



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OCT 07 1997

Refer to
Legislative Secretary

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By:	<u>[Signature]</u>
Time:	<u>11:54am</u>
Date:	<u>10-8-97</u>

Dear Speaker Unpingco:

Enclosed please find a copy of Substitute Bill No. 232 (COR), "AN ACT TO AMEND §11309, CHAPTER 11, 7 GCA, TO CREATE A STATUTE OF REPOSE AND TO ESTABLISH A STATUTE OF LIMITATIONS REGARDING IMPROVEMENTS IN REAL PROPERTY ON GUAM", which I have signed into law as **Public Law No. 24-90**.

This legislation establishes a 10-year statute of limitations on lawsuits for design, specifications, surveying, planning, supervision, observation of construction, or construction of an improvement to real property from the date of substantial completion of the improvement.

Currently, there is no statute of limitation on actions against professionals who work on buildings which later turn out to be defective, making professionals who work on buildings responsible virtually forever. This is not the practice in most jurisdictions, and certainly is not the state of the law for other areas where individuals are held liable for their acts or omissions. Even in the criminal law, except for a very few exceptions such as murder, statutes of limitation bar lawsuits after a limited period of time.

Very truly yours,

[Signature]
Carl T. C. Gutierrez
Governor of Guam

Attachment

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

00476

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 10-8-97
Time: 7:30 AM
Rec'd by: [Signature]
Print Name: Janice Mesa

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

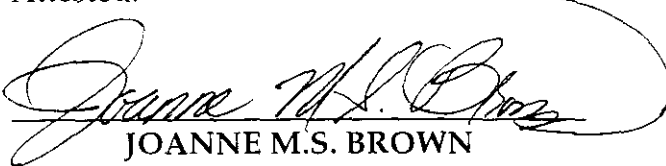
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 232 (COR), "AN ACT TO AMEND §§11309(a), 11309(b) AND 11310(a) OF ARTICLE 3, CHAPTER 11 OF TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO CREATING A STATUTE OF REPOSE AND TO ESTABLISH A STATUTE OF LIMITATIONS REGARDING IMPROVEMENTS IN REAL PROPERTY ON GUAM," was on the 12th day of September, 1997, duly and regularly passed.



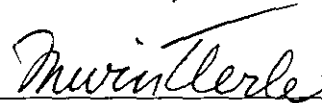
ANTHONY C. BLAZ
Acting Speaker

Attested:



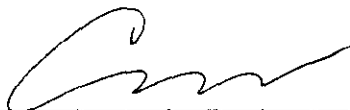
JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by the Governor this 26th day of September, 1997, at
4:00 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ
Governor of Guam

Date: 10-7-97

Public Law No. 24-90

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

Bill No. 232 (COR)

As amended on the Floor.

Introduced by:

Mark Forbes
A. C. Blaz
F. B. Aguon, Jr.
E. Barrett-Anderson
J. M.S. Brown
Felix P. Camacho
Francisco P. Camacho
M. C. Charfauros
E. J. Cruz
L. F. Kasperbauer
A. C. Lamorena, V
C. A. Leon Guerrero
L. Leon Guerrero
V. C. Pangelinan
J. C. Salas
F. E. Santos
A. R. Unpingco

AN ACT TO AMEND §§11309(a), 11309(b) AND
11310(a) OF ARTICLE 3, CHAPTER 11 OF TITLE 7
OF THE GUAM CODE ANNOTATED, RELATIVE
TO CREATING A STATUTE OF REPOSE AND TO
ESTABLISH A STATUTE OF LIMITATIONS
REGARDING IMPROVEMENTS IN REAL
PROPERTY ON GUAM.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. The Guam Legislature finds that the wording in Guam's
3 current law regarding the statute of repose for improvements in real property

1 on our Island binds Guam architects, engineers, designers and building
2 contractors unfairly, making them liable for their work practically for all time.

3 The Guam Legislature acknowledges the fact that because there is no
4 estimated shelf-life for a building; there has to be a distinct end to a period of
5 liability for improvement to real property after which an architect, engineer or
6 design professional can no longer be held liable for personal injury or injury
7 to property.

8 The Guam Legislature finds that the wording in Guam's current law
9 makes it possible for an architect, engineer or designer to be held liable for
10 losses suffered by an individual for damages to a building that was designed
11 forty (40), fifty (50) or even one hundred (100) years prior. The Guam
12 Legislature finds that the wording of the law defeats any attempt to create an
13 equitable statute of repose. The resulting law is a statute of limitations which
14 can, in essence, run forever.

15 The Guam Legislature finds that statutes of limitation and statutes of
16 repose are laws that bar a party from filing claim after a specified period of
17 time has elapsed. The difference between a statute of limitation and a statute
18 of repose is the point from which the limitation of time is measured. Statutes
19 of limitation begin at the date of injury or discovery of the deficiency. Since
20 the time of injury or discovery can begin at any time, the limitation can run
21 indefinitely.

22 Statutes of repose, on the other hand, provide an architect, engineer or
23 designer with protection from third-party claims after a specified period of
24 time has elapsed after substantial completion of a project. After the period of

1 time specified in a statute of repose, an injured party may file a claim only
2 against those parties in control of maintaining the safety of the building.

3 The Guam Legislature finds that forty-eight (48) states, including
4 Washington D. C., have statutes of repose based on "completion." Only
5 Guam, together with Vermont and New York, have statutes based on
6 "discovery." Unlike Vermont and New York, however, Guam lies in a strong
7 earthquake prone area. Guam's statute of repose should mirror that of
8 Hawaii, California and Alaska - states which lie in strong earthquake prone
9 areas as well.

10 The Guam Legislature finds that a statute of repose supplemented with
11 a statute of limitations will, in fairness to an injured party, give an additional
12 period of time to allow for the filing of suits for injuries that occur, or defects
13 that are discovered, in the final year of the statute of repose.

14 The Guam Legislature acts in the interest of providing the due process
15 rights to potential litigants in the area of design and construction in
16 improvements to real property in an equitable manner to all parties involved.

17 **Section 2.** Section 11309(a) of Article 3, Chapter 11 of Title 7 of the
18 Guam Code Annotated is hereby amended to read as follows:

19 "(a) Except as otherwise provided in this Section, no action shall
20 be brought to recover damages from any person performing or
21 furnishing the design, specifications, surveying, planning, supervision
22 or observation of construction or construction of an improvement to real
23 property more than ten (10) years after the date of substantial
24 completion of the development or improvement for any of the
25 following:"

1 **Section 3.** Section 11309(b) of Article 3, Chapter 11 of Title 7 of the
2 Guam Code Annotated is hereby amended to read as follows:

3 “(b) If, by reason of such patent deficiency, an injury to property
4 or the person of an injury causing wrongful death occurs during the
5 tenth (10th) year after the date of substantial completion of the
6 development or improvement, an action in tort to recover damages for
7 such an injury or wrongful death may be brought within one (1) year
8 after the date on which such injury occurred, irrespective of the date of
9 death, but in no event may such an action be brought more than eleven
10 (11) years after the date of substantial completion of the development or
11 improvement.”

12 **Section 4.** Section 11310(a) of Article 3, Chapter 11 of Title 7 of the
13 Guam Code Annotated is hereby amended to read as follows:

14 “(a) Except as otherwise provided in this Section, no action shall
15 be brought to recover damages from any person performing or
16 furnishing the design, specifications, surveying, planning, supervision
17 or observation of construction or construction of an improvement to real
18 property more than ten (10) years after the date of substantial
19 completion of the development or improvement for any of the
20 following:

21 (1) Any latent deficiency in the design, specifications,
22 planning, supervision or observation of construction or
23 construction of an improvement to, or survey of, real property;

24 (2) Injury to property, real or personal, arising out of any
25 such patent deficiency.”

P.L. 24-90



TWENTY-FOURTH GUAM LEGISLATURE

Office of the Vice-Speaker

ANTHONY C. BLAZ



**LEGISLATIVE
COMMITTEE
MEMBERSHIP**

August 27, 1997

Chairman
Finance & Taxation

The Honorable Speaker Antonio R. Unpingco
24th Guam Legislature
155 Hesler Street
Agana, Guam 96910

Vice-Chairman
Rules,
Government Reform
& Federal Affairs

Education

Natural Resources

Health &
Human Services

Dear Mr. Speaker:

Tourism, Economic
Development & Cultural
Affairs

The Committee on Finance and Taxation now reports its findings on Bill No. 232, An Act to Amend §11309 and §11310, Chapter 11, 7 GCA, to Create a Statute of Repose and to Establish a Statute of Limitations Regarding Improvements in Real Property on Guam, to the full Legislature with the recommendation TO DO PASS.

Judiciary,
Public Safety &
Consumer Protection

Transportation,
Telecommunications, &
Micronesian Affairs

Votes of the committee members are as follows:

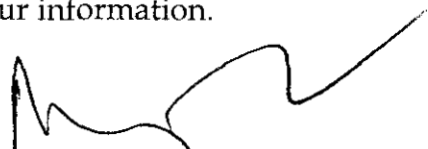
MEMBERSHIP

Guam Finance
Commission

Commission on Self
Determination

To Pass	<u>11</u>
Not To Pass	<u> </u>
Inactive File	<u> </u>
Abstained	<u>1</u>
Off-Island	<u>1</u>
Not Available	<u> </u>

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


Anthony C. Blaz

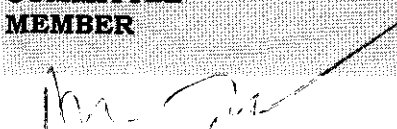
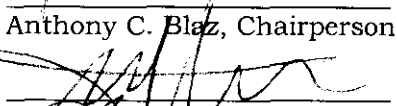
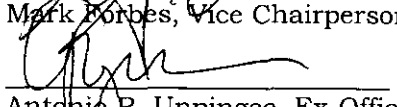
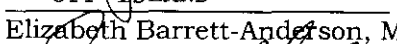
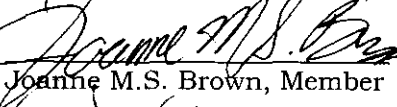
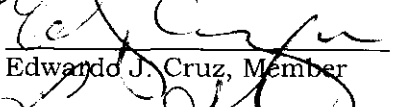
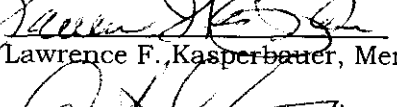
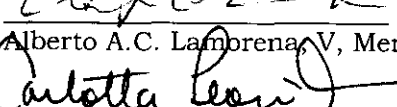
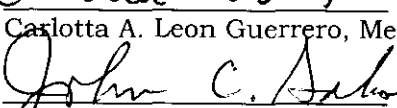
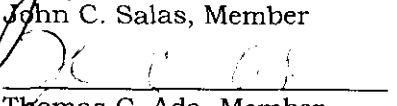
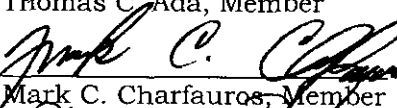

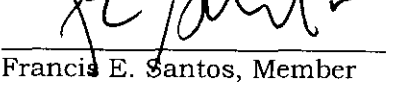

Attachments

Committee on Finance and Taxation

Voting Sheet on

Bill No. 232

AN ACT TO AMEND §11309 AND §11310, CHAPTER 11, 7 GCA, TO CREATE A STATUTE OF REPOSE AND TO ESTABLISH A STATUTE OF LIMITATIONS REGARDING IMPROVEMENTS IN REAL PROPERTY ON GUAM.

COMMITTEE MEMBER	TO PASS	NOT TO PASS	ABSTAIN	INACTIVE FILE
 Anthony C. Blaz, Chairperson	✓			
 Mark Forbes, Vice Chairperson	✓			
 Antonio R. Unpingco, Ex-Officio				
OFF-ISLAND				
 Elizabeth Barrett-Anderson, Member				
 Joanne M.S. Brown, Member	✓			
 Edwardo J. Cruz, Member	✓			
 Lawrence F. Kasperbauer, Member	X			
 Alberto A.C. Lambrena, V, Member	✓			
 Carlotta A. Leon Guerrero, Member	✓			
 John C. Salas, Member	✓			
 Thomas C. Ada, Member				
 Mark C. Charfauros, Member	X			
 William B.S.M. Flores, Member			✓	
 Francis E. Santos, Member	✓			



TWENTY-FOURTH GUAM LEGISLATURE

Office of the Vice-Speaker

ANTHONY C. BLAZ

LEGISLATIVE
COMMITTEE
MEMBERSHIP

Chairman
Finance & Taxation

Vice-Chairman
Rules,
Government Reform
& Federal Affairs

Education

Natural Resources

Health &
Human Services

Tourism, Economic
Development & Cultural
Affairs

Judiciary,
Public Safety &
Consumer Protection

Transportation,
Telecommunications, &
Micronesian Affairs

MEMBERSHIP

Guam Finance
Commission

Commission on Self
Determination

August 27, 1997

To: Senator Mark Forbes, Vice Chairperson
Speaker Antonio R. Unpingco, Ex-Officio Member
Senator Elizabeth Barrett-Anderson, Member
Senator Joanne M.S. Brown, Member
Senator Edwardo J. Cruz, Member
Senator Lawrence F. Kasperbauer, Member
Senator Alberto A.C. Lamorena, V, Member
Senator Carlotta A. Leon Guerrero, Member
Senator John C. Salas, Member
Senator Thomas C. Ada, Member
Senator Mark C. Charfauros, Member
Senator William B.S.M. Flores, Member
Senator Francis E. Santos, Member

From: Vice Speaker Anthony C. Blaz, Chairperson
Committee on Finance and Taxation

Re: Voting Sheet on Bill No. 232

Transmitted herewith are the voting sheet and Committee Report on Bill No. 232 for your review and signature.

Your attention to this matter is greatly appreciated.

Anthony C. Blaz

Committee on Finance and Taxation
Report on Bill No. 232

AN ACT TO AMEND §11309 AND §11310, CHAPTER 11, 7 GCA, TO CREATE A STATUTE OF REPOSE AND TO ESTABLISH A STATUTE OF LIMITATIONS REGARDING IMPROVEMENTS IN REAL PROPERTY ON GUAM.

PUBLIC NOTICE:

Pursuant to the requirements of the Standing Rules, notice of the Public Hearing on Bill No. 232 was published in the Pacific Daily News on June 11, 1997.

PUBLIC HEARING:

The Committee on Finance and Taxation conducted a public hearing on Thursday, June 12, 1997 in the Legislature's Public Hearing Room to hear testimonies on Bill No. 232.

MEMBERS PRESENT:

The hearing was called to order by the Chairperson of the Committee on Finance and Taxation, Vice Speaker Anthony C. Blaz. Committee members present were:

Senator Thomas Ada
Senator Mark Charfauros
Senator Alberto A.C. Lamorena, V
Senator Francis E. Santos

Other Senators present were:

Senator Frank B. Aguon, Jr.
Senator Lou Leon Guerrero
Senator Vicente C. Pangelinan
Senator Judith Won-Pat Borja
Senator Francisco P. Camacho

Providing Public Testimony on the Bill:

Michael Makio - Amer Inst Arch (written)
Karen Storts - Guam Contr Assoc (written/oral)
Thomas P. Camacho - GK2 Inc (written/oral)
Zenon Belanger - Z Belanger & Assoc (written)
H. Mark Ruth - Taniguchi-Ruth-Smith (written)
Ukrit Siriprusanan - Geo-Engineering & Testing
Duncan G. McCully - McCully, Lannen, Beggs & Melancon (written)

BACKGROUND ON ILL 232:

The Chairman called on witnesses to provide testimony on Bill 232.

Karen Storts, representing the Guam Contractors Association, testified in favor of Bill 232 citing that proposed statute of repose and statute of limitations are consistent with prevailing practices throughout the United States. The period of time allowed in the statute of repose should begin at the project's completion and ten (10) years without evidence of a substantial deficiency is sufficient proof of proper work by contracted professionals. Proper upkeep and maintenance of buildings are essential to keeping buildings defect-free and safe. Proper construction inspections should safeguard against problems and errors.

Michael Makio, registered architect with GRS, representing the American Institute of Architects, Guam Chapter; also a founding member of the Guam Seismic Advisory Council, testified in favor of Bill 232. He cited statutes of repose should not be indefinite and take into consideration that building codes change roughly every four (4) years in a decade. He cited that the majority fully 95% of deficiencies are discovered within the first three years of a building's existence.

Nil Villaluz testified in favor of the bill. He is the President and Managing Engineer of EMPSCO Engineering Consultants. His work spans about twenty (20) years and he is proud of such work and appreciates the justified protection contained in Bill 232.

Thomas P. Camacho, President of GK2, a registered civil and structural engineer for 14 years and Chairman of the Seismic Advisory Council, testified in support of Bill 232. He opened that there are enough mechanisms currently in place to address proper structural design of building/structures. He supports the ten (10) years provision of the bill which endorses good engineering design and the professionalism and ethics of the engineering/architectural profession. He closed by saying that it is the owner's prerogative to conduct periodic reviews of structural designs and to ensure proper designs.

FINDINGS:

BILL 232 OVERVIEW

- Bill 232 was unanimously supported by all witnesses testifying and represents fair and reasonable allowances and protection
- Bill 232 will encourage and provide needed support for the A&E professions and construction industry.

COMMITTEE RECOMMENDATION:

The Committee, having conducted a sufficient hearing, does hereby recommend to the Legislature **to do pass Bill 232-** "AN ACT TO AMEND §11309 AND §11310 CHAPTER 11, 7 GCA TO CREATE A STATUTE OF REPOSE AND TO ESTABLISH A STATUTE OF LIMITATIONS REGARDING IMPROVEMENTS IN REAL PROPERTY ON GUAM."

american institute of architects guam & micronesia chapter

post office box 24392 / GMF, guam 96921

11 June 1997

Senator Anthony C. Blaz
Chairman, Committee on Finance and Taxation
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

Subject: Bill 232: Statute of Repose

Dear Chairman:

We thank you for this opportunity to have the concept of a statute of repose offered in legislation, and to have this public hearing for review and public input. The American Institute of Architects wishes to offer the following testimony in support of Bill 232.

Currently, contractors, engineers, and architects are liable for details in their work forever. Architects and other construction parties are open to lawsuits for hidden defects in their work any time within 10 years after the owner or public notices or discovers the problem. A case could arise where a problem is noticed 20 or 40 years after the work has been completed, and there is no longer anyone alive who worked on the project, or after all records concerning the project have been lost.

This perpetual liability seems unfair and not in line with almost all other jurisdictions, including California. Guam contractors, engineers, and architects are all being subjected to burdens that don't exist in other jurisdictions. Being liable forever is unfair to the practitioners, their families, and their great grandchildren. Fairness requires that after a suitable period of time the professionals and contractors no longer be susceptible to the filing of such a lawsuit.

The construction industry is one that slowly evolves in both techniques and standards, including the building codes. Holding construction parties and design professionals liable for past work subject to future standards, is also both unfair and unrealistic.

The proposal of the legislation in Bill 232 would provide a limit to liability of 10 years

after completion of a project. This limitation seems fair and appropriate, so parties and the court can have access to witnesses and documents which may be lost by the passage of time. This would protect and encourage a vibrant construction industry on Guam by limiting the contractors', architects', and engineers' liability to 10 years after the completion of the work.

We anticipate that the intent is to apply to all construction, past, present, and future. Is this intent clear as is, or perhaps an additional clarification, such as the following, could be added?

"The limitation prescribed by this section shall also apply retroactively to any improvement substantially completed before the effective date of this section."

On behalf of the American Institute of Architects, Guam and Micronesia Chapter, we again thank you for this proposed legislation, and public hearing opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Makio". The signature is fluid and cursive, with a large initial "M".

Michael Makio, AIA
President Guam and Micronesia Chapter



CONSULTING ENGINEERS

June 12, 1997

OFFICE OF THE VICE-SPEAKER

Senator Anthony C. Blaz
Twenty-Fourth Guam Legislature
155 Hesler St.
Agana, Gu 96910

Dean Gillham, S.E.
Chairman
Thomas P. Camacho, S.E.
President
Ruben U. Velesrubio, S.E.
Vice President
Sesha R. Nagalla, P.E.
Secretary
Terangue E.R. Gillham, P.E.
Treasurer

Subject: Bill No. 232

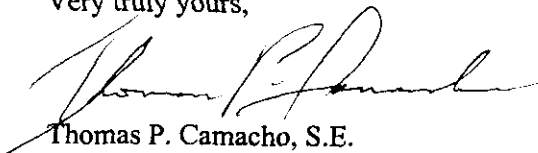
Dear Vice Speaker Blaz:

My name is Thomas P. Camacho and I am a registered Civil and Structural Engineer in the Territory of Guam and the CNMI. I am currently the President of GK2, Inc., which was incorporated in 1970 and has participated in Civil and Structural Design throughout the Western Pacific Region for the last 27 years. I would like to express my support for Bill No. 232, which addresses and essentially establishes a Statute of Limitations regarding improvements in real property on Guam. It is my opinion that there are enough mechanisms currently in place to address proper structural design of structures in this Region. In the last few years as a direct result of the August 8, 1993 Great Earthquake, the Government of Guam along with the support of the private community have implemented provisions for special structural inspection and have upgraded the seismic zoning designation for Guam from 3 to 4. Additionally, the requirement for accelerometers in high-rise structures have been enforced by the Department of Public Works in recent years. The Guam Seismic Advisory Council, in conjunction with FEMA, have programs currently being considered which address networks for seismic instrumentation and reduction of seismic hazards.

With the present law as you've addressed in your bill, an engineer designing a structure is liable for the life of the structure which is undoubtedly a tremendous liability of our profession. There may be some concern by the public with regard to the responsibilities and accountability of professional engineers. We are required to comply with all applicable laws as adopted by the Government of Guam. We maintain a high standards of ethics, have a Professional Engineers And Licensed Surveyors Board administering policy, the Department of Public Works enforcing the proper laws, and public laws in place requiring attention to proper design and construction. The public should be aware that Uniform Building Codes are constantly being upgraded, changed and improved every three years and engineers are required to comply with the new codes as adopted by law. It is my opinion that the ten year period as addressed in your bill as a period of liability is sufficient time, especially in our region of high seismic activity and frequent typhoons, for a structure to undergo the tests of Mother Nature.

Finally, I wholeheartedly support Bill No. 232, which endorses good engineering design and the professionalism and ethics of our careers. Please call me if you have any questions regarding the above.

Very truly yours,



Thomas P. Camacho, S.E.

A:Bill.232



BELANGER & ASSOCIATES

Post Office Box 1755
Agana, Guam 96932
Phone: (671) 646-6505
Fax: (671) 649-2601

June 12, 1997

Anthony C. Blaz
Vice-Speaker
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96911

Via Facsimile: 472-3562
No. of Pages: 2

Subject: Testimony Against Bill No. 232
An Act to Amend subsection 11309 and subsection 11310, Chapter 11, 7 GCA,
To Create A statute of Repose and to Establish A statute of Limitations regarding
Improvements In Real Property On Guam.

Dear Vice-Speaker Blaz:

My name is Zenon E. Belanger. I am resident of the Territory of Guam, was born on here in 1951, own and operate a consulting engineering and construction management business here under the name of Belanger & Associates, Inc., and am a Registered Civil Engineer with the Territorial Board of Registration for Professional Engineers, Architects and Land Surveyors. I am the Principal Engineer of Belanger & Associates, Inc. I am also the President of the Guam Society of Professional Engineers and have served as a representative of the Chamber of Commerce to the Territorial Planning Commission from 1995 to 1996.

On the surface it would appear that Bill No. 232 would garner the support of every Architect, Engineer, Designer and Building Contractor on Guam. However, as a licensed Civil Engineer since 1978, I must question the intent of Bill No. 232 for the following reasons:

1. A licensed Professional Engineer or Architect is bound by a Code of Ethics which includes protecting public welfare. This bill reduces this protection of the public and rather appears to be created to protect an elite group of professionals and contractors who might not have engaged in their professional responsibilities in a prudent and proper manner.
2. In the last thirty years we have witnessed several major earthquakes occurring in 1975, 1993, 1997 and hundreds of minor earthquakes. The majority of the buildings which were designed and constructed properly withstood these natural disasters. The current building codes and earthquake zoning classifications are guidelines to properly design for this seismic activity and other related designs. If a building was improperly designed and/or constructed, and in the 11th year experiences latent defects, this bill in effect holds the responsible parties harmless, except the property owner who has no legal recourse to protect his or her property rights.
3. Let's remember that Guam is not only prone to earthquakes but also to super typhoons. The frequency of occurrence of these major storms is between twelve (12) to fifteen (15)

Office located at: 388 S. Marine Drive, Isla Building, Suite 303, Tamuning, Guam 96911

years. This bill also does not provide a Property Owner protection from possible unknown or undetected latent defects which may occur later than the proposed limitations which is greater than the proposed statute of limitations.

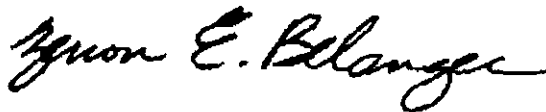
4. This bill does not protect the Property Owner from Contractors deciding to use inferior or cheaper construction materials because the Contractor knows his liability is only good for ten (10) years. Nor does it protect a Property Owner from a Designer whose design standards may be lower due to lack of knowledge of our local conditions. Responsibility for all Designers will be reduced as a result of this Bill.
5. In my career since graduating from Engineering School in 1973, I have seen good and bad designs. I have also seen good and bad construction work. In several instances, I end up assisting the Property Owner with professional services to clean up and recommend corrective action for someone else's mess. At least with the current laws, Property Owners have some sort of legal recourse. This bill, if passed, will take away current rights that Property Owners have regarding defective designs or construction.

One must remember a deficiency is an inadequacy and a defect, whether it is a design or construction matter. No one should be held harmless as a result of a poor design or shoddy construction, regardless of the time frame. We must also remember, lawmakers are empowered to protect the general public not the handful of elite professionals and contractors. Therefore, I can not support Bill No. 232, oppose its passage and recommend that you and your constituents at the Twenty-Fourth Guam Legislature reanalyze your positions on the bill with the reasons I have set forth.

It is unfortunate that I am not able to attend the Public Hearing for Bill No. 232 because of prior corporate and project commitments. Should you have any questions or need further clarification, please feel free to contact my office.

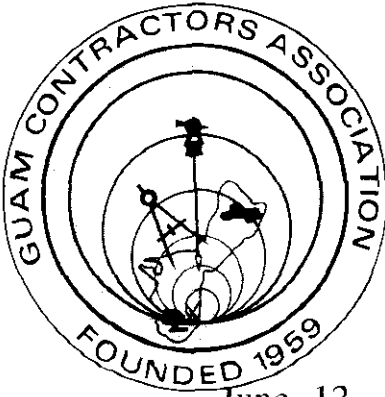
Very truly yours,

BELANGER & ASSOCIATES, INC.



Zenon E. Belanger, P.E.

cc: Governor Carl T.C. Gutierrez
All Senators of the Twenty Fourth Guam Legislature
Territorial Board of Registration for Professional Engineers, Architects and Land Surveyors
Department of Public Works, Division of Building Permits
Contractors Licensing Board
Guam Contractors Association
Guam Society of Professional Engineers
Filipino American Society of Architects & Engineers
Architects Institute of America, Micronesian Chapter
Duncan G. McCully - facsimile 472-1201



GUAM CONTRACTORS' ASSOCIATION

June 12, 1997

Vice-Speaker Anthony C. Blaz, Chairman
Committee on Finance & Taxation
Twenty-Fourth Guam Legislature
Agana, Guam 96910

RE: Bill 232, An Act to Amend §11309 and §11310 Chapter 11,7
GCA to Create a Statute of Repose and to Establish a
Statute of Limitations Regarding Improvements in Real
Property on Guam

Dear Chairman Blaz and Members of the Committee:

I appreciate this opportunity to comment on Bill 232, which amends the current law to put limits on the liability contractors and building professionals now face regarding building deficiencies. The amendments to the law change the time frame for professional liability due to losses caused by a construction or engineering deficiency. These limitations are consistent with the majority of the United States, as are most other regulations under which Guam contractors work.

The period of time allowed in the statute of repose should begin at the project's completion, as defined by Bill 232, rather than at some obscure date in the future, which is what is currently law. Certainly ten years without evidence of a substantial deficiency is proof enough that the contracting professionals have done their jobs well. Proper upkeep and maintenance of the buildings by the owners after that time will keep buildings defect-free and the people in them safe. Additionally, owners have a responsibility to hire qualified, competent firms, whose work will satisfy public works inspection requirements. Proper inspection at the time of construction should be sufficient to discover any inadvertent errors that could eventually cause problems.

After an informal poll of the available Guam Contractors' Association Board of Directors, I feel comfortable testifying in favor of Bill 232 and believe I speak for the majority of our members.

Thank you for this opportunity to testify in favor of Bill 232. I remain available to answer any questions you may have, and will be pleased to forward those pertaining to technical matters to the GCA Board of Directors for a prompt response.

Sincerely,

GUAM CONTRACTORS' ASSOCIATION

A handwritten signature in cursive script that reads "Karen M. Storts".

Karen M. Storts
Executive Director

June 12, 1997

Committee on Ways and Means
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, GU 96910

Subj: Bill 232, Statue of Repose

Dear Chairman Blaz and Committee Members;

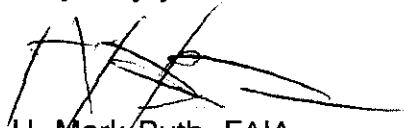
As a member of the Board of the Guam Chapter of the American Institute of Architects, I have for several years been working for the establishment of statue of repose legislation. I am pleased that it is now being heard by this committee. I sincerely hope that this Committee, and the Twenty-Fourth Guam Legislature, will recognize it's importance and need and carry it through to passage.

Statue of repose legislation is important because it places a limit on the length of time from the date of substantial completion of a project during which a claim can be filed against any member of the construction team. Without a statue of repose, architects, engineers and contractors will be liable for a project to their grave. This is not reasonable as after a period of time building uses change, the uncertainties of maintenance and remodeling affect the original construction, records are lost and expectations change.

Additionally, it stands to reason that after a certain period of time, deficiencies will have been discovered. Bill 232's limitation of ten years for latent deficiencies is typical of laws enacted in other states and is fair and reasonable.

Your support of this bill in Committee and on the legislative floor will be greatly appreciated. Thank you.

Very truly yours,



H. Mark Ruth, FAIA

GEO-ENGINEERING & TESTING, INC.

Geotechnical & Material Testing Engineers
Post Office Box 8170 Tamuning, Guam 96931

Telephone: (671) 646-7710
Facsimile: (671) 646-6600

FACSIMILE TRANSMISSION

TO :	Office of the Vice Speaker	FAX :	472-3562
ATTENTION :	Sen. Anthony C. Blaz	DATE :	12 June 1997
FROM :	Ukrit Siriprusanan	OUR REF. # :	
SUBJECT :	Bill No. 232	TOTAL PAGES:	

Reference: Your fax transmittal to us dated June 10, 1997, copy followed.

Thank you for the above fax transmitted to us.

We wholeheartedly support the passage of Bill No. 232 as you have proposed. However, we will not be able to attend the public hearing on Thursday, June 12, 1997 at 1:30 PM.

Sincerely



Confidentiality Notice: This page and any accompanying documents contain confidential information intended for a specific individual and purpose. This telecopied information is private and protected by law. If you are not the intended recipient, you are hereby notified that any disclosure, copying or distribution or the taking of any action based on the content of this information, is strictly prohibited.

~~Handwritten signature~~

McCULLY, LANNEN, BEGGS & MELANÇON, P.C.
ATTORNEYS AT LAW

DUNCAN G. McCULLY
THOMAS J. LANNEN
MARK S. BEGGS
JEAN MELANÇON
KEVIN J. FOWLER
JACK P. ZAHNER
ALISON L. YEARSLEY

SUITE 403 FIRST HAWAIIAN BANK BUILDING
400 CHALAN MACHAUTE
MAIPE, GUAM 96927

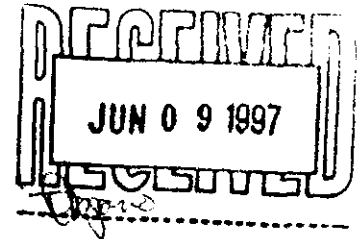
TELEPHONE:
(671) 477-7418
(671) 472-5685

TELECOPIER:
(671) 472-1201

MELINDA C. SWAVELY,
Of Counsel

EMAIL:
mlbm@kuentos.guam.net

June 9, 1997



Hand Deliver

Senator Anthony Blaz
TWENTY-FOURTH GUAM LEGISLATURE
155 Hesler Street
Agana, Guam 96910

Re: Statute of Repose For Contractors, Architects and Engineers
Bill No. 232-Corrected
MLBM File No. 1195-4

Dear Tony:

Thank you very much for co-sponsoring Bill 232 which, as you know, will protect contractors, architects and engineers from liability on projects which they completed more than 10 years ago. I have been working with the representatives of the contractors, engineers and architects associations on Guam. They are extremely interested in having Guam law changed to be as it is in almost all of the states. I hope that you can schedule public hearings on Bill 232 as soon as possible.

As you know, under existing law, contractors are liable, virtually forever, on their projects. I am aware of contractors pricing their bids on large public projects to take into consideration their unusual exposure from doing work on Guam.

I have attached a copy of my April 23, 1997 letter to Mark Forbes which explains in more detail the importance of the law. I would ask that a new Subsection (g) be included which would clarify that the statute is retroactive. This is important. If the law is held to not be retroactive, it may apply only to projects finished after the change becomes law, leaving contractors possibly liable for hidden defects on projects completed 50 years ago.

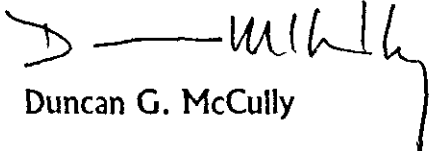
FILE COPY

Senator Anthony Blaz
June 9, 1997
Page 2 of 2

At your earliest convenience, I would look forward to meeting with you and your staff about this important legislation. Thank you for your assistance.

Kindest regards.

Sincerely,



Duncan G. McCully

DMC:esp F#
ltrs:blaz

Attachment

cc: Mr. Fred Castro, w/att.
Senator Antonio R. Unpingco, Speaker, Twenty-Fourth
Guam Legislature (472-3400)
Mark Ruth, American Institute of Architects (472-3381)
Julie Duwel, Vice President, Guam Society
of Professional Engineers (828-1865)
Karen Stortz, Executive Director, Guam
Contractors Association (477-3178)
Art Chan, President, Guam Contractors
Association (734-0990)

McCULLY, LANNEN, BEGGS & MELANÇON, P.C.
ATTORNEYS AT LAW

DUNCAN G. McCULLY
THOMAS J. LANNEN
MARK S. BEGGS
JEAN MELANÇON
KEVIN J. FOWLER
JACK P. ZAHNER
ALISON L. YEARSLEY

SUITE 403 FIRST HAWAIIAN BANK BUILDING
400 CHALAN MACHAUTE
MAITE, GUAM 96927

TELEPHONE:
(671) 477-7418
(671) 472-5685

TELECOPIER:
(671) 472-1201

MELINDA C. SWAVELEY,
Of Counsel

EMAIL:
mlbm@kuentos.guam.net

April 23, 1997

Hand Deliver

Senator Mark Forbes
TWENTY-FOURTH GUAM LEGISLATURE
155 Hesler Street
Agana, Guam 96910

Re: Statute of Repose for Contractors, Architects and Engineers
MLBM File No. 1195-4b

Dear Mark:

As we discussed, your assistance is requested to change the law of Guam so that contractors, architects and engineers are not perpetually liable for hidden defects in their old work. At the present time, Guam does not have a statute of repose which would prevent lawsuits over projects completed 10 or more years ago, as most states do. Attached you will find a copy of Bill No. 591 introduced in the Twenty-Third Guam Legislature which would have made the appropriate changes to existing law. My clients and other representatives of the contractors, architects and engineers on Guam hope that a similar bill can be re-introduced and passed by the Twenty-Fourth Guam Legislature.

As you know, statutes of limitation require the prompt filing of a lawsuit. It is fair and appropriate to set time limitations as the court and the parties should have access to witnesses and documents which may be lost by the passage of time. Time limits also provide the community with certainty that there will be an end to potential litigation and liability.

Under present law, there is no effective outside limit on when a contractor, architect or engineer can be sued for latent or hidden defects in a work of improvement. Under 7 G.C.A. §11310, a lawsuit can be brought for latent defects at any time within 10 years, after the owner discovers the defect. Since the owner can discover the defect 20 or 40 years after the work has been completed, the contractor, architect or engineer allegedly responsible for the defect continues to be potentially liable. The contractor, architect or engineer may be sued at a time when there is no one alive who worked on the project or after all records concerning the project have been lost. Under such a circumstance, the construction professional would be unable to prove his or her non-responsibility for property damage following an earthquake, a fire or a storm. Fairness requires that after a suitable period, say 10 years, the construction professional can no longer be sued.

Almost all of the states recognize that perpetual liability is not fair; to encourage a vibrant construction industry, they have passed various types of statutes of repose which prevent the filing of a lawsuit at some point after substantial completion of the improvement. 7 G.C.A. §11310 was taken almost verbatim from California's statute intended to protect contractors. The significant alteration was that the 10-year period on Guam runs from the "discovery of the deficiency" while in California it runs from "substantial completion".

The requested legislation would cause 7 G.C.A. §11310 (and §11309) to be in accord with the law of California and that of 47 other states. It would reasonably protect and encourage the construction industry on Guam by requiring project owners to sue within 10 years of the completion of the work. The construction industry would no longer be threatened by perpetual liability and questions of responsibility will be resolved after a full disclosure of the relevant circumstances.

Bill No. 591 makes the necessary changes to §§11309 and 11310 of Title 7. However, it would be requested that a new subparagraph (B) be added to Section 3 to read as follows:

Add a new subsection (g) to read as follows:

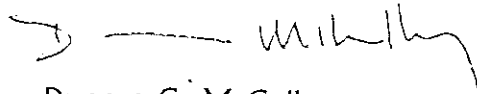
"The limitation prescribed by this section shall apply retroactively to any improvement substantially completed before the effective date of this section."

I would look forward to meeting with you regarding this bill and hope that you will refer it to the appropriate committee for introduction and immediate hearing. Thank you for your assistance.

Senator Mark Forbes
April 23, 1997
Page 3 of 3

Kindest regards.

Sincerely,



Duncan G. McCully

DMC:esp F#
ltrs:forbes

Attachment

cc: Senator Antonio R. Unpingco, Speaker, Twenty-Fourth
Guam Legislature (472-3400)
Mark Ruth, Taniguchi-Ruth-Smith + Associates (472-3381)
Julie Duwel, Vice President, Guam Society
of Professional Engineers (828-1865)
Karen Stortz, Executive Director, Guam
Contractors Association (477-3178)
Art Chan, President, Guam Contractors
Association (734-0990)

Guam & Hill

bcc: Tae R. Kim

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

Bill No. 232
Amendatory Bill YES X NO

Date Received June 11, 1997
Date Reviewed June 18, 1997

Department/Agency Affected: Department of Public Works
Department/Agency Head: Mr. Tony Quinata, Acting Director
Total FY appropriation to Date: \$27,955,635

Bill Title (Preamble): An Act to Amend §11309 and §11310, Chapter 11, Title 7 Guam Code Annotated to Create a Statute of Repose and to Establish a Statute of Limitations Regarding Improvements in Real Property on Guam

Change in Law: Amend §11309 and §11310, Chapter 11, Title 7 Guam Code Annotated

Bill's Impact on Present Program Funding:

 Increase Decrease Reallocation X No Change
Bill is for: Operations Capital Improvement X Other

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)

PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
<u>Infrastructure & Utilities</u>	<u>-0-</u>	<u> </u>	<u>-0-</u>

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)

FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
OTHER	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TOTAL	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? YES/NO - IF NO, ADD'L AMOUNT REQUIRED n/a
AGENCY/PERSON/DATE CONTACTED: Dept. of Public Works / Mr. Sabino Flores, Chief of Engineering, Capital Imprv. Projects / June 24, 1997

ESTIMATED POTENTIAL MULTI-YEAR REVENUES

FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND	<u>n/a</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
OTHER	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TOTAL	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

ANALYST Frank Lizama DATE 6/24/97 DIRECTOR Joseph E. Rivera DATE JUN 27 1997
Acting Director

Footnotes: The department cannot determine at this time the impacts regarding administrative costs that may be attributed from any litigation and injury claims relative to the proposed legislation.



Vice-Speaker Anthony C. Blaz, Chairman
 Committee on Finance & Taxation, Twenty-Fourth Guam Legislature

PUBLIC HEARING NOTICE

Thursday, June 12, 1997
 Guam Legislature Public Hearing Room, 9:00 a.m.

Bill 276 Gov Req./ Rules

AN ACT TO PROVIDE FOR THE CONSTRUCTION OF A NEW ELEMENTARY SCHOOL IN NORTHERN GUAM.

Bill 247 M.C. Charfauros, E.J. Cruz, A.L.G. Santos

AN ACT TO ADD A NEW SUBDIVISION (27) TO §26203(i) OF TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING A GROSS RECEIPTS TAX EXEMPTION FOR THE RETAIL SALE OF LOCAL PRODUCE.

Bill 163 J. Won Pat-Borja, W.B. Flores, L. Leon Guerrero

AN ACT TO AMEND ARTICLE 3, CHAPTER 3, TITLE 11, SUBSECTION 3306, GCA, PROHIBITING THE ISSUANCE OF ON-SALE LIQUOR LICENSES TO ANY ESTABLISHMENT LOCATED WITHIN FIVE HUNDRED (500) FEET FROM THE OFFICIAL PROPERTY LINE SURROUNDING ALL CHURCHES, HOSPITALS, SCHOOLS, DAY CARE CENTERS, NURSERIES, OR CHILD CARE ESTABLISHMENTS.

Bill 238 A.R. Unpingco, L.F. Kasperbauer

AN ACT TO AMEND AND REENACT §24109 AND 24113 OF P.L. 23-107 OF TITLE 11, GCA, TO CLARIFY THE ASSESSMENT DATE AND ALLOW TAXPAYERS SECURING EXEMPTIONS UNDER SECTION TWO OF P.L. 21-30 TO QUALIFY AND BE ELIGIBLE FOR EXEMPTION UNDER P.L. 23-107.

Bill 230 A.C. Blaz, M. Forbes

AN ACT TO ADD A NEW SECTION 127114 TO CHAPTER 127, TITLE 11, GUAM CODE ANNOTATED, TO PROVIDE FOR THE DISPOSITION OF DORMANT AND INACTIVE ACCOUNTS AND UNCLAIMED FUNDS HELD BY SAVINGS AND LOAN ASSOCIATIONS.

Bill 213 L. Leon Guerrero, A.L.G. Santos, T. Ada

AN ACT TO PROVIDE FOR CLARIFICATION OF THE PROMPT PAYMENT PROVISION FOR GUAM MEMORIAL HOSPITAL.

Bill 206 F.B. Aguon, Jr.

AN ACT RELATIVE TO MANDATING THAT TAX REFUNDS DUE TO ANY INDIVIDUAL OR BUSINESS ESTABLISHMENT THAT CURRENTLY HAS AN OUTSTANDING DELINQUENT FINANCIAL OBLIGATION WITH ANY GOVERNMENT OF GUAM ENTITY SHALL BE WITHHELD AND UTILIZED FOR THE PAYMENT OF SUCH OBLIGATIONS.

Bill 211 J.C. Salas, E.J. Cruz, L.F. Kasperbauer

AN ACT TO AUTHORIZE THE SALE OF GOVERNMENT OWNED LAND IN AGAT TO OCCUPANTS EDWARD T. RIOS AND ELVINA REYES RIOS.

Bill 212 J.C. Salas, E.J. Cruz, L.F. Kasperbauer

AN ACT AUTHORIZING THE GOVERNOR TO SELL LOT NO. 2417-14, MANGLAQ, TOMR. JUAN QUICHOCHOACALLE.

Bill 219 J.C. Salas, E.J. Cruz, L.F. Kasperbauer

AN ACT TO AUTHORIZE THE GOVERNOR OF GUAM TO SELL A PORTION OF AN ABANDONED PREWAR BULL CART TRAIL IN TALOF OFO TO THE OWNERS OF THE PROPERTY WHICH THE TRAIL ABUTS.

Bill 207 GOV REQ/Rules

AN ACT TO AMEND THE USE OF THE HIGHWAY BOND CAPITAL IMPROVEMENT PROJECTS.

Bill 222 F.P. Camacho

AN ACT TO APPROPRIATE TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) TO THE DEPARTMENT OF PUBLIC WORKS FOR THE CONSTRUCTION AND INSTALLATION OF STREET LIGHTS ON ROUTE 4 BETWEEN INARAJAN SWIMMING POOL TO THE ENTRANCE OF MERIZO VILLAGE, MERIZO CEMETERY TO THE ENTRANCE OF UMATAC VILLAGE, AND ON ROUTE 2 BETWEEN NIMITZ BEACH IN AGAT TO THE ENTRANCE OF UMATAC VILLAGE.

Bill 202 F.B. Aguon, Jr.

AN ACT RELATIVE TO MANDATING THAT A FIVE YEAR ISLANDWIDE COMPREHENSIVE SIDEWALK CONSTRUCTION MASTERPLAN BE FORMULATED THAT WILL IDENTIFY AREAS IN NEED OF SIDEWALKS IN THE ISLAND VILLAGES; REQUIRING THE CONSTRUCTION OF SIDEWALKS, OVER THE DESIGNATED TIME PERIOD, IN CONFORMANCE WITH SAID MASTERPLAN WHERE IT MAY BE DEEMED NECESSARY FOR THE PUBLIC SAFETY AND CONVENIENCE OF THE PEOPLE WITHIN THE COMMUNITY; MANDATING THAT ANY HOUSING SUBDIVISION CONSTRUCTED BY THE GOVERNMENT OF GUAM IN THE FUTURE INCLUDE THE CONSTRUCTION OF SIDEWALKS; PROVIDING FOR A CONTINUOUS APPROPRIATION ANNUALLY TO THE DEPARTMENT OF PUBLIC WORKS FOR THE IMPLEMENTATION OF THE PROVISIONS WITHIN THIS ACT; AND IDENTIFYING THIS PROVISION AS THE "ISLANDWIDE COMMUNITY SIDEWALK CONSTRUCTION ACT".

Bill 239 V.C. Pangelinan, J. Won Pat-Borja, W.B.S.M. Flores

AN ACT TO APPROPRIATE THE (\$1,800,000) FROM THE BUILDING AND DESIGN FEE ACCOUNT OF THE DEPARTMENT OF PUBLIC WORKS FOR THE CONSTRUCTION OF YOUTH AND COMMUNITY CENTERS IN THE MUNICIPALITIES OF AGAT, PITI AND YIGO.

Bill 208 F.B. Aguon, Jr.

AN ACT RELATIVE TO FURTHER ASSURING THE SAFETY AND PROTECTION OF OUR ISLAND'S SCHOOL CHILDREN AS THEY TRAVEL TO AND FROM SCHOOL BY REQUIRING THAT PROTECTIVE GUARD RAILS BE CONSTRUCTED FOR BUS SHELTERS LOCATED ADJACENT TO MAJOR ROADWAY AND HIGHWAYS.

Bill 232 M. Forbes, A.C. Blaz

AN ACT TO AMEND §11309 AND 11310 CHAPTER 11, 7 GCA TO CREATE A STATUTE OF LIMITATIONS REGARDING IMPROVEMENTS IN REAL PROPERTY ON GUAM.

Confirmation Hearing: Robert S. Quitugua to the Cockpit License Board

The public is encouraged to attend and provide testimony. Copies of the above bills and agenda are available. Contact the office of Vice-Speaker Anthony C. Blaz at 472-3557/58.