I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN

2018 (SECOND) Regular Session

LEGISLATIVE SESSION VOTING RECORD

Bill No. 267-34 (COR) As substituted by the Committee on Appropriations and Adjudication.	**Speaker Antonio R. Unpingco Legislative Session Hall** **November 30, 2018**					
NAME	**Aye**	**Nay**	**Not Voting/ Abstained**	**Out During Roll Call**	**Absent**	**Excused**
Senator Thomas C. **ADA**	✓					
Senator FRANK B. **AGUON, JR.**					✓	✓
Senator William M. **CASTRO**	✓					
Senator James V. **ESPALDON**	✓					
Senator Fernando Barcinas **ESTEVES**	✓					
Senator Régine Biscoe **LEE**	✓					
Senator Tommy **MORRISON**	✓					
Senator Louise B. **MUÑA**	✓					
Senator Telena Cruz **NELSON**	✓					
Senator Dennis G. **RODRIGUEZ, Jr.**					✓	✓
Senator Joe S. San **AGUSTIN**	✓					
Senator Michael F.Q. **SAN NICOLAS**					✓	✓
Acting Speaker Therese M. **TERLAJE**		✓				
Senator Mary Camacho **TORRES**	✓					

TOTAL:	**10**	**1**			**3**	**3**
	Aye	**Nay**	**Not Voting/ Abstained**	**Out During Roll Call**	**Absent**	**Excused**

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

I = Pass

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

Bill No. 267-34 (COR)
As substituted by the Committee
on Appropriations and Adjudication.

*

Introduced by: Mary Camacho Torres

AN ACT TO *AMEND* §§ 4406 AND 4406.2 OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO ENHANCING PROCEDURAL PROTECTIONS WITHIN THE CIVIL SERVICE COMMISSION IN FAVOR OF INCREASING TIMELINESS, EFFICIENCY, AND DUE PROCESS FOR CLASSIFIED EMPLOYEES OF THE GOVERNMENT OF GUAM.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. § 4406 of Article 4, Chapter 4, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 4406. Adverse Action Procedures and Appeals.**

(a) Notice of Adverse Action. An employee in the classified service who is dismissed, demoted, or suspended *shall* be given immediate notice of the action, together with a specific statement of the charges upon which such action is based in the manner required by Article 2 of this Chapter. Copies thereof *shall* be filed with the Commission and, if applicable, with the government entity charged with hearing that person's appeal under the personnel rules governing that person's appointment not later than the working day next following the effective date of the action.

(b) Ninety (90) Day Rule.

(1) Management *shall* give the employee in the classified service notice and statement of the charges under this Section no later than:

(A) ninety (90) calendar days from the date in which management knew or should have known the facts or events which form the alleged basis for the adverse action; or

(B) ninety (90) calendar days from the date of entry of a judgment of conviction in any court of competent jurisdiction that forms the alleged basis for the adverse action.

(2) As used in this Subsection, "management" means the appointing authority of a government department, agency, or instrumentality, or any deputy, division head, or other senior assistant of the appointing authority, however designated, having administrative power to implement management policy and the supervisory responsibility to directly advise the appointing authority regarding an adverse action or other personnel decision involving an employee of the department, agency, or instrumentality.

(3) In situations of emergencies, acts of nature, or disasters, the department, agency, or instrumentality may petition the Commission to suspend or extend the ninety (90) day time limitation provided in this Subsection. The Commission *shall* consider all such petitions expeditiously and may, in its discretion, suspend or reasonably extend the ninety (90) day time limitation after issuing written findings that support the suspension or extension.

(4) Any action brought by a government department, agency, or instrumentality in violation of this Subsection is barred and any decision based upon such action is void.

(c) Suspension and Reinstatement Pending Appeal. While an employee's appeal is pending before the Commission, the employee may be suspended by the department, instrumentality, or agency. The Commission or appropriate entity may order the employee reinstated to active duty during pendency of the appeal.

(d) Twenty (20) Day Rule. The employee, within twenty (20) days of effective date of the action, may appeal to the Commission or appropriate entity by filing that person's written answer to the charges against the employee, regardless of whether the employee has tendered any resignations, which shall have no effect upon the employee's appeal rights. In the event an employee resigns before the issuance of the final notice of adverse action, the employee's twenty (20) day appeal period to the Commission *shall* begin to run at the time the employee submits the resignation, which notice of Proposed Adverse Action *shall* be deemed a final notice of adverse action. Management may not fill the employee's position until:

(1) the twenty (20) day period has elapsed and no appeal has been filed; or

(2) the right to appeal has been exhausted upon judicial review.

(e) Adverse Action Hearing. The Commission or appropriate entity *shall* set an adverse action appeal for hearing as expeditiously as possible and in accordance with the Time Standards provided under this Article. The employee, or that person's representative, *shall* be given the opportunity to inspect any documents relevant to the action that would be admissible in

evidence at the hearing, and to depose, interview, or direct written interrogatories to other employees having knowledge of the acts or omissions upon which the dismissal, demotion, or suspension is based. The Commission or appropriate entity may sustain, modify, or revoke the action taken. The decision of the Commission or appropriate entity *shall* be final but subject to judicial review.

(f) Judicial Review.

(1) The government department, agency, instrumentality, or the employee may petition the Superior Court for judicial review of an adverse action appeal only after:

(A) the appeal has been heard by the Commission and a final written or oral decision has been issued; or

(B) the Commission has failed to meet the Time Standards provided under this Article.

(2) The party who petitions for judicial review is responsible for providing certified transcripts of hearings and *shall* bear associated costs.

(g) Reinstatement Pending Judicial Review. Where the Commission has modified or revoked an adverse action in favor of the employee from the classified service, the employee *shall* be reinstated immediately pursuant to the terms of the decision until such time as the decision is overturned by judicial review.

(h) Enforcement. Failure to adhere to a decision by the Commission to reinstate an employee *shall* result in reduction in salary by ten percent (10%) for the responsible agency head and his deputy from the date of the decision until the date of reinstatement in full compliance with the decision. The Commission may bring an action in the Superior Court to enforce the

reinstatement of the employee and impose any appropriate penalties or remedies available at law or equity."

Section 2. § 4406.2 of Article 4, Chapter 4, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 4406.2. Time Standards and Case Management.**

In order to assist in case management and promote timeliness in the resolution of matters before the Commission, *I Liheslatura* (the Legislature) establishes the following Time Standards, which the Commission *shall* attain in all cases filed with the Commission after the effective date of this Act:

(a) For appeals from actions resulting in the termination of an employee, a Hearing on the Merits *shall* commence *no later than* four (4) months from the initial filing of the appeal.

(b) For all other appeals from adverse actions, a Hearing on the Merits *shall* commence *no later than* six (6) months from the initial filing of the appeal.

(c) For grievances filed before the Commission, a Grievance Hearing *shall* be held *no later than* four (4) months from the initial filing of the grievance.

(d) All matters *shall* be adjudicated within twelve (12) months from the filing of a notice of appeal *unless* the Time Standards are waived by the employee.

(e) Failure on the part of the Commission to adhere to the Time Standards described in Subsections (a), (b), and (c) *shall* in no way result in the dismissal of the employee's right to appeal an adverse action.

(f) The Time Standards described in Subsections (a), (b), and (c) may be waived by the employee.

(g) The Time Standards described in Subsections (a), (b), and (c) may be waived by the Commissioners upon finding substantial and compelling reasons to determine that a waiver of the Time Standards is the only option available, and only upon mutual consent of the parties.

(h) Following all oral decisions by Commissioners, the prevailing party *shall* present its proposed written decision for Commissioners to sign *no later than* ten (10) working days from the date of the hearing in which the oral decision was rendered.

(i) All written decisions following any and all hearings *shall* be signed and ordered within sixty (60) days of the date of the hearing."

Section 3. Effective Date. This Act *shall* become effective upon enactment.