


SEVENTEENTH GUAM LEGISLATURE
1983 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Bill No. 160, "AN ACT TO REPEAL AND REENACT THE GOVERNMENT CLAIMS ACT TO CLARIFY THE RELATIONSHIP BETWEEN THE LINE AND AUTONOMOUS AND SEMI-AUTONOMOUS AGENCIES, TO AUTHORIZE THE GOVERNMENT TO PURCHASE INSURANCE, AND TO PROVIDE ADDITIONAL PROTECTION FOR GOVERNMENT EMPLOYEES, AND FOR OTHER PURPOSES," returned to the Legislature without the approval of the Governor was, in accordance with the Organic Act of Guam, reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 9th day of November 1983, agree to pass said bill notwithstanding the objections of the Governor by a vote of two-thirds of all members thereof, to wit: by a vote of 16 members.


CARL T. C. GUTIERREZ
Speaker

Attested:


ELIZABETH P. ARRIOLA
Senator and Legislative Secretary

This Act was received by the Governor this 14th day of November, 1983, at 1:36 o'clock P.m.


Assistant Staff Officer
Governor's Office

PUBLIC LAW NO. 17 -29

(By Legislative override
November 9, 1983)

SEVENTEENTH GUAM LEGISLATURE
1983 (FIRST) Regular Session

Bill No. 160

Introduced by:

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AN ACT TO REPEAL AND RE-ENACT THE GOVERNMENT CLAIMS ACT TO CLARIFY THE RELATIONSHIP BETWEEN THE LINE AND AUTONOMOUS AND SEMI-AUTONOMOUS AGENCIES, TO AUTHORIZE THE GOVERNMENT TO PURCHASE INSURANCE, TO PROVIDE ADDITIONAL PROTECTION FOR GOVERNMENT EMPLOYEES, AND FOR OTHER PURPOSES.

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

2 Section 1. The "Government Claims Act", being Chapter VI of Title
3 VII of the Government Code of Guam, is repealed and re-enacted to read:

4 "CHAPTER VI
5 CLAIMS AGAINST THE GOVERNMENT OF GUAM
6 Article 1. Scope and Definitions

\$6500.00. Short Title.
\$6500.01. Coverage of Chapter.
\$6500.02. Definitions.
\$6500.03. Exclusions.

- §6500.04. Waiver of Immunity.**
§6500.05. Limitations on Actions and Filing.
§6500.06. Continuation of Law.
§6500.07. Chapter Applicable to All Claims.

1 **§6500.00. Short Title.**

2 This Chapter shall be known as the 'Government Claims Act'.

SOURCE: GC §6500.00

COMMENT: The name of this Chapter is unchanged since the fundamental purpose of this Act is to continue the policies of the former Chapter, but clarifying the relationship between the various government departments, line and autonomous agencies. Also, this Chapter will authorize insurance to be purchased for both the government and its employees. However, it is to be deemed a continuation of the old law, not a departure from it.

3 **§6500.01. Coverage of Chapter.**

4 This Chapter applies, except as provided in §6500.03, to the
5 entire Government of Guam, as specifically stated herein. No govern-
6 ment agency, whether denominated a line department, an agency, or a
7 public corporation, is excluded from the scope of this Chapter. The
8 fact that an agency or instrumentality has or has not the right to sue
9 or be sued in its own name does not exclude such agency or
10 instrumentality from the scope of this Chapter.

SOURCE: New Section.

COMMENT: A number of lawsuits have been brought against the Guam Memorial Hospital and the Guam Power Authority claiming exemption, in whole or in part, from the former Government Claims Act. No case has gone to appeal on this point. Existing law is extremely unclear. Section 6500.19, as amended, of the former law indicates that the procedure of the Act should apply to all agencies, but payment be made from the accounts of the stated autonomous or semi-autonomous agencies. Yet the law of the individual agencies states that they may sue and be sued. The Superior Court, in some cases, has interpreted the latter as prevailing over the Claims Act, so as to give no sovereign immunity whatsoever to the autonomous agencies. This Section makes clear that this Act covers the entire Government, with no exceptions.

11 **§6500.02. Definitions.**

12 As used in this Chapter, the following words and phrases shall

1 have the meaning stated herein, unless such meaning is clearly
2 inapplicable in the context:

3 (1) 'Government of Guam' shall include all agencies,
4 departments, instrumentalities, public corporations, and all other
5 entities of the Government, no matter how designated, and
6 whether or not such agencies may sue or be sued in their own
7 name.

8 (2) 'Chief Claims Officer' means the Attorney General of
9 Guam, and for the autonomous agencies the Attorney General shall
10 designate as claims officers those persons so designated by the
11 Board of such agency, or by its chief executive officer if there
12 be no Board.

13 (3) 'Line Agency' means any department, agency or instru-
14 mentality of the Government of Guam which is funded by an
15 annual appropriation from the Legislature. Such appropriations
16 do not include 'subsidies'.

17 (4) 'Autonomous agency' means any department, agency, or
18 instrumentality which generates, or is intended to generate, as
19 evidenced in law, all of its own operating revenues apart from
20 annual appropriations from the General Fund. 'Annual appropria-
21 tions' do not include amounts appropriated to line agencies to pay
22 for services rendered by autonomous agencies. Subsidies
23 appropriated from the general fund to an autonomous agency,
24 whether or not annually appropriated, shall not mean that an
25 autonomous agency becomes a line agency for purposes of this
26 Chapter.

SOURCE: New Section.

COMMENT: This Section is added to define the terms that will be
used in this Chapter. The organization of the Chapter will treat
the line agencies separately from the autonomous agencies as far
as payment is concerned, but unify the procedure by which
claims may be made, so that a person does not have to face one
procedure for a line agency and another for each autonomous
agency.

1 §6500.03. Exclusions.

2 This Chapter shall not apply to any claim pertaining to any tax
3 refund, the Worker's Compensation Law, or the Government of Guam
4 Retirement Fund.

SOURCE: GC §6500.02

COMMENT: Prior Law is continued here. However, the
Commercial Port is treated as any other autonomous agency under
this Chapter.

5 §6500.04. Waiver of Immunity.

6 Pursuant to Section 3 of the Organic Act of Guam, the
7 Government of Guam hereby waives immunity from suit, but only as
8 hereinafter provided:

9 (a) for all expenses incurred in reliance upon a contract to
10 which the Government of Guam is a party, but if the contract has
11 been substantially completed, expectation damages may be
12 awarded;

13 (b) for claims in tort, arising from the negligent acts of its
14 employees, or volunteers acting for and at the direction of the
15 Government of Guam, even though occurring in an activity to
16 which private persons do not engage. For the purposes of this
17 Chapter, any officer or enlisted person of the Guam National
18 Guard on territorial duty shall be deemed an employee of the
19 Government.

20 (c) The Government of Guam shall not be liable for claims
21 arising from an exercise of discretion in making policy.

SOURCE: GC §6500.01, as amended by P.L. 14-50. Second
sentence of Subsection (b) added by P.L. 16-18.

COMMENT: Again, this Section is continued from prior law, but
the source of its authority, the Organic Act, is emphasized.
Some suits have, unsuccessfully, tried to challenge this law on
the basis of various state court rulings. However, those states
do not have the constitutional equivalent of §3 of the Organic
Act. This Section merely emphasizes the law for clarity. It
cannot create or amend the Organic Act.

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§6500.05. Limitations on Actions and Filing.

(a) All claims under this Act must be filed within eighteen (18) months from the date the claim arose, but any claims timely filed under the predecessor of this Act shall be considered to have been timely filed under this Chapter.

(b) Every action filed under this Chapter shall be barred unless commenced within eighteen (18) months from the time the notice that the claim was rejected was served as provided in Article 2 of this Chapter, or within twenty-four months after the claim was filed in cases where the government does not reject the claim.

SOURCE: GC §6500.05 and §6500.21 joined and modified.

COMMENT: The 15th Guam Legislature amended the limitations applicable to this Chapter to be equivalent to the limitations applicable to actions in general. However, that amendment failed to address the issue of time of filing a claim as it relates to filing an action on a rejected claim. These two limitations are closely related, both for the government and the claimant. Therefore, this Section takes a middle ground, giving the claimant 18 months from the time the action arose to file his claim and another 18 months after the claim was rejected and 24 months after the claim was filed in cases where the government does not reject the claim in order to file an action. This gives both parties a reasonable and certain time within which to file both claims and actions against all government agencies.

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§6500.06. Continuation of Law.

This Chapter shall be deemed a continuation of the former law so far as sections of the former law are continued unamended. No claim which accrued under the former law shall be increased, lessened, or extinguished by any provision of this law, but if the claim has not been filed or suit commenced, the procedures provided in Article 2 and the methods of payment prescribed in Article 4 shall apply to said claim. Sections of the former Government Claims Act amended by this Chapter shall be deemed amendments only and not new enactments.

SOURCE: New Section.

COMMENT: This Section makes clear that this Chapter merely amends and clarifies the former law. The basic philosophy of the former Government Claims Act is not changed.

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§6500.07. This Chapter Applicable to All Claims.

This Chapter shall apply to all pending litigation in the courts of Guam, or which are on appeal, which were commenced without first filing an administrative claim as would be required by this Act had it applied at the time the suit was filed. If such pending litigation was timely filed under the laws existing at the time of filing, the plaintiffs may, notwithstanding §6500.5 of this Chapter, file a claim under this Chapter, but such claims shall not be filed later than June 30, 1984, or not later than six months after the effective date of this Chapter, whichever is later.

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Article 2. Procedure for Filing Claims and Actions

- §6500.10. Procedure for Filing Claim.**
- §6500.11. Claim to be Signed and Sworn To.**
- §6500.12. Investigations.**
- §6500.13. Ancillary Powers of Claims Officer.**
- §6500.14. Hearing.**
- §6500.15. Settlement of Claim Before Action.**
- §6500.16. False Swearing.**
- §6500.17. Action Against the Government.**
- §6500.18. Procedure in Court.**
- §6500.19. Settlement of Suit.**
- §6500.20. Appeals.**
- §6500.21. Limitation on Proceedings.**

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§6500.10. Procedure for Filing Claim.

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All claims shall be filed in duplicate with the Claims Officers responsible for the department or agency against which the claim is made. Each claim shall contain the following information:

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1. The complete name and address of the claimant. If the claimant should change his address or retain an attorney to whom all notices should be sent after filing his claim, he shall file an amendment to his claim so stating the changes. If no amendment is filed all notices sent to the address stated in the claim shall be deemed properly sent and served.
2. The amount of damage or other relief claimed.
3. A concise statement of the facts upon which the claim is

1 made, including the time, place and other circumstances and the
2 department or agency or fund of the Government of Guam that is
3 concerned.

4 4. A copy of any contract or other instrument in writing
5 upon which the claim is based.

6 5. A statement of whether or not the claimant has received
7 any payment on account of such claim, and if so, the amount
8 received.

9 6. A statement whether or not any third person has any
10 interest in the claim, and if so, the name and address of such
11 person having such interest and the nature of such interest.

12 7. If the claimant is an executor, administrator, guardian,
13 or other representative, appointed by a judicial tribunal, a duly
14 certified copy of the record of appointment.

15 8. A statement as to whether or not the claimant has any
16 insurance covering the damage alleged to have been suffered by
17 him, and of any payments, if any, he has received from such
18 insurance carrier.

SOURCE: GC §6500.03 modified.

COMMENT: With the aim of separating the claims of autonomous
agencies from those of line agencies, and from the Claims Fund,
this section requires that claims filed be filed with the Claims
Officer of the agency against whom the claim is made. This
separates the filing of claims against autonomous agencies from
the Attorney General, who is responsible for all line agencies and
is their Claims Officer. From the time the claim is filed with the
autonomous agency until its settlement, only the autonomous
agency will be involved, unless, of course, the government of
Guam is also a party.

19 §6500.11. Claim to be Signed and Verified.

20 All claims filed pursuant to this Chapter shall be signed by the
21 claimant, his agent or his legal guardian, and verified by him, or may
22 be signed as being under the penalties prescribed for perjury.

SOURCE: GC §6500.04 modified.

CROSS-REFERENCE: 9 GCA §52.10(f)(2) - Penalties for Perjury.
See also 6 GCA §4208 regarding unsworn declarations and the
form required for them.

COMMENT: 1. The first words of this Section are changed to "All claims" to show that this Section refers to claims made both to the Attorney General and to the Claims Officers of the appropriate autonomous agencies.

2. The claims made may be either sworn to before a Notary Public or signed "under the penalty for perjury" as permitted by the Criminal Code (9 GCA §52.10(f)(2)). This should eliminate one unnecessary bit of red tape for claimants.

1 §6500.12. Investigations.

2 The Claims Officer shall cause each claim received by him to be
3 investigated to determine its merits.

SOURCE: GC §6500.06 modified.

COMMENT: The modification is to refer to "Claims Officers". Thus, the Attorney General investigates claims received by him against the line agencies and each Claims Officer within an autonomous agency will investigate claims made against his agency. If, and when, he refers the claim to an attorney for evaluation, he will do so according to the practice of the agency involved and will give it to the attorney responsible for that agency, whether it be the Attorney General or a private attorney.

4 §6500.13. Ancillary Powers of Claims Officer.

5 In making his investigation, the Claims Officer, or person
6 designated by him within his agency, shall have the authority to
7 administer oaths to claimants and witnesses, and to require the
8 production of any books, records or documents that may be material or
9 relative as evidence in connection with the claim.

SOURCE: GC §6500.07 modified to refer to "Claims Officer."

10 §6500.14. Hearing.

11 The Claims Officer, or a person designated by him, may, in his
12 discretion, conduct a formal hearing in connection with the investi-
13 gation of any claim.

SOURCE: GC §6500.09 modified to refer to "Claims Officer."

14 §6500.15. Settlement of Claim Before Action.

15 (a) The Attorney General, subject to the approval of the
16 Governor for settlements of over Three Thousand Dollars (\$3,000.00),
17 may settle for money damages any claim filed against a line agency or

1 autonomous agency under this Chapter. The Attorney General may
2 recommend other relief if appropriate.

3 (b) In the case of autonomous agencies, the Claims Officer,
4 subject to the approval of the Board, the Attorney General and the
5 Governor, or if there be no board, the highest official of such
6 agency, the Attorney General and the Governor for settlements of over
7 Three Thousand Dollars (\$3,000.00), may settle for money damages any
8 claim filed against said agency under this Chapter. The Attorney
9 General may recommend other relief as may be appropriate.

SOURCE: GC §6500.10 as modified.

COMMENT: This Section separates the line agencies from the
autonomous agencies as far as settlement goes. Subsection (a)
continues the procedure, with amendments, as is now law with
respect to the line agencies. Subsection (b) follows the same
procedure, but makes the approving authority the governing
board of the autonomous agency as well as the Attorney General
and the Governor.

The dollar limit in former law has been eliminated from this
Section. There is no reason, particularly with inflation and court
awards being as high as they are, for such a limitation, es-
pecially when the approval of the Governor is required for all
settlements above \$3,000. Approval by the governing board is
required for the settlement of autonomous agency claims as well as
the Attorney General and the Governor. We should not encourage
court suits by such a limitation when litigation could be avoided.

10 §6500.16. False Swearing.

11 All claimants and witnesses concerning any claim under this
12 Chapter are subject to the penalties and provisions of Chapter 52 of
13 Title 9 Guam Code Annotated with respect to False Swearing and
14 Perjury.

SOURCE: GC §6500.08 modified to reflect the Criminal and
Correctional Code's new provisions for Perjury and False Swearing
(9 GCA CH. 52).

15 §6500.17. Action Against the Government.

16 A claimant may institute an action in contract or tort, for money
17 damages only, against the Government of Guam in the event the claim
18 is made against a line agency, or against the specific agency involved

1 in the event the claim is made against an autonomous agency, in the
2 Superior Court of Guam, provided that:

3 (a) The claimant has been notified by registered or certified mail,
4 return receipt requested, that his claim has been rejected in whole or
5 in part; or

6 (b) Six months have elapsed since the date of filing the claim with the
7 Claims Officer.

SOURCE: GC §6500.11 as modified.

COMMENT: There have been questions as to whether the govern-
ment of Guam, as an entity, may be sued when an autonomous
agency is the one against whom the claim is filed. This Section
clears up that doubt by making it clear that such is not the case.

Subsection (a) has been modernized to reflect current mail
practices. See also 1 GCA §717.

Subsection (b) continues the former time limit. A proposal
would reduce this limit to two months. However, testimony on
that proposal was opposed as two months is not sufficient time to
complete a complex investigation.

8 §6500.18. Procedure in Court.

9 All actions brought under this Chapter shall be governed by the
10 law and rules of procedure of the Superior Court of Guam. Service of
11 process shall be made upon the Claims Officer and upon the Attorney
12 General. Trial shall be without a jury.

SOURCE: GC §6500.14 and §6500.15 joined.

COMMENT: Service of process is required to be made upon both
the Claims Officer and upon the Attorney General. Obviously, if
the Attorney General is the Claims Officer for the agency
involved, only one service need be made. However, where such
is not the case, the Attorney General, having cognizance over all
legal matters concerning the Government of Guam, must be made
aware of all suits against the government, or any of its parts, as
soon as possible. Waiting upon delivery by the affected agency
could lose, and has lost under prior law, valuable time and some-
times money.

13 §6500.19. Settlement of Suit.

14 (a) Subject to the approval of the court in which the case is
15 pending, the Attorney General is authorized to settle a suit at any
16 time before final judgment.

1 (b) In the case of autonomous agencies, the attorney
2 representing such agency is authorized to settle a suit against the
3 agency he represents subject to the approval of the court in which the
4 case is pending and subject to the approval of the governing board of
5 the agency, or if no Board exists, to the approval of the chief
6 executive officer of said agency.

SOURCE: GC §6500.17 as modified.

COMMENT: This Section notes the difference between autonomous
and line agencies and their legal representation. If a law should
be passed making the Attorney General the legal representative of
such agencies, this Section would still apply, as it recognizes the
semi-independent character of these agencies.

7 §6500.20. Appeals.

8 Judgments shall be subject to review on appeal in the same
9 manner and to the same extent as other judgments of the Superior
10 Court of Guam.

SOURCE: GC §6500.18.

11 §6500.21. Limitation on Proceedings.

12 (a) The filing of a suit under this Chapter against the govern-
13 ment of Guam or against any specific entity thereof shall suspend any
14 proceedings against individual employees alleged to be liable in the
15 same action until such time as the suit against the government of Guam
16 or against any specific entity thereof has been brought to final
17 judgment.

18 (b) Settlement of a claim before suit, or final judgment in a suit
19 filed under this Chapter shall bar the claimant from any further pro-
20 ceedings against the employee or employees whose acts or omissions
21 gave rise to the claim unless:

22 1. the Court finds that the employee was acting outside the
23 scope of his employment; or

24 2. the Court certifies that it would have awarded the claim-
25 ant more but for the limitations of §6500.30.

26 (c) Satisfaction of a settlement with or of a judgment against an
27 employee of the government shall constitute a forfeiture by the

1 claimant of all rights against the government by reason of the same
2 subject matter.

SOURCE: GC §6500.20 modified to refer to all suits and claims
filed.

3 §6500.22. Limitations on Awards in Actions.

4 No action shall be instituted, nor judgment granted, for a sum in
5 excess of the amount of the claim presented to the Claims Officer,
6 unless the increased amount of the claim is shown to be based upon
7 new evidence not reasonably discoverable at the time the claim was
8 filed with the Claims Officer.

SOURCE: GC §6500.12 modified to refer to "Claims Officers"
instead of "Attorney General".

9 Article 3. Liability and Insurance

§6500.30. Maximum Limits of Governmental Liability.

§6500.31. Limitations on Contract Obligations.

§6500.32. Insurance Authorized.

§6500.33. Insurance for Government Employees.

10 §6500.30. Maximum Limits of Governmental Liability.

11 (a) In all cases, neither line agencies nor autonomous agencies
12 nor the government of Guam shall be liable for interest prior to the
13 date of judgment, nor for punitive damages, nor for attorney's fees of
14 the claimant; provided, that attorney's fees may be awarded a suc-
15 cessful claimant as part of a final court judgment if the court finds
16 that suit was filed only because the government of Guam failed to act
17 upon the claim before the expiration of the times specified in §6500.5
18 of this Chapter and such failure resulted from failure to investigate
19 the claim.

20 (b) The government of Guam, in the case of line agencies, shall
21 be liable in tort for not more than One Hundred Thousand Dollars
22 (\$100,000.00) in an action for wrongful death, nor for more than
23 Three Hundred Thousand Dollars (\$300,000.00) in any other tort
24 action.

25 (c) Each autonomous agency shall be liable for torts committed
26 by it for not more than the amounts stated in subsection (b), above.

1 (d) (i) In the case of the Guam Memorial Hospital Authority, it
2 shall also be liable in tort, not to exceed the limits stated in sub-
3 section (b), above, for damages arising from the negligent acts of
4 Government Health Professional performed within facilities
5 operated by said authority as agents of the government of Guam
6 at the request of the government. Government Health Profes-
7 sionals shall be considered agents of the government of Guam
8 within the meaning of §6500.21 of this Chapter.

9 (ii) Government Health Professionals performing services in
10 government facilities other than those operated by the Guam
11 Memorial Hospital Authority shall be considered agents of the line
12 department or autonomous agency they serve.

13 (iii) A "Government Health Professional" is any person who
14 is licensed or certified to practice a healing art in Guam and is
15 practicing that art within a government of Guam facility as an
16 agent of the government of Guam.

SOURCE: GC §6500.13 as amended by P.L. 13-118 and modified.

COMMENT. GC §6500.13 became permanent in the 14th Guam
Legislature. It is continued here in its existing form modified to
suit the format of this Chapter. Since the Guam Memorial Hos-
pital is an autonomous agency, it must be treated differently than
the Department of Public Health and Social Services, which is a
line agency. Also, Government Health Professionals may be
acting as agents of the government through other line agencies.

This Section also clears up a number of difficulties that have
arisen in suits over the years, but never resolved upon appeal.
Thus, it is clear that the government is liable, as a government,
only for the obligations of the line agencies. The autonomous
agencies are liable for their own torts. For contract obligations,
see §6500.31.

The rationale for providing the same limitations for all of the
government is that, unlike private parties, the government has a
continuing responsibility to the whole people of Guam. One or
two suits cannot defeat the rationale for the government's
existence by so depleting the treasury that the government
cannot function. A similar rationale applies to the Hospital, the
Telephone and Power Authorities, and any other such autonomous
agencies as the legislature may see fit to create.

The tort limitations are raised to take into account inflation,
increased court awards and the needs of the victims of the torts.

1 §6500.31. Limitations on Contract Obligations.

2 Each autonomous agency shall be liable for its own contract
3 obligations. The government of Guam shall be liable only for those
4 contract obligations undertaken by the line agencies, or for those
5 contract obligations undertaken by autonomous agencies in which the
6 government is a named party specifically made jointly liable with the
7 autonomous agency by the contract.

SOURCE: New Section

COMMENT: At least one claimant has argued, unsuccessfully, that
the government of Guam can be jointly liable with an autonomous
agency under the former chapter. Such was never the intent of
the legislature, but the former law was at least doubtful on the
point. See Aetna Life Ins. Co. v. Guam Memorial Hospital
Authority and Government of Guam, (1979) 1 Guam R. 592.

8 §6500.32. Insurance Authorized.

9 (a) The government of Guam may use any funds authorized for
10 general operations to purchase liability insurance to cover the
11 liabilities incurred by it under this Chapter or under any other law of
12 Guam or of the United States. Such insurance may cover the
13 government as a whole, or any part, department, line agency or
14 autonomous agency, as is appropriate under the circumstances.

15 (b) The government of Guam may use any funds authorized for
16 general operations to purchase property insurance to cover the loss,
17 for any reason and by any cause, incurred by the government, or any
18 appropriate line agency or autonomous agency, of any property owned
19 by the government. Any monies recovered pursuant to this subsection
20 shall be used for the repair or replacement of the facilities insured,
21 and if the facilities are not to be repaired or replaced, then the funds
22 shall be deposited in the General Fund. Such insurance coverage may
23 cover the general government or any appropriate portion, agency,
24 autonomous agency or specific facility thereof.

25 (c) The authority given by this Section shall be in addition to
26 any authority for the purchase of insurance given by any other law of
27 Guam.

1 (d) No insurance company writing insurance pursuant to this
2 section shall have a defense of sovereign immunity if sued directly by
3 a claimant unless the government, itself, would have such a defense.

SOURCE: New Section.

COMMENT: Under an old Attorney General's opinion (pre-1970), the government cannot purchase any insurance unless specially authorized by law. This Section provides that authorization, both for liability and for property insurance. The lack of such section caused much argument and delay, and even potential loss of funds, after Typhoon Pamela when one requirement of the federal relief funds for construction was that the finished construction be adequately covered by insurance against typhoon damage. Guam is "self-insured", but only barely so and not really self-insured as there is no fund created nor means of replacing damaged property other than by general appropriation. This Section also provides a means by which claims can be paid promptly.

4 §6500.33. Insurance for Government Employees.

5 The government of Guam and each of the autonomous agencies is
6 authorized to purchase insurance, if advisable and available, to cover the
7 liability of government employees which they may incur pursuant to §6500.21
8 of this Chapter, unless such liability is incurred for acts or omissions
9 which occurred outside the scope of the employees' employment. The
10 authority granted by this Section shall be in addition to any other grant of
11 authority contained in any law of Guam or of the United States. Each
12 agency, department or entity purchasing such insurance shall have the
13 discretion to determine what dollar limitations are reasonable considering the
14 positions to be covered and the risks involved.

SOURCE: New Section.

COMMENT: Ever since the adoption of the first Government Claims Act, government employees have been liable for any amount of tort damages in excess of the limitations placed on judgments against the government of Guam. Until recently, this problem has been negligible. However, with the increase in the amounts of awards and the growing number of grounds for suit, the employees have become increasingly vulnerable. The Legislature has recognized this with respect to false arrest insurance for police. The Guam Federation of Teachers has recognized this with respect to its membership. This section recognizes this fact with respect to all government employees.

Notice that the coverage is only for liability incurred by this

Chapter. If an employee becomes liable for something that is done outside the scope of his employment, then this chapter provides no protection nor does it govern the liability incurred.

Article 4. Payments.

- §6500.40 Claims Fund Created.
- §6500.41. Payments for Line Agency Obligations.
- §6500.42. Autonomous Agency Operating Funds Available.
- §6500.43. Budgeting for Claims.

§6500.40. Claims Fund Created.

(a) Creation. The Government Claims Fund is hereby created and established as an account which shall be separately identified and maintained by the Department of Administration. It shall consist of such funds as have been appropriated by the Legislature for the purpose of paying claims pursuant to this Chapter and unspent on the effective date of this Chapter and such appropriations made for this purpose thereafter.

(b) Reports by Attorney General. Upon the settlement of any claim by the Attorney General, or final judgment in any action under this Chapter, the Attorney General shall designate which line agency incurred the liability which requires payment, and whether the liability arose under tort or contract.

(c) Records of the Dept. of Administration. The Department of Administration shall keep records of amounts paid out of the Government Claims Fund under the provisions of this Chapter on behalf of each line agency. This record shall be based upon the designations as to agency and legal basis, the latter being made pursuant to subsection (b) of this Section.

SOURCE: Portions of Bill No. 385 (16th GL) modified to reflect the structure of this Chapter.

§6500.41. Payments for Line Agency Obligations.

The Director of Administration shall pay the amount allowed in an approved settlement or in a final court judgment rendered against any line agency of the Government, or the Government of Guam in general. All payments under this Chapter not made on account of the liability of

1 autonomous agencies shall be made out of the Government Claims Fund
2 only.

SOURCE: GC §6500.19 limited to Line Agencies only.

3 §6500.42. Autonomous Agency Operating Funds Available.

4 Each autonomous agency shall pay the amount allowed in an
5 approved settlement or in a final court judgment rendered against it
6 from its own operating funds not specifically restricted by any other
7 Guam or United States law.

SOURCE: New Section following §6500.19, but referring to
autonomous agencies only.

8 §6500.43. Budgeting for Claims.

9 (a) The annual budget recommendation for governmental operations
10 transmitted from the Governor to the Legislature, or the annual budget of
11 each autonomous agency, shall include an amount for each agency, line or
12 autonomous, as the case may be, for payment of claims made pursuant to
13 this Chapter and generated by the activities of such agency. The amount
14 shall be at least equal to the arithmetic average of amounts paid out of the
15 Government Claims Fund, or operating fund, as the case may be, on behalf
16 of such line or autonomous agency, as determined and recorded by the
17 Department of Administration, or by the autonomous agency for the three
18 fiscal years immediately preceding the year in which the recommendation is
19 being made. The amounts requested may be decreased by the amount of
20 insurance coverage purchased and in force.

21 (b) The first such budget request shall be made for the fiscal year
22 following passage of this Act.

23 (c) Between the passage of this Act and Fiscal Year 1985, the budget
24 recommendation required by this Section shall be based upon the amounts
25 paid in claim settlements or judgments on behalf of each line agency during
26 the preceding fiscal year.

SOURCE: Portion of Bill 385, 16th GL.

Section 2. Subsection B of Part IX of Section 5 of Chapter 1 of P.L.
17-25 is amended to read:

1	B. Commissioner's Council		
2	1. Personnel Services	\$1,079,193	\$1,079,193
3		(67.0 FTE)	(67.0 FTE)
4	2. Operating Expenses	29,142	29,142
5	3. President's Contingency		
6	Fund	5,000	5,000
7	TOTAL	\$1,113,335	\$1,113,335

8 Section 3. Grand Total of Part IX of Section 5 of Chapter 1 of P.L.
9 17-25 is amended to read:

10 Part IX Grand Total \$1,765,410 \$1,765,410

11 Section 4. Two Hundred Fifty Thousand Dollars (\$250,000) is
12 authorized to be appropriated from the General Fund to the Department of
13 Education for the purpose of procuring and placing fiberglass school bus
14 shelters in the Territory's 19 municipal districts. The Department shall
15 submit a request for the appropriation authorized by this section to be
16 made when it has received from the Department of Public Works a school
17 bus shelter design that is satisfactory to the Legislature.

18 Section 5. Section 21559 of the Government Code of Guam (12 GCA
19 8210), is hereby repealed and reenacted to read:

20 "Section 21559. Covenants and Agreements that may be contained
21 in indenture. An indenture pursuant to which bonds are issued and
22 which is approved by legislation may include any and all such
23 covenants and agreements on the part of the Authority, the Board,
24 the Territory, the Governor, the Director of Administration, the
25 Treasurer, the General Manager or any other officer or agency of the
26 Territory, the Authority or the Board as are authorized by this
27 Article or as the Board deems necessary or advisable for the better
28 security of the bonds issued thereunder, including without limiting the
29 generality of the foregoing, any one or more of the following:

30 (a) A provision that payments of principal and interest of
31 bonds shall be secured by all or by part of revenues and
32 provisions creating one or more funds or accounts to be held by
33 the Director of Administration into which all or any part of
34 revenues shall be deposited:

1 (i) for payment of the principal of and interest on
2 bonds at or prior to maturity; or

3 (ii) for reserve or sinking funds for the further
4 security of bonds. All moneys in any such fund or account
5 shall be paid out by the Director of Administration or his
6 agent to pay the principal of and interest on the bonds when
7 due or when redeemed or purchased prior to maturity, as
8 provided in any indenture.

9 (b) A provision requiring the Director of Administration or
10 his agent, as trustee as hereinafter provided, to pay or cause to
11 be paid punctually the principal of all such bonds and the
12 interest thereon on the date or dates, or at the place or places
13 and in the manner mentioned in such bonds and in the coupons
14 appertaining thereto in accordance with such indenture.

15 (c) A provision requiring the Board to operate the system
16 continuously, to the extent practicable under conditions as they
17 may from time to time exist, in any efficient and economical
18 manner.

19 (d) A provision requiring the Board to maintain the system
20 and to make all necessary repairs, renewals and replacements to
21 the system and to keep the system at all times in good working
22 order and condition.

23 (e) A provision requiring the Board to preserve and
24 protect the security of the bonds and the rights of the holders
25 thereof and to warrant and defend such rights.

26 (f) A provision requiring the Board to pay and discharge
27 or cause to be paid and discharged all lawful claims for labor,
28 materials and supplies or other charges which, if unpaid, might
29 become a lien or charge upon revenues or any part thereof, or
30 which might impair the security of the bonds.

31 (g) A provision which limits, restricts or prohibits any
32 right, power or privilege of the Board to mortgage or otherwise
33 encumber, sell, lease or dispose of the system or any part
34 thereof, or to enter into any lease or agreement which impairs or

1 impedes the operation of the system or any part thereof necessary
2 to secure adequate revenues or which otherwise impairs or
3 impedes the right of the holders of bonds with respect to such
4 revenues.

5 (h) A provision requiring the Board to fix, prescribe and
6 collect annually rates or other charges in connection with the
7 electric service furnished from the system which, together with
8 other available revenues, will be:

9 (i) sufficient to pay the principal of and interest on the
10 bonds as they become due and payable, together with such
11 additional sums as may be required for any bond reserve
12 fund or account or other fund or account created by the
13 indenture for the security of such bonds;

14 (ii) sufficient to pay the annual system operation and
15 maintenance costs; and

16 (iii) in such additional amount as shall be provided in
17 the indenture for the further security or protection of such
18 bonds.

19 (i) A provision that no electric service shall be furnished
20 free of charge to any person, except to the extent permitted by
21 the indenture.

22 (j) A provision requiring the Board and the Treasurer and
23 the Director of Administration to hold or cause to be held in trust
24 the revenues or any part of revenues pledged to the payment of
25 such bonds and the interest thereon, or to any fund or account
26 created by any indenture relating to such bonds for the further
27 security or protection of such bonds and to apply such revenues
28 or any part of revenues or cause them to be applied only as
29 provided in the indenture and to invest all or any part of such
30 revenues pending such application in such securities and subject
31 to such limitations as are specified in the indenture.

32 (k) A provision defining the power of the Board and the
33 Treasurer in applying the proceeds of the sale of any issue of
34 bonds for the acquiring, constructing or completing of the system

1 or any part thereof.

2 (l) A provision permitting the board to issue additional
3 bonds or one or more additional series of bonds, equally secured
4 with bonds theretofore issued under the indenture, for the
5 purpose of acquiring, constructing or completing, improving or
6 extending the system or any part thereof; and a provision
7 limiting the power of the Board to issue any additional bonds so
8 secured or any other additional bonds for such purpose.

9 (m) A provision requiring, specifying or limiting the kind,
10 amount and character of insurance (or any reserve fund or funds
11 in lieu of insurance) to be maintained by the Board on the system
12 or any part thereof and the use and disposition of the proceeds
13 of any such insurance thereafter collected or of the moneys in
14 any such reserve fund.

15 (n) A provision specifying the events of default and the
16 terms and conditions upon which any or all of the bonds of the
17 Board then or thereafter issued may become or be declared due
18 and payable prior to maturity, and the terms and conditions upon
19 which such declaration and its consequences may be waived.

20 (o) A provision designating the rights, limitations, powers
21 and duties arising upon breach by the Board of any of the
22 covenants, conditions or obligations contained in the indenture.

23 (p) A provision prescribing a procedure by which the terms
24 and conditions of the indenture may be subsequently amended or
25 modified with the consent of the Board, subject to the approval of
26 the Governor, and the vote or written consent of the holders of a
27 specified principal amount or specified proportion of the bonds
28 issued and outstanding, including provisions for meetings of
29 bondholders and for the manner in which the consent of the
30 bondholders may be given and specifically stating the effect of
31 such amendment or modification upon the rights of the holders of
32 all of the bonds and interest coupons appertaining thereto,
33 whether attached thereto or detached therefrom.

1 With respect to any provision relating to the modification or
2 amendment of an indenture, the Board, with the approval of the
3 Governor, may agree that bonds held by the Authority, the
4 Territory, the United States or any instrumentality of either
5 thereof (including every public corporation, political subdivision,
6 city, county, district, board, agency or instrumentality of any
7 kind of class) shall not be counted as outstanding bonds, or be
8 entitled to vote or assent, but shall, nevertheless, be subject to
9 any such modification or amendment.

10 (q) A provision for the refunding of all or any bonds
11 authorized by such indenture, subject to the provisions and
12 limitations of Sections 8228 and 8229.

13 (r) A provision permitting the Authority, the Board or the
14 Director of Administration to purchase outstanding bonds of the
15 Authority from any moneys or funds or accounts referred to in
16 the indenture or otherwise legally available for such purpose.

17 (s) A provision that the Governor, the Treasurer and the
18 Director of Administration and all other officers and agencies of
19 the Territory shall:

20 (i) be bound by all of the covenants and agreements
21 on the part of the Board set forth in such indenture; and

22 (ii) perform all such covenants and agreements which,
23 under the Organic Act or any provision of this Code or any
24 other statute of the Territory, can be taken for, or on
25 behalf of, or in lieu of the Board only by the Governor, the
26 Treasurer and the Director of Administration or such other
27 officer or agency.

28 (t) A provision for any working capital fund or account or
29 contingency fund or account relating to the system.

30 (u) A provision for the replacement of lost, destroyed or
31 mutilated bonds or coupons.

32 (v) A provision or provisions relating to such other acts
33 and matters as may be necessary or convenient or desirable in

1 order better to secure the bonds or to make the bonds more
2 marketable.

3 (w) As to existing bond issues and indentures and
4 covenants thereto, no changes as indicated above nor any
5 changes relating to repayment schedules or sinking fund
6 requirements may be approved or agreed to except upon action of
7 the Board of Directors of the Guam Power Authority after
8 approval by legislation. Neither the Guam Power Authority nor
9 the Governor shall have the authority to amend any Guam Power
10 Authority bond covenants, indentures or agreements as to bond
11 issues if such bond issues can be paid from, obligate, or are
12 secured by Section 30 money, money or revenues owed to the
13 Government of Guam, or money or other funds belonging to or
14 payable to the Government of Guam. Any offer to make any such
15 changes or amendments as indicated above shall be deemed
16 withdrawn upon the effective date of this Act, and shall
17 thereafter be subject to approval by legislation as herein
18 indicated."

19 Section 6. Notwithstanding any other provisions of law, the Governor
20 or his official designee may approve transfers of General Fund appro-
21 priations of up to fifteen percent (15%) among the items within a Part of
22 Parts XI, XIV, XXXIV, XXXIX and XLI of Section 5 of Chapter I of the
23 General Appropriation Act of 1984 for the purpose of meeting shortfalls and
24 not to fund new programs, unless such programs were identified in the FY
25 '84 Budget Act. The Governor or his designee shall transmit a report to
26 the Speaker of the Legislature within thirty (30) days of the transfers of
27 such funds.

28 Section 7. The Department of Education is hereby authorized an
29 increase of 88 FTE positions in its FY 1984 Budget Appropriation to include
30 the following positions:

<u>Teaching Positions:</u>	<u>Number</u>
Secondary Education	6
Chamorro Language	8
Special Education	14

1	Band (Music)	6
2	Elementary Education	5
3	ROTC Instructors	5
4	<u>Support Personnel:</u>	
5	Cafeteria Personnel	33
6	Attendance Officers	4
7	Guidance Counselor Coordinator	1
8	Health Counselor Coordinator	1
9	School Psychologist	1
10	School Psychometrist	1
11	School Social Worker II	1
12	Pupil Personnel Services	
13	Administrator	1
14	Clerk Typist III	<u>1</u>
15		88

16 Section 8. Section 12, Chapter II of P.L. 17-25 is amended to read:

17 "Section 12. No contract entered into for services by a
18 consultant or other person licensed to perform services shall be paid
19 from appropriations for personnel services, except for purposes of
20 implementing contractual arrangements under Section 6 of Chapter III
21 of P.L. 17-25. No such contract shall contain provisions entitling
22 contractors to standard employee benefits; further, no such contract
23 shall be entered into unless the contractor is licensed to do business
24 and is current in his tax payments. The government of Guam shall
25 not pay social security tax for the contractor. It is understood that
26 numerous special contracts and consultants are now funded from
27 appropriation for personnel services. It is the purpose of this
28 provision to stop this irregular system of recruitment and to preclude
29 the further payment of these contracts from appropriation intended by
30 the Legislature for positions authorized in the budget, except as above
31 provided."

32 Section 9. Section 8 of P.L. 17-25 is repealed and Section 15021.1 is
33 added to the Government Code to read:

1 "Section 15021.1. School bus shelters shall be placed at
2 necessary places within each of the 19 municipal districts of the Territory
3 and such placement shall be in accordance with the decision of each
4 municipal council, subject to the availability of funds and requirements of
5 public safety as determined by the Directors of Public Safety and Public
6 Works and the president of the Commissioner's Council. Once placed,
7 school bus shelters shall not be removed, dismantled or relocated without
8 the consent of the village council of the municipal district involved."

9 Section 10. Section 9 of Chapter II of the "General Appropriation Act
10 of 1984" is amended to read:

11 "Section 9. No street lights or portions of street lights in the
12 various villages working on July 1, 1983 shall be removed or disconnected
13 from their present location or relocated without the consent of the
14 commissioner and assistant commissioner, if any, of the village where such
15 street lights are located."

16 Section 11. A new Subsection 6 is added to Section 1022 of the Civil
17 Procedure Code to read:

18 "Subsection 6. Costs and reasonable attorney's fees in any
19 action against the Government of Guam by a government employee.
20 This Subsection shall operate retroactively to January 1, 1983."

21 Section 12. Subsection (f) of Section 28019 of the Government Code of
22 Guam is hereby repealed and reenacted to read:

23 "(f) that he/she has graduated from a law school in the United
24 States, its territories or possessions which is either accredited by the
25 American Bar Association or approved by the judicial council; provided
26 that in the case of a law school which is not accredited by the
27 American Bar Association, the judicial council may only approve law
28 schools of such stature that graduation from said law school would
29 qualify a graduate thereof to take the bar exam in the state, territory
30 or possession where the law school is located. No correspondence law
31 school may be so approved."

32 Section 13. Subsection G of Part II of Section 5 of Chapter 1 of
33 P.L. 17-25 is amended to read:

34 "G. For Fish and Wildlife Law Enforcement.

1	1. Personnel Services	\$119,911	\$119,911
2		(7.0 FTE)	(7.0 FTE)
3	2. Operating Expenses	6,000	6,000
4	3. Capital Outlay	12,000	12,000
5	TOTAL	137,911	137,911"

6 Section 14. Grand Total of Part II of Section 5 of Chapter 1 of P.E.
7 17-25 is amended to read:

8 "PART II GRAND TOTAL 1,187,197 1,187,197"

9 Section 15. The provisions of Section 1 of this Act are to take
10 effect thirty (30) days after the effective date of this Act.