



JAN 24 2014

The Honorable Judith T. Won Pat  
Speaker  
*I Mina' Trentai Dos Na Liheslaturan Guåhan*  
32nd Guam Legislature  
155 Hesler Place  
Hagåtña, Guam 96910

VIA: The Honorable Rory J. Respicio  
Chairperson, Committee on Rules

RE: Committee Report on Bill No. 180-32 (COR), as Substituted

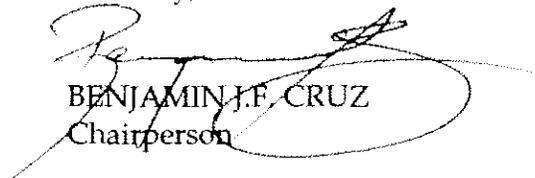
Dear Speaker Won Pat:

Transmitted herewith is the Report of the Committee on General Government Operations and Cultural Affairs on Bill No. 180-32 (COR), as Substituted - B.J.F. Cruz / T.C. Ada - An act to amend Section 30102(a) of Chapter 30, Title 5 Guam Code Annotated, to require agencies permitted to retain counsel other than the Attorney General, to hire unclassified, in-house counsel.

Committee votes are as follows:

<u>5</u>	TO DO PASS
---	TO NOT PASS
<u>2</u>	TO REPORT OUT ONLY
---	TO ABSTAIN
---	TO PLACE IN INACTIVE FILE

Sincerely,

  
BENJAMIN J.F. CRUZ  
Chairperson

2014 JAN 27 PM 3:39



## COMMITTEE REPORT

### **Bill No. 180-32 (COR), as Substituted**

**An act to amend Section 30102(a) of Chapter 30, Title 5 Guam Code Annotated, to require agencies permitted to retain counsel other than the Attorney General, to hire unclassified, in-house counsel.**



**JAN 24 2014**  
**MEMORANDUM**

**TO: All Members**

**FROM: Vice Speaker Benjamin J.F. Cruz**  
**Committee on General Government Operations and Cultural Affairs**

**SUBJECT: Committee Report on Bill No. 180-32 (COR), as Substituted**

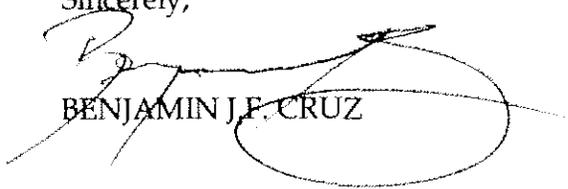
Transmitted herewith for your consideration is the Committee Report on Bill No. 180-32 (COR), as Substituted - B.J.F. Cruz / T.C. Ada - "An act to amend Section 30102(a) of Chapter 30, Title 5 Guam Code Annotated, to require agencies permitted to retain counsel other than the Attorney General, to hire unclassified, in-house counsel."

This report includes the following:

- Committee Vote Sheet
- Committee Report Digest
- Bill No. 180-32 (COR), as Introduced
- Bill No. 180-32 (COR), as Substituted
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony & Supporting Documents
- COR Referral of Bill No. 180-32 (COR)
- Fiscal Note Requirement
- Notices of Public Hearing
- Public Hearing Agenda
- Related News Reports

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

  
BENJAMIN J.F. CRUZ



**COMMITTEE VOTING SHEET**

Bill No. 180-32 (COR), as Substituted - B.J.F. Cruz / T.C. Ada - An act to amend Section 30102(a) of Chapter 30, Title 5 Guam Code Annotated, to require agencies permitted to retain counsel other than the Attorney General, to hire unclassified, in-house counsel.

COMMITTEE MEMBERS	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
CRUZ, BENJAMIN J.F. Chairperson		✓ 1/21/14				
MUÑA BARNES, TINA ROSE Vice-Chairperson						
WON PAT, JUDITH T. Speaker and Ex-Officio Member		✓ 1/22/14				
ADA, THOMAS C. Member		✓				
PANGELINAN, C. VICENTE Member						
RESPICIO, RORY J. Member		✓ 1-24-14				
RODRIGUEZ, DENNIS G. JR. Member						
SAN NICOLAS, MICHAEL, F.Q. Member				✓		
AGUON, Jr., FRANK B. Member		✓				
ADA, V. ANTHONY Member						
Morrison, Thomas Member				✓		
McCreadie, Brant Member						
YAMASHITA, ALINE Member						



## COMMITTEE REPORT DIGEST

### **I. OVERVIEW**

**Bill No. 180-32 (COR)** was introduced by B.J.F. Cruz and T.C. Ada on **September 6, 2013**, and subsequently referred to the **Committee on General Government Operations and Cultural Affairs** on **September 9, 2013**.

The **Committee on General Government Operations and Cultural Affairs** convened a public hearing on **Monday, October 7, 2013**, at **10:00AM** in the Public Hearing Room of *I Liheslatura*. Among the items on the agenda was Bill No. 180-32 (COR) – B.J.F. Cruz / T.C. Ada – An act to amend Section 30102(a) of Chapter 30, Title 5 Guam Code Annotated, to require agencies permitted to retain counsel other than the Attorney General, to hire unclassified, in-house counsel.

The public hearing for Bill No. 180-32 (COR) was began at **11:18AM** and ended at **1:27PM**.

### **Public Notice Requirements**

All legal requirements for public notices were met, with requests for publication sent to all media and all Senators on **September 30, 2013**, and **October 3, 2013**, via email. Copies of the hearing notices are appended to the report.

### **Senators Present**

Vice Speaker Benjamin J.F. Cruz, *Chairman*  
Senator Michael F.Q. San Nicolas, *Member*  
Senator Frank B. Aguon, Jr., *Member*  
Senator Thomas C. Ada, *Member*  
Senator Michael F.Q. San Nicolas, *Member*  
Senator Dennis G. Rodriguez, Jr., *Member*  
Senator V. Anthony Ada, *Member*  
Senator Christopher M. Duenas, *Member*  
Senator Aline A. Yamashita, *Member*  
Senator Michael Limtiaco, *Member*  
Senator Thomas Morrison, *Member*

### **Oral Testimony**

Alan C. Ulrich, Chief Financial Officer, Guam Memorial Hospital Authority  
Phil Tydingco, Deputy Attorney General, Office of the Attorney General

### Written Testimony

Alan C. Ulrich, Chief Financial Officer, Guam Memorial Hospital Authority

Leonardo M. Rapadas, Attorney General, Office of the Attorney General

Eric M. Palacios, Administrator, Guam Environmental Protection Agency

Mary C. Torres

Joe T. San Agustin, Chairman, Retirement Fund Board of Trustees

Jeffrey C. Johnson, Chairman, Guam Public Utilities Commission

Joanne M.S. Brown, General Manager, Port Authority of Guam

Charles H. Ada II, Executive Manager, Guam International Airport Authority

Maria I.D. Pangelinan, Executive Director, Guam Election Commission

Henry J. Taitano, Administrator, Guam Economic Development Authority

Elyze Iriarte, Board Member, Guam Solid Waste Authority

Robert M. Weinberg, Assistant Attorney General, Office of the Attorney General

## II. TESTIMONY & DISCUSSION

Chairman Benjamin J.F Cruz announced Bill No. 180-32 (COR) and acknowledged individuals present to provide oral testimony, including Mr. Robert Weinberg, who, in response to the Chair's inquiry, mentioned he was only present to observe the hearing. Chairman Cruz mentioned into the record that the Committee intends to use Mr. Weinberg's post on a social networking website on September 30, 2013 (*appended to the report*), as written testimony, and called Mr. Alan Ulrich to the panel.

Mr. Alan Ulrich thanked the Committee for the opportunity to provide testimony and proceeded to read his written testimony (*appended to the report*), which he interposed with an extemporal comment (*in boldface*), into the record:

"My name is Alan Ulrich. I am the Chief Financial Officer at Guam Memorial Hospital Authority. Thank you for asking Guam Memorial Hospital Authority (GMHA) to offer testimony concerning Bill No. 180-32 (COR). I support the use of legal counsel provided through the Attorney General's office. GMHA budgeted \$360,000 for legal fees in its fiscal 2014 budget. It appears that GMHA would incur less legal expense through use of the Attorney General's staff for Bill No. 180-32 (COR). For several years, GMHA has posted the recruitment of an unclassified attorney. Only one person applied, **and I learned this morning before coming here that that person was employed for a total of three months through March 2011 and left the employ of GMHA because of deployment away from Guam.** Relative to Bill No. 180-32 (COR), I respectfully ask the Legislature to add verbiage that would allow the agency to negotiate a salary to the \$125,000 cap currently in Bill No. 180-32 (COR). Per [Section 6208, Title 4, Guam Code Annotated], which is attached to my testimony (*as Attachment A*), the salary range of this position ranges from \$40,352 to \$80,580 for a lawyer with over 15 years of experience. However, the salary would be independent of the salary grades and waived as detailed in 4.6208. The Attorney General's office could, of course, approve the final employment contract. Thank you."

**Mr. Phil Tydingco** introduced himself and mentioned for the record that he was presenting testimony on behalf of Attorney General Leonardo M. Rapadas and the Office of Attorney General, and that they will be submitting written testimony. Mr. Tydingco stated that he intends to present two points of contention: the establishment of unclassified position as mandated by the proposed legislation, and certification of outside counsel.

“If the Legislature’s intent is to provide for the employment of unclassified in-house counsel then there should be findings that include impracticability to be consistent with the Hauser decision; otherwise, there’ll be that issue. Because unclassified attorneys, I know that arguably [Guam Power Authority] and [Guam Waterworks Authority] have gotten away with that. We just haven’t challenged them on it.

“But, the Hauser decision (*Hauser v. Dept. of Law*, 97 F.3d 1152, 9<sup>th</sup> Cir. 1996) requires [that] there should be no unclassified in-house counsel unless the Legislature or the agency makes impracticability findings, which are not difficult to do. So, if your legislative intent and findings have that then the language that you have here would be okay.

“But, in the alternative we would submit—because if you didn’t meet those findings of impracticability—which is actually, by the way, the language of the Organic Act—so it’d be inorganic as stands. We just haven’t made an issue of it over the years. If you did that, of course, the issue is it’ll impact our office. Because obviously [the way to go is to get hired by a]—I’ll go retire and try to seek employment with a private agency.

“But, putting that aside, alternatively, or you could simply include it and simply make it classified [...] paid in accordance with the pay scale as provided by law. As you know, [Section 6208, Title 4, Guam Code Annotated] is the current [Government Attorneys Salaries] pay scale, but the Hay study has rearranged and readjusted the scale. In fact the Hay study seems to be designed to move some of us—force some of us older ones to retire—and also to provide proper compensation for the new and younger ones up front. So, that would increase the range there. And, to make it like it used to be in the past when we allowed in-house counsel—and by the way, I’ve had the experience of being both private counsel and making lots of money with these autonomous agencies, as well as being in-house counsel, as well as being AG. I think all three types of attorneys serve different circumstances for different agencies. There are those agencies that are very frugal; they don’t spend exorbitant fees. And there are conflicts issues, which may require—like, for example, we think in subsection (b) we shouldn’t restrict the attorneys to these specialty areas. Because there may come a time in certain agencies where issue by issue or litigation by litigation may require even for a run-of-the-mill procurement litigation or civil service litigation, the AG’s offices conflicted or the in-house counsel’s conflicted. So, for

that singular case the agency would certify that they have the experience, but we would approve the certification of that to us.

"In fact, that's another point that we'll make, too, is that we would prefer, rather than certifying we shouldn't be the—because we wouldn't be out looking for these attorneys. It should be the agencies [that] have these attorneys submit their resumes, and certify that these people possess it. Then, we would review it and approve it as the formal legality, which is what we do already.

"Another issue that's raised by this law, too, is we think that you should include somewhere in here, in subsection (b), language that says notwithstanding the procurement law. Because the way the bill is designed right now it looks as though—as you know, the private counsels are secured through procurement law. So, it would appear that here you're asking the agency and/or the AG to start selecting people for this.

"Unless this is clearly to be an employment type in-house situation, then, of course, it would just be submitting resumes to be employed. So, to be safe and to make certain that it's not subject to procurement law, we would ask that you include that, and of course, again, to broaden the area of law to the subject matter or specialized area.

"We believe that, again, for example, some agencies may be able to—their funding is like only \$30,000 a year for that consulting attorney to help them with that one particular area of law. They could certify that. We could approve that. That would be a control on it.

"But, it may not necessarily be simply maritime law, aviation law, health care, or bonds. It might be because of a conflict situation. We submitted language for that, too. These are just sort of the technical issues and comments we wanted to provide to you. We do have written testimony that lays out that proposed amendment for your consideration. Thank you."

**Chairman Cruz** thanked Mr. Tydingco and provided his sponsor statement:

"This issue of attorneys' fees has been something I have been addressing for several years. Five years ago I introduced legislation when the [Guam International Airport Authority] ran up almost \$900,000 in attorneys' fees. Unfortunately, the bill did not get anywhere. Senator Tom Ada introduced in the last legislature a bill to address the employment of attorneys in the autonomous agencies. I'm not sure what happened to that one; that one didn't get through either.

"But this year it's become clear that we are running a considerable amount of money in attorneys' fees. At the [Port of Guam] specifically, which is what I was

following, we may run in excess of a million dollars. They've budgeted [\$600,000] so far for the current fiscal year, and they're planning on another [\$630,000] for the next fiscal year. So, it's going to be a considerable amount of money being paid out.

"In preparation for this, I sent out a [Freedom of Information Act] request to all the agencies to get how much they were getting. Much to my surprise and shock, I got a FOIA response from the airport that had received billings in excess of \$1.29 million or almost \$1.3 million in attorneys' fees just for this fiscal year. That was even more than what [Mr. Tydingco was] billing them when [he was] at the airport. Just teasing, Phil. But, it has become a huge amount of money. Unfortunately, those are addressed with tariffs. At the airport it becomes a tariff to the airlines that land. I know that Chairman Aguon, when he was trying to increase the rates for Customs and Quarantine at the airport, was concerned about the increase that I was pushing Customs and Quarantine to implement, because it would drive up the cost of landing fees at the airport.

"At the Port those fees are immediately passed on when they go to [Public Utilities Commission] to try to get their tariffs increased. I know they're planning on [an increase]—they increased it 5.95 [percent], and they're proposing another 3.65 or 3.95 [percent] annually; it's not just to meet their increasing operations costs. So, I just thought that it's the consumer on this island that is really eating it. We've got to put this under control. The GWA and GPA have successfully had in-house counsel. So has the [University of Guam], and when necessary have retained outside counsel in the event that it was something their counsel could not provide. They've done it very successfully.

"It was the intent of this Committee, or at least my intent when I introduced this legislation, to try to see if we can bring everything back under control. That \$1.3 million that the airport spent could easily have employed six or eight attorneys at the Attorney General's Office, and they could [...] attend board meetings and go to Civil Service Commission meetings on their behalf.

"I'm hoping that I can get this with the amendments that you're proposing, and I understand your Hauser concern. I was the one that made the mistake of ruling with the AG at the time and being slapped down by Ninth Circuit on the Hauser decision. So, I understand. I'm hoping at some point you will address the issue of the fact that there's too many unclassified employees in this government. I did a FOIA request, and you'd be surprised to see how many are currently still unclassified within the government service. We can discuss that offline some time. I'm hoping that I can get support for this this time and bring the costs of legal fees within some kind of reasonable amount so that the people don't have to pay through the nose for it."

**Chairman Cruz** opened the floor for questions.

**Senator Mike Limtiaco** asked Mr. Tydingco if the qualification requirement for five consecutive years in any one particular specialty of law would significantly narrow the number of eligible legal counsel available.

**Mr. Tydingco** thanked Senator Limtiaco for his question and began his response with an aside regarding the proposed language that would give an additional 10 percent to in-house counsel, explaining that this was the AG's office traditional practice of compensating attorneys who were solely assigned to agencies. To answer Senator Limtiaco's question, he stated that five years of experience is small especially for the specialties specified in the bill.

"The language we thought that should replace it, for example, would be language that says rather in maritime law, would be in the subject matter or specialized area of legal services for which in-house counsel or the AG's unable to provide at that time."

"The reason why we wanted a generally broad... Again, if you're just going to go with these specialties then it should be something like ten years because the people who are in this area are usually more than journeymen attorneys. But, there are many circumstances in the government where there are conflicts issues. I was trying to give you the example. Let's just say in-house counsel has a conflict. The AG's has a conflict. So, you need somebody to do a civil service or procurement matter [that] is not listed here.

"All we're allowing under this language for other than in-house counsel is in maritime, aviation, health care, or bonds, or financing law which basically is only, like, six subject areas. There are other areas like procurement law, civil service, which may call. Then, we'd be back here asking for an exception or amendment. So, we thought that'll be one of the amendments we will submit to the Vice Speaker. Therefore, if you're going to allow for basic contract law, conflict situation, or procurement, or civil service, then five years is fine. That would be good for the market, too, for the younger attorneys and local attorneys. Because many times these specialty areas like bonds folks, they're all off island. Every so often we do have maritime law people, but the majority of folks with these specialties tend to be in [Los Angeles] and New York and San Francisco. We just thought that it should be broader language. I hope that answers your question."

**Senator Limtiaco** followed up with a second question, asking Mr. Tydingco if he had an opinion on the word *consecutive* and what that entails as to the requirement for the consecutive years in specialty law.

**Mr. Tydingco** responded that he did not have a problem with the word *consecutive* and

believes that the language in the proposed legislation is just calling for a lawyer who has worked in that endeavor or field for five consecutive years and not someone who “did procurement law ten years ago and now [is] doing it again.” He repeated that that language seems to him to be a “sort of a quality control” to prevent the hiring of lawyers whose last cases in the specialty field were litigated before the turn of the century. He added:

“Folks who are graduating out of law school since the millennium might know more today and have more experience. I thought that that was a quality control type language. I was okay with it.”

**Senator Lintiac** thanked Mr. Tydingco and Chairman Cruz.

**Senator Aline A. Yamashita** asked Mr. Tydingco to clarify his comment about the ten percent extra that a lawyer at the AG’s office would receive for in-house agency work.

**Mr. Tydingco** explained that before § 6208 (Title 4, Guam Code Annotated, “Government Attorneys Salaries”), the pay scale for attorney generals had language that provided that those who were assigned in-house to an agency were given an extra ten percent of their pay. He added:

“Because it acknowledged the fact that you were basically out there on your own practicing with the agency, or if you were a supervisor. We had that language, but then that law got amended in, I think, 2004. They got rid of that language and instituted a whole new pay scale. Because that pay scale was based on government service. Then, the policy of the territory changed and was no longer based on government service but attorneys should be hired based on total years of experience in that area. So, that was the difference. It’s been in our books before. Every other decade it changed.”

**Senator Yamashita** continued to inquire about the pay scale.

**Mr. Tydingco** stated that the current pay scale is based on years of experience and not the assignment. To explain this policy, he mentioned that some assistant attorney generals have been assigned out to agencies, which entailed their physical relocation. For example, he stated, one AG used to be assigned at GMH until the hospital decided to hire private counsel, which was a cheaper alternative. He added:

“Of course, we were fine that they let us go. So, what happens is that agency will fund that attorney, and [he or she] is paid according to scale. I think you might get more people willing to be assigned out if they had this other incentive built into statute. We have that in our proposed language amendments.”

**Senator Yamashita** stated that it seems to her that the intent of the bill is to not only “control costs, but also to ensure effectiveness or efficiency of support and services.” She added that she looks forward to reading the AG’s proposed amendment. She ended with a comment regarding Mr. Tydingco’s opinions about professionals of

different generations:

"I would suggest that while, yeah, there may be a type of energy that's brought to the table by our younger folks, I want to say or I am saying that with our experienced folks that brings a lot of value to the table as well that's needed."

**Mr. Tydingco** responded affirmatively.

**Senator Tom Ada** asked Mr. Tydingco to explain his comment that an agency's hiring of an unclassified attorney should not be subject to the procurement laws.

**Mr. Tydingco** responded:

"The language here says, as I understand the bill, you hire in-house whether it's classified or unclassified, but it also provides that in the event there's a need for specialized hiring or conflicts hiring, let's just say, this law basically states that the AG will also have to approve that certification. They have to meet these requirements. The trouble is when you go in that area, that's procurement law. So, we also proposed that if you want that to happen, and these things shouldn't be tied up with the procurement law, especially if it's just— Then you might want to consider not subjecting it to procurement law. That was our only observation."

**Senator Ada** expressed his concern about this opinion:

"Procurement law does a pretty good job of at least setting up the process for the solicitation. If the concern was that with all other solicitations the objective is to get the lowest priced offer, but in the case of an RFP..."

**Mr. Tydingco** interjected, "But, that doesn't happen to RFP, right?"

**Senator Ada** agreed, adding that he was just concerned about the "requirement to go to the AG's office" but stated that he thought that was for anything in excess of \$500,000.

**Mr. Tydingco** confirmed that figure, but stated that the AG's office would still be overloaded even with that threshold. He continued:

"You know, procurement law is supposed to provide that you have the qualifications and so forth. But, here, again, when you need to move quickly, procurement law's fine, too. [...] You already have the checks, and you're asking us to review it and approve that. We would prefer that the agency certify it. Then, we think it should not be subject to procurement law, because, the way it's designed, it looks like you want the agency and us to review this before the person even submits. It seems to me that conflicts counsel are..."

**Chairman Cruz** interjected:

"The intent is to have the Attorney General say that the in-house counsel does not have the competence or experience to address this specialized area of the law

and to certify that the agency can go out and procure special counsel for this purpose. There's nothing in this paragraph that I see where it says 'notwithstanding that law'..."

*(At this point of the hearing and as shown by several rounds of interrupted turn taking, Chairman Cruz and Mr. Tydingco realize that there has been a misunderstanding but they continue the discussion to try to determine the cause of the confusion.)*

**Chairman Cruz** said, "I'm trying to figure out where you find that I'm waiving procurement law in here."

**Mr. Tydingco** explained:

"No, no, no. We wanted to waive. The way it looks designed it looks as though when we review and say, hey this person doesn't have the experience, or the in-house counsel doesn't have the experience, or they have a conflict... I mean they may have a conflict, and they want to go to outside counsel. Then, usually outside counsel is procured, right?"

**Chairman Cruz** responded affirmatively.

**Mr. Tydingco** repeated that the AG's office does not share Chairman Cruz's interpretation.

**Chairman Cruz** stated that he is trying to figure out what part of the proposed legislation is responsible for Mr. Tydingco's misreading because he is certain that the bill does not include the words "notwithstanding procurement law". He added that the agency would not be able to publicly solicit without the AG certifying that neither AG's office nor the agency's in-house counsel can provide a particular service required by the agency.

**Mr. Tydingco** apologized, stating that that was not how the AG's office read that subsection of the bill, and repeated that subsection (b) "doesn't come out that way."

After **Chairman Cruz** and Mr. Tydingco continued to reread subsection (b) of the bill, **Mr. Tydingco** finally conceded and said, "Okay, I just have to go back to the drawing board on that, then."

**Chairman Cruz** thanked Mr. Tydingco.

**Mr. Tydingco** repeated that the AG's office misread the subsection and apologized for the misunderstanding. He continued:

"We read it as we would be already looking at who it is they want to be outside counsel, and then we're thinking, okay they're already putting the cart before the horse before procurement law. All right. We'll take a look at that. Again,

though, the point I think I wanted to make is we shouldn't restrict it. Our determination shouldn't be restricted to that they don't have the requisite specialty in only aviation, health care, bonds. We hope you adopt our language, just the subject matter. The reason why we say that is this can be conflict situations."

**Chairman Cruz** stated that he understood that there can be conflicts, for example, in real estate, but the agency can get conflict counsel. He continued:

"The thing is I'm trying to not leave the barn door open for everybody to run through. The Port now claims that they need legal counsel at \$65,000 a month because they have seven people before the Civil Service Commission. We had a member of this legislature and the last legislature, Senator Palacios, who without a law school education probably represented more people to the Civil Service Commission than that law firm."

**Mr. Tydingco** remarked that he thought the language in lines 20 to 25 of that subsection would accomplish the purpose of the sponsor, and "keep the barn door shut."

**Senator Ada**, in continuation with his line of questioning, asked Mr. Tydingco to clarify his concern about hiring unclassified attorneys and the need to file a statement of impracticality.

**Mr. Tydingco** explained that the Hauser opinion states that there should be no unclassified in-house attorneys. He recalls that he was recruited as unclassified in the 1990s, during a time when there were three or four types of attorneys, such as classified, unclassified, and those on employment contracts. He summarily explained:

"Essentially, the Ninth Circuit said that the Organic Act states that government of Guam employees, which includes the attorneys, shall be classified unless there's a determination or finding that it's impracticable. So, if you make that then we don't think you'll be inconsistent with... And, I don't think that's difficult to achieve necessarily. But, it would be consistent with the Organic Act and with the Ninth Circuit opinion of Hauser."

**Senator Ada** continued his inquiry with Mr. Tydingco:

"Now that you've brought that up publicly, what does that do to GPA and GWA? Right now, does it do anything to the standing of those attorneys that they've got up there?"

**Mr. Tydingco** tried to answer, but **Senator Ada** interrupted, reminding Mr. Tydingco of his earlier statement that the AG's office "just haven't had the time."

**Mr. Tydingco** replied that the attorneys at GWA and GPA "may have gotten grandfathered in." He stated that he is not aware of all the facts, including their respective employment periods.

**Chairman Cruz** interjected that their termination would be problematic if “they tried to come back and try to get protection from the Civil Service Commission.”

After a few interrupted starts, **Mr. Tydingco** finally stated:

“I think Hauser would say... Because we would in effect be trying to do that. I think for practical reasons, for some reason it was never caught and it was never challenged. I think if the management tried to do something about that it’d be circular. We’d be back to Hauser. I can only tell you what the law says. That’s what the law says. But, not everything is consistent and conforming to the law. That’s where you would be...”

**Chairman Cruz** interrupted, stating that the AG’s office is responsible for the enforcement of the law and compliance with the Hauser decision.

**Mr. Tydingco** responded:

“I would say yes and no. I think it’s not just simply only us. Traditionally, the gatekeepers of the classified and unclassified service—as most of us know, we’ve been in and out, I’ve been in and out of the government since the seventies—has been the Civil Service Commission as well as [Department of Administration] and ourselves. We are all the gatekeepers of what the budget law restrictions are that allow classified or unclassified, what funding is used for this or that. As you know, there are exceptions made throughout those through some of the budget laws and other laws through the years. I would say that the gatekeepers are those folks who know the HR of the different agencies and raise those issues—when people believe that, hey, why are you unclassified and I’m classified and we’re in the same agency. As you recall from the seventies and eighties those were issues. The gatekeeper agencies would raise them, and we would either defend them or represent them. That’s how that whole process works.”

To put his question in context, **Senator Christopher Duenas** began his query noting that some agencies—namely the Port, GIAA, and PUC—have submitted testimony that they are not in support of the legislation based on their historical workloads. He then asked Mr. Tydingco to share his experience “in terms of the ebb and flow with regard to legal fees based on work load requirements and the like” and asked if it is his experience that there are disparities in the amounts.

**Mr. Tydingco** replied that every agency that utilizes outside counsel has its own history and its own special circumstances or needs. He reiterated that some agencies are very “good about budgeting” for what they need for outside counsel because their workloads are only activated at certain times. For such agencies, they would not have exorbitant legal billings; additionally, since they would not need a full-time in-house counsel, outside counsel would be a better fit. He added that conflict situations would also require outside counsel. Anecdotally, he mentioned his experience as in-house

counsel for Guam Police Department, that the agency would either request AG's office to take over, or "we would within a certain budget get the quotations if it was for a small matter." He then mentioned that a number of autonomous agencies generate their own revenues and have their own special circumstances but those conditions do not preclude the use of both in-house counsel or an AG assigned there as well as outside counsel. He continued:

"It really depends on the circumstances. But, I would say, by and large, I don't know why you can't use in-house counsel for your contract review, your procurement processing, your civil service, your basic review bills, and real estate issues. I would think it would be just seems common sense that you would save money having both; use the private for your specialized stuff. [...] But, again, here I think this bill provides a safeguard or reviewing mechanism that involves both the agency and the AG's office. I think that's what the Vice Speaker was also trying to ensure. That's why I think there are some quality control language issues here. I just thought that we shouldn't make it too restrictive. I hope that answered your question. Maybe I didn't do a good job at it."

**Senator Duenas** remarked:

"Sure. Yeah. I'm just trying to follow. Of course, like I said, obviously your legal discussions on the structure and the back and forth may be the..."

**Mr. Tydingco** interjected, stating that when he was legal counsel as a private attorney, he was motivated but he was a business as well. He continued:

"You've got to pay your bills. I didn't see what... I wasn't necessarily any more special than a government attorney. I just got paid more."

**Senator Duenas** then began to share his experience as an agency director and recalled that "it was quite busy" whenever his agency had to work with the AG's office. He added that his agency was small with legal matters primarily limited to civil service and federal grants. He continued:

"Certainly, and no disparagement whatsoever on the AG's office, understanding the workload and the cases that they're dealing with, I would envision should this move forward you would be looking at having to pretty much... That would have to almost be a direct assignment of one or more to those entities just given the fact that obviously, maybe even in your experience, their workload is quite heavy. Would you agree with that?"

**Mr. Tydingco** replied that while he concurs that the AG's office does have a heavy workload, there is nothing that prevents the hiring of in-house counsel and also the retention of outside counsel, other than the conditions of the market. He added that the AG's office believes that the use of a combination of in-house and outside counsel is sound policy "if managed and reviewed properly."

**Chairman Cruz** asked Mr. Tydingco if he believed it was necessary when he was retained counsel for the airport, which retained counsel at \$175 or \$200 an hour, to sit through a board meeting.

**Mr. Tydingco** replied affirmatively, saying that amount was his "worth out in the market."

**Chairman Cruz** rephrased his question, noting that he was not asking about the rate but rather the necessity of private counsel to sit through hours of the open board meeting.

**Mr. Tydingco** replied that it depends on the circumstances, adding that the board would let him know if his presence was not necessary. He continued:

"Inevitably, depending on your agency, there might always be legal issues popping up. There may be times when it is dormant legal issues and perhaps you shouldn't be there. If the agency wants you there in the event that something... There's always a legal issue, or there's always personnel issues, so whether you're private or in-house counsel, generally there's usually personnel issues when you go into executive session. You may be consulted, or somebody may ask a question about law nobody else wants to answer. I think, yeah, there are times when it's necessary for you to be present."

**Senator Dennis G. Rodriguez, Jr.** stated that he fully supports the intent of the proposed legislation chiefly because the bill highlights the exorbitant cost of legal fees throughout the government but he is unsure "if this is perhaps the way to do it as it's written now." To illustrate his understanding of the bill, he drew a hypothetical situation in which an agency, after receiving the go-ahead from the AG's office certifying that specific issue, would ask the AG to certify that a specific candidate has demonstrated prior experience and competency for the job.

*(At this point of the hearing, Mr. Tydingco and Senator Rodriguez are in concurrence that the subsection (b) of the bill may be misconstrued in a way that contrary to the intent of the bill.)*

**Chairman Cruz** remarked that the bill has very simple language and asked if either Mr. Tydingco or Senator Rodriguez could point out where he was drawing the interpretation that a candidate has been pre-selected for the outside counsel work as certified by the AG's office. After a second reading of the subsections, **Mr. Tydingco** still had the opinion that subsection (b) implies pre-procurement.

**Mr. Tydingco** states that perhaps the misunderstanding is simply a "half full or half empty view of how that works." He continued:

"At least two of us or three of us read it as, okay, in issuing such certification we'll certify that outside counsel. Now, that outside counsel, we interpreted that to mean the new person who's going to be the... Let's say this other person, is that pre- or post-procurement?"

**Chairman Cruz** concedes to the perceived ambiguity and states that he will clarify that matter in the substitute legislation.

**Mr. Tydingco** further explained:

"That's what we were trying to... That's where we thought, okay, maybe we better say so that we don't get a protest on this. Oh, you already have the name. You're already looking at his qualifications. You're prequalifying him before you even do the procurement law. So, we thought, okay. That's why we said, well you better put notwithstanding procurement law to the contrary. Then, we can take the name you gave us and then say, yeah, he can do the work sole source or whatever, or put it RFP."

**Chairman Cruz** emphasized that he was not a "notwithstanding procurement person."

**Senator Ada** interrupted with his interpretation:

"If I may, I think the way then I would interpret this is that before they can go and issue the RFP the agency, the AG's office would have to certify that [the agency's in-house] counsel is unable to take on the matter nor is the AG's office."

**Mr. Tydingco** explained that the AG's office was confused by subsection (b) and asked Chairman Cruz if the AG's approval or certification of outside counsel occurs prior to the procurement.

**Chairman Cruz** stated that the AG's office would only certify the need.

**Mr. Tydingco** remarked that this discussion only underscores the need to tighten the language of the legislation and make it clear that the process is subject to procurement law. He added that the proposed law involves prequalifying and procurement law allows qualifying, as well as RFP procurement. He explained that it's easy to declare that the in-house counsel is unable provide a service of a specialty field and providing names of prospective candidates is a violation of procurement law.

**Senator Ada** countered that the process would not violate the procurement law since the agency should have issued an RFP after the need is certified by the AG's office. He added that once interested parties submit their qualifications, "everybody sits down and will take a look at all the offers that they made." He said that this is when the AG's office should participate and certify which candidates are qualified.

**Mr. Tydingco** repeated that that was not how sections of the bill appear to operate or function, specifically because "it looks as if we're doing these names before they've issued the ad." He added that he now understood the bill and its intent to remain subject to procurement law.

In summation, **Senator Ada** laid out the process as directed by the language of the bill. Prior to the issuance of an RFP, the AG's office has to certify that neither the in-house lawyer nor the AG's office itself can provide a particular service. The agency then issues the RFP and the certification in subsection (b) is actually part of the determination as to whether an offer is a responsible one.

**Senator Rodriguez** asked Mr. Tydingco, with respect to his experience as private counsel to an agency, if agencies would start, should this bill pass, resorting to outside counsel more often.

**Mr. Tydingco** answered affirmatively and backpedaled and stated:

"I'm not sure how to answer your question. We don't know. We haven't tried this out. That's why we were trying to figure out all the different scenarios and how it impacts with procurement law. That's why we were raising the issue."

**Senator Rodriguez** asked if the leave status of in-house counsel would warrant the need for outside counsel.

**Mr. Tydingco** stated that would not happen since attorney generals, especially those who have litigation, typically give notice of their leave schedules and request the court and all parties to hold off on scheduling.

**Senator Cruz**, on the account that no one else was present to testify, adjourned the public hearing for Bill No. 180-32 (COR).

### III. FINDINGS AND RECOMMENDATIONS

Based on testimony provided during the measure's public hearing, Substitute Bill No. 180-32 (COR) reflects the following amendments: 1) changing unclassified counsel into classified counsel, thus resolving the Hauser issue; 2) allowing a classified attorney to be hired in accordance with the attorney pay schedule plus 10 percent with maximum credit for seniority; 3) the requirement for agency certification of need along with the Attorney General's confirmation of outside counsel's prior experience and competency; and 4) the deletion of the limiting language related to specific subject matters.

The Committee on General Government Operations and Cultural Affairs to which was referred "Bill No. 180-32 (COR) - B.J.F. Cruz / T.C. Ada - An act to amend Section 30102(a) of Chapter 30, Title 5 Guam Code Annotated, to require agencies permitted to retain counsel other than the Attorney General, to hire unclassified, in-house counsel" hereby submits these findings to *I Mina' Trentai Dos na Liheslaturan Guåhan* and reports out Bill No. 180-32 (COR), as Substituted, with a recommendation TO PASS.

I MINA TRENTAI DOS NA LIHESLATURAN GUAHAN  
2013 (First) Regular Session

Bill No. 180-32 (COR)

Introduced by:

B. J.F. Cruz  
T. C. Ada

2013 SEP - 6 AM 11:45

**AN ACT TO AMEND SECTION 30102(a) OF CHAPTER 30, TITLE 5 GUAM CODE ANNOTATED, TO REQUIRE AGENCIES PERMITTED TO RETAIN COUNSEL OTHER THAN THE ATTORNEY GENERAL, TO HIRE UNCLASSIFIED, IN-HOUSE COUNSEL.**

1 BE IT ENACTED BY THE PEOPLE OF GUAM;

2 **Section 1.** § 30102(a) of Chapter 30 Title 5, of the Guam Code Annotated is  
3 hereby amended to read:

4 **“§ 30102. Department of Law, Cognizance.**

5 (a) Notwithstanding any other provision of law, the Attorney General shall  
6 have cognizance of all legal matters, excluding the Legislative and Judicial  
7 Branches of the Government of Guam, involving the Executive Branch of the  
8 Government of Guam, its agencies, instrumentalities, public corporations,  
9 autonomous agencies and the Mayors Council, all hereinafter referred to as  
10 ‘agency.’ Where any other law permits any agency or autonomous public  
11 corporation to retain counsel other than the Attorney General, this shall not  
12 preclude said agency or public corporation from requesting the services of the  
13 offices of the Attorney General, provided that said agency or autonomous public

1 corporation shall reimburse the Office of the Attorney General for such services  
2 from funds of said agency or autonomous public corporation. Said reimbursement  
3 shall be deposited in the General Fund and credited to the Office of the Attorney  
4 General. In addition, and notwithstanding any other law to the contrary, any  
5 agency or autonomous public corporation of the Government of Guam may  
6 advance funds to the office of the Attorney General for services and incidental  
7 travel to be rendered by said office on behalf of said agency or autonomous public  
8 corporation. Effective sixty (60) days from the enactment of this act, any law  
9 permitting an agency or autonomous public corporation to retain counsel other than  
10 the Attorney General shall mean unclassified, in-house counsel only, compensated  
11 at a rate not to exceed \$125,000 for salary annually.

12 (b) An agency or autonomous public corporation of the Government may  
13 retain outside counsel, in addition to the unclassified, in-house counsel mandated  
14 in item (a), only when the Attorney General of Guam has certified in writing to the  
15 Speaker of I Liheslaturan Guåhan and I Maga'lahen Guåhan, that such outside  
16 counsel is essential to addressing a sole and specific legal matter before the  
17 agency, provided that neither the Office of the Attorney General nor the In-house  
18 Counsel required by item (a) will be able to address the legal matter before the  
19 agency. In issuing such certification, the Attorney General shall certify that such  
20 outside counsel has demonstrated prior experience and competency for a period not  
21 less than five (5) consecutive years in maritime law, aviation law, Healthcare law,  
22 or the issuance of bonds or other financial instruments. Nothing in this section  
23 shall be construed as to allow any agency of the Government to retain outside legal  
24 counsel on an ongoing basis or to permit the payment of any outside counsel for  
25 matters other than the sole and specific matter certified by the Attorney General."

*I MINA'TRENTAI DOS NA LIHESLATURAN GUAHAN*  
2014 (Second) Regular Session

Bill No. 180-32 (COR)

Introduced by: **\*As Substituted**  
**By the Committee on General Government**  
**Operations & Cultural Affairs**

B. J.F. Cruz  
T. C. Ada

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**AN ACT TO *AMEND* SECTION 30102(a) OF CHAPTER 30,  
TITLE 5 GUAM CODE ANNOTATED, TO REQUIRE  
AGENCIES PERMITTED TO RETAIN COUNSEL OTHER  
THAN THE ATTORNEY GENERAL, TO HIRE CLASSIFIED,  
IN-HOUSE COUNSEL.**

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7 Branches of the Government of Guam, involving the Executive Branch of the  
8 Government of Guam, its agencies, instrumentalities, public corporations,  
9 autonomous agencies and the Mayors Council, all hereinafter referred to as  
10 ‘agency.’ Where any other law permits any agency or autonomous public  
11 corporation to retain counsel other than the Attorney General, this shall not  
12 preclude said agency or public corporation from requesting the services of the

1 offices of the Attorney General, provided that said agency or autonomous public  
2 corporation shall reimburse the Office of the Attorney General for such services  
3 from funds of said agency or autonomous public corporation. Said reimbursement  
4 shall be deposited in the General Fund and credited to the Office of the Attorney  
5 General. In addition, and notwithstanding any other law to the contrary, any  
6 agency or autonomous public corporation of the Government of Guam may  
7 advance funds to the office of the Attorney General for services and incidental  
8 travel to be rendered by said office on behalf of said agency or autonomous public  
9 corporation. Effective sixty (60) days from the enactment of this act, any law  
10 permitting an agency or autonomous public corporation to retain counsel other than  
11 the Attorney General shall mean classified, in-house counsel. Any attorney holding  
12 the position of full-time classified in-house counsel for any governmental  
13 department or agency shall earn the salary set by law for that position, or plus 10 %  
14 of that salary he or she would earn as a government attorney, according to the  
15 attorney pay schedule, with maximum additional credit for seniority and  
16 experience as allowed in the attorney pay schedule to maximize his or her salary,  
17 whichever is higher.

18 (b) An agency or autonomous public corporation of the Government may  
19 retain outside counsel, in addition to the classified, in-house counsel mandated in  
20 item (a), only when the department or agency has certified in writing to the  
21 Attorney General of Guam, the Speaker of *I Liheslaturan Guåhan*, and *I*  
22 *Maga'lahren Guåhan*, that such outside counsel is essential to addressing a sole and  
23 specific legal matter before the agency. Upon issuance of the certification by the  
24 department or agency, the Attorney General shall confirm that such outside  
25 counsel has demonstrated prior experience and competency for a period not less

1 than five (5) consecutive years in the subject matter or specialized area for which  
2 the in-house counsel or Attorney General's Office is unable to provide at that time.  
3 Nothing in this section shall be construed as to apply to the Government of Guam  
4 Retirement Fund, or to allow any agency of the Government to retain outside legal  
5 counsel on an ongoing basis or to permit the payment of any outside counsel for  
6 matters other than the sole and specific matter certified by the department or  
7 agency and confirmed by the Attorney General."





# Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan



850 GOV. CARLOS CAMACHO ROAD  
OKA, TAMUNING, GUAM 96913  
TEL: 647-2444 or 647-2330  
FAX: (671) 649-0145

October 7, 2013

Senator Benjamin J. F. Cruz, Vice Speaker  
I Mina 'Trentai Dos na Liheslaturan Guahan  
The 32<sup>nd</sup> Guam Legislature  
155 Hesler Place  
Hagatna, Guam 96910

Reference: Testimony on Bill No. 180-32 (COR)

The Honorable Vice Speaker Cruz:

Hafa Adai. My name is Alan Ulrich. I am the Chief Financial Officer at Guam Memorial Hospital Authority.

Thank you for asking Guam Memorial Hospital Authority to offer testimony concerning Bill No. 180-32.

I support the use of legal counsel provided through the Attorney General's office. GMHA budgeted \$360,000 for legal fees in its Fiscal 2014 budget. It appears that GMHA would incur less legal expense through use of the Attorney General's staff per Bill No. 180-32.

For several years, GMHA has posted the recruitment of an unclassified attorney. Only one person applied.

Relative to Bill No. 180-32, I respectfully ask the legislature to add verbiage that would allow the agency to negotiate a salary to the \$125,000 cap currently in Bill No. 180-32. Per Section 4.6208 (Attachment A), the salary range of this position ranges from \$40,352 to \$80,580 for a lawyer with over 15 years of experience. However, the salary would be independent of the salary grades and wages detailed in 4.6208. The Attorney General's office could, of course, approve the final employment contract.

Thank you.

Alan C. Ulrich  
Chief Financial Officer

Enclosure

cc: Joseph P. Verga, MS, FACHE, Hospital Administrator/CEO

**4 GCA PUBLIC OFFICERS & EMPLOYEES**  
**CH. 6 COMPENSATION OF PUBLIC EMPLOYEES**

Deputy Director positions under the terms of a contract in effect on the effective date of this Act, however 4 GCA § 6206.1 shall be effective for any subsequent contract or renewal of a current contract when salary is negotiable.

**SOURCE:** Added by P.L. 18-32:24 and 25.

**§ 6207. Positions in Governor's Office.**

The Governor is authorized to establish such positions as may be necessary for the operation of the Office of the Governor including off-island offices and Government House; provided, however, that no person shall be appointed to fill such a position in the absence of an appropriation to pay the salary set for such position. The Governor shall set the salaries for positions for which salaries are not set by law.

**SOURCE:** GC § 4116.2, as amended by P.L. 11-202; Repealed and reenacted by P.L. 21-17:4. Amended by P.L. 28-145:3 (August 15, 2006).

**§ 6207.1. Positions in Lieutenant Governor's Office.**

The Lieutenant Governor is authorized to establish such positions as may be necessary for the operation of the Office of the Lieutenant Governor, the Guam State Clearinghouse, and other offices that are established and placed under the purview or direction of the Lieutenant Governor of Guam; provided, however, that *no* person shall be appointed to fill such a position in the absence of an appropriation to pay the salary set for that position. The Lieutenant Governor shall set the salaries for positions for which salaries are not set by law.

**SOURCE:** Added by P.L. 28-145:4 (August 15, 2006).

**§ 6208. Government Attorneys Salaries.**

It is the intent of *Liheslatura* that all full-time attorneys working for the government of Guam, its agencies and instrumentalities (including autonomous agencies and instrumentalities), the Judiciary, and the Public Defender Service Corporation be paid according to the following schedule in order to make the pay received by full-time attorneys working for different departments and agencies more or less uniform. Therefore, all full-time attorneys now working for or later hired after the effective date of this Section by the government of Guam, its agencies and instrumentalities (including autonomous agencies and instrumentalities), the Judiciary, and the Public Defender Service Corporation including classified, unclassified, and contract hire shall be paid according to the following schedule.

4 GCA PUBLIC OFFICERS & EMPLOYEES  
CH. 6 COMPENSATION OF PUBLIC EMPLOYEES

However, no attorney working for the government of Guam on the effective date of this Act shall have his or her salary reduced by this schedule below.

ATTORNEY I

(a) An attorney with zero (0) to three (3) years experience as an attorney, working under the supervision of a senior attorney or judge. The pay scale and steps shall be as follows:

Step 1 -- under one (1) year as an attorney, \$40,352;

Step 2 -- more than one (1) year but *less than* two (2) years as an attorney, \$42,874; and

Step 3 -- more than two (2) years but *less than* three (3) years as an attorney, \$45,396.

ATTORNEY II

(b) An attorney with three (3) years experience but *less than* five (5) years experience as an attorney, working under the supervision of a senior attorney. The pay scale and steps shall be as follows:

Step 1 -- more than three (3) years but *less than* four (4) years experience as an attorney, \$47,008;

Step 2 -- more than four (4) years but *less than* five (5) years experience as an attorney, \$49,773.

ATTORNEY III

(c) A senior attorney with over five (5) years but *less than* eight (8) years experience as an attorney, working with minimal supervision, who may supervise and direct other attorneys. The hiring authority may allow up to two (2) years of attorney experience credit or seniority credit for special skills, training, or excellence as an attorney. The pay scale and steps shall be as follows:

Step 1 -- more than five (5) years but *less than* six (6) years experience as an attorney, \$51,723;

Step 2 -- more than six (6) years but *less than* seven (7) years experience as an attorney, \$54,765; and

4 GCA PUBLIC OFFICERS & EMPLOYEES  
CH. 6 COMPENSATION OF PUBLIC EMPLOYEES

Step 3 -- more than seven (7) years but *less than* eight (8) years experience as an attorney, \$59,329.

ATTORNEY IV

(d) An Attorney IV includes all non-supervisory and program-supervisor senior attorneys, to include, the Chief Deputy Attorney General, and the Public Defender. A senior attorney with over eight (8) years as an attorney, working with minimal supervision, with possible supervisory duties over other attorneys. The hiring authority may allow up to three (3) years of attorney experience credit or seniority credit for special skills, trial experience, training, or excellence as an attorney, to the extent the attorney has less than eleven (11) years of experience as an attorney. The pay scale and steps shall be as follows:

Step 1 -- over eight (8) years but *less than* nine (9) years of experience as an attorney, \$62,114;

Step 2 -- over nine (9) years but *less than* ten (10) years of experience as an attorney, \$68,493;

Step 3 -- over ten (10) years but *less than* eleven (11) years of experience as an attorney, \$72,522;

Step 4 -- over eleven (11) years but *less than* twelve (12) years of experience as an attorney, \$75,208;

Step 5 -- over twelve (12) years but *less than* fifteen (15) years of experience as an attorney, \$77,894; and

Step 6 -- over fifteen (15) years experience as an attorney, \$80,580.

Any attorney who has sixteen (16) years or more of total experience as an attorney, and who has reached the level of Attorney IV, Step 6, shall thereafter receive a pay increase of 3.5% every two (2) years of service as a government of Guam attorney.

In the case of attorneys working for the government of Guam as of the effective date of this Section, the Department of Administration shall review the current attorney's salaries and slot the attorneys into the appropriate step and grade of the previous salary structure without regard to any freeze on

**4 GCA PUBLIC OFFICERS & EMPLOYEES**  
**CH. 6 COMPENSATION OF PUBLIC EMPLOYEES**

salaries that may have occurred. After placing the attorneys at the appropriate step and grade, the attorneys shall then be slotted in accordance with the above schedule closest to, but not below the step and grade established by the Department of Administration and to receive pay increases established by the new salary structure on their anniversary of hire. The slotting into the appropriate steps closest to, but *not* below their current salaries shall include all experience and seniority credits.

The salary schedules contained in Subsections (a) through (d) above may be modified upwards from time to time by the Director of Administration pursuant to the Administrative Adjudication Act public notice requirements without further legislation.

**SOURCE:** GC § 4106.1, added by P.L. 13-117; amended by P.L. 15-147; Repealed and reenacted by P.L.'s 16-72, 16-80, 17-6 and 19-52:8; amended by P.L. 27-106:VI:20. Effective January 1, 2006, reference to the "Civil Service Commission," amended to "Director of Administration" pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

**§ 6208.1. Recruitment of Assistant Attorneys General.**

Notwithstanding any other provision of law, the Attorney General may hire Assistant Attorneys General necessary for the operation of the department. Attorneys shall be hired for an initial two-year probationary period in the unclassified service, which shall by the term of the appointment expire two years from the date of the appointment if not sooner terminated by the appointing authority. Attorneys reappointed after completion of their probationary period shall be employed in the unclassified service as provided under Section 4102(16) of Chapter 4 of this Title and may be removed only for cause. Attorneys presently in the classified service shall remain classified.

**SOURCE:** GC § 6208.1 enacted by P.L. 17-53:17, and Repealed and reenacted by P.L. 19-52:7.

**COURT DECISIONS:** This section was declared contrary to the Organic Act of Guam by the Ninth Circuit Court of Appeals. *Haeuser v. Dept. of Law*, (CA9 1996) 97 F.3d 1152; for limitation on damages see *Haeuser v. Dept. of Law*, (Supreme Court Guam 1999) 1999 Guam 12.

**§ 6209. Professionals of Public Health and Social Services.**

(a) Within the Department of Public Health and Social Services the following classified positions are created and given annual compensation as follows:

LEONARDO M. RAPADAS  
Attorney General



PHILLIP J. TYDINGCO  
Chief Deputy Attorney General

## OFFICE OF THE ATTORNEY GENERAL

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October 8, 2013

Honorable Benjamin J.F. Cruz  
Vice-Speaker  
*I Mina' Trentai Dos Na Liheslaturan Guåhan*  
Chairperson  
Committee on General Operations and Cultural Affairs  
155 Hesler Place  
Hagåtña, Guam 96910

CONFIRMATION

SUBJECT: Legislative Bill No. 180-32 (COR), An Act to Amend Section 30102(a) of Chapter 30, Title 10 Guam Code Annotated, to Require Agencies Permitted to Retain Counsel other than the Attorney General, to Hire Unclassified, In-House Counsel

Submitted herein is written testimony in support of Bill No. 180-32 as well as comments on the bill.

A. Unclassified In-house Counsel and \$125,000 Salary Cap.

In order to establish an unclassified position in the government of Guam, there needs to be a determination that it is impracticable to not create the position as a classified position. *Hauser v. Dept. of Law*, 97 F.3d 1152 (9<sup>th</sup> Cir. 1996) held that "because record reflected no reasonable basis for legislative determination that it was impracticable to include assistant attorneys general in the classified service, Guam statute exempting them from merit protections of classified service violated the Organic Act of Guam which mandates inclusion of government positions in the merit system 'as far as practicable'." The bill should articulate a reasonable basis that it is impracticable to include government attorneys employed by government agencies in the classified service.

Alternatively, the bill could establish in-house counsel as a classified position. The salary would then be structured by the existing attorney pay scale and therefore the bill would not require a salary cap. If it is the intent of the legislature to recruit experienced lawyers to work as in-house

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counsel to the government agencies and departments, the bill could afford a 10% increase to the established salary. The following language is proposed:

“Any attorney holding the position of full-time legal counsel with any governmental department or agency shall earn the salary set by law for that position, or plus 10% of that salary he or she would earn as a government attorney, according to the attorney pay schedule, with maximum additional credit for seniority and experience as allowed in the attorney pay schedule to a maximize his or her salary, whichever is higher.”

#### B. Certification of Outside Counsel.

The language contained in the bill indicates that the outside counsel has been selected prior to certification. It provides that an agency may retain outside counsel when it is certified in writing that such outside counsel is essential and that “[i]n issuing such certification, the Attorney General shall certify that such outside counsel has demonstrated prior experience and competency for a period not less than five (5) consecutive years in maritime law, aviation law, Healthcare law, or the issuance of bonds or other financial instruments.”

As such, a certification cannot be issued determining experience and competency unless the outside counsel has been selected and identified. Therefore, the department or agency would need to follow the procurement process and request for proposals, evaluate, determine best qualified offeror, and then ask the AG to certify in writing that such offeror is essential to addressing a sole and specific legal matter before the agency, that neither the Office of the Attorney General nor the In-house Counsel will be able to address and that such offeror has demonstrated at least five years prior experience and competency in the legal field for which the offeror is being procured. If the offeror has not demonstrated prior experience and competency in the subject legal field, then the agency would have to cancel the existing procurement and redo the process. If the AG issues a certification, the agency may proceed to negotiate with the best qualified offeror. If an award is made to the best qualified offeror, the legal services contract would need to be routed to the AG for approval as to form and legality as provided in 5 G.C.A. 5121(b).

It is recommended that the department or agency be the entity to certify in writing that the in-house counsel will be not able to address the legal matter at this time, the outside counsel is essential to addressing a sole and specific legal matter, and the outside counsel has demonstrated prior experience and competency for a period of not less than five years in the subject legal matter. The certification would then be subject to the Attorney General’s approval.

Upon AG’s approval, the agency or department can request for proposals with the criteria of demonstrating prior experience and competency for a period of not less than five (5) consecutive years in the subject legal field. After determining the most qualified offeror, the procurement record and legal services contract will be submitted to the AG for review and approval as to form, legality and demonstrating the requisite experience and competency

The bill should provide a specific and efficient and competitive process for which outside counsel is to be retained and certified. Another option is to remove such hiring of outside

counsel from the procurement process by inserting the phrase “notwithstanding the Guam Procurement law to the contrary” at the beginning of subsection (b).

As previously noted, the bill provides an exclusive list of legal fields by which outside counsel could be retained. The following language is recommended in the event a field not listed is needed:

“Upon issuance of the certification by the department or agency, the Attorney General shall confirm that such outside counsel has demonstrated prior experience and competency for a period not less than five (5) consecutive years in the subject matter or specialized area for which the in-house counsel or the Attorney General’s office is unable to provide at that time.”

### Conclusion

While the bill does not provide legislative findings and intent, media accounts represent that the purpose for the measure is to contain legal expenses incurred by the government. Although laudable, it does not articulate a reasonable basis for exempting government agency attorneys from the merit system. It is also recommended that the agency certify the information for which the Attorney General can approve and clarify the process for which outside counsel is retained and certification is issued. Further that the area of law for which outside counsel would provide legal services should not be exclusive otherwise legislative amendments would need to be passed in order to address a legal matter not listed in the current bill. Finally, we look forward to attending any subsequent mark-up or round table meetings with you and your colleagues as suggested at the hearing.

Sincerely,



**LEONARDO M. RAPADAS**  
Attorney General

cc: All Senators, 32<sup>nd</sup> Guam Legislature  
Chief Deputy Attorney General Phillip J. Tydingco  
Deputy Attorney General J Patrick Mason  
Assistant Attorney General Shannon Taitano



# GUAM ENVIRONMENTAL PROTECTION AGENCY

AHENSIAN PRUTEKSION LINA'LA GUAHAN

EDDIE BAZA CALVO  
GOVERNOR OF GUAM

RAY TENORIO  
LT. GOVERNOR OF GUAM

ERIC M. PALACIOS  
ADMINISTRATOR, GUAM EPA, ENERGY OFFICE

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Oct. 7, 2013

## VIA HAND DELIVERY

Hon. Benjamin J.F. Cruz  
Senator  
*Mina' Trentai Dos Na Liheslaturan Guahan*  
Chairperson, Committee on General Government  
Operations and Cultural Affairs  
Suite 107  
155 Hesler St.  
Hagatna, Guam 96910

**Re: Bill No. 180-32 (COR)**

Dear Senator Cruz:

I do not support Bill 180-32 (COR).

The first reason I do not support this Bill is the lack of effective and expected representation that the Executive Branch would receive. The Office of the Attorney General (OAG) has shown that it takes stances, and at times advocates, against the Executive Branch even where such position is not that of the client or in the best interest of the Territory.

Second, there at times lacks subject matter expertise involving the laws and/or rules and regulations that OAG attorneys are tasked with enforcing or providing guidance on. Representing a client and *effectively representing a client* are polar opposites. In court cases, verdicts are overturned and cases are remanded to lower courts because of ineffective representation by counsel.

Why, then, should the Executive Branch be afforded lesser standards?

Third, the caseloads of the OAG attorneys, by their admission, are overwhelming and matters "fall through the cracks." How, then, can they effectively represent clients? If they go on leave, a case comes to a screeching halt until they return. Unfortunately, the case isn't taken on by another attorney in the same office to ensure continued movement through the adjudication process.

Contrary to this, private attorneys dispose of their office's resources to the fullest, from having other attorneys in the firm assist, to dedicating a team of legal aides to handle administrative support matters.

Testimony re: Bill 180-32(COR)

Oct. 7, 2013

Page 2

Finally, and this sums it up: An attorney at the OAG previously told me: “You should never expect the same level of representation and dedication from a government attorney as you would from a private attorney.” This makes sense since private attorneys earn their living by being vetted, retained and then zealously representing their clients.

I thank you for the opportunity to provide input on this Bill as the Guam Environmental Protection Agency would be adversely impacted by this measure.

Sincerely,

**ERIC M. PALACIOS**  
Administrator



Charissa Tenorio <charissa.tenorio@senatorbjcruz.com>

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## Bill 180-32(COR) Written Testimony

2 messages

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**Mary C. Torres** <marycamachotorres@outlook.com>

Thu, Oct 17, 2013 at 3:53 PM

To: "charissa.tenorio@senatorbjcruz.com" <charissa.tenorio@senatorbjcruz.com>

Benjamin J.F. Cruz, Senator

Mina' Trentai Dos Na Lihes laturan Guahan

Chairperson, Committee on General Government Operations and Cultural Affairs

Suite 107, 155 Hesler Street

Hagatna, Guam 96910

**Re: Bill No. 180-32(COR)**

Dear Senator Cruz:

I am providing comments in support of Bill number 180-32(COR) for your consideration. I agree with your position that the legal fees of government agencies that retain outside legal counsel are disproportionately high compared to those that employ in-house legal counsel, and that taxpayers shouldn't have to pay hundreds of thousands of dollars when a more cost-effective option exists.

Effective in-house legal representation exists for some large government of Guam agencies that deal with complex and specialized issues occurs, so it is implausible to believe that other agencies will not benefit from adopting a similar model. Much of what has been presented by agencies opposing this bill is centered on maintaining a convenient arrangement. Convenience should not be the determinant, however, and Bill No. 180-32(COR) is a step in the right direction for reigning in skyrocketing legal fees incurred by agencies. This government needs to integrate and standardize practices amongst the agencies going forward if we expect to improve general government operations. An act to curb certain lucrative contracts that are unnecessary is prudent and sensible for the Government of Guam.

Besides the obvious cost savings, in-house counsel will develop a deep "institutional memory" and can be an important part of an agency's corporate management and risk management. It would be a clear advantage to have in-house counsel actively guide management in decisions that could have potential legal ramifications to avert potential problems with contract management, negotiation and personnel matters. In-house counsel would not only be a trusted legal advisor but may be called upon to assist with important business and policy decisions and strategic business planning. In-house counsel may also help ensure that legal issues are considered in addition to the numerous other issues that agencies should take into account in dealing with matters of concern. The combination of legal knowledge and continued agency experience makes for a better-rounded advisor, helping agencies avoid unnecessary liability while increasing efficiency

and effectiveness.

The value of in-house counsel can also extend beyond assisting the agency to perform its functions. They can help one group in the agency better understand another group's perspectives and they can help in managing external legal providers when necessary. From their more detailed knowledge of the agency's functions they can also create value by identifying the scope for legal policy changes and promoting them, to the benefit of the agency and the Island.

The bulk of agency legal representation deals with ordinary and routine matters, and with sound planning and broad vision, management can readily avail itself of highly specialized legal counsel when special circumstances warrant procuring such services. Your bill still allows for this contingency. Having the Attorney General certify the need for counsel will contribute to the efficiency of service, and it is premature to presume this level of involvement will hinder the expedient delivery of services to the agency.

Although large agencies may have adequate funds to meet their private legal budgets and cost savings is not critical to sustained operations, we cannot ignore the fact that public funds are involved nonetheless and there must be accountability that the funds are properly spent, especially if management has no desire or incentive to question the billing practices. As you made aware, a recent review of invoices from the Port Authority of Guam, for example, has uncovered repeated instances of unscrupulous billing entries that were subsequently certified and paid by Port management within days of receipt. Some of the most egregious examples were several billing entries by a single attorney that totaled more than 24 hours in a single day and billing by quarter increments in contravention of their professional services agreement. Other less glaring but unethical billing practices include exorbitant number of very long days, block billing, and excessive practices such as charging the agency for three attorneys to attend the same board meeting. Such expenditure of public funds is not cost efficient, necessary, or reasonable but the Port management and Board does not appear to have the desire or incentive to require proper accountability.

The use of private outside counsel can undoubtedly create a conflict between the client's needs and the attorney's economic interests that can lead to inefficient use of attorney time and the risk of an attorney abusing his discretion. Bill 180-32(COR) as amended will effectively minimize the risk of (unscrupulous) attorneys taking advantage of government agencies for their economic gain.

Thank you for the opportunity to voice my opinion on this proposed amendment. I believe that setting public policy that takes into consideration a level playing field for all, rather than special interest opportunities for political favor, is necessary to improve general government operations.

Sincerely,

Mary C. Torres

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**Charissa Tenorio** <charissa.tenorio@senatorbjcruz.com>  
To: "Benjamin J.F. Cruz" <senator@senatorbjcruz.com>

Thu, Oct 17, 2013 at 4:33 PM



Carlo Branch <carlo.branch@senatorbjcruz.com>

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## Written Testimony regarding Bill 180

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Elyze McDonald <elyzej@yahoo.com>

Mon, Oct 7, 2013 at 9:58 AM

Reply-To: Elyze McDonald <elyzej@yahoo.com>

To: "carlo.branch@senatorbjcruz.com" <carlo.branch@senatorbjcruz.com>

Cc: Joseph Duenas <joseph\_duenas@ymail.com>, Jonathan Denight <jon@denight.com>, Andrew Gayle <agayle@gta.net>, Alexandra Taitano <Alexandra.Taitano@bankofguam.com>

Hafa Adai Vice Speaker Cruz:

I write to you in my capacity as a Board member of the Guam Solid Waste Authority. I speak on behalf of myself.

GSWA has recently approved a Request for Proposals for legal services in order to assist it with tasks during the transition from receivership. The RFP will be issued shortly. The GSWA Board considered its options of hiring in-house counsel, using the AG's office, or issuing an RFP for legal services from a private firm, and chose the last option for several reasons. First, the AG's office told the GSWA Board that we should obtain private counsel. Since that first meeting, the AG's office has not attended GSWA Board meetings. If Bill 180 is passed, I am concerned that the AG will not be able to provide the legal services GSWA's Board needs in this transition period. For this reason, I am also concerned that the certification process in Bill 180 will result in a delay of the transition.

Regarding the remaining options, we chose to retain private counsel because we believed it would be more cost-effective than an in-house attorney. As Bill 180 recognizes, an in-house counsel could cost around \$125,000. We did not believe that the legal services we needed to establish the Board's rules and regulations, and perform other legal functions needed by the Board during transition, would amount to the cost of an in-house attorney. We intend to utilize a private legal firm on a task-specific basis with pre-approved tasks and billing.

Though I am cognizant of the cost-savings concerns raised by Bill 180, I am concerned that forcing GSWA to utilize the AG's office will result in GSWA not having effective legal representation, and therefore, delaying the transition from receivership. I am also concerned that paying for in-house counsel will result in higher legal fees for the agency.

I suggest that GSWA be exempted from Bill 180 if passed into law, at least for this period as it transitions from receivership.

Sincerely,

Elyze Iriarte

**From:** "Joe T. SanAgustin" <jtsa@kuentos.guam.net>  
**Date:** October 7, 2013 at 10:00:13 AM GMT+10  
**To:** "Benjamin J.F. Cruz" <senator@senatorbjcruz.com>, "Vicente C. Pangelinan" <senben@guam.net>, "Speaker" <speaker@judiwonpat.com>  
**Cc:** "Paula Blas" <pmbblas@ite.net>, "Antolina S. Leon Guerrero" <lina.leonguerrero@saguamanagu-mpg.com>, "David M. O'Brien" <dobrien@uguam.uog.edu>, "Gerard A. Cruz" <gcruz@communityfirstfcu.com>, "James R.F. Duenas" <jrduenas@gpagwa.com>, "Katherine T.E. Taitano" <katherinetaitano@yahoo.com>, "Wildred P. Leon Guerrero" <wplg@ite.net>  
**Subject:** Bill 180- Today's hearing?

Mr. VSpkr. Cruz

Today's PDN article on subject bill 180 is scheduled for a public hearing. Perhaps, we missed it but, we have no advance notice that you were having a public hearing.

In any event, the Retirement Fund under present statute as a " Trust Fund" is authorized to have its own Legal Counsel and separate and apart from the Attorney-General, to preclude basic conflict of interest - the AG representing the Government as the employer would not be in a position to represent or defend the interest of the Retirement Fund membership.

In the meantime, the Fund respectfully request that the current law which allows the Fund to have its own independent legal counsel should not be superseded nor amended by Bill 180, if enacted as it is currently worded. The Fund would be submitting written testimony citing the historical background for the Retirement Fund to have its own legal counsel, and not dependent nor to be legally, and, or by discretion permitted by AG.

Your cooperaion and assistance, as always, are appreciated to ensure that the intergrity and soundness of the Fund are maintained on behalf of the Fund's membership - a position you have always echoed and support.

thank you,

Joe T. San Agustin, Chm, Retirement Fund Bd of Trustees

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BEFORE THE  
I MINA' TRENTAI DOS NA LIHESLATURAN GUÁHAN

In the Matter of:

Bill No. 180-32 (COR)

An Act to Amend §30102(a) of Chapter 30, Title 5 GCA, to Require Agencies Permitted to Retain Counsel Other Than the Attorney General, to hire Unclassified, In-House Counsel.

WRITTEN TESTIMONY OF JEFFREY C. JOHNSON, CHAIRMAN, ON BEHALF OF THE GUAM PUBLIC UTILITIES COMMISSION

The Guam Public Utilities Commission [PUC] is pleased to have been requested to comment on Bill No. 180-32 (COR). The PUC objects to Bill No. 180-32 and urges its rejection. For the reasons stated herein, it is impractical and unnecessary to require the PUC to retain in-house, unclassified counsel. Imposition of such a requirement upon the Guam PUC would most probably impede its ability to obtain quality legal services.

**I. IT WOULD BE IMPRACTICAL, IF NOT IMPOSSIBLE, FOR THE PUC TO HIRE "UNCLASSIFIED, IN-HOUSE COUNSEL."**

The Guam Public Utilities Commission is not a typical governmental entity; it is an independent regulatory body whose primary function is the setting of rates for regulated entities. Its work is highly specialized, and the consultants engaged by the PUC must have a high degree of specialized knowledge.

There are no position descriptions for PUC employees, nor are any of its employees specifically placed in the "classified" or "unclassified" service. The PUC

only has one employee: the PUC Administrator, who is hired under successive one year employment contracts.

In general, the Commission is authorized to retain "on an as needed basis those professional services required by the Commission in the performance of its duties." 12 GCA §12002(a). In its nearly 25 year history, the PUC has always hired its consultants, including Administrative Law Judge, Legal Counsel, and substantive Regulatory Consultants **on a contractual basis**. Other than its one contractual employee, the PUC Administrator, it has no employees.

During its history, the PUC has not had more than one full-time employee. The PUC is not able to provide any of the benefits ordinarily available to Government of Guam employees, such as health insurance, annual and sick leave benefits, or other benefits appurtenant to government employment. The current employee of the PUC provides her own health insurance and is also required to file monthly Gross Receipt Tax Returns and to pay Gross Receipts Tax upon her salary.

Even assuming that the PUC could locate a suitable "in-house" counsel to handle its functions, said counsel would have to be hired on a contractual basis and not as a classified or unclassified employee through a GG1 or its equivalent. As a contract employee, in-house counsel would not be afforded health or life insurance benefits, leave benefits, or other benefits ordinarily accorded employees of the government.

The absence of such ordinary Government of Guam employment benefits would likely make it difficult to recruit such an in-house counsel; in-house counsel would also

have to be willing to file monthly Gross Receipt Tax Returns and to pay GRT upon his/her salary. Such counsel would also have to pay employer and employee share of FICA. The PUC is simply not an ordinary entity of the Government of Guam; to force it to hire "in-house" counsel in the unclassified service is impractical. PUC is not equivalent to other entities which have large numbers of classified and unclassified employees.

**II. THE PUC DOES NOT HAVE THE INTERNAL RESOURCES TO PROVIDE AN EFFICIENT OR EFFECTIVE WORKING ENVIRONMENT FOR AN IN-HOUSE LEGAL COUNSEL.**

Every counsel, whether in-house or otherwise, needs secretarial and other forms of assistance, and resources to provide effective services. To begin with, any counsel hired "in-house" at the PUC would not have an available full-time Legal Secretary to assist such counsel. The current PUC Administrator has her own substantial administrative duties, including receipt and filing of all regulatory documents, maintaining the filing system, compiling of Commissioner Packets and agendas, handling of public inquiries, preparing of billings, accounting functions, and numerous other duties.

In addition, the PUC has no support staff, including messengers or individuals who could prepare documents or assist with the filing and delivery of documents with other offices, entities, or courts. The PUC has no legal office supplies, no research materials, or access to online legal research services such as Westlaw and Lexus. The

PUC has no internal law office calendaring capability or any of the other resources ordinarily available to private counsel.

The PUC has always handled its legal counsel services through outside contracted counsel. Prior to 2009, the PUC had an Administrative Law Judge; when legal opinions or other legal services were necessary, the ALJ relied upon private outside counsel of the PUC Consultant.

Since 2009, the PUC has retained its own private counsel through a professional services agreement. Outside counsel has the advantage of access to necessary personnel assistance and office resources. It is difficult to imagine that an “in-house” counsel could effectively function in the current administrative framework of the PUC.

**III. IT IS HIGHLY UNLIKELY THAT THE GUAM PUC COULD HIRE IN-HOUSE COUNSEL WHO COULD PROVIDE AS EFFECTIVE LEGAL SERVICES AS PRIVATE COUNSEL.**

The PUC is a highly specialized regulatory authority which has jurisdiction over extremely diverse entities: the Guam Power Authority, the Guam Waterworks Authority, telecommunications companies, the Port Authority, the Guam Solid Waste Authority, the Municipal Golf Course, and others. To begin with, there are very few lawyers who specialize in regulatory law.

There are certainly few lawyers who have knowledge of all of the subject areas over which the PUC has jurisdiction. The knowledge which a counsel for the PUC needs to address these diverse entities is not possessed by a beginner lawyer or newer lawyer who would seek an in-house counsel position.

The difficulty that the PUC could have in hiring in-house lawyers is also pointed out by the fact that the PUC only obtained one application for Legal Counsel in the issuance of two Requests for Proposals for Legal Services over the past five years.

By statute, the duties of the PUC attorney **may include service as the Commission's Administrative Law Judge.** Currently, the PUC counsel does not only perform routine or mundane legal services. He serves as an ALJ for power, telecom, and solid waste matters. Service as an Administrative Law Judge requires a high degree of skill and experience which is not routinely possessed by an in-house counsel.

The current PUC counsel, Frederick J. Horecky, has served as PUC Legal Counsel for five years and was recently rehired by the PUC through an RFP. He has nearly 35 years of legal experience on Guam and extensive background and experience in the area of Administrative Law. He was the general Legal Counsel for the Guam Power Authority for ten years and also represented the Guam Telephone Authority, the Guam Waterworks Authority, and private telecom companies.

He possesses a broad substantive background which now encompasses all of the regulated entities of the PUC. He has undertaken special training in rate regulatory law, including annual attendance at the Pacific Telecommunications Conference and at the National Association of Regulatory Commissions Rate School. A person of his background and experience would be difficult to replace through the hiring of an in-house counsel. It would, at the very least, be extremely difficult for the PUC to locate an in-house counsel who would possess the necessary background and experience.

**IV. EVEN AS A SO-CALLED COST CUTTING MEASURE, THE IMPOSITION OF AN IN-HOUSE COUNSEL REQUIREMENT UPON PUC IS COMPLETELY UNNECESSARY.**

From public statements made by the authors of this bill, it appears that the intent behind requiring government entities to retain unclassified in-house counsel is cost savings to the government. The presumption appears to be that government legal fees are too high and that the imposition of a \$125,000 annual salary upon in-house counsel can lead to government savings.

Whatever may be the applicability of this rationale to other government entities, it is not applicable to the Guam Public Utilities Commission. Initial computation of the amounts paid by the Public Utilities Commission to its outside counsel for legal services over the past five years (FY2009 – FY2013) indicates an average annual compensation to Legal Counsel of roughly \$113,000, less than the target amount of \$125,000 set in the bill. The measure is unnecessary as a cost savings measure with regard to the PUC.

**V. FOR THE REASONS STATED HEREIN, THE PUC RESPECTFULLY REQUESTS THAT IT BE EXEMPTED FROM THE REQUIREMENTS OF BILL NO. 180-32.**

Bill No. 180-32 already includes a limited procedure to allow autonomous entities of the government to retain outside counsel that are “essential to addressing a sole and specific legal matter before the agency...” One of the matters included as a basis for hiring outside counsel is matters involving “the issuance of bonds or other financial instruments.”

It should also be pointed out that PUC counsel routinely investigates matters involving bond issuance with regard to the Guam Power Authority and the Guam Waterworks Authority. In fact, the PUC is ordinarily required, through legislation, to approve any bond issuance by the public utilities. Issues related to the interpretation of GPA and GWA bonds and the bond covenants routinely come before Counsel for investigation.

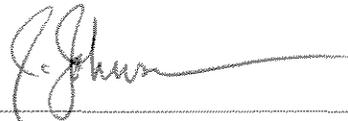
The PUC submits that the particular nature of its specialized functions require that it should have a permanent and broad reaching exemption to the requirements of Bill No. 180-32.

At the end of Paragraph (b) in proposed 5 GCA §30102, the PUC requests that the Guam Legislature add the following provision [this language would appear after the language "... other than the sole and specific matters certified by the Attorney General."]: "However, the Guam Public Utilities Commission is exempted from the requirements of this law and may continue to retain outside counsel."

### CONCLUSION

For all of the reasons set forth herein, the Guam Public Utilities Commission urges that the Legislature reject Bill No. 180-32 (COR).

Sincerely,



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Jeffrey C. Johnson  
Chairman  
Guam Public Utilities Commission



**PORT OF GUAM**

ATURIDATI / PUETTON GUAHAN

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Eddie Baza Calvo  
Governor of Guam

Ray Tenorio  
Lieutenant Governor

October 7, 2013

Senator Benjamin J.F. Cruz, Vice Speaker  
Chair, Committee on General Government Operations  
and Cultural Affairs  
155 Hesler Place  
Hagatna, Guam 96910



**RE: Bill No. 180-32 (COR): An Act to amend section 30102(a) of Chapter 30, Title 5  
Guam Code Annotated, to require agencies permitted to retain counsel other than  
the Attorney General, to hire unclassified, in-house counsel.**

*Hafa Adai!* Vice Speaker Cruz:

Thank you for inviting my perspective on your proposal to mandate the Port Authority of Guam to employ a full time attorney and to further restrict the Port's ability to utilize Guam's private law firms.

Historically, the Port maintained the discretion and authority to manage its legal needs by utilizing the procurement process with participation by the Office of the Attorney General and final approval by the Attorney General. I believe there remains compelling reasons to continue this authority and to allow the Port to best manage its resources and the discretion to address its many legal needs.

As you are well aware, the Port's ability to immediately receive assistance from a private law firm led to the uncovering of wide spread abuse and corruption by former Port employees of the Workers Compensation Program. These cases remain ongoing in the Superior Court, Civil Service Commission, and counsel continues to work with the Office of the Attorney General to ensure those who broke the law are not allowed to return to their former employment with the Port. Under your proposal, the sixty (60) day rule requiring management to complete the adverse action process from the date it knew or should have known of the offense would prevent the meaningful involvement of outside counsel. This is just one of many examples why the Port continues to require a team of attorneys remain available to provide immediate legal assistance and advice. The Port's legal strategy should come from the Board of Directors and General Manager, not the Legislature or special interest groups.

I believe attempts to terminate the Port's use of a private law firm in the middle of these and other enormous cases, sends a very poor message to those hoping you will intervene to assist them in their cases. These cases are better left to the Civil Service Commission and Judiciary and the Port that is in the best position to determine which matters to pursue. Just recently, outside counsel defeated a claim against the Port for approximately Seven Million Dollars (\$7,000,000). On a daily basis, and at times a few times a day, the Port utilizes the expertise of its retained law firm for the numerous issues arising. While you propose to limit the participation of local firms

to the one or two that might have five (5) years of consecutive experience in maritime law, the Port requires a legal team able to quickly address a whole gambit of legal areas much broader than the limited area you propose. The Attorney General has appointed our current private counsel as a Special Assistant Attorney General for procurement matters. A portion of the work performed by the Port's current law firm includes work on the recent acquisition of cranes, including but not limited to the procurement process and acquisition of loan proceeds to purchase the cranes; GFT Negotiations and Contract Drafting; Review of Insurance Contracts to ensure compliance with applicable rules and regulations; Return of Ancestral Lands; Construction Projects; Personnel Issues; Defending and Prosecuting Simple and Complex Litigation; Prosecuting Adverse Action Appeals before the Civil Service Commission; Defending and addressing EEOC Complaints; Responding to Civil Service Commission Audits; Reviewing Worker's Compensation Claims and many related issues; Meeting and representing the Port with local law enforcement, investigators, the Attorney General's Office, and the U.S. Attorney's Office regarding criminal activity; Compliance Issues: Procurement Laws and Procedures; Reviewing and addressing Freedom of Information Requests; Advising Management and the Board on Open Government Law issues and compliance; Privacy Issues; Employment Issues, and much more. The Port's ability to utilize a law firm has resulted in great financial savings to the Port. Most times the avoidance of Port expenditures because of keen and experienced legal advice is not discussed publically and rarely makes headlines, but it remains a real need for the Port's continued success.

Requiring the Port to create and fund a legal office within the Port would divert resources from their current and best use and severely hinder the Port's ability to receive immediate and comprehensive legal services. Some situations will require an ongoing investigation by counsel with a specialized understanding of particular areas of law. While we certainly appreciate the assistance of the AG's office when available, we also understand that the AG's limited resources restrict the Office's availability to respond to issues as immediately as they may prefer. The Port earlier entered an agreement with the AG's Office and utilized an Assistant Attorney General for certain matters although this relationship did not work due mostly to the Port's unique, and at times overwhelming legal needs. Assistant Attorneys General remain employees of the Office of the Attorney General and have separate supervisors in their office. Under current law the Port maintains the discretion to utilize the Office of the Attorney General, and to create a legal office, and there is no need to create additional laws to enable such action should the Port decide in the future it would like this addition to its current method of securing the best possible legal advice.

Under your proposal, by the time the AG certifies in writing that outside counsel is required for a particular matter, Port may be greatly disadvantaged by its inability to act quickly. The role of outside counsel is to serve the needs of their client, but those needs are far better served when the outside counsel has a strong understanding of their client, as the current relationship allows. Whether guiding management on technical and complicated compliance issues or leading investigations into wrongdoing and violations of law, the current law allows the Port to establish the necessary extremely fluid relationship with a team of attorneys always available to assist or lead when called upon. Our current team of attorneys remains available day and night to represent the Port in Court, before the Civil Service Commission, and have served as key participants in all significant Port matters ranging from union contract negotiations with the

Guam Federation of Teachers to the Port's acquisition of cranes and the resulting Public Utilities Commission, banking and legislative approval procedures. A simple protest by a firm not selected under your proposal could further cripple the Port's ability to maintain access to qualified attorneys.

As it stands now, our outside counsel only answers to the General Manager and the Board. Having outside counsel deal with adverse actions also reduces the likelihood that the government will discount the integrity of any exculpatory results of the investigation as a byproduct of the hierarchy. With outside counsel, Port maintains strong protection of communications under the attorney-client privilege, whereas in-house counsel's communications may be construed as unprotected business advice. Plus, the matter may result in a future proceeding beyond the expertise of an in-house counsel. Additionally, as the bill is written the AG would also have to take time not only to certify that outside counsel is necessary but to evaluate whether or not the outside counsel meets the criteria of having at least five consecutive years of experience and competency in maritime and other areas of law. In the time I have been here, the vast majority of legal issues we have had to deal with involve areas such as workers compensation, procurement, employment, and contract law. Requiring five or more consecutive years of experience in areas of law which do not arise would needlessly disqualify a large segment of the legal community. Limiting the Port to an unclassified government attorney will not further the interest of the Port although certain special interest groups may celebrate such a severe restriction literally tying the Port's hands to prosecute and defend critical legal matters.

Each time new issues arise, regardless of the subject matter outside counsel is equipped and prepared to address each matter. Outside counsel is familiar and knowledgeable of areas including complex issues involving multiple party leases of Port property (Cementon and Mobil corporations) and defending or prosecuting complex litigation, avoiding employee class action lawsuits, and saving the Port hundreds of thousands of dollars in unauthorized expenditures. The Port requires a team of attorneys able to quickly address one legal issue after another without the added constraints of repeated procurement and restriction upon who the Port can retain as its representative.

I strongly encourage you to allow the current laws regarding legal representation to remain in place. Current law requires the Port to include the Office of the Attorney General during the procurement of legal services from a private firm, and further requires the Attorney General himself approve any and all legal contracts. These additional requirements to the procurement process further ensure the protection of the public interest and the ability of the Port to utilize the best legal services available.

Thank you for this opportunity to submit written testimony. Please feel free to contact me anytime should you have questions or wish to further discuss this matter.

Sincerely,

  
**JOANNE M.S. BROWN**  
General Manager



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October 7, 2013

**VIA HAND DELIVERY**

Honorable Benjamin J.F. Cruz  
Senator  
**MINA' TRENTAI DOS NA LIHESLATURAN GUÅHAN**  
Chairperson, Committee on General Government  
Operations and Cultural Affairs  
Suite 107  
155 Hesler St.  
Hagåtña, Guam 96910

**RE: BILL NO. 180-32**

Dear Senator Cruz:

I am writing to give you the comments of the Antonio B. Won Pat International Airport Authority, Guam ("GIAA") on the legislation proposed in Bill 180-32.

As you well know, GIAA is a large and complex multi-million dollar operation requiring highly skilled, experienced and responsive professional service providers. Total operating revenues in 2012 were \$52,477,933. The passenger terminal building now includes 76 ticket counter positions, 48 immigration and 42 customs inspection stations, and enough capacity to process 5,000 international passengers per hour. According to the Federal Aviation Administration, 1,477,926 enplaned passengers were processed through the Airport in calendar year 2012, making the Airport the 71<sup>st</sup> busiest primary airport within the FAA system. According to data published by U.S. Department of Commerce Office of Travel and Tourism Industries, for calendar year 2012, the Airport was the 8<sup>th</sup> busiest port of entry to the United States for non-U.S. resident arrivals (excluding arrivals from Canada and Mexico). About 98% of all visitors to Guam travel by air and these visitors add over two billion dollars to Guam's annual revenues. GIAA, therefore, plays a more significant role in Guam's economic health than does any other agency. We hope to continue this role for the Territory, and even improve our services to the People of Guam, for many years to come.

At the outset, I'm pleased to report that GIAA has finished several successful months of operations, which was the result of many months of work and planning. In May, we signed a new specialty retail concession agreement that will generate for GIAA at least \$15.4 million in revenue per year and a projected \$278 million dollars in revenue over the next ten years. In September, GIAA closed its 2013 bond offering of \$247 million. We refinanced old debt at a lower interest rate and issued \$110 million in new debt to support much-need capital



improvements at the Airport. Because so many bond buyers wanted to invest in GIAA, the bond offering was oversubscribed and allowed us to lock in a very low interest rate.

We have carefully considered Bill 180-32, and for the following reasons, GIAA respectfully opposes passage of the Bill. We believe that the Bill assumes GIAA management uses its limited resources wastefully, but that assumption is not supported by any facts. Our attorney's fees to outside counsel bills go up and down in response to the legal issues and problems faced by GIAA. We believe that, at least with respect to GIAA, the Bill is a solution to a problem that does not exist.

### **Background**

In 1976, the Government of Guam transferred the ownership, management, and administration of what was then known as the Guam International Air Terminal from the Director of the Department of Commerce to the newly created Guam Airport Authority (the predecessor of, and also referred to hereafter as GIAA). GIAA was created as a public corporation and autonomous instrumentality of the Government of Guam, with vested powers exercised by its Board of Directors. The purpose of this new autonomous public corporation was to use newly obtained federal funding to develop a modern commercial airport on Guam. In GIAA's enabling act, the Guam legislature required GIAA to become self-sustaining – both through airport revenue and from federal grants – rather than continue to rely on Guam taxpayer money for funding.

We are lucky that GIAA has the benefit of an experienced management group and access to knowledgeable consultants to run its operations. Because of the many services GIAA provides, it has a wide variety of substantial and pressing business, operational and legal issues to address on a daily basis. Some of these legal issues arise from the following kinds of matters that GIAA confronts every day:

- Signatory and non-signatory airline agreements.
- Parking and ground transportation services.
- Rental car concession and lease agreements.
- The Tiyan Business Park ground leases with PAC Air Properties, DHL, Triple B and CTSI and space or ground leases with, or Airport Operating Permits issued to, other entities using the facilities located within the Tiyan Business Park.
- The Airport Industrial Park, which currently has four tenants operating pursuant to various ground leases, including a gas station and convenience store, a heavy equipment retailer, a restaurant (still under development) and cargo warehouses.

- Other facilities at the Airport, including the Kunkle Air Cargo Building, the Yellow Cargo Building, aircraft hangars, warehouse and storage areas, a commuter terminal used primarily by Freedom Air for inter-island/commuter operations and that has been converted in part to airline and aviation-services related offices, and other facilities used as administrative buildings.
- Passenger terminal leases ranging from leases to banks providing ATM machines, to leases for tour company counters, to leases to the Transportation Security Administration and the Customs & Quarantine Agency for office and operations space, and leases to other entities providing services at the Airport.
- Concession agreements to provide food and beverages, currency exchange services, newsstand services, duty free retail sales, retail sales of electronics, and advertising services within the passenger terminal building.
- Labor and employment issues, including counseling, discipline, termination, wrongful discharge cases and hearings.
- Retirement and employee benefits.
- Risk management and insurance.
- Matters ranging from FAA grant assurance compliance to TSA security compliance raised by GIAA regulators, including the Government of Guam, the Federal Aviation Administration, the Federal Aviation Administration, the Federal and Guam Environmental Protection Agencies, the Transportation Safety Administration and Department of Homeland Security, the Department of Labor, and U.S. Customs and Border Protection, among others.
- Financing issues, including bond financing and compliance with bond covenants.
- Procurement issues, including issuance of requests for proposals and invitations to bid, as well as procurement disputes.
- Corporate governance, including advice to Directors at Board meetings.
- Sunshine Act requests.

At present, numerous businesses operate at the Airport that, along with GIAA itself, employ thousands of people. The legal fees spent by GIAA in 2012 and 2013 to outside counsel are low compared to GIAA's overall budget. In the past year, GIAA has experienced several unusual events that have served to increase its legal fees on a one-time basis, including among other things GIAA's bond offering, the specialty retail RFP – GIAA's most significant non-

airline concession – and defense of a bid protest and protracted litigation commenced by one of the disappointed specialty retail proposers. These circumstances are unique to 2012-2013. And, in many cases, GIAA will seek to recoup its fees from third parties, if allowed to do so under a contract or by statute, or by court order.

### Analysis

Bill 180-32 would deprive GIAA of on-demand and immediate access to experienced attorneys in specialized fields, and GIAA and the People of Guam would be prejudiced as a consequence. The Bill would limit GIAA to one staff attorney. But the volume and the complexity of GIAA's legal needs would make it impossible for a single staff attorney (or even 2 or 3) to provide GIAA with effective and timely legal advice.

We rely on GIAA's experienced management team and consultants to help choose outside counsel. We hire outside counsel through an RFP process. During that process, we get input from management on the selection of counsel. After we choose the most qualified proposer, we negotiate on their fees and usually obtain deeply discounted rates. GIAA hires outside law firms because we depend upon private counsel to bring to the table several attorneys with expertise from different practice areas to help GIAA resolve legal issues such as these and to timely deliver an answers to complicated legal questions. We conclude that during the past year, the benefit of having access to outside legal counsel has far outweighed the costs.

GIAA cannot rely on a single staff attorney to replace outside counsel for the same reason that no enterprise of GIAA's size and complexity relies solely on in-house counsel: it is impossible for in-house lawyers to maintain sufficient competence and expertise regarding all of the issues potentially facing a large enterprise such as GIAA without in-house counsel itself becoming prohibitively expensive. While the Bill designates the Office of the Attorney General as the "backstop" for the proposed staff attorney, the Office of the Attorney General is also ill-equipped to fulfill that role. There is evidence already that the Office of the Attorney General cannot handle the work of GIAA and other independent agencies, because there is a process to appoint outside counsel as special attorneys general to review and approve procurements, among other things. In fact, in recent hearings before the Guam Legislature, the Office of the Attorney General has already been revealed to be overburdened and stretched beyond its capacity with respect to its existing obligations. Adding GIAA's legal problems to the workload of the Office of the Attorney General is not a solution.

GIAA could not effectively operate under the hamstrings imposed by Bill 180-32. GIAA needs outside counsel on call in order to get timely and useful answers to legal questions. The Bill would permit GIAA to retain outside counsel *only* when the Attorney General of Guam has certified in writing to the Speaker of *I Liheslaturan Guahan* and *I Maga'Lahen Guahan*, that:

- Such outside counsel is *essential* to addressing a *sole and specific* legal matter before the agency.

- Neither the Office of the Attorney General nor the In-house counsel would be able to address the legal matter before the agency.
- The Attorney General certifies that such outside counsel has demonstrated prior experience and competency for a period of not less than five consecutive years in:
  - maritime law,
  - aviation law,
  - healthcare law,
  - or the issuance of bonds or other financial instruments.

This framework for approval of outside counsel is unrealistic. Many problems requiring legal advice require immediate assistance – within an hour or less -- but the bureaucratic roadblocks presented by Bill 180-32 will prevent GIAA from getting timely, needed legal advice. In an emergency, several days will pass before the in-house staff attorney and the Office of the Attorney General determine that outside counsel is *essential* to addressing a *sole and specific* legal matter before the agency and that they are not capable of addressing the issues. It will take several more days for the Office of the Attorney General to draft a written certification to the legislature that such outside counsel is “essential”; and finally, it will take several more weeks for the Office of the Attorney General to vet outside counsel and make a determination of experience and competency in the areas of maritime law, aviation law, healthcare law or the issuance of bonds or other financial instruments and for the agency to procure legal services. In addition, there are gaps in the areas of expertise even certifiable under the bill—e.g., homeland security, procurement and employment—that have the potential for shutting down the Airport if not properly and promptly handled. By the time GIAA passes through the bureaucratic gauntlet constructed by the Bill, including issuing a procurement for legal services each time outside counsel is needed, GIAA will be irreparably disadvantaged in any legal dispute with any third party. The effect of Bill 180-32 will be to subject GIAA to the potential of paying huge fines due to non-compliance with federal and local regulations, including homeland security regulations, which would cause GIAA to incur unnecessary liabilities and waive possible revenue opportunities.

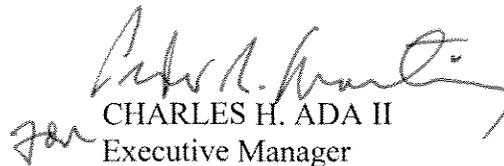
Bill 180-32 points to no evidence that the amounts paid by GIAA in legal services were excessive or that they did not reflect valuable and necessary services benefiting GIAA and the people of Guam. In fact, while the effect of Bill 180-32 will likely expose GIAA to huge risks and monetary penalties, there is no corresponding benefit to the Territory or to the people of Guam. GIAA is a self-funded agency and does not rely on general taxpayer funds for its operations. Per-passenger fees charged by the Airlines are subject to negotiation each year and depend upon GIAA’s revenues and expenses. There is absolutely no evidence that the current amount of GIAA’s legal fees has had any impact on Guamanians who are passengers at the

Airport. On the contrary, over the past several years the per-passenger fees charged by the Airlines have remained in a very narrow range and, in fact, have decreased in the past year, despite the fact that GIAA is undertaking several large capital infrastructure projects. These projects are funded without needing to raise fees because of the work of GIAA's specialized outside counsel. There is also no evidence that per-passenger fees will increase this year or at any time in the near future due to outside attorney's fees incurred by the Airport.

**Conclusion**

For the foregoing reasons, GIAA respectfully requests that the Legislature consider the significant adverse impacts of Bill 180-32 on GIAA's ability to secure timely and expert legal advice on the wide variety of legal issues it faces on a daily basis, and that it reject Bill 180-32 because it imposes significant costs and potential liability on the Airport without any countervailing benefits.

*Senseremente,*

  
for CHARLES H. ADA II  
Executive Manager

cc: Honorable Michael F. Q. San Nicolas  
GIAA Board of Directors



# GUAM ELECTION COMMISSION

## Kumision Ileksion Guåhan

Your VOTE is your voice. ✓ BOTA ya un ma kuenta.



October 7, 2013

Honorable Benjamin J.F. Cruz  
Vice-Speaker  
I Mina'Trentai Dos Na Liheslaturan Guåhan  
155 Hesler Place  
Hagåtña, Guam 96910

Hafa Adai Vice-Speaker Cruz:

Si Yu'os ma'ase' for inviting me to testify. The Guam Election Commission (GEC) respectfully submits additional information on legal fees and legal service hours for Fiscal Years 2004 to 2007 based on discussion of Bill 32-180 at the Commission meeting of September 18, 2013.

Guam Election Commission Summary of Legal Services			
Year	Fiscal Year	No. of Hours	Amount
1	2004	515.00	\$ 90,145
2	2005	838.00	\$ 146,719
3	2006	1,025.25	\$ 180,118
4	2007	1,836.00	\$ 325,620
5	2008	920.00	\$ 160,669
6	2009	307.50	\$ 68,888
7	2010	520.00	\$ 91,065
8	2011	1,469.00	\$ 250,793
	2012	443.50	\$ 84,656
9	2012	On Retainer (17 hrs. per month)	\$ 39,248
10	2013	On Retainer (17 hrs. per month)	\$ 40,436
			<b>\$ 1,478,355</b>

NOTE: New Legal Counsel hired Nov. 2011; retained former Legal Counsel for pending litigation. Legal hours and fees are based on invoices on file at GEC and the Dept. of Administration Financial Accounting System. For years 2004-2010, some invoices may not have been available, so no. of hours were estimated based on \$175 per hour/amount paid.

Joseph F. Mesa  
Chairman  
Republican

Donald I. Weakley, Sr.  
Vice-Chairman  
Democrat

Dot H. Chargualaf  
Member  
Democrat

G. Patrick Civile  
Member  
Independent

Martha C. Ruth  
Member  
Republican

Alice M. Taijeron  
Member  
Democrat

Johnny P. Taitano  
Member  
Republican

Jeffrey A. Cook, Esq.  
Legal Counsel

Maria I.D. Pangelinan  
Ex Officio Secretary  
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Please further note that the GEC still owes about \$250,000 in legal fees for invoices from as far back as 2005. Though the Guam Legislature has been supportive of the GEC, the GEC has no choice when it comes to election litigation and initiatives which are not planned and budgeted. The retainer fee for the contracted GEC legal counsel is \$3,200 per month and for the last two years (twenty-two months) the GEC has spent less than \$80,000 for the current Legal Counsel.

The GEC has been diligent in complying with election mandates and exercising fiscal responsibility. The nature and timing of the work of the GEC does not lend itself to in-house legal counsel. **To this end, the GEC respectfully requests exemption from the requirements of Bill 180-32.** Comments may be submitted from the Guam Election Commission after its monthly meeting, October 16, 2013. Please let me know if you require additional information. Si Yu'os ma'ase'.

Sincerely,



MARIA PANGELINAN  
Executive Director

cc: Honorable Rory J. Respicio, Chairman, Committee on Rules, Federal, Foreign & Micronesian Affairs, Human & Natural Resources, and Election Reform



EDWARD J.B. CALVO  
GOVERNOR OF GUAM  
I MAGA' LAHEN GUAHAN  
RAYMOND S. TENORIO  
LT. GOVERNOR OF GUAM  
I SEGUNDO NA MAGA' LAHEN GUAHAN  
HENRY J. TAITANO  
ADMINISTRATOR  
ADMINISTRADOR

VIA HAND DELIVERY

Honorable Benjamin J.F. Cruz  
Vice Speaker  
*Mina' Trentai Dos Na Liheslaturan Guahan*  
Chairperson, Committee on General Government  
Operations and Cultural Affairs  
Suite 107  
155 Hesler St.  
Hagåtña, Guam 96910

RE: BILL NO. 180-32

*Hafa Adai Vice Speaker Cruz!*

I am writing to relay the concerns of the Guam Economic Development Authority ("GEDA") with Bill No. 180-32. For the reasons set forth below, GEDA cannot support passage of this Bill.

For decades GEDA has engaged private counsel to provide legal services to GEDA on an as-needed basis at government rates that are much lower than rates charged by counsel to non-government clients. The flexibility of having private counsel provide legal services on an as-needed basis works best for GEDA given that our legal needs vary month to month. There are some months when GEDA requires only minimal legal services, in which case it does not make economic sense for GEDA to have in-house counsel on its payroll. By contrast, during bond issuances or when GEDA is administering large procurements or when GEDA is involved in protracted litigation, GEDA's legal needs are substantial and ongoing and GEDA requires responsive services of a multi-lawyer firm. Having private counsel standing by to provide services on an on-call basis gives GEDA the flexibility to pay its counsel only when needed. If Bill 180-32 becomes law, GEDA would lose the ability to quickly retain counsel when multiple attorneys with diverse expertise are needed while GEDA would at the same time be forced to pay a single attorney even when his or her services are not needed.

GEDA's mandates vary greatly and thus GEDA's legal needs are diverse and multifaceted. As the central financial manager of the government of Guam, GEDA needs its legal counsel to review loan and bond documents and to assist with the procurement of financial institutions and bond professionals. As a landlord and property manager, GEDA needs its legal counsel to prepare lease documents and provide advice on landlord-tenant issues and disputes. As the program manager for the HOT Bonds capital improvement projects, GEDA needs its legal counsel to assist with multi-million dollar procurements and all related procurement issues such as addressing protests and drafting contracts. With all of its various functions, GEDA needs its legal counsel to be an experienced transactional attorney, a skilled administrative attorney, and a talented litigator. These are qualities rarely seen in a single lawyer.



By retaining private counsel with a multi-disciplinary practice, GEDA is able to draw upon the varied expertise of the lawyers in a single firm. Bill 180-32 would require GEDA to employ one in-house counsel who will likely not have the wide-ranging transactional and litigation experience required to service GEDA's legal needs. Relying on the Office of the Attorney General ("OAG") to provide legal services as Bill 180-32 contemplates is also troublesome as that office is already overloaded with the work it provides to the line agencies and departments.

Bill 180-32 would impose a method for retaining private counsel that is cumbersome and time consuming and will result in delays detrimental to GEDA and the programs it administers. Adhering to the requirements of Bill 180-32, in order for GEDA to retain outside counsel, GEDA would have to obtain certification from the OAG that outside counsel is essential to address a sole and specific legal matter and that neither the OAG nor in-house counsel is able to address that legal matter. The OAG would have to further certify that the private counsel selected by GEDA has demonstrated experience for at least five years in certain delineated areas of law, most of which do not even relate to the services GEDA provides. This cumbersome process would bring many GEDA projects to a standstill while the OAG certification is being obtained and while GEDA procures legal services for each separate and specific legal matter.

GEDA does not rely on general fund appropriations for its operations. GEDA has for decades made efficient and prudent use of its outside counsel while always living within its means. In-house counsel would provide absolutely no benefit to GEDA and would actually delay the services GEDA provides. Considering GEDA's multiple mandates and legal needs, outside counsel has always made the most sense for our agency. If Bill 180-32 were to become law, GEDA would certainly see a delay in the services it provides. GEDA performs an array of important functions that greatly benefit our government and our community. Please do not pass a law that would impair GEDA's ability to perform those functions.

I again thank you and the members of your Committee, for this opportunity to provide this testimony on Bill 180-32(COR).

*Si Yu'us Ma'ase,*



Henry J. Taitano  
Administrator





Carlo Branch <carlo.branch@senatorbjcruz.com>

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## Written Testimony regarding Bill 180

---

Elyze McDonald <elyzej@yahoo.com>

Mon, Oct 7, 2013 at 9:58 AM

Reply-To: Elyze McDonald <elyzej@yahoo.com>

To: "carlo.branch@senatorbjcruz.com" <carlo.branch@senatorbjcruz.com>

Cc: Joseph Duenas <joseph\_duenas@ymail.com>, Jonathan Denight <jon@denight.com>, Andrew Gayle <agayle@gta.net>, Alexandra Taitano <Alexandra.Taitano@bankofguam.com>

Hafa Adai Vice Speaker Cruz:

I write to you in my capacity as a Board member of the Guam Solid Waste Authority. I speak on behalf of myself.

GSWA has recently approved a Request for Proposals for legal services in order to assist it with tasks during the transition from receivership. The RFP will be issued shortly. The GSWA Board considered its options of hiring in-house counsel, using the AG's office, or issuing an RFP for legal services from a private firm, and chose the last option for several reasons. First, the AG's office told the GSWA Board that we should obtain private counsel. Since that first meeting, the AG's office has not attended GSWA Board meetings. If Bill 180 is passed, I am concerned that the AG will not be able to provide the legal services GSWA's Board needs in this transition period. For this reason, I am also concerned that the certification process in Bill 180 will result in a delay of the transition.

Regarding the remaining options, we chose to retain private counsel because we believed it would be more cost-effective than an in-house attorney. As Bill 180 recognizes, an in-house counsel could cost around \$125,000. We did not believe that the legal services we needed to establish the Board's rules and regulations, and perform other legal functions needed by the Board during transition, would amount to the cost of an in-house attorney. We intend to utilize a private legal firm on a task-specific basis with pre-approved tasks and billing.

Though I am cognizant of the cost-savings concerns raised by Bill 180, I am concerned that forcing GSWA to utilize the AG's office will result in GSWA not having effective legal representation, and therefore, delaying the transition from receivership. I am also concerned that paying for in-house counsel will result in higher legal fees for the agency.

I suggest that GSWA be exempted from Bill 180 if passed into law, at least for this period as it transitions from receivership.

Sincerely,

Elyze Iriarte

Assistant Attorney General Robert M. Weinberg, Office of the Attorney General, shared this post with Vice Speaker Benjamin J.F. Cruz on a social networking website (Facebook) on September 30, 2013.

**Rob Weinberg** shared a link.

September 30, 2013

Keep at it, Senator Benjamin Cruz. You're on the right track. When I was at GMHA it didn't file frivolous or unnecessary lawsuits and appeals (as, it has been suggested, my private predecessors and successors did); GMHA wasn't challenged for any procurement law violations; and Civil Service Commission matters were handled in-house by lawyers in the AGO at no extra charge. What might GMHA need outside counsel for? Medical malpractice cases are somewhat of a specialty, but the number of actual med/mal cases in Guam is very, very low, and nearly all settle out thanks to the \$100,000 for wrongful death and \$300,000 for personal injury limitations (caps) of the Government Claims Act. Compliance with CMMS and other accreditation standards doesn't require specialized expertise that in-house counsel shouldn't already have. So, we ask ourselves: what exactly has GMHA been paying for at over \$300,000 per year in the years I wasn't there? And we need to ask the same question for the Election Commission, the Port and the Airport. If anyone ever actually analyzed the billings and compared it to what in-house lawyers would cost for rendering the identical services, they'd wonder how it was allowed to go on for so long.

The biggest difference between experienced in-house counsel and outside private counsel for GovGuam agencies is three-fold: (1) you don't pay for services you don't need; (2) you're not paying for lawyers to educate themselves on what they should already know; and most importantly, (3) the lawyer's focus is on preventative law and keeping his or her client out of trouble, not generating billable hours. There is built-in accountability precisely because the in-house lawyer is not motivated by generating extra work for himself.

The idea that lawyers from the private sector are any better than government lawyers who have institutional knowledge of how to represent, defend and advocate on behalf of government agencies is a complete myth. I'll match the lawyers in the Civil/Solicitors Division of the AGO against the lawyers from local private firms any day of the week. Government contracts for legal services -- here and elsewhere in the nation -- serve one purpose: political patronage payback. Don't be fooled just because we go through the charade of complying with the Procurement law before hiring them.

And here's a thought: Take half the money GovGuam is spending on outside private lawyers and put it into making sure that major departments and agencies have the legal staffing they need, not just at the "autonomous" agencies like GMHA and GEC (which actually serve line agency functions), but also at DPHSS; GBHWC (the former DMHSA); GPD, DOC, and GFD; GEPA; GDOE; and DOA, GSA, and BBMR.



# COMMITTEE ON RULES

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Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER

Senator  
Vicente (Ben) C. Pangelinan  
Member

Speaker  
Judith T.P. Won Pat, Ed.D.  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Legislative Secretary  
Tina Rose Muña Barnes  
Member

Senator  
Frank Blas Aguon, Jr.  
Member

Senator  
Michael F.Q. San Nicolas  
Member

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Senator  
Aline Yamashita  
Member

## Certification of Waiver of Fiscal Note Requirement

This is to certify that the Committee on Rules submitted to the Bureau of Budget and Management Research (BBMR) a request for a fiscal note, or applicable waiver, on **BILL NO. 180-32 (COR)**, "AN ACT TO AMEND SECTION 30102(a) OF CHAPTER 30, TITLE 5 GUAM CODE ANNOTATED, TO REQUIRE AGENCIES PERMITTED TO RETAIN COUNSEL OTHER THAN THE ATTORNEY GENERAL, TO HIRE UNCLASSIFIED, IN-HOUSE COUNSEL." – on September 24, 2013. COR hereby certifies that BBMR confirmed receipt of this request September 24, 2013 at 12:57 PM.

COR further certifies that a response to this request was not received. **Therefore, pursuant to 2 GCA §9105, the requirement for a fiscal note, or waiver thereof, on Bill 180-32 to be included in the committee report on said bill, is hereby waived.**

Certified by:

**Senator Rory J. Respicio**

Chairperson, Committee on Rules

January 27, 2014

**Date**



# COMMITTEE ON RULES

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Member

Senator  
Michael F.Q. San Nicolas  
Member

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Senator  
Aline Yamashita  
Member

September 24, 2013

**VIA E-MAIL**

[john.rios@bbmr.guam.gov](mailto:john.rios@bbmr.guam.gov)

**John A. Rios**  
**Director**  
**Bureau of Budget & Management Research**  
**P.O. Box 2950**  
**Hagåtña, Guam 96910**

**RE: Request for Fiscal Notes– Bill Nos. 177-32(COR) through 180-32(COR);**  
**184-32(COR) through 186-32(COR); and 188-**  
**32(COR) through 193-32(COR)**

*Hafa Adai* Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

*Si Yu'os ma'åse'* for your attention to this matter.

Very Truly Yours,

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

Attachments (3)

Cc: Clerk of the Legislature

Bill Nos.	Sponsor	Title
177-32 (COR)	Vicente (ben) C. Pangelinan, Michael F.Q. SanNicolas, Judith T. Won Pat, Ed.D., T. R. Muña Barnes, Frank B. Aguon, Jr., B.J.F. Cruz, R.J. Respicio	AN ACT MAKING APPROPRIATIONS FOR THE OPERATIONS OF THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES OF THE GOVERNMENT OF GUAM FOR FISCAL YEAR ENDING SEPTEMBER 30, 2014; MAKING OTHER APPROPRIATIONS; AND ESTABLISHING MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS.
178-32 (COR)	Judith T. Won Pat, Ed.D. Tina R. Muna Barnes D.G. Rodriguez, Jr., Rory J. Respicio, Michael F.Q. San Nicolas Frank B. Aguon, Jr. Tommy Morrison	AN ACT TO APPROPRIATE THE REMAINING FUNDS ESCHEATED TO THE GENERAL FUND PRIOR TO END OF FISCAL YEAR 2013, PURSUANT TO §21116 OF CHAPTER 21, DIVISION 2, TITLE 5, GUAM CODE ANNOTATED, TO THE DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES AND AUTHORIZED TO USE AS A LOCAL REQUIREMENT FOR THE MEDICAID PROGRAM.
179-32 (COR)	B.J.F. Cruz T.R. Muña-Barnes J.T. Won Pat, Ed.D	AN ACT TO AMEND P.L. 30-83 RELATIVE TO THE COORDINATING COMMITTEE OF THE 12TH FESTIVAL OF PACIFIC ARTS OF 2016.
180-32 (COR)	B.J.F. Cruz T. C. Ada	AN ACT TO AMEND SECTION 30102(a) OF CHAPTER 30, TITLE 5 GUAM CODE ANNOTATED, TO REQUIRE AGENCIES PERMITTED TO RETAIN COUNSEL OTHER THAN THE ATTORNEY GENERAL, TO HIRE UNCLASSIFIED, IN-HOUSE COUNSEL.
184-32 (COR)	Aline A. Yamashita, Ph.D., V. Anthony Ada, Brant T. McCreadie, Tommy Morrison, Michael T. Limtiaco, Chris M. Dueñas	AN ACT TO APPROPRIATE THE SUM OF THREE MILLION DOLLARS (\$3,000,000) FROM SECTION 30 TAX REVENUES TO THE DEPARTMENT OF EDUCATION FOR THE IMPLEMENTATION OF PROVISIONS OF PUBLIC LAW NO. 31-29.
185-32 (COR)	Michael T. Limtiaco, Brant T. McCreadie, V. Anthony Ada, Chris M. Dueñas, Tommy Morrison, Aline A. Yamashita, Ph.D.,	AN ACT TO APPROPRIATE THE SUM OF FOUR HUNDRED FORTY NINE THOUSAND, ONE HUNDRED NINETEEN DOLLARS (\$449,119) FROM SECTION 30 TAX REVENUES TO PURCHASE VEHICLES FOR THE GUAM POLICE DEPARTMENT.
186-32 (COR)	Tommy Morrison, Brant T. McCreadie, V. Anthony Ada, Chris M. Dueñas, Michael T. Limtiaco, Aline A. Yamashita, Ph.D.,	AN ACT TO APPROPRIATE THE SUM OF THREE MILLION DOLLARS (\$3,000,000) FROM SECTION 30 TAX REVENUES TO THE GUAM POLICE DEPARTMENT, THE GUAM FIRE DEPARTMENT, AND THE DEPARTMENT OF CORRECTIONS.

188-32 (COR)	T.R. MUÑA Barnes, B. J.F. Cruz	AN ACT TO ADD A NEW § 80.50 TO ARTICLE 2, CHAPTER 80, TITLE 9 GUAM CODE ANNOTATED KNOWN AS THE JUSTICE SAFETY VALVE ACT OF 2013 RELATIVE TO EMPOWERING THE COURTS OF GUAM TO DEPART FROM APPLICABLE MANDATORY MINIMUM SENTENCES UNDER SPECIFIC CONDITIONS, AND FOR OTHER PURPOSES.
189-32 (COR)	Dennis G. Rodriguez, Jr.	AN ACT TO FACILITATE THE RECRUITMENT OF HARD-TO-FILL ALLIED HEALTH PROFESSIONAL POSITIONS, BY AMENDING §6229.14 OF CHAPTER 6, 4 GCA, AND SUBSECTION (a) OF § 12805, ARTICLE 8, CHAPTER 12, PART 1, 10 GCA.
190-32 (COR)	B J.F. Cruz, Judith T. Won Pat, Ed.D., Aline A. Yamashita, Ph.D.	AN ACT TO ADD A NEW CHAPTER 28 TO DIVISION 2 OF TITLE 17 GUAM CODE ANNOTATED RELATIVE TO THE ESTABLISHMENT OF THE RESEARCH CORPORATION, UNIVERSITY OF GUAM (RCUOG).
191-32 (COR)	Frank B. Aguon, Jr.	AN ACT TO AMEND PUBLIC LAW 31-235, RELATIVE TO THE WOMEN'S REPRODUCTIVE HEALTH INFORMATION ACT OF 2012.
192-32 (COR)	B J.F. Cruz	AN ACT TO ADD A NEW § 64.15, § 64.16, AND § 64.17 TO CHAPTER 64 OF TITLE 9 OF THE GUAM CODE ANNOTATED; RELATIVE TO THE PROHIBITION AND FORFEITURE OF ELECTRONIC MACHINES OR DEVICES TO CONDUCT SWEEPSTAKES GAMBLING.
193-32 (COR)	Dennis G. Rodriguez, Jr.	AN ACT TO AMEND SECTION 4 OF PUBLIC LAW 31-235 TO DELETE THE PROVISION REQUIRING THE "PRINTED MATERIALS" AND THE "CHECKLIST CERTIFICATION" TO UNDERGO THE RULE MAKING PROCESS PURSUANT TO THE ADMINISTRATIVE ADJUDICATION LAW.



## COMMITTEE ON RULES

*I Mina'trentai Dos na Liheslaturan Guåhan* • The 32nd Guam Legislature  
155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)  
E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER

Senator  
Vicente (Ben) C. Pangelinan  
Member

Speaker  
Judith T.P. Won Pat, Ed.D.  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Legislative Secretary  
Tina Rose Muña Barnes  
Member

Senator  
Frank Blas Aguon, Jr.  
Member

Senator  
Michael F.Q. San Nicolas  
Member

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Senator  
Aline Yamashita  
Member

September 6, 2013

### MEMORANDUM

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

**Attorney Therese M. Terlaje**  
*Legislative Legal Counsel*

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

**Subject: Referral of Bill No. 180-32(COR)**

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 180-32(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

*Si Yu'os Ma'åsel*

Attachment

*I Mina'Trentai Dos Na Liheslaturan Guahan*  
**Bill Log Sheet**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
<b>180-32 (COR)</b>	B. J.F. Cruz T. C. Ada	AN ACT TO AMEND SECTION 30102(a) OF CHAPTER 30, TITLE 5 GUAM CODE ANNOTATED, TO REQUIRE AGENCIES PERMITTED TO RETAIN COUNSEL OTHER THAN THE ATTORNEY GENERAL, TO HIRE UNCLASSIFIED, IN-HOUSE COUNSEL.	9/6/2013 11:45 a.m.	9/9/13	Committee on General Governmental Affairs and Cultural Affairs			




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## REVISED - First Notice of Public Hearing – Five Day Notice – October 7, 2013

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Mike Lidia <mike.lidia@senatorbjcruz.com>

Mon, Sep 30, 2013 at 2:24 PM

To: phnotice@guamlegislature.org, "Irapadas@guamag.org" <irapadas@guamag.org>, Phil Tydingco <ptydingco@guamag.org>, ptydingco@guamattorneygeneral.com, "law@guamattorneygeneral.com" <law@guamattorneygeneral.com>, Zerlyn Palomo <zpalomo@guamag.org>, James Gillan <james.gillan@dphss.guam.gov>, rosellie zabala <rosellie.zabala@dphss.guam.gov>, Joseph Cameron <joseph.cameron@dca.guam.gov>, info@ghra.org, Gerald Perez <geap43@yahoo.com>, "John Thos. Brown" <jngo@ozemail.com.au>, dledy@guamchamber.com.gu, General Benny Paulino <benny.m.paulino@us.army.mil>, governor@guam.gov, afcmstg24@yahoo.com, "Benjamin J.F. Cruz" <senator@senatorbjcruz.com>, Carlo Branch <carlo.branch@gmail.com>, Carlo Branch <carlo.branch@senatorbjcruz.com>, Charissa Tenorio <charissatenorio@gmail.com>, Charissa Tenorio <charissa.tenorio@senatorbjcruz.com>, Matthew Santos <matthew.santos@senatorbjcruz.com>, Tessa Mae Borja Weidenbacher <tessa.borja@gmail.com>, Tessa Weidenbacher <tessa@senatorbjcruz.com>, Yong Pak <yong@guamlegislature.org>, Adam Bearce <adam@guamlegislature.org>, Chief Fred Bordallo <fred.bordallo@gpd.guam.gov>

September 30, 2013

### MEMORANDUM

To: All Members/All Senators

From: Chairman, Committee on General Government Operations and Cultural Affairs

Re: First Notice of Public Hearing – Five Day Notice – October 7, 2013

Hafa Adai! Please be advised that the Committee on General Government Operations and Cultural Affairs will conduct a Public Hearing on Monday, October 7, 2013, beginning at 10:00AM in the Legislature's Public Hearing Room with the following agenda:

**Bill No. 175-32 (COR)** - M.F.Q. San Nicolas / F.B. Aguon, Jr. / B.J.F. Cruz / T.A. Morrison - An act to allow non-commissioned officers to have their service recognized for management positions of the government of Guam, by adding a new §4129 to Article 1, Chapter 4, Title 4, Guam Code Annotated.

**Bill No. 179-32 (COR)** - B.J.F. Cruz / T.R. Muña Barnes / J.T. Won Pat, Ed.D. - An act to amend P.L. 30-83 relative to the coordinating committee of the 12th Festival of Pacific Arts of 2016.

**Bill No. 180-32 (COR)** - B.J.F. Cruz / T.C. Ada - An act to amend Section 30102(a) of Chapter 30, Title 5 Guam Code Annotated, to require agencies permitted to retain counsel other than the Attorney General, to hire unclassified, in-house counsel.

**Bill No. 189-32 (COR)** - D.G. Rodriguez, Jr. - An act to facilitate the recruitment of hard-to-fill allied health professional positions, by amending §6229.14 of Chapter 6, 4 GCA, and subsection (a) of § 12805, Article 8, Chapter 12, Part 1, 10 GCA.

**Bill No. 200-32 (COR)** - R.J. Respicio, T.C. Ada, B J.F. Cruz - An act to amend Title 10 Guam Code Annotated §77135 Relative to Police Clearances, to be known as the "Police Clearance Clarity Act of 2013."

Please provide written testimonies at least one day prior to the hearing to the Office of Vice Speaker Benjamin J.F Cruz, 155 Hesler Place, Hagåtña Guam 96910. They may be sent via facsimile to 477-2522, or via email to [carlo.branch@senatorbjcruz.com](mailto:carlo.branch@senatorbjcruz.com).

We comply with Title II of the Americans with Disabilities Act (ADA). Should you require assistance or special accommodations, please contact Carlo Branch at the Office of the Vice Speaker Benjamin J.F Cruz at 477-2521 or via email at [carlo.branch@senatorbjcruz.com](mailto:carlo.branch@senatorbjcruz.com).

Senseramente,

Mike Lidia  
Committee Director  
Office of Vice Speaker Cruz  
477-2520



## Second Notice of Public Hearing – Two Day Notice – October 7, 2013

Mike Lidia <mike.lidia@senatorbjcruz.com>

Thu, Oct 3, 2013 at 8:22 AM

To: phnotice@guamlegislature.org, "Irapadas@guamag.org" <irapadas@guamag.org>, Phil Tydingco <ptydingco@guamag.org>, ptydingco@guamattorneygeneral.com, "law@guamattorneygeneral.com" <law@guamattorneygeneral.com>, Zerlyn Palomo <zpalomo@guamag.org>, James Gillan <james.gillan@dphss.guam.gov>, roselle zabala <roselle.zabala@dphss.guam.gov>, Joseph Cameron <joseph.cameron@dca.guam.gov>, info@ghra.org, Gerald Perez <geap43@yahoo.com>, "John Thos. Brown" <jngoz@ozemail.com.au>, dleddy@guamchamber.com.gu, General Benny Paulino <benny.m.paulino@us.army.mil>, governor@guam.gov, afcmsgt24@yahoo.com, Chief Fred Bordallo <fred.bordallo@gpd.guam.gov>, Yong Pak <yong@guamlegislature.org>, Adam Bearce <adam@guamlegislature.org>, "Benjamin J.F. Cruz" <senator@senatorbjcruz.com>, Carlo Branch <carlo.branch@gmail.com>, Carlo Branch <carlo.branch@senatorbjcruz.com>, Charissa Tenorio <charissatenorio@gmail.com>, Charissa Tenorio <charissa.tenorio@senatorbjcruz.com>, Matthew Santos <matthew.santos@senatorbjcruz.com>, Tessa Mae Borja Weidenbacher <tessa.borja@gmail.com>, Tessa Weidenbacher <tessa@senatorbjcruz.com>

October 3, 2013

### MEMORANDUM

To: All Members/All Senators

From: Chairman, Committee on General Government Operations and Cultural Affairs

Re: Second Notice of Public Hearing – Two Day Notice – October 7, 2013

*Hafa Adai!* Please be advised that the Committee on General Government Operations and Cultural Affairs will conduct a Public Hearing on Monday, October 7, 2013, beginning at 10:00AM in the Legislature's Public Hearing Room with the following agenda:

**Bill No. 175-32 (COR)** - M.F.Q. San Nicolas / F.B. Aguon, Jr. / B.J.F. Cruz / T.A. Morrison - An act to allow non-commissioned officers to have their service recognized for management positions of the government of Guam, by adding a new §4129 to Article 1, Chapter 4, Title 4, Guam Code Annotated.

**Bill No. 179-32 (COR)** - B.J.F. Cruz / T.R. Muña Barnes / J.T. Won Pat, Ed.D. - An act to amend P.L. 30-83 relative to the coordinating committee of the 12th Festival of Pacific Arts of 2016.

**Bill No. 180-32 (COR)** - B.J.F. Cruz / T.C. Ada - An act to amend Section 30102(a) of Chapter 30, Title 5 Guam Code Annotated, to require agencies permitted to retain counsel other than the Attorney General, to hire unclassified, in-house counsel.

**Bill No. 189-32 (COR)** - D.G. Rodriguez, Jr. - An act to facilitate the recruitment of hard-to-fill allied health professional positions, by amending §6229.14 of Chapter 6, 4 GCA, and subsection (a) of § 12805, Article 8, Chapter 12, Part 1, 10 GCA.

**Bill No. 200-32 (COR)** - R.J. Respicio, T.C. Ada, B.J.F. Cruz - An act to amend Title 10 Guam Code Annotated §77135 Relative to Police Clearances, to be known as the "Police Clearance Clarity Act of 2013."

Please provide written testimonies at least one day prior to the hearing to the Office of Vice Speaker Benjamin J.F. Cruz, 155 Hesler Place, Hagåtña Guam 96910. They may be sent via facsimile to 477-2522, or via email to [carlo.branch@senatorbjcruz.com](mailto:carlo.branch@senatorbjcruz.com).

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Senseramente,

Mike Lidia  
Committee Director  
Office of Vice Speaker Cruz  
477-2520



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**Public Hearing**  
**AGENDA**  
**Monday, October 7, 2013 – 10:00AM**

**Bill No. 175-32 (COR)** - M.F.Q. San Nicolas / F.B. Aguon, Jr. / B.J.F. Cruz / T.A. Morrison - An act to allow non-commissioned officers to have their service recognized for management positions of the government of Guam, by adding a new §4129 to Article 1, Chapter 4, Title 4, Guam Code Annotated.

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**Bill No. 200-32 (COR)** - R.J. Respicio, T.C. Ada, B.J.F. Cruz - An act to amend Title 10 Guam Code Annotated §77135 Relative to Police Clearances, to be known as the "Police Clearance Clarity Act of 2013."