

FILE 6347

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

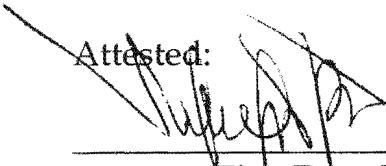
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

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 26<sup>th</sup> 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'lahi's Office*

APPROVED:

FELIX P. CAMACHO  
*I Maga'lahaen Guåhan*

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

***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4 the Civil Service Commission (CSC) being repealed entirely or transferred to the  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.