

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

Bill No. 308-31 (LS)

Introduced by:

V.C. Pangelinan
J.T. Won Pat, Ed.D.

2011 SEP 19
PH 1:18

AN ACT TO APPROPRIATE ONE MILLION THREE HUNDRED SIXTY THOUSAND NINE HUNDRED FORTY THREE DOLLARS (\$1,360,943) FROM THE SUPPLEMENTAL APPROPRIATIONS REVENUE FUND TO THE UNIVERSITY OF GUAM FOR ITS FY 2012 OPERATIONS, FOR THE PAYMENT OF TAX YEAR 2010 INCOME TAX REFUNDS AND TO AMEND 5GCA RELATIVE TO IMPROVING FISCAL DISCIPLINE.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Statement and Intent.** *I Liheslaturan Guåhan*
2 finds that a Memorandum of Understanding (MOU) between the government of
3 Guam and the United States Department of the Interior (USDO I) was signed in
4 September of 2008 by the Director of the Department of Revenue and Taxation,
5 the Director of the Bureau of Budget and Management Research, and the Director
6 of the USDO I Office of Insular Affairs. Due to the over-estimations, Section 30
7 funds remitted to the government of Guam by the United States, the amount of
8 Twenty Three Million Two Hundred Thirty Three Thousand One Hundred Eight
9 One Dollars (\$23,233,181) was identified as an overpayment of Section 30 funds

1 to the government of Guam. This MOU acknowledged the government of Guam's
2 agreement that the amount indicated as an overpayment be offset with future
3 Section 30 funds remitted to the government of Guam for fiscal years 2010 through
4 2013 in the amount of approximately Five Million Eight Hundred Eight Thousand
5 Three Hundred Dollars (**\$5,808,300**) each fiscal year.

6 *I Liheslaturan Guåhan* further finds that the original Bill No. 145-31, the
7 Executive Budget Request from *I Maga'låhen Guåhan*, recognized Fifty Million
8 Two Hundred Twenty Eight Thousand Eight Hundred Fifty Five Dollars
9 (**\$50,228,855**) of Federal Income Tax Collection – Section 30 which is net of the
10 Five Million Eight Hundred Eight Thousand Two Hundred Ninety Five Dollars
11 (**\$5,808,295**) Overpayment Reconciliation of Section 30 Funds indicated in the
12 September 2008 MOU.

13 *I Liheslaturan Guåhan* deplores the difficulty the Committee on
14 Appropriations had in obtaining information legally mandated to be provided by
15 the Bureau of Budget and Management Research (BBMR) in accordance with
16 Public Law 30-219. The Administration's practice of preaching transparency,
17 while concealing information, is clearly becoming its emerging policy. Information
18 necessary for the Committee on Appropriations for proper budgeting purposes,
19 were withheld from the Committee. Information was only provided via a Freedom
20 of Information Act request that was sent to the BBMR to obtain such
21 communications, correspondences, etc. that are legally mandated to be provided to
22 *I Liheslaturan Guåhan*.

23 Through the Freedom of Information Act request, the Committee received a
24 letter dated September 1, 2011, from *I Maga'låhen Guåhan* to the Assistant
25 Secretary of the Interior, Office of Insular Affairs, Anthony M. Babauta, which
26 requested Fifty Three Million One Hundred Twenty Five Thousand Nine Hundred
27 Forty Nine Dollars (**\$53,125,949**) of Section 30 funds, Two Million Eight Hundred

1 Ninety Seven Thousand Ninety Four Dollars (**\$2,897,094**) more than what was
2 included in the Governor's Executive Budget Request. Also in this letter, *I*
3 *Maga'låhen Guåhan* requested a decrease of the Overpayment Reconciliation of
4 Section 30 Funds for FY 2012 from the Five Million Eight Hundred Eight
5 Thousand Two Hundred Ninety Five Dollars (**\$5,808,295**) submitted in the
6 budgets transmitted to *I Liheslaturan Guåhan* by *I Maga'låhen Guåhan* after the
7 September 1, 2011 letter, amount to only Five Hundred Thousand Dollars
8 (**\$500,000**), while also requesting to spread the remainder owed in the September
9 2008 MOU, which was to be paid by September 2012, to be spread over the next
10 five years as follows:

11	September 2011	\$500,000
12	September 2012	1,500,000
13	September 2013	2,000,000
14	September 2014	3,000,000
15	September 2015	<u>4,616,600</u>
16		\$11,616,600

17 *I Liheslaturan Guåhan* further finds that if the FY 2012 Section 30 advance
18 request calculation and the request to amend the September 2008 MOU is
19 approved by the USDOJ, the government of Guam will receive an additional Two
20 Million Eight Hundred Ninety Seven Thousand Ninety Four Dollars (**\$2,897,094**)
21 in Section 30 funds for FY 2012 that was not included in the General Fund
22 estimates for Section 30 in Bill 1 (2-S) (*Annual Appropriations Act of FY 2012*)
23 passed by *I Liheslaturan Guåhan* and transmitted to *I Maga'låhen Guåhan* in
24 September of 2011.

25 It is *I Liheslaturan Guåhan*'s intent to appropriate additional funds to cover
26 the operational expenditures at the University of Guam in lieu of implementing a
27 burdensome student tuition increase in the upcoming semesters. This additional

1 support to the University will still require to implement its austerity programs
2 which will result in a savings of approximately One Million Nine Hundred
3 Thousand Dollars (**\$1,900,000**) in FY 2012 through utility conservation, temporary
4 salary reductions and other efforts as presented to the Board of Regents.

5 *I Liheslaturan Guåhan* intends to continue to direct additional revenues to
6 the payments of tax refunds as well and intends to appropriate the excess funds
7 toward the payment of Tax Year 2010 A-Status Income Tax Returns.

8 **Section 2.** The sum of Two Million Eight Hundred Ninety Seven
9 Thousand Ninety Four Dollars (**\$2,897,094**) from Section 30 Funds for FY 2012
10 *shall* be deposited into the Supplemental Appropriations Revenue Fund *only* for
11 the use of the appropriations herein for FY 2012. The deposit in this Section *shall*
12 occur *no later than* fifteen (15) days after the enactment of this Act.

13 **Section 3. Appropriation to the University of Guam.**

14 (a) The sum of One Million Three Hundred Sixty Thousand Nine Hundred
15 Forty Three Dollars (**\$1,360,943**) is appropriated from the Supplemental
16 Appropriations Revenue Fund to the University of Guam for its
17 operations in Fiscal Year 2012.

18 (b) The appropriation in Section 3(a) is contingent upon a sending of a
19 resolution duly passed by the University of Guam Board of Regents to
20 the Speaker of *I Liheslaturan Guåhan* and *I Maga'låhen Guåhan* that the
21 University of Guam *will not* increase its tuition in the Spring 2012 and
22 Fall 2012 semesters which *shall* be due *no later than* sixty (60) days after
23 the enactment of this Act.

24 **Section 4. Appropriation for Tax Year 2010 "A-status returns."** The
25 sum of One Million Five Hundred Thirty Six Thousand One Hundred Fifty One
26 Dollars (**\$1,536,151**) is appropriated from the Supplemental Appropriations
27 Revenue Fund to pay for Tax Year 2010 "A-status returns" and *shall* be transferred

1 into the Income Tax Refund Efficient Payment Trust Fund *no later than* thirty (30)
2 days after the enactment of this Act. The deposits into the Income Tax Refund
3 Efficient Payment Trust Fund in this Section *shall* be separate and apart from and
4 *shall not be* credited as a deposit mandated in §51102 of Chapter 51 of Title 11 of
5 the Guam Code Annotated. For the purposes of this Section, A-status returns
6 means income tax returns that are certified by the Guam Department of Revenue
7 and Taxation as ready for payment.

8 **Section 5. Appropriations Contingent Upon Approval by the USDOJ**
9 **of Section 30 Advance for FY 2012.** The appropriations in Sections 3 and 4 of
10 this Act are contingent upon approval of the final official Section 30 advance for
11 FY 2012 by the USDOJ.

12 **Section 6. Legislative Intent - Income Tax Refund Provision Payment**
13 **Assurance for FY2012.** *I Liheslaturan Guåhan* finds that the income tax
14 provision in the *Annual Appropriations Act of FY 2011* in the amount of One
15 Hundred Million Sixty Two Thousand Dollars (\$100,062,000) has not been
16 deposited into the Income Tax Refund Efficient Payment Trust Fund by the current
17 Administration in accordance with §51102 of Chapter 51 of Title 11 of the Guam
18 Code Annotated.

19 *I Liheslaturan Guåhan* further finds that the current Administration has
20 admitted, in several instances, on the record and under oath, that such deposits
21 have not been made citing a multitude of reasons for not following the law.

22 *I Liheslaturan Guåhan* further finds that One Hundred Five Million Dollars
23 (\$105,000,000) was provisioned in Bill 1 (2-S) as passed by *I Liheslaturan*
24 *Guåhan* and transmitted to *I Maga'låhen Guåhan*. Before *I Liheslaturan Guåhan*
25 in the Committee of the Whole, when asked if the full provision is planned to be
26 set aside in FY 2012 as budgeted in the FY 2012 budget act as passed, the Chief

1 Fiscal Advisor of *I Maga'låhen Guåhan*, under oath, stated “if we want to run the
2 government into the ground.”

3 *I Liheslaturan Guåhan* further finds that in a letter from *I Maga'låhen*
4 *Guåhan* sent to *I Liheslaturan Guåhan* on September 7, 2011, *I Maga'låhen*
5 *Guåhan* stated that “[t]here are no revenues to support these continuing
6 appropriations.” Furthermore, the Director of the Department of Administration
7 has publicly voiced concerns over continuing appropriations that have no identified
8 revenue source that may exacerbate the revenues in FY 2012.

9 *I Liheslaturan Guåhan* further finds that Sections 7, 8, and 9 of this Act are
10 paramount in providing more assurances that the current Administration will set
11 aside the full provision for income tax refunds of One Hundred Five Million
12 Dollars (\$105,000,000) in FY 2012 and will deposit that amount in the Income Tax
13 Refund Efficient Payment Trust Fund in accordance with §51102 of Chapter 51 of
14 Title 11 of the Guam Code Annotated, and that the continuing appropriations
15 language included in Bill 1 (2-S) as passed by *I Liheslaturan Guåhan*, will not
16 deter or prevent these deposits and subsequent payment of the provisioned income
17 tax refund payments in FY 2012.

18 **Section 7. A new Subsection (g) is added to § 4109 of Title 5, Guam**
19 **Code Annotated to read:**

20 **“§ 4109. Program Execution.**

21 (g) Continuing Appropriations

22 (1) shall not be filled in the first quarter of the current fiscal
23 year if the Monthly Comparative Revenue and Expenditure Analysis
24 Report filed pursuant to 5GCA § 4109(c)(3) in September of the
25 previous fiscal year indicates unfavorable revenue collections to
26 estimated revenues;

1 (2) shall not be filled after the first quarter of the current fiscal
2 year if the cumulative year-to-date current fiscal year deposits into the
3 Income Tax Refund Efficient Payment Trust Fund are less than the
4 budgeted provision pursuant to the monthly audits required pursuant
5 to 11GCA § 51106(b).

6 (3) may be filled for any current fiscal year expenses and shall
7 automatically de-appropriate the equal amount from the branch,
8 agency or department from its current fiscal year revenues
9 appropriated. The de-appropriated revenues, if available on
10 September 1 of the current fiscal year are reserved for the branch,
11 agency or department which may be expended by a new Legislative
12 appropriation.

13 **Section 8. A new Subsection (x) is added to § 4117 of Title 5, Guam**
14 **Code Annotated to read:**

15 **“§ 4117. Definitions.**

16 (x) Continuing Appropriations include all unexpended and
17 unencumbered balance of appropriations available to support obligations for
18 a specified purpose or project, even when these obligations are incurred
19 beyond the budget year.”

20 **Section 9. Reaffirmation of 5GCA, § 4118.**

21 **“§ 4118. Cash Reports from the Department of Administration.**

22 The Director of Administration shall certify and submit to *I*
23 *Maga’lahen Guåhan*, the Speaker of *I Liheslaturan Guåhan*, and the
24 Director of the Bureau of Budget and Management Research the following
25 reports, which shall also be certified by the Treasurer of Guam:

1 (a) Treasurer of Guam's Monthly General Fund Cash Position Report,
2 which shall be submitted *no later than* five (5) days after the end of each
3 month.

4 (b) Treasurer of Guam's Weekly General Fund Cash Flow Report,
5 inclusive of unrestricted and restricted accounts, with comparisons of actual
6 to forecasted cash receipts, which shall be submitted *no later than* five (5)
7 days after the end of each week.

8 (c) Department of Administration's Weekly Cash Disbursement
9 Analysis, which shall be submitted *no later than* five (5) days after the end
10 of each week.

11 (d) Reports listed above in Subsections (a), (b), and (c) shall be posted
12 on the *I Maga'lahaen Guåhan's* website, the Department of Administration's
13 website, the Bureau of Budget and Management Research's website, and the
14 Department of Revenue and Taxation's website."

15 **Section 10. Severability.** If any provisions of this Act or the application
16 thereof to any person or circumstance is held invalid, such invalidity *shall* not
17 affect any other provision or application of this Act which can be given effect
18 without the invalid provision or application, and to this end the provisions of this
19 Act are severable.