


I Mina'Trentai Kuàttro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
303-34 (COR)	Michael F.Q. San Nicolas	AN ACT TO REPEAL § 10103 OF CHAPTER 10, TITLE 4, GUAM CODE ANNOTATED AND TO REPEAL § 5103 OF PART A, CHAPTER 5, TITLE 2, GAR, RELATIVE TO ALLOWING INVESTIGATIVE, INTELLIGENCE, OR SECURITY EMPLOYEES OF THE GOVERNMENT OF GUAM TO BE REPRESENTED BY EMPLOYEE ORGANIZATIONS UNDER THE PUBLIC EMPLOYEE-MANAGEMENT RELATIONS ACT.	6/19/18 4:13 p.m.						

I MINA' TRENTAI KUÁTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

Bill No. 303-34 (COR)

Introduced by:

Michael F.Q. San Nicolas 

AN ACT TO REPEAL § 10103 OF CHAPTER 10, TITLE 4, GUAM CODE ANNOTATED AND TO REPEAL § 5103 OF PART A, CHAPTER 5, TITLE 2, GAR, RELATIVE TO ALLOWING INVESTIGATIVE, INTELLIGENCE, OR SECURITY EMPLOYEES OF THE GOVERNMENT OF GUAM TO BE REPRESENTED BY EMPLOYEE ORGANIZATIONS UNDER THE PUBLIC EMPLOYEE-MANAGEMENT RELATIONS ACT.

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BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Short Title. This act shall be cited as the “Public Safety Employee Freedom of Association Protection Act.”

Section 2. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that, in the Ninth (9th) Guam Legislature, Bill 476, establishing the Public Employee-Management Relations Act of Guam,” was signed into law as Public Law 9-240 by Governor Manuel F.L. Guerrero on August 13, 1968.

I Liheslaturan Guåhan further finds that when the Legislature enacted the Public Employee-Management Relations Act, it made the intent of the law clear when it stated, “The Legislature of the territory of Guam declares that it is the policy and purpose of this Chapter, in the public interest, to promote orderly and constructive relationships between Government and its public employees by providing an opportunity for effective participation by employees in the formulation and implementation of policies and procedures affecting conditions of

1 their employment, subject to paramount requirements of law for conducting
2 efficient and uninterrupted operations of Government.”

3 *I Liheslaturan Guåhan* finds that § 10103 of Chapter 10, Title 4, Guam
4 Code Annotated (‘GCA’) excludes “any government department, or to any office,
5 or entity of the Executive Branch, which is primarily performing investigative,
6 intelligence or security functions, if Governor of Guam determines the provisions
7 of [the Public Employee-Management Relations Act] cannot be applied, in whole
8 or in part, in a manner consistent with security requirements or considerations.”

9 *I Liheslaturan Guåhan* further finds that § 5103 of Part A, Chapter 5, Title 2,
10 Guam Administrative Rules and Regulations (‘GAR’), restates the aforementioned
11 language of 4 GCA § 10103 and, in addition, specifically excludes personnel of the
12 Department of Public Safety whose principal job is law enforcement, Port Security
13 Inspectors, Alcohol Beverage Control Inspectors, personnel under the Attorney
14 General’s office performing investigative work, personnel of the Department of
15 Corrections whose principal job is prison security, and Fish and Game wardens.

16 *I Liheslaturan Guåhan* further finds that these provisions are intended to
17 limit representation by employee organizations only to the extent such
18 representation may endanger a valid state interest, which is deemed to be the
19 security requirements or considerations of the government agencies described in 4
20 GCA § 10103.

21 *I Liheslaturan Guåhan* further finds that the Public Employee-Management
22 Relations Act requires that employee organizations do not include those which
23 asserts “the right to strike against the Government or to assist, participate or
24 conduct any such strike” or “advocates the overthrow of the constitutional form of
25 government in the United States or the government of Guam” and are prohibited
26 from “disciplining or otherwise discriminating against any public employee
27 member of the organization as reprisal for, or for the purpose of obstructing the

1 discharge of the employee’s official duties in the government service” or
2 “engaging in or inducing public employees to engage in any strike, work stoppage,
3 slowdown or picketing against the Government.”

4 *I Liheslaturan Guåhan* further finds that under the Public Employee-
5 Management Relations Act government management officials retain the rights and
6 responsibilities to:

7 “(a) maintain efficient government operations and direct public
8 employees;

9 (b) hire, promote, transfer and assign employees to government
10 positions;

11 (c) suspend, demote, discharge or take other disciplinary action
12 against employees for just cause;

13 (d) to determine the methods, organization and assignment of
14 personnel for the conduct of operations, including necessary actions in
15 emergency situations.”

16 *I Liheslaturan Guåhan* finds that, considering the aforementioned provisions
17 which govern employee organizations and the ability of management to direct
18 employees, it is unclear how representation by an employee organization,
19 consistent with the Public Employee-Management Relations Act interferes or
20 could reasonably interfere with security requirements or considerations.

21 *I Liheslaturan Guåhan* further finds that both 4 GCA §10103 and 2 GAR §
22 5103 are ill-conceived, as there is no valid state interest in denying the identified
23 class of government employees representation by an employee organization under
24 the Public Employee-Management Relations Act.

25 It is, therefore, the intent of *I Liheslaturan Guåhan* to recognize the right of
26 investigative, intelligence, or security employees of the government of Guam to
27 join and be represented by an employee organization to the same extent as other

1 employees of the government of Guam, by repealing both 4 GCA §10103 and 2
2 GAR § 5103.

3 **Section 3. Repeal of Exclusions from the Public Employee-**
4 **Management Relations Act.** § 10103 of Chapter 10, Title 4, Guam Code
5 Annotated, is hereby repealed:

6 ~~“§ 10103. Exclusions.~~

7 ~~This Chapter shall not apply to any government department or to any~~
8 ~~office or entity in the Executive Branch, which is primarily performing~~
9 ~~investigative, intelligence or security functions, if the Governor of Guam~~
10 ~~determines that the provisions of this Chapter cannot be applied, in whole or~~
11 ~~in part, in a manner consistent with security requirements and~~
12 ~~considerations.”~~

13 **Section 4. Repeal of Exclusions from the Public Employee-**
14 **Management Relations Act.** § 5103 of Part A, Chapter 5, Title 2, GAR, is hereby
15 repealed:

16 ~~“§5103. Exclusions. (a) These rules and regulations shall not~~
17 ~~apply to any department, office or entity in the Executive Branch which is~~
18 ~~primarily performing investigative, intelligence or security functions, if the~~
19 ~~Governor of Guam determines that the provision of this rule cannot be~~
20 ~~applied, in whole or in part, in a manner consistent with security~~
21 ~~requirements and considerations.~~

22 ~~(b) Excluded are:~~

23 ~~(1) Personnel of the Department of Public Safety whose~~
24 ~~principal job is law enforcement.~~

25 ~~(2) Port Security Inspectors.~~

26 ~~(3) Alcoholic Beverage Control Inspectors.~~

1 ~~(4) Personnel under the Attorney General's office performing~~
2 ~~investigative work.~~

3 ~~(5) Personnel of the Department of Corrections whose~~
4 ~~principal job is prison security.~~

5 ~~(6) Fish and Game wardens.”~~