

VICE SPEAKER BENJAMIN J.F. CRUZ

Committee on Appropriations and Adjudication
senator@senatorbjcruz.com | www.senatorbjcruz.com



I Mina'trentai Tres na Liheslaturan Guåhan

THE 33RD GUAM LEGISLATURE

155 Hesler Place, Suite 107, Hagatña, Guam 96910

T: (671) 477-2520/1 | F: (671) 477-2522

MAY 26 2015

The Honorable Judith T. Won Pat
Speaker

I Mina'trentai Tres na Liheslaturan Guåhan

33rd Guam Legislature

155 Hesler Place

Hagatña, Guam 96910

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

2015 MAY 26 AM 10:21

RE: Committee Report on Bill No. 81-33 (COR), As Amended by the Committee

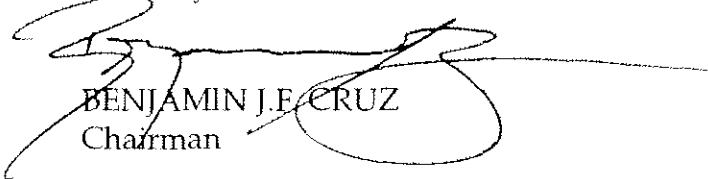
Dear Speaker Won Pat:

Transmitted herewith is the Report of the Committee on Appropriations and Adjudication on Bill No. 81-33 (COR), As Amended by the Committee - M.C. Torres / B.J.F. Cruz / R.J. Respicio - "An act to *amend* Subsection (c) of § 4405 and *add a new* § 4406.2, both of Article 4, Chapter 4, Title 4, Guam Code Annotated, relative to mandating the use of an Administrative Law Judge under the Civil Service Commission, to clarifying certain functions, and to establishing time standards and case management practices."

Committee votes are as follows:

6 TO DO PASS
____ TO NOT PASS
____ TO REPORT OUT ONLY
____ TO ABSTAIN
____ TO PLACE IN INACTIVE FILE

Sincerely,


BENJAMIN J.F. CRUZ
Chairman

VICE SPEAKER BENJAMIN J.F. CRUZ

Committee on Appropriations and Adjudication
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THE 33RD GUAM LEGISLATURE

155 Hesler Place, Suite 107, Hagåtña, Guam 96910

T: (671) 477-2520/1 | F: (671) 477-2522

COMMITTEE REPORT

Bill No. 81-33 (COR), As Amended by the Committee

“An act to amend Subsection (c) of § 4405 and add a new § 4406.2, both of Article 4, Chapter 4, Title 4, Guam Code Annotated, relative to mandating the use of an Administrative Law Judge under the Civil Service Commission, to clarifying certain functions, and to establishing time standards and case management practices.”

VICE SPEAKER BENJAMIN J.F. CRUZ

Committee on Appropriations and Adjudication
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THE 33RD GUAM LEGISLATURE

155 Hesler Place, Suite 107, Hagåtña, Guam 96910
T: (671) 477-2520/1 | F: (671) 477-2522

MAY 26 2015

MEMORANDUM

TO: All Members
FROM: Vice Speaker Benjamin J.F. Cruz
Chairman, Committee on Appropriations and Adjudication

SUBJECT: Committee Report on Bill No. 81-33 (COR), As Amended by the Committee

Transmitted herewith for your consideration is the Committee Report on Bill No. 81-33 (COR), As Amended by the Committee – M.C. Torres / B.J.F. Cruz / R.J. Respicio – “An act to *amend* Subsection (c) of § 4405 and *add a new* § 4406.2, both of Article 4, Chapter 4, Title 4, Guam Code Annotated, relative to mandating *the* use of an Administrative Law Judge under the Civil Service Commission, to clarifying certain functions, and to establishing time standards and case management practices.”

This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Bill No. 81-33 (COR), As Introduced
- Bill No. 81-33 (COR), As Amended by the Committee
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony & Supporting Documents
- COR Referral of Bill No. 81-33 (COR)
- Fiscal Note Requirement
- Notices of Public Hearing
- Public Hearing Agenda
- Related News Reports

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


BENJAMIN J.F. CRUZ
Chairman

SENATOR BENJAMIN J.F. CRUZ, VICE SPEAKER

Committee on Appropriations and Adjudication
 senator@senatorbjcruz.com | www.senatorbjcruz.com

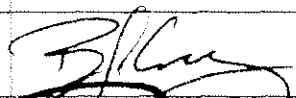

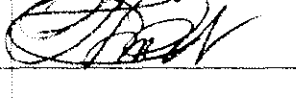

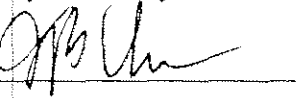



I Mina'trentai Tres na Liheslaturan Guåhan
THE THIRTY-THIRD GUAM LEGISLATURE

155 Hesler Place, Suite 107, Hagåtña, Guam 96910
 T: (671) 477-2520/1 | F: (671) 477-2522

COMMITTEE VOTING SHEET

Bill No. 81-33 (COR), As Amended by the Committee - M.C. Torres / B.J.F. Cruz / R.J. Respicio - "An act to amend Subsection (c) of § 4405 and add a new § 4406.2, both of Article 4, Chapter 4, Title 4, Guam Code Annotated, relative to mandating the use of an Administrative Law Judge under the Civil Service Commission, to clarifying certain functions, and to establishing time standards and case management practices."

COMMITTEE MEMBERS	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
CRUZ, BENJAMIN J.F. Chairperson		✓ 5/22/15				
AGUON, Jr., FRANK B. Vice Chairperson 5/22/15		✓				
WON PAT, Ed.D., JUDITH T. Speaker and Ex-Officio Member		✓ 5/22/15				
MUÑA BARNES, TINA ROSE Member						
RODRIGUEZ, Jr., DENNIS G. Member						
SAN NICOLAS, MICHAEL, F.Q. Member		✓ 5/22/15				
UNDERWOOD, Ph.D., NERISSA B. Member		✓ 5/24/15				
ADA, V. ANTHONY Member						
MORRISON, THOMAS A. Member						
TORRES, MARY C. Member		✓ 5/22/15				



COMMITTEE REPORT DIGEST

Bill No. 81-33 (COR), As Amended by the Committee – M.C. Torres / B.J.F. Cruz / R.J. Respicio – “An act to *amend* Subsection (c) of § 4405 and *add a new* § 4406.2, both of Article 4, Chapter 4, Title 4, Guam Code Annotated, relative to mandating the use of an Administrative Law Judge under the Civil Service Commission, to clarifying certain functions, and to establishing time standards and case management practices.”

I. OVERVIEW

Bill No. 81-33 (COR), “An act to mandate the use of an Administrative Law Judge under the Civil Service Commission, to clarify certain functions and to establish time standards and case management practices by *amending* Subsection (c) of Title 4 GCA § 4405 and *adding a new* § 4406.2,” was introduced by Senator Mary C. Torres, Vice Speaker Benjamin J.F. Cruz, and Senator Rory J. Respicio on April 21, 2015, and subsequently referred to the **Committee on Appropriations and Adjudication** on April 22, 2015.

The **Committee on Appropriations and Adjudication** convened a public hearing on **Friday, May 8, 2015**, beginning at 2:00PM in the Guam Legislature Public Hearing Room. The hearing for **Bill No. 81-33 (COR)** began at 3:03PM and ended at 4:06PM.

Public Notice Requirements

All legal requirements for public notices were met, with requests for publication sent to all media and all Senators on May 1, 2015, and May 6, 2015, via email. Copies of the hearing notices are appended to the report.

Senators Present

Vice Speaker Benjamin J.F. Cruz, Chairperson

Senator Frank B. Aguon, Jr., Vice-chairperson

Senator V. Anthony Ada, Member

Senator Mary C. Torres, Member

Senator Brant T. McCreadie

Appeared Before the Committee

Ms. Georgette Bello Concepcion, P.C., Private practice attorney

Mr. Daniel R. Del Priore, Legal Counsel, Guam Federation of Teachers, AFT Local 1851

Mr. Alberto “Tony” A. Lamorena, V, Executive Director, Civil Service Commission

Submitted Written Testimonies

Ms. Georgette Bello Concepcion, P.C., Private practice attorney

Mr. Timothy Fedenko, President, Guam Federation of Teachers, AFT Local 1851

Mr. Alberto "Tony" A. Lamorena, V, *Executive Director, Civil Service Commission*
Mr. Anthony C. Blaz, *Director, Department of Administration*
Mr. Joaquin C. Mesa
Attorney General Elizabeth Barrett-Anderson, *Attorney General of Guam*

II. TESTIMONY & DISCUSSION

Chairman Benjamin J.F. Cruz announced Bill No. 81-33 (COR), and allowed the main sponsor of the legislation to give a few remarks.

Senator Mary C. Torres thanked Chairman Cruz and proceeded to provide her sponsor statement:

"Bill No. 81-33 (Bill) is an act to mandate the use of an Administrative Law Judge (ALJ) under the Civil Service Commission (CSC, Commission), to clarify certain functions and to establish time standards and case management practices by amending Subsection (c) of Title 4 [of the Guam Code Annotated] (GCA) § 4405 and adding a new § 4406.2. What the bill [intends] to do is give the CSC more resources to help facilitate case management in a more timely manner and also to ensure that the employee's rights are protected during the appeals process.

"Many of us in the community know that there is a serious need to provide a solution to the extensive backlog of cases before the CSC, and I believe that many cases are backed up because, quite honestly, the burden we are placing on our Commissioners is too unreasonable and unfair in many instances. What this bill does is that it aims to give them additional resources by mandating an ALJ to assist them with the disposition of cases. And what I am also doing—I am attempting to protect the interests of the government of Guam (GovGuam) agencies [that], when their employees are terminated or suspended, pending the resolution of their cases, the agencies don't have the opportunity to fill those positions, so they are also harmed in some way. And lastly, the employees [who] rely on their employment are also harmed because of the delays and we are looking at delays that are upwards three (3) years plus to seek resolution of their matters."

Chairman Cruz called on the first panel of individuals to testify.

Ms. Georgette Bello Concepcion, P.C., read her testimony (*appended to this report*) in support of the legislation, wherein she states her background as a private practitioner who has represented employees before the CSC, her familiarity with the case backlog, and the advantages of an ALJ; and offers the following amendments: to amend § 4405(c) to require professional licensure period of at least five (5) years; to amend § 4406.2(d) to require that judgment signing hearing take place within thirty (30) days from issuance of decision/order; to add a new § 4406.2(e) to allow for deviation from time standards

for good cause upon written stipulation and approval by the CSC but to prohibit an appeal's dismissal due to such deviation; and to add a new § 4406.2(f) to require the CSC to adjudicate appeals within twelve (12) months from initial filing. She intermittently paused during her reading to elaborate on some of these amendments:

"[In regards to the addition of a new § 4406.2(e) relative to allowing deviation from time standards], I think it's important that the employee will not be penalized because of the lawyer's schedule. And things happen, life happens, and I understand that the delay may not always be on the CSC's part; it might be [that of] one of the parties or their attorneys. So I think that would alleviate for that."

"[In regards to the addition of a new § 4406.2(f) relative to requiring the CSC to adjudicate appeals within a year from initial filing], although the revisions I propose would allow the parties to stipulate to have the hearing on the merits held after the four- (4-) month period, it still kind of holds the CSC and the parties to a deadline to one (1) year. Like in the Superior Court of Guam, there are these time standards that we have to abide by. So [in] a civil case, we have to be finished within eighteen (18) months of when you file; that means you do your discoveries, all your motion hearings, and you go to trial. So at least here, the parties can deviate from the four- (4-) month time period but you are still holding their feet to the fire—to get their case done and adjudicated—and it still hold[s] the CSC's feet to the fire to ensure that these cases get out [in] a timely manner."

"Other than that, I spoke to [Guam Federation of Teacher legal counsel] Mr. [Daniel] Del and I think he wants some sanctions put into the bill. I think that the sanctions, which are provided for the Commissioners not receive their stipend. I think that's sufficient. I caution you about putting in any kind of sanctions because who is going to control what those sanctions are. You know that the CSC can already subpoena—they have the power to subpoena witnesses—but they also have the power to decide who [to subpoena and] which subpoenas to issue. Some of my subpoenas [were] not issued, although I requested for them for one reason or another. So I just want to caution you as to what sanctions you would put in against the parties and that if you do agree with Mr. Del Priore and you put in sanctions, that one of the sanctions not be that the employee's case gets thrown out. I think that it is very important to keep that employee's ability to use the merit protection system and give them their due process without penalty. Because I think the purpose here is to hold the CSC's feet to the fire and not necessarily the employees'. So I just ask [that] whatever sanctions you impose or you adopt into this law, you keep the employee's ability to pursue his or her case in mind and not make that a sanction. Thank you."

Chairman Cruz thanked Ms. Concepcion.

Mr. Daniel R. Del Priore introduced himself and began his testimony in his capacity as Legal Counsel for the Guam Federation of Teachers (GFT, Union):

"The Union has a great interest in the bill because it represents many public employees in front of the CSC—for grievances, adverse actions, post audits, a number of things. And we support the idea and concept of the bill. We do suggest perhaps some additions or amendments could be made to the bill. We speak largely from the standpoint of the public employee but the Senator's (Torres) point is well taken. The matters before the Commission deal with management, the agencies, as well as the individual employees.

"That being said, looking at the ALJ position, the present law allows the Commission [to hire an ALJ] and uses the term 'may hire'. And my understanding from the CSC is that they are desirous of having the ALJ position filled. And in this regard, looking at Senator [Frank B. Aguon, Jr.]'s concern [with] the Legislature dealing with the funding, the GFT would suggest that the hiring of the ALJ not only be mandated, but the Legislature set the salary. Look at it—let's say some level as if you would give [similar to that given to] the Attorney General's Office (AGO) or like Ms. Linda Ingles (Administrative Hearing Officer, Judiciary of Guam) handling certain matters regarding child support; [the Legislature should] set what the salary would be.

"And at the same time, the GFT suggests that you make it a permanent position, [and] not time to time that you may pick someone. From this we analogize what [is given to] that ALJ—independence, job security—not that it would happen but if you favor one side or the other, or whoever you may think the Commission wants to win, then maybe it would be more likely to get more jobs from the Commission. That may certainly not happen but if you make it a permanent position—look at the law staggering [the terms for] the Commissioners, [i.e.] they are not elected or appointed at the same time. So stagger [the term], maybe make it a three- (3-) year position, same as the level as Commissioners. But set the salary and make it a permanent position on the Commission and give it a length where there is some longevity [that provides] the ALJ [with] independence, [as] we suggested.

"The comment of counsel regarding a five- (5-) year experience: nothing wrong with that if you want to add that in. Certainly would hope that the Executive Director [of CSC] would use good judgment, if you will, if you want to leave it to his or her discretion to make that choice.

"But those are the suggestions we have for the ALJ. In regard to authorizing the Commission to assign matters to the ALJ, certainly that is one of the fundamental purposes to help alleviate the load there. However, the GFT takes concern to your attention about allowing the Commission to assign full hearings on the merit absent the public employee's waiving [of his or her] right to have the full

merits heard from the CSC itself. In this regard, the GFT looks at this as a right to a defendant to trial by jury. The Organic Act gives you the right to create a merit system; you can set up the Commission and you did; and the Commission is charged with the responsibility of hearing all these matters [adjudicated by their] merits. And the Commission consists of seven (7) members. Now to have the Commission hire an ALJ and say, 'You decide the merits on this employee's case,' we suggest [that there] may be an abrogation of the responsibilities of the Commission a whole. Now, not every case in front of the Commission requires a full hearing so the GFT suggests look[ing] at it as the right to trial by jury. A defendant can waive trial by jury and have this case heard by a judge alone. So if a public employee waives the right to a full Commission hearing, the matter can go forward to the ALJ. And what I would suggest [is that this] would happen with some frequency for those cases that are suitable because the public employee and management would want to have the matter resolved as soon as possible; it's generally in everybody's best interest.

"[An]other aspect we suggest is having the ALJ also perhaps review the language in the bill so the Commission can assign matters. Other things that the CSC does—it does its post-audits and whistleblower complaints under the Public Employee Protection Act. You may want to consider enumerating those as matters that the ALJ is cognizant of. Now when the ALJ hears a matter, a full hearing on the merits, the law says that it seems to go to the CSC for review. Because it's a full hearing on the merits with the public employee's and the agency's concurrence, we suggest the review then go directly to the Superior Court [of Guam], not go a second step and be looked at by the CSC. The status of the law now is that once the CSC decides on the merits, the Superior Court can review. Why not have that same direct line for review if the ALJ hears the matter on the merits?

"That leads into the second point [regarding] matters adjudicated by the ALJ that are reviewed by the CSC: what is the CSC going to review? Is there a record made on the proceeding before the ALJ—a transcript—and if there is, who pays for it? If you have a matter of evidentiary or it's a post-audit on a personnel appointment, would it be *de novo*, i.e. the CSC looks at it all over again? How are you going to fashion the review by the CSC rather than leave it up in the air?

"And the other aspect we suggest to be considered if the ALJ will be hearing matters in the daytime: who pays for the public employees and public witnesses [who] are coming in the daytime and taking off from work? I suppose certainly that [the witnesses] can be subpoenaed, and that would be means by saying they should get paid. But do you want to say that they will be able to leave their job if they are appearing as a witness or a third party during working hours when the ALJ considers it?

"The last aspect and probably the most important of the whole bill are the time standards and the mandate. The GFT wholeheartedly supports the imposition of time standards and mandate. Right now, the GFT has a member's case pending. He was terminated going on a year and a half ago, a termination [whereby] he is not getting any income. He was terminated after going through the adverse action procedure but he still has [power bills], mortgages and car payments. A termination case going over two and a half (2½) years has devastating effects not only on the public employee—and you also alluded to management's problem—but also to [the employee's] family. And to say that things must be addressed within these times constrains is altogether reasonable. Again, we at GFT analogize to the right to a speedy trial that a defendant has, if you have these mandates, these are the rights of the public employee who is grieving. It's the public employee that is coming to grieve or who is appealing his [or her] adverse action so you are giving him or her these rights to have the case begin within these time standards. Now, if there is a problem, such as [what Ms. Concepcion] mentioned, a trial beginning so near to that or if there is some other reason to postpone, then—like you do in court with a speedy trial—let the public employee waive the time standard and that would allow it to go forward. But absent the public employee waiving, then let the time standard stand.

"The other aspect, [to which Ms. Concepcion] alluded, [was] holding back the pay of Commissioners, but that only applies to the Commissioners issuing a judgment. What the GFT is concerned about and asking you to pay the utmost attention to is sanctions for failing to meet the time standards for beginning to hear cases as you have set up to be reviewed in forty (40) days and sixty (60) days—I believe, something in that time frame. What happens if the case doesn't commence in that time frame and there is no waiver by the public employee? Then the same as they do in the court system, it would be looked at [and the question would be asked,] 'Is the delay caused by the public employee?' If it's not, we suggest the sanction should be found in favor of the public employee in the case before the Commission. Why do we suggest that? Because it's the same for a public defendant in a case before the Superior Court; it's basically the defendant and his counsel or lay representative against the system or the establishment, which in essence is basically the agency and its representative. But also the CSC or the Superior Court [that] has the resources and the ability to make sure the deadline is met, and that we suggest is [the responsibility of] the CSC and the agency. It's analogous also to that recent case before the Superior Court of Guam regarding the defendant who was charged with rape. First, for some reason the case has been scheduled for trial to begin on a certain date but the Superior Court did not calendar and process it for notice of hearing. Now the AGO must have been at the earlier hearing when it was scheduled. But the government—the AGO—did not calendar it obviously or something else happened, obviously, on the date the trial was supposed to begin. So what was

the result? The decision was to dismiss the charge against that defendant. We submit a fair and reasonable interpretation or sanction for the failure to commence the hearing at the CSC within your standards is a decision in favor of the public employee. That would be GFT's position at this time. Thank you."

Chairman Cruz thanked Ms. Concepcion and Mr. Del Priore for their testimonies.

Senator Torres thanked the two attorneys for their time, as well, and continued to provide a few comments regarding the some of the concerns mentioned during their testimonies:

"We all appreciate the necessity of this bill and I also appreciate the fact that you both are legal counsel, well-trained lawyers that are providing very practical input into the bill. I have looked at the standards in case management, [and] one of the hardest things is trying to consider what the ramifications are for not adhering to it. You know, you don't want unnecessary harm to either party's right. And in some ways this was an aspirational measure on my part by doing the time standards.

"However, I do see a necessity to, first of all, put in an amendment where any failure on the part of the Commission to adhere to the time standards does not in any way result in the dismissal of the employee's right to appeal—that we are going to do first and foremost. Thank you Attorney Concepcion for bringing that up as well in today's hearing. The idea of departure from the time standards and the employee's ability to waive is also considered in here, as is the Commissioners'. The Legislature just recently had a bill pass that allowed judges to depart under certain circumstances in cases where there were mandatory sentences imposed by law, and we are going to certainly put that same kind of consideration into the legislation. I thought that your point about having an overall wrap-up date is very reasonable with regard to sanctions. We will consider that very closely because one of the things we are also doing as we develop this bill and polish it up in Committee is that we are correlating it to [Title] 5 [of the Guam Code Annotated], as well with the Administrative Adjudication Law (AAL). It's not a direct correlation, but many of the statutes do apply in this instance so we will take a look at that and correspond them and cross reference them as we develop this bill.

"But I do want to thank you very much. And on the more casual side, we thought about all sorts of repercussions, withholding budgets, reducing budgets, monetary sanctions for failure to appear. We thought about all sorts of things but the bottom line is this is really a novel approach to the system and what I want to do, what I'm attempting to do, is start first with this, [which] would be a good test study for other processes and other agencies, other regulatory agencies that have the same issues. This would be a good study on how we apply time

standards [and] how we apply resources like an ALJ in place to facilitate the process, and then we'll go from there. But thank you very much for the very, very important input and if I may, I would like to contact you if I can as we do the amendments."

Ms. Concepcion remarked:

"Since you alluded to the AAL, I just wanted to bring that up given the opportunity because I think a lot of the issues that Mr. Del Priore brought up are addressed in the AAL and that was my bible when I acted as a hearings officer for one of the agencies a couple of years ago. So maybe you would want to take a look at the AAL and revamping that because there are some little holes in between; as a hearings officer, which is kind of just like an ALJ, [I] kind of have to put two and two together to figure out what to do, and I guess you can cross reference that in the bill. Thank you for allowing me to provide testimony and assist you in getting this moving. It's a good thing."

Senator Torres thanked Ms. Concepcion again, noted that she will correspond with the attorney via e-mail, and greeted her on the upcoming occasion of Mother's Day.

Chairman Cruz called the next panel to approach and provide testimony.

Mr. Alberto "Tony" A. Lamorena, V, greeted Chairman Cruz and the rest of the senators present and read his testimony (*appended to this report*) in support of the legislation in his capacity as Executive Director of the Guam Civil Service Commission, wherein he acknowledged the advantages of an ALJ in resolving the case backlog, and offered the following amendments: to strike language in Subsections (a), (b) and (c) of § 4406.2 relative to time constraints; to amend § 4410 relative to authorizing the CSC to conduct a hearing notwithstanding the public notice requirements of the Open Government Act; to add a new § 4412 relative to establishing sanctions and penalties for noncompliance (based on Local Rules of the Superior Court of Guam, General Rule 2.1); to add a new § 4413 relative to the promulgation of a Case Management Statement; and to strike language in Subsection (d) of § 4406.2 relative to the penalty of withholding meeting stipends for Commissioners for failure to issue written decisions within the time frame. He intermittently paused during his reading to elaborate on some of these amendments:

"[In regards to the recently implemented Case Management Statement procedure] this is the process actually that we mirrored [to that of the process used by] the Superior Court, which actually provides information to both parties so that they don't have to come back to the CSC for a third, fourth or fifth status hearing."

"[In regards to amending § 4410 relative to authorizing the CSC to conduct a hearing notwithstanding the public notice requirements of the Open Government Act,] the CSC believes in transparency and announcing all our hearing dates as mandated by the Open Government Law. There are situations where we have cases that are vacated by the parties [at the] last minute. And there are cases where we've already done pre-hearing conferences and all the briefs and witness lists are already on file. So a lot of times we're unable to slot these cases in to dates, because then we would violate the Open Government Law. What we're trying to say in our amendment is that in situations such as this, if we get the permission from both parties, that we are able to bypass the Open Government Law, if both parties agree to fill these vacant dates."

"We also have a new § 4412, "Sanctions and Penalties for Noncompliance." In a lot of situations, we have status hearings where parties fail to attend. We have situations where [we have] hearings of the merits where parties don't show up or witnesses don't show up. And of course, the CSC's resolution is to sanction them by going to the courts, but that process takes a long time. So what we're asking is if an amendment can be added that allows the CSC to issue sanctions.

"And then the other one is the Case Management Statement (§ 4413), which we're currently using. But if we have that codified, you know, it would add more strength to it."

"[In regards to comments on the CSC budget request for fiscal year (FY) 2016,] we understand the concerns brought up by Attorney Concepcion and Mr. Del Priore; the budget that was submitted was for an Attorney IV position because obviously we want to have someone who is experienced."

"[In regards to delays as mentioned anecdotally by Ms. Concepcion,] granted she waited three to four (3-4) months, and the reason for that delay was that her legal counsel left us for another position; we had to bring in a temporary attorney. And when her judgment came out, we had hired our current counsel, but because he was not [licensed] in Guam, he was not able to write the decision and judgment. So there was a transition delay of about three to four (3-4) months during that period. So since that period, he has come on board and has [been licensed] with the Guam Bar Association, we have alleviated that issue.

"Just to give you an example, recently we had an attorney call us up and say, 'Where's my decision and judgment? It's been six (6) months and I've been waiting.' And we said, 'Well, when are you going to submit your proposed draft decision?' So you know, a lot of times a lot of the delays are based on the prevailing party failing to submit proposed draft decisions in a timely manner."

Chairman Cruz yielded the floor to Senator Torres and noted that he will ask questions once she was finished with hers.

Senator Torres thanked Mr. Lamorena and proceeded with her comments:

"I'm glad that you recognize and are very supportive of the ALJ position because we know that it is already in the law and that the concern for most parties is: where do we get the funding for it? But I think all of us realize that given the time delay, time is money. And we know that given time delays and the cost of attorneys racking up time from cases that drag on forever. Plus in the event that an appealing employee prevails, the cost to the government is back wages and attorney fees for that employee. I understand that just looking at it, there is going to be a savings to the government if we just speed things along, just on the principle of 'time is money' — time saved is money saved.

"I wanted to—I've taken all your considerations into account and I will take them into account as we work this in Committee, but I do want to comment on your proposed amendment to § 4410 of 4 GCA. You have a proposed amendment to that but looking at 4 GCA it looks to me—I don't see the difficulty or the prohibition in slotting any ongoing case into open hearing dates is because, you know, you allude to the Open Government Act. But in reading this, there [are two conditions]: The Commission has the authority to slot any ongoing scheduled hearing into an open hearing date, should a sooner hearing date become available provided that, one, both parties agree, and, two, the original public notice for the initial hearing met the requirements of the Open Government Act. Then there is another [Sub]section (b) that says, clarifies even further, that the public notice requirement of the Open Government Act shall be deemed met for purposes of ongoing scheduled hearings relative to the section if the original initial hearing satisfied such requirements. So it's anticipated that you're just moving something up."

Mr. Lamorena responded:

"And you know, Senator, we agree with you, but in some situations, there are certain counsels that don't agree with us. So that's why we're introducing an amendment and only just to further clarify that. We agree with you. As a matter of fact, we were even thinking of doing that. But there was still a lot of gray area in there and I think the passage of the proposed amendments would further clarify that. But we agree. Senator, I tell you what, if no one else had any questions, and everyone thought like you, we'd have been doing that for —"

Senator Torres interjected:

"But it's in your prerogative to deny their motion. You know, there are two sides to an argument and one guy's wrong and one guy's right. And I would so easily and quickly [see] the guy who's wrong, because it's so clear. From a layman's perspective, it's so clear."

Mr. Lamorena added:

“Right. The only reason why we’re doing this is to further clarify it.”

Senator Torres said:

“And thank you for that. And I will take into consideration your other testimony here. I see your point in sanctioning, but there needs to be a corresponding practice with not only the court system but also with the AAL. So we’ll look at all things and take that into consideration. Thank you very much for your testimony.”

Chairman Cruz thanked Senator Torres and began his line of inquiry:

“I’m glad Mr. Del Priore brought me back to my prior life with some of the suggestions. And I think it was Alberto III [who] issued the opinion about the sixty (60) days. And if the employee doesn’t file within the sixty (60) days, that he could or should have known that the case was dismissed against him. And so why couldn’t we have a provision that if the government fails to move forward after all—it is their attorneys who are bringing this forward—and they fail to meet the timeline, that the case is ruled in favor of the employee.”

Mr. Lamorena responded:

“Yeah, in regards to—primarily, historically, we look at our files, granted both parties usually ask for stipulations on dates. As a matter of fact, I believe the two (2) cases that were brought up by both attorneys that were up here earlier, those cases were moved back primarily because of vacating of dates. And we have cases, for example, where it should have been heard in 2014. And the employee’s attorney at the request of another attorney who needed more days to present their case asked them to vacate their dates so that they could have them. And we did. So now that case is in 2016. So a lot of our backed cases—granted we have a backlog—but a lot of the backlog is the result of the parties vacating for whatever reason.

“Recently, we had an employee on his first status hearing, if we were to follow for example, and his case will fall into four (4) months in the bill. He asked for two (2) months to find an attorney. So when he comes back to us in two (2) months with his legal counsel, the legal counsel will then say, ‘I need more time because I need to request for discovery and so forth.’ And so by that time—granted we allow for certain sanctions—that’s eventually what’s going to happen.

“Currently, I can approve stipulations. And I usually approve them if they have a good reason for it. For example, recently we have employees who request for

stipulation because one is deployed in the military [and the other] is pending a criminal case.”

Chairman Cruz continued:

“Why don’t we take Mr. Del Priore’s example, about why don’t we say a classified employee has a right to a speedy disposition of his case and we have whatever time standard we have there. If at some point he or she signs a waiver, then I don’t want to hear any complaints down here about the fact that it was delayed. If you ask for one stipulated extension, your right to a speedy disposition is gone. And don’t call me, don’t text me, no nothing. You’re being given a right to a speedy disposition. If you’re not ready to move forward and you ask for one continuance, and you take it over the time, it’s over. Then whenever it fits in, you know, if it’s after your retirement date, tough. But make sure they know upfront they have a right to speedy disposition but once they waive it, you can’t go back on it because it just seems that—I’m still trying to figure out how we can work it into the fact that we’re very fast to say to the employee, ‘It’s sixty-one (61) days, because you should have known the day before yesterday was Friday and —’”

Mr. Lamorena interjected:

“That favors the employee.”

Chairman Cruz said:

“No, but I mean, but you filed on Monday. It’s tough. It’s more than sixty (60) days and you have no recourse with us.”

Mr. Lamorena elaborated:

“If it’s sixty-one (61) days, the employee wins—prevails—because management should have taken action before or within sixty (60) days. If management issues adverse action on the sixty-first (61st) day, the employee automatically prevails.”

Chairman Cruz asked:

“But the employee also needs to file within a certain period, right?”

Mr. Lamorena replied:

“To file for adverse action, they have twenty (20) days to file for an appeal.”

Chairman Cruz said:

“That’s if they fail.”

Mr. Lamorena added:

"The Superior Court already has ruled on that. We used to give some leverage but I believe it was Judge [Elizabeth] Barrett-Anderson who ruled that twenty (20) days is twenty (20) days."

Chairman Cruz continued:

"Well, I mean, both. The sixty (60) days is sixty (60) days. The twenty (20) days is twenty (20) days and what I'm saying is that the same Draconian sanctions that we take against the employees should all still apply to management. If they don't get their attorney to act in a timely fashion, and in fact I was going to ask Ms. Concepcion whether or not we could put in a requirement [whereby] the employee has to sign that stipulation. Because I know in the old days, there was always the practice of two (2) attorneys managing to sign the stipulations, saying you know, 'It was the other attorney that made me do the stipulation.' So unless you get the employee signature on there, that stipulation counts; but you're not going to stipulate away my right without my signing onto it. And so [our challenge is in] trying to figure out some way to move these [cases] and trying to hold management to the same standard that we hold the employees.

Mr. Lamorena remarked:

"I think, Vice Speaker, once the ALJ is in place and we make some changes and amendments to our current rules and procedures, we're going to alleviate a lot on the calendar. But currently, at this point in time, I mean we are backed up. In the past, attorneys would take three to four (3-4) days to litigate their case; now they're requesting five to ten (5-10) days. As a matter of fact, one of the procedures we've set up now is that any party requesting more than five (>5) days has to go to an evidentiary hearing or administrative counsel to justify the need for additional days because it really ties up [the caseload]. I mean, Attorney Concepcion said, her case took nine (9) days. And so there are only so many Tuesdays and Thursdays in a year. We do give our Commissioners a week off for Christmas and Easter, and Thanksgiving Thursday, but you know, last year, we were running Tuesdays, Wednesdays and Thursdays and so it's very difficult. I think as time progresses, with an ALJ in place, we'll start to see that time will start to shrink but I agree: everybody should hear their cases in a timely manner.

"One of the reasons why – Vice Speaker, you know it – I've been trying to push for an ALJ for the past three (3) years with you, and last year we were able to change the language in the budget bill. But we really need it. And there were a lot of things we're working on to try and improve the process. [For example] grievances: employees wait years to have a grievance heard and [that's] not necessarily anyone's fault. You know, [the Department of Administration]

(DOA) has a grievances review board. Before they come to us, they have to go to Step 4, before they come to us for Step 5. But I'm working with DOA and we're trying to actually come up with an alternative where we can actually cut the grievance time to a very short time to the point where we can now eliminate the grievance review board and go directly to the ALJ. So after grieving to the supervisor, to the director, then they can go straight to the ALJ and hear their case within three to four (3-4) months. So we're trying our best to see what we can do to speed that up."

Chairman Cruz noted:

"And really, seriously, I think this is one of the best hearings I've had in a while. I mean, the testimony that's been provided by the two [individuals] before you and [that which you have provided] yourself gives us a lot to work with and I appreciate it. And please carry back to the Commissioners my debt of gratitude for the hours and hours that they spend; we appreciate what they do and so please thank them for me for their efforts and assure them that moving this forward is to try to make sure we don't keep them for three (3) nights a week to be able to address the needs. But thank them very much."

Mr. Lamorena commented:

"Vice Speaker, we've worked together since I've been here at the CSC and we've tried every possible way where we can expedite the process. We've always prioritized terminations first and granted that, [as Senator Torres mentioned], that agencies can hire people—although the law allows them to hire limited-term employees to fill the position while the process is taking its course—but we try our best and like I said there's only so many days in a week. My Commissioners, most of them have full-time jobs, and I remember last year after months of [working] three (3) nights a week [one of our Commissioners] who has been with us for almost, maybe twenty (20) years, turns to me after we adjourn and she looks at me and she goes, 'Boy, I'm tired.' Because you know, we make every conscious effort to try and expedite these cases, but with the number of cases and loads that we currently have, you know, we try as much as we can. And I think the ALJ is a great move. And if you can provide me the funding before the FY 2016 budget is approved, we can begin the process. Currently what we're doing with our counsel and staff is we're revising our current rules and procedures to include the ALJ. So once the ALJ comes in to play, they hit the ground running."

Senator Torres added:

"I just wanted to end by saying '*Si Yu'os Ma'ase*' ('Thank You') and, yes, I've had a lot of experiences up at the CSC, you know while I was running the various government agencies and that's part of why, Mr. Lamorena, why I felt that it was necessary to—but you're right, we do have a situation where the present process

that—it just needs a little bit of help and we're here to lend that help. And I appreciate your input."

Mr. Lamorena responded:

"And I appreciate your help, too, Senator, and for bringing the issue to light. And I wholeheartedly agree [that] once the ALJ comes into play, we'll start to see our caseload [lighten]; as Mr. Del Priore stated, we would now be able to operate eight-to-five (8-5) versus three (3) nights a week.

Senator Torres noted:

"And I also want to add, Mr. Chairman, [that] I am in contact with the Attorney General (Elizabeth Barrett-Anderson) and she had desired to be here today but she's not able to make it due to her schedule; but she also is in full support of this bill and she'll be working with us to develop it."

Mr. Lamorena added:

"And we're working with her as well. I'm not going to speak for her but [she also has a personnel] shortage problem and because she represents government agencies. Currently I believe there are over twenty-three (23) cases that her office is representing. They do have quite a bit of a caseload, as well."

Chairman Cruz noted:

"At some point, you said in your comment addressing Mr. Del Priore's question [...] I think we can put into this thing maybe administrative leave."

Mr. Lamorena replied:

"I believe the law states currently that GovGuam employees are not compensated—if you're an active employee, you are not compensated to be a witness. And it also allows all GovGuam employees [who] come to the CSC for official business shall be granted administrative leave. So we always tell employees when they come for status hearings [or] for anything else, 'Make sure your agency gives you administrative leave.'"

Chairman Cruz reiterated that Mr. Lamorena commented earlier that GovGuam employees are not compensated as witnesses, which **Mr. Lamorena** confirmed.

Chairman Cruz asked hypothetically if he would get paid if were to take all of Friday off to stand as a witness for a CSC case, to which **Mr. Lamorena** reiterated his previous comment that the agency must provide the employee paid administrative leave.

Chairman Cruz said that he wanted to assure Mr. Del Priore that GovGuam employees who appear before the CSC on official business are given administrative leave.

Mr. Lamorena added that they make sure GFT representatives instruct their clients to inform their agency heads or human resources manager of their official business with the CSC so that they are granted paid administrative leave.

Chairman Cruz stated that Senator Torres had one last question.

Senator Torres added:

“I just wanted to clarify. I’m looking at 5 GCA, AAL, and I think what you are referring to is the fees that they pay, it’s here in § 9217(c) [of Chapter 9, Title 5 GCA]. They don’t get the usual stipend—the fees that are afforded anybody else under GovGuam—and so that’s what he’s referring to as ‘not getting paid.’ If they get paid Thirty-Five Dollars (\$35) if [they’re] a GovGuam employee, so a layperson would get a witness fee—”

Mr. Lamorena said:

“And those fees are usually paid for by the party requesting them to be there.”

On account that there were neither additional questions from the Committee nor other individuals present to testify, **Chairman Cruz** considered Bill No. 81-33 (COR) heard.

III. FINDINGS AND RECOMMENDATIONS

Based on the Committee Record appended hereto and substantive consultation with the measure’s main author and other relevant stakeholders, the Committee on Appropriations and Adjudication made the following amendments reflected in Bill No. 81-33 (COR), As Amended by the Committee:

1. **Adopted stylistic changes throughout to comply with legislation writing standards.**

2. **Amended the title of the bill per the recommendation of legislative counsel to read:**

“An act to amend Subsection (c) of § 4405 and add a new § 4406.2, both of Article 4, Chapter 4, Title 4, Guam Code Annotated, relative to mandateing the use of an Administrative Law Judge under the Civil Service Commission, to clarifying certain functions, and to establishing time standards and case management practices by amending Subsection (c) of Title 4 GCA § 4405 and adding a new § 4406.2.”

3. Minor stylistic changes were made to the measure's legislative intent section to ensure consistency throughout the document.

4. Amended § 4405(c) on line 18 of page 3 to read:

"(c) The Commission may *shall* employ an full-time or part-time Administrative Law Judge (ALJ), ~~full or part-time~~, to assist the Commission with the adjudicatory responsibilities, or the Commission may retain a private attorney or attorneys to serve as an ALJ on a case-by-case basis. The ALJ *shall* have the authority to handle the following matters: hearings related to technical and procedural motions, preliminary evidentiary motions, and any other matters deemed appropriate by the Commission, including full merit hearings. All decisions by the ALJ *shall* be forwarded for review and ratification to the Commission, which ~~shall accept or reject in its entirety~~, the ALJ's decision will have the authority to accept, modify, or reject it in whole or in part, and to determine whether the decision affects similarly situated matters being reviewed by the ALJ. The Commission will review only those parts of the record before the ALJ that the Commission deems necessary to decide whether to accept, modify, or reject the ALJ's decision. The ALJ *shall* follow applicable rules and procedures approved by the Commission, and the Commission may direct the ALJ to act in the Commission's place and assume all authority and responsibilities prescribed by such rules and regulations, except as limited by this Act. An ALJ must be an Guam-licensed attorney active member of the Guam Bar Association in good standing and a licensed attorney for at least five (5) years."

5. To ensure the aspirational nature of the time standards recommended, amended Section 3 of the measure to read:

"Section 3. A new § 4406.2 is hereby added to Article 4, Chapter 4, Title 4, Guam Code Annotated to read:

"§4406.2. Time Standards and Case Management.

In order to assist in case management and promote timeliness in the resolution of matters before the Commission, there is hereby established the Legislature establishes the following Time Standards which the Legislature deems to be reasonably achievable standards that the Commission shall aspire to attain in all cases filed with the Commission after December 31, 2015."

6. Re-lettered § 4406.2(d) on line 8 of page 4 to § 4406.2(i) and amended to read:

"(i) (d) All written decisions following any and all hearings *shall* be signed and ordered within sixty (60) days of the date of the hearing. Failure by the Commission to issue the written decisions in compliance with (d) shall result in withholding of all meeting stipends allowed for under (g) of §4405, Article 4, Chapter 4 of Title 4 of the Guam Code Annotated."

7. **Inserted a new § 4406.2(d) beginning at line 8 of page 4 after § 4406.2(c):**
“(d) All matters shall be adjudicated within (12) twelve months from the filing of a notice of appeal unless the time standards are waived by the employee. The CSC Commissioners may also waive the time standards for substantial and compelling reasons by either party.”
8. **Inserted a new § 4406.2(e) after the new § 4406.2(d):**
“(e) Failure on the part of the Commission to adhere to the time standards described in Subsections (a), (b) and (c) shall in no way result in the dismissal of the employee’s right to appeal their adverse action.”
9. **Inserted a new § 4406.2(f) after the new § 4406.2(e):**
“(f) The time standards described in Subsections (a), (b) and (c) may be waived by the employee, but if not so waived, a failure to render a timely decision is an exhaustion of all available administrative remedies.”
10. **Inserted a new § 4406.2(g) after the new § 4406.2(f):**
“(g) The time standards described in Subsections (a), (b) and (c) may be waived by the Commissioners upon finding substantial and compelling reasons to determine that a waiver of the time standards is the only option available, and only upon mutual consent of the parties.”
11. **Inserted a new § 4406.2(h) after the new § 4406.2(g):**
“(h) Following all oral decision by Commissioners, the prevailing party shall present their proposed written decision for Commissioners to sign no later than ten (10) working days from the date of the hearing in which the oral decision was rendered.”

The Committee on Appropriations and Adjudication to which was referred Bill No. 81-33 (COR) - M.C. Torres / B.J.F. Cruz / R.J. Respicio - “An act to *amend* Subsection (c) of § 4405 and *add a new* § 4406.2, both of Article 4, Chapter 4, Title 4, Guam Code Annotated, relative to mandating the use of an Administrative Law Judge under the Civil Service Commission, to clarifying certain functions, and to establishing time standards and case management practices” hereby submits these findings to *I Mina'trentai Tres na Liheslaturan Guåhan* and reports out Bill No. 81-33 (COR), As Amended by the Committee, with a recommendation TO PASS.

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN

2015 (FIRST) Regular Session

Bill No. 81-33 (COR)

Introduced by:

M.C. Torres

B.J.F. Cruz

R.J. Respicio

AN ACT TO MANDATE THE USE OF AN ADMINISTRATIVE LAW JUDGE UNDER THE CIVIL SERVICE COMMISSION, TO CLARIFY CERTAIN FUNCTIONS AND TO ESTABLISH TIME STANDARDS AND CASE MANAGEMENT PRACTICES BY AMENDING SUBSECTION (C) OF TITLE 4 GCA § 4405 AND ADDING A NEW § 4406.2.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that there is a serious need to provide a solution to the extensive backlog of cases before the Civil Service Commission. According to the CSC calendar, cases are backed up for many years and the caseload of the CSC continues to be voluminous. This legislation would mandate that the Civil Service Commission hire an attorney to serve as an Administrative Law Judge, to hear arguments and make decisions on matters of law or procedure which usually occur prior to hearing a case on the merits, or facts. Currently, Commission members who must preside over the course of an administrative trial, with lawyers engaging in sometimes intense trial maneuvers, are placed under an arduous, and sometimes unfair, burden. In addition, because most

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1 Commission members have full-time jobs elsewhere, hearings are required to be
2 held during limited evening hours. This limitation on when hearings can take place
3 is one factor in the growing caseload of the Commission. Therefore, *I Liheslaturan*
4 *Guåhan* finds that it is in the best interest of the employees of the government of
5 Guam, the CSC, the government agencies and the appeals process to alleviate the
6 pressure placed on the CSC by mandating the use of an Administrative Law Judge
7 (ALJ) to conduct the hearings and administrative trials. An ALJ would expedite the
8 disposition of all adverse action caseloads. Hearings and trials would be set during
9 the course of working hours, with the full support of the Commission's staff being
10 present. Parties to the action and their counsel would also be more readily available
11 during normal working hours. Parties would be allowed sufficient and ample time
12 within the course of regular working hours to present full and complete cases.
13 Continuances could be greatly reduced, and cases would be set more frequently for
14 final disposition. Trial advocacy would be under the control of the ALJ, subject to
15 all appropriate rulings and sanctions as deemed necessary for the proper conduct of
16 the hearing. Any decision of the ALJ would be subject to review and approval of the
17 CSC, after which such decision would become final, subject only to appeal before
18 the Superior Court of Guam.

19 It is, therefore, the intent of *I Liheslaturan Guåhan* to mandate the use of an
20 Administrative Law Judge at the Civil Service Commission.

21 **Section 2.** Subsection (c) of §4405, Article 4, Chapter 4 of Title 4 of the Guam
22 Code Annotated is hereby *amended* to read:

23 **“§4405. Commission Staff.**

24 (a) The Executive Director of the Commission shall be appointed by the Civil
25 Service Commission with the approval of the Governor and with the advice and
26 consent of the Legislature.

1 (b) The Executive Director may, with Commission approval, hire such
2 professional, clerical, and other staff as may be deemed necessary to assist the
3 Commission in performing its duties and functions.

4 (c) The Commission ~~may~~ shall employ an full-time or part-time
5 Administrative Law Judge (ALJ), ~~full or part time~~, to assist the Commission with
6 the adjudicatory responsibilities, or the Commission may retain a private attorney or
7 attorneys to serve as an ALJ on a case-by-case basis. The ALJ shall have the
8 authority to handle the following matters: hearings related to technical and
9 procedural motions, preliminary evidentiary motions, and any other matters deemed
10 appropriate by the Commission, including full merit hearings. All decisions by the
11 ALJ shall be forwarded for review and ratification to the Commission, which shall
12 accept or reject in its entirety, the ALJ's decision will have the authority to accept,
13 modify, or reject it in whole or in part, and to determine whether the decision affects
14 similarly situated matters being reviewed by the ALJ. The ALJ shall follow
15 applicable rules and procedures approved by the Commission, and where any rule
16 or procedure identifies the Commission, the ALJ may at the direction of the
17 Commission act in its place and will assume all authority and responsibilities
18 prescribed by such rules and regulations, except as limited by this Act. An ALJ must
19 be a Guam-licensed attorney.

20 **Section 3.** A new section of §4406.2., Article 4, Chapter 4 of Title 4 of the
21 Guam Code Annotated is hereby *added* to read:

22 **“§4406.2. Time Standards and Case Management.**

23 In order to assist in case management and promote timeliness in the resolution
24 of matters before the Commission, there is hereby established the following Time
25 Standards.

1 (a) For appeals from actions resulting in the termination of an employee, a
2 Hearing on the Merits shall commence no later than four months from the initial
3 filing of the appeal.

4 (b) For all other appeals from adverse actions, a Hearing on the Merits shall
5 commence no later than six months from the initial filing of the appeal.

6 (c) For grievances filed before the Commission, a Grievance Hearing shall be
7 held no later than four months from the initial filing of the grievance.

8 (d) All written decisions following any and all hearings shall be signed and
9 ordered within 60 days of the date of the hearing. Failure by the Commission to
10 issue the written decisions in compliance with (d) shall result in withholding of
11 all meeting stipends allowed for under (g) of §4405, Article 4, Chapter 4 of Title
12 4 of the Guam Code Annotated.

13 **Section 4. Severability.** If any provision of this Act or its application
14 to any person or circumstance is found to be invalid or contrary to law, such
15 invalidity shall not affect other provisions or applications of this Act which can
16 be given effect without the invalid provisions or application, and to this end the
17 provisions of this Act are severable.

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

Bill No. 81-33 (COR)

***As Amended by the Committee on Appropriations and Adjudication**

Introduced by:

M.C. Torres

B.J.F. Cruz

R.J. Respicio

**AN ACT TO *AMEND* SUBSECTION (C) OF § 4405 AND
ADD A NEW § 4406.2, BOTH OF ARTICLE 4, CHAPTER 4,
TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO
MANDATING THE USE OF AN ADMINISTRATIVE LAW
JUDGE UNDER THE CIVIL SERVICE COMMISSION, TO
CLARIFYING CERTAIN FUNCTIONS, AND TO
ESTABLISHING TIME STANDARDS AND CASE
MANAGEMENT PRACTICES.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds

that there is a serious need to provide a solution to the extensive backlog of cases before the Civil Service Commission (CSC, Commission). According to the CSC calendar, cases are backed up for many years and the caseload of the CSC continues to be voluminous. This legislation mandates that the Civil Service Commission hire an attorney to serve as an Administrative Law Judge (ALJ) to hear arguments and make decisions on matters of law or procedure that usually occur prior to hearing a case on the merits or facts. Currently, Commissioners who must preside over the course of an administrative trial with lawyers engaging in sometimes intense trial maneuvers are placed under an arduous, and sometimes

1 unfair, burden. In addition, because most Commissioners have full-time jobs
2 elsewhere, hearings are required to be held during limited evening hours. This
3 limitation on when hearings can take place is one factor in the growing caseload of
4 the Commission.

5 Therefore, *I Liheslaturan Guåhan* finds that it is in the best interest of the
6 employees of the government of Guam, the CSC, the government agencies and the
7 appeals process to alleviate the pressure placed on the CSC by mandating the use
8 of an Administrative Law Judge (ALJ) to conduct the hearings and administrative
9 trials. An ALJ would expedite the disposition of all adverse action caseloads.
10 Hearings and trials would be set during the course of working hours, with the full
11 support of the CSC's staff being present. Parties to the action and their counsel
12 would also be more readily available during normal working hours. Parties would
13 be allowed sufficient and ample time within the course of regular working hours to
14 present full and complete cases. Continuances could be greatly reduced, and cases
15 would be set more frequently for final disposition. Trial advocacy would be under
16 the control of the ALJ, subject to all appropriate rulings and sanctions as deemed
17 necessary for the proper conduct of the hearing. Any decision of the ALJ would be
18 subject to review and approval of the CSC, after which such decision would
19 become final, subject only to appeal before the Superior Court of Guam.

20 It is, therefore, the intent of *I Liheslaturan Guåhan* to mandate the use of an
21 Administrative Law Judge at the Civil Service Commission.

22 **Section 2.** Subsection (c) of § 4405, Article 4, Chapter 4, Title 4, Guam
23 Code Annotated is hereby *amended* to read:

24 **“§ 4405. Commission Staff.**

1 (a) The Executive Director of the Commission *shall* be
2 appointed by the Civil Service Commission with the approval of the
3 Governor and with the advice and consent of the Legislature.

4 (b) The Executive Director may, with Commission approval,
5 hire such professional, clerical, and other staff as may be deemed
6 necessary to assist the Commission in performing its duties and
7 functions.

8 (c) The Commission ~~may~~ *shall* employ ~~an~~ full-time or part-time
9 Administrative Law Judge (ALJ) ~~, full or part-time,~~ to assist the
10 Commission with the adjudicatory responsibilities, or the Commission
11 may retain a private attorney or attorneys to serve as an ALJ on a
12 case-by-case basis. The ALJ shall have the authority to handle the
13 following matters: hearings related to technical and procedural
14 motions, preliminary evidentiary motions, and any other matters
15 deemed appropriate by the Commission, including full merit hearings.
16 All decisions by the ALJ shall be forwarded to the Commission,
17 which shall accept or reject in its entirety, the ALJ's decision will
18 have the authority to accept, modify, or reject the ALJ's decision in
19 whole or in part. The Commission will review only those parts of the
20 record before the ALJ which the Commission deems necessary to
21 decide whether to accept, modify, or reject the ALJ's decision. The
22 ALJ shall follow applicable rules and procedures approved by the
23 Commission, and the Commission may direct the ALJ to act in the
24 Commission's place and assume all authority and responsibilities
25 prescribed by such rules and regulations, except as limited by this Act.
26 An ALJ must be an Guam-licensed attorney active member of the

1 Guam Bar Association in good standing and a licensed attorney for at
2 least five (5) years.”

3 **Section 3.** A *new* § 4406.2 is hereby *added* to Article 4, Chapter 4, Title 4,
4 Guam Code Annotated to read:

5 **“§ 4406.2. Time Standards and Case Management.**

6 In order to assist in case management and promote timeliness in
7 the resolution of matters before the Commission, the Legislature
8 establishes the following Time Standards which the Legislature deems
9 to be reasonably achievable standards that the Commission shall
10 aspire to attain in all cases filed with the Commission after December
11 31, 2015.

12 (a) For appeals from actions resulting in the termination
13 of an employee, a Hearing on the Merits shall commence no
14 later than four (4) months from the initial filing of the appeal.

15 (b) For all other appeals from adverse actions, a Hearing
16 on the Merits shall commence no later than six (6) months
17 from the initial filing of the appeal.

18 (c) For grievances filed before the Commission, a
19 Grievance Hearing shall be held no later than four (4) months
20 from the initial filing of the grievance.

21 (d) All matters shall be adjudicated within (12) twelve
22 months from the filing of a notice of appeal unless the time
23 standards are waived by the employee. The CSC
24 Commissioners may also waive the time standards for
25 substantial and compelling reasons by either party.

1 (e) Failure on the part of the Commission to adhere to the
2 time standards described in Subsections (a), (b) and (c) shall in
3 no way result in the dismissal of the employee's right to appeal
4 their adverse action.

5 (f) The time standards described in Subsections (a), (b)
6 and (c) may be waived by the employee.

7 (g) The time standards described in Subsections (a), (b)
8 and (c) may be waived by the Commissioners upon finding
9 substantial and compelling reasons to determine that a waiver
10 of the time standards is the only option available, and only upon
11 mutual consent of the parties.

12 (h) Following all oral decision by Commissioners, the
13 prevailing party shall present their proposed written decision
14 for Commissioners to sign no later than ten (10) working days
15 from the date of the hearing in which the oral decision was
16 rendered.

17 (i) All written decisions following any and all hearings
18 shall be signed and ordered within sixty (60) days of the date of
19 the hearing.

20 **Section 4. Severability.** *If any provision of this Act or its application to*
21 *any person or circumstance is found to be invalid or contrary to law, such*
22 *invalidity shall not affect other provisions or applications of this Act that can be*
23 *given effect without the invalid provisions or application, and to this end the*
24 *provisions of this Act are severable.*

SENATOR BENJAMIN J.F. CRUZ, VICE SPEAKER

Committee on Appropriations and Adjudication
senator@senatorbjcruz.com | www.senatorbjcruz.com



I Mina'trentai Tres na Liheslaturan Guåhan
THE THIRTY-THIRD GUAM LEGISLATURE

155 Hesler Place, Suite 107, Hagåtña, Guam 96910
T: (671) 477-2520/1 | F: (671) 477-2522

PUBLIC HEARING SIGN-IN SHEET

2:00PM, Friday, May 8, 2015

Guam Legislature Public Hearing Room • Hagåtña, Guam

Bill No. 81-33 (COR) – M.C. Torres / B.J.F. Cruz / R.J. Respicio – “An act to mandate the use of an Administrative Law Judge under the Civil Service Commission, to clarify certain functions and to establish time standards and case management practices by *amending* Subsection (c) of Title 4 GCA § 4405 and *adding a new* § 4406.2.”

NAME	AGENCY OR ORGANIZATION	POSITION		TESTIMONY		PHONE NO.	EMAIL ADDRESS
		SUPPORT	OPPOSE	WRITTEN	ORAL		
Don Del Priore	GFT	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	735-4390	Daniel@gftunion.com
Georgette Concepcion	private attorney	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	477-8305	gconcepuan@guamlawfirm.com
John Nowakowski	CSC	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	647-1855	john.nowakowski@csc.guam.gov
Tony La Merina	CSC	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	647-1855	alberto.lamerina@csc.guam.gov
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
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LAW OFFICE OF
GEORGETTE BELLO CONCEPCION, P.C.
173 ASPINALL AVENUE, SUITE 203
HAGÅTÑA, GUAM 96910
TELEPHONE: 671.477.8305
FACSIMILE: 671.477.5873
gconcepcion@guamlawfirm.com

May 8, 2015

Re. WRITTEN TESTIMONY - BILL NO. 81-33 (COR)

Dear Senators Torres, Cruz and Respicio,

I write to you in SUPPORT of Bill No. 81-33 and ask your consideration of revisions to said bill.

I am a sole practitioner and I have represented employees before the Civil Service Commission ("CSC"). Most recently, I represented a government employee with regard to an appeal of an adverse action taken against her. The hearing on the merits was finally held one (1) year and ten (10) months after she had filed her appeal with the CSC. The Judgment signing hearing was set more than three (3) months after the CSC rendered its decision in favor of my client.

The primary reason given for the 20 month delay in getting the hearing on the merits scheduled date was that the CSC was overwhelmed with cases such that there were no earlier available dates considering the parties anticipated the hearing would occur over numerous evenings. I also personally witnessed the CSC give this same reason for the delay of setting motion hearings and hearing on the merits in other cases.

I recognize that the Commissioners are limited in the number of times a week they can meet and the length of time they can give each case in any given evening. I also recognize that the CSC's employees have families and other obligations to tend to during the evening after putting in a full-day's work with the CSC. Because of these limitations it would be advantageous to both the Commission and employees to have an Administrative Law Judge ("ALJ") available to it to expedite the disposition of all adverse action and grievance appeals filed with the CSC. The ALJ can then hold hearings during work hours with the full support of the CSC's staff which would allow the parties more time during any given day to present their cases in chief. This in turn, would alleviate the need for the CSC to "find" the needed number of

consecutive evenings, which in my client's case was nine (9) evenings over a 2 month period, within which to schedule and conclude one merit hearing.

For these reasons I support Bill No. 81-33 ("Bill") with the request you consider revisions to the Bill that I believe would make applying the language of the Bill more practical and workable for all parties.

Section 2, § 4405, Commission Staff

I recommend the last sentence of subsection (c) be revised to read as follows to ensure the ALJ will be knowledgeable and hopefully efficient in carrying out his/her duties:

An ALJ must be an active member of the Guam Bar and have been licensed as an attorney for at least five (5) years.

Section 3, § 4406.2, Time Standards and Case Management

As to subsection (d), I recommend it be revised to read as follows:

All written decisions following any and all hearings shall be signed and ordered within 60 days of the date of the hearing and the Judgment signing hearing date be held within 30 days of the issuance of written decisions and orders.

Although I believe it is important to implement time standards within which an appeal must be set for hearing, as a sole practitioner I may not be able to prepare and appear the Hearing on the Merits due to other pending matters that were set for hearing or trial prior to the filing of an appeal or the setting of a hearing by the CSC. The parties should be allowed to deviate from this four month period for good cause upon stipulation as a means of accommodating the parties' and attorneys' schedules. I recommended the following provisions be added to § 4406.2 as set forth in the Bill:

(e) As to the time standards set forth in subsections (a), (b) and (c), the parties may deviate from said standards for good cause upon written stipulation and approval by the CSC. Under no circumstances shall an employee's appeal be dismissed due to said deviation and stipulation.

(f) All appeals filed with the CSC must be adjudicated within twelve (12) months from the initial filing of the appeal.

Thank you for the opportunity to provide comment on the Bill.

Yours truly,


Georgette Bello Concepcion, Esq.

Vice Speaker Benjamin J.F. Cruz

Date: 5/8/15 Time: 2:00pm

File No.: 33-339

Received By:  _____



GFT, AFT Local 1581
Together We Win!

Timothy Fedenko, President
Corazon Mucho, Secretary

Sanjay Sharma, Vice President
James Lukan, Treasurer

May 7, 2015

Vice-Speaker Benjamin J.F. Cruz
Committee on Appropriations and Adjudication
33rd Guam Legislature
155 Hesler Place
Hagatna, Guam 96910
Re: Comments as to proposed Bill 81-33

Dear Vice-Speaker Cruz:

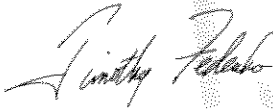
The Guam Federation of Teachers; hereinafter GFT, supports the good intentions of Bill 81-33 insofar as it seeks to make the Civil Service Commission; hereinafter CSC, more effective in its ability to meet its responsibilities pertaining to Guam's Merit System. However, GFT has several concerns as to the provisions of the proposed Bill as it is currently drafted, and they are as follows:

- A) The Bill puts the word "Shall" in place of the word "May" regarding the CSC employing an Administrative Law Judge; hereinafter ALJ, but that is not the problem, as GFT understands the issue from CSC, because the CSC wants to employ an ALJ; just as it is allowed to do presently under the existing law. The problem is that there has not been allocated funding for an ALJ; so instead of just substituting words, the Bill needs to identify funding for the position and should even say what the salary will be. In regard to the same subject, the ALJ, the GFT submits a permanently hired ALJ is what should be required in order to ensure, as much as possible independence and insulation of the position; versus hiring an ALJ from time to time as that may make the temporary ALJ more susceptible to trying to please; so as to receive more repeat temporary appointments. The same idea as an Article Three Judge being appointed for life.
- B) The proposed Bill would allow the CSC to assign to the ALJ Hearings on the "full merits", but that it is submitted would be an abrogation by the CSC of its role and responsibilities under existing Guam Law and perhaps the Organic Act itself. It is suggested that the idea can be addressed by doing the matter the same as in the Court System; and that is a Public Employee has the right to have his or her matter heard by the CSC; just as a defendant has a right to a Jury Trial, however, the Public Employee can waive, in writing, this right, and choose to have his or her matter decided on the Merits by the ALJ. Otherwise the ALJ should be restricted to matters such as Discovery etc.; that are Motions not dealing directly with the merits, and such adjudicatory matters of this nature only; so as to assist the CSC. If the ALJ hears a matter on the Merits, the Bill should be then amended to

allow either party to go directly to the Superior Court for review; just as if the CSC had heard the matter on the Merits, and remove a CSC Review Stage.

- C) Another point to also address is that if the CSC is to review decisions of the ALJ is there any kind of record made of proceedings before the ALJ; in other words what is the CSC to have before it to review, or would it be better to say the CSC reviews de novo?
- D) If there are proceedings before the ALJ in the daytime; now CSC Hearings are in the evening; who pays the individuals who come before the ALJ in the workday time period? Should some kind of Leave with Pay be identified for such proceedings both for the Public Employee whose matter is being heard; as well as witnesses that may be called?
- E) In regard to the Time Standards and Case Management Sections of the proposed Bill, The GFT believes the mandating of such is a good thing. However, there is no sanction identified. Thus it has no "teeth" to enforce the mandate. Insofar as the CSC and all others involved, except the Public Employee and his or her Representative, are the Government; just as the Superior Court is, the GFT submits the sanction for any violation of the mandated Time Standards set forth in the Bill; unless the delay is caused by the Public Employee or else waived by the Public Employee, the sanction should be the determination of the matter in favor of the Public Employee. That form of sanction alone will ensure that the spirit, intent and mandate of the Bill are met by the CSC and the Government/Management.

Respectfully submitted,



Timothy Fedenko
President
GFT Local 1581
AFL-CIO



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

**I Gobietnon Guahan
CIVIL SERVICE COMMISSION
KUMISION I SETBISION SIBIT**

7TH Floor International Trading Center (ITC)
Marine Corp Drive, Tamuning 96913
P.O. Box 2950 Hagatna, Guahan 96932
Tel: 647-1855/57 Fax: 647-1867



Alberto "Tony" Lamorena V
Executive Director

CSC NO: 2015-09

May 8, 2015

Honorable Benjamin J.F. Cruz,
Vice Speaker, 33rd Guam Legislature
155 Hesler Place
Hagatna, Guam 96910

Buenas Yan Hafa Adai,

Vice Speaker Cruz and members of the Committee on Appropriations and Adjudication my name is Alberto "Tony" Lamorena V, Executive Director of the Guam Civil Service Commission. I am appearing before you today on behalf of the Commission to testify on Bill 81-33(COR) introduced by Senator Mary C. Torres.

I want to thank you for the opportunity for us to provide input on Bill 81-33(COR) which is entitled "AN ACT TO MANDATE THE USE OF AN ADMINSTRATIVE LAW JUDGE UNDER THE CIVIL SERVICE COMMISSION, TO CLARIFY CERTAIN FUNCTION AND TO ESTABLISH TIME STANDARDS AND CASE MANSGEMENT PRACTICES BY AMENDING SUBSECIION (c) OF TITLE 4 GCA § 4405 AND ADDING A NEW § 4406.2.

I would like to recognize and commend the author for the intent to resolve the current and future backlogs at the Civil Service Commission. The Civil Service Commission is aware of the situation and understands the urgency to expeditiously address the cases brought before the CSC. In the last few years the CSC has worked to amend the statute regarding the Administrative Law Judge (ALJ). Last year thanks to Vice Speaker Cruz corrective language was included and passed in the FY15 budget, P.L. 32-181 Section 31 addressing those concerns in §4405 (c) of Bill 81-33(COR) the CSC supports this section of the bill as it further clarifies any additional concerns.

The CSC agrees that one of the primary solutions to resolve the current situation is an Administrative Law Judge (ALJ) who will address such matters as grievances, motions and other responsibilities directed by the Commission. The Commission could realize alleviating 50% of its current caseload in a period within the next year or two. Bill 81-33(COR) mandates the CSC stating "The Commission shall employ" but does not identify or appropriate the funding to follow in the spirit of its intent. In the last few years the CSC has seen a tremendous influx of

cases and the demands from the parties to provide more hearing days to plead their cases. As a result the Commission frequently meets three (3) nights a week to tackle the backlog.

The Commission understands the author's intent to address cases in a more timely manner but objects to §4406.2 (a),(b),(c) "Time Standards and Case Management" for the following reasons; delays in the hearing of cases is a result of numerous factors and not solely in the hands of the Commission. These delays include the employee needing time to find Counsel sometimes taking several months. Once Counsel is selected additional time is requested for discovery, to review relevant documents, identify witnesses, motions filed by the parties' contributes to further delays. When dates become available for hearings those dates can conflict with either parties' schedule and later dates must be identified. We have also had on numerous occasions when parties stipulate to vacate hearing dates which compounds more delays in the process. The Commission realizes the need to hear cases in a timely manner but also realizes the need to provide ample time for parties to prepare their presentations to best represent their clients. Therefore, it would be unfair to put time constraints but instead provide the Commission the resources to address them. The Commission feels that once the ALJ is in place cases would be heard in a timely manner.

The Commission has also taken steps to further streamline and improve its efficiency by recently implementing procedures that are within the confines of our current rules these include; a) Scheduling pre-hearing conferences earlier, to allow cases to be heard sooner when open dates become available; b) Having Administrative Counsel conduct an evidentiary hearing when parties request for more than four (4) nights for a hearing on the merits; c) "Case Management Statement" form to be completed early in the process, forcing representatives to discuss the case, plan in advance, and possibly resolve any issues; d) Being more aggressive in calling in parties to take open dates as they become available. We can anticipate seeing improvements in the near future but the Commission feels that these procedures would be more effective if codified thus we are proposing the following amendments (Please see attachment) namely; §4410 Authority to Slot On-Going Cases into Open Hearing Dates. §4412 Sanctions and Penalties for Noncompliance. §4413 Case Management Statement.

The CSC is reviewing our current laws, rules and procedures and will be working collaboratively with our stake holders to address their issues and concerns to improve and accelerate the process which will eventually come before the Legislature for approval. The Commission has also included in the FY16 budget request, funding for an ALJ, Legal Secretary and supplies and equipment. The support from this body to approve these resolutions would contribute tremendously to our current situation.

In §4406.2(d) The Commission supports the intent to prioritize the need to have written decisions issued within 60 days. Although, penalizing the Commissioners of their stipends is not the solution to the problem, the delays are the result of the prevailing parties' not submitting a draft proposed decision in a timely manner to the CSC. Once the CSC receives the draft decision the CSC's Administrative Counsel reviews, formats and calendars the signing within two (2) to three (3) weeks. If a penalty is to be imposed it should be the prevailing party and not the Commissioners.

The seven (7) men and women that comprise the Commission are hard working and dedicated individuals who not only hear cases 2 to 3 nights a week but take time out of their busy schedule to review all the evidence presented in each case to ensure that sound decisions are made. In the past the Legislature has always been supportive of the Commission and we hope that you will look kindly at our concerns with Bill 81-33(COR) and for your continued support in the future.

Again, thank you for allowing me to provide testimony and should you have any questions, please feel free to contact me.

Si Yu'us Ma'ase,



Alberto "Tony" Lamorena V

Vice Speaker Benjamin J.F. Cruz

Date: 5/8/15 Time: 2:05pm

File No.: 33-330

Received By: 

4410. Authority to Slot On-Going Cases into Open Hearing Dates.

Where both sides agree, the Commission has authority to conduct a hearing notwithstanding the prior public notice requirements of the Open Government Act. With consent of the parties, a hearing can be held on the same day that consent is given to have the hearing held. Consent of the parties to waive the time requirements of the Open Government Act public notice must be in writing. In such cases, public notice shall be given as soon as reasonably practicable and all other requirements of the Open Government Act (e.g., recording) shall be met.

§ 4412. Sanctions and Penalties for Noncompliance.

The violation of or failure to conform to any of the statutes in this section, Civil Service Commission Rules of Procedure, or directives of the presiding officer shall subject the offending party or counsel to such penalties, including monetary sanctions and/or the imposition of costs and attorney's fees to opposing counsel, as the presiding officer may deem appropriate under the circumstances.

[Based upon Local Rules of the Superior Court of Guam, General Rule 2.1:

GR 2.1: Sanctions and Penalties for Noncompliance.

The violation of or failure to conform to any of these General Rules, the Guam Rules of Civil Procedure, or the Local Rules of the Superior Court of Guam – Civil Rules shall subject the offending party or counsel to such penalties, including monetary sanctions and/or the imposition of costs and attorney's fees to opposing counsel, as the Court may deem appropriate under the circumstances.]

§ 4413. Case Management Statement.

In the interest of expediting case resolution, the Commission may promulgate a Case Management Statement that requires parties to meet and confer in good faith prior to scheduling hearing dates to discuss fundamental issues and evidence in the case, procedural matters, and potential settlement in completing the Case Management Statement. Failure to cooperate in completion of the Case Management Statement can be grounds for an unfavorable disposition of the case against the uncooperative party. The Commission *shall* adjust application of this requirement against an unrepresented party where there is a clear misunderstanding and failure to do so would operate unfairly.

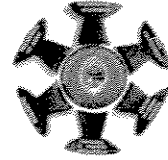


Eddie Baza Calvo
Governor
Ray Tenorio
Lieutenant Governor

GOVERNMENT OF GUÅHAN
(GUBETNAMENTO GUÅHAN)
DEPARTMENT OF ADMINISTRATION
(DIPATTAMENTON ATMENESTRASION)
DIRECTOR'S OFFICE

(Ufisinan Direktot)

Post Office Box 884 * Hagatna, Guam 96932
TEL: (671) 475-1101/1250 * FAX: (671) 477-6788



Anthony C. Blaz
Director
Alfred F. Duenas
Deputy Director

MAY 08 2015

Senator Benjamin J. Cruz
I Mina'Trentai Tres Na Liheslaturan Guahan
Vice Speaker/Chairman, Committee on Appropriation
and Adjudication
33rd Guam Legislature
155 Hesler Street, Suite 107
Hagatna, Guam 96910

Dear Senator B.J. Cruz:

Buenas yan Hafa Adai! This is to submit the Department of Administration's Testimony on Bill No. 81-33 (COR), "**AN ACT TO MANDATE THE USE OF AN ADMINISTRATIVE LAW JUDGE UNDER THE CIVIL SERVICE COMMISSION, TO CLARIFY CERTAIN FUNCTIONS AND TO ESTABLISH TIME STANDARDS AND CASE MANAGEMENT PRACTICES BY AMENDING SUBSECTION © OF TITLE 4 GCA § 4405 AND ADDING A NEW § 4406.2.**"

We are in favor of this bill, which broadens the ALJ's duties and responsibilities to hear and determine similar appeals filed by government employees that are compliant with the rules and regulations. This will also address the current caseload and scheduling at the CSC, whereby the employees' appeals would be heard sooner than later.

We would like to offer some input on **Section 3** of the bill which adds a **§4406.2** of Article 4, Chapter 4 of Title 4 of the Guam Code Annotated relative to establishing time standards in case management. DOA understands that the flexibility that the Civil Service Commission and its staff currently has allows them to manage cases in the most efficient manner that they can within their mandated timelines. We believe that with the proposed legislation in regards to the ALJ in addition to the current system of case management, it would serve both employees and management officials best if the Commission and its staff were able to work flexibly without mandated deadlines relative to the type of cases that are being heard. There are instances and circumstances that would demand flexibility when it comes to scheduling of hearings and briefings while taking into consideration the availability of witnesses and other key persons whose presence are requested at all the scheduled meetings and hearings. We recommend that Section 3 be removed to allow the Commission, its staff, and the ALJ to hear as many cases as possible should this bill become law.

Si Yu'os Ma'ase for the opportunity to testify on Bill 81-33(COR).

Sincerely,

Received By: ANTHONY C. BLAZ

File No.:

Date:

Time:

Vice Speaker Benjamin J.F. Cruz

Received
TW 2:15 PM
05/08/2015

Mary C. Torres

From: sunny mesa <sunnymesa@gmail.com>
Sent: Friday, May 8, 2015 11:18 AM
To: marycamachotorres@gmail.com
Subject: Fwd: Bill 81-33 (COR)

----- Forwarded message -----

From: "sunny mesa" <sunnymesa@gmail.com>
Date: May 7, 2015 8:57 AM
Subject: Bill 81-33 (COR)
To: "marycamachotorres@gmail.com" <marycamachotorres@gmail.com>
Cc:

Hafa Adai,

Firstly, I would like to thank Senator Mary Torres for the introduction of the subject bill. I believe this bill is long overdue.

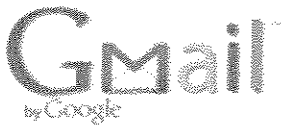
I've read the bill and would like to express my support for the measure but I kindly ask for an ammendment that would vacate and dismiss a termination in its entirety if its not seen in a timely manner (two months) and final disposition in six months.

A terminated employee already has to endure financial and emotional challenges during the termination period whereas the terminating authority, without burden, awaits the hearings. This allows the terminating authority to prolong the hearing for just about any reason.

Notwithstanding the numerous caseloads at the CSC, the terminated employee should not have to wait an unreasonable period of time to get final disposition as he or she is already burdened.

Thank you for your time and consideration

Joaquín C. Mesa 688-2831 (C)



Carlo Branch <carlo.branch@senatorbjcruz.com>

Bill 81-33

Elizabeth Barrett-Anderson <ebanderson@guamag.org>

Fri, May 22, 2015 at 5:58 AM

To: "Carlo.branch@senatorbjcruz.com" <Carlo.branch@senatorbjcruz.com>

Carlo,

Thank you for allowing me to comment on the re-draft of Bill 81-33. I fully support the ALJ authorization. With appropriate funding one ALJ can assist the Commission to expedite and clean up its backlog within a year's timeframe.

While I fully understand the time standards provisions, the Bill does not make it clear whether it will be applied to existing cases, and if so in what manner. I see all kinds of concerns cropping up from the time standards. I know the important implications of time standards (TS), and I do support TS generally, but it would be best that the CSC develop them internally for adoption as rules rather than statutorily being imposed. That's what the court did. The National Center for State Courts worked with the trial judges in the development of time standards before the Supreme Court adopted them.

I recommend that the ALJ be fully funded first, allow the ALJ to clean up the calendar, and work with the CSC to establish appropriate time standards that work for the employee and the agencies. It might end up that the ALJ process will resolve matters and time standards will no longer be necessary. It's worth giving the CSC at least a year to implement the ALJ process to see if it resolves the backlog sufficiently such that time standards are not necessary.

Lastly, the Bill states that failure to meet the time standards is deemed an "exhaustion of administrative remedies." Is this prospective only? It has to be because there are hundreds of pending cases beyond the TS. Even applied prospectively, it has the potential to cause an increase to the Judiciary's caseload. The trial judges are currently crushing under the weight of judicial time standards. Adding CSC cases on the merits to the workload of the 7 trial judges is significant. Courts should only be a review of administrative processes and decisions, not the replacement of them.

I firmly believe that the ALJ process is the solution to the TS issue. We just need to get a good ALJ on board, and have him/her start hearing the backlog of cases, write the Findings of Fact, and present them to the Commission for adoption, rejection, or modification. Btw, should the Commission reject the recommendation of the ALJ, I recommend that they can impose their own decision based solely on a transcript of the record, NOT engaging in a new hearing on the merits. This is absent from the Bill.

Thank you for allowing me to comment.



COMMITTEE ON RULES

I Minu'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator

Rory J. Respicio

CHAIRPERSON

MAJORITY LEADER

Senator

Thomas C. Ada

VICE CHAIRPERSON

ASSISTANT MAJORITY LEADER

Speaker

Judith T.P. Won Pat, Ed.D.

Member

Vice-Speaker

Benjamin J.F. Cruz

Member

Legislative Secretary

Tina Rose Muna Barnes

Member

Senator

Dennis G. Rodriguez, Jr.

Member

Senator

Frank Blas Aguon, Jr.

Member

Senator

Michael F.Q. San Nicolas

Member

Senator

Nerissa Bretania Underwood

Member

V. Anthony Ada

MINORITY LEADER

Mary C. Torres

MINORITY MEMBER

Certification of Waiver of Fiscal Note Requirement

This is to certify that the Committee on Rules submitted to the Bureau of Budget and Management Research (BBMR) a request for a fiscal note, or applicable waiver, on **Bill No. 81-33 (COR) –M.C. Torres, B.J.F. Cruz, R.J. Respicio, "AN ACT TO MANDATE THE USE OF AN ADMINISTRATIVE LAW JUDGE UNDER THE CIVIL SERVICE COMMISSION, TO CLARIFY CERTAIN FUNCTIONS AND TO ESTABLISH TIME STANDARDS AND CASE MANAGEMENT PRACTICES BY AMENDING SUBSECTION (C) OF TITLE 4 GCA § 4405 AND ADDING A NEW § 4406.2."**– on April 24, 2015. COR hereby certifies that BBMR confirmed receipt of this request April 24, 2015 at 2:57 P.M.

COR further certifies that a response to this request was not received. **Therefore, pursuant to 2 GCA §9105, the requirement for a fiscal note, or waiver thereof, on Bill 81-33 (COR) to be included in the committee report on said bill, is hereby waived.**

Certified by:

Senator Rory J. Respicio

Chairperson, Committee on Rules

May 26, 2015

Date



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator

Rory J. Respicio

CHAIRPERSON

MAJORITY LEADER

Senator

Thomas C. Ada

VICE CHAIRPERSON

ASSISTANT MAJORITY LEADER

Speaker

Judith T.P. Won Pat, Ed.D.

Member

Vice-Speaker

Benjamin J.F. Cruz

Member

Legislative Secretary

Tina Rose Muna Barnes

Member

Senator

Dennis G. Rodriguez, Jr.

Member

Senator

Frank Blas Aguon, Jr.

Member

Senator

Michael F.Q. San Nicolas

Member

Senator

Nerissa Bretania Underwood

Member

V. Anthony Ada

MINORITY LEADER

Mary C. Torres

MINORITY MEMBER

April 24, 2015

VIA E-MAIL

joey.calvo@bbmr.guam.gov

Jose S. Calvo

Acting Director

Bureau of Budget & Management Research

P.O. Box 2950

Hagåtña, Guam 96910

RE: Request for Fiscal Notes-- Bill Nos. 81-33(COR) through 83-33(COR)

Hafa Adai Mr. Calvo:

Transmitted herewith is a listing of *I Mina'trentai Tres Na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

Si Yu'os ma'åse' for your attention to this matter.

Very Truly Yours,

Senator Rory J. Respicio

Chairperson of the Committee on Rules

Attachment (1)

Cc: Clerk of the Legislature

Bill Nos.	Sponsor	Title
81-33 (COR)	M. C. Torres B. J.F. Cruz R. J. Respicio	AN ACT TO MANDATE THE USE OF AN ADMINISTRATIVE LAW JUDGE UNDER THE CIVIL SERVICE COMMISSION, TO CLARIFY CERTAIN FUNCTIONS AND TO ESTABLISH TIME STANDARDS AND CASE MANAGEMENT PRACTICES BY AMENDING SUBSECTION (C) OF TITLE 4 GCA § 4405 AND ADDING A NEW § 4406.2.
82-33 (COR)	T. R. Muña Barnes V. Anthony Ada Frank F. Blas, Jr.	AN ACT TO APPROPRIATE FUNDS FROM THE FY 2014 FUND BALANCE OF THE TOURIST ATTRACTION FUND FOR THE PAYMENT OF OPERATIONAL NEEDS OF THE 2016 FESTIVAL OF THE PACIFIC ARTS ACTIVITIES, PAYMENTS TO THE EMPLOYEES OF THE GOVERNMENT OF GUAM RESULTING FROM THE ENACTMENT OF THE COMPETITIVE WAGE ACT, AND TO FUND THE BALANCE OF PAYMENTS DUE TO LAW ENFORCEMENT OFFICERS.
83-33 (COR)	T. R. Muña Barnes V. Anthony Ada Frank F. Blas, Jr.	AN ACT TO APPROPRIATE FUNDS FROM THE FY 2014 HOTEL OCCUPANCY TAX (HOT) SURPLUS FUND FOR THE PAYMENT OF CAPITAL NEEDS OF THE GUAM MEMORIAL HOSPITAL AUTHORITY, OPERATIONAL FUNDING FOR THE GUAM VISITORS BUREAU, AND FUNDING REQUIREMENTS FOR THE HAGATNA RESTORATION AND REDEVELOPMENT AUTHORITY.



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

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Michael F.Q. San Nicolas
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Senator
Nerissa Bretania Underwood
Member

V. Anthony Ada
MINORITY LEADER

Mary C. Torres
MINORITY MEMBER

April 22, 2015

MEMORANDUM

To: Rennae Meno
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: Senator Rory J. Respicio
Chairperson, Committee on Rules

Subject: Referral of Bill No. 81-33(COR)

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 81-33(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Tres Na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

I Mina'Trentai Tres Na Liheslaturan Received
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
81-33 (COR)	M. C. Torres B. J.F. Cruz R. J. Respicio	AN ACT TO MANDATE THE USE OF AN ADMINISTRATIVE LAW JUDGE UNDER THE CIVIL SERVICE COMMISSION, TO CLARIFY CERTAIN FUNCTIONS AND TO ESTABLISH TIME STANDARDS AND CASE MANAGEMENT PRACTICES BY AMENDING SUBSECTION (C) OF TITLE 4 GCA § 4405 AND ADDING A NEW § 4406.2.	04/21/15 4:49 p.m.	04/22/15	Committee on Appropriations and Adjudication			



Ealani Flores <eflores@senatorbjcruz.com>

FIRST NOTICE of Public Hearing – May 8, 2015

Dani Reyes <danireyes@senatorbjcruz.com>

Fri, May 1, 2015 at 9:52 AM

To: PH Notice <phnotice@guamlegislature.org>

Cc: "Senator Rory J. Respicio" <cor@guamlegislature.org>, "Sergeant-at-Arms (Legislature)" <sgtarms@guamlegislature.org>, Management Information System <mis@guamlegislature.org>, Clerks <clerks@guamlegislature.org>

May 1, 2015

MEMORANDUM

To: All Members / All Senators

From: Vice Speaker Benjamin J.F. Cruz, Chairman

Re: FIRST NOTICE of Public Hearing – May 8, 2015

Håfa Adai! The **Committee on Appropriations and Adjudication** will conduct a series of Public Hearings on **Friday, May 8, 2015**, in the **/ Liheslatura Public Hearing Room** with the following schedule:

10:00AM – OVERSIGHT HEARING

- **Bureau of Budget and Management Research**

2:00PM – PUBLIC HEARING OF BILLS

- **Bill No. 78-33 (COR)** – B.T. McCreddie – "An act to add a new § 77113.1 to Chapter 77, Title 10 Guam Code Annotated; relative to establishing an annual police recruitment cycle, starting in fiscal year 2016 for a five year period."
- **Bill No. 81-33 (COR)** – M.C. Torres / B.J.F. Cruz / R.J. Respicio – "An act to mandate the use of an Administrative Law Judge under the Civil Service Commission, to clarify certain functions and to establish time standards and case management practices by amending Subsection (c) of Title 4 GCA § 4405 and adding a new § 4406.2."

6:00PM – OVERSIGHT HEARING

- **Veteran's Affairs Office**

(The links provided above, as shown in the boldfaced and underlined text, direct to the respective PDF documents posted on the Guam Legislature website. For direct access, go to <http://www.guamlegislature.org>; bills are found under Bills > Introduced > 33rd).

Testimonies may be submitted via hand delivery to the Office of Vice Speaker Benjamin J.F. Cruz at the Guam Legislature; via postal mail to 155 Hesler Street, Hagåtña Guam 96910; via facsimile to 477-2522; or via e-mail to senator@senatorbjcruz.com. Please submit testimonies at least one day prior to the date of the hearing.

All government activities, programs, and services are accessible for people with disabilities in compliance with Title II of the Americans with Disabilities Act (ADA). Should you or interested parties require assistance or special accommodations to fully participate in this public hearing, please contact Mr. Carlo J. Branch at the Office of the Vice Speaker at 477-2521 or via e-mail at carlo.branch@senatorbjcruz.com.

We look forward to your attendance and participation.

cc: COR
Sgt-at-Arms
MIS
Clerks
Media

--

Dani Reyes
Policy Analyst

Vice Speaker Benjamin J.F. Cruz
I Mina'trentai Tres na Liheslaturan Guåhan
T 671-477-2520 | F 671-477-2522
<http://www.senatorbjcruz.com>

2 attachments



FIRST NOTICE PR PH 05082015.pdf
892K



FIRST NOTICE Memo PH 05082015.pdf
897K

VICE SPEAKER BENJAMIN J.F. CRUZ

Committee on Appropriations and Adjudication
senator@senatorbjcruz.com | www.senatorbjcruz.com



I Mina'trentai Tres na Liheslaturan Guáhan

THE 33RD GUAM LEGISLATURE

155 Hesler Place, Suite 107, Hagåtña, Guam 96910
T: (671) 477-2520/1 | F: (671) 477-2522

May 1, 2015

MEMORANDUM

To: All Members/ All Senators
From: Vice Speaker Benjamin J.F. Cruz, Chairman
Re: **FIRST NOTICE of Public Hearing – May 8, 2015**

Håfa Adai! The **Committee on Appropriations and Adjudication** will conduct a series of Public Hearings on **Friday, May 8, 2015**, in the *I Liheslatura* Public Hearing Room with the following schedule:

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We look forward to your attendance and participation.

VICE SPEAKER BENJAMIN J.F. CRUZ

Committee on Appropriations and Adjudication
senator@senatorbjcruz.com | www.senatorbjcruz.com



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THE 33RD GUAM LEGISLATURE

155 Hesler Place, Suite 107, Hagåtña, Guam 96910

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FOR IMMEDIATE RELEASE

May 1, 2015

FIRST NOTICE OF PUBLIC HEARING

In accordance with the Open Government Law, P.L. 24-109, relative to notice for public meetings, let this release serve as five (5) days' notice for a series of Public Hearings by the **Committee on Appropriations and Adjudication** scheduled on **Friday, May 8, 2015**, in the Guam Legislature Hearing Room in Hagåtña, on the following:

10:00AM - OVERSIGHT HEARING

- **Bureau of Budget and Management Research**

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Ealani Flores <eflores@senatorbjcruz.com>

SECOND NOTICE of Public Hearing – May 8, 2015

1 message

Dani Reyes <danireyes@senatorbjcruz.com>

Wed, May 6, 2015 at 10:00 AM

To: PH Notice <phnotice@guamlegislature.org>

Cc: "Senator Rory J. Respicio" <cor@guamlegislature.org>, "Sergeant-at-Arms (Legislature)" <sgtarms@guamlegislature.org>, Management Information System <mis@guamlegislature.org>, Clerks <clerks@guamlegislature.org>

May 6, 2015

MEMORANDUM

To: All Members / All Senators

From: Vice Speaker Benjamin J.F. Cruz, Chairman

Re: **SECOND NOTICE of Public Hearing – May 8, 2015**

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6:00PM – OVERSIGHT HEARING

- **Veteran's Affairs Office**
 - FY 2015 and Prior VAO Appropriations and Expenditures
 - FY 2014 Governor's Transfer of Appropriation from the VAO

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We look forward to your attendance and participation.

cc: COR
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Dani Reyes
Policy Analyst

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2 attachments



SECOND NOTICE PR PH 05082015.pdf

164K



SECOND NOTICE Memo PH 05082015.pdf

904K

VICE SPEAKER BENJAMIN J.F. CRUZ

Committee on Appropriations and Adjudication
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May 6, 2015

MEMORANDUM

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From: Vice Speaker Benjamin J.F. Cruz, Chairman
Re: **SECOND NOTICE of Public Hearing – May 8, 2015**

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We look forward to your attendance and participation.

VICE SPEAKER BENJAMIN J.F. CRUZ

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FOR IMMEDIATE RELEASE

May 6, 2015

SECOND NOTICE OF PUBLIC HEARING

In accordance with the Open Government Law, P.L. 24-109, relative to notice for public meetings, let this release serve as forty-eight (48) hours' notice for a Public Hearing by the **Committee on Appropriations and Adjudication** scheduled on **Friday, May 8, 2015**, in the Guam Legislature Hearing Room in Hagåtña, on the following:

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 - FY 2015 General and Special Revenue Fund Revenue Tracking

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 - FY 2015 and Prior VAO Appropriations and Expenditures
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Listserv: phnotice@guamlegislature.org
Updated as of April 16, 2015

aalladi@guampdn.com
action@weareguahan.com
admin2@guamrealtors.com
admin@frankaguonjr.com
admin@guamrealtors.com
admin@weareguahan.com
aguon4guam@gmail.com
agusto.aflague@gmail.com
ahernandez@guamlegislature.org
ajuan@kijifm104.com
alerta.jermaine@gmail.com
aline4families@gmail.com
am800guam@gmail.com
amandalee.shelton@mail.house.gov
amcborja@gmail.com
amier@mvguam.com
ang.duenas@gmail.com
ataligba@gmail.com
av@guamlegislature.org
avon.guam@gmail.com
baza.matthew@gmail.com
bbautista@spbgum.com
bdydasco@senatorada.org
bernice@tinamunabarnes.com
betsy@spbgum.com
bmkelman@guampdn.com
brantforguam@gmail.com
bruce.lloyd.media@gmail.com
bshringi@moylans.net
carlaborja.73@yahoo.com
carlsanchez@judiwonpat.com
carlsonc@pstripes.osd.mil
ccastro@guamchamber.com.gu
ccharfauros@guamag.org
ccolbert@guamlegislature.org
ccruz.duenas@gmail.com
chechsantos@gmail.com
cheerfulcatunao@yahoo.com
christine.quinata@takecareasia.com
cipo@guamlegislature.org
clerks@guamlegislature.org
clynt@spbgum.com
committee@frankaguonjr.com
communications@frankaguonjr.com
communications@guam.gov
cor@guamlegislature.org
coy@senatorada.org
cyrus@senatorada.org
danireyes@senatorbjcruz.com
dcrisost@guam.gannett.com
delisleduenas@judiwonpat.com
desori623@hotmail.com
divider_j_jimenez@hotmail.com

dledddy@guamchamber.com.gu
dmgeorge@guampdn.com
dtamondong@guampdn.com
duenasenator@gmail.com
ed@tonyada.com
edelynn1130@hotmail.com
editor@mvguam.com
editor@saipantribune.com
edpocaigue@judiwonpat.com
eflores@senatorbjcruz.com
elena.garcia@senatorbjcruz.com
emqcho@gmail.com
eo@guamrealtors.com
etajalle@guamlegislature.org
ewinstoni@yahoo.com
fbtorres@judiwonpat.com
fes22744@gmail.com
flores@senatorada.org
frank.blasjr@gmail.com
frank@judiwonpat.com
frank@mvguam.com
gdumat-ol@guampdn.com
gerry@mvguam.com
gerrypartido@gmail.com
gina@mvguam.com
gina.fccg12@yahoo.com
gktv23@hotmail.com
guadalupeignacio@gmail.com
guam.avon@gmail.com
guam@pstripes.osd.mil
guamnativesun@yahoo.com
hana@guam-shinbun.com
hermina.certeza@senatorbjcruz.com
hill.bruce@abc.net.au
hottips@kuam.com
info@chinesetimesguam.com
janela@mvguam.com
jason@kuam.com
jason@senatormorrison.com
jean@tinamunabarnes.com
jennifer.lj.dulla@gmail.com
jennifer@mvguam.com
jespaldonesq@gmail.com
joan@kuam.com
joe@toduguam.com
joesa@guamlegislature.org
john.calvo@noaa.gov
john@kuam.com
johnlucos@toduguam.com
jon.calvo@mail.house.gov
jontalk@gmail.com
jpmanuel@gmail.com
jstedtaotao@gmail.com

Listserv: phnotice@guamlegislature.org
Updated as of April 16, 2015

jtenorio@guamcourts.org
julian.c.janssen@gmail.com
juliette@senatorada.org
kai@spbgum.com
kcn.kelly@gmail.com
keepinginformed.671@gmail.com
kelly.toves@mail.house.gov
kennylg@guamlegislature.org
kenq@kuam.com
kevin@spbgum.com
khmg@hbcgum.net
koreannews@guam.net
koreatv@kuentos.guam.net
kstokish@gmail.com
kstone@ite.net
law@guamag.org
legislativecounsel@guamlegislature.org
leling@judiwonpat.com
life@guampdn.com
ljalcairo@gmail.com
llmatthews@guampdn.com
louella@mvgum.com
louise@tonyada.com
m.salaila@yahoo.com
mabuhaynews@yahoo.com
mahoquinene@guam.net
malainse@gmail.com
maria.pangelinan@gec.guam.gov
marym@guamlegislature.org
marycamachotorres@gmail.com
maryfejeran@gmail.com
matthew@senatormorrison.com
matthew.santos@senatorbjcruz.com
mcarlson@guamlegislature.org
mcperson.kathryn@abc.net.au
media@frankaguonjr.com
menchu@todugum.com
millie@tinamunabarnes.com
mindy@kuam.com
mis@guamlegislature.org
miseke@mcvgum.com
mlwheeler2000@yahoo.com
monty.mcdowell@amigum.com
mspeps4873@gmail.com
mvariety@pticom.com
mwatanabe@guampdn.com
natasha@todugum.com
news@guampdn.com
news@spbgum.com
nick@kuam.com
norman.aguilar@guamcc.edu
nsantos@guamlegislature.org
odngirairikl@guampdn.com

office@senatorada.org
officeassistant@frankaguonjr.com
oliviampalacios@gmail.com
onlyongum@acubedink.com
orleen@senatorbjcruz.com
pacificjournalist@gmail.com
parroyo@k57.com
pdkprg@gmail.com
pete@tonyada.com
phillips@guamlegislature.org
policy@frankaguonjr.com
publisher@glimpsesofguam.com
rennae@guamlegislature.org
responsibleguam@gmail.com
rfttechan@yahoo.com
rgibson@k57.com
ricknauta@hitradiol00.com
rlimtiaco@guampdn.com
rolly@ktkb.com
roryforgum@gmail.com
rowena@senatormorrison.com
senator@senatorbjcruz.com
senator@tinamunabarnes.com
senatorbrantmccreadie@gmail.com
senatordrodriguez@gmail.com
senjvespaldon@gmail.com
sensorsannicolas@gmail.com
senatortonyada@guamlegislature.org
senatorunderwood@guamlegislature.org
sgflores@tinamunabarnes.com
sgtarms@guamlegislature.org
sitarose2@yahoo.com
sixquintanilla@gmail.com
slimtiaco@guampdn.com
smendiola@guamlegislature.org
sonedera-salas@guamlegislature.org
speaker@judiwonpat.com
staff@frankaguonjr.com
stephaniemendiola@gmail.com
tanya4families@gmail.com
tasigirl@gmail.com
teastro@guam.net
telo.taitague@visitguam.org
tessa@senatorbjcruz.com
thebigshow@guamcell.net
thebigshow@k57.com
therese.hart.writer@gmail.com
tina@tinamunabarnes.com
tina.alicto@yahoo.com
tinamunabarnes@gmail.com
tjtaitano@cs.com
tom@senatorada.org
tommy@senatormorrison.com

Listserv: *phnotice@guamlegislature.org*

Updated as of April 16, 2015

tony@senatorada.org
tony@tonyada.com
tpocaigne@judiwonpat.com
tritten@pstripes.osd.mil
tterlaje@guam.net
vejohntorres@guamlegislature.org
vince@tinamunabarnes.com

vleonguerrero@judiwonpat.com
xiosormd@gmail.com
xiosormd@yahoo.com
ylee2@guam.gannett.com
zita@mvguam.com
zpalomo@guamag.org

VICE SPEAKER BENJAMIN J.F. CRUZ

Committee on Appropriations and Adjudication
senator@senatorbjcruz.com | www.senatorbjcruz.com



I Mina'trentai Tres na Liheslaturan Guåhan

THE 33RD GUAM LEGISLATURE

155 Hesler Place, Suite 107, Hagåtña, Guam 96910

T: (671) 477-2520/1 | F: (671) 477-2522

PUBLIC HEARING AGENDA

Friday, May 8, 2015

Guam Legislature Public Hearing Room • Hagåtña, Guam

10:00AM

Oversight Hearing

BUREAU OF BUDGET AND MANAGEMENT RESEARCH

FY 2015 General and Special Revenue Fund Revenue Tracking

2:00PM

Public Hearing of Bills

Bill No. 78-33 (COR) – B.T. McCreadie – “An act to *add a new* § 77113.1 to Chapter 77, Title 10 Guam Code Annotated; relative to establishing an annual police recruitment cycle, starting in fiscal year 2016 for a five year period.”

Bill No. 81-33 (COR) – M.C. Torres / B.J.F. Cruz / R.J. Respicio – “An act to mandate the use of an Administrative Law Judge under the Civil Service Commission, to clarify certain functions and to establish time standards and case management practices by *amending* Subsection (c) of Title 4 GCA § 4405 and *adding a new* § 4406.2.”

6:00PM

Oversight Hearing

VETERANS AFFAIRS OFFICE

FY 2015 and Prior VAO Appropriations & Expenditures

FY 2014 Governor's Transfer of Appropriation from the VAO