



Office of the Governor of Guam

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Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

Office of the People's Speaker
vicente (ben) c. pangelinan

MAR 04 2003

TIME: 4:56 () AM () PM
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March 4, 2003

The Honorable Vicente C. Pangelinan
Speaker
I Mina' Bente Siete Na Liheslaturan Guåhan
Twenty-Seventh Guam Legislature
155 Hesler Street Hagåtña, Guam 96910

Dear Mr. Speaker Pangelinan:

Enclosed please find Bill No.42 (COR), "AN ACT RELATIVE TO APPROPRIATING NECESSARY FUNDS FOR THE OPERATION OF THE EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCES OF THE GOVERNMENT OF GUAM FOR THE REMAINDER OF FISCAL YEAR 2003; INSTITUTING NECESSARY BUDGETARY REDUCTIONS IN GOVERNMENT EXPENDITURES; AND PROVIDING *I MAGA'LAHEN GUAHAN* THE TOOLS AND FLEXIBILITY TO FURTHER IMPLEMENT CRITICAL REDUCTIONS IN THE OPERATIONAL COSTS OF THE GOVERNMENT OF GUAM," which I have signed into law on February 28, 2003 as **Public Law 27-05**.

Mr. Speaker, *I Liheslaturan Guåhan* is to be commended for their efforts in passing Bill No. 42. It is an important first step in beginning to address the difficult decisions that face our island community. Our current fiscal crisis calls for bold, decisive leadership and a community united in sharing in the painful process of rightsizing a government crippled by years of abuse and mismanagement.

Less than sixty (60) days ago, this Administration took over a near bankrupt government with a cash shortfall of \$110 million and an inevitable budgetary shortfall of another \$100 million. After weeks of arduous budget deliberations that in the end included tax increases and immediate reductions in salaries government-wide, we remain at about the same position from a cash standpoint. While Public Law 27-05 provides a workable budgetary framework, the revenues and savings to be derived do not address our cash requirement for providing basic services in the near term. As indicated in my presentation on the financial condition of the government back in January 2003 and again in my revised expenditure plan on February 10, 2003, in compliance with Public Law 27-02, the need for cash infusion is a key component to

our fiscal recovery. To this end, my office is presently working on proposed legislation for cash infusion to be transmitted later this week.

My Administration is moving forward with immediate cost cutting initiatives but recognizes the need for long-term economic stimulus and permanent changes in the size, organization, and structure of our government. Therefore, in the coming months, this Administration will be working on initiatives aimed at rightsizing, reorganizing, consolidating, and even eliminating certain government functions through outsourcing and privatization. I ask for *I Liheslaturan Guåhan*'s continued assistance in implementing measures which may require legislation.

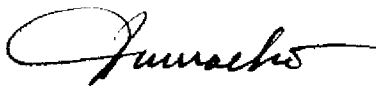
In the revenue component of Public Law 26-05, I wish to point out that the income tax and gross receipts tax categories and the Tourist Attraction Fund may be optimistic. The estimates do not appear to have taken into consideration Super typhoon Pongsona's inevitable adverse impact. Conceivably, a \$10 million decline may result in the areas of income tax and gross receipts tax, and the Tourist Attraction Fund may yield only \$12 million by fiscal year end. I have asked the Director of the Guam Visitors Bureau to provide contingencies for operational adjustments in anticipation of this shortfall. We will closely monitor and track any changes in the General Fund revenues and my Administration will continue to implement the adjustments necessary to balance the budget.

Please review the following for possible technical changes that need to be addressed:

1. On page 11, line 10 should read "Section 3 of Public Law..."
2. Section 6 of Chapter 11, The Creation of Public School Library Resources Fund, has been added to Chapter 41 of Title 17 of the Guam Code Annotated. Chapter 41 of Title 17 of the Guam Code Annotated relates to Vocational Rehabilitation.
3. On page 38, line 17 should read "GCA § 8201(I)" instead of "GCA § 8301(I)"

Mr. Speaker, I pledge to continue to work in cooperation with *I Liheslaturan Guåhan* in evaluating this entire government, its programs, policies, and practices, so we may continue to deliver on our promises of a brighter future. I ask for your continued support in the coming months to effectuate lasting and meaningful changes in our government and how it serves our people.

Sincerely,



FELIX P. CAMACHO
I Maga'lahaen Guåhan
Governor of Guam

Enclosure

Cc: The Honorable Tina Rose Muna-Barnes
Senator and Legislative Secretary

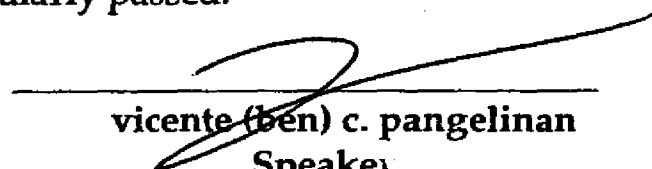
I MINA'BENTE SIETE NA LIHESLATURAN GUAHAN
2003 (FIRST) Regular Session

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

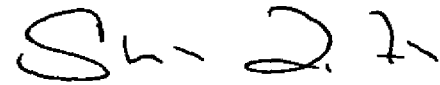
This is to certify that Substitute Bill No. 42 (COR), "AN ACT RELATIVE TO APPROPRIATING NECESSARY FUNDS FOR THE OPERATION OF THE EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCHES OF THE GOVERNMENT OF GUAM FOR THE REMAINDER OF FISCAL YEAR 2003; INSTITUTING NECESSARY BUDGETARY REDUCTIONS IN GOVERNMENT EXPENDITURES; AND PROVIDING I MAGA'LAHEN GUÁHAN THE TOOLS AND FLEXIBILITY TO FURTHER IMPLEMENT CRITICAL REDUCTIONS IN THE OPERATIONAL COSTS OF THE GOVERNMENT OF GUAM.," was on the 28th day of February, 2003, duly and regularly passed.

Attested:

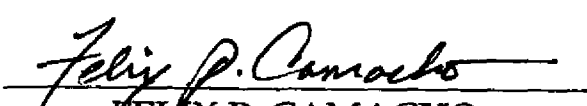

Tina Rose Muna-Barnes
Senator and Legislative Secretary


vicente (ben) c. pangelinan
Speaker

This Act was received by I Maga'lahaen Guahan this 28th day of FEBRUARY, 2003,
at 6:15 o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahaen Guahan

Date: FEBRUARY 28, 2003

Public Law No. 27-05

**MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) REGULAR SESSION**

Bill No. 42 (COR)

As substituted by the Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform and further substituted on the Floor, and amended in the Committee of the Whole.

Introduced by:

Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform

F. B. Aguon, Jr.
J. M.S. Brown
F. R. Cunliffe
C. Fernandez
Mark Forbes
L. F. Kasperbauer
R. Klitzkie
L. A. Leon Guerrero
J. A. Lujan
T. Muna-Barnes
v. c. pangelinan
J. M. Quinata
R. J. Respicio
Toni D. Sanford
Ray Tenorio

AN ACT RELATIVE TO APPROPRIATING NECESSARY FUNDS FOR THE OPERATION OF THE EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCHES OF THE GOVERNMENT OF GUAM FOR THE REMAINDER OF FISCAL YEAR 2003; INSTITUTING NECESSARY BUDGETARY REDUCTIONS IN GOVERNMENT EXPENDITURES; AND PROVIDING *I MAGA'LAHEN*

**GUÅHAN THE TOOLS AND FLEXIBILITY TO FURTHER
IMPLEMENT CRITICAL REDUCTIONS IN THE
OPERATIONAL COSTS OF THE GOVERNMENT OF
GUAM.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

INDEX

CHAPTER I.

ESTIMATED REVENUES.

Section 1. Revised Revenue Estimate for Fiscal Year 2003.

CHAPTER II.

GENERAL APPROPRIATIONS.

**Section 1. Government Appropriations for the Remainder of
Fiscal Year 2003.**

CHAPTER III.

MISCELLANEOUS APPROPRIATIONS.

Section 1. Office of *I Maga'laha*n Guåhan Appropriation.

**Section 2. Passport Office Employees Moved to Department of
Revenue and Taxation.**

**Section 3. Passport Funds Deposited into Tax Collection
Enhancement Fund.**

**Section 4. Director of Revenue and Taxation Authorized to Use
Passport Funds and Hire Passport Agents.**

Section 5. Creation of Tax Collection Enhancement Fund.

Section 6. Creation of Public School Library Resources Fund.

- 1 **Section 7. Insurance Coverage on Public Facilities.**
- 2 **Section 8. Guam Aquaculture Development and Training Center**
3 **Appropriation.**
- 4 **Section 9. Guam Police Department Matching Federal Funds**
5 **Requirement.**
- 6 **Section 10. Government of Guam Agency Relocation Funds.**
- 7 **Section 11. Appropriation to *I Liheslaturan Guåhan*.**
- 8 **Section 12. Department of Public Health and Social Services**
9 **Appropriation.**
- 10 **Section 13. Amendment of Appropriation to the Department of**
11 **Public Health and Social Services for Public**
12 **Assistance Program Payments.**
- 13 **Section 14. Senior Citizen Support Services Unit Appropriation.**
- 14 **Section 15. Office of Finance and Budget Appropriation.**
- 15 **Section 16. Mayors Council Appropriation.**
- 16 **Section 17. Amendment of Supplemental Annuity Appropriation.**
- 17 **Section 18. Appropriation to the Government of Guam**
18 **Retirement Fund for Sliding Scale Supplemental**
19 **Annuity Benefits.**
- 20 **Section 19. Repeal of COLA Appropriation.**
- 21 **Section 20. Amendment to Guam Community College**
22 **Appropriation.**
- 23 **Section 21. Amendment to University of Guam Appropriations.**
- 24 **Section 22. Office of the Public Auditor Appropriation.**

1 **Section 23. Appropriation to Customs and Quarantine Agency for**
2 **Personnel Services.**

3 **Section 24. Expansion of Public Health Community Centers.**

4 **CHAPTER IV.**

5 **MISCELLANEOUS PROVISIONS.**

6 **Section 1. *I Maga'laha*n Guåhan Transfer Authority.**

7 **Section 2. Annual Leave.**

8 **Section 3. Accumulation of Annual Leave.**

9 **Section 4. Maximum Accumulation of Annual Leave at Three**
10 **Hundred Twenty (320) Hours.**

11 **Section 5. Suspension of Night Differential Pay.**

12 **Section 6. Transfer of Employees.**

13 **Section 7. Preferred Hiring of Government Employees in**
14 **Autonomous Agencies.**

15 **Section 8. Reduction of Senatorial Salaries.**

16 **Section 9. *I Maga'laha*n Guåhan and *Segundo Maga'laha*n Guåhan**
17 **Salary Reduction.**

18 **Section 10. Mayors and Vice-Mayors Salary Reduction.**

19 **Section 11. Attorney General Salary Reduction.**

20 **Section 12. Public Auditor Salary Reduction.**

21 **Section 13. Salary Savings to the General Fund.**

22 **Section 14. *I Maga'laha*n Guåhan Special Fund Transfer.**

23 **Section 15. Judicial Branch Staffing Levels.**

- 1 Section 2. Tobacco Tax Rates.
- 2 Section 3. Increase in Vehicle Registration Fee.
- 3 Section 4. Increase in Vehicle Registration Fee after April 1, 2003.
- 4 Section 5. Tracking of Government of Guam General Fund
- 5 Revenues and Expenditures for Fiscal Year 2003.
- 6 Section 6. Increase in Gross Receipts Tax Rates.
- 7 Section 7. Reduction of GRT Exemptions.
- 8 Section 8. Use Tax Amendment.
- 9 Section 9. Severability.

10 CHAPTER I.

11 ESTIMATED REVENUES.

12 Section 1. Revised Revenue Estimate for Fiscal Year 2003. *I*
 13 *Liheslaturan Guåhan* hereby updates and adopts from the Executive Branch
 14 the following revenue estimates for Fiscal Year 2003, which shall be
 15 utilized for appropriations contained herein:

16 I. GENERAL FUND REVENUE	AMOUNTS
17 A. <u>Taxes</u>	
18 i.) Income Tax (Individual,	
19 Withholding and Corporate)	\$ 140,145,420.00
20 ii.) Federal Income Tax Collection	
21 (Section 30 Funds)	\$ 54,000,000.00
22 iii.) Gross Receipts Tax	\$ 175,032,443.00
23 iv.) Other Taxes	\$ <u>4,532,990.00</u>
24 TOTAL TAXES	\$ 373,710,853.00

1	B. <u>Federal Sources</u>	
2	Immigration Fees and Indirect Cost	\$ 2,835,187.00
3	C. <u>Use of Money and Property</u>	
4	Interest Earned on Account	\$ 132,387.00
5	D. <u>Licenses, Fees and Permits</u>	
6	Business Licenses, Weights	
7	and Measures Fees and Others	\$ 996,585.00
8	E. <u>Department Charges</u>	
9	Education, Public Health,	
10	Agriculture and Others	\$ 1,546,091.00
11	F. <u>Outstanding Tax Receivables Collections</u>	<u>\$ 13,000,000.00</u>
12	<u>TOTAL GENERAL FUND REVENUE</u>	\$ 392,221,103.00
13	II. SPECIAL FUND REVENUE	
14	A. Abandoned Vehicle and Streetlight Fund	\$ 1,650,766.00
15	B. Chamorro Land Trust Fund	\$ 566,765.00
16	C. Customs, Agricultural and Quarantine	
17	Inspection Services Fund	\$ 7,875,149.00
18	D. Enhanced 911 Emergency Reporting	
19	System Fund	\$ 739,301.00
20	E. Guam Contractors License Board Fund	\$ 242,599.00
21	F. Guam Highway Fund	\$ 8,168,021.00
22	G. Land Survey Revolving Fund	\$ 181,923.00
23	H. Manpower Development Fund	\$ 107,580.00
24	I. Parks Fund	\$ 65,181.00
25	J. Police Services Fund	\$ 288,479.00

1	K. Professional Engineers, Architects and Land	
2	Surveyors Board Fund	\$ 151,000.00
3	L. Safe Street Fund	\$ 100,000.00
4	M. Solid Waste Fund	\$ 4,845,437.00
5	N. Tourist Attraction Fund	\$ 14,557,703.00
6	O. Healthy Futures Fund	\$ 3,530,417.00
7	P. Safe Homes, Safe Streets Fund	\$ <u>1,473,750.00</u>
8	<u>TOTAL SPECIAL FUND REVENUE</u>	\$ 44,544,071.00
9	III. FEDERAL MATCHING GRANTS-IN-AID REVENUE	
10	<u>Federal Grants-In-Aid Requiring Local Match:</u>	
11	A. Agriculture	\$ 457,000.00
12	B. Guam Council on the Arts and Humanities	\$ 240,200.00
13	C. Guam Environmental Protection Agency	\$ 1,465,652.00
14	D. Guam Public Library	\$ 106,337.00
15	E. Integrated Services for Individuals	
16	with Disabilities	\$ 1,983,456.00
17	F. Labor	\$ 74,600.00
18	G. Law	\$ 3,896,622.00
19	H. Military Affairs	\$ 842,383.00
20	I. Public Health and Social Services	\$ 16,856,438.00
21	J. University of Guam	\$ 1,432,379.00
22	K. Youth Affairs	\$ 33,000.00
23	TOTAL FEDERAL MATCHING	<hr/>
24	GRANTS-IN-AID REVENUE	\$ 27,388,067.00
25	REVENUE SUMMARY	

1	TOTAL GENERAL FUND REVENUE	\$ 392,221,103.00
2	TOTAL SPECIAL FUND REVENUE	\$ 44,544,071.00
3	TOTAL FEDERAL MATCHING GRANTS-	
4	IN-AID REVENUE	<u>\$ 27,388,067.00</u>
5	GRAND TOTAL	\$ 464,153,241.00
6		

1 CHAPTER II.

2 GENERAL APPROPRIATIONS.

3 Section 1. Government Appropriations for the Remainder of
4 Fiscal Year 2003.

5 The sum of One Hundred Forty-Seven Million Six Hundred Eighty-
6 Two Thousand Eight Hundred Sixty-Nine Dollars (\$147,682,869.00),
7 composed of One Hundred Thirty-Eight Million Four Hundred Seventy-
8 One Thousand Eight Hundred Seventy Dollars (\$138,471,870.00) from the
9 General Fund and Nine Million Two Hundred Ten Thousand Nine
10 Hundred Ninety-Nine Dollars (\$9,210,999.00) from Special Funds, is
11 appropriated for the personnel costs of the Executive and Judicial branches
12 for the remaining months of Fiscal Year 2003, from March 1 through
13 September 30, 2003, which sum shall be expended in accordance with
14 Appendix A of this Act. The appropriations contained in Appendix A are
15 representative of the fiscal year's funding for the respective entities for the
16 remainder of the fiscal year.

17 The appropriations from the General Fund of Thirty-Four Million Six
18 Hundred Twenty-Nine Thousand Seven Dollars (\$34,629,007.00)
19 previously provided in Appendix A of Public Law 26-152 for operations of
20 the respective Government of Guam agencies are hereby amended to
21 reflect the FY 2003 Adjusted Operations Cost amounts of Thirty-Two
22 Million One Hundred Fifty-Five Thousand Eight Hundred Twenty-Two
23 Dollars (\$32,155,822.00) in Appendix B of this Act.

24

1 CHAPTER III.

2 MISCELLANEOUS APPROPRIATIONS.

3 Section 1. Office of *I Maga'lahaen Guahan* Appropriation. The
4 sum of Two Million Five Hundred Fifty-Six Thousand Eight Hundred
5 Three Dollars (\$2,556,803.00) is hereby appropriated from the General Fund
6 to the Office of *I Maga'lahaen Guahan* for its operations, inclusive of
7 Personnel Services, for the period March 1, 2003, through September 30,
8 2003.

9 Section 2. Passport Office Employees Moved to the Department
10 of Revenue and Taxation. Section 2 of P.L. 27-02 is *amended* to read:

11 "Section 2. The sum of Four Hundred Sixty Thousand Nine
12 Dollars (\$460,009.00) is hereby appropriated from the General Fund
13 to the Office of *I Maga'lahaen Guahan* for its operations, inclusive of
14 Personnel Services, for the period February 1, 2003 through February
15 28, 2003. Effective July 1, 2003, no appropriation may be used to
16 operate a passport office, except that the Director of Revenue and
17 Taxation is authorized to designate employees of the Department of
18 Revenue and Taxation to act as Passport Acceptance Agents for the
19 U.S. Passport Office."

20 Section 3. Passport Funds Deposited into the Tax Collection
21 Enhancement Fund. A new subsection (n) is added to 11 GCA §1104 to
22 read:

23 "(n) Passports. The Department shall be responsible for
24 providing Passport Acceptance Agents, provided that all funds

1 collected, derived or received from the issuance of passports shall be
2 deposited in the Fund created by §1111 of this Title.”

3 **Section 4. Director of Revenue and Taxation Authorized to Use**
4 **Passport Funds and Hire Passport Agents.** A new subsection (e) is added
5 to 11 GCA §1107 to read:

6 “(e) Shall expend fifty percent (50%), *pro rata*, of the funds in
7 the Tax Collection Enhancement Fund to employ Tax Technicians,
8 Revenue Agents, Revenue Officers and for other related expenses in
9 order to increase collection of taxes and for the salaries of employees
10 serving as Passport Acceptance Agents, two of whom may be
11 transferred into the Department. He shall deposit fifty percent (50%),
12 *pro rata*, of the funds in the Tax Collection Enhancement Fund to the
13 Public School Library Resources Fund created by 17 GCA §4120.1.”

14 **Section 5. Creation of Tax Collection Enhancement Fund.** A new
15 §1111 is added to Title 11, Guam Code Annotated, to read:

16 “§1111. **Creation of Tax Collection Enhancement Fund.** No
17 Commingling. There is hereby created, separate and apart from other
18 funds of the government of Guam, a reserve fund known as the Tax
19 Collection Enhancement Fund (the “Fund”). The Fund shall not be
20 commingled with the General Fund or any other funds of the
21 government of Guam. Expenditure from the Fund shall be pursuant
22 to 11 GCA §1107(e) for FY 2003, 2004, and 2005, and by appropriation
23 only beginning with Fiscal Year 2006.”

24 **Section 6. Creation of Public School Library Resources Fund.** A
25 new §41201.1 is added to Title 17, Guam Code Annotated, to read:

1 “§41201.1 (a) There is hereby created, separate and apart from
2 other funds of the government of Guam, a fund known as the "Public
3 School Library Resources Fund ("Fund")." The Fund shall not be
4 commingled with the General Fund and shall be kept in a separate
5 bank account and administered by the Guam Education Policy Board.
6 All monies deposited into the Fund shall be expended exclusively for
7 enhancement of learning resources and technology within the Public
8 School Libraries, including, but not limited to, the purchase of
9 computer equipment for the direct use of students, resources,
10 subscriptions, periodical materials and other library supplies and
11 materials that directly benefit the students.”

12 **Section 7. Insurance Coverage on Public Facilities.** The sum of
13 Two Hundred Seventy Thousand Dollars (\$270,000.00) is hereby
14 appropriated from the General Fund for Fiscal Year 2003 to the
15 Department of Administration for insurance coverage of public facilities in
16 compliance with requirements set forth by the Federal Emergency
17 Management Agency, including but not limited to, the Department of
18 Education facilities, but excluding autonomous agency facilities. The
19 Department of Administration shall be the coordinating agency for the
20 solicitation and acquisition of such insurance coverage, which coverage
21 shall be up to and include, September 30, 2003. A written request shall be
22 forwarded to *I Liheslaturan Guåhan* by the Department of Administration
23 on the financial requirement for such insurance coverage for Fiscal Year
24 2004 no later than August 1, 2003. The funds appropriated herein shall not
25 be subject to *I Maga'lahen Guåhan's* transfer authority.

1 **Section 8. Guam Aquaculture Development and Training Center**
2 **Appropriation.** The sum of One Hundred Forty Thousand Dollars
3 **(\$140,000.00)** is hereby appropriated from the General Fund to the Guam
4 Aquaculture Development and Training Center within the University of
5 Guam to fund its personnel and operational needs for the remainder of the
6 Fiscal Year, from March 1 through September 30, 2003. In future fiscal
7 years, the funding of the Guam Aquaculture Development and Training
8 Center shall be incorporated into the University of Guam budget request.

9 **Section 9. Guam Police Department Matching Federal Funds**
10 **Requirement.** The sum of Eighty Thousand Dollars **(\$80,000.00)** is hereby
11 appropriated from the General Fund to the Guam Police Department to
12 fund the personnel Federal fund matching requirement for the immediate
13 recruitment of twenty (20) new uniformed police officers in Fiscal Year
14 2003.

15 **Section 10. Government of Guam Agency Relocation Funds.** The
16 sum of Three Hundred Thousand Dollars **(\$300,000.00)** is hereby
17 appropriated from the General Fund to the Department of Administration
18 solely for the rental space of government agencies that relocate their offices
19 from Tiyan and for rental of office space for Civil Service Commission by
20 March 2003. The sums provided herein shall be for the period of March 1
21 through September 30, 2003. The appropriations contained herein shall not
22 be subject to *I Maga'lahaen Guåhan's* transfer authority.

23 **Section 11. Appropriation to *I Liheslaturan Guåhan*.** The sum of
24 Four Million Sixty-Six Thousand Five Hundred Six Dollars **(\$4,066,506.00)**
25 is hereby appropriated from the General Fund to *I Liheslaturan Guåhan* for

1 its operations, including Personnel Services, for the period March 1
2 through September 30, 2003.

3 **Section 12. Department of Public Health and Social Services**
4 **Appropriation.** The sum of One Hundred Sixty-Four Thousand Dollars
5 (\$164,000.00) is hereby appropriated from the Environmental Health Fund
6 to the Department of Public Health and Social Services for the purpose of
7 monetary compensation for detailed assignments for thirteen (13)
8 employees within the Division of Environmental Health.

9 **Section 13. Amendment of Appropriation to the Department of**
10 **Public Health and Social Services for Public Assistance Program**
11 **Payments.** Section 9, Chapter III, of Public Law 26-152 is hereby *amended*
12 to read as follows:

13 "Section 9. **Appropriation to the Public Health and**
14 **Social Services for Public Assistance Program Payments.** The
15 sum of Thirteen Million Six Hundred Thirty-Seven Thousand
16 Five Hundred Sixty-Two Dollars (\$13,637,562.00) is
17 appropriated from the General Fund to the Department of
18 Public Health and Social Services for Public Assistance
19 Program payments for Fiscal Year 2003."

20 **Section 14. Senior Citizen Support Services Unit Appropriation.**
21 The sum of Nine Hundred Eighty-Five Thousand Two Hundred Ninety
22 Dollars (\$985,290.00) is hereby appropriated from the General Fund to the
23 Department of Public Health and Social Services for the purpose of
24 meeting the Contracts category shortfall of the Senior Citizens, Title IIIB,
25 Support Services Unit.

1 **Section 15. Office of Finance and Budget Appropriation.** There is
2 hereby appropriated from the General Fund to *I Liheslaturan Guåhan*,
3 specifically for the Office of Finance and Budget (OFB), the sum of Three
4 Hundred Thirteen Thousand Nine Hundred Twenty-Three Dollars
5 (\$313,923.00) for operations, inclusive of Personnel Services, for the period
6 March 1 through September 30, 2003.

7 **Section 16. Mayors Council Appropriations.**

8 (a) The sum of Three Million Four Hundred Fifteen Thousand
9 Four Hundred Eighty-Two Dollars (\$3,415,482.00) is hereby appropriated
10 from the General Fund to the Mayors Council for Personnel Services for
11 the period March 1 through September 30, 2003.

12 (b) The sum of Two Hundred Fifty Thousand Dollars (\$250,000.00)
13 is hereby appropriated from the General Fund to the Mayors Council of
14 Guam for utility obligations incurred during Fiscal Year 2003. These funds
15 shall be allocated by the Mayors Council to the individual mayors and
16 released by BBMR to avoid interruption in utility service, and to allow the
17 individual mayors the ability to directly pay their utility obligations as they
18 become due. Such funds shall not be subject to any transfer authority of *I*
19 *Maga'lahaen Guåhan*, and shall be utilized for its aforementioned purposes,
20 and shall be further restricted from any other use.

21 **Section 17. Amendment of Supplemental Annuity Appropriation.**

22 Section 22 of Chapter III of Public Law 26-152 is hereby *amended* to read:

23 **"Section 22. Appropriations to the Government of**
24 **Guam Retirement Fund for Supplemental Annuity Benefits**
25 **and Other Costs.**

1 (a) Fifteen Million Five Hundred Sixty Thousand
2 Twenty-Two Dollars (\$15,560,022.00) is appropriated from the
3 General Fund to the Government of Guam Retirement Fund for
4 the payment of benefits from October 1, 2002 to February 28,
5 2003, for those employees who retired prior to October 1, 1995
6 for the continuing provisions of Items (i) through (iv), below,
7 and for the payment of benefits of current retirees from October
8 1, 2002 to September 30, 2003, consisting of the continuing
9 provisions of Items (v) through (viii), below:

10 (i) One Thousand Two Hundred Dollars
11 (\$1,200.00) to annuity benefits (to continue existing
12 programs currently contained in the semi-monthly
13 payments);

14 (ii) One Thousand Five Hundred Dollars
15 (\$1,500.00) to supplemental annuity benefits (to continue
16 existing programs currently contained in the semi-
17 monthly payments);

18 (iii) Seven Hundred Dollars (\$700.00) to
19 supplemental annuity benefits (to continue existing
20 programs currently contained in the semi-monthly
21 payments);

22 (iv) Eight Hundred Thirty-Eight Dollars (\$838.00)
23 to annuity benefits (to continue existing programs
24 currently contained in the semi-monthly payments);

1 (v) *I Maga'lahi and I Segundo Maga'lahi* Pensions
2 (to continue existing programs currently contained in the
3 semi-monthly payments);

4 (vi) Retiree group health, dental and life insurance
5 premiums (to continue existing programs currently
6 contained in the semi-monthly payments);

7 (vii) Retiree life insurance subsidy (to continue
8 existing programs currently contained in the semi-
9 monthly payments); and

10 (viii) to defray the cost of Medicare premiums for
11 government of Guam Retirees and their survivors who
12 are eligible to receive social security income benefits and
13 are required under the government of Guam group
14 health insurance program to pay such premiums to
15 continue to participate in such health insurance program
16 failing which they are excluded therefrom (to continue
17 existing programs contained in the monthly payments).

18 (b) For October 1, 2002, through February 28, 2003, the
19 Guam Power Authority, the Guam Telephone Authority, the
20 A.B. Won Pat Guam International Airport Authority, the Guam
21 Economic Development Authority, the Guam Housing
22 Corporation, the Government of Guam Retirement Fund, the
23 Port Authority of Guam, and the Guam Visitors Bureau shall
24 remit to the Government of Guam Retirement Fund an amount
25 equal to the number of employees which are retired from each

1 entity multiplied by the amounts listed in Items (i) through (iv)
2 in Subsection (a) of this Section. The remittance shall be made
3 in two (2) equal installments and shall be due on or before
4 December 31, 2002, and March 31, 2003, respectively.

5 (c) The Government of Guam Retirement Fund shall
6 promulgate, continue and amend, if necessary, previous
7 administrative procedures to ensure the proper submission,
8 receipt and accounting of all sums remitted in conformance
9 with Subsection (b) of this Section."

10 **Section 18. Appropriations to the Government of Guam**
11 **Retirement Fund for Sliding Scale Supplemental Annuity Benefits.**

12 (a) The sum of Three Million Five Hundred Twenty
13 Thousand Eight Hundred Forty Dollars (\$3,520,840.00) is
14 appropriated from the General Fund to the Government of Guam
15 Retirement Fund for the prospective payment of supplemental
16 benefits for the period March 1, 2003, through September 30, 2003, for
17 those employees who retired prior to October 1, 1995, or their
18 survivors, to be paid in the following manner:

19 (i) Two Thousand Four Hundred Seventy-Two
20 (\$2,472.00) for prospective supplemental annuity benefits,
21 known as the sum of One Thousand Two Hundred Dollars
22 (\$1,200.00), One Thousand Five Hundred Dollars (\$1,500.00),
23 Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-
24 Eight Dollars (\$838.00) in annual benefits formerly contained in
25 various General Appropriation Acts, for those employees who

1 retired as of October 1, 1977, or their survivors. This amount
2 shall now be known as Class 1 Retiree Supplemental Annuity
3 Benefits.

4 (ii) One Thousand Seven Hundred Seventy-Two
5 (\$1,772.00) for prospective supplemental annuity benefits,
6 comprised of the sum of One Thousand Five Hundred Dollars
7 (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight
8 Hundred Thirty-Eight Dollars (\$838.00) in annual annuity
9 benefits formerly contained in various General Appropriation
10 Acts, for those employees who retired between October 2, 1977,
11 and October 1, 1980, or their survivors. This amount shall now
12 be known as Class 2 Retiree Supplemental Annuity Benefits.

13 (iii) One Thousand Three Hundred Sixty-Four Dollars
14 (\$1,364.00) for supplemental annuity benefits, comprised of the
15 sum of One Thousand Five Hundred Dollars (\$1,500.00), and
16 Eight Hundred Thirty-Eight Dollars (\$838.00) in annual annuity
17 benefits formerly contained in various General Appropriation
18 Acts, for those employees who retired between October 2, 1980,
19 and October 1, 1982, or their survivors. This amount shall now
20 be known as Class 3 Retiree Supplemental Annuity Benefits.

21 (iv) Eight Hundred Seventy-Five Dollars (\$875.00) for
22 prospective supplemental annuity benefits, composed of the
23 annual sum of One Thousand Five Hundred Dollars (\$1,500.00)
24 in annual annuity benefits, formerly contained in various
25 General Appropriation Acts, for those employees who retired

1 between October 2, 1982, and October 1, 1995, or their
2 survivors. This amount shall now be known as Class 4 Retiree
3 Supplemental Annuity Benefits.

4 No persons eligible for Class 1, 2, 3 or 4 Retiree Supplemental
5 Annuity Benefits provided for in paragraph (a) of this Section shall receive
6 such benefit if their regular annual retirement annuity prior to the
7 supplemental amounts herein is more than Forty Thousand Dollars
8 (\$40,000.00). Persons eligible for Class 1, 2, 3, or 4 Retiree Supplemental
9 Annuity Benefits shall only receive an amount of such benefits up to the
10 total aggregate sum of Forty Thousand Dollars (\$40,000.00) in combined
11 retirement annuities and supplemental retirement annuities and not more.

12 (b) For March 1, 2003, to September 30, 2003, of Fiscal Year
13 2003, the Guam Power Authority, the Guam Telephone Authority,
14 the A.B. Won Pat Guam International Airport Authority, the Guam
15 Economic Development Authority, the Guam Housing Corporation,
16 the Government of Guam Retirement Fund, the Port Authority of
17 Guam, the Guam Waterworks Authority and the Guam Visitors
18 Bureau shall remit to the Government of Guam Retirement Fund an
19 amount equal to the number of eligible employees which are retired
20 from each entity multiplied by the amounts listed in Items (i) through
21 (iv) in Subsection (a) of this Section. The remittance shall be made in
22 two (2) equal installments and shall be due on or before June 30, 2003,
23 and August 31, 2003, respectively.

1 Supplemental Annuities authorized herein are *ex gratia* payments and
2 are for fiscal year 2003 only. Any future supplemental annuities may be
3 addressed by future legislation.

4 **Section 19. Repeal of COLA Appropriation.** Section 23 of Chapter
5 III of Public Law 26-152 is hereby *repealed*.

6 **Section 20. Amendment to Guam Community College**
7 **Appropriation.** Section 7 of Public Law 27-02 is hereby *amended* to read as
8 follows:

9 "Section 7. **Appropriation to GCC.** The sum of Five
10 Million Eight Hundred Forty Thousand Dollars (\$5,840,000.00)
11 is hereby appropriated from the General Fund to the Guam
12 Community College for its operations, inclusive of its
13 Personnel Services, for the period February 1, 2003 through
14 September 30, 2003."

15 **Section 21. Amendment to University of Guam Appropriation.**
16 Subsection (a) of Section 10, Chapter III, of Public Law 26-152 is hereby
17 *amended* to read as follows:

18 "(a) **Appropriations to UOG.** The sum of Twenty-
19 Seven Million One Hundred Fourteen Thousand Three
20 Hundred Sixty-Nine Dollars (\$27,114,369.00) composed of
21 Twenty-Five Million Six Hundred Eighty-One Thousand Nine
22 Hundred Ninety Dollars (\$25,681,990.00) from the General
23 Fund and One Million Four Hundred Thirty-Two Thousand
24 Three Hundred Seventy-Nine Dollars (\$1,432,379.00) from
25 Federal Matching Grants-in-Aid, is hereby appropriated to the

1 University of Guam ("UOG") for its Fiscal Year 2003
2 operations. The sum of the funds appropriated herein that can
3 be expended upon the Board of Regents' sponsored programs
4 for Reserve Officer Training Corp ("ROTC") and Marine Lab
5 Graduates Assistance Program shall not exceed One Hundred
6 Fifty-Three Thousand Two Hundred Eighty Dollars
7 (\$153,280.00)."

8 **Section 22. Office of the Public Auditor Appropriation.** Subsection
9 (a) of Section 17, Chapter III, of Public Law 26-152 is hereby *amended* to
10 read as follows:

11 **"(a) Appropriation to the Office of the Public Auditor.** The
12 sum of Eight Hundred Eighty-Seven Thousand Eight Hundred Fifty-
13 Nine Dollars (\$887,859.00) is hereby appropriated from the General
14 Fund to the Office of the Public Auditor for its FY 2003 operations."

15 **Section 23. Appropriation to Customs and Quarantine Agency for**
16 **Personnel Services.** There is hereby appropriated from the Customs,
17 Agriculture, and Quarantine Inspection Services Fund to the Customs and
18 Quarantine Agency a total of One Million Four Hundred Thousand Dollars
19 (\$1,400,000.00) for the purpose of recruitment of customs officers and
20 essential personnel services staff for the operational requirements of the A.
21 B. Won Pat Guam International Airport. Customs and Quarantine Agency
22 is authorized to also utilize this appropriation for training, drug testing,
23 staff development and the payment for administrative services and
24 equipment assessed by the Department of Administration. This
25 appropriation shall continue until expended for the operations and

1 purposes specified herein. The provision of Section 7 of Chapter IV of this
2 act shall apply to the recruitment of customs officers and other personnel
3 as if the Customs and Quarantine Agency was an autonomous agency.

4 **Section 24. Expansion of Public Health Community Centers.** The
5 sum of One Million Three Hundred Twenty-Four Thousand Eight
6 Hundred Seventy-Five Dollars (**\$1,324,875.00**) is hereby appropriated from
7 the General Fund to the Department of Public Health and Social Services,
8 Division of Public Health, to be allocated and expended as follows: Object
9 Category 230 for contractual services the amount of Three Hundred
10 Thousand Dollars (\$300,00.00); and Object Category 240 for medical and
11 pharmaceutical supplies the amount of One Million Twenty-Four
12 Thousand Eight Hundred Seventy-Five Dollars (**\$1,024,875.00**)."

13

1 who are employed on a school-year basis, in accordance with the
2 following schedule:

3 (1) One-half day (4 hours) for each full bi-weekly pay
4 period in the case of employees with less than five (5) years of
5 service;

6 (2) Three-fourths day (6 hours) for each bi-weekly pay
7 period in the case of employees with more than five (5) years of
8 service.

9 For purposes of this Subsection (a), all elected officials except
10 members of the Guam Education Policy Board and the Consolidated
11 Commission on Utilities shall be deemed employees occupying permanent
12 positions."

13 **Section 4. Maximum Accumulation of Annual Leave at Three**
14 **Hundred Twenty (320) hours.** Subsection (c) of 4 GCA §4109 is hereby
15 *amended* to read as follows:

16 "(c) Employees entitled to annual leave hereunder may
17 accumulate up to three hundred twenty (320) hours. Any annual
18 leave earned by eligible employees in excess of three hundred twenty
19 (320) hours shall be credited to such employee's accumulated sick
20 leave; provided, that no more than one hundred (100) hours shall be
21 credited to said sick leave at the end of each fiscal year. The
22 determination of accumulation of annual leave, and crediting of
23 excess hours sick leave, shall be done at the end of each fiscal year.

24 Employees who have accumulated annual leave in excess of
25 three hundred and twenty (320) hours as of the enactment of this act

1 shall have up to and including September 30, 2004, to use the excess
2 amount of leave or that portion permitted to be credited to sick leave
3 shall be so credited and the remainder of excess leave, if any, shall be
4 lost.”

5 **Section 5. Suspension of Night Differential Pay.** Notwithstanding
6 any other provision of law, and effective immediately, the entitlement to
7 Night Differential Pay by public employees in all branches of the
8 government is suspended. Any ability to earn or accrue night differential
9 pay for employees of the Government of Guam is hereby suspended for the
10 duration of Fiscal Year 2003.

11 **Section 6. Transfer of Employees.** Notwithstanding any other
12 provision of law, and in recognition of the shortages of personnel in
13 certain areas of the government, *I Maga'lahaen Guåhan* is authorized to
14 transfer employees within or between any department or agency of the
15 Government of Guam, *except* that:

- 16 1. The provisions of this Section shall *not* apply to any employee of
17 the Legislative or Judicial Branches of government, personnel
18 within the Department of Education, and personnel within the
19 University of Guam and Guam Community College;
- 20 2. The transfer of any employee shall *not* result in a loss of pay or
21 salary;
- 22 3. The transfer of any employee shall not occur if the employee has
23 filed a legitimate grievance with the Civil Service Commission
24 for discrimination based on political affiliation, gender, or sexual

1 harassment, unless the said transfer is agreed to by the
2 employee;

3 4. The provisions of this Section shall not provide for the transfer of
4 autonomous agency employees into line departments or
5 agencies;

6 5. The transfer of any employee pursuant to this Section shall be
7 accompanied with the authorized funding for the transferred
8 employee's position by the department or agency from which the
9 employee is being transferred, unless the employee is transferred
10 to an autonomous department or agency;

11 6. The employee shall be provided written notice thirty (30) days
12 prior to the beginning of the pay period in which the employee is
13 to be transferred; *and*

14 7. This Section shall not be used to transfer employees acting in the
15 best interest of the government in reporting or exposing bad
16 business practices, illegal activities, or unofficial conduct by
17 public officials.

18 **Section 7. Preferred Hiring of Government Employees in**
19 **Autonomous Agencies.** Notwithstanding any other provision of law,
20 rule, or regulation, employees of the line departments and agencies of the
21 government of Guam shall have the right of first refusal for classified
22 positions being recruited in all autonomous agencies, departments, and
23 instrumentalities, except those positions being recruited "in-house" within
24 such agency. Such recruitment shall be conducted in a competitive process
25 consistent with the merit system of the government of Guam. The

1 Department of Administration is hereby directed and authorized to
2 develop a rating system for use by the autonomous agencies, departments,
3 and instrumentalities in the filling of such positions. This Section shall be
4 interpreted to mean that employees of the line departments and agencies
5 are preferred for employment. In cases where the autonomous agencies,
6 departments, and instrumentalities opine that there are no qualified
7 applicants found from the line departments and agencies, the Civil Service
8 Commission shall review the applications and render its opinion as to the
9 qualification of the applicants. Should the Civil Service Commission agree
10 with the autonomous agencies, departments or instrumentalities that no
11 qualified applicant exists in the line departments, or agencies, then the
12 Civil Service Commission shall certify that the applicants were not
13 qualified and that the need to recruit from outside government sources
14 exists. The autonomous agencies, departments, or instrumentalities may
15 then commence general recruitment activities.

16 **Section 8. Reduction of Senatorial Salaries.** §1106 of Title 2 of the
17 Guam Code Annotated, is *amended* to read:

18 **"§ 1106. Legislative Compensation and Allowances.**

19 (a) Compensation of each member of *I Liheslaturan*
20 *Guåhan* shall be paid in twenty-six (26) equal installments at the
21 rate per annum of fifty percent (50%) of the annual salary of a
22 judge of the Superior Court; the compensation of the Speaker of
23 *I Liheslaturan Guåhan* shall be paid in twenty-six (26) equal
24 installments at the rate per annum of fifty percent (50%) of the
25 annual salary of the presiding judge of the Superior Court. Such

1 compensation shall be paid out of funds to be appropriated to *I*
2 *Liheslaturan Guåhan*.

3 (b) From the date of enactment of this Subsection (b) and
4 until the end of Fiscal Year 2003, the annual salary of Senators of
5 *I Mina'Bente Siete Liheslaturan Guåhan* shall be based on eighty
6 percent (80%) of the amount as computed according to
7 Subsection (a) of this Section, for a reduction of twenty percent
8 (20%)."

9 **Section 9. *I Maga'lahen Guåhan* and *I Segundo Maga'lahen Guåhan***
10 **Salary Reduction.** From the date of enactment of this Section and until
11 the end of Fiscal Year 2003, *I Maga'lahen Guåhan* and *I Segundo Maga'lahen*
12 *Guåhan*, are authorized to reduce their salaries down to eighty percent (80%)
13 of the current amount authorized by the Civil Service Commission pursuant
14 to the Hay Study, for a maximum reduction of twenty percent (20%)."

15 **Section 10. Mayors and Vice-Mayors Salary Reduction.** § 40109 of
16 Title 5 of the Guam Code Annotated is *amended* to read:

17 "§ 40109. **Compensation.** (a) The compensation of the Chief
18 Mayor, Mayors and Vice-Mayors shall be that provided in 4 GCA §
19 6206.

20 (b) From the date of enactment of this Subsection (b) and
21 until the end of Fiscal Year 2003, the Chief Mayor, Mayors, and Vice-
22 Mayors are authorized to reduce their salaries down to eighty
23 percent (80%) of the amount as computed according to Subsection (a)
24 of this Section, for a maximum reduction of twenty percent (20%)."

1 **Section 11. Attorney General Salary Reduction.** § 30116 of Chapter
2 30, Division 3 of Title 5 of the Guam Code Annotated is *amended* to read:

3 "§ 30116. **Compensation.** (a) The Attorney General shall be
4 compensated in twenty-six (26) equal installments for an annual
5 salary based on ninety percent (90%) of the annual compensation of a
6 judge of the Superior Court of Guam.

7 (b) From the date of enactment of this Subsection (b) and until
8 the end of Fiscal Year 2003, the Attorney General is authorized to
9 reduce his salary down to eighty percent (80%) of the amount as
10 computed according to Subsection (a) of this Section, for a maximum
11 reduction of twenty percent (20%)."

12 **Section 12. Public Auditor Salary Reduction.** § 1907 of Title 1 of the
13 Guam Code Annotated is *amended* to read:

14 "§ 1907. **Deputies and Staff.** (a) Subject to the availability of
15 funds, the Public Auditor may appoint a Deputy Public Auditor, who
16 shall be appointed to serve at the pleasure of the Public Auditor.

17 (b) The salaries of the Public Auditor and her staff shall be
18 fixed by the Civil Service Commission in accordance with the
19 methodology recommended by the Hay Study adopted by *I*
20 *Liheslatura* and effective October 1, 1991, and shall not be diminished
21 during the Public Auditor's term of office.

22 (c) From the date of enactment of this Subsection (c) and
23 until the end of Fiscal Year 2003, the Public Auditor is authorized to
24 reduce her salary down to eighty percent (80%) of the current salary

1 as set by the Civil Service Commission, for a maximum reduction of
2 twenty percent (20%)."

3 **Section 13. Salary Savings to the General Fund.** The Department
4 of Administration is authorized to receive such funds that may result from
5 the reduction of the salaries of *I Maga'lahi* and *I Segundo Maga'lahi*,
6 Attorney General, Public Auditor, Mayors, and Vice-Mayors as authorized
7 by this Act and to deposit said amounts into the General Fund.

8 **Section 14. *I Maga'lahen Guåhan* Special Fund Transfer.**
9 Notwithstanding any other provision of law, *I Maga'lahen Guåhan* is
10 authorized to transfer to the General Fund, from any Special Fund, Trust
11 Fund, and Revolving Fund to supplement the cash obligations of the
12 General Fund, *except* that such authority shall *not* extend to the Tourist
13 Attraction Fund, the Customs Agriculture and Quarantine Inspection
14 Services Fund, and funds under the purview and administered by *I*
15 *Lihselaturan Guåhan*, the Superior Court of Guam, the Supreme Court of
16 Guam or the Public Defender Service Corporation.

17 **Section 15. Judicial Branch Staffing Levels.** Notwithstanding any
18 other provision of law, rule, or regulation, the overall number of full-time
19 equivalent (FTE) positions at the Superior Court of Guam and the Supreme
20 Court of Guam shall not exceed the number of employees in incumbent
21 positions as of January 6, 2003. This provision shall cease to be effective on
22 September 30, 2003.

23 **Section 16. Restrictions on Executive Branch Hiring of**
24 **Unclassified Employees.** Notwithstanding any other provision of law,
25 rule, or regulation, and in recognition of the authority vested in *I*

1 *Maga'lahaen Guåhan* by the Organic Act of Guam, there shall be no
2 employment of or hiring of unclassified employees in the Executive Branch
3 of the government of Guam, except for the following:

- 4 1) Federally funded positions;
- 5 2) Teaching positions at the Department of Education;
- 6 3) Positions at the University of Guam and the Guam Community
7 College;
- 8 4) Nurses, doctors, licensed medical professionals and ancillary
9 help employees necessary for clinical purposes at the
10 Department of Public Health and Social Services, Department
11 of Mental Health & Substance Abuse, the Office of the Chief
12 Medical Examiner, and the Guam Memorial Hospital
13 Authority; and
- 14 5) Department of Labor Survey Workers.

15 This provision does not apply to employees at the Office of *I*
16 *Maga'lahaen Guåhan* and *I Segundo Maga'lahaen Guåhan*, and the
17 appointments of departments or agencies heads and their First Assistants.
18 For the purposes of this Section, a First Assistant is recognized as the
19 Deputy Director of such agency or a private secretary, but not both.

20 **Section 17. Moratorium on Compensation for Boards and**
21 **Commissions.**

22 (a) Notwithstanding any other provision of law, rule, or
23 regulation, and except for the Civil Service Commission, a
24 moratorium is hereby placed on the compensation of appointed
25 members of government boards and commissions for their

1 attendance at hearings or meetings, through the end of Fiscal Year
2 2004.

3 (b) §79106 of Title 12 of the Guam Code Annotated is
4 *amended* to read:

5 "§79106. Compensation. Commissioners shall be
6 compensated at the rate of Eight Hundred Dollars (\$800.00)
7 per month for their services. All funds required for the
8 operations of the Commission shall be obtained by
9 subscription from the Authorities administered by the
10 Commission, pursuant to such formula as the Commission
11 shall devise. Commissioners shall *not* be eligible for
12 government of Guam retirement or insurance benefits, or other
13 benefits associated with government of Guam employment.
14 Commissioners who are government of Guam retirees may
15 serve on the Commission without giving up their retirement
16 benefits."

17 **Section 18. Amendment to Prohibition on Personal Services**
18 **Contracts.** Section 11 of Chapter V of Public Law 26-152 is hereby *amended*
19 to read as follows:

20 "Section 11. Prohibition on Personal Services Contracts.
21 Notwithstanding any other provision of law, no appropriation made
22 in this Act shall be used to fund any *new* Personal Services Contracts.
23 The University of Guam, the Guam Community College, the Superior
24 Court and the Supreme Court of Guam, and licensed health
25 professionals shall be *exempt* from the application of this Section."

1 **Section 19. Furlough and Layoff Procedures.** Notwithstanding any
2 other provision of law, rule or regulation, *I Maga'lahi* is authorized to begin
3 furlough and layoff procedures in accordance with the requirements of this
4 Section. The Personnel Rules and Regulations of any Government of Guam
5 departments, bureaus or agencies which includes autonomous agencies or
6 other instrumentalities of the Executive Branch of the government of
7 Guam, but excludes the University of Guam and the Guam Community
8 College, shall be followed subject to the following:

9 (a) The written notice procedures contained in the Personnel
10 Rules and Regulations for furloughs and layoffs shall be for thirty
11 (30) days.

12 (b) The government shall pay for both government and
13 employee health insurance contributions during any period of
14 furlough only when the employee is certified to have family income
15 at or below the Department of Public Health & Social Services'
16 Medically Indigent Program Income Eligibility Level for the specific
17 household size.

18 (c) Employees with some form of income (e.g., spouse's
19 income, part-time or full-time job, etc.) during the furlough period
20 shall be required to pay for the employee's contribution only, of the
21 health plan premium, provided that income is greater than the
22 Department of Public Health & Social Services' Medically Indigent
23 Program Income Eligibility Level for the specific household size.
24 Employees who wish to continue their life insurance benefits shall be
25 required to pay for the premium for supplemental plans only. The

1 employee shall continue to be fully covered for the basic life
2 insurance while on furlough.

3 (d) Upon furlough of identified personnel, any
4 appropriations to such agency in excess of actual personnel costs and
5 the cost for continuing health care benefits shall be reverted to the
6 original funding source.

7 (e) Furloughed employees shall be recalled according to
8 need, classification, or ability to do the job based on retention
9 standing points. The recall notice shall be sent by registered mail,
10 return receipt requested, to the current home address furnished by
11 the employee. It is solely the responsibility of the employees' to
12 ensure that the agency has their current home address.

13 (f) Unless and until made available to the furloughed
14 employee, any position affected by furlough shall only be filled by
15 the incumbent, provided the incumbent wishes to return and
16 responds to the recall in conformance with Personnel Rules and
17 Regulations, *however*, such incumbent may be displaced in
18 accordance with employees' retention standing points.

19 (g) Employees returning from furlough shall be paid the
20 same salary as before they were furloughed. Any unused sick leave
21 or annual leave accrued prior to the furlough shall be reinstated. All
22 employment benefits shall be restored at the same rate as before the
23 furlough and subject to all amendments or changes to benefits that
24 may be in effect upon the recall date.

1 (h) Upon separation of personnel identified for layoff, each
2 vacated position shall be automatically eliminated.

3 **Section 20. Government Unfunded, Liability Amortization Cost**
4 **Amendment.** §8137(b) of Article 1 of Chapter 8 of Title 4, Guam Code
5 Annotated, is hereby *amended* to read as follows:

6 “(b) **Government Unfunded, Liability Amortization Cost.**

7 An amount resulting from the application of a rate percent of total
8 salaries of all members which will amortize the remaining liability for
9 prior service over a period of eighty (80) years following May 1, 1951.
10 From July 1, 1955, to August 30, 1972, the rate of contribution shall be
11 not less than one and three hundred seventeen thousandths percent
12 (1.317%) of the total salaries of the members participating in the
13 Fund. From September 1, 1972, the rate of contributions shall be not
14 less than one and four hundred and seven thousandths percent
15 (1.407%) of the total salaries of the members participating in the
16 Fund. From the beginning of the first full pay period following the
17 beginning of the 1992 fiscal year, the rate of contribution shall be
18 equal to thirteen and six hundred sixty-five thousandths percent
19 (13.665%) of the total salaries of the members participating in the
20 Fund. From October 1, 1993, the rate of contribution shall be equal to
21 the Government Unfunded Liability Amortization Cost rate percent
22 determined in the latest completed actuarial valuation prepared for
23 the Board of Trustees by the actuary appointed by the Board, subject
24 to the approval by *I Liheslaturan Guåhan* by legislation. From March
25 1, 2003, until the next completed actuarial valuation prepared for the

1 Board of Trustees by the actuary appointed by the Board, the rate of
2 contribution shall be eighteen percent (18%) of the total salaries of the
3 members participating in the Fund. Thereafter, the contribution shall
4 be equal to the Government Unfunded Liability Amortization Cost
5 rate percent prepared for the Board of Trustees by the actuary
6 appointed by the Board, subject to approval by *I Liheslaturan Guåhan*
7 by legislation, which will amortize the remaining liability for prior
8 service for the full period authorized herein.

9 The amount of contributions by the Government shall be
10 determined by applying the applicable percentage rate of
11 contributions as hereinabove prescribed to the total salaries paid to
12 the members during each payroll period, and all such amounts shall
13 be paid into the Fund following the close of each payroll period,
14 concurrently with the contributions made to the Fund by the
15 members. For purposes of this Section, the term total salaries of
16 members shall be interpreted to include Base Pay, as defined in 4
17 GCA § 8301(l), of members participating in the Government Defined
18 Contribution System."

19 **Section 21. Cost Containment Measures.** Section 2 of Chapter IV of
20 Public Law 26-152 is hereby *amended* to read as follows:

21 "Section 2. **Repeal and Reenactment of §8137(e) of**
22 **Article 1, Chapter 8 of Title 4 of the Guam Code Annotated.**
23 §8137(e) of Article 1, Chapter 8 of Title 4 of the Guam Code
24 Annotated is *repealed and reenacted* to read as follows:

1 “(e) From October 1, 2000, the Government rate of
2 contribution for agencies receiving appropriations from *I*
3 *Liheslaturan Guåhan* and for Federally funded programs
4 shall equal 18.6%. From October 1, 2001, the government
5 rate of contribution for agencies receiving appropriations
6 from *I Liheslaturan Guåhan* and for Federally funded
7 programs shall equal 85% of the sum of the contribution
8 rates required under §§ 8137(a) and 8137(b) up to a
9 *maximum* of 19.8016%. From October 1, 2002, the
10 Government rate of contribution for agencies receiving
11 appropriations from *I Liheslaturan Guåhan* and for
12 Federally funded programs shall equal twenty-six percent
13 (26.0%). From March 1, 2003, the Government rate of
14 contribution for agencies receiving appropriations from *I*
15 *Liheslaturan Guåhan* and for Federally funded programs
16 shall equal eighteen percent (18%) and thereafter shall be
17 one hundred percent (100%) of the sum of the
18 contribution rates required under §8137(a) and adopted
19 by the Board pursuant to §8137(b).

20 From October 1, 2000, the government rate of
21 contribution for autonomous agencies not receiving
22 appropriations from *I Liheslaturan Guåhan* shall equal one
23 hundred percent (100%) of the sum of the contribution
24 rates required under §§ 8137(a) and 8137(b) up to a
25 maximum of twenty-one percent (21%). From October 1,

1 2002, the government rate of contribution for autonomous
2 agencies not receiving appropriations from *I Liheslaturan*
3 *Guåhan* shall equal one hundred percent (100%) of the
4 sum of the contribution rates required under §§ 8137(a)
5 and 8137(b) up to a maximum of twenty-six percent
6 (26%). From March 1, 2003, the government rate of
7 contribution for autonomous agencies not receiving
8 appropriations from *I Liheslaturan Guåhan* shall be
9 eighteen percent (18%), and thereafter shall equal to one
10 hundred percent (100%) of the sum of the contribution
11 rates required under §8137(a) and adopted by the Board
12 pursuant to §8137(b)."

13 **Section 22. Retirement Fund Board Composition.** §8138(b) of
14 Chapter 8 of Title 4, GCA is hereby *amended* to read as follows:

15 “(b) Two (2) of *I Maga’lahen Guåhan’s* appointees to the board
16 of Trustees shall be from the private sector and one (1) appointee
17 shall be a member of the classified service of the government of
18 Guam.”

19 **Section 23. Additions to Retirement Annuity.** §8122(d)(1) of
20 Article 1 of Chapter 8 of Title 4, Guam Code Annotated, is hereby *amended*
21 to read as follows:

22 “(d) Additions to Recomputed Annuities. The recomputed
23 retirement annuity set forth in Subsection (c) shall be subject to any of the
24 following applicable non-cumulative additions:

1 (1) any member who commenced receiving a retirement
2 annuity prior to October 1, 1995, and who is entitled to benefits
3 under this Chapter, shall receive, during the fiscal years
4 commencing on October 1, 2002, and ending on February 28,
5 2003, an additional Four Thousand Two Hundred Thirty-Eight
6 Dollars (\$4,238.00), to replace the amount known as the sum of
7 the One Thousand Two Hundred Dollars (\$1,200.00), One
8 Thousand Five Hundred Dollar (\$1,500.00), Seven Hundred
9 Dollars (\$700.00), and Eight Hundred Thirty-Eight Dollars
10 (\$838.00) supplemental annuity benefits formerly contained in
11 various General Appropriation Acts."

12 **Section 24. Additions to Survivor Annuity.** §8135(d)(1) of Article 1
13 of Chapter 8 of Title 4, Guam Code Annotated is hereby *amended* to read as
14 follows:

15 "(1) Any survivor annuitant who commenced receiving a
16 survivor annuity prior to October 1, 1995, shall receive, during the
17 fiscal years commencing on October 1, 2002, and ending on February
18 28, 2003, an additional Four Thousand Two Hundred Thirty-Eight
19 Dollars (\$4,238.00) to replace the amount known as the sum of the
20 One Thousand Two Hundred Dollar (\$1,200.00), One Thousand Five
21 Hundred Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00), and
22 Eight Hundred Thirty-Eight Dollars (\$838.00) supplemental annuity
23 benefits formerly contained in various General Appropriation Acts."

1 **Section 25. Additions to Disability Retirement Annuity.** §8129(b)
2 of Article 1 of Chapter 8 of Title 4, Guam Code Annotated is hereby
3 *amended* to read as follows:

4 “(b) Any disability retirement annuitant who
5 commenced receiving a disability retirement annuity prior to
6 October 1, 1995, and who is entitled to disability retirement
7 benefits under this Chapter shall receive, during the fiscal years
8 commencing on October 1, 2002 and ending on February 28,
9 2003, an additional Four Thousand Two Hundred Thirty-Eight
10 Dollars (\$4,238.00), to replace the sum known as the One
11 Thousand Two Hundred Dollars (\$1,200.00), One Thousand
12 Five Hundred Dollars (\$1,500.00), Seven Hundred Dollar
13 (\$700.00), and Eight Hundred Thirty-Eight Dollars (\$838.00)
14 supplemental annuity benefits formerly contained in various
15 General Appropriation Acts.”

16 **Section 26. Survivor Sliding Scale Annuity Additions.** Add a new
17 item (5) to subsection (d) of 4 GCA §8135 to read:

18 (5) the prospective payment of supplemental benefits for the
19 period March 1, 2003, through September 30, 2003, for survivors of
20 those employees who retired prior to October 1, 1995, to be paid in
21 the following manner:

22 (i) Two Thousand Four Hundred Seventy-Two
23 (\$2,472.00) in Class 1 Retiree Supplemental Annuity Benefits,
24 known as the sum of One Thousand Two Hundred Dollars
25 (\$1,200.00), One Thousand Five Hundred Dollars (\$1,500.00),

1 Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-
2 Eight Dollars (\$838.00) in *annual* benefits formerly contained in
3 various General Appropriation Acts, for survivors of those
4 employees who retired as of October 1, 1977.

5 (ii) One Thousand Seven Hundred Seventy-Two
6 (\$1,772.00) in prospective Class 2 Retiree Supplemental Annuity
7 Benefits comprised of the sum of One Thousand Five Hundred
8 Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight
9 Hundred Thirty-Eight Dollars (\$838.00) in *annual* annuity
10 benefits formerly contained in various General Appropriation
11 Acts, for survivors of those employees who retired between
12 October 2, 1977, and October 1, 1980.

13 (iii) One Thousand Three Hundred Sixty-Four Dollars
14 (\$1,364.00) in Class 3 Retiree Supplemental Annuity Benefits,
15 comprised of the sum of One Thousand Five Hundred Dollars
16 (\$1,500.00), and Eight Hundred Thirty-Eight Dollars (\$838.00)
17 in *annual* annuity benefits formerly contained in various
18 General Appropriation Acts, for survivors of those employees
19 who retired between October 2, 1980 and October 1, 1982.

20 (iv) Eight Hundred Seventy-Five Dollars (\$875.00) in
21 Class 4 Retiree Supplemental Annuity Benefits, composed of
22 the sum of One Thousand Five Hundred Dollars (\$1,500.00) in
23 *annual* annuity benefits, formerly contained in various General
24 Appropriation Acts, for survivors of those employees who
25 retired between October 2, 1982, and October 1, 1995.

1 (v) No persons eligible for Class 1, 2, 3 or 4 Retiree
2 Supplemental Annuity Benefits provided for in paragraph (5)
3 of this Section shall receive such benefit if their regular *annual*
4 retirement annuity prior to the supplemental amounts herein is
5 more than Forty Thousand Dollars (\$40,000.00). Persons
6 eligible for Class 1, 2, 3, or 4 Retiree Supplemental Annuity
7 Benefits shall only receive an amount of such benefits up to the
8 total aggregate sum of Forty Thousand Dollars (\$40,000.00) in
9 combined retirement annuities and supplemental retirement
10 annuities and not more."

11 **Section 27. Disability Sliding Scale Annuity Additions.** Add a
12 new Subsection (f) to 4 GCA §8129 to read as follows:

13 "(f) Any disability retirement annuitant who commenced
14 receiving a disability retirement annuity prior to October 1, 1995, and
15 who is entitled to disability retirement benefits under this Chapter
16 shall receive, during the period commencing on March 1, 2003, and
17 ending on October 28, 2003, prospective non-cumulative
18 supplemental annuity benefits as follows:

19 (i) Two Thousand Four Hundred Seventy-Two
20 (\$2,472.00) in Class 1 Retiree Supplemental Annuity Benefits,
21 known as the sum of One Thousand Two Hundred Dollars
22 (\$1,200.00), One Thousand Five Hundred Dollars (\$1,500.00),
23 Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-
24 Eight Dollars (\$838.00) in *annual* benefits formerly contained in

1 various General Appropriation Acts, for those employees who
2 retired as of October 1, 1977.

3 (ii) One Thousand Seven Hundred Seventy-two
4 (\$1,772.00) in Class 2 Retiree Supplemental Annuity Benefits
5 comprised of the sum of One Thousand Five Hundred Dollars
6 (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight
7 Hundred Thirty-Eight Dollars (\$838.00) in *annual* annuity
8 benefits formerly contained in various General Appropriation
9 Acts, for those employees who retired between October 2, 1977,
10 and October 1, 1980.

11 (iii) One Thousand Three Hundred Sixty-Four Dollars
12 (\$1,364.00) in Class 3 Retiree Supplemental Annuity Benefits,
13 comprised of the sum of One Thousand Five Hundred Dollars
14 (\$1,500.00), and Eight Hundred Thirty-Eight Dollars (\$838.00)
15 in *annual* annuity benefits formerly contained in various
16 General Appropriation Acts, for those employees who retired
17 between October 2, 1980, and October 1, 1982.

18 (iv) Eight Hundred Seventy-Five Dollars (\$875.00) in
19 Class 4 Retiree Supplemental Annuity Benefits, composed of
20 the sum of One Thousand Five Hundred Dollars (\$1,500.00) in
21 *annual* annuity benefits, formerly contained in various General
22 Appropriation Acts, for those employees who retired between
23 October 2, 1982, and October 1, 1995, or their survivors.

24 (v) No persons eligible for Class 1, 2, 3 or 4 Retiree
25 Supplemental Annuity Benefits provided for in paragraph (f) of

1 this Section shall receive such benefit if their regular *annual*
2 retirement annuity prior to the supplemental amounts herein is
3 more than Forty Thousand Dollars (\$40,000.00). Persons
4 eligible for Class 1, 2, 3, or 4 Retiree Supplemental Annuity
5 Benefits shall only receive an amount of such benefits up to the
6 total aggregate sum of Forty Thousand Dollars (\$40,000.00) in
7 combined retirement annuities and supplemental retirement
8 annuities and not more."

9 **Section 28. Sliding Scale Annuity Additions.** Add a new item (5) to
10 4 GCA §8122(d) to read as follows:

11 "(5) Any retirement annuitant who commenced receiving a
12 retirement annuity prior to October 1, 1995, and who is entitled to
13 retirement benefits under this Chapter shall receive, during the
14 period commencing on March 1, 2003, and ending on October 28,
15 2003, prospective, non-cumulative supplemental annuity benefits as
16 follows:

17 (i) Two Thousand Four Hundred Seventy-Two
18 (\$2,472.00) in Class 1 Retiree Supplemental Annuity Benefits,
19 known as the sum of One Thousand Two Hundred Dollars
20 (\$1,200.00), One Thousand Five Hundred Dollars (\$1,500.00),
21 Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-
22 Eight Dollars (\$838.00) in *annual* benefits formerly contained in
23 various General Appropriation Acts, for those employees who
24 retired as of October 1, 1977.

1 (ii) One Thousand Seven Hundred Seventy-Two
2 Dollars (\$1,772.00) in Class 2 Retiree Supplemental Annuity
3 Benefits comprised of the sum of One Thousand Five Hundred
4 Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight
5 Hundred Thirty-Eight Dollars (\$838.00) in *annual* annuity
6 benefits formerly contained in various General Appropriation
7 Acts, for those employees who retired between October 2, 1977,
8 and October 1, 1980.

9 (iii) One Thousand Three Hundred Sixty-Four Dollars
10 (\$1,364.00) in Class 3 Retiree Supplemental Annuity Benefits,
11 comprised of the sum of One Thousand Five Hundred Dollars
12 (\$1,500.00), and Eight Hundred Thirty-Eight Dollars (\$838.00)
13 in *annual* annuity benefits formerly contained in various
14 General Appropriation Acts, for those employees who retired
15 between October 2, 1980, and October 1, 1982.

16 (iv) Eight Hundred Seventy-Five Dollars (\$875.00) in
17 Class 4 Retiree Supplemental Annuity Benefits, composed of
18 the sum of One Thousand Five Hundred Dollars (\$1,500.00) in
19 *annual* annuity benefits, formerly contained in various General
20 Appropriation Acts, for those employees who retired between
21 October 2, 1982 and October 1, 1995, or their survivors.

22 (v) No persons eligible for Class 1, 2, 3 or 4 Retiree
23 Supplemental Annuity Benefits provided for in paragraph (5)
24 of this Section shall receive such benefit if their regular *annual*
25 retirement annuity prior to the supplemental amounts herein is

1 more than Forty Thousand Dollars (\$40,000.00). Persons
2 eligible for Class 1, 2, 3, or 4 Retiree Supplemental Annuity
3 Benefits shall only receive an amount of such benefits up to the
4 total aggregate sum of Forty Thousand Dollars (\$40,000.00) in
5 combined retirement annuities and supplemental retirement
6 annuities and not more."

7 **Section 29. Guam Visitors Bureau Transfer Authority.** The Guam
8 Visitors Bureau is hereby authorized transfer authority over the monies
9 appropriated herein and set forth in Appendix A at a rate not greater than
10 fifteen percent (15%) of the appropriation. Such transfer authority shall be
11 restricted to transfers from the Personnel Services category to Operations
12 and shall not permit transfers into the Personnel Services category.

13 **Section 30. Authorization to Use Credits for Sports Tourism Events.**
14 Notwithstanding any other provision of law, the Guam Racing Federation
15 is authorized to use up to twenty percent (20%) of its annual Gross Receipts
16 Tax credit limit as authorized by Public Law 24-141, as *amended*, for costs
17 associated with special racing events promoting sports tourism. The total
18 amount of credits for such sports tourism events and track construction
19 shall not exceed the limits set by Section 2 of Public Law 26-37.
20 Notwithstanding any other provision of law, such Gross Receipts Tax
21 credits authorized *supra* for sports tourism events may be used by Guam
22 businesses to cover costs associated with such event.

23 **Section 31. Privatization of DOE Cafeteria and Facility**
24 **Maintenance Services.**

1 (a) Within 60 days from the enactment of this Section, the
2 Superintendent of Education shall issue a Request for Proposal (RFP)
3 for the privatization of the cafeteria services within the Department
4 of Education. The award for this RFP shall be made no later than
5 August 1, 2003.

6 (b) Within 60 days from the enactment of this Section, the
7 Superintendent of Education shall issue a RFP for the privatization of
8 the facility maintenance services within the Department of Education.
9 The award for this RFP shall be made no later than August 1, 2003.

10 (c) No funds may be expended by the Department of
11 Education for cafeteria services or facility maintenance services after
12 August 1, 2003, unless the provisions of subsections (a) and (b) of this
13 Section are met.

14 (d) The issuance and award of the RFPs authorized herein
15 shall be in conformance with all applicable procurement laws and
16 regulations of Guam.

CHAPTER V.

REVENUE ENHANCEMENTS.

Section 1. Excise Tax on Alcoholic Beverages. Amendment of §26302 of Article 3, Chapter 26, Division 2 of Title 11 of the Guam Code Annotated. Notwithstanding any other provision of law, §26302 of Article 3, Chapter 26, Division 2 of Title 11 of the Guam Code Annotated is hereby amended to read as follows with said amendment to take effect on May 1, 2003:

“§26302. Excise Tax on Alcoholic Beverages. An excise tax is imposed upon all alcoholic beverages (except alcoholic beverages manufactured in Guam) sold in Guam by manufacturer, manufacturer’s agents, rectifiers or wholesalers or sellers of alcoholic beverages selling alcoholic beverages with respect to which no tax has been paid within areas of which the Federal government exercises jurisdiction at the following rates:

(a) Malted Fermented Beverage. A tax in the amount of Seven Cents (\$0.07) per each twelve (12) fluid ounces or fraction thereof on all malted fermented beverages to be applied to the measure of the container in which it is offered for sale.

(b) Distilled Beverages. A tax in the amount of Eighteen Dollars (\$18.00) per gallon on all distilled beverages to be applied to the measure of the container in which it is offered for sale; provided further that any fraction of One Cent (\$0.01) shall be taken as a whole cent.

1 (c) **Vinous Beverages.** A tax at the rate of Four Dollars
2 and Ninety-Five Cents (\$4.95) per wine gallon on all vinous
3 beverages to be applied to the measure of the container in
4 which it is offered for sale; provided, however, that the tax
5 levied by this Section shall be prorated in units of measure less
6 than one (1) gallon; and provided further, that any fraction of
7 One Cent (\$0.01) shall be taken as a whole cent.

8 (d) **Creation of Safe Homes, Safe Streets Fund.** There
9 is hereby created in the Department of Administration a fund,
10 separate and apart from other funds of the government of
11 Guam, known as the 'Safe Homes, Safe Streets Fund.' This
12 Fund shall not be commingled with the General Fund and shall
13 be kept in a separate bank account. The Safe Homes, Safe
14 Streets Fund shall be expended on public safety and social
15 programs that enforce alcohol regulations, reduce underage
16 drinking, support traffic safety, reduce drug-related violence
17 and abuse, and/or support community-based drug and
18 substance abuse prevention programs at the Guam Police
19 Department, the Department of Education, the Department of
20 Public Health and Social Services, the Department of Youth
21 Affairs, the Department of Mental Health and Substance Abuse
22 and other agencies deemed appropriate by *I Liheslaturan*
23 *Guåhan*. All expenditures of the Safe Homes, Safe Streets Fund
24 shall be by appropriation by *I Liheslaturan Guåhan*. The
25 Department of Administration shall report on a quarterly basis

1 to the Speaker of *I Liheslaturan Guåhan* the revenues collected
2 and expended from this Fund.

3 (e) **Distribution of Excise Tax on Alcoholic Beverages.**

4 Fifty percent (50%) of all proceeds from taxes collected under
5 this Section shall be deposited in the Safe Homes, Safe Streets
6 Fund. All remaining proceeds from taxes collected under this
7 Section will be deposited in the Healthy Futures Fund.”

8 **Section 2. Tobacco Tax Rates.** Amendment of §26603 of Article 6,
9 Chapter 26, Division 2 of Title 11 of the Guam Code Annotated.
10 Notwithstanding any other provision of law, §26603 of Article 6, Chapter
11 26, Division 2 of Title 11 of the Guam Code Annotated is hereby *repealed*
12 and *reenacted* to read as follows with said amendment to take effect on May
13 1, 2003:

14 “§26603. Rates. The following rates shall apply in
15 computing, assessing and collecting Tobacco Tax:

16 (a) **Cigarettes.** A tax at the rate of Five Dollars (\$5.00)
17 per one hundred (100) cigarettes to be prorated in accordance
18 with the number of cigarettes contained in the individual
19 package taxed.

20 (b) **Cigars.** The tax rates for cigars shall be based on
21 the following sizes:

22 1. Mini Cigars: Twenty Cents (\$0.20) Per Cigar.

23 Mini Cigars are defined as cigars with a ring size of forty
24 (40) or less, or a length of less than four and one-half

1 inches (4.5"), regardless of ring size as specified by the
2 manufacturer's label.

3 2. Standard Cigars: Twenty-Two Cents (\$0.22)
4 Per Cigar. Standard Cigars are defined as cigars with a
5 ring size of more than forty (40), but less than sixty-four
6 (64) as specified by the manufacturer's label.

7 3. Large Cigars: Twenty-Five Cents (\$0.25) Per
8 Cigar. Large Cigars are defined as cigars with a ring size
9 of more than sixty-four (64), or a length of more than
10 eight inches (8"), regardless of the ring size as specified by
11 the manufacturer's label.

12 4. Where no ring size or length is specified by
13 the manufacturer's label, the tax shall be Twenty-Two
14 Cents (\$0.22) per cigar. For purposes of this Section, ring
15 size shall be defined as the usually accepted measure
16 used by cigar manufacturers for determining the
17 diameter of cigar at its widest point. A ring size of one (1)
18 is equal to one sixty-fourth (1/64) of an inch.

19 (c) **Other Tobacco Products.** A tax at the rate of Three
20 Dollars and Fifty Cents (\$3.50) per pound for all other tobacco
21 products to be prorated in accordance with the size of the
22 package to be taxed.

23 (d) **Creation of Healthy Futures Fund.** There is hereby
24 created in the Department of Administration a fund, separate
25 and apart from other funds of the government of Guam, known

1 as the 'Healthy Futures Fund.' This Fund shall not be
2 commingled with the General Fund and shall be kept in a
3 separate bank account. All proceeds from taxes collected under
4 this Section shall be deposited in the Healthy Futures Fund and
5 shall be expended for health and education programs relating
6 to tobacco and alcohol prevention, cessation, treatment, control
7 and to improving overall health and well-being at the
8 Department of Health and Social Services, the Department of
9 Mental Health and Substance Abuse, the Department of
10 Education, the Guam Memorial Hospital, the Department of
11 Youth Affairs and other agencies deemed appropriate by *I*
12 *Liheslaturan Guåhan*. Preference will be given to programs
13 directed towards youth, low-income or at-risk persons and
14 families, drug and substance prevention, cessation, and
15 treatment, preventative health care, and chronic disease
16 management. All expenditures of the Healthy Futures Fund
17 shall be made by legislative appropriation. The Department of
18 Administration shall report on a quarterly basis to the Speaker
19 of *I Liheslaturan Guåhan* the revenues collected and expended
20 from this Fund."

21 **Section 3. Increase in Vehicle Registration Fee.** Notwithstanding
22 any other provision of law, Subsection (b) of 16 GCA §7161 is hereby
23 *amended* to read as follows:

24 "(b) In addition to all other fees imposed by law, an
25 additional Twenty-Five Dollars (\$25.00) annual fee is imposed

1 upon any vehicle subject to registration under this Title which
2 shall be deposited in the Treasury of Guam to the credit of the
3 Abandoned Vehicle and Street Light Fund. This fee shall be
4 collected at the same time and in the same manner as the
5 annual license and registration fee provided for in this Title.”

6 **Section 4. Increase in Vehicle Registration Fee after April 1, 2003.**

7 A new subsection (c) is hereby *added* to 16 GCA §7161 to read:

8 “(c) Effective April 1, 2004, the fee established in the
9 preceding subsection shall be amended and increased by
10 Fifteen Dollars (\$15.00), to be adjusted to a total of Forty
11 Dollars (\$40.00), with the proceeds to be deposited in said
12 Fund.”

13 **Section 5. Tracking of Government of Guam General Fund**
14 **Revenues and Expenditures for Fiscal Year 2003.** *I Maga’lahen Guåhan*
15 shall provide the Speaker and the Chairman of the Committee on
16 Appropriations and Budgeting, General Governmental Operations,
17 Reorganization and Reform of *I Liheslaturan Guåhan* a written report on the
18 revenues and expenditures of the General Fund and Special Funds within
19 fifteen (15) days upon the conclusion of every quarter within the Fiscal
20 Year and shall also provide a written schedule of cash flows and
21 disbursements from the General Fund and Special Funds within five (5)
22 working days after the end of each month within the Fiscal Year.

23 **Section 6. Increase in Gross Receipts Tax Rates.**

24 (a) Notwithstanding any other provision of law, the four
25 percent (4%) gross receipts tax rate contained in 11 GCA §26202

1 (a),(c),(d),(e),(f),(g),(h), (i), and (j) shall be *amended* to six percent (6%),
2 effective April 1, 2003. This Section shall cease to be effective after
3 September 30, 2005, at which time the rate shall revert to four percent
4 (4%).

5 (b) Not less than six (6) months prior to September 30, 2005, *I*
6 *Maga'lahaen Guåhan* shall submit a plan to *I Liheslaturan Guåhan* on the
7 deletion of the Gross Receipts or Business Privilege Tax, and the
8 implementation of a sales tax or other tax.

9 (c) The first paragraph of 11 GCA §26202(f) shall be *amended*
10 to read: "Tax on banks, banking institutions, small lenders and
11 building and loan associations. Upon every person engaging or
12 continuing within Guam in the business of operating any bank,
13 banking institutions, building and loan association, small lending
14 business, or lending institutions, there shall be a tax equivalent to
15 four percent (4%) of the net income received from business."

16 **Section 7. Reduction of Gross Receipt Tax Exemptions.**

17 Notwithstanding any other provision of law, the Fifty Thousand Dollars
18 (\$50,000.00) exemptions contained in items (9), (28), (29), (30), (31), and (32)
19 of 11 GCA §26203(k) are reduced to Thirty-Five Thousand Dollars
20 (\$35,000.00) effective April 1, 2003. In addition, the Five Hundred
21 Thousand Dollars (\$500,000.00) recent tax year caps contained in the same
22 items are decreased to Three Hundred Thousand Dollars (\$300,000.00)
23 effective April 1, 2003.

1 This Section shall cease to be effective after September 30, 2005, at
2 which time the original Fifty Thousand (\$50,000.00) and Five Hundred
3 Thousand (\$500,000.00) amounts are restored.

4 **Section 8. Use Tax Amendment.** §28104 of Chapter 28 of Title 11,
5 Guam Code Annotated, is hereby *amended* to read:

6 “§28104. Rate of Tax. The rate of the tax hereby imposed shall
7 be four percent (4%). Effective April 1, 2003, the rate of the tax
8 hereby imposed shall be six percent (6%) until September 30, 2005, at
9 which time the rate shall revert to four percent (4%).”

10 **Section 9. Severability.** *If* any provision of this Act or its
11 application to any person or circumstance is found to be invalid or contrary
12 to law, such invalidity shall *not* affect other provisions or applications of
13 this Act which can be given effect without the invalid provisions or
14 application, and to this end the provisions of this Act are severable.

APPENDIX A

Personnel Costs (Mar. 01 - Sep. 30, 2003)				Total
Agency	General Fund	Special Fund	Personnel Costs (C+D)	
	C	D	E	
1 Administration	3,346,484	155,289	3,501,773	
2 Agriculture	1,238,225	654,445	1,892,670	
3 Ancestral Lands Commission	112,154	-	112,154	
4 Bureau of Budget & Mgmt Research	634,965	-	634,965	
5 Bureau of Statistics & Plans	675,042	-	675,042	
6 Guam Council on the Arts & Humanities	120,994	-	120,994	
7 Chamorro Affairs	285,302	-	285,302	
8 Chamorro Land Trust Commission	-	302,207	302,207	
9 Chief Medical Examiner	158,234	-	158,234	
10 Civil Service Commission	534,667	-	534,667	
11 Guam Economic Dev. & Commerce Auth.	113,460	-	113,460	
12 Commission on Decolonization	56,933	-	56,933	
13 Contractors License Board	-	120,123	120,123	
14 Corrections**	3,903,673	-	3,903,673	
15 Customs & Quarantine	-	2,754,393	2,754,393	
16 DISID	149,277	-	149,277	
17 Education	73,936,071	-	73,936,071	
18 Guam Fire Department**	9,466,585	320,884	9,787,469	
19 Guam Environmental Protection Agency	300,000	-	300,000	
20 Guam Election Commission	134,144	-	134,144	
21 Guam Visitors Bureau	-	928,635	928,635	
22 Guam Educ. Tele. Corp. (KGTF)	199,667	-	199,667	
23 Labor	799,569	147,031	946,600	
24 Land Management	1,128,514	37,594	1,166,108	
25 Law	2,264,922	-	2,264,922	
26 Library	406,601	-	406,601	
27 Mental Health & Substance Abuse**	2,041,142	-	2,041,142	
28 Military Affairs	297,486	-	297,486	
29 Parks & Recreations	1,768,819	339,039	2,107,858	
30 PEALS Board	-	47,349	47,349	
31 Police**	7,222,297	364,252	7,586,549	
32 Public Defender Service	1,233,174	-	1,233,174	
33 Public Guardian	79,097	-	79,097	
34 Public Health & Social Services	4,965,695	-	4,965,695	
35 Public Works	6,450,318	3,039,758	9,490,076	
36 Revenue & Taxation	3,116,997	-	3,116,997	
37 Superior Court of Guam	8,730,000	-	8,730,000	
38 Supreme Court of Guam	1,094,430	-	1,094,430	
39 Youth Affairs**	1,506,932	-	1,506,932	
TOTALS	\$ 138,471,870	\$ 9,210,999	\$ 147,682,869	
**Night differential cost removed.				

Appendix A (Continued)

Special Funds Category:

- 1) Department of Administration: Guam Highway Fund
- 2) Department of Agriculture: Customs, Agriculture & Quarantine Inspection Services Fund
- 8) Chamorro Land Trust Commission: Chamorro Land Trust Fund
- 13) Contractors License Board: Contractors License Board Fund
- 15) Customs & Quarantine: Customs, Agriculture & Quarantine Inspection Services Fund
- 18) Guam Fire Department: Enhanced 911 Emergency Reporting System Fund
- 21) Guam Visitors Bureau: Tourist Attraction Fund
- 23) Department of Labor: Manpower Development Fund
- 24) Department of Land Management: Land Survey Revolving Fund
- 29) Department of Parks & Recreation: Parks Fund
- 30) PEALS Board: Professional Engineers, Architects and Land Surveys Board Fund
- 31) Guam Police Department: Police Services Fund
- 35) Department of Public Works: Solid Waste Fund; Guam Highway Fund; Abandoned Vehicle & Streetlight Fund

APPENDIX B

	FY2003 Adjusted Operations Cost	P.L. 26-152	10% Reduction	Adjusted Amount for
Agency	Operations Cost	Amount	Amount	Operations FY2003
	(less) Utilities	(C*.10)		(C-D+Utilities)
	General Fund			General Fund
	C	D		E
1 Administration	353,572	35,357		412,845
2 Agriculture	44,650	4,465		102,381
3 Ancestral Lands Commission	55,749	5,575		65,844
4 Bureau of Budget & Mgmt Research	34,533	3,453		41,256
5 Bureau of Statistics & Plans	19,184	1,918		32,296
6 Guam Council on the Arts & Humanities	7,125	713		15,075
7 Chamorro Affairs	65,370	6,537		120,273
8 Chamorro Land Trust Commission	-	-		-
9 Chief Medical Examiner	26,885	2,689		26,267
10 Civil Service Commission	28,595	2,860		46,136
11 Guam Economic Dev. & Commerce Auth.	59,850	5,985		103,506
12 Commission on Decolonization	48,260	4,826		46,224
13 Contractors License Board	-	-		-
14 Corrections	2,398,906	239,891		2,918,065
15 Customs & Quarantine	-	-		-
16 DISID	1,418,439	141,844		1,303,335
17 Education*	4,514,396	-		4,514,396
18 Guam Fire Department	306,642	30,664		446,978
19 Guam Environmental Protection Agency	29,969	2,997		49,672
20 Guam Election Commission	444,021	44,402		412,611
21 Guam Visitors Bureau	-	-		-
22 Guam Educ. Tele. Corp. (KGTF)	37,798	3,780		61,218
23 Labor	83,125	8,313		153,448
24 Land Management	11,780	1,178		115,323
25 Law	905,688	90,569		841,219
26 Library	129,117	12,912		212,740
27 Mental Health & Substance Abuse	369,648	36,965		590,136
28 Military Affairs	175,158	17,516		239,784
29 Parks & Recreations	188,140	18,814		858,326
30 PEALS Board	-	-		-
31 Police	1,510,774	151,077		1,879,697
32 Public Defender Service	60,800	6,080		72,720
33 Public Guardian	37,905	3,791		39,815
34 Public Health & Social Services	10,846,214	1,084,621		10,542,336
35 Public Works	1,383,211	138,321		1,753,018
36 Revenue & Taxation	780,825	78,083		913,243
37 Superior Court of Guam	2,571,979	257,198		2,899,053
38 Supreme Court of Guam	206,264	20,626		199,948
39 Youth Affairs	91,675	9,168		126,642
TOTALS	\$ 29,246,247	\$ 2,473,185	\$	\$ 32,155,822

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I MINA' BENTE SIETE NA LIHESLATURAN GUAHAN

2003 (FIRST) Regular Session

Date: 2/28/03

VOTING SHEET

S Bill No. 42(COE)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.		✓			
CUNLIFFE, F. Randall	11 ✓				
FERNANDEZ, Dr. Carmen	✓				
FORBES, Mark	11	✓			
KASPERBAUER, Lawrence F.	11	✓			
KLITZKIE, Robert		✓			
LEON GUERRERO, Lourdes A.	✓				
LUJAN, Jesse A.		✓			
MUNA-BARNES, Tina Rose	✓				
pangelinan, vicente "ben" C.	✓				
QUINATA, John "JQ" M.	11 ✓				
RESPICIO, Rory J.		✓			
SANFORD, Antoinette "Toni" D.	✓				
TENORIO, Ray		✓			

TOTAL 8 7 0 0 0

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence

22 S.A.

TESTIMONY BEFORE THE COMMITTEE ON BUDGETING AND APPROPRIATIONS, 27TH GUAM LEGISLATURE

21 FEB. 2003

SK B & P...

MR. CHAIRMAN, SENATOR/VICE SPEAKER FRANK AGUON, MEMBERS OF THIS COMMITTEE AND OF THE 27TH GUAM LEGISLATURE-- AFTER SEVERAL WEEKS OF DISCUSSING THE ISSUE OF SUPPLEMENTAL BENEFITS AND THE COLA, INVITING OTHERS TO ENGAGE IN AN OVERSIGHT HEARINGS, EXCEPT THE AFFECTED BENEFICIARIES, I WANT TO THANK YOU FOR ALLOWING US THE RETIREES AND SURVIVORS-- TO ADDRESS OUR CONCERNS.

MR. CHAIRMAN AND MEMBERS, OVER FIFTY-ONE YEARS, THE GOVERNMENT OF GUAM RETIREMENT SYSTEM WAS ESTABLISHED IN 1951 AS PUBLIC LAW 26, OF THE 1ST GUAM LEGISLATURE, SPONSORED BY THE LATE SENATOR QUINNENE-- WHOSE NAME NOW GRACED THE RETIREMENT FUND BUILDING.

THE FORESIGHT AND VISIONARY THINKING OF OUR GUAM PIONEERS WERE TO CREATE A SYSTEM THAT "WOULD PROVIDE A RETIREMENT PLAN FOR LOCAL GOVERNMENT EMPLOYEES SINCE THEY DIDN'T HAVE ACCESS TO THE U.S. SOCIAL SECURITY PROGRAM, AND TO RECRUIT AND RETAIN QUALIFIED LOCAL CIVIL SERVICE WORKERS."

THE TYPE OF PLAN THAT WAS DEVELOPED TO MEET THE MAIN PURPOSES OF THE FUND'S CREATION WAS THE "DEFINED BENEFIT PLAN" WHICH EXISTED UP TO SEPTEMBER 30, 1995. WE ALL KNOW THAT THIS PLAN WAS REPLACED BY THE DIRECT CONTRIBUTION PLAN, SPONSORED BY YOURS TRULY.

SINCE THE MATTER OF CONCERN NOW PERTAINS ONLY TO MEMBERS OF THE DEFINED BENEFIT PLAN, THE ATTENTION SHOULD BE DIRECTED TO THEM.

THE DEFINED BENEFIT PLAN IS A CONTRACTUAL ARRANGEMENT BETWEEN THE GOVERNMENT OF GUAM AS THE EMPLOYER AND THE PUBLIC EMPLOYEE THAT SET ASIDE "DEFERRED WAGES" IN EXCHANGE FOR CURRENT SERVICE.

THIS TYPE OF DEFINED BENEFIT PLAN RECOGNIZES SERVICE WITH THE GOVERNMENT OF GUAM BY PROVIDING GREATER BENEFITS FOR

A LONG-TERM EMPLOYEE THAN FOR SHORT-TERM EMPLOYEE WITH THE SAME AVERAGE COMPENSATION, AS OUTLINED IN SECTION 8122 OF 4GCA.

IN OTHER WORDS, AN EMPLOYEE WHO OPTED TO RETIRE "EARLIER", EITHER ON A REDUCED ANNUITY OR UNDER THE "EARLY" OUT RETIREMENT LAW, WOULD NOT RECEIVE THE SAME ANNUITY AS THE "FULL SERVICE RETIREE"-- IN FACT, IT WOULD BE "LESS". SENATORS, PLEASE BEAR THESE FACTS IN MIND WHEN YOU ARE THINKING ABOUT THE APPLICATION OF THE "SO-CALL MEANS TEST".

UNDER THIS PLAN, THE RETIREMENT BENEFITS ARE NOT DEPENDENT ON CONTRIBUTIONS, AND THE ANNUAL CONTRIBUTIONS RATES ARE ACTUARIALLY DETERMINED. THE PLAN IS BASICALLY A "UNIT BENEFIT PLAN" AS I HAVE STATED EARLIER, WHICH RECOGNIZES SERVICE WITH THE GOVERNMENT BY PROVIDING GREATER BENEFITS FOR A LONG-TERM EMPLOYEE THAN FOR A SHORT-TERM EMPLOYEE WITH THE SAME AVERAGE COMPENSATION, AND WITH A MAXIMUM 85% OF THE MONTHLY COMPENSATION DETERMINED BY LAW.

THEREFORE, ONCE THE EMPLOYEE RETIRES, AT THE END OF A CERTAIN PRESCRIBED PERIOD OF SERVICE RENDERED AS ESTABLISHED BY LAW, THE CONTRACTUAL AGREEMENT IS NOW "ENFORCED AS DELIVERED" OF THE BENEFITS AS DEFINED FOR SERVICES RENDERED.

WHETHER OR NOT THE RETIREMENT FUND HAS SUFFICIENT FUNDS TO MEET THE ANNUITIES OBLIGATIONS WHEN DUE, IT IS THE LEGAL OBLIGATION OF THE GOVERNMENT OF GUAM AS THE "EMPLOYER" TO MEET SUCH OBLIGATIONS, BE IT IN THE FORM OF REVENUE EARNINGS FROM THE FUND OR BY DIRECT LEGISLATIVE APPROPRIATIONS. I MIGHT SAY THAT SEVERAL STATES IN OUR COUNTRY HAVE FOUND THEMSELVES IN THE SAME PREDICAMENT, HAD TO APPROPRIATE THE "SHORTFALL".

"THESE DEFINED BENEFIT PROMISES INTO A PENSION OBLIGATION, ONE THAT IS TYPICALLY A "GENERAL" OBLIGATION OF THE SPONSORING PUBLIC ENTITY". IN OTHER WORDS, THESE BENEFITS ARE SECURE WITH THE FULL BACKING OF THE GOVERNMENT OF GUAM AS THE PRINCIPAL SPONSOR HAVING THE ABILITY TO "TAX" TO MEET ITS OBLIGATIONS. (SEE Public Pensions in the Public Sector, Pension Research Council, Wharton School of the University of Pennsylvania, 2001). THIS GUARANTEE IS NOT DIMINISHED TO THE EXTENT THAT THE PLAN HAS TRUST ASSETS, BUT IN FACT, THE DEFERRED OR PROMISE ANNUITY IS DEEMED TO BE "COLLATERALIZED" WITH THE TRUST ASSETS-- RETIREMENT FUND.

FURTHERMORE, ACCORDING TO THE WHITE PAPER OF THE NATIONAL ASSOCIATION OF STATE RETIREMENT ADMINISTRATORS, "MYTHS AND MISPERCEPTIONS OF DEFINED BENEFIT AND DEFINED CONTRIBUTION PLANS", NOVEMBER 2002, DEFINED BENEFIT PUBLIC PENSION FUNDS ARE TRUSTS, AND ONCE THE CONTRIBUTIONS ARE REMITTED, THESE FUNDS ARE NO LONGER "PUBLIC FUNDS".

I MIGHT SAY THAT ACCORDING TO THE SEVERAL RETIREMENT AUTHORITIES, PUBLIC PENSION REPRESENT AN "EXTREMELY LONG BOND OBLIGATION", POORLY MISUNDERSTOOD, NOT MARKED TO MARKET BY ANYBODY, AND BACKED BY AN ENORMOUS POOL OF ASSETS". FOR THESE VERY REASONS, THESE ASSETS ARE "RAIDED", INCREASING LONG-TERM COSTS AND COMPLEXITY IN EXCHANGE FOR A SHORT-TERM ACCOMMODATIONS, i.e. THE "BORROWING" LEGISLATION IN THE 24TH GUAM LEGISLATURE TO BE PAID OVER AN EXTENDED AMORTIZATION, AND THE "EARLY-OUT" LEGISLATION, I BELIEVE, IN THE 25TH GUAM LEGISLATURE.

LIKE CLOCK WORK, EVERY TIME THE GOVERNMENT FIND THEMSELVES IN A FINANCIAL "BIND" OR "CRISIS", INEVITABLY, THE SACRIFICIAL LAMBS ARE THE GOVERNMENT OF GUAM RETIREES, THEIR SURVIVORS AND THEIR DEPENDENTS. WHY??

THE TARGETS ARE ALWAYS THE QUESTIONABLE LEGITIMACY OF THE SUPPLEMENTAL BENEFITS, BENEFITING SOME 3,111 REGULAR RETIREES, 562 REGULAR SURVIVORS, 335 DISABILITY RETIREES, AND 224 DISABILITY SURVIVORS, TOTALING SOME 4,000.

IF IT WERE NOT FOR THESE SUPPLEMENTAL BENEFITS COVERING BENEFICIARIES PRIOR TO OCTOBER 1, 1995, OVER 97% HAVE MANAGED TO AVOID POVERTY. SINCE THE CURTAILMENT OF THE GREAT MAJORITY OF THESE BENEFICIARIES ON DECEMBER 31, 2002, MANY OF THEM ARE, INDEED, EXTREMELY "POOR"-- THE ELDERLY POOR.

THE MOST TROUBLING PART OF THIS DISCUSSION OVER THE FINANCIAL SHORTFALL OF THE GOVERNMENT IS THE UNCERTAINTY THAT THESE BENEFITS WOULD, INDEED, BE CURTAILED OR REDUCED. THESE ELDERLY CITIZENS ARE NOW BEING PLACED IN A "HELPLESS SITUATION". AFTER CONTRIBUTING PART OF THEIR HARD EARNED SALARIES, OVER THEIR WORKING LIFE TIMES, AND LOOKING FORWARD FOR RETIREMENT WITH THE FULL EXPECTATION THAT THEY WILL BE RECEIVING ADEQUATE INCOME, PLUS AN APPROPRIATE ADJUSTMENTS OVER THEIR RETIREMENT YEARS, RETIREES RIGHTLY EXPECT THEIR GOVERNMENT OF GUAM TO HAVE

A "MORAL" IF NOT A "LEGAL OBLIGATION" TO HONOR ITS COMMITMENTS.

UNDER THE DEFINED BENEFIT PLAN, THERE IS A LEGAL QUESTION WHETHER THESE BENEFITS THAT THE RETIREES HAVE BEEN RECEIVING FOR MORE THAN TWENTY-SIX YEARS CAN BE DIMINISHED, WITHOUT "DUE PROCESS".

ACCORDING TO THE SAME NASRA WHITE PAPER CITED EARLIER WHICH STATED: "FEDERAL CONSTITUTIONAL PROVISIONS GOVERNING CONTRACTS AND PROPERTY RIGHTS ARE GENERALLY PERCEIVED TO PROTECT PENSION BENEFITS FROM DIMINUTION". SINCE GUAM GOVERNMENT OPERATES UNDER A FEDERAL LAW--THE ORGANIC ACT OF GUAM --, THE PENSION BENEFITS MAY NOT BE REDUCED WITHOUT DUE PROCESS--THE SUPPLEMENTAL BENEFITS THAT HAVE BEEN IN EXISTENCE FOR MORE THAN TWENTY-SIX YEARS CAN BE CONSIDERED AS PENSION BENEFITS AND ENTITLEMENTS WITHIN THE DEFINED BENEFIT PLAN. FURTHER QUOTING FROM THE SOURCE, "PUBLIC PENSIONS ALSO ENJOY PROTECTION PROVIDED THROUGH PROPERTY RIGHTS LAW... PENSION BENEFIT COVERAGE AND ENTITLEMENT WILL BE GENERALLY CONSIDERED TO BE PROPERTY BRINGING DUE PROCESS PROTECTION" (SEE ALSO :LEGAL OBLIGATIONS OF PUBLIC PENSION PLAN GOVERNING BOARDS AND ADMINISTRATORS, by Lawrence A Martin, published by Government Finance Officers Association, 1990)

SECTION 22(B) OF PUBLIC LAW 26-152 ALLOWS SUPPLEMENTAL BENEFITS AND COLA TO BE PAID TO RETIREES WHO LAST RETIRED FROM AN AGENCIES OF THE GOVERNMENT, IF SAID AGENCIES PROVIDED THE FUNDS. RETIREES ARE ALL GOVERNMENT OF GUAM RETIREES-- THIS SEPARATE TREATMENT APPEARS TO BE IN VIOLATION OF THE 14TH AMENDMENT OF THE U.S. CONSTITUTION-- THE "DISCRIMINATORY CLAUSE". WHY THE DISCRIMINATORY PROVISIONS WERE ALLOWED?? MANY OF THESE SAME RETIREES MAY HAVE WORKED IN BOTH LINE AND AUTONOMOUS AGENCIES, THOUGHOUT THEIR GOVERNMENT CAREERS, AND BECAUSE THEY HAPPEN TO BE AT THIS AGENCY BEFORE THEY RETIRED, THEY RECEIVED "PREFERENTIAL" TREATMENT.

MR. CHAIRMAN AND MEMBERS, WHILE THE BUDGETARY CUTS WERE INDEED NECESSARY, WHY PICK ON THE ELDERLY AND HELPLESS CITIZENS-- AS YOUR "SACRIFICIAL LAMBS" TO BE THE FIRST ON THE CHOPPING TABLE.

MR. CHAIRMAN AND MEMBERS, I HAVE SPENT A LOT OF TIME DISCUSSING THE NATURE OF THE DEFINED BENEFIT PLAN AND I

APB PURPOSELY COULD NOT ADDRESS ANY SPECIFIC PROPOSAL, SINCE *to be / had / now!* THERE SEEMS TO BE NOTHING ON THE TABLE OFFICIALLY. PERHAPS, ~~IF I HAD A "BILL" AS INTRODUCED, MAYBE WE CAN GO FROM THERE.~~ THERE WERE SEVERAL "IDEAS" BEING DISCUSSED OVER THE LAST SEVERAL WEEKS, MOSTLY THRU THE "MEDIA". NEVERTHELESS, I BELIEVE THAT THE AFFECTED RETIREES BE GIVEN AMPLE OPPORTUNITIES TO BRING THEIR OWN CONCERNS. HOWEVER, AS YOU ALL KNOW, I HAVE SPENT MOST OF MY GOVERNMENT CAREER, IN PROMOTING AND PROTECTING THE INTERGRITY OF THE RETIREMENT FUND. I AM AVAILABLE TO DISCUSS ANY PARTICULARS. I WANT TO EXPRESS MY APPRECIATION AND GRATITUDE TO YOU, MR. CHAIRMAN, VICE SPEAKER SENATOR FRANK AGUON, SENATOR TONI SANSFORD, SENATOR RORY RESPECIO, AND THE REST, FOR TRYING TO AMERLIORATE THE CONCERNS. MOST ESPECIALLY, I WANT TO THANK SPEAKER BEN PANGELINAN FOR HIS SPONSORED PUBLIC LAW 26-131, WHICH WILL GIVE THE RESPONSIBILITY OF OVERSEEING THE RETIREMENT FUND TO THE PEOPLE THAT OWNS THE FUND. I ONLY "HOPE" THAT THIS LAW BE IMPLEMENTED AS SOON AS POSSIBLE. IF THERE IS ANYTHING MORE IMPORTANT FOR THE ACTIVE MEMBERS AND THE INACTIVE MEMBERS OF THE DEFINED BENEFIT PLAN TO ENSURE THAT THE FUND CONTINUES, MEMBERS OF THIS AUGUST BODY, THIS IT! WE NEED TO ACT ON THIS ONE RIGHT NOW!

THIS CONCLUDES MY TESTIMONY. I WOULD BE MORE THAN GLAD TO RESPOND TO ANY QUESTIONS FROM ANY ONE OF YOU.

THANK YOU.

Statement provided by the Department of Public Health and Social Services
Bill No: _____

Good Afternoon Senators. My name is Joleen Almandres and I am a Program Coordinator at the Department of Public Health and Social Services, Tobacco Free Guam Program. I am here this afternoon representing the Department of Public Health and Social Services and I wish to briefly provide you with some important facts on the consequences of tobacco use, as well as share with you some of the burdens brought about by the use of this addictive, harmful and lethal habit called tobacco.

As you are aware Senators, tobacco use is the leading cause of premature death and preventable illness in the United States as well as Guam. It exceeds the combined death tolls from car crashes, AIDS, illegal drugs, suicides, fires and homicides. But did you know that when you smoke tobacco, you inhale more than 4,000 chemicals into your lungs, and at least 450 of these chemicals are cancer causing agents. Because of this the United States Environmental Protection Agency recommended that tobacco smoke be classified as a Class A carcinogen joining a list which includes such substances as benzene and asbestos. In addition the Institute of Medicine states that "smoking is the main cause of 87% of deaths from lung cancer, 30% of all cancer deaths, 82% of deaths from pulmonary diseases, and 21% of deaths from chronic heart disease."

As it stands, tobacco is the only legal substance sold on the market, that when used as directed, **KILLS**, even for people who simply just breathe in second-hand smoke. The Centers for Disease Control and Prevention (CDC) has reported that over 400,000 people, who use tobacco, die every year from tobacco-related diseases with an

additional 53,000 lives taken each year by "secondhand" smoke, which includes both exhaled smoke and side-stream smoke from a burning cigarette. CDC estimates a cost of more than \$60 billion dollars in medical expenses alone for the United States.

There are no compelling arguments to indicate that Guam is immune from these same deadly consequences. In fact, the tobacco industry has begun to shift their market emphasis to the Asia Pacific region and other parts of the world, as a result of federal and state pressures to control and prevent tobacco use in the U.S., making the people of Guam and her visitors even more vulnerable to tobacco-related deaths and illnesses.

The Behavioral Risk Factor Surveillance data for 2001 ranks Guam as having the highest adult smoking rate at 31.2% among all the states and territories. We even beat Kentucky, a tobacco producing state, whose smoking rate is 30.9%. If this information is not enough to capture your attention, I'm sure you will find it interesting to know that data collected from the Department of Education's 2001 Youth Risk Behavior Survey reveals one-fifth, or 20% of middle school students and over one-third, or 38% of high school students are current smokers. Unfortunately, there is no data that exists that reports on smoking rates for Guam's children, but is it likely that a number of elementary school students have already initiated into smoking.

Smoking plays a major role in the mortality of our people. The latest statistical data collected by Guam's Office of Vital Statistics identifies our island's top three causes of death for year 2000 to be Diseases of the Heart (181 or 27.14%), Malignant Neoplasms (125 or 18.74%) and Cerebrovascular Disease (58 or 8.70%) with Chronic Obstructive Pulmonary Disease (16 or 2.40%) ranking as number 10. Three hundred

eighty (380) or 67.7% of the five hundred sixty-one (561) deaths occurring in Guam in 2000, can be attributed to tobacco use.

The statistics provided confirm that Guam has a significant tobacco use problem, which will not go away on its own. Tobacco control is considered a priority for the U.S. Department of Health and Human Services calling in its Healthy People 2010 objectives for a 12% adult smoking rate and 16% youth and adolescents smoking rate by the year 2010. If Guam is to reach this goal, we must address tobacco control comprehensively. The economic sector, the educational sector, the communication sector, the health care sector, the voluntary sector, and the legislative and executive branch are all needed to assist in reducing Guam's tobacco use consumption as well as help in preventing the initiation of tobacco use.

We are losing too many of our loved ones prematurely as a result of tobacco use and cannot afford to lose more to this addictive, harmful and lethal habit. People who smoke are not to blame. They have simply fallen victim to tobacco, but we can certainly help them if they wish to commit to stop using tobacco. At a minimum, it is incumbent for everyone to be educated on the consequences of smoking, so that they can make an informed decision on whether to choose a tobacco-free life.

Senators, you have a responsibility to promulgate laws to protect the health and welfare of our people. Failure to act decisively on measures that can be disincentives to tobacco use will allow Guam's prevalence, disease and death rates associated with tobacco use to continue to increase. The challenge is great, but the risk of increasing morbidity, mortality and loss will be greater if nothing is done now.

Thank you very much for your time and attention.

23

U.S. Passport Guam Office

P.O. Box 2950
Hagatña, Guam 96910

Director: Antonita Bamba

Phone: 475-9139

Fax: 477-1125

CLOSURE OF PASSPORT OFFICE WOULD CAUSE UNDUE HARDSHIP TO GUAM RESIDENTS

US Passport Services urges Legislature to reconsider closure

FOR IMMEDIATE RELEASE

February 20 2003

Mr. Frank E. Moss, Executive Director for the United States Passport Services in Washington D.C. sent a letter to Governor Felix P. Camacho today reiterating the State Departments opposition to the potential closure of the Guam Passport Acceptance Office.

According to the letter, it is the United States Department of State's position that since Guam receives the all application and issuance fees for processing passports, it is the responsibility of the Government of Guam to provide the service.

"It is not realistic to expect any other entity such as the Federal Court system or the post office to take on this work without being able to receive the execution fee that they receive in every other location where this service is performed," Mr. Moss stated in his letter.

According to Mr. Moss, if the Guam Legislature does not reverse its position on the closure of the Passport Office, the U.S. State Department would pursue legislation through the U.S. Congress to change the financial arrangement, eliminating the Government of Guam as the beneficiary of the fees and so that passport fees would revert back to the U.S. Treasury.

"While we seek that legislation, a process that could take considerable time, the people of Guam would be inconvenienced in a major way since they would have to go to Saipan or Honolulu to apply for their passports," according to Mr. Moss.

The Guam Passport Office keeps 100% of all fees collected and has generated hundreds of thousands of dollars for the General Fund. For this fiscal year, it anticipates generating more than \$1 Million. Governor Camacho is currently operating the passport office at \$128,000 annually. The previous administration operated the office at \$274,000 annually.

"The letter from the US Passport Services office further emphasizes the concerns of the Guam Passport Office," Toni Bamba, Director of the Guam Passport Office said. "If the Guam Passport Office shuts down on March 1, the people of Guam would have to fly to Saipan or Hawaii in order to apply for a passport. They will not be able to apply through the mail."

For more information contact Toni Bamba at 475-9139.

Vice Spokes



United States Department of State

*Deputy Assistant Secretary
for Passport Services**Washington, D.C. 20520*

February 19, 2003

The Honorable Felix P. Camacho
Governor of Guam
P.O. Box 2950
Hagatna, GU 96932

Dear Governor Camacho:

As has been conveyed to you by Ms. Nancy K. ("Sam") Finn, our Regional Director in Honolulu, where Guam's passports are issued, we are concerned about the recent vote in the Guam Legislature that would have the effect of closing your passport application acceptance office on February 28.

It is our hope that the Legislature will reverse that decision for the benefit of the people of Guam. Should they not do so, we see only unfortunate alternatives. We view it as the responsibility of the Government of Guam to provide the service since the Government of Guam receives not only the application execution fee of \$30 but also the fee for issuance of the passport. It is not realistic to expect any other entity such as the Federal Court system or the post office to take on this work without being able to receive the execution fee that they receive in every other location where this service is performed.

If another entity were to be willing to take on the work, we would seek legislation in the U.S. Congress to change the financial arrangements, specifically to eliminate the Government of Guam as the beneficiary of the fees, so that the passport fees would revert to the U.S. Treasury, and the application execution fee would be credited to the office performing the service.

-2-

While we seek that legislation, a process that could take considerable time, the people of Guam would be inconvenienced in a major way since they would have to go to Saipan or to Honolulu to apply for their passports. I am sure neither you nor the Legislature of Guam would see this as a positive situation. I therefore hope that you can use your influence to help those in the Legislature who are working to reverse the earlier decision.

Sincerely,



Frank E. Moss

CARLSMITH BALL

A PARTNERSHIP INCLUDING LAW CORPORATIONS

P.O. Box 656 Honolulu, Hawaii 96809-0656 Phone (808) 523-2500 Fax: (808) 523-0842

CONFIDENTIAL

ATTORNEY-CLIENT COMMUNICATION

Memorandum To: Board of Trustees and Director
Government of Guam Retirement Fund

From: Joanne L. Grimes, Esq. Telephone: (808) 523-2587

Date: November 9, 1999 *Grimes*

Subject: Financial Viability of Early Retirement Incentive Program

Public Law No. 25-72, as amended by Public Law No. 25-74, created an early retirement incentive program which allows certain active members of the Defined Benefit Plan to retire and obtain up to five years of additional service credits by contributing the appropriate employees' share of contributions either by lump sum payment or by promissory note. The following are two threshold questions presented by the new law related to the financial viability of the Fund. Our preliminary analysis of the questions presented follows. Pursuant to the Attorney General's letter dated November 8, 1999, the Retirement Fund may wish to seek a formal legal opinion on the conclusions herein from the Attorney General of Guam.

I. QUESTIONS PRESENTED

A. Within the fiduciary duties imposed under 4 G.C.A. § 8139.1 of the Defined Benefit Plan statute, and pursuant to the recommendations contained in the November 3, 1999 letter to Director John Rios from Board actuary Jay Lingo of Deloitte & Touche (attached hereto as Attachment "A"); will the Board of Trustees of the Retirement Fund breach its fiduciary duties by implementing the early retirement incentive program enacted in Public Law Nos. 25-72 and 25-74?

B. If so, will the Board be fully indemnified for damages arising from personal liability, and will the Board be protected from removal pursuant to the protections enacted in Public Law Nos. 25-72 and 25-74?

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ATTORNEY-CLIENT COMMUNICATION

Page 2

II. BRIEF ANSWERS

A. Because the early retirement law is not contained in the governing plan document (the Defined Benefit Plan statute), the Board of Trustees is not authorized to implement the law, for to do so would exceed the Board's delegated scope of authority. Even if so authorized by subsequent legislation, if the Board of Trustees agrees with the actuary's conclusion that the financial viability of the Retirement Fund is significantly at risk, the Board of Trustees has the fiduciary responsibility not to proceed with implementation of the early retirement law.

B. The Board will not be protected against personal liability for actions exceeding the scope of its delegated authority. Furthermore, it is not clear what government entity will indemnify the Board of Trustees for personal liability arising from implementation of the early retirement incentive program. Accordingly, it is unlikely that the legislation's "blanket" indemnification would obviate the Board's statutory duty of undivided loyalty to the members and beneficiaries of the Fund. The legislation will not protect the Board of Trustees against equitable remedies such as removal.

III. ANALYSIS

A. The Defined Benefit Plan statute expressly requires the Board of Trustees to stand in a fiduciary relationship to the beneficiaries of the Retirement Fund in regard to the management of the Fund. 4 G.C.A. § 8139.1(a). This fiduciary duty requires that the Board may not act in a manner that would jeopardize Fund assets, since the Board must act solely in the interest of the members and beneficiaries of the Fund and for the exclusive purpose of providing benefits to members and beneficiaries. 4 G.C.A. § 8139.1(b).

The Director of the Retirement Fund is authorized by statute to engage actuarial services to advise in matters of policy. 4 G.C.A. § 8141(a). Jay Lingo of Deloitte & Touche, who is the actuary retained by the Retirement Fund, has performed a preliminary analysis of the early retirement law. He concludes that the law transfers significant obligations to the Retirement Fund while not providing for the funding of these obligations on a sound actuarial basis. If the early retirement incentive program were implemented, the government's unfunded liability would increase indefinitely, putting the entire retirement system into a spiral toward financial insecurity. The reason

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CONFIDENTIAL

ATTORNEY-CLIENT COMMUNICATION

Page 3

for indefinite growth in the unfunded liability is because the funding level of employer contributions (1.12% of payroll) as envisioned in the law is too low to support the obligations arising from projected participation in the early retirement incentive program.

The Board of Trustees's powers are limited to the terms set forth in the governing plan document, which in this case is the Defined Benefit Plan statute, 4 G.C.A. §§ 8101 *et seq.* Importantly, however, the early retirement legislation does not amend nor add to the Defined Benefit Plan statute. The Board of Trustees therefore is not authorized to act outside the scope of the statute; to do so would exceed the scope of authority granted by the Legislature. Accordingly, if the Board proceeds to implement the early retirement legislation, it would be acting *ultra vires*, or outside its authorized scope of authority and would not be protected from personal liability for such actions. For this reason alone, the Board should not proceed with implementation.

Even if the early retirement legislation is amended so that it is codified in the statute (with accompanying public hearing and other due process requirements), there are dangers in proceeding in light of the actuary's recommendations. Odilia M. Bautista, Vice Chairperson of the Board of Trustees, has attended an Employee Benefits Conference in October 1998. One of the topics was the "Current Status of Legislative Incursions (So-Called Raids) Into Public Retirement Systems. A copy of the outline from that conference is provided for your information as Attachment "B". It contains examples of the various raids on public retirement systems, and the resulting claims arising from such raids, including actions against fiduciaries. This is a brief overview of relevant cases; our preliminary research has revealed similar instances of fiduciary breaches involving underfunding of public pension systems. (Because of the time constraints under which this memorandum was prepared, we were unable to conduct extensive research; we would be happy to do so at your direction).

Even if the Board were authorized to implement the early retirement legislation, the Board must exercise due diligence based on the strongly worded actuarial recommendation that it would be imprudent to implement an early retirement incentive program without a designated source of adequate funding. This is especially true since the unfunded liability resulting from implementation would never be retired.

B. Assuming that implementation of the early retirement incentive program without an adequate and designated funding source would constitute a breach of fiduciary

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CONFIDENTIAL

ATTORNEY-CLIENT COMMUNICATION

Page 4

duties, would the protective language in the legislation protect the Board from personal liability as well as from removal?

The relevant language provides: "Notwithstanding any other provision of law or terms and conditions set by the Board of Trustees of the Government of Guam Retirement Fund pursuant to § 8130 of Title 4 of the Guam Code Annotated . . . The members of the Retirement Fund Board of Trustees are indemnified against any personal liability in any matter relative to the implementation of this Section. The Board of Trustees of the government of Guam Retirement Fund shall implement the provisions of this Section immediately upon the effective date of this Act, notwithstanding any other provision of law." Pub. L. No. 25-72:21, as amended by Pub. L. No. 25-74:13.

Because the fiduciary duty requirements contained in the Defined Benefit Plan statute (which is the instrument governing the Retirement Fund) were not amended to carve out an exception for implementation of the early retirement law, it is unlikely that the foregoing non-codified language will be sufficient to absolve the Trustees of their statutory fiduciary responsibilities. Moreover, it is not at all clear what government entity will indemnify the Trustees upon their breach. This is an important questions because while the Government Claims Act exempts the Retirement Fund from its provisions, it is not clear whether the Retirement Fund has retained sovereign immunity or whether the exemption applies only to remove the maximum dollar limits on liability for breach of contract and tort, both of which would constitute claims related to imprudent implementation of the early retirement law. *See, e.g.*, Organic Act § 1421a (consent of legislature required for government to be sued in contract or in tort); 5 G.C.A. § 6014 (Government Claims Act not applicable to the Retirement Fund); 5 G.C.A. § 6015(c) (government of Guam shall not be liable for claims arising from an exercise of discretion in making policy). A conservative reading of the relevant authorities would remove the dollar caps on damages, while waiving sovereign immunity with respect to claims for benefits.

If indemnification of the Trustees provides illusory protection to the Fund (*i.e.*, no meaningful recourse is available to restore the Fund to the position it was in before the program was implemented), then it is possible that the Legislature would not be immune from suit arising from enacting law which jeopardizes the financial viability of the Fund and which cuts off any meaningful recourse or rectification. *See, Jones v.*

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Page 5

Board of Trustees of Kentucky Retirement Systems, 910 S.W.2d 710 (Kentucky 1995) and cases cited therein.

We do not believe that legislation outside the Defined Benefit Plan statute would protect the Trustees against claims for legal and equitable relief, notwithstanding indemnification for personal liability.

IV. CONCLUSION

Because the early retirement law was not codified within the Defined Benefit Plan statute, the Board is unauthorized to implement the law, as it would exceed the Board's delegated scope of authority granted by the Legislature. If the Board proceeds *ultra vires*, it will not be protected from personal liability.

Secondly, while there are numerous other legal issues raised by Public Law No. ~~2~~⁵-72, as amended by Public Law No. ~~2~~⁵-74 (such as disqualification of tax-exempt status), the issue of financial viability raised by the Board's actuary constitutes the threshold requirement for implementation of an early retirement program affecting the Defined Benefit Plan. Our analysis indicates that even if the law were codified in the statute, the Board of Trustees cannot proceed based on its actuary's conclusion that to implement the law would place the Fund in financial peril. This conclusion alone is sufficient to prevent implementation, whether or not the other legal issues are resolved.

1341359.1.039415-7



via H/L

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November 3, 1999

Mr. John Rios
Government of Guam Retirement Fund
Director
Government of Guam Retirement Fund
P.O. Box 3-C
Maite, Guam

Subject: Public Law 25-74 – Financial Viability

Dear John:

We have performed a preliminary analysis regarding the financial viability of Public Law 25-74, as it relates to the funding of the Retirement Fund. While we understand the intentions of this measure to reduce payroll costs of the Government of Guam, we do not believe that the financial health of the Retirement Fund was adequately considered in drafting this legislation.

Below are more specifics regarding our analysis. The key message we wish to deliver is that the legislation transfers significant obligations to the Retirement Fund while not providing for the funding of these obligations on a sound actuarial basis. It is not merely an issue of the liabilities being funded over too long a period, but rather the funding level is inadequate to ever fund the obligation. This represents a huge step backward in the progress made by the Government over the past decade to secure the financial status of the Retirement Fund for all its members. The unfunded liability created under this bill would continue to grow, putting the entire retirement system into a spiral toward financial insecurity.

Early Retirement Incentive Program

Public Law 25-72 created an early retirement incentive program (ERIP) which offers members with 20 years of service the opportunity to retire with an additional 5 years of service credit. Public Law 25-74 extended the eligibility for the ERIP to uniform personnel with at least 15 years of service, and other members who are over age 60 with at least five years of service.

The law provided that 1.12% of the 18.60% payroll based employer contribution would be dedicated to funding the ERIP.

As you are aware, the actuarial funding policy adopted by the Retirement Fund Board states that increases in the unfunded liability of the Fund resulting from benefit enhancements shall be amortized over a period of twenty years from the date of the legislation is first recognized in the actuarial survey.

The ERIP creates an unfunded liability in the Fund that we estimate at approximately \$100 million, and decreases the security ratio of the Fund from the current level of over 70%, to approximately 66%. The 1.12% is not sufficient to fund this liability over the twenty-year amortization period. In fact, we project that this 1.12% funding would not be sufficient to fund this obligation over the next 100 years and more. The unfunded liability would continue to grow indefinitely, shifting costs to future generations of taxpayers, and resulting in a downward slide in the security ratio of the fund. *

Other Provisions

In addition, Public Laws 25-72 and 25-74 shifted additional government obligations to the Retirement Fund (e.g., Governor's pensions, retiree medical and life insurance premiums, etc.) for which no funding was provided.

In conclusion we want to again stress our strong belief that legislation which increases benefits paid from the Retirement Fund without requiring full actuarial funding for these benefits represent a very dangerous and damaging precedent for the Fund. Obviously the Government's cash flow needs must be addressed. However, the books should not be balanced on the backs of the Government's retirees.

John, please call us if you wish to discuss this information further.

Sincerely,



Jay Lingo

cc: Jeff Peer
Michael de Leon



CURRENT STATUS OF LEGISLATIVE INCURSIONS (SO-CALLED RAIDS) INTO PUBLIC RETIREMENT SYSTEMS

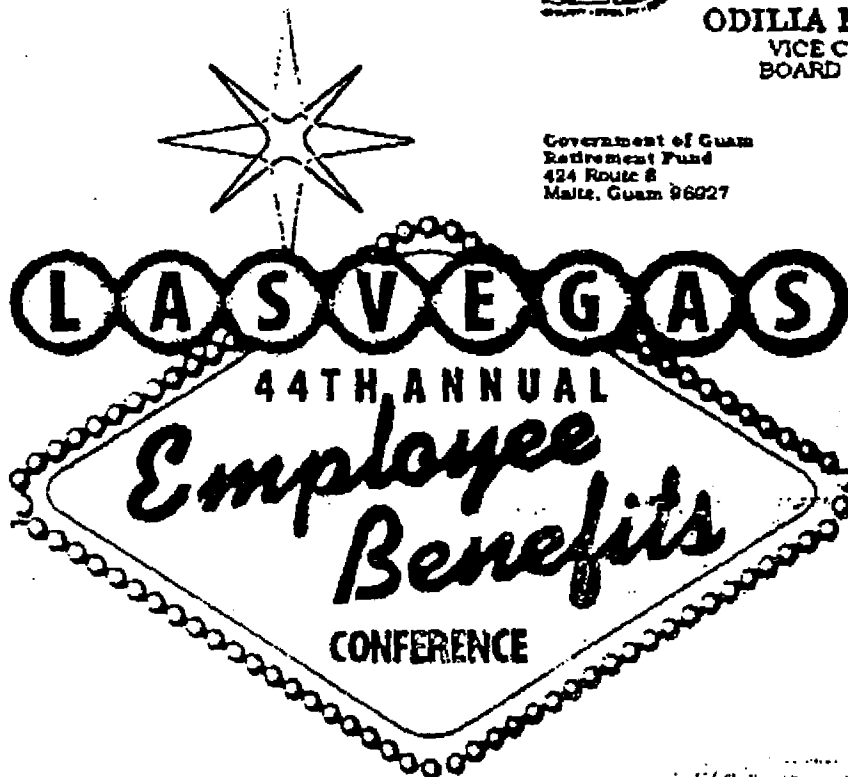
Tuesday, 9:30-10:45 a.m.



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ATTACHMENT B



The Modern Shell Game: Executive and Legislative Raids on Public Pension Funds

John A. Nixon, Esquire

I. OVERVIEW

Public fund trustees have a wide range of responsibilities regarding the administration and investment of pension fund assets. Increasingly, trustees have been called upon to defend their fund against legislative or executive attempts to "beg, borrow or steal" fund assets for political purposes. The first part of this outline discusses the factors leading to such actions, collectively referred to as "raids," and the tactics used by these "fund raiders". The second part addresses the general fiduciary obligation of public fund trustees. The final parts sets forth case studies of actual pension raids and examines defensive strategies utilized by trustees when faced with such attacks.

II. CONDITIONS LEADING TO RAIDS

A. IGNORANCE OF PUBLIC OFFICIALS

Many elected officials suffer from a basic misunderstanding of the fundamental legal, actuarial, investment and operative principles of pension and retirement systems. First and foremost is that, assets held under such systems must be used for the "exclusive benefit" of system members.

This requirement is a condition of tax qualification under the Internal Revenue Code of 1986 ("IRC"). Hence, all benefits of a tax-qualified retirement system, which inure solely to system members in the public plan setting, may be jeopardized if public officials ignore the exclusive benefit rule. Moreover, most state statutes include similar prohibitions against the unauthorized use of fund assets. Nonetheless, in many cases public officials have failed to recognize that their ability to establish such plans and legislate their operation does not permit the diversion of assets held thereunder.

B. FINANCING TAX CUTS

Even diehard supply-siders will admit that the any tax-cut will result in a short-term downward spike in revenues. This decline in revenues as represented by a legislatively approved tax cut must be made up. Hence, the question: How does one run a government while awaiting the theoretical increase in revenues? The Answer: The retirement system.

Encroachment into retirement system assets are a particularly attractive method of financing tax cuts because, the theory goes, the eventual increase in tax revenues will ultimately restore any short term use of pension funds. Additionally, other than the most severe cases, the depletion of retirement system assets will not affect a system's current abilities to pay benefits. Such a tax-based assault was launched against the New Jersey state system and is discussed below.

C. INADEQUATE OPERATING REVENUE

Because pension assets largely represent a future obligation to pay, they are particularly vulnerable to attacks based on the current financial needs of the system sponsors. In these cases, the mysterious, arcane science of actuarial funding, with its code terms of "unfunded accrued liability," "full funding limitations" and "actuarial cost leveling" are difficult to understand and more difficult to defend when potholes must be fixed.

D. INEFFECTUAL TRUSTEES

To the extent that the trustee board is politicized, its autonomy may be compromised. The trustees are usually the first line of defense against raiders and, in many cases, may be the only defense. Trustees, without exception, have standing fight any action which would jeopardize the ability of the fund to pay retirement obligations when due. Their duties are exclusive to the beneficiaries of the fund: the system members. Such duties are inherent in fiduciary law and operative regardless of the state. Ineffective, weak or ill-informed trustees provide a fertile environment for executive and legislative attacks on fund assets.

E. POLITICS.

All of the factors discussed above are political. Ultimately, the decision to raid the system, the purpose of the raid and the manner in which it is accomplished are political decisions that may only be made by politicians. A system will be vulnerable to attack in any environment in which politicians do not understand that their political viability is linked to the fiscal viability of the retirement systems subject to their control.

III. THE TRUSTEES RESPONSIBILITIES

An analysis of trustee responsibilities in light of a pension raid must begin with the general concepts of fiduciary duties. While each state has developed laws regarding the fiduciary responsibilities of trustees, the consolidation of these various concepts in ERISA presents perhaps the best guide of fiduciary duties to defend trust assets.

ERISA clearly delineates those functions performed by a fiduciary which may give rise to liability. These "fiduciary duties" stem essentially from principals of state trust law which have been carried over into federal pension law. The main objective of the fiduciary duty rules is to insure that plans are operated in accordance with written guidelines and protect the availability of retirement benefits.

A. THE "EXCLUSIVE BENEFIT" RULE

[A] fiduciary shall discharge his duties . . . for the exclusive purpose of (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan...

ERISA Section 404(a)(1)(A), commonly referred to as the "exclusive purpose" rule, is designed to insure that trustees or other fiduciaries acting on behalf of the plan do not have dual loyalties. Fiduciaries are charged to act exclusively on behalf of participants in their decisions regarding plan assets. The most common violation of the exclusive purpose rule occurs where a fiduciary acts to benefit a third party, often times the plan sponsor, at the detriment of plan participants.

In a typical example, a fiduciary authorizes the plan to invest in the stock of the plan sponsor or extend a loan to the plan sponsor where

such transaction is not justified when viewed solely on investment merit. Such a decision is not a per se violation of the exclusive purpose rule, however, a fiduciary must establish that the action taken is prudent and in the best interests of the plan and its participants. In such case, the fact that there is an incidental benefit to the plan sponsor will not cause a violation of the exclusive purpose rule.

B. PRUDENCE

[A] fiduciary shall discharge his duties . . . with a care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in a conduct of an enterprise of a like character and with like aims...

The language of ERISA Section 404(a)(1)(B), which is frequently used in state law fiduciary statutes, provides that a fiduciary is to exercise the prudence not only of a reasonable person, but of an individual familiar with such matters. Commonly referred to as the "prudent expert" standard, this rule applies differently to different plan fiduciaries. A trustee, with no particular expertise in asset investment, may be deemed to satisfy the prudence standard by retaining an investment advisor or delegating the investment function to an individual familiar with such matters. In such case, the "prudence" of the trustee would be examined by reference to the process in which she selects the investment advisor.

Alternatively, a money manager selected by a plan trustee and delegated with the authority to invest plan assets, would be measured by a different standard. Because he or she is a fiduciary with respect to the plan, the manager must also comply with the prudent expert standard. In his case, however, the manager's standard of prudence will be measured by that of other persons "familiar with such matters," i.e., other professional money managers. Consequently, in evaluating compliance with the fiduciary standards, one would look to the conduct of other investment advisors and the decisions which would have been made given similar information and investment guidelines. Thus, the prudent expert rule does not require that one be held to a standard of which he or she has neither the training nor the experience to fulfill; but rather, the individual must act in a

C. DIVERSIFICATION OF INVESTMENTS

[A] fiduciary shall discharge his duties . . . by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

The diversification requirement of ERISA Section 404(a)(1)(C) is based on the general investment principal that calls for investment in a wide array of vehicles to avoid the risk incumbent with a concentration in a particular investment. The primary function of pension assets is to secure performance sufficient to pay out benefits when due. While asset managers should strive for the highest possible return, such attempt should not be made at the expense of diversification. This legislative history of ERISA notes that the diversification requirement cannot be stated as a fixed percentage but depends on the "facts and circumstances of each case." While many factors may effect the investment mix, e.g., liquidity needs, fiduciaries are generally cautioned against investing an unreasonably large portion of plan assets in a single type of investment.

D. ADHERENCE TO PLAN DOCUMENTS.

[A] fiduciary shall discharge his duties with respect to the plan . . . in accordance with the documents and instruments governing the plan..

ERISA Section 404(a)(1)(D) requires that the fiduciary act in accordance with the documents which memorialize the terms of the plan. This duty is relatively straightforward. The plan document will contain provisions regarding vesting, funding, administration, distributions, etc. and the fiduciary is required to operate the plan in accordance with those terms. There are several instances where the fiduciary will exercise discretion regarding the operation of the plan, however, where the plan document is unambiguous, the fiduciary must adhere to its terms.

In the public fund setting, the "plan document" is the constitution, statute or ordinance that establishes the terms of the system. This may include restrictions on investment options or a certain allocation mix. For example, until recently, West Virginia's constitution prohibited investment in stocks.

IV. TYPES OF RAIDS

A. DIVERSION OF ASSETS

The most blatant form of raid is the diversion of assets. The vast majority of defined benefit plans operate under the concept of funding both current benefit payment obligations and future accrued benefits based on actuarial assumptions regarding the amount of current funding necessary to provide such benefits. Typically, system actuaries will make the determination of the funding requirements based on the benefit formula and assumptions regarding the expected return of the plan in order to determine the level of funding.

- **New York State**

One form of diversion is the actual misappropriation of fund assets. In 1995, the governor of New York attempted to divert \$230 million dollars from the system's reserve fund to balance the state's budget. The state controller filed suit to block the diversion. The court held that the monies in the reserve fund were considered assets of the retirement system. Then, noting the state constitutional protection of pension benefits, the court held that the controller was solely empowered to protect such assets subject to his independent judgment in managing such assets. McCall v. New York, 640 N.Y.S. 2d 347 (N. Y. App. Div. 1996).



- **Wisconsin**

In Wisconsin, the state legislature attempted to fund retiree cost of living increases with \$84.7 million from the retirement system. However, under state statute, the COLA's were to be funded from the state's "general purpose" fund. The court of appeals held that the diversion amounted to a "taking" without just compensation under the state constitution. State Engineering Assn. v. Employees Trust Funds Board 558 N.W. 2d 83 (1997)

- **Washington, D.C.**

In 1994, the chairman of the Washington D.C. retirement board brought suit against then-mayor Sharon Pratt Kelly in response to her decision to postpone paying \$230 million in pension contributions. The mayor

proposed a "delay" in the contributions and promised that interest rate of 7.5% would accrue on the amount to be contributed.

- **California**

CALPERS successfully brought suit to strike measures passed by the legislature to delay \$910 million in contributions owed in 1992 and 1993. This resulted in the contributions being made up to 16 months later than they would have under prior practice. The appellate court, in upholding a trial court opinion, held that the delay violated the member's contract rights under the state constitution to an "actuarially sound" retirement system. Board of Administration v. Wilson 52 Cal. App. 4th 1104 (1997)

These are the assumptions

to determine

the value of the

assets

B. ACTUARIAL ASSUMPTIONS

Actuarial assumptions represent the stealth form of pension raid. Few people understand them and even fewer people want to understand them. However, in its most basic form, actuarial assumptions that overestimate the current value of assets or the projected rate of return on system assets, will necessarily reduce the level of funding required. Over the long haul, such practices will produce a deficiency in the funding due to an insufficient level of assets to fund future benefit obligations.

Similarly, because funding assumptions are based on the relationship between current and projected asset values to current and projected benefit liability, adjustment of assets values can greatly impact the system's funding obligation. An enterprising raider can thus manipulate either the actuarial assumptions, asset values, or both, and justify a smaller contribution.

- **New Jersey**

The state of New Jersey transferred \$773 million from state public employee pension fund to the state treasury. The transfer occurred after the state changed the method of valuing the assets from "book value" to "market value." Under the new valuation method, which was applied retroactively, the assets of the system were increased by 21 percent.

State public union challenged this practice and found an ally in the Internal Revenue Service. The unions filed a complaint with the IRS

contending that the state had violated the Section 401(a)(2) of the IRC which provides that assets held in trust under a tax-qualified retirement plan must be used for the exclusive benefit of the plan's participants. The IRS agreed and informed the state that the diversion of assets could result in the system losing its tax-qualified status. (The IRS also noted that the statutes incorporating the retirement system were deficient in that they did not contain certain tax-qualification rules.) The state entered a settlement agreement in which it agreed to restore amounts withdrawn from the fund plus interest thereon.

C. DIVERSION OF "SURPLUS"

Proving that there can be too much of a good thing, fund raiders have tried to attack funds that appear to have a surplus of assets when compared to benefit liabilities. In these unique situations, the key issue is: Who owns the surplus?

The raider will argue that because the sponsor is only obligated to keep the system "adequately funded" any assets above an adequate funding threshold are not subject to property, contract or constitution theories that would shield the assets from use by the sponsor. Even if the amounts cannot be tapped by the sponsor, at a minimum, the sponsor's funding levels should be reduced to reflect that the system is safely "in the black."

Members will counter that all assets held in trust are subject to the "exclusive benefit" provisions of the IRC and that fiduciary prudence mandates that the surplus be protected and maintained as a hedge against a downturn in investment returns. Alternatively, members may argue that because the assets have to be used for the exclusive benefit of the members, the surplus must be absorbed by increasing the benefit formula.

• Chicago

Mayor Richard Daley proposed a plan that would divert 56 million annually from the funding of two city retirement systems to public works projects and to finance property tax cuts. Another 20 million per year would be shifted from the funding of the systems to the firefighter and police funds that are currently underfunded. Daley's plan

is fortified by the fact that the systems from which the assets would be diverted are funded at 84% and 124% respectively. Conversely, the national average for funding is 70% of accrued liabilities.

- **Los Angeles**

handwritten: bonds issued when surplus was used to pay liability

The Los Angeles County Employees Retirement System pays a portion of its surplus assets to Los Angeles County as part of a five year agreement between the county and the system. The county issued pension obligation bonds in 1994 to retire a two billion dollar underfunded liability. In exchange for the bond issuance, the trustees of the system agreed that any surplus generated by the system would be divided between the system and the county with 25% of the surplus payable to the system and 75% of the surplus payable to the county.

- **Milwaukee**

The city attempted to merge a municipal pension fund with a surplus of approximately \$138 million with a disability fund that had a projected deficit of approximately \$87 million. City officials asserted that absent a merger, they would be forced to raise taxes by \$150 million to \$200 million over a 13 year period. A Wisconsin circuit court held that such a merger was unconstitutional and violated the due process and contract rights of the pension fund members.

D. LOANS TO PLAN SPONSOR.

Sometimes, the raider merely seeks to "borrow" from the pension fund by virtue of an "investment" in the well-being of the plan sponsor. In such cases, the sponsor will look to the pension system to invest in its tax-exempt bonds. In the private sector, such an investment is normally a violation of both Section 4975 of the IRC and Section 406 of the Employee Retirement Income Security Act of 1974 ("ERISA").

A similar rule applies to public sector plans. Section 503 of the IRC provides that a governmental pension fund may lose its tax-qualified state

if the fund engages in certain transactions with the sponsoring governmental entity. Section 503(b) of the IRC defines these transactions as follows:

(b) Prohibited Transactions. - For purposes of this section, the term "prohibited transaction" means any transaction in which an organization [a governmental tax-qualified pension plan] subject to the provisions of this section -

- (1) lends any part of his income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;*
- (2) pays any compensation in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;*
- (3) makes any part of its services available on a preferential basis to;*
- (4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;*
- (5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to;*
- (6) engages in any other transaction which results in a substantial diversion of its income or corpus to;*

the creator of such organization. . .

The purchase of such bonds by a retirement system are counterintuitive in that the government bonds are normally tax-exempt. However, income earned on assets held pursuant to a tax qualified trust is not taxed. As such, the purchase of tax-exempt bonds would appear to be an unusual investment decision on the part of the plan trustees. Here again political considerations and a lack of adequate independence on the part interest of system members.

• Philadelphia

With the city on the brink of bankruptcy, the Mayor sought to have the city's pension system purchase \$72 million in city bonds. The Finance Director, as chairman of the city's pension board advocated the purchase. (The Finance Director, under city charter, serves at the pleasure of the Mayor.) The city's police and fire union representatives objected to the purchase and filed suit.

The suit ultimately was dismissed and the bonds were purchased. The court found that the trustees had exercise both procedural and substantive due diligence. The purchase was analyzed on the basis of its return versus alternative investments in the same category. The court noted that sufficient safeguards were in place to protect the retirement system and that the system was on equal footing with other commercial bank investors.

E. ETI - ECONOMICALLY TARGETED INVESTMENTS.

Economically targeted investments or "ETIs" are generally defined as those investments which, in addition to producing an investment return, also produce a non-monetary "societal" return. These vehicles include investment in "union-only" projects, low income housing, and geographically restricted enterprises.

In the larger sense, ETIs include any investment in which the decision to invest, or withhold the investment, is based on factors other than maximizing the rate of return. Thus, all divestiture decisions are, in fact a form of economically targeted investments in that divestiture necessitates the selection of "alternative" (i.e. politically acceptable) investments.

Divestitures, however, cannot truly be classified as "raids" because they do not result in the diversion of pension assets for a legislative or executive purpose. An ETI raid must: (a) result in an active investment; and (b) the investment must directly or indirectly relieve a financial burden of the plan sponsor. Therefore, the use of system assets to invest in "small businesses operating within the state," is arguably is a raid of pension assets if the investment promotes an objective of the state other than

*not pay
are not
beneficiaries
of the plan*

- **Minneapolis**

Under a Minnesota law that allows investment in venture capital investment businesses within the state, the Minneapolis police and fire pension fund invested over nine million dollars in a Minnesota counter-top manufacture. The manufacture filed for bankruptcy protection without producing a single counter-top.

V. DEFENSES TO RAID ATTEMPTS

A. UNITED STATE CONSTITUTION

- Due Process Clause - United States Const. Amendment XIV § 1
employees & members have property rights in assets
- Contract Clause - United States Const. Art. I § 10 Clause 1
explicit contractual right to benefits

B. INTERNAL REVENUE CODE OF 1986, AS AMENDED

- Exclusive Benefit Rule - 26 C.F.R. § 1.401-2(a) *can lose tax ^{qualified} status for plan*
- Prohibited Transaction Rule - 26 U.S.C. § 503

C. STATE CONSTITUTIONS

- Alaska Const. Art XII § 4
- Hawaii Const. Art. XVI § 4
- Michigan Constitution Art. IX § 24

D. STATE ENABLING LEGISLATION

E. MEMBER RIGHTS

- Contract
- Property
- Promissory Estoppel

F. MANAGEMENT OF PUBLIC EMPLOYEES RETIREMENT SYSTEMS ACT

*specific
provisions
in Act*



via HL



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November 3, 1999

Mr. John Rios
Government of Guam Retirement Fund
Director
Government of Guam Retirement Fund
P.O. Box 3-C
Maite, Guam

Subject: Public Law 25-74 – Financial Viability

Dear John:

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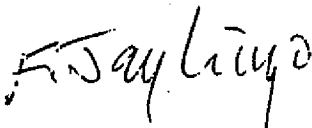
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John, please call us if you wish to discuss this information further.

Sincerely,



Jay Lingo

cc: Jeff Peer
Michael de Leon

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19

FILED
SUPERIOR COURT
OF GUAM

2003 FEB 18 AM 2:47

ALFREDO M. BORJAS
CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM

ODILIA BAUTISTA, et al.,

Plaintiff,

vs.

GERALD S.A. PEREZ, et al.,

Defendant,

CIVIL CASE NO. CV 1848-01

DECISION AND ORDER ON
DEFENDANT'S MOTION FOR
SUMMARY JUDGEMENT

INTRODUCTION

On May 17, 2002 the Defendant filed this motion for Summary Judgement. The Plaintiff filed an opposition to the motion on June 20, 2002. The reply to the opposition was filed on June 26, 2002. Vincent Leon Guerrero represents the Defendant. Philip Torres represents the Plaintiff. This motion has come before the Honorable Alberto Lamorena III, Presiding Judge, on July 3, 2002.

BACKGROUND

Plaintiff are members of the Defined Benefit Plan (DB) established in 1951. Ms. Bautista is a current retiree where as Mr. Guthrie is an inactive member. Membership in this plan was mandatory for all Government of Guam employees until October 1, 1995, when the members were given a choice of retirement plans. These employees were required to contribute a percentage of their base pay toward the retirement plan. 4 GCA §8136. The plan provides for a fixed, determinable, defined benefit, usually paid as an annuity. The formula to determine the benefit which reflected an employee's earnings and years of service. The government's cost to provide this defined benefit is whatever was necessary to provide that benefit. The cost to the government could be reduced by investment returns, the costs were ultimately the responsibility of the Government. See 4 GCA §8168.

FEB 19 2003

TEKER

1 In the 1990's, the 23rd Guam Legislature created the Defined Contribution Retirement
2 System (DCRS), which became mandatory for substantially all government employees, hired on
3 or after October 1, 1995. See 4 GCA Chp.8 Art.2. This plan did not allow a fixed benefit for the
4 employees. The employees were to make a five percent defined contribution of their salary. The
5 primary variable of this plan is the ultimate benefit, which varies depending on such factors such
6 as the level of contribution, the age of the employees, and the performance of the investment.

7 Since 1978 benefits including supplemental annuity benefits were mandated and fully
8 funded by the General Fund surpluses on an annual or semi-annual basis. Since 1993 these
9 amounts equaled \$4,238.00. The Legislature at times also allowed for the appropriation of a
10 lump sum cost of living allowance (COLA).

11 DISCUSSION

12
13 A complaint should not be dismissed unless it appears beyond doubt that the plaintiffs
14 can prove no set of facts in support of their claim, which would entitle them to relief. Johnson v.
15 Knowles, 113 F.3d 1114, 1117 (9th Cir.1997). When reviewing a dismissal for failure to state a
16 claim pursuant to Rule 12(b)(6) all allegations of material fact are taken as true and construed in
17 the light most favorable to the non-moving party. AlliedSignal, Inc. v. City of Phoenix, 182 F.3d
18 692 (9th Cir. 1999). See Jensen v. City of Oxnard, 145 F.3d 1078 (9th Cir.1998), cert. Denied,
19 119 S.Ct. 540, 142 L.Ed.2d 449 (1998). Unlikelihood of success does not, by itself, justify
20 dismissal. AlliedSignal, Inc. v. City of Phoenix, supra, 182 F.3d at 698. Furthermore, the court
21 when ruling on a motion to dismiss must accept well-pleaded factual allegations as true, and may
22 disregard conclusory allegations of law and unwarranted inferences. Pareto v. FDIC, 139 F.3d
23 696, 699 (9th Cir. 1998). Dismissal without leave to amend is improper unless it is clear that the
24 complaint could not be saved by any amendment. Chang v. Chen, 80 F.3d 1293, 1296 (9th Cir.
25 1996). A "judgement on the pleadings is properly granted when, taking all the allegations in the
26 pleading as true, the moving party is entitled to judgement as a matter of law." Ada v. Guam
27 Telephone Authority, 1999 Guam 10 (Apr. 30, 1999)(Rule 12(c))
28

1
2 The issue presented by the Defendants in their motion to dismiss is the legislation
3 requiring the Trustees to use funds held in trust for the Government Retirement Fund Defined
4 Benefit Plan to pay certain retired government workers additional benefit amounts unrelated to
5 their age, length of service, or the dollar amount of their pensions. Legislation was enacted to
6 create temporary vested benefits funded by the Retirement Fund. This was done when there was
7 sufficient funds to pay the benefits plus the "pick- up". The appropriation this year is
8 insufficient to fund the entire package for the Defined Benefit Plan, (DB Plan), at their actual
9 contribution rate. Many agencies have represented to the Board that they will not be able to fund
10 the additional benefits as mandated.

13 The Retirement Fund is currently using funds held in trust for the benefit of the DP plan
14 beneficiaries to pay these additional benefits. The Plaintiffs assert that the trustees must refuse to
15 pay the additional benefits because the statutory contribution rate falls below the actual
16 contribution rate. Are the Trustees to follow the statute without question and regardless of the
17 funding source? Or is the Board authorized to refuse to implement these additional benefits if
18 the implementation would adversely impair the government's ability to provide retirement,
19 disability and survivor annuities. "The member of the Board of Trustees stand in a fiduciary
20 relationship to the beneficiaries of the Retirement Fund in regard to the management of the
21 Fund." 4 GCA §8139.1(a). "The members of the Board of Trustees shall discharge their duties
22 with respect to the management of the Retirement Fund solely in the interest of the members and
23 beneficiaries of the Fund and for exclusive purpose of Providing benefits to the members and
24 beneficiaries and defraying reasonable expenses of administering the Fund." 4 GCA §8139.1(b).
25 These additional benefit are also paid out to the members in the DB plan and are the subject of
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1 this suit as to whether they are proper beneficiaries under the statute. In October 1995 the
2 Legislature established a Defined Contribution Retirement System (DCRS) which became
3 mandatory for all incoming employees of the government. In this plan the employers and the
4 employees made fixed, defined contribution equaling 5% of the employee's earnings. 4 GCA
5 §8209. The primary variable in this plan depends on factors such as the level of contributions,
6 the employee's age at entry and at retirement, and the performance of the investments.
7

8 Since 1978 many of the benefits including supplemental annuity benefits were mandated
9 and fully funded by an appropriation for the General Fund. Subsequent years have seen the
10 annuities limited to those retiring prior to October 1, 1995. The Legislature also had funded the
11 COLA from the General Fund.
12

13 In 1999, the legislature could not fund these benefits with the General Fund. But,
14 recognizing that the retirees have "come to depend on the annual supplemental annuity benefit
15 and the cost of living adjustment payments." Pub.L.No.25-72:2(a). Therefore, "in order to give
16 full effect to the underlying purposes of providing supplemental annuity benefits and cost of
17 living allowances to preserve the purchasing power of retirees and beneficiaries during this
18 period of economic austerity," see *Id.* The Legislature arrived at a temporary alternative funding
19 mechanism. They decided that the funding would be amortized, paid in installments, over a
20 twenty-year period. The pertinent language in the statute is:
21
22

23 To be more a prudent means to realize cost savings, rather than extending the amortization of the
24 non-funded liability from its current fifteen year period to no less than thirty years, or having the
25 Government of Guam Retirement Fund shoulder the burden of payment of the supplemental
26 annuity benefits and the cost of living allowances outright. Pub.L.No.23-42:IV:2(a).

27 As to the health, dental and life insurance premiums and Medicare reimbursement, the
28 Retirement Fund agreed to the approach taken by the Legislature to treat such benefits as "fully
funded by amounts already remitted by General Fund appropriation on behalf of line agency

1 employers and by autonomous agency employers during the period from October 1, 1998
2 through February 28, 1999." Pub.L.No.25-72:IV:2(b).

3 The Trustees have agreed to the "pick- up" under two condition:
4

5 1) The Legislature would continue to Fully Fund Existing Benefit Obligations. This was
6 needed as to not jeopardize the fiscal integrity of the Retirement Fund, "if the benefits it provides
7 to its members are not reasonably related and restricted to the resources from which said benefits
8 may be paid. 4 GCA §8101.1. The Retirement Fund agreed to the "pick- up" of the new
9 benefits on the basis that the existing benefits would be funded at the full actuarial rate
10 established by the Board.
11

12 2) The Legislature would fully fund new benefit obligations. The Board conditioned
13 payment of the "new" picked- up" benefits on funding of those benefits at the full actuarial rate
14 established by the Board.
15

16 These two requirements were initially met and were supposed to revert back to the General
17 Fund to carry out. Currently the present deteriorating economy caused the legislature to extend
18 the "pick up" date to September 30, 2002. The Budget Law identified an increase by 1.2019%
19 from the prior employer contribution rate of 18.6% for a total of 19.8019% for line agencies and
20 at least 21% for autonomous agencies,. However the current statutory rate falls short of the
21 actual full actuarial rate needed to support current and future obligations: 26.07% for line
22 agencies and 25.14% for autonomous agencies, for fiscal year 2002. Basically the Defendants
23 are stating that there is insufficient funding for the Retirement Fund to support its existing
24 benefit obligations, much less to undertake supporting new temporary benefits. The General
25 Fund is creating a greater debt to the Retirement Fund by not only paying the contributions back
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1 but by paying back at the actuarial rate during the amortization period. The ability of the
2 members of the DB plan is impaired on their planning for retirement.

3 The Trustees want to know whether the class of persons eligible for supplemental benefits
4 and COLA are the beneficiaries to whom the Trustees owe exclusive allegiance. The Trustees
5 seek as well a ruling as to whether (a) the provision of retirement, disability, and survivor
6 annuities to DB Plan members and beneficiaries ultimately remains a government obligation,
7 such that the Retirement Fund does not have discretion to challenge any legislation that may
8 impair the government's ability to continue to provide such benefits, and therefore must pay all
9 benefits under the DB Plan regardless of actual funding, or alternatively (b) the Retirement Fund,
10 as required by its duties as a fiduciary, take steps, in its reasonable discretion, to implement the
11 DB Plan statute in a manner that will not severely or adversely impair the government's ability to
12 provide retirement, disability and survivor annuities to DB Plan members and beneficiaries.

13 Rule 56 of the GRCP states that summary judgment :

14 Shall be granted forthwith if the pleadings, depositions, answers to interrogatories, and
15 admissions on file, together with affidavits, if any, show that there is no genuine issue as to any
16 material fact and that the moving party is entitled to judgment as a matter of law.

17 The Defendant cites to Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-5-, 106 S.Ct.
18 2505, 91 L.Ed.2d 202 (1986), "There is no issue for trial unless there is sufficient evidence
19 favoring the nonmoving party for a trier of fact to return a verdict for a party... If the evidence is
20 merely colorable... or is no significantly probative... summary judgement may be granted." The
21 Defendant also argues that in cases such as these the court can use a more aggressive manner in
22 granting a Summary Judgment. "Where the ultimate fact in dispute is destined for decision by
23 the court rather than by a jury, there is no reason why the court and the parties should go through
24 the motion of a trial if the court will eventually end up deciding on the same record."

1 Transworld Airlines, Inc. v. American Coupon Exchange, 913 F.2d 676, 684 (9th Cir. 1990) In a
2 non- jury trial case, a court recognizing that a trial would not enhance its ability to draw
3 inferences and conclusion, may in such situations, where evidentiary facts are otherwise not
4 disputed, properly grant a motion for summary judgment. Coats & Clark, 755 F.2d 1509 (11th
5 Cir.1985); Nunez, 572 F.2d 1124 (5th Cir. 1978).

7 Legal Arguments

8 A) The Defendant asks for an interpretation of the law as the facts are undisputed. They
9 cite to G. Bogert & Bogert, Law of Trusts and Trustees § 559, pp. 169-71 (2d rev. ed. 1980) (the
10 court has the power to instruct and advise trustees concerning doubts arising from ambiguity or
11 uncertainty of the law); Alaska State Employees Assoc. v. Alaska Public Employees Assoc., 825
12 P.2d 451, 454 (Alaska 1991) (recognizing equitable jurisdiction of courts over trusts).

14 The Trustees request that the Court find that the Fund has no discretion to challenge the
15 legislation requiring them to pay the benefits regardless of the funding source. Alternatively the
16 court can **instruct the trustees** , that as a requirement of their fiduciary duties, may take steps to
17 implement the DB plan statute in a manner that will not severely or adversely impair the
18 government's ability to provide the retirement, disability, and survivor annuities to DB plan
19 members and beneficiaries, such as:

- 22 1. refusing to pay new benefits if unfunded to under funded pursuant to actuarial standards;
- 23 2. challenging legislation of amendments to the DB Plan that would increase benefit levels,
24 expand minimum eligibility requirements; reduce or delay funding of contributions, or otherwise
25 impair the ability of the government to continue to provide retirement, disability , and survivor
26 benefits to members and beneficiaries;

1 3. determining, in its reasonable discretion, the priority for payment of benefits among the
2 various classes of beneficiaries under circumstances of unfunded or under funded employer
3 contributions; and

4 4. declining to process retirement, disability , or survivor benefit applications related to
5 employment at agencies, which have not made employer contributions at the statutory
6 contribution rate (this includes unfunded, underfunded, and late contributions).
7

8 B. The Government of Guam is Ultimately Responsible to Fund the DB Plan benefit
9 Obligations.

10 4 GCA §8168 states : "It is the intention of this Chapter that the payment of the required
11 contributions by the Government shall be an obligation of the government and all allowances,
12 annuities , benefits, and administration, custodial, and audit fees shall be paid by the Fund." The
13 Defendant uses this statute to show that the responsibility to pay for annuities and benefits are
14 the responsibility of the Government. This would mean that the Retirement Fund does not have
15 any discretion to challenge the legislation ordering them to pay the annuities and benefits,
16 regardless of the funding source.
17

18 C. Payments of Temporary "Pick Up" Benefits Conflicts with the Legislature's 1995 Closure of
19 the DB Plan Benefits.
20

21 The Defendant states that the Budget Law conflicts with legislature's intent and purpose
22 for creating the DCRS. The Legislature never added permanent benefits. The relevant portion
23 of the Budget Law shows an intent for the Retirement Fund to "pick up" the temporary diverted
24 General Fund obligation. The Law also failed to identify an adequate funding source to keep the
25 Retirement Fund funded at the full actuarial rate to preserve the rights of members to continued
26 payment of current and future obligations.
27
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1 The Retirement Fund must balance the interests of the members of the DB Plan as a
2 whole, over the long term, and remain impartial. The payment of the temporary benefits, would
3 only favor one class of beneficiaries and disfavor others, by substantially impairing the DB Plan
4 member's assurances that they will ultimately receive the retirement benefits to which they are
5 entitled.
6

7 22 GCA §3215 states: "Retirement contributions of both the employer and the employee
8 to a retirement fund or plan, including the Government of Guam retirement Fund, shall be the
9 property of the retirement fund or plan held in trust for the benefit of the members of the plan or
fund, and the employer retains no rights thereto."

10 The Defendant sees this as once the funds are deposited into the retirement fund the
11 contributions are thus held in trust for the benefits of its members. These funds are not available
12 for the Legislature to use for any other purpose except for which it was contributed for. See
13 Valdes, 139 Ca.App.3d at 788, 189 Cal.Rptr. at 224 (holding that contributions to a public
14 employees' retirement plan, including employer's contribution, became part of the corpus of the
15 trust and were not available as state funds).
16

17 The Budget Law requires the Retirement Fund to "pick up" the payment of temporary
18 benefits, to which employees have never contributed. , at the expense of diminishing the
19 Retirement Fund's ability to provide current and future permanent, vested benefits to which
20 employees have contributed. There is a conflict when the legislature expresses an intent to
21 maintain the fiscal integrity of the DB plan then enacts legislation that would substantially impair
22 the Plan.
23

24
25 D) Payment of Temporary "pick up" Benefits and substantially impair employees' and
26 Retirees' Contract Rights

27 The Defendant argues that the Organic Act of Guam specifically provides that "no bill of
28 attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted." 48

1 U.S.C. 1421b(j). In Kern v. City of Long Beach, 29 Ca..2d 848, 851-52, 179 P.2d 799, 801
2 (Ca..1947), the California Supreme Court stated, "Sine a pension is an integral portion of
3 contemplated compensation... it cannot be destroyed without impairing a contractual
4 obligation." The modern trend is that the public employee's rights under a public pension or
5 retirement statute are contract rights. See Howell v. Anne Arundel County, 14 F.Supp.2d 752,
6 754 (D.Md, 1998)(in most states, public employee pension plans embody contractual rights and
7 duties between an employee and the government as employer). This is also prohibited by the
8 Organic Act of Guam.

9
10
11 The Defendant then cited cases that show that courts consistently refused to implement
12 legislation which attempted to divert assets from pension and retirement funds to general funds.
13 Such a case was Valdes v. Cory, 39 Cal.App. 3d 773, 189 Cal. Rptr. 212 (Cal. Ct. App. 1983),
14 when the legislature enacted legislation to suspend funding of PERS by the government. The
15 statute prohibited the payment of employer contributions, from the general fund to the PERS, for
16 the months of April- June 1982. Consolidated mandamus proceedings were brought by PERS
17 members and employer organizations challenging the validity of the statute as an
18 unconstitutional impairment of contract. Had the Legislature appropriated the PERS trust funds
19 for purposes unrelated to the benefit of PERS members, then the court would have had no
20 difficulty in concluding that the legislation modified the vested interests of the PERS members.
21
22 Valdes,139 Cal.App.3d at 78, 189 Cal. Rptr. At 224. The court observed that even if the
23 Legislature did not directly raid the PERS fund, and merely directed "that funds held in trust for
24 the exclusive benefit of members and beneficiaries of PERS be used to satisfy the state's
25 contractual obligations to make monthly contributions to the retirement fund so that monies
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1 regularly appropriated for that purpose can redirected to balance the state budget, the effect is
2 precisely the same, i.e., vested rights of the PERS members are impaired.”

3 The present case has the Legislature attempting to “raid” the retirement fund in the same
4 manner as described above. This pick up of obligations is thus a gift of the government. This
5 diversion of funds increases the Retirement’s Fund’s unfunded accrued actuarial liability, thus
6 impairing the soundness of the fund. This diversion may be against the Organic Act of Guam.

7 The Plaintiffs contend that the Defendants request for an “instruction’ is the inappropriate
8 relief. The instruction would not be binding on the Defendants, and would not prevent the
9 Defendants from continuing to pay the COLA and Supplemental Annuities out of the fund unless
10 the court decided that such payment and legislation are inorganic as an impairment of the
11 member’s contractual rights. The Defendants cite to First National Bank of Chicago v.
12 Comptroller, 956 F.2d 1360, 1364 (1992), which stated its advisory opinion, “bank free to go
13 ahead with its restructuring and face consequences of its defiance.”

14 The Plaintiff in this case states on their opposition reply, that they do not seek an instruction
15 but rather seeks judgement, as a matter of law, and judicial determination concerning the rights
16 and duties for the parties. The party states many concurring cases that support the idea that an
17 interpretation of a statute is a proper matter for declaratory relief.

18 Declaratory Relief as stated in 7 GCA §26801 provides:

19 Any person interested under a deed, will, or other written
20 instrument, or under a contract, or who desires a declaration of his
21 rights or duties with respect to another, or in respect to, in, over, or
22 upon property, or with respect to the location of the natural channel
23 of water course, may, in cases of actual controversy relating to the
24 legal rights and duties of the respective parties, bring an action in
25 the court having jurisdiction for a declaration of his rights and
26 duties in the premises, including a determination of any question of
27 instruction or validity arising under such instrument or contract.
28 He may ask for a declaration of rights or duties, either alone or

1 with relief ; and the court may make a binding declaration of such
2 rights or duties , whether or not further relief is or could be claimed
3 at the time. The declaration may be either affirmative or negative
4 in form and effect. Such declaration shall have the force of final
5 judgement. Such declaration may be had before there has been any
6 breach of the obligation in respect to which said declaration is
7 sought.

8 In the Defendant's reply, to the Plaintiff's opposition, they state, "the Retirement Fund's
9 motion does not seek non-binding "instructions" from the Court. Rather the Retirement Fund's
10 Motion seeks judgment, as a matter of law, and judicial determination concerning the rights and
11 duties of the parties under the Budget Law and DB Plan statute."

12 The Court upon reviewing the Motions and Opposition see that the parties are requesting
13 the same type of declaratory relief, a Declaratory Judgement. This Court further finds that the
14 Retirement Fund's request for relief is consistent with its prayer for relief as set forth in its
15 Answer to First Amended Complaint for Declaratory and Injunctive Relief filed on January 10,
16 2002, specifically, "that the court determine whether the applicable legislation is valid under the
17 contract clause of the Organic Act."

18 4 GCA §8139.1 Fiduciary Duties states: (a) The members of the Board of Trustees stand in
19 a fiduciary relationship to the beneficiaries of the Retirement Fund in regard to the management
20 of the Fund.

21 (b) The members of the Board of Trustees shall discharge their duties with respect to the
22 management of the Retirement Fund solely in the interest of the members and
23 beneficiaries...The members of the Board of Trustees shall discharge their duties with the care,
24 skill, prudence and diligence under the circumstances then prevailing that a prudent person
25 acting in a like capacity and familiar with such matters would use in the conduct of an enterprise
26 of a like character and with like aims.
27
28

1 The Defendant's Motion cites 22 GCA §3215 in part:

2 Retirement contributions of both the employer and employee to a retirement fund, including the
3 Government of Guam Retirement Fund, shall be the property of the retirement fund or plan held
4 in trust for the benefit of the members of the plan or fund, and the employer retains no rights.

5 This means that the contributions must be held on trust for the benefit of its members.

6 The Court agrees with the Valdes, 139 Cal.App.3d at 788 189 Cal.Rptr. at 224 (holding that
7 contributions to a public employee's retirement plan, including employer's contribution, became
8 part of the corpus of the trust and were not available as state funds). These funds are held in
9 trust for the members of the fund. The employees have earned these funds, so any purpose of
10 which they are used which is not the puppies of the fund is an adverse modification of the rights
11 of the participants. The Budget Bills has required the Retirement fund to "pick up" the payments
12 of temporary benefits of which no employee has ever contributed. Thus the effect is the
13 diminishing of the Fund to the detriment of all who have contributed.
14

15 The Defendant's Motion also cites to the Organic Act of Guam, which states, "no bill of
16 attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted." 48
17 U.S.C. 1421(b)(j). This language recognizes that public employment contains certain
18 obligations, which are protected by the Contract Clause, including the right to the payment of
19 pensions and retirement benefits. Thus the modifications of statutes that change the provision of
20 the existing retirement fund jeopardizes the rights of the Retirement Fund beneficiaries. This is
21 impermissible.
22

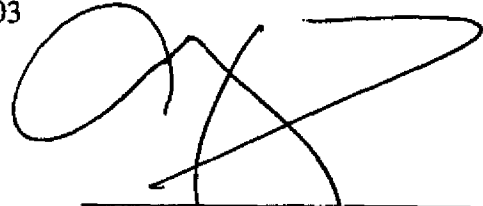
23
24 The Court finds that the Board of Trustees of the Retirement Fund must follow their
25 fiduciary duties as set forth in the Organic Act of Guam. The Board must treat the Fund in a
26 manner that will not impair the government's ability to provide permanent, disability, and
27 survivor benefits to DB Plan members. The Board of Trustees is hereby ordered to:
28

1. refuse to pay new benefits if unfunded or underfunded pursuant to actuarial standards;
2. challenge legislation amending the DB Plan that would increase benefit levels, expand minimum eligibility requirements, reduce or delay funding of contributions, otherwise impair the ability of the government to provide retirement, disability, and survivor benefits to members and beneficiaries;
3. determine, in its reasonable discretion, the priority for payment of benefits among the various classes of beneficiaries under circumstances of unfunded or underfunded employer contributions; and
4. decline to process retirement, disability, or survivor benefit applications related to employment at agencies which have not made employer contributions at the statutory contribution rate (this includes unfunded, underfunded, and late contributions).

CONCLUSION

Based on the foregoing, the Defendant's Motion for Summary Judgement is GRANTED.

Dated this 18th day of February, 2003



Alberto C. Lamorena III
Presiding Judge
Superior Court of Guam

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GOVERNMENT OF GUAM
RETIREMENT FUND

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF GUAM

ODILIA BAUTISTA and
JOSEPH A. GUTHRIE,
Plaintiffs,

vs.

The Government of Guam Retirement
Fund and JOHN RIOS, in his capacity
as Director of the Government of
Guam Retirement Fund,

Defendants.

CIVIL CASE NO. **CV 1823-02**

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1. This court has jurisdiction of this action pursuant to 7 G.C.A. § 3105, et seq., as amended.

2. Plaintiff, Odilia Bautista, is an ex Trustee of the Government of Guam Retirement Fund and is a legally qualified member of the Defined Benefit Plan established by the Government of Guam and brings this action respectively and derivatively on her behalf and on behalf of all other members of the Retirement Fund similarly situated.

3. Plaintiff, Joseph A. Guthrie, is a legally qualified member of the Defined Benefit Plan established by the Government of Guam and brings this action representatively and derivatively on his behalf and on behalf of all members of the Retirement Fund similarly situated.

4. Defendant John Rios ("Defendant Rios") is the Director of the Retirement

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CARLSMITH BALL

Date: 01/06/03

1 Fund and charged with its proper administration. He oversees the retirement payments to
2 beneficiaries of the Fund.

3 5. The Government of Guam Retirement Fund is a self supporting
4 instrumentality of the Government of Guam and was created by the Government of Guam to
5 maintain, own and operate a retirement fund for the exclusive benefit of all members and retirees
6 of the Government of Guam

7 6. The Defined Benefit Plan, as set forth in 4 GCA § 8101-8172, creates a
8 contractual relationship between the members of the Defined Benefit Plan and the Fund.

9 7. Membership in the Defined Benefit Retirement Plan is an integral element
10 of a public employees compensation package. At present there are approximately Twelve
11 Thousand Seven Hundred (12,700) members of the Defined Benefit Plan who rely upon an
12 actuarially sound pension plan.

13 8. The Defined Benefit Plan, pursuant to 4 G.C.A. § 8143, is a statutory trust.

14 9. Members of the Government of Guam Defined Benefit Plan have a
15 contractual right to a pension system that is actuarially sound. (4 GCA § 8101.1).

16 10. The members right to an actuarially sound fund requires that the normal cost
17 of benefits and the unfunded liability of the Plan be funded on an actuarially sound basis. (4 GCA
18 § 8137). The unfunded liability of the Fund is approximately One Billion Dollars
19 (\$1,000,000,000.00) and the Retirement Fund is presently actuarially unsound.

20 11. Retirement contributions of both the employer and employee are the
21 property of the fund. The monies in the Defined Benefit Plan trust are an equitable estate, held
22 in common for the benefit of each member and retiree. Employers and taxpayers retain no rights
23 to the Funds therein. (22 GCA § 3215(a)).

1 12. Members of the Defined Benefit Plan have a vested contractual right to the
2 assets of the Plan being used for the exclusive purpose of providing benefits to members and
3 beneficiaries and defraying expenses of administering the Fund. (4 GCA § 8139.1(b)).

4 13. The Government of Guam Retirement Fund, since October 1, 2002, has
5 been making payments of One Hundred Seventy-Six Dollars and Fifty-Seven Cents (\$176.57)
6 bimonthly to those members of the Defined Benefit Plan who retired before October 1, 1995.
7 This payment and certain other insurance payments have been denoted as a Supplemental Annuity.

8 14. Supplemental Annuity Benefits, along with COLA Benefits, are not vested
9 benefits. They are entitlements granted by the territory and are the sole obligation of the General
10 Fund. Public Law 26-152 at § 22(a) provides for an appropriation to the Retirement Fund for
11 supplemental annuity benefits for its employees who retired before October 1, 1995 in the amount
12 of Twenty-One Million Six Hundred Forty-Five Thousand Fifty-Six Dollars (\$21,645,056.00).
13 This appropriation covers FY2003, which began on October 1, 2002. Besides cash payments to
14 the qualifying retirees, the appropriation also covers payments to the Governor and Lieutenant
15 Governor, group health, dental and life insurance premiums and certain medicare premiums.

16 15. Section 22(b) of P.L. 26-152 requires the autonomous agencies to remit
17 their share of costs to the Retirement Fund to cover supplemental annuities for their employees.
18 Based upon FY2002 payments, that amounts to approximately Twelve Million Dollars
19 (\$12,000,000.00).

20 16. Defendant Rios and the Retirement Fund are absent any statutory or other
21 legal authority to authorize or make any payment of the Supplemental Annuity for FY2003.
22 Neither the Department of Administration nor any autonomous agency, except for the Guam
23 International Airport Authority, has made payment to the Retirement Fund for FY2003

1 supplemental benefits. Permitting payment of Supplemental Benefits with members funds is
2 contrary to Defendant Rios' obligations as the Director of the Fund to safeguard the Fund and
3 only spend money in accordance with the standards set forth in 5 G.C.A. § 7102.

4 17. The payment of FY2003 supplemental non-vested benefits diverts substantial
5 monies from the Defined Benefit Plan trust for purposes unrelated to the memberships exclusive
6 benefit. The payments constitute an impairment of the contractual rights of members of the
7 Defined Benefit Plan protected by the Guam Organic Act and statutory law.

8 18. Defendants Rios and the Retirement Fund have made payment of the
9 Supplemental Benefits without legal authority draining members money from the Fund and
10 increasing administrative processing costs.

11 19. Defendant Rios has failed to exercise the care, skill, prudence and diligence
12 of a prudent administrator acting in like capacity and familiar with such matters. Supplemental
13 Benefit payments from the Fund and related costs incurred, negatively impacts the Fund such that
14 it is even more actuarially unsound.

15 WHEREFORE, the Plaintiffs' request the following relief:

- 16 1. For a finding that the Retirement Fund is:
- 17 a. A Trust Fund and the monies therein belong to the members;
 - 18 b. To be administered for the exclusive benefit of the members of the
19 Fund;
 - 20 c. Without statutory authority to pay Supplemental Benefits; and
 - 21 d. Paying Supplemental Benefits with members funds is a breach of the
22 contractual relationship between the Fund and its members.
- 23 2. That Defendants be permanently enjoined from spending the trust money

1 in the Retirement Fund for Supplemental Benefits.

2 3. That Defendants be permanently enjoined for issuing Supplemental Benefits,
3 which are an obligation of the General Fund, thereby saving the Fund the administrative costs
4 associated thereto.

5 4. For attorney's fees, costs and such other relief as the court finds
6 appropriate.

7 Dated this 4th day of December, 2002.

8 **TEKER CIVILLE TORRES & TANG, PLLC,**

9
10 *Phillip Torres*
11 By _____,
12 **PHILLIP TORRES,**
13 *Attorney for Plaintiffs*

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Phil Torres
Attorney at Law

FILED
SUPERIOR COURT
OF GUAM

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ALFREDO M. BORLAG
CLERK OF COURT
BY _____

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF GUAM

ODILIA BAUTISTA and JOSEPH A.)
GUTHRIE, on behalf of themselves and)
all those similarly situated,)
)
Plaintiffs,)

vs.

GERALD S.A. PEREZ, ROLENDIA L.)
FAASUAMALIE, ANTOINETTE D.)
SANFORD and FRANK J.C. CAMACHO,)
in their capacities as Trustees of the)
Government of Guam Retirement Fund)
Board of Trustees, and JOHN RIOS, in his)
capacity as Director of the Government)
of Guam Retirement Fund,)
)
Defendants.)

CIVIL CASE NO. **CV 1848-01**

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1. This Court has jurisdiction of this action pursuant to 7 G.C.A. § 3105, *et seq.*, as amended.

2. Plaintiff, Odilia Bautista, is an ex-Trustee of the government of Guam Retirement Fund and is a legally qualified member of the Defined Benefit Plan established by the government of Guam and brings this action representively and derivatively on her own behalf and on behalf of all other members of the Retirement Fund similarly situated.

1 Dollars (\$1,100.00) cost of living allowance (COLA) checks to government of Guam retirees in
2 the Defined Benefit Plan.

3 9. The Trustees' vote and decision to pay the non-vested and non-funded
4 supplemental annuity and COLA benefits was in direct contravention of their fiduciary duties and
5 obligations as Trustees of the Retirement Fund, without regard to the propriety of such use, and
6 without regard to the powers and authorities of the Retirement Fund with respect to the protection
7 of assets for the members benefit.

8 10. Over the past two years the Retirement Fund has been raided by the
9 Legislature by its transfer of certain general fund obligations and passage of the early retirement
10 program, payment of medical premiums and the unfunded authorizations of fiscal year 2002
11 supplemental annuity and COLA payments and has lost One Hundred Million Dollars
12 (\$100,000,000.00) as a result of complying with the laws passed by the Legislature.

13 11. It is foreseeable that the continued diversion of funds to continue to cover
14 the Legislature's payment will cause an additional One Hundred Million Dollars
15 (\$100,000,000.00) depletion of the fund in fiscal year 2002.

16 12. Members of the Retirement Fund are contractually entitled to an actuarially
17 sound retirement system. The diversion of existing assets in the fund to pay for fiscal year 2002
18 non-vested and non-funded supplemental annuities and COLA payments violate the Organic Act
19 and is an impairment of contract between the members of the fund and the Retirement Fund.

20 13. Plaintiffs seek a declaration that the laws identified in paragraph 7 above
21 are not binding upon the Retirement Fund when proper funding is not provided by the Legislation.

22 / / /

23 / / /

1 3. That the Defendants be ORDERED to recapture all FY 2002 supplemental
2 annuity benefits and COLA payments from the members and return said monies to the Retirement
3 Fund;

4 4. That the Defendants' decision to comply with the unfunded legislation to
5 pay benefits be found to be a breach of their fiduciary duties and the vote be voided; and

6 5. That Plaintiffs be awarded their attorneys' fees pursuant to 7 G.C.A.
7 § 26603 and pursuant to the Common Fund Doctrine.

8 Dated at Hagåtña, Guam, on November 7, 2001.

9 TEKER CIVILLE TORRES & TANG, PLLC

10
11 By  _____

12 PHILLIP TORRES, ESQ.

13 Attorneys for Plaintiffs

14 Odilia Bautista and Joseph A. Guthrie

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February 21, 2003
Guam Legislature

**Statement by the Coalition for a Tobacco Free Guam on the 2003 Budget Bill
(specifically on the measure to levy taxes on Tobacco Products)**

Good afternoon.

We're here today to present a statement in support of the tobacco tax on behalf of the Coalition for a Tobacco Free Guam. The Tobacco Coalition is comprised of government of Guam agencies, Naval Hospital, Catholic Social Services, Sanctuary Inc. and the Guam Unit of the American Cancer Society. Our mission is to exist as a territory-wide community based coalition dedicated to achieving a healthier community by reducing death and disease associated with tobacco use through education and advocacy programs.

In 1982, the Surgeon General stated, "Cigarette smoking is the major single cause of cancer mortality in the United States." This statement is still true today. Tobacco causes many types of cancer. More Americans are killed by cigarettes than by alcohol, car accidents, suicide, AIDS, homicide and illegal drugs. Because cigarette smoking and tobacco use is an acquired behavior, one that the individual chooses to do, smoking is the most preventable cause of premature death in our society. In 2003, a staggering 430,700 or more deaths are expected from tobacco use.

The Tobacco Coalition would like to highlight additional facts:

- 1) Research Studies overwhelmingly conclude that tobacco use is linked to cancer.
- 2) 1 out of 2 people who smoke and do not quit will eventually die from tobacco related deaths.
- 3) Currently, 8 people die every minute globally from tobacco related deaths.
- 4) It is estimated that for every 8 people who die from smoking-related causes, one non-smoker dies from the effects of second-hand smoke.
- 5) It has been established that children exposed to second-hand smoke are far more likely to develop asthma.
- 6) Research has shown that workers in the hospitality industry are at greatest risk of the effects of second-hand smoke.
- 7) Nicotine is the most addictive drug known to man.
- 8) By the year 2030, 10 million people worldwide will die a year from tobacco related deaths.

The position of the Tobacco Coalition is that we must eliminate or at the very least, decrease the use of tobacco on Guam. In addition to community education and related programs, one way to curb tobacco use is through the increase of tobacco excise taxes.

The data from research on the relationship between cigarette prices and cigarette consumption support the conclusion that substantial increases in cigarette taxes will reduce cigarette smoking. The higher price of tobacco products tend to encourage individuals to quit or smoke less; and can potentially prevent our youth from acquiring the addiction to nicotine (or initiating the habit).

Higher tobacco taxes would discourage the use of [tobacco] the leading cause of preventable death in our nation. The consumption of tobacco products is strongly related to their affordability. This is especially true among youth whose smoking habits are not firmly established.

Policy-makers have the unique opportunity to reduce the consumption of tobacco by youths and thereby reduce health toll through the increase of the island's tobacco excise tax. This in turn increases the real price of tobacco products. Although of course, "no tax" is the desirable scenario, it is well known that the government needs funds to operate efficiently and adequately. We believe that the community would support this increase as the funds will be earmarked towards further education about the dangers of tobacco use and programs that support cessation and prevention.

As advocates for tobacco prevention, we have a lot of information about the dangers of tobacco use. We know about the tobacco industry's manipulation of the facts, about the negative health effects of cigarettes, and finally about the effective use of taxation to decrease consumption. The community deserves to know this information firsthand.

- 1) Government should quit "raiding" the Retirement Fund
- 2) Repay "loans" the government has "borrowed" from the fund
- 3) Audit the Retirement Fund
Reform Retirement policies (Cap on retirement ^{2.5%} salary)
non-lump sum shall be excluded
- 4) Privatize services and departments such as Mass Transit - eliminate / privatize
- 5) Increase Fees
 - a) \$50 for drivers license
 - b) \$75 for vehicle registration
 - c) Increase (100% increase) for traffic violations
 - d) Increase all fees - 20% to 30:
(building, inspection)
- 6) Sales Tax - 6% (most states have this)
- ~~7) Layoff 33% to be rescinded when the economy recovers~~
- 8) Eliminate COLA and supplemental annuities for retirees making \$50,000 +
retirees making \$20,000 and under should be exempt from any further reduction. Those making (retiree salary) \$50,000 to \$110,000 should not receive any further benefits.

(In bill 10% gen. wide cut) - Not enough

A. Brangley

TECHNIQUES TO CONSIDER
FOR THE
ADMINISTRATIVE REORGANIZATION
OF THE
GOVERNMENT OF GUAM

February 2003

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This introductory paper on the subject of government reorganization focuses on the organization and structure of administrative agencies and the management procedures that may be used in carrying out their assignments.

In this paper we are concerned with that aspect of Public Administration, which focuses on fitting people together in large and small governmental undertakings in such a way that they can, by cooperative and coordinated effort, produce measurable outcomes and results in a

**cost-effective
and efficient manner.**

This paper is designed to assist Guam's elected officials and public administrators as they attempt to develop reorganization initiatives for the Government of Guam.

APPROACHES TO REORGANIZATION

One way of approaching reorganization is to distinguish between what might be called the (1) overall government-wide improvement of organization and management, or the (2) improvement of organization and management in individual departments and agencies. This paper will look at the challenge of undertaking an overall administrative reorganization

OVERALL ADMINISTRATIVE REORGANIZATION

The term "overall administrative reorganization," as used in this paper, refers to organizational and management challenges that transcend the interests of individual departments and agencies, and are government-wide in scope. Of course, it is impossible to state with exactness that this matter falls in one category or the other. At times they may even overlap. The emphasis in this paper is on organizational questions, which are of mutual concern to all or many individual departments and agencies, as well as to the central management organs of government. For instance, this would include such questions as:

1. How many major departments and agencies should be set-up?

2. On what basis should they be established?

3. Is it better to have single-headed departments and agencies or those headed by boards or commissions?

4. How much control should the Chief Executive have over departments and agencies?

5. How should these controls be exercised, etc?

PRINCIPLES FOR OVERALL ADMINISTRATIVE REORGANIZATION

In this paper, I will not attempt to work out specific answers to current issues in the Government of Guam. This calls for a much more thorough and systematic review and evaluation of Guam's Public Administration practices. This paper presents various techniques for achieving administrative reorganization.

Professionals involved with government change initiatives generally agree substantially on some guiding "principles" for overall administrative reorganization. The most commonly accepted "principles" might be summarized briefly as follows:

1. In a Presidential/Gubernatorial system, the Chief Executive should be the focal point of responsibility and authority for the conduct of administration.
2. To assist the Chief Executive in this task, the help of well-equipped central management or "housekeeping" agencies is needed, particularly in the areas of public management, human resources/personnel administration, and public finance.
3. Administrative agencies should be established on a functional or "major purpose" basis, with the number of departments and agencies limited so as not to stretch unduly the span of control of the Chief Executive.

4. Single-headed departments and agencies are generally preferable to those headed by boards or commissions, at least for government instrumentalities engaged in administrative as distinguished from quasi-judicial or policymaking tasks.

These "principles" provide an indication of some of the primary objectives which have been pursued in the United States and in some other Western countries in dealing with administrative reorganization. Without the intention of passing judgment as to their applicability on Guam, we can assume for the time being that similar recommendations are apt to be made as the result of local reorganization efforts.

INTERNAL/EXTERNAL ADMINISTRATIVE REORGANIZATION

If we examine the ways in which different governments have tried to accomplish improvements in overall administrative organization and management, we find two common approaches. One might be called the "continuous internal" approach. This calls for a special staff unit of organization and management specialists located at some central point with the continuing regular assignment of administrative self-improvement. Probably the closest example we have to such an instrumentality within the U.S. federal government is the Office of Management and Budget (OMB)). A counterpart agency in the Government of Guam is the "Bureau of Budget and Management Research" (BBMR). Many countries have similar units, including Australia, the Netherlands, and Brazil.

On Guam, the conduct of administrative improvements in government departments and agencies is supposed to be one of the functions assigned by law to BBMR, but this function has been neglected – at least until recently. It appears that some effort is now being made by the new Administration to develop this aspect

of BBMR's work. This method is somewhat slow and undramatic, but it may bring about greater long-range results. This internal approach is often characterized as relying more on knowledge and persistence through the quiet aggregation of minor administrative reforms.

The second approach is what can be described as the "external" approach. This is accomplished when a special concentrated effort is exerted toward major reorganization, usually involving the creation of some temporary reorganization body to help draft and carry out the reorganization proposals. This approach is often characterized as "revivalism" in governmental reform. These occasional major reforms have the value of shock treatments to the administrative organism. This approach does have the advantages of:

1. Independence (provided by law or executive order)
2. Full-time concentration by those involved
3. Self-Criticism
4. Speed, and
5. A wider organizational vision of government

At the same time, it is generally recognized that this approach to administrative reorganization is an emergency measure, like resorting to major surgery after less dramatic treatment has failed to bring about a cure for government ills.

Although a number of countries have indulged in this technique of reorganization, the most frequent use has been in the United States, both in the federal government and in state and municipal government systems. For example, after World War II the federal government created the "Hoover Commission" (1947). In 1953, the "Second Hoover Commission" was set up. During the Clinton Administration (1990's) another reorganization commission was created, known as the "Gore Commission." Recently a major

reorganization initiative occurred in the federal government, which consolidated numerous independent sub-units within various departments and agencies involved in federal law enforcement and interdiction activities into a new "Department of Homeland Security." This new consolidated agency now has over 175,000 personnel assigned to it.

WHY GOVERNMENT REORGANIZATION ON GUAM?

On Guam, we are now at the point where we need to embark on a major reorganization campaign of our own for many of the same reasons that seemed important to the federal government. These reasons include:

1. The malfunctioning of government machinery due to the strain of the economy, declining resources, increasing demands for public services, and the lack of prudent management,
2. The rapid growth of legal mandates and functions (funded and unfunded) undertaken by government,
3. A growing interest and demand for the betterment of administration from the general public, private sector, and from career employees of government,, and
4. The coming into office of a new Administration and Legislature pledged to governmental reform and modernization.

GUAM'S REORGANIZATION CHALLENGES

In view of the increasing interest in and public recognition for the need for overall administrative reorganization and the close parallel of the federal and Guam experience, let us look at three reorganization challenges which must be faced on our island. These challenges include:

1. Setting up the basic machinery for securing reorganization,
2. Identifying the techniques for making the necessary investigations for formulating reorganization proposals, and
3. Dealing with the "politics" of reorganization; that is, the process by which reorganization measures are actually adopted in the face of what is apt to be well-mobilized and powerful opposition to these measures.

THE BASIC MACHINERY OF REORGANIZATION

In analyzing the first of these challenges, that of the basic machinery for reorganization, it is essential to work out a division of responsibility between the Legislative and Executive branches of government. This is a crucial and at the same time difficult relationship in any democratic government.

Executive- Legislative Cooperation Is Imperative

We can probably all agree that ultimate decisions about the pattern of government reorganization on Guam should be made by the Legislature, subject to the basic limitations contained in the Organic Act. At the same time, it is clear that Guam's Chief Executive – the Governor, has a very deep and immediate concern with the adequacy of the administrative structure which he heads. Indeed, the success or failure of a Chief Executive may even depend on this very point. Moreover, the Chief Executive is in a position to know the shortcomings of the administrative system first-hand and to have ideas for reform. The Legislature, on the other hand, is apt to be primarily focused on financial concerns. Legislators tend, by and large, to be less familiar with detailed organizational problems in the departments and agencies; its customary way of conducting business may also make it hard for

legislators to reach agreement and make decisions on issues of this kind.

These considerations help explain why the Guam Legislature may be tempted to turn the job of reorganization, as provided for in the Organic Act, over to the Chief Executive, or at least try to evolve some cooperative arrangement which will give the initiative to the Chief Executive while retaining power over the final approval or rejection of a reorganization plan.

Unless some formal arrangement is worked out to assure Legislative-Executive cooperation, the chances of making progress in any administrative reorganization initiative in the Government of Guam is going to be slim to none.

Serious attention must be given to this matter very early in the institutional life of the new Legislature and Administration. A reorganization bill(s) will need to be introduced and considered which should offer several choices of procedure for consideration to guide government reorganization on Guam.

At one end of the scale may be the suggestion that the job of reorganization be turned completely over to the Governor, with specifics on the time during which the Chief Executive shall have the power to act. In this plan:

1. The Legislature would pass a Reorganization Act conferring authority upon the Governor to put a reorganization plan in effect during a specified period of time (e.g., six months, one or two years);
2. Adhere to a requirement that the reorganization changes must be reported to the Legislature; and that
3. The Legislature may reject or modify any reorganization proposals of the Chief Executive by passing a law containing different provisions.

This reorganization method has been used in the United States. In the past, the U.S. Congress has provided such reorganization powers to the President.

At the other extreme, is the point of view that administrative reorganization is exclusively the prerogative of legislative bodies, and that the Chief Executive should be excluded from participation, except insofar as he might use his customary veto power for or against reorganization measures which he opposes. Here, official enabling legislation would be needed to put this process into effect, by passing a specific reorganization law.. At one time, the Congress reported that legislative leaders had agreed that this was the best system to use to guide the first Hoover Commission.

The other proposals on reorganization techniques fell somewhere between these two systems, and called for more of a joint attack upon the problem by both Congress and the President. These schemes appear to be adaptations of methods which have been used in recent times. In one of these proposals – called the Presidential reorganization plan technique, the President would be empowered to formulate reorganization plans. But he could not put them into effect single-handedly. Instead, he would be required to transmit each plan to Congress. A plan would take effect thirty calendar days after submission, unless either House disapproved of it by simple resolution during the thirty-day period. If Congress should adjourn during the thirty days, the period of consideration would be extended and the plan would carry over to the next session.

In the above approach, Congress obviously felt the need to keep zealous guard, over its constitutional prerogatives. The proposal provides for limitations and safeguards to keep the delegation of legislative powers within the bounds of validity.

The proposal was undoubtedly inspired by other reorganization acts. Beginning in the 1930's, the Congress had passed a series of these laws, each of them remaining in effect for a specified period of time. Other reorganization laws were passed in 1949 and renewed in 1953 after the Eisenhower administration came into office.

Another technique might be called the "autonomous reorganization commission method." At one time this received the endorsement of various U.S. Presidents as well as the leaders of Congress. This approach provided for a special "Commission on Reorganization," with authority to prepare reorganization plans and submit them directly to Congress for approval or rejection.

The unique feature of this approach is the procedure for forecasting and submitting reorganization plans. In the U.S., this prerogative has been reserved exclusively to the President. He can and often has in the past taken the advice of reorganization groups such as the Hoover Commission, but such bodies have never been authorized themselves to propose reorganization measures which automatically take effect unless disapproved by Congress within a short period of time. The difference here is that while the Hoover Commission was little more than a fact-finding body with no greater power than to recommend, the Commission under this proposal would be not only fact-finding, but would have the power to make and to effect reorganization plans subject to the approval of Congress.

Considering this significant variation in reorganization techniques, it seems plain that the machinery for achieving reorganization in the United States has been basically under the control of the Congress, rather than the President, but with executive-legislative cooperation – sort of a joint undertaking. In this sense, the Chief

Executive has a less crucial role and the legislative a more dominant role.

TIME TO ACT BY ESTABLISHING "THE EXECUTIVE BRANCH REORGANIZATION COMMISSION OF THE GOVERNMENT OF GUAM"

At the present time, a new Administration has just come into office, headed by a young and energetic Chief Executive (Governor) with popular support. Guam's Chief Executive also seems to enjoy the backing of strong bipartisan support among a majority of Senators - most of whom are also young and energetic first-time legislators. Consequently there does exist the possibility of achieving concerted action for reorganization with the active and influential participation of both the Governor and the Legislature.

None of this should obscure the fact that -by virtue of the Organic Act- Guam's Governor has full control of initiating administrative reorganization, with the advice and approval of the Legislature. But there is nothing to stop either the Governor or the Legislature from delegating the power of initiating a reorganization plan to a Commission on Reorganization - a Commission that would ultimately be responsible to both entities (Governor and Legislature). In such an arrangement, the Legislature would retain for itself the prerogative of rejecting any specific reorganization plan.

I respectfully suggest that the Legislature pass a law that combines the idea of establishing a special Commission on Reorganization - using the chief executive reorganization plan method previously discussed- for developing organizational changes and improvements. The legislation would create an "Executive Branch Reorganization Commission for the Government of Guam" to be composed of ten members, who may or may not be officials of the

government. The Speaker of the Guam Legislature would appoint four members. The Governor would appoint the remainder. The Commission would be instructed to:

1. Elect a Chairman and a Vice Chairman from among its members,
2. Have the authority to temporarily employ its own staff and/or acquire and detail staff from various government instrumentalities,
3. Be empowered to hold hearings and otherwise secure information needed in its work, and
4. Be given a small appropriation to cover expenses.

The Commission would go into effect for a period of six months after the date of approval of the act.

During this six-month period:

1. The Commission would have the authority to prepare an organization plan or plans for submission to the Governor of Guam,.
2. The Governor would submit such plan or plans to the Guam Legislature,.
3. Any plan submitted to the Legislature by the Governor would go into effect at the expiration of thirty calendar days of session from the date of transmittal, unless during the thirty-day period the Legislature, by simple resolution, disapproves the plan or mandates a transition period..

PROPOSED SCOPE OF COMMISSION PROPOSALS

The possible scope of the reorganization proposals developed by the Commission would be extremely broad, including:

1. Grouping, coordination, or consolidation of departments and agencies,
2. Abolition of departments and agencies which may not be necessary for the efficient conduct of government services, activities and functions,
3. Elimination of overlapping and duplication of services, activities, and functions among departments and agencies,
4. Transfer of functions from one department or agency to another, and
5. Recommend functions for privatization, where appropriate.

Furthermore, the Commission would have the authorization to:

6. Recommend whatever is necessary and desirable to improve administrative and management systems, and
7. Recommend initiatives to effect economy, efficiency and enhanced delivery of services, provided that no reorganization plan would continue an agency or function beyond the period authorized by law.

This approach to reorganization is similar to those used in the United States during recent years. The basic features are:

1. The use of a special reorganization commission to conduct studies and prepare reorganization proposals,
2. Delegation of authority to the Governor to submit specific reorganization plans which automatically go into effect

unless disapproved by the Legislature within a limited period of time or held back to effectuate a transition period/plan..

Factually, the Governor of Guam is always in a somewhat less powerful position in guiding and approving reorganizations. This is because of the unique balance of power established between the Governor and the Legislature as provided for in the Organic Act. It would take only a simple majority vote of Senators to block a Gubernatorial reorganization plan.

CONDUCTING REORGANIZATION STUDIES

If, as proposed in this paper, an "Executive Branch Reorganization Commission of the Government of Guam" is actually established, the Commission will face a tremendous problem of planning and scheduling its work in order to complete its assignment within the brief six-month period of its official life.

The expiration date for submission of reorganization plans to the Governor and the Legislature will inch upon those involved very quickly. Before this date, the Commission must:

1. Organize
2. Identify and recruit its staff
3. Find suitable office quarters, necessary equipment and supplies
4. Map out a schedule of study
5. Make work assignments
6. Conduct all of its investigations and research with departments and agencies
7. Develop draft recommendations
8. Circulate recommendations
10. Organize and hold public hearings
11. Draft and "package" final recommendations in appropriate form

12. Officially submit plan(s) to the Governor and the Legislature

Anyone who has experience with government reorganization initiatives will realize the enormity of this task within the limits of such a time schedule. Based on my own experience, the following suggestions might be useful as guides to the Commission:

1. It will save time and avoid later confusion for the Commission to devote a great deal of effort at the beginning to the identification of the main problem(s) areas on which it will concentrate and the determination of the general objectives which it intends to achieve.
2. The central staff of the Commission should probably be small, with emphasis in making selections based on energy, strategic thinking, imagination, familiarity with the workings of the Government of Guam, and excellent writing skills.
3. The "task force" technique may prove useful as a means of accomplishing a large volume of work in a short time. This would involve assignment of specific fields of inquiry to different groups of investigators, with each task force reporting its findings and recommendations to the Commission for final action. (The original Hoover Commission set up about 25 such task forces, and the same system has been used by many state reorganization commissions.). The handicap here will be finding a sufficient number of qualified and available persons to serve on the task forces. Adequate staff will be difficult to get in any event, and it will probably be easier to persuade qualified and motivated individuals to serve on task forces with restricted assignments than to serve as regular full-time members of the Commission's own staff.

4. Intermediate deadlines will have to be set and met in order to permit the Commission to finish up on time. Particular care is needed to make sure that task force reports or staff reports are turned in to the Commission soon enough for Commission members to study them and consider them thoroughly before making their own recommendations.
5. Throughout its existence, the Commission should pay attention to the importance of securing acceptance of its proposals for reorganization. Unless it can sell its product to all sectors of the Guam community, and, most particularly, to elected officials and to career employees of the Government of Guam, the whole effort of the Commission will have been in vain.

THE POLITICS OF REORGANIZATION

This brings us to the third topic - the "politics" of reorganization. The sad but certain facts are that although reorganization groups show a remarkable unanimity in what they recommend, they also usually show a poor record when it comes to getting their recommendations adopted and put into effect. The first Hoover Commission enjoyed high prestige and received bipartisan support, and compiled a commendable record of accomplishment. Even so, Congress did not accept about 70% of its recommendations. Most of the basic proposals were not adopted.

The poor record of actual accomplishments of some reorganization commissions in the United States can be traced to potent and persistent opposition to many reorganization proposals. Resistance usually comes from these sources:

1. Legislative bodies
2. Interest or pressure groups, and

3. The administrative agencies being reorganized.

PITFALLS TO AVOID:

Exaggerated Claims of Financial Savings;

Before exploring the reasons for opposition from the groups identified above, mention should be made of a couple of pitfalls reorganization commissions often stumble into and which might be avoided on Guam. One is the urge to make claims of exaggerated sums of monetary savings to be realized as a result of reorganization. This may arouse temporary interest and support but it is likely to have a boomerang effect. The gains from reorganization are usually in terms of better services rather than the reduced expenditure of funds, and even when less money is spent, it is hard to prove that the reason is the reorganization and not something else.

Policy Recommendations or Organizational Recommendations?

The other pitfall is that the reorganization commission may be drawn into the making of policy recommendations rather than organizational recommendations. Admittedly it is impossible to divorce organizational considerations completely from the program objectives which government organizations are created to achieve. Nevertheless, the main reason for undertaking reorganization studies is to improve the execution of existing governmental programs. When proposals for expansion or reduction of governmental functions are mixed with proposals for better organization to carry on the current programs, the merits of the organizational plans become involved in the heated debate over policy issues. To avoid this confusion, the original Hoover Commission decided that it would not pass judgment on the wisdom of existing governmental programs, but would confine

itself to recommendations designed to bring about the more efficient execution of these programs. The most controversial parts of the Hoover Commission reports were those in which the Commission deviated from this decision. The second Hoover Commission was actually given full and explicit authority to make recommendations on government policy. But this mandate diverted the Commission from the organizational phase of its assignment, created dissension in its own ranks, and made it a storm center when its final report was made public and transmitted to Congress.

Unless specifically provided for by law, any act creating a reorganization commission on Guam should not involve delving into these policy questions, but instead should mention such objectives as:

1. More effective and cost effective management of the government,
2. Increased efficiency of government operations, and
3. Expeditious administration of public business.

With so much to be accomplished along these lines, it would seem wise for a Guam commission to leave to the Governor and the Legislature the task of deciding questions as to what the Government of Guam should "do or not do" at this point in time

Even if the reorganization commission to be established sticks to its principal job and does it well, the prospects are that its recommendations will face strong opposition. Very often the most determined resistance will come from the officials and employees of the departments and agencies being reorganized.

Most of us are apt to think that we are actually doing things in the right way and we automatically become defensive when someone else suggests change. This attitude leads people to testify before legislative bodies that they are all in favor of the idea of

reorganization and that most departments and agencies certainly need it, but it happens that their own agency is in good shape and needs very little readjustment. (I.e., "My department is of a type, character and kind that cannot be consolidated with any other department or agency, as its duties and functions are unique, and a reduction of personnel or a transfer of any duties of this department would work a hardship and prevent certain citizens from receiving the benefits to which they are entitled.").

Nearly every department and agency has one or more clientele groups, which normally lend support to it and maintain close interest in its programs. A familiar example is the relationship between an administrative agency dispensing benefits to individual veterans, and to groups and associations of veterans. Normally an agency can expect to receive the encouragement and active support of its clientele when trying to block a reorganization plan which it dislikes. The bigger and stronger the clientele group, the better are the chances of preventing reorganization.

The combined power of agencies and their clientele groups were vividly demonstrated after the first Hoover Commission made its recommendations. A proposal for more unified direction of government hospitals, based on careful study and documented needs, was defeated because of the resistance of the U.S. Veteran's Administration and the almost solid opposition of veteran's organizations. Similarly, an attempt to transfer civil functions of the Army Corps of Engineers to an integrated water development agency was easily blocked by an alliance of the Corps and its friends in an out of government, working through a lobbying organization known as the "Rivers and Harbors Congress." Similarly, varied alliances on Guam can be expected to emerge to resist reorganization proposals.

The Guam Legislature is the battlefield where the victory or defeat of local government reorganization plans will be decided.

Just as the sponsors of reorganization will try to convince our Senators of the merits of their proposals, the opponents will try to convince them of the defects. In this context, the odds are usually against the adoption of all or significant parts of the reorganization plan.

For one thing, the opponents of the reorganization are nearly always highly vocal well organized, well financed, and aware of their objectives. Supporters for reorganization tend to be more amateurish and less concentrated.

Moreover, the U.S. experience indicates that legislators often take a dim view of the objectives and methods of administrative reorganization. This is due, at least in part, to doubts about the validity and effectiveness of the proposed changes. It probably also reflects a reluctance to take any action which might upset the balance of power between the legislative and executive branches by strengthening the administrative system and thereby building up executive powers -even though the result might be improved and more cost effective delivery and execution of government programs.

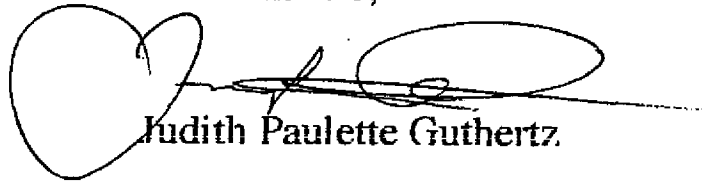
THE CHALLENGE AHEAD

As we embark on various initiatives and develop a campaign to secure better overall organization of the administrative system of the Government of Guam, many of the challenges posed by reorganization will have to be met and decided upon. None of this should discourage our elected officials, public sector employees or citizenry. The challenges and problems associated with reorganization initiatives can be overcome.

Administrative reorganization and management improvement should be a continuous process. Progress can be made even against

heavy odds. The rewards will be worth the effort because better organization means improved and more cost effective delivery of services to the public. Isn't this, after all, the purpose of government?

Sincerely,

A handwritten signature in black ink, appearing to read 'Judith Paulette Guthertz', written over a horizontal line.

Judith Paulette Guthertz



GOVERNMENT OF GUAM
CIVIL SERVICE COMMISSION
KUMISION I SETBISION SIBIT

490 Chalan Palasyo, Agana Heights
P.O. Box 3156 Hagåtña, Guam 96932
Tel: 475-1300/01 Fax: 477-3301



FEB 24 2003

CSC NO. 2003-152

TO: Honorable Frank Aguon
Vice-Speaker, Twenty-Seventh Guam Legislature

FROM: Acting Director, Civil Service Commission

SUBJECT: Proposed Bill 42

Hafa Adai!

Thank you for the opportunity to comment on bill 42 as it relates to the functions of the Civil Service Commission. In reviewing the bill, I would first like to thank the Legislature for the confidence that it has shown in the Civil Service Commission and its staff in undertaking the massive changes that will affect the government department and agencies as well as its employees.

In Chapter IV, section 16(b), it provides that the Director/Agency head notifies the Civil Service Commission (Commission) of the proposed furlough or layoff for specific positions and that the Commission shall respond to the agency within 5 work days, approving or disapproving the elimination of each identified position. This section raises the following concern:

The furlough and layoff procedures provide that the employee may appeal to the Civil Service Commission. It would be difficult for the employee to feel that they had a fair review of their situation if the Commission is to determine the appropriateness of the elimination of each identified position.

We propose instead, the following language for your consideration:

Director/Agency head notifies the Director of the Department of Administration. Upon notification of employees of plan for furloughs and layoffs, the director for each department shall identify each position within their agency identified for elimination, and transmit such information as well as current and proposed staffing patterns and current and proposed organizational charts to the Department of Administration for approval, based upon the function and needs of the agency. The Department of Administration shall review its staff findings without public input and

shall respond to the agency within 30 days, approving or disapproving the elimination of each identified position. In its review, the Director of the Department of Administration shall submit to the Director of any department or agency any comments or recommendations that it finds in its review.

Additionally, all autonomous agencies, bureaus and instrumentalities of the government of Guam, who may implement a furlough or layoff plan, shall also submit their request to the Department of Administration for approval.

Also, we note in section 6 of Chapter IV the issue of transfer of government employees. We suggest the following language be added to number 3 to be consistent with existing Department of Administration's Personnel rules and regulations:

3. The transfer of any employee shall not occur if the employee has filed a legitimate grievance or EEO complaint.

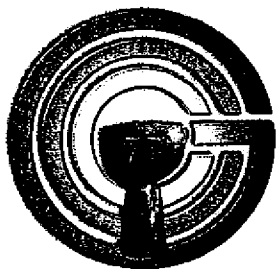
Because of the enormous amount of work that the Civil Service Commission will be undertaking, we strongly request that you consider restoring the full amount requested (\$549,000) in the Governor's budget bill submission to you for the Civil Service Commission.

Thank you for your consideration of our review.


VERN P. PEREZ



Commonwealth Now!



GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS

1 9 2 4 - 2 0 0 1

February 18, 2003

Vice Speaker Frank B. Aguon Jr.
Chairman, Finance and Budget, General Governmental Operations, Reorganization and Reform
Twenty Seventh Guam Legislature
101-A, Ada's Commercial & Professional Center
118 East Marine Dr.
Hagåtña, Guam 96910

RE: GOVERNMENT OF GUAM'S FISCAL YEAR 2003 BUDGET

FAXED

Dear Vice Speaker Aguon:

On behalf of the Board of Directors, I am writing to forward our comments and recommendations on the Governor's Fiscal Year 2003 Budget Plan. At the outset, we would like to say that we are pleased that the plan includes several Chamber generated cost-savings and economic initiatives we have worked on with the Guam Legislature including:

- Workweek reduction;
- Nighttime differential pay suspension;
- Reducing carryover leave from 720 to 240 hours;
- Reduction of supplemental annuities and COLA payments; and,
- Several privatization and outsourcing initiatives.

It is a well-known fact that more than 5,000 private sector jobs were cut over the last two years. Employers were faced with very painful decisions, which affected close friends and family. The private sector has paid dearly. Any new or increased taxes, including the proposal to take away incentives or capital from numerous small businesses provided by the Dave Santos Act and proposals to increase excise taxes on alcohol and tobacco products, would only serve to exacerbate further decline in private sector employment.

We believe the size of the Government of Guam must be reduced in line with current revenue. A tax increase will only continue to spiral down the economy. Keeping money in the economy is the only way it can grow and pay taxes to the government.

We applaud our elected officials for strongly espousing outsourcing and privatization for telephone, power, water/sewer, GMH, and the consolidation of our ports and the outsourcing of many of their activities. Further, initiatives to consolidate departments and eliminate redundant positions are quite laudable. We encourage more of these initiatives as they are responsive to the urgent necessity to downsize the government now rather than later.

Our comments and recommendations regarding the Governor's budget plan follow:

1. The Guam Chamber of Commerce is opposed to any and all new or increases in taxes.

2. Deeper cuts in current spending must be made. We strongly recommend the immediate reduction in the government's workforce resulting in at least a 10% reduction in General Fund personnel expenses.
3. The immediate cessation of retirement income payment for any retiree who is employed or contracts for re-employment with the Government of Guam.
4. The elimination of supplemental annuity payments to retirees who collect more than \$20,000 annually in retirement pay, as recommended by the Public Auditor.
5. Implementation of other recommended changes to the government's benefits package and the enforcement of personnel policies that will increase productivity while reducing personnel costs, such as random drug testing government-wide.

We will not be opposed to the notion of bridge financing provided that:

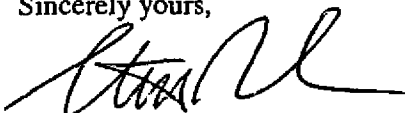
1. The proceeds from the financing are not used for general operating purposes. They must be solely utilized to pay tax refunds due to individuals and corporations and outstanding payments to vendors.
2. The appropriate restructure of the government continues through the combination of redundant agencies, reduction in workforce, and outsourcing of applicable activities such that the deficit is maintained at a level of less than \$100 million by the fiscal year ending September 30, 2004.
3. For Fiscal Year 2004, the Governor and the Legislature re-implement P.L. 23-14 requiring the budget to be 5% less than the prior year in order to reduce the deficit to zero in the foreseeable future.

As bridge financing will take at least six months to secure, it is even more important to cut costs immediately.

These are very difficult times for the community as a whole. We would like to continue working with you, the Senators in the 27th Guam Legislature, the Governor and Lt. Governor on solutions to grow investor confidence in Guam.

On behalf of the Board of Directors, I would like to invite you to participate in discussions of our recommendations and others, which could have a positive impact on the Government of Guam's financial crisis. The Breakfast Meeting is scheduled on Tuesday, February 25, 2003, 7:30 a.m. - 9:00 a.m., Chamorro Ballroom, Guam Marriott Resort. Besides yourself and the Senators, we will be inviting the Governor and Lt. Governor. We're here to work with you on solutions. It is our sincere hope we will see you there. We will be calling your office to confirm.

Sincerely yours,



STEPHEN C. RUDER
Vice Chairman

General Fund Revenues

<u>Categories</u>	<u>FY 2003 Revenue Forecast</u>	<u>Bill 42</u>	<u>Difference</u>
Income Tax (Individual, Withholding and Corporate less Refunds)	150,459,754.00	140,145,420.00	10,314,334.00
Federal Income Tax Collection			
Section 30 and Immigration/Indirect	56,835,187.00		
Section 30		54,000,000.00	
Immigration Fees and Indirect Cost		<u>2,835,187.00</u>	
Total	<u>56,835,187.00</u>	56,835,187.00	0.00
Gross Receipts Tax	127,069,727.00	173,032,443.00	(45,962,716.00)
Other Taxes	3,441,497.00	3,157,990.00	283,507.00
Total Taxes	337,806,165.00	373,171,040.00	(35,364,875.00)
Use of Money and Property	735,533.00	132,387.00	603,146.00
Licenses, Fees and Permits	1,099,131.00	996,585.00	102,546.00
Department Charges	1,921,702.00	1,546,091.00	375,611.00
Federal Funds Receivables Collections	0.00	20,000,000.00	(20,000,000.00)
Outstanding Receivables Collections Tax	0.00	13,000,000.00	(13,000,000.00)
TOTAL GENERAL FUND REVENUES	341,562,531.00	408,846,103.00	(67,283,572.00)

**BILL 42: CHAPTER IV
MISCELLANEOUS PROVISIONS**

SEC.	DESCRIPTION	GOVS REPEAL
1	Governor's transfer of 15%: Appendix A: into personnel exempted	YES
2	Flexible Work Week authorized	YES
3	P.L. 25-164 relative to Annual Leave is repealed	YES
4	Annual Leave reenacted: 6 hrs maximum bi-weekly, 320 accumulated hrs.	YES
5	Suspension of Night Differential, effective immediately	YES
6	Transfer of Employees within & between departments authorized	YES
7	Preferred hiring of line employees in Autonomous Agencies	YES
8	Across-the-Board pay cuts for elected officials & justices	YES
9	Authorizing Civil Service to equitably adjust salaries with Governor's approval	YES
10	Repeal of P.L. 26-73 relative to preventing across-the-board cuts	YES
11	Governor's Special Fund transfer authority to supplement cash obligations	YES
12	FTE level for Superior & Supreme Courts limited to Jan. 6, 2003 filled pos.	YES
13	No hiring of Executive Branch unclassified positions with some exceptions	YES
14	Moratorium on compensation for Boards & Commissions through FY2004	YES
15	Creation of task force within BOPS for Government Reform & Reorganization	YES
16	Personal Services Contracts extends to licensed health professional	YES
17	Employee separation procedures elaborated	YES
18	DOA rules & regulations: Amendment for Employee Furlough Benefits	YES
19	DOA rules & regulations: Amendment for Employee Furlough Procedures	YES
20	DOA rules & regulations: Amendment relative to Recalls	YES
21	Effective date of provisions per the Act; upon enactment into law	YES

Bill 42 (COR)

The Bill proposes to appropriate funds from the General Fund and various Special Funds for the remainder of the fiscal year from March thru September. In addition, Chapter IV proposes various cost saving measures, such as Suspension of Night Differential Pay, Transfer of Employees, Flexible Work Hours and Furloughs. Chapter V deals with Revenue Enhancements, inclusive of an amendment to the Alcohol and Tobacco tax rates, as well as an increase in the Gross Receipts Tax from 4% to 6%.

The various cost saving measures as proposed will provide for significant cost savings. Any cost savings would be dependent upon the number of employees affected in the application of such measures. It is estimated, for example, that approximately \$60.0MM may be saved annually from the General Fund if a 32 hour work week was implemented for all General Fund funded positions.

The Revenue enhancement measures are projected to generate approximately \$74.0MM in additional revenues. However, the revenues from alcohol and tobacco taxes would be earmarked to the Safe Home, Safe Streets Fund and Healthy Future Fund.

Total additional appropriations for the General Fund and Special Fund are \$179,652,983 and \$10,633,199. This would mean the appropriations for the General Fund and Special Funds would be appropriated over their corresponding revenue levels, as proposed in the Bill, by \$90,713,523 and \$1,337,863 respectively.

Attached is additional information regarding the Bill. However, due to time constraints, we will be providing a more detailed analysis on certain provisions as discussions continue on Bill 42.





Committee on Appropriations and Budgeting,
General Governmental Operations, Reorganization and Reform
 Vice Speaker Frank B. Aguon, Jr., Chairman

Public Hearing
 February 24, 2003 • 1:30 p.m.
 I Liheslaturan Guahan, Hagåtña

BILL 42 (COR), AS AMENDED: "AN ACT RELATIVE TO APPROPRIATING NECESSARY FUNDS FOR THE OPERATION OF THE EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCHES OF THE GOVERNMENT OF GUAM FOR THE REMAINDER OF FISCAL YEAR 2003; INSTITUTING NECESSARY BUDGETARY REDUCTIONS IN GOVERNMENT EXPENDITURES; AND PROVIDING / MAGA'LAHEN GUAHAN THE TOOLS AND FLEXIBILITY TO FURTHER IMPLEMENT CRITICAL REDUCTIONS IN THE OPERATIONAL COSTS OF THE GOVERNMENT OF GUAM."

NAME (Please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
✓ Stephen C. Rudy	Guam Chamber of Commerce	✓	✓		✓	472 6311 / 8001



**Committee on Appropriations and Budgeting,
General Governmental Operations, Reorganization and Reform**
Vice Speaker Frank B. Aguon, Jr., Chairman

Public Hearing

February 21, 2003 • 1:00 p.m.
I Liheslaturan Guahan, Hagåtña

BILL NO. 2: AN ACT RELATIVE TO APPROPRIATING NECESSARY FUNDS FOR THE OPERATION OF THE EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCHES OF THE GOVERNMENT OF GUAM FOR THE REMAINDER OF FISCAL YEAR 2003; INSTITUTING NECESSARY BUDGETARY REDUCTIONS IN GOVERNMENT EXPENDITURES; AND PROVIDING THE MAGA'LAHEN GUAHAN THE TOOLS AND FLEXIBILITY TO FURTHER IMPLEMENT CRITICAL REDUCTIONS IN THE OPERATIONAL COSTS OF THE GOVERNMENT OF GUAM.

NAME (Please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
<i>Quoth Gutierrez</i>	<i>Personal</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			<i>734-5833</i>



**Committee on Appropriations and Budgeting,
General Governmental Operations, Reorganization and Reform**
Vice Speaker Frank B. Aguon, Jr., Chairman

Public Hearing

February 21, 2003 • 1:00 p.m.
I Liheslaturan Guahan, Hagåtña

BILL NO. 42: AN ACT RELATIVE TO APPROPRIATING NECESSARY FUNDS FOR THE OPERATION OF THE EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCHES OF THE GOVERNMENT OF GUAM FOR THE REMAINDER OF FISCAL YEAR 2003; INSTITUTING NECESSARY BUDGETARY REDUCTIONS IN GOVERNMENT EXPENDITURES; AND PROVIDING THE MAGA'LAHEN GUAHAN THE TOOLS AND FLEXIBILITY TO FURTHER IMPLEMENT CRITICAL REDUCTIONS IN THE OPERATIONAL COSTS OF THE GOVERNMENT OF GUAM.

NAME (Please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
✓ Jose S.N. Chagnualaf	Retiree	✓				878-1217
✓ JOSEPH T. FLORES	RETIREE	✓				789-3060
X SUSAN Y. Quitugan	RETIREE					734-0431
✓ PHIL TORRES	ATTORNEY	✓			✓	477-9891
✓ Elaine Low/ American Cancer Society	Coalition for a Tobacco Free Guam	X	X			707-6548
✓ RITA FRANQUEZ	Retiree	✓				





SEE PAGES
H 3, H5-6



PERSONNEL RULES
AND
REGULATIONS

Department of Administration
Government of Guam



TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U. S. A.
EXECUTIVE ORDER NO. 96-24

**RELATIVE TO ADOPTING AND PROMULGATING THE
DEPARTMENT OF ADMINISTRATION'S PERSONNEL
RULES AND REGULATIONS GOVERNING THE
RIGHTS, CONDUCT, AND OBLIGATIONS OF
EMPLOYEES AND RESPONSIBILITIES AND ACTIONS
OF MANAGEMENT.**

WHEREAS, §4105 of Title 4, Guam Code Annotated, provides that the Director of Administration shall adopt personnel rules and regulations for line departments and agencies, to be approved by the Civil Service Commission and promulgated by Executive Order of the Governor; and

WHEREAS, the Director of Administration adopted the Department of Administration's Personnel Rules and Regulations for line departments and agencies relative to employee rights, conduct, and obligations and relative to management responsibilities and actions; and

WHEREAS, the Civil Service Commission approved the rules and regulations in its meeting on the 12th day of December, 1995, and after further review and revisions, the Civil Service Commission further approved the revisions on August 1, 1996; and

WHEREAS, the Gutierrez-Bordallo Administration is committed to a merit system of personnel administration; and

WHEREAS, the new rules and regulations are in compliance with federal personnel management laws applicable to the territory of Guam, such as the Americans With Disabilities Act, Fair Labor Standards Act, Family Medical Leave Act, Drug-Free Workplace Program, and other pertinent laws; and

WHEREAS, the development of the new personnel rules and regulations involved a rigorous and lengthy process, which included public hearings and scrutiny by many groups and individuals; and

WHEREAS, the Department of Administration's Personnel Rules and Regulations were last adopted in 1979; and

WHEREAS, the finalization of the new personnel rules and regulations is a momentous occasion and marks the beginning of a new era in personnel administration in the government of Guam; and

WHEREAS, the implementation of the new personnel rules and regulations will be supportive of Vision 2001 and will serve to improve the work ethic and the morale of public employees as well as the delivery of public services; and

WHEREAS, the new personnel rules and regulations include a long awaited Chapter setting forth a cohesive set of ethical standards for government employees; and



WHEREAS, the fine efforts and hard work of all who contributed to the development of the new personnel rules and regulations are appreciated and acknowledged, with special thanks to the Personnel Rules and Regulations Task Force Members; the Chairman, John S. Salas, Department of Administration; the Co-Chairman, Eloy P. Hara, Executive Director, Civil Service Commission; and Task Force Leaders: Dan Astorga, Personnel Services Administrator, Department of Administration; John Aguon, Acting Personnel Management Administrator; and Ron Aguon, Administrative Counsel, Civil Service Commission; and

WHEREAS, the new personnel rules and regulations will serve as a model for all autonomous agencies to follow; and

WHEREAS, it is the policy of the Gutierrez-Bordallo Administration that personnel rules and regulations for the Executive Branch be uniform in substance and consistent in application to the fullest extent possible;

NOW, THEREFORE, I, CARL T. C. GUTIERREZ, Governor of Guam, by virtue of the authority vested in me by §4105 of Title 4, Guam Code Annotated, and the Organic Act of Guam, as amended, do order:

1. The attached Department of Administration Personnel Rules and Regulations, adopted by the Director of Administration and approved by the Civil Service Commission, are hereby promulgated.
2. All prior rules, regulations, policies, memoranda or Executive Orders in conflict with this Executive Order are hereby rescinded to the extent of any conflict.
3. Unless contrary to statute, all autonomous departments and agencies are hereby required to adopt the Department of Administration's Personnel Rules and Regulations to promote uniformity and consistency concerning personnel rules and regulations throughout the Executive Branch.
4. A copy of the Department of Administration's Personnel Rules and Regulations, as promulgated, shall be filed with the Legislative Secretary to take prospective effect on the date of filing. Filing shall be deferred for One Hundred Eighty (180) days from the date of this Executive Order to allow the Department of Administration to conduct orientation sessions for departments and agencies, and for the creation of policies, forms, and procedures that may be immediately necessary for implementation. The Personnel Rules and Regulations shall be filed no later than the Third (3rd) working day after the expiration of the One Hundred Eighty (180) day transition period.

SIGNED AND PROMULGATED at Agana, Guam this 1st day of October, 1996.


CARL T. C. GUTIERREZ
Governor of Guam

COUNTERSIGNED:


MADELEINE Z. BORDALLO
Lieutenant Governor of Guam

EMPLOYEE FURLOUGH PROCEDURES

PURPOSE

To establish Furlough procedures as an option for the government of Guam to cut administrative costs and continue to provide vital public service to the people of Guam. In addition, furlough procedures shall be administered and coordinated with procedures for employee layoff, priority placement, outside employment, and leave without pay policy. The Director of Administration may revise, change or add to the following policy and procedure, as appropriate, subject to the review of the Civil Service Commission.

STATEMENT OF POLICY

It is the policy of the government of Guam to resort to employee furlough, when necessary, to avoid layoff of employees and to ensure that the government meets its commitment to the people of Guam in the areas of education, health, safety, and other vital services. This procedure will be used only after all other efforts have been explored by departments and agencies to cut operating costs. Heads of departments and agencies shall submit requests for employee furlough to the Director of Administration for approval.

A. *DEFINITION*

A furlough action is the placement of an employee in a temporary non-duty and non-pay status on a continuous basis (for example 10 consecutive days), or a noncontinuous basis (for example one day a week). A furlough is not a layoff or reduction in force action.

B. *REASONS FOR FURLOUGH*

Furlough is caused by any one of the following reasons:

1. Lack of work.
2. Shortage of funds.
3. Insufficient personnel authorization.

4. Reorganization.
5. Reclassification of an employee's position due to erosion of duties when such action will take effect after a formal announcement of a reduction in force.

C. *TIME LIMIT*

Departments/agencies may furlough an employee for a period of time listed below:

1. One to thirty (1 to 30) consecutive days on a continuous basis, or 22 work days if done on a noncontinuous basis.
2. More than 30 consecutive days, or more than 22 work days to a maximum of one year. The one year limit begins the day after the notice period ends and when the furlough begins.

D. *VOLUNTARY FURLOUGH*

Employees who are interested in taking leave of absence without pay will be encouraged to voluntarily apply for a furlough. This opportunity is especially beneficial to employees who have outside part-time employment. Employees who volunteer for furlough, for a period not to exceed one year, will be allowed to work increased hours at their outside employment without regard to the scheduled hours of work with the government.

E. *INVOLUNTARY FURLOUGH*

Where budget constraints are crucial, the Director may resort to involuntary furloughs after it has been decided that the voluntary furlough will still not meet the necessary cost reduction. Furloughed employees shall be furloughed, based on retention points, for the time limits authorized above. Furlough will be used to the maximum extent possible in order to reduce the necessity for layoffs. Departments and agencies having exclusive bargaining units must work with the employee unions to explore all avenues to avert layoffs, and obtain their support for this option.

F. RESTRICTIONS

A department or agency may not:

1. furlough any employee it does not intend to recall to duty in the same position within one year; or
2. separate an employee through layoff while an employee with lower retention points in the same competitive level is on furlough.

G. FURLOUGH IMPACT ON EMPLOYMENT BENEFITS

Employees on furlough, voluntary or involuntary, will be covered for health benefits based on the following conditions:

1. The government will pay for both government and employee contributions only when the employee is certified to have no family income during the period of furlough.
2. Employees with some form of income (e.g., spouse's income, part-time or full-time job, etc.) during the furlough period will be required to pay for the employee's contribution portion only, of the health plan premium.

Employees who wish to continue their life insurance benefits will be required to pay for the premium for supplemental plans only. The employee will continue to be fully covered for the basic life insurance while on furlough.

H. FURLOUGH RETENTION RIGHTS

1. **Release by Furlough.** The action to release an employee scheduled for a furlough must be consistent with established layoff procedures. A department/agency may furlough an employee under the layoff provisions only, if the employee has no right of assignment, or refuses an offer of assignment. A furloughed employee who accepts another offer of assignment, becomes the incumbent of the offered position unless the employee accepts an offer of recall to the position from which furloughed.
2. **Assignment Rights.** In determining whether a furloughed employee has assignment rights to another position, it is important for the department/agency to consider whether the offer would result in undue interruption to the organization. Since a furlough anticipates an employee's recall to the same

position, the agency should consider whether undue interruption would result from the displacement of a lower-standing employee, and from the recall of both employees to their positions of record at the end of the furlough period. The assignment right does not apply when all employees in the department/agency are furloughed at the same time, or on the same basis. For example, if all employees in the Department of Administration were furloughed one day a week (either the same day or different days) on a noncontinuous basis for 28 weeks, none of the employees would have a right of assignment to another position. If only some of the employees were furloughed one day a week for 28 weeks, and other employees were not furloughed, the furloughed employees would have a right of assignment to positions held by employees with lower retention standing, and not affected by the furlough only if there was no undue interruption.

I. *RECALL FROM FURLOUGH*

If all employees furloughed from a competitive level cannot be recalled at the same time, the employees must be recalled according to their retention points beginning with the highest-standing employee.

J. *SEPARATION IN LIEU OF RECALL*

1. **No Recall.** If the situation changes and a department/agency determines that a furloughed employee cannot be recalled within the one year period, the employee must be separated unless the employee accepted an offer of assignment to another position. If some, but not all furloughed employees in a competitive level must be separated, employees are selected for separation by retention standing points beginning with the lowest-standing employee. A new layoff notice of separation must be given to the furloughed employee at least 60 days prior to the end of the one year furlough period. The separation of a furloughed employee is a new layoff action. Separated employees are entitled to the same rights as those employees separated through regular layoff procedures.
2. **Failure to Return.** If a furloughed employee refuses or does not respond to a notice to return to duty, the department/ agency may separate the employee by layoff effective on the specified date of recall. A new layoff notice of separation is not required.

K. PROCEDURES

Department and agency heads must submit a request to the Director of Administration for authorization to conduct a furlough within six months of the proposed furlough. The request must specify the reason for the furlough, the number of employees and/or positions to be affected, and the duration of the furlough. After the Director's approval, the following procedure applies:

1. A written 90 day notice that a furlough is planned, must be issued to all employees (whether or not identified for furlough) in the department/agency. The notice must include the following information:
 - a. The date the furlough will commence.
 - b. The period of furlough (i.e., 1-30 days continuous, 22 or more days non-continuous, or a maximum of one year).
 - c. Employees may volunteer to be furloughed.
 - d. Lost of some employment benefits for furloughed employees.
 - e. Employees under furlough are not restricted from seeking other employment during the furlough period. Those employees who already have part-time jobs while employed with the government, may opt to increase their hours of work up to a full-time basis during the furlough period.
 - f. Furloughed employees must report to work when recalled to duty.
 - g. Furlough will be conducted in accordance with employees' retention standing points.
 - h. Furloughed employees have the right to appeal to the Civil Service Commission.
2. Encourage the use of voluntary furlough to the maximum extent possible before implementing involuntary furlough.
3. Coordinate with the Department of Administration, Division of Personnel Management, with regard to the feasibility of assigning employees reached for furlough, to ensure fairness in the assignment and that the furlough poses no unnecessary disruption to the agency's/department's mission.

4. Those employees who cannot be assigned to other positions within the department/agency will receive written "Notice of Furlough". This final (or second notice) will again include the same information as the first notice. In addition, the furloughed employee shall be:
- a. encouraged to continue his insurance coverage by personally paying for the premiums.
 - b. informed that his name will be retained in a "recall list" for one year, and must keep current address and telephone number at the DOA Personnel Office.
 - c. informed that if he fails to provide a current home address on record with the personnel office, will lose recall rights.
 - d. informed that he must respond to the recall notice within seven days of receipt or its attempted delivery, or lose his rights for reemployment.
 - e. notified that he must inform the agency/department, or DOA Personnel Office if he becomes unavailable for recall.
 - f. provided appeal rights to the Civil Service Commission.

L. *RECALL*

Employees will be recalled according to need, classification, or ability to do the job based on retention standing points. The recall notice will be sent registered mail, return receipt requested, to the current home address furnished by the employee.

Returning employees will be paid the same salary as before they were furloughed. Any unused sick leave or annual leave accrued prior to the furlough will be reinstated. All employment benefits will be restored at the same rate as before the furlough.



FRANK B. AGUON, JR.

Vice-Speaker

February 24, 2003

The Honorable Lou Leon Guerrero
Chairperson, Committee on Rules & Health
I Mina' Bente Siete Na Liheslaturan Guahan
155 Hessler Street
Hagatna, GU 96910

Dear Senator Leon Guerrero:

The Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform, to which Bill 42, was referred, wishes to report its findings and recommendations TO DO PASS BILL 42, as substituted, "An act relative to appropriating necessary funds for the operation of the Executive, Judicial, and Legislative branches of the Government of Guam for the remainder of Fiscal Year 2003; instituting necessary budgetary reductions in government expenditures; and providing *I Maga'lahren Guahan* the tools and flexibility to further implement critical reductions in the operational costs of the Government of Guam."

The voting record is as follows:

TO PASS

6

NOT TO PASS

0

TO ABSTAIN DUE TO POTENTIAL CONFLICT

0

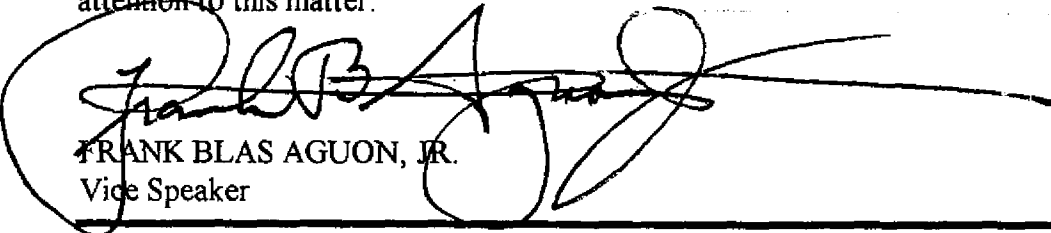
TO PLACE IN INACTIVE FILE

0

TO REPORT OUT

2

Copies of the Committee Report and other pertinent documents are attached. Si Yu'os Ma'ase for your attention to this matter.


FRANK BLAS AGUON, JR.
Vice Speaker

Respetu Para Todu (Respect for All)

I Mina Bente-Siete Na Liheslaturan Guahan * Twenty-Seventh Guam Legislature
Suite 101-A * Ada's Commercial and Professional Center * 118 East Marine Drive * Agana, Guam 96910
Phone (671) 479-4GUM (4486/4828) * Fax (671) 479-4827





FRANK B. AGUON, JR.
Vice-Speaker

February 24, 2003

MEMORANDUM

TO: Committee Members

FROM: Chairman

SUBJECT: Committee Report – Bill 42, as substituted, “An act relative to appropriating necessary funds for the operation of the Executive, Judicial, and Legislative branches of the Government of Guam for the remainder of Fiscal Year 2003; instituting necessary budgetary reductions in government expenditures; and providing *I Maga’lahen Guahan* the tools and flexibility to further implement critical reductions in the operational costs of the Government of Guam.”

Transmitted herewith for your information and action is the report on Bill 42, as amended,, from the Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform.

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill 42, as amended
4. Public Hearing Sign-in Sheet
5. Fiscal Note
6. Request for Emergency 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.

Si Yu’os Ma’ase.


FRANK BLAS AGUON, JR.

Respetu Para Todu (Respect for All)

I Mina Bente-Siete Na Liheslaturan Guahan * Twenty-Seventh Guam Legislature
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Committee on Appropriations and Budgeting,
General Governmental Operations,
Reorganization and Reform
 Vice Speaker Frank B. Aguon, Jr., Chairman

VOTING RECORD

BILL 42 (COR), AS SUBSTITUTED: "AN ACT RELATIVE TO APPROPRIATING NECESSARY FUNDS FOR THE OPERATION OF THE EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCHES OF THE GOVERNMENT OF GUAM FOR THE REMAINDER OF FISCAL YEAR 2003; INSTITUTING NECESSARY BUDGETARY REDUCTIONS IN GOVERNMENT EXPENDITURES; AND PROVIDING *I MAGA'LAHEN GUAHAN* THE TOOLS AND FLEXIBILITY TO FURTHER IMPLEMENT CRITICAL REDUCTIONS IN THE OPERATIONAL COSTS OF THE GOVERNMENT OF GUAM."

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO ABSTAIN DUE TO POTENTIAL CONFLICT</u>	<u>INACTIVE FILE</u>	<u>REPORT OUT</u>
 FRANK B. AGUON, JR. Chairman	✓				
 ANTOINETTE D. SANFORD Vice Chairman	✓				
 LOU LEON GUERRERO Member	✓				
 TINA R. MUNA-BARNES Member	✓				
 JOHN M. QUINATA Member	✓				
 RORY J. RESPICIO Member					
 CARMEN FERNANDEZ Member					
MARK FORBES Member					
 LAWRENCE F. KASPERBAUER Member					



FRANK B. AGUON, JR.

Vice Speaker

I MINA' BENTE SIETE NA LIHESLATURAN GUAHAN

**COMMITTEE ON APPROPRIATIONS AND BUDGETING,
GENERAL GOVERNMENTAL OPERATIONS,
REORGANIZATION AND REFORM**

**VICE SPEAKER FRANK B. AGUON, JR.
CHAIRMAN**

**COMMITTEE REPORT
ON
BILL NO. 42 (COR),
AS SUBSTITUTED,**

“AN ACT RELATIVE TO APPROPRIATING NECESSARY FUNDS FOR THE OPERATION OF THE EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCHES OF THE GOVERNMENT OF GUAM FOR THE REMAINDER OF FISCAL YEAR 2003; INSTITUTING NECESSARY BUDGETARY REDUCTIONS IN GOVERNMENT EXPENDITURES; AND PROVIDING *I MAGA'LAHEN GUAHAN* THE TOOLS AND FLEXIBILITY TO FURTHER IMPLEMENT CRITICAL REDUCTIONS IN THE OPERATIONAL COSTS OF THE GOVERNMENT OF GUAM.”

Respetu Para Todu (Respect for All)

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I. OVERVIEW

The Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform held a public hearing on Bill 42 at 1:45 p.m. on Friday, February 21, 2003 and continued said public hearing at 1:30 p.m. on Monday, February 24, 2003 in the Session Hall of *Liheslaturan Guahân*. As Bill 42 was declared an emergency measure, public notice was waived. However, the public hearing was publicly announced by the electronic and print media on Thursday, February 20, 2003 and Friday, February 21, 2003.

Senators present at the public hearing on Friday, February 21, 2003 were:

Vice Speaker Frank B. Aguon, Jr., Chairman	Senator Tori Sanford, Vice Chair
Senator Lou Leon Guerrero, Member	Senator Tina Muna Barnes, Member
Senator Carmen Fernandez, Member	Senator John Quinata, Member
Senator Rory Respicio, Member	Senator Larry Kasperbauer, Member
Senator Mark Forbes, Member	Speaker Ben Pangelinan
Senator Randy Cunliffe	Senator Ray Tenorio
Senator Jesse Lujan	Senator Robert Klitzkie
Senator Mark Forbes	

II. SUMMARY OF TESTIMONY

The following individuals appeared before the Committee to provide testimony on Bill 42 on Friday, February 21, 2003:

Vicente Garrido	Barry Christman
Jimmy B. Mantanona	John M. Phillips, AARP
Ann S.A. San Nicolas	Former Speaker Joe T. San Agustin
Joleen Almandres, DPHSS	Vince Atalig, AARP
Jose S.N. Chargualaf,	Joseph T. Flores
Phil Torres, Attorney	Rita Franquez
Dr. Richard Wytttenbach-Santos	Elaine Low, American Cancer Society

The Vice Speaker stated that the task at hand was a very difficult and challenging one which calls for putting together a budget which is reflective of government reductions, cost savings and revenue enhancement measures. He acknowledged that because the bill was only completed and introduced late in the morning, the public hearing would continue on Monday, February 24th to provide the people with an opportunity to look over the proposal and provide comments and input. He was anxious to involve as many people as possible in this very important process. Vice Speaker Aguon informed those present that the Governor's Office would be participating in the public hearing on Monday.

when the government is running out of money, stated the Speaker. This Legislature now is willing to take a stand and make hard decisions to take care of as many people as possible with as little resources as possible and provide especially for those who really need it.

Former Legislative *Speaker Joe T. San Agustin* submitted written testimony in opposition of the proposed reduction of the supplemental retirement annuities and discontinuance of the COLA. San Agustin stated that whether or not the Fund has funds or not, it is incumbent on GovGuam as the "employer" to fulfill its legal duty and meet its financial obligations to the retirees.

Ms. Joleen Almandres, Program Coordinator for the Tobacco Free Guam Program at the DPHSS provided written testimony on the harmful effects of tobacco, as it relates to the proposed tobacco tax in Bill 42. Almandres concluded by stating that Guam residents lose too many loved ones to tobacco, which is an addictive, harmful, and lethal habit.

Mr. Vince Atalig, Local Chapter 4837 AAPR member, asked the Senators not to penalize the retirees for the mismanagement of the Retirement Fund but rather to look at other ways to continue providing the supplemental annuities and COLA to this very vulnerable group. He recommended several ways in which revenues could be generated for these expenditures. He presented the numbers of retirees and survivors by age group. On another matter, Mr. Atalig noted that small businesses are the engine of the economy, and he strongly believed that the Dave Santos Amendment should not be removed because it helps keep these small businesses on our island in operation.

With 27 years of government service, *Mr. Jose S. N. Chargualaf* said that retirees were being discriminated against under the 14th Amendment of the Constitution and that the end does not justify the means in this matter. The retiree felt that the sliding scale as proposed in the bill was not fair. Mr. Chargualaf also testified in opposition of the closure of the Passport Office. He saw no justification in closing down an agency that brings in over \$1,000,000 in revenues each year, and asked that the Senators exercise good judgment and try to find the best solution with regards to the Passport Office.

Mr. Joseph Flores, a 30-year Government of Guam retiree, said he understood the current situation that the government is facing, however, it is his feeling that retirees and survivors should be left alone. He shared that after the September 11th incident when he lost his \$8/hour job which supplemented his retirement annuity he felt victimized at that time, through no fault of his. Now once again he is being victimized by the proposed reductions in supplemental annuities and COLA. Mr. Flores asked that the Legislature be the protector of the people of Guam as a whole, most especially the retirees.

Attorney Phil Torres stated that he has does not have an opinion on whether supplemental annuity should be paid or not. However, Judge Lamorena came out with a decision on Monday, which stated

Mrs. Terri Cruz stated that she would like to see the elected leaders be the first to take cuts in their salaries. With regards to the Retirement Fund, she would like to see transparency and complete information be provided to the retirees on what has happened with the Retirement Fund from people who have direct knowledge of the Fund.

Ms. Amber Sanchez, representing MADD and as a private citizen, questioned the reason why the Governor's and Lt. Governor's Offices are exempted from hiring unclassified employees. Secondly, she said that tax increases go against her philosophical grain, however, she would like to see the tax on beer raised dramatically not for revenue enhancement but more to serve as a deterrent to youth. With regards to the Safe Home Safe Street Fund Ms. Sanchez asked that input from the community be allowed as to the expenditure of the fund and asked for assurances that the Fund would not be raided. She concluded by stating that the Abandoned Vehicle & Streetlight Fund should be used for the purpose it was created.

Mr. Monty McDowell, a member of the Guam Chamber of Commerce, complimented the Senators on one of the finest pieces of legislation he has ever seen from the Legislature. However, there's always something which not everyone agrees with and in this case it is the gross receipts tax. He said that the proposal would put many local companies out of business, and felt that the 32% corporate receipt tax is much more of an enhancement to the economy on Guam than a sales tax.

Mr. Vern Perez, Executive Director of the Civil Service Commission, noted three things in his written testimony: (1) CSC should not approve a set plan but remain as an appellate body for employees who are affected. (2) Section 6 of Chapter IV should be expanded to suspend a employee transfer if there is a legitimate grievance or an EEO complaint filed. (3) In order to administer this section, the Civil Service Commission will require the full \$549,000 for the remainder of the fiscal year.

Mr. Stephen C. Ruder, representing the Guam Chamber of Commerce, provided oral and written testimony in opposition of the bill based on the tenet to not raise existing or implement new taxes.

In response to a question by Senator Respicio, Ms. Amber Sanchez said that alcohol sold in the mainland is taxed a federal excise tax on top of the state excise tax. She recommended that the Legislature look at some of the excise tax rates which the states charge.

Senator Forbes asked the Chamber of Commerce representative what effect an increase in gross receipts/sales tax would have. Mr. Ruder replied that it would have a dramatic effect in the negative immediately and it may cause the immediate demise of many of the small businesses on island. Discussion ensued on the increased tourism industry in Saipan after the last two typhoons and the effect an increase in tax may have on Guam's tourism industry.