

CHAPTER 5
OFFICE OF THE SURUHANU (OMBUDSMAN)

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§ 5101. Legislative Finding and Intent.

The Legislature finds that government bureaucracies have a tendency to serve group needs and forget individual needs. In today's system of government, the individual citizen with a problem often does not know where to start nor to whom to seek to solve his problem.

Elected representatives are usually receptive to individual requests for assistance, but they can only approach constituent requests on a one-to-one basis. Other responsibilities make it difficult for elected representatives to follow through on all problems submitted to them.

Some system of overview is needed to expedite governmental action on individual complaints or requests for services, to hold the governmental agency accountable for satisfying a legitimate request for assistance and to

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suggest necessary legal or administrative changes to prevent continued abuses of an individual rights.

The legislative intent of this bill is to create the Office of Ombudsman or Suruhanu and charge this office with the responsibility to correct and solve the individual problems citizens may have with their government to provide a method by which each citizen will have open access to an expert in dealing with the Government so that each citizen will know his complaint will be investigated and the department or agency responsible for the solution will ultimately be held accountable for that solution.

It is the intent of the Legislature to establish, in addition to other remedies or rights of appeal of any person under law, an independent and partial office readily available to the public, responsible to the Legislature, empowered to investigate the acts of the administrative agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting high standards of competency, efficiency and justice in the administration of territorial law.

SOURCE: GC § 1425 . Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5102. Definitions.

As used in this Chapter:

(a) *Agency* means any department, organization, board, commission, council, institution or other governmental entity of the government of Guam, and any official, officer, employee or member thereof acting or purporting to act by reason of his connection with the government of Guam, except:

- (1) any court, judge and pertinent judicial staff;
- (2) the Legislature, its members, its committees, its staff and its employees;
- (3) the Governor and his personal staff; and
- (4) the Lieutenant Governor and his personal staff.

(b) An *Act of an Agency* means any action, decision, failure to act, omission, rule or regulation, interpretation, recommendation, policy, practice or procedure of any agency.

(c) *Person* means any individual, aggregate of individuals, corporation, partnership or unincorporated association.

(d) *Suruhanu* also means Suruhana. In the case that the person elected is female, reference to the office shall be in the feminine, that is to the Suruhana.

SOURCE: GC § 1426. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5103. Creation of Office.

The Office of the Suruhanu is created.

SOURCE: GC § 1427. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5104. Qualifications.

(a) The Suruhanu shall be a person of recognized judgment, objectivity and integrity who is well equipped to analyze problems of law, administration and public policy.

(b) No person while serving as Suruhanu:

(1) shall be actively involved in political party activities;

(2) shall be candidate for or hold other public office, whether elective or appointive; or

(3) shall be engaged in any other occupation, business or profession.

SOURCE: GC § 1429. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5105. Election of Suruhanu.

The Legislature shall elect the Suruhanu by a two-thirds (2/3) vote of the membership.

SOURCE: GC § 1428. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5106. Certificates of Appointment.

Immediately after declaring the results of any election, the Legislative Secretary shall cause to be prepared "certificates of appointment." The form of such certificate shall be prescribed by the Legislative Secretary and shall contain the essential facts of the appointment. The Legislative Secretary shall cause to be placed in the hands of the appointed person a copy of such certificate which shall constitute evidence of that person's right to office. The Legislative Secretary shall preserve the original certificate for a period of ten (10) years.

SOURCE: GC § 1446, as added by P.L. 15-83.

§ 5107. Term of Office.

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(a) The Suruhanu shall serve for a term of six (6) years commencing at 12 o'clock noon on April 1 of the year he takes office. He may be reappointed for additional terms.

SOURCE: GC § 1430. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5108. Removal and Vacancy.

(a) Qualified voters of Guam may initiate a petition for the removal of the Suruhanu by presenting a petition to the Election Commission signed by voters equal in number to ten percent (10%) of all votes counted for all candidates for the Governor at the last preceding general election at which a Governor was elected. The format of the petition shall comply with the Election Commission regulations and upon certification by the Election Commission, the petition shall be presented to the Legislature.

(b) The Legislature, upon receipt of the certified petition, may by a vote of two-thirds (2/3) of the members present and voting remove the Suruhanu from office. The Legislature may also on its own initiative remove the Suruhanu for cause by the same two-thirds (2/3) vote.

(c) If the position of Suruhanu becomes vacant for any reason, the Legislature shall elect a person to fill the vacant position to serve only until the end of his predecessor's term.

SOURCE: GC § 1431. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5109. Suruhanu, Salary of.

The salary of the Suruhanu shall be established by a majority vote of the Legislature at the time of his election to office. During his term of office, the salary of the Suruhanu may be increased only upon the adoption of a resolution or a statute. The salary of the Suruhanu shall not be reduced during his term of office except as a part of a uniform and government-wide reduction of salaries of all elected officials and officers of the Government whose appointment is subject to the concurrence of the Legislature.

SOURCE: GC § 1432. Added by P.L. 14-99; renumbered by P.L. 15-83. R/R by P.L. 16-120.

§ 5110. Organization of Office.

(a) The Suruhanu shall select, appoint and fix the compensation within the amount available by appropriation of such other officers and employees, and including a Segundo Suruhanu as he may deem necessary to discharge his responsibilities under this Chapter. All officers and employees of his office shall be unclassified and shall serve at the Suruhanu's pleasure.

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(b) The Suruhanu may delegate to members of his staff any of his authority, powers or duties except this power of delegation and his duty to make any report under this Chapter. However, the Suruhanu may authorize the Segundo Suruhanu to act in his stead during illness, absence, leave or disability.

(c) The Suruhanu and his staff shall be entitled to participate in any employee benefit or retirement plan available to the government of Guam employees.

SOURCE: GC § 1433. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5111. Powers.

The Suruhanu shall have the following powers:

(a) To investigate, on complaint of a person but not an agency or on his own motion, any act of an agency without regard to its finality.

(b) To adopt, promulgate, amend and rescind rules and regulations required for the discharge of his duties, including procedures for receiving and processing complaints, conducting investigations and reporting his findings. However, he may not levy any fees for the submission or investigation of complaints.

(c) To examine the records and documents of any agency except those records and documents privileged from inspection because of their confidential nature, including but not limited to juvenile court records, tax records and other records specifically made confidential by law.

(d) To enter and inspect without notice the premises of any government agency.

(e) To subpoena any employee or agent of the government of Guam to appear, give sworn testimony or to produce documentary or other evidence that is reasonably material to his inquiry and to administer oaths and affirmations in all matters incident to his duties.

(f) To undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies as might lead to improvements in the functioning of agencies

(g) To obtain such information and make such inquiries from any agency or person as he shall require for the discharge of his duties.

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(h) To maintain secrecy in respect to all matters and the identities of the complainants or witnesses coming before him.

(i) To concern himself with the strengthening of procedures and practices which lessen the risk that objectionable administrative acts will occur.

(j) To bring civil proceedings in any appropriate court to enforce the provisions of this Chapter and to retain legal counsel to effectuate the intent of this Subsection and this Chapter.

SOURCE: GC § 1434. Added by P.L. 14-99; renumbered by P.L. 15-83; Subsection (e) amended by P.L. 15-83; Subsection (j) added by P.L. 16-24.

COURT DECISIONS: The Suruhanu, as part of the Legislative Branch, has the power to bring actions in court to enforce only the powers given him under the Suruhanu Act in chief, namely those powers related to his functions of investigation, reporting and recommending. The Suruhanu has no substantive enforcement powers. *Attorney General of Guam v. 16th Guam Legislature*, et al. Sup. Ct. Civ. No. 593-81 (1982).

§ 5112. Investigation of Complaints.

(a) The Suruhanu shall investigate any complaint alleging that an act of an agency is:

- (1) contrary to or inconsistent with law, regulation or agency practice;
- (2) based on mistaken facts or irrelevant considerations;
- (3) inadequately explained when reasons should have been revealed;
- (4) inefficiently performed; or
- (5) unreasonable, unfair or otherwise objectionable, even though in accordance with law.

Unless the Suruhanu at his discretion decides not to investigate a complaint because:

- (1) the complainant could reasonably be expected to use another remedy or channel, and then the Suruhanu shall furnish the complainant with written instructions on the procedural steps to be taken in connection with such other remedy or channel;
- (2) the complaint is trivial, frivolous, vexatious or not made in good faith;

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(3) the complaint has been too long delayed to justify present examination; and

(4) his resources are insufficient for adequate investigation in which case the Suruhanu shall refer the complaint to the proper legislative committee for investigation.

(b) The Suruhanu in his discretion may investigate any administrative act of an agency not enumerated in Subsection (a).

(c) If the Suruhanu declines to investigate a complaint he shall not be barred from reviewing on his motion acts of an agency whether or not included in the complaint.

SOURCE: GC § 1435. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5113. Rights of Complainant - Communication With Complainant.

(a) After the Suruhanu has decided whether or not to investigate a complaint, he shall suitably inform the complainant.

(b) The Suruhanu shall, if requested by the complainant, report the status of his investigation to the complainant.

(c) After investigation of a complaint, he shall suitably inform the complainant of his conclusion or recommendation, if appropriate, any action taken or to be taken by the agency involved.

(d) A letter to the Suruhanu from a person held in custody including by detention, incarceration and hospitalization - by an agency shall be forwarded immediately, unopened to the Suruhanu. A letter from the Suruhanu to such person shall be immediately delivered, unopened to the person.

(e) No person who files a complaint pursuant to this Chapter shall be subject to any penalties, sanctions or restrictions in connection with his employment because of such complaint.

SOURCE: GC § 1436. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5114. Rights of Agency.

(a) If the Suruhanu decides to investigate a complaint, he may, if he deems it appropriate, suitably inform the agency involved.

(b) Before announcing or reporting a conclusion or recommendation that criticizes or is adverse to an agency, the Suruhanu shall consult with that agency and permit the agency reasonable opportunity to reply.

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(c) If any report that he issues criticizes or is adverse to an agency, the Suruhanu shall include any brief statement the agency may provide.

SOURCE: GC § 1437. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5115. Recommendations.

(a) If, after investigation, the Suruhanu is of the opinion that an agency should:

- (1) consider the matter further;
- (2) modify or cancel an act;
- (3) alter a regulation, practice or ruling;
- (4) explain more fully the act in question;
- (5) rectify an omission; or

(6) take any other action; he shall state his recommendations and reasons therefor to the agency. If the Suruhanu so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendation or the reasons for not complying with them. After a reasonable period of time has elapsed, the Suruhanu may issue a report.

(b) If the Suruhanu believes that an action has been dictated by laws whose results are unfair or otherwise objectionable and should be revised, he shall bring his views concerning desirable statutory change to the attention of the Legislature and agency.

(c) If the Suruhanu believes that any person has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities without notice to that person.

SOURCE: GC § 1438. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5116. Reports.

The Suruhanu shall annually report on his activities to the Governor and to the Legislature.

SOURCE: GC § 1439. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5117. Suruhanu's Immunities.

(a) No proceeding, conclusion, recommendation or report of the Suruhanu or member of his staff shall be reviewable in any court, unless it contravenes the provisions of this Chapter.

(b) The Suruhanu and his staff shall have the same immunities from civil and criminal liabilities as a judge of this Territory.

(c) The Suruhanu and his staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this Chapter.

SOURCE: GC § 1440. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5118. Witnesses' Privileges.

Any person required to provide information under this Chapter shall be paid the same fees and travel allowances and accorded the same privileges and immunities, including right of assistance of counsel, as witnesses whose attendance has been required in the Superior Court.

SOURCE: GC § 1441. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5119. Obstruction.

Any person who willfully obstructs or hinders the proper and lawful exercise of the Suruhanu's powers or willfully misleads or attempts to mislead the Suruhanu in his inquiries, shall be guilty of a misdemeanor and subject to a fine of not more than One Thousand Dollars (\$1,000.00).

SOURCE: GC § 1442. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5120. Relation to Other Laws.

The provisions of this Chapter are in addition to and do not in any manner limit or affect the provisions of any other statute under which any remedy or right of appeal is provided for any person or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Suruhanu may be exercised notwithstanding any provision in any statute to the effect that any administrative action shall be final or unappealable.

SOURCE: GC § 1443. Added by P.L. 14-99; renumbered by P.L. 15-83.

§ 5121. Severability.

If any part of this Chapter shall be declared invalid, all other parts shall remain in full force and effect; the provisions of this Chapter are declared to be severable.

SOURCE: GC § 1444. Added by P.L. 14-99; renumbered by P.L. 15-83.
