



# COMMITTEE ON RULES

*I Mina'trentai Unu na Lihelaturan Guåhan* • The 31<sup>st</sup> Guam Legislature  
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Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

October 5, 2012

## MEMORANDUM

Senator  
Judith P. Guthertz  
VICE CHAIRPERSON  
ASST. MAJORITY LEADER

To: Patricia C. Santos  
*Clerk of the Legislature*

### MAJORITY MEMBERS:

From: Senator Rory J. Respicio  
*Majority Leader & Rules Char*

Speaker  
Judith T. Won Pat

Subject: Supplement to Committee Report -  
Substitute Bill No. 513-31 (COR)

Vice Speaker  
Benjamin J. F. Cruz

*Hafa Adai!*

Senator  
Tina Rose Muña Barnes  
LEGISLATIVE SECRETARY  
MAJORITY WHIP

Transmitted herewith is a supplement to the Report on Substitute Bill No. 513-31 (COR) ""AN ACT TO PROVIDE HEALTH INSURANCE TO GOVERNMENT OF GUAM EMPLOYEES AND RETIREES FOR FISCAL YEAR 2013"" submitted by Senator vincente c. pangelinan.

Senator  
Dennis G. Rodriguez, Jr.  
ASST. MAJORITY WHIP

Please include this memo and the attachment as a "Supplement" to the Committee Report on Substitute Bill No. 513-31 (COR).

Senator  
Thomas C. Ada

Senator  
Adolpho B. Palacios, Sr.

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 Unu na Lihelaturan Guåhan*.

Senator  
vicente c. pangelinan

### MINORITY MEMBERS:

*Si Yu'os ma'åse'!*

Senator  
Aline A. Yamashita  
ASST. MINORITY LEADER

Senator  
Christopher M. Duenas



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# Supplement to the Committee Report on Substitute Bill No. 513-31 (COR)

**"AN ACT TO PROVIDE HEALTH INSURANCE  
TO GOVERNMENT OF GUAM EMPLOYEES  
AND RETIREES FOR FISCAL YEAR 2013."**

\*NOTE: The original Committee Report on  
Substitute Bill No. 513-31 (COR)  
was filed on October 1, 2012.




I Mina'trentai Unu Na Liheslaturan Guåhan

Senator Vicente (ben) Cabrera Pangelinan (D)

October 3, 2012

Memorandum

To: Senator Rory Respicio  
Chairman, Committee on Rules

From: Senator Vicente (ben) Cabrera Pangelinan 

Re: Testimony

Chairman  
Committee on Appropriations,  
Taxation, Public Debt, Banking,  
Insurance, Retirement, and  
Land

Vice Chairman  
Committee on Education

Member  
Committee on Rules,  
Federal, Foreign &  
Micronesian Affairs and  
Human & Natural  
Resources

Member  
Committee on  
Municipal Affairs,  
Tourism, Housing, and  
Recreation

Member  
Committee on the Guam  
Military Buildup and  
Homeland Security

Member  
Committee on Health and  
Human Services, Senior  
Citizens, Economic  
Development, and Election  
Reform

Please accept the attached testimony received from the Office of the Attorney General relative to Bill No. 513-31 (COR) on October 3, 2012.

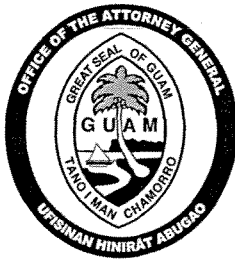
I ask that the attached testimony be included in the Committee Report, which was filed with the Committee on Rules on October 1, 2012.

*Si Yu'os Ma'ase.*

cc: Committee Members

10-4-12  
Sent

Leonardo M. Rapadas  
*Attorney General*



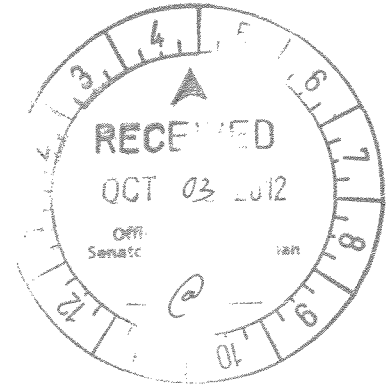
Philip J. Tydingco  
*Chief Deputy Attorney General*

## OFFICE OF THE ATTORNEY GENERAL

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October 3, 2012

Honorable Vicente (ben) C. Pangelinan  
Chairman, Committee on Appropriations, Taxation,  
Public Debt, Banking, Insurance, Retirement, and Land  
I Mina Trentai Unu Na Liheslaturan Guåhan  
324 West Soledad Avenue  
Suite 101  
Hagåtña, Guam 96910



**Re: Review of Bill No. 513-31 (COR): An Act to Provide Health Insurance to Government of Guam Employees and Retirees for Fiscal Year 2013**

Dear Chairman Pangelinan and Honorable Senators:

Buenas yan hafa adai! As was noted by the Office of the Attorney General at the public hearing on Bill 513-31 held last week, and in light of problems surrounding the procurement of health insurance coverage, the intent of the bill in streamlining the process and looking to other models used by other employers like the Federal government that make multiple health insurance providers available to our government employees is certainly a laudable endeavor. We had intended to submit written testimony within the customary ten (10) days after a public hearing that is allowed for accepting written testimony on a bill. However, it came to our attention that Bill 513-31 was slated for consideration and voting in a legislative session to commence on Monday, October 1, 2012. As you may all recall, we admitted both at the public hearing held last week and in a meeting with Senator Ben Pangelinan and his staff in the early Monday morning of October 1, 2012 that our Office had not quite fully comprehended the various potential legal and practical concerns raised by the draft of Bill 513-31 heard at the public hearing; and now still in existence with the Substitute Bill 513-31 that we had also received at the same Monday morning meeting. Indeed, we had intended for this written testimony to include a request that the Legislature briefly delay consideration of, and voting on Bill 513-31 for a couple of weeks in order for there to be a mark-up meeting for this bill. That

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request has been made moot with the passing of Bill 513-31 by a 9 to 6 vote. Nonetheless, we still believe it is important that we transmit to your colleagues some of our comments and concerns about certain provisions and issues regarding Bill 513-31 in the event they were not addressed by the final passed version of Bill 513-31 that we had not received or reviewed.

Two days subsequent to Bill 513-31 being introduced a 5 GCA § 5425 (g) *automatic stay* was put into effect with regard to FY 2013 Group Health Insurance procurement, which is the subject matter of the bill. On September 19, 2012, Tokio Marine Pacific Insurance Ltd. and Calvo's Insurance Underwriters, Inc. filed an appeal with the Office of Public Accountability (OPA). The legal ramifications if the government of Guam tried to implement the provisions of Bill 513-13 while there is a pending procurement appeal and stay are uncertain at this time.

In the Intent Section of the bill, the federal Health Insurance Portability Act (HIPPA) guarantee renewability provision extension of existing agreements provision is inaccurately referred to as an "emergency procurement". Emergency procurement is defined 5 GCA § 5215.<sup>1</sup> HIPPA is not procurement. The federal HIPPA provision allows continuation of coverage until the procurement issues are resolved. It is an area where federal law preempts local law. It is under the federal law the Extension Agreements (one each for the HSA 2000 plan and the SC 1500 plan) are put into place. The Extension Agreements incorporate the already existing FY 2012 Group Health Insurance Contracts between the SelectCare and the government of Guam, and with a sixty (60) days notice of termination clause, remain in effect for FY 2013, until the government of Guam has a new FY 2013 agreement in place, or September 30, 2013, whichever is the earliest. The notice provisions of the Extension Agreements are contractual provisions and must be adhered to by the government of Guam and any legislation reducing or effecting such provisions would violate contractual rights and potentially be litigated as to the Organic Act and arguably the U.S. Constitution protection of such rights. The procurement process in the bill should permit time frames to permit the sixty (60) day notice to the current Group Health Insurance Provider.

Clarification of the role of the Chief Procurement Officer and "quorum of the Negotiation Team" is recommended. 4 GCA § 4302 (c) sets forth who the members of the Negotiating Team are. The replacement of the Director of DOA with the Chief Procurement Officer does not clarify if the Chief Procurement Officer is a voting or non-

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<sup>1</sup> It is not a new month to month procurement or an Emergency Procurement as defined in 5 G.C.A. §5215. Given the statutory and regulatory definition of, and other restrictions like the thirty day period placed upon the use of an emergency procurement, additional legal and practical hurdles may arise when applied to health insurance coverage for *utilization* by thousands of government of Guam employees and retirees throughout the fiscal year.

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voting member of the team, and whether or not the Director of DOA is still a member of the Negotiating Team or not. Although the Chief Procurement Officer “on behalf of the GGNT” is issuing the Invitation to Bid, with regard to special procurement in Bill 513, it appears that none of the traditional roles of the Chief Procurement Officer with regard to 5 GCA Ch 5 are in place, except reference to it being defined by 5 GCA § § 5030 (c) and 5110 in the new Substitute Bill 513 § 2 (A). The Chief Procurement Officer in the GSA Invitation for Bid process includes AG Procurement Forms, General Terms and Conditions as well Special Terms and Conditions. It would add clarity to the Invitation for Bid process if the subject was clarified further. Additionally, § 2 (C) (3) and § 5 of the bill reference “presence of a quorum of the GGNT”. Clarification of the specific number of members and whether the count of members present for the purposes of a quorum includes or excludes non-voting members is recommended.

Although not stated, the role of the Attorney General’s Office in § 3 (H) and § 5 would be as a legal advisor only. In an administrative approval role the attorney becomes a witness as opposed to legal counsel. In procurements through GSA the Chief Procurement Officer has the administrative approval role and the Attorney General’s Office provides legal information and guidance. The new Substitute Bill § 3 (H) places the Attorney General in a policy role of determining what revisions are in the best interests of the government, thus removing the Attorney General from his role as legal advisor. The GNNT appears to be in the policy role with regard to this procurement, and this determination should be with the GNNT. A meeting of the GGNT will need to be noticed and held on the issue. Section 3 (H) also includes a time frame of October 20, 2012 for the new Invitation for Bid accompanying contract in final form and written report to the legislature, which may not be in keeping with realistic time frames for the process.

The attorney client privilege is waived in § 2 (B). This waiver should not include representing the government of Guam in a protest appeal to the Office of Public Accountability or the court.

Bill 513 states the Open Government Law will apply to all GGNT meetings. The Open Government law requires public notice of five (5) working days and forty eight (48) hours. This could make the short time lines difficult to meet, especially the requirements of § 5. If questions cannot be answered at the pre-bid meeting and GNNT is required to approve additional responses to questions presented at the pre-bid meeting, this would require another GGNT meeting. Before another GNNT meeting is held, the Open Government Law requires another five (5) days and forty eight (48) hours public notice of the meeting. Failure to meet the Open Government Law requirements can void the actions in the meeting and can end up voiding *ab initio* the whole procurement.

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In § 3 (A) there is mention of provisions in excess of the floor provision in the procurement (Exhibit R Exclusion provisions the providers may include). It is not clear why the submittal in excess of the floor in the sealed bid is subject “to approval” as opposed to being at the bidder’s option as part of its bid, since the bidders are opting to include as covered items that they are not required ( listed exclusion in Exhibit R) in their bid. In order for the GGNT to approve requests the GNNT would need to meet on the issue(s).

Section 4 should clarify that § 5 GCA § 5201 (g) does not apply to the procurement. The term “Responsive Bidder” is defined in 5 GCA § 5201 (g). The bill in § 4 on page 10 replaces that definition with the items set forth in § 4, and also replaces the standard GSA IFB package with what is set forth in § 3. Again clarification as to the non-application of Guam Procurement Laws and Regulations to the procurement would prevent potential confusion on the issues.

Section 5 should delete reference to “contractual miscellaneous provisions”. Substitute Bill 513 deletes mention of “contractual miscellaneous provisions that was present in the prior § 3 (H) and includes in § 3 (I) (1) that “a uniform contract” is to be executed by all prospective offerors. The contracts should be same for all bidders except the names and rates changing.

There currently is no flexibility for the Chief Procurement Officer to make written determination in the procurement process as provided in Guam Procurement Laws and Regulations, and/or the GNNT to make decisions except to those expressly stated in the bill. In the event the stated time frames and processes are not met, there could be procurement issues that arise.

As alluded to earlier in this letter and at the Monday morning meeting held with Senator Ben Pangelinan and his staff, the legal ramifications if the government of Guam tried to implement the provisions of Bill 513-13 while there is a pending procurement stay and appeal remain uncertain at this time. This is to say that we have not been able to determine whether Bill 513-31 can be legally implemented for the procurement of health insurance for FY2013 when there is an appeal and stay of procurement of the same subject matter services and for the same time period. Now, if there were no procurement protest appeal that stayed the procurement of health insurance for FY 2013 and assuming other legal and practical issues raised about Bill 513-31 were resolved, or if the government of Guam prevails (wins) in the protest before the OPA and there are no further appeals and stays before the courts, then the manner and form of procuring multiple health insurance providers contemplated by Bill 513-31 could be implemented subject to the 60 day termination clause of the Extension Agreements. However, if the

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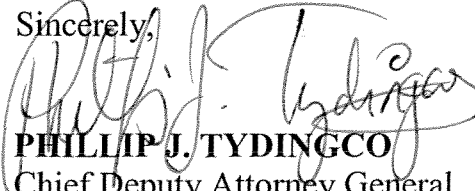
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parties who protested were to succeed with their appeal, there also arises an uncertainty whether the government of Guam must procure under the procurement law provided for in Bill 513-31 or under the procurement law and rules that existed before Bill 513-31 became law.

In any event, there is presently health insurance coverage for the employees and retirees of the Government of Guam because last year's health insurance contract was continued through the Extension Agreements up to one (1) year under HIPPA for Fiscal Year 2013.

Finally, we appeal to you and your colleagues of the Guam Legislature to consider crafting legislation, if not for FY 2013 then for FY 2014, that provides for an expedited and final procurement protest process as had been done for ARRA funded procurement. We make this request due in part to the competitive and controversial nature of health insurance coverage these past couple of years. This is because the negotiations and/or procurement of FY 2014 health insurance coverage for thousands of government of Guam employees and retirees customarily begins in January. Any protests thereafter are not likely to be resolved under Guam's current protest laws and rules before the beginning of FY 2014 (October 2013), especially if the litigation becomes protracted. Furthermore, the HIPPA renewability option will no longer be available to the government of Guam. Therefore, we respectfully ask that our request be considered and acted upon.

Sincerely,



**PHILLIP J. TYDINGCO**  
Chief Deputy Attorney General

cc: Attorney General  
All Senators of Guam Legislature