

FOURTEENTH GUAM LEGISLATURE
1977 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 188, "An Act to add Chapter V to Title II of the Government Code relative to establishing the Office of the Suruhanu (Ombudsman)", was on 14th day of December, 1977, duly and regularly passed.

✓

JOSEPH F. ADA
Speaker

ATTESTED:

ERNESTO M. ESPALDON
Legislative Secretary

This Act was received by the Governor this _____ day of _____, 1977, at _____ o'clock _____ .M.

RUTH F. WON PAT
Assistant Staff Officer
Governor's Office

APPROVED:

RICARDO J. BORDALLO
Governor of Guam

DATED: _____

FOURTEENTH GUAM LEGISLATURE
1977 (FIRST) Regular Session

Bill No. 188
Substitute

Introduced by F. F. Blas

AN ACT TO ADD CHAPTER V TO TITLE II OF
THE GOVERNMENT CODE RELATIVE TO ESTABLISHING
THE OFFICE OF THE SUREHANU (OMBUDSMAN).

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

2 Section 1. Chapter V is added to Title II of the Government
3 Code to read:

4 "CHAPTER V

5 Office of the Surehanu (Ombudsman)

6 Section 1400. Legislative finding and intent. The
7 Legislature finds that government bureaucracies have a
8 tendency to serve group needs and forget individual needs.
9 In today's system of government, the individual citizen with
10 a problem often does not know where to start nor to whom
11 to seek ~~X~~ to solve his problem.

12 Elected representatives are usually receptive to
13 individual requests for assistance, but they can only
14 approach constituent requests on a one to one basis. Other
15 responsibilities make it diffucult for elected representa-
16 tives to follow through on all problems submitted to them.

17 Some system of overview is needed to expedite govern-
18 mental action on individual complaints or requests for
19 services, to hold the governmental agency accountable for
20 satisfying a legitimate request for assistance, and to
21 suggest necessary legal or administrative changes to prevent
22 continued abuses of an individual rights.

1 The legislative intent of this bill is to create the
2 Office of Ombudsman or Surehanu and charge this office
3 with the responsibility to correct and solve the individual
4 problems citizens may have with their government to provide
5 a method by which each citizen will have open access to an
6 expert in dealing with the government so that each citizen
7 will know his complaint will be investigated and the depart-
8 ment or agency responsible for the solution will ultimately
9 be held accountable for that solution.

10 It is the intent of the Legislature to establish, in
11 addition to other remedies or rights of appeal of any person
12 under law, an independent and partial office readily
13 available to the public, responsible to the Legislature, ^{am}~~en~~
14 powered to investigate the acts of the administrative
15 agencies and to recommend appropriate changes toward the
16 goals of safeguarding the rights of persons and of pro-
17 moting high standards of competency, efficiency and
18 justice in the administration of territorial law.

19 Section 1401. Definitions. As used in this Chapter:

20 (a) 'Agency' means any department, organization,
21 board, commission, council, institution or other
22 governmental entity of the government of Guam, and any
23 official, officer, employee, or member thereof acting
24 or purporting to act by reason of his connection with
25 the government of Guam, except:

26 (1) any court, judge and pertinent judicial
27 staff;

28 (2) the Legislature, its members, its
29 committees, its staff and its employees;

1 (3) the Governor and his personal staff;

2 and

3 (4) the Lieutenant Governor and his personal
4 staff.

5 (b) An 'act of an agency' means any action,
6 decision, failure to act, omission, rule or regulation,
7 interpretation, recommendation, policy, practice or
8 procedure of any agency.

9 (c) 'Person' means any individual, aggregate
10 of individuals, corporation, partnership, or unicorpo-
11 rated association.

12 (d) 'Surehanu' also means 'Surehana'. In the
13 case that the person elected is female, reference to
14 the office shall be in the feminine, that is to the
15 Surehana.

16 Section 1402. Creation of Office. The office of the
17 Surehanu is created.

18 Section 1403. Nomination and appointment. The Legis-
19 lature shall elect the Surehanu by a two-thirds (2/3) vote
20 of the membership.

21 Section 1404. Qualifications. (a) The Surehanu
22 shall be a person of recognized judgment, objectivity and
23 integrity who is well equipped to analyze problems of law,
24 administration and public policy.

25 (b) No person while serving as Surehanu:

26 (1) shall be actively involved in political
27 party activities;

28 (2) shall be a candidate for or hold other public
29 office, whether elective or appointive;

1 (3) shall be engaged in any other occupation,
2 business or profession.

3 Section 1405. Term of office. (a) The Surehanu shall
4 serve for a term of six (6) years commencing at 12 o'clock
5 noon on April 1 of the year he takes office. He may be
6 reappointed for additional terms.

7 Section 1406. Removal and vacancy. (a) Qualified
8 voters of Guam may initiate a petition for the removal of
9 the Surehanu by presenting a petition to the Election Commis-
10 sion signed by voters equal in number to ten percent (10%)
11 of all votes counted for all candidates for the Governor at
12 the last preceding general election at which a Governor
13 was elected. The format of the petition shall comply with
14 the Election Commission regulations and upon certification
15 by the Election Commission the petition shall be presented
16 to the Legislature.

17 (b) The Legislature upon receipt of the certified
18 petition may by a vote of two-thirds (2/3) of the members
19 present and voting remove the Surehanu from office.

20 (c) If the position of Surehanu becomes vacant for
21 any reason, the Legislature shall elect a person to fill the
22 vacant position to serve only until the end of his prede-
23 cessor's term.

24 Section 1407. Compensation. The Surehanu shall receive
25 the same salary as the presiding judge of the Superior
26 Court.

1 Section 1408. Organization of office. (a) The Sureu-
2 hanu shall select, appoint and fix the compensation within
3 the amount available by appropriation of such other officers
4 and employees, and including a deputy as he may deem
5 necessary to discharge his responsibilities under this
6 Chapter. All officers and employees of his office shall be
7 unclassified and shall serve at the Sureuhanu's pleasure.

8 (b) The Sureuhanu may delegate to members of his
9 staff any of his authority, powers, or duties except this
10 power of delegation and his duty to make any report under
11 this Chapter. However, the Sureuhanu may authorize the
12 deputy Sureuhanu to act in his stead during illness, absence,
13 leave or disability.

14 (c) The Sureuhanu and his staff shall be entitled to
15 participate in any employee benefit or retirement plan
16 available to the government of Guam employees.

17 Section 1409. Powers. The Sureuhanu shall have the
18 following powers:

19 (a) to investigate, on complaint of a person
20 but not an agency or on his own motion, any act of an
21 agency without regard to its finality;

22 (b) to adopt, promulgate, amend and rescind rules
23 and regulations required for the discharge of his
24 duties - including procedures for receiving and pro-
25 cessing complaints, conducting investigations, and
26 reporting his findings. However, he may not levy
27 any fees for the submission or investigation of com-
28 plaints;

1 (c) to examine the records and documents of any
2 agency except those records and documents privileged
3 from inspection because of their confidential nature,
4 including but not limited to juvenile court records,
5 tax records and other records specifically made con-
6 fidential by law;

7 (d) to enter and inspect without notice the
8 premises of any government agency;

9 (e) to subpoena any employee or agent of the
10 government of Guam or to produce documentary or other
11 evidence that is reasonably material to his inquiry;

12 (f) to undertake, participate in or cooperate
13 with persons and agencies in such conferences, in-
14 quiries, meetings or studies as might lead to improve-
15 ments in the functioning of agencies;

16 (g) to obtain such information and make such
17 inquiries from any agency or person as he shall require
18 for the discharge of his duties;

19 (h) to maintain secrecy in respect to all
20 matters and the identities of the complainants or
21 witnesses coming before him; and

22 (i) to concern himself with the strengthening
23 of procedures and practices which lessen the risk
24 that objectionable administrative acts will occur.
25 Section 1410. Investigation of complaints.

26 (a) The Sur^uehanu shall investigate any complaint
27 alleging that an act of an agency is:

28 (1) contrary to or inconsistent with law,
29 regulation or agency practice;

1 (2) based on mistaken facts or irrelevant
2 considerations;

3 (3) inadequately explained when reasons
4 should have been revealed;

5 (4) inefficiently performed; or

6 (5) unreasonable, unfair, or otherwise
7 objectionable, even though in accordance with
8 law.

9 Unless the Sur^uhanu at his discretion decides not
10 to investigate a complaint because:

11 (1) the complainant could reasonably be
12 expected to use another remedy or channel, and
13 then the Sur^uhanu shall furnish the complainant
14 with written instructions on the procedural
15 steps to be taken in connection with such other
16 remedy or channel;

17 (2) the complaint is trivial^o frivolous,
18 vexatious^x or not made in good faith;

19 (3) the complaint has been too long delayed
20 to justify present examination; and

21 (4) his resources are insufficient for
22 adequate investigation in which case the Sur^uhanu
23 shall refer the complaint to the proper legislative
24 committee for investigation.

25 (b) The Sur^uhanu in his discretion may investigate
26 any administrative act of an agency not enumerated in
27 Subsection (a).

1 (c) If the Surehanu declines to investigate a
2 complaint he shall not be barred from reviewing on
3 his motion acts of an agency whether or not included
4 in the complaint.

5 Section 1411. Rights of complainant--communication
6 with complainant. (a) After the Surehanu has decided
7 whether or not to investigate a complaint, he shall suitably
8 inform the complainant.

9 (b) The Surehanu shall, if requested by the complain-
10 ant, report the status of his investigation to the complain-
11 ant.

12 (c) After investigation of a complaint, he shall
13 suitably inform the complainant of his conclusion or
14 recommendation, if appropriate, any action taken or to be
15 taken by the agency involved.

16 (d) A letter to the Surehanu from a person held in
17 custody--including by detention, incarceration and hospita-
18 lization--by an agency shall be forwarded immediately,
19 unopened to the Surehanu. A letter from the Surehanu to
20 such person shall be immediately delivered, unopened to
21 the person.

22 (e) No person who files a complaint pursuant to this
23 Chapter shall be subject to any penalties, sanctions or
24 restriction in connection with his employment because of
25 such complaint.

26 Section 1412. Rights of agency. (a) If the Surehanu
27 decides to investigate a complaint, he may, if he deems
28 it appropriate, suitably inform the agency involved.

1 (b) Before announcing or reporting a conclusion or
2 recommendation that criticizes or is adverse to an agency,
3 the Surehanu shall consult with that agency and permit the
4 agency reasonable opportunity to reply.

5 (c) If any report that he issues criticizes or is
6 adverse to an agency, the Surehanu shall include any brief
7 statement the agency may provide.

8 Section 1413. Recommendations. (a) If, after investi-
9 gation, the Surehanu is of the opinion that an agency should:

- 10 (1) consider the matter further;
- 11 (2) modify or cancel an act;
- 12 (3) alter a regulation, practice, or ruling;
- 13 (4) explain more fully the act in question;
- 14 (5) rectify an omission; or
- 15 (6) take any other action.

16 he shall state his recommendations and reasons therefor to
17 the agency. If the Surehanu so requests, the agency shall,
18 within the time he has specified, inform him about the
19 action taken on his recommendation or the reasons for not
20 complying with them. After a reasonable period of time
21 has elapsed, the Surehanu may issue a report.

22 (b) If the Surehanu believes that an action has been
23 dictated by laws whose results are unfair or otherwise
24 objectionable and should be revised, he shall bring his views
25 concerning desirable statutory change to the attention of
26 the Legislature and agency.

1 (c) If the Surehanu believes that any person has
2 acted in a manner warranting criminal or disciplinary
3 proceedings, he shall refer the matter to the appropriate
4 authorities without notice to that person.

5 Section 1414. Reports. The Surehanu shall annually
6 report on his activities to the Governor and to the Legisla-
7 ture.

8 Section 1415. Surehanu's immunities. (g) No proceed-
9 ing, conclusion, recommendation, or report of the Surehanu
10 or member of his staff shall be reviewable in any court,
11 unless it contravenes the provisions of this Chapter.

12 (b) The Surehanu and his staff shall have the same
13 immunities from civil and criminal liabilities as a judge
14 of this territory.

15 (c) The Surehanu and his staff shall not be compelled
16 to testify or produce evidence in any judicial or adminis-
17 trative proceeding with respect to any matter involving the
18 exercise of their official duties except as may be necessary
19 to enforce this Chapter.

20 Section 1416. Witnesses' privileges. Any person
21 required to provide information under this Chapter shall be
22 paid the same fees and travel allowances ~~and accorded the~~
23 ~~same fees and travel allowances~~ and accorded the same
24 privileges and immunities, including right of assistance
25 of counsel, as witnesses whose attendance has been required
26 in the Superior Court.

1 Section 1417. Obstruction. Any person who willfully
2 obstructs or hinders the proper and lawful exercise of the
3 ^u Surehanu's powers, or willfully misleads or attempts to
4 mislead the ^u Surehanu in his inquiries, shall be guilty of
5 a misdemeanor and subject to a fine of not more than One
6 Thousand Dollars (\$1,000).

7 Section 1418: Relation to other laws. The provisions
8 of this Chapter are in addition to and do not in any manner
9 limit or affect the provisions of any other statute under
10 which any remedy or right of appeal is provided for any
11 person ~~or~~ any procedure is provided for the inquiry into
12 or investigation or any matter. The powers conferred on
13 the ^u Surehanu may be exercised notwithstanding any provision
14 in any statute to the effect that any administrative action
15 shall be final or unappealable.

16 Section 1419. Severability. If any part of this
17 Chapter shall be declared invalid, all other parts shall
18 remain in full force and effect; the provisions of this
19 Chapter are declared to be severable."

20 Section 2. Appropriation. There is hereby authorized to
21 be appropriated such sums ^{as may be necessary} to carry out the provisions of this
22 Act.

23 Section 3. Chapter II of Title IX (being Sections 8050
24 through 8071) of the Government Code is repealed.

25 Section 4. Effective Date. The provisions of Section 1
26 of this Act shall take effect upon appropriation of funds for
27 operation of the office of the ^u Surehanu and appointment of a
28 ^u Surehanu by the Legislature. The ^u Surehanu who takes office
29 shall serve until March 31, 1984. Subsequent terms of office
30 shall begin on April 1.