

2011 AUG 11 11:12 AM
ce/ton

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 286-31COR

Introduced by:

Adolpho B. Palacios, Sr. 

**AN ACT RELATIVE TO GRANTING INCREASED
AUTONOMY ON FINANCIAL AND PERSONNEL
MATTERS TO THE OFFICE OF THE ELECTED
ATTORNEY GENERAL, BY AMENDING §30109 AND
§30118, AND BY ADDING A NEW §30121, §30121.1
AND §30121.2, ALL OF CHAPTER 30, DIVISION 3,
TITLE 5, GUAM CODE ANNOTATED.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that the people of Guam first elected an Attorney General for the
4 government of Guam in 2002. The election of the position of the Attorney
5 General provides for more independence of that office from *I Maga'lahi* and
6 *I Liheslatura*, which is appropriate for the wide-ranging duties of the
7 Attorney General as the chief legal officer of the government of Guam.

8 *I Liheslatura* further finds that the Office of the Attorney General
9 experiences difficulties with government bureaucracy, specifically
10 concerning personnel recruitment and the release of funds appropriated to
11 the Office. These problems have diminished the ability of the Office of the
12 Attorney General to effectively and efficiently execute its responsibilities as
13 the government of Guam's chief legal representative.

14 *I Liheslaturan Guåhan* finds that the Public Defender Service
15 Corporation (PDSC), as provided in Title 12, Guam Code Annotated, is

1 authorized to administer its budgetary resources and matters pertaining to
2 personnel. This level of autonomy allows for the PDSC to efficiently
3 manage its financial resources and to recruit in a timely manner, and retain
4 personnel critical to supporting the mandates of the PDSC.

5 *I Liheslaturan Guåhan* further finds that it is manifestly in the interest
6 of the people of Guam that the Attorney General shall have more autonomy
7 over the operations of the agency in which he heads. It is only appropriate
8 that the Attorney General have more control over the administration of the
9 Office’s budgetary resources and the management of its personnel, including
10 the recruitment, hiring and retention process. This will only enhance its
11 independence and its credibility in the rendering of legal opinions, carrying
12 out its prosecutorial responsibilities and performing the other duties of the
13 Office.

14 Therefore, it is the intent of *I Liheslaturan Guåhan* to amend and add
15 provisions in Title 5, Guam Code Annotated, which grant the Office of the
16 Attorney General a level of autonomy similar to the PDSC relative to the
17 recruitment, hiring and retention of agency personnel, and the proper
18 administration of its financial matters.

19 **Section 2. Duties of the Attorney General.** Section 30109 of
20 Chapter 30, Division 3, Title 5, Guam Code Annotated, is hereby *amended*.

21 **“§30109. Duties.**

22 The Attorney General is the public prosecutor and, by himself,
23 a deputy or assistant, shall:

- 24 (a) Conduct on behalf of the Government of Guam the
25 prosecution of all offenses against the laws of Guam which
26 are prosecuted in any of the courts of Guam, the District
27 Court of Guam, and any appeals therefrom.

1 (b) Draw all informations, conduct grand jury proceedings,
2 prosecute all recognizances forfeited in the courts and all
3 actions for the recovery of debts, fines, penalties and
4 forfeitures accruing to the government of Guam, except as
5 otherwise provided in this Act;

6 (c) Conduct on behalf of the government of Guam all civil
7 actions in which the government is an interested party;
8 provided that those branches, departments or agencies which
9 are authorized to employ their own legal counsel may use
10 them instead of the Attorney General.

11 (d) Deliver receipts of money or property received by him in his
12 official capacity and file duplicates thereof with the Director
13 of Administration;

14 (e) As soon as practical after the receipt of any money in his
15 official capacity, turn the money over to the Director of
16 Revenue and Taxation, and on the first Monday of each
17 month file with the Director of Administration, an account,
18 verified by his oath, of all monies received by him in his
19 official capacity for the government of Guam during the
20 preceding month;

21 (f) Be diligent in protecting the rights and properties of the
22 government of Guam;

23 (g) Institute by any appropriate action proceedings on behalf of
24 himself or any other public officers (not an employee) to
25 have determined by the courts the validity of any law, rule
26 or regulation of the government of Guam; ~~and~~

27 (h) Prepare and submit annual budgets for approval by I

1 *Liheslaturan Guåhan.*

2 (i) Administer federal funds/programs on behalf of the Office
3 of the Attorney General.

4 (j) Serve as the Office of the Attorney General’s approving
5 authority for the expenditure of funds.

6 (k) Serve as the Office of the Attorney General’s appointing
7 authority for all personnel employed at the Office of the
8 Attorney General, hiring employees from an established list
9 of qualified applicants in accordance with established
10 criteria and assigning, detailing, and transferring employees
11 as the Attorney General deems necessary for the effective
12 operation of the Office of the Attorney General; and

13 (l) Perform such other duties as are required by law.”

14 **Section 3. Budget and Financial Matters of the Attorney**
15 **General’s Office.** Section 30118 of Chapter 30, Division 3, Title 5, Guam
16 Code Annotated, is hereby *amended*.

17 **“§30118. Budget and Financial Matters.**

18 The Office of the elected Attorney General shall receive an
19 annual budget pursuant to appropriation by *I Liheslaturan Guåhan*,
20 which shall be disbursed to the Office in twelve (12), equal monthly
21 installments. ~~The budget of the elected Attorney General is not~~
22 subject to the allotment process or the control of the Bureau of Budget
23 and Management Research, nor shall *I Maga’lahen Guåhan* impound
24 or transfer funds appropriated to the elected Attorney General. The
25 Office of the elected Attorney General shall receive from the
26 Department of Administration, or its successor, an amount no less
27 than one twelfth (1/12) of its budget on the first day of every month of

1 the fiscal year until such budget has been exhausted. ~~On~~ In a month
2 where in which more than two (2) pay periods shall occur, the
3 Department of Administration shall release such funds required for
4 the purpose of meeting the operational needs of the Office of the
5 elected Attorney General for that month, provided a sufficient balance
6 of the appropriation remains.

7 **§30118.1. Fiscal Authority Accounting; Expenditures.**

8 (a) The Office of the Attorney General shall be responsible for
9 the conduct of operational matters addressing its financial
10 activities, in accordance with and consistent with the
11 provisions contained herein.

12 (b) The Department of Administration shall establish, for the
13 benefit of the Office of the Attorney General, a fund to be
14 known as the “Office of the Attorney General Operations
15 Fund”, hereafter referred to as the “Fund”, which shall be
16 maintained by the general administrative services of the
17 Department of Administration separate and apart from other
18 funds of the government of Guam, and independent records
19 and accounts shall be maintained in connection therewith.
20 Financial Statements, entailing the revenues generated and
21 expenses incurred, of the Fund shall be furnished to I
22 Liheslaturan Guåhan quarterly, or as otherwise required by
23 law.

24 (c) All monies, excepting monies required by law to be
25 deposited in a special fund, received by the Office of the
26 Attorney General, from whatever source derived, shall be
27 deposited into the Fund bank account in an eligible bank as

1 defined in 5GCA §21112, which is procured by the
2 Department of Administration.

3 (d) All expenditures from the Fund shall be made by the
4 Department of Administration at the direction of the Office
5 of the Attorney General.

6 (e) The Department of Administration shall adopt a uniform
7 system of accounting, consistent with other government of
8 Guam requirements, for the Fund and special funds of the
9 Office of Attorney General.”

10 **Section 4. Administration of Personnel Matters by the Office of**
11 **the Elected Attorney General of Guam.** A new §30121, §30121.1 and
12 §30121.2 are hereby *added* to Chapter 30, Division 3, Title 5, Guam Code
13 Annotated.

14 **“§30121. Administration of General Personnel Matters.**

15 The Office of the Attorney General shall be responsible for the
16 conduct of operational matters addressing its personnel activities, in
17 accordance with and consistent with the provisions contained herein.

18 **§30121.1. Administration of Personnel.**

19 The Attorney General of Guam is authorized to hire and appoint
20 such personnel, and to fix their duties and responsibilities under and in
21 accordance with 4GCA, as may be necessary for the purposes of this
22 Chapter.

23 **§30121.2. Employment.**

24 (a) Pursuant to the provisions of 4GCA §4105, the Attorney
25 General may establish rules and regulations governing
26 selection, promotion, performance evaluation, demotion,
27 suspension and other disciplinary action for the employees

1 of the Office of the Attorney General. Until such time as the
2 Office of the Attorney General adopts its own rules and
3 regulations as provided herein, the rules and regulations
4 adopted by the Department of Administration shall continue
5 to apply to the Office of the Attorney General.

6 (b) Employees of the Office of the Attorney General shall
7 continue to be members of the government of Guam
8 Retirement Fund, subject to the provisions of 4GCA §8105.
9 The Office of the Attorney General shall contribute to the
10 government of Guam Retirement Fund on the basis of
11 annual billings as determined by *I Liheslaturan Guåhan* or
12 the government of Guam Retirement Fund, for the
13 government share of the cost of the retirement benefits
14 applicable to the Office of the Attorney General employees
15 and their beneficiaries. The Office of the Attorney General
16 shall also contribute to the Workmen’s Compensation Fund,
17 on the basis of annual billings as determined by the
18 Workmen’s Compensation Commissioner, for the benefit
19 payments made from the Workmen’s Compensation Fund
20 on account of the Office of the Attorney General’s
21 employees.”

22 **Section 5. Effective Date.** The provisions contained herein shall be
23 effective following enactment.

24 **Section 6. Severability.** If any provision of this Act or its
25 application to any person or circumstance is found to be invalid or contrary
26 to law, such invalidity shall not affect other provisions or applications of this

- 1 Act which can be given effect without the invalid provisions or application,
- 2 and to this end the provisions of this Act are severable.