

EDDIE BAZA CALVO  
Governor

RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

33-16-1735

July 1, 2016

Office of the Speaker  
Judith T. Won Pat, Ed.D

Honorable Judith T. Won Pat, Ed.D  
Honorable Judith T. Won Pat, Ed.D  
Speaker

Date: 1 JULY 2016  
Time: 4:05  
Received By: [Signature]

*I Mina'trentai Tres Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96910

Dear Madame Speaker:

Attached is Bill No. 30-33 (COR), entitled, "An act to amend § 30102 of Article 1 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, and to strengthen the Attorney General of Guam's cognizance of legal matters before the Government of Guam" which I have **VETOED**.

2016 JUN 30 9:58 AM  
A. B. B.

Like Bill 180-32 which was introduced and vetoed two years ago, Bill 30-33 is similarly flawed. The premise of the bill assumes that it is wasteful for government agencies to retain outside legal counsel, and that therefore such agencies should only be permitted to retain outside counsel on a case-by-case basis for a "sole and specific legal matter." Even then, the agency must certify the need for legal counsel to the Attorney General, as well as to the Legislature. As I stated in my veto message to Bill 180-32, requiring that an autonomous or executive branch agency certify to the Legislature its need for legal counsel is an act that intrudes upon the Governor's Organic Act authority to administer the Executive Branch.

Bill 30-33 further presumes that the Attorney General has the full capacity and manpower to represent and handle the legal affairs of dozens of executive branch agencies, boards, commissions, and councils. It is a well known reality, however, that like many of the agencies it represents, the Office of the Attorney General is understaffed and struggles with a heavy caseload that includes providing the government of Guam and its line agencies with procurement assistance, reviewing

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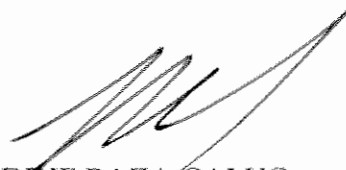
government contract and proposed agency rules and regulations, and providing general legal advice. The specialized complex business of large autonomous agencies such as the Guam Airport Authority and the Port Authority of Guam would be especially handicapped by Bill 30-33's requirements to the extent that those agencies would simply not be able to operate if they are unable to have experienced legal counsel on call from whom they can receive immediate and timely responses.

In attempting to promote cost savings, Bill 30-33 viciously insinuates that outside legal counsel is to blame for the recent award of \$14 million rendered against the Port Authority by an arbitration panel in the Guam YTK case. However, it is a fact that the Office of the Attorney General signed and approved the YTK contract back in 2001, even though the contract contained a glaring arbitration provision that contradicted and waived the Guam Government Claim's Act. The Guam Supreme Court cited this arbitration provision as the exclusive reason for holding the Port Authority liable under the contract.<sup>1</sup> And if this was not enough, in September 2004, the Office of the Attorney General advised the Port Authority *against* terminating the contract with YTK and to *instead go forward* and issue YTK a notice to proceed.

Suffice to say, if the Office of the Attorney General had not approved the lease or the arbitration provision, the liability of the Port Authority would have been limited to \$300,000, instead of \$14 million. And if the Attorney General had not advised the Port Authority against terminating the contract, a number of steps could have been taken at that early stage to prevent the future \$14 million award.

It is clear to me that in addition to being inorganic and violative of the doctrine of separation of powers, the economy promoted by Bill 30-33 is false. And it is for those reasons that I veto it today.

*Senseramente,*



EDDIE BAZA CALVO  
Governor of Guam

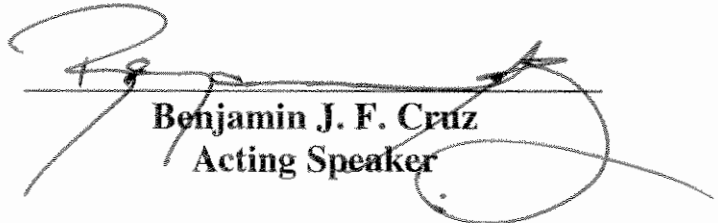
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<sup>1</sup> See, *Guam YTK Corp. v. Port Authority of Guam*, 2014 Guam 7 at ¶¶ 42-43 (arbitration provision in YTK contract waives sovereign immunity under the Government Claims Act and the Port Authority must therefore comply with it).

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN  
2016 (SECOND) Regular Session


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


This is to certify that **Substitute Bill No. 30-33 (COR)**, "AN ACT TO AMEND § 30102 OF ARTICLE 1 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, AND TO STRENGTHEN THE ATTORNEY GENERAL OF GUAM'S COGNIZANCE OF LEGAL MATTERS BEFORE THE GOVERNMENT OF GUAM," was on the 17<sup>th</sup> day of June 2016, duly and regularly passed.

  
Benjamin J. F. Cruz  
Acting Speaker

Attested:   
\_\_\_\_\_  
Tina Rose Muña Barnes  
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 20<sup>th</sup> day of JUNE,  
2016, at 5:25 o'clock P.M.

  
Assistant Staff Officer  
*Maga'låhi's Office*

APPROVED:   
\_\_\_\_\_  
EDWARD J.B. CALVO  
*I Maga'låhen Guåhan*

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

*I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN*  
**2015 (FIRST) Regular Session**

**Bill No. 30-33 (COR)**

As substituted by the Committee on Appropriations and Adjudication;  
and amended on the Floor.

Introduced by:

B. J.F. Cruz  
T. C. Ada  
V. Anthony Ada  
FRANK B. AGUON, JR.  
Frank F. Blas, Jr.  
James V. Espaldon  
Brant T. McCreadie  
Tommy Morrison  
T. R. Muña Barnes  
R. J. Respicio  
Dennis G. Rodriguez, Jr.  
Michael F.Q. San Nicolas  
Mary Camacho Torres  
N. B. Underwood, Ph.D.  
Judith T. Won Pat, Ed.D.

**AN ACT TO AMEND § 30102 OF ARTICLE 1 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, AND TO  
STRENGTHEN THE ATTORNEY GENERAL OF  
GUAM'S COGNIZANCE OF LEGAL MATTERS  
BEFORE THE GOVERNMENT OF GUAM.**

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

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

4                   “§ 30102. Department of Law, Cognizance.

1 (a) Notwithstanding any other provision of law, the Attorney  
2 General *shall* have cognizance of all legal matters, excluding the Legislative  
3 and Judicial Branches of the government of Guam, involving the Executive  
4 Branch of the government of Guam, its agencies, instrumentalities, public  
5 corporations, autonomous agencies, and the Mayors Council, all hereinafter  
6 referred to as “agency.” Where any other law permits any agency to retain  
7 counsel other than the Attorney General, this *shall not* preclude said agency  
8 from requesting the services of the Office of the Attorney General; *provided*,  
9 that said agency *shall* reimburse the Office of the Attorney General for such  
10 services from funds of said agency. Said reimbursement *shall* be deposited in  
11 the Office of the Attorney General Operations Fund. In addition, and  
12 notwithstanding any other law to the contrary, any agency of the government  
13 of Guam may advance funds to the Office of the Attorney General for services  
14 and incidental travel to be rendered by said office on behalf of said agency.  
15 Any law permitting the agency to retain counsel other than the Attorney  
16 General *shall* mean full time classified counsel. Any attorney holding the  
17 position of full time classified counsel *shall* earn the salary prescribed by the  
18 schedule established for government classified attorneys. The Attorney  
19 General may appoint such classified counsel as a special assistant attorney  
20 general as provided under Subsection (c) below.

21 (b) An agency of the government may retain outside counsel, in  
22 addition to the classified, in-house counsel mandated in Subsection (a), *only*  
23 when the department or agency has certified in writing to the Attorney General  
24 of Guam, the Speaker of *I Liheslaturan Guåhan*, and *I Maga'låhen Guåhan*,  
25 that such outside counsel is essential to addressing a sole and specific legal  
26 matter before the agency. Upon issuance of the certification by the department

1 or agency, the Attorney General *shall* confirm that such outside counsel has  
2 demonstrated prior experience and competency for a period of *not less than*  
3 five (5) consecutive years in the subject matter or specialized area for which  
4 the in-house counsel or Attorney General's Office is unable to provide at that  
5 time. Nothing in this Section shall be construed as to apply to the Government  
6 of Guam Retirement Fund, or to allow any agency of the government to retain  
7 outside legal counsel on an ongoing basis, or to permit the payment of any  
8 outside counsel for matters other than the *sole* and *specific* matter certified by  
9 the department or agency, and confirmed by the Attorney General.

10 (c) The Attorney General may appoint as special assistant attorney  
11 general the classified full time counsel, or any outside counsel contracted by  
12 the agency for purposes of administrative or civil litigation in order to ensure  
13 that a unified and consistent legal policy of the government of Guam is  
14 maintained over the conduct of all legal proceedings in which the government  
15 of Guam may be interested. The special assistant attorney general *shall* keep  
16 the Attorney General informed of all litigation, filing of pleadings, and issuing  
17 letters, appeals, and settlement agreements, and the Attorney General *shall*  
18 have the right to stop, modify or change the direction of litigation in the best  
19 interest of Guam, and to void any settlement reached in abrogation of the  
20 Attorney General's approval.

21 (d) The Attorney General *shall* have legal cognizance and exclusive  
22 authority over all administrative, civil, and appellate matters in which the  
23 government of Guam is in any way interested. No appeal from an  
24 administrative or civil case may be filed in any court having jurisdiction over  
25 the case without the prior review and concurrence of the Attorney General

1 that the best interest of the government of Guam, and the people of Guam, are  
2 served by the appeal.

3 (e) The Attorney General *shall* promptly post copies of all  
4 administrative, civil, and appellate pleadings, letters, appeals, and settlement  
5 agreements on its website accessible to the public, and *shall* promptly send a  
6 copy to the Speaker of *I Liheslaturan Guåhan* and *I Maga'låhen Guåhan*.”

7 **Section 2. Effective Date.** The newly added provisions of § 30102 of  
8 Article 1, Chapter 30, Title 5 GCA *shall not* be construed to impair or interfere with  
9 any existing contractual rights for legal services between outside counsel and any  
10 agency which has obtained the approval of the Attorney General on the date of  
11 enactment herein; provided, that any provision for renewal or extension of an  
12 existing contract *shall not* be renewed except pursuant to § 30102(b) as amended.