


I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

2011 NOV 30
11:10:54

BILL NO. 387-31 (kor)

Introduced by:

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AN ACT TO ADD A NEW ITEM (J) TO SECTION 4403 OF ARTICLE 4, CHAPTER 4 OF TITLE 4, GUAM CODE ANNOTATED; AND TO AMEND ITEMS (A), (D) AND (E) OF SECTION 9301 AND TO AMEND ITEM (B) OF SECTION 9303 ALL OF ARTICLE 3, CHAPTER 9 OF TITLE 5, GUAM CODE ANNOTATED RELATIVE TO THE ADMINISTRATIVE ADJUDICATION LAW TO INCLUDE A REVIEW BY THE CIVIL SERVICE COMMISSION FOR PROPOSED PERSONNEL RULES AND REGULATIONS, AND TO FURTHER ENHANCE TRANSPARENCY BY REQUIRING THE ELECTRONIC PUBLISHING OF PROPOSED RULES AND REGULATIONS.

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

2 **Section 1. Findings and intent.** *I Liheslaturan Guahan* finds that
3 the Civil Service Commission has expressed concern that there is a lack of
4 uniformity in government of Guam personnel rules and regulations and has
5 requested to be part of the review process for proposed rules and regulations.
6 Therefore, it is the intent of *I Liheslatura* to amend the law to allow the
7 Civil Service Commission to review proposals in order to provide for greater
8 uniformity to the rule-making process throughout agencies and departments.

9 **Section 2. A new item (j) is hereby added to § 4403 of Chapter 4,**
10 **Article 4 of Title 4, Guam Code Annotated, 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 employment as it
5 deems necessary and report its findings and recommendations to *I*
6 *Maga 'lahi* (the Governor) and *I Liheslatura* (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 suspend,
9 demote or dismiss an employee from the classified service *if* such
10 right of appeal to the Commission is established in the personnel rules
11 governing the employee; however, it may *not* hear any appeal of an
12 action taken to suspend, demote or dismiss an employee of the
13 government of Guam who has *not* been hired through the competitive
14 hiring procedures of the personnel rules of the government of Guam,
15 as such personnel rules required at the time of the hiring of the
16 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
19 the classified service *if* such right of appeal to the Commission is
20 established in the personnel rules governing the employee. The
21 Commission *shall* adopt rules and procedures for furlough appeals,
22 lay-off appeals, grievance complaint appeals, and Equal Employment
23 Opportunity complaint appeals;

24 (d) The Commission may investigate and set aside and declare null
25 and void any personnel action of an employee in the classified service
26 *if* the Commission finds after conducting the necessary investigation
27 that the personnel action was taken in violation of personnel laws or

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

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

1 (f) The jurisdiction of the Commission *shall* also apply to the
2 adverse action appeals of certified, technical, and professional
3 personnel of the Guam Power Authority and the Guam Waterworks
4 Authority; the jurisdiction of the Commission *shall* apply to all
5 classified personnel of the Guam Memorial Hospital Authority;

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

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

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

24 (j) The Commission shall review proposed personnel rules and
25 regulations proffered by government of Guam agencies and
26 departments in the executive branch, including autonomous agencies,
27 before said proposed rules are provided to the Guam Legislature for

1 consideration pursuant to the Administrative Adjudication Law. The
2 purpose of the Commission review is to provide for greater uniformity
3 to the rule-making process throughout agencies and departments.

4 **Section 3. Items (a), (d) and (e) of § 9301 Article 3, Chapter 9 of**
5 **Title 5, Guam Code Annotated are hereby amended to read:**

6 “§ 9301. Adoption, Repeal, Recession or Amendment of Rules:
7 Procedure.

8 (a) Before any rule is adopted, amended, rescinded or repealed by
9 any agency it shall cause a notice to be published in a newspaper of
10 general circulation in the territory of Guam, at least ten (10) days prior
11 to the date set for a hearing, said notice shall include a statement of
12 the time and place of said hearing, a reference to the subject matter of
13 the proposed rule or rules and refer to the fact that a copy of said
14 proposed rule or rules is on file at the office of said agency where it
15 may be examined, provided, however, that no rule shall be invalid
16 because the reference to the subject matter thereof in said notice may
17 be inadequate or insufficient. At least five (5) copies of said proposed
18 rule or rules shall be on file at the office of said agency from the date
19 of publication of said notice continuously until the said hearing and
20 any interested person shall be given an adequate opportunity to
21 examine a copy of said proposed rule or rules. Copies of the proposed
22 rule or rules will also be made available on the website of said agency,
23 if available, for public review.

24 (b) On the date set for hearing any interested party in person or his
25 authorized representative or both shall be afforded an adequate
26 opportunity to participate in the formulation of the proposed rule or
27 rules through the presentation of facts or argument or the submission

1 of written data or views. All relevant matter presented shall be given
2 full consideration by the agency, and a change in the proposed rule or
3 rules because of facts, arguments, written data or views stated at the
4 hearing will not require the setting of a new hearing unless it is so
5 determined by said agency.

6 (c) Any agency may adopt procedures in addition to those required
7 by this law including the holding of conferences and inviting and
8 permitting the submission of suggestions, facts, arguments and views
9 of interested persons in advance of the drafting of the proposed rule or
10 rules.

11 (d) Any government of Guam department, agency, autonomous
12 agency, office or instrumentality promulgating rules or regulations
13 under the Administrative Adjudication Law, shall include, as part of
14 the promulgation of such rules or regulations, an economic impact
15 statement. This statement must be completed and made available to
16 the public prior to any required hearings on the proposed rules or
17 regulations. Any proposed personnel rules or regulations shall also be
18 submitted to the Civil Service Commission for review to provide for
19 greater uniformity to the rule-making process throughout agencies and
20 departments.

21 (e) No proposed rule or regulation shall be transmitted to *I*
22 *Liheslaturan Guåhan* for consideration without an economic impact
23 statement, and a review by the Civil Service Commission for
24 personnel rules and regulations, nor shall any proposed rule or
25 regulation go into effect without a completed economic impact
26 statement; and, in the cases of proposed personnel rules and
27 regulations, a written statement of approval by the Civil Service

1 Commission.

2 (f) The economic impact statement required by Subsections (d)
3 and (e) of this Section must directly address, at a minimum, the
4 following:

- 5 1. The purpose and the need for the rule or regulation; an
6 assessment of the risk and the cost of the imposed rule or
7 regulation. In addition, government agencies proposing a new
8 rule or regulation must include with the assessment, the
9 justification for the new rule or regulation.
- 10 2. The financial impact of the proposed rule or regulation upon
11 those persons or corporate entities directly affected by the
12 proposed rule or regulation, and upon the people and the
13 economy of Guam.
- 14 3. Any potential increase or decrease in the cost of living on
15 Guam, or any specific increase or decrease in the price or
16 availability of any good or service on Guam directly or
17 indirectly attributable to the proposed rule or regulation.
- 18 4. Any direct or indirect impact upon employment on Guam or
19 any increase or decrease in the availability of a particular job or
20 jobs, or jobs in general, attributable to the proposed rule or
21 regulation.
- 22 5. Any increase or decrease in the cost of doing business as an
23 enterprise or industry on Guam, or any increase or decrease in
24 doing business in general, which is attributable to the proposed
25 rule or regulation.
- 26 6. Any adverse or beneficial economic impact which is
27 attributable to the proposed rule or regulation.

1 (g) The provisions of this Section are also applicable to any
2 department, agency, autonomous agency, office or instrumentality of
3 the government of Guam, which is proposing to increase any fee for
4 service.

5 (h) An economic impact statement shall be produced by the
6 department, agency, autonomous agency, office or instrumentality of
7 the government of Guam which has proposed the rule, regulation or
8 increase of fees for services.

9 (i) Exemptions. Any proposed rule, change of rule, regulation or
10 request to impose or raise fees or rates shall be exempted from the
11 requirements of this Act if the annual economic impact to the general
12 public is Five Hundred Thousand Dollars (\$500,000.00) or less, as
13 determined by the department, agency, autonomous agency, office or
14 instrumentality proposing the rule, change of rule, regulation or
15 request to impose or raise fees.

16 (j) A rule, change of rule, regulation or request to impose or raise
17 fees adopted under the exemption granted in Subsection (i) of this
18 Section shall, one (1) year after adoption, have a preliminary cost
19 impact assessment performed by the Bureau of Budget and
20 Management Research. If the preliminary cost impact assessment
21 shows that the cost impact of the rule, change of rule, regulation, or
22 request to impose or raise fees exceeds Five Hundred Thousand
23 Dollars (\$500,000.00) annually, then an economic impact statement,
24 as required in Subsections (d), (e), (f), (g) and (h), shall be prepared
25 and transmitted to *I Liheslaturan Guåhan* within sixty (60) days after
26 the completion of the preliminary cost impact assessment.”

27 **Section 4. Items (b) of § 9303 Article 3, Chapter 9 of Title 5,**

1 **Guam Code Annotated is hereby amended to read:**

2 “§ 9303. Adoption, Repeal, Recission, or Amendment of Rules and
3 Regulations: Circulation and Filing.

4 It shall be the duty of every agency which may have been or hereafter
5 may be clothed with or given any power or authority to make, adopt,
6 promulgate or enforce rules to:

7 (a) Prepare the rules in a form approved by the Attorney General or
8 other legal counsel of the agency, and where required by law,
9 approved by the Governor, and which will conform to a standard
10 system or code of rules adopted by the Legislative Secretary for the
11 guidance of all agencies.

12 (b) File the original approval copy and one (1) duplicate and one
13 (1) copy of the entire record of any public hearings on the rules being
14 filed with the Legislative Secretary of the Guam Legislature. The
15 Legislative Secretary shall maintain a permanent register of all rules,
16 which shall include a notation of the date of filing thereon, and
17 evidence of public hearing held by the agency. The Legislative
18 Secretary shall also cause said permanent register to be published
19 electronically on the Guam Legislature website.

20 (c) No rule shall be effective until after compliance with the
21 provisions of this Section and ninety (90) calendar days have elapsed
22 from the date of filing with the Legislative Secretary. The Guam
23 Legislature may approve, disapprove or amend any rule within ninety
24 (90) calendar days from the date of filing with the Legislative
25 Secretary.”