



Office of the Governor of Guahan

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2010 MAR 16 PM 2:24
epw

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

MAR 15 2010

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Trenta Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

30-10-0226
3/16/10

Dear Speaker Won Pat:

Transmitted herewith is Substitute Bill No. 92-30 (COR) "AN ACT TO REPEAL AND REENACT §§ 4403, 4405(b) AND (b), 4408, AND §5105; TO AMEND §4406; AND TO ADD NEW §§410 AND 411 TO TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO RESTORING CERTAIN JURISDICTIONS, AND TO CLARIFY CERTAIN FUNCTIONS OF THE CIVIL SERVICE COMMISSION" which I signed into law on March 12, 2010 as **Public Law 30-112**.

Sinseru yan Magåhet,

MICHAEL W. CRUZ, M.D.
I Maga'låhen Guåhan para pa'go
Acting Governor of Guahan

Attachment: copy of Bill

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

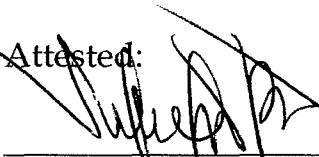
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Substitute Bill No. 92-30 (COR), "AN ACT TO REPEAL AND REENACT §§ 4403, 4405 (b) AND (c), 4408, AND §5105; TO AMEND §4406; AND TO ADD NEW §§ 4410 AND 4411 TO TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO RESTORING CERTAIN JURISDICTIONS, AND TO CLARIFY CERTAIN FUNCTIONS OF THE CIVIL SERVICE COMMISSION,"** was on the 26th day of February, 2010, duly and regularly passed.



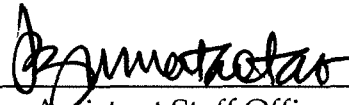
Judith T. Won Pat, Ed. D.
Speaker

Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 1 day of March, 2010, at
5:40 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



MIKE W. CRUZ, MD
GOVERNOR OF GUAM ACTING

Date: MAR 12 2010

Public Law No. P.L. 30-112

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 92-30 (COR)

As substituted by the Committee on Labor,
the Public Structure, Public Libraries and Technology,
and amended on the Floor.

Introduced by:

Judith P. Guthertz, DPA

Adolpho B. Palacios, Sr.

R. J. Respicio

T. C. Ada

F. B. Aguon, Jr.

B. J.F. Cruz

F. F. Blas, Jr.

E. J.B. Calvo

J. V. Espaldon

T. R. Muña Barnes

v. c. pangelinan

Telo Taitague

Ray Tenorio

Judith T. Won Pat, Ed.D.

**AN ACT TO REPEAL AND REENACT §§ 4403, 4405 (b)
AND (c), 4408, AND §5105; TO AMEND §4406; AND TO
ADD NEW §§ 4410 AND 4411 TO TITLE 4, GUAM CODE
ANNOTATED, RELATIVE TO RESTORING CERTAIN
JURISDICTIONS, AND TO CLARIFY CERTAIN
FUNCTIONS OF THE CIVIL SERVICE COMMISSION.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslatura* finds that the
3 passage of Public Law 28-68 resulted in most of the non-adjudicatory functions of
4 the Civil Service Commission (CSC) being repealed entirely or transferred to the
5 Director of the Department of Administration (DOA), one major function being the

1 administration of compensation and classification for government of Guam
2 employees.

3 Much confusion was also created by Public Law 28-68, specifically whether
4 investigations performed by the CSC are considered adjudicatory or non-
5 adjudicatory, and have resulted in “Whistle-Blower” complaints and furlough
6 appeals remaining in limbo. Some other check-and-balance functions once
7 performed by the CSC were eliminated by Public Law 28-68 and have resulted in a
8 lack of uniformity in the application of the merit system and some questionable
9 employment practices, including the post-audit review and the full null and void
10 authority. Several GovGuam departments, including the Guam Memorial Hospital
11 Authority, Guam Power Authority, and Guam Waterworks Authority, have
12 expressed their desire for the Civil Service Commission to have the jurisdiction to
13 hear certain appeals of their employees.

14 *I Liheslatura* now finds that the restoration of the jurisdiction and the
15 clarification of certain functions of the CSC are necessary and will improve the
16 merit system and better fulfill the requirements of Section 1422c of the Organic
17 Act which states:

18 “The Legislature *shall* establish a merit system and, as far as
19 practicable, appointments and promotions *shall* be made in
20 accordance with such merit system. The Government of Guam may
21 by law establish a Civil Service Commission to administer the merit
22 system.”

23 Therefore, it is the intent of *I Liheslaturan Guåhan* to make the amendments
24 herein in an effort to restore jurisdiction to the CSC to the extent necessary to
25 administer the merit system and to eliminate the strict demarcation of adjudicatory
26 versus non-adjudicatory functions imposed by Public 28-68 and other laws.

1 **Section 2.** Title 4, GCA, Chapter 4, Article 4, §4403 is *repealed and*
2 *reenacted* to read:

3 “§4403. **Duties of the Commission.** The Commission has the
4 following duties, powers and responsibilities:

5 (a) It *shall* investigate conditions of government employment as it
6 deems necessary and report its findings and recommendations to *I*
7 *Maga’lahi* (the Governor) and *I Liheslatura* (Legislature) annually, and also
8 post such reports on the Commission's website;

9 (b) It *shall* hear appeals from the adverse actions taken to suspend,
10 demote or dismiss an employee from the classified service *if* such right of
11 appeal to the Commission is established in the personnel rules governing the
12 employee; however, it may *not* hear any appeal of an action taken to
13 suspend, demote or dismiss an employee of the government of Guam who
14 has *not* been hired through the competitive hiring procedures of the
15 personnel rules of the government of Guam, as such personnel rules required
16 at the time of the hiring of the employee, *nor* any unclassified employee;

17 (c) To hear appeals of furloughs, lay-offs, grievance complaints,
18 and Equal Employment Opportunity complaints of an employee from the
19 classified service *if* such right of appeal to the Commission is established in
20 the personnel rules governing the employee. The Commission *shall* adopt
21 rules and procedures for furlough appeals, lay-off appeals, grievance
22 complaint appeals, and Equal Employment Opportunity complaint appeals;

23 (d) The Commission may investigate and set aside and declare null
24 and void any personnel action of an employee in the classified service *if* the
25 Commission finds after conducting the necessary investigation that the
26 personnel action was taken in violation of personnel laws or rules; provided,
27 however, that this Section shall *not* be deemed to permit appeals by

1 employees from adverse actions *not* covered in Subsection (b) above. The
2 agency head *shall* cooperate and assist with the Commission's investigation.
3 Prior to declaring any personnel action null and void, the Commission *shall*
4 provide written notice of the alleged violation to the agency head. The
5 agency head *shall* respond within ten (10) calendar days after receipt of the
6 notice to the Commission's proposed action. All actions taken by the
7 Commission pursuant to this Section *shall* be taken within one hundred
8 eighty (180) calendar days after the personnel action or complaint is filed
9 with the Commission. The Civil Service Commission *shall* submit a copy of
10 its final decision to *I Liheslatura* by the next working day. The Commission
11 *shall* adopt rules and regulations to effectuate this Section, including the
12 requirement of a written complaint to initiate any investigation. The
13 Commission's decision *shall* be final but subject to judicial review;

14 (e) It *shall* conduct reviews of notices of personnel actions of
15 employees from the classified service. All notices of personnel actions
16 regarding the classified service *shall* be filed with the Commission within
17 twenty (20) calendar days after their effective date. Failure to submit the
18 required notices of personnel actions within ten (10) calendar days after
19 written request by the Commission will immediately result in a ten percent
20 (10%) salary reduction of the agency head and his deputy until compliance
21 is made. The Civil Service Commission *shall* submit a copy of its written
22 request to the agency head and his deputy for compliance with this Section
23 to *I Liheslatura* by the next working day;

24 (f) The jurisdiction of the Commission *shall* also apply to the
25 adverse action appeals of certified, technical, and professional personnel of
26 the Guam Power Authority and the Guam Waterworks Authority; the

1 jurisdiction of the Commission *shall* apply to all classified personnel of the
2 Guam Memorial Hospital Authority;

3 (g) The provisions of this Section shall *not* apply to the Judiciary of
4 Guam *or I Liheslaturan Guåhan* (the Guam Legislature) in compliance with
5 the doctrine of Separation of Powers, unless such separate Branch opts to
6 make them applicable by submitting to the jurisdiction of the Commission;
7 and all reference to classified employees will be deemed to mean classified
8 employees of the Executive Branch, including agencies and authorities;

9 (h) The jurisdiction of the Commission shall *not* extend to
10 academic personnel of the Guam Community College and the University of
11 Guam, *except* upon mutual consent by the governing board of the respective
12 institution and the Commission; *nor* to any position or person, appeal or
13 proceeding of whatever kind or description *if* the position is denominated
14 “unclassified” in this Title, *except* to the extent explicitly permitted in this
15 Section; and

16 (i) The jurisdiction of the Commission *shall* extend to
17 investigating Public Employee Protection Act complaints (a.k.a. “whistle-
18 blower” complaints) pursuant to Title 4, GCA, §4501 et seq.”

19 **Section 3.** Title 4, GCA, Chapter 4, Article 4, §4406 is *amended* by adding
20 the following at the end of the existing Section:

21 “The party who appeals the Commission's decision to the court is
22 responsible for providing certified transcripts of hearings and *shall* bear
23 associated costs.”

24 **Section 4.** Title 4, GCA, Chapter 4, Article 4, §4408 is *repealed and*
25 *reenacted* to read:

26 “§4408. **Enforcement of Orders.** The Civil Service Commission
27 may seek enforcement of its decisions and orders in all decisions and orders

1 in all matters permitted by this Title by application to the Superior Court for
2 the appropriate remedy. In seeking enforcement of its decisions and orders,
3 the application for enforcement *shall* be entitled, “The Civil Service
4 Commission v. (department, agency, instrumentality or officer).” *No*
5 enforcement *shall* be commenced against any department head or other
6 employee or officer of the Government in his personal capacity.”

7 **Section 5.** §4405 (b) and (c) of Title 4, GCA, Chapter 4, Article 4, are
8 *repealed and reenacted* to read:

9 “(b) The Executive Director may, with Commission approval, hire
10 such professional, clerical, and other staff as may be deemed necessary to
11 assist the Commission in performing its duties and functions;

12 (c) The Commission may employ an Administrative Law Judge
13 (ALJ), full or part-time, to assist the Commission with the adjudicatory
14 responsibilities, or the Commission may retain a private attorney or
15 attorneys to serve as an ALJ on a case-by-case basis. A decision by the ALJ
16 *shall* be forwarded for review to the Commission, which *shall* accept or
17 reject in its entirety, the ALJ’s decision. The ALJ *shall* follow procedures
18 approved by the Commission. An ALJ must be a Guam-licensed attorney.”

19 **Section 6.** A new §4410 of Title 4, GCA, Chapter 4, Article 4, is *added* to
20 read:

21 “**§4410. Authority to Slot On-Going Cases into Open Hearing**
22 **Dates.** The Commission *shall* have the authority to slot an on-going
23 scheduled hearing into an open hearing date should a sooner hearing date
24 become available provided that: 1) Both sides agree; and 2) The original
25 public notice for the initial hearing met the requirements of the Open
26 Government Act. The public notice requirement of the Open Government
27 Act *shall* be deemed met for purposes of on-going scheduled hearings

1 relative to this Section if the original initial hearing satisfied such
2 requirements.”

3 **Section 7.** A new §4411 of Title 4, GCA, Chapter 4, Article 4, is *added* to
4 read:

5 **“§4411. Civil Service Commission Revolving Fund.**

6 (a) There is hereby created the Civil Service Commission
7 Revolving Fund, which *shall* be accounted for separately from the General
8 Fund. Monies in the revolving fund shall *not* lapse at the end of a fiscal year
9 but *shall* roll-over until used by the Commission.

10 (b) All monies received either as payment for Commission
11 publications, photocopying fees, training, presentations, or other activities
12 authorized by the Board *shall* be deposited into the Revolving Fund.
13 Expenditure authority over the revolving fund is vested in the chair of the
14 Commission.

15 (c) Moneys in the Revolving Fund *shall* be used to pay for printing
16 or photocopying supplies of the Commission, related costs for creating or
17 compiling Commission publications in electronic media format, materials
18 for training, training of Commission staff, and membership dues for
19 professional organizations relevant to the Commission. Moneys in the
20 revolving fund shall *not* be used to pay any personnel expenses.”

21 **Section 8.** Title 4, GCA, Chapter 5, §5105 is *repealed and reenacted* to
22 read:

23 **“§5105. Investigations by Civil Service Commission.** When any
24 person has reason to believe that an employee has violated § 5103 he *shall*
25 report the matter to the Civil Service Commission. On receipt of such report
26 or on receipt of such other information which seems to the Commission to
27 warrant an investigation, the Commission *shall* investigate the matter in

1 accordance with the provisions of the rules and procedures established by
2 the Civil Service Commission and the following:

3 (a) All hearings *shall* be conducted before the entire
4 Commission; and

5 (b) The decision of the Commission *shall* include a
6 determination of whether a violation of § 5103 has occurred and
7 whether a violation warrants the removal of the employee from his
8 employment.”

9 **Section 9. Savings Clause.** This Act and any *repealer* contained herein
10 shall *not* be construed as affecting any existing right acquired under contract or
11 acquired under statutes repealed or under any rule, regulation or order adopted
12 under the statutes. *Repealers* contained in this Act shall *not* affect any proceeding
13 instituted under or pursuant to prior law. The enactment of this Act shall *not* have
14 the effect of terminating, or in any way modifying, any liability, civil or criminal,
15 which *shall* already be in existence on the date this Act becomes effective.

16 **Section 10. Effective Date.** This Act *shall* take effect upon its enactment
17 into law.

18 **Section 11. Severability.** *If* any provision of this Act or the application of
19 any such provision to any person or circumstance should be held invalid by a court
20 of competent jurisdiction, the remainder of this Act or the application of its
21 provisions to persons or circumstances other than those to which it is held invalid
22 shall *not* be affected thereby.

6

I MINA' TRENTA NA LIHESLATURAN GUAHAN
2010 (SECOND) Regular Session

Date: 2/26/10

VOTING SHEET

Bill No. 92

Resolution No. _____

Question: After reconsideration + amendment + voted without a quorum
(Section 12 deleted)

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Thomas C.		✓			
AGUON, Frank B., Jr. /	✓				
BLAS, Frank F., Jr. ///		* ✓			
CALVO, Edward J.B. /	✓				
CRUZ, Benjamin J. F.	✓				
ESPALDON, James V. ///		* ✓			
GUTHERTZ, Judith Paulette	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RESPICIO, Rory J.	✓				
TAITAGUE, Telo /	✓				
TENORIO, Ray	✓				
WON PAT, Judith T. ///		* ✓			

TOTAL

10 4

CERTIFIED TRUE AND CORRECT:


 Clerk of the Legislature

* 3 Passes = No vote
 EA = Excused Absence



SENATOR MATT RECTOR

Chairman, Committee on labor, the public structure, public libraries and technology

I Mina' Trenta na Liheslaturan Guahan

Thirtieth Guam Legislature



May 22, 2009

To The Honorable Judith T. Won Pat, Ed.D
Speaker of the Legislature
Mina Trenta Na Liheslaturan Guahan
155 Hesler Street
Hagåtña, Guam 96910

VIA: **The Honorable Rory J. Respicio**
Chairperson, Committee on Rules.

Buenas Yan Hafa Adai Madam Speaker,

The Committee on Labor, The Public Structure, Public Libraries and Technology, to Which **Bill No. 92 (COR)** – “An Act To Restore Certain Jurisdictions And Clarify Certain Functions Of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA § 4405; And New §§ 4410 And 4411.” Was referred, wishes to report its findings and recommendations to ~~NO~~ **PASS** bill 92 as substituted by the committee on Labor, the Public Structure, Public Libraries and Technology.

2009 MAY 26 PM 12:45
emk

The voting record is as follows:

TO PASS	<u>4</u>
NOT TO PASS	<u>0</u>
TO REPORT OUT	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>

CUR
RECEIVED
MAY 22 2009
SR

Copies of the Committee Report and other pertinent documents are attached. Thank You for your attention in this matter

Senseramente,

MATT RECTOR
Chairman,
Committee on Labor, the Public Structure,
Public Libraries and Technology

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SENATOR MATT RECTOR

Chairman, Committee on labor, the public structure, public libraries and technology

I Mina' Trenta na Liheslaturan Guahan

Thirtieth Guam Legislature



May 22, 2009

MEMORANDUM:

TO: Members:
Committee on Labor, the Public, Structure, Public Libraries, and
Technology.

FROM: Chairman, Matthew Rector
Committee on Labor, the Public, Structure, Public Libraries, and
Technology.

SUBJECT: Committee Report- Bill No. 92 (COR) as substituted by the committee:
"AN ACT TO REPEAL AND REENACT ARTICLE 4 OF 4 GCA
CHAPTER 4 RELATIVE TO THE DUTIES AND RESPONSIBILITIES
OF THE CIVIL SERVICE COMMISSION TO RESTORE THE
AGENCY TO FUNCTIONAL OPERATIONAL CAPACITY IN
ACCORDANCE WITH THE PROVISIONS OF THE ORGANIC ACT
AND IN ORDER TO PROVIDE A FAIR AND EQUITABLE SYSTEM
OF CIVIL SERVICE TO THE PEOPLE OF GUAM"

Transmitted herewith for your information and action is the report for **Bill No. 92 (COR)** from the Committee on Labor, the Public Structure, Public Libraries and Technology.

This Memorandum is accompanied by the following.

1. Voting Sheet
2. Bill No. 92 (COR) as substituted
3. Bill No. 92 (COR) as introduced
4. Sign in Sheet
5. Committee Report
6. Written Testimonies
7. Notices of public hearing
8. Referral

Please take appropriate action on the attached voting sheet. Your attention and cooperation in this matter is greatly appreciated. Should there be any questions regarding this matter, please contact my office at 734-6288

Senseramente

MATT RECTOR
Chairman,

Committee on Labor, the Public Structure,
Public Libraries and Technology

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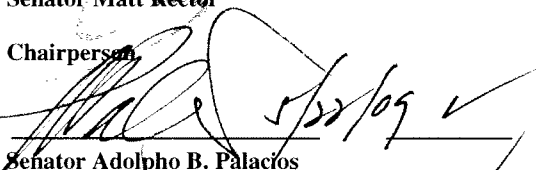
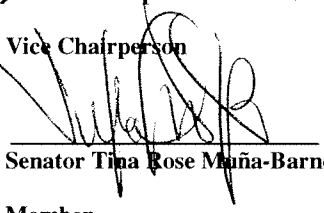
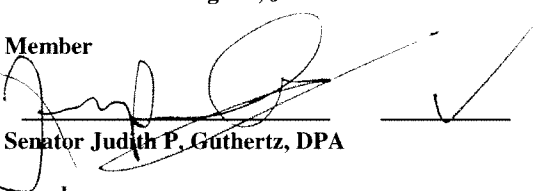
Website:
www.MattRector.com

I MINA TRENTA NA LIHESLATURAN GUAHAN

Committee Voting Sheet

Committee on Labor, the Public Structure, Public Libraries
and Technology.

Bill No. 92 (COR) As substituted – AN ACT TO REPEAL AND REENACT ARTICLE 4 OF 4
GCA CHAPTER 4 RELATIVE TO THE DUTIES AND RESPONSIBILITIES OF THE
CIVIL SERVICE COMMISSION TO RESTORE THE AGENCY TO FUNCTIONAL
OPERATIONAL CAPACITY IN ACCORDANCE WITH THE PROVISIONS OF THE
ORGANIC ACT AND IN ORDER TO PROVIDE A FAIR AND EQUITABLE SYSTEM OF
CIVIL SERVICE TO THE PEOPLE OF GUAM

Committee Members	To Pass	Not to pass	Report out	Abstain	Inactive File
_____ Senator Matt Reector	<input checked="" type="checkbox"/>	_____	_____	_____	_____
_____ Chairperson					
 5/22/09 ✓ _____ Senator Adolpho B. Palacios		_____	_____	_____	_____
_____ Vice Chairperson	<input checked="" type="checkbox"/>	_____	_____	_____	_____
 _____ Senator Tina Rose Mañá-Barnes		_____	_____	_____	_____
_____ Member					
_____ Senator Frank B. Aguon, Jr.		_____	_____	_____	_____
_____ Member					
 _____ Senator Judith P. Guthertz, DPA	<input checked="" type="checkbox"/>	_____	_____	_____	_____
_____ member					
_____ Senator Vicente "Ben" Pangelinan		_____	_____	_____	_____
_____ Member					
_____ Senator Telo Taitague		_____	_____	_____	_____
_____ Member					

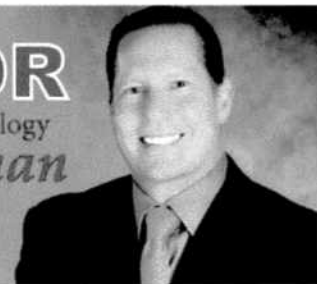


SENATOR MATT RECTOR

Chairman, Committee on labor, the public structure, public libraries and technology

I Mina' Trenta na Liheslaturan Guahan

Thirtieth Guam Legislature



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COMMITTEE REPORT ON:

Bill No. 92 (COR) – “An Act To Restore Certain Jurisdictions And Clarify Certain Functions Of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA § 4405; And New §§ 4410 And 4411”

I. Overview

The Committee on Labor, the Public Structure, Public Libraries and Technology convened for a public hearing on Monday, April 13th at 9:00 AM at the *I Liheslaturan Guahan*, Hagatna public hearing room. Notice of all hearings was disseminated to all local media outlets via electronic mail on Tuesday, April 7th, 2009 and Wednesday, April 8th, 2009 as required by Guam Open Government Law, copies of which are attached to said report. Notice of said events was also displayed upon the Guam Legislature’s website www.guamlegislature.com/calendar.htm.

Committee members/Senators Present:

Senator Matthew Rector Chairman

Senator Adolpho Palacios, Sr. Vice Chairman

Senator Frank B. Aguon Jr., Member

Senator Vicente “Ben” Pangelinan, Member

Senator Benjamin J.F. Cruz

Senator Rory J. Respicio

Senator Judith Guthertz, DPA

II. SUMMARY OF TESTIMONY

April 13, 2009 Senator Rector states that there will be a continuation discussion on Bill No 91 and Bill No. 92 on Wednesday 15, 2009 at 5:30pm at the Guam Legislature Public hearing Room. Public notices were given to the media on April 7th and 8th and also published in the Pacific Daily News on the Government meetings section on April 10, 2009 on page 37. For the record Today is Monday April 13th, 2009 and it is now officially 9:04am. The committee will hear and accept both oral and written on the Following Bills; Bill No. 92, Bill 91, Bill 81, and Bill 65. Those testifying will be recognized in order of the sign-up sheet whether oral or written. The committee will be excepting additional written testimonies up to ten days after the public hearing and persons will be allowed to submit testimonies only once.

BILL No. 92

Senator Rector states the Bill No 91 and Bill 92 will be heard together. Calls fourth the following people to testify, Louie Baza, Manny G. Naomi Gonzalez, Fred Moser and Robert Koss.

Senator Rector states that the testimony will start with the Director.

Naomi Lujan Gonzalez (CSC) states that she is the current Director of the CSC, and she is here to voice her concern on Bill No. 91 and Bill No. 92. Six months ago she has a confirmation hearing to be the director of the CSC and that she had to write a draft letter addresses states the needs of the CSC. When she was commissioned to be the Director of the CSC, she embarked on a mission to understand the CSC of the past, present and the Future.

Manny Pinanin (CSC) States he is there to represent and testify on behave of Luis Baza.

Fred Moser states that he is program coordinator for FEMA projects within the Guam Public School System. Mr. Moser states that he E-mailed the senators of the 29th Guam legislature for assistance, and that he is asking the same of senators of the 30th Guam Legislature relative to restoring the Civil Service Commission by passing bill 92 including staffing levels. Mr. Moser states that reports provided by his recovery office staff were affected by retaliatory efforts because of his reporting due to a whistle blower complaint. His Civil Service case has yet to commence because of amendments made by Senator Klitzkie and confusion over who has power to review whistle blower complaints. Mr. Moser expresses that people like the recovery office staff are encouraged to come forward, but are left hanging in confusion. Mr. Moser asks the legislature to reinstate all powers of the Civil Service Commission in order to provide better oversight and support for the public good and for efforts to combat wasteful spending and other issues within Government.

Robert Koss states that the importance of the CSC is that it provides an important checks and balances for the Government of Guam, and that the Government of Guam, with 10,000 to 12,000 employees with 52 agencies, it is a massive monster. The staff of the CSC's current staff inadequate. The size of the government immense and he believes that the current staff is not sufficient. Mr. Koss suggests a large CSC which can provide a check to the Government and points out that the CSC, employees don't share an employee and employer relationship with the CSC, they are citizens of this community and employers is our Government. Mr. Koss goes on to state that the Legislature has the rule making authority, they have to make sure that the employee working conditions and rights are protected by the rules that the CSC will enforce. This is very important because there are some changes in law 28 68 denies certain rights that are constitutional and organic. Mr. Koss cites an incident that happen in the private sector with an employee that had a problem with the employer, the employee did not have the CSC to report his problem to, now the employee is incarcerated after taking matters into his own hands, and

another individual is dead. He believes that an employee should have some sort of vehicle where the employee can file grievances and have some sort of justice. The CSC so important that they have the adequate authority being they are only vehicle available to government employees to address the issues of public employees regardless what those issues are. One problem that the CSC has is Jurisdiction, the CSC has some authority over position and classification and but no authority over compensation. Mr. Koss states that he would like more clarity, and also notes that the CSC Lacks Jurisdiction on the power to make a position classified and unclassified and not having this authority has led to wide abuse on Government of Guam. Currently if you are a qualified and certified Teacher applying at GPSS you will be hired but you will be hired as a limited term appointment, similar to Bus drivers, GPD and other agencies in the Government. Mr. Koss states that he doesn't believe there is no reason why this is not practicable not to give these employees a classified employment. Mr. Koss states that this has led to wide spread of abuse of not allowing employees merit and job protection. They get all the benefits of a classified employee, they get paid the same as a classified employee but the only thing that they do not get is job protection. Mr. Koss states that it has been a long time since some has said they were hired as a classified employee. Mr. Koss expressed that both Bill No. 91 and Bill No. 92 have not addressed this problem and he would like the bills to be amended but with the Bills allowing the CSC to make a position be classified or unclassified. The Second issue that Mr. Koss spoke upon relates to two court cases. One Court case was heard by Judge Liz Barred Anderson where the CSC has no jurisdiction over collective bargaining agreements could not be heard by the CSC. They only handle matters over grievances. All policies should be heard over one body that body being the CSC that he has complete faith in the CSC. The second court decision given by Judge Robert Kiltsky That based on public Law Public Employee Grievances could not be appealed by the courts of Guam. That the CSC decision be final. Whether or not the court hears those grievances or not. In Bill No. 92, page 10 Mr. Koss found "something disturbing", that problem being that all of hearings be conducted by the entire commission.

Senator Palacios States that he would like to speak to quorum. The Senator states that he supports the quorum concept, because it is a standard policy of Guam. The problem is that is not always the same quorum that attending the meetings, that it is never heard by the same people whom have heard that same case. It would dilute the decision. Also, it is apparent from past experience that too often members of a commission do not read the reports.

Ms Lujan-Gonzalez assures Senator Palacios that the commissioners who are not present at hearings are sent tape recordings and they do listen to the hearings on their spare time due to the fact that they only get their stipends. Commissioner's state that did read the packet before they make that appeal. On the record, when they show up, they also state that they have read/listened to the records of the previous hearing.

Senator Palacios states that when a person is terminated and eventually prevail in an appeal, they minus the time that employee was employed elsewhere. I do not agree. Issue is with employee and the agency, what that current practice implies is that a person should not work while case is

in progress because they will subtract the earnings from the other job when they get their revenue. Expresses that employee should be paid completely

Ms. Lujan-Gonzalez: It is an issue I will look into. Expresses that she is sure that previous decisions were based on legal principals.

Senator Palacios inquires as to if there Is there anything that can be done to stop that practice.

Manny Pinamin (CSC) states that If he has some employment during said period, than that can be deducted from what Government is obligated to pay

Senator Palacios Inquires as to What is the authority for that?

Manny Pinamin: Rules and regs

Senator Palacios states that this is not law and that it can be changed. If employee earned money during said period, it was not the agency that paid him, and employees should get full compensation in the case of this. This benefits the employee that wrongly terminated the other employee. It has to stop. We have to make sure that that practice is stop. The terminating agency still owes that wrongfully terminated person fully.

Senator Guthertz states that some folks that may not be supportive, and that one issue is the certified employees of the Government that may be exempted. Senator Guthertz inquires as to if there Is any reason why the CSC couldn't properly deal with certified personnel to ensure that they are properly compensated.

Ms. Lujan-Gonzalez states that the CSC is not seeking to obtain jurisdiction over salary or compensation issues, which currently resides with DOA.

Senator Guthertz states that you (CSC) would retain power of review of compensation and classification. Employees always come to us with a host of issues regarding payment and compensation, and they come to us and other senators because they have nowhere else to go. It is every unfortunate for a Government to allow reports of abuse and grievances to move from one entity to another. Senator Guthertz states that there are two things that she would like to see happen: first, this bill will need a transition statement that will require the civil service commission and DOA to sit down and work on a transition plan so that it becomes law by the Governor's signature so that it can become effective within 60 days of passage. Second thing is a strong provision to give independence to the civil service commission.

Senator Cruz inquires of Mr. Koss regarding the Allen Houser decision, which bars unclassified employees, and seeks clarification as to whether or under that decision there should be unclassified employees.

Ms. Gonzalez informs Senator Cruz that he is correct.

R. Koss states that this happens more with new appointment, though the Hauser decision is very clear. But when CSC jurisdiction was removed from hearing unclassified appeals, it opened the door for abuse. Mr. Koss states that there is also no relief in the court, and asks what is the avenue of relief to that employee? The Agencies are taking advantage of a system that has loopholes in it.

Senator Cruz states that this decision makes it clear that every employee must be classified, and even the legislature's authority to decide classified and unclassified employees may be questioned.

Senator Aguon states that he does not know that the economic stimulus package in many incidents that he's aware of unclassified employees are attached to a funding source that isn't permanent and inquires as to whether or not agencies should be given the option of hiring classified personnel. Senator Aguon expresses that he thinks that Vice speaker Cruz brings up a valid concern.

R. Koss states that Receipt of Federal funds requires local governments to follow merit system protection.

Senator Aguon states that CSC, when this change was enacted, one big concern by the sponsor of that legislation was looking at the backlog of cases and allowing greater flexibility in Government. Senator Aguon inquires as to whether or not CSC has a major backlog right now.

Ms. Gonzalez states no, and notes that CSC has taken measures to ensure the efficiency and accountability to bring resolution to how these cases are handled. Bill 92 has timelines built into certain areas that were a concern at the time, we're asking for additional days to ensure that the process is done correctly.

Senator Aguon states that he knows that the salary structure of technical/professional positions have been extracted, obviously there is a comprehensive study ongoing, looking at how the process has proceeded, one of the challenges the Senator has been looking at differences between compensatory structures between agencies, and that he believe that may be defeating the purpose of having an oversight agency, and that's the issue the Government is trying to minimize in terms of uniformity with the pay structure. Senator Aguon Expresses that we should ensure uniformity to attract best personnel to agency. Senator questions why the information is not more up to date, Senator Rector notes that his office provided the study in question by Senator Aguon.

Senator Pangelinan asks for explanation as to a statement made by CSC that opposition to bill 92 is dangerous.

Ms. Gonzalez states that there is a lot of transparency in bill 92, and it is overall a functional legislation.

Senator Pangelinan asks if past changes made to jurisdiction are not as subject to follow the rules, and asks whether or not this change has resulted in a skewing of even scale of pay across all agencies, citing deficits in pay scale between airport and other agencies for one example.

Ms. Gonzales expresses that salary and compensation issues are not included in bill 92. Also expresses that commission's belief is that said issues are better tailored to other governmental bodies. Expresses that currently DOA has jurisdiction over compensation, and states that the CSC does not want jurisdiction, extending to job/pay classification.

Senator Pangelinan expresses that there is something wrong with the policy that allows jurisdictions to be disjointed so that you don't have a body that takes a look at all issues including the merit system, including equal pay for equal work, and I have a problem with that, and states that it results in differential treatment, and that we are getting mini-governments no longer under merit system umbrella to ensure fair and equal treatment for equal work, and bill 92, according to CSC, doesn't go far enough. Expresses that he does not think the legislature made this decision blindly, but the results have not been satisfactory, and he feels that inequity is widespread due to the Certified Technical Professional program among other issues, which must be corrected by a bill.

Ms. Gonzales expresses that the legislature should work with the Civil Service Commission when dealing with merit system issues for their input.

Senator Aguon remarks that the issues presented by Senator Pangelinan illustrate the necessity of uniform compensation. States that in regards to uniformity, we act as one or many governments, and must centralize. Senator Aguon expresses that above step recruitment does indeed work and that he has been through it personally. Feels that the previous process involving CSC did indeed work.

Senator Rector thanks all involved for contribution, and states that the civil service commission is a body designed to make sure that management and employees act fairly and in accordance with existing policy.

R. Koss notes that currently in respect to compensation, a problematic situation currently is that eight teachers were promoted; but that the agency came back years later stating that said employees were promoted to a lower salary rate. GPSS has no jurisdiction, CSC would have to dismiss due to lack of jurisdiction, and with Klitzkie ruling in place, and the court could not hear matter either. Mr. Koss notes that there needs to be some mechanism in place.

Senator Pangelinan states that there needs to be some kind of system in place, and that it is a misconception that the CSC is so biased in favor of employees. Senator Pangelinan notes that of 157 grievances in 1995, only 3 were management overturned. Of 131 where adverse actions were filed in 96, only 3 were ruled in favor of employee, and only 3 were overturned in 97, 4 in 98, and that the idea that employees of the Government of Guam can do whatever they want

because of CSC, the numbers make it clear that this is not true. Anybody who thinks that they should get rid of the Civil Service Commission, my advice to employees is to save your time. We want to make sure the process is implemented fairly. Notes that it is almost disturbing to him that it is a burden on the employee to go to CSC and that the merit system protection does not unfairly protect employees historically.

Senator Palacios notes that management almost always prevails, in law employee may be represented by management of his own choosing, the problem is that it shall be at no cost to employee, but an attorney representing employee is entitled to reimbursement for cost. Senator Palacios expresses that they should do more to assist the employee in his representation because finding representation can be the most difficult part of grievance

Ms. Gonzalez notes that lay representatives cannot receive compensation for time or services, but nothing stops employee from requesting reimbursement for cost of photocopying. Notes that CSC is in the process of finalizing rules of adverse actions and procedures.

Senator Guthertz asks why a lay representative should not be compensated for their time, asks why lawyers should be special in this classification, and expresses that qualified lay representatives should be recognized.

Ms. Gonzalez states that she is in full agreement with this.

Senator Pangelinan notes finally that only 25 percent of adverse actions ever end up before the CSC.

Senator Rector calls Daniel Summerfleck, Gram Botham, Kin Flores, and Sam Taylor.

Mr. Flores states that as General Manger of Guam Power Authority, he expresses support for some language of bill 92, does not want the Certified Technical Professional program placed under the Civil Service Commission because it would give the CSC authority to review personnel actions of GPA. Mr. Flores cites alleged concerns with bond-holders. Mr. Flores also suggests that bill 92 should exempt Certified Technical Professional employees, but that jurisdiction will apply to adverse action appeals of GWA, GPA and Guam Memorial Hospital. States that CSC was no longer allowed some time ago to hear GPA cases regarding adverse actions. Mr. Flores states that he opposes the language of bill 91 because it gives authority to the CSC over OSHA issues and other safety issues. Expresses that his agency has an OSHA instructor on staff as safety administrator. Regarding Department of Labor, Mr. Flores notes that it was "unfortunate" that GPA was caught with two illegal immigrant laborers illegally on site.

Graham Bothe states that he is here for legal support, but due to neglect of instructions to utilize his microphone, his testimony is not clearly heard on the record here.

Sam Taylor notes that John Benevente wrote the testimony he is submitting (included in written portion of report) Mr. Taylor's prepared written statement notes that bill 92 constitutes a step

backwards in regards to GWA, GPA, and other autonomous agencies, arguing that bill 92's autonomy is important to bond-holders. Mr. Taylor also notes opposition to 91, feeling that labor issues are a problem of the court, and that OSHA is already sufficient. Bill 91 also codifies a new cause of action, (complaints of retaliation). Mr. Taylor notes that grievances include retaliatory actions and that the Guam Supreme court has found that there is a difference between autonomous agencies and public corporations. GPA went to public corporation status because of agency problems, and also GWA, and had to restructure. Mr. Taylor notes necessary specialized knowledge necessary. Mr. Taylor stated that under the CTP program qualifications have been modified feels that the CSC would require training to review how certain persons were slotted.

Senator Rector asks regarding the concept of the CTP, and it is his understanding that a large percentage of both agencies' personnel are now considered certified technical professionals.

Mr. Flores states that about seventy percent fall under the CTP category fall under this classification, and only 44 are non-CTP. Mr. Taylor also notes that the percentage is allegedly lower at GWA. Senator Rector also requested the actual numbers from said agencies.

Senator Guthertz states that great improvements have occurred at GPA, GWA, but questions the alleged lack of necessity of another oversight layer, because if the agency is performing, it should not be a problem, and because the training issues are easily resolved in regards to CSC.

Senator Palacios states that when the utilities commission came before the legislature requesting the CTP provision, we gave them the benefit of the doubt, but that he feels this authority has been misused and that he cannot believe that 75% of employees are under absolute agency authority, effectively excluding CSC protection and supervision. Senator Palacios also asks if it is right that GWA impose a surcharge of 1% on water consumption on all subscribers for supplemental annuity, and does not feel that it is right that non-government of Guam retirees should pay for retirees. Senator Palacios also states that the credibility of the CCU does not weigh well with him, and that is why he is asking.

Gram Boffit stated that it was presumably a necessary surcharge due to lack of funding, though Senator Palacios stated that it was an issue of fairness.

Senator Pangelinan asks that if we truly should not make this change due to bond issues, isn't it true that CTP was not in place? The Senator also asks if any issues effect rate making, and Mr. Flores answered that he doesn't think so, but the issue is adverse actions.

Graham Bothe expresses that there were two cases floating around from the past, and that they got the Civil Service to reconsider for pending cases, and that is why they are in support of administrative provisions of bill 92.

Mr. Flores also states that the Civil Service Commission was demanding compensation for services under an MOU agreement. Senator Pangelinan points out timeline errors with much of

this argument due to the fact that court rulings on the Governmental status of public corporations came later.

Mr. Taylor notes that it was obvious that at the time, these agencies needed a special status and that their statutes were different from GVB and GEDCA.

Senator Guthertz states that for the record, GWA and GPA employees are part of the Government of Guam retirement program not paying social security benefits.

Senator Rector thanks all present for showing up to testify today.

April 15th 2009

BILL No. 91 & No. 92

Senator Rector states the Bill No 91 and Bill 92 will be heard together. Calls fourth the following people to testify Cecilia Martinez, John S. Tomac, Cora Cepeda, Daniel Somerfleck, and James Lujan.

Senator Rector states that the testimony will start Cecilia Martinez.

For the record Today is Monday April 15th, 2009 and it is now officially 5:30pm. The committee will hear and accept both oral and written on the Following Bills; Bill No. 92, Bill No. 91, and Bill No. 60. Those testifying will be recognized in order of the signup sheet weather oral or written. The committee will be excepting additional written testimonies up to ten days after the public hearing and persons will be allowed to submit testimonies only once.

Cecilia Martinez: Reading from written testimony provided (see attachment)

John S. Tomac: Mr. Tomac noted that there are very important issues, that the CSC places on the Government of Guam, one of those issues are the check and balances. The only bid that the CSC has is jurisdiction. Mr. Tomac commented that he would like to see that change from commission. One section of Bill No. 92 is a provision that all CSC provisions will be under law. At least I know that I would be getting some kind of fair trial regarding my issue but I don't have that right now. I have about 7 pages worth of contractual agreements that I had on my worksite. When I file grievance I usually talk to my field representative, but I want to make sure it's in violation of my contract or grievance. This is a little fable, the wolf fable. Forgot how wicket the wolf could be. I'm asking you to give me my Sheppard to watch over us.

Cora Cepeda: Ms Cepeda explained how she was touched by the gentlemen sitting next to her, and how she would not want to relive it again. Ms Cepeda states that she does want the CSC to be restored all their powers and employees to do their responsibilities efficiently and effectively. Ms Cepeda pleads with the senators to consider what the CSC needs, they have always been cut, they don't have staffing necessary to address all grievances', with consideration to comments please ask me. I do thank all senators who've made this happen. Give fairness to all government of Guam employees.

Daniel Somerfleck: Mr. Somerfleck has been in front of a number of the senator in prior legislations. Past years and half he has been representing employees in front of CSC. Issues in labor, is just as vital. Through employment we have success. That is vital. The 2 bills put forward, both drastically different. On face, both are similar. Major difference: issue of collective bargaining agreements. Contract puts forth conditions of work. Both employee and employer are bound by conditions of work. The CSC is not hearing or in process of excluding agreements because it's not in current law. Says to employees, we care about working conditions, but not enough to do anything about it with your employment rights. If breach contract, unfair labor can be filed. If unfair labor practices filed, so many unfair labor practices filed, grievances will create entirely different system. Somewhere we've lost the process of adjudication, decided by DOA, sent to governor. Bill No. 91 puts forth that CSC will hear unfair labor practices. Grievances heard by collective bargaining will be heard by civil service commission. If employees can't go to CSC to grieve, can employers take action based on employers to perform under collective bargaining agreement, leaving whole group of employees in limbo. Give CSC jurisdiction issues in collective bargaining agreement. I would expand their powers. Put an AOJ in there that will hear these grievances in entity that's already equipped to deal with it. In law, other board committees don't really exist. No members to labor board. Instead of creating non-existent boards that aren't here, I strongly urge you to look at commission that we have empowered them. One thing that Mr. Somerfleck heard was too much. Use Administration law to judge and do analysis, and present an opinion. We cannot have a government processing without adjudication of issues. Found it educational. Is a labor board always has been labor board within federal government. If unsatisfied individual, goes before whole board. Should not be decided by employee especially subject to control of government of Guam, let alone appointed employee in governor's cabinet. All power on one side, twisted, our system is corrupted not because people are bad, but because we didn't set it up right. Look at both bills, hybrid in each of them. Whistle blower issue, investigatory issue, should we have people investigating in same house as adjudication. Do see merit to that thought. Have investigatory body contained within adjudicatory body. Labor relation board does. If you're here, Mr. Staff member, shouldn't you conflict? I think that's the current part of commission, I wasn't prepared as my colleague here to represent that issue. Are some points that I agree with people who have spoken before me. Have difficulty agreeing with the idea that the entire commission should be present. Commissioners get sick like everybody else. Mr. Somerfleck has a concern with section 6. His concern is retaining private attorneys to serve as ALJs, should be classified

employees; they do not want any outside employment or private sector employees. You can't afford me compared to hiring someone internally. They make a very strong team. Both with grievances advocate against any externals. Other thing I would put forth is that we in government of Guam don't have limited term appointments, lot of temp employees doing classified work. Who's supposed to be making sure that classified jobs go to employees and not to temps or 1 yr contracts, if we keep going to another name then we keep.... Maybe CSC should do more than just classified employees. If employee has been left in an unclassified position for over a year than he should have filed for grievances? Mr. Somerfleck strongly agrees that somewhere in here we need to give power to CSC, say where's my classified position? Make sure that unclassified employees should be classified after 12 months. Agency director should come before you all. Thought that commonly runs in our community among people who don't have a good understanding of government of Guam employees. Left behind 20 yrs ago of Guam, pro employees, sees grievances coming before commission. Want to be treated as pros, want fair deal. More that we provide ability to go to impartial body, have management review; government of Guam employees, are frequently disrespected.

James Lujan: Mr. Lujan states about the testimonies about grievances: Federal government employs hundreds of thousands of people, broken down into departments. President of US does not hear grievances, Government of Guam it does happen that way. Reinstate civics, employment rights. Put a lot of mental thought to my mind that I almost lost my intent to work. CSC is next step to upgrading FEMRA, very 1960, CSC is arbitrating body for government employees. Government is a lifeline, the government should care for its people, should do that, meant to do that. CSC is that body that offers that medium between people and authority. We shouldn't be fighting with Administration, administrating shouldn't be tyrannically dictating. We're all human. When we grasp power, we don't want to let go. The CSC offers balance. We can only work so much, must keep it balanced. Government is a medium, having independent body within government is that medium? This CSC is to organize a medium between employees and management so that we work to our goal. That is where I stand, improves nature of our society. It expands to rest of the people of Guam.

Senator Palacios: Senator Palacios speaks on a comment made by DOA: In light of autonomous agencies having authority to do their own as far as certified technical positions, I think it is because of continuing.. all autonomous agencies having own personnel, so how can hay study be implemented government wide when there are still laws setting pay structure for government. Government of Guam employee is government of Guam employee regardless. Serious disparity in pay for same work, an auditor lost auditor to airport, 40 to 60 k a year. How can a hay study be done in light of this? Against or on autonomous agencies. Autonomous agencies personnel are subject to study by any group. Invited autonomous agencies to participate. Some of them have accepted it. Some that did not do that. Do have some employees not part of CPTE

Senator Respicio: Senator Respicio states that he always appreciates testimony on any bill, testimony against bill are good for fine tuning, Ms. Martinez where citing progress with

reduction in times, above step requests for employment. What kind of positions are you creating outside of CSC process?

Ms Martinez: Ms Martinez notes that is we develop recommendation on upgrades. Don't have to be major changes but if we have to submit recommendations on promotion or demotion.

Senator Respicio: Senator Respicio asks Ms. Martinez has she ever feel pressure from your director to speed up above step, etc?

Ms. Martinez: Ms. Martinez responds with a No, and note department heads are always anxious to follow up on positions.

Senator Respicio: Senator Respicio asks again if she feels pressure when someone does a follow up. Senator Respicio comments that he knows that she is committed to protecting the merit system but don't you think you are leaving your successor in position? Especially with political pressure, there is some. Increase in request for desk audits, reclassification. As far as creation, above step, no pressure, but do call up with status inquiries, hear within next week or 2 weeks. Mission to accomplish, I understand.

Ms Martinez: Ms Martinez says that there is a time limit for details, request for extension. For next 90 day extension, individual has to meet minimum qualification for position.

Senator Respicio: Senator Respicio questions how many people decide on this non regulatory cases, is it just director, panel?

Ms Martinez: Ms. Martinez responds with a yes, and notes that they also advise their director.

Senator Respicio: Senator Respicio asks what, can employee appeal that decision.

Ms Martinez: Ms Martinez comments that an employee can file grievances in that matter. An individual can file an appeal to director of DOA for appeal review board, management representatives, employee grade level representative.

Mr. Somerfleck: Mr. Somerfleck states that If it's a personnel policy and rule, than that goes on just as said. If grievance is Col bargaining issue, appeals board, limbo or arbitration. Easy thing is all grievances go same way. Let all go to CSC, not collective bargaining. Right now CSC is saying that it's not our jurisdiction.

Senator Pangelinan: Senator Pangelinan states that everything under collective bargaining agreement would relate to rules and regulations.

Mr. Somerfleck: Mr. Somerfleck states that we cannot do anything contrary to Guam law.

Senator Pangelinan: Senator Pangelinan states that it does not make sense.

Mr. Somerfleck: Mr. Somerfleck states that the CSC said that's one thing they would not want to put in. Move it to be an adjudicative body, let them hear labor as well. When I hear that situation, I think we should have adjudicative bodies aside. We should have consistency.

Senator Pangelinan: Senator Pangelinan you mentioned that actions and review of personnel actions are not subject to review by CSC by the change.

Luis Baza: Mr. Baza responds that if a Law amended that to give null and void authority to give commission copies of personnel actions.

Senator Pangelinan: Senator Pangelinan notes that in action that the HR office took in regards to changes and qualification of Guam PD, changes were made, overwhelming testimony against changes. In discussion that GPD held on changes, that issue was never proposed to be part of change. From records I have, when submitted, not part of change in qualification standards. Chief wrote a letter to include that change though it was never discussed in hearings/meetings. How does this process facilitate that and where is an employee who now had his ability to get promoted into those positions has now been compromised?

Mr. Baza: Mr. Baza responds that change in statement has been requested many times but they've never put it in writing by several chief of police, never officially submitted. Last change was included by Suba.

Mr. Baza: Mr Baza states that they have had several complaints about that issue, lot of applications for vacancies. Many formerly rejected applicants have met qualification this time because of that revision. Still have experience, have considered that, had more qualified people than they've had in past.

Senator Pangelinan: reason: Never promoted anybody that's why they didn't have people qualified. Never had promotion board. Can an employee now brief anything at all?

Mr. Baza: if employee or applicant feels that he/she is better qualified than that. Just have to take the move for that. Seniority doesn't mean that they are the best. Younger police who are very aggressive. If you haven't done anything to improve, than selecting official will look at it. Don't deny individual opportunity for that.

Senator Pangelinan: You don't' jump him from sergeant to commander, but you've done that now. Police chief couldn't become chief in senior rank, all of a sudden, sergeant. Became senior ranking police officer. How does system protect against that now? Do these bills prevent these kind of things from happening.

Mr. Baza: I don't know how it will. If you want commission to look at qualification then it will have to be sent to CSC commission, but I don't know what they will do with that.

Senator Rector: Thank you for coming out. Democracy works when we participate in it. The statement you read wasn't your statement?

Mr. Baza: no, that was from my director.

Senator Rector: who do you appeal your problems to?

Mr. Baza: I would grieve, if grievance overrules her, they have to change mind, if not, I have to go to CSC.

Senator Rector: Exactly, we want everyone to have access to CSC.

Morris: Manger, WIC program, public health. Heard testimony. Not qualified to talk about process itself, but here to tell our story about how all things in years have affected us, pub law 28 68. Myself and 30 employees filed appeal to furlough, expected to act in good faith under all procedures, file appeal. Subsequently to that, had long wait. Still waiting after 6 yrs to get some kind of resolution out of that. 28 68 can't account for everything, delay prior to that. Feedback change from "working on it" to "Cant work on it", makes it frustrating. Had to go to employees and explain why case wasn't heard and what they were telling me. Not expert, but have some sense of what's fair and not. Expectations get fairness from appeal that doesn't take 6 yrs. That's all I have to say.

Ms. Prekash: Ms Prekash is in favor of Bills No. 91 and Bill No.92. Families have suffered as a result of cutting CSC staff and funding. Island of rules, regulations, contracts, laws and policies. Neutral 3rd party. MS. Martinez has been bombarded, DOA is very busy, has too many other responsibilities. Need to have grievances, labor practices heard in timely manner. Hasn't been happening. As Ms. Martinez said, has to go through CSC, checks are why our system works, when checks get cut out, can never lead to good. As teacher, many things in contract that protect students education. Without way to enforce agreements, kids education at risk. Fair tribunal to adjudicate, not good for people of Guam. CSC will pay for themselves by stopping corruption. Ask public employee. Allows superiors free reign because people who could report are afraid to speak. With efficient system in place, we will see improvement. When everyone is forced to follow law, government will work better.

Bernideta: Basa torre: teacher, Price el. 2nd grade.

Bernadetta Torre: States that she is a citizen and a resident of Guam and that she is In favor of Bill No. 91, also Bill No. 92, even Bill No. 60. They all deal with people in the Government of Guam. Dealing with human beings, police man teacher, nurse, school aid, regardless of occupation we're talking about human beings who need to live. They all have the need for Shelter, food and, survival. We must make sure that we as government provide security for our people of all races, color regardless of race, background, or education. Let's treat them as human beings must make sure that if they are employed they have a way to address their grievances. If

teacher has grievance at school level, go through proper procedure, to admin, from superintendent to board, then where does it go? Most cannot afford private lawyer. IF we're to hire him, it costs a lot. We will not drop case at the end of the school board. I want justice. I want respect. I want integrity. If we have CSC with its power restored to appeal to, than I feel secure that there is an agency or a body that I can go to have my grievance heard, anybody, somebody who can continue the process. Please restore the CSC. IF they need funding, let's find funding. I hope that they are not appointed by executive office.

Ms. Martinez: Ms. Martinez states that administration would not be able to help her. We have to have a way and a system to get help. CSC was established for that purpose, you are legislative body, if they need funding; let's help them get on their feet. Some part time employees have been in the system for 20 years. Is that fair? Let's look into our system of employment: If a person has been on part time and there is a classified position, that person should be given the opportunity. We are taking advantage of people. Not just, not fair. We are here to help each other. We must work hard to make life more pleasant. Find out how many employees are on this category. If we can hire people through attrition, put them in as classified. Let's not take advantage of them year after year. No insurance, no benefits. No salary, sometimes not needed within a day or 2 or within a week. Maybe sick, No work, no pay, and some inequities that we must look into the system. Help agencies, help administrators. Help dept identify employees. Let's help each other. I'm asking this body to approve Bill No. 91 so that we as employees have a path or way to help ourselves with our grievances and whatever is within our power to do it. This should be available with everybody to address their grievances. The CSC is a haven. I thank you all for listening. I hope you consider every employee. Let's work for our people and have a happy life here in Guam so that we can all live together happily so that we can make this island prosperous.

Mr. Baza: Mr. Baza states that as Chair of the CSC, he thanks the body. I grew up in Civil service. History, Hay Study, Uneven compensation, He is quoted in saying that he calls his staff and says "I'm going to enforce the law of CSC." Very unpopular with CSC he took away fire fighters rescue pay. Some of these jobs that are not hard to fill they get above step recruitment. Reason why hay study didn't work was because of funding to make it work. Must update pay structure every 3 years. Started structuring pay to step 20, got creative to try to retain people. Need teachers, need pros, need speech language pathologists, when 28 68 came in, he had said sorry that he stirred the pot. Mr. Baza's colleagues didn't like that he checked and balanced them. DOE was mad at me because they gave above step for an auntie or a niece and that's wrong. Check and balances is what are senators, department heads don't like to give information, and don't want to get caught. Mr. Baza commends Ms. Martinez for saying that. HR managers get pressured around here to do whatever they want to do. Mr Baza guesses that's why they call him an asshole as director. Director of corrections didn't like me because Mr. Baza found out that they were giving overtime to exempt employees. Collective bargaining agreement: Court told him they have no jurisdiction. If they have no jurisdiction on this matter than they need to

have one. No jurisdiction on whistle blowing. Mr. Baza is not going to hear a case if he has no jurisdiction. Mr. Baza states that he works for private sector now, proud of government employee status, but when you lose on a technicality, who do I blame, my colleagues, the HR managers? The HR manager is accountable to ensure that rules, regulations, policy are adhered to. I look at the facts, I don't mind hearing these cases, I try my best, but I do my best there. Now that this body is relying to give jurisdiction back to CSC for Guam memorial, GPA, GWA, etc, the only one who can fix this is legislature. I support whole intent. In terms of classification and comp, DOA can have it, but we need to have a check. That's how I see it, I really feel bad for a lot of government employees. Where do we go, where's my appeals process? I trust that this legislature will fine tune merit system, lets' go for it.

Senator Palacios: Senator Palacios states that in respect to limited term of appointment, that's supposed to be a good management tool, but I guess that what appears to be case is that employees are in position of being taken advantage of. What do you think of proposal of an employee in unclassified position exceeding 1 yr that automatically should enjoy same protection for grievance, appeal? Some directors do not have care, experience that these guys have. If this person is good for more than a year at least give him some protection. Perhaps maybe there can be an amendment to that effect's

Mr. Baza: Mr. Baza states that once they meet minimum, after 1 yr they should be permanent. It increases competition, but 1 yr to put them on list. Must compete after meeting minimum, Clerk 1, LTA temp appointment, 1 year to work on it, Person makes it top 5 or top 10.

Senator Palacios: Senator Palacios states that all agree that anyone who lasts more than 1 yr should be selected.

Mr. Baza: Mr. Baza States that it can be done the right way but thru court decision.

Senator Pangelinan: Senator Pangelinan asks Mr. Morris: what was the reason prior to 28-68 your grievance was under whose jurisdiction?

Mr. Morris: Mr. Morris responds that CSC has jurisdiction.

Mr. Morris: Mr. Morris states that there were things he was following up with agency just to follow up on progress. Preliminary memos sent to director.

Mr. Baza: Mr. Baza notes that when not getting a response from staff, I suggest that you put in on commission and let it review. I'm going to say why we are delaying this. Heard about influx of furloughs, became chairman of 2 months after, heard that it was canceled, got into other cases. IF that was issue, can write to chairman, myself, get to bottom of it.

Senator Pangelinan: Senator Pangelinan states that after 2868 commission, disagreement between dept and CSC between who had jurisdiction,

Mr. Morris: Mr. Morris Notes that, certain functions of CSC were eliminated. Weren't clear on whose responsibility, had to investigate whose responsibility things were.

Senator Rector: Senator Rector asks Mr. Baza, if one thing public employees have told us is long time frame for justice. Both bills are looking at putting in adjudicated law judge. Brought to me that it will help move, do you agree?

Mr. Baza: Mr. Baza Responds with a yes, we have law that created ALJ, big help to expedite process. We at the board can trump our staff.

There being no further testimony, the Chairman indicated that the committee will continue to receive written testimonies for the next (10) days. The being no comments or discussion, the chairman concluded the public hearing on **Bill No. 92 (COR)** as duly heard.

III. FINDINGS AND RECOMMENDATIONS

The Committee on Labor, the Public Structure, the Public Libraries, and Technology to which **Bill No. 92 (COR)** was referred does hereby submit its recommendations to **DO PASS** **Bill No. 92 COR as Substituted: "AN ACT TO REPEAL AND REENACT ARTICLE 4 OF 4 GCA CHAPTER 4 RELATIVE TO THE DUTIES AND RESPONSIBILITIES OF THE CIVIL SERVICE COMMISSION TO RESTORE THE AGENCY TO FUNCTIONAL OPERATIONAL CAPACITY IN ACCORDANCE WITH THE PROVISIONS OF THE ORGANIC ACT AND IN ORDER TO PROVIDE A FAIR AND EQUITABLE SYSTEM OF CIVIL SERVICE TO THE PEOPLE OF GUAM."**

SENATOR MATT RECTOR
Public Hearing Sign in Sheet
 Monday, April 13, 2009, 9:00 a.m.

Bill No. 92 (COR) An Act To Restore Certain Jurisdictions And Clarify Certain Functions of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA §4405; And New §§4410 And 4411.

	Name/Company	E-Mail /Contact No.	Village/Address	Support	Oppose
1.	Normi Lujan-Gonzales (CSC)	647-1857/55	CSC	✓	
2.	Luis R. Baza (CSC)	647-1857/55	CSC	✓	
3.	Manny Pinamin (CSC)	647-1857/55	CSC	✓	
4.	FRED. MOSER	fred@quad.net 731-1195		✓	
5.	Robert Koss	BFJ 898-3076	BFJ	✓	
6.	Joquin C Flores		GPA		
7.	Stalaw Bolton		GPA		
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	Name/Company	E-Mail /Contact No.	Village/Address	Support	Oppose
1.	Som Taylor/ORA	647-7681			
2.	Personal Services	477-6021	Ap...	✓	
3.	JULIE QUINATA	448-3130	60-	✓	
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SENATOR MATT RECTOR
Public Hearing Sign in Sheet
 Wednesday, April 15, 2009, 5:30 p.m.

Bill No. 92 (COR) An Act To Restore Certain Jurisdictions And Clarify Certain Functions of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA §4405; And New §§4410 And 4411.

	Name/Company	E-Mail /Contact No.	Village/Address	Support	Oppose
1.	Cecilia Martinez ^{DofA}	cgmartnz@mail.gov.gu	Manguilao	X	X
2.	John S. Tomas	jstomas@hotmail.com	Manguilao	X	
3.	CORA Cepeda	coco.cepeda@yahoo.com	Manguilao	X	
4.	Famil Torres	etc@domaincell	Rio	X	
5.	James Byron	Football@taguayan.stt	Chula Puy	X	
6.	Charlie Morris	charles.morris@phiss.guam.gov	Talofofo		
7.	Timothy R. Febus	tfebus@stflum.com	Yona	X	
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	Name/Company	E-Mail /Contact No.	Village/Address	Support	Oppose
1.	Neel Prakash GPT.	neeti@afham.com 482517	Turmon Heights	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.	Arumathur	188-0217	Yoga	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.	LUIS R. BACA				
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SENATOR MATT RECTOR
Public Hearing Sign in Sheet
 Wednesday, April 15, 2009, 5:30 p.m.

Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(c) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA § 5102 Section (f) And Adding A New Section (i) To 4 GCA §4403 Duties Of The Commission.

	Name/Company	E-Mail /Contact No.	Village/Address	Support	Oppose
1.	Cecilia Martinez John S. Tomar	stomarc@hotmail.com	Monguon Monguon	X	X
2.					
3.	Paul Sanceski		Rickon	X	
4.	James Flynor Tim Sentesko	Postbell@telegraph.com.NET +1202456 0944@hudson.com	Chatham Park D YDWH	X	
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	Name/Company	E-Mail /Contact No.	Village/Address	Support	Oppose
1.	Neel. Prakash Giff	neeti@softunion.com	Tumkur Hts	X	
2.	Reemindata time	769-8217	Y109	X	
3.	LUIS R. BAZA	ltbaga@159skychips.com		X	
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Monday, April 13, 2009, 9:00 a.m.

Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(c) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA § 5102 Section (f) And Adding A New Section (i) To 4 GCA §4403 Duties Of The Commission.

	Name/Company	E-Mail /Contact No.	Village/Address	Support	Oppose
1.	Luis R. Baza (CSC)	647-1857/55	CSC	✓ w/ amendments	
2.	Manny Pinamin (CSC)	647-1857/55	CSC	✓ w/ amendments	
3.	Nancy Lujan-Gonzales (ess)	647-1857/55	CSC	✓ w/ amendments	
4.	Joerguis C Flores	646-3225	GPA		
5.	Graham Gotha	646-3203	GPA		
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Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(c) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA § 5102 Section (f) And Adding A New Section (i) To 4 GCA §4403 Duties Of The Commission.

	Name/Company	E-Mail /Contact No.	Village/Address	Support	Oppose
1.	Sam Taylor GUSA	647-7681			
2.	David Sorensen	477-8020	Aguon	✓	
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The Honorable Matt Rector
Senator, 33rd Guam Legislature
Chairman, Committee on Labor, the Public Structure,
Public Libraries and Technologies
155 Hesler Place
Hagatna, Guam 96910

April 13, 2009

RE: Bills 91 & 92 Relative to Restoring the Civil Service Commission's Authority

Dear Senator Rector:

My name is Luis R. Baza and I am currently the Chairman of the Civil Service Commission. I am present today to voice mine and the members of the Civil Service Commission's support of **Bill 92**, "An Act to Restore Certain Jurisdictions and Clarify Certain Functions of the Civil Service Commission by Repealing and Reenacting Title 4 FCT 4403, 4408, 4409, and 5105; Sub items (b) and (c) of Title 4, Section 4405; and New Sections 4410 and 4411.

As you are well aware, Public Law 28-68 enacted legislation that gutted the Civil Service Commission's authority in many different areas and placed them with the Department of Administration, as well as with the autonomous agencies boards and their commissions. The break up was painful for both the Commission and the classified employees, but it was also very helpful in allowing the Civil Service Commission to re-evaluate itself and the services that it should provide and ultimately, what should be services we must provide if the merit system is to continue.

Bill 92 is an attempt to address these concerns. Some of the proposed changes will increase the length of time that the Civil Service Commission will have in reviewing post-audit actions of the departments and agencies. Further, it provides some teeth to the request for the information necessary to carry out these audits, however, please note that it will not be done arbitrarily, but after notice has been sent to the agency or department head informing him or her of their agency's failure to submit enough information to the Civil Service Commission to do its job. We believe that this statutory approach will ensure our critics that the Civil Service Commission is not working against them, but with them to ensure impartiality in the system. It is a "win-win" situation for all.

The proposed bill in Section 2(f) gives the Civil Service Commission jurisdiction over the certified, technical and professional personnel at the Guam Power Authority, Guam Waterworks Authority and all of the classified personnel at the Guam Memorial Hospital Authority. This changes the law in which the Civil Service Commission would obtain jurisdiction over these individuals if a Memorandum of Agreement is reached. We believe that the mechanism for a Memorandum of Understanding is not the most appropriate method of ensuring the rights of the classified employees as thoughts of "buying" the decision of the Civil Service Commission may arise. The members of the Civil Service Commission recognize that there is a cost of servicing these employees, however, by demanding such and receiving it from one of these agencies leads to a lack of respect for our decision as being based not solely upon the evidence provided and instead to cries of favoritism. We respectfully request that this change be considered.

Section 3 would codify what has been the practice at the Civil Service Commission for many years.

We believe that our jurisdiction should extend to investigating Public Employee Protection Act and would like this point to clarify such authority. In Section 4, enforcement of our Orders should extend to all orders of the Civil Service Commission and not just to decisions rendered in adverse action appeals.

The court has indicated that our rules are the appropriate ones to follow and we believe that Section 5 would give us the flexibility to update, modify and change the rules as necessary. As the Civil Service Commission evolves with its new responsibilities, we believe that we should be able to add to our needs to address this matter, and Section 6 would provide for that possibility.



Section 7 would give the Commission an opportunity to better manage its case management by allowing for those last minute cancellations to be used for slotting of cases into these open hearing nights without worrying about the public notice requirement of the Open Government Law.

As appropriations become tight, Section 8 would allow the Civil Service Commission to develop a Revolving Fund to recover the cost associated with running the Civil Service Commission as well as to offset any needs that arises during the budget year that was not previously considered or accepted as a necessary item, should the Civil Service Commission be able to authorize an activity that can raise moneys.

Section 9 would allow for investigations of political activity to be done under our rules rather than the Administrative Adjudication Act and would be consistent with a recent Guam Supreme Court case (Carlson). As to changing the name to the Office of Public Auditor in Section 10, the Office of Public Auditor currently provides for training on ethics in this area and we do not see the need to duplicate such services.

In regards to **Bill 91**, while the staff and members of the Civil Service Commission support many of the concepts put forth in this bill, we had not worked as closely as we did in assisting in the development of Bill 92 and as such, we would limit our comment on Bill 91. After preliminary review and discussion of this bill 91, the Civil Service Commission believes that if given the authority to consider the Collective Bargaining Agreement issues that it would be consistent with reviewing working conditions that employees have in the current grievance procedures and would not be opposed to handling these matters. Further, just repealing the law does not automatically revive the previous law. Sections 2 and 3 do this and without further clarification, we believe the Civil Service Commission would not have any authority to handle its current activities.

Thank you for the opportunity to speak on Bills 91 and 92. I hope that you will strongly support the passage of Bill 92 and also the passage of Bill 91 taking into consideration the above-mentioned comment and according amendments.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Luis R. Baza".

LUIS R. BAZA
Chairman, Civil Service Commission



Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

GOVERNMENT OF GUAM
(GUBETNAMENTON GUAHAN)

DEPARTMENT OF ADMINISTRATION
(DIPATTAMENTON ATMENESTRASON)

DIRECTOR'S OFFICE

(Ufisinan Direktot)

Post Office Box 884 * Hagåtña, Guam 96932
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Lourdes M. Perez
Director

Joseph C. Manibusan
Deputy Director

APR 15 2009

HRD No.: OG-09-0383

Senator Matt Rector
Chairman, Committee on Labor, the Public Structure, Public Libraries & Technology
I Mina' Trenta Na Liheslaturan Guahan
155 Hessler Place
Hagatna, Guam 96910

Dear Senator Rector:

Buenas yan Háfa Adai! We thank you for the opportunity to provide comment on Bills 91 and 92. Bill 91 is an act to restore the authorized powers and personnel of the Civil Service Commission and Judicial Council, by repealing Subsection 2(c) of Chapter 11, Public Law 28-68 and sections 31 through 48, inclusive of Chapter IV of Public Law 28-68 The General Appropriations Act of Fiscal Year 2006 and amending 7 GCA § 5102 Section (F) and adding a new Section (i) to 4 GCA §4403 Duties of the Commission; and Bill 92(COR) is an act relative to restoring certain jurisdictions and clarifying certain functions of the Civil Service Commission.

The Department of Administration (DOA) wishes to convey to the Legislature that it does not support Bill 91. We would like to approach our justification for not supporting this bill in two ways, the first is by providing a historically based reason for keeping the powers with our Department, and then second, by addressing the specifics of the bill starting with the legislative intent.

We can compare the current situation between the CSC and our Department with the current configuration of the U.S. federal government in relation to their civil service system. Like this Department, the Office of Personnel Management was established to handle much of the non-adjudicatory duties for the civil servants of the federal government. This agency was born out of the Civil Service Reform Act of 1978, along with Reorganization Plans No. 1 and 2 of 1978. Prior to January 1, 1979 when the Office of Personnel Management was established, the federal Civil Service Commission existed. The Commission was established in 1883 under the Pendleton Civil Service Reform Act. It administered a system based on Merit rather than political connections. For over 70 years, the federal Civil Service Commission had both the power to make rules and to adjudicate. Between the late 1960s and into the early 1970s however, confidence in the federal government was shaken due to such scandals as Watergate and President Nixon's pardon. Debate had erupted where the Commission was accused of having undermined the merit system. Additional debate surfaced as to whether the role of the Commission as "advisor" to management in promoting positive personnel management conflicted with the role of the Commission as adjudicator of employee appeals. This begs the question as to how can an organization that creates the rules; hear cases that are based on these same rules.

As one of his campaign promises to the American people, President Jimmy Carter appointed people to begin to look into civil service reform. This eventually led to the Civil Service Reform Act of 1978 which abolished the CSC and divided its powers into four entities: the Office of Personnel Management to handle the non-adjudicatory civil service functions (i.e. rule making and management functions), the Merit Systems Protection Board to handle the adjudicatory function of the Commission, the Federal Labor Relations Authority to manage union matters and unfair labor practices and the Equal Employment Opportunity Commission to handle EEO complaints.

The point of this history lesson is that the federal government, has "been there... done that", meaning they have experienced the same challenges and concerns that we did before the passage of Public Law 28-68 and determined that the structure of the CSC was no longer a viable arrangement. In order to reform and move forward, they divided the adjudicatory and non-adjudicatory functions, just as they are between our Department and our local government's Civil Service Commission.

With regard to the specifics of the bill, we would like to start with the legislative intent. From our analysis, we see that there are two main points of justification for changing the law. First, the bill's legislative intent states that since there was no notice and inadequate public input on the miscellaneous provisions which transferred much of the powers of CSC to the DOA as per Public Law 28-68; this is a reason to justify repealing the above-mentioned sections in the law and to restore CSC's powers.

We would like to point out that there was at least one public hearing that was conducted on January 27, 2006, for two similar bills, Bill 203 and 204. There were at least 30 oral and written testimonies given. According to the record, even the author of this current bill, 91, gave oral testimony. These two bills however did not make it to the floor to vote during a session.

During the hearing on January 27, 2006, and included in the Committee Report for PL 28-112, there were written and oral comments submitted by various agencies and departments. Bill 203 looked to restore the authority to the CSC by repealing Sections 31 to 48 of PL 28-68, exactly what Bill 91 looks to accomplish in the same fashion. Bills 203 and 204 received overwhelming opposition from various departments citing the constantly changing and dynamic environment of strategic management, and the flexibility of management decisions, absent of influence by the CSC. Comments also stated that with the new structure of the former regulatory authority, along with the passing of public laws 28-68 and 28-112; allowed the departments to operate in an evolving environment of public administration, in order for all departments to meet the needs of their customers, while efficiently managing their human resources. The reforming of the federal Civil Service Commission in which the non-adjudicatory and adjudicatory duties were separated into different agencies provided the groundwork for solving the problem of having a regulatory agency hear appeals on policies that it is mandated to establish. Through the passage of PL 28-68, our government has tailored its public administration structure more towards the model used by the federal government today. Therefore, our office sees that the current structure of the adjudicatory and non-adjudicatory functions of the public administration / personnel matters within the government appropriate.

The second reason provided is that repealing all the sections mentioned will ensure that classified public employees will have adequate due process. With the subject of adequate due process, government employees currently have adequate due process by means of being able to appeal actions taken against them by management to the CSC. These means of appeal fall under the adjudicatory authority of the CSC as it currently stands in the 4403 (b). Section 31 of PL 28-68 did remove the authority of the CSC for the non-adjudicatory functions while transferring it to DOA. There is only one section that affects this and that is Section 31. Sections 32 through 48 of Chapter IV of Public Law 28-68 all address non-adjudicatory

functions transferred to DOA such as the maintenance of rules and regulations, incentive awards program, affirmative action program, etc.

Furthermore, our office believes that to reverse the reform of the CSC would undo all the recent progress that has been made within the government. Such as, the most recent contract between the Hay Group and the government of Guam to conduct the much-needed, long-awaited government-wide position classification, compensation, and benefits review for the entire government with the exception of a few who do not wish to participate due to the completions and implementation of similar reviews authorized by law; the reduction in the processing time of creations of positions, reviews of above-step requests and extensions of detail appointments. These types of actions have been rampant in the past years due to the lack of a review. One other such progress achieved is the removal of the redundancy of functions where creations, above-step and extension of detail requests are concerned. Prior to 28-68, all the legwork required would be done by the DOA and autonomous agencies and then submitted to the CSC for their review and determination only to be faced with another review when one was already completed; and lastly, the ability of the DOA to address pay policy matters such as the movement of an employee occupying a certified, technical, professional position at an autonomous agency to a line agency. Staff of the DOA, are exposed to such matters due to the operational nature of their duties and are better prepared/knowledgeable to recommend and or establish policies to address such matters. Obviously, there are different compensation structures and pay plans within the different agencies and the policies that govern their decisions, but with the cooperation of all the departments and agencies, and the proper authorities being in place within the departments and agencies, all non-adjudicatory matters can be handled. The current structure along with the amendments stated in Bill 92, specific to the investigative authority of the CSC, will provide a checks and balance of the policies and actions effectuated by departments and agencies of the Executive Branch. The current authority of the CSC also provides for an appellate agency for government employees who would look for protection of their rights by virtue of holding classified positions.

Moreover, in consultation with the Hay Group Inc., Bill 91 has brought, about and other previous bills and laws, the importance of developing a Compensation Philosophy soon as we embark on the government-wide review. The Hay Group who are experts in classification and compensation recommends that this philosophy be developed early on so as to address the issues are government our faced with now, one being the attempts to restore all of the CSC functions and the discombobulation of the 1991 Unified Pay Plan. The consultant has also expressed his willingness to meet with the Thirtieth (30th) Guam Legislature Leadership to address this matter.

In summary, our office believes that reversing the provisions of PL 28-68 would have a detrimental impact on the environment of our personnel administration such as, confusion among the workforce as to the proper authorities over non-adjudicatory versus adjudicatory functions; delays in addressing employee adjudicatory and or non-adjudicatory requests should the functions be restored due to a transitioning period; and the timeliness to address the day-to-day issues brought about by the numerous departments and agencies the DOA is mandated to serve. Additionally, the progress that has been made to bring our public administration up-to-date would be impacted. Our office as mentioned earlier on has successfully contracted with a consultant group to conduct a position classification, compensation and benefits review. A meeting in March of this year has kicked off the commencement of this much needed review with other meetings and trainings scheduled for April, May and June.

Historical events that took place within the federal government provide evidence that our move toward an updated structure in relation to the merit process and other such personnel matters are heading in the right direction. The transferring of non-adjudicatory authority from the CSC to the DOA while leaving the adjudicatory authority with the CSC provides for a more accountable government in relation to personnel administration. Our office believes that the current structure

combined with Bill 92, and our recommendations for amendments to Bill 92, will promote an even more efficient and logical model of public personnel administration for government of Guam employees. The separation of the authorities of policy making, investigatory, and hearing appeals for those policies, provides a beneficial working environment for government employees due to the realization that there are two separate entities in charge of making policies, and ensuring that departments and agencies implement them correctly. This model of public administration has already proven to make strides toward improving the government of Guam employment environment. It will take hard work to bring the government of Guam into the future of public administration and will require a dynamic team of policy-makers and regulatory agencies to accomplish this. Repealing the provisions of PL 28-68 will only launch our government into an antiquated system that has been proven to hinder progress rather than promote it. It is for these reasons that our office does not support Bill 91, but does support Bill 92 with some recommendations.

We would also like to thank you for the opportunity to comment on Bill 92(COR) relative to restoring certain jurisdictions and clarifying certain functions of the Civil Service Commission.

We agree for the most part with the provisions of this bill with the exception of Section 2, regarding the duties of the Commission; and section 5, which intends to repeal and reenact §4409, Chapter 4 of Title 4 GCA.

Section 2 of Bill 92 proposes to repeal and reenact §4403 (a) Duties of the Commission. Currently, §4101.1 (b) indicates that the Director of Administration will be responsible for this function. We therefore, recommend the repeal of §4101.1(b). Additionally, section (d) regarding the null and void of any personnel actions, the Human Resources Division of the Department of Administration and other Human Resources Offices of the Autonomous Agencies provided recommendations on the Civil Service Commission's Proposed Rules of Procedures for Post Audits in June of 2008 and recommend that Bill 92 include a provision for the Commission to establish such rules. Attached is a copy of the recommendations on this matter.

Section 5, which intends to repeal and reenact §4409, Chapter 4 of Title 4 GCA, identifies that, "Neither the rules of the Civil Service Commission, nor any procedures prescribed there under are subject to the Administrative Adjudication Act." We do not agree with the above section.

§9107, of the Administrative Adjudication Law (Chapter 9, of Title 5 GCA), provides that the word "rule" means any rule, regulation, standard, classification, procedure or requirement of any agency designed to have or having the effect of law or interpreting, supplementing or implementing any law enforced or administered by it, including any regulation under which the agency makes charges or services it provides, or to govern its organization or procedure, but does not include regulation, resolution or directions relating solely to internal policy, internal agency organization or internal procedure which do not directly affect the rights of or procedures available to the public and does not include administrative adjudication.

§9300 of the same title provides it is the intent of the Legislature to establish a uniform method of making, adopting, promulgating, filing and publishing rules...to permit participation therein and provide a method of making rules readily accessible to the public. It is not intended to give to any agency any additional rule-making power or authority and no additional or new power or authority to make or adopt rules is given to any agency by this law.

§9301 (a) provides that “before any rule is adopted, amended, by any agency it shall cause a notice to be published...”


§9301 (b) provides individuals shall be provided adequate opportunity to participate in the formulation of proposed rule or rules. All relevant matter shall be given full consideration.

The actions taken by the Civil Service Commission have the effect of law, therefore rules of the Civil Service Commission, and procedures should be subject to the Administrative Adjudication Law. The current proposed language within Section 5 of Bill 92 indicates that the Commission shall provide a copy of its proposed rules or procedures and any amendments to the Legislature and taking effect thirty (30) calendar days after submission unless disapproved by majority of the members of the Legislature, appears to give this entity leeway in the establishment of rules and procedures that clearly will have impacting effects on the management of classified employees and the discretion of management of this government. If the Legislature sees fit to be lenient on this matter then the requirements of the Administrative Adjudication Law should be amended to reflect such leniency.

Finally, with regard to the investigation of whistleblower complaints under the Public Employee Protection Act, it was the CSC past administration that opined that the investigation of these complaints are non-adjudicatory and should be done by the DOA. Our office did not agree and requested for an Attorney General opinion to clarify this issue. There have been no whistleblower complaints done by DOA.

We thank you for the opportunity to express our position on Bills 91 and 92 and feel confident that you will consider our comments, concerns, and suggestions. We understand that as law makers you have hard decisions to make while keeping in mind the best interest of the people of Guam, and for this reason we know that you will carefully consider all the recommendations that we have submitted. Should you have any questions, please contact the Human Resources Division at 475-1252 or 1248. Dǎngkolo na Agradesimiento!

Respectfully,


for LOURDES M. PEREZ, Director
Department of Administration



Felix P. Camacho
Governor
Michael W. Cruz, M.D.
Lieutenant Governor

GOVERNMENT OF GUAM
(GUBETNAMENTON GUAHAN)

DEPARTMENT OF ADMINISTRATION
(DIPATTAMENTON ATMENESTRASION)

HUMAN RESOURCES DIVISION
(Dibision Inadilanto Yan Guinaha Para Taotao)
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Lourdes M. Perez
Director
Joseph C. Manibusan
Deputy Director

JUN 30 2008

HRD No.: OG-08-8216

MEMORANDUM

To: Executive Director, Civil Service Commission
From: Manager, Human Resources Division
Subject: Comments
RE: Proposed Rules of Procedures for Post Audits

Buenas yan Håfa Adai! Thank you for the opportunity to comment on your Proposed Rules of Procedures for Post Audits. Attached you will find a compilation of comments from the Human Resources Division, Department of Administration and the various Human Resources Offices of the Autonomous Agencies.

Should you have any questions, please feel free to contact our office at 475-1132 or 1288. Dangkolo na agradecimiento!


Cecilia G. Martinez

cc: DOA Chrono
HRD Chrono
HRD File

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06/30/08
TRANSMITTAL MEMO PROPOSED RULES.doc



Felix P. Camacho
Governor
Michael W. Cruz, M.D.
Lieutenant Governor

GOVERNMENT OF GUAM
(GUBETNAMENTON GUÁHAN)

DEPARTMENT OF ADMINISTRATION
(DIPATTAMENTON ATMENESTRASION)

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Lourdes M. Perez
Director
Joseph C. Manibusan
Deputy Director

HRD NO: OG-08-8143

MAY 29 2008

MEMORANDUM

To: Director, Department of Administration
From: Manager, Human Resources Division
Subject: Proposed Rules of Procedures for Post Audits
RE: The Civil Service Commission

Buenas yan Håfa Adai! The Civil Service Commission (CSC) in July 2007 invited our office and all other Personnel Services Administrators from the autonomous agencies to a meeting to discuss the provisions of Section 27, Chapter VI of Public Law 29-02. This section restored the null and void authority of the CSC. As a result of this meeting, Personnel Services Administrators were asked to comment on the CSC's proposed Rules of Procedures for Conducting Post-Audits of Personnel Actions. Our office coordinated with the other Personnel Services Administrators and submits for your approval comments and or recommendations to CSC's proposed rules.

Title of Rules: Recommend to read, "Rules of Procedures for Conducting Post-Audits Affecting Classified Employee Personnel Actions"

Rule 1. Recommend to read, "All government agencies, departments, autonomous agencies, public corporations (hereinafter "department") that have classified employees shall file all personnel actions regarding the classified service within twenty (20) days after its effective date. The Human Resources Division, Department of Administration in addition to the respective line department/agency, shall be notified of a post audit review. All Personnel Actions effective prior to enactment of Public Law 29-02, Section 27 (effective, May 7, 2007) are not subject to null and void and/or post-audit review".

Rule 1a. Recommend to read, "A personnel action is defined as an action in the form of a Notification of Personnel Action processed as a result of a GG-1 or UG-1 as an example, and actions defined by Title 5, Part III, Subpart A, Chapter 23, §2302 of the US Code. These are the only personnel actions with the exception of 9, 10, and 11 of Title 5, Part III, Subpart A, Chapter 23, §2302 of the US Code to be filed with the CSC within twenty (20) days after their effective date. Furthermore, CSC shall hear no appeal regarding the creation of a new position.

Rule 1b. No comment on this rule.

Rule 2. Recommend to read, "The personnel action to be submitted to the CSC should be accompanied with complete documentation associated with the action. This applies only to

those personnel actions identified by CSC for post-audit review of which CSC has pre-determined that a violation of law or discrepancy review may have occurred.

Rule 3. Recommend to read, "Upon notification to an autonomous agency/department or line department/agency to include the Human Resources Division, Department of Administration (for Line departments/agencies only), that the CSC is reviewing a personnel action beyond the documentation provided, management and/or their designee and an HRD Staff (for line departments/agencies) will be notified upon reasonable advance notification to assist or answer questions that the CSC Staff may find necessary to conduct an investigation. Notifications of post-audit reviews shall include the alleged violation.

Rule 4. Recommend to read, "Upon completion of the investigation, the CSC shall again provide a written notice of the alleged violation(s), and recommendation(s) to correct/reverse/amend the personnel action regarding the violation, favorable to both the department head (include HRD in the case of line departments/agencies) and the employee where appropriate. The department head shall respond within ten (10) days after receipt of the notice to the Commission's proposed action either accepting or disputing the findings. If the department head disputes the findings, their response should indicate why the finding(s) is/are not proper. If they accept, their response should indicate the compliance of the findings together with the amendment or correction of the personnel action."

Rule 4a. Recommend to read "If a department fails to submit its determination within ten (10) days upon receipt of notice of violation, the CSC Staff before scheduling the matter for hearing, shall notify the department head and or their designee (include HRD in the case of line departments/agencies) and the employee of the need to schedule for a hearing verbally or in writing and to re-assess if a hearing is still necessary."

Note: If a hearing may be scheduled as a result of a department's failure to comply, why would the CSC preclude the submission of additional documents or evidence in the matter regardless of who may benefit. Even in courts of law, evidence may be submitted during times of trial from both the plaintiff and the defendant.

Rule 5. Recommend to read, "The CSC Board shall hear and make a final determination on the matter. However, this final determination is subject to judicial review.

Rule 5a. Recommend to read, "The manner of the hearing shall be as follows: Presentation by the CSC staff; the response or rebuttal by the department head or designee to include a HRD Staff for the line departments/agencies; and closing statement by the CSC staff".

Rule 6. Recommend to read, "The CSC shall conduct randomly selected post-audits of personnel actions filed with the CSC to determine compliance with applicable personnel laws and rules".

Recommend to add a Rule 6a. The CSC shall develop a methodology transparent to all departments in the random selection of post-audits of personnel actions filed with the CSC.

Rule 7. Recommend to read, "A permanent classified employee may appeal to the CSC an alleged violation of personnel laws or rules which has changed his/her status quo within twenty (20) days of the alleged violation not in conflict with grievance and adverse action procedures. However, actions covered under the grievance, adverse actions, EEO and other administrative decisions made by boards or commissions as statutorily authorized are not covered under this policy.

Rule 7a. Recommend to read, "The petition shall be a brief statement setting forth the law or

rule alleged to have been violated and the action taken by the respective department”.

Rule 7b. Within three (3) days upon receipt of the petition, the CSC shall serve the department head to include HRD for the line departments/agencies with the employee’s petition. The CSC staff shall commence the investigation after the department head along with HRD for the line departments/agencies acknowledges the receipt of the petition. Upon completion of the investigation, the CSC staff shall issue its preliminary findings to the department head to include HRD for the line departments/agencies. The department head shall file its response within twenty (20) days upon receipt of the preliminary findings. If the department head disputes the finding(s), the response should indicate the compliance of the findings together with the amendment or correction of the personnel action.

Rule 7c. No recommended changes to this rule.

Rule 8. Recommend removing this rule all together.

Rule 8a. Dependent upon Rule 8.

Rule 9. Recommend removing this rule. Why would it be necessary to mention the standard for the way CSC should rule on a matter? The result of a determination should be made in compliance with personnel laws and rules anyway which would be dominant in the matter.

Or this rule should remain because it is related to Rule 5. Because preponderance of the evidence means to my understanding that it only takes 51% or a simple majority vote of the commissioners to make a decision and so those who will read this will know that’s all it takes, as opposed to “beyond a reasonable doubt”.

Rule 10. Recommend to read, “All actions taken by the Commission pursuant to §4403 (d), shall be taken within one hundred twenty (120) days after the personnel action is filed with the Commission”.

Rule 11. No recommended changes to this rule.

Rule 12. Recommend to read: “The final determination by the CSC is subject to judicial review if filed with the courts within thirty (30) days. Further comments on this rule: Why 30 days? If there is a legal statute of limitation, then it should be whatever that number of days, if there is none, and then it should be removed.

Additional Comments on documents required for post audit review:

Need to remove this section altogether: Creation of Position-4GCA §6303
The CSC shall hear no appeals regarding the creation of a new position.

Pay Grade Reassignment-4 GCA §6302

Comment-The CSC has no jurisdiction on this matter unless a personnel action is processed regarding a reassignment of pay grade for an employee and a violation of rule (i.e. number of steps applied) is found. The Director of Administration may reassign a pay grade, as she/he deems necessary.

Recruitment Above Step 4 GCA §6205

CSC's jurisdiction in this matter is allowed, only if violations of 6205 have been found.

Announcement and Recruitment of Positions(s)

No comment.

Classification Audits

CSC's purview over matters such as these is only when a Notification of Personnel Action is processed, as a result of an audit, which may reveal possible violations of personnel laws or rules.

Review of any or all Personnel Actions

CSC's purview of these matters is for those personnel actions filed with that office. See our comments under Rule 1a and Rule 2

Important Documents Essential in the review of Personnel Actions

CSC's purview shall only be limited to the personnel actions filed with their office. See our comments under Rule 1a and Rule 2

Your approval of these comments and/or recommendations is appreciated. Dangkolo na Agradesimiento!

Cecilia G. Martinez
Cecilia G. Martinez

Approval *M*
Disapproval / /

John P. Camacho
John P. Camacho,
Acting Director, DOA

Date: 6/12/08

Recruitment Above Step 4 GCA §6205

CSC's jurisdiction in this matter is allowed, only if violations of 6205 have been found.

Announcement and Recruitment of Positions(s)

No comment.

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Cecilia G. Martinez
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Approval *M*
Disapproval */ /*

John P. Camacho
John P. Camacho,
Acting Director, DOA

Date: 6/12/08

CIVIL SERVICE COMMISSION

(PROPOSED) RULES OF PROCEDURES FOR CONDUCTING POST-AUDITS OF PERSONNEL ACTIONS

Pursuant to Public Law 29-02, the following procedures are to be used by the Civil Service Commission (hereinafter "CSC") when reviewing personnel actions to determine its compliance to laws or rules as it affects the classified service employment.

- RULE 1.** All government agencies, departments, autonomous agencies, public corporations (hereinafter "department") that have classified employees shall file all personnel actions regarding the classified service within twenty (20) days after its effective date.
- RULE 1a.** A personnel action is defined as any action taken by management that substantially changes the status quo of an employee. Personnel actions are not limited to actions reflected on a G.G.1 Form.
- RULE 1b.** An employee, who appeals a personnel action taken pursuant to 4 GCA Section 4403 (b) adverse actions, will not be covered under this law and its procedures.
- RULE 2.** The personnel action to be submitted to the CSC should be accompanied with complete documentation associated with the action.
- RULE 3.** Upon notification to the department that the CSC is reviewing a personnel action beyond the documentation provided, management or their designee shall be made immediately available to assist or answer any questions that the CSC staff may find necessary to conduct an investigation.
- RULE 4.** Upon completion of the investigation, the CSC shall provide a written notice of the alleged violation to the department head, ^{DNA line} The department head shall respond within ten (10) days either accepting or disputing the findings. If the department head disputes the findings, their response should indicate why the finding(s) is/are not proper. If they accept, their response should indicate the compliance of the findings together with the amendment or correction of the personnel action.
- RULE 4a.** If a department fails to submit its determination within ten (10) days upon receipt of the report, the CSC shall schedule this matter for hearing. No additional documents or evidence shall be submitted

CIVIL SERVICE COMMISSION

(PROPOSED) RULES OF PROCEDURES FOR CONDUCTING POST-AUDITS OF PERSONNEL ACTIONS

into the record after this ten (10) day time period for responding to the findings.

RULE 5. The CSC Board shall hear and make a final determination on the matter.

RULE 5a. The manner of the hearing shall be as follows: Presentation by the CSC staff; the response or rebuttal by the Department Head or his designee and then the closing statement by the CSC staff.

RULE 5b. Witnesses may be allowed as determined by the CSC Board.

RULE 6. The CSC may randomly conduct investigations into the personnel actions to determine compliance with applicable personnel laws and rules.

RULE 7. A classified employee may petition to void a personnel action taken against him or her by filing a petition with the CSC within thirty (30) days of the effective date of the personnel action.

RULE 7a. The petition shall be a brief statement setting forth the law or rule alleged to have been violated and the department that took the action.

RULE 7b. Within three (3) days upon receipt of the petition, the CSC shall serve the department head with the employee's petition. The CSC staff shall commence the investigation after the department head acknowledges the receipt of the petition. Upon completion of the investigation, the CSC staff shall issue its preliminary findings to the department head. The department head shall file its response within twenty (20) days upon receipt of the preliminary findings. If the department head disputes the findings, their response should indicate why the finding(s) is/are not proper. If they accept the findings, their response should indicate the compliance of the findings together with the amendment or correction of the personnel action.

RULE 7c. Upon receipt of the department head's response, the CSC staff shall present its final report along with the petition to the CSC Board for action.

CIVIL SERVICE COMMISSION

(PROPOSED) RULES OF PROCEDURES FOR CONDUCTING POST-AUDITS OF PERSONNEL ACTIONS

- RULE 8.** CSC may expand its post audit review if it is determined that other employees' personnel actions (i.e. furlough, layoff, etc.) are adversely affected by a particular action taken by the department. Such determination shall be transmitted to the department head.
- RULE 8a.** An employee's petition is not required when the action is covered under Rule 8.
- RULE 9.** The standard for the CSC decision shall be preponderance of the evidence.
- RULE 10.** The CSC shall make the final determination within One Hundred and Twenty (120) days after the initial personnel action together with the associated or related documents are filed with the CSC.
- RULE 11.** After the CSC makes its final determination, a report of said action shall be sent to the Guam Legislature.
- RULE 12.** The final determination by the CSC is subject to judicial review if filed with the courts within thirty (30) days.

CIVIL SERVICE COMMISSION
(PROPOSED DOCUMENTS REQUIRED FOR POST AUDIT REVIEW)

Creation of Position – 4 GCA §6303

1. Request and justification for the new position with the Governor.
2. Essential detail concerning the creation of position.
3. An analysis of the similarities and differences between the position to be created and position listed pursuant to 4 GCA §4101.0(d).
4. Position Description and Hay Questionnaire.
5. Proposed pay grade and demonstration of compliance to 4 GCA §6301.
6. A *fiscal note* as that terms described in 2 GCA §9101 and any pertinent information. Fiscal note shall be regarded for all bills that have an effect upon the revenues or the expenditures of government of Guam.
7. Petition and Resolution from the Autonomous, Public Corporation, Instrumentalities etc. filed with the Department of Administration and Legislative Secretary for record on the subject.
8. Document(s) affirming the filing of the creation of position with the Governor and Legislature Secretary.
9. Document(s) affirming the announcement and filling of the position created.
10. Documents(s) affirming the posting of the petition and proposed creation of position through the website.
11. All documents associated with the Creation of Position.

In Addition:

4 GCA §6303.1 Transparency and Disclosure

Notice of postings required by 4 GCA §6205 and §6303 to each newspaper circulation and broadcasting station which airs a regular local news program within Guam.

- All documents affirming or attesting the posting of the position as required by said statutes.

Pay Grade Reassignment – 4 GCA §6302

- a. List of Positions that was reassigned in pay grades.
- b. Position Description describing the current and former duties and responsibilities of the subject position.
- c. Justification and analysis supporting the pay grade reassignment inclusive of job content evaluation using the hay methodology.
- d. All documents associated with the Pay Grade Reassignment.

CIVIL SERVICE COMMISSION
(PROPOSED DOCUMENTS REQUIRED FOR POST AUDIT REVIEW)

Recruitment Above Step 4 GCA §6205

1. Request and Justification of the above step recruitment for the selected individual(s).
2. Selected individual's application forms and other relevant documents.
3. Announcement of the position.
4. Eligibility and Certification lists of the position(s).
5. Rating Evaluations.
6. Document(s) affirming the posting of the announcement through the website.
7. *For recruitment difficulty:* Name of employees occupying the same position titles, pay grades, and steps.
8. All documents associated with the Recruitment Above Step.

Announcement and Recruitment of Position(s)
(Regular, Selective Certification, Merit Promotion Plan, BFOQ, etc.)

- a. Announcement of position (This contains date, pay grade, salary, steps, minimum qualification, etc.).
- b. Position Description for the position announced.
- c. Rating evaluation and Application forms of individual(s) selected for the position.
- d. Eligibility and Certification Lists
- e. Notice to Applicants of their ratings and interviews for the position.
- f. Recruitment procedures such as method of noticing the applicants for their interview, etc..
- g. All documents associated with the announcement and recruitment of the position(s)

Classification Audits

1. Documents requesting for the desk audit by the employee, supervisor, appointing authority, etc.
2. Position Descriptions, current job applications of the employee.
3. Classification analysis, findings and recommendation conducted by the Personnel Specialist or assigned Human Resources staff.
4. Rating evaluation forms of the incumbent for the allocated position prepared by the assigned Personnel Specialist or Human Resources staff.
5. All documents associated with the classification audits.

Review of any or all Personnel Actions

The Personnel Actions are different and are covered by different personnel laws, rules, regulations and policies. The Commission will request documents associated with each personnel action which may not be listed in the guidelines.

Important Documents Essential in the review of Personnel Actions

Official Staffing Patterns, Organization Charts, Functional Charts, Policy and Procedures, and other related documents are required before the Commission.



Felix P. Camacho
Governor
Michael W. Cruz, M.D.
Lieutenant Governor

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DEPARTMENT OF ADMINISTRATION
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Lourdes M. Perez
Director
Joseph C. Manibusan
Deputy Director

JUN 30 2008

HRD No.: OG-08-8216

MEMORANDUM

To: Executive Director, Civil Service Commission
From: Manager, Human Resources Division
Subject: Comments
RE: Proposed Rules of Procedures for Post Audits

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Lourdes M. Perez
Director
Joseph C. Manibusan
Deputy Director

HRD NO: OG-08-8143

MAY 29 2008

MEMORANDUM

To: Director, Department of Administration
From: Manager, Human Resources Division
Subject: Proposed Rules of Procedures for Post Audits
RE: The Civil Service Commission

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Rule 1a. Recommend to read, "A personnel action is defined as an action in the form of a Notification of Personnel Action processed as a result of a GG-1 or UG-1 as an example, and actions defined by Title 5, Part III, Subpart A, Chapter 23, §2302 of the US Code. These are the only personnel actions with the exception of 9, 10, and 11 of Title 5, Part III, Subpart A, Chapter 23, §2302 of the US Code to be filed with the CSC within twenty (20) days after their effective date. Furthermore, CSC shall hear no appeal regarding the creation of a new position.

Rule 1b. No comment on this rule.

Rule 2. Recommend to read, "The personnel action to be submitted to the CSC should be accompanied with complete documentation associated with the action. This applies only to

those personnel actions identified by CSC for post-audit review of which CSC has pre-determined that a violation of law or discrepancy review may have occurred.

Rule 3. Recommend to read, "Upon notification to an autonomous agency/department or line department/agency to include the Human Resources Division, Department of Administration (for Line departments/agencies only), that the CSC is reviewing a personnel action beyond the documentation provided, management and/or their designee and an HRD Staff (for line departments/agencies) will be notified upon reasonable advance notification to assist or answer questions that the CSC Staff may find necessary to conduct an investigation. Notifications of post-audit reviews shall include the alleged violation.

Rule 4. Recommend to read, "Upon completion of the investigation, the CSC shall again provide a written notice of the alleged violation(s), and recommendation(s) to correct/reverse/amend the personnel action regarding the violation, favorable to both the department head (include HRD in the case of line departments/agencies) and the employee where appropriate. The department head shall respond within ten (10) days after receipt of the notice to the Commission's proposed action either accepting or disputing the findings. If the department head disputes the findings, their response should indicate why the finding(s) is/are not proper. If they accept, their response should indicate the compliance of the findings together with the amendment or correction of the personnel action."

Rule 4a. Recommend to read "If a department fails to submit its determination within ten (10) days upon receipt of notice of violation, the CSC Staff before scheduling the matter for hearing, shall notify the department head and or their designee (include HRD in the case of line departments/agencies) and the employee of the need to schedule for a hearing verbally or in writing and to re-assess if a hearing is still necessary."

Note: If a hearing may be scheduled as a result of a department's failure to comply, why would the CSC preclude the submission of additional documents or evidence in the matter regardless of who may benefit. Even in courts of law, evidence may be submitted during times of trial from both the plaintiff and the defendant.

Rule 5. Recommend to read, "The CSC Board shall hear and make a final determination on the matter. However, this final determination is subject to judicial review.

Rule 5a. Recommend to read, "The manner of the hearing shall be as follows: Presentation by the CSC staff; the response or rebuttal by the department head or designee to include a HRD Staff for the line departments/agencies; and closing statement by the CSC staff".

Rule 6. Recommend to read, "The CSC shall conduct randomly selected post-audits of personnel actions filed with the CSC to determine compliance with applicable personnel laws and rules".

Recommend to add a Rule 6a. The CSC shall develop a methodology transparent to all departments in the random selection of post-audits of personnel actions filed with the CSC.

Rule 7. Recommend to read, "A permanent classified employee may appeal to the CSC an alleged violation of personnel laws or rules which has changed his/her status quo within twenty (20) days of the alleged violation not in conflict with grievance and adverse action procedures. However, actions covered under the grievance, adverse actions, EEO and other administrative decisions made by boards or commissions as statutorily authorized are not covered under this policy.

Rule 7a. Recommend to read, "The petition shall be a brief statement setting forth the law or

rule alleged to have been violated and the action taken by the respective department”.

Rule 7b. Within three (3) days upon receipt of the petition, the CSC shall serve the department head to include HRD for the line departments/agencies with the employee’s petition. The CSC staff shall commence the investigation after the department head along with HRD for the line departments/agencies acknowledges the receipt of the petition. Upon completion of the investigation, the CSC staff shall issue its preliminary findings to the department head to include HRD for the line departments/agencies. The department head shall file its response within twenty (20) days upon receipt of the preliminary findings. If the department head disputes the finding(s), the response should indicate the compliance of the findings together with the amendment or correction of the personnel action.

Rule 7c. No recommended changes to this rule.

Rule 8. Recommend removing this rule all together.

Rule 8a. Dependent upon Rule 8.

Rule 9. Recommend removing this rule. Why would it be necessary to mention the standard for the way CSC should rule on a matter? The result of a determination should be made in compliance with personnel laws and rules anyway which would be dominant in the matter.

Or this rule should remain because it is related to Rule 5. Because preponderance of the evidence means to my understanding that it only takes 51% or a simple majority vote of the commissioners to make a decision and so those who will read this will know that’s all it takes, as opposed to “beyond a reasonable doubt”.

Rule 10. Recommend to read, “All actions taken by the Commission pursuant to §4403 (d), shall be taken within one hundred twenty (120) days after the personnel action is filed with the Commission”.

Rule 11. No recommended changes to this rule.

Rule 12. Recommend to read: “The final determination by the CSC is subject to judicial review if filed with the courts within thirty (30) days. Further comments on this rule: Why 30 days? If there is a legal statute of limitation, then it should be whatever that number of days, if there is none, and then it should be removed.

Additional Comments on documents required for post audit review:

Need to remove this section altogether: Creation of Position-4GCA §6303
The CSC shall hear no appeals regarding the creation of a new position.

Pay Grade Reassignment-4 GCA §6302

Comment-The CSC has no jurisdiction on this matter unless a personnel action is processed regarding a reassignment of pay grade for an employee and a violation of rule (i.e. number of steps applied) is found. The Director of Administration may reassign a pay grade, as she/he deems necessary.

Recruitment Above Step 4 GCA §6205

CSC's jurisdiction in this matter is allowed, only if violations of 6205 have been found.

Announcement and Recruitment of Positions(s)

No comment.

Classification Audits

CSC's purview over matters such as these is only when a Notification of Personnel Action is processed, as a result of an audit, which may reveal possible violations of personnel laws or rules.

Review of any or all Personnel Actions

CSC's purview of these matters is for those personnel actions filed with that office. See our comments under Rule 1a and Rule 2

Important Documents Essential in the review of Personnel Actions

CSC's purview shall only be limited to the personnel actions filed with their office. See our comments under Rule 1a and Rule 2

Your approval of these comments and/or recommendations is appreciated. Dangkolo na Agradesimiento!

Cecilia G. Martinez
Cecilia G. Martinez

Approval *M*
Disapproval / /

John P. Camacho
John P. Camacho,
Acting Director, DOA

Date: 6/12/08

Recruitment Above Step 4 GCA §6205

CSC's jurisdiction in this matter is allowed, only if violations of 6205 have been found.

Announcement and Recruitment of Positions(s)

No comment.

Classification Audits

CSC's purview over matters such as these is only when a Notification of Personnel Action is processed, as a result of an audit, which may reveal possible violations of personnel laws or rules.

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Your approval of these comments and/or recommendations is appreciated. Dangkolo na Agradesimiento!

Cecilia G. Martinez
Cecilia G. Martinez

Approval *M*
Disapproval */ /*

John P. Camacho
John P. Camacho,
Acting Director, DOA

Date: 6/12/08

CIVIL SERVICE COMMISSION

(PROPOSED) RULES OF PROCEDURES FOR CONDUCTING POST-AUDITS OF PERSONNEL ACTIONS

Pursuant to Public Law 29-02, the following procedures are to be used by the Civil Service Commission (hereinafter "CSC") when reviewing personnel actions to determine its compliance to laws or rules as it affects the classified service employment.

RULE 1. All government agencies, departments, autonomous agencies, public corporations (hereinafter "department") that have classified employees shall file all personnel actions regarding the classified service within twenty (20) days after its effective date.

RULE 1a. A personnel action is defined as any action taken by management that substantially changes the status quo of an employee. Personnel actions are not limited to actions reflected on a G.G.1 Form.

RULE 1b. An employee, who appeals a personnel action taken pursuant to 4 GCA Section 4403 (b) adverse actions, will not be covered under this law and its procedures.

RULE 2. The personnel action to be submitted to the CSC should be accompanied with complete documentation associated with the action.

RULE 3. Upon notification to the department that the CSC is reviewing a personnel action beyond the documentation provided, management or their designee shall be made immediately available to assist or answer any questions that the CSC staff may find necessary to conduct an investigation.

RULE 4. Upon completion of the investigation, the CSC shall provide a written notice of the alleged violation to the department head, ^{DATA line} The department head shall respond within ten (10) days either accepting or disputing the findings. If the department head disputes the findings, their response should indicate why the finding(s) is/are not proper. If they accept, their response should indicate the compliance of the findings together with the amendment or correction of the personnel action.

RULE 4a. If a department fails to submit its determination within ten (10) days upon receipt of the report, the CSC shall schedule this matter for hearing. No additional documents or evidence shall be submitted

CIVIL SERVICE COMMISSION

(PROPOSED) RULES OF PROCEDURES FOR CONDUCTING POST-AUDITS OF PERSONNEL ACTIONS

into the record after this ten (10) day time period for responding to the findings.

- RULE 5.** The CSC Board shall hear and make a final determination on the matter.
- RULE 5a.** The manner of the hearing shall be as follows: Presentation by the CSC staff; the response or rebuttal by the ^{Dept.} Department Head or his designee and then the closing statement by the CSC staff.
- RULE 5b.** Witnesses may be allowed as determined by the CSC Board.
- RULE 6.** The CSC may randomly conduct investigations into the personnel actions to determine compliance with applicable personnel laws and rules.
- RULE 7.** A classified employee may petition to void a personnel action taken against him or her by filing a petition with the CSC within thirty (30) days of the effective date of the personnel action.
- RULE 7a.** The petition shall be a brief statement setting forth the law or rule alleged to have been violated and the department that took the action.
- RULE 7b.** Within three (3) days upon receipt of the petition, the CSC shall serve the department head with the employee's petition. The CSC staff shall commence the investigation after the department head acknowledges the receipt of the petition. Upon completion of the investigation, the CSC staff shall issue its preliminary findings to the department head. The department head shall file its response within twenty (20) days upon receipt of the preliminary findings. If the department head disputes the findings, their response should indicate why the finding(s) is/are not proper. If they accept the findings, their response should indicate the compliance of the findings together with the amendment or correction of the personnel action.
- RULE 7c.** Upon receipt of the department head's response, the CSC staff shall present its final report along with the petition to the CSC Board for action.

CIVIL SERVICE COMMISSION

(PROPOSED) RULES OF PROCEDURES FOR CONDUCTING POST-AUDITS OF PERSONNEL ACTIONS

- RULE 8.** CSC may expand its post audit review if it is determined that other employees' personnel actions (i.e. furlough, layoff, etc.) are adversely affected by a particular action taken by the department. Such determination shall be transmitted to the department head.
- RULE 8a.** An employee's petition is not required when the action is covered under Rule 8.
- RULE 9.** The standard for the CSC decision shall be preponderance of the evidence.
- RULE 10.** The CSC shall make the final determination within One Hundred and Twenty (120) days after the initial personnel action together with the associated or related documents are filed with the CSC.
- RULE 11.** After the CSC makes its final determination, a report of said action shall be sent to the Guam Legislature.
- RULE 12.** The final determination by the CSC is subject to judicial review if filed with the courts within thirty (30) days.

CIVIL SERVICE COMMISSION
(PROPOSED DOCUMENTS REQUIRED FOR POST AUDIT REVIEW)

Creation of Position – 4 GCA §6303

1. Request and justification for the new position with the Governor.
2. Essential detail concerning the creation of position.
3. An analysis of the similarities and differences between the position to be created and position listed pursuant to 4 GCA §4101.0(d).
4. Position Description and Hay Questionnaire.
5. Proposed pay grade and demonstration of compliance to 4 GCA §6301.
6. A *fiscal note* as that terms described in 2 GCA §9101 and any pertinent information. Fiscal note shall be regarded for all bills that have an effect upon the revenues or the expenditures of government of Guam.
7. Petition and Resolution from the Autonomous, Public Corporation, Instrumentalities etc. filed with the Department of Administration and Legislative Secretary for record on the subject.
8. Document(s) affirming the filing of the creation of position with the Governor and Legislature Secretary.
9. Document(s) affirming the announcement and filling of the position created.
10. Documents(s) affirming the posting of the petition and proposed creation of position through the website.
11. All documents associated with the Creation of Position.

In Addition:

4 GCA §6303.1 Transparency and Disclosure

Notice of postings required by 4 GCA §6205 and §6303 to each newspaper circulation and broadcasting station which airs a regular local news program within Guam.

- All documents affirming or attesting the posting of the position as required by said statutes.

Pay Grade Reassignment – 4 GCA §6302

- a. List of Positions that was reassigned in pay grades.
- b. Position Description describing the current and former duties and responsibilities of the subject position.
- c. Justification and analysis supporting the pay grade reassignment inclusive of job content evaluation using the hay methodology.
- d. All documents associated with the Pay Grade Reassignment.

CIVIL SERVICE COMMISSION
(PROPOSED DOCUMENTS REQUIRED FOR POST AUDIT REVIEW)

Recruitment Above Step 4 GCA §6205

1. Request and Justification of the above step recruitment for the selected individual(s).
2. Selected individual's application forms and other relevant documents.
3. Announcement of the position.
4. Eligibility and Certification lists of the position(s).
5. Rating Evaluations.
6. Document(s) affirming the posting of the announcement through the website.
7. *For recruitment difficulty:* Name of employees occupying the same position titles, pay grades, and steps.
8. All documents associated with the Recruitment Above Step.

Announcement and Recruitment of Position(s)
(Regular, Selective Certification, Merit Promotion Plan, BFOQ, etc.)

- a. Announcement of position (This contains date, pay grade, salary, steps, minimum qualification, etc.).
- b. Position Description for the position announced.
- c. Rating evaluation and Application forms of individual(s) selected for the position.
- d. Eligibility and Certification Lists
- e. Notice to Applicants of their ratings and interviews for the position.
- f. Recruitment procedures such as method of noticing the applicants for their interview, etc..
- g. All documents associated with the announcement and recruitment of the position(s)

Classification Audits

1. Documents requesting for the desk audit by the employee, supervisor, appointing authority, etc.
2. Position Descriptions, current job applications of the employee.
3. Classification analysis, findings and recommendation conducted by the Personnel Specialist or assigned Human Resources staff.
4. Rating evaluation forms of the incumbent for the allocated position prepared by the assigned Personnel Specialist or Human Resources staff.
5. All documents associated with the classification audits.

Review of any or all Personnel Actions

The Personnel Actions are different and are covered by different personnel laws, rules, regulations and policies. The Commission will request documents associated with each personnel action which may not be listed in the guidelines.

Important Documents Essential in the review of Personnel Actions

Official Staffing Patterns, Organization Charts, Functional Charts, Policy and Procedures, and other related documents are required before the Commission.

1 **GUAM CONSOLIDATED COMMISSION ON UTILITIES**
2 **RESOLUTION NO. 16-FY2009**
3 **RELATIVE TO THE POSITION OF THE CONSOLIDATED COMMISSION ON**
4 **UTILITIES WITH RESPECT TO BILL NO. 92**

5
6 **WHEREAS**, the Consolidated Commission on Utilities (CCU) is an elected board
7 charged with the governance of the Guam Waterworks Authority and the Guam Power
8 Authority; and
9

10 **WHEREAS**, since the CCU assumed governance of the utilities there have been a
11 significant number of improvements made at the utilities including Guam Waterworks
12 Authority's compliance with more than 90% of the tasks under the Stipulated Order, completion
13 of the Chaot pumping station, rehabilitation of the Hagåtña Treatment Plant, and Guam Power
14 Authority's policy in treating government of Guam agencies in a similar manner to any other
15 customer class, internet and credit card payment options, extended customer support hours,
16 improved efficiencies of base load plants saving more than \$120 million in cumulative fuel costs,
17 etc. ; and
18

19 **WHEREAS**, the vision of the Consolidated Commission on Utilities is to create best in
20 class utilities to serve the needs of utility customers on Guam; and
21

22 **WHEREAS**, the Consolidated Commission on Utilities has determined that in order to
23 continue to achieve the vision of the utilities, it is essential to stop the brain drain taking place
24 among highly skilled employees at the utilities and to ensure that highly skilled employees are
25 properly compensated to ensure these critical resources are retained; and
26

27 **WHEREAS**, concurrently with its initiative to properly compensate utility employees,
28 the CCU has undertaken a parallel initiative to conduct a management and organization
29 assessment of the utilities to ensure the utilities are performing in accordance with best practices
30 with a high level of productivity in order to ensure the efficient delivery of services to customers;
31 and
32

1 **WHEREAS**, the results of the compensation study indicated that nearly all employees of
2 the utilities are compensated at levels below the fifth percentile when distributed across a broad
3 spectrum of employees across the nation; and
4

5 **WHEREAS**, the CCU has determined that many aspects of Bill No. 92, recently
6 introduced into i Liheslaturan Guåhan would work to reverse the progress made at the utilities in
7 recent years and would be inconsistent with the initiatives developed by the Commission to
8 develop best in class utilities; and
9

10 **WHEREAS**, certain aspects of Bill No. 92 would remove authority for determining wage
11 scales from the CCU – an elected board directly accountable to the ratepayers of Guam - and
12 place it in the hands of an appointed board that is by definition, not attuned to the needs of utility
13 ratepayers for improvements in service and reliability and would negatively impact the reviews
14 and decisions of the rating agencies and bondholders with regard to the current and future debt of
15 GPA and GWA and could cause an increase in the cost of such debt and ultimately the cost to
16 the ratepayers; and
17

18 **NOW, THEREFORE BE IT RESOLVED**, the following policy is adopted by the
19 Consolidated Commission on Utilities:
20

- 21 1. The Consolidated Commission on Utilities requests that the current Section 2, Subsection
22 (f) relative to 4 G.C.A. of Bill 92 be amended to read as follows:
23

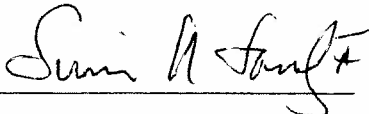
24 “(f) The jurisdiction of the Commission shall only apply to those employees of the
25 Guam Power Authority and the Guam Waterworks Authority who are not designated as
26 Certified, Technical and Professional employees. However, the jurisdiction of the
27 Commission shall apply to the adverse action appeals, grievance appeals, EEO complaints
28 and Whistle Blower complaints for Certified, Technical and Professional employees of the
29 Guam Power Authority and the Guam Waterworks Authority. The Commission’s jurisdiction
30 shall also apply to the classified employees of the Guam Memorial Hospital.
31

- 32 2. This Resolution shall be sent to all GWA and GPA employees.
3. This Resolution shall be sent to every Senator and the Governor of Guam.

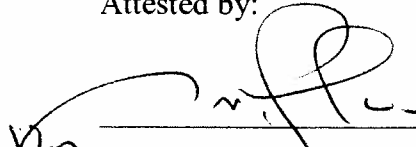
1 **RESOLVED**, that the Chairman certifies and the Board Secretary attests to the adoption of
2 this Resolution.

3
4 **DULY AND REGULARLY ADOPTED AND APPROVED THIS 14th DAY OF**
5 **APRIL, 2009.**

6
7 Certified by:

8 
9
10 **SIMON A. SANCHEZ, II**
11 Chairperson

Attested by:

12 
13
14 **GLORIA B. NELSON**
15 CCU Board Secretary

16
17 **I, Gloria B. Nelson**, Secretary for the Consolidated Commission on Utilities do
18 hereby certify that the foregoing is a full, true, and correct copy of the resolution duly
19 adopted at a regular meeting of the members of Guam's Consolidated Commission on
20 Utilities, duly and legally held at the meeting place thereof on April 14, 2009, at which
21 meeting of all said members had due notice and at which at least a majority thereof were
22 present, and

23 At said meeting said resolution was adopted by the following vote:

24 Ayes: 3

25 Nays: 0

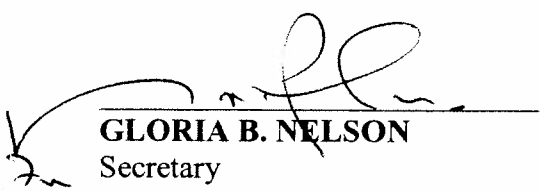
26 Absent: 2

27 Abstain: 0

28 As of the date of this certification, said original resolution has not been amended,
29 modified, or rescinded since the date of its adoption, and the same is now in full force and effect.

30 **SO CERTIFIED** this 14th day of April 2009.



33 
34 **GLORIA B. NELSON**
35 Secretary
36 Consolidated Commission on Utilities



April 13, 2009

mi
The Honorable Matt Rector
Senator, 33th Guam Legislature
Chairman, Committee on Labor, the Public Structure,
Public Libraries and Technologies
155 Hesler Place
Hagatna, Guam 96910

**SUBJECT: TESTIMONY IN SUPPORT OF BILL 92 AND BILL 91 (WITH AMENDMENTS)
RELATIVE TO RESTORING THE CIVIL SERVICE COMMISSION'S AUTHORITY**

Hafa adai Senator Rector and fellow committee members (to be identified by name at time of testimony):

I am Naomi Lujan-Gonzales and I am the current executive director of the Civil Service Commission. I come before you today to express my comments on Bills 92 and 91.

Six months ago at my confirmation hearing, I was set to task by the committee of the time to submit draft legislation that addresses the needs of the Civil Service Commission should I be confirmed as the director of the Commission. When I was confirmed shortly thereafter, I launched on a mission with both ears and eyes wide open to understand the Commission of the past, the Commission of the present, and the Commission of the future. This voyage entailed studying the current Civil Service Commission law, dissecting Public 28-68 and other statutes that affected the Commission, speaking to many people who have knowledge of the Commission (board members and staff of the present and past, persons in management, lawyers and lay representatives, GovGuam employees, critics, and politicians), listening to the tape recordings of the supposed public hearing on Public Law 28-68, and researching merit system commissions found elsewhere.

The adage, "if it ain't broke, don't fix it" holds true in many respects for the Civil Service Commission. As you are aware, Public Law 28-68 essentially decommissioned the Commission for a variety of reasons that were less than genuine with respect to the merit system and did more breaking than fixing. On a positive note, this forced self-evaluation gave rise to the current opportunity to fine-tune the Commission and to learn from past mistakes so that they will not be repeated in the future.

Bill 92 reflects the collaborative efforts to get the Civil Service Commission into proper functioning order if a merit system was to continue. As is apparent in the language of Bill 92, it is not the desire of Commission to attain all of the powers it once had prior to Public Law 28-68. This goes towards fine-tuning the Commission to upholding the merit system and acting primarily as an adjudicatory body. Additionally, Bill 92 clarifies that the Commission maintains jurisdiction over investigations of whistle-blower complaints.

An important factor throughout Bill 92 in the Commission's exercise of jurisdiction and power are the checks put into place by the proposed statute to ensure that such exercises of jurisdiction and power are not unbridled. Compared to the Commission of the present, the only new jurisdictions the Commission is requesting for regard post-audit authority, adverse action appeals of certified technical professionals of the Guam Waterworks and the Guam Power Authority, and employees of the Guam Memorial Hospital. It is critical to point out that the inclusion of GWA

and GPA comes at the request of the CCU, and the inclusion of GMHA comes as the request of the hospital administrator himself.

The language in the post-audit authority found in section 2(b) is necessary to assist the Commission in fulfilling its job. The time-lines built into the proposed legislation ensure that notice is given by the Commission, time for response by the department/agency is provided, and the matter is fully resolved in a timely fashion. The legislation also requires that specific rules be adopted including the requirement of a written complaint with an identified complainant to institute an investigation.

In the exercise of the Commission's jurisdiction and powers, the proposed legislation requires appropriate rules be adopted to effectuate such jurisdiction and powers. My upbringing, educational background, and professional experience have instilled in me the principles of accountability, integrity, and equity. I can assure you that I will ensure that such rules will bear the theme of accountability, integrity, and fairness and will include the proper checks and balances.

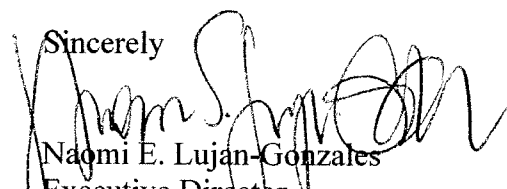
Bill 92 is not one-sided. It does not favor management nor does it favor the employee. Bill 92 upholds the merit system, protects and upholds the integrity of the process, and protects the rights of the parties involved. It insures that applicable statutes and rules are followed.

Opposition or dissent to Bill 92 must be looked upon with great suspicion.

I do ask that section 2(e) be amended to reflect twenty calendar days *from the date of the personnel action* versus *after the effective date of the personnel action*. This amendment will take into consideration the time delays caused by other departments in the routing process of a notice of personnel action.

With regard to **Bill 91**, while the intention is noble, Bill 91 purports to give more jurisdiction to the Civil Service Commission than what the Commission had envisioned is necessary to protect the merit system. However, there are areas of Bill 91 that are already addressed and incorporated into Bill 92. Moreover, if a certain process is not working in the hands of a particular department, it does not always make sense to take that function away and give it to another department. Sometimes enacting through legislation specifically tailored corrective measures is all that is necessary to get things working. Also, repealing a law does not automatically reinstate the prior law. As a compromise, an area in Bill 91 that is not specifically identified in Bill 92 is the issue of grievances involving collective bargaining agreements. This specific subject matter can be easily incorporated into Bill 92, section 2(c).

Thank you for the opportunity to voice my comments and support on these important and historically significant legislations. It is my sincerest hope that you will support the passage of Bill 92 and Bill 91 with the mentioned amendments, including those mentioned in my April 10, 2009 letter to you. The proposed legislation is not only good for the merit system, it is also good for Guam.

Sincerely

Naomi E. Lujan-Gonzales
Executive Director
Civil Service Commission (Gov't of Guam)



GUAM WATERWORKS AUTHORITY
ATURIDAT KINALAMTEN HANOM GUAHAN
Post Office Box 3010, Hagatna, Guam 96932
Phone: (671) 647-2603 Fax: (671) 646-2335

April 13, 2009

Senator Matt Rector
Chairman, Committee on Labor,
the Public Structure, Public Libraries
and Technology
30th Guam Legislature
255 Hesler Street
Hagåtña, GU 96932

RE: Testimony From The Guam Waterworks Authority and Guam Power Authority
Regarding Bills 91 and 92.

Hafa Adai,

The Guam Waterworks Authority (“GWA”) and the Guam Power Authority (“GPA”) appreciates being afforded the opportunity to present testimony regarding Bills 92 and 92 and I thank the Chairman and the Committee members for their valuable time. On behalf of GPA and GWA I would like to offer the following testimony, starting with Bill 92 first.

Bill 92.

To begin, I would like to commend the Guam Legislature for its continued support of GWA and GPA to upgrade and modernize our workforce via the introduction of the Certified, Technical and Professional (“CTP”) program and placement of the management of this program under the auspices of the Consolidated Commission on Utilities.

Unfortunately Bill 92 in some way constitutes a step backwards regarding the status of GWA and GPA as Guam Public Corporations and the benefits that we can give to the public through such structures which has been recognized by the bond markets, rating agencies and even our customers through the improvement of services. For example, gone are the days of rolling blackouts, brownouts and just as recently as 2003 we need to remember that GWA was being sued by the USEPA for being a threat to public safety. In fact, one of the requirements of GWA’s Stipulated Order was to modernize its workforce and to remove legal and institutional impediments to its operations.

Bill 92 once again places the CCU and GWA and GPA back under the “old system” completely without regard to the CCU’s responsibilities under existing law. For example, under Bill 92 the CSC would once again have the ability to review all personnel actions and personnel decisions of both GWA and GPA, including CTP employees. However, unlike UoG, the Judiciary, the Legislature and Guam Community College, GWA and GPA are not specifically exempted from the CSC jurisdiction despite having similar issues. For example, GWA and GPA’s autonomy is important to rating agencies, bondholders and even the USEPA just like UoG’s and GCC’s autonomy is important to their accreditation entities.

GPA and GWA would like to suggest that the current language to Section 2, Subsection (f) relative to 4 G.C.A. § 4403 read as follows:

“(f) The jurisdiction of the Commission shall only apply to those employees who are not designated as Certified, Technical and Professional employees. However, the jurisdiction of the Commission shall apply to adverse action appeals, grievance appeals and EEO complaints for Certified, Technical and Professional employees of the Guam Waterworks Authority and the Guam Power Authority. The Commission’s jurisdiction shall also apply to classified employees at the Guam Memorial Hospital.”

We believe that this language maintains the integrity of the Certified, Technical and Professional employees at GWA and GPA since the CCU already has the responsibility of monitoring the hiring, slotting and pay of CTP employees.

Bill 91.

GWA and GPA oppose Bill 91 for the reasons discussed below.

First, disputes arising from a collective bargaining agreement should be resolved by a Court of law as they are contractual obligations on behalf of the entities who signed the agreement. The CSC should not be put in a position of a court by being required to resolve contractual disputes. Second, safety concerns for employees fall under the purview of OSHA. This bill would only add additional layers of review and interfere with existing functions of the Guam Department of Labor and OSHA who are trained as experts in the safety field. Third, there is already a mechanism for unfair labor practices to be resolved and adding another layer to this process is unnecessary.

Sincerely,



John Benavente,
General Manager,
Consolidated Utility Services



GUAM POWER AUTHORITY

ATURIDÁT ILEKTRESEDÁT GUAHAN
P.O. BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

Tel: (671) 648-3225; Fax: (671) 648-3290

April 13, 2009

TO: I MINA 'TRENTA NA LIHESLATURAN GUAHAN

My name is Joaquin C. Flores, P.E. I am the General Manager of the Guam Power Authority. I am here to testify regarding Bills 92 and 91. I am providing this testimony in my official capacity. This testimony has not been adopted by the Consolidated Commission on Utilities, but it is my intention to bring it to the CCU for adoption at a later date.

On behalf of Guam Power Authority I would like to offer the following testimony:

Bill 92:

The Guam legislature has supported Guam Power Authority by providing the Consolidated Commission of Utilities (CCU) the authority and responsibility for the oversight of the GPA employees under the Certified, Technical and Professional ("CTP") program.

GPA supports the language in Bill 92 that allows adverse action appeals of CTP employees to be heard by the Civil Service Commission. It is GPA's understanding that the Guam Legislature intended that all adverse action appeals, both CTP and non-CTP employees, be heard by the Civil Service Commission.

GPA disagrees with the language in Bill 92 which appears to have the intention of restoring the jurisdiction of the Civil Service Commission regarding certain actions that now fall within the jurisdiction of the CCU. This would have the unintended consequence of placing all personnel actions, both CTP and non-CTP, back under the purview of the Civil Service Commission. The language in Bill 92 would give the CSC once again the ability to review all personnel actions and personnel decisions of GPA. Other entities such as the University of Guam, Guam Community College, the Judiciary and the Legislature have been exempted from CSC jurisdiction. GPA's bondholders expect that GPA will be regulated by both the CCU and the PUC, and recognize that autonomy is important to GPA.

GPA would suggest that 4 GCA §4403(f) be amended as follows:


"(f) The jurisdiction of the Commission shall only apply to those employees who are not designated as Certified, Technical and Professional employees. However, the jurisdiction of the Commission shall apply to adverse action appeals, grievance appeals and EEO complaints for Certified, Technical and Professional ("CTP") employees of the Guam Power Authority and the Guam Waterworks Authority. The Commission's jurisdiction shall also apply to classified employees at the Guam Memorial Hospital."

This suggested change would continue the current statutory responsibility given to the members of the CCU regarding the oversight of hiring and pay issues for CTP employees.

Bill 91:

Guam Power Authority is opposed to the provisions of Bill 91. This bill attempts to give the Civil Service Commission powers that are already the responsibility of other entities, and are appropriately under their jurisdiction. Specifically, safety issues are already regulated by OSHA and the Guam Department of Labor. GPA has its own Safety Division that ensures that its employees and contractors comply with DOL and OSHA safety rules. Contractual disputes should be resolved either through the courts or through mediation.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Flores', with a long horizontal line extending to the right.

JOAQUIN C. FLORES, P.E.
General Manager

PA: April 13/15

Written testimony 4/10/09

Fred E. Moser

From: Fred Moser [fem@guam.net]

Sent: Wednesday, April 08, 2009 7:46 AM

To: Adolpho B. Palacios Sr.; Adolpho Palacios; Ben C. Pangelinan; Benjamin J. F. Cruz; BJ Cruz; DPA Judith P. Guthertz; Eddie Calvo; Frank Aguon; Frank F. Blas Jr.; James V. Espaldon; Jim Espaldon; Judy WonPat; Judy WonPat; Matt Rector; Ray Tenorio; Rory J. Respicio; Rory Respicio; Telo Taitague; Tina Muna Barnes; Tina Rose Muña-Barnes; Tom Ada

Subject: Support Bill 92

Honorable Senators of the 30th Guam Legislature:

My name is Fred Moser, Program Coordinator for GPSS FEMA Projects with 23 years of service in GPSS. On 4/25/08, I emailed the Senators of the 29th Guam Legislature requesting for assistance and provided eleven (11) documents for reference (the previously sent email is attached for your reference). I would like to personally thank the senators that took the time to communicate with me directly and their assistance. This is to follow up with the senators of the 30th Guam Legislature as well as recommend full support and passage of Bill 92 relative to restoring CSC powers (including staffing) introduced by Senator Guthertz.

For the record, I have worked in GPSS for 23 years and make \$49,915 annually. Mr. Randy Romero and Ms. Vivian Hernandez have worked in GPSS for 13 years and make \$41,936 & \$27,244 respectively. Mr. Rod Traya has worked in GPSS for 11 years and makes \$46,882 annually. Collectively, we bring 60 years of service and experience to this office at an annual cost of \$165,177. Consider that we have obtained over \$3.2M in FEMA funding in appeals and re-instatements alone. Additionally, we've successfully appealed \$1.175M in FEMA imposed insurance requirements. In effect, we've basically paid for our salaries for the next 19 years. Much of the reports and documentation provided by the GPSS Recovery Office, we believe, was the basis for retaliatory actions giving rise to our whistleblowers complaint.

On 4/2/07 the GPSS FEMA Projects staff submitted a PL 24-69 Violation to the CSC. As you may know, it takes much emotional and mental effort as well as retaliatory risk to prepare this documentation. 164 days later on 9/13/07 the CSC Commission held a hearing and directed that an investigation commence within an estimated 3-week time period. Today (4/08/09), 736 days after the initial filing and 572 days after the direction by the CSC Commissioners to begin the investigation, it has yet to commence because of confusion among CSC staff regarding adjudicatory powers and jurisdiction (reportedly because of Senator Klitzkie's law taking away CSC powers). More recently on 6/13/08 the CSC sent a letter to DOA to commence the investigation. Then on 7/7/08, DOA sent a request for legal opinion to the AG regarding the matter. Subsequently, on 10/1/08 DOA informed CSC that it requested the opinion from the AGs Office and returned the Whistleblower Complaint package. (See attached docs) As you can see, people like the GPSS FEMA Projects staff are encouraged to come forward with information, but are left hanging in the midst of confusion. I share all this with you to humbly ask you as Senator's to do whatever it takes to support this very important law by strongly considering reinstating all powers and personnel to the CSC.

For the record, I stand by the Recovery Office reports and documentation and strongly believe that we must not operate from a position of fear. If we do, nothing of substantive truth will ever be written for fear that "someone" might see it. I look forward to direction that will prevent all departmental personnel from behavior that discourages people from coming forward, and gives the appearance that management does not want to hear the bad news, and is more concerned about good press than good results. I look forward to a direction that will promote bringing people together and chart the course to encourage personnel to do the right thing for the right reasons. In other words, require that we ask ourselves—"what is the motivation for what I do?" I believe the current Superintendent supports our beliefs.

Senators rightly saw the need for good stewardship in government by enacting the Public Employee Protection Act, finding that the people of Guam are entitled to information about the workings of the government in order to reduce the waste and mismanagement of public funds, to reduce abuses in government authority, and to prevent illegal and unethical practices. The act also asserts that employees of the government of Guam are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of governmental affairs.

The good Speaker WonPat's address was right on point in this regard:

- *Differences must be put aside, self-interests must be shelved, and integrity must be restored.*
- *I pledge to become a better leader, to work together with every person who wants the best for this island.*
- *Together we can open these doors as a symbol of our commitment to never stop listening to the will of the people. Together we can return this government to its rightful owners: the people of Guam.*
- *To those of you who feel forgotten, whose voices have gone unheard, I urge you to be silent no longer. I encourage you to become empowered to lead along side us, because leadership doesn't only happen in session halls and oval offices, it happens*

in business meetings, classrooms, and back-kitchens. It is crucial that each one of us learn to lead by example in everything we do.

We are the forgotten ones—whose voices have gone unheard. We are asking that we and others like us be empowered to do the right things for the people of Guam without fear of reprisal. Support this empowerment by passing Bill 92 restoring all CSC powers and staffing levels.

After all, ours is supposed to be a government of the people, by the people, and for the people. Sometimes, I think we forget the fact that the Constitution begins with the words, “we the people”—the three most powerful words in that great document. As a government employee and foremost a private citizen, I take seriously my responsibility to speak out on sometimes controversial issues. It’s not always easy and I many times take the hits because often people don’t like what I have to say. But as Harry Truman once said about his “Give ‘Em Hell Harry” nickname, “I never give anybody hell. I just tell them the truth and they think it’s hell.” After all, at the end of our days on this earth, we should be able to look our children and grandchildren in the eye and say we did everything we could to pass on a Guam that’s better off and better positioned for their future.

With Honor & Respect,

FRED E. MOSER (734-1195 (H); 300-1579(W); fem@guam.net



GOVERNMENT OF GUAM

CIVIL SERVICE COMMISSION
KUMISION I SETBISION SIBIT
 7th Floor, International Trade Center (ITC Bld.)
 Marine Drive, Tamuning 96913
 P.O. Box 3186 Hagatna, Guam 96932
 Tel: 647-1856/57 Fax: 647-1867



CSC NO. 2008-070

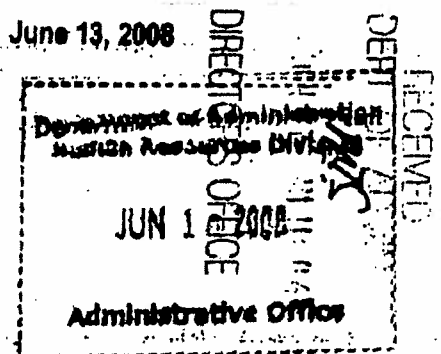
June 13, 2008

MEMORANDUM

TO: Lourdes Perez,
 Director of Administration

FROM: Executive Director

SUBJECT: PUBLIC EMPLOYEE PROTECTION STATUTE



Hafa Adai! I have enclosed two complaints made to the Civil Service Commission alleging retaliation by employers for disclosures made by the complainants. The Public Employee Protection statute (also known as Whistleblower), codified at 4GCA Section 4501, allows complaints to be made where there is a belief that retaliation has resulted from disclosure or reporting of fraud, waste, abuse, mismanagement, etc.. The act requires a preliminary review (investigation) to determine if there is a reasonable basis for such a complaint. However, I believe the Civil Service Commission may not conduct such an investigation based on recent law changes.

As a result of Public Law 28-68, all non-adjudicatory functions of the CSC were transferred to the Director of the Department of Administration. The initial review and investigation stage involved in a Public Employee Protection complaint is non-adjudicative and should be addressed by your agency. In the event you find there is a reasonable basis for the complaint, the transgressor may have the option for a hearing on the matter. Should either of these two cases reach this stage, the CSC may then exercise jurisdiction and adjudicate the matter.

The complainants referred to above are: 1) Fred Moser, GRSS and 2) Juanita Quintanilla, Department of Chamorro Affairs. I have informed the Board of Commissioners of the transfer of these cases to your agency for initial processing.

If you need any assistance or information regarding these matters do not hesitate to call. *Si Yu'us Ma'ase!*

Senseramento,


 VERNON P. PEREZ

cc: Chairman, CSC Board
 Mr. Fred Moser
 Ms. Juanita Quintanilla
 File



Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

GOVERNMENT OF GUAM
(GUBETNAMENTON GUÅHAN)

DEPARTMENT OF ADMINISTRATION
(DIPATTAMENTON ATMENESTRASON)

HUMAN RESOURCES DIVISION
(Dibision Inadilanto Yan Guinaha Para Taotao)
Post Office Box 884 * Hagåtña, Guam 96932
TEL: (671) 475-1128/1174 * FAX: (671) 477-7100



Lourdes M. Perez
Director

Joseph C. Manibusan
Deputy Director

cm
7/3/08

JUL 07 2008

MEMORANDUM

TO: Attorney General

FROM: Director, Department of Administration

SUBJECT: Request for Legal Opinion
Jurisdiction of the Public Employee Protection Act (Whistleblower)
(P.L. 24-69)

Jose
7/3/08

Hafa Adai! The Department of Administration is requesting a legal opinion from your office as to whether the Public Employee Protection Act (Whistleblower) inclusive or exclusive of the initial investigative function has been transferred as a non-adjudicatory function of the Civil Service Commission to the Department of Administration as a result of Public Law 28-68.

Public Law 28-68, Section 45 provides:

Transfer of Authority of the Civil Service Commission to the Department of Administration.

(a) All Guam statutes and regulations not specifically mentioned in this enactment which refer to the non-adjudicatory authority of the Civil Service Commission or which purport to create such authority in the Civil Service Commission are hereby amended to reflect the transfer of said authority to the Director of Administration, who shall henceforward perform all functions regarding rulemaking, the creation of new positions, pay scales, personnel rules and the like which formerly were performed by the Commission. The Civil Service Commission shall retain its duties under the Mini-Hatch Act and Ethics in Public Contracting laws except as may be provided herein.

(b) Saving Clause. All existing rules and regulations currently in effect shall remain in effect until amended or repealed by the Director of Administration or other competent.

Section 46. Director of Administration and Personnel Policy. A new §4101.1 is *added* to Title 4, Guam Code Annotated to read:

“§4101.1. Responsibilities of the Director of Administration regarding Personnel Policy of the Government. The Director of Administration shall perform the following functions:

(a) Maintain and from time to time modify a general personnel policy for all government of Guam line agencies through the adoption of rules and regulations pursuant to the Administrative Adjudication Law;

(b) Investigate conditions of government employment as he deems necessary and report his findings thereon to *I Maga'lahen Guåhan* and *I Liheslaturan Guåhan* annually.

(c) Administer the Equal Employment Opportunity Program for the Executive Branch of the government of Guam.”

(d) Maintain, post and keep current on the Department's website a list of all classified and unclassified positions in the executive branch including autonomous agencies and public corporations, showing the job description and pay range assigned to each position.

(e) Make an annual report on July 1 on the status of the uniform pay schedule required by §6302 of this Title to *I Maga'lahi* and the Speaker of *I Liheslatura* and post the report on the Department's website.

Section 4504 Chapter 4 GCA provides:

Complaints by Classified Employees. (a) Any employee in the classified service may file a written complaint with the personnel board alleging a violation of §4503 of this Article, if the employee demonstrates that reasonable communication to his supervisor, appointing authority or member of the Guam Legislature has occurred in regard to the alleged violation. The personnel board shall cause an investigation to be made of the charges in the complaint. If the investigation establishes that there is a reasonable basis for the charges, the appointing authority or supervisor shall be given written notice thereof. Within ten (10) days after he receives such notice, the appointing authority or supervisor may petition the personnel board for a hearing on the matter, and the personnel board shall grant such hearing.

Section 4502. Definitions. As used in this Article, unless the context otherwise requires:

(e) **'Personnel Board'** means the Civil Service Commission, the Judicial Council or other government entity charged with hearing the appeal of a classified employee pursuant to §4105 of this Chapter or under the personnel rules governing such employee.

BACKGROUND

The Department of Administration received Civil Service Commission No. 2008-070 Memorandum, dated June 13, 2008 and attached two complaints filed with the Civil Service Commission, pursuant to the Public Employee Protection Act (P.L. 24-69.1). The Civil Service Commission claims that the initial review and investigation stage of the Public Employee Protection Act are non-adjudicatory and they may not conduct investigations based on the recent law changes and as a result they transferred two complaints to our office.

Effective January 2006, Public Law 28-68 transferred personnel pay/classification functions and other non-adjudicatory functions of the Civil Service Commission to the Department of Administration. However the law was silent, lacking intent and language that specified that the authority of the Public Employee Protection Act is removed from the Civil Service Commission to the Department of Administration, inclusive of the investigative process.

The Public Employee Protection Act essentially, provides a function which grants classified employees rights to file a complaint with the Personnel Board, pursuant to Section 4504. It also provided a process which required that an investigation be conducted to determine if such complaint is on a reasonable basis for the charges.

QUESTIONS

(1) Is the investigative function within the Public Employee Protection Act, adjudicative or non-adjudicative?

2) Can the Department of Administration conduct the initial investigative process of the Public Employee Protection Act for the Civil Service Commission?

Attached is a copy of CSC No. 2008-070 Memorandum, dated June 13, 2008 for your review. Your legal opinion on this matter is requested. Should you have any questions please call the Human Resources Division at 475-1132. **Si Yu'us Ma'ase!**



JOHN P. CAMACHO

Acting

A 7/3/2008



Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

GOVERNMENT OF GUAM
(GUBETNAMENTON GUAHAN)

DEPARTMENT OF ADMINISTRATION
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TEL: (671) 475-1128/1174 * FAX: (671) 477-7100

*Followed up w/ Ray Leyana
on 10/13/08*



Lourdes M. Perez
Director

Joseph C. Manibusan
Deputy Director

OCT 01 2008

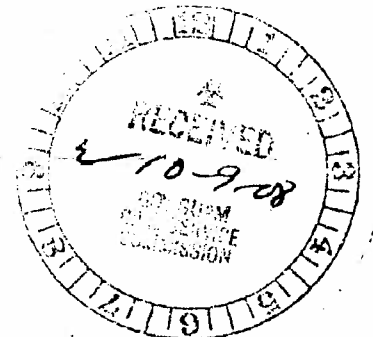
HRD NO: OG08-8188

MEMORANDUM

To: Executive Director, Civil Service Commission

From: Director, Department of Administration

Subject: Complaint (Public Employee Protection Act)
Re: Mr. Fred Moser, Guam Public School System
Ms. Juanita Quintanilla, Department of Chamorro Affairs



Hafa Adai! This is in reference to Civil Service Commission Memorandum No. 2008-070, Memorandum dated June 13, 2008, and the attached two complaints filed with the Civil Service Commission, pursuant to the Public Employee Protection Act (PL 24-69.1). The complaints filed were for Mr. Fred Moser from Guam Public School System and Ms. Juanita Quintanilla from the Department of Chamorro Affairs.

The Department of Administration is prepared to handle the investigative stage of the Public Employee Protection Act. However, we believe that there are legal concerns and issues with our handling of these appeals that are raised. Foremost concern is that the Employee Protection Act grants classified employee's rights to file a complaint with the Civil Service Commission and not with the Department of Administration.

On July 9, 2008, we had filed a request for legal opinion with the Office of the Attorney General as to whether the Public Protection Act inclusive or exclusive of the initial investigative function has been transferred as a non-adjudicatory function of the Civil Service Commission to the Department of Administration as a result of Public Law 28-68.

Thereby, we are returning attachments of Mr. Fred Moser of the Guam Public School System and Ms. Juanita Quintanilla from the Department of Chamorro Affairs, awaiting the legal opinion from the Attorney General's Office. When we obtain the legal opinion we will take the appropriate action, consistent with the opinion.

If you have any questions on this matter, please call the Department of Administration, Human Resource Division at 475-1132. Si Yu'us Ma'ase!

Lourdes M. Perez
LOURDES M. PEREZ
for

Attachments

tlizama@mail.gov.gu

From: Fred Moser [fem@guam.net]
Sent: Friday, April 25, 2008 1:12 PM
To: Adolpho B. Palacios Sr. (adolpho_palacios@hotmail.com); Ben C. Pangelinan (senbenp@guam.net); Benjamin J. F. Cruz (cjbjcruz@aol.com); DPA Judith P. Guthertz (judiguthertz@pticom.com); Ed. D David L. G. Shimizu (dlgshimizu@guam.net); Edward J. B. Calvo (sencalvo@gmail.com); Frank F. Blas Jr. (frank.blasjr@gmail.com); Frank T. Ishizaki (ishizaki@ite.net); James V. Espaldon (senjim@ite.net); Jesse A. Lujan (jal@ite.net); Judy WonPat (senwonpat@ecomm.com); Mark Forbes; Mark Forbes (speakerforbes@yahoo.com); Ray Tenorio (ray@raytenorio.com); Rory J. Respicio (rjr@ite.net); Tina Rose Muña-Barnes (munabarnes@hotmail.com)
Subject: Fred Moser - Request For Assistance/Support

Importance: High

Honorable Senators of the 29th Guam Legislature:

My name is Fred Moser, Program Coordinator for GPSS FEMA Projects with 22 years of service in GPSS. I recently returned from a brief trip escorting family members to PI for medical reasons. Much of what's been recently reported relative to GPSS are similar to issues that I sought to work with management to correct, some of which are detailed in the Disaster Recovery Accomplishment & Challenges Report of 12/29/06. For the record, I am a haole & I'm married to a Chamorro and I chose to live on Guam (if she had her way we'd be living in the states). I love this place, I love the people, and I'm thankful for my job. I cannot, nor should I, be so presumptuous to believe that I've got all the answers and know what's best for the Chamorro people on their island. Although I call this island my home, I'm not going to pretend to walk in as a house guest and say to my host, "I love your island, but you've got it all wrong." With that in mind, I am simply trying to share what I believe to be true. I am emailing information and attachments to each of you for two reasons:

First, to provide a snapshot of FEMA Project information to enable you decide whether or not you support our efforts to institutionalize our office within the GPSS. I would be glad to sit down and answer any questions you may have regarding this.

Second, to request your assistance regarding PL 24-69 — Public Employee Protection Act relative to legislative findings that the people of Guam are entitled to information about the workings of the government in order to reduce the waste and mismanagement of public funds, to reduce abuses in government authority, and to prevent illegal and unethical practices. Additionally, that employees of the government of Guam are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of governmental affairs. To help achieve these objectives, the Guam Legislature finds that such employees should be encouraged to disclose information on actions of agencies that are not in the public interest and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

You may be interested to know that on 4/2/07 the GPSS FEMA Projects staff submitted a PL 24-69 Violation to the CSC. As you may understand, it takes much emotional and mental effort as well as retaliatory risk to prepare this documentation. 164 days later on 9/13/07 the CSC Commission held a hearing and directed that an investigation commence with an estimated 3-week time period. Today, 389 days later, the investigation has yet to commence because of confusion among CSC staff regarding adjudicatory powers and jurisdiction (reportedly because of Senator Klitzkie's law taking away CSC powers). As you can see, people like the GPSS FEMA Projects staff are encouraged to come forward with information, but are left hanging in the quagmire of retaliation in the midst of confusion. I share all this with you to humbly ask you as Senator's to support this very important law by strongly considering reinstating all powers and personnel to the CSC.

For the record, I stand by my report and strongly believe that we must not operate from a position of fear. If we do, nothing of substantive truth will ever be written for fear that "someone" might see it. I know that people are offended by my resolve, but my responsibility is to provide management with information to hold people accountable—to facilitate *behavioral* changes within the respective "problem" areas. GPSS management has been touting accountability and when I repeatedly provide documentation and reports to effectuate this process, I am ostracized. I look forward to direction from the GPSS Superintendent that will prevent all departmental personnel from behavior that discourages people from coming forward, and gives the appearance that management does not want to hear the bad news, and is more concerned about good press than good results. I look forward to a direction that will promote bringing people together and chart the course to encourage personnel to *do the right thing for the right reasons*. In other words, require that we ask ourselves— "*what is the motivation for what I do?*"

Listed below are 11 documents (in chronological order) that are attached to this email with a brief explanation of each:

1. Disaster Recovery Accomplishment & Challenges Report of 12/29/06 - A report that I sent to the Superintendent, GEPB members and administrators. (Note, this was the second annual report submitted by the GPSS Recovery Coordination Office)
2. Superintendent, Response - Cease & Desist - 1/5/07 Memo to Superintendent as a result of an attempted Cease & Desist Order from Ike Santos after submission of my Disaster Recovery Accomplishment & Challenges Report of 12/29/06.
3. Superintendent, PL 24-69 - 1/10/07 memo to Superintendent informing him of potential PL 24-69 violations.
4. Superintendent, FEMA Project SOP Recommendation - 2/19/07 FEMA SOP updated submission. (Note: This SOP was ignored by the Superintendent's Office. When I followed up with Dan Camacho, he stated that it was not in the proper SOP format. However, information our office developed in this SOP was extracted and/or revised and sent out by the Superintendent's Office as the responsibility of the CIP Office. However, the CIP has been unable to perform or follow the SOP.)
5. FEMA Project Flow Chart - Contract & In-House Projects - 2/6/07 FEMA Project Flow Chart (part of the FEMA Project SOP developed by our office.)
6. Superintendent & CSC, PL 24-69 Violation - The 4/2/07 whistleblower/grievance document I submitted to the Superintendent & CSC. The CSC conducted a hearing on 9/13/07 and ordered the investigation to commence with a 3-week timeline, but confusion regarding adjudicatory jurisdiction and the authority to investigate has caused confusion and slowed the process.
7. FEMA SOP Format - FEMA SOP resubmitted on 4/18/07 in format requested by Dan Camacho.
8. Final GPSS Report - Report of 4/27/07 commissioned by Senator Guthertz that was sent to GEPB which includes FEMA Projects Office Recommendations.
9. Guthertz Interview Regarding Commissioned Report - K57 interview in which Senator Guthertz discussed, in part, the FEMA projects Office.
10. CSC, Summary Request - 8/20/07 violations summary requested by CSC.
11. CSC, Ongoing RCO Office Actions - 3/4/08 issuance of ongoing actions related to the FEMA Projects staff.

Again, this information is being respectfully submitted and I will be glad to sit and talk and discuss this matter further if you like. I invite you to reply via email or you can contact me at home at 734-1195 or at work at 475-0238 (temporary number). Si Yu'os Ma'ase'.

FRED E. MOSER

I MINA 'TRENTA NA LIHESLATURAN GUÅHAN

2009 (FIRST) Regular Session

Bill No. 92 (COR)

As Substituted by:

The Committee on Labor, the Public Structure,

Public Libraries and Technology.

Introduced by:

J.P GUTHERTZ

A.B PALACIOS

R.J RESPICIO

*

**AN ACT TO REPEAL AND REENACT ARTICLE 4 OF 4
GCA CHAPTER 4 RELATIVE TO THE DUTIES AND
RESPONSIBILITIES OF THE CIVIL SERVICE
COMMISSION TO RESTORE THE AGENCY TO
FUNCTIONAL OPERATIONAL CAPACITY IN
ACCORDANCE WITH THE PROVISIONS OF THE
ORGANIC ACT AND IN ORDER TO PROVIDE A FAIR
AND EQUITABLE SYSTEM OF CIVIL SERVICE TO THE
PEOPLE OF GUAM**

1. **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1: Legislative Findings and Intent:** *I Liheslaturan Guåhan* finds
3 that during late September working meetings to finalize the fiscal year 2006
4 budget, sections were added as miscellaneous provisions to transfer non-
5 adjudicatory functions and duties from the Civil Service Commission to the

1 Department of Administration. *I Liheslatura* finds that this transfer of powers
2 and full time employees from the independent commission to a line agency
3 had not been previously announced or otherwise made available for public
4 comment. *I Liheslatura* finds that regardless of the merits of these or any
5 other possible measures to address historical problems, the process limited
6 public discussion and input by which lawmakers could become fully
7 informed on the proposal prior to a vote. Government personnel
8 administration experts were not summoned to assist the Committee of the
9 Whole, although they were available. Sweeping public policy changes were
10 accomplished without a public hearing by attaching them in working
11 meetings to a time-sensitive bill. Additionally, the Superior Court of Guam
12 has ruled that the Civil Service Commission lacks jurisdiction to hear
13 classified employee grievance appeals pertaining to Collective Bargaining
14 Agreements and that the Superior Court of Guam lacks jurisdiction to hear
15 grievance appeals of Classified Employees.

16 It is therefore the intent of *I Liheslatura* to insure that classified public
17 employees have adequate due process for the redress of grievances in the
18 Civil Service Commission and the Courts of Guam by *Repealing* and
19 reenacting Article 4 of Chapter 4, 4 GCA to restore the proper functions of
20 the agency.

21

22 **Section 2: Article 4 of 4 GCA Chapter 4 is hereby *repealed* and**
23 **reenacted to read:**

24

1 **ARTICLE 4**

2 **CIVIL SERVICE COMMISSION**

3 § 4401. Civil Service Commission.

4 § 4402. Quorum.

5 § 4403. Duties of the Commission.

6 § 4404. Subpoena Powers.

7 § 4405. Commission Staff.

8 § 4406. Adverse Action Procedure and Appeals.

9 § 4407. CSC Revolving fund creation and oversight.

10 § 4408. Furlough and lay-offs appeals and unfair labor practice
11 procedures

12 § 4409 Grievance procedures

13 § 4410. Representation Fees and Cost on Appeal

14 § 4411. Standards for Making Decisions on Appeal.

15 § 4412. Enforcement of Orders.

16 § 4413. Administrative Adjudication Law Applicable.

17 § 4414. Severability.

18 **§ 4401. Civil Service Commission.**

19 Notwithstanding any other provision of law, the provisions of this
20 article shall Govern procedure for the Civil Service Commission, grievance
21 procedures, rights of employee representation and persons qualified as
22 representatives, and other issues contained herein.

1 (a) There is established, in and for the government of Guam, a Civil
2 Service Commission composed of seven (7) members appointed by the
3 Governor with the consent of the Legislature. The members shall serve
4 for a term of six (6) years and until their successors are appointed and
5 qualified, provided that of the initial members appointed under this
6 Chapter, appointments shall be made so that two members of the
7 Commission, sitting or newly appointed shall serve for two (2) years,
8 two members, sitting or newly appointed shall serve for a term of four
9 (4) years and three (3) members, sitting or newly appointed shall serve
10 for a term of six (6) years.

11 (b) When a vacancy occurs, the Governor shall appoint a new member
12 within sixty (60) days of the commencement of the vacancy.

13 (c) The Governor may remove members of the Civil Service
14 Commission but only for conviction of a crime constituting a felony or
15 a misdemeanor involving moral turpitude, willful misconduct in office,
16 willful and persistent failure to perform the duties of office, or any
17 conduct which is prejudicial to the administration of the merit system
18 of the government of Guam. Nothing in this Section shall require the
19 reappointment of any member. A person sought to be removed may
20 challenge the decision by an action for declaratory judgment in the
21 Superior Court.

22 (d) The members of the Civil Service Commission sitting at the date of
23 enactment of this Chapter who meet the requirements and limitations

1 placed upon membership by this Chapter shall remain in office until the
2 expiration of their respective terms.

3 (e) Civil Service Commissioners, shall, without limitation, each receive
4 Fifty Dollars (\$50.00) for every meeting attended to adjudicate appeals,
5 complaints, grievances or other disputes, or to perform rule-making
6 functions as provided in statute, rule or regulation.

7 **§ 4402. Quorum.**

8 The quorum of the Commission shall be four (4) members. The
9 affirmative vote of four (4) members shall be required for any action of the
10 Commission. The Commission may adopt rules to govern its procedures and
11 the standards to be maintained by non-attorney representatives; provided, that
12 rules adopted by the Commission shall recognize that representative is not an
13 attorney and cannot be bound by the same standards and ethics as an
14 attorney; and, further, provided, that in cases where an employee represents
15 oneself, the Commission shall render all possible assistance to the employee
16 to insure a fair and impartial hearing.

17 **§ 4403. Duties of the Commission.**

18 The Commission has the following duties, powers and responsibilities:

19 (a) It shall investigate conditions of government employment as it
20 deems necessary and report findings and recommendations to the
21 Governor and Legislature annually and also post such reports on the
22 Commission's website;

1 (b) It shall hear appeals from the adverse actions taken to suspend,
2 demote, or dismiss an employee from the classified service if such right
3 of appeal to the Commission is established in the personnel rules
4 governing the employee; however, it may not hear any appeal of an
5 action taken to suspend, demote, or dismiss an employee of the
6 Government of Guam who has not been hired through the competitive
7 hiring procedures of the personnel rules of the Government of Guam,
8 as such personnel rules required at the time of the hiring of the
9 employee, nor any unclassified employee, unless said employee was
10 improperly hired as an unclassified, part-time or limited term
11 employee;

12 (c) To hear appeals of furloughs, lay-offs, grievances, and personnel
13 issues including but not limited to grievance complaints relating to
14 laws, rules and collective bargaining agreements, unfair labor practices,
15 safety concerns, personnel actions, promotions, Complaints of
16 retaliation and Equal Employment Opportunity complaints of an
17 employee from the classified service if such right of appeal to the
18 Commission is established in the personnel rules or collective
19 bargaining agreements governing the employee. The Commission shall
20 adopt rules and procedures for furlough appeals, lay-off appeals,
21 grievance complaint appeals, grievances and personnel issues including
22 but not limited to grievance complaints relating to laws, rules and
23 collective bargaining agreements, unfair labor practices, safety
24 concerns, personnel actions, promotions, EEO complaints of

1 discrimination and Complaints of retaliation and Equal Employment
2 Opportunity complaint appeals;

3 (d) The Commission may investigate and set aside and declare null and
4 void any personnel action of an employee in the classified service if the
5 Commission finds after conducting the necessary investigation that the
6 personnel action was taken in violation of personnel laws or rules, or
7 collective bargaining agreements provided, however, that this Section
8 *shall not* be deemed to permit appeals by employees from adverse
9 actions not covered in Subsection (b) above. The agency head shall
10 cooperate and assist with the Commission's investigation. Prior to
11 declaring any personnel action null and void, the Commission shall
12 provide written notice of the alleged violation to the agency head. The
13 agency head shall respond within ten (10) calendar days after receipt of
14 the notice to the Commission's proposed action. All actions taken by
15 the Commission pursuant to this Section shall be taken within one-
16 hundred-eighty (180) calendar days after the personnel action or
17 complaint is filed with the Commission. The Civil Service Commission
18 *shall* submit a copy of its final decision to *I Liheslatura* by the next
19 working day. The Commission shall adopt rules and regulations to
20 effectuate this Section, including the requirement of a written
21 complaint to initiate any investigation. The Commission's decision
22 shall be final but subject to judicial review;

23 (e) The jurisdiction of the Commission shall also apply to the adverse
24 action appeals of certified, technical, and professional personnel of the

1 Guam Power Authority and Guam Waterworks Authority; the
2 jurisdiction of the Commission shall apply to all classified personnel of
3 the Guam Memorial Hospital Authority;

4 (f) The provisions of this Section shall not apply to the Judiciary or *I*
5 *Liheslaturan Guåhan* in compliance with the doctrine of the Separation
6 of Powers, unless such separate branch of government opts to make
7 them applicable by submitting to the jurisdiction of the Commission;
8 and all references to classified employees will be deemed to mean
9 classified employees of the Executive Branch, including agencies and
10 authorities;

11 (g) The jurisdiction of the Commission shall not extend to academic
12 personnel of the Guam Community College and the University of
13 Guam except upon mutual consent by the governing board of the
14 respective institution and the Commission, nor to any position or
15 person, appeal or proceeding of whatever kind or description if the
16 position is denominated “unclassified” in this Title, except to the extent
17 explicitly permitted in this Section; and

18 (h) The jurisdiction of the Commission shall extend to investigating
19 Public Employee Protection Act complaints (a.k.a. “whistle-blower”
20 complaints) pursuant to 4 GCA § 4501 et seq.”

21 **§ 4404. Subpoena Powers.**

22 The Chairperson of the Civil Service Commission or the Executive
23 Director, upon his own initiative, upon the request of any member of the

1 Commission, or upon the request of any party before the Commission, may
2 summon in writing any person to attend before a meeting of the Commission
3 as a witness and in a proper case, to bring with him any book, record or paper
4 which may be deemed material as evidence in the case. The fees for such
5 attendance shall be the same as the fees of witnesses before the Superior
6 Court, except that if the witness is a government employee no witness fees
7 shall be given. The subpoena shall issue in the name of the Civil Service
8 Commission, and shall be directed to the person and shall be served in the
9 same manner as subpoenas to appear and testify before the court. If any
10 person or persons summoned to testify shall refuse or neglect to obey said
11 subpoena, upon petition, the court may compel the attendance of such person
12 or persons before the Commission, or punish said person or persons for
13 contempt in the same manner provided by law for securing the attendance of
14 witnesses or their punishment for neglect or refusal to attend in the Superior
15 Court.

16 **§ 4405. Commission Staff.**

17 (a) The Executive Director of the Commission shall be appointed by the
18 Civil Service Commission with the approval of the Governor and with
19 the advice and consent of the Legislature.

20 (b) The executive director may, with Commission approval, hire such
21 professional, clerical, and other staff as may be deemed necessary to
22 assist the Commission in performing its duties and functions;

23 (c) The Commission may employ an Administrative Law Judge (ALJ), full
24 or part-time, to assist the Commission with the adjudicatory

1 responsibilities, or the Commission may retain a private practice
2 attorney or attorneys to serve as an ALJ on a case-by-case basis. A
3 decision by the ALJ shall be forwarded for review to the Commission,
4 which shall accept or reject in its entirety, the ALJ's decision. The ALJ
5 shall follow procedures approved by the Commission. The ALJ must
6 be a Guam-licensed attorney.”

7 **§ 4406. Adverse Action Appeals and Procedures**

8 An employee in the classified service who is dismissed, demoted or
9 suspended shall be given immediate notice of the action, together with a
10 specific statement of the charges upon which such action is based in the
11 manner required by Article 2 of this Chapter. Copies thereof shall be filed
12 with the Commission and, if applicable, with the government entity charged
13 with hearing that person's appeal under the personnel rules governing that
14 person's appointment not later than the working day next following the
15 effective date of the action. In no event may an employee in the classified
16 service be given notice and statement of the charges required by this Section
17 after the sixtieth (60th) day after management knew or should have known
18 the facts or events which form the alleged basis for such action. Any action
19 brought by management in violation of this Section is barred and any
20 decision based upon such action is void. While an employee's appeal is
21 pending, the employee may be suspended by the department, instrumentality
22 or agency. The Commission or appropriate entity may order the employee
23 reinstated to active duty during pendency of the appeal.

1 The employee within twenty (20) days of effective date of the action, may
2 appeal to the Commission or appropriate entity by filing that person's written
3 answer to the charges against the employee, regardless whether the employee
4 has tendered any resignations, which shall have no effect upon the
5 employee's appeal rights. In the event an employee resigns before the
6 issuance of the final notice of adverse action, the employee's twenty (20) day
7 appeal period to the Commission shall begin to run at the time the employee
8 submits the resignation, which notice of Proposed Adverse Action shall be
9 deemed a final notice of adverse action. Management may not fill the
10 employee's position until the appeal time frames or appeal, if taken, has been
11 exhausted.

12 The Commission or appropriate entity shall then set the matter for hearing as
13 expeditiously as possible. The employee, or that person's representative, shall
14 be given the opportunity to inspect any documents relevant to the action
15 which would be admissible in evidence at the hearing, and to depose,
16 interview or direct written interrogatories to other employees having
17 knowledge of the acts or omissions upon which the dismissal, demotion or
18 suspension is based. The Commission or appropriate entity may sustain,
19 modify or revoke the action taken. The decision of the Commission or
20 appropriate entity shall be final, but subject to judicial review.

21 **§ 4407. CSC Revolving fund creation and oversight.**

22 (a) There is hereby created the Civil Service Commission revolving fund,
23 which shall be accounted for separately from the General Fund. Monies

1 in the revolving fund shall not lapse at the end of a fiscal year, but shall
2 roll-over until used by the commission.

3 (b) All revenues received by the commission other than funding annually
4 budgeted for the personnel expenses of the commission by *I*
5 *Liheslatura* shall be deposited into the Civil Service Commission
6 Revolving Fund created by this section. Expenditure authority over the
7 revolving fund is hereby vested in the Chair of the Commission.

8 (c) Revenue from the Revolving Fund created by the provisions of this
9 section shall be used to pay other, non-personnel salary/wage expenses
10 of the Civil Service Commission including supplies, copying, printing,
11 and training of commission staff.

12 (d) Funding deposited within the Revolving Fund hereby created shall be
13 used for the initial payment of any fines and fees levied against any
14 agency for wrongful action taken against any employee(s) by said
15 agency in accordance with the provisions of this article.

16 (e) The Civil Service Commission Revolving Fund established by the
17 provisions of this section shall be subject to annual audit by the Office
18 of the Public Auditor and copies detailing expenditures from said
19 revolving fund shall annually be submitted to *I Liheslatura*.

20 **§ 4408. Furlough and lay-offs appeals and unfair labor practice**
21 **procedures**

22 (a) All Furlough and lay-off appeals and unfair labor practices shall be
23 heard by the Administrative Law Judge within ten calendar days of
24 being filed at the Commission.

1 (b)The decision of the ALJ may be appealed to the Commission. If the
2 commission decides that the appeal has merit then the case shall be
3 scheduled in the next available slot in the Commissions calendar.

4 (c) If the director or head of any agency or instrumentality of the
5 Government of Guam is found to have illegally Furloughed or laid-off
6 employees or committed an Unfair Labor Practice they shall be docked
7 a minimum of ten (10) hours of pay which shall be transferred by the
8 Agency to the CSC's Revolving Fund within the next pay period after
9 the decision is rendered. Hourly rate of pay shall be calculated by
10 dividing said director or agency head's total annual earnings by the
11 number two-thousand and eighty (2080), which shall calculate with
12 accuracy said Director or Agency head's hourly rate.

13 **§ 4409. Grievance procedures**

14 (a)All Grievances shall be heard by the Administrative Law Judge within
15 ten calendar days of being filed at the Commission.

16 (b)The decision of the ALJ may be appealed to the Commission. If the
17 commission decides that the appeal has merit then the case shall be
18 scheduled in the next available slot in the Commissions calendar.

19 (c)The Commission shall award a successful grievant a minimum of ten
20 hours pay for time invested by said employee in enforcing the
21 appropriate rules, regulations or collective bargaining agreement. Said
22 amount shall be paid out by from the CSC's Revolving Fund directly to
23 the grievant within the next pay period after the decision is rendered.

1 (d)The director or head of the Agency which has lost a grievance shall be
2 docked ten (10) hours of pay which shall be transferred by the Agency
3 to the CSC's Revolving Fund within the next pay period after the
4 decision is rendered. The hourly rate of pay of any director or head of
5 any agency shall be calculated by dividing said director's total annual
6 earnings by the number two-thousand eighty (2080).

7 **§ 4410. Representation Fees and Costs on Appeal.**

8 If an employee in the classified service retains an attorney *or lay*
9 *representative* to represent him or her before the Civil Service Commission
10 or other applicable administrative body to challenge an adverse action
11 brought against the employee, or to represent the employee through a
12 grievance and the employee prevails in whole or in part before the Civil
13 Service Commission or other applicable administrative body by either
14 receiving a favorable decision from the Commission or body or a withdrawal
15 of the adverse action by the department, agency or instrumentality that
16 brought the adverse action, the employee shall be awarded and paid costs,
17 including but not limited to an additional ten hours of pay at the employee's
18 hourly rate of pay at the time of the incident and reasonable representation
19 fees from funds of the department, agency or instrumentality in which the
20 employee was employed. Revenues necessary for the payment of the
21 representation fees as specified by this section shall initially be paid from the
22 Revolving Fund of the Civil Service Commission created by § 4407 of this
23 article. The commission shall inform any department, agency, or
24 instrumentality indebted to the commission of total charges and shall have the

1 authority to recoup an amount equal to the commission's initial expenditure
2 from the department, agency, or instrumentality that brought the adverse
3 action by any means necessary and practicable under law plus an
4 administrative fee equal to ten (10) percent of the CSC initial expenditure.
5 The department, agency or instrumentality that brought the adverse action
6 shall have thirty (30) days to reimburse the Civil Service Commission for this
7 expenditure or the Director or head of the department, agency or
8 instrumentality that brought the adverse action shall be docked ten (10) hours
9 of his or her pay per pay period which shall be transferred to the CSC
10 Revolving Fund created under the provisions of this Article, until the balance
11 owed to the Civil Service Commission by said Department, Agency or
12 Instrumentality has been satisfied in full. The hourly rate of pay of the
13 director or head of any agency or instrumentality shall be calculated by
14 dividing the total annual pay of said director or agency head by the number
15 two-thousand and eighty (2080). This amount deducted shall not exceed the
16 amount owed to the Civil Service Commission by any agency. Any revenue
17 so deducted from the salary of the Director or head of any agency indebted to
18 the Civil Service Commission shall be remitted to the CSC Revolving Fund.
19 Any amount of revenue recouped by the Civil Service Commission from any
20 Department, Agency or Instrumentality under the provisions of this section
21 shall be remitted to the CSC Revolving Fund.

22 **§ 4411. Standards for Making Decisions on Appeal.**

1 (a) Upon the hearing of any adverse action appeal, the burden of proof
2 shall be upon the government to show clearly and convincingly that the
3 action of the branch, department, agency or instrumentality was correct.

4 (b) Upon the hearing of a grievance, discrimination complaint or other
5 appeal, the burden of proof shall be upon the employee to show that the
6 action of the Government was improper.

7 (c) In cases involving charges which could be a crime if the person was
8 charged in a criminal action, the Commission shall determine the
9 matter based upon substantial evidence that the employee committed
10 the acts charged.

11 **§ 4412. Enforcement of Orders.**

12 The Civil Service Commission may seek enforcement of its decisions
13 and orders in all decisions and orders rendered pursuant to §4403 of this
14 Chapter by application to the Superior Court for the appropriate remedy. In
15 seeking enforcement of its decisions and orders, the application for
16 enforcement shall be entitled, “The Civil Service Commission v.
17 (department, agency, instrumentality or officer).”

18 **§ 4413. Administrative Adjudication Law Applicable.**

19 The rules of the Commission are subject to the Administrative
20 Adjudication Law.

21 **§ 4414. Severability.**

1 If any provision of this Article or its application to any person or
2 circumstance is found to be invalid or contrary to law, such invalidity shall
3 not affect other provisions or applications of this Article which can be given
4 effect without the invalid provisions or application, and to this end the
5 provisions of this Article are severable.

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) REGULAR SESSION

Bill No. 92(COR)

Introduced by:

J.P. GUTHERTZ
A.B. PALACIOS
R.J. RESPICIO

2009 APR - 6 PM 3: 53me

AN ACT TO RESTORE CERTAIN JURISDICTIONS
AND CLARIFY CERTAIN FUNCTIONS OF THE
CIVIL SERVICE COMMISSION BY REPEALING
AND REENACTING TITLE 4 GCA §§ 4403, 4408,
4409, AND 5105; SUBITEMS (b) AND (c) OF TITLE 4
GCA § 4405; AND NEW §§ 4410 AND 4411

1 BE IT ENACTED BY I LIHESLATURAN GUÅHAN:

2 Section 1. Legislative Findings and Intent. *I Liheslatura* finds that the
3 passage of Public Law 28-68 resulted in most of the non-adjudicatory
4 functions of the Civil Service Commission (CSC) being repealed entirely or
5 transferred to the Director of the Department of Administration (DOA);
6 one major function being the administration of compensation and
7 classification for government of Guam employees.

8 Much confusion was also created by P.L. 28-68, specifically whether
9 investigations performed by the CSC are considered adjudicatory or non-
10 adjudicatory, and have resulted in "Whistle-Blower" complaints and
11 furlough appeals remaining in limbo. Some other check-and-balance
12 functions once performed by the CSC were eliminated by Public Law 28-68
13 and have resulted in a lack of uniformity in the application of the merit

1 system and some questionable employment practices, including the post-
2 audit review and the full null and void authority. Several GovGuam
3 departments, including the Guam Memorial Hospital Authority, Guam
4 Power Authority, and Guam Waterworks Authority, have expressed their
5 desire for the Civil Service Commission to have the jurisdiction to hear
6 certain appeals of their employees.

7 *I Liheslatura* now finds the restoration of jurisdiction and clarification
8 of certain functions of the CSC are necessary and will improve the merit
9 system and better fulfill the requirements of Section 1422c of the Organic
10 Act which states:

11 “The Legislature shall establish a merit system and, as far as
12 practicable, appointments and promotions shall be made in
13 accordance with such merit system. The Government of Guam
14 may by law establish a Civil Service Commission to administer
15 the merit system.”

16 Therefore, it is the intent of the *I Liheslaturan Guåhan* to make the
17 amendments herein in an effort to restore jurisdiction to the CSC to the
18 extent necessary to administer the merit system and to eliminate the strict
19 demarcation of adjudicatory versus non-adjudicatory functions imposed by
20 Public 28-68 and other laws.

21 **Section 2. Title 4 GCA § 4403 is repealed and reenacted to read:**

1 **“§ 4403. Duties of the Commission.**

2 The Commission has the following duties, powers, and
3 responsibilities:

4 (a) It shall investigate conditions of government
5 employment as it deems necessary and report findings and
6 recommendations to the Governor and Legislature annually
7 and also post such reports on the Commission’s website;

8 (b) It shall hear appeals from the adverse actions taken to
9 suspend, demote, or dismiss an employee from the classified
10 service if such right of appeal to the Commission is established
11 in the personnel rules governing the employee; however, it may
12 not hear any appeal of an action taken to suspend, demote, or
13 dismiss an employee of the Government of Guam who has not
14 been hired through the competitive hiring procedures of the
15 personnel rules of the Government of Guam, as such personnel
16 rules required at the time of the hiring of the employee, nor any
17 unclassified employee;

18 (c) To hear appeals of furloughs, lay-offs, grievance
19 complaints, and Equal Employment Opportunity complaints of
20 an employee from the classified service if such right of appeal
21 to the Commission is established in the personnel rules

1 governing the employee. The Commission shall adopt rules
2 and procedures for furlough appeals, lay-off appeals, grievance
3 complaint appeals, and Equal Employment Opportunity
4 complaint appeals;

5 (d) The Commission may investigate and set aside and
6 declare null and void any personnel action of an employee in
7 the classified service if the Commission finds after conducting
8 the necessary investigation that the personnel action was taken
9 in violation of personnel laws or rules, provided, however, that
10 this Section shall not be deemed to permit appeals by
11 employees from adverse actions not covered in Subsection (b)
12 above. The agency head shall cooperate and assist with the
13 Commission's investigation. Prior to declaring any personnel
14 action null and void, the Commission shall provide written
15 notice of the alleged violation to the agency head. The agency
16 head shall respond within ten (10) calendar days after receipt of
17 the notice to the Commission's proposed action. All actions
18 taken by the Commission pursuant to this Section shall be
19 taken within one-hundred-eighty (180) calendar days after the
20 personnel action or complaint is filed with the Commission.
21 The Civil Service Commission shall submit a copy of its final

1 decision to *I Liheslatura* by the next working day. The
2 Commission shall adopt rules and regulations to effectuate this
3 Section, including the requirement of a written complaint to
4 initiate any investigation. The Commission's decision shall be
5 final but subject to judicial review;

6 (e) It shall conduct reviews of notices of personnel actions
7 of employees from the classified service. All notices of
8 personnel actions regarding the classified service shall be filed
9 with the Commission within twenty (20) calendar days after
10 their effective date. Failure to submit the required notices of
11 personnel actions within ten (10) calendar days after written
12 request by the Commission will immediately result in a ten
13 percent (10%) salary reduction of the agency head and his
14 deputy until compliance is made. The Civil Service
15 Commission shall submit a copy of its written request to the
16 agency head and his deputy for compliance with this Section to
17 *I Liheslatura* by the next working day;

18 (f) The jurisdiction of the Commission shall also apply to
19 the adverse action appeals of certified, technical, and
20 professional personnel of the Guam Power Authority and
21 Guam Waterworks Authority; the jurisdiction of the

1 Commission shall apply to all classified personnel of the Guam
2 Memorial Hospital Authority;

3 (g) The provisions of this Section shall not apply to the
4 Judiciary or *I Liheslaturan Guåhan* in compliance with the
5 doctrine of the Separation of Powers, unless such separate
6 branch of government opts to make them applicable by
7 submitting to the jurisdiction of the Commission; and all
8 references to classified employees will be deemed to mean
9 classified employees of the Executive Branch, including
10 agencies and authorities;

11 (h) The jurisdiction of the Commission shall not extend to
12 academic personnel of the Guam Community College and the
13 University of Guam, except upon mutual consent by the
14 governing board of the respective institution and the
15 Commission, nor to any position or person, appeal or
16 proceeding of whatever kind or description if the position is
17 denominated "unclassified" in this Title, except to the extent
18 explicitly permitted in this Section; and

19 (i) The jurisdiction of the Commission shall extend to
20 investigating Public Employee Protection Act complaints (a.k.a.

1 “whistle-blower” complaints) pursuant to 4 GCA § 4501 et
2 seq.”

3 **Section 3. Title 4 GCA § 4406 is amended by adding the following at**
4 **the end of the existing subsection:**

5 “The party who appeals the Commission’s decision to the
6 court is responsible for providing certified transcripts of
7 hearings and shall bear associated costs.”

8 **Section 4. Title 4 GCA § 4408 is repealed and reenacted to read:**

9 **“§ 4408. Enforcement of Orders.**

10 The Civil Service Commission may seek enforcement of its
11 decisions and orders in all matters permitted by this Title by
12 application to the Superior Court of Guam for the appropriate
13 remedy. In seeking enforcement of its decisions and orders, the
14 application for enforcement shall be entitled, “The Civil Service
15 Commission v. (department, agency, instrumentality, or officer).”
16 No enforcement shall be commenced against any department head
17 or other employee or officer of the Government of Guam in his
18 personal capacity.”

19 **Section 5. Title 4 GCA § 4409 is repealed and reenacted to read:**

20 **“§ 4409. Administrative Adjudication Act Not Applicable.**

1 Neither the rules of the Civil Service Commission, nor any
2 procedures prescribed thereunder are subject to the Administrative
3 Adjudication Act. The Commission shall post on its website and
4 provide a copy of its proposed rules or procedures and any
5 amendments thereafter to *I Liheslaturan Guðhan*, and such rules or
6 procedures shall take effect thirty (30) calendar days after submission
7 unless disapproved by a majority of the members of *I Liheslaturan*
8 *Guðhan*. Copies of effective rules and procedures shall be made
9 available on the Commission’s website.”

10 **Section 6. Subitems (b) and (c) of Title 4 GCA § 4405 are repealed**

11 ***and reenacted to read:***

12 “(b) The executive director may, with Commission approval,
13 hire such professional, clerical, and other staff as may be deemed
14 necessary to assist the Commission in performing its duties and
15 functions;

16 (c) The Commission may employ an Administrative Law Judge
17 (ALJ), full or part-time, to assist the Commission with the
18 adjudicatory responsibilities, or the Commission may retain a private
19 practice attorney or attorneys to serve as an ALJ on a case-by-case
20 basis. A decision by the ALJ shall be forwarded for review to the
21 Commission, which shall accept or reject in its entirety, the ALJ’s

1 decision. The ALJ shall follow procedures approved by the
2 Commission. The ALJ must be a Guam-licensed attorney.”

3 **Section 7. A new Title 4 GCA § 4410 is *added* as follows:**

4 **“§ 4410. Authority to Slot On-Going Cases into Open Hearing**
5 **Dates.**

6 “The Commission shall have the authority to slot an on-going
7 scheduled hearing into an open hearing date should a sooner hearing
8 date become available provided that: 1) Both sides agree; and 2) The
9 original public notice for the initial hearing met the requirements of
10 the Open Government Act. The public notice requirement of the
11 Open Government Act shall be deemed met for purposes of on-going
12 scheduled hearings relative to this Section if the original initial
13 hearing satisfied such requirements.”

14 **Section 8. A new 4 GCA § 4411 is *added* to read:**

15 **“§ 4411. Civil Service Commission Revolving Fund.**

16 (a) There is hereby created the Civil Service Commission
17 Revolving Fund, which shall be accounted for separately from the
18 General Fund. Monies in the revolving fund shall not lapse at the end
19 of a fiscal year but shall roll-over until used by the Commission.

20 (b) All monies received either as payment for Commission
21 publications, photocopying fees, training, presentations, or other

1 activities authorized by the Board shall be deposited into the
2 Revolving Fund. Expenditure authority over the revolving fund is
3 vested in the chair of the Commission.

4 (c) Moneys in the Revolving Fund shall be used to pay for
5 printing or photocopying supplies of the Commission, related costs
6 for creating or compiling Commission publications in electronic
7 media/format, materials for training, training of Commission staff,
8 and membership dues for professional organizations relevant to the
9 Commission. Moneys in the revolving fund shall not be used to pay
10 any personnel expenses.”

11 **Section 9. Title 4 GCA § 5105 is repealed and reenacted to read:**

12 **“§ 5105. Investigations by Civil Service Commission.**

13 When any person has reason to believe that an employee has
14 violated § 5103 he shall report the matter to the Civil Service
15 Commission. On receipt of such report or on receipt of such other
16 information which seems to the Commission to warrant an
17 investigation, the Commission shall investigate the matter in
18 accordance with the provisions of the rules and procedures
19 established by the Civil Service Commission and the following:

20 (a) All hearings shall be conducted before the entire
21 Commission; and

1 (b) The decision of the Commission shall include a
2 determination of whether a violation of § 5103 has occurred and
3 whether a violation warrants the removal of the employee from
4 his employment.”

5 **Section 10. Global Amendment.** The Guam Compiler of Laws shall
6 change all references to the “Civil Service Commission” in the Guam
7 Procurement Law, codified in Chapter 5 of Title 5 of the Guam Code
8 Annotated, to “Office of the Public Auditor.”

9 **Section 11. Savings Clause.** This Act and any repealer contained
10 herein shall not be construed as affecting any existing right acquired under
11 contract or acquired under statutes repealed or under any rule, regulation
12 or order adopted under the statutes. Repealers contained in this Act shall
13 not affect any proceeding instituted under or pursuant to prior law. The
14 enactment of this Act shall not have the effect of terminating, or in any way
15 modifying, any liability, civil or criminal, which shall already be in
16 existence on the date this Act becomes effective.

17 **Section 12. Effective Date.** This Act shall take effect upon its
18 enactment into law.

19 **Section 13. Severability.** If any provision of this Act or the
20 application of any such provision to any person or circumstance should be
21 held invalid by a court of competent jurisdiction, the remainder of this Act

- 1 or the application of its provisions to persons or circumstances other than
- 2 those to which it is held invalid shall not be affected thereby.

o

COMMITTEE ON RULES

I Mina' Trenta na Liheslaturan Guåhan • 30th Guam Legislature

155 Hesler Place, Hagatña, Guam 96910 • tel: (671)472-7679 • fax: (671)472-3547 • roryforguam@gmail.com

**SENATOR
RORY J.
RESPICIO
CHAIRPERSON**

**SENATOR
Judith P. Guthertz
VICE
CHAIRPERSON**

**MAJORITY
MEMBERS:**

Judith T. Won Pat
SPEAKER

Benjamin J. F. Cruz
VICE SPEAKER

Tina Rose Muña Barnes
LEGISLATIVE SECRETARY

Thomas C. Ada
SENATOR

Frank B. Aguon, Jr.
SENATOR

Adolpho B. Palacios, Sr.
SENATOR

Vicente C. Pangelinan
SENATOR

Matthew Rector
SENATOR

**MINORITY
MEMBERS:**

Frank F. Blas, Jr.
SENATOR


James V. Espaldon
SENATOR

April 7, 2009

MEMORANDUM

To: Clerk of the Legislature
I Mina' Trenta Na Liheslaturan Guåhan

Attorney Therese M. Terlaje, Legislative Legal Counsel
I Mina' Trenta Na Liheslaturan Guåhan

From: Senator Judith Paulette Guthertz, DPA 
Acting Chairperson, Committee on Rules

Subject: Referral of Bill Nos. 91 and 92

As Chairperson of the Committee on Rules, I am forwarding my referral of Bill Nos. 91 and 92.

Please ensure that the subject Bills are referred, in my name, to the respective Chairpersons, as shown on the attachment. I am also requesting that the same be forwarded to all Senators of *I Mina' Trenta Na Liheslaturan Guåhan*.

Should you have any questions, please contact Elaine V. Tajalle at 472-7679.

Si Yu'os Ma'åse'!

Attachment

2009 APR -7 PM 1:47
GDM

Bill Introduction/Referral 4/07/09

Bill	Sponsor	Description	Date Introduced	Date Referred	Committee Referred
91 (COR)	Matt Rector	An act to restore the authorized powers and personnel of the Civil Service Commission and Judicial Council, by repealing Subsection 2(c) of Chapter 11, Public Law 28-68 and Sections 31 through 48, inclusive, of Chapter IV of Public Law 28-68 the General Appropriations Act of Fiscal Year 2006 and amending 7 GCA § 5102 Section (F) and adding a new Section (I) to 4 GCA §4403 Duties of the Commission	4/06/09	4/07/09	Committee on Labor, the Public Structure, Public Libraries, and Technology
92 (COR)	J. P. Guthertz, A. B. Palacios, R. J. Respicio	An act to restore certain jurisdictions and clarify certain functions of the Civil Service Commission by repealing and reenacting Title 4 GCA §§ 4403, 4408, 4409, and 5105; Subitems (b) and (c) of Title 4 Gca § 4405; and <i>new</i> §§ 4410 and 4411.	4/06/09	4/07/09	Committee on Labor, the Public Structure, Public Libraries, and Technology

SENATOR MATT RECTOR

Chairman,

Committee on Labor, the Public Structure, Public Libraries and Technologies

Public Hearing

AGENDA

Monday, April 13, 2009 – 9:00 a.m.

Legislative Public Hearing Room, Hagatna

Bill No. 92 (COR) An Act To Restore Certain Jurisdictions And Clarify Certain Functions Of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA § 4405; And New §§ 4410 And 4411. **Authored by: J. P. Guthertz, A.B. Palacios, Jr., R. J. Respicio**

Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(C) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA §5102 Section (F) And Adding A New Section (i) To 4 GCA 4403 Duties Of The Commission. **Authored by: Matt Rector**

NOTE: A Public Hearing for Bill Nos. 91 & 92 will continue on Wednesday, April 15, 2009 at 5:30 PM in the Legislature's Public Hearing Room. Formal notice has been sent out.

Bill No. 81 (COR) An Act To Amend Subsection (f) of §15102, To Add Subsection (g) To §15102 All Of Chapter 15 Of Title 4 Of The Guam Code Annotated, Relative To The Disclosure Of Conflict Of Interests. **Authored by: J. T. Won Pat, T. R. Barnes**

Bill No. 65 (LS) An Act To Amend §1900, Chapter 19, Title 1 Guam Code Annotated To Rename The Office Of The Public Auditor To The Office Of Public Accountability. **Authored by: A. B. Palacios, Sr.**

Copies of the Bills mentioned above may be found on the official Guam Legislature website at www.guamlegislature.com. Individuals requiring special accommodations or services, please contact Justin Parvin or Fred Burgos at 734-6288.

The Committee will continue to receive testimonies for the next ten (10) days. Please fax testimonies to 734-8085, e-mail at matt@mattrector.com, or drop the testimonies to my office at 153 Sesame Street, Suite B, Mangilao or in my mailbox in the Reproduction room in the Legislature.³

Justin

From: therese@mattrector.com
Sent: Wednesday, April 08, 2009 6:09 PM
To: life@guampdn.com; msilva@spbgum.com; jtyquiengco@spbgum.com; kevin@spbgum.com; rgibson@spbgum.com; parroyo@spbgum.com; blognews@afclcio.org; info@chinesetimesguam.com; fnhp-general@aflists.aft.org; georgebamba@hotmail.com; gerry@mvguam.com; hr100prod@hitradio100.com; anitra@kuam.com; csanagustin@kuam.com; kprg@guam.net; ksto@ite.net; kstonews@ite.net; miguel@kktb.com; krisgaza@yahoo.com; hottips@kuam.com; newsdirector@kuam.com; tony@kuam.com; jason@kuam.com; annie@kuam.com; bettyann@kuam.com; amier@mvguam.com
Subject: 1st Notice of Public Hearing – Wednesday, April 15, 2009 – 5:30 p.m. Committee on Labor, the Public Structure, Public Libraries and Technology
Attachments: _AVG certification_.txt

April 8, 2009
For Immediate Release

Subject: Notice of Public Hearing – Wednesday, April 15, 2009 – 5:30 p.m.

Please be advised that the Committee on Labor, the Public Structure, Public Libraries and Technology will be conducting a public hearing on Wednesday, April 15, 2009 beginning at 5:30 p.m. in the Legislature's Public Hearing Room. On the Agenda are the following:

Bill No. 92 (COR) An Act To Restore Certain Jurisdictions And Clarify Certain Functions Of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA § 4405; And New §§ 4410 And 4411.

Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(C) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA §5102 Section (F) And Adding A New Section (i) To 4 GCA 4403 Duties Of The Commission.

Bill No. 60 (COR) An Act To Established Minimum Qualifications For Management Level Uniform Positions In The Guam Police Department, By Adding New Subsections 771102.2, 77110.3, And 77110.4 To 10 GCA, Chapter 77, Section 77110, Appointment Of Deputy Chief Of Police.

The committee requests that, if written testimony is to be presented at the hearing, copies be submitted one day prior to the public hearing date to the Office of Senator Matt Rector via fax to 734-8085 or email to Matt@MattRector.com.

Copies of the Bills mentioned above may be found on the official Guam Legislature website at www.guamlegislature.com.

Individuals requiring special accommodations or services, please contact Justin Parvin or Fred Burgos at 734-6288.

Justin

From: therese@mattrector.com
Sent: Monday, April 13, 2009 4:05 PM
To: life@guampdn.com; msilva@spbgum.com; jtyquiengco@spbgum.com; kevin@spbgum.com; rgibson@spbgum.com; parroyo@spbgum.com; blognews@afcio.org; info@chinesetimesgum.com; fnhp-general@afllists.aft.org; georgebamba@hotmail.com; gerry@mvgum.com; hr100prod@hitradio100.com; anitra@kuam.com; csanagustin@kuam.com; kprg@gum.net; ksto@ite.net; kstone@ite.net; miguel@kktb.com; krisgaza@yahoo.com; hottips@kuam.com; newsdirector@kuam.com; tony@kuam.com; jason@kuam.com; annie@kuam.com; bettyann@kuam.com; amier@mvgum.com
Subject: 2nd Notice of Public Hearing – Wednesday, April 15, 2009 – 5:30 p.m. Committee on Labor, the Public Structure, Public Libraries and Technology
Attachments: _AVG certification_.txt

April 13, 2009
For Immediate Release

Subject: Notice of Public Hearing – Wednesday, April 15, 2009 – 5:30 p.m.

Please be advised that the Committee on Labor, the Public Structure, Public Libraries and Technology will be conducting a public hearing on Wednesday, April 15, 2009 beginning at 5:30 p.m. in the Legislature's Public Hearing Room. On the Agenda are the following:

Bill No. 92 (COR) An Act To Restore Certain Jurisdictions And Clarify Certain Functions Of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA § 4405; And New §§ 4410 And 4411.

Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(C) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA §5102 Section (F) And Adding A New Section (i) To 4 GCA 4403 Duties Of The Commission.

***Note: Bill No's 91 and 92 are a continuation from a scheduled public hearing on Monday April 13, 2009. Formal notice has been sent out.

Bill No. 60 (COR) An Act To Established Minimum Qualifications For Management Level Uniform Positions In The Guam Police Department, By Adding New Subsections 771102.2, 77110.3, And 77110.4 To 10 GCA, Chapter 77, Section 77110, Appointment Of Deputy Chief Of Police.

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Individuals requiring special accommodations or services, please contact Justin Parvin or Fred Burgos at 734-6288.

The committee requests that, if written testimony is to be presented at the hearing, copies be submitted one day prior to the public hearing date to the Office of Senator Matt Rector via fax to 734-8085 or email to Matt@MattRector.com.

Justin

From: therese@mattrector.com
Sent: Tuesday, April 07, 2009 10:43 AM
To: life@guampdn.com; msilva@spbgum.com; jtyquiengco@spbgum.com; kevin@spbgum.com; rgibson@spbgum.com; parroyo@spbgum.com; blognews@afcio.org; info@chinesetimesguam.com; fnhp-general@aftlists.aft.org; georgebamba@hotmail.com; gerry@mvgum.com; hr100prod@hitradio100.com; anitra@kuam.com; csanagustin@kuam.com; kprg@guam.net; ksto@ite.net; kstonews@ite.net; miguel@kktb.com; krisgaza@yahoo.com; hottips@kuam.com; newsdirector@kuam.com; tony@kuam.com; jason@kuam.com; annie@kuam.com; bettyann@kuam.com; amier@mvgum.com
Subject: PUBLIC HEARING NOTICE Committee on Labor, the Public Structure, Public Libraries and Technology
Attachments: _AVG certification_.txt

Notice of Public Hearing - Monday, April 13, 2009 - 9:00 a.m.

Please be advised that the Committee on Labor, the Public Structure, Public Libraries and Technology will be conducting a public hearing on Monday, April 13, 2009 beginning at 9:00 a.m. in the Legislature's Public Hearing Room. On the Agenda are the following:

Bill No. 92 (COR) An Act To Restore Certain Jurisdictions And Clarify Certain Functions Of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA § 4405; And New §§ 4410 And 4411.

Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(C) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA §5102 Section (F) And Adding A New Section (i) To 4 GCA 4403 Duties Of The Commission.

Bill No. 81 (COR) An Act To Amend Subsection (f) of §15102, To Add Subsection (g) To §15102 All Of Chapter 15 Of Title 4 Of The Guam Code Annotated, Relative To The Disclosure Of Conflict Of Interests.

Bill No. 65 (LS) An Act To Amend §1900, Chapter 19, Title 1 Guam Code Annotated To Rename The Office Of The Public Auditor To The Office Of Public Accountability.

Bill No. 61 (COR) An Act To Add A New Article 5 To Chapter 6 Of 17GCA Relative To Recommendations On Medicating Students.

Copies of the Bills mentioned above may be found on the official Guam Legislature website at www.guamlegislature.com.

The committee requests that, if written testimony is to be presented at the hearing, copies be submitted one day prior to the public hearing date to the Office of Senator Matt Rector via fax to 734-8085 or email to www.Matt@MattRector.com.

Individuals requiring special accommodations of services, please contact Justin P. or Fred B. at 734-6288.

Justin

From: therese@mattrector.com
Sent: Wednesday, April 08, 2009 6:02 PM
To: life@guampdn.com; msilva@spbgum.com; jtyquiengco@spbgum.com;
kevin@spbgum.com; rgibson@spbgum.com; parroyo@spbgum.com;
blognews@afcio.org; info@chinesetimesguam.com; fnhp-general@afflists.aft.org;
georgebamba@hotmail.com; gerry@mvgum.com; hr100prod@hitradio100.com;
anitra@kuam.com; csanagustin@kuam.com; kprg@guam.net; ksto@ite.net;
kstonews@ite.net; miguel@ktkb.com; krisgaza@yahoo.com; hottips@kuam.com;
newsdirector@kuam.com; tony@kuam.com; jason@kuam.com; annie@kuam.com;
bettyann@kuam.com; amier@mvgum.com
Subject: 2nd Notice of PUBLIC HEARING Committee on Labor, the Public Structure, Public
Libraries and Technology
Attachments: _AVG certification_.txt

April 8, 2009
For Immediate Release

Subject: SECOND NOTICE of Public Hearing - Monday, April 13, 2009 - 9:00 a.m.

Please be advised that the Committee on Labor, the Public Structure, Public Libraries and Technology will be conducting a public hearing on Monday, April 13, 2009 beginning at 9:00 a.m. in the Legislature's Public Hearing Room.

On the Agenda are the following:

Bill No. 92 (COR) An Act To Restore Certain Jurisdictions And Clarify Certain Functions Of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA § 4405; And New §§ 4410 And 4411.

Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(C) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA §5102 Section (F) And Adding A New Section (i) To 4 GCA 4403 Duties Of The Commission.

*** NOTE: A Public Hearing for Bill Nos. 91 & 92 will continue on Wednesday, April 15, 2009 at 5:30 PM in the Legislature's Public Hearing Room. Formal notice will be forthcoming. ***

Bill No. 81 (COR) An Act To Amend Subsection (f) of §15102, To Add Subsection (g) To §15102 All Of Chapter 15 Of Title 4 Of The Guam Code Annotated, Relative To The Disclosure Of Conflict Of Interests.

Bill No. 65 (LS) An Act To Amend §1900, Chapter 19, Title 1 Guam Code Annotated To Rename The Office Of The Public Auditor To The Office Of Public Accountability.

Bill No. 61 (COR) An Act To Add A New Article 5 To Chapter 6 Of 17GCA Relative To Recommendations On Medicating Students. CORRECTION: BILL 61 WILL NOT BE HEARD.

Copies of the Bills mentioned above may be found on the official Guam Legislature website at www.guamlegislature.com. Individuals requiring special accommodations or services, please contact Justin Parvin or Fred Burgos at 734-6288.

The committee requests that, if written testimony is to be presented at the hearing, copies be submitted one day prior to the public hearing date to the Office of Senator Matt Rector via fax to 734-8085 or email to Matt@MattRector.com.

Individuals requiring special accommodations of services, please contact Justin P. or Fred B. at 734-6288.



SENATOR MATT RECTOR

Chairman, Committee on labor, the public structure, public libraries and technology

I Mina' Trenta na Liheslaturan Guahan

Thirtieth Guam Legislature



April 13, 2009

MEMORANDUM

To: All Members/Senators
Committee on Labor, the Public Structure, Public Libraries and Technology

From: Senator Matt Rector
Chairman

Subject: **Notice of Public Hearing – Wednesday, April 15, 2009 – 5:30 p.m.**

Please be advised that the Committee on Labor, the Public Structure, Public Libraries and Technology will be conducting a public hearing on Wednesday, April 15, 2009 beginning at 5:30 p.m. in the Legislature's Public Hearing Room. On the Agenda are the following:

Bill No. 92 (COR) An Act To Restore Certain Jurisdictions And Clarify Certain Functions Of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA § 4405; And New §§ 4410 And 4411.

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Note: Bill No's 91 and 92 are a continuation from a scheduled public hearing on Monday April 13, 2009. Formal notice has been sent out.

Bill No. 60 (COR) An Act To Established Minimum Qualifications For Management Level Uniform Positions In The Guam Police Department, By Adding New Subsections 77110.2, 77110.3, And 77110.4 To 10 GCA, Chapter 77, Section 77110, Appointment Of Deputy Chief Of Police.

Copies of the Bills mentioned above may be found on the official Guam Legislature website at www.guamlegislature.com. Individuals requiring special accommodations or services, please contact Justin Parvin or Fred Burgos at 734-6288.

I look forward to your attendance during this hearing. Should you have any questions, suggestions or comments concerning the hearing, please feel free to share them with me. *Si Yu'os Ma'ase!*

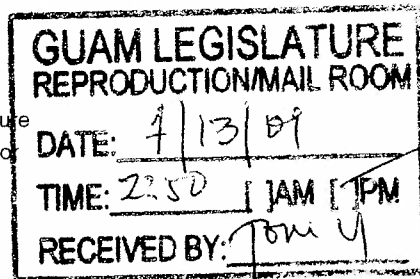
Address
153 Sesame Street, Suite B
Mangilao, Guam 96923

Telephone:
(671)734-6288
Fax No.:
(671)734-8085

Email:
Matt@mattrector.com

Website:
www.MattRector.com

cc: Clerk of Legislature
Executive Director
Protocol
Audio/Video
All Media



Senseramente

MATT RECTOR



SENATOR MATT RECTOR

Chairman, Committee on labor, the public structure, public libraries and technology
I Mina' Trenta na Liheslaturan Guahan
Thirtieth Guam Legislature



April 8, 2009

MEMORANDUM

To: All Members/Senators
Committee on Labor, the Public Structure, Public Libraries and Technology

From: Senator Matt Rector
Chairman

Subject: **Notice of Public Hearing – Wednesday, April 15, 2009 – 5:30 p.m.**

Please be advised that the Committee on Labor, the Public Structure, Public Libraries and Technology will be conducting a public hearing on Wednesday, April 15, 2009 beginning at 5:30 p.m. in the Legislature's Public Hearing Room. On the Agenda are the following:

Bill No. 92 (COR) An Act To Restore Certain Jurisdictions And Clarify Certain Functions Of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA § 4405; And New §§ 4410 And 4411.

Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(C) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA §5102 Section (F) And Adding A New Section (i) To 4 GCA 4403 Duties Of The Commission.

Bill No. 60 (COR) An Act To Established Minimum Qualifications For Management Level Uniform Positions In The Guam Police Department, By Adding New Subsections 771102.2, 77110.3, And 77110.4 To 10 GCA, Chapter 77, Section 77110, Appointment Of Deputy Chief Of Police.

Copies of the Bills mentioned above may be found on the official Guam Legislature website at www.guamlegislature.com. Individuals requiring special accommodations or services, please contact Justin Parvin or Fred Burgos at 734-6288.

I look forward to your attendance during this hearing. Should you have any questions, suggestions or comments concerning the hearing, please feel free to share them with me. *Si Yu'os Ma'ase!*

Senseramente

cc: Clerk of Legislature
Executive Director
Protocol
Audio/Video
All Media

GUAM LEGISLATURE
REPRODUCTION/MAIL ROOM

DATE: 4-8-09

TIME: 4:19 | AM | PM

RECEIVED BY: [Signature]

MATT RECTOR



SENATOR MATT RECTOR

Chairman, Committee on labor, the public structure, public libraries and technology

I Mina' Trenta na Liheslaturan Guahan

Thirtieth Guam Legislature



April 8, 2009

MEMORANDUM

To: All Members/Senators
Committee on Labor, the Public Structure, Public Libraries and Technology

From: Senator Matt Rector
Chairman

Subject: **Second Notice of Public Hearing – Monday, April 13, 2009 – 9:00 a.m.**

Please be advised that the Committee on Labor, the Public Structure, Public Libraries and Technology will be conducting a public hearing on Monday, April 13, 2009 beginning at 9:00 a.m. in the Legislature's Public Hearing Room. On the Agenda are the following:

Bill No. 92 (COR) An Act To Restore Certain Jurisdictions And Clarify Certain Functions Of The Civil Service Commission By Repealing And Reenacting Title 4 GCA §§ 4403, 4408, 4409, And 5105; Subitems (b) And (c) Of Title 4 GCA § 4405; And New §§ 4410 And 4411.

Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(C) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA §5102 Section (F) And Adding A New Section (i) To 4 GCA 4403 Duties Of The Commission.

***** NOTE: A Public Hearing for Bill Nos. 91 & 92 will continue on Wednesday, April 15, 2009 at 5:30 PM in the Legislature's Public Hearing Room. Formal notice will be forthcoming. *****

Bill No. 81 (COR) An Act To Amend Subsection (f) of §15102, To Add Subsection (g) To §15102 All Of Chapter 15 Of Title 4 Of The Guam Code Annotated, Relative To The Disclosure Of Conflict Of Interests.

Bill No. 65 (LS) An Act To Amend §1900, Chapter 19, Title 1 Guam Code Annotated To Rename The Office Of The Public Auditor To The Office Of Public Accountability.

~~**Bill No. 61 (COR)** An Act To Add A New Article 5 To Chapter 6 Of 17GCA Relative To Recommendations On Medicating Students.~~

Copies of the Bills mentioned above may be found on the official Guam Legislature website at www.guamlegislature.com. Individuals requiring special accommodations or services, please contact Justin Parvin or Fred Burgos at 734-6288.

I look forward to your attendance during this hearing. Should you have any questions, suggestions or comments concerning the hearing, please feel free to share them with me. *Si Yu'os Ma'ase!*

cc: Clerk of Legislature
Executive Director
Protocol
Audio/Video
All Media

GUAM LEGISLATURE *Senseramente*
REPRODUCTION/MAIL ROOM

DATE: 4-8-09

TIME: 4:19 [] AM [] PM

RECEIVED BY: [Signature] **MATT RECTOR**

Address
153 Sesame Street, Suite B
Mangilao, Guam 96923

Telephone:
(671)734-6288
Fax No.:
(671)734-8085

Email:
Matt@mattrector.com

Website:
www.MattRector.com



SENATOR MATT RECTOR

Chairman, Committee on labor, the public structure, public libraries and technology

I Mina' Trenta na Liheslaturan Guahan

Thirtieth Guam Legislature



April 7, 2009

MEMORANDUM

To: All Members/Senators
 Committee on Labor, the Public Structure, Public Libraries and Technology

From: Senator Matt Rector
 Chairman

Subject: **Notice of Public Hearing – Monday, April 13, 2009 – 9:00 a.m.**

Please be advised that the Committee on Labor, the Public Structure, Public Libraries and Technology will be conducting a public hearing on Monday, April 13, 2009 beginning at 9:00 a.m. in the Legislature's Public Hearing Room. On the Agenda are the following:

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Bill No. 91 (COR) An Act To Restore The Authorized Powers And Personnel Of The Civil Service Commission And Judicial Council, By Repealing Subsection 2(C) Of Chapter 11, Public Law 28-68 And Sections 31 Through 48, Inclusive, Of Chapter IV Of Public Law 28-68 The General Appropriations Act Of Fiscal Year 2006 And Amending 7 GCA §5102 Section (F) And Adding A New Section (i) To 4 GCA 4403 Duties Of The Commission.

Bill No. 81 (COR) An Act To Amend Subsection (f) of §15102, To Add Subsection (g) To §15102 All Of Chapter 15 Of Title 4 Of The Guam Code Annotated, Relative To The Disclosure Of Conflict Of Interests.

Bill No. 65 (LS) An Act To Amend §1900, Chapter 19, Title 1 Guam Code Annotated To Rename The Office Of The Public Auditor To The Office Of Public Accountability.

Bill No. 61 (COR) An Act To Add A New Article 5 To Chapter 6 Of 17GCA Relative To Recommendations On Medicating Students.

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I look forward to your attendance during this hearing. Should you have any questions, suggestions or comments concerning the hearing, please feel free to share them with me. *Si Yu'os Ma'ase!*

Senseramente

cc: Clerk of Legislature
 Executive Director
 Protocol
 Audio/Video
 All Media

4.7.09
 10:12 /

MATT RECTOR

Address
 153 Sesame Street, Suite B
 Mangilao, Guam 96923

Telephone:
 (671)734-6288
 Fax No.:
 (671)734-8085

Email:
 Matt@mattrector.com

Website:
 www.MattRector.com

8:30 a.m. on Easter Sunday at the Plaza de España.

▲ **Hilton Tree Bar**

From 12:45 p.m. to 1:15 p.m. and 2 p.m. to 2:30 p.m.

▲ **UnderWater World**

The underwater Easter Egg Hunt will be from 10 a.m. to 8 p.m. The Dive Bunny show will be in the main aquarium tank from 1 p.m. to 2 p.m. followed by the daily shark feeding at 2 p.m. The Egg Hunt and Dive Bunny show is complementary with general admission price and free for local membership card holders. For more information, e-mail TammyJo@aquariumteam.com or call 649-9191.

GOVERNMENT MEETINGS

The Guam Board of Allied Health Examiners meeting that was rescheduled for today has been canceled. For more information, call 735-7406/11.

April 13

Committee on Labor, Public

Structure, Public Libraries and Technology: Public hearing 9 a.m., Legislature's public hearing room, Hagåtña. Bill 92, to restore certain jurisdictions and clarify certain functions of the Civil Service Commission; Bill 91, to restore authorized powers and personnel of CSC and Judicial Council; Bill 81, relative to disclosure of conflict of interests; Bill 65, renaming Office of the Public Auditor to Office of Public Accountability; Bill 61, relative to recommendations on medicating students. Copies of bills may found at www.guamlegislature.com. Submit written testimony to office of Sen. Matt Rector by fax 734-8085 or e-mail: www.Matt@MattRector.com. For special accommodations, call Justin or Fred, 734-6288.

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) REGULAR SESSION

Bill No. 92(COR)

Introduced by:

J.P. GUTHERTZ
A.B. PALACIOS
R.J. RESPICIO

[Handwritten signatures and initials]

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AN ACT TO RESTORE CERTAIN JURISDICTIONS
AND CLARIFY CERTAIN FUNCTIONS OF THE
CIVIL SERVICE COMMISSION BY REPEALING
AND REENACTING TITLE 4 GCA §§ 4403, 4408,
4409, AND 5105; SUBITEMS (b) AND (c) OF TITLE 4
GCA § 4405; AND NEW §§ 4410 AND 4411

1 BE IT ENACTED BY I LIHESLATURAN GUÅHAN:

2 Section 1. Legislative Findings and Intent. *I Liheslatura* finds that the
3 passage of Public Law 28-68 resulted in most of the non-adjudicatory
4 functions of the Civil Service Commission (CSC) being repealed entirely or
5 transferred to the Director of the Department of Administration (DOA);
6 one major function being the administration of compensation and
7 classification for government of Guam employees.

8 Much confusion was also created by P.L. 28-68, specifically whether
9 investigations performed by the CSC are considered adjudicatory or non-
10 adjudicatory, and have resulted in "Whistle-Blower" complaints and
11 furlough appeals remaining in limbo. Some other check-and-balance
12 functions once performed by the CSC were eliminated by Public Law 28-68
13 and have resulted in a lack of uniformity in the application of the merit

1 system and some questionable employment practices, including the post-
2 audit review and the full null and void authority. Several GovGuam
3 departments, including the Guam Memorial Hospital Authority, Guam
4 Power Authority, and Guam Waterworks Authority, have expressed their
5 desire for the Civil Service Commission to have the jurisdiction to hear
6 certain appeals of their employees.

7 *I Liheslatura* now finds the restoration of jurisdiction and clarification
8 of certain functions of the CSC are necessary and will improve the merit
9 system and better fulfill the requirements of Section 1422c of the Organic
10 Act which states:

11 “The Legislature shall establish a merit system and, as far as
12 practicable, appointments and promotions shall be made in
13 accordance with such merit system. The Government of Guam
14 may by law establish a Civil Service Commission to administer
15 the merit system.”

16 Therefore, it is the intent of the *I Liheslaturan Guåhan* to make the
17 amendments herein in an effort to restore jurisdiction to the CSC to the
18 extent necessary to administer the merit system and to eliminate the strict
19 demarcation of adjudicatory versus non-adjudicatory functions imposed by
20 Public 28-68 and other laws.

21 **Section 2. Title 4 GCA § 4403 is repealed and reenacted to read:**

1 **“§ 4403. Duties of the Commission.**

2 The Commission has the following duties, powers, and
3 responsibilities:

4 (a) It shall investigate conditions of government
5 employment as it deems necessary and report findings and
6 recommendations to the Governor and Legislature annually
7 and also post such reports on the Commission’s website;

8 (b) It shall hear appeals from the adverse actions taken to
9 suspend, demote, or dismiss an employee from the classified
10 service if such right of appeal to the Commission is established
11 in the personnel rules governing the employee; however, it may
12 not hear any appeal of an action taken to suspend, demote, or
13 dismiss an employee of the Government of Guam who has not
14 been hired through the competitive hiring procedures of the
15 personnel rules of the Government of Guam, as such personnel
16 rules required at the time of the hiring of the employee, nor any
17 unclassified employee;

18 (c) To hear appeals of furloughs, lay-offs, grievance
19 complaints, and Equal Employment Opportunity complaints of
20 an employee from the classified service if such right of appeal
21 to the Commission is established in the personnel rules

1 governing the employee. The Commission shall adopt rules
2 and procedures for furlough appeals, lay-off appeals, grievance
3 complaint appeals, and Equal Employment Opportunity
4 complaint appeals;

5 (d) The Commission may investigate and set aside and
6 declare null and void any personnel action of an employee in
7 the classified service if the Commission finds after conducting
8 the necessary investigation that the personnel action was taken
9 in violation of personnel laws or rules, provided, however, that
10 this Section shall not be deemed to permit appeals by
11 employees from adverse actions not covered in Subsection (b)
12 above. The agency head shall cooperate and assist with the
13 Commission's investigation. Prior to declaring any personnel
14 action null and void, the Commission shall provide written
15 notice of the alleged violation to the agency head. The agency
16 head shall respond within ten (10) calendar days after receipt of
17 the notice to the Commission's proposed action. All actions
18 taken by the Commission pursuant to this Section shall be
19 taken within one-hundred-eighty (180) calendar days after the
20 personnel action or complaint is filed with the Commission.
21 The Civil Service Commission shall submit a copy of its final

1 decision to *I Liheslatura* by the next working day. The
2 Commission shall adopt rules and regulations to effectuate this
3 Section, including the requirement of a written complaint to
4 initiate any investigation. The Commission's decision shall be
5 final but subject to judicial review;

6 (e) It shall conduct reviews of notices of personnel actions
7 of employees from the classified service. All notices of
8 personnel actions regarding the classified service shall be filed
9 with the Commission within twenty (20) calendar days after
10 their effective date. Failure to submit the required notices of
11 personnel actions within ten (10) calendar days after written
12 request by the Commission will immediately result in a ten
13 percent (10%) salary reduction of the agency head and his
14 deputy until compliance is made. The Civil Service
15 Commission shall submit a copy of its written request to the
16 agency head and his deputy for compliance with this Section to
17 *I Liheslatura* by the next working day;

18 (f) The jurisdiction of the Commission shall also apply to
19 the adverse action appeals of certified, technical, and
20 professional personnel of the Guam Power Authority and
21 Guam Waterworks Authority; the jurisdiction of the

1 Commission shall apply to all classified personnel of the Guam
2 Memorial Hospital Authority;

3 (g) The provisions of this Section shall not apply to the
4 Judiciary or *I Liheslaturan Guåhan* in compliance with the
5 doctrine of the Separation of Powers, unless such separate
6 branch of government opts to make them applicable by
7 submitting to the jurisdiction of the Commission; and all
8 references to classified employees will be deemed to mean
9 classified employees of the Executive Branch, including
10 agencies and authorities;

11 (h) The jurisdiction of the Commission shall not extend to
12 academic personnel of the Guam Community College and the
13 University of Guam, except upon mutual consent by the
14 governing board of the respective institution and the
15 Commission, nor to any position or person, appeal or
16 proceeding of whatever kind or description if the position is
17 denominated "unclassified" in this Title, except to the extent
18 explicitly permitted in this Section; and

19 (i) The jurisdiction of the Commission shall extend to
20 investigating Public Employee Protection Act complaints (a.k.a.

1 “whistle-blower” complaints) pursuant to 4 GCA § 4501 et
2 seq.”

3 **Section 3. Title 4 GCA § 4406 is *amended* by adding the following at**
4 **the end of the existing subsection:**

5 “The party who appeals the Commission’s decision to the
6 court is responsible for providing certified transcripts of
7 hearings and shall bear associated costs.”

8 **Section 4. Title 4 GCA § 4408 is *repealed and reenacted* to read:**

9 **“§ 4408. Enforcement of Orders.**

10 The Civil Service Commission may seek enforcement of its
11 decisions and orders in all matters permitted by this Title by
12 application to the Superior Court of Guam for the appropriate
13 remedy. In seeking enforcement of its decisions and orders, the
14 application for enforcement shall be entitled, “The Civil Service
15 Commission v. (department, agency, instrumentality, or officer).”
16 No enforcement shall be commenced against any department head
17 or other employee or officer of the Government of Guam in his
18 personal capacity.”

19 **Section 5. Title 4 GCA § 4409 is *repealed and reenacted* to read:**

20 **“§ 4409. Administrative Adjudication Act Not Applicable.**

1 Neither the rules of the Civil Service Commission, nor any
2 procedures prescribed thereunder are subject to the Administrative
3 Adjudication Act. The Commission shall post on its website and
4 provide a copy of its proposed rules or procedures and any
5 amendments thereafter to *I Liheslaturan Guåhan*, and such rules or
6 procedures shall take effect thirty (30) calendar days after submission
7 unless disapproved by a majority of the members of *I Liheslaturan*
8 *Guåhan*. Copies of effective rules and procedures shall be made
9 available on the Commission’s website.”

10 **Section 6. Subitems (b) and (c) of Title 4 GCA § 4405 are repealed**
11 ***and reenacted to read:***

12 “(b) The executive director may, with Commission approval,
13 hire such professional, clerical, and other staff as may be deemed
14 necessary to assist the Commission in performing its duties and
15 functions;

16 (c) The Commission may employ an Administrative Law Judge
17 (ALJ), full or part-time, to assist the Commission with the
18 adjudicatory responsibilities, or the Commission may retain a private
19 practice attorney or attorneys to serve as an ALJ on a case-by-case
20 basis. A decision by the ALJ shall be forwarded for review to the
21 Commission, which shall accept or reject in its entirety, the ALJ’s

1 decision. The ALJ shall follow procedures approved by the
2 Commission. The ALJ must be a Guam-licensed attorney.”

3 **Section 7. A new Title 4 GCA § 4410 is *added* as follows:**

4 **“§ 4410. Authority to Slot On-Going Cases into Open Hearing**
5 **Dates.**

6 “The Commission shall have the authority to slot an on-going
7 scheduled hearing into an open hearing date should a sooner hearing
8 date become available provided that: 1) Both sides agree; and 2) The
9 original public notice for the initial hearing met the requirements of
10 the Open Government Act. The public notice requirement of the
11 Open Government Act shall be deemed met for purposes of on-going
12 scheduled hearings relative to this Section if the original initial
13 hearing satisfied such requirements.”

14 **Section 8. A new 4 GCA § 4411 is *added* to read:**

15 **“§ 4411. Civil Service Commission Revolving Fund.**

16 (a) There is hereby created the Civil Service Commission
17 Revolving Fund, which shall be accounted for separately from the
18 General Fund. Monies in the revolving fund shall not lapse at the end
19 of a fiscal year but shall roll-over until used by the Commission.

20 (b) All monies received either as payment for Commission
21 publications, photocopying fees, training, presentations, or other

1 activities authorized by the Board shall be deposited into the
2 Revolving Fund. Expenditure authority over the revolving fund is
3 vested in the chair of the Commission.

4 (c) Moneys in the Revolving Fund shall be used to pay for
5 printing or photocopying supplies of the Commission, related costs
6 for creating or compiling Commission publications in electronic
7 media/format, materials for training, training of Commission staff,
8 and membership dues for professional organizations relevant to the
9 Commission. Moneys in the revolving fund shall not be used to pay
10 any personnel expenses.”

11 **Section 9. Title 4 GCA § 5105 is *repealed and reenacted to read:***

12 **“§ 5105. Investigations by Civil Service Commission.**

13 When any person has reason to believe that an employee has
14 violated § 5103 he shall report the matter to the Civil Service
15 Commission. On receipt of such report or on receipt of such other
16 information which seems to the Commission to warrant an
17 investigation, the Commission shall investigate the matter in
18 accordance with the provisions of the rules and procedures
19 established by the Civil Service Commission and the following:

20 (a) All hearings shall be conducted before the entire
21 Commission; and

1 (b) The decision of the Commission shall include a
2 determination of whether a violation of § 5103 has occurred and
3 whether a violation warrants the removal of the employee from
4 his employment.”

5 **Section 10. Global Amendment.** The Guam Compiler of Laws shall
6 change all references to the “Civil Service Commission” in the Guam
7 Procurement Law, codified in Chapter 5 of Title 5 of the Guam Code
8 Annotated, to “Office of the Public Auditor.”

9 **Section 11. Savings Clause.** This Act and any repealer contained
10 herein shall not be construed as affecting any existing right acquired under
11 contract or acquired under statutes repealed or under any rule, regulation
12 or order adopted under the statutes. Repealers contained in this Act shall
13 not affect any proceeding instituted under or pursuant to prior law. The
14 enactment of this Act shall not have the effect of terminating, or in any way
15 modifying, any liability, civil or criminal, which shall already be in
16 existence on the date this Act becomes effective.

17 **Section 12. Effective Date.** This Act shall take effect upon its
18 enactment into law.

19 **Section 13. Severability.** If any provision of this Act or the
20 application of any such provision to any person or circumstance should be
21 held invalid by a court of competent jurisdiction, the remainder of this Act

- 1 or the application of its provisions to persons or circumstances other than
- 2 those to which it is held invalid shall not be affected thereby.

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