



COMMITTEE ON RULES

I Mina'trentai Tres na Liheslaturan Guåhan • The 33rd Guam Legislature

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February 16, 2016

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

From: **Senator Rory J. Respicio**
Chairperson, Committee on Rules

Subject: **Supplemental to Committee Report on Bill No. 185-33 (COR)**

Hafa Adai!

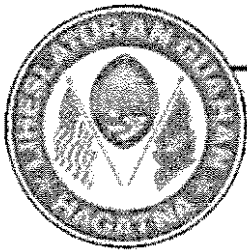
Transmitted herewith is a memo from Senator Frank Aguon, Jr., Chairperson, Committee on the Guam U.S. Military Relocation, Public Safety and Judiciary, forwarding Attachment for Bill No. 185-33 (COR).

Please include this memo and the attachment as a "Supplemental" to the Committee Report on Bill No. 185-33(COR).

Please make the appropriate indication in your records; and forward to MIS for posting on our website. I also request that the same be forwarded to all Senators of *I Mina'trentai Tres Na Liheslaturan Guåhan*.

Si Yu'os Ma'ase'!

RJR
2016 FEB 16 PM 4:10



February 12, 2016

MEMORANDUM

Senator
FRANK B. AGUON, JR.
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Member

Speaker
Dr. Judith T. Won Pat, Ed.D.
Ex-Officio

TO: Senator Rory Respicio
Clerk of the Legislature

FROM: SENATOR FRANK B. AGUON, JR.
Committee Chairman

RE: SUPPLEMENTAL TO COMMITTEE REPORT ON
BILL NO. 185-33 (COR)

A mark-up meeting was held on Monday, December 7, 2015 and on Thursday, February 11, 2016. Attached is the "As Substitute by the Author" Bill No. 185-33 (COR) version of both mark-up meetings, which we request to be a supplemental to the Committee Report for Bill No. 185-33 (COR).

Si Yu'os Mo'asol

SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Public Safety | Judiciary
I Mina' Trentai Tres Na Liheslaturan Guahan | 33rd Guam Legislature

I MINA' TRENTAI TRES NA LIHESLATURAN GUÁHAN
2015 (FIRST) Regular Session

Bill No. 185-33 (COR), as substituted
by the Author, and as further
Substituted on the Floor

Introduced by:

Dennis G. Rodriguez, Jr.
Tina Rose Muna-Barnes
FRANK B. AGUON, JR.
Rory J. Respicio
Thomas A. Morrison
V. Anthony Ada
Brant McCreadie

AN ACT TO AMEND § 11311.1 OF TITLE 7 AND ADD A NEW CHAPTER 16 TO TITLE 21, BOTH OF GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING AN EXPEDITED ADMINISTRATIVE PROCESS TO IDENTIFY LAND TAKINGS BY AGENCIES, ADDRESS CLAIMS, AND DETERMINE APPROPRIATE SETTLEMENTS RELATIVE TO PROPERTY EXPROPRIATED FOR PUBLIC PURPOSES BY THE GOVERNMENT OF GUAM WITHOUT DUE PROCESS; TO ADD A NEW SUBSECTION (d) OF § 2101, AND ADD A NEW ARTICLE 5 TO CHAPTER 4, DIVISION 1, OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR JUDICIAL PROCESSES; ADD A NEW CHAPTER 16 TO DIVISION 1 OF 21 GCA FOR CLAIMS FOR GOVERNMENT LAND TAKING AND CONDEMNATION ACTIONS; AND TO REQUIRE THE DEPOSIT OF PAYMENTS-IN-LIEU-OF-TAXES OWED PURSUANT TO § 22421 OF ARTICLE 4, CHAPTER 22, TITLE 5, GUAM CODE ANNOTATED, INTO THE LAND CLAIMS COMPENSATION FUND; TO ESTABLISH A DIVISION OF GOVERNMENT LAND TAKING; AND TO AUTHORIZE THE GOVERNOR TO ENTER INTO BINDING SETTLEMENT AGREEMENTS WITH LANDOWNERS FOR INVERSE CONDEMNATION TAKINGS BY THE GOVERNMENT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Short Title.** This Act *shall* be cited as the “Government Land
2 Takings Compensation Act of 2016.”

3 **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
4 that the manner and method of taking land for public easements must be in
5 accordance with the Organic Act of Guam and the laws of Guam. However, when
6 establishing easements, government agencies and instrumentalities have placed
7 utility infrastructure on private property without the proper exercise of eminent
8 domain or negotiated transfer. These encroachments have placed an unfair burden
9 upon citizens seeking redress, and only those who can afford attorney’s fees and
10 professional surveying services have the capacity to confirm that these
11 encroachments have violated the law.

12 *I Liheslaturan Guåhan* further finds that many landowners are unaware that
13 an inverse condemnation taking of their land has even occurred, and that their
14 rights to due process and just compensation has expired due to a four year statute
15 of limitations beginning from the time of taking. To use a single, but common
16 example; an easement map for a highway such as Route 4 which impacts their
17 property, and which, although it was developed by the Department of Public
18 Works and recorded with the Department of Land Management, lays in a drawer or
19 file cabinet unknown to and unheard of by the landowners, yet still constitutes a
20 taking with the clock on the four year statute of limitations running.

21 The November 1992, Audit Report No. 93-I-226 by the Office of the
22 Inspector General of the U.S. Department of the Interior brought glaringly to light
23 the inappropriate taking of land by the government of Guam for easements, with
24 significant attention in the report being placed upon Route 4 as an example.

25 It is the intent of *I Liheslaturan Guåhan* to equitably share the burden of
26 proof upon both the government entity alleged to have established the public
27 utilization, easement or placed the utility infrastructure on the private property in

1 question, and the landowner, thereby alleviating a portion of the onerous burden
2 currently borne solely by the landowner. Further, that upon receipt of a claim by
3 an agency based upon the submission of a sworn affidavit for a claim from a
4 landowner relative to an inverse condemnation taking impacting his land, the
5 agency *shall* be responsible to initiate a review and investigation of the claim, with
6 the assistance of the Department of Land Management and the Office of the
7 Attorney General. If it is found that government encroachment is proven,
8 claimants should be allowed just compensation from the time of the encroachment
9 determination. Market value should be calculated from time of the taking pro-
10 rated to the value at the time period, and claimant *shall* be entitled to receive
11 interest on the fair market amount due accruing from time of taking. *I Liheslaturan*
12 *Guåhan* recognizes that each land taking case is different, and the intent of the
13 mandate provided by this Act *shall* preclude a broad class action, thereby assuring
14 there is individual consideration of the unique parcels affected unless otherwise
15 deemed appropriate by the Court.

16 It is therefore the intent of *I Liheslaturan Guåhan* to authorize the Supreme
17 Court of Guam to establish a process within the courts dedicated to these matters,
18 make determinations as to claims, and determine adequate compensation; which
19 may include but is not limited to, creating a specialized court or docket, and
20 promulgating or amending court rules and procedures. In creating this process, the
21 Supreme Court shall take into consideration the time that these claimants have
22 been seeking compensation.

23 **Section 3.** Section 11311.1 of Article 3 of Chapter 11, Title 7, Guam Code
24 Annotated, is *amended*, to read:

25 **“§ 11311.1. Inverse Condemnation.** (a)(1) Any person whose land
26 was expropriated for public purposes by the government of Guam between
27 August 1, 1950, and July 1, 1994, and who has not been compensated by the

1 government of Guam for such taking, may institute an action for inverse
2 condemnation. In any taking by the government of Guam after July 1, 1994,
3 in which the government fails to follow the eminent domain provisions of
4 Title 21, Guam Code Annotated, the person whose land is taken *shall* have
5 five (5) ~~four (4)~~ years from the time of such taking to institute an action for
6 inverse condemnation pursuant to 21 GCA Chapter 16. It is further
7 provided, that for any taking from July 1, 1994 to the date of enactment of
8 this Chapter, the owner whose land was taken *shall* have five (5) years from
9 the date of taking to institute an action for inverse condemnation, or until
10 December 31, 2021, whichever is later.

11 (2) For purposes of this Section, only the owner as of the date of
12 taking, or the estate of the owner, of the land subject to the claim may seek
13 compensation dating back to the time of the taking. An action shall lie for
14 the taking of a person's fee or for lesser compensable interest in the property
15 which has been expropriated by the government of Guam without according
16 the person due process. In any action for inverse condemnation in which an
17 award is made to a person for a taking, the court *shall* also award interest
18 and reasonable attorney's fees and costs.

19 (b) The lands taken pursuant to inverse condemnation by the
20 government *shall not* be deemed to be subject to a class action. This
21 Subsection *shall* be interpreted with deference to the circumstance that there
22 is 1) no common issue of law or fact on behalf of all landowners subject to
23 inverse condemnations due to the unique nature of each parcel of land, and,
24 2) the damages are not typical to each and every landowner and must be
25 calculated on a separate basis.”

26 **Section 4.** A new Chapter 16 is hereby *added* to Division 1 of Title 21,
27 Guam Code Annotated, to read:

1 “Chapter 16

2 Claims for Government Land Taking and Condemnation Actions

3 § 16101. Agency to Determine Land Acquisition and Possession

4 Status for Inverse Condemnation Claims.

5 (a) The Department of Land Management and the Office of the Attorney
6 General shall be the lead agencies responsible for the coordination and
7 determination of the validity of a claim of inverse condemnation.

8 (b) All agencies, departments, authorities and instrumentalities, to include
9 autonomous agencies, of the government of Guam (collectively, “the agency”), in
10 conjunction with and under the supervision of the Department of Land
11 Management and the Office of the Attorney General, shall upon receipt of the
12 filing of a claim of inverse condemnation by a landowner or the landowners’
13 estate, that property has been expropriated by the government, initiate the process
14 to determine whether or not the land claimed is in its inventory, possession, or is
15 being utilized by it for public purposes, has been legally acquired from a private
16 landowner with due process.

17 It is further provided that the Guam Waterworks Authority, the Guam Power
18 Authority, and the Department of Public Works, shall utilize their agency’s
19 expertise and resources relative to the placement and utilization of easements, and
20 the development of public facilities, to fully facilitate the conduct of the
21 investigation and determination by the Department of Land Management and the
22 Office of the Attorney General of the validity of claims filed for inverse
23 condemnation for property in their inventory, possession, or which is being utilized
24 by the Authority or Department for public purposes.

25 (c) Upon receipt of the filing of a claim, the agency shall initiate and
26 complete the process, at its sole expense, of identifying and determining if land(s)
27 claimed by the landowner, if any, were acquired through inverse condemnation and

1 for which no administrative or judicial proceeding was conducted whereby due
2 process was accorded the landowner, as of the date of enactment of this Chapter.

3 (d) The agency shall provide written notice to the landowner or the
4 representative of the estate filing the claim, as well as provide public notice by
5 publishing in a newspaper of general circulation, for five (5) days, the name of the
6 landowner of record as of the date of taking as recorded with the Department of
7 Land Management, property location, recorded lot description, size of area taken;
8 and affirming or denying the claimants' right to file an action for inverse
9 condemnation with the government pursuant to this Chapter.

10 § 16102. Filing a Claim. Any person or estate claiming land was
11 expropriated by the government of Guam and has not been compensated by the
12 government for such taking may file a sworn affidavit for a claim for inverse
13 condemnation with the agency claimed to have expropriated such land. The
14 agency shall in turn file notice of the claim, along with all accompanying
15 documentation or information in the possession of the agency and provided by the
16 claimant, with the Department of Land Management and the Office of the
17 Attorney. In any taking by the government of Guam after July 1, 1994, in which
18 the government failed to follow the eminent domain provisions of 21 GCA, a claim
19 may be filed for inverse condemnation within five (5) years from the date of
20 enactment of this Chapter to institute an action for inverse condemnation,
21 commencing from the date of enactment, or by December 31, 2021, whichever is
22 later. Such claim shall precede the filing of any action pursuant to § 7 GCA §
23 11311.1. All claims shall include documentation that the owner or the owners'
24 estate has real interest in the subject property as of the date of the taking.

25 § 16103. Administrative and Claims Status Review of Real Property by
26 Government.

1 (a) Upon receipt of a claim and the review and consideration of relevant
2 information, documentation or evidence, the head of an agency to which a claim
3 was filed shall have one hundred eighty (180) days to investigate the claim, and
4 shall make written findings as to whether or not an inverse condemnation taking
5 has occurred due to a public benefit requirement for utilization of the land initiated
6 or caused by the agency without due process. As part of the claims status review
7 process, the head of an agency shall prepare a record in support of its written
8 findings.

9 (b) The agency head shall transmit the written findings to the agency's
10 governing board, if any, and who shall then provide a copy to I Maga'laha
11 Guãhan who shall submit a request to I Liheslaturan Guãhan for a settlement
12 authorization and appropriation. If the written findings conclude that the claim is
13 invalid, the agency has one hundred fifty (150) days to determine just compensation
14 based upon the average of two (2) appraisals of the fair market value of the
15 property at the time of the taking. If, however, the written findings conclude the
16 claim is not valid, the agency must provide written notice to the claimant. Such
17 notice shall advise the claimant of the right to file an action for inverse
18 condemnation pursuant to 7 GCA § 11311.1, or to appeal pursuant to § 16104 of
19 this Chapter.

20 (c) Cost of Investigation, Confirmation, and Appraisals. The agency with
21 the land in its inventory, possession, or which is being utilized by it for public
22 purposes, as provided pursuant to this Chapter, shall pay for the cost of
23 investigating and confirming a claim, surveys and two (2) appraisals the subject
24 property. In the event that a claim is determined not to be valid, is frivolous and/or
25 fraudulent, the claimant shall be held liable for any amounts expended to
26 investigate the claim, to include the survey and appraisal of the subject property.

1 (d) The Department of Land Management shall provide assistance to any
2 agency requesting information in the investigation of a claim upon land in its
3 possession, or which is being utilized by it for public purposes, has been legally
4 acquired from a private landowner through the conduct of a negotiated settlement
5 or judicial process. The Department may review any records, documentation or
6 pertinent evidence in its consideration of a claim.

7 (e) All information obtained through the research and investigation of a
8 claim as to the status of lands taken shall be deemed public information, and shall
9 be made readily available to the landowner and the general public.

10 (f) This Chapter shall not be applicable to claims that have been
11 extinguished by negotiated settlement or judicial process and for which any
12 settlement has been duly recorded and may be reviewed to substantiate a
13 settlement.

14 (g) This Chapter shall not be applicable to any land that has been the subject
15 of a voluntary subdivision pursuant to 21 GCA, Chapter 62 – Subdivision Law,
16 and whereby a government of Guam agency had not initiated nor was a party to the
17 action, except to the extent of ensuring compliance with applicable law, rule or
18 regulation relative to the subdivision of property.

19 § 16104. Appeal. A decision under this Section shall be appealed by the
20 landowner to the Superior Court of Guam within thirty (30) days after receipt by
21 the landowner of the notice of decision. The appeal shall include the written
22 findings of the agency and the record in support of the findings as required by §
23 16103.

24 § 16105. Land Claims Compensation Fund. There is hereby established a
25 special fund to be known as the Land Claims Compensation Fund (“the Fund”) to
26 be maintained by the Judiciary of Guam. The Fund shall be established and
27 maintained in a bank account apart and separate from the General Fund or any

1 other bank account(s) of the government of Guam, and shall not be co-mingled
2 with, or a part of, the General Fund. The Fund shall be solely utilized to pay
3 settlements, in whole or in part, to landowners who have had their property taken
4 by the government of Guam for public purposes. I Maga'lahen Guåhan shall
5 provide for in the annual Fiscal Year Executive Branch budget request, beginning
6 Fiscal Year 2017, a request for an appropriation for a minimum sum of Five
7 Hundred Thousand Dollars (\$500,000.00), which shall be deposited in the Fund.

8 § 16106. Effective date. The provisions of this chapter shall apply to
9 claims filed after enactment.”

10 **Section 5.** A new subsection (d) of § 2101 of Chapter 2, Title 7, Guam
11 Code Annotated, is hereby *added*, to read:

12 “(d)(1) Authorization and Purpose. The Supreme Court of Guam is hereby
13 authorized to establish processes and procedures within the courts of Guam for the
14 purposes of judicial review and determination of civil actions or matters pertaining
15 but not limited to, land taking by inverse condemnation or eminent domain by the
16 government of Guam.

17 The purpose of this dedicated process is to provide a speedy and efficient
18 legal process for government land takings and inverse condemnation cases
19 appealed from agency decisions pursuant to 21 GCA Chapter 16 that will assist the
20 Superior Court judicial officers in adjudicating such.

21 (2) Functions and Duties of Land Division Judicial Officers. Upon
22 establishment of such process by the Supreme Court, (The Land Division judicial
23 officer shall have the following duties in relation to government land takings and
24 inverse condemnation matters only:

25 (A) To take testimony and receive evidence for the record;

26 (B) To hear and decide motions and matters, unless the same are
27 appealed by any party, including but not limited to the following matters:

- 1 (i) Orders to show cause for contempt;
2 (ii) Motions of joinder;
3 (iii) Motions to amend pleadings or to dismiss;
4 (iv) Pretrial settlement conferences;
5 (v) Motions to withdraw;
6 (vi) Mediation to compel discovery;
7 (vii) To conduct informal office conferences with the parties to
8 discuss and resolve problems or questions about any matters relating
9 to claims of government land takings or inverse condemnation;
10 (viii) To refer appropriate cases to mediation; and
11 (ix) To adjudicate the claim.

12 (C) Subpoena powers. A judicial officer or the clerk of court
13 may issue subpoenas and subpoenas *duces tecum* at the request of any
14 party in accordance with the provisions of § 7201, *et seq.*, of Title 6,
15 Guam Code Annotated.

16 (3) All decisions of the ~~Land Division~~ judicial officer *shall* be final unless,
17 within thirty (30) days of the filing of the written decision adjudicating the claim,
18 the claimant or the government files a notice of appeal with the clerk of the
19 Superior Court. The notice of appeal shall specify the party or parties taking the
20 appeal. The clerk of the Superior Court shall service notice of the filing of a notice
21 of appeal by mailing a copy thereof to the head of the agency that adjudicated the
22 claim. For purposes of the appeal, the record on appeal shall consist of the record
23 created pursuant to the claims status review process set forth in 21 GCA § 16103,
24 which shall be filed by the party taking the appeal.”

25 **Section 6.** § 22421 of Article 4, Chapter 22, Title 5, Guam Code Annotated,
26 is hereby *amended*, to read: