

I Mina Trentai Kuáttro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
121-34 (COR)	Michael F.Q. San Nicolas	AN ACT TO <i>AMEND</i> ITEM (2) OF §5425(h) OF SUBARTICLE A, ARTICLE 9, AND TO <i>ADD A NEW</i> §5634 TO SUBARTICLE B, ARTICLE 11, BOTH OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE PAYMENT OF LIQUIDATED DAMAGES FOR FRAUDULENT OR FRIVOLOUS PROCUREMENT PROTESTS AND REQUIRING THE PAYMENT OF A FINE OF TEN THOUSAND DOLLARS (\$10,000) BY THE DIRECTOR OF THE PROCURING AGENCY AND THE DIRECTOR OF THE PROCUREMENT AGENCY WHEN A SECOND PROCUREMENT PROTEST IS RESOLVED WITH A CONCLUSION FAVORABLE TO THE PROTESTANT.	6/20/17 12:12 p.m.						

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN
2017 (FIRST) Regular Session

Bill No. 121-34(COR)

Introduced by:

Michael F.Q. San Nicolas 

AN ACT TO *AMEND* ITEM (2) OF §5425(h) OF SUBARTICLE A, ARTICLE 9, AND TO *ADD A NEW* §5634 TO SUBARTICLE B, ARTICLE 11, BOTH OF CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THE PAYMENT OF LIQUIDATED DAMAGES FOR FRAUDULENT OR FRIVOLOUS PROCUREMENT PROTESTS AND REQUIRING THE PAYMENT OF A FINE OF TEN THOUSAND DOLLARS (\$10,000) BY THE DIRECTOR OF THE PROCURING AGENCY AND THE DIRECTOR OF THE PROCUREMENT AGENCY WHEN A SECOND PROCUREMENT PROTEST IS RESOLVED WITH A CONCLUSION FAVORABLE TO THE PROTESTANT.

2017 JUN 20 PM 12: 12 

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

2 **Section 1. Short Title.** This Act shall be cited as the “Responsible
3 Procurement Protests Act.”

4 **Section 2. Fraudulent or Frivolous Procurement Protests.** Item (2) of
5 §5425(h) of Subarticle A, Article 9, Chapter 5, Title 5, Guam Code Annotated, is
6 hereby *amended*, to read:

7 “(2) there is a reasonable likelihood that the protestant may have
8 been awarded the contract but for the breach of any ethical obligation
9 imposed by Subarticle B of Article 11 of this Chapter or the willful or
10 reckless violation of any applicable procurement law or regulation. The
11 Public Auditor shall ~~have the power to~~ assess reasonable costs, including

1 ~~reasonable attorney fees and liquidated damages for any delay or additional~~
2 ~~costs incurred by the government, including its autonomous agencies and~~
3 ~~public corporations, relating directly to the procurement and arising from~~
4 ~~such protest(s), if such protestant has filed more than one (1) procurement~~
5 ~~protest for a particular procurement, at least one (1) of which has been found~~
6 ~~fraudulent, frivolous, or solely disruptive of the procurement process.~~
7 ~~against a protestant upon its finding that the protest was made fraudulently,~~
8 ~~frivolously or solely to disrupt the procurement process.~~

9 (A) A protestant who has been assessed reasonable costs,
10 including attorney fees and liquidated damages, under this Item may
11 appeal such assessment to the Attorney General within fourteen (14)
12 days of such assessment, who may make a determination in writing
13 within ninety (90) days of the receipt of such appeal. The Attorney
14 General shall receive such documents and make such hearings as may
15 be necessary to come to findings of fact which are able to determine
16 whether the Item applies. If such findings substantiate the assessment,
17 then such assessment shall be upheld. If such findings do not
18 substantiate the assessment, then such assessment shall be vacated.

19 (B) A protestant who has been assessed reasonable costs,
20 including attorney fees and liquidated damages, under this Item and
21 has an assessment upheld with respect to the protest under Subitem
22 (A) of this Item may bring an action in the Superior Court of Guam.”

23 **Section 3. Procurement Professionalism Accountability.** A new §5634
24 is hereby *added* to Subarticle B, Article 11, Chapter 5, Title 5, Guam Code
25 Annotated, to read:

26 **“§ 5634. Procurement Professionalism Accountability.**

1 (a) If a procurement process for goods and/or services is reinitiated
2 due to a procurement protest resolved in favor of the protestant, through
3 settlement, resolution, appeal, or court action, as otherwise authorized in this
4 Chapter, and a further protest for the reinitiated procurement process is
5 resolved in favor of the protestant, through settlement, resolution, appeal, or
6 court action, as otherwise authorized in this Chapter, then the Public
7 Auditor:

8 (1) shall issue a letter of determination with findings,
9 identifying the applicable procuring agency or agencies and
10 procurement agency or agencies which solicited such goods and/or
11 services, the applicable Director(s) or equivalent officer(s) of such
12 agency or agencies, the applicable procurements, and the resolution of
13 such protests under this Subsection

14 (2) and shall assess a fine of ten thousand dollars (\$10,000)
15 to the Director(s) or equivalent officer(s) of the applicable procuring
16 agency or agencies and procurement agency or agencies. Provided,
17 that if the applicable procuring agency or agencies and procurement
18 agency or agencies are the same, then the Director shall pay a single
19 fine on such occasion of ten thousand dollars (\$10,000) to the General
20 Fund.

21 (b) A Director or equivalent officer who has been assessed a fine
22 under this Section may appeal such assessment to the Attorney General
23 within fifteen (15) days of the assessment of such fine, who may make a
24 determination in writing within ninety (90) days of the receipt of such
25 appeal. The Attorney General shall receive such documents and make such
26 hearings as may be necessary to come to findings of fact which are able to
27 determine whether the Section applies. If such findings substantiate the

1 assessment, then such assessment shall be upheld. If such findings do not
2 substantiate the assessment, then such assessment shall be vacated.

3 (c) A Director or equivalent officer who has been assessed a fine
4 under this Section and has received a negative finding with respect to the
5 protest under Subsection (b) of this Section may bring an action in the
6 Superior Court of Guam.”

7 **Section 4. Rules and Procedures.** The Attorney General shall adopt such
8 rules and procedures as deemed necessary to provide for fair and impartial
9 proceedings and determinations by the Attorney General for the appeals provided
10 in Sections 2 and 3 this Act.