



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Office of the Speaker
ANTONIO R. UNPINGCO

Date: Oct. 16, 1998

Time: 11:20am

Rec'd by: [Signature]

Print Name: J. Roberts

OCT 16 1998

The Honorable Antonio R. Unpingco
Speaker
Mina'Bente Kuattro na Liheslaturan Guahan
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagåtña, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Time	<u>1:58pm</u>
Date	<u>10/16/98</u>

Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 659 (COR), "AN ACT TO ADD CHAPTER 36 TO DIVISION 3, AMEND §30109 AND REPEAL §§30109(a) AND 30104, ALL OF PART 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE OFFICE OF THE PUBLIC PROSECUTOR", which I have signed into law today as **Public Law No. 24-288**.

Twelve years ago, I lobbied the United States Congress to allow Guam to create its own Public Prosecutor's Office. I included this provision in my platform, and am in favor of the concept.

Today, I am still in favor of allowing Guam to create its own Public Prosecutor's Office. Unfortunately, the legislation drafted here does not take into account the various changes that have occurred concerning the personnel of the Department of Law in the past several years. For example, a court case has determined that the attorneys in the Department of Law are classified employees, despite language in Guam statutes to the contrary. Bill No. 659, separates the current attorneys and employees in the Prosecutor's Division of the Department of Law and places them into a new Elected Prosecutor's Office, and at the same time strips these experienced attorneys of their classified status. The bill states that in the new office they will "serve at the please of the Public Prosecutor".


01065

Bill No. 659 does not allow current attorneys or other employees of the Department of Law to transfer from one division to another. It arbitrarily separates off those attorneys and employees assigned to the Prosecutor's Division, without giving any grace period to allow those employees currently working in either the Prosecutor's Division or the other divisions of the Department of Law to transfer between divisions.

The legislation also does not take into account the sharing between divisions that now occurs. For example, more than one division share the use of vehicles, computers, and administrative personnel who handle federal grants. All of these shared items would have to be separated, and a shortage of equipment and personnel would be experienced if the current assets of the Department of Law assigned to the Prosecutor's Division were separated out.

The legislation calls for rushed action. There is a general election scheduled within days in November, 1998, yet this matter cannot be placed on that election due to the short time frame. The legislation calls for another election, a special election, to be held approximately in mid-February, 1999, just for this question. This special election would cost the taxpayers an additional \$80,000 and, because it is only a 1-question election, a low voter turn-out could be expected. I hope that I Liheslatura will make amendments to this legislation to provide for the election of a Public Prosecutor at a general election. The short time frame also does not give potential candidates much opportunity to run for this office.

Very truly yours,



Carl T. C. Gutierrez
I Maga'lahaen Guåhan
Governor of Guam

Attachment: copy attached for signed bill
 original attached for vetoed bill

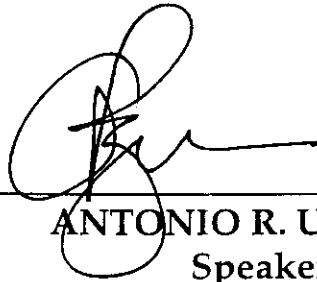
cc: The Honorable Joanne M. S. Brown
 Legislative Secretary

01065

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Substitute Bill No. 659 (COR), "AN ACT TO ADD CHAPTER 36 TO DIVISION 3, AMEND §30109 AND REPEAL §§30109(a) AND 30104, ALL OF PART 1 OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE OFFICE OF THE PUBLIC PROSECUTOR," was on the 2nd day of October, duly and regularly passed.




ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guahan* this 6th day of October, 1998,
at 2:00 o'clock P.M.



Assistant Staff Officer
Maga'laha's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guahan

Date: 10-16-98

Public Law No. 24-288

**MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session**

Bill No. 659 (COR)

As substituted by the Author
and amended on the Floor.

Introduced by:

Mark Forbes
T. C. Ada
F. B. Aguon, Jr.
A. C. Blaz
J. M.S. Brown
Felix P. Camacho
Francisco P. Camacho
M. C. Charfauros
E. J. Cruz
W. B.S.M. Flores
L. F. Kasperbauer
A. C. Lamorena, V
C. A. Leon Guerrero
L. A. Leon Guerrero
V. C. Pangelinan
J. C. Salas
A. L.G. Santos
F. E. Santos
A. R. Unpingco
J. T. Won Pat

**AN ACT TO ADD CHAPTER 36 TO DIVISION 3,
AMEND §30109 AND REPEAL §§30109(a) AND 30104,
ALL OF PART 1 OF TITLE 5 OF THE GUAM CODE
ANNOTATED, RELATIVE TO ESTABLISHING THE
OFFICE OF THE PUBLIC PROSECUTOR.**

1 this Chapter relative to the prosecution, on behalf of the people of
2 Guam, of criminal offenses on Guam and the empowerment of the
3 Public Prosecutor established by this Chapter with such powers enjoyed
4 by the Attorney General needed to accomplish the purposes of this
5 Chapter.

6 **Section 36102. Public Prosecutor, Elected.** The Office of the
7 Public Prosecutor shall be administered by the Public Prosecutor of
8 Guam ('Public Prosecutor'), who shall be elected by the people of Guam
9 for a term of four (4) years. The election of the Public Prosecutor shall
10 occur during the same general election at which *I Maga'lahaen Guahan* is
11 elected. A candidate for the position of Public Prosecutor shall declare
12 no political party affiliation. Candidates for Public Prosecutor shall be
13 subject to the same campaign and personal financial reporting
14 requirements as apply to candidates for *I Maga'lahaen Guahan*, as well as
15 all laws pertaining to campaign contributions. No person shall serve
16 more than two (2) consecutive terms as Public Prosecutor. No
17 nominating petition shall be required of a candidate for Public
18 Prosecutor.

19 A candidate for the position of Public Prosecutors shall file
20 candidacy with the Guam Election Commission in the manner similar to
21 a candidate for *I Maga'lahaen Guahan*, except as is not consistent with this
22 Chapter. There shall be no Primary Election for the position of Public
23 Prosecutor. All qualified candidates complying with the provisions of
24 this Chapter shall be placed on the General Election ballot. In the

1 General Election, the candidate receiving the most votes, subject to the
2 qualifications established by this Chapter, shall be certified by the Guam
3 Election Commission as having won election to the position of Public
4 Prosecutor. The Public Prosecutor shall be sworn into and take office on
5 the first Monday of the January following the General Election at which
6 the Public Prosecutor was elected and shall remain in office until the
7 election and swearing in of a new Public Prosecutor, unless removed
8 from office as provided for in this Chapter. The Public Prosecutor shall:

9 (a) be at least thirty-five (35) years of age;

10 (b) be a citizen of the United States and a resident of
11 Guam;

12 (c) be admitted to the practice of law on Guam for at least
13 five (5) years immediately preceding his or her candidacy for
14 office; and

15 (d) not have been convicted of a felony.

16 **Section 36103. Same: Removal or Vacancy.** The Public
17 Prosecutor may be removed in the same manner as provided under the
18 Organic Act of Guam for the removal of *I Maga'lahaen Guahan*. Should a
19 vacancy occur in the position of Public Prosecutor within eight (8)
20 months of the General Election in which the Public Prosecutor would
21 normally be elected, *I Maga'lahaen Guahan* shall appoint a person who
22 meets the qualifications for Public Prosecutor established in this
23 Chapter, such appointment being subject to the advice and consent of *I*
24 *Lihselaturan Guahan*, and such appointee to serve the balance of the term

1 only. If a vacancy occurs more than eight (8) months from the General
2 Election at which the Public Prosecutor would normally be elected, the
3 Guam Election Commission shall conduct a Special Election to fill the
4 vacancy for the balance of the term and shall request such funding from
5 *I Liheslaturan Guahan* as is required for this purpose.

6 **Section 36104. Deputy and Assistant Prosecutors.** Subject
7 to the availability of funds, the Public Prosecutor is authorized to
8 appoint a Deputy and any number of Assistant Prosecutors, provided
9 such appointees are admitted to the practice of law on Guam and
10 subject to the same qualifications as are current for Deputy and
11 Assistant Attorneys Generals. The Deputy Prosecutor and all Assistant
12 Prosecutors shall serve at the pleasure of the Public Prosecutor. The
13 Deputy and Assistant Prosecutors are delegated such authority as
14 deemed appropriate by the Public Prosecutor and are under the full
15 supervision and control of the Public Prosecutor.

16 **Section 36105. Compensation.** The Public Prosecutor shall be
17 compensated in twenty-six (26) equal installments an annual salary
18 based on ninety percent (90%) of the annual compensation of a judge of
19 the Superior Court of Guam. Compensation for the Deputy and
20 Assistant Prosecutors shall be established by the Civil Service
21 Commission.

22 **Section 36106. Defense of Persons Accused of Crime**
23 **Prohibited.** No Public Prosecutor, nor any attorney in the
24 employ of the Office of Public Prosecutor, shall act as counsel for any
25 person or entity accused of any crime on Guam.”

1 **Section 2. Election of First Public Prosecutor.** Notwithstanding
2 any other provision of law, the election of the first Public Prosecutor shall
3 occur at a special election to be conducted by the Guam Election Commission
4 one hundred twenty (120) days after the effective date of this Act. The first
5 Public Prosecutor shall be sworn into office thirty (30) days after the election
6 of the first Public Prosecutor. The first Public Prosecutor shall serve until the
7 election and swearing into office of a new Public Prosecutor, such election to
8 occur at the next General Election during which *I Maga'lahaen Guahan* is
9 elected. Thereafter, the election of the Public Prosecutor shall occur in the
10 manner described in Chapter 36; provided, that in the event that the position
11 of an elective Attorney General is permitted by the Organic Act, no Public
12 Prosecutor shall be elected.

13 **Section 3. Transfer of Assets and Employees.** Upon the election
14 and swearing into office of the first Public Prosecutor, all assets assigned to
15 the Prosecution Division of the Department of Law, inclusive of equipment,
16 shall be transferred to the Office of the Public Prosecutor. All employees
17 assigned to the Prosecution Division of the Department of Law shall be
18 transferred to the Office of the Public Prosecutor and shall receive no
19 reduction in pay as a result of such transfer. The balance of all amounts
20 budgeted, internally or otherwise, to the operations of the Prosecution
21 Division of the Department of Law, whether or not they have been released,
22 shall be transferred to the Office of the Public Prosecutor. Upon the election
23 of the first Public Prosecutor, the Attorney General is directed to assist the
24 Public Prosecutor in guaranteeing a smooth transition.

1 **Section 4.** Section 30109 of Chapter 30, Division 3, Part 1 of Title 5 of
2 the Guam Code Annotated is hereby *amended* so that any reference to the
3 Attorney General as the Public Prosecutor is deleted.

4 **Section 5.** Section 30109(a) of Chapter 30, Division 3, Part 1 of Title 5 of
5 the Guam Code Annotated is hereby *repealed*.

6 **Section 6.** Section 30104 of Chapter 30, Division 3, Part 1 of Title 5 of
7 the Guam Code Annotated is hereby *repealed*.

8 **Section 7. Effective Dates.** Section 2 of this Act is effective
9 immediately upon its enactment. All other Sections are effective upon the
10 election and swearing into office of the first Public Prosecutor.

11 **Section 8.** The Office of the Public Prosecutor shall receive an annual
12 budget pursuant to appropriation by *I Liheslaturan Guahan*, which shall be
13 disbursed to the Office in twelve (12) equal monthly installments. The budget
14 of the Public Prosecutor is *not* subject to the allotment process or the control of
15 the Bureau of Budget and Management Research, nor shall *I Maga'lahaen*
16 *Guahan* impound or transfer funds appropriated to the Public Prosecutor. On
17 a month where more than two (2) pay periods shall occur, the Department of
18 Administration shall release such funds required for the purpose of meeting
19 the operational needs of the Public Prosecutor for that month, provided a
20 sufficient balance of the appropriation remains.

21 **Section 9. Severability.** If any provision of this Law or its
22 application to any person or circumstance is found to be invalid or contrary to
23 law, such invalidity shall not affect other provisions or applications of this

- 1 Law which can be given effect without the invalid provisions or application,
- 2 and to this end the provisions of this Law are severable.

PL24288

24th Guam Legislature
Committee on Rules, Government
Reform and Federal Affairs
Senator Mark Forbes, Chairman



JUL 27 1998

Speaker Antonio R. Unpingco
I Mina' Bente Kuattro Na Liheslaturan Guahan
155 Hesler Street
Hagåtña, Guam 96910

Dear Mr. Speaker:

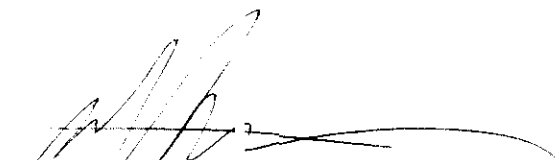
The Committee on Rules, Government Reform and Federal Affairs, to which Bill No. 659 was referred, wishes to report its findings and recommendations **TO DO PASS BILL NO. 659**, "An act to place before the people of Guam as an initiative a proposal for an elected Public Prosecutor and an elected Public Auditor, thus increasing accountability in our government and further empowering the people of Guam."

The voting record is as follows:

TO PASS	<u>7</u>
NOT TO PASS	<u>1</u>
ABSTAIN	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached.

Thank you and si Yu'os ma'ase for your attention to this matter.


MARK FORBES

Attachments

24th Guam Legislature
Committee on Rules, Government
Reform and Federal Affairs
Senator Mark Forbes, Chairman



MEMORANDUM

TO: Committee Members

FROM: Chairman *[Signature]*

SUBJECT: Committee Report- Bill No. 659 "An act to place before the people of Guam as an initiative a proposal for an elected Public Prosecutor and an elected Public Auditor, thus increasing accountability in our government and further empowering the people of Guam."

Transmitted herewith for your information and action is the report on Bill No. 659 from the Committee on Rules, Government Reform and Federal Affairs.

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill No. 659
4. Public Hearing Sign-in Sheet
5. Written testimony
6. Fiscal Note/ Fiscal Note Waiver
7. Notice of Public Hearing

Please take the appropriate action on the attached voting sheet. Your attention and cooperation in this matter is greatly appreciated.

Should you have any questions regarding the report or accompanying documents, please do not hesitate to contact me.

Thank you and si Yu'os ma'ase.

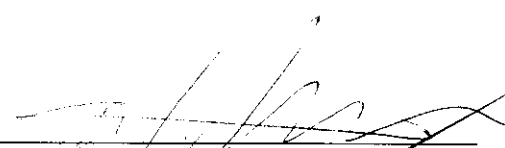
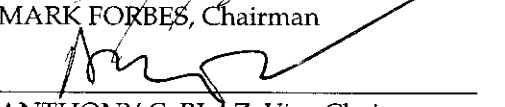
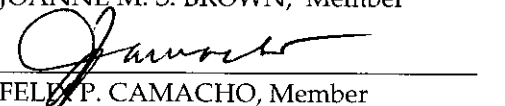

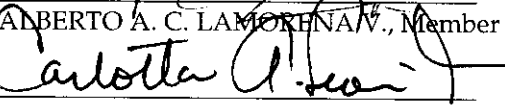
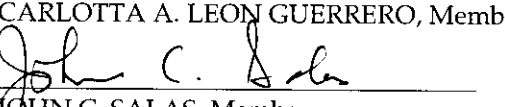
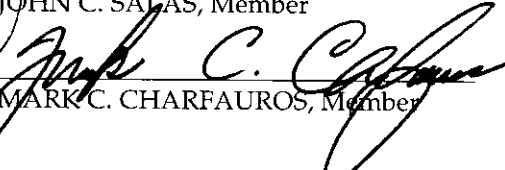
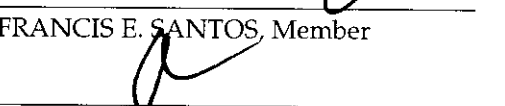
MARK FORBES

Attachments

Committee on Rules, Government Reform and Federal Affairs
I Mina' Bente Kuáttro Na Liheslaturan Guahan

Voting Record

Bill No. 659 "An act to place before the people of Guam as an initiative a proposal for an elected Public Prosecutor and an elected Public Auditor, thus increasing accountability in our government and further empowering the people of Guam."

	<u>TO</u> <u>PASS</u>	<u>NOT TO</u> <u>PASS</u>	<u>ABSTAIN</u>	<u>INACTIVE</u> <u>FILE</u>
 MARK FORBES, Chairman	✓			
 ANTHONY C. BLAZ, Vice-Chairman	✓			
JOANNE M. S. BROWN, Member				
 FELIX P. CAMACHO, Member	✓			
EDUARDO J. CRUZ, M.D., Member				
LAWRENCE F. KASPERBAUER, Member				
 ALBERTO A. C. LAMORENA, Member	✓			
 CARLOTTA A. LEON GUERRERO, Member	✓			
 JOHN C. SALAS, Member	✓			
 MARK C. CHARFAUROS, Member	✓			
FRANCIS E. SANTOS, Member				
 ANTONIO R. UNPINGCO, Member		✓		

I Mina' Bente Kuåttro Na Liheslaturan Guahan

**Committee On Rules,
Government Reform & Federal Affairs
Senator Mark Forbes, Chairman**

**Committee Report
on
Bill No. 659**

“An act to place before the people of Guam as an initiative a proposal for an elected Public Prosecutor and an elected Public Auditor, thus increasing accountability in our government and further empowering the people of Guam.”

I. OVERVIEW

The Committee on Rules, Government Reform and Federal Affairs held a public hearing on Wednesday, June 10, 1998 at 10:00 a.m. at I Liheslaturan Guahan. Public Notice of the hearing was announced in the June 3rd, 7th and 10th, 1998 issues of the Pacific Daily News.

Senators in attendance were:

- Senator Mark Forbes, Chairman
- Senator Mark Charfauros, Member
- Senator Edwardo Cruz, Member
- Senator Tony Lamorena, Member
- Senator John Salas, Member
- Senator Frank Aguon

Appearing before the Committee were:

- Mr. Mark Martinez (testimony attached)
- Mr. Phillip J. Tydingco (testimony attached)

Providing written testimony:

- Ms. Elizabeth Robertson (testimony attached)
- Mr. Robert G.P. Cruz, Public Auditor (testimony attached)

II. SUMMARY OF TESTIMONY

Mr. Mark Martinez read his testimony **in favor** of Bill No. 659 before the Committee. Mr. Martinez stated further that he is in full favor of the creation of an elected Public Prosecutor.

Mr. Phillip J. Tydingco read his testimony **in favor** of Bill No. 659 before the Committee. In his testimony, he stated that a prosecutor elected by the voters makes this office directly accountable to the people of Guam. He further stated the bill combines the elements or parts of similar bills without foreseeable impediments contained in the other bills. Bill No. 659 achieves the goal of creating an elected Public Prosecutor by allowing the voters of Guam to decide whether the prosecutor should be directly accountable or not to the people by way of an initiative.

Ms. Elizabeth Robertson submitted written testimony not in favor of Bill No. 659. In her testimony, Ms. Robertson wrote that an elected prosecutor would not solve the problems at the Attorney General's office but would add new ones. She believes that there are few attorneys interested in running for the position. Ms. Robertson wrote that the Guam Bar Association is still too small, and its attorney pool too transient. Attached to her testimony, Ms. Robertson included an excerpt from the 1996 Guam Bar Association Survey.

Mr. Robert G.P. Cruz, Public Auditor of the government of Guam, submitted written testimony on Bill No. 659. In his testimony, Mr. Cruz outlined four major points in regard to the bill. He wrote that passage of a referendum would not automatically establish an elected prosecutor or an elected public auditor without amending the Organic Act. Mr. Cruz also noted that the bill would eliminate the requirement in the present law that the Public Auditor be either a Certified Public Accountant or a member of the Guam Bar Association. He added that accountability to the voters already exists as current law calls for a retention election of the public auditor. Mr. Cruz also wrote that the bill does

not improve the financial independence of the Office of the Public Auditor because it does not include a provision setting aside one fourth of one percent of government revenues for the operation of the office.

III. FINDINGS AND RECOMMENDATIONS

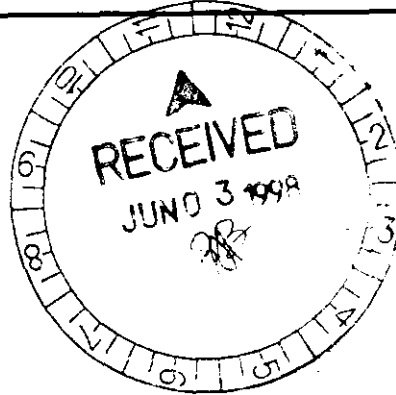
The Committee on Rules, Government Reform and Federal Affairs finds that the purpose of Bill No. 659 is to allow the voters of Guam to decide in a referendum whether or not Guam should have an elected Public Prosecutor and an elected Public Auditor. This measure empowers the people of Guam by giving them direct participation in the creation of these elected offices.

The Committee further finds that upon passage of this referendum, the Public Prosecutor and the Public Auditor would be direct representatives of the people, chosen by the people. Accountability and effectiveness would be increased, as these offices would be answerable to none other than the community.

Accordingly, the Committee on Rules, Government Reform and Federal Affairs, to which Bill No. 659 was referred does hereby submit its findings and recommendations to I Mina' Bente Kuåttro Na Liheslaturan Guahan **TO DO PASS BILL NO. 659** "An act to place before the people of Guam as an initiative a proposal for an elected Public Prosecutor and an elected Public Auditor, thus increasing accountability in our government and further empowering the people of Guam."

2. h Guam Legislature
Committee on Rules, Government
Reform and Federal Affairs

Senator Mark Forbes, Chairman



JUN 03 1998

MEMORANDUM

TO: Chairman
Committee on Rules, Government Reform and Federal Affairs

FROM: Chairman
Committee on Rules, Government Reform and Federal Affairs

SUBJECT: Referral- Bill No. 659

The above Bill is referred to your Committee as the principal committee. It is recommended you schedule a public hearing at your earliest convenience.

Thank you for your attention to this matter.

MARK FORBES

Attachment



**INTERIM GOVERNING BOARD
GUAM DEPARTMENT OF EDUCATION**



Mark "Paps" Martinez, Elected Member

P. O. Box DE, Agana, GU 96932 Telephone: (671) 734-4902/3 FAX: (671) 734-4904

District 3: Tamuning • Agana • Agana Heights • Mongmong-Toto-Maite

June 10, 1998

Honorable Mark Forbes
Chair, Committee on Government Reform
Twenty-Fourth Guam Legislature

RE: Testimony in favor of elected Public Prosecutor
Bills 90 & 659

Dear Senator Forbes:

School Districts

Elementary

L.B. Johnson

Tamuning

Agana Heights

J.Q. San Miguel

Chief Brodie

High School

John F. Kennedy

As I testified in 1997. I favor an elected prosecutor based on my experience with the Attorney General's (AG) Office. As you recall in 1995 a private citizen sued the elected school board. Later that year the AG and Governor also sued the school board. In late 1995 the AG requested the Court to deny the board it's right to legal counsel. The AG who was suing the board wanted to represent the Board in both suits. So the AG's Office was asking to represent both sides in a law suit. Also, the AG who was suing someone (the School Board) requested to be the Board's legal counsel in the same suit.

As Judge Gatewood noted in her October, 1995 decision, SP 0114-95, what the AG is requesting would breach Rule 1.7 of both the ABA and Guam Rules of Professional conduct. "The Court finds that an obvious conflict of interest exist....". "The conflict of interest is further magnified by the Attorney General's second suit against the Board".

Just pass Bill 90 and let's elect the public prosecutor on November 3rd. Do not have a special election the voter turn out could be just one-third of the voter turn out in the General Election. This has happen in the past, such low turn out is not a true election and special interest will have a better chance to prevail.

Sincerely,

Mark K Martinez (paps)

Our Educational Community:

Prepares students for life

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Hon. Mark Forbes
Chairman, Committee on Rules,
Government Reform and Federal Affairs
Senator, 24th Guam Legislature

Subject: Bills No. 59, 90 & 659 re: Elected Guam Prosecutor

Dear Mr. Chairperson,

"Crime," we can all agree has and is becoming more and more of a concern to our ever growing community, especially since we cannot entirely escape its effects because the vast majority of crimes committed these past few years are known to be largely driven by the use of dangerous drugs like "Ice," and its effects are seriously threatening the physical, social and economic well-being of island community. Without minimizing the importance of our individual and community responsibilities insofar as social, medical and educational involvement are concerned in addressing crime, we like all American communities look to our criminal justice system for "law and order."

As we all know, hopefully not only from television, there are two primary groups in the criminal justice system charged with enforcing our criminal laws--the police and the prosecutors.

The common underlying issue of legislative bills number 59, 90, and 659 concern the latter, the prosecutors, and whether they should be led by an attorney general or prosecutor or whatever title provided therein, who is only directly accountable to a director appointed by the Governor and confirmed by the Guam Legislature (the status quo), or led by someone who is elected and therefore directly accountable to we, the people of Guam.

In my view all three legislative bills support that portion of the issue requiring accountability of the prosecutors through an elected prosecutor and therefore they each have merit. However, without trying to make major amendments or come up with a new bill that combines elements or parts of each of these bills at this stage of the legislative process, I believe it is sensible to support to support Legislative Bill Number 659(Cor) for the following reasons.

First, it is really not necessary to make major amendments to one bill or introduce a new bill combining elements or parts of the three bills because the "Proposal for an Elected Public Prosecutor" of legislative bill number 659 essentially achieves that goal.

Secondly, bill number 659 does not appear to contain substantive provisions or language as seen in bills number 59 and 90 that are likely to be impediments or obstacles to the implementation or operation of such an office. For example,

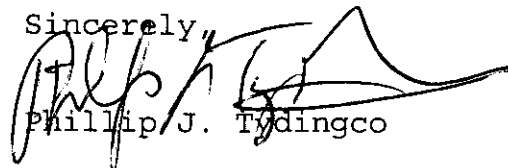
notwithstanding the fact that the "Legislative Statement" of Bill 59 is an exceptionally sound justification for the bill, it can only achieve making the position of the Attorney General an elected one when the U.S. Congress amends the Organic Act by providing the legal authority and language to do so and may not happen until the new millennia.

Bill number 90 has to its credit taken a detailed and comprehensive approach to establishing the office of an elected public prosecutor whose title would be "Territorial Prosecutor." However, bill number 90 does contain some provisions that may hamper implementation or operation of that position. For example, some of the qualifications described or the language used in Section 2105 of this bill may be unconstitutional or ambiguous (i.e., residency requirements language; passage of the Guam Bar Examination but some attorneys who have longed practiced on Guam may not have necessarily had to take the exam; or having the election commission determine what constitutes "criminal trial practice, etc.). Bill number 90 also contains another example of an inherent obstacle as seen in Section 2102 because it requires a successful candidate for the Office of the Territorial Prosecutor to acquire a "majority of the votes cast by the people who are qualified to vote for the members of the Legislature of Guam." This language will likely raise criticism similarly heard about the "Santos Amendment" (past requirement for successful passage of public initiatives or referendums), or most likely result in a legal challenge from the highest vote getter who may want to avoid the risk of having to deal with the requirement of a runoff election between him or herself against the candidate with second highest number of votes cast.

Thus, legislative bill number 659(Cor) does not contain the problematic provisions discussed above, but the final and more important reason to support this bill is that it will place the issue of whether the prosecutors should be directly accountable or not to the people squarely before the people of Guam by way of an initiative.

I therefore respectfully urge your committee as well as all your colleagues of the Twenty-fourth Guam Legislature to support Bill Number 659 and allow the people to decide whether law and order on Guam includes having an elected Public Prosecutor or not.

Sincerely,



Phillip J. Tydingco

ELIZABETH ROBERTSON
P.O. BOX A.B.
AGANA, GUAM 96932
(Tel)(W) 671-477-7857
(Tel)(H)671-477-0135
Email: keeler@kuentos.guam.net

Fax to:
Guam Legislature
c/o Sen. Carlotta Leon Guerrero 477-1323

Re: Two Bills regarding Elected Territorial Prosecutor.

Please submit this testimony opposing the two bills for an elected territorial prosecutor.

It is my personal belief that having an elected territorial prosecutor would not solve the problems at the A.G.'s office but would rather add new ones. While creating this elected position may appear at first blush to be a solution, I think that you will find if you dig deeper that there may be very few attorneys interested in running. This limited pool may or may not be eligible or desirable for the job. [Until the government allows the A.G./prosecutor the power to control their staff (e.g. hire and fire -- declassify attorney positions), I think that it will be difficult to find persons of the caliber the community needs to fill these positions.]

My personal view of the elected territorial prosecutor situation is borne out by the results of the 1996 Guam Bar Association Survey, the relevant excerpt of which is attached. The respondents found that while an elected position appears attractive, very few attorneys are actually willing to take the job. [The anonymous survey does not reveal whether these few potential candidates are qualified. Nor do we now know whether this pool still exists!]

Before passing such a law, please do the legwork necessary to determine whether a reasonable pool of eligible and qualified candidates exists. I suspect that you will find that the Guam Bar is still too small, and its attorney pool too transient, to make an elected position a viable or desirable alternative to the current situation. Over the past 5 years, the A.G.'s Office has had a hard enough time keeping regular prosecutors in the office.] Forcing voters to choose from a smaller pool than you may now consider, severely limits Guam's chances of securing a qualified person for this critical job.

Thank you.
Elizabeth Robertson



cc: Jon Anderson 4773982

if so, how often?

- One year 12
- b. Two years 36
- c. Three years 15

45. SHOULD MEMBERS OF THE COURT BE PERMITTED TO SERVE ON ANY POLITICAL, SOCIAL, OR GOVERNMENTAL ORGANIZATION, COMMISSION OR BODY?

A. Yes 26 No 75 N/A 9

Comments:

A number of respondents note that the answer to this question is found in the Code of Judicial Conduct which governs the activities of Judges and certain other members of the Court. Several respondents specify that such Court members' (Judges') activities should be limited to those social and religious. Others comment that it is improper for judges to serve and participate in political and governmental organizations.

46. SINCE THE SUPREME COURT HAS TAKEN OVER ATTORNEY DISCIPLINE, SHOULD THE GUAM BAR ASSOCIATION REMAIN AN INTEGRATED BAR?

A. Yes 41 No 39 N/A 16

B. Comments:

Several respondents note that now that the Supreme Court has taken over (or plans to take over) attorney discipline, an integrated bar is (or will) no longer be necessary and a voluntary bar may actually be more active and effective. Another expresses that the Bar should remain integrated so that it could continue to provide inexpensive public services to individuals.

→ 47. SHOULD THE CHIEF PROSECUTOR BE ELECTED BY THE PEOPLE? *

A. Yes 55 No 52 N/A 4

B. Comments:

Interestingly, proponents and opponents of this proposition comment that it "would eliminate political interference" and "would hold the position accountable to the people." Opponents state that it would add "more politics

to an area that should be free from it"; question who would run, and if anyone did, would these candidates be qualified to perform the job; and express that if a prosecutor couldn't control his/her own budget, they would not be able to properly run the office, elected or otherwise.

C. If so, would you run for such an office?

Yes 14 No 72 N/A 9

**GUAM BAR ASSOCIATION
JUDICIAL LIAISON COMMITTEE**

1996 SURVEY ON THE EFFICIENCY OF THE COURTS OF GUAM

REPORT AND RECOMMENDATIONS

OCTOBER 21, 1996

INTRODUCTION

The Judicial Liaison Committee is a standing committee of the Guam Bar Association formed to liaise between the Bar and the courts of Guam. The 1996 Survey fields concerns regarding the administration of the Guam court system and solicits input as to how perceived problems might be addressed. The survey also requests members to assess the performance of the judges before whom they practice. The survey was conducted to fulfill the Bar's responsibility under the Guam Rules of Professional Conduct. See MPRC Rule 8.2, Comments. The survey format was taken from the 1993 and 1982 Guam Bar Association surveys which in turn were based upon surveys utilized by the Bars of the State of Oregon and other jurisdictions. In finalizing the 1996 text, the Committee took into account input from members of both the Bar and Bench. The Committee recommends that future surveys be conducted every two years.

In late September 1996, this Survey was distributed to 224 active Guam-based Bar members, 18 specially admitted public attorneys, the judges and justices of the Guam courts. The response was overwhelming. Over 143 responses were received. Four survey responses were not signed and, thus, those responses were not included in the compilation. Most of the members who did not respond were not litigators or were corporate or transactional lawyers whose practices presumably do not involve significant contact with the courts.

At a special meeting of the membership of the Guam Bar Association on October 10, 1996, the Bar discussed the survey and voted overwhelmingly to publish all portions of and comments in the survey.

THE RESULTS OF THIS SURVEY DO NOT CONSTITUTE THE POSITION OF THE GUAM BAR ASSOCIATION AS TO ANY MATTER DISCUSSED IN THIS REPORT. The Survey report merely represents a compilation of the responses of the members of the Bar who responded to the survey.

The Committee thanks the members of the Bar who responded to the Survey for their time and for the insight shared. The Committee urges the Judiciary, the Guam Bar membership and our lawmakers to take into serious account this compiled evaluation so that the Administration of Justice on Guam can continue to improve.



ELIZABETH ROBERTSON, Chair


JOAQUIN C. ABRIOLA, JR., Co-Chair


TERRENCE M. BROOKS


CESAR G. CABOT


G. PATRICK CIVILE


F. RANDALL CUNLIFFE


RICHARD DIRKX


RAYMOND T. JOHNSON, II


KATHRYN L. MONTAGUE



OFFICE OF THE PUBLIC AUDITOR
UFISINAN I ADITOT PUPBLEKO
GOVERNMENT OF GUAM
P.O. BOX 23667, GMF, Barrigada, Guam 96921
(1208 East Sunset Boulevard, Tiyan)
(671) 475-0393/0394/0395 - FAX: (671) 472-7951

ROBERT G.P. CRUZ
PUBLIC AUDITOR

June 5, 1998

Honorable Mark Forbes, Chairman
Committee on Rules, Government
Reform and Federal Affairs
I Liheslaturan Guahan
155 Hesler Street
Hagatna, Guam 96910

Re: Bill No. 659

Dear Mr. Chairman:

Because I am performing annual training with the Guam National Guard on June 10th, I am submitting testimony on the proposed bill to hold a referendum on whether the Public Auditor and the Guam Prosecutor should be established as elected positions.

I have just received the bill today, and may have additional comments in the future as I have time to consider this matter further. However, the following thoughts come to mind in reviewing your measure.

First, passage of this referendum, if held, would not automatically establish these positions. The Organic Act of Guam would have to be amended to create new elected positions.

Second, the bill would eliminate the requirement in the present law that the Public Auditor be either a Certified Public Accountant or a member of the Guam Bar. Public Auditors throughout the Pacific are required to be a Certified Public Accountant either by statute or by the constitution of the respective government. Two of the most effective Public Auditors I know, Mr. Leo LaMotte of the CNMI, and Mr. Wendell Harwell, who has just completed his term as Territorial Auditor of American Samoa, have both law degrees and the Certified Public Accountant credential. The CPA credential exists in most, if not all, State Auditor, positions.

Third, the current law presently calls for a retention election, similar to that required of judges of our Superior Court after their term expires. There is a measure of accountability already existing.

Fourth, the measure does improve the independence of the Office of Public Auditor by setting aside 1/4 of one percent of government revenues. This is patterned after the one percent set aside by CNMI set out in the statute which our office provided your Committee. The only suggestion we have to improve this section would be to match the CNMI figure, and to permit carry over of funds unused from one year to the next.

If the Legislature is intent on passing this measure, I would like to suggest that the annual requirement of financial and management audits be deleted. It is an impossibility with the level of staffing permitted this office. Even the CNMI Public Auditor completes a limited number of audits on the Executive Branch, with a staff of thirty auditors, two attorneys and five investigators.

When our office was established, I asked for a budget of \$2 million for a staffing level of approximately 20 staff. I have never been permitted a funding level higher than the \$878,000 given our first year. Each year since then, your budget level has decreased. Our statute, mandating annual audits of every agency in the Executive, Legislative, and Judicial branches, is an unattainable standard.

In conclusion, let me say that I am hoping the Legislature will consider making amendments to the Public Auditor law. I am in favor of setting out financial independence in the statute. However, I am not in favor of removing the requirement that the Public Auditor either be an attorney or have the Certified Public Accountant credential. In making both the Prosecutor and Public Auditor positions elected, I do not believe that you will encourage qualified persons to seek the jobs. Rather, I believe you will discourage persons from striving for these two important positions.

Sincerely,


ROBERT G.P. CRUZ

cc:
Governor
Attorney General

**FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH**

BBMR-F7

Bill Number: 689(COR) Date Received: June 08, 1998
 Amendatory Bill: No Date Reviewed: June 18, 1998

Department/Agency Affected: Guam Election Commission
 Department/Agency Head: Henry Torres
 Total FY Appropriation to Date: \$670,712

Bill Title (preamble): AN ACT TO PLACE BEFORE THE PEOPLE OF GUAM AS AN INITIATIVE A PROPOSAL FOR AN ELECTED PUBLIC PROSECUTOR AND AN ELECTED PUBLIC AUDITOR, THUS INCREASING ACCOUNTABILITY IN OUR GOVERNMENT AND FURTHER EMPOWERING THE PEOPLE OF GUAM.

Change in Law: N/A

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

Bill is for:
 Operations XXX Capital Improvement _____ Other _____

FINANCIAL/PROGRAM IMPACT

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

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

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

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

ANALYST [Signature] DATE 6/14/98 DIRECTOR Francis Gallegos DATE JUL 15 1998
 Joseph E. Rivera Acting

FOOTNOTES: See Attachment

1/ Bill Number 859(COR) is an act to place before the people of Guam as an initiative a proposal for an elected public prosecutor and an elected public auditor, thus increasing accountability in our government and further empowering the people of Guam. Per the Guam Election Commission, the passage of this Bill may pose a fiscal impact on their agency. Such an impact may involve, for example, advertising, postage, supplies, overtime, and the printing of materials such as pamphlets, ballots, etc. They estimate a dollar amount of approximately \$76,000.

General Fund Appropriation Status:

FY 1998 Adopted Revenues	353,292,790	1/
less: Appropriations to date	<u>386,353,359</u>	2/
Revenues available for appropriation	<u>(33,060,569)</u>	

1/ General Fund revenues adopted in P.L. 24 59 which includes:

- 7.6 Autonomous Agency Fund
- 7.0 Use Tax
- 3.2 Customs & Immigration Reimb.
- \$17.8

It should be noted that the actual collection of the \$17.8 in alternative revenues is not likely to be realized. As such, the budgetary shortfall may be increased by the \$17.8 million.

2/ Covers appropriations up to P.L. 24-177 inclusive of continuing appropriations for debt service.



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PUBLIC HEARING NOTICE

MINA' BENTE KUATTRO NA LIBESLATURAN GUAHAN

Committee on Power, Foreign Affairs & General Government Services

Senator Felix P. Camacho, Chairman

155 Hesler Street, Agaña, Guam 96910

TEL: 472-3505/06 FAX: 472-9747 Email: senator@saba.kuentos.guam.net

Date: Monday, June 6, 1998
Time: 9:00 a.m.

Place: Public Hearing Room, Guam
Legislature Temp Bldg.

AGENDA

- Appointment, Mr. Robert Steffy, Acting Member, Parks and Recreation Commission
- Appointment, Mr. Atanacio L.G. Salas, Acting member, Parks and Recreation Commission
- Bill No. 640, "An act to authorize the government of Guam to lease a portion of the Guam Baseball/Softball Complex to 'Strike Zone' for the construction and operation of a baseball/softball training facility open to the public." By: Felix P. Camacho
- Bill No. 527, "An act relative to disallowing part time employees travel authorization to attend a seminar/conference by adding a new paragraph (g) to §4103, Article 1, Chapter 4, of Title 4 of the Guam Code Annotated." By: E.J. Cruz, J.C. Salas and Felix P. Camacho



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Notice of Public Hearing

Senator Mark Forbes, Chairman
Committee on Rules, Government Reform and Federal Affairs

Wednesday, June 10, 1998 **10:00 a.m.**

- Bill No. 59 "An act to repeal and reenact Section 30101, Title 5 GCA relative to creating an elective Attorney General position.
- Bill No. 90 "An act to grant the people of Guam greater influence in the island's prosecution system through the establishment of an elected Territorial Prosecutor by adding a new Chapter 21 to Title 1 GCA, repealing §30104 and repealing and reenacting §30109 of Title 5 GCA, and adding a new subsection (n) to §5.55 of Title 8 Guam Code Annotated."
- Bill No. 606 "An act to establish a Division of Municipal Police, otherwise designated the Division of Municipal Sheriffs, as a permanent division within the Guam Police Department in order to increase police presence in Guam's villages on a permanent basis and help further protect our people against crime."
- Bill No. 659 "An act to place before the people of Guam as an initiative a proposal for an elected Guam Prosecutor and an elected Public Auditor, thus increasing accountability for these positions and activities further empowering the people of Guam."

Hearing will take place in the Conference Room
Office of Senator Mark Forbes, I Libeslaturan Guahan
Hagåtña, Guam
The Public is Invited to Participate
Individuals requiring special accommodations, auxiliary aids or services are asked to contact the Office of Senator Forbes at 472-3512.

GOVERNMENT MEETINGS

▲ Continued from Page 6

a.m., June 9, terminal conference room no. 3, Tamuning. Agenda copies will be available at meeting. Parking available on ground floor. Discussion of governor's request under P.L. 24-117 for GIAA to transfer \$2 million to the General Fund.

CIVIL SERVICE COMMISSION BOARD: 5:30 p.m., June 9, CSC conference room, 490 Chalan Palasyo Road, Agaña Heights. Request for above-step recruitment of Jesus K. Paulino for customers officer III at Customs & Quarantine Agency; request for above-step recruitment of Trinidad F. Boria for administrative officer at DYA; GIAA personnel rules and regulations; continuation of adverse action appeal of Edward Ngeskesuk vs. DepCor; general business; executive session.

COMMITTEES ON EDUCATION; AGRICULTURE, LAND, HOUSING, COMMUNITY & HUMAN RESOURCES DEVELOPMENT; TRANSPORTATION, TELECOMMUNICATIONS & MICRONESIAN AFFAIRS: Meeting with representatives of the Departments of Education and Agriculture, local farmers and local fishermen 2 p.m., June 9, 1 Liheslaturan Guahan public hearing room, Hagåtña. For more information call 475-KIDS.

Wednesday
MAYORS COUNCIL OF GUAM: Rescheduled meeting 10 a.m., June 10, council's conference room, RUB complex, Adelup.

CIVIL SERVICE COMMISSION BOARD: 5:30 p.m., June 10, CSC conference room, 490 Chalan Palasyo Road, Agaña Heights. Adverse action appeal of Grace Babauta vs. GCC; general business; executive session.

ALCOHOLIC BEVERAGE CONTROL BOARD: 5 p.m., June 10, Department of Revenue & Taxation director's conference room, 13-1 Mariner Ave., Tiyon. For more information call 475-5000.

GHURA BOARD OF COMMISSIONERS: 5 p.m., June 10, GHURA conference room.

REHABILITATION ADVISORY COUNCIL: Special meeting on State Plan Attachments 3-5 p.m., June 10, DVR conference room, Tiyon.

COUNCIL ON THE ARTS & HUMANITIES AGENCY: Monthly board meeting 4 p.m., CAHA conference room, 703 Central Ave., Tiyon.

COMMITTEE ON RULES, GOVERNMENT REFORM & FEDERAL AFFAIRS: Public hearing 10 a.m., June 10, office conference room of Sen. Mark Forbes, 1 Liheslaturan Guahan, Hagåtña. Bills 59, 90, 606, 659.

GWA BOARD OF DIRECTORS: 6 p.m., June 10, Building 150, Lower E. Sunset Blvd., Tiyon. Agenda copies available by calling 479-7812.

Thursday
BOARD OF NURSE EXAMINERS: Noon, June 11, board conference room, 1302 E. Sunset Blvd., Tiyon.

Agenda copies available at 1304 E. Sunset Blvd. For more information call 475-0251/2.

GVB BOARD OF DIRECTORS: 4 p.m., June 11, GVB main conference room, Tumon.

ELECTION COMMISSION BOARD: Noon, June 11, commission's conference room, Suite 200, GGC Building, Hagåtña. Agenda copies available at commission's office. Public invited.

TEACHER TRAINING COUNCIL: Monthly meeting noon, June 11, Mr. Reyes' office, DOE, Hagåtña.

CIVIL SERVICE COMMISSION BOARD: 5:30 p.m., June 11, CSC conference room, 490 Chalan Palasyo Road, Agaña Heights. Termination of appeal of Terence F. Sablan vs. DOE; motion in matter of Fidel Masga vs. GIAA; continuation of adverse action appeal of Grace Babauta vs. GCC; general business; executive session.

GPA BOARD OF DIRECTORS: Special meeting 11 a.m., June 11, board conference room, Sunny Plaza Building, 124 Tun Jesus Crisostomo St., Tamuning. All members urged to attend; public invited.

GTA BOARD OF DIRECTORS: Regular meeting June 11 postponed (due to lack of quorum) to 6 p.m., June 25, GTA conference room. For more information call 646-8607.

GLUC COMMISSION: 1:30 p.m., June 11, DLM conference room, 3rd floor, Room 320, One Stop Building, Anigwa. HPR; final public report for Yu-Han commercial condo, conditional use for John M. Camacho, Sinajana; zone change for Seikichi & Paul Kaneshiro, Tamuning. For more information call 475-5212.

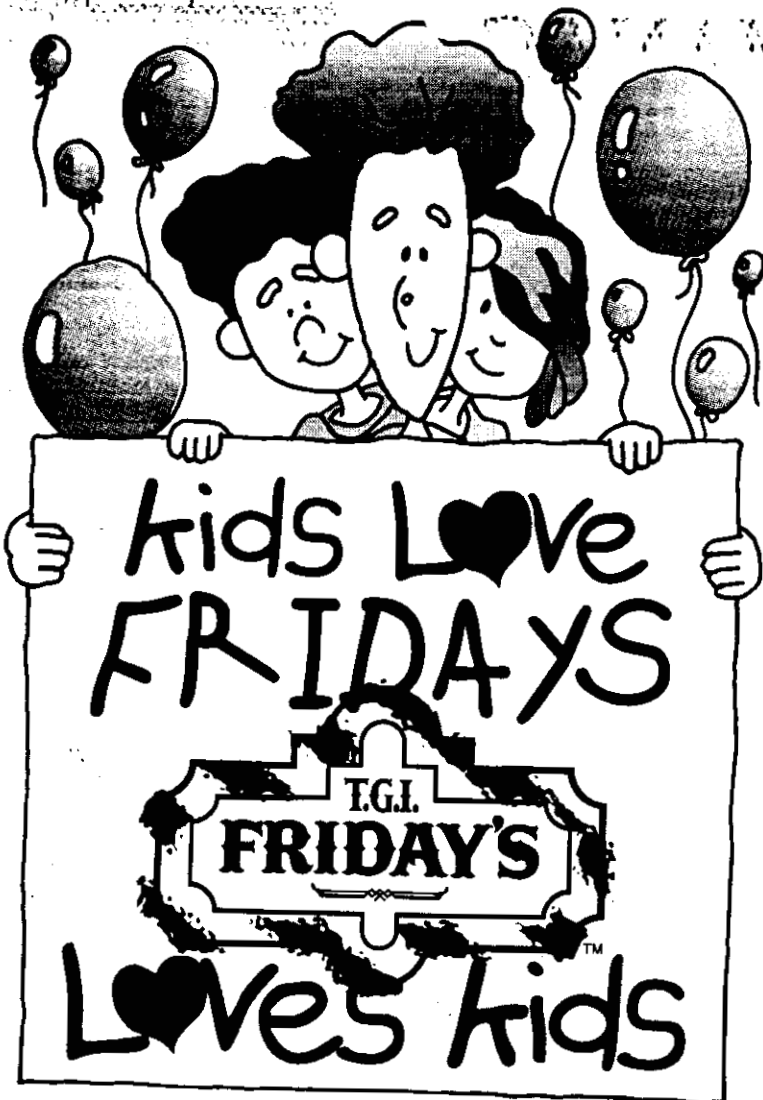
Friday
COMMITTEE ON FINANCE & TAXATION: Roundtable meeting 10 a.m., June 12, on Bill 483 (cor.) canceled. For more information call 472-3557/8.

PORT AUTHORITY OF GUAM BOARD OF DIRECTORS: 10 a.m., June 12, board conference room, Cabras Island, Piti. Agenda copies available.

GEDA BOARD OF DIRECTORS: 10 a.m., June 12, Suite 216, 2nd floor, ITC Building, Tamuning.

Miscellaneous
DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES' BUREAU OF SOCIAL SERVICES ADMINISTRATION: FY '99 Title XX, Consolidation of Grants Pre-Expenditure Report on program objectives and use of federal funds are available for review. Copies of the report may be picked up at Building 13-15, Seagull Ave., Tiyon. For more information call 475-2653 or -2672.

BOARD OF NURSE EXAMINERS: Licensure by Exom applications for nurse assistants may be picked up from 8:30 to 10:30 a.m. or 3 to 5 p.m. at the board office, 1304 E. Sunset Blvd., Tiyon. For more information call 475-0251/2.



T.G.I. Friday's is throwing a party because we love kids! Join us on Saturday, June 13, 1998 from 11 a.m. to 3:00 p.m. for our Friday's Family Festival where kids can sign up to be a Friday's Clubhouse member - FREE!

FRIDAY'S CLUBHOUSE FAMILY FESTIVAL!

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But wait, that's not all! Every kid gets a chance to win great prizes (like a weekend family getaway at Guam Plaza Hotel, a special T.G.I. Friday's birthday party for you and nineteen of your closest friends, 10 Tarza passes, and two Lifestyle cellular phones from Guam Cellular and Paging). Just fill out the entry form. You need not be present to win.

So, see you at the T.G.I. Friday's Family Festival, and don't forget the secret Clubhouse phrase: "In here, it's always Friday!"

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