



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

SEP 30 1997

Refer to
Legislative Secretary

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

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>Ferni Guzman</u>
Time	<u>3 pm.</u>
Date	<u>9-30-97</u>

Dear Speaker Unpingco:


Enclosed please find a copy of Bill No. 89, "AN ACT TO ADD A NEW ARTICLE 5 TO CHAPTER 4 AND TO REPEAL §4210 OF TITLE 4, BOTH OF THE GUAM CODE ANNOTATED, RELATIVE TO THE PROTECTION OF PUBLIC EMPLOYEES.", which I have signed into law as Public Law No. 24-69.

This legislation is "whistleblower" legislation, designed to protect employees from reprisals on the part of management if they report fraud and abuse that they observe in the government.

Guam already enacted "whistleblower" legislation in Public Law No. 23-55, and employees are currently free to report fraud and abuse in the government without fear of reprisals. This legislation corrects some of the deficiencies in the first version of the legislation.

Some further corrections need to be made to this legislation. It needs further adaptation to the current laws of Guam. For example, the employee appeal procedure specifies that the appeal is to the District Court, when it should indicate that the appeal should be to the Superior Court of Guam under our court system. The Civil Service Commission is referred to as the "personnel board", when it is unnecessary to create a new name for an already existing agency.

Very truly yours,


Carl T. C. Gutierrez
Governor of Guam

Attachment 00444


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

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 093097
Time: 1300
Rec'd by: [Signature]
Print Name: Charlene Duenas

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 89 (COR), "AN ACT TO ADD A NEW ARTICLE 5 TO CHAPTER 4 AND TO REPEAL §4210 OF TITLE 4, BOTH OF THE GUAM CODE ANNOTATED, RELATIVE TO THE PROTECTION OF PUBLIC EMPLOYEES," was on the 15th day of September, 1997, duly and regularly passed.



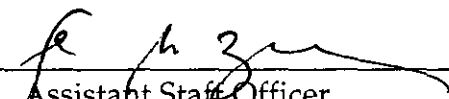
ANTHONY C. BLAZ
Acting Speaker

Attested:



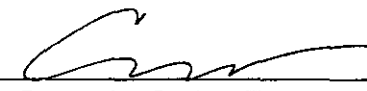
JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by the Governor this 22nd day of September, 1997, at
2:45 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ
Governor of Guam

Date: 9-30-97

Public Law No. 24 69

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

Bill No. 89 (COR)

As amended on the Floor.

Introduced by:

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

**AN ACT TO ADD A NEW ARTICLE 5 TO CHAPTER
4 AND TO REPEAL §4210 OF TITLE 4, BOTH OF THE
GUAM CODE ANNOTATED, RELATIVE TO THE
PROTECTION OF PUBLIC EMPLOYEES.**

- 1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**
2 **Section 1.** A new Article 5 is hereby added to Chapter 4 of Title 4 of the

1 Guam Code Annotated to read as follows:

2 **"Article 5.**

3 **Public Employee Protection.**

4 **§4501. Legislative Findings.**

5 **§4502. Definitions.**

6 **§4503. Retaliation Prohibited.**

7 **§4504. Complaints by Classified Employees.**

8 **§4505. Civil Action.**

9 **§4506. Notice to Public Auditor.**

10 **§4507. Reports to Legislature and Governor.**

11 **Section 4501. Legislative Findings.** The Guam Legislature finds that
12 the people of Guam are entitled to information about the workings of the
13 government in order to reduce the waste and mismanagement of public
14 funds, to reduce abuses in government authority, and to prevent illegal and
15 unethical practices. The Guam Legislature further finds that employees of
16 the government of Guam are citizens first and have a right and a
17 responsibility to behave as good citizens in our common efforts to provide
18 sound management of governmental affairs. To help achieve these
19 objectives, the Guam Legislature finds that such employees should be
20 encouraged to disclose information on actions of agencies that are not in
21 the public interest and that legislation is needed to ensure that any
22 employee making such disclosures shall not be subject to disciplinary
23 measures or harassment by any public official.

24 **Section 4502. Definitions.** As used in this Article, unless the context
25 otherwise requires:

1 (a) *'Agency'* means any board, commission, department,
2 division, section or other agency of the Executive, Legislative or Judicial
3 Branch of the government of Guam.

4 (b) *'Disciplinary action'* means any direct or indirect form of
5 discipline or penalty, including, but not limited to, dismissal, demotion,
6 transfer, reassignment, suspension, corrective action, reprimand,
7 admonishment, unsatisfactory or below standard performance evaluation,
8 reduction in force, or withholding of work, or the threat of any such
9 discipline or penalty.

10 (c) *'Disclosure of information'* means the written provision of
11 evidence to any person, or the testimony before any committee of the
12 Guam Legislature, regarding any action, policy, regulation, practice or
13 procedure, including, but not limited to, the waste of public funds, abuse
14 of authority or mismanagement of any agency.

15 (d) *'Employee'* means any person employed by an agency.

16 (e) *'Personnel Board'* means the Civil Service Commission, the
17 Judicial Council or other government entity charged with hearing the
18 appeal of a classified employee pursuant to §4105 of this Chapter or under
19 the personnel rules governing such employee.

20 (f) *'Supervisor'* means any board, commission, department head,
21 division head or other person who supervises or is responsible for the work
22 of one (1) or more employees.

23 **Section 4503. Retaliation Prohibited.** (a) Except as provided in
24 Subsection (b) of this Section, no appointing authority or supervisor shall
25 initiate or administer any disciplinary action against an employee on

1 account of the employee's disclosure of information. This Section shall not
2 apply to:

3 (1) An employee who discloses information that he knows
4 to be false or who discloses information with disregard for the truth
5 or falsity thereof;

6 (2) An employee who discloses information from public
7 records which are closed to public inspection pursuant to Chapter 10
8 of Title 5, Guam Code Annotated;

9 (3) An employee who discloses information which is
10 confidential under any other provision of law.

11 (b) It shall be the obligation of an employee who wishes to disclose
12 information under the protection of this Article to make a good faith effort
13 to provide to his supervisor or appointing authority or member of the
14 Guam Legislature the information to be disclosed prior to the time of its
15 disclosure.

16 **Section 4504. Complaints by Classified Employees.** (a) Any
17 employee in the classified service may file a written complaint with the
18 personnel board alleging a violation of §4503 of this Article, if the employee
19 demonstrates that reasonable communication to his supervisor, appointing
20 authority or member of the Guam Legislature has occurred in regard to the
21 alleged violation. The personnel board shall cause an investigation to be
22 made of the charges in the complaint. If the investigation establishes that
23 there is a reasonable basis for the charges, the appointing authority or
24 supervisor shall be given written notice thereof. Within ten (10) days after
25 he receives such notice, the appointing authority or supervisor may

1 petition the personnel board for a hearing on the matter, and the personnel
2 board shall grant such hearing.

3 (b) If the personnel board after hearing determines that a violation
4 of §4503 of this Article has occurred, or if the investigation establishes a
5 reasonable basis for the charges and no hearing is requested, the personnel
6 board shall order the appropriate relief, including, but not limited to,
7 reinstatement, back pay, restoration of lost service credit, and expungement
8 of the records of the employee who disclosed information, and, in addition,
9 the personnel board shall order that the employee filing the complaint be
10 reimbursed for any costs incurred in the proceeding. Such reimbursement
11 shall be made out of moneys appropriated to the agency which employs
12 such employee. The determination by the personnel board under this
13 Subsection shall be final but subject to judicial review.

14 (c) It shall be a defense in any disciplinary proceeding against an
15 employee under §4406 of this Chapter that such proceeding was initiated
16 in violation of §4503 of this Article and the issue of such violation shall be
17 determined by the personnel board as a part of the disciplinary proceeding.

18 (d) Whenever the personnel board determines that an appointing
19 authority or supervisor has violated §4503 of this Article it shall cause an
20 entry to that effect to be made in the supervisor's personnel records. In
21 addition, such appointing authority or supervisor shall be subject to a fine
22 of no less than Five Hundred Dollars (\$500.00) and no more than One
23 Thousand Dollars (\$1,000.00), to be determined by the personnel board.
24 Government funds shall not be used to pay such fine.

25 **Section 4505. Civil Action.** Any employee not in the classified

1 service, or any employee in the classified service who has filed a complaint
2 under §4504(a) but no reasonable basis was found for the charges, may
3 bring a civil action in the District Court alleging a violation of §4503 of this
4 Article. If the employee prevails, the employee may recover damages,
5 together with court costs, and the court may order such other relief as it
6 deems appropriate.

7 **Section 4506. Notice to Public Auditor.** Whenever the personnel
8 board finds that a violation of §4503 of this Article involving the disclosure
9 of information concerning waste of public funds or mismanagement of an
10 agency has occurred, it shall transmit a copy of the investigation report to
11 the public auditor, who shall proceed in accordance with §1908 and §1909
12 of Title 1, Guam Code Annotated. Any person found guilty of violating
13 §4503 of this Article shall be guilty of a misdemeanor.

14 **Section 4507. Reports to Legislature and Governor.** The personnel
15 board shall report annually to the Guam Legislature and the Governor
16 concerning the complaints filed, hearings held, and actions taken pursuant
17 to this Article.”

18 **Section 2. Section 4210 of Title 4 of the Guam Code Annotated is**
19 **Repealed.** Section 4210 of Title 4, Guam Code Annotated, which provided
20 protection for government employees who communicate with elected or
21 appointed officials, is hereby repealed.

P.L. 24-69



155 Hesler Street
Agaña, Guam 96910



TWENTY • FOURTH
GUAM LEGISLATURE

Senator Felix P. Camacho

Committee on Power, Foreign Affairs and General Government Services

Tel: (671)
472-3505 / 6

Fax: (671)
472-9747

April 14, 1997

The Honorable
Antonio R. Unpingco
Speaker, 24th Guam Legislature
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. 89, "An act to add a new Article 5 to Chapter 4 and to repeal §4210 of Title 4, Guam Code Annotated, relative to the protection of public employees" herein reports back with the recommendation **TO DO PASS**.

Votes of committee members are as follows:

<u> 10 </u>	To Pass
<u> </u>	Not To Pass
<u> </u>	To The Inactive File
<u> </u>	Abstained
<u> </u>	Off-Island
<u> 4 </u>	Not Available

Sincerely,

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
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VOTING SHEET ON:

BILL NO. 89, "AN ACT TO ADD A NEW ARTICLE 5 TO CHAPTER 4 AND TO REPEAL §4210 OF TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO THE PROTECTION OF PUBLIC EMPLOYEES"

<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	<i>FC</i>	✓			
Sen. Lawrence F. Kasperbauer	<i>LFK</i>	✓			
Sen. Thomas C. Ada	<i>TA</i>	✓			
Sen. Elizabeth Barrett-Anderson					
Sen. Francisco P. Camacho	<i>FC</i>	✓			
Sen. Mark C. Charfauros	<i>MC</i>	✓			
Sen. Edwardo J. Cruz, MD	<i>EJC</i>	✓			
Sen. William B. S.M. Flores	<i>WF</i>	✓			
Sen. Carlotta A. Leon Guerrero	<i>CLG</i>	✓			
Sen. Alberto A.C. Lamorena V					
Sen. Vicente C. Pangelinan	<i>VP</i>	✓			
Sen. Angel L.G. Santos					
Sen. Francis E. Santos					
Sen. Judith Won Pat-Borja	<i>JWP</i>	✓			

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

COMMITTEE REPORT

ON

BILL NO. 89

“An act to add a new Article 5 to Chapter 4 and to repeal §4210 of Title 4, Guam Code Annotated, relative to the protection of public employees”

COMMITTEE MEMBERS

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

Thomas C. Ada	Elizabeth Barrett-Anderson
Francisco P. Camacho	Mark C. Charfauros
Edwardo J. Cruz, MD	William B. S.M. Flores
Alberto A.C. Lamorena V	Carlotta A. Leon Guerrero
Vicente C. Pangelinan	Angel L.G. Santos
Francis E. Santos	Judith Won Pat-Borja

COMMITTEE REPORT
POWER, FOREIGN AFFAIRS & GENERAL GOVERNMENT SERVICES

BILL NO. 89

“An act to add a new Article 5 to Chapter 4 and to repeal §4210 of Title 4, Guam Code Annotated, relative to the protection of public employees”

I. PUBLIC HEARING

The Committee on Power, Foreign Affairs & General Government Services (CPFA&GGS) held a public hearing on Thursday, March 27, 1997, at 1:30 p.m. to hear testimony on Bill No. 89, “An act to add a new Article 5 to Chapter 4 and to repeal §4210 of Title 4, Guam Code Annotated, relative to the protection of public employees”

The hearing was called to order by Senator Felix P. Camacho, Chairman of CPFA&GGS. Members present included Senators Francisco Camacho, Vicente Pangelinan, Mark Charfauros and Tom Ada, with Senator Frank Aguon as guest.

There was no one to testify on this bill.

II. BACKGROUND

Concern has been raised in the past that employees in our government, in an attempt to disclose or report abuse, waste or mismanagement of funds or illegal activities of public officials, have been targeted by these officials in the form of retaliatory measures or unwarranted disciplinary action. These employees should be encouraged to disclose information on actions of officials in the agencies that are not in the public interest and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official. Fines and other administrative penalties should be assessed against any government official found guilty of infringing or obstructing an employee’s freedom to disclose or report actions not in the public interest.

III. TESTIMONY

Testimony written or oral was not available.

The **Bureau of Budget & Management Resources** provides the Fiscal Note stating that the range of fines proposed to be assessed against an appointing authority is

absorbed solely by the individual and not the agency employed at. The agency is not free from costs of cases settled. The fiscal impact is dependent on the number of complaints filed, violations committed, fines imposed, civil actions filed, etc.

IV. FINDINGS

The Committee finds that Bill No. 89, offers public employees statutory relief to be protected from disciplinary action from the recognition, identification and reporting of government waste, mismanagement of public funds or illegal or unethical practices. In this Article 5, named “Public Employee Protection” provides definitions not otherwise defined, retaliatory actions prohibited by officials, complaints allowed to be filed to the Personnel Board, civil action permitted if complaint is vacated or dismissed, public auditor notices and reports required by the Board to the Governor and legislature.

V. RECOMMENDATION

The Committee on Power, Foreign Affairs & General Government Services hereby reports out Bill No. 89, with the recommendation **TO DO PASS**.

FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH

BBMR-F7

Bill Number: 89
Amendatory Bill: No

Date Received: March 14, 1997
Date Reviewed: March 28, 1997

Department/Agency Affected: Civil Service Commission
Department/Agency Head: Eloy Hara, Director
Total FY Appropriation to Date: \$1,274,843 (P.L. 23-128)

Bill Title (preamble): *An act to add a new article 5 to Chapter 4 and to repeal subsection 4210 of Title 4, Guam Code Annotated, relative to the protection of public employees*

Change in Law: Repeals subsection 4210 of Title 4, GCA

Bill's Impact on Present Program Funding:

Increase _____ Decrease _____ Reallocation _____
 No Change XXX

Bill is for:

Operations _____ Capital Improvement _____ Other X

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
Government Wide	1/		

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL	1/					
OTHER						
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? N/A -- IF NO, ADD'L AMOUNT REQUIRED \$ _____

AGENCY/PERSON/DATE CONTACTED: Civil Service Comm./Helen Chaco/3/25/97

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND	1/					
OTHER						
TOTAL						

ANALYST d
 Dina P. Chock

DATE 3/27/97

DIRECTOR Joseph Rivera
 Joseph E. Rivera, Acting

DATE APR 01 1997

FOOTNOTE(S):

1/ Bill No. 89 is an act to add a new Article 5 to Chapter 4 and to repeal subsection 4210 of Title 4, Guam Code Annotated, relative to the protection of Public Employees. It should be noted that the Bill proposes a fine of not less than \$500.00 and no more than a \$1,000 for any appointing authority who violates subsection 4503 of this Article. This would entail revenues to the General Fund (if ever an appointing authority or authorities should be found in violation of Article 5 and a fine is imposed) since the appointing authority must absorb the fine with personal funds as the Bill specifically mentions that no government funds shall be used to pay the fines. On the other hand, cost to the Government would result when an employee files a complaint and prevails and the employee must, for example, be reinstated, receive back pay, be restored of lost service credit, and/or be reimbursed for cost incurred during the proceeding (the Bill mentions that the reimbursement shall be absorbed by appropriations to the agency who employs such employee). Other cost would result when a civil action is filed and the employee prevails. The employee may recover for damages, court costs and other relief determined by the court. As such, the fiscal impact is dependent on the no. of complaints filed, violations committed, fines imposed, civil actions filed, etc.