

**I MINA'TRENTA NA LIHESLATURAN GUÅHAN  
2009 (FIRST) REGULAR SESSION**

**Bill No.** *92(cor)*

**Introduced by:**

**J.P. GUTHERTZ**  
**A.B. PALACIOS**  
**R.J. RESPICIO**

*2009 APR - 6 PM 3:53pm*

**AN ACT TO RESTORE CERTAIN JURISDICTIONS  
AND CLARIFY CERTAIN FUNCTIONS OF THE  
CIVIL SERVICE COMMISSION BY REPEALING  
AND REENACTING TITLE 4 GCA §§ 4403, 4408,  
4409, AND 5105; SUBITEMS (b) AND (c) OF TITLE 4  
GCA § 4405; AND NEW §§ 4410 AND 4411**

1        **BE IT ENACTED BY I LIHESLATURAN GUÅHAN:**

2        **Section 1. Legislative Findings and Intent.** *I Liheslatura* finds that the  
3 passage of Public Law 28-68 resulted in most of the non-adjudicatory  
4 functions of the Civil Service Commission (CSC) being repealed entirely or  
5 transferred to the Director of the Department of Administration (DOA);  
6 one major function being the administration of compensation and  
7 classification for government of Guam employees.

8        Much confusion was also created by P.L. 28-68, specifically whether  
9 investigations performed by the CSC are considered adjudicatory or non-  
10 adjudicatory, and have resulted in "Whistle-Blower" complaints and  
11 furlough appeals remaining in limbo. Some other check-and-balance  
12 functions once performed by the CSC were eliminated by Public Law 28-68  
13 and have resulted in a lack of uniformity in the application of the merit

1 system and some questionable employment practices, including the post-  
2 audit review and the full null and void authority. Several GovGuam  
3 departments, including the Guam Memorial Hospital Authority, Guam  
4 Power Authority, and Guam Waterworks Authority, have expressed their  
5 desire for the Civil Service Commission to have the jurisdiction to hear  
6 certain appeals of their employees.

7 *I Liheslatura* now finds the restoration of jurisdiction and clarification  
8 of certain functions of the CSC are necessary and will improve the merit  
9 system and better fulfill the requirements of Section 1422c of the Organic  
10 Act which states:

11 “The Legislature shall establish a merit system and, as far as  
12 practicable, appointments and promotions shall be made in  
13 accordance with such merit system. The Government of Guam  
14 may by law establish a Civil Service Commission to administer  
15 the merit system.”

16 Therefore, it is the intent of the *I Liheslaturan Guåhan* to make the  
17 amendments herein in an effort to restore jurisdiction to the CSC to the  
18 extent necessary to administer the merit system and to eliminate the strict  
19 demarcation of adjudicatory versus non-adjudicatory functions imposed by  
20 Public 28-68 and other laws.

21 **Section 2. Title 4 GCA § 4403 is repealed and reenacted to read:**

1           **“§ 4403. Duties of the Commission.**

2           The Commission has the following duties, powers, and  
3           responsibilities:

4                   (a) It shall investigate conditions of government  
5                   employment as it deems necessary and report findings and  
6                   recommendations to the Governor and Legislature annually  
7                   and also post such reports on the Commission’s website;

8                   (b) It shall hear appeals from the adverse actions taken to  
9                   suspend, demote, or dismiss an employee from the classified  
10                  service if such right of appeal to the Commission is established  
11                  in the personnel rules governing the employee; however, it may  
12                  not hear any appeal of an action taken to suspend, demote, or  
13                  dismiss an employee of the Government of Guam who has not  
14                  been hired through the competitive hiring procedures of the  
15                  personnel rules of the Government of Guam, as such personnel  
16                  rules required at the time of the hiring of the employee, nor any  
17                  unclassified employee;

18                  (c) To hear appeals of furloughs, lay-offs, grievance  
19                  complaints, and Equal Employment Opportunity complaints of  
20                  an employee from the classified service if such right of appeal  
21                  to the Commission is established in the personnel rules

1 governing the employee. The Commission shall adopt rules  
2 and procedures for furlough appeals, lay-off appeals, grievance  
3 complaint appeals, and Equal Employment Opportunity  
4 complaint appeals;

5 (d) The Commission may investigate and set aside and  
6 declare null and void any personnel action of an employee in  
7 the classified service if the Commission finds after conducting  
8 the necessary investigation that the personnel action was taken  
9 in violation of personnel laws or rules, provided, however, that  
10 this Section shall not be deemed to permit appeals by  
11 employees from adverse actions not covered in Subsection (b)  
12 above. The agency head shall cooperate and assist with the  
13 Commission's investigation. Prior to declaring any personnel  
14 action null and void, the Commission shall provide written  
15 notice of the alleged violation to the agency head. The agency  
16 head shall respond within ten (10) calendar days after receipt of  
17 the notice to the Commission's proposed action. All actions  
18 taken by the Commission pursuant to this Section shall be  
19 taken within one-hundred-eighty (180) calendar days after the  
20 personnel action or complaint is filed with the Commission.  
21 The Civil Service Commission shall submit a copy of its final

1 decision to *I Liheslatura* by the next working day. The  
2 Commission shall adopt rules and regulations to effectuate this  
3 Section, including the requirement of a written complaint to  
4 initiate any investigation. The Commission's decision shall be  
5 final but subject to judicial review;

6 (e) It shall conduct reviews of notices of personnel actions  
7 of employees from the classified service. All notices of  
8 personnel actions regarding the classified service shall be filed  
9 with the Commission within twenty (20) calendar days after  
10 their effective date. Failure to submit the required notices of  
11 personnel actions within ten (10) calendar days after written  
12 request by the Commission will immediately result in a ten  
13 percent (10%) salary reduction of the agency head and his  
14 deputy until compliance is made. The Civil Service  
15 Commission shall submit a copy of its written request to the  
16 agency head and his deputy for compliance with this Section to  
17 *I Liheslatura* by the next working day;

18 (f) The jurisdiction of the Commission shall also apply to  
19 the adverse action appeals of certified, technical, and  
20 professional personnel of the Guam Power Authority and  
21 Guam Waterworks Authority; the jurisdiction of the

1 Commission shall apply to all classified personnel of the Guam  
2 Memorial Hospital Authority;

3 (g) The provisions of this Section shall not apply to the  
4 Judiciary or *I Liheslaturan Guåhan* in compliance with the  
5 doctrine of the Separation of Powers, unless such separate  
6 branch of government opts to make them applicable by  
7 submitting to the jurisdiction of the Commission; and all  
8 references to classified employees will be deemed to mean  
9 classified employees of the Executive Branch, including  
10 agencies and authorities;

11 (h) The jurisdiction of the Commission shall not extend to  
12 academic personnel of the Guam Community College and the  
13 University of Guam, except upon mutual consent by the  
14 governing board of the respective institution and the  
15 Commission, nor to any position or person, appeal or  
16 proceeding of whatever kind or description if the position is  
17 denominated "unclassified" in this Title, except to the extent  
18 explicitly permitted in this Section; and

19 (i) The jurisdiction of the Commission shall extend to  
20 investigating Public Employee Protection Act complaints (a.k.a.

1           “whistle-blower” complaints) pursuant to 4 GCA § 4501 et  
2           seq.”

3           **Section 3. Title 4 GCA § 4406 is *amended* by adding the following at**  
4 **the end of the existing subsection:**

5                   “The party who appeals the Commission’s decision to the  
6           court is responsible for providing certified transcripts of  
7           hearings and shall bear associated costs.”

8           **Section 4. Title 4 GCA § 4408 is *repealed and reenacted* to read:**

9                   **“§ 4408. Enforcement of Orders.**

10           The Civil Service Commission may seek enforcement of its  
11           decisions and orders in all matters permitted by this Title by  
12           application to the Superior Court of Guam for the appropriate  
13           remedy. In seeking enforcement of its decisions and orders, the  
14           application for enforcement shall be entitled, “The Civil Service  
15           Commission v. (department, agency, instrumentality, or officer).”  
16           No enforcement shall be commenced against any department head  
17           or other employee or officer of the Government of Guam in his  
18           personal capacity.”

19           **Section 5. Title 4 GCA § 4409 is *repealed and reenacted* to read:**

20                   **“§ 4409. Administrative Adjudication Act Not Applicable.**

1           Neither the rules of the Civil Service Commission, nor any  
2           procedures prescribed thereunder are subject to the Administrative  
3           Adjudication Act. The Commission shall post on its website and  
4           provide a copy of its proposed rules or procedures and any  
5           amendments thereafter to *I Liheslaturan Guåhan*, and such rules or  
6           procedures shall take effect thirty (30) calendar days after submission  
7           unless disapproved by a majority of the members of *I Liheslaturan*  
8           *Guåhan*. Copies of effective rules and procedures shall be made  
9           available on the Commission’s website.”

10           **Section 6. Subitems (b) and (c) of Title 4 GCA § 4405 are repealed**  
11 ***and reenacted to read:***

12           “(b) The executive director may, with Commission approval,  
13           hire such professional, clerical, and other staff as may be deemed  
14           necessary to assist the Commission in performing its duties and  
15           functions;

16           (c) The Commission may employ an Administrative Law Judge  
17           (ALJ), full or part-time, to assist the Commission with the  
18           adjudicatory responsibilities, or the Commission may retain a private  
19           practice attorney or attorneys to serve as an ALJ on a case-by-case  
20           basis. A decision by the ALJ shall be forwarded for review to the  
21           Commission, which shall accept or reject in its entirety, the ALJ’s



1 decision. The ALJ shall follow procedures approved by the  
2 Commission. The ALJ must be a Guam-licensed attorney.”

3 **Section 7. A new Title 4 GCA § 4410 is *added* as follows:**

4 **“§ 4410. Authority to Slot On-Going Cases into Open Hearing**  
5 **Dates.**

6 “The Commission shall have the authority to slot an on-going  
7 scheduled hearing into an open hearing date should a sooner hearing  
8 date become available provided that: 1) Both sides agree; and 2) The  
9 original public notice for the initial hearing met the requirements of  
10 the Open Government Act. The public notice requirement of the  
11 Open Government Act shall be deemed met for purposes of on-going  
12 scheduled hearings relative to this Section if the original initial  
13 hearing satisfied such requirements.”

14 **Section 8. A new 4 GCA § 4411 is *added* to read:**

15 **“§ 4411. Civil Service Commission Revolving Fund.**

16 (a) There is hereby created the Civil Service Commission  
17 Revolving Fund, which shall be accounted for separately from the  
18 General Fund. Monies in the revolving fund shall not lapse at the end  
19 of a fiscal year but shall roll-over until used by the Commission.

20 (b) All monies received either as payment for Commission  
21 publications, photocopying fees, training, presentations, or other

1 activities authorized by the Board shall be deposited into the  
2 Revolving Fund. Expenditure authority over the revolving fund is  
3 vested in the chair of the Commission.

4 (c) Moneys in the Revolving Fund shall be used to pay for  
5 printing or photocopying supplies of the Commission, related costs  
6 for creating or compiling Commission publications in electronic  
7 media/format, materials for training, training of Commission staff,  
8 and membership dues for professional organizations relevant to the  
9 Commission. Moneys in the revolving fund shall not be used to pay  
10 any personnel expenses.”

11 **Section 9. Title 4 GCA § 5105 is *repealed and reenacted to read:***

12 **“§ 5105. Investigations by Civil Service Commission.**

13 When any person has reason to believe that an employee has  
14 violated § 5103 he shall report the matter to the Civil Service  
15 Commission. On receipt of such report or on receipt of such other  
16 information which seems to the Commission to warrant an  
17 investigation, the Commission shall investigate the matter in  
18 accordance with the provisions of the rules and procedures  
19 established by the Civil Service Commission and the following:

20 (a) All hearings shall be conducted before the entire  
21 Commission; and

1 (b) The decision of the Commission shall include a  
2 determination of whether a violation of § 5103 has occurred and  
3 whether a violation warrants the removal of the employee from  
4 his employment.”

5 **Section 10. Global Amendment.** The Guam Compiler of Laws shall  
6 change all references to the “Civil Service Commission” in the Guam  
7 Procurement Law, codified in Chapter 5 of Title 5 of the Guam Code  
8 Annotated, to “Office of the Public Auditor.”

9 **Section 11. Savings Clause.** This Act and any repealer contained  
10 herein shall not be construed as affecting any existing right acquired under  
11 contract or acquired under statutes repealed or under any rule, regulation  
12 or order adopted under the statutes. Repealers contained in this Act shall  
13 not affect any proceeding instituted under or pursuant to prior law. The  
14 enactment of this Act shall not have the effect of terminating, or in any way  
15 modifying, any liability, civil or criminal, which shall already be in  
16 existence on the date this Act becomes effective.

17 **Section 12. Effective Date.** This Act shall take effect upon its  
18 enactment into law.

19 **Section 13. Severability.** If any provision of this Act or the  
20 application of any such provision to any person or circumstance should be  
21 held invalid by a court of competent jurisdiction, the remainder of this Act

- 1 or the application of its provisions to persons or circumstances other than
- 2 those to which it is held invalid shall not be affected thereby.

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