



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

MAY 31 2002

The Honorable Joanne M. S. Brown  
Legislative Secretary  
I Mina'Bente Sais na Liheslaturan Guåhan  
Twenty-Sixth Guam Legislature  
Suite 200  
130 Aspinal Street  
Hagåtña, Guam 96910

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 173 (COR) "AN ACT TO *REPEAL AND REENACT* §§ 4402, 4407(a), 4105, 4409, AND TO *AMEND* § 4406, ALL OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO PERSONNEL POLICIES AND THE CIVIL SERVICE COMMISSION" which was vetoed and subsequently overridden by the Legislature, I Liheslatura. This legislation is now designated as **Public Law No. 26-88**.

Very truly yours,

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

Attachments: original bill for vetoed legislation or  
copy of bill for signed or overridden legislation  
and legislation enacted without signature

cc: The Honorable Antonio R. Unpingco  
Speaker

0800

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	
Time	_____
Date	6/3/02


MINA'BENTE SAIS NA LIHESLATURAN GUAHAN  
2002 (SECOND) Regular Session

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

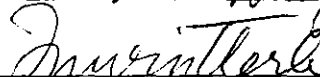
This is to certify that Substitute Bill No. 173 (COR), "AN ACT TO REPEAL AND REENACT §§ 4402, 4407(a), 4105, 4409, AND TO AMEND § 4406, ALL OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO PERSONNEL POLICIES AND THE CIVIL SERVICE COMMISSION," returned without approval of *I Maga'lahaen Guahan*, was reconsidered by *I Liheslaturan Guahan* and after such consideration, did agree, on the 17<sup>TH</sup> day of May, 2002, to pass said bill notwithstanding the veto of *I Maga'lahaen Guahan* by a vote of thirteen (13) members.

  
LAWRENCE F. KASPERBAUER  
Acting Speaker

Attested:

  
JOANNE M.S. BROWN  
Senator and Legislative Secretary

-----  
This Act was received by *I Maga'lahaen Guahan* this 20<sup>th</sup> day of May, 2002,  
at 4:10 o'clock P.M.

  
Assistant Staff Officer  
*Maga'lahaen's Office*

**MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN**  
**2001 (FIRST) Regular Session**

**Bill No. 173 (COR)**

As substituted on the Floor and amended.

Introduced by:

M. C. Charfauros

J. F. Ada

T. C. Ada

F. B. Aguon, Jr.

J. M.S. Brown

E. B. Calvo

F. P. Camacho

Mark Forbes

L. F. Kasperbauer

L. A. Leon Guerrero

K. S. Moylan

V. C. Pangelinan

A. L.G. Santos

A. R. Unpingco

J. T. Won Pat

**AN ACT TO REPEAL AND REENACT §§ 4402, 4407(a), 4105, 4409, AND TO AMEND § 4406, ALL OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO PERSONNEL POLICIES AND THE CIVIL SERVICE COMMISSION.**

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

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 finds that the decisions of the Civil Service Commission ("Commission") can  
4 have a significant impact upon the lives of government of Guam employees  
5 and their families. *I Liheslaturan Guåhan* finds the existing law as being

1 unacceptable in meting out justice and highly unfavorable to the employees.  
2 To bring back balance to the government of Guam's management/labor  
3 relationship, *I Liheslaturan Guåhan* finds that the vote needed to affirmatively  
4 carry out the decision of the Commission must be increased.

5 *I Liheslaturan Guåhan* finds that the standard of proof utilized by the  
6 Commission in any adverse action appeal requires that management only  
7 show "by a preponderance of the evidence" that its action was correct. This  
8 standard of proof favors management to the detriment of the employee  
9 appealing management's action. *I Liheslaturan Guåhan* finds that there is a  
10 need "to level the playing field" by requiring a greater burden of proof.

11 *I Liheslaturan Guåhan* finds that management can exert undue pressure  
12 and stress on employees when the employees are faced with the threat of  
13 disciplinary action. The employees, under great emotional stress from the  
14 threat of action, may, wrongfully, think that resigning, while under duress,  
15 will remove the threat. *I Liheslaturan Guåhan* does *not* condone the resignation  
16 of an employee when submitted under duress. *I Liheslaturan Guåhan* finds  
17 that when a resignation by an employee is submitted under duress that it  
18 constitutes a deprivation of the employee's due process rights and denies the  
19 employee of that person's right to seek justice.

20 **Section 2.** Section 4402 of Article 4, Chapter 4 of Title 4 of the Guam  
21 Code Annotated is hereby *repealed* and *reenacted* to read as follows:

22 "Section 4402. **Quorum.** The quorum of the Commission shall  
23 be four (4) members. The affirmative vote of four (4) members shall be  
24 required for any action of the Commission. The Commission may adopt

1 rules to govern its procedures and the standards to be maintained by  
2 non-attorney representatives; *provided*, that rules adopted by the  
3 Commission shall recognize that representative is *not* an attorney and  
4 cannot be bound by the same standards and ethics as an attorney; and,  
5 further, *provided*, that in cases where an employee represents oneself,  
6 the Commission shall render all possible assistance to the employee to  
7 insure a fair and impartial hearing.”

8 **Section 3.** Section 4407(a) of Article 4, Chapter 4 of Title 4 of the Guam  
9 Code Annotated is hereby *repealed* and *reenacted* to read as follows:

10 “(a) Upon the hearing of any adverse action appeal, the burden  
11 of proof shall be upon the government to show clearly and convincingly  
12 that the action of the Branch, department, agency or instrumentality was  
13 correct.”

14 **Section 4.** Section 4105 of Article 1, Chapter 4 of Title 4 of the Guam  
15 Code Annotated is hereby *repealed* and *reenacted* to read as follows:

16 “**Section 4105. Departmental Rules.** Rules subject to criteria  
17 established by this Chapter governing the selection, promotion,  
18 performance, evaluation, demotion, suspension and other disciplinary  
19 action of classified employees shall be adopted by the Board of Directors  
20 of the Antonio B. Won Pat Guam International Airport Authority; the  
21 Board of Directors for the Guam Economic Development Authority, the  
22 Board of Directors of the Guam Housing Corporation; the Board of  
23 Commissioners for the Guam Housing and Urban Renewal Authority;  
24 the Guam Judicial Council; the Board of Directors of the Guam

1 Telephone Authority; the Board of Directors of the Port Authority of  
2 Guam; the Board of Directors of the Guam Power Authority; the Board  
3 of Education; the Board of Regents of the University of Guam; the Guam  
4 Community College Board of Trustees; the Board of Trustees of the  
5 Guam Memorial Hospital Authority; the Board of Directors of the Guam  
6 Visitors Bureau; and by the Board of Directors of the Guam Waterworks  
7 Authority with respect to personnel matters within their respective  
8 Branches, agencies or departments, and by the Director of the  
9 Department of Administration as to all other Executive Branch  
10 employment.

11 Such rules shall, to the extent practicable, provide standard  
12 conditions for entry into and the other matters concerning the  
13 government service. The personnel rules adopted for the Guam  
14 Economic Development Authority, the Guam Housing Corporation, the  
15 Guam Housing and Urban Renewal Authority, the University of Guam,  
16 the Guam Community College, the Antonio B. Won Pat Guam  
17 International Airport Authority, the Guam Telephone Authority, the  
18 Port Authority of Guam, the Department of Education, the Guam  
19 Memorial Hospital Authority, the Director of the Department of  
20 Administration and by the Guam Waterworks Authority shall require  
21 that all their classified employee appeals, *except* academic personnel of  
22 the Guam Community College and the University of Guam in  
23 conformance with 4 G.C.A. § 4403(h), be heard by the Civil Service  
24 Commission ('Commission').

1           The personnel rules adopted for the Judiciary Branch by the  
2 Judicial Council shall require that the Council hear all classified  
3 employee appeals. Personnel rules governing any other Executive  
4 Branch entities shall require that their classified employee appeals be  
5 heard by the Commission. Rules concerning the Executive Branch shall  
6 take effect upon their approval by the Commission, by Executive Order  
7 of *I Maga'lahaen Guahan* and filing with the Legislative Secretary. Rules  
8 concerning the Judicial Council shall take effect upon adoption by the  
9 Judicial Council of Guam and filing with the Legislative Secretary.

10           Such rules shall include the following provisions:

11           (a) that the *minimum* rate of each pay range shall be the  
12 normal rate for initial employment in the positions and classes  
13 assigned thereto; provided, however, that the directors or other  
14 department heads may, with the approval of the Commission,  
15 authorize initial employment in a position at a higher step in the  
16 position's pay range *if* such action is warranted by recruitment  
17 difficulties or by the new employee's special or unusual  
18 qualifications, including experience;

19           (b) that no spouse of any director, chief administrator or  
20 department head within the government of Guam may be  
21 employed within the department, agency or instrumentality so  
22 headed by such director, chief administrator, department head or  
23 other officer;

24           (c) that overtime for those employees entitled hereto shall  
25 be calculated at one and one-half (1 ½) times their *regular wage*;

1 (d) that employees may work at outside employment *not*  
2 in conflict with their government service, nor such as would bring  
3 the government of Guam or its employees into disrepute, but that  
4 any employee may undertake such employment *only* if such is *not*  
5 in conflict with that person's duly scheduled hours and *only* with  
6 the consent of that person's department or agency head, which  
7 consent may *not* be unreasonably withheld; *and*

8 (e) that no person shall be required to work overtime,  
9 *unless* the employee has received certification by the Director that  
10 funds for overtime pay as provided in Subsection (c), above, are  
11 available.

12 Adoptions of such rules are subject to the Administrative  
13 Adjudication Law."

14 **Section 5.** Section 4409 of Article 4, Chapter 4 of Title 4 of the Guam  
15 Code Annotated is hereby *repealed* and *reenacted* to read as follows:

16 **"Section 4409. Administrative Adjudication Law Applicable.**

17 The rules of the Commission are subject to the Administrative  
18 Adjudication Law."

19 **Section 6.** Section 4406 of Article 4, Chapter 4 of Title 4 of the Guam  
20 Code Annotated is hereby *amended* to read as follows:

21 **"Section 4406. Adverse Action Procedures Appeals.** An  
22 employee in the classified service who is dismissed, demoted or  
23 suspended shall be given *immediate* notice of the action, together with a  
24 specific statement of the charges upon which such action is based in the



1 manner required by Article 2 of this Chapter. Copies thereof shall be  
2 filed with the Commission and, *if* applicable, with the government  
3 entity charged with hearing that person's appeal under the personnel  
4 rules governing that person's appointment *not later than* the working  
5 day next following the effective date of the action. In no event may an  
6 employee in the classified service be given notice and statement of the  
7 charges required by this Section *after* the sixtieth (60<sup>th</sup>) day *after*  
8 management knew or should have known the facts or events which  
9 form the alleged basis for such action. Any action brought by  
10 management in violation of this Section is barred and any decision  
11 based upon such action is void.

12 While an employee's appeal is pending, the employee may be  
13 suspended by the department, instrumentality or agency. The  
14 Commission or appropriate entity may order the employee reinstated to  
15 active duty during pendency of the appeal.

16 The employee within twenty (20) days of effective date of the  
17 action, may appeal to the Commission or appropriate entity by filing  
18 that person's written answer to the charges against the employee,  
19 regardless whether the employee has tendered any resignations, which  
20 shall have no effect upon the employee's appeal rights. In the event an  
21 employee resigns *before* the issuance of the final notice of adverse action,  
22 the employee's twenty (20) day appeal period to the Commission shall  
23 begin to run at the time the employee submits the resignation, which  
24 notice of Proposed Adverse Action shall be deemed a final notice of

1 adverse action. Management may *not* fill the employee's position until  
2 the appeal time frames or appeal, if taken, has been exhausted.

3 The Commission or appropriate entity shall then set the matter for  
4 hearing as expeditiously as possible. The employee, or that person's  
5 representative, shall be given the opportunity to inspect any documents  
6 relevant to the action which would be admissible in evidence at the  
7 hearing, and to depose, interview or direct written interrogatories to  
8 other employees having knowledge of the acts or omissions upon which  
9 the dismissal, demotion or suspension is based. The Commission or  
10 appropriate entity may sustain, modify or revoke the action taken. The  
11 decision of the Commission or appropriate entity shall be final, but  
12 subject to judicial review."

13 **Section 7. Severability.** *If* any provision of this Law or its  
14 application to any person or circumstance is found to be invalid or contrary to  
15 law, such invalidity shall *not* affect other provisions or applications of this  
16 Law which can be given effect without the invalid provisions or application,  
17 and to this end the provisions of this Law are severable.

Overridden

# I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2002 (SECOND) Regular Session

Date: 5/17/02

## VOTING SHEET

Vetoed  
Bill No. 173 (COR)

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_

76-88

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.					✓
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.	✓				
MOYLAN, Kaleo S.	✓				
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.					✓
WON PAT, Judith T.	✓				

TOTAL

13   0   0   0   2

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
Clerk of the Legislature

\* 3 Passes = No vote  
EA = Excused Absence



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

DEC 26 2001

The Honorable Joanne M. S. Brown  
Legislative Secretary  
I Mina'Bente Sais na Liheslaturan Guåhan  
Twenty-Sixth Guam Legislature  
Suite 200  
130 Aspinal Street  
Hagåtña, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Time	<u>2:44 pm</u>
Date	<u>12-26-01</u>

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 173 (COR) "AN ACT TO REPEAL AND REENACT §§ 4402, 4407(a), 4105, 4409, AND TO AMEND § 4406, ALL OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO PERSONNEL POLICIES AND THE CIVIL SERVICE COMMISSION" which was I have vetoed.

This legislation, while indicating that it is "updating" the civil service laws, actually makes it more difficult for the Civil Service Commission to make decisions, whether in favor of an employee or not in favor of an employee. The legislation also appears to be designed to favor individuals who chose to resign from their government positions rather than face an adverse action. The legislation creates a very high burden of proof for the government in issuing an adverse action against an employee.

The legislation contains a typographical error on Page 3, line 3. The clause beginning with "provided" on Line 2 of Page 3 does not make sense without the addition of the word "a" between "that" and "representative" on Line 3 and the addition of the word "who" between "representative" and "is", also on Line 3.

The legislation contains a logical and legal error on Page 5, Lines 5 through 9, and Page 6, lines 12 and 13 and Page 6, lines 16-18. On Page 5, the current method of adopting government personnel rules, which is through promulgating by Executive Order and transmitting the rules to the Legislature, is set out. This method is different than that of promulgating other sorts of rules and regulations of the government, which is through the processes required under the Administrative Adjudication Act.

0627

Legislative Secretary  
SB173;veto  
December, 2001  
Page 2

On Page 6, the Administrative Adjudication Act's procedures are stated to be now applicable to promulgating Personnel Rules and Regulations. This leaves in doubt the proper procedure of promulgating Personnel Rules and Regulations, since two different types of procedures are mandated, even within the same code section.

The amendments in this legislation also allow an employee to take outside employment without the written permission of his or her supervisor. The requirement of a writing is deleted, making oral permissions, subject to the whims of misunderstandings and forgetting, an acceptable method of taking on outside employment.

It is undesirable to amend the civil service laws of the government for the express purpose of assisting certain individuals in their employee appeals, as this legislation obviously does.

It is well known that government employees have excellent protection for their jobs through the Civil Service Commission. There is no need to change what is already working, only for the interests of an individual.

Very truly yours,



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

Attachments: original bill for vetoed legislation or  
copy of bill for signed or overridden legislation  
and legislation enacted without signature

cc: The Honorable Antonio R. Unpingco  
Speaker

**MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN**  
**2001 (FIRST) Regular Session**

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

This is to certify that Substitute Bill No. 173 (COR) "AN ACT TO REPEAL AND REENACT §§ 4402, 4407(a), 4105, 4409, AND TO AMEND § 4406, ALL OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO PERSONNEL POLICIES AND THE CIVIL SERVICE COMMISSION," was on the 14<sup>th</sup> day of December, 2001, duly and regularly passed.

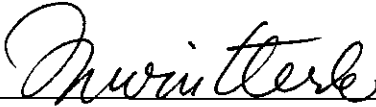
  
\_\_\_\_\_  
**ANTONIO R. UNPINGCO**  
Speaker

Attested:

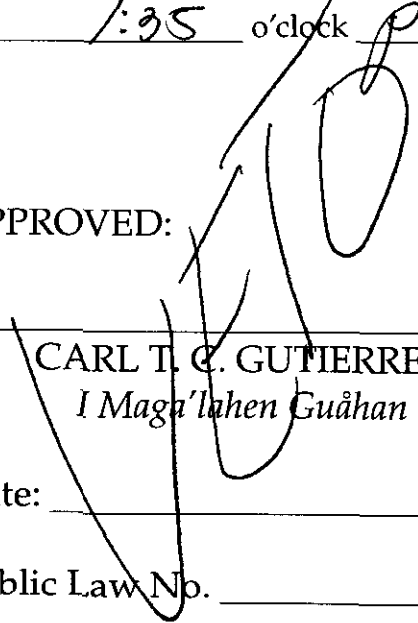
  
\_\_\_\_\_  
**JOANNE M.S. BROWN**

Senator and Legislative Secretary

-----  
This Act was received by *I Maga'lahaen Guåhan* this 20<sup>th</sup> day of December, 2001,  
at 1:35 o'clock P.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
*Maga'lahaen's Office*

APPROVED:

  
\_\_\_\_\_  
**CARL T. C. GUTIERREZ**  
*I Maga'lahaen Guåhan*

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

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

6/

# I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2001 (FIRST) Regular Session

Date: 12/14/01

## VOTING SHEET

5 Bill No. 173 (COR)

Resolution No. \_\_\_\_\_

VETO

Question: \_\_\_\_\_

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.	✓				
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.	✓				
MOYLAN, Kaleo S.	✓				
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.	✓				

TOTAL

15      0      0      0      0

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
Clerk of the Legislature

\* 3 Passes = No vote  
EA = Excused Absence



# MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

Kumitehan Areklamento, Hinanao Gubetnamenton Hinirát, Rifotma yan Rinueba,  
yan Asuntion Fidirát, Taotao Hiyong yan Hinirát

*Senadot Mark Forbes, Gehilu  
Kabisiyon Mayurát*

05 DEC 2001

Speaker Antonio R. Unpingco  
I Mina' Bente Sais Na Liheslaturan Guahan  
155 Hesler Street  
Hagátña, Guam 96910

Dear Mr. Speaker:

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs, to which Bill No. 173, was referred, wishes to report its findings and recommendations **TO DO PASS BILL NO. 173**: "An Act To Repeal And Reenact: Section 4402; Subsection (a) Of Section 4407; Section 4105 And Section 4409, Chapter 4, All Of Title 4 Guam Code Annotated Relative To Personnel Policy And The Civil Service Commission. An Act To Add A New Subsection 2 To Section 4203 Of Title 4, Guam Code Annotated, Relative To Forced Or Involuntary Resignation Of Employee By Management."

The voting record is as follows:

TO PASS	<u>6</u>
NOT TO PASS	<u>0</u>
ABSTAIN	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>
TO REPORT OUT	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached. Thank you and si Yu'os ma'ase for your attention to this matter.

  
MARK FORBES

Attachments





# MINA ' BENTE SAIS NA LIHESLATURAN GUAHAN

Kumitehan Areklamento, Hinanao Gubetnamenton Hinirát, Rifotma yan Rinueba,  
yan Asunton Fidirát, Taotao Hiyong yan Hinirát

*Senadot Mark Forbes, Gehilu  
Kabisiyon Mayurát*

05 DEC 2001

## MEMORANDUM

**TO:** Committee Members

**FROM:** Chairman

**SUBJECT:** Committee Report- BILL NO. 173: "An Act To Repeal And Reenact: Section 4402; Subsection (a) Of Section 4407; Section 4105 And Section 4409, Chapter 4, All Of Title 4 Guam Code Annotated Relative To Personnel Policy And The Civil Service Commission. An Act To Add A New Subsection 2 To Section 4203 Of Title 4, Guam Code Annotated, Relative To Forced Or Involuntary Resignation Of Employee By Management."

Transmitted herewith for your information and action is the report on Bill No. 173 from the Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs.

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill No. 173
4. Public Hearing Sign-in Sheet
5. Fiscal Note/Fiscal Note Waiver
6. Notice of Public Hearing

Please take the appropriate action on the attached voting sheet. Your attention and cooperation in this matter is greatly appreciated.

Should you have any questions regarding the report or accompanying documents, please do not hesitate to contact me.

Thank you and si Yu'os ma'ase.

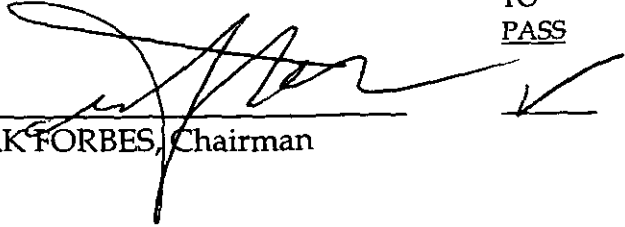

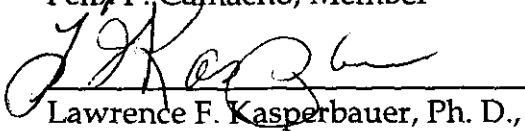
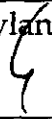


  
MARK FORBES

Attachments

**Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal,  
Foreign and General Affairs**  
**I Mina' Bente Sais Na Liheslaturan Guåhan**

**Voting Record**

BILL NO. 173: "An Act To Repeal And Reenact: Section 4402; Subsection (a) Of Section 4407; Section 4105 And Section 4409, Chapter 4, All Of Title 4 Guam Code Annotated Relative To Personnel Policy And The Civil Service Commission. An Act To Add A New Subsection 2 To Section 4203 Of Title 4, Guam Code Annotated, Relative To Forced Or Involuntary Resignation Of Employee By Management."

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO ABSTAIN</u>	<u>INACTIVE FILE</u>	<u>REPORT OUT</u>
 MARK FORBES, Chairman	✓	_____	_____	_____	_____
Joseph F. Ada, Member	_____	_____	_____	_____	_____
Joanne M.S. Brown, Member	_____	_____	_____	_____	_____
Eddie B. Calvo, Member	_____	_____	_____	_____	_____
 Felix P. Camacho, Member	✓	_____	_____	_____	_____
 Lawrence F. Kasperbauer, Ph. D., Member	X	_____	_____	_____	_____
Kaleo S. Moylan, Member	_____	_____	_____	_____	_____
 Antonio R. Unpingco, Ex-Officio Member	✓	_____	_____	_____	_____
Thomas C. Ada, Member	_____	_____	_____	_____	_____
 Lou A. Leon Guerrero, Member	✓	_____	_____	_____	_____
 Vicente C. Pangelinan, Member	✓	_____	_____	_____	_____

**I MINA' BENTE SAIS NA LIHESLATURAN GUÅHAN**

**COMMITTEE ON RULES, GENERAL GOVERNMENTAL  
OPERATIONS, REORGANIZATION AND REFORM, AND  
FEDERAL, FOREIGN AND GENERAL AFFAIRS**

**SENATOR MARK FORBES, CHAIRMAN**

**COMMITTEE REPORT  
ON  
BILL NO. 173**

**“AN ACT TO REPEAL AND REENACT: SECTION 4402;  
SUBSECTION (A) OF SECTION 4407; SECTION 4105 AND  
SECTION 4409, CHAPTER 4, ALL OF TITLE 4 GUAM CODE  
ANNOTATED RELATIVE TO PERSONNEL POLICY AND THE  
CIVIL SERVICE COMMISSION. AN ACT TO ADD A NEW  
SUBSECTION 2 TO SECTION 4203 OF TITLE 4, GUAM CODE  
ANNOTATED, RELATIVE TO FORCED OR INVOLUNTARY  
RESIGNATION OF EMPLOYEE BY MANAGEMENT.”**

## **I. OVERVIEW**

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs held a public hearing at 10 a.m. on November 01, 2001 in the Public Hearing Room, I Liheslaturan Guahan. Public notice was given in the October 27, 2001 edition of the Pacific Daily News.

Senators present at the public hearing were:

Senator Mark Forbes, Chairman  
Senator Larry Kasperbauer, Member  
Senator Lou Leon Guerrero, Member  
Senator Vicente "Ben" Pangelinan, Member  
Senator Frank Aguon, Jr.

## **II. SUMMARY OF TESTIMONY**

Individuals appearing before the Committee to present oral and written testimony on the bill are as follows:

Luis Baza, Executive Director, Civil Service Commission (Oral testimony)  
Jerry Hogan, Administrative Counsel, Civil Service Commission (Oral and written testimony)  
Juan Calvo, Personnel Management Administrator, Civil Service Commission (Oral testimony)  
Rufo Lujan, lay representative (Oral testimony)

Luis Baza, Executive Director, Civil Service Commission presented oral testimony against the bill and has deferred his testimony to the administrative counsel of the Civil Service Commission.

Juan Calvo, Personnel Management Administrator, Civil Service Commission submitted his name for oral testimony but option to not speak towards the end of the discussion on the bill.

Jerry Hogan, Administrative Counsel of the Civil Service Commission presented oral and written testimony in opposition to the bill. In his testimony before the committee, Mr. Hogan addressed the various issues relating to the intent of Bill 173. He indicated that the rule of four clause in the number of votes required in a quorum will have a minimal impact on the decision of the CSC and he further stated that the board currently consists of six active board members and the "rule of four" clause would not cause significant changes on the board's decision making process. In his remarks concerning Subsection (a), §4407, Title 4 GCA, regarding the standards for making decisions, Mr. Hogan indicated that burden of proof relies heavily on the employee and by changing the terms of preponderance to clear and convincing, the impact will not be on the CSC, but on the Superior Court in the event that the employee files an appeal with the Superior Court to overturn the CSC ruling. With a change in this section the presiding judge in the Superior Court will encounter much difficulty in deciding if the CSC was clearly erroneous. This upper step of providing proof will not impact the standards for making a decision on actions taken on by the CSC. Mr. Hogan also addresses some of the issues surrounding the compliance of the Administrative Adjudication Law. He stated that a Supreme Court ruling indicated that the case involving the GEDA does not require this executive branch entity to comply with the Administrative Adjudication Law in promulgation of its rules and

regulations on the basis that GLDA is deemed a public corporation. Mr. Hogan stated before the committee that the CSC is a autonomous entity that does not require compliance with the Administrative Adjudication Law. He cautioned the legislature and the committee of a potential risk of mandating the CSC to comply with the Administrative Adjudication Law, in which he cited UOG tenure and unclassified faculty grievance cases brought before the CSC in prior years. Towards the end of his testimony, Mr. Hogan stated issues concerning a certain individual who acts as a lay representative of several employees of the government of Guam and who had filed grievances and appeals with the CSC. Mr. Hogan provided documents to the committee regarding Rule 13.1, Rules relative to lay representatives. He indicated that lay representatives are subjected to the orders of the CSC and to reasonable discipline and to contempt proceedings by the CSC and further stating that the lay representative assumes an ethical and agency relationship with his/her client. Mr. Hogan further provided the committee with documentation of a proposed bill that includes information gathered and put into legal language by the employees, the administrative counsel and the board members of the CSC. Mr. Hogan stated that this bill proposal will significantly strengthen the CSC's autonomy and independence from the legislative and executive branches of government.

Rufo Lujan, Lay Representative for several employees of the government of Guam provided oral testimony in support of the bill. Mr. Lujan cited several inconsistencies while conducting his services as a lay representative at the CSC. Mr. Lujan expressed his discontent with the CSC's rules and regulations pertaining to lay representation and divulged his identity as the person inferred in the testimony given by Mr. Hogan. Mr. Lujan stated his dissatisfaction with the standards for making decisions in relative to adverse actions and appeals and stressed the need to change the language to clear and convincing in the burden of proof. He testified that because of the inconsistencies in the rules, he has been frustrated with the process of performing his duties as a lay representative. He stated that the CSC has made changes in the rules and regulations unannounced and making his performance as a lay representative challenging in terms of the higher standards required. Mr. Lujan stated his concern for his clients, stating that he performs his duty as a lay representative without compensation because his clients could not afford to pay for services of attorneys, but that the CSC now prohibits lay representatives from recovering fees from clients. Because of this change in the rules, Mr. Lujan stated that it is too costly to perform legal assistance as a lay representative for his clients. In his statements regarding the Administrative Adjudication Law, Mr. Lujan pointed out that much of the rules and regulations are internal policies and not to be concerned with the Administrative Adjudication Law and that the CSC and DOA are exempt from compliance with the Administrative Adjudication Act in the promulgation of rules and regulations. He further stated that he doesn't think its right to force an employee to resign, but the rules and regulations of the CSC state that if an employee resigns, it's voluntary. Mr. Lujan shared with the committee his views of the CSC, stating that they appear to be pro-management because when the CSC makes a decision, it's a vote of the simple majority, as opposed to what the bill proposes, to require a vote of four. Mr. Lujan stated that a change in the CSC is needed and restated his support of the bill to ensure fairness at the CSC.

### **III. FINDINGS AND RECOMMENDATION**

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs finds that Bill No. 173 was a result of adverse actions that were filed with the Civil Service Commission and which were subjected to much scrutiny as a result of changes in the rules and regulations governing adverse actions and appeals brought forth by an employee of the government of Guam. This bill addresses the issues relating to the quorum or the

"rule of four" in relative to votes required for any action taken up by the commission and the standards for making decisions by the commission from preponderance of the evidence to clear and convincing evidence as burden of proof. The committee also finds that there has been much speculation on the compliance of the Administrative Adjudication Law in the executive and legislative branches of government. As a result of appeals made to the Superior Court of Guam to reverse the decisions of the CSC, the law needed to address the fact that the compliance with Administrative Adjudication Law applies to the CSC as well. This act further addresses the forced and involuntary resignation of an employee of the government of Guam by management. This adverse action taken by management on an employee who resigns under duress induced by management automatically grants the employee an appeal with the CSC against management. The committee finds that much controversy surrounding the CSC involves the influence of the administration and is criticized as pro-management. By the intent of Bill 173, the CSC will be held accountable for the actions it takes on cases filed by an employee of the government of Guam and to have the commission align its rules and regulations in compliance with the Administrative Adjudication Law.

Accordingly, the Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs, to which Bill No. 173 was referred does hereby submit its findings and recommendations to I Mina' Bente Sais Na Liheslaturan Guahan **TO DO PASS BILL NO. 173**, "An Act To Repeal And Reenact: Section 4402; Subsection (a) Of Section 4407; Section 4105 And Section 4409, Chapter 4, All Of Title 4 Guam Code Annotated Relative To Personnel Policy And The Civil Service Commission. An Act To Add A New Subsection 2 To Section 4203 Of Title 4, Guam Code Annotated, Relative To Forced Or Involuntary Resignation Of Employee By Management."

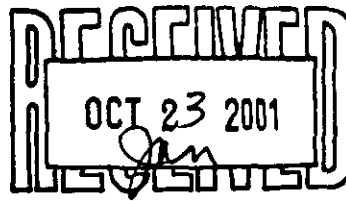


# MINA ' BENTE SAIS NA LIHESLATURAN GUAM

Ku...chan Areklamento, Hinanao Gubetnament Hinirát, Rifotma yan Rinueba,  
yan Asunton Fidirát, Taotao Hiyong yan Hinirát

*Senadot Mark Forbes, Gehilu  
Kabisiyon Mayurát*

23 OCT 2001



## MEMORANDUM

TO: Chairman  
Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs

FROM: Chairman  
Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs

SUBJECT: Principal Referral - Bill No. 173 (COR)

The above bill is referred to your Committee as the Principal Committee, in accordance with Section 6.04.05.01. of the Standing Rules. Your Committee is the Committee authorized to perform the public hearing on this bill and to amend or substitute the bill, as well as report the bill out to the Body. It is recommended that you schedule a public hearing at your earliest convenience.

Thank you for your attention to this matter.

**MARK FORBES**

Attachment

*Final*  
1215701

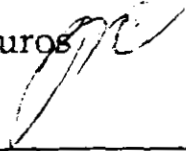
Introduced

AUG 31 2001

**MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN**  
2001 (FIRST) Regular Session

Bill No. 173 (COR)

Introduced by:

M. C. Charfauros 

---

AN ACT TO REPEAL AND REENACT: SECTION 4402; SUBSECTION (a) OF SECTION 4407; SECTION 4105 AND SECTION 4409, CHAPTER 4, ALL OF TITLE 4 GUAM CODE ANNOTATED RELATIVE TO PERSONNEL POLICY AND THE CIVIL SERVICE COMMISSION. AN ACT TO ADD A NEW SUBSECTION 2 TO SECTION 4203 OF TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO FORCED OR INVOLUNTARY RESIGNATION OF EMPLOYEE BY MANAGEMENT.

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that the decisions of the Civil Service Commission (CSC) can have a significant impact on the lives of government of Guam employees and their families. *I Liheslaturan Guahan* finds the existing law as being unacceptable in meting out justice and highly unfavorable to the employees. To bring back balance to the government of Guam's management/labor relationship, *I Liheslaturan Guahan* finds that the vote needed to affirmatively carry out the decision of the CSC must be increased.



*I Liheslaturan Guåhan* finds that the standard of proof utilized by the Civil Service Commission in any adverse action appeal requires that management only show “by a preponderance of the evidence” that its action was correct. This standard of proof favors management to the detriment of the employee appealing management’s action. *I Liheslaturan Guahan* finds that there is a need “to level the playing field” by requiring a greater burden of proof.

*I Liheslaturan Guåhan* finds that management can exert undue pressure and stress on employees when the employees are faced with the threat of disciplinary action. The employees, under great emotional stress from the threat of action, may, wrongfully, think that resigning, while under duress, will remove the threat. *I Liheslaturan Guahan* does not condone the resignation of an employee when submitted under duress. *I Liheslaturan Guahan* finds that when a resignation by an employee is submitted under duress that it constitutes a deprivation of the employee’s due process rights and denies the employee of his/her right to seek justice.

Section 2. Section 4402, Chapter 4, of Title 4 of the Guam Code Annotated is hereby *repealed* and *reenacted* to add read to read as follows:

“§ 4402. Quorum. The quorum of the Commission shall be four (4) members. The affirmative vote of four (4) members shall be required for any action of the Commission. The Commission may adopt rules to govern its procedures; provided that, rules adopted by the Commission shall recognize that a lay representative is not an attorney and cannot be bound by the same standards and ethics

as an attorneys; and, further provided that, in cases where an employee represents himself/herself, the Commission shall render all possible assistance to the employee to insure a fair and impartial hearing."

Section 3. Subsection (a) of Section 4407 of Title 4 of the Guam Code Annotated is hereby *repealed* and *reenacted* to read as follows:

"~~§4407. Standards for Making Decisions.~~ (a) Upon the hearing of any adverse action appeal, the burden of proof shall be upon the Government to show clearly and convincingly that the action of the branch, department, agency or instrumentality was correct."

Section 4. Section 4105, Chapter 4, of Title 4 of the Guam Code Annotated is hereby *repealed* and *reenacted* to read as follows:

"~~§4105. Departmental Rules.~~ Rules subject to criteria established by this chapter governing the selection, promotion, performance, evaluation, demotion, suspension and other disciplinary action of classified employees shall be adopted by the Board of Directors of Guam Airport Authority, Board of Directors for Guam Economic Development Authority, Board of Directors of Guam Housing Corporation, Board of Commissioners for Guam Housing and Urban Renewal Authority, Judicial Council, the Board of Directors of the Guam Telephone Authority, the Board of Directors of the Port Authority of Guam, the Board of directors of the Guam Power Authority, the Board of Education, the Board of Regents of the University of Guam, the Guam Community College Board of Trustees, The Board of Trustees of the Guam Memorial Hospital Authority, and by the ~~Public Utility Agency of Guam~~ Waterworks Authority with respect to personnel matters within their

respective branches, agencies or departments, and by the Director of Administration as to all other executive branch employment. Such rules shall, to the extent practicable, provide standard conditions for entry into and the other matters concerning the government service. The personnel rules adopted for the Guam Economic Development Authority, Guam Housing Corporation, Guam Housing and Urban Renewal Authority, University of Guam, Guam Community College, Guam Airport Authority, Guam Telephone Authority, Port Authority of Guam, Department of Education, Guam Memorial Hospital Authority, the Director of Administration and by the ~~Public Utility Agency of Guam~~ Waterworks Authority shall require that all their classified employee appeals be heard by the Civil Service Commission. The personnel rules adopted for the Judiciary Branch by the Judicial Council shall require that ~~all their classified employee appeals be heard by the Council~~ hear all classified employee appeals. Personnel rules governing any other Executive Branch entities ~~may~~ shall require that that their classified employee appeals be heard by the Civil Service Commission. Rules concerning the Executive Branch shall take effect upon their approval by the Civil Service Commission, by Executive Order of the Governor and filing with the Legislative Secretary. Rules concerning the Judicial Council shall take effect upon adoption by the Judicial Council of Guam.

Such rules shall include the following provisions:

- (a) That the minimum rate of each pay range shall be the normal rate for initial employment in the positions and classes assigned thereto; provided, however, that the directors or other department heads may,

with the approval of the Civil Service Commission, authorize initial employment in a position at a higher step in the position's pay range if such action is warranted by recruitment difficulties or by the new employee's special or unusual qualifications, including experience;

- (b) That no spouse of any director, chief administrator or department head within the government of Guam may be employed within the department, agency or instrumentality so headed by such director, chief administrator or other officer;
- (c) That overtime for those employees entitled hereto shall be calculated at one and one-half (1 ½) times their regular wage; and
- (d) That employees may work at outside employment not in conflict with their government service nor such as would bring the government of Guam or its employees into disrepute, but that any employee may undertake such employment only if such is not in conflict with his duly scheduled hours ~~if such is not in conflict with his duly scheduled hours of government employment~~ and only with the consent of his department or agency head, which consent may not be unreasonably withheld.
- (e) That no person shall be required to work overtime unless the employee has received certification by the Director that funds for overtime pay as provided in Subsection (c) above are available.

Adoptions of such rules are ~~not~~ subject to the Administrative Adjudication Act.”

Section 5. Section 4409 of Chapter 4 of Title 4 of the Guam Code Annotated is hereby *repealed* and *reenacted* to read as follows:

~~“§4409. Administrative Adjudication Act Not Applicable. Neither the~~  
~~The~~ rules of the Civil Service Commission, ~~nor any procedures prescribed~~  
~~thereunder~~ are subject to the ~~Administrative Adjudication Law,~~ unless the  
~~contrary is expressly required by a law other than~~ the Administrative  
Adjudication Law.”

1  
2  
3 Section 6. Section 4203, Chapter 4, of Title 4 of the Guam Code  
4 Annotated is hereby *amended* to add a new subsection to read as follows:

5  
6 “§4203. 2. Prohibition: Forced Resignation. A resignation by an  
7 employee tendered under duress induced by management is ‘forced  
8 resignation’ and is subject to automatic appeal under 4 GCA §4406.  
9 Forced resignation is defined as resignation that is not freely  
10 tendered at the employee’s own free will and decision.”

11  
12 Section 7. Severability. *If* any provision of this Law or its  
13 application to any person or circumstance is found to be invalid or contrary to  
14 law, such invalidity shall *not* affect other provisions or applications of this  
15 Law which can be given effect without the invalid provisions or application,  
16 and to this end the provisions of this Law are severable.







**GOVERNMENT OF GUAM**  
**CIVIL SERVICE COMMISSION**  
**KUMISION I SETBISION SIBIT**

490 Chalan Palasyo, Agana Heights  
P.O. Box 3156 Hagåtña, Guam 96932  
Tel: 475-1300/01 Fax: 477-3301



Senator Mark Forbes  
Chairman  
Committee of General Governmental Operations, et.al

OCT 31 2001

Re: Testimony on Bills  
173,171 and 166

Sir:

Attached are documents submitted by the Administrative Counsel of Civil Service Commission in support of his testimony regarding the above reference bills.

Sincerely,

A handwritten signature in black ink that reads "J.E. Hogan".

J.E. HOGAN  
Administrative Counsel



- 1 A. 7 GCA §9215(c)(16) permits a person who is not an attorney to represent  
2 an employee before the CSC in actions related to government service.  
3  
4 B. 7 GCA §9215(c)(12) permits a government employee to represent a  
5 government agency in "administrative hearings" as part of such person's  
6 official duties.

7 **RULE 13.1 RULES RELATIVE TO LAY REPRESENTATIVES**

8 A non-lawyer who represents an Employee before the CSC or who represents a  
9 government agency before the CSC, shall be called a "Lay Representative".

10 A Lay Representative shall enter his appearance in an action by filing with the CSC  
11 an entry of appearance which shall include the written approval of his client and  
12 shall also contain the address and telephone number of the Lay Representative.  
13

14 **RULE 13.2 ENTRY OF APPEARANCE**

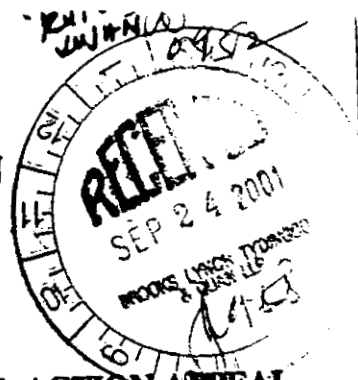
15 By entering his appearance before the CSC, the Lay Representative becomes  
16 subject to the Orders of the CSC and to reasonable discipline and to contempt  
17 proceedings by the CSC.  
18

19 Reasonable discipline may include, but is not limited to, the following:

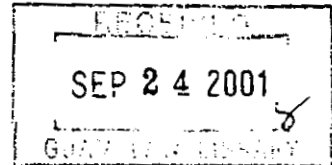
- 20 a. Disqualification from appearing before the CSC, so long as the  
21 disqualification does not prejudice the client's interest; and  
22 b. a monetary fine; and  
23 c. incarceration.

24 By agreeing to be a Lay Representative, the Lay Representative assumes an ethical  
25 and agency relationship with the Employee that he represents. Lay Representatives  
26 may not be compensated for their services.  
27  
28

CIVIL SERVICE COMMISSION  
GOVERNMENT OF GUAM



PERSONNEL ACTION APPEAL  
CASE NO. 0105-AA07



IN THE MATTER OF:

TROY A. MORRISON,

Employee,

Vs.

GUAM POLICE DEPARTMENT,

Management.

DECISION AND JUDGEMENT

This matter came before the Civil Service Commission (hereafter C.S.C.) on August 16, 2001 for hearing on Management's (hereafter GPD) Motion to Dismiss. Employee (hereafter Morrison) was represented by Lay Representative, Rufo Lujan. GPD was represented by Attorney Phillip Tydingco.

**I. NATURE OF ACTION**

This is an action described by the C.S.C. as a Personnel Action Appeal. Jurisdiction of the C.S.C. to adjudicate a Personnel Action Appeal vests pursuant to 4 G.C.A. § 4403 (d), which permits the C.S.C. to, "set aside and declare null and void any personnel action taken by any entity of the Government under its jurisdiction when it has found that such action was taken without compliance with personnel laws and rules..."

1 In Morrison's Notice of Appeal, filed on May 9, 2001, he asserted that he resigned as  
2 a police officer after he received a Notice of Proposed Adverse Action on April 12, 2001, but  
3 before he was served a Final Notice of Adverse Action.  
4

5 Morrison, as the moving party, bears the burden of proving by a preponderance of  
6 evidence that he was the subject of a personnel action and that personnel action was taken  
7 without compliance with personnel rules or law. If both elements are proven, then the C.S.C.  
8 shall declare his resignation to be null and void.  
9

10  
11 **II. ISSUE**

12 Did GPD prove by a preponderance of the evidence that its motion to dismiss should  
13 be granted?

14 **III. HOLDING**

15 By a vote of 5-0 and with one member abstaining, the C.S.C. finds that Rule 13.005,  
16 infra, requires the C.S.C., as a matter of law, to sustain GPD's Motion to dismiss this  
17 personnel action appeal.  
18

19 **IV. DECISION**

20 The C.S.C. finds as follows:

- 21 1.) Morrison alleged in his Notice of Appeal that he resigned rather than be fired  
22 after he received a notice of Proposed Adverse Action.  
23 2.) After Morrison resigned, he came to believe that GPD could not have legally  
24 fired him because GPD could not have completed the adverse action against  
25 him within the 60 days provided by law. (4 G.C.A. 4406)  
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- 3.) Morrison concludes, therefore, that his resignation was a personnel action taken in violation of law; that is, he was given a choice of resigning or being fired when it would have been illegal to fire him.
- 4.) Morrison's argument is that his resignation was procured by GPD's misrepresentation that his employment could not have been legally terminated on the day of his resignation and, therefore, his resignation was not voluntary.
- 5.) Rule 13.005 of Department Of Administration's Personnel Rules and Regulations is applicable to the present action as it applies to line agencies of the Government of Guam and GPD is a line agency.
- 6.) Rule 13.005, supra, states: "An employee who resigns after receipt of a Notice of Proposed Adverse Action is deemed to have resigned voluntarily and has no right to appeal to the C.S.C."...
- 7.) The CSC first notes that Rule 13.005 consists of two separate clauses. The first clause regards resignation from employment while the second clause, an independent clause, denies an Employee the right to appeal to the C.S.C.
- 8.) The C.S.C. concludes that the provision of Rule 13.005 which denies an employee the right to appeal after a resignation subsequent to receipt of a Notice of Proposed Adverse Action does not apply to this action to defeat jurisdiction.
- 9.) 4 G.C.A. § 4403 (d) permits the C.S.C. to void personnel actions. Such matters need not come before the C.S.C. by way of an appeal from an Employee. Personnel action appeals may be initiated by the C.S.C. itself. For example, if the C.S.C. discovered a personnel action was taken in violation of law while conducting a desk audit, the C.S.C. could initiate a hearing and void

1 the action. It is entirely possible that the adjudication of a null and void action  
2 under 4 G.C.A. 4403 (e) may be to void a personnel action that was taken in  
3 favor of an Employee. Since the C.S.C. may initiate an action under 4 G.C.A.  
4 § 4403 (e) on its own, it is axiomatic that the language in Rule 13.005 stating  
5 that an Employee has no right to appeal, does not apply actions adjudicated  
6 under 4 G.C.A. § 4403 (e).  
7

8 10.) There is a different result, however, regarding the first clause of Rule 13.005  
9 which deems a resignation made after receipt of a Notice of Proposed Adverse  
10 Action to be voluntary.

11 11.) Rule 13.005 was approved by the C.S.C. in 1996 and then was approved by the  
12 Legislature of Guam under the Administrative Adjudication Act. As such, the  
13 C.S.C. is bound by Rule 13.005. That being said, the CSC believes that a better  
14 rule would be that the presumption of voluntariness could be rebutted if the  
15 circumstances demonstrate that the employee had acted in good faith. A  
16 rebuttable presumption, however, would require a change in the personnel  
17 rules.  
18

19 12.) It appears to the C.S.C. that the rationale behind the presumption of  
20 voluntariness in a resignation after Notice of a Proposed Adverse Action is to  
21 prevent an Employee from resigning, then claiming that the resignation was  
22 involuntary because of the coercion inherent in the possibility of being  
23 terminated from employment. If Employees could successfully argue that their  
24 resignation was involuntary, it would mean that the Employee would be  
25 reinstated. After the employee was reinstated, however, the 60-day rule, 4  
26 G.C.A. § 4406, would block imposition of discipline based upon the original  
27  
28

1 subject of the Notice of Proposed Adverse Action. Thus, a resignation could  
2 be used as an artificial mechanism to defeat an adverse action.

3 13.) The C.S.C. concludes that it must follow the resignation clause of Rule 13.005.  
4 In applying the rule, the C.S.C finds that Morrison's resignation was voluntary.  
5 That conclusion precludes the Employee from asserting that his resignation  
6 was the product of G.P.D.'s allegedly illegal misrepresentation. If Morrison's  
7 resignation was voluntary, then it was not the product of a violation of law or  
8 rule. Thus, as a matter of law, Morrison cannot prevail in this action. -

9  
10 14.) G.P.D. asserted additional grounds to dismiss Morrison's appeal. CSC's  
11 ruling on the applicability of Rule 13.005, supra, obviates the necessity of the  
12 CSC deciding the sufficiency of those grounds.  
13

### 14 JUDGEMENT

15 It is hereby adjudged that Morrison's appeal is hereby dismissed.

16 **SO ADJUDGED.**

17 **DATED THIS 18<sup>th</sup> DAY OF SEPTEMBER 2001.**

18  
19  
20  
21 **RICHARD J. UNTALAN**  
Chairman

22  
23 **JOAQUIN T. ANGOCO**  
Commissioner

24  
25  
26  
27 **ZENON J. BELANGER**  
Commissioner

28  
  
29 **MANUEL R. PINAUIN**  
Vice Chairman

  
30 **PRISCILLA T. TUNCAP**  
Commissioner

  
31 **JOHN V. GERBER**  
Commissioner

***MINA' BENTE SINGKO NA LIHESLATURAN GUAHAN***

***2001 REGULAR SESSION***

Bill No. \_\_\_\_\_

Introduced by: \_\_\_\_\_

**AN ACT TO AMEND 4GCA, ARTICLE 4, SECTIONS 4401 ET SEQ.**

The Guam Legislature finds as follows:

1. The Organic Act of Guam requires the Legislature to adopt a merit system for government employees;
2. The current law establishing the Guam Civil Service Commission was enacted in 1968 and has not been significantly amended;
3. The role of the Civil Service Commission should be strengthened in administering the merit system;
4. The law of the Guam Civil Service Commission should be interpreted to insure that permanent employees are hired because they merit employment and fired for good cause;
5. Therefore, the Guam Legislature enacts the following amendment to Title 4 of the Guam Code Annotated (GCA) as related to the Guam Civil Service Commission.

Article 4

Civil Service Commission

- §4401. Civil Service Commission.
- §4402. Quorum.
- §4403. Duties of the Commission.
- §4404. Subpoena Powers.
- §4405. Commission Staff.
- §4406. Adverse Action Procedures and Appeals.
- §4406.1. Attorney Fees and Cost on Appeal.
- §4407. Standards for Making Decisions on Appeal.
- §4408. Enforcement of Orders.
- §4409. Administrative Adjudication Act Not Applicable.

§4401. Civil Service Commission. (a) There is established, in and for the government of Guam, a Civil Service Commission composed of seven (7) members appointed by the Governor with the consent of the Legislature. The members shall serve for a term of six (6) years and until their successors are appointed and qualified, provided that, of the initial members appointed under this Chapter, appointments shall be made so that two members of the Commission, sitting or newly appointed shall serve for two (2) years, two members, sitting or newly appointed shall serve for a term of four (4) years and three members,



sitting or newly appointed shall serve for a term of six (6) years.

Should a Commissioner not serve a full term of six years, his replacement shall be appointed to fill the remainder of the term, and not for six years.

The term of a Commissioner begins on the day of his appointment, not the date of confirmation by the Legislature. An appointed Commissioner shall serve even though the Legislature is in session and has not confirmed his appointment. *The appointed Commissioner shall NOT serve if he or she is NOT CONFIRMED by a vote of the Legislature.*

(b) No Commissioner shall be an employee of the Government of Guam, or a member of any other board or commission of the Government of Guam. ~~or a~~ No member of the immediate family of a Commissioner shall be an employee of the Government of Guam at the time of his appointment. As used in this Section, immediate family means a collective body of persons living together in one house. ~~under one~~ head.

(c) In order to be appointed as a Commissioner, the nominee must be a high school graduate or G.E.D. equivalent, have been employed for five (5) years, have been a resident of Guam for at least one year, and must not have been convicted of a felony within 10 years of nomination.

(d) The appointment of any person to the Commission shall become ~~void~~ voidable if at any time during his term of office, he shall become an employee of the Government, or accept appointment to any other board or commission of the Government of Guam.

(e) When a vacancy occurs, the Governor shall appoint a Commissioner within sixty (60) days of when the Governor is informed by the Commission of a the commencement of the vacancy or informed by the Commission of the expiration of a term of appointment. If the Governor fails to do so within sixty (60) days, the Civil Service Commission shall appoint a new member subject to the consent of the Legislature.

(f) The Governor ~~may~~ shall remove members of the Civil Service Commission ~~but only~~ for conviction of a crime constituting a felony, ~~or a misdemeanor involving moral turpitude,~~ willful misconduct in office, willful and persistent failure to perform the duties of office, or any conduct which is manifestly prejudicial to the administration of the Civil Service merit system of the Government of Guam.

~~Nothing in this Section shall require the reappointment of any member.~~

A Commissioner who is removed from the Civil Service Commission pursuant to <sup>Section 4401</sup> ~~subsection~~ (f), may challenge the

that decision by an action for declaratory judgment in the Superior Court of Guam, but the vacancy shall be filled as provided for above. ~~however,~~ <sup>S</sup> should a Court order the terminated Commissioner to be reinstated, his replacement shall be removed from the Commission.

~~(g) The members of the Civil Service Commission sitting at the date of enactment of this Chapter who meet the requirements and limitation placed upon membership by this Chapter shall remain in office until the expiration of their respective terms.~~ (g) Each Commissioner shall receive a stipend of Fifty (\$50) dollars for each meeting of the Commission that he attends.

(h) Prior to assuming the duties of a Commissioner, a nominated Commissioner shall take the following oath, which shall be administered by the Presiding Officer of the Commission:

I, \_\_\_\_\_ (name) \_\_\_\_\_, do solemnly promise that I shall perform my duties as a Commissioner of the Civil Service Commission without bias or undue influence and in a fair, impartial, honest and honorable manner.

(i) The Governor of Guam shall not request a Commissioner to resign. No Commissioner shall submit a courtesy resignation to the Governor of Guam.

~~SOURCE: §4170 GCA, as reenacted by P.L. 16-23.  
Subsections (b) and (c) amended by P.L. 19-4:19 and 20  
respectively.~~

§4402. Quorum. The quorum of the Commission shall be four (4) members. ~~The vote of four (4) members shall be required for any action of the Commission.~~ The vote of a simple majority of the Commission members present shall be required for any action of the Commission. The Commission may adopt rules to govern its procedures. Those provisions of the Open Government <sup>LAW (S.B.C.D. Section 8101 et. seq.)</sup> relative to deliberation do not apply to the Civil Service Commission.

SOURCE: §4171 GCA, as reenacted by P.L. 16-23.

§4403. Duties of the Commission. The Commission has the following duties, powers and responsibilities:

(a) It shall provide ~~by rule~~ standards relating to position classification, creation of new positions or classes of positions, ~~as provided in §6210 of this Title, and as required for positions in the other branches of the Government as such positions are placed within the jurisdiction of the Commission of the~~ Executive Branch;

(b) It shall hear appeals from the adverse actions taken to suspend, demote or dismiss an employee from the classified service of the Executive Branch, ~~if such right of appeal to the Commission is established in the personnel rules governing the employee except as delineated in paragraph (h) below;~~

~~(c) It shall investigate conditions of government employment as it deems necessary, and report findings and recommendations to the Governor and Legislature annually.~~ (c) The Commission is hereby vested with broad and general investigation powers of the administration and regulation of the classified service, including the power to adopt rules for regulating employment, promotion, demotion, suspension, reduction in pay, removal, certification, qualifications, political activities, employment conditions, compensation and disbursements to employees, and other personnel matters and transactions; to adopt a uniform pay and classification plan; and generally to accomplish the objectives and purposes of the merit system of civil service as herein established.

(d) It may set aside, and declare null and void, and order corrective action regarding any personnel action taken by an entity of the Executive Branch of the Government under its jurisdiction when it has found

that such action was taken without compliance with personnel laws or rules, provided, however, ~~that this Section shall not be deemed to permit appeals by employees from adverse actions not covered by Subsection (b), above;~~ neither this subsection or subsection (c) above permits the Civil Service Commission to <sup>Ajudiate</sup> bear matters that are adverse actions as defined in Subsection (b) above, under this section.

A personnel action is an official act which affects an employee's employment status.

~~(e) It shall review the salaries of positions in the unclassified service, including judges and elected officials and recommend adjustments to the Legislature on an annual basis;~~ Delete - covered by 4GCA §6103 and 6401.

(f) Administer, as provided in law and in Executive Orders, the Equal Opportunity Programs of the Government which <sup>programs</sup> are understood to apply to both classified and unclassified employees.

(g) ~~The provisions of this Section shall not apply to the Judiciary or Legislature in compliance with the doctrine of separation of powers unless such separate branch opts to make them applicable by submitting to the jurisdiction of the Civil Service~~

~~Commission. All reference to classified employees will be deemed to mean classified employees of the Executive Branch including agencies and authorities. (Delete. Separation of power doctrine can not be waived.)~~

(h) The jurisdiction of the Civil Service Commission shall not extend to academic personnel of the Guam Community College and the University of Guam, except upon mutual consent by the governing boards of the respective institutions and the Commission.

SOURCE: §4172 GCA, as reenacted by P.L. 16-23; Subsection (g) repealed by P.L. 16-111; a new subsection (h) added by P.L. 17-5 and relettered to (g), by Compiler. Subsection (h) added by P.L. 23-26:5 (5/95). Relettered from (I) by Compiler to conform with prior lettering.

COMMENT: The purpose of the amendment by P.L. 23-26:5 was to make sure the academic personnel of GCC and UOG may not be brought under the Civil Service Commission without the consent of the institutions concerned.

**§4404. Subpoena Powers.** The Chairperson of the Civil Service Commission or the Executive Director, ~~upon his own initiative,~~ upon the request of ~~any member~~ of the Commission, or upon the request of any party before the

Commission, may summons in writing any person to attend before a meeting of the Commission as a witness, and in a proper case, to bring with him any book, record, paper or electronic or computer record which may be deemed material as evidence in ~~the~~ a case.

The fees for such attendance shall be the same as the fees of witnesses before the Superior Court of Guam, except that if the witness ~~is~~ is a government employee, no witness fees shall be given.

The subpoena shall issue in the name of the Civil Service Commission, and shall be directed to the person and shall be served in the same manner as subpoenas to appear and testify before the Superior Court of Guam court.

If any person or persons summoned to testify shall refuse or neglect to obey said subpoena, upon petition, the ~~court~~ Superior Court of Guam may compel the attendance of such person or persons before the Commission, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the Superior Court of Guam.

SOURCE: §4173 GCA, as reenacted by P.L. 16-23; amended by P.L. 16-104.



§4405. Commission Staff. (a) The Executive Director of the Commission shall be appointed by the Civil Service Commission with the approval of the Governor and with the advice and consent of the Legislature for a term of four (4) years. During the four-year term, the Executive Director may only be removed by the Commission from his position for good cause. The Executive Director may challenge his removal by way of a declaratory judgement action in the Superior Court of Guam.

(b) The Civil Service Commission may employ its own staff and shall employ its own legal counsel to serve at the pleasure of the Commission, either on a full-time basis, or may employ on retainer an attorney in private practice in Guam. An attorney employed by the Commission, and who is not in private practice, may be treated as an attorney of the Government for purposes of admission to the practice of law in Guam.

SOURCE: §4174 GCA, as reenacted by P.L 16-23; amended by P.L. 16-104.

§4406. Adverse Action Procedures and Appeals. An employee in the classified service who is dismissed, demoted, or suspended shall be given immediate notice of the action, together with a written specific statement of the charges upon which such action is based in the manner required by Article 2 of this Chapter. Copies thereof shall be filed with the Civil Service Commission and, if applicable, with the government entity charged with hearing

his appeal under the personnel rules governing his appointment not later than the working day next following the effective date of the action.

The effective date of an adverse action shall not be deferred, suspended or otherwise delayed in its implementation. The effective date of an adverse action shall be the date it is served upon Employee or the date Management attempts to serve it to the Employee, but the Employee willfully evades service.

In no event may an employee in the classified service be given the proposed notice of adverse action and statement of the charges required by this Section after the sixtieth (60) day after management knew or should have known the facts or events which form the alleged basis for such action. Any action brought by management in violation of this Section is barred and any decision based on such action is void voidable.

While an employee's appeal is pending, he may be suspended by the department, instrumentality or agency. The Civil Service Commission or appropriate entity may order the employee reinstated to active duty during pendency of the appeal.

The employee, within twenty (20) days of effective date service upon him or his willful avoidance of service of the final notice of adverse action, may appeal to the Commission or appropriate entity by filing with the Commission his

written answer to the charges against him. The Commission or appropriate entity shall then set the matter for hearing as expeditiously as possible.

The employee or his representative shall be given the opportunity to inspect any documents relevant to the action which would be admissible in evidence at the hearing, and to depose, interview or direct written interrogatories to other employees and persons having knowledge of the acts or omissions upon which the dismissal, demotion or suspension is based.

The Commission or appropriate entity may sustain, modify or revoke the adverse action. taken. In the event the Commission either modifies or revokes the adverse action taken against an Employee, the Commission shall award the Employee back pay and other damages as were reasonably foreseeable at the time the adverse action was taken. Damages are limited to economic damages which does not include, among others, punitive damages, pain & suffering or emotional distress damages. Back pay and damages shall be paid by the government agency that took the adverse actions against the Employee from its budget which payment shall take priority over all budgeted items.

The decision of the Commission or appropriate entity shall be final but subject to judicial review by the Superior Court of Guam.

After termination of employment and pending the outcome of an appeal to the Commission or review of the Commission's decision by the Courts of Guam or the United States, an appointing authority shall not permanently fill the position vacated by the terminated employee and shall not cause the position to be deleted or un-funded.

SOURCE: §4175 GCA, as reenacted by P.L. 16-23; first paragraph amended by P.L. 16-41 and 17-81:12. Renumbered by Compiler. Amended by P.L. 23-26:13 (5/95).

NEW ``§4406.1. Attorney fees and costs of appeal. If an employee in the classified service or unclassified service regarding Equal Employment Opportunity complaints, including employees of autonomous agencies and instrumentalities of the government of Guam, retains an attorney to represent him or her before the Civil Service Commission ~~or~~ other applicable administrative body or the courts of Guam or the United States to challenge an adverse action brought against the employee, or to file a complaint of discrimination, sexual harassment or other grievance against his or her department, agency, or other instrumentality, including appeals, and if the employee prevails in whole or in part before the Civil Service Commission or other applicable administrative or judicial body (i) by receiving a favorable decision from the Commission or other applicable administrative or judicial body, or (ii) by a withdrawal of the adverse action by the department, agency, or

instrumentality that brought the adverse action, or (iii) by withdrawal of a non-frivolous complaint of discrimination or of sexual harassment, including other appeals by the employee, as part of an agreement between the department, agency, and the employee, the employee shall be awarded and paid costs, if any, and reasonable attorney's fees because of such attorney representation, from funds of the department, agency, or instrumentality in which the employee was employed. If an employee, either classified or unclassified, who is accused of discrimination based on race, religion, gender or sexual orientation or of sexual harassment, prevails in any action brought against such employee, he or she shall similarly be awarded costs and reasonable attorney's fees. This section shall apply to attorney's fees and costs incurred in any appeal filed before the Civil Service Commission or other applicable administrative or judicial body on or after January 1, 1989."

Lay representatives of employees may receive reasonable pay for their time, as approved by the Commission, in the same manner as attorneys.

**§4407. Standards for Making Decisions on Appeal. (a)**  
Upon the hearing of any adverse action appeal, the burden of proof shall be upon the Government to show that the action

of the branch, department, agency or instrumentality was correct.

(b) Upon the hearing of a grievance, discrimination complaint or other appeal, the burden of proof shall be upon the employee to show that the action of the Government was improper. ✓

(c) In cases involving charges, which could be a crime if the person was charged in a criminal action, <sup>Management</sup> the Commission shall ~~determine the matter based upon substantial evidence that the employee committed the acts charged.~~ <sup>require proof of the allegations</sup>

<sup>must prove the allegations by substantial evidence which is a greater burden than proof beyond a reasonable doubt.</sup>  
SOURCE: §4176 GCA, as reenacted by P.L. 16-23.

§4408. Enforcement of Orders. The Civil Service Commission may seek enforcement of its decisions and judgements in all matters by application to the Superior Court of Guam for the appropriate remedy or relief. In ~~seeking enforcement of its decisions and orders, the application for enforcement shall be entitled, "The Civil Service Commission v. (department, agency, instrumentality or officer)."~~ No enforcement shall Writs of Mandamus to enforce the judgements and orders of the Commission be commenced by the Commission or the Employee against any department head, appointing authority or other employee or officer of the Government in his their personal capacity, however, they shall not be personally liable for any monies due.

**SOURCE:** §4177 GCA, as reenacted by P.L. 16-23.

**§4409. Administrative Adjudication Act Not Applicable.**

Neither the rules of the Civil Service Commission, nor any procedures prescribed thereunder are subject to the Administrative Adjudication Law, unless the contrary is expressly required by a law other than the Administrative Adjudication Law.

**SOURCE:** §4178 GCA, as reenacted by P.L. 16-23.



# MINA 'BENTE SAIS NA LIHE<sup>o</sup>LATURAN GUAHAN

Kumitehan Areklamento, Hinanao Gubetnamenton Hinirát, Riforma yan Rinueba,  
yan Asunton Fidirát, Taotao Hiyong yan Hinirát

*Senadot Mark Forbes, Gehilu  
Kabisiyon Mayurát*

## WAIVER OF FISCAL NOTE

In accordance with §9105 Title 2 GCA, I hereby certify that prompt committee action on Bill 173 is necessary to the proper conduct of legislative business. Therefore, I am waiving requirement of a fiscal note on Bill 173.

MARK FORBES

Chairman  
Committee on Rules, General Governmental Operations,  
Reorganization and Reform, and Federal, Foreign  
and General Operations



**MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN**  
**2001 (FIRST) Regular Session**

Bill No. 173 (COR)

Introduced by:

M. C. Charfauros



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**AN ACT TO REPEAL AND REENACT: SECTION 4402; SUBSECTION (a) OF SECTION 4407; SECTION 4105 AND SECTION 4409, CHAPTER 4, ALL OF TITLE 4 GUAM CODE ANNOTATED RELATIVE TO PERSONNEL POLICY AND THE CIVIL SERVICE COMMISSION. AN ACT TO ADD A NEW SUBSECTION 2 TO SECTION 4203 OF TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO FORCED OR INVOLUNTARY RESIGNATION OF EMPLOYEE BY MANAGEMENT.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that the decisions of the Civil Service Commission (CSC) can have a significant impact on the lives of government of Guam employees and their families. *I Liheslaturan Guahan* finds the existing law as being unacceptable in meting out justice and highly unfavorable to the employees. To bring back balance to the government of Guam's management/labor relationship, *I Liheslaturan Guahan* finds that the vote needed to affirmatively carry out the decision of the CSC must be increased.

*I Liheslaturan Guåhan* finds that the standard of proof utilized by the Civil Service Commission in any adverse action appeal requires that management only show “by a preponderance of the evidence” that its action was correct. This standard of proof favors management to the detriment of the employee appealing management’s action. *I Liheslaturan Guahan* finds that there is a need “to level the playing field” by requiring a greater burden of proof.

*I Liheslaturan Guåhan* finds that management can exert undue pressure and stress on employees when the employees are faced with the threat of disciplinary action. The employees, under great emotional stress from the threat of action, may, wrongfully, think that resigning, while under duress, will remove the threat. *I Liheslaturan Guahan* does not condone the resignation of an employee when submitted under duress. *I Liheslaturan Guahan* finds that when a resignation by an employee is submitted under duress that it constitutes a deprivation of the employee’s due process rights and denies the employee of his/her right to seek justice.

**Section 2.** Section 4402, Chapter 4, of Title 4 of the Guam Code Annotated is hereby *repealed* and *reenacted* to add read to read as follows:

**“§ 4402. Quorum.** The quorum of the Commission shall be four (4) members. The affirmative vote of four (4) members shall be required for any action of the Commission. The Commission may adopt rules to govern its procedures; provided that, rules adopted by the Commission shall recognize that a lay representative is not an attorney and cannot be bound by the same standards and ethics

as an attorneys; and, further provided that, in cases where an employee represents himself/herself, the Commission shall render all possible assistance to the employee to insure a fair and impartial hearing.”

**Section 3.** Subsection (a) of Section 4407 of Title 4 of the Guam Code Annotated is hereby *repealed* and *reenacted* to read as follows:

**“§4407. Standards for Making Decisions.** (a) Upon the hearing of any adverse action appeal, the burden of proof shall be upon the Government to show clearly and convincingly that the action of the branch, department, agency or instrumentality was correct.”

**Section 4.** Section 4105, Chapter 4, of Title 4 of the Guam Code Annotated is hereby *repealed* and *reenacted* to read as follows:

**“§4105. Departmental Rules.** Rules subject to criteria established by this chapter governing the selection, promotion, performance, evaluation, demotion, suspension and other disciplinary action of classified employees shall be adopted by the Board of Directors of Guam Airport Authority, Board of Directors for Guam Economic Development Authority, Board of Directors of Guam Housing Corporation, Board of Commissioners for Guam Housing and Urban Renewal Authority, Judicial Council, the Board of Directors of the Guam Telephone Authority, the Board of Directors of the Port Authority of Guam, the Board of directors of the Guam Power Authority, the Board of Education, the Board of Regents of the University of Guam, the Guam Community College Board of Trustees, The Board of Trustees of the Guam Memorial Hospital Authority, and by the ~~Public Utility Agency~~ of Guam Waterworks Authority with respect to personnel matters within their

respective branches, agencies or departments, and by the Director of Administration as to all other executive branch employment. Such rules shall, to the extent practicable, provide standard conditions for entry into and the other matters concerning the government service. The personnel rules adopted for the Guam Economic Development Authority, Guam Housing Corporation, Guam Housing and Urban Renewal Authority, University of Guam, Guam Community College, Guam Airport Authority, Guam Telephone Authority, Port Authority of Guam, Department of Education, Guam Memorial Hospital Authority, the Director of Administration and by the ~~Public Utility Agency of Guam~~ Waterworks Authority shall require that all their classified employee appeals be heard by the Civil Service Commission. The personnel rules adopted for the Judiciary Branch by the Judicial Council shall require that ~~all their classified employee appeals be heard by the Council~~ hear all classified employee appeals. Personnel rules governing any other Executive Branch entities ~~may~~ shall require that that their classified employee appeals be heard by the Civil Service Commission. Rules concerning the Executive Branch shall take effect upon their approval by the Civil Service Commission, by Executive Order of the Governor and filing with the Legislative Secretary. Rules concerning the Judicial Council shall take effect upon adoption by the Judicial Council of Guam.

Such rules shall include the following provisions:

- (a) That the minimum rate of each pay range shall be the normal rate for initial employment in the positions and classes assigned thereto; provided, however, that the directors or other department heads may,

with the approval of the Civil Service Commission, authorize initial employment in a position at a higher step in the position's pay range if such action is warranted by recruitment difficulties or by the new employee's special or unusual qualifications, including experience;

- (b) That no spouse of any director, chief administrator or department head within the government of Guam may be employed within the department, agency or instrumentality so headed by such director, chief administrator or other officer;
- (c) That overtime for those employees entitled hereto shall be calculated at one and one-half (1 ½) times their regular wage; and
- (d) That employees may work at outside employment not in conflict with their government service nor such as would bring the government of Guam or its employees into disrepute, but that any employee may undertake such employment only if such is not in conflict with his duly scheduled hours ~~if such is not in conflict with his duly scheduled hours of government employment~~ and only with the consent of his department or agency head, which consent may not be unreasonably withheld.
- (e) That no person shall be required to work overtime unless the employee has received certification by the Director that funds for overtime pay as provided in Subsection (c) above are available.

Adoptions of such rules are ~~not~~ subject to the Administrative Adjudication Act.”