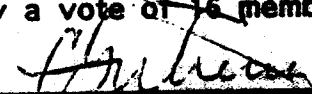


SEVENTEENTH GUAM LEGISLATURE
1983 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill No. 160, "AN ACT TO REPEAL AND REENACT THE GOVERNMENT CLAIMS ACT TO CLARIFY THE RELATIONSHIP BETWEEN THE LINE AND AUTONOMOUS AND SEMI-AUTONOMOUS AGENCIES, TO AUTHORIZE THE GOVERNMENT TO PURCHASE INSURANCE, AND TO PROVIDE ADDITIONAL PROTECTION FOR GOVERNMENT EMPLOYEES, AND FOR OTHER PURPOSES," returned to the Legislature without the approval of the Governor was, in accordance with the Organic Act of Guam, reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 9th day of November 1983, agree to pass said bill notwithstanding the objections of the Governor by a vote of two-thirds of all members thereof, to wit: by a vote of 16 members.


CARL T. C. GUTIERREZ
Speaker

Attested:


ELIZABETH P. ARRIOLA
Senator and Legislative Secretary

This Act was received by the Governor this 14th day of November, 1983, at 1:36 o'clock P.m.


Assistant Staff Officer
Governor's Office

PUBLIC LAW NO. 17 -29

(By Legislative override
November 9, 1983)

SEVENTEENTH GUAM LEGISLATURE
1983 (FIRST) Regular Session

Bill No. 160

Introduced by:

F.R. Santos,
T. S. Nelson
J. H. Underwood

J. F. Ada
J. P. Aguon
E. P. Arriola
E. T. Charfauros
E. R. Duenas
C. T. C. Gutierrez
F. J. Gutierrez
M. K. Hartsock
A. C. Lamorena III
P. C. Lujan
M. D. A. Manibusan
D. Parkinson
J. F. Quan
F. J. Quitugua
E. D. Ramsey
J. T. San Agustin
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO REPEAL AND RE-ENACT THE GOVERNMENT CLAIMS ACT TO CLARIFY THE RELATIONSHIP BETWEEN THE LINE AND AUTONOMOUS AND SEMI-AUTONOMOUS AGENCIES, TO AUTHORIZE THE GOVERNMENT TO PURCHASE INSURANCE, TO PROVIDE ADDITIONAL PROTECTION FOR GOVERNMENT EMPLOYEES, AND FOR OTHER PURPOSES.

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

2 Section 1. The "Government Claims Act", being Chapter VI of Title
3 VII of the Government Code of Guam, is repealed and re-enacted to read:

4 "CHAPTER VI
5 CLAIMS AGAINST THE GOVERNMENT OF GUAM
6 Article 1. Scope and Definitions

\$6500.00. Short Title.
\$6500.01. Coverage of Chapter.
\$6500.02. Definitions.
\$6500.03. Exclusions.

- §6500.04. Waiver of Immunity.**
§6500.05. Limitations on Actions and Filing.
§6500.06. Continuation of Law.
§6500.07. Chapter Applicable to All Claims.

1 **§6500.00. Short Title.**

2 This Chapter shall be known as the 'Government Claims Act'.

SOURCE: GC §6500.00

COMMENT: The name of this Chapter is unchanged since the fundamental purpose of this Act is to continue the policies of the former Chapter, but clarifying the relationship between the various government departments, line and autonomous agencies. Also, this Chapter will authorize insurance to be purchased for both the government and its employees. However, it is to be deemed a continuation of the old law, not a departure from it.

3 **§6500.01. Coverage of Chapter.**

4 This Chapter applies, except as provided in §6500.03, to the
5 entire Government of Guam, as specifically stated herein. No govern-
6 ment agency, whether denominated a line department, an agency, or a
7 public corporation, is excluded from the scope of this Chapter. The
8 fact that an agency or instrumentality has or has not the right to sue
9 or be sued in its own name does not exclude such agency or
10 instrumentality from the scope of this Chapter.

SOURCE: New Section.

COMMENT: A number of lawsuits have been brought against the Guam Memorial Hospital and the Guam Power Authority claiming exemption, in whole or in part, from the former Government Claims Act. No case has gone to appeal on this point. Existing law is extremely unclear. Section 6500.19, as amended, of the former law indicates that the procedure of the Act should apply to all agencies, but payment be made from the accounts of the stated autonomous or semi-autonomous agencies. Yet the law of the individual agencies states that they may sue and be sued. The Superior Court, in some cases, has interpreted the latter as prevailing over the Claims Act, so as to give no sovereign immunity whatsoever to the autonomous agencies. This Section makes clear that this Act covers the entire Government, with no exceptions.

11 **§6500.02. Definitions.**

12 As used in this Chapter, the following words and phrases shall

1 have the meaning stated herein, unless such meaning is clearly
2 inapplicable in the context:

3 (1) 'Government of Guam' shall include all agencies,
4 departments, instrumentalities, public corporations, and all other
5 entities of the Government, no matter how designated, and
6 whether or not such agencies may sue or be sued in their own
7 name.

8 (2) 'Chief Claims Officer' means the Attorney General of
9 Guam, and for the autonomous agencies the Attorney General shall
10 designate as claims officers those persons so designated by the
11 Board of such agency, or by its chief executive officer if there
12 be no Board.

13 (3) 'Line Agency' means any department, agency or instru-
14 mentality of the Government of Guam which is funded by an
15 annual appropriation from the Legislature. Such appropriations
16 do not include 'subsidies'.

17 (4) 'Autonomous agency' means any department, agency, or
18 instrumentality which generates, or is intended to generate, as
19 evidenced in law, all of its own operating revenues apart from
20 annual appropriations from the General Fund. 'Annual appropria-
21 tions' do not include amounts appropriated to line agencies to pay
22 for services rendered by autonomous agencies. Subsidies
23 appropriated from the general fund to an autonomous agency,
24 whether or not annually appropriated, shall not mean that an
25 autonomous agency becomes a line agency for purposes of this
26 Chapter.

SOURCE: New Section.

COMMENT: This Section is added to define the terms that will be
used in this Chapter. The organization of the Chapter will treat
the line agencies separately from the autonomous agencies as far
as payment is concerned, but unify the procedure by which
claims may be made, so that a person does not have to face one
procedure for a line agency and another for each autonomous
agency.

1 §6500.03. Exclusions.

2 This Chapter shall not apply to any claim pertaining to any tax
3 refund, the Worker's Compensation Law, or the Government of Guam
4 Retirement Fund.

SOURCE: GC §6500.02

COMMENT: Prior Law is continued here. However, the
Commercial Port is treated as any other autonomous agency under
this Chapter.

5 §6500.04. Waiver of Immunity.

6 Pursuant to Section 3 of the Organic Act of Guam, the
7 Government of Guam hereby waives immunity from suit, but only as
8 hereinafter provided:

9 (a) for all expenses incurred in reliance upon a contract to
10 which the Government of Guam is a party, but if the contract has
11 been substantially completed, expectation damages may be
12 awarded;

13 (b) for claims in tort, arising from the negligent acts of its
14 employees, or volunteers acting for and at the direction of the
15 Government of Guam, even though occurring in an activity to
16 which private persons do not engage. For the purposes of this
17 Chapter, any officer or enlisted person of the Guam National
18 Guard on territorial duty shall be deemed an employee of the
19 Government.

20 (c) The Government of Guam shall not be liable for claims
21 arising from an exercise of discretion in making policy.

SOURCE: GC §6500.01, as amended by P.L. 14-50. Second
sentence of Subsection (b) added by P.L. 16-18.

COMMENT: Again, this Section is continued from prior law, but
the source of its authority, the Organic Act, is emphasized.
Some suits have, unsuccessfully, tried to challenge this law on
the basis of various state court rulings. However, those states
do not have the constitutional equivalent of §3 of the Organic
Act. This Section merely emphasizes the law for clarity. It
cannot create or amend the Organic Act.

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§6500.05. Limitations on Actions and Filing.

(a) All claims under this Act must be filed within eighteen (18) months from the date the claim arose, but any claims timely filed under the predecessor of this Act shall be considered to have been timely filed under this Chapter.

(b) Every action filed under this Chapter shall be barred unless commenced within eighteen (18) months from the time the notice that the claim was rejected was served as provided in Article 2 of this Chapter, or within twenty-four months after the claim was filed in cases where the government does not reject the claim.

SOURCE: GC §6500.05 and §6500.21 joined and modified.

COMMENT: The 15th Guam Legislature amended the limitations applicable to this Chapter to be equivalent to the limitations applicable to actions in general. However, that amendment failed to address the issue of time of filing a claim as it relates to filing an action on a rejected claim. These two limitations are closely related, both for the government and the claimant. Therefore, this Section takes a middle ground, giving the claimant 18 months from the time the action arose to file his claim and another 18 months after the claim was rejected and 24 months after the claim was filed in cases where the government does not reject the claim in order to file an action. This gives both parties a reasonable and certain time within which to file both claims and actions against all government agencies.

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§6500.06. Continuation of Law.

This Chapter shall be deemed a continuation of the former law so far as sections of the former law are continued unamended. No claim which accrued under the former law shall be increased, lessened, or extinguished by any provision of this law, but if the claim has not been filed or suit commenced, the procedures provided in Article 2 and the methods of payment prescribed in Article 4 shall apply to said claim. Sections of the former Government Claims Act amended by this Chapter shall be deemed amendments only and not new enactments.

SOURCE: New Section.

COMMENT: This Section makes clear that this Chapter merely amends and clarifies the former law. The basic philosophy of the former Government Claims Act is not changed.

1 **§6500.07. This Chapter Applicable to All Claims.**

2 This Chapter shall apply to all pending litigation in the courts of
3 Guam, or which are on appeal, which were commenced without first
4 filing an administrative claim as would be required by this Act had it
5 applied at the time the suit was filed. If such pending litigation was
6 timely filed under the laws existing at the time of filing, the plaintiffs
7 may, notwithstanding §6500.5 of this Chapter, file a claim under this
8 Chapter, but such claims shall not be filed later than June 30, 1984,
9 or not later than six months after the effective date of this Chapter,
10 whichever is later.

11 **Article 2. Procedure for Filing Claims and Actions**

- §6500.10. Procedure for Filing Claim.
- §6500.11. Claim to be Signed and Sworn To.
- §6500.12. Investigations.
- §6500.13. Ancillary Powers of Claims Officer.
- §6500.14. Hearing.
- §6500.15. Settlement of Claim Before Action.
- §6500.16. False Swearing.
- §6500.17. Action Against the Government.
- §6500.18. Procedure in Court.
- §6500.19. Settlement of Suit.
- §6500.20. Appeals.
- §6500.21. Limitation on Proceedings.

12 **§6500.10. Procedure for Filing Claim.**

13 All claims shall be filed in duplicate with the Claims Officers
14 responsible for the department or agency against which the claim is
15 made. Each claim shall contain the following information:

16 1. The complete name and address of the claimant. If the
17 claimant should change his address or retain an attorney to whom
18 all notices should be sent after filing his claim, he shall file an
19 amendment to his claim so stating the changes. If no amendment
20 is filed all notices sent to the address stated in the claim shall be
21 deemed properly sent and served.

22 2. The amount of damage or other relief claimed.

23 3. A concise statement of the facts upon which the claim is

1 made, including the time, place and other circumstances and the
2 department or agency or fund of the Government of Guam that is
3 concerned.

4 4. A copy of any contract or other instrument in writing
5 upon which the claim is based.

6 5. A statement of whether or not the claimant has received
7 any payment on account of such claim, and if so, the amount
8 received.

9 6. A statement whether or not any third person has any
10 interest in the claim, and if so, the name and address of such
11 person having such interest and the nature of such interest.

12 7. If the claimant is an executor, administrator, guardian,
13 or other representative, appointed by a judicial tribunal, a duly
14 certified copy of the record of appointment.

15 8. A statement as to whether or not the claimant has any
16 insurance covering the damage alleged to have been suffered by
17 him, and of any payments, if any, he has received from such
18 insurance carrier.

SOURCE: GC §6500.03 modified.

COMMENT: With the aim of separating the claims of autonomous
agencies from those of line agencies, and from the Claims Fund,
this section requires that claims filed be filed with the Claims
Officer of the agency against whom the claim is made. This
separates the filing of claims against autonomous agencies from
the Attorney General, who is responsible for all line agencies and
is their Claims Officer. From the time the claim is filed with the
autonomous agency until its settlement, only the autonomous
agency will be involved, unless, of course, the government of
Guam is also a party.

19 §6500.11. Claim to be Signed and Verified.

20 All claims filed pursuant to this Chapter shall be signed by the
21 claimant, his agent or his legal guardian, and verified by him, or may
22 be signed as being under the penalties prescribed for perjury.

SOURCE: GC §6500.04 modified.

CROSS-REFERENCE: 9 GCA §52.10(f)(2) - Penalties for Perjury.
See also 6 GCA §4208 regarding unsworn declarations and the
form required for them.

COMMENT: 1. The first words of this Section are changed to "All claims" to show that this Section refers to claims made both to the Attorney General and to the Claims Officers of the appropriate autonomous agencies.

2. The claims made may be either sworn to before a Notary Public or signed "under the penalty for perjury" as permitted by the Criminal Code (9 GCA §52.10(f)(2)). This should eliminate one unnecessary bit of red tape for claimants.

1 §6500.12. Investigations.

2 The Claims Officer shall cause each claim received by him to be
3 investigated to determine its merits.

SOURCE: GC §6500.06 modified.

COMMENT: The modification is to refer to "Claims Officers". Thus, the Attorney General investigates claims received by him against the line agencies and each Claims Officer within an autonomous agency will investigate claims made against his agency. If, and when, he refers the claim to an attorney for evaluation, he will do so according to the practice of the agency involved and will give it to the attorney responsible for that agency, whether it be the Attorney General or a private attorney.

4 §6500.13. Ancillary Powers of Claims Officer.

5 In making his investigation, the Claims Officer, or person
6 designated by him within his agency, shall have the authority to
7 administer oaths to claimants and witnesses, and to require the
8 production of any books, records or documents that may be material or
9 relative as evidence in connection with the claim.

SOURCE: GC §6500.07 modified to refer to "Claims Officer."

10 §6500.14. Hearing.

11 The Claims Officer, or a person designated by him, may, in his
12 discretion, conduct a formal hearing in connection with the investi-
13 gation of any claim.

SOURCE: GC §6500.09 modified to refer to "Claims Officer."

14 §6500.15. Settlement of Claim Before Action.

15 (a) The Attorney General, subject to the approval of the
16 Governor for settlements of over Three Thousand Dollars (\$3,000.00),
17 may settle for money damages any claim filed against a line agency or

1 autonomous agency under this Chapter. The Attorney General may
2 recommend other relief if appropriate.

3 (b) In the case of autonomous agencies, the Claims Officer,
4 subject to the approval of the Board, the Attorney General and the
5 Governor, or if there be no board, the highest official of such
6 agency, the Attorney General and the Governor for settlements of over
7 Three Thousand Dollars (\$3,000.00), may settle for money damages any
8 claim filed against said agency under this Chapter. The Attorney
9 General may recommend other relief as may be appropriate.

SOURCE: GC §6500.10 as modified.

COMMENT: This Section separates the line agencies from the
autonomous agencies as far as settlement goes. Subsection (a)
continues the procedure, with amendments, as is now law with
respect to the line agencies. Subsection (b) follows the same
procedure, but makes the approving authority the governing
board of the autonomous agency as well as the Attorney General
and the Governor.

The dollar limit in former law has been eliminated from this
Section. There is no reason, particularly with inflation and court
awards being as high as they are, for such a limitation, es-
pecially when the approval of the Governor is required for all
settlements above \$3,000. Approval by the governing board is
required for the settlement of autonomous agency claims as well as
the Attorney General and the Governor. We should not encourage
court suits by such a limitation when litigation could be avoided.

10 §6500.16. False Swearing.

11 All claimants and witnesses concerning any claim under this
12 Chapter are subject to the penalties and provisions of Chapter 52 of
13 Title 9 Guam Code Annotated with respect to False Swearing and
14 Perjury.

SOURCE: GC §6500.08 modified to reflect the Criminal and
Correctional Code's new provisions for Perjury and False Swearing
(9 GCA CH. 52).

15 §6500.17. Action Against the Government.

16 A claimant may institute an action in contract or tort, for money
17 damages only, against the Government of Guam in the event the claim
18 is made against a line agency, or against the specific agency involved

1 in the event the claim is made against an autonomous agency, in the
2 Superior Court of Guam, provided that:

3 (a) The claimant has been notified by registered or certified mail,
4 return receipt requested, that his claim has been rejected in whole or
5 in part; or

6 (b) Six months have elapsed since the date of filing the claim with the
7 Claims Officer.

SOURCE: GC §6500.11 as modified.

COMMENT: There have been questions as to whether the govern-
ment of Guam, as an entity, may be sued when an autonomous
agency is the one against whom the claim is filed. This Section
clears up that doubt by making it clear that such is not the case.

Subsection (a) has been modernized to reflect current mail
practices. See also 1 GCA §717.

Subsection (b) continues the former time limit. A proposal
would reduce this limit to two months. However, testimony on
that proposal was opposed as two months is not sufficient time to
complete a complex investigation.

8 §6500.18. Procedure in Court.

9 All actions brought under this Chapter shall be governed by the
10 law and rules of procedure of the Superior Court of Guam. Service of
11 process shall be made upon the Claims Officer and upon the Attorney
12 General. Trial shall be without a jury.

SOURCE: GC §6500.14 and §6500.15 joined.

COMMENT: Service of process is required to be made upon both
the Claims Officer and upon the Attorney General. Obviously, if
the Attorney General is the Claims Officer for the agency
involved, only one service need be made. However, where such
is not the case, the Attorney General, having cognizance over all
legal matters concerning the Government of Guam, must be made
aware of all suits against the government, or any of its parts, as
soon as possible. Waiting upon delivery by the affected agency
could lose, and has lost under prior law, valuable time and some-
times money.

13 §6500.19. Settlement of Suit.

14 (a) Subject to the approval of the court in which the case is
15 pending, the Attorney General is authorized to settle a suit at any
16 time before final judgment.

1 (b) In the case of autonomous agencies, the attorney
2 representing such agency is authorized to settle a suit against the
3 agency he represents subject to the approval of the court in which the
4 case is pending and subject to the approval of the governing board of
5 the agency, or if no Board exists, to the approval of the chief
6 executive officer of said agency.

SOURCE: GC §6500.17 as modified.

COMMENT: This Section notes the difference between autonomous
and line agencies and their legal representation. If a law should
be passed making the Attorney General the legal representative of
such agencies, this Section would still apply, as it recognizes the
semi-independent character of these agencies.

7 §6500.20. Appeals.

8 Judgments shall be subject to review on appeal in the same
9 manner and to the same extent as other judgments of the Superior
10 Court of Guam.

SOURCE: GC §6500.18.

11 §6500.21. Limitation on Proceedings.

12 (a) The filing of a suit under this Chapter against the govern-
13 ment of Guam or against any specific entity thereof shall suspend any
14 proceedings against individual employees alleged to be liable in the
15 same action until such time as the suit against the government of Guam
16 or against any specific entity thereof has been brought to final
17 judgment.

18 (b) Settlement of a claim before suit, or final judgment in a suit
19 filed under this Chapter shall bar the claimant from any further pro-
20 ceedings against the employee or employees whose acts or omissions
21 gave rise to the claim unless:

22 1. the Court finds that the employee was acting outside the
23 scope of his employment; or

24 2. the Court certifies that it would have awarded the claim-
25 ant more but for the limitations of §6500.30.

26 (c) Satisfaction of a settlement with or of a judgment against an
27 employee of the government shall constitute a forfeiture by the

1 claimant of all rights against the government by reason of the same
2 subject matter.

SOURCE: GC §6500.20 modified to refer to all suits and claims
filed.

3 §6500.22. Limitations on Awards in Actions.

4 No action shall be instituted, nor judgment granted, for a sum in
5 excess of the amount of the claim presented to the Claims Officer,
6 unless the increased amount of the claim is shown to be based upon
7 new evidence not reasonably discoverable at the time the claim was
8 filed with the Claims Officer.

SOURCE: GC §6500.12 modified to refer to "Claims Officers"
instead of "Attorney General".

9 Article 3. Liability and Insurance

§6500.30. Maximum Limits of Governmental Liability.

§6500.31. Limitations on Contract Obligations.

§6500.32. Insurance Authorized.

§6500.33. Insurance for Government Employees.

10 §6500.30. Maximum Limits of Governmental Liability.

11 (a) In all cases, neither line agencies nor autonomous agencies
12 nor the government of Guam shall be liable for interest prior to the
13 date of judgment, nor for punitive damages, nor for attorney's fees of
14 the claimant; provided, that attorney's fees may be awarded a suc-
15 cessful claimant as part of a final court judgment if the court finds
16 that suit was filed only because the government of Guam failed to act
17 upon the claim before the expiration of the times specified in §6500.5
18 of this Chapter and such failure resulted from failure to investigate
19 the claim.

20 (b) The government of Guam, in the case of line agencies, shall
21 be liable in tort for not more than One Hundred Thousand Dollars
22 (\$100,000.00) in an action for wrongful death, nor for more than
23 Three Hundred Thousand Dollars (\$300,000.00) in any other tort
24 action.

25 (c) Each autonomous agency shall be liable for torts committed
26 by it for not more than the amounts stated in subsection (b), above.