



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Refer to
Legislative Secretary

DEC 23 1998

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	<u>[Signature]</u>
Time	<u>3:05 pm</u>
Date	<u>12-24-98</u>

Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 694 (COR), "AN ACT TO REPEAL AND REENACT §§8123, 8124, 8125, 8127(a), AND 8136(c) OF ARTICLE 1, CHAPTER 8 OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO DISABILITY ANNUITIES AND MEMBER CONTRIBUTIONS TO THE FUND", which I have signed into law today as **Public Law No. 24-315**.

The Government of Guam Retirement Fund indicates that this legislation will make it easier for them to administer the current statutes relative to disability retirement. Please note that the statutes relative to disability annuities of the retirement program need to be coordinated with the statutes relative to disability administered by the Workers Compensation Commission.

Disability retirement statutes are unclear in some areas. For example, to clear up some of the confusion, this legislation adds a definition of what constitutes "total and permanent disability."

Some of the other items contained in this legislation are:

- a) definition of the time of commencement of the annuity.
- b) clarification of how many years of service an individual must have to be eligible for a disability retirement annuity.


Office of the Speaker
 ANTONIO R. UNPINGCO
 Date: 12-24-98
 Time: 3:05 pm
 Rec'd by: [Signature]
 Print Name: [Signature]

01137

- c) statement that if an employee fails to provide a report of the physical examination, that the member is ineligible for disability retirement.
- d) provides for the Retirement Board's consideration of a report provided by their medical consultant.
- e) provides that disability retirement annuity subsidizes an award given under Workers Compensation laws, and that an employee does not collect both Workers Compensation and disability retirement, but that if the employee collects Workers Compensation that the Retirement Fund will then pay the difference up to an amount equal to 66-2/3% of the employee's salary, based on the average of the employee's three highest years.
- f) clarifies that annual salary includes non-base pay as well as base pay if the employee elected to do so prior to March 29, 1993.
- g) provides for re-examination of the retired employee, to assess if the retired employee still qualifies for disability.

Hopefully, this legislation will provide more clarity and fairness in the administration of the disability retirement annuity statutes, in the interests of faster determinations and more accurate determinations.

Very truly yours,


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

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

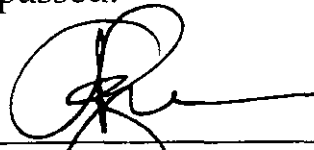
cc: The Honorable Joanne M. S. Brown
 Legislative Secretary

01157

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 Substitute Bill No. 694 (COR), "AN ACT TO REPEAL AND REENACT §§8123, 8124, 8125, 8127(a), AND 8136(c) OF ARTICLE 1, CHAPTER 8 OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO DISABILITY ANNUITIES AND MEMBER CONTRIBUTIONS TO THE FUND," was on the 11th day of December, 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'lahen Guahan* this 15th day of December, 1998,
at 9:20 o'clock 9.M.


Assistant Staff Officer
Maga'lahi's Office

APPROVED:


CARL T. C. GUTIERREZ
I Maga'lahen Guahan

Date: 12-23-98

Public Law No. 24-315

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

Bill No. 694 (COR)

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

Introduced by:

Felix P. Camacho
A. R. Unpingco
E. J. Cruz
J. C. Salas
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
L. F. Kasperbauer
A. C. Lamorena, V
C. A. Leon Guerrero
L. A. Leon Guerrero
V. C. Pangelinan
A. L.G. Santos
F. E. Santos
J. T. Won Pat

**AN ACT TO REPEAL AND REENACT §§8123, 8124,
8125, 8127(a), AND 8136(c) OF ARTICLE 1, CHAPTER
8 OF TITLE 4 OF THE GUAM CODE ANNOTATED,
RELATIVE TO DISABILITY ANNUITIES AND
MEMBER CONTRIBUTIONS TO THE FUND.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* finds
3 that certain sections of Article 1, Chapter 8 of Title 4 of the Guam Code
4 Annotated, concerning disability annuities, conflict with, and in some cases,
5 inhibit the Retirement Fund Board of Trustees' fiduciary relationship to the
6 beneficiaries of the Retirement Fund in regard to the management of the Fund.
7 Sections 8123, 8124, 8125 and 8127(a), as written, allow for the following: (1)
8 double compensation of members for the same ailment; (2) a broad interpretation
9 of "total and permanent disability;" (3) insufficient Board discretion in the
10 determination of member eligibility for annuities; *and* (4) the absence of physical
11 examination requirements for members receiving disability annuities.

12 *I Liheslaturan Guahan* further finds that 4 GCA §8136(c) needs to be clarified
13 to include reference to the current contributions rate of nine and one-half percent
14 (9.5%), to ensure reference is made to any such rate established in the future, and
15 to include the non-base pay of a member under his/her annual salary as
16 provided under P.L. No. 19-10:XI:10, P.L. No. 20-4:3, and P.L. No. 22-06:7.

17 It is the intent of *I Liheslaturan Guahan* to repeal and reenact certain sections
18 regarding disability annuities under Article 1, Chapter 8 of Title 4 of the Guam
19 Code Annotated, and to repeal and reenact 4 GCA §8136(c).

20 **Section 2.** Section 8123 of Article 1, Chapter 8 of Title 4 of the Guam Code
21 Annotated is hereby *repealed and reenacted* to read as follows:

22 **"Section 8123. Disability.** (a) A member less than sixty-five (65)
23 years of age, who shall become totally and permanently disabled for
24 service, either mentally or physically, regardless of how or where the
25 disability shall have occurred after joining the retirement fund, shall

1 be entitled to a disability retirement annuity; *provided*, that he is *not*
2 receiving disability payments from the United States Government for
3 substantially the same ailment; and further provided that, to be
4 eligible for a disability retirement annuity from a non-occupational
5 cause, he shall have had at least six (6) years of actual service as a
6 member of the Government of Guam Retirement Fund *prior* thereto,
7 or five (5) years of actual service as a member of the Government of
8 Guam Retirement Fund *prior* thereto if he has been medically
9 certified to be terminally ill.

10 A person shall *not* qualify for a disability retirement annuity if
11 his disability arises from an impairment occurring *prior* to his
12 employment by the government of Guam. A total and permanent
13 disability for the purposes of this Chapter is one which results from
14 some impairment of body or mind which can be expected to result in
15 death, or can be expected to last for a continuous period of not less
16 than twelve (12) months. The impairment shall be one that
17 substantially precludes a person from performing with reasonable
18 regularity the substantial and material parts of any gainful work or
19 occupation that he would be competent to perform were it not for
20 that impairment, and if founded upon condition which render it
21 reasonably certain that it will continue indefinitely.

22 (b) Such annuity shall begin to accrue upon the later of: (1)
23 commencement of disability; *or* (2) date of Board approval; provided,
24 that *if* the member is receiving salary for sick leave, payment shall
25 accrue from the date salary ceases.

1 (c) As a condition of membership in the Retirement Fund, an
2 employee shall have a physical examination performed at the
3 employee's expense and a report of the exam shall be submitted to
4 the retirement fund within sixty (60) days of employment. An
5 employee's failure to provide the Retirement Fund with a report of
6 the physical examination will render the member ineligible for
7 disability retirement."

8 **Section 3.** Section 8124 of Article 1, Chapter 8 of Title 4 of the Guam Code
9 Annotated is hereby *repealed and reenacted* to read as follows:

10 "Section 8124. **Same: Written Certification Required.** A member
11 shall be required to undergo two (2) medical examinations to be performed
12 and submitted by at least two (2) licensed and practicing physicians
13 selected by the Board certifying that the member is totally and likely to be
14 permanently disabled for the future performance of the duties of any
15 assigned position in the service of the government. *If* upon consideration
16 of the report of such physicians, the medical consultant and such other
17 evidence as shall have been presented to it by the member, or others
18 interested therein, the Board finds the member to be totally and
19 permanently disabled, it shall grant him a disability retirement annuity
20 upon written certification that the member has been separated from the
21 service of the employer because of total disability of such nature as to
22 reasonably prevent further service for the employer, and as a consequence
23 is *not* entitled to compensation from the government."

24 **Section 4.** Section 8125 of Article 1, Chapter 8 of Title 4 of the Guam Code
25 Annotated is hereby *repealed and reenacted* to read as follows:

1 **“Section 8125. Same: Amount of Annuity.** (a) The amount of
2 disability retirement annuity shall be sixty-six and two-thirds percent
3 (66 2/3%) based on the average of the three (3) highest annual
4 salaries received by a member during his years of credited service.

5 (b) The annuity in Subsection (a) shall be reduced by any
6 amounts awarded to a member under worker’s compensation laws
7 for substantially the same impairment.

8 (c) The Board may revoke any and all disability annuity
9 benefit(s) if a member fails to report a worker’s compensation award
10 for substantially the same impairment.

11 (d) As used in this Section “*annual salary*” means the base pay
12 and non-base pay for which the members contributed to the Fund as
13 provided in §8136(c) of this Chapter.”

14 **Section 5.** Section 8127(a) of Article 1, Chapter 8 of Title 4 of the Guam
15 Code Annotated is hereby *repealed and reenacted* to read as follows:

16 “(a) At least once each year during the first five (5) years following
17 the allowance of a disability annuity to any member, and at least once in
18 every three (3) year period thereafter, the Board of Trustees shall require
19 any disability annuitant to undergo a medical examination to be made by
20 a place mutually agreed upon, by a physician or physicians engaged by the
21 Board. If any examination indicates that the annuitant is no longer
22 physically or mentally incapacitated for service, *or* that he is engaged or is
23 able to engage in a gainful occupation, payment of the disability annuity
24 by the Fund shall be discontinued as soon as the disability annuitant is
25 reinstated to the payroll, but in no case shall payments be made for more

1 than sixty (60) days after physicians and a medical consultant engaged by
2 the Board find the annuitant is no longer incapacitated for service.”

3 **Section 6.** Section 8136(c) of Article 1, Chapter 8 of Title 4 of the Guam
4 Code Annotated is hereby *repealed and reenacted* to read as follows:

5 “(c) The annual salary of a member shall include: (i) the base pay
6 of the member for which he/she contributed to the Fund as required in
7 §8136(a) of this Chapter; *and* (ii) the non-base pay of the member for which
8 he/she contributed to the Fund pursuant to his/her election made *prior to*
9 March 29, 1993, in accordance with P.L. No. 19-10:XI:10, P.L. No. 20-4:3, *and*
10 P.L. No. 22-06:7.”



GUAM LEGISLATURE

Senator Felix P. Camacho

Office of Power, Foreign Affairs and General Government Services

150 Hesler Street
Agaña, Guam 96910

472-3505-16

472-9747

September 15, 1998

The Honorable
Antonio R. Unpingco
Speaker, Mina'Bente Kuattro Na Liheslaturan Guahan
155 Hesler Street
Hågatña, Guam 96910

via: Committee on Rules

Dear Mr. Speaker:

The Committee on Power, Foreign Affairs & General Government Services, to which was referred **Bill No. 694**, "An act to repeal and reenact certain sections of Article 1, Chapter 8, Title 4 of the Guam Code Annotated, relative to disability annuities and member contributions to the Fund," does hereby report back with the recommendation **TO DO PASS** As Substituted.

Votes of committee members are as follows:

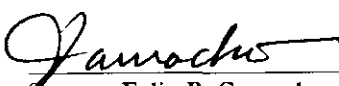

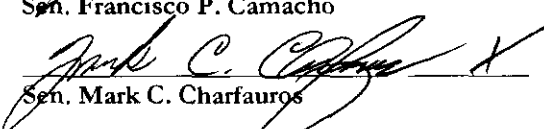

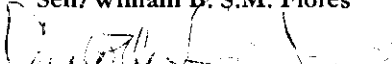

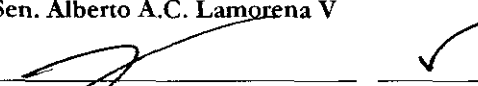

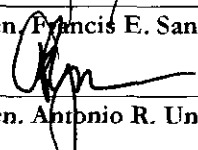
 (9) To pass
 Not to pass
 To place in inactive file
 Abstained
 (6) Not available/Off island

FELIX P. CAMACHO
Chairman

Attachments

SUBSTITUTE BILL NO. 694 VOTING SHEET

An act to repeal and reenact certain sections of Article 1, Chapter 8, Title 4 of the Guam Code Annotated, relative to disability annuities and member contributions to the Fund.

<u>COMMITTEE MEMBERS</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
 Senator Felix P. Camacho	✓			
Sen. Lawrence F. Kasperbauer				
Sen. Thomas C. Ada				
Sen. Frank B. Aguon, Jr.				
 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	✓			
Sen. Angel L.G. Santos				
 Sen. Francis E. Santos	✓			
 Sen. Antonio R. Unpingco (ex-officio member)	✓			
Sen. Judith Won-Pat				

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

Mina'Bente Kuattro Na Liheslaturan Guahan
155 Hesler Street, Hagatna, Guam 96910

**Committee Report on
Substitute Bill No. 694**

“An act to repeal and reenact certain sections of Article 1,
Chapter 8, Title 4 of the Guam Code Annotated, relative to
disability annuities and member contributions to the Fund.”

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

SUBSTITUTE BILL NO. 694

“An act to repeal and reenact certain sections of Article 1, Chapter 8, Title 4 of the Guam Code Annotated, relative to disability annuities and member contributions to the Fund.”

PUBLIC HEARING

8:30, Monday, July 27, 1998

Conference Room, Office of Senator Felix P. Camacho

SENATORS PRESENT

Sen. Felix P. Camacho	Chairman
Sen. F. B. Aguon, Jr.	Member
Sen. V.C. Pangelinan	Member
Sen. Francisco P. Camacho	Member

PRESENT TO TESTIFY

Mr. John A. Rios	Director, Retirement Fund
Ms. Joanne Grimes	Legal Counsel, Retirement Fund
Mr. Chris Delfin	Administrator, Worker’s Compensation Commission

BACKGROUND

Bill 694 was introduced by Senator Felix P. Camacho on July 16, 1998;

Referred to the Committee on Power, Foreign Affairs and General Government Services on July 24, 1998, and

Heard by the Committee on July 27, 1998.

A Request for Fiscal Note Fiscal Note was submitted to The Bureau of Budget and Management Research on July 22, 1998. As of Tuesday, September 8, 1998, BBMR has not provided the Committee with a Fiscal Note.

TESTIMONY AND DISCUSSION

Mr. John Rios: Submitted and read written testimony in favor of Bill 694. Bill 694's proposed revisions to existing disability statutes would help the Retirement Fund and its Board in the processing of disability benefits for Government of Guam Defined Benefits Members; clarify existing disability language with regards to the processing and qualifications of a disability applicant; and prohibit further abuse of the Government's disability benefits, therefore reducing the unfunded liability to the Fund and protecting the future benefits of retirees and members. (*See attached written testimony*).

One problem encountered under current statutes is when a disability annuitant is no longer permanently disabled, yet continues to receive disability annuities. New language found in Bill 694 would require an annuitant to be reexamined periodically to determine whether or not he/she is still disabled. If it is determined that the annuitant is not, the Retirement Fund will be able to cut off annuities being paid to that individual.

Currently, there are some disability annuitants that are not really disabled, but are still benefitting by receiving annuities from the Retirement Fund.

Sen. Vicente C. Pangelinan: Medical certification is already required in order to receive annuities for a disability.

Rios: The difference with what Bill 694 proposes is that before, once two physicians deemed one to be permanently disabled, he/she was considered disabled forever. However, sometimes that is not the case.

Ms. Joanne Grimes: In the past, some determinations have been made that have not adhered to the definition of "disability" as it was defined in statute. The Purpose of Bill 694 is to allow the Retirement Fund to require additional medical examinations to assure that the disability is permanent and in line with whatever the current statutory definition of "disability" is. The provisions of Bill 694 are intended to encourage disabled employees to continue to work as much as possible.

The current (disability annuity) statute was enacted long before the "Americans with Disabilities Act" which tries to help and encourage people with disabilities to continue to work in the workplace with reasonable accommodation. Sometimes the current statute fails to take into consideration "reasonable accommodation" at all. If there is a possibility, at all, in the government to continue to employ people with reasonable accommodation, this bill will balance those interests and allow for such employment.

Sen. Pangelinan: Interest (of all parties involved) can not be balanced when it is totally up to the choice of the Retirement Fund in terms of the physician performing the evaluation.

Grimes: Licensed physicians only make recommendations; Ultimate decision is up to the Board of Trustees. An applicant may bring in his/her own physician as relevant testimony. That is how the

application process begins.

Sen. Pangelinan: Concerned over the fact that the applicant has one physician representing his interests while the Fund has two representing their's. *(The Committee notes that this provision exists in current statute, and is not a provision added by Bill No. 694).*

Grimes: The difference between Bill 694 and existing statutes is the re-certification requirement. Also, a new provision is being added preventing an individual from receiving worker's compensation or federal money and disability annuities from the Retirement Fund for the same ailment.

Mr. Chris Delfin: Public Law 14-32 allows for both the receipt of Worker's Compensation benefits and retirement annuities.

Sen. Francisco P. Camacho: How can an annuitant be reinstated with the government of Guam once he/she is determined to be no longer disabled? (Re-employment rights).

Sen. Felix P. Camacho: Current Government of Guam policy gives an employee, who voluntarily leaves government service, "re-employment rights" up to a period of 2 years. Basically, the employee is preferentially placed on a waiting list for employment. However, the Director has the discretion of choosing which person on the list is to be employed. Basically, re-employment rights do not guarantee actual re-employment.

Grimes: Bill 694 is the Retirement Fund's attempt to reduce expenses and cost; deals with the income replacement portion, not the guaranteed employment portion of disability annuitants.

Sen. Pangelinan: What are the current pay outs on disabilities?

Rios: Exact figure is unknown at the time. However, it is significant.

Grimes: Looking at the trend of disability annuity policies as a whole, nationwide: There are a lot more restrictions, such as longer waiting periods, lower pay outs, stricter definitions of what constitutes disabled. In comparison, Bill 694 provisions are still very generous.

Sen. Felix Camacho: Re-examination requirements for disability annuitants are at whose expense?

Grimes: At the expense of the Retirement Fund.

Sen. Pangelinan: Anything in the current Statute allowing for an appeal?

Grimes: Section 8126 of this Article.

Mr. Chris Delfin: Disagrees with Bill 694's provision disallowing a disabled employee from receiving both Worker's Compensation and retirement disability annuities at the same time. Reason: Worker's

Compensation has a ceiling which does not necessarily equate to 66 2/3% of the employee's salary as does retirement annuities do. At the same time, under the Worker's Compensation Statutes there are no provisions to "not pay compensation" to a disabled employee. Therefore, with Bill 694's current language, a disabled employee would be limited to only receiving Worker's Compensation, which is \$250 per week, and not entitled to 66 2/3% of his/her salary. Suggests that the Retirement Fund subsidize the amount remaining after \$250 of Worker's Compensation is paid, up to 66 2/3% of the employee's salary.

Grimes: Language could be changed so that the Retirement Fund will pay 66 2/3% of an employee's salary, but to the extent that Worker's Compensation pays \$250 per week, the Retirement Fund will be responsible only for the difference. Once Worker's Compensation stops, the Retirement Fund will take over that portion previously paid by Worker's Compensation.

Discussion on the Worker's Compensation Commission and Worker's Compensation Fund took place (irrelevant to the Retirement Fund's disability annuities and Bill 694).

Sen. Felix Camacho: Concluded hearing.

Bureau of Budget and Management Research: No Fiscal Note

FINDINGS

The Committee finds that certain sections of Article 1, Chapter 8, Title 4 of the Guam Code Annotated, namely, Sections 8123, 8124, 8125 and 8127(a), conflict with, and in some cases, inhibit the Retirement Fund Board of Trustee's fiduciary relationship to the beneficiaries of the Retirement Fund in regard to the management of the Fund. Current allowances under these sections include: (1) double compensation for the same ailment; (2) a broad interpretation of the terms "total and permanent disability;" (3) insufficient Board discretion in the determination of member eligibility for annuities; and (4) the absence of physical examination requirements for members receiving disability annuities.

The Committee further finds that Section 8236(c), concerning the annual salaries of Fund members, fails to make reference to the current contributions rate of 9.5%, and would fail to make reference to any future rate established.

Bill 694 as Substituted intends to: (1) prevent annuitants from receiving double compensation for the same ailment; (2) clarify the interpretation of "total and permanent disability;" (3) grant the Board more discretion in determining a member's eligibility for annuities; (4) re-establish physical examination requirements for members receiving disability annuities; and (5) include reference to the current contributions rate and any newly established rate concerning a member's annual salary, and include the non-base pay of a member under his/her annual salary as provided under P.L. 19-10:XI 10, P.L. 20-4:3, and P.L. 22-06.

RECOMMENDATION

The Committee on Power, Foreign Affairs and General Government Services wishes to report out Bill No. 694 as Substituted **TO DO PASS.**