will provide flexibility to the guardsman to elect to use annual leave during training once exhausting paid military leave, person may also opt or elect to go on leave without pay, and unused military leave can accumulate to the next fiscal year to a maximum total of 15 days. At this point I'd like to call Mr. Gus Diaz from the attorney general's office to please take a seat. After Gus Diaz we'll have David Cruz then Colonel Robert Cocky. Before I ask the presenters this morning to do their testimony, I'd like to introduce members of my committee. To my right is Senator Joanne Brown who has a bill this morning that we're hearing and to my left is Senator Tom Ada. Welcome to the public hearing this morning and we'll begin with Mr. Gus Diaz.

Mr. Gus Diaz

Thank you Madam Chair. The Attorney General's office fully supports the intent of bill no. 260, and as you see in our submission yesterday, basically we recommend that the language be changed in at least two statutes and in fact we didn't include this in the submission yesterday but I would even go so far to say that this statute probably most properly belongs in 4 GCA, relating to personnel, civil service matters. As opposed to fact that it's also reflected in 10 GCA section 63106, it seems a little redundant. Aside from that, in order to enable government employees who are members of the National Guard to take annual leave, in the event that they exceed the statutory entitlement of 15 days per fiscal year, military leave for their assigned training or duties then both these statutes would have to be

amended if we're going to retain both statutes. So, in 10 GCA section 63106 we recommend that the second sentence be amended to read: The officers and employees shall be entitled to military leave, (the underlinings indicate the changes, military is the change and addition), with pay for such active duty not to exceed 15 work days per fiscal year and thereafter the officers and employees shall receive (this is another addition) at their election annual leave or leave without pay. In 4 GCA section 4119, we would also recommend the second sentence be amended to read: Such employees shall be entitled to military leave with pay while performing such duty not to exceed 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.

Senator Cristobal:

Okay, we'll just proceed then we'll ask questions after everyone presents their testimony.

Colonel Cockey

Current Guam law provides In support of bill 260. States issues of morality and fairness in regards to the old laws in the GCA. Says that guardsmen should not be punished for serving their country and that amendments to these laws should be incorporated. His recommendations include to amend section 63106 so that it is parallel to the provisions of the federal personnel manual. He feels this amendment should be retroactive to October of 1994 or when the first law was introduced so that the individuals who suffered financial hardships could have some type of compensation as well as a better outlook for future training periods.

COMMITTEE MEMBERS DIALOGUE

Senator Ada

If this is to be retroactive, have you identified specifically how many members have been affected by this?

Colonel Cockey

Right now we only have one. What we are worried about is that without the retroactive, people might come back and use these cases as an example.

Senator Ada

The problem with making it retroactive without knowing the impact is just like writing a blank check. In the case of the National Guard I think it's easy enough to identify the GovGuam personnel who were impacted. It would be easier to put out on the floor and say the exposure to GovGuam is this much, but, to go in there without knowing would get many members to say "no way."

Colonel Cockey

In this situation that we're addressing, the person had a crude annual leave. There was no additional expense.

Senator Ada

No, what we're saying here is that we are going to restore that annual leave and charge it to military leave. There will be an then impact then to the annual leave in which GovGuam has to restore. That's what we need to identify. We need to be very certain about how many individuals will be affected with this retro.

Colonel Cockey

Well, right now we have just one. Hopefully there will not be any others because of the misinterpretation of the law.

Senator Cristobal

Your asking this to be retroactive to October 1994. Is this the result of 2254.

Senator Ada

Well, I think it's a result of someone reading too much into it and then it was sent to the AG's office. Leave it to the attorneys to read more into it.

Mr. Gus Diaz

First of all, the AG's office has taken no position to make it retroactive. I think there is some misunderstanding. It's not an issue of more military leave, it's a matter of now charging against annual leave.

Senator Ada

I understand that. Whereas, he was charge two weeks for his annual leave, we are now going to restore that and charge that to military leave.

Colonel Cockey

It's actually like this. A person attended school for three months. While he was attending they interpreted his status to be incorrect, therefore, not allowing him to use his annual leave and as a result, he must pay this back.

Senator Cristobal

How about those individuals who were made to go with leave without pay. They may want to come back and claim the money in which they had loss.

Senator Ada

Which department is this?

Colonel Cockey

This individual is from the Fire Department. The unfairness is that others were able to use their leave. In this particular situation, this person was required to pay back the money he got on annual leave.

Senator Ada

You mean that the request for annual leave to supplement military leave was initially approved. Then all of a sudden someone says "I'm going to change that."

Colonel Cockey

Right. The retroactive is to prevent somebody else from looking back and saying "Well gee, I found some more members that have used their annual leave and we're going to try to make them pay back the money and then therefore they have to now go on annual leave and that kind of stuff."

Senator Ada:

I guess what concerns me is that, personally I think that's a stupid decision, and to tell the guy to go ahead and do it and then to turn around later and tell the guy to pay up..., personally if I was that individual I'd take that person to court.

Colonel Cockey:

I believe that person is going to be exhausting everything he can. The way the law was written, by the absence of the necessary sentences, it made it as if a person could not use annual leave. That's how it was interpreted in this case and he's saying that you used annual leave and now you have to pay us back.

Senator Ada:

Could you tell me, what's your understanding of the purpose of military leave? As a result of being a member in the reserve components, what sort of mandatory participation is required of the individual? Mandatory.

Colonel Cockey:

Mandatory. Mandatory would be the drill weekends and the fifteen days of annual tour. However, in practicality, the person that's in the military has a progression and in order for him to do that, it's necessary for him to get trained for the job. Also, as the type of situation we're finding now, we will have people that are trained in jobs and then the structure of the military being changed. So, these people have to maybe attend a school to learn another position in order to retain their place. These schools, in this particular case, are for three months and that's not uncommon.

Senator Ada:

What is the minimum requirement of that individual to maintain membership? He has to meet his one weekend a month for the next twelve months plus a two week period for annual training during the year. Right? That's the minimum requirement.

Colonel Cockey:

That's the absolute minimum.

Senator Ada:

Wasn't that the intent of the military leave is to be able to accommodate those guys to meet those minimum mandatory requirements?

Colonel Cockey:

Correct.

Senator Ada:

Now, a lot of the additional training that takes place, like for example your acquired career progression courses, do a lot of those take place on weekends, locally? Like for example, as I understand it, let's say your advanced NCO course, I guess that's taken in to phases. Correct? First phase is conducted locally by correspondence and I guess if they have any classroom work they do it here locally on weekends. Then there's a two week phase where you actually go in residence for MOS, part of it, and then that two week phase is then conducted in lieu of annual training. Is that correct?

Colonel Cockey:

I want to basically ask some of the members here as to what they have been doing here.

Command Sergeant Major Taitan:

I am Command Sergeant Major Taitan from Guam Army National Guard. Your looking at the air guard that may be different on your NCO development. What your talking about is the NCO development in which basic and advance NCO courses are taken here, but to graduate you have to go off island to finish it up.

Senator Ada:

A two week course, two week portion of it, correct?

Command Sergeant Major Taitan:

Right, and it's still the fifteen days, the fifteen days is not only annual training but for this course is in lieu of annual training.

Senator Ada:

So your still required to do just two weeks during that year?

Command Sergeant Major Taitan:

Correct.

Senator Ada:

So it is in that additional mandatory training above and beyond that two weeks as needed. My concern here is that we don't set a precedent here where annual leave is viewed as a right as opposed to what was intended to be that it was a privilege. So my concern here in studying precedence here is that you shall give the guy annual leave because that's really contrary to the intent of annual leave but on the other hand, if the employer decides that military leave because the guy wants to take optional training, anything beyond that two weeks of annual training is really not mandatory.

Command Sergeant Major Taitan:

When you say optional training sir, a lot of this training are not optional. MOS training is not optional, you have to be MOS trained to even get anywhere. These are courses that go beyond the two weeks annual training. A lot of our soldiers and airman will to the job skilled trainings that will take fifteen days and then plus whatever days they need to finish up that training, that could be anywhere from three to four months.

Colonel Cockey:

And on the airguard side, because it's requirements of a technical job I would say that there will be many cases where a person will have to go to school for three to four months to learn his job and there all going to be done at airforce training bases at the mainland. It's just impossible to say that a person could really be part of today's military with just fifteen days of training in a year when we're talking about computers and numerous types of other stuff.

Senator Cristobal:

So then are we saying that this problem is not unique to Guam?

Command Sergeant Major Taitan:

No it's not, a good example is the initial training, when they first come in they have to be gone for four months. They'll have to go to basic and then there's job skills course. At least four months.

Senator Cristobal:

So from your understanding, how are other guards from other areas handling this?

Colonel Cockey:

Well, I have almost 30 years experience in the air force reserve and the airguard and the way the federal personnel manual is written has been what I assumed every state and every location has used. In our particular case, we have an individual who

accrued his annual leave, anticipating the fact that he was going to be going to this school and we kind of encourage people to do that. The idea is it is your annual leave and if a person takes annual leave and he goes and takes a job somewhere, the thing about it is, he knows he's going to be going to school, he's probably been working for that and it's necessary training, it's just that today's military is not like it used to be.

Senator Ada:

Madam Chair, I would recommend and again, I'm a member of the reserves also and I fully empathize and I want to be supportive and there's other things also that we need to be watchful for. I think that the military leave of course has to be maintained so that the individual member of the reserve components are able to meet their mandatory participation requirements, I don't think there's any question about that. But I think we've got to be careful that the essence of annual leave is not changed such that it is now made a right as opposed to a privilege and that anything beyond the time required to meet mandatory requirements is really got to be something between the employer and the employee because that individual members primary livelihood comes from that full time job that he has with the government. Now, if the employer feels that he can afford to let the individual go off for an additional two weeks without seriously impacting on his operations then fine, let the two of them work it out and him either annual leave or unpaid administrative leave, but we cannot lose sight of the fact that his primary income is being earned from that full time job and we've got to be mindful of that.

Senator Cristobal:

Let me just call your attention to the Attorney General's testimony this morning and I think that we can find those words and the words shall receive at their election, and I think those words would provide that latitude either way.

Colonel Cockey:

I don't think the intent of law is to say that you have to give this member annual leave and it's his right to go off and do what he wants, he still has to work that out but what we are saying is that the member has the right to basically, if it's going to be more than his fifteen days military leave, to use his annual leave if he has it and then if he doesn't have it then it will be unpaid leave. You cannot deny him the election of using annual leave. Once it has better proof by his supervisors that they can allow him to go to his training.

Command Sergeant Major Taitan:

The reasoning behind this not to undermine the employer because what we do is we let our soldiers and airmen get with their employers and say this is the date that we're going to be going to school, and they work that out before we set up orders and sending them out. Now, once the employers all agree that yeah we can loose you for that amount of time. That is the only time we can send them out to the school. If we don't do that, what

happens is he may be able to get some problems with the employer, so the relationship between the Guard or the Reserve and the employer continues to go on through out the year. We even have employer conferences with the National Guard, so that we can have that relationship on going and if we need someone to go to school, that they do understand that maybe this will be a benefit to their full time employment, not only to the Guard.

Colonel Cockey:

I want to bring out that most of the time these schools actually enhance the persons skills for their employer. It's good for the island, it's good for the employer, I mean your talking about job skills that make him more valuable for his employer and the community.

Senator Cristobal:

I think, we are all in agreement with that. For me, I applaud the fact that an employee takes annual leave which is normally reserved for family vacations, to go and improve their skills. This is something that I fully support. But, in looking for the language, I think the Attorney General this morning has given us that language and I think we will be looking at that very closely. We don't want to bind the employer or the employee. I want to call attention to the fifteen (15) days as workdays, colonel, and that does not include the weekends, and the weekends are those days that you also require people to come in.

Colonel Cockey:

Right, it's a volunteer, basically we are talking about a volunteer military, it as such because it is a volunteer, it's sacrifice away from home and the family. It requires support from the community.

Senator Cristobal:

Just, you mentioned the required off-island training of two weeks, is that anything that cannot be handled by the University of Guam, just digressing here a little bit.

Command Sergeant Major Taitano:

These are military courses, ma'am, in our case the Guam Army National Guard, there is a set area where they have to go to finish it at, in Utah or in Hawaii. That's all paid by the National Guard Bureau, it does not come out of our funds in the Guam Army National Guard.

Senator Cristobal:

It's not anything can potentially be worked out at the military program at the University of Guam.

Command Sergeant Major Taitano:

At this time that is not the way it is, as a matter of fact it was taken out of our hands with the Guam National Guard and put into a regional academy in Utah.

Senator Cristobal:

Okay, let me ask this question of the A.G. What is your opinion then of leave that is not used carried over to the next fiscal year.

Mr. Gus Diaz:

Senator, we really haven't taken any position pro or con. We don't see any objection to the present law which basically renews the fifteen days year after year.

Senator Cristobal:

Okay.

Senator Nelson:

Madam Chairman. You the Attorney General ruling calls on administrative leave. There is a big difference between administrative leave and annual leave. Administrative leave is a period where by the Governor would grant you so many days off with pay and will not be charged to your accumulated annual leave or sick leave or what ever leave. It's a privilege that the Governor has granted any person to go off island or to leave this government with pay. What we are talking about here you guys are talking about annual leave is an entirely different matter. Administrative like I said is supposed to be a special only the Governor or certain directors could grant with pay under any condition like say you might want to go to a conference or go to a sports activities in Asia or Europe or what not, that is the prerogative of the governor and does not contradict any statute. Is a condition where an employee is allowed to leave his office for a time being with pay, that's what it's all about. Don't try to mix it up with annual leave. Annual leave is an entirely different animal.

Mr. Gus Diaz:

Senator I think the proposal is for annual leave. We reviewed it.

(Colonel Cockey and Mr. Diaz at the same time)

Senator Nelson:

No, but somebody was making a direct reference to the ruling by the Attorney General has something to do with only administrative leave not with annual leave or sick leave.

Senator Cristobal:

No, we haven't even talked about administrative leave and none of us have even mentioned that word this morning Senator.

Senator Nelson:

No, but it was attached to this ruling, what ever it is. This is what the Attorney General is.

Mr. Gus Diaz:

I'm not sure what you are talking about Senator. Are you talking

about the written submission that I sent over yesterday.

Senator Nelson:

I don't know I just saw this for the first time. But, there should be a differentiation here between administrative leave and annual leave. Like I said it is the authority of the Governor to grant anybody administrative leave for what ever reason. If an employee feels that he does not want to take his annual leave to attend certain functions, the Governor says okay. Puts him on administrative leave that's legal. It's not contradicted to any law because the Governor has that prerogative has that authority, whether for military leave or marriage leave or participate in international sports or conference what ever it is, that is the prerogative of the Governor.

Mr. Gus Diaz:

Well, I can only say Senator, I'm sorry we just didn't review it from the viewpoint of administrative leave. We were just looking at the proposed bill which mentions annual leave. I think that the point of the changes as we understand them it's a question of whether the members should be permitted to take annual leave with the approval of the employer or whether they have to take unpaid leave. And that's how we looked at it.

Senator Ada:

I think what Senator Nelson is referring to is the A.G.'s opinion. The request for an A.G.'s opinion was can administrative leave be used and it made reference to the Governor giving administrative leave.

Mr. Gus Diaz:

Oh, thank you.

Senator Nelson:

And, annual leave you're entitled to that, you earn it. If your administrator says I will grant you thirty (30) days annual leave that is his prerogative, and you're entitled to it and nobody can take that away from you.

Senator Ada:

So, the A.G.'s opinion is obviously questioning the authority of the Governor here, to grant administrative leave. I know the A.G. will say that that's inorganic.

Senator Nelson:

Mr. inorganic is not here today.

Mr. Gus Diaz:

He expresses his regrets by the way he had a prior commitment or could not just be here today.

Senator Nelson:

No, he just doesn't want to be in the hot seat that's all.

Mr. Gus Diaz:

No really he is tied up Senators.

Senator Cristobal:

So, can you address that Mr. Diaz. The requestee that came from the Department of Administration and a response...

Senator Ada:

And if this is declared inorganic then we won't need the retroactive clause.

Senator Nelson:

The Governor should resign.

Senator Cristobal:

And it references the same 10 GCA 63106.

Senator Nelson:

Like I was stating earlier, when an employee has so many annual leave and he wants to take it for military or other purposes for training or advanced training or just to improve himself with any kind of advanced a seminar in relation to his duty and he doesn't have anymore military leave that he's entitled to. I don't think that anybody can prevent him from taking that. If the director or his boss says alright I'll give you thirty (30) days to go to North Carolina or Fort Ord or what ever it is to get advanced training in certain type of military activity, that is legal. Nothing can prevent that individual if he wants to take that leave. I don't know why everything seems to be so complicated. Or are we not communicating.

Colonel Cockey:

Yeah, right. As far as my issue here it strictly has to do with annual leave.

Senator Nelson:

Annual leave is earned leave. By the employee.

Colonel Cockey:

Right.

Senator Nelson:

And, he can take that with the approval of the administrator, he can take 5 days, 10 days, 30 days whatever. No matter how many days you need. I think if a sergeant has to go to NCO academy to advance himself to a higher Warren Officer or whatever it is, and he needs that extra time and he has that annual leave, nothing really unless the military says you can't do it. Perhaps the Mr. Attorney General may go back to Mr. Inorganic and ask him to do some research in this one.

Senator Cristobal:

Well, we're definitely going to have to work on this Senator, it appears that we have some conflicting testimony this morning.

Your recommendation earlier this morning Mr. Diaz we should actually disregard the 10 GCA. In essence just find the a reference to leave under 4 GCA rather than a...

Mr. Gus Diaz:

Yes, madam chair, it's just our feeling that logically this statute really belongs in 4 GCA more logically than under 10 GCA. Of course, right now we have both statutes on the books. And, I think that repealing 10 GCA and just leaving the statute at 4 GCA would be more appropriate.

Senator Ada:

In fact, 4 GCA brought into the scope off coverage because it refers to members of reserve components of Department of Defense and that was revised by PL 22-54, and then the difference also with that is that it just deleted the words and thereafter employees shall receive leave without pay, just deleted that and all it stated was you will give him fifteen work days of military leave period. How you supplement that is then becomes a matter between the employer and the employee as it should be.

Mr. Gus Diaz:

Right. What we don't want is a situation where a person takes annual leave and on his annual leave attends a military school, and this is literally the case, a person says, "I found out you were on military duty and therefore your not allowed to take annual leave to do that".

Senator Nelson:

Or somebody made a mistake. I don't know how that situation will exist when you have the administrative officer, knowing that he's being paid or whatever it is, a then to be granted to something that he's not entitled to. This will be rather impossible unless nobody seems to know how their doing it.

Senator Cristobal:

Colonel Cockey are you aware of any Guardsman or Airguardsman that have been placed at a hardship where they were forced to take leave without pay, go on military leave and then leave without pay for three or four months and unable to meet routine household expenses, I mean I would sure hate to see an employee who feels that they have to upgrade their skills for the guard, be placed on leave without pay and not able to pay their cars or their homes and in the process may lose. Is that happening?

Colonel Cockey:

Well we have one member, and I'm going to ask that he explain his case, which is a little more complicated because I think there is some administrative leave there.

Senator Cristobal:

Without mentioning names can you just apprise us of this case.

Mr. Gus Diaz:

Yes ma'am, in talking to this individual, what had happened was he went to a school, he took his fifteen days and then they allowed him to take his annual leave and then now that he came back and they looked at the law they said no we can't give you your annual leave we're going to have to give you leave without pay and they're taking his pay out. That's what actually happens.

Senator Cristobal:

They're garnishing his pay.

Mr. Gus Diaz:

Right. They wouldn't let him take his annual leave, bottom line.

Colonel Cockey:

The reason is because the way the rule was written, it says "shall" which was interpreted to mean that he's not allowed to take annual leave to do military training.

Senator Cristobal:

Okay. Do you have a testimony regarding the same bill? Will you please state your name.

John Cruz:

My name is John Cruz and I'm currently employed with the Guam Fire Department and also the Guam Air National Guard. I'm that individual that they've been talking about. Back in December, I was scheduled to go to school, I went through the outgoing administration for administrative leave which was granted by the Governor, then Gov. Ada, and also by our Acting Chief Mike Uncangco. I left for school on Dec. 12, 1994 and administrative leave was started. All the way up until the new administration came, then they sent it to the Attorney General for an interpretation. Be it for whatever reason they thought, the AG came back and said the Governor did not have the authority to grant administrative leave. Right here is the copy that you were talking about, Senator Nelson. Thus they placed me on annual leave.

Senator Cristobal:

The retroactive, the annual leave.

John Cruz:

Up until the new administration came and then I started annual leave.

Senator Cristobal:

Oh okay.

John Cruz:

I took six weeks of administrative leave then the new administration came in then they put me on annual leave.

Senator Nelson:

You got paid for the six weeks?

John Cruz:

Six weeks.

Senator Nelson:

You got paid?

John Cruz:

I got paid. Administrative leave. Up until January. Then the AG came back and said the Governor did not have the authority to grant me administrative leave. I thus was put on annual leave for the remainder of my training. When I came back they got this public law here that states, "you shall receive leave without pay". I was the individual who was made to pay back my annual leave. Three thousand two hundred some odd dollars I paid.

Senator Nelson:

For their stupid mistake.

John Cruz:

For their mistake. Now DOA is coming back and saying that now I have to pay back that administrative leave that was granted to me over the fifteen days. Where's the fairness? We talked earlier about the problem it would create by retro. There is no problem. How can there be? The problem is, if they don't retro the individual is going to be made to pay back the government to buy back his leave. Which then in my case I'm on excess leave now. Is that fair? Now I'm going to have to go and try to fight with the Fire Department to get a time frame to go on excess leave.

Senator Nelson:

Who's asking for reimbursement for the administrative leave?

Colonel Cockey:

Well it's not for the administrative leave though, it's only for the annual leave.

John Cruz:

It is now. DOA called me up yesterday and told me that after the fifteen days of military leave I would have to pay back. So that included the administrative leave, they're asking recutment of another pay period. I've already paid back three pay periods in my annual leave.

Senator Ada:

What's DOA's resent decision based on another opinion from the AG's office?

John Cruz:

There is not another opinion. There basically saying because of the first opinion. I've asked them to go back and ask another opinion through the AG and they garnished my pay. My first

paycheck they withheld. To use this strong arm tactic against me nine percent, a nine percent interest they want to charge me. For my fault or their fault? I refuse to sign that promissory note. They withheld my paycheck for three pay periods because I refuse to pay it. Then they turned around and now they garnished half of my paycheck. I turned around and I paid it in full because I'm one of the one's that's being hurt by withholding paychecks, garnishing, and all that. I have a responsibility to my family, their livelihood. And annual leave would have covered that. First of all, I believe administrative leave was appropriate, but the AG came out with an opinion, just an opinion, I went ahead and agreed with it, but then they started this and where does it leave me? You know you have a commitment to your lending institute, if you go on leave without pay, one of the commitments is you drag it out every pay period to show them that it will be paid on time. Now that you go on leave without pay, your family it up, you think that that's a broken commitment to that lending institute.

Senator Cristobal:

On what basis did the Governor grant you the administrative leave? Do you have that paper work? John may I ask you to provide the committee with the paperwork that you have received regarding this problem? Anyhow, are you still paying back this leave, annual leave?

John Cruz:

I paid back in full the three thousand. They want me to pay back an additional amount.

Senator Cristobal:

The administrative leave now?

John Cruz:

Right.

Senator Cristobal:

And that is not in writing yet?

John Cruz:

Nothing was ever in writing. They just garnished my paycheck, withheld my first paycheck, garnished it then I requested something in writing to the fact.

Senator Cristobal:

Something is wrong.

Mr. George Quichocho:

I'm George Quichocho, Mr. pretty soon, I was just relieved from my position yesterday as Director of the Air National Guard Personnel division. I entertained the two complaints from John Cruz and another member that I will not name right now. The two problems I saw was the fact that the Government of Guam approved the leaves, the two individuals left the island making sacrifices

and while at training, they contacted the spouses and said they are not going to give the their checks. While still at training this moment, the wife is a student teacher up at UOG, she's making ends meet by getting help from her family, her mom and her in-laws. That person also came from the fire department. She showed me all the approval, so the guy left here with that understanding in his mind. Nobody contacted him, nobody contacted us from the government of Guam. So we told him that the law is specific in title 10, we're sorry they messed up, whoever wrote that law did deny National Guardsmen the use of annual leave. Whereas other members of the reserve components under title 4 of the section of the law were being authorized annual leave. So instead of looking at a way where we can solve this quickly without hurting everybody, they just yanked the checks of these people. That's what upsets me. Then when they come back they try to go retroactively to deny these individuals their entitlement, after having approved it. I did suggest they go through the Civil Service Commission and see if we can't get this law corrected. To address two other issues okay, number one, we need to be in par with the rest of the reserve component whether we put it in title 10 or title 4, we need to reflect what the federal government is giving the federal employees, at a minimum. And I can tell you that more that 90% of the states support the same procedure as the federal government. They gave them fifteen days military leave, if they don't use it, allow them to carry it, when they do need it they use thier military leave first, if they have annual leave they use thier annual leave whether "shall" or "will" they use it, instead of going on vacation and then when they run out of that they go leave without pay. That's the little we're asking from the community to support the National Guard Reserves. Then a lot of the companies, Guam Cable right now, SeaLand that I know for sure, and at least a dozen more on island follow suit, they use the same procedure. They grant military leave, they grant annual leave, and then the grant leave without pay to the support the National Guard Reserves. And that's all we're asking is straighten this law out to show support for the National Guard Reserves paralleling the federal government and the rest of the business communities that follow suit and make us equal in par with the other reserve components and please help these individuals that have been effected because prior to the new reading, whoever found that stupid law, everybody was being given military leave, annual leave, and then leave without pay. So we're not asking for much. In the airguard I can tell you two, I don't know about the other service components and that's all I need to say.

Senator Cristobal:

Well thank you very much. I'm glad that you came forward and enlightend us on those two cases. I'm just wondering Mr. Cruz, why did you request for administrative leave in the first place? Is it because you knew the law was saying that you shall be granted the leave without pay after the military leave?

John Cruz:

I requested because the Governor is in fact our Commander in Chief, he has the authority, be it when we're called up locally for natural disasters, we give to the government. I went and requested administrative leave because I was going for an extended period of time and like somebody said annual leave was reserved for your family and stuff. So I went and presented my case to him and he approved it because of the length of time. And I was going up for a key position in the airguard. It's a E-8 position, a key position and I felt that I shouldn't be let to use my annual leave. We are activated constantly for the people of Guam.

Senator Cristobal:

Okay. I don't think you need to go on and extended explanation on that. But thank you, I just thought that it was something that was in the law that you foresaw as an impediment to you receiving your salary.

John Cruz:

Well Senator there is something in the law now.

Senator Cristobal:

Yes, well that's why we're here today and I'm glad that there was the Guam National Guard that brought this to my attention. I know that they are working hard to try and get equitable leave as compared to the other Reserves.

John Cruz:

Can I say something. If you don't approve this annual leave the law states that you're still entitled to leave without pay. It doesn't matter if you approve it or not the individual will still go on leave without pay. That's what the law states. Senator Ada was saying that after fifteen days it's up to the employer. The law says the employer has to release you, leave without pay. Aal we are asking for is to give us the opportunity to use our annual leave.

Senator Cristobal:

Point well taken that's why we're here today. If it were not for the Guard we would not be hearing this bill today, they were the ones who wanted to correct the situation. Of course, I applaud the leadership here of Major Taitano and the Adjutant General Ramon Sudo who visited my office and called this to my attention, perhaps because of the problem of the two individuals. I also recieved a visit from the wife of one of these individuals and I don't know that's yours or the other individual, but to me it was causing a hardship on the family, people are being sent on training and the being put on leave without pay, now they are trying to make ends meet so they can pay for there home, and pay for there cars and I just think that it is an unfortunate situation when this government sends out for training and does not pay for it. When the time comes you are going to get activated and we are not going to ask you if we are going to pay

you or not. That's really what we are trying to do here and work this thing out. I'm sure that the Attorney General's office will be accessible to us. I'm sure that we are going to straighten this out. It behooves us here at the legislature to try and we take care of these things. At this time I would like to introduce my colleague here Senator Elizabeth Barrett-Anderson, who is also a member of this committee. Unless there is any more testimony this morning, I'm sorry.

Senator Barrett-Anderson:

Mr. Cruz just clarify one thing and maybe the chief Deputy might look into further my question, you said your wages were garnished to the extent of 50%, was any judgement entered into against you for the garnishment of your wages.

John Cruz:

What do you mean by judgement.

Senator Barrett-Anderson:

Any court documents. To allow the government to garnish your wages.

John Cruz:

No, what they did on my paycheck is we receive 106 hours. On my check stub it says a 106 hours but they only paid me for half.

Senator Barrett-Anderson:

They just took it away. I would like the A.G.'s office to look at the propriety of it, I think Gus understands prejudgement attachment to wages. No doubt if you are leaving and you haven't paid your library fees, then the government can hold your final departing paycheck because it is the only way the government can recover for its losses. When it comes to wages local and federal laws protect you from prejudgement attachments because exactly what you said Mr. Cruz this is the only income you have to pay your debts and to buy food and clothing for your family that is what the courts protect your wages very clearly. That's the only question I have, is whether the government was justified in holding 50% of your wages without a judgement attached to that, if there was a judgement you would have the opportunity to argue before a judge that you aren't the one at fault. The Government is the one that made the mistake why am I the one suffering for it. It doesn't seem you had that opportunity to argue it which we call due process argument why your wages should not be withheld from you. I ask the A.G.'s office to check with the Department of Administration as to how his wages were garnished without a judgement.

John Cruz:

I would like to say that I paid my annual leave back in full, they issued another check reimbursing me the 53 hours. After I paid back 126 of annual leave.

Senator Cristobal:

On behalf of the committee to the Attorney General please consider that a official request.

Mr. Gus Diaz:

Shall we respond to the committee.

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 tranfers 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 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 burdeen 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 o f 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 seentence there where it says the Bureau of Planning designate which departments seems to be reduntant 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 reduntant I beleive Land Management recrds 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 and 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 an 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 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, with 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 accept 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 specify 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 the 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 transfered, or at least after the northern high school was transfered 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 occured, 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 accessment, 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 accessment is not the document that will determine whether there is environmental contamination on the sight. An environmental impact accessment 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 accessment 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 evironmental impact accessment 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 sites 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 to 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 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 saying 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 has ever gone through such appropriate review. I'm very pleased I met with Congressman Underwood yesterday we've talked about these 3200 acres of federal property. That's the first time you're 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, is 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 circla 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 sup[pose 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 weree getting back from the federal government we're going to find ourselves in this mess. Now, the LEutenant 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 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 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 milions and millions of dollars to operate it and yet we dont even know what we're getting as far as clean up or the environmental impact. I dont 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 Congeress 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 dont 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 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 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 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 transfered in effect when you begin to utitlize the property. So for instance.. if the Gov of Guam uses the property then the Navy or the Airforce 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.



GOVERNMENT OF GUAM
AGANA GUAM 96910

03 NOV 94
Date

Memorandum

To: Acting Fire Chief
Via: Channels GA AD 11/14/93
From: FIREFIGHTER II J.R. CRUZ / FIRE SUPPRESSION BUREAU
Rank & Assigned Bureau STATION 1, PLATOON B
Subject: Request for Off-Island ADMINISTRATIVE LEAVE

Sir, this is to respectfully request your consideration and approval for off-island leave for the purpose of Attending a Technical Training School for the Guam Air National Guard in order to meet the criteria for promotion to the grade of Senior Master Sergeant (E-8).

If approved, my leave will commence from 12 DEC 94 to 03 MAR 95, an approximate period of 3 months. I will be leaving to SHEPPARD AIR FORCE BASE, TEXAS.

Your kind consideration and approval is solicited and greatly appreciated.

FFII John R Cruz
(Name & Signature)

Attachment

APPROVED DISAPPROVED

APPROVED DISAPPROVED

ACTING FIRE CHIEF
M.F. UNCANGCO

11-15-94
Date

11/15/94
Date

3 NOV 94

MEMORANDUM

TO: THE HONORABLE JOSEPH F. ADA
GOVERNOR OF GUAM
AGANA, GUAM 96910

FROM: JOHN R. CRUZ
P.O. BOX 11465
YIGO, GUAM 96929

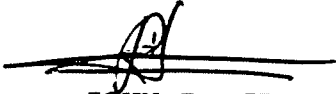
SUBJECT: Request for Off-Island Administrative Leave

I am currently a member of the 254th Civil Engineering Squadron, Guam Air National Guard on a part-time basis. Recent organizational restructuring of the Civil Engineering units Air Force-wide has required the consolidation of several engineering career fields.

In my case, as the Utilities Shop Superintendent and to meet the criteria for promotion to the grade of Senior Master Sergeant (E-8), I'm required to attend training which consolidates plumbing, water & waste and liquid fuels management. Because of the consolidation of these engineering fields the technical training has been extended to 12 weeks.

For this reason, I humbly request your consideration and approval for off-island administrative leave from my full-time job as a GovGuam Fire Fighter in order to pursue training with the Guam Air National Guard.

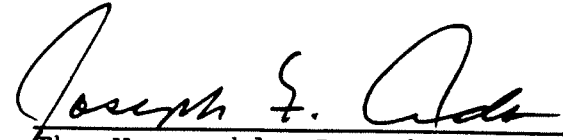
If approved, the administrative leave will be from 12 Dec 94 thru 3 Mar 95.


JOHN R. CRUZ
Fire Fighter II

1st Ind

TO: M.F. Uncangco
Acting Fire Chief

Approved () Disapproved


The Honorable Joseph F. Ada
Governor

LEAVE APPLICATION
PCN 2-0-1 (REV. 12-82)

NAME (First, Middle, Last) John R Cruz		PAYROLL NO. 586-46-9103	DATE THIS REQUEST 03 NOV 94
TYPE OF LEAVE REQUESTED <input type="checkbox"/> SICK <input type="checkbox"/> ANNUAL <input type="checkbox"/> MATERNITY <input type="checkbox"/> EDUCATIONAL <input type="checkbox"/> MILITARY <input type="checkbox"/> JURY <input checked="" type="checkbox"/> OTHER Administrative			
PAY STATUS <input checked="" type="checkbox"/> W/PAY <input type="checkbox"/> W/O PAY <input type="checkbox"/> COMBINATION		HOURS W/PAY _____ WITHOUT PAY _____ TOTAL NO. OF HOURS _____	
FROM (Hour, Month, Day, Year) 0745 HRS DECEMBER 12, 1994		TO (Hour, Month, Day, Year) 0815 HRS MARCH 03, 1994	
ADDRESS WHILE ON LEAVE			

APPLICATION FOR PREPAYMENT OF VACATION LEAVE

Minimum requirement is not less than ten (10) consecutive work days. It is understood that if I return to duty before the expiration of my prepaid vacation, I shall reimburse the Government in an amount equivalent to the unexpired portion of the prepaid leave.

FROM (Hour, Month, Day, Year)	TO (Hour, Month, Day, Year)	TOTAL HOURS PREPAID
-------------------------------	-----------------------------	---------------------

SICK LEAVE CERTIFICATION

In compliance with Personnel Rules and Regulations, Government of Guam, if an employee is absent because of illness, injury or quarantine in excess of two consecutive days, or for the day immediately before or after a holiday, weekend, day off or vacation, or while on vacation, to be granted sick leave he shall be required to furnish a certification as to the incapacity from a regularly licensed physician. The Department Head may require certification for such other period of illness he deems advisable. If the certification required is furnished, all absence which would have been covered by such certification shall be indicated on the payroll as leave absence WITHOUT PAY.

Sick leave taken for trivial indispositions, or falsification of an illness report shall be considered sufficient cause for DISMISSAL from the permanent service.

I CERTIFY THAT THE ABOVE NAMED PERSON WAS UNDER MY PROFESSIONAL CARE OR QUARANTINED DURING THE PERIOD STATED BELOW, FROM A MEDICAL STANDPOINT, HIS CONDITION DURING THIS PERIOD WAS SUCH THAT I CONSIDERED IT INADVISABLE FOR HIM TO REPORT FOR WORK.

FROM (Hour, Month, Day, Year)	TO (Month, Day, Year)	HOSPITALIZED <input type="checkbox"/> YES <input type="checkbox"/> NO	NO. DAYS
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REMARKS

NAME OF PHYSICIAN (Print or Type)	(Signature of Physician)
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I CERTIFY ALL STATEMENTS MADE HEREIN ARE TRUE AND CORRECT.

APPROVED DISAPPROVED

APPROVED DISAPPROVED

(Signature of Employee)

(Signature of Supervisor)

(Signature of Department Authority or authorized delegate)

Guam Army National Guard Facsimile Cover Sheet



FTS FAX NUMBERS
(671) 647-6018
(671) 647-6016
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From: RAMON Q. SUDO, The Adjutant General

Office Symbol: Office of The Adjutant General

POC Number: 647-2764

Number of Pages: 4 (includes cover sheet)

To: Senator Hope Cristobol

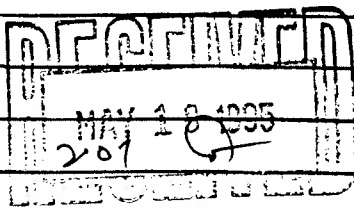
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Receiver's FAX Number: 472-3585

Date Sent: 18 May 1995

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NOTES: Please call this office (647-2764) upon receipt of these documents.
"Have a Nice Day"





GOVERNMENT OF GUAM
DEPARTMENT OF MILITARY AFFAIRS
(DIPATTAMENTON ASUNTON MILITAT)

Fort Juan Muna
622 East Harmon Industrial Park
Tamuning, Guam 96911 - 4421

May 18, 1995

Chairperson
Senator Hope Alvarez Cristobal
Committee on Federal and Foreign Affairs
23RD Guam Legislature

Dear Senator Cristobal:

The proposed amendment is agreed on except the wording for lines 31 to 34 are proposed to be worded as follows:

31 Under
32 this section each employee or individual is entitled to fifteen days of
33 paid military leave each fiscal year, and such leave that is not used
34 during the fiscal year is carried over to the next fiscal year, provided
35 that no more than fifteen days of unused paid military leave may be
36 carried over from one fiscal year to the next. The provisions of this
37 act are retroactive to October 1, 1994.

Sincerely,

Ramon Q. Sudo
Colonel, Guam National Guard
The Adjutant General

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. _____

Introduced by:

H.CRISTOBAL
T. ADA
M.CHARFAUROS

AN ACT TO AMEND §63106 OF TITLE 10 GUAM CODE ANNOTATED, CHAPTER 63 RELATIVE TO ALLOWING FOR ALL GOVERNMENT OF GUAM EMPLOYEES WHO ARE MEMBERS OF THE NATIONAL GUARD THE ABILITY TO UTILIZE THEIR ANNUAL LEAVE IN THE EVENT THAT THE ASSIGNED TRAINING OR DUTY SESSION EXCEEDS THE EXISTING GOVERNMENT OF GUAM ENTITLEMENT.

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

SECTION 1. Legislative statement. The Legislature finds that there is a need to recognize our National Guard members and their ongoing efforts through military basic skills training and continuous "contingency" exercises in order to attain and preserve the maximum level of military readiness required for national security.

The Legislature further finds that essential training available to National Guard members often extends beyond the fifteen (15) days. Current law limits military paid leave for the purposes of training and duty obligations to fifteen (15) days. Presently, any training time exceeding fifteen (15) days must be undertaken by a national guardsman under the status of "leave without pay".

The Legislature finds that this situation poses unfavorable circumstances to these dedicated individuals who seek to advance their skills through training and have chosen to serve and defend this Territory in a time of need.

SECTION 2. §63106 of Guam Code Annotated is hereby amended to read:

"§63106 Leaves of absence. All officers and employees of the government of Guam who are members of the Guam National Guard shall be entitled to leaves of absence from their respective duties without loss of time or efficiency rating on all days during which they shall be engaged on duty ordered or authorized under the laws of the United States or under this Chapter. 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 leave without pay.~~] When an employee is granted leave for military training or duty, such leave should be charged first to paid military leave until the employee's

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27 entitlement to paid military leave has been exhausted. When the employee's entitlement to
28 paid military leave has been exhausted, the employee may elect to use accrued annual leave;
29 provided that said leave is in connection with pertinent military training, or to take an unpaid
30 leave of absence. If the employee chooses not to use annual leave, or when the employee's
31 annual leave has been exhausted, the employee should be placed on unpaid leave. Leave
32 under this section accrues for an employee or individual at the rate of fifteen (15) workdays
33 per fiscal year and, to the extent not used in a fiscal year, accumulates in the succeeding
34 fiscal year until it totals fifteen (15) days at the beginning of a fiscal year."



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS GUAM AIR NATIONAL GUARD (NGB)
622 EAST HARMON INDUSTRIAL PARK ROAD
FORT JUAN MUNA, TAMUNING, GUAM 96911-4421

30 May 95

Col Robert M. Cockey
Assistant Adjutant General for Air
Guam Air National Guard
622 East Harmon Industrial Park Road
Fort Juan Muna, Tamuning, Guam 96911-4421

Senator Hope A. Cristobal
Committee on Federal and Foreign Affairs
23rd Guam Legislature
155 Hesler Street
Agana, Guam 96910

Dear Madame Chairperson

Current Guam law provides National Guard members employed by the Government of Guam with fifteen (15) days paid military leave per year for military training. This law, section 63106 of Guam Code Annotated, also states that National Guard members who require additional training days shall receive leave without pay during their civilian employment absence. At present, some Guard members whose training will exceed 15 days have requested to be placed in an annual leave status so that they may receive their civilian pay. These members have had their requests denied and have been placed on leave without pay. The financial hardship they will suffer may be great, and I believe the issue has become not only one of fairness, but one of morale to our people.

Section 63106 states in relevant part the following:

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

The operative word in the above quoted sentence is the word "shall." This word is causing government officials interpreting the sentence to place Guard personnel who exhaust their fifteen day paid leave balance on leave without pay. The reading of the sentence in such a way is contrary to the rationale of the statute, which is to not penalize Guard personnel by forcing them to use annual leave after exhausting military leave. The word "shall" may have been selected to protect our members through guaranteeing them, at a minimum, unpaid leave to carry out their training. That word has now become a culprit and is mandating unpaid leave status, leaving our Guard members without the option of using their earned

annual leave.

My recommendation in the matter is to amend section 63106 so that it parallels the similar provisions of the Federal Personnel Manual, which covers federal employees. Section (c)(4) of Subchapter 1 of that manual states in relevant part:

"When an employee is granted leave for military training or duty, such leave should be charged first to paid military leave until the employee's entitlement to paid military leave has been exhausted. When the employee's entitlement to paid military leave has been exhausted, the employee may elect to use accrued annual leave or to take an unpaid leave of absence. If the employee chooses not to use annual leave, or when the employee's annual leave balance has been exhausted, the employee should be placed on unpaid leave."

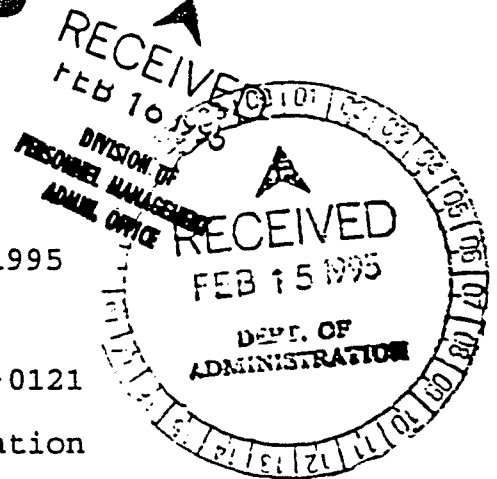
Finally, I would personally like to see any amendment made retroactive to October 1994. There are Guard personnel who have been forced to accept unpaid leave and who have suffered financial hardship. Retroactivity would allow them to recoup their losses and would boost their outlook when having to undergo future training periods of a duration greater than fifteen days.

Respectfully



ROBERT M. COCKEY, COL, GUANG
Assistant Adjutant General for Air

GOVERNMENT OF GUAM
1988

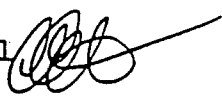


February 13, 1995

Memorandum (Opinion)

Ref: DOA 95-0121

To: Director, Department of Administration

From: Attorney General 

Subject: Use of Administrative Leave for Attendance at Guam National Guard training

This office is in receipt of your memorandum dated February 6, 1995, in which you requested information on the following:

REQUEST: May administrative leave be authorized for attendance at Guam National Guard Training?

ANSWER: No. See discussion.

STATEMENT OF FACTS:

An employee of the Guam Fire Department requested former Governor Ada to approve 12 weeks of administrative leave to attend National Guard training required for his promotion to Senior Master Sergeant (E-8). Governor Ada approved the request for the period December 12, 1994 to March 3, 1995.

10 GCA §63106 provides:

All officers and employees of the government of Guam who are members of the Guam National Guard shall be entitled to leaves of absence from their respective duties without loss of time or efficiency rating on all days during which they shall be engaged on duty ordered or authorized under the laws of the United States or under this Chapter. The officers and employees shall be entitled to leave with pay for such active duty not to exceed fifteen (15) workdays per fiscal year, and thereafter the officers and employees shall receive leave without pay. Leave under this section accrues for an employee or individual at the rate of fifteen (15) workdays per fiscal year and, to the extent not used in a fiscal year, accumulates in the succeeding fiscal year until it totals fifteen (15) days at the beginning of a fiscal year. (emphasis added)



Memo to Dir., DOA
February 13, 1995
Page 2

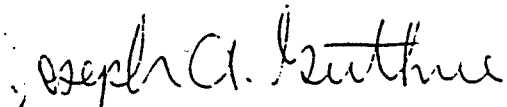
DISCUSSION:

The award of 12 weeks of administrative leave to this employee to attend military training contradicts 10 GCA §63106. Although administrative leave is not mentioned in the statute, the statute does limit leave with pay for such purposes to fifteen workdays per fiscal year. Under the rule of statutory construction "expressio unius est exclusio alterius," there is an inference that all omissions should be understood as exclusions. 2A Sutherland Statutory Construction, §47.23 (5th Ed.1991). Hence, specification of the type of leave that may be taken for military training in 10 GCA §63106 precludes any other types of leave from being authorized for this purpose.

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:



JOSEPH A. GUTHRIE
Assistant Attorney General

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jag/lzl

upon conviction thereof, shall be fined a sum not to exceed One Thousand Dollars (\$1,000).

SOURCE: §40005 GC.

§63106. **Leaves of absence.** All officers and employees of the government of Guam who are members of the Guam National Guard shall be entitled to leaves of absence from their respective duties without loss of time or efficiency rating on all days during which they shall be engaged on duty ordered or authorized under the laws of the United States or under this Chapter. The officers and employees shall be entitled to leave with pay for such active duty not to exceed fifteen (15) workdays per fiscal year, and thereafter the officers and employees shall receive leave without pay. Leave under this section accrues for an employee or individual at the rate of fifteen (15) workdays per fiscal year and, to the extent not used in a fiscal year, accumulates in the succeeding fiscal year until it totals fifteen (15) days at the beginning of a fiscal year

SOURCE: §40006 GC; Amended by P.L. 21-146:2



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.

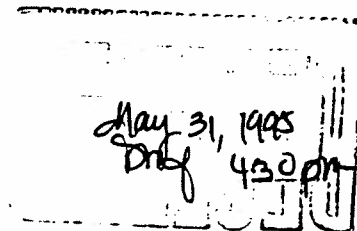
We have no objection to Bill No. 110, and our only concern would be that it could lead to delays in federal properties being transferred to the government of Guam.

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!



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.

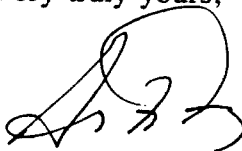
In 4 GCA §4119, the second sentence should be amended to read:

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

Prayer

Manaina, guela yan guelo:

Hampis muna' huyong todu guinahan - mam
todu i guinahan i tano' - mami. En
gagaga na'un na' fan metgot ham,
na'un na'e ham tranquilo na kinasso
yan lina'la'. Ya en gagaga lokkue
na'un gia ham todos gi che'cho' - mami,
guini yan lokkue ayula, ham gi
s inilas - mami para en chachalani
mo'na pago, agupa yan todus i tiempo.

Si Yios ma'ase

Committee on Federal & Foreign Affairs
Senator Hope A. Cristobal, Chair

Public Hearing
Thursday, June 01, 1995, 9:30 a.m.
Legislative Public Hearing Room.

AGENDA

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.

Bill No. 260 - AN ACT TO AMEND §63106 OF TITLE 10, GUAM CODE ANNOTATED RELATIVE TO ALLOWING FOR ALL GOVERNMENT OF GUAM EMPLOYEES WHO ARE MEMBERS OF THE NATIONAL GUARD THE ABILITY TO UTILIZE THEIR ANNUAL LEAVE IN THE EVENT THAT THE ASSIGNED TRAINING OR DUTY SESSION EXCEEDS THE EXISTING GOVERNMENT OF GUAM ENTITLEMENT.

WITNESS SHEET
COMMITTEE ON FEDERAL & FOREIGN AFFAIRS

TESTIMONY/ATTENDANCE RELATIVE TO THE PUBLIC HEARING
June 1, 1995

NAME	AGENCY/ BUSINESS/ ORGANIZATION	BILL NO.	Oral / Written TESTIMONY	CONTACT # ADDRESS
Mike Cruz	Bureau of Planning	110	BOTH	4724201-3 A25UP
Gus Diaz	Chief Deputy Attorney General	110 & 260	Oral	475-3324 - Technical Center
Maj David M. Cruz, Jr.	Guam Air Guard	260	Written	366-6147
Col Robert Cokeley	Guam Air Guard Major	260	Written	366.6147
Edward Calvo Astero	Municipality of Yigo	110	Both	653-2695/5248 - Yigo
Sgt Maj. Paulano	Guam Army Nat'l Guard	260	oral	
JOSEPH M. BORSA	Chamorro Land Trust	110	oral	475-4251 / 477-8822
John Cruz	G.F.D. / AOD	260	Oral	
George Quichucho	Civilian	260	Oral	789-1036
Joaquin Perez	H. Gov. Office	110	oral	

JUN 05 1995

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. 260 (LS)

Introduced by:

H. CRISTOBAL
T. ADA
M. CHARFAUROS

AN ACT TO AMEND §63106 OF TITLE 10 GUAM CODE ANNOTATED, CHAPTER 63 RELATIVE TO ALLOWING FOR ALL GOVERNMENT OF GUAM EMPLOYEES WHO ARE MEMBERS OF THE NATIONAL GUARD THE ABILITY TO UTILIZE THEIR ANNUAL LEAVE IN THE EVENT THAT THE ASSIGNED TRAINING OR DUTY SESSION EXCEEDS THE EXISTING GOVERNMENT OF GUAM ENTITLEMENT.

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