



Office of the Governor of Guam

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

02 APR 2010
36-10-0272

Handwritten signature and date 4/2/10

Honorable Judith T. Won Pat, Ed.D
Speaker
I Mina Trenta Na Liheslaturan Guahan
155 Hessler Street
Hagatna Guam 96910

Dear Speaker Won Pat:

I am returning herewith Bill 192-30 (COR), "AN ACT TO AMEND §§1108 (a) AND (c) OF CHAPTER 1, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO THE EMPLOYMENT OF AN ATTORNEY FOR THE WON PAT INTERNATIONAL AIRPORT AUTHORITY GUAM," which I have vetoed.

I have vetoed this measure at the request of the executive management of the A.B. Won Pat International Airport Authority (the "Authority") whom has expressed strong opposition to Bill 192-30(COR) ("Bill 192").

The intent of Bill 192 is to deny the Authority the flexibility to determine whether to hire a private law firm as counsel or in-house attorney(s) and, instead, require the Authority to employ a single staff attorney for all non-litigation matters and retain the Office of the Attorney General ("AGO"), for litigation matters, supposedly to "greatly decrease" the cost of legal services to Authority. The fact of the matter is that there is simply no way that a single staff attorney (for non-litigation matters) and the AGO (for litigation matters) could replace a private law firm and to attempt to do so would, as discussed in detail below, prove ruinous to the operation of the Airport. In addition, to these substantive problems, there are a number of technical problems with Bill 192 that also warrant its veto. Both the substantive and technical problems are addressed below in detail.

I. Technical Defects

Bill 192 suffers from a number of technical deficiencies. First, recent experience has shown that often the interests of the AGO and the executive branch are not aligned. The AGO has on prior occasions announced that it is not constrained by an executive branch agency's determination, either through its Board or by the Governor, of what is in the agency's best interest. This has resulted in discord between the agency and the AGO on litigation strategy, and has instead spawned litigation between the AGO and the executive branch. Bill 192 would eviscerate the hard-fought effort in the Santos v. Camacho case in which the court affirmed the executive

branch's independence from the AGO in litigation matters. In the case of the Authority, discord between the Authority and its counsel, upon whom the Authority heavily relies in order to ensure the continued operation of the Airport, could prove disastrous if as a result of this discord the Authority fails to timely meet its legal requirements under the bevy of laws, regulations and bond requirements to which the Authority is subject.

Second, Section 3 of Bill 192 requires the AGO to participate in the selection of alternative counsel for the Authority in those instances when the AGO itself cannot represent the Authority. This means that in those instances when the AGO is ethically conflicted from representing the Authority, including matters in which the AGO may be directly adverse to the Authority, even pursuing an action against the Authority or its employees, the AGO will nevertheless participate in the process to select who will represent the Authority. Allowing the AGO to select its potential adversary attorney would certainly give rise to a conflict of interest and is presumably prohibited by the ethical rules governing attorneys.

Third, the AGO's participation in the selection of alternative counsel would preclude it from representing the Authority in a subsequent dispute or protest regarding the procurement of the alternative counsel's contract. The AGO would be barred because its own work product would be the subject of the investigation. Fourth, Bill 192 does not address the rights of existing counsel, whose contract is presumably insulated or grandfathered in under the Contracts Clause of the Organic Act and the U.S. Constitution. And finally, we note that recently introduced Bill 345-30(LS) would require the Authority (as well as other autonomous agencies) to pay the AGO \$200 per hour for its review of certain procurement related documents and contracts as required pursuant to recently enacted Public Law 30-72. This is \$25 more per hour than what the Authority presently pays its private counsel for similar services. Thus, Bill 192, combined with Public Law 30-72 and Bill 345-30, if passed, would require the Authority to pay *more* for its AGO representation, contrary to Bill 192's stated purpose.

II. Substantive Concerns

In addition, Bill 192, if passed into law, would effectively reduce the Authority's legal staff to a single staff attorney. A single staff attorney will not be able to handle the large volume of non-litigation legal work currently outsourced to outside counsel, such as, bond financings and FAA regulatory compliance. Although Bill 192 allows the Authority to eventually outsource legal work to private firms when the staff attorney and the AGO are unable to handle the representation, the Authority often has very limited time to react or respond to legal, regulatory or bond-financing requirements to avoid a violation that might possibly jeopardize federal or bond funding. The mutli-stepped process of passing a matter through a staff attorney, then through the AGO, and then proceeding with a procurement of private counsel for each individual matter will unquestionably result in critical delays that could have huge disastrous financial consequences. Likewise, the AGO, which is already overburdened and understaffed, will not be able to successfully handle the current volume of litigation involving the Authority. The relatively small cost savings contemplated by Bill 192, if any in the final analysis, are greatly outweighed by the benefits attendant to receiving the type of undivided attention and legal representation as can only be provided by private outside counsel.

These benefits, as well as certain of the pitfalls associated with limiting the Authority to a single staff attorney, are addressed below in bullet point.

- Private counsel can bring to bear several attorneys from different areas of expertise on a single project in order to provide a fast and accurate work product. This is something that neither a staff attorney nor the AGO can do given the airport's diverse aviation and commerce activities
- There are times when the rights of the Authority depend upon immediate (that is, within one hour) answers to complicated legal questions which require the resources of a law firm with a staff of attorneys to answer. Notwithstanding the overall number of attorneys at the AGO, the actual number in the Solicitor's Unit available to answer legal questions is very limited, and these attorneys already have a current heavy workload. When required to rely on the AGO in the past, our experience is that it often takes weeks to receive any kind of reasoned, well-researched legal conclusion from the AGO.
- Historically, the Authority has required 4,500 hours of legal work product per year in order to successfully carry out its operations. The combined efforts of a single staff attorney and the AGO simply will not be able to handle this work volume in a timely manner, if at all.
- The Airport is regulated federally by the U.S. DOT, the FAA, EPA, TSA, DOL, the Office of Homeland Security and U.S. Immigration and Customs Enforcement, to name but a few, and is also regulated under Guam law. A single staff attorney will not have the necessary expertise to provide quality representation in all of the areas of the law implicated by this myriad regulation.
- Quality representation is important to the continued operation of the Airport. Incorrect legal advice which results in the Authority's regulatory non-compliance could expose the Authority to enormous fines, the revocation of licenses necessary for continued operation and other dire consequences.
- The Authority is involved in a wide variety of often complex transactions, involving many areas of legal practice, including: land sales and purchases, leases, landlord-tenant disputes, government procurement, retail concession agreements, construction, insurance, financing, employment, public bond issuances, federal grant solicitation, legislative drafting and review, lobbying, zoning compliance and enforcement issues, land use, and Sunshine Act compliance. A single staff attorney will not have the necessary expertise to provide quality representation in all of these matters.
- Seventy-four businesses operate at the Airport which, along with the Authority itself, employ 2,500 people. In recent years the Airport has averaged over \$40 million in annual revenue with \$28 million in annual operating expenses. The legal fees spent by the

Authority in recent years to outside counsel are low compared to the legal budgets of corporations of comparable size; and particularly so, when considering the vast scope of business and operations in which the Authority engages, as well as the extraordinary level of regulation under which the Authority operates.

- Under the current retainer agreement between the Authority and outside counsel, the Authority pays \$175 per hour for legal services rendered by outside counsel. This amount is well below the market rate for similar attorney legal services on Guahan, which ranges from \$200 to \$350.
- The Airport's total economic contribution to Guahan in 2006 was \$1.722 billion. The Airport's anticipated aggregate economic contribution for the period of 2006 to 2023 is \$54.7 billion. Twenty thousand jobs on Guahan either directly depend on or otherwise arise out of the operation of the Airport. Suboptimal legal representation will put this economic contribution and employment at risk.
- Bill 192 points to no evidence whatsoever to indicate that amounts paid by the Authority for legal services were excessive or that they do not reflect valuable and necessary services rendered. This means that if Bill 192 is to effect a reduction in costs, it will also have to effect an equal reduction in legal services to the Authority.
- Bill 192 will put at risk the successful operation of the Airport and in doing so will put into jeopardy the enormous economic benefit that the Airport provides to Guahan.
- The successful operation of the Airport is largely due to its autonomy and its consequent authority to appoint competent outside counsel with the staff and expertise necessary to quickly and competently address a wide range of legal matters. Bill 192 would strip the Authority of this flexibility
- Bill 192 fails to acknowledge certain costs associated with its implementation that would at least partially offset the cost savings asserted by Bill 192. Bill 192 does not contemplate an increase in the budget for the AGO associated with increased litigation arising from its representation of the Authority. Without significantly augmenting the AGO's staff, it will not be able to handle all of the disputes and cases involving the Authority, particularly during those periods when the Authority is involved in multiple cases or complex litigation. However, if the AGO does increase its staff, the Government will have to continue to pay this new staff salary and benefits even during those periods when the Authority is not involved in any litigation and when the staff is left idle.
- By comparison, the Authority only has to pay outside counsel for services rendered. Accordingly, when using outside counsel the Authority does not have to attempt to anticipate the legal costs that the Authority will incur (which amount can vary widely depending on litigation levels) in any given year. Rather than hire new staff on the basis of a speculative legal budget, the Authority only has to pay outside counsel to the extent that it needs legal representation. Otherwise, the Authority has no obligation to outside

counsel.

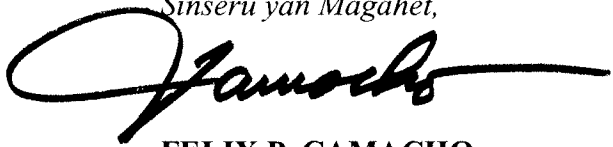
- The AGO is already overburdened and underfunded and will not be able to devote the time (including many late nights and weekends) necessary to successfully represent the Authority, particularly in cases of complex litigation involving multiple parties and a wide range of complicated legal issues.

Although a governmental instrumentality, the Authority operates in nearly every respect as a private enterprise. The Authority generates its own income and pays its own bills. As a market participant in a competitive market, the Authority must have the ability to choose its own vendors, suppliers and professional service personnel based on the Authority's unique understanding and experience as the operator of an international airport. As it presently stands, the Authority is able to use its sheer size to demand the best rates and the best services from all of its vendors, including its legal counsel. If Bill 192 is enacted into law, the Authority will lose this bargaining power and its ability to demand the best services at the cheapest rates. This bill will adversely affect the Authority's ability to continue to be a true premier hub and be competitive in the region.

The Authority must continue to have the flexibility to manage its operations and as to who the Authority must appoint as counsel. Given the unique understanding of Airport operations (including the important role played by our legal counsel), it seems that it should be enough to preempt further consideration of Bill 192 to note that Bill 192 will ultimately cost the Authority more if enacted.

Based on the foregoing I have vetoed Bill 192.

Sinseru yan Magåhet,

A handwritten signature in black ink, appearing to read 'Felix P. Camacho', with a long horizontal flourish extending to the right.

FELIX P. CAMACHO

I Maga'låhen Guahan

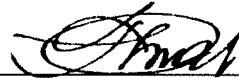
Governor of Guahan

Attachment

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Bill No. 192-30 (COR), "AN ACT TO AMEND §1108 (a) AND (c) OF CHAPTER 1, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO THE EMPLOYMENT OF AN ATTORNEY FOR THE WON PAT INTERNATIONAL AIRPORT AUTHORITY GUAM,"** was on the 19th day of March, 2010, duly and regularly passed.



Judith T. Won Pat, Ed. D.
Speaker

Attested:



Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 22nd day of March, 2010, at 2:15 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 192-30 (COR)

As amended on the Floor.

Introduced by:

B. J.F. Cruz
T. C. Ada
F. B. Aguon, Jr.
F. F. Blas, Jr.
E. J.B. Calvo
J. V. Espaldon
Judith P. Guthertz, DPA
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
v. c. pangelinan
R. J. Respicio
Telo Taitague
Ray Tenorio
Judith T. Won Pat, Ed.D.

**AN ACT TO *AMEND* §1108 (a) AND (c) OF CHAPTER 1,
TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO
THE EMPLOYMENT OF AN ATTORNEY FOR THE
WON PAT INTERNATIONAL AIRPORT AUTHORITY
GUAM.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the cost incurred by the Won Pat International Airport Authority, Guam for
4 legal services for Fiscal Year 2008 was in excess of Eight Hundred Thousand
5 Dollars (\$800,000). *I Liheslatura* finds that the cost of legal services to the
6 Authority would be greatly decreased with the employment of a staff attorney.

1 **Section 2.** §1108 (a) of Chapter 1 of Title 12, Guam Code Annotated, is
2 hereby *amended* to read:

3 “(a) The Board may also appoint a treasurer, a comptroller and an
4 in-house attorney, all of whom *shall* serve at the pleasure of the Board. Their
5 duties and compensation *shall* be fixed by the Board. Compensation for the
6 comptroller *shall not* be limited by §6103, Title 4, Guam Code Annotated,
7 *or* other laws which may conflict herewith.

8 Notwithstanding the provisions of §6208, Title 4, Guam Code
9 Annotated, the annual salary for the Attorney’s Position *shall not exceed*
10 One Hundred Twenty-five Thousand Dollars (\$125,000) annually excluding
11 benefits. The Board may appoint one (1) assistant to any such office. Any of
12 the said offices may be consolidated into one (1) person.”

13 **Section 3.** §1108 (c) of Chapter 1 of Title 12, Guam Code Annotated, is
14 hereby *amended* to read:

15 “(c) The Attorney, who must have been admitted to the practice of law
16 in Guam, *shall* advise the Board and the Executive Director on all legal
17 matters to which the Authority is a party *or* in which the Authority is legally
18 interested, and may represent the Authority in connection with legal matters
19 before *I Liheslatura*, boards and other agencies of the Territory *or* of the
20 United States. The Attorney General shall represent the Authority in
21 litigation, or in other specialized legal matters as requested by the board, or
22 in the case of conflict on a matter by the in-house counsel concerning the
23 affairs of the Authority, provided that the Attorney General may delegate
24 this duty to the Attorney of the Authority, with respect to any such litigation.

25 Should in-house counsel or the Office of the Attorney General be
26 unable to represent the Guam Airport Authority and/or the Board of the
27 Guam Airport Authority in any legal matter, then only upon certification of

1 need and approval of the Office of the Attorney General, the Board shall be
2 authorized to hire private counsel with the Attorney General participating in
3 the selection process and approval of outside Attorney Fees.”

4 **Section 4. Severability.** *If* any of the provisions of this Act, or the
5 application thereof to any person or circumstance, is held invalid, such invalidity
6 shall *not* affect any other provision of application of this Act which can be given
7 effect without the invalid provision or application, and to this end the provisions of
8 this code are severable.

9 **Section 5.** This Act *shall* be effective upon enactment into law.