



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Refer to
Legislative Secretary
AUG 17 1998

| | | |
|-------------------------------------|----------------|--|
| OFFICE OF THE LEGISLATIVE SECRETARY | | |
| PRINCIPAL SECRETARY | | |
| Received By | <i>Roberto</i> | |
| Time | 8:45 am | |
| Date | 8/18/98 | |

The Honorable Antonio R. Unpingco
Speaker
Mina'Bente Kuåttro na Liheslaturan Guåhan
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagåtña, Guam 96910

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 8/17/98
Time: 11:15
Rec'd by: *Lawrie*
Print Name: Lawrie

Dear Speaker Unpingco:

Enclosed please find Bill No. 688 (COR), "AN ACT TO REPEAL §8209 OF ARTICLE 2, CHAPTER 8 AND ADD ARTICLE 3 TO CHAPTER 8, BOTH OF THE GUAM CODE ANNOTATED, RELATIVE TO THE DEFERRED COMPENSATION PROGRAM FOR EMPLOYEES OF THE GOVERNMENT OF GUAM", which I have signed into law today as **Public Law No. 24-268**.

The amendments in this legislation are made due to the effect of §457 of the United States Internal Revenue Code. There is currently a "deferred compensation" program in effect for members of the Defined Contribution retirement program of the government of Guam, the "new" retirement program. There is no such local statute authorizing or directing the operation of a deferred compensation program for members of the Defined Benefit retirement program, or the "old" retirement program.

This legislation makes it possible to administer one "deferred compensation" program for all government of Guam employees who are members of either the Defined Benefit or the Defined Contribution retirement plans.

A deferred compensation program is the voluntary option of an employee to have payroll deductions made from their paycheck. The employee needs to authorize the deductions in writing, which are then placed in an individual account, and are used to augment the retirement plan of the individual by investing this additional money into shares in mutual funds or other managed investments, or annuity contracts from an insurance company, all selected by

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the Board of Trustees of the Government of Guam Retirement Fund. A combination of these types of investments may be selected.

The deferred compensation program is designed to ensure that an employee has the opportunity to have up to \$8,000 of the employee's annual salary placed in investments for retirement, at the employee's option, in addition to the mandatory standard retirement plan for employees.


Many employees may not take the time or trouble to invest their personal funds to their retirement benefit, and this program makes retirement investments "user friendly", in conjunction with the normal retirement plan. Since members of the "new" retirement plan could already take advantage of this service, this legislation provides the service, according to §457 of the United States Internal Revenue Code, to members of the "old" retirement plan, also.

There are 2 instances where language needs to be inserted to clarify the citation to a code section:

a) Page 4, line 3, after the words "Code §408(n)" a reference to where the code is to be found needs to be inserted. If it is the United States Internal Revenue Code, this needs to be so stated.

b) Page 11, line 16, after the words "§8305(a)(5)" a reference to where the code is to be found needs to be inserted. If it is "of this Article", this needs to be so stated.

Very truly yours,


Carl T. C. Gutierrez
I Maga'lahaen Guåhan
Governor of Guam

00984


Attachment: copy attached for signed bill
 original attached for vetoed bill

cc: The Honorable Joanne M. S. Brown
 Legislative Secretary

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session

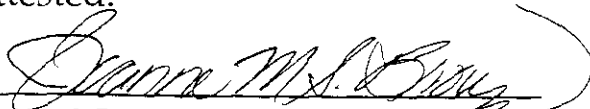
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUAHAN

This is to certify that Bill No. 688 (COR), "AN ACT TO REPEAL §8219 OF ARTICLE 2, CHAPTER 8 AND ADD ARTICLE 3 TO CHAPTER 8, BOTH OF THE GUAM CODE ANNOTATED, RELATIVE TO THE DEFERRED COMPENSATION PROGRAM FOR EMPLOYEES OF THE GOVERNMENT OF GUAM," was on the 3rd day of August, 1998, duly and regularly passed.



ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by I Maga'lahaen Guahan this 7th day of August, 1998,
at 2:45 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guahan

Date: 8-17-98

Public Law No. 24-268

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session

Bill No. 688 (COR)

As amended by the Author and as
further amended on the Floor.

Introduced by:

Felix P. Camacho
A. C. Lamorena, V
A. R. Unpingco
J. C. Salas
E. J. Cruz
L. F. Kasperbauer
T. C. Ada
F. B. Aguon, Jr.
A. C. Blaz
J. M.S. Brown
Francisco P. Camacho
M. C. Charfauros
W. B.S.M. Flores
Mark Forbes
C. A. Leon Guerrero
L. A. Leon Guerrero
V. C. Pangelinan
A. L.G. Santos
F. E. Santos
J. Won Pat-Borja

**AN ACT TO REPEAL §8219 OF ARTICLE 2, CHAPTER
8 AND ADD ARTICLE 3 TO CHAPTER 8, BOTH OF
THE GUAM CODE ANNOTATED, RELATIVE TO
THE DEFERRED COMPENSATION PROGRAM FOR
EMPLOYEES OF THE GOVERNMENT OF GUAM.**

1

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* finds
2 that §8219 of Article 2, Chapter 8 of Title 4 of the Guam Code Annotated requires
3 amendment due to the adoption of §457(g) of the United States Internal Revenue
4 Code, which requires that assets and income held by governmental §457 plans be
5 held in trust for the exclusive benefit of the members and their beneficiaries.

6 *I Liheslaturan Guahan* further finds that §8219 also requires amendment in
7 order to clarify that membership in the deferred compensation program shall be
8 extended to members in both the Government of Guam Defined Contribution
9 Plan and the Government of Guam Defined Benefit Plan.

10 It is the intent of *I Liheslaturan Guahan* to repeal §8219 of Article 2 of Title
11 4 of the Guam Code Annotated and to add a new Article 3 to Chapter 8 of Title
12 4 of the Guam Code Annotated, establishing the Government of Guam Deferred
13 Compensation Program for employees of the government of Guam.

14 **Section 2.** Section 8129 of Article 2, Chapter 8 of Title 4 of the Guam Code
15 Annotated is hereby *repealed*.

16 **Section 3.** Article 3 is hereby *added* to Chapter 8 of Title 4 of the Guam
17 Code Annotated to read as follows:

18 **“ARTICLE 3.**

19 **DEFERRED COMPENSATION PROGRAM.**

20 **Section 8301. Definitions.** As used in this Article, unless the
21 context otherwise requires:

22 (a) *Deferred Compensation Program* or *Program* means the
23 government of Guam Deferred Compensation Program created and
24 established by this Article.

25 (b) *Board of Trustees* or *Board* means the Board of Trustees of the

1 government of Guam Retirement Fund, which is responsible for the
2 direction and operation of the affairs and business of the Program. Title to
3 all assets and income of the program shall be held in trust by the Board or
4 by a Qualified Custodian for the exclusive benefit of members and their
5 beneficiaries.

6 (c) *Code* means the United States Internal Revenue Code, as
7 amended, and corresponding references to the Guam Territorial Income
8 Tax Code, as may be appropriate.

9 (d) *Director of the Government of Guam Retirement System* or *Director*
10 means the Director of the Government of Guam Retirement Fund as
11 appointed by the Board in accordance with §8140 of Article 1, Chapter 8 of
12 Title 4 of the Guam Code Annotated.

13 (e) *Member of the Government of Guam Deferred Compensation*
14 *Program* or *Member* means any person who is employed by an Employer in
15 the government of Guam and who is a member of either the Government
16 of Guam Retirement Fund established in Article 1 of this Title or the
17 Government of Guam Defined Contribution Retirement System established
18 in Article 2 of this Title, with the exception of any person who participates
19 under a Code §403(b) plan sponsored by the employer.

20 (f) *Employer* or *Employer Unit* means the following government
21 entities, organizations or departments that are organized and operated in
22 Guam: each and every line department or agency of the Executive Branch,
23 every autonomous and semi-autonomous agency or instrumentality, every
24 public corporation, every educational institution, whether secondary or
25 post secondary, the Legislative Branch, the Judicial Branch, the Public

1 Defender Corporation and every public entity hereafter to be created by
2 law, within Guam which has employed or employs a member.

3 (g) *Qualified Custodian* means a bank as described in Code §408(n),
4 or person other than a bank that satisfies the requirements of Paragraphs
5 (2)-(6) of U.S. Treasury Regulations §1.408-2(e), or the Board in its capacity
6 as trustee of the Program in accordance with Code §457(g).

7 (h) *Section 457* means §457 of the United States Internal Revenue
8 Code, as amended, and corresponding references to the Guam Territorial
9 Income Tax Code, as may be appropriate.

10 **Section 8302. Establishment of the Government of Guam**
11 **Deferred Compensation Program; Participation in Government of Guam**
12 **Deferred Compensation Program; Limiting Participation in Existing §457**
13 **Plans.** (a) There shall be established the Government of Guam

14 Deferred Compensation Program, hereinafter referred to as 'Program,' to
15 which member contributions, in the form of deductions from salary, shall
16 be deposited and to which earnings on investments and other contributions
17 shall also be deposited upon receipt and from which benefits and
18 reasonable administrative fees and expenses authorized by the Board of
19 Trustees shall be paid.

20 (b) **Voluntary Participation.** Each member's participation in
21 the Program shall be completely voluntary. At the request of a member of
22 the Deferred Compensation Program, the employer shall by payroll
23 deduction defer the payment of part of the compensation of the member.

24 The amount to be deferred must be as provided in a written agreement
25 timely executed by and between the member and his or her employing

1 unit. This agreement shall be in a form as prescribed by the Director of the
2 Government of Guam Retirement System, approved by the Board of
3 Trustees, and in compliance with the requirements of Code §457.

4 (c) **Employer's Failure to Implement Program.** Implementation
5 of the Deferred Compensation Program by the employer must be
6 completed within thirty (30) days of the member's request as provided in
7 Subsection (b). Beginning on the date of enactment, the Government of
8 Guam Deferred Compensation Program shall be the single §457 program
9 receiving payroll deductions representing elective deferrals of the
10 compensation of any member of an employer unit other than an employer
11 unit which had established a §457 program and was receiving payroll
12 deductions prior to the date of enactment. Such excepted employer unit
13 may defer compensation under its existing 457 deferred compensation plan
14 through December 31, 1998. Payroll deductions representing §457 elective
15 deferrals of any employee of an excepted employer unit must be remitted
16 to the Qualified Custodian of the Government of Guam Deferred
17 Compensation Program after December 31, 1998. The Board of Trustees
18 may order any employer to implement the Deferred Compensation
19 Program provided for in this Section upon receipt of a member's approved
20 request to undertake that implementation and may enforce that order in
21 appropriate legal proceedings.

22 **Section 8303. Article to be Liberally Construed; Purpose.** The
23 provisions of this Article shall be liberally construed so as to provide a
24 Deferred Compensation Program for any member which is funded on a
25 current basis from elective member contributions.

1 **Section 8304. Administration of the Government of Guam**
2 **Deferred Compensation Program.** The Board of Trustees created
3 pursuant to Article 1 of Chapter 8 of this Title shall administer the
4 Government of Guam Deferred Compensation Program. The Board may
5 sue and be sued, contract and be contracted with, and conduct all the
6 business of the Deferred Compensation Program in the name of the
7 Government of Guam.

8 **Section 8305. Powers and Duties of the Board of Trustees and**
9 **the Director of the Government of Guam Retirement System in the**
10 **Administration of the Deferred Compensation Program.**

11 **(a) Adoption of Formal Written Plan and Trust Arrangement.**
12 The Board of Trustees shall be responsible for the adoption of a formal
13 written plan setting forth all the terms and conditions of the Program, and
14 any plan amendments which from time to time the Board of Trustees shall
15 determine to be required, in order that the Plan shall comply with and
16 remain in compliance with Code §457. The Board of Trustees, on behalf of
17 the Government of Guam and all of its Employers, shall be authorized and
18 empowered to take any and all required action, including, but not limited
19 to, entering into annuity contracts, trust agreements and custodial
20 arrangements, all of which shall be intended to satisfy the requirements of
21 Code §457(g) or to implement the Program.

22 **(b) Exclusive Jurisdiction.** The Board of Trustees shall have
23 exclusive original jurisdiction in all matters relating to or affecting the
24 Program, including, but not limited to, claims for benefits and refunds
25 under this Article.

1 (c) **Approval of Rules, Regulations and Administrative**
2 **Procedures.** The Board of Trustees shall consent to and approve such
3 rules, regulations, administrative procedures and prescribed forms as
4 established by the Director, as it may deem necessary to effectuate the
5 purposes of this Article, all of which shall conform to Code §457, Federal
6 tax laws, U.S. Treasury Regulations, and rulings.

7 (d) **Administrative Contracts.** The Board of Trustees may
8 contract with insurance, annuity, mutual fund, trust company or other
9 qualified company or companies to administer the operations of the
10 Program. In addition, the Board of Trustees shall also be authorized and
11 empowered to take any and all additional actions, including, but not
12 limited to, the execution of custodial, record keeping, and investment
13 advisory agreements in order to implement the Program.

14 (e) **Investments.** The Board of Trustees may solicit bids for
15 investment options and may retain consulting services to assist it in
16 soliciting and evaluating bids and in the periodic review of companies
17 offering investment options. The Board of Trustees may annually establish
18 a budget for its costs in the soliciting, evaluating and periodic review
19 process of companies offering investment options, and may charge a
20 proportional share of all costs related to the periodic review to each such
21 company currently under contract and charge a proportional share of all
22 costs related to soliciting and evaluating bids to each such company
23 offering investment options which is selected by the Board of Trustees.
24 Contracts must provide that any investment options are offered to
25 members in an unbiased manner, in a manner that conforms to rules

1 adopted by the Director, and without unreasonable solicitation. The
2 contract must not permit any person to jeopardize the tax-deferred status
3 of money invested by members under this Article.

4 The Board of Trustees shall invest and reinvest the monies of the
5 Program and manage the assets and income of the Program:

6 (i) solely in the interest of, and for the exclusive purposes of
7 providing benefits to, members and their beneficiaries, and defraying
8 reasonable expenses of administering the Program;

9 (ii) with the care, skill, prudence and diligence under the
10 circumstances then prevailing that a prudent person acting in a like
11 capacity and familiar with these matters would use in the conduct of
12 an enterprise of a like character and with like aims; and

13 (iii) in a manner that diversifies the investments of the
14 Program as to minimize the risk of loss and to maximize the rate of
15 return, unless under the circumstances prudent not to do so.

16 Notwithstanding any other provision of this Article, and except as
17 otherwise expressly restricted by the Organic Act of Guam and by the law,
18 the Board of Trustees may delegate its authority to invest and/or manage
19 the assets and income of the Program, provided that the Board of Trustees
20 shall exercise reasonable care, skill and caution in: (a) selecting an agent;
21 (b) establishing the scope and terms of the delegation, consistent with the
22 purposes and terms of the Program; and (c) periodically reviewing the
23 agent's performance and compliance with the terms of the delegation.

24 (f) **Member Accounts.** The Board of Trustees shall establish an
25 individual account(s) for each Member, to which his or her respective

1 contributions, together with all earnings on investments shall be deposited,
2 and from which his or her respective benefits under this Program and his
3 or her respective pro-rata share of reasonable administrative fees and
4 expenses, as authorized by the Board of Trustees, shall be paid.

5 (g) **Advisors.** The Board of Trustees may engage actuarial, legal,
6 clerical and all other advisors, including, but not limited to, a Qualified
7 Custodian as described by §8301(g) of this Article, as may be necessary to
8 effectuate the purposes of this Article.

9 (h) **Duties of Employer.** The Board of Trustees shall confirm that
10 all duties under this Article of each employer are being performed and, in
11 the event that an employer fails to perform any duty imposed on said
12 employer under the provisions of this Article, to take such steps as in its
13 judgment seem advisable to enforce compliance by the employer with the
14 provisions of this Article.

15 (i) **Supervised Contributions.** The Board of Trustees shall
16 confirm that all member contributions by way of salary deductions are
17 remitted to the appropriate Qualified Custodian of the Program, and shall
18 certify to each employer the amount to be deducted from each member's
19 salary.

20 (j) **Records.** The Board of Trustees shall cause to be maintained
21 adequate accounting records that reflect the financial condition of the
22 Program, and such additional data as is necessary or required for the
23 operation of the Program.

24 **Section 8306. Members' Contributions.**

25 (a) **Deductions from Salary.** Member contributions in the form

1 of deductions from salary shall not exceed the limits prescribed by Code
2 §457, as amended. The employer shall contribute or pay these member
3 deducted contributions from the same source of funds which is used in
4 paying base pay to the members. Such member contributions shall be
5 deducted from his or her salary by the employer and immediately credited
6 to such member's account and/or accounts at the normal payroll intervals,
7 and shall be remitted to the Qualified Custodian designated by the Board
8 of Trustees to receive such contributions of the Program, no later than ten
9 (10) working days from the date on which such amount would otherwise
10 have been payable to the member in cash.

11 **(b) Purchase of Shares.** The amount of compensation so
12 deferred may be used to purchase such forms of investments which are
13 prescribed by the Board of Trustees. Included among such forms of
14 investments which may be provided are:

15 (1) shares in mutual funds or other managed investment
16 portfolios selected by the Board of Trustees; or

17 (2) annuity contracts from an insurance company selected by
18 the Board of Trustees, which company is licensed to contract business
19 on Guam and is subject to regulation by the Director of Revenue and
20 Taxation; or

21 (3) a combination of (1) and (2).

22 The shares or contracts purchased shall stand in the name of the
23 Qualified Custodian designated by the Board of Trustees for the member
24 whose deferred compensation purchased the shares or contracts until
25 distributed to the member in a manner agreed upon by the member and the

1 Board of Trustees and in accordance with the terms of the deferred
2 compensation plan. The government of Guam, the Board of Trustees,
3 political subdivision, or other employer is *not* responsible for any loss that
4 may result from investment of the Member's deferred compensation.

5 **Section 8307. Payment of Administrative Cost and Expenses.**

6 (a) Subject to the approval of the Board of Trustees, the Director
7 shall develop and establish a procedure by which common administrative
8 expenses shared among the Government of Guam Retirement Fund, the
9 Government of Guam Defined Contribution System and the Program,
10 taking into account such factors, including, but not limited to, the number
11 of members and plan asset values that may be prorated among such
12 retirement plans.

13 (b) In accordance with such procedure, the Qualified Custodian,
14 as selected by the Board of Trustees, shall allocate all of the administrative,
15 custodial, record keeping, and investment management costs and expenses
16 associated with the Program, other than the costs described in §8305(a)(5)
17 relating to the soliciting, evaluating and periodic review of companies
18 offering investment options, against the assets and investment income
19 accumulated pursuant to this Article. The amount of administrative costs
20 and expenses which are to be appropriated from the fund or member's
21 account in accordance with this Section shall also include the costs of the
22 Board of Trustees and the Director which are incurred in administering the
23 Program, including, but not limited to, fees of counsel, actuaries,
24 accountants or other experts appointed to provide services with respect to
25 the Program and payroll expenses of persons on the payroll of the Board

1 of Trustees or the Retirement Fund who are employed to perform services
2 with respect to the Program.

3 The Board of Trustees is authorized and instructed to borrow from
4 the Government of Guam Retirement Fund on behalf of the Deferred
5 Compensation Program, the amounts necessary to pay the administrative
6 costs and expenses of the Board of Trustees and the Director pending the
7 appropriation of such costs from the fund or the members' accounts. Such
8 borrowed amounts shall be repaid to the Government of Guam Retirement
9 Fund as soon as possible following the Board of Trustee's receipt of the
10 appropriated reimbursements together with a reasonable rate of interest
11 based upon the investment return which the Government of Guam
12 Retirement Fund could have obtained through an alternative investment
13 of such monies.

14 **Section 8308. Amount of Benefit Payments.** (a) The
15 amount of benefit payments that a retired member shall receive shall be
16 based solely upon the balance in the member's deferred compensation plan
17 account at the date of retirement, the retirement option selected, the
18 actuarial life expectancy of the member, if applicable, and such other
19 factors as normally govern annuity payments.

20 (b) The Board of Trustees, or its designee, is authorized upon
21 retirement of a member, upon the election of that member, to purchase an
22 annuity for the member upon his or her retirement.

23 (c) In accordance with 7 GCA §23111, no amount of deferred
24 compensation is assignable or subject to execution, levy, attachment,
25 garnishment or other legal process.



GUAM LEGISLATURE

Senator Felix P. Camacho

Power, Foreign Affairs, and General Government Services

113 Agaña Street

Agaña, Guam 96910

472-3505 / 6

472-9747

July 28, 1998

The Honorable
Antonio R. Unpingco
Speaker, Mina' Bente Kuattro Na Liheslaturan Guahan
155 Hesler Street
Hâgatña, Guam 96910

via: Committee on Rules

Dear Mr. Speaker:

The Committee on Power, Foreign Affairs & General Government Services, to which was referred Bill No. 688, "An act to repeal Section 8219, Article 2, Chapter 8, Title 4 of the Guam Code Annotated and to add a new Article 3 to Chapter 8, Title 4 of the Guam Code Annotated, relative to the *Deferred Compensation Program* for employees of the Government of Guam," does hereby report back with the recommendation **TO DO PASS** As Amended.

Votes of committee members are as follows:

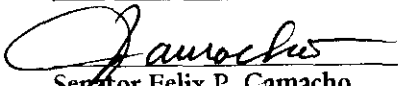


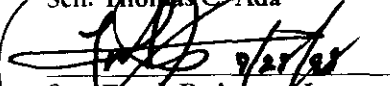

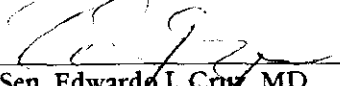
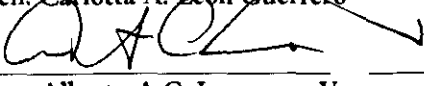
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|----------|---------------------------|
| <u>8</u> | To pass |
| _____ | Not to pass |
| _____ | To place in inactive file |
| _____ | Abstained |
| <u>6</u> | Not available/Off island |

FELIX P. CAMACHO
Chairman

Attachments

AMENDED BILL NO. 688, VOTING SHEET

“An act to repeal Section 8219, Article 2, Chapter 8, Title 4 of the Guam Code Annotated and to add a new Article 3 to Chapter 8, Title 4 of the Guam Code Annotated, relative to the Deferred Compensation Program for employees of the Government of Guam.”

| <u>COMMITTEE MEMBERS</u> | <u>TO PASS</u> | <u>NOT TO PASS</u> | <u>ABSTAIN</u> | <u>TO PLACE IN INACTIVE FILE</u> |
|---|----------------|--------------------|----------------|----------------------------------|
|  Senator Felix P. Camacho | ✓ | | | |
|  Sen. Lawrence F. Kasperbauer | X | | | |
|  Sen. Thomas C. Ada | ✓ | | | |
|  Sen. Frank B. Aguon, Jr. | ✓ | | | |
|  Sen. Francisco P. Camacho | ✓ | | | |
| Sen. Mark C. Charfauros | | | | |
|  Sen. Edwardo J. Cruz, MD | ✓ | | | |
| Sen. William B. S.M. Flores | | | | |
| Sen. Carlotta A. Leon Guerrero | | | | |
|  Sen. Alberto A.C. Lamorena V | | | | |
| Sen. Vicente C. Pangelinan | ✓ | | | |
| Sen. Angel L.G. Santos | | | | |
| Sen. Francis E. Santos | | | | |
| Sen. Antonio R. Unpingco (ex-officio member) | | | | |
| Sen. Judith Won-Pat Borja | | | | |

**COMMITTEE ON POWER, FOREIGN AFFAIRS
AND GENERAL GOVERNMENT SERVICES**

Mina'Bente Kuattro Na Liheslaturan Guahan
155 Hesler Street, Hagatna, Guam 96910

**Committee Report on
Amended Bill No. 688**

“An act to repeal Section 8219, Article 2, Chapter 8, Title 4 of the Guam Code Annotated and to add a new Article 3 to Chapter 8, Title 4 of the Guam Code Annotated, relative to the Deferred Compensation Program for employees of the Government of Guam.”

**COMMITTEE REPORT
POWER, FOREIGN AFFAIRS, AND GENERAL GOVERNMENT
SERVICES**

AMENDED BILL NO. 688

“An act to repeal Section 8219, Article 2, Chapter 8, Title 4 of the Guam Code Annotated and to add a new Article 3 to Chapter 8, Title 4 of the Guam Code Annotated, relative to the Deferred Compensation Program for employees of the Government of Guam.”

PUBLIC HEARING

8:30, Monday, July 27, 1998

Conference Room, Office of Senator Felix P. Camacho

SENATORS PRESENT

| | |
|---------------------------|----------|
| Sen. Felix P. Camacho | Chairman |
| Sen. F. B. Aguon, Jr. | Member |
| Sen. V.C. Pangelinan | Member |
| Sen. Francisco P. Camacho | Member |

PRESENT TO TESTIFY

| | |
|----------------------|--|
| Mr. John A. Rios | Director, Retirement Fund |
| Ms. Joanne Grimes | Legal Counsel, Retirement Fund |
| Mr. Vince C. Camacho | VP Micronesia Operations, BenefitsCorp |

BACKGROUND

Bill 688 was introduced by Senator Felix P. Camacho on July 7, 1998;

Referred to the Committee on Power, Foreign Affairs and General Government Services on July 24, 1998, and

Heard by the Committee on July 27, 1998.

Fiscal Note requirement: waived by the Committee Chairman.

TESTIMONY AND DISCUSSION

John A. Rios, Director, Retirement Fund: The Retirement Fund is in support of Bill 688 which

establishes a deferred compensation program for GovGuam employees. Bill 688 will effectuate the provisions set forth in Section 8219 of Article 2, Chapter 8, Title 4 GCA. Establishing a deferred compensation program will provide employees with additional investment opportunities. The Deferred Compensation Program will be voluntary. *(See attached written testimony).*

Vince C. Camacho, VP Micronesia Operations, BenefitsCorp: BenefitsCorp (Government of Guam Defined Contribution Retirement System Third Party Administrators) is in favor of Bill 688. Bill 688 has several advantages to both the Defined Contribution and Defined Benefit members: (1) will allow members of the DB Plan who have opted to transfer to the DCRS an opportunity to increase their retirement contributions back to 9.5% as in the DB Plan; (2) will allow members of the DCRS to voluntarily increase their contributions to the DCRS in hopes of having a sufficient retirement nest egg upon retirement; (3) Implementation is at no additional cost to the Government of Guam as all costs will be absorbed by the participants and/or the investment managers, and no contributions will be made by GovGuam; and (4) Will allow members of the Defined Benefit Plan to supplement their current retirement pension with additional funds, providing GovGuam employees with the opportunity to retire without having to seek employment. *(See attached written testimony).*

Sen. Vicente C. Pangelinan: Would it be possible for a member, under this program, to have his/her contributions rolled over into a self-directed IRA, or would the contributions have to be kept within the GovGuam program?

Joanne Grimes: A member, while still employed with the government of Guam, may not be able to put 457 plan voluntary contributions into an IRA that has already been established. His/her contributions must remain in the GovGuam system.

Sen. Pangelinan: Can the GovGuam Program be a self-directed program, or does it have to be a managed program.

Grimes: “Self-Directed” meaning, choosing certain investment options is discretionary to the extent that there are certain selections available and the participants can select from among those. The GovGuam Retirement Fund offers eleven (11) different funds as investment options, with a number of different investment managers handling them.

Sen. Felix P. Camacho: What is the possibility of taking one’s contributions made to an IRA while employed with a private company, and putting them into this program when hired by the government of Guam?

Grimes: Concerning 401k’s in the private sector: Instead of taking a distribution upon resignation, one could do a roll-over into the GovGuam system, but there are certain qualifying criteria. The roll-over is only possible with 401k’s, not with IRA’s.

Rios: Basically, Bill 688 would allow additional investment opportunities for the members of both the Defined Benefit Plan and the Defined Contribution Retirement System. The Deferred

Compensation Program will allow them to set their future retirement by investing additional contributions for any foreseen shortfalls in their retirement.

Sen. Camacho: Is there a ceiling on the amount one can contribute under this program?

Rios: \$8,000.00 per year. This amount is set under the U.S. Internal Revenue Code.

Discussion on Defined Contribution Retirement System investments. There is concern that participants are investing more of their contributions in the stable funds than they are in other available funds.

Sen. Pangelinan: What are the number of members who have switched from the DB Plan to the DC Plan?

Rios: The actual statistics the Fund has are on those members who have refunded their contributions and were perhaps rehired under the DC Plan. Current figures stand at about 300 (DB transferred to DC). Current membership of the DC Plan = 4,500. 4,200 of these are either new hires or rehires.

Sen. Pangelinan: No requirement for GovGuam to make matching contributions?

Grimes: GovGuam would not have to make any contributions under this program because the employee contributions are voluntary, not mandatory; similar to the private sectors 401K.

Sen. Pangelinan: What are the restrictions on withdrawing these contributions?

Grimes: The restrictions are set by Federal law; More restrictive than the withdrawal provisions in the Defined Contribution Retirement System. Withdrawals under this new program will be required to meet higher standards.

Vince C. Camacho: There are no penalties when one withdraws from the 457 plan. One will have to pay the taxes on the contributions withdrawn, but will not be penalized for early distribution.

Discussion on 457 investments. Investments are mixed. Investment options adopted by the Board range from international equities to stable value funds. Portfolio is established by the investment manager.

Sen. Camacho: What are the estimated number of people who will take advantage of this program?

Vince Camacho: Looking at the DB- DC transfers, there are already about 300 members that will take advantage of this program.

Rios: The Fund has been getting calls from members inquiring on when this plan will be established. Once Bill 688 is enacted, the Fund will make additional efforts to educate GovGuam employees on

the program.

Waiver of Fiscal Note Requirement: The Committee notes that all costs relating to the Government of Guam Deferred Compensation Program established by Bill 688 will be absorbed by the participants and/or the investment managers, and will have no pecuniary impact on the General Fund.

The Chairman of the Committee on Power, Foreign Affairs and General Government Services certifies in conformance with Title 2 Guam Code Annotated §9105, Attachment of Fiscal Note to Bill, that prompt Committee action is required on Bill No. 688. Therefore, the Chairman of the Committee waives the requirement for a fiscal note on Bill 688. (*See attached waiver*).

FINDINGS

The Committee finds that the current deferred compensation statute (See GCA §8219) needs to be amended in order to adopt Section 457(g) of the U.S. Internal Revenue Code. The establishment of the *Government of Guam Deferred Compensation Program* will extend to government of Guam employees who are members of either the *Defined Benefit Plan*, or the *Defined Contribution Retirement System*, the opportunity to voluntarily set aside and invest more of their pre-tax income for retirement purposes, supplementing their mandatory contributions. (The U.S. Internal Revenue Code currently limits contributions under 457(g) to \$8,000.00/year.)

Implementation and execution of the new program will not be at any additional cost to the government of Guam as all costs will be absorbed by the participants and/or the investment managers; GovGuam will not be required to match or make any contributions under this plan.

RECOMMENDATION

The Committee on Power, Foreign Affairs and General Government Services wishes to report out Bill No.688 As Amended **TO DO PASS**.



FONDON RITIRAO GUBETNAMENTON GUÅHAN
Government of Guam Retirement Fund
424 ROUTE 8
MAITE, GUAM 96927

Telephone Nos. (671) 475-8900/8901
Facsimile No. (671) 475-8922



July 27, 1998

The Honorable Felix P. Camacho
Chairman, Committee on Power, Foreign Affairs
And General Government Services
Twenty-Fourth Guam Legislature
155 Hesler Street
Agana, Guam 96910

Re: Bill 688

Dear Senator Camacho and committee members:

Thank you for this opportunity to testify in support of Bill 688 which establishes a deferred compensation program for employees of the Government of Guam.

Bill 688 will finally effectuate the provisions set forth in Section 8219 of Article 2, Chapter 8 of Title 4. By establishing a deferred compensation plan, members of both retirement plans will be better able to prepare for retirement by providing additional investment opportunities and would enable our members to participate in modern day investment practices. Participation in the Deferred Compensation program will be voluntary.

Again, thank you for allowing me to appear before you.

Sincerely,



JOHN A. RIOS
Director



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July 27, 1998

Honorable Felix P. Camacho, Senator
Chairman, Committee on Power, Foreign Affairs
and General Governmental Services
I Mina' Bente Kuattro Na Liheslaturan Guahan

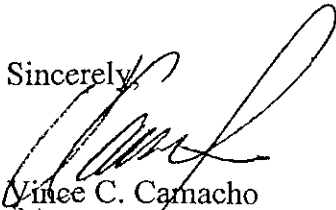
Dear Mr. Chairman:

As the Government of Guam Defined Contribution Retirement System Third Party Administrators, we are in favor of Bill 688 which establishes the Government of Guam Deferred Compensation Program. We feel this bill has several advantages to both the Defined Contribution and Defined Benefit members:

1. This bill will allow members of the Defined Benefit Plan who have opted to transfer to the Defined Contribution Plan an opportunity to increase their retirement contributions back to 9.5% as in the Defined Benefit Plan.
2. This bill will allow members of the Defined Contribution Plan to voluntarily increase their contributions to the DC Plan in hopes of having a sufficient retirement nest egg upon retirement.
3. The Deferred Compensation Program will be implemented without an additional cost to the Government of Guam.
 - a. All costs will be absorbed by the participants and/or the investment managers.
 - b. Government of Guam will not be making a contribution to this supplemental program.
4. The Deferred Compensation Program will allow members of the Defined Benefit Plan to supplement their current retirement pension with additional funds. This will eventually allow GovGuam employees the opportunity to retire without having to seek employment.

Thank you for this opportunity to express our support for Bill 688. We look forward to the passage of this bill.

Sincerely,



Vince C. Camacho
VP Micronesia Operations

Benefits Communication Corporation

Equities offered through BenefitsCorp Equities, Inc.

1000 B, Route 8

Government of Guam Retirement Fund Bldg.

Agaña, Guam 96927

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NOTICE OF PUBLIC HEARING

**Mina'Bente Kuattro Na Liheslaturan Guahan
Committee on Power, Foreign Affairs
& General Government Services
Senator Felix P. Camacho, Chairman**

Monday, July 27, 1998

8:30 a.m.

Agenda

Bill No. 688, "An act to repeal Section 8219, Article 2, Chapter 8, Title 4 of the Guam Code Annotated and to add a new Article 3 to Chapter 8, Title 4 of the Guam Code Annotated, relative to the Deferred Compensation Program for employees of the Government of Guam."

Bill No. 694, "An act to repeal and reenact certain sections of Article 1, Chapter 8, Title 4 of the Guam Code Annotated, relative to disability annuities and member contributions to the Fund."

**Hearing will take place in the Conference Room of
Senator Felix P. Camacho's Office
2nd FL, Malayan Bldg.
5th St. W & Hernan Cortes Ave.**

TEL: 472-3505/6 FAX: 472-9747



MINA' BENTE KUATTRO NA LIHESLATURAN GUAHAN


TWENTY-FOURTH GUAM LEGISLATURE

155 Hesler Street, Agana, Guam 96910

**MINA' BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session**

I, Felix P. Camacho, Chairman of the Committee on Power, Foreign Affairs and General Government Services of Mina' Bente Kuattro Na Liheslaturan Guahan, hereby certify, in conformance with Title 2 Guam Code Annotated §9105, *Attachment of Fiscal Note to Bill*, that prompt Committee action is required on Bill Number 688 (COR), "AN ACT TO REPEAL SECTION 8219, ARTICLE 2, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED AND TO ADD A NEW ARTICLE 3 TO CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE DEFERRED COMPENSATION PROGRAM FOR EMPLOYEES OF THE GOVERNMENT OF GUAM," which was introduced on July 7, 1998 and subsequently referred to the Committee on Power, Foreign Affairs and General Government Services, and therefore waive the statutory requirement for a fiscal note on the before mentioned bill.

Dated: July 28, 1998


FELIX P. CAMACHO
Chairman, Committee on Power,
Foreign Affairs and General
Government Services