



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

MAY 06 1998

Refer to
Legislative Secretary

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

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<i>Jane Annunator</i>
Time	<i>2:15 p.m.</i>
Date	<i>5-7-98</i>

Dear Speaker Unpingco:

Enclosed please find Bill No. 570 (LS), "AN ACT TO AMEND §8166 AND ADD §§8166(b), (c) AND (d) TO ARTICLE 1, CHAPTER 8 OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO ALLOWING GOVERNMENT OF GUAM RETIREMENT FUND ANNUITANTS TO ARRANGE FOR DIRECT DEPOSIT AND THIRD-PARTY PAYMENTS.", which I have signed into law today as Public Law No. 24-193.

This bill is labelled as "Bill" on the certification page, however, it is labeled "Substitute Bill" on page 1 of the bill. The committee report has a "Bill" and also a "Substitute Bill" included in it, however, neither title is the same as that transmitted to the Governor. Hopefully, the transmitted version is the correct, passed version of this legislation.

This legislation is approved because it will allow our retirees to have automatic deductions from their retirement annuity checks only for the limited purpose of important regular debts such as house payments, and only to be paid to employers, banks, savings and loans, and credit unions. This both protects the retirees annuity from creditors and allows automatic payment of a regular payment such as the rent without the inconvenience of doing it personally.

Very truly yours,

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

69802

Office of the Speaker
ANTONIO R. UNPINGCO
Date: *5/7/98*
Time: *10:15 AM*
Rec'd by: *[Signature]*
Print. Name: *Jane Annunator*

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

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

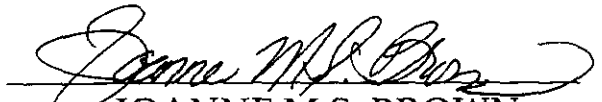
MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session

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


This is to certify that Bill No. 570 (LS), "AN ACT TO AMEND §8166 AND ADD §§8166(b), (c) AND (d) TO ARTICLE 1, CHAPTER 8 OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO ALLOWING GOVERNMENT OF GUAM RETIREMENT FUND ANNUITANTS TO ARRANGE FOR DIRECT DEPOSIT AND THIRD-PARTY PAYMENTS," was on the 27th day of April, 1998, duly and regularly passed.


ANTONIO R. UNPINGCO
Speaker

Attested:


JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guahan* this 30th day of April, 1998,
at 10:40 o'clock 9 .M.


Assistant Staff Officer
Governor's Office

APPROVED:


CARL T. C. GUTIERREZ
I Maga'lahaen Guahan

Date: 5-6-98

Public Law No. 24-193

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

Bill No. 570 (LS)

As substituted by the Committee on Power
Foreign Affairs and General Government
Services and amended on the Floor.

Introduced by:

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

AN ACT TO AMEND §8166 AND ADD §§8166(b), (c)
AND (d) TO ARTICLE 1, CHAPTER 8 OF TITLE 4
OF THE GUAM CODE ANNOTATED, RELATIVE
TO ALLOWING GOVERNMENT OF GUAM
RETIREMENT FUND ANNUITANTS TO
ARRANGE FOR DIRECT DEPOSIT AND THIRD-
PARTY PAYMENTS.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan*
3 finds that the anti-alienation protections of §8166 of Article 1, Chapter 8 of
4 Title 4 of the Guam Code Annotated, which was enacted for the protection of
5 Retirement Fund members, prohibit the Retirement Fund from effectuating
6 third-party payments for the convenience of Retirement Fund members and
7 beneficiaries. It is the intent of *I Liheslaturan Guahan* to ensure that members
8 and beneficiaries of the Retirement Fund are protected against involuntary
9 alienation of their right to Retirement Fund benefits, but are able to effectuate
10 direct deposits or partial third-party payments of their Retirement Fund
11 benefits. *I Liheslaturan Guahan* further finds that, in order to limit
12 administrative and operational expenses, and to protect Retirement Fund
13 assets from exposure to liability, such payments should be limited to financial
14 institutions such as banks, savings and loan associations, and credit unions,
15 for the benefit of the retiree or beneficiary, or to a joint account of the retiree or
16 beneficiary and his or her spouse. Moreover, *I Liheslaturan Guahan* further
17 finds that the Internal Revenue Code regulations involving the assignment
18 and alienation of benefits, and the limited exceptions thereto, with respect to
19 non-governmental qualified plans, offer guidance to achieve these goals. See
20 e.g., Reg. §1.401(a)-13.

21 **Section 2.** Section 8166 of Article 1, Chapter 8 of Title 4 of the Guam
22 Code Annotated is hereby amended to read as follows:

23 **"Section 8166. Right to Annuity.** (a) The right to a
24 retirement, disability annuity, survivor's annuity or benefit, death

1 benefit or any other benefit under the provisions hereof, or refund, by
2 whatever name called, is personal with the recipient thereof and the
3 assignment or alienation of such benefit, refund, or any part thereof,
4 shall be void, except as herein provided. Any such benefit, or refund
5 shall not answer for debts contracted by the person receiving the same,
6 and it is the intention of this Chapter that the same shall not be attached
7 by judicial proceeding, except for orders issued by the Superior Court of
8 Guam for prospective payments of prospective child support, which
9 may also include, but are not limited to, wage assignments and writs of
10 attachment which specifically order the Retirement Fund to pay some
11 part of the member's benefits for ongoing support; and except for court
12 orders issued by the Superior Court of Guam in divorces dividing
13 community property interests, but only in cases where the court finds
14 that the parties were married for at least ten (10) years during which
15 years the member worked for the government of Guam accumulating
16 retirement benefits, and in the case of division of retirement benefits in a
17 divorce, which specifically orders the Retirement Fund to pay some part
18 of the member's benefits to the prior spouse. Whenever the Superior
19 Court orders the Retirement Fund to pay on behalf of an obligee, to a
20 prior spouse, the maximum amount it may order is fifty percent (50%)
21 of the obligee's benefits. Any such funds to be collected from the
22 Retirement Fund pursuant to such orders shall be payable to the obligee
23 only at the time the funds would otherwise be released to the member.

24 (b) For purposes of this Section, '*assignment*' and '*alienation*'
25 include: (1) any arrangement providing for the payment to the

1 employer of plan benefits which otherwise would be due the member
2 under the plan; and (2) any direct or indirect arrangement, whether
3 revocable or irrevocable, whereby a party acquires from a member or
4 beneficiary a right or interest enforceable against the Retirement Fund
5 in, or to, all or any part of a Retirement Fund benefit payment which is,
6 or may become, payable to a member or beneficiary.

7 (c) For purposes of this Section '*assignment*' and '*alienation*' do
8 not include, and Subsection (d) does not apply to, any arrangement for
9 the direct deposit of benefit payments to an account in a bank, savings
10 and loan association or credit union, provided such arrangement is not
11 part of an arrangement constituting an assignment or transfer. For
12 example, such an arrangement could provide for the direct deposit of
13 the member's or beneficiary's benefit payments to a bank account held
14 by the member or beneficiary and the member's or beneficiary's spouse
15 as joint tenants.

16 (d) For purposes of this Section, and notwithstanding
17 Subsection (b) of this Section, an arrangement whereby a member or
18 beneficiary directs the Retirement Fund to pay a portion of his or her
19 benefit payments to a third-party, which is limited to the member's or
20 beneficiary's employer, bank, savings and loan association or credit
21 union, will not constitute an '*assignment*' or '*alienation*' if: (1) It is
22 revocable at any time by the member or beneficiary; and (2) the third-
23 party files a written acknowledgment with the Director of the
24 Retirement Fund, no later than ninety (90) days after the arrangement is
25 entered into, which states that the third-party has no enforceable right

1 in, or to, any benefit payment or portion thereof, except to the extent of
2 payments actually received pursuant to the terms of the arrangement. A
3 blanket written acknowledgment for all members and beneficiaries who
4 are covered under the arrangement with the third-party is sufficient.”

5 **Section 3.** The Board of Trustees of the Retirement Fund shall establish
6 rules and regulations, within sixty (60) days of enactment of this Act, to
7 implement the provisions of this Section, which shall not be inconsistent
8 herewith, and to the extent necessary to protect the interests of the members
9 and beneficiaries of the Retirement Fund.

24-193



GUAM LEGISLATURE

Senator Felix P. Camacho

Power, Foreign Affairs and General Government Services

472 3505 6
472 9747

April 20, 1998

The Honorable Antonio R. Unpingco
Speaker
Twenty-Fourth Guam Legislature
155 Hesler Street
Agaña, Guam 96910

via: Committee on Rules

Dear Mr. Speaker:

The Committee on Power, Foreign Affairs & General Government Services, to which was referred **BILL NO. 570 (LS)**, "An Act to Allow the Government of Guam Retirement Fund to Make Benefit, Annuity or Refund Deductions to Answer for Debts Contracted by Those Persons Receiving the Same.", does hereby report back, with the recommendation **TO DO PASS AS SUBSTITUTED BY THE COMMITTEE.**

SUBSTITUTE BILL NO. 570 (LS): "An Act to Amend §8166, Chapter 8, Title 4, Guam Code Annotated and to Add New Subsections (b), (c) and (d) to the Same Section, Relative to Allowing Government of Guam Retirement Fund Annuitants to Arrange for Direct Deposit and Third Party Payments of Benefits."

Votes of Committee Members are as follows:

<u> 9 </u>	To Pass
<u> </u>	Not To Pass
<u> </u>	To The Inactive File
<u> </u>	Abstained
<u> </u>	Off-Island
<u> 6 </u>	Not Available

Sincerely,

SENATOR FELIX P. CAMACHO

Attachments



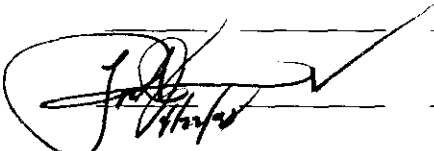



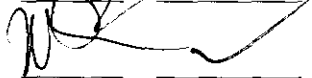
**COMMITTEE ON POWER, FOREIGN AFFAIRS
& GENERAL GOVERNMENT SERVICES
TWENTY-FOURTH GUAM LEGISLATURE
155 Hesler Street, Agana, Guam 96910**

Chairman: Senator Felix P. Camacho Vice Chairman: Senator Lawrence F. Kasperbauer
Ex-Officio Member: Speaker Antonio R. Unpingco

VOTING SHEET ON:

SUBSTITUTE BILL NO. 570 (LS), "A Act to Amend §8166, Chapter 8, Title 4, Guam Code Annotated and to Add New Subsections (b), (c) and (d) to the Same Section, Relative to Allowing Government of Guam Retirement Fund Annuitants to Arrange for Direct Deposit and Third Party Payments."

(AS INTRODUCED: BILL NO. 570 (LS), "An Act to Allow the Government of Guam Retirement Fund to Make Benefit, Annuity or Refund Deductions to Answer for Debts Contracted by Those Persons Receiving the Same.")

<u>COMMITTEE MEMBERS</u>	<u>INITIAL</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
Sen. Felix P. Camacho		✓	_____	_____	_____
Sen. Lawrence F. Kasperbauer		✓	_____	_____	_____
Sen. Thomas C. Ada					
Sen. Frank B. Aguon, Jr.		✓	_____	_____	_____
Sen. Elizabeth Barrett-Anderson					
Sen. Francisco P. Camacho		✓	_____	_____	_____
Sen. Mark C. Charfauros		✓	_____	_____	_____
Sen. Edwardo J. Cruz, MD		✓	_____	_____	_____
Sen. William B. S.M. Flores		✓	_____	_____	_____
Sen. Carlotta A. Leon Guerrero					

Sen. Alberto A.C. Lamorena V

Sen. Vicente C. Pangelinan

[Signature]

✓

Sen. Angel L.G. Santos

Sen. Francis E. Santos

Sen. Judith Won Pat-Borja

[Signature]

✓

**COMMITTEE ON POWER, FOREIGN AFFAIRS
& GENERAL GOVERNMENT SERVICES
TWENTY-FOURTH GUAM LEGISLATURE
155 Hesler Street, Agaña, Guam 96910**

COMMITTEE REPORT

ON

BILL NO. 570 (LS)

“An Act to Allow the Government of Guam Retirement Fund to Make Benefit, Annuity or Refund Deductions to Answer for Debts Contracted by Those Persons Receiving the Same.”

COMMITTEE MEMBERS

Chairman: Felix P. Camacho

Vice Chairman: Senator Lawrence F. Kasperbauer

Ex-Officio Member: Antonio R. Unpingco

Thomas C. Ada
Francisco P. Camacho
Edwardo J. Cruz, MD
Alberto A.C. Lamorena V
Vicente C. Pangelinan
Francis E. Santos
Frank B. Aguon, Jr.

Elizabeth Barrett-Anderson
Mark C. Charfauros
William B. S.M. Flores
Carlotta A. Leon Guerrero
Angel L.G. Santos
Judith Won Pat-Borja

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

BILL NO. 570 (LS)

“An Act to Allow the Government of Guam Retirement Fund to Make Benefit, Annuity or Refund Deductions to Answer for Debts Contracted by Those Persons Receiving the Same.”

I. PUBLIC HEARING

The Committee on Power, Foreign Affairs & General Government Services called a public hearing to order at 9:00 a.m., Tuesday, April 14, 1998 to hear testimony on Bill No. 570 (LS). The hearing was held in the Public Hearing Room, of the Temporary Building, of the Guam Legislature, Agaña. Notices were placed in the Pacific Daily News on 04/11/ and 04/12/98.

The hearing was called to order by Senator Felix P. Camacho, Chairman of the Committee on Power, Foreign Affairs and General Government Services. Members present included Senators Vicente C. Pangelinan, Francisco P. Camacho, Frank B. Aguon, and Alberto A. Lamorena V.

Present to testify were Mr. John A. Rios the Director of the Government of Guam Retirement Fund, and Attorney Joanne Grimes, the Legal Counsel of the Board of Trustees of the Government of Guam Retirement Fund.

II. BACKGROUND

Current statute prohibits the Government of Guam Retirement Fund (Fund) to make benefit, annuity or refund deductions on behalf of government of Guam retirees, recipients or members. Over the years, however, the Fund has been foregoing the enabling statute, and has been administering such

deductions on behalf of said individuals. Recently, the Fund has taken a position to cease providing for such services, citing §8166, Title 4, Guam Code Annotated. Acknowledging that many retirees are either physically incapable of manually answering for such financial obligations; or who are economically unable to maintain accounts in financial institutions as a means of paying for incurred debts, it has been found that said action has left few if any options available to these individuals. Bill No. 570 (LS) seeks to address the issue by amending current statute to allow for said deductions.

III. TESTIMONY

Mr. John A. Rios, Director, Government of Guam Retirement Fund, testified in opposition to the measure. He stated that when a situation regarding a retiree's benefit deduction arose, he was caught between abiding by the law and servicing retirees and members. He stated that upon review of §8166, 4 GCA, a decision was made to abide by the law, which specifically prohibits the Fund to make benefit, annuity or refund deductions on behalf of retirees and members; a decision that was made to protect interests of the Fund, as well as its Board of Trustees. He said that he and his staff have entertained numerous concerns and questions from retirees in relation to the cessation of such services. Once explained that the statute was written to protect and secure retirees' annuities, many of them have become more accepting. He explained that many retirees have enrolled in the Fund's Electronic Fund Transfer program which automatically credits each retiree's bank account. He went on to say that many financial institutions offer services which could assist retirees who are physically incapable of making manual payments. He concluded by stating that the passage of the measure would lessen the protection of the retirees' annuities and allow creditors to garnish said annuities. (Please refer to attached written testimony.)

Attorney Joann Grimes, Legal Counsel, Board of Trustees, Government of Guam Retirement Fund, testified on behalf of the board in opposition to the measure. She stated that both the board and the Fund are extremely concerned over lines 5 - 7, page 1 in the legislative findings. Said findings state: "The legislature finds that many retirees are physically incapable of foregoing manual payment processes, and are in need of alternative methods to attend to their financial obligations." She said that if the aforementioned statement were true (that there are many members in need of this service), it may outweigh the consequences and risks involved in authorizing such a service. However, she stated that it is the board's position that there are not many retirees in need of such a service, and that the tremendous amount of

risk, and dire consequences involved, are not worth providing the benefit deduction service. She stated that the concern was in accommodating each individual member of the Fund at the expense of the overall membership. She said that the Fund has developed alternative, practical options, as well as suggestions, that will serve to assist retirees in achieving comparable services. One of which is the execution of a power of attorney. For those who are physically unable to pick up retirement checks or write out checks to answer for financial obligations, a power of attorney would enable a family member or friend to assist the retiree. The Fund is also encouraging Electronic Fund Transfers (EFT). Of the five thousand employees the Retirement Fund services, one thousand have opted to participate in the EFT program. She said that through the EFT, the Fund would send one hundred percent of the pension to a financial institution, which would then administer the payments for the retiree. She proceeded to enumerate examples of direct deposit authority/companies offering direct debits from a particular financial institution.

Attorney Grimes said that the board and the Fund feel that there must be consistency between the Defined Benefit Plan (DB) and the Defined Contribution Plan (DC) in relation to anti-alienation provisions. She explained that the DC plan has similar anti-alienation provisions and protections as the DB plan. As written, the bill addresses those under the DB plan, and if passed into law, said anti-alienation provisions would be nullified, thus subjecting the pensions of those retirees under the DB plan to garnishment, attachment and levies.

She stated that the board also opposes the measure because of the language which seeks to amend current statute; page 2, lines 7 - 8 (underscored). This language would essentially provide the retiree with the power to control or direct the right to their annuity, and as soon as the retiree has the power to control or direct their annuity, the pension or annuity would be open for attachment, liens, levies, garnishment, thus weakening the tremendous amount of protection which is found in the current statute. She explained that generally, an individual has three bases of retirement to rely on: an employment pension plan, Social Security and personal savings. In the government of Guam, however, two foundations exist: service in the government of Guam (together with Social Security), as well as personal savings. And if an individual does not have personal savings to rely on, that leaves only one source of income to rely on during retirement; income that would not be protected from garnishment if the bill passes into law as currently written.

She concluded by stating that another reason the Fund is opposed to Bill No. 570 is that it would increase operational and administrative costs. She explained that the Fund does not have the protection that the government of Guam has in terms of penalties for late payments made through payroll deductions (§4307, 4 GCA). Said penalties, for late payments made through payroll deductions, are limited only to interest. As written, Bill No. 570 does not afford said protection. (Please refer the attached written testimony)

Senator Felix P. Camacho stated that the measure was authored in response to several complaints made by concerned retirees. He stated that it was irresponsible, initially, for the Fund to administer these types of deductions over the years, and found it ironic that only when a situation arose in which a retiree demanded that the Fund pay penalties and fines for a late payment, the Fund, in turn, cited a section of the code stating that the deduction was not supposed to have transpired in the first place. He said that there is a definite need to address the issue, especially concerning those retirees that are not physically capable of manually paying for financial obligations. Additionally, he said that there may be situations in which retirees do not have family or friends who are willing to undertake the responsibility of making payments on their behalf. He stated that he understood the various concerns raised by both Attorney Grimes and Mr. Rios, and inquired if there were any suggestions that could be made to strengthen the language of the bill. He stated that he would like to work with Attorney Grimes and Mr. Rios in amending the measure so as to afford the protections mentioned while at the same time allowing for benefit deductions.

Senator Felix P. Camacho then inquired on the reason behind the decision to terminate the deduction services.

Mr. Rios stated that a retiree wanted the Fund to make payments on penalties and interest because a late payment (through a benefit deduction) was made on his behalf. He stated that he then sought the advice of the legal counsel, and was advised that current statute prohibits such deductions. He then queried staff members of the Fund's practices in situations such as this. He was informed that in the past, the Fund assumed such liabilities. He stated that the benefit deductions ceased in March, 1998, and that the Fund has been working with various financial institutions in garnering pertinent information on services available that will benefit retirees. Upon compilation of all necessary details, the information will then be passed on to the retirees.

Senator Felix P. Camacho then asked if he attempted to find out why said payments were not made on time. Mr. Rios stated that he had, and that the

reasons, thought varied, were somewhat administrative in nature. He then emphasized that his main concern over the issue is the extent of the Fund's liability in said situations.

Senator Felix P. Camacho expressed concern over the remaining four thousand retirees not utilizing the EFT program, and inquired on the steps the Fund has taken to inform all members of its decision to end benefit deductions.

Mr. Rios stated that a letter was attached to pension checks. He informed the committee that although many retirees expressed concern over the change, once they were informed of the law, its purpose in protecting their annuities, and of the plans of the Fund in providing information on options, many concerns were alleviated.

Senator Felix P. Camacho queried Attorney Grimes on her prior statement that there would be no charge to the retirees if they were to utilize the EFT program.

Attorney Grimes responded by saying that it was to her understanding that the commercial vendors will be providing the service free of charge, however, charges may be assessed for intra-bank transfers.

Senator Pangelinan stated that before discontinuing the deductions, the Fund should have coordinated with financial institutions to ensure that options would be readily available to affected retirees.

Mr. Rios responded by stating that current deductions have not stopped, and that the Fund is servicing the needs of those that have already had said deductions administered by the agency. The Fund is just not allowing for any new deductions, nor any new retirees from participating in the service.

Senator Pangelinan queried Attorney Grimes on her contention that at some point, allowing for benefit deductions may be worth the risk, and asked where that would qualify.

Attorney Grimes stated that if there were many, many members who are absolutely unable to process their financial obligations, such a need may outweigh the risk involved in not being able to protect against garnishment and levy. Senator Pangelinan then requested that a figure be provided on the number of retirees receiving the benefit deduction service.

Senator Pangelinan inquired on the protection offered by way of garnishment in relation to a settlement agreement in a divorce case.

Attorney Grimes stated that the general rule regarding pensions is that they are protected from garnishment through anti-alienation clauses. There are limited exceptions that are made, nonetheless. Through Public Law 22-99, two exceptions were made: 1) court orders relating to orders of divorce, domestic relations and property settlements; and 2) child support. She said that the provisions for both exceptions are very stringent.

Senator Pangelinan asked that Mr. Rios submit information on the total amount in damages (interest and penalties) the Fund has paid (to date) for all late payments made through benefit deductions. Mr. Rios stated that the information would be provided as soon as possible.

Senator Francisco P. Camacho inquired if utility payments are made on behalf of retirees through benefit deductions. Attorney Grimes stated that those were not part of the benefit deductions administered by the Fund.

Senator Frank B. Aguon, Jr. inquired on language could be added so as to provide for further protection to the Fund, considering that a strong possibility exists that the measure would continue through the legislative process and be placed on Session agenda.

Attorney Grimes emphasized the need to delete any language that gives the retiree the right to control or direct the annuity.

Senator Aguon stated that he understood and agreed with the concerns expressed over the language of the bill, and recommended that Attorney Grimes and Mr. Rios work with the committee on revising the measure to as to protect the interests of the Fund, but at the same time, to ensure that the intent of the bill remains the same - to allow for benefit deductions to be made on behalf of retirees. He concluded by stating that the Fund may wish to consider the possibility of assessing a minimal fee, for benefit deductions, as a means of attempting to recover lost administrative/operational costs.

Senator Felix P. Camacho concluded the hearing emphasizing that he would like to work with the Attorney Grimes and Mr. Rios in addressing the concerns expressed, while at the same time allow for said benefit deductions.

IV. FINDINGS

The Committee finds that §8166, Chapter 8, Title 4, Guam Code Annotated be amended to allow for the Retirement Fund to effectuate third party payments for the benefit of retirees and members. The Committee further finds that it is of utmost importance to address the concerns raised, and ensure that the members and beneficiaries of the Retirement Fund are protected against involuntary alienation of their right to Retirement Fund Benefits. Substantive changes were made to the measure affording such.

V. RECOMMENDATIONS

The Committee on Power, Foreign Affairs & General Government Services hereby reports out Bill No. 570 (LS), as substituted by the committee, with the recommendation **TO DO PASS**

SOURCE: GC §4227. Subsection (a) as amended by P.L. 17-18:7(a).

§8165. Interest of Members in Fund. Each member shall, by virtue of the payment of contributions to the system, receive a vested interest in such contributions and in consideration of such vested interest, shall be conclusively deemed to undertake and agree to pay the same and to have the amounts deducted from his compensation as herein provided.

SOURCE: GC §4228.

§8166. Right to Annuity. The right to a retirement, disability annuity, survivor's annuity or benefit, death benefit or any other benefit under the provisions hereof, or refund, by whatever name called, is personal with the recipient thereof and the assignment or transfer of such benefit, refund, or any part thereof, shall be void, except as herein provided. Any such benefit, or refund shall not answer for debts contracted by the person receiving the same, and it is the intention of this Chapter that the same shall not be attached by judicial proceeding, except for orders issued by the Superior Court of Guam for prospective payments of prospective child support, which may also include, but are not limited to, wage assignments and writs of attachment which specifically order the Retirement Fund to pay some part of the member's benefits for ongoing support; and except for court orders issued by the Superior Court of Guam in divorces dividing community property interests but only in cases where the court finds that the parties were married for at least ten (10) years during which years the member worked for the government of Guam accumulating retirement benefits, and in the case of division of retirement benefits in a divorce, which specifically orders the Retirement Fund to pay some part of the member's benefits to the prior spouse. Whenever the Superior Court orders the Retirement Fund to pay on behalf of an obligee, to a prior spouse, the maximum amount it may order is fifty percent (50%) of the obligee's benefits. Any such funds to be collected from the Retirement Fund pursuant to such orders shall be payable to the obligee only at the time the funds would otherwise be released to the member.

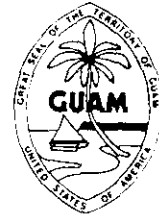
SOURCE: GC §4229; Amended by P.L. 22-99:11.

§8167. Payments: Time For. (a) Any service retirement annuity, disability retirement annuity or any other annuity provided herein shall be payable in equal semi-monthly installments as life annuities, or as temporary annuities, as the case may be and shall not be increased, decreased, revoked or repealed, except for error or except where



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

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



April 14, 1998

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

Re: Testimony on Bill 570


Dear Senator Camacho:

Good morning. Thank you for giving me this opportunity to testify on Bill No. 570 which allows the Government of Guam Retirement Fund to make benefit, annuity or refund deductions for members and retirees. I would also like to thank you for acknowledging the interpretation of 4 GCA section 8166 which does not allow the Fund to make these deductions.

When the Fund first encountered a situation which involved a retiree's benefit deduction, I knew this would be an issue that would not be to my advantage. The fund was caught between abiding by what is law on section 8166 of 4 GCA and servicing our retirees and members. The decision was easy as abiding by the law was in the best interest of the Fund and its Board of Trustees. The implementation has led to a different type of service for our retirees. My staff and I have entertained retirees with numerous concerns and questions as to why these deductions have ceased. We have informed them that section 8166 is written for the protection and security of their annuities. As many of them understand that the law prohibits the Fund from making these deductions and that it was written for their own protection, they have become more accepting.

Many of the retirees have enrolled on our Electronic Fund Transfer program which automatically credits the retirees Bank account. Many financial institutions offer these deduction services which would assist our retirees that are physically incapable of foregoing manual payment processes.

I strongly feel that the passage of this bill will only create a more serious problem. It will lessen the protection of the retiree's annuities and allow creditors to make an attachment to their annuities. Therefore, I oppose the passage of Bill 570 in its present form.


JOHN A. RIOS
Director

Government of Guam Retirement Fund
Board of Trustees' Position Statement Regarding Bill 570
April 14, 1998

I. BRIEF SUMMARY OF THE RETIREMENT FUND'S POSITION

As described in further detail in Section II, below, the Board of Trustees of the Retirement Fund opposes Bill 570 in its current form for the following reasons:

A. Bill 570 would dilute and possibly eliminate the protective anti-alienation provisions of 4 G.C.A. § 8166 by providing the retiree or beneficiary with the power to assign or transfer pension benefits, thus eliminating protection from attachment or garnishment.

B. Individual third party payments in amounts less than 100% of the total pension benefit create increased operational and administrative costs, and the resultant exposure to liability for failure to effectuate timely payments to third parties.

C. There are other practical options available to recipients which would subject the Retirement Fund to less risk of exposure to liability, including powers of attorney and payments to vendors by financial institutions.

D. For consistency between the Defined Benefit Plan and the Defined Contribution Retirement System, any amendments to the anti-alienation provisions of 4 G.C.A. § 8166 should not be less protective to the participant/member than the provisions in the Defined Contribution Retirement System.

II. POSITION STATEMENT

A. Bill 570 would dilute or eliminate the protective anti-alienation provisions of 4 G.C.A. § 8166 by providing the retiree or beneficiary with the power to assign or transfer pension benefits, thus eliminating protection from attachment or garnishment.

Pension benefits are subject to strict statutory requirements set forth in Title 4, § 8166, § 8216, and § 8219(f) of the Guam Code Annotated (G.C.A.). Pension plans in general are subject to very strict anti-alienation principles, which prevent the assignment or transfer of benefits except in very limited circumstances. Prior to March 4, 1994, the Guam statute governing the Defined Benefit Plan prohibited any

assignment or transfer of benefits or portions thereof. See Govt. Code. § 4229, recodified at 4 G.C.A. § 8166. Pursuant to Public Law No. 23-99:11, this absolute restriction was amended to allow for two limited exceptions to the law: for child support payments and payments to former spouses pursuant to qualified domestic relations orders. This law was enacted to protect the Retirement Fund member, even from himself or herself, such that the right to benefits was personal and could never be transferred away, even voluntarily.

Bill 570 would dilute and possibly eliminate this protection by granting the retiree or beneficiary the power to assign or transfer benefits to third parties. Similar to spendthrift clauses in trusts, the anti-alienation provisions in section 8166 insulate and protect benefit payments from the claims of most creditors, with limited exceptions such as payments to former spouses, for child support, or income taxes. Since the recipient is unable to access or transfer his or her right to future payments, creditors are unable to subject the recipient's interest to the payment of their claims. Conversely, Bill 570 would grant recipients the power to assign or transfer their right to annuity benefits, and this power could be deemed to permit attachment or garnishment of pension benefits, since the right to annuity would be within the control and direction of the recipient.

To the extent that Bill 570 could nullify the protections against garnishment and attachment, the Board of Trustees opposes Bill 570. Additionally, the Board of Trustees opposes Bill 570 to the extent that the amendment to section 8166 may be interpreted to allow for an oral covenant or understanding.

- B. Individual third party payments in amounts less than 100% of the total pension benefit create increased operational and administrative costs, and resultant exposure to liability for failure to effectuate timely payments to third parties.

In addition to opposing dilution of section 8166's anti-alienation protections, the Board of Trustees also has operational and administrative concerns regarding benefit deductions used to pay third party creditors. In some cases, retirees use the Retirement Fund as their personal bankers. In the case of one retiree, the Retirement Fund makes fourteen payments to various third party payees. These are functions that would be better accomplished through the use of checks or through a savings account with direct deposit authorization to vendors.

An important reason to eliminate third party payments is to reduce the Retirement Fund's exposure to liability for missed or late payments. Unlike governmental "payroll" deductions for employees that are explicitly authorized by statute (see 4 G.C.A. § 4307), "benefit" deductions for retirees are not expressly authorized in the Defined Benefit or Defined Contribution statute. Additionally, damages for failed payroll deductions are limited by statute to interest and late penalties (see 4 G.C.A. § 4308). In contrast, there is no statutory limitation on damages against the Retirement Fund for its failure to effectuate deductions and third party payments. The absence of statutory authority and a cap on damages exposes the Retirement Fund to liability, for example, if it failed to deduct and pay premium payments to private insurance companies and the retirees' insurance coverage lapsed.

It is our understanding that this actually occurred with respect to certain Department of Education employees who had directed portions of their payroll checks to be deposited directly in their accounts at a brokerage firm. After their payroll deductions were not timely made, the employees alleged that the government should be liable for their losses due to their missing the market. While we are not aware whether a case has been filed against the Government, we are aware that there is no statute which would limit the liability of the Government or the Retirement Fund for missed market opportunities due to missed or late payments to brokerage firms. As mentioned above, there would be similar exposure for missed insurance premiums as well.

To reduce operational and administrative expenses and the exposure to liability, the Board of Trustees believes that it would be in the best interest of all the members to prospectively eliminate third party partial benefit payments and to phase out such payments gradually with respect to retirees who currently take advantage of this service. Instead, retirees will be encouraged to have 100% of their benefit payments deposited directly (via electronic transfer) into their accounts at financial institutions. Then, the retiree or beneficiary can make his or her own payments to creditors, or can arrange for mortgage, insurance, and other payments to be made by their financial institution via direct payment authorization.

We would point out that the federal government also is concerned about the increasing costs of federal payroll and benefit payments. Effective December 1998, all federal government payroll and benefit payments will be made via electronic funds transfer (EFT), meaning that 100% of the payments will be made directly into the payee's account at a financial institution. For payees who do not have an account at a financial institution, the federal government is working with each state and

territory to designate certain financial institutions from which payees may pick up their payroll or benefit checks. The Board of Trustees believes that similar procedures will reduce operational and administrative costs to the Retirement Fund.

- C. There are other practical options available to recipients which would subject the Retirement Fund to less risk of exposure to liability.

The Board of Trustees shares the Legislature's concern that there are retirees who are physically incapable of effectuating manual payment processes, and has worked with such retirees to execute powers of attorney to allow a relative or friend to process their payments on their behalf. The Retirement Fund also is identifying financial institutions who will, at no charge, effectuate direct payments to certain vendors.

Similar to the federal government mandating electronic funds transfer payments, the Retirement Fund plans to encourage retirees and beneficiaries to take advantage of the EFT direct deposit service, and is currently surveying local financial institutions to identify those who can offer the third party payment services now provided by the Retirement Fund. For those retirees do not have financial institution accounts, and the Retirement Fund is willing to work with each retiree to find a way to accommodate individual hardship circumstances. In the case of retirees who are physically incapable of foregoing manual payment processes, arrangements generally are made with relatives to serves attorneys in fact via powers of attorney.

- D. For consistency between the Defined Benefit Plan and the Defined Contribution Retirement System, amendments to the anti-alienation provisions of 4 G.C.A. § 8166 must not be less protective to the member than provisions of the Defined Contribution Retirement System.

In order to achieve consistency between the Defined Benefit Plan and the Defined Contribution Plan, anti-alienation protections of Bill 570 should not fall below the standards provided in the Internal Revenue Code with respect to assignment of participant's benefits. Currently, sections 8216 and 8219(f) of the Defined Contribution Plan strictly prohibit the assignment or transfer of a participant's retirement benefits. The only exceptions are provided in Article 14, section 14.2 of the Defined Contribution Retirement System Plan document, as they pertain to qualified domestic relations orders with respect to spousal and child support orders. The current Defined Benefit Plan provides more somewhat more protection to members by requiring that spouses be married for at least ten years. Bill 570 would offer less

protection to members by eliminating the protection offered by anti-alienation provisions. To the extent that Bill 570 would result in a disparity of protection between the two plans by providing less protection than that of qualified plans, the Board of Trustees opposes Bill 570.

III. SUMMARY

In summary, the Board of Trustees opposes Bill 570 because it would dilute and possibly eliminate the anti-alienation provisions of section 8166 and allow pension funds to be subject to attachment and garnishment. Bill 570 would increase operational and administrative expenses, and would expose the Retirement Fund to increased liability for its failure to effectuate third party payments in a timely manner. There are other practical alternatives to provide similar services to members who are physically unable to effectuate manual payment processes, including powers of attorney and payments to vendors by financial institutions at no charge. In order to offer comparable protection against attachment and garnishment in both the Defined Benefit Plan and the Defined Contribution Plan, the Board of Trustees opposes Bill 570 insofar as the anti-alienation provisions in the Defined Benefit Plan would offer lesser protections than provided for in the Internal Revenue Code.