


*I Mina'Trentai Kuåttro Na Liheslaturan*  
**BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
220-34 (COR)	Michael F.Q. San Nicolas	AN ACT TO ADD A NEW ARTICLE 7 TO CHAPTER 46, TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO FALSE CLAIMS FILED WITH THE GOVERNMENT OF GUAM	12/19/17 2:32 p.m.						

*I MINA 'TRENTAI KUÁTTRO NA LIHESLATURAN GUÅHAN*  
2017 (FIRST) Regular Session

Bill No. 220-34 (COR)

Introduced by:

Michael F.Q. San Nicolas 

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**AN ACT TO ADD A NEW ARTICLE 7 TO CHAPTER 46,  
TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO FALSE  
CLAIMS FILED WITH THE GOVERNMENT OF GUAM.**

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

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that in 2014, the United States of America, on behalf of the U.S. Environmental Protection Agency, secured Two Hundred Eighty-Five Thousand Dollars (\$285,000) in settlement of a civil lawsuit against GRH Technologies Construction Co., Ltd. (“GRH”) and GRH’s Treasurer, Chen Pei Su, when GRH and Su committed a violation of the False Claims Act, 31 U.S.C. § 3729, by submitting a fraudulent claim for reimbursement under a contract funded by the American Recovery and Reinvestment Act between Guam Waterworks Authority and GRH for services including detection, pipeline, location, mapping, leak control, and related training.

*I Liheslatura* further finds that in November 2017, District Court of Guam Chief Judge Frances Tydingco-Gatewood, under the False Claims Act, awarded William and Fred Toelkes twenty-five percent (25%) of the Three Million One Hundred Thousand Dollar (\$3,100,000) settlement between the federal government and TOA Corporation, a Japanese company doing construction work for the U.S. military on Guam that created a “sham” joint venture with a smaller U.S. business to qualify for preferential treatment when bidding on U.S. government contracts.

2017 DEC 19 PM 2:32 C.S.



1           As used in this Article, unless the context in which they are used  
2 requires a different meaning, or unless a different definition is prescribed for  
3 a particular provision:

4           (a)    the term ‘claim’

5                   (1)   means any request or demand, whether under a contract  
6 or otherwise, for money or property and whether or not the Territory  
7 of Guam has title to the money or property, that

8                           (A)   is presented to an officer, employee, or agent of  
9 the Territory of Guam; or

10                           (B)   is made to a contractor, grantee, or other recipient,  
11 if the money or property is to be spent or used on the  
12 Government of Guam’s behalf or to advance a Government of  
13 Guam program or interest, and if the Government of Guam

14                                   (i)   provides or has provided any portion of the  
15 money or property requested or demanded; or

16                                   (ii)   will reimburse such contractor, grantee, or  
17 other recipient for any portion of the money or property  
18 which is requested or demanded; and

19                   (2)   does not include requests or demands for money or  
20 property that the Government of Guam has paid to an individual as  
21 compensation for employment or as an income subsidy with no  
22 restrictions on that individual’s use of the money or property;

23           (b)   the terms ‘knowing’ and ‘knowingly’

24                   (1)   mean that a person, with respect to information—

25                           (A)   has actual knowledge of the information;

26                           (B)   acts in deliberate ignorance of the truth or falsity  
27 of the information; or

1 (C) acts in reckless disregard of the truth or falsity of  
2 the information; and

3 (2) require no proof of specific intent to defraud;

4 (c) the term 'material' means having a natural tendency to  
5 influence, or be capable of influencing, the payment or receipt of money or  
6 property; and

7 (d) the term 'obligation' means an established duty, whether or not  
8 fixed, arising from an express or implied contractual, grantor-grantee, or  
9 licensor-licensee relationship, from a fee-based or similar relationship, from  
10 statute or regulation, or from the retention of any overpayment.

11 **§ 46.702. Liability for Certain Acts.**

12 (a) Subject to subsection (b) of this section, any person who:

13 (1) knowingly presents, or causes to be presented, a false or  
14 fraudulent claim for payment or approval;

15 (2) knowingly makes, uses, or causes to be made or used, a  
16 false record or statement material to a false or fraudulent claim;

17 (3) conspires to commit a violation of items (1), (2), (4), (5),  
18 (6), or (7);

19 (4) has possession, custody, or control of property or money  
20 used, or to be used, by the Government of Guam and knowingly  
21 delivers, or causes to be delivered, less than all of that money or  
22 property;

23 (5) is authorized to make or deliver a document certifying  
24 receipt of property used, or to be used, by the Government of Guam  
25 and, intending to defraud the Government of Guam, makes or delivers  
26 the receipt without completely knowing that the information on the  
27 receipt is true;

1           (6) knowingly buys, or receives as a pledge of an obligation  
2 or debt, public property from an officer or employee of the  
3 Government of Guam, who lawfully *may* not sell or pledge property;  
4 or

5           (7) knowingly makes, uses, or causes to be made or used, a  
6 false record or statement material to an obligation to pay or transmit  
7 money or property to the Government of Guam, or knowingly  
8 conceals or knowingly and improperly avoids or decreases an  
9 obligation to pay or transmit money or property to the Government of  
10 Guam,

11 is liable to the Government of Guam for a civil penalty of not less  
12 than five thousand dollars (\$5,000) and not more than ten thousand dollars  
13 (\$10,000), plus three (3) times the amount of damages which the  
14 Government of Guam sustains because of the act of that person.

15           (b) Reduced damages. If the court finds that:

16           (1) the person committing the violation of this section  
17 furnished officials of Guam responsible for investigating false claims  
18 violations with all information known to such person about the  
19 violation within thirty (30) days after the date on which the defendant  
20 first obtained the information;

21           (2) such person fully cooperated with any Government of  
22 Guam investigation of such violation; and

23           (3) at the time such person furnished the Government of  
24 Guam with the information about the violation, no criminal  
25 prosecution, civil action, or administrative action had commenced  
26 under this title with respect to such violation, and the person did not



1           The Attorney General *shall* diligently investigate a violation under  
2 §46.702. If the Attorney General finds that a person has violated or is  
3 violating §46.702, the Attorney General *may* bring a civil action under this  
4 section against the person.

5       **§ 46.712.    Actions by Private Persons.**

6           (a)    A person *may* bring a civil action for a violation of §46.702 for  
7 the person and for the Government of Guam. The action *shall* be brought in  
8 the name of the Government. The action *may* be dismissed only if the court  
9 and the Attorney General give written consent to the dismissal and their  
10 reasons for consenting.

11           (b)    A copy of the complaint and written disclosure of substantially  
12 all material evidence and information the person possesses *shall* be served  
13 on the Government of Guam. The complaint *shall* be filed in camera, *shall*  
14 remain under seal for at least sixty (60) days, and *shall* not be served on the  
15 defendant until the court so orders. The Government of Guam *may* elect to  
16 intervene and proceed with the action within sixty (60) days after it receives  
17 both the complaint and the material evidence and information.

18           (c)    The Government of Guam *may*, for good cause shown, move  
19 the court for extensions of the time during which the complaint remains  
20 under seal under subsection (b). Any such motions *may* be supported by  
21 affidavits or other submissions in camera. The defendant *shall* not be  
22 required to respond to any complaint filed under this section until twenty  
23 (20) days after the complaint is unsealed and served upon the defendant.

24           (d)    Before the expiration of the sixty- (60-) day period or any  
25 extensions obtained under subsection (b), the Government of Guam *shall*—

26                   (1)    proceed with the action, in which case the action *shall* be  
27                   conducted by the Government of Guam; or

1                   (2)    notify the court that it declines to take over the action, in  
2                   which case the person bringing the action *shall* have the right to  
3                   conduct the action.

4                   (e)    When a person brings an action under this subsection, no  
5                   person other than the Government of Guam may intervene or bring a related  
6                   action based on the facts underlying the pending action.

7                   **§ 46.713.    Right of the Parties to Qui Tam Actions.**

8                   (a)    If the Government of Guam proceeds with the action, it *shall*  
9                   have the primary responsibility for prosecuting the action, and *shall* not be  
10                  bound by an act of the person bringing the action. Such person *shall* have the  
11                  right to continue as a party to the action, subject to the limitations set forth in  
12                  subsection (b).

13                  (b)    (1)   The Government of Guam *may* dismiss the action  
14                  notwithstanding the objections of the person initiating the action if the  
15                  person has been notified by the Government of Guam of the filing of the  
16                  motion and the court has provided the person with an opportunity for a  
17                  hearing on the motion.

18                  (2)    The Government of Guam *may* settle the action with the  
19                  defendant notwithstanding the objections of the person initiating the  
20                  action if the court determines, after a hearing, that the proposed  
21                  settlement is fair, adequate, and reasonable under all the  
22                  circumstances. Upon a showing of good cause, such hearing *may* be  
23                  held in camera.

24                  (3)    Upon a showing by the Government of Guam that  
25                  unrestricted participation during the course of the litigation by the  
26                  person initiating the action would interfere with or unduly delay the  
27                  Government of Guam's prosecution of the case, or would be

1           repetitious, irrelevant, or for purposes of harassment, the court *may*, in  
2           its discretion, impose limitations on the person's participation, such  
3           as:

4                   (A) limiting the number of witnesses the person *may*  
5                   call;

6                   (B) limiting the length of the testimony of such  
7                   witnesses;

8                   (C) limiting the person's cross-examination of  
9                   witnesses; or

10                  (D) otherwise limiting the participation by the person  
11                  in the litigation.

12           (4) Upon a showing by the defendant that unrestricted  
13           participation during the course of the litigation by the person initiating  
14           the action would be for purposes of harassment or would cause the  
15           defendant undue burden or unnecessary expense, the court *may* limit  
16           the participation by the person in the litigation.

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17           (c) If the Government of Guam elects not to proceed with the  
18           action, the person who initiated the action *shall* have the right to conduct the  
19           action. If the Government of Guam so requests, it *shall* be served with  
20           copies of all pleadings filed in the action and *shall* be supplied with copies  
21           of all deposition transcripts (at the Government of Guam's expense). When a  
22           person proceeds with the action, the court, without limiting the status and  
23           rights of the person initiating the action, *may* nevertheless permit the  
24           Government of Guam to intervene at a later date upon a showing of good  
25           cause.

26           (d) Whether or not the Government of Guam proceeds with the  
27           action, upon a showing by the Government of Guam that certain actions of

1 discovery by the person initiating the action would interfere with the  
2 Government of Guam's investigation or prosecution of a criminal or civil  
3 matter arising out of the same facts, the court *may* stay such discovery for a  
4 period of not more than sixty (60) days. Such a showing *shall* be conducted  
5 in camera. The court *may* extend the sixty- (60-) day period upon a further  
6 showing in camera that the Government of Guam has pursued the criminal  
7 or civil investigation or proceedings with reasonable diligence and any  
8 proposed discovery in the civil action will interfere with the ongoing  
9 criminal or civil investigation or proceedings.

10 (e) Notwithstanding §46.712, the Government of Guam *may* elect  
11 to pursue its claim through any alternate remedy available to the  
12 Government of Guam, including any administrative proceeding to determine  
13 a civil money penalty. If any such alternate remedy is pursued in another  
14 proceeding, the person initiating the action *shall* have the same rights in such  
15 proceeding as such person would have had if the action had continued under  
16 this section. Any finding of fact or conclusion of law made in such other  
17 proceeding that has become final *shall* be conclusive on all parties to an  
18 action under this section. For purposes of the preceding sentence, a finding  
19 or conclusion is final if it has been finally determined on appeal to the  
20 appropriate court of Guam, if all time for filing such an appeal with respect  
21 to the finding or conclusion has expired, or if the finding or conclusion is not  
22 subject to judicial review.

23 **§ 46.714. Award to Qui Tam Plaintiff.**

24 (a) If the Government of Guam proceeds with an action brought by  
25 a person under §46.712, such person *shall*, subject to the second sentence of  
26 this subsection, receive at least fifteen percent (15%) but not more than  
27 twenty-five percent (25%) of the proceeds of the action or settlement of the

1 claim, depending upon the extent to which the person substantially  
2 contributed to the prosecution of the action. Where the action is one which  
3 the court finds to be based primarily on disclosures of specific information  
4 (other than information provided by the person bringing the action) relating  
5 to allegations or transactions in a criminal, civil, or administrative hearing,  
6 in a congressional, administrative, or Government of Guam report, hearing,  
7 audit, or investigation, or from the news media, the court *may* award such  
8 sums as it considers appropriate, but in no case more than ten percent (10%)  
9 of the proceeds, taking into account the significance of the information and  
10 the role of the person bringing the action in advancing the case to litigation.  
11 Any payment to a person under the first or second sentence of this  
12 subsection *shall* be made from the proceeds. Any such person *shall* also  
13 receive an amount for reasonable expenses which the court finds to have  
14 been necessarily incurred, plus reasonable attorneys' fees and costs. All such  
15 expenses, fees, and costs *shall* be awarded against the defendant.

16 (b) If the Government of Guam does not proceed with an action  
17 under this section, the person bringing the action or settling the claim *shall*  
18 receive an amount which the court decides is reasonable for collecting the  
19 civil penalty and damages. The amount *shall* be not less than twenty-five  
20 percent (25%) and not more than thirty percent (30%) of the proceeds of the  
21 action or settlement and *shall* be paid out of such proceeds. Such person  
22 *shall* also receive an amount for reasonable expenses which the court finds  
23 to have been necessarily incurred, plus reasonable attorneys' fees and costs.  
24 All such expenses, fees, and costs *shall* be awarded against the defendant.

25 (c) Whether or not the Government of Guam proceeds with the  
26 action, if the court finds that the action was brought by a person who  
27 planned and initiated the violation of §46.702 upon which the action was

1 brought, then the court *may*, to the extent the court considers appropriate,  
2 reduce the share of the proceeds of the action which the person would  
3 otherwise receive under subsection (a) or (b), taking into account the role of  
4 that person in advancing the case to litigation and any relevant  
5 circumstances pertaining to the violation. If the person bringing the action is  
6 convicted of criminal conduct arising from his or her role in the violation of  
7 §46.702, that person *shall* be dismissed from the civil action and *shall* not  
8 receive any share of the proceeds of the action. Such dismissal *shall* not  
9 prejudice the right of the Government of Guam to continue the action,  
10 represented by the Attorney General.

11 (d) If the Government of Guam does not proceed with the action  
12 and the person bringing the action conducts the action, the court *may* award  
13 to the defendant its reasonable attorneys' fees and expenses if the defendant  
14 prevails in the action and the court finds that the claim of the person  
15 bringing the action was clearly frivolous, clearly vexatious, or brought  
16 primarily for purposes of harassment.

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17 **§ 46.715. Certain Actions Barred.**

18 (a) No court *shall* have jurisdiction over an action brought by a  
19 former or present member of the armed forces under §46.712 against a  
20 member of the armed forces arising out of such person's service in the  
21 armed forces.

22 (b) In no event *may* a person bring an action under subsection  
23 §46.712 which is based upon allegations or transactions which are the  
24 subject of a civil suit or an administrative civil money penalty proceeding in  
25 which the Government of Guam is already a party.

26 **§ 46.716. Government of Guam Not Liable for Certain Expenses.**

1           The Government of Guam is not liable for expenses which a person  
2 incurs in bringing an action under this subarticle.

3       **§ 46.717. Fees and Expenses to Prevailing Defendant.**

4           Only in civil actions brought under this subarticle by the Government  
5 of Guam, the following *shall* apply:

6           (a) (1) a court *shall* award to a prevailing party other than the  
7 Government of Guam fees and other expenses, in addition to any costs  
8 awarded, incurred by that party in any civil action (other than cases  
9 sounding in tort), including proceedings for judicial review of agency  
10 action, brought by or against the Government of Guam in the Unified  
11 Judiciary of Guam, unless the court finds that the position of the  
12 Government of Guam was substantially justified or that special  
13 circumstances make an award unjust.

14           (2) A party seeking an award of fees and other expenses  
15 *shall*, within thirty (30) days of final judgment in the action, submit to  
16 the court an application for fees and other expenses which shows that  
17 the party is a prevailing party and is eligible to receive an award under  
18 this section, and the amount sought, including an itemized statement  
19 from any attorney or expert witness representing or appearing in  
20 behalf of the party stating the actual time expended and the rate at  
21 which fees and other expenses were computed. The party *shall* also  
22 allege that the position of the Government of Guam was not  
23 substantially justified. Whether or not the position of the Government  
24 of Guam was substantially justified *shall* be determined on the basis  
25 of the record (including the record with respect to the action or failure  
26 to act by the agency upon which the civil action is based) which is  
27 made in the civil action for which fees and other expenses are sought.

1           (3) The court, in its discretion, *may* reduce the amount to be  
2 awarded pursuant to this subsection, or deny an award, to the extent  
3 that the prevailing party during the course of the proceedings engaged  
4 in conduct which unduly and unreasonably protracted the final  
5 resolution of the matter in controversy.

6           (4) If, in a civil action brought by the Government of Guam  
7 under this subarticle, the demand by the Government of Guam is  
8 substantially in excess of the judgment finally obtained by the  
9 Government of Guam and is unreasonable when compared with such  
10 judgment, under the facts and circumstances of the case, the court  
11 *shall* award to the party the fees and other expenses related to  
12 defending against the excessive demand, unless the party has  
13 committed a willful violation of law or otherwise acted in bad faith, or  
14 special circumstances make an award unjust. Fees and expenses  
15 awarded under this subparagraph *shall* be paid only as a consequence  
16 of appropriations provided in advance.

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17 (b) For the purposes of this section:

18           (1) ‘fees and other expenses’ includes the reasonable  
19 expenses of expert witnesses, the reasonable cost of any study,  
20 analysis, engineering report, test, or project which is found by the  
21 court to be necessary for the preparation of the party’s case, and  
22 reasonable attorney fees (The amount of fees awarded under this  
23 subsection *shall* be based upon prevailing market rates for the kind  
24 and quality of the services furnished, except that (i) no expert witness  
25 *shall* be compensated at a rate in excess of the highest rate of  
26 compensation for expert witnesses paid by the Government of Guam;  
27 and (ii) attorney fees *shall* not be awarded in excess of one hundred

1 twenty-five dollars (\$125) per hour unless the court determines that an  
2 increase in the cost of living or a special factor, such as the limited  
3 availability of qualified attorneys for the proceedings involved,  
4 justifies a higher fee.);

5 (2) 'Government of Guam' includes any agency and any  
6 official of the Government of Guam acting in his or her official  
7 capacity;

8 (3) 'position of the Government of Guam' means, in addition  
9 to the position taken by the Government of Guam in the civil action,  
10 the action or failure to act by the agency upon which the civil action is  
11 based; except that fees and expenses *may* not be awarded to a party  
12 for any portion of the litigation in which the party has unreasonably  
13 protracted the proceedings; and

14 (4) 'final judgment' means a judgment that is final and not  
15 appealable, and includes an order of settlement.

16 (c) Fees and other expenses awarded under this subsection to a  
17 party *shall* be paid by any agency over which the party prevails from any  
18 funds made available to the agency by appropriation or otherwise.

19 **§ 46.718. Relief from Retaliatory Actions.**

20 (a) In general. Any employee, contractor, or agent *shall* be entitled  
21 to all relief necessary to make that employee, contractor, or agent whole, if  
22 that employee, contractor, or agent is discharged, demoted, suspended,  
23 threatened, harassed, or in any other manner discriminated against in the  
24 terms and conditions of employment because of lawful acts done by the  
25 employee, contractor, agent or associated others in furtherance of an action  
26 under this section or other efforts to stop one (1) or more violations of this  
27 Article.

1 (b) Relief. Relief under subsection (a) *shall* include reinstatement  
2 with the same seniority status that employee, contractor, or agent would  
3 have had but for the discrimination, two (2) times the amount of back pay,  
4 interest on the back pay, and compensation for any special damages  
5 sustained as a result of the discrimination, including litigation costs and  
6 reasonable attorneys' fees. An action under this subsection *may* be brought  
7 in the Unified Judiciary of Guam for the relief provided in this subsection.

8 (c) Limitation on bringing civil action. A civil action under this  
9 subsection *may* not be brought more than three (3) years after the date when  
10 the retaliation occurred.

## 11 SUBARTICLE C

### 12 FALSE CLAIMS PROCEDURE

13 § 46.721. Statute of Limitations for Civil Actions.

14 § 46.722. Clarification or Addition of Detail to Claims in Which the  
15 Government of Guam Intervenes.

16 § 46.723. Government to Prove Elements of the Cause of Action.

17 **§ 46.721. Statute of Limitations for Civil Actions.**

18 A civil action under subarticle B *may* not be brought more than ten  
19 (10) years after the date on which the violation is committed.

20 **§ 46.722. Clarification or Addition of Detail to Claims in Which the**  
21 **Government of Guam Intervenes.**

22 If the Government of Guam elects to intervene and proceed with an  
23 action brought under §46.712, the Government of Guam *may* file its own  
24 complaint or amend the complaint of a person who has brought an action  
25  
26  
27

1 under §46.712 to clarify or add detail to the claims in which the Government  
2 of Guam is intervening and to add any additional claims with respect to  
3 which the Government contends it is entitled to relief. For statute of  
4 limitations purposes, any such Government of Guam pleading *shall* relate  
5 back to the filing date of the complaint of the person who originally brought  
6 the action, to the extent that the claim of the Government of Guam arises out  
7 of the conduct, transactions, or occurrences set forth, or attempted to be set  
8 forth, in the prior complaint of that person.

9 **§ 46.723. Government to Prove Elements of the Cause of Action.**

10 (a) In any action brought under subarticle B, the Government of  
11 Guam *shall* be required to prove all essential elements of the cause of action,  
12 including damages, by a preponderance of the evidence.

13 (b) Notwithstanding any other provision of law, a final judgment  
14 rendered in favor of the Government of Guam in any criminal proceeding  
15 charging fraud or false statements, whether upon a verdict after trial or upon  
16 a plea of guilty or nolo contendere, *shall* estop the defendant from denying  
17 the essential elements of the offense in any action which involves the same  
18 transaction as in the criminal proceeding and which is brought under §§  
19 46.711 or 46.712.

20  
21 **SUBARTICLE D**

22 **CIVIL INVESTIGATIVE DEMANDS**

23  
24 § 46.731. In General.

25 § 46.732. Protected Material of Information.

26 § 46.733. Service; Jurisdiction.

27 § 46.733.1. Service upon Legal Entities and Natural Persons.

- 1       § 46.733.2. Proof of Service.
- 2       § 46.734. Documentary Material.
- 3       § 46.735. Interrogatories.
- 4       § 46.736. Oral Examinations.
- 5       § 46.737. Custodians of Documents, Answers, and Transcripts.
- 6       § 46.738. Judicial Proceedings.
- 7       § 46.739. Disclosure Exemption.
- 8       § 46.740. Definitions.

9

10       **§ 46.731. In General.**

11           (a) Issuance and service. Whenever the Attorney General, or a  
12       designee (for purposes of this section), has reason to believe that any person  
13       *may* be in possession, custody, or control of any documentary material or  
14       information relevant to a false claims law investigation, the Attorney  
15       General, or a designee, *may*, before commencing a civil proceeding under  
16       §46.711 or other false claims law, or making an election under section

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17       §46.712, issue in writing and cause to be served upon such person, a civil  
18       investigative demand requiring such person:

19           (1) to produce such documentary material for inspection and  
20       copying,

21           (2) to answer in writing written interrogatories with respect  
22       to such documentary material or information,

23           (3) to give oral testimony concerning such documentary  
24       material or information, or

25           (4) to furnish any combination of such material, answers, or  
26       testimony.

1           The Attorney General *may* delegate the authority to issue civil  
2           investigative demands under this subsection. Whenever a civil  
3           investigative demand is an express demand for any product of  
4           discovery, the Attorney General, the Deputy Attorney General, or an  
5           Assistant Attorney General *shall* cause to be served, in any manner  
6           authorized by this section, a copy of such demand upon the person  
7           from whom the discovery was obtained and *shall* notify the person to  
8           whom such demand is issued of the date on which such copy was  
9           served. Any information obtained by the Attorney General or a  
10          designee of the Attorney General under this section *may* be shared  
11          with any qui tam relator if the Attorney General or designee determine  
12          it is necessary as part of any false claims act investigation.

13          (b)    Contents and deadlines.

14                  (1)   Each civil investigative demand issued under subsection  
15          (a) *shall* state the nature of the conduct constituting the alleged  
16          violation of a false claims law which is under investigation, and the  
17          applicable provision of law alleged to be violated.

18                  (2)   If such demand is for the production of documentary  
19          material, the demand *shall*

20                          (A)   describe each class of documentary material to be  
21                          produced with such definiteness and certainty as to permit such  
22                          material to be fairly identified;

23                          (B)   prescribe a return date for each such class which  
24                          will provide a reasonable period of time within which the  
25                          material so demanded *may* be assembled and made available for  
26                          inspection and copying; and

1 (C) identify the false claims law investigator to whom  
2 such material *shall* be made available.

3 (3) If such demand is for answers to written interrogatories,  
4 the demand *shall*:

5 (A) set forth with specificity the written interrogatories  
6 to be answered;

7 (B) prescribe dates at which time answers to written  
8 interrogatories *shall* be submitted; and

9 (C) identify the false claims law investigator to whom  
10 such answers *shall* be submitted.

11 (4) If such demand is for the giving of oral testimony, the  
12 demand *shall*:

13 (A) prescribe a date, time, and place at which oral  
14 testimony *shall* be commenced;

15 (B) identify a false claims law investigator who *shall*  
16 conduct the examination and the custodian to whom the  
17 transcript of such examination *shall* be submitted;

18 (C) specify that such attendance and testimony are  
19 necessary to the conduct of the investigation;

20 (D) notify the person receiving the demand of the right  
21 to be accompanied by an attorney and any other representative;  
22 and

23 (E) describe the general purpose for which the demand  
24 is being issued and the general nature of the testimony,  
25 including the primary areas of inquiry, which will be taken  
26 pursuant to the demand.

1           (5) Any civil investigative demand issued under this section  
2 which is an express demand for any product of discovery *shall* not be  
3 returned or returnable until twenty (20) days after a copy of such  
4 demand has been served upon the person from whom the discovery  
5 was obtained.

6           (6) The date prescribed for the commencement of oral  
7 testimony pursuant to a civil investigative demand issued under this  
8 section *shall* be a date which is not less than seven days after the date  
9 on which demand is received, unless the Attorney General or an  
10 Assistant Attorney General designated by the Attorney General  
11 determines that exceptional circumstances are present which warrant  
12 the commencement of such testimony within a lesser period of time.

13           (7) The Attorney General *shall* not authorize the issuance  
14 under this section of more than one civil investigative demand for oral  
15 testimony by the same person unless the person requests otherwise or  
16 unless the Attorney General, after investigation, notifies that person in  
17 writing that an additional demand for oral testimony is necessary.

18 **§ 46.732. Protected Material of Information.**

19           (a) In general. A civil investigative demand issued under §46.731  
20 *may* not require the production of any documentary material, the submission  
21 of any answers to written interrogatories, or the giving of any oral testimony  
22 if such material, answers, or testimony would be protected from disclosure  
23 under:

24           (1) the standards applicable to subpoenas or subpoenas *duces*  
25 *tecum* issued by a court of the Unified Judiciary of Guam to aid in a  
26 grand jury investigation; or

1                   (2) the standards applicable to discovery requests under  
2                   Guam law, to the extent that the application of such standards to any  
3                   such demand is appropriate and consistent with the provisions and  
4                   purposes of this subarticle.

5                   (b) Effect on other orders, rules, and laws. Any such demand which  
6                   is an express demand for any product of discovery supersedes any  
7                   inconsistent order, rule, or provision of law (other than this section)  
8                   preventing or restraining disclosure of such product of discovery to any  
9                   person. Disclosure of any product of discovery pursuant to any such express  
10                  demand does not constitute a waiver of any right or privilege which the  
11                  person making such disclosure *may* be entitled to invoke to resist discovery  
12                  of trial preparation materials.

13                  **§ 46.733. Service; Jurisdiction.**

14                  Any civil investigative demand issued under subsection §46.731 *may*  
15                  be served by a false claims law investigator, or by a law enforcement officer  
16                  of the Government of Guam, at any place within the territorial jurisdiction of  
17                  the Unified Judiciary of Guam.

18                  **§ 46.733.1. Service upon Legal Entities and Natural Persons.**

19                  (a) Legal entities. Service of any civil investigative demand issued  
20                  under §46.731 or of any petition filed under §46.738 *may* be made upon a  
21                  partnership, corporation, association, or other legal entity by:

22                         (1) delivering an executed copy of such demand or petition  
23                         to any partner, executive officer, managing agent, or general agent of  
24                         the partnership, corporation, association, or entity, or to any agent  
25                         authorized by appointment or by law to receive service of process on  
26                         behalf of such partnership, corporation, association, or entity;

1           (2) delivering an executed copy of such demand or petition  
2 to the principal office or place of business of the partnership,  
3 corporation, association, or entity; or

4           (3) depositing an executed copy of such demand or petition  
5 in the United States mails by registered or certified mail, with a return  
6 receipt requested, addressed to such partnership, corporation,  
7 association, or entity at its principal office or place of business.

8           (b) Natural persons. Service of any such demand or petition *may* be  
9 made upon any natural person by:

10           (1) delivering an executed copy of such demand or petition  
11 to the person; or

12           (2) depositing an executed copy of such demand or petition  
13 in the United States mails by registered or certified mail, with a return  
14 receipt requested, addressed to the person at the person's residence or  
15 principal office or place of business.

16           **§ 46.733.2. Proof of Service.**

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17           A verified return by the individual serving any civil investigative  
18 demand issued under §46.731 or any petition filed under §46.738 setting  
19 forth the manner of such service *shall* be proof of such service. In the case of  
20 service by registered or certified mail, such return *shall* be accompanied by  
21 the return post office receipt of delivery of such demand.

22           **§ 46.734. Documentary Material.**

23           (a) Sworn certificates. The production of documentary material in  
24 response to a civil investigative demand served under this section *shall* be  
25 made under a sworn certificate, in such form as the demand designates, by:

26           (1) in the case of a natural person, the person to whom the  
27 demand is directed, or

1           (2) in the case of a person other than a natural person, a  
2 person having knowledge of the facts and circumstances relating to  
3 such production and authorized to act on behalf of such person.

4           The certificate *shall* state that all of the documentary material  
5 required by the demand and in the possession, custody, or control of  
6 the person to whom the demand is directed has been produced and  
7 made available to the false claims law investigator identified in the  
8 demand.

9           (b) Production of materials. Any person upon whom any civil  
10 investigative demand for the production of documentary material has been  
11 served under this section *shall* make such material available for inspection  
12 and copying to the false claims law investigator identified in such demand at  
13 the principal place of business of such person, or at such other place as the  
14 false claims law investigator and the person thereafter *may* agree and  
15 prescribe in writing, or as the court *may* direct under §46.738(a). Such  
16 material *shall* be made so available on the return date specified in such  
17 demand, or on such later date as the false claims law investigator *may*  
18 prescribe in writing. Such person *may*, upon written agreement between the  
19 person and the false claims law investigator, substitute copies for originals  
20 of all or any part of such material.

21 **§ 46.735. Interrogatories.**

22           Each interrogatory in a civil investigative demand served under this  
23 section *shall* be answered separately and fully in writing under oath and  
24 *shall* be submitted under a sworn certificate, in such form as the demand  
25 designates, by:

26           (a) in the case of a natural person, the person to whom the demand  
27 is directed, or

1 (b) in the case of a person other than a natural person, the person or  
2 persons responsible for answering each interrogatory.

3 If any interrogatory is objected to, the reasons for the objection *shall*  
4 be stated in the certificate instead of an answer. The certificate *shall* state  
5 that all information required by the demand and in the possession, custody,  
6 control, or knowledge of the person to whom the demand is directed has  
7 been submitted. To the extent that any information is not furnished, the  
8 information *shall* be identified and reasons set forth with particularity  
9 regarding the reasons why the information was not furnished.

10 **§ 46.736. Oral Examinations.**

11 (a) Procedures. The examination of any person pursuant to a civil  
12 investigative demand for oral testimony served under this section *shall* be  
13 taken before an officer authorized to administer oaths and affirmations by  
14 the laws of Guam. The officer before whom the testimony is to be taken  
15 *shall* put the witness on oath or affirmation and *shall*, personally or by  
16 someone acting under the direction of the officer and in the officer's  
17 presence, record the testimony of the witness. The testimony *shall* be taken  
18 stenographically and *shall* be transcribed. When the testimony is fully  
19 transcribed, the officer before whom the testimony is taken *shall* promptly  
20 transmit a copy of the transcript of the testimony to the custodian. This  
21 subsection *shall* not preclude the taking of testimony by any means  
22 authorized by, and in a manner consistent with, the laws of Guam.

23 (b) Persons present. The false claims law investigator conducting  
24 the examination *shall* exclude from the place where the examination is held  
25 all persons except the person giving the testimony, the attorney for and any  
26 other representative of the person giving the testimony, the attorney for the  
27 Government, any person who *may* be agreed upon by the attorney for the

1 Government and the person giving the testimony, the officer before whom  
2 the testimony is to be taken, and any stenographer taking such testimony.

3 (c) Transcript of testimony. When the testimony is fully  
4 transcribed, the false claims law investigator or the officer before whom the  
5 testimony is taken *shall* afford the witness, who *may* be accompanied by  
6 counsel, a reasonable opportunity to examine and read the transcript, unless  
7 such examination and reading are waived by the witness. Any changes in  
8 form or substance which the witness desires to make *shall* be entered and  
9 identified upon the transcript by the officer or the false claims law  
10 investigator, with a statement of the reasons given by the witness for making  
11 such changes. The transcript *shall* then be signed by the witness, unless the  
12 witness in writing waives the signing, is ill, cannot be found, or refuses to  
13 sign. If the transcript is not signed by the witness within thirty (30) days  
14 after being afforded a reasonable opportunity to examine it, the officer or the  
15 false claims law investigator *shall* sign it and state on the record the fact of  
16 the waiver, illness, absence of the witness, or the refusal to sign, together  
17 with the reasons, if any, given therefor.

18 (d) Certification and delivery to custodian. The officer before  
19 whom the testimony is taken *shall* certify on the transcript that the witness  
20 was sworn by the officer and that the transcript is a true record of the  
21 testimony given by the witness, and the officer or false claims law  
22 investigator *shall* promptly deliver the transcript, or send the transcript by  
23 registered or certified mail, to the custodian.

24 (e) Furnishing or inspection of transcript by witness. Upon  
25 payment of reasonable charges therefor, the false claims law investigator  
26 *shall* furnish a copy of the transcript to the witness only, except that the  
27 Attorney General, the Deputy Attorney General, or an Assistant Attorney

1 General *may*, for good cause, limit such witness to inspection of the official  
2 transcript of the witness' testimony.

3 (f) Conduct of oral testimony.

4 (1) Any person compelled to appear for oral testimony under  
5 a civil investigative demand issued under §46.731 *may* be  
6 accompanied, represented, and advised by counsel. Counsel *may*  
7 advise such person, in confidence, with respect to any question asked  
8 of such person. Such person or counsel *may* object on the record to  
9 any question, in whole or in part, and *shall* briefly state for the record  
10 the reason for the objection. An objection *may* be made, received, and  
11 entered upon the record when it is claimed that such person is entitled  
12 to refuse to answer the question on the grounds of any constitutional  
13 or other legal right or privilege, including the privilege against self-  
14 incrimination. Such person *may* not otherwise object to or refuse to  
15 answer any question, and *may* not directly or through counsel  
16 otherwise interrupt the oral examination. If such person refuses to  
17 answer any question, a petition *may* be filed in the Unified Judiciary  
18 of Guam under §46738(a) for an order compelling such person to  
19 answer such question.

20 (2) If such person refuses to answer any question on the  
21 grounds of the privilege against self-incrimination, the testimony of  
22 such person *may* be compelled, in a manner consistent with Guam  
23 law.

24 (g) Witness fees and allowances. Any person appearing for oral  
25 testimony under a civil investigative demand issued under §46.731 *shall* be  
26 entitled to the same fees and allowances which are paid to witnesses in the  
27 Unified Judiciary of Guam.

1       **§ 46.737. Custodians of Documents, Answers, and Transcripts.**

2           (a) Designation. The Attorney General *shall* designate a false  
3 claims law investigator to serve as custodian of documentary material,  
4 answers to interrogatories, and transcripts of oral testimony received under  
5 this section, and *shall* designate such additional false claims law  
6 investigators as the Attorney General determines from time to time to be  
7 necessary to serve as deputies to the custodian.

8           (b) Responsibility for materials; disclosure.

9           (1) A false claims law investigator who receives any  
10 documentary material, answers to interrogatories, or transcripts of oral  
11 testimony under this section *shall* transmit them to the custodian. The  
12 custodian *shall* take physical possession of such material, answers, or  
13 transcripts and *shall* be responsible for the use made of them and for  
14 the return of documentary material under subsection (d).

15           (2) The custodian *may* cause the preparation of such copies  
16 of such documentary material, answers to interrogatories, or  
17 transcripts of oral testimony as *may* be required for official use by any  
18 false claims law investigator, or other officer or employee of the  
19 Office of the Attorney General. Such material, answers, and  
20 transcripts *may* be used by any such authorized false claims law  
21 investigator or other officer or employee in connection with the taking  
22 of oral testimony under this section.

23           (3) Except as otherwise provided in this subsection, no  
24 documentary material, answers to interrogatories, or transcripts of oral  
25 testimony, or copies thereof, while in the possession of the custodian,  
26 *shall* be available for examination by any individual other than a false  
27 claims law investigator or other officer or employee of the Office of

1 the Attorney General authorized under item (2). The prohibition in the  
2 preceding sentence on the availability of material, answers, or  
3 transcripts *shall* not apply if consent is given by the person who  
4 produced such material, answers, or transcripts, or, in the case of any  
5 product of discovery produced pursuant to an express demand for  
6 such material, consent is given by the person from whom the  
7 discovery was obtained. Nothing in this subparagraph is intended to  
8 prevent disclosure to *i Liheslatura*, including any committee or  
9 subcommittee of *i Liheslatura*, or to any other agency of the  
10 Government of Guam for use by such agency in furtherance of its  
11 statutory responsibilities.

12 (4) While in the possession of the custodian and under such  
13 reasonable terms and conditions as the Attorney General *shall*  
14 prescribe:

15 (A) documentary material and answers to  
16 interrogatories *shall* be available for examination by the person  
17 who produced such material or answers, or by a representative  
18 of that person authorized by that person to examine such  
19 material and answers; and

20 (B) transcripts of oral testimony *shall* be available for  
21 examination by the person who produced such testimony, or by  
22 a representative of that person authorized by that person to  
23 examine such transcripts.

24 (c) Use of material, answers, or transcripts in other proceedings.  
25 Whenever any attorney of the Office of the Attorney General has been  
26 designated to appear before any court, grand jury, or agency in any case or  
27 proceeding, the custodian of any documentary material, answers to

1 interrogatories, or transcripts of oral testimony received under this section  
2 *may* deliver to such attorney such material, answers, or transcripts for  
3 official use in connection with any such case or proceeding as such attorney  
4 determines to be required. Upon the completion of any such case or  
5 proceeding, such attorney *shall* return to the custodian any such material,  
6 answers, or transcripts so delivered which have not passed into the control of  
7 such court, grand jury, or agency through introduction into the record of  
8 such case or proceeding.

9 (d) Conditions for return of material. If any documentary material  
10 has been produced by any person in the course of any false claims law  
11 investigation pursuant to a civil investigative demand under this section, and

12 (1) any case or proceeding before the court or grand jury  
13 arising out of such investigation, or any proceeding before any  
14 Federal agency involving such material, has been completed, or

15 (2) no case or proceeding in which such material *may* be  
16 used has been commenced within a reasonable time after completion

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17 of the examination and analysis of all documentary material and other  
18 information assembled in the course of such investigation,

19 the custodian *shall*, upon written request of the person who produced  
20 such material, return to such person any such material (other than copies  
21 furnished to the false claims law investigator under §46.736(b) or made for  
22 the Office of the Attorney General under subsection (b)(2) which has not  
23 passed into the control of any court, grand jury, or agency through  
24 introduction into the record of such case or proceeding.

25 (e) Appointment of successor custodians. In the event of the death,  
26 disability, or separation from service in the Office of the Attorney General of  
27 the custodian of any documentary material, answers to interrogatories, or

1 transcripts of oral testimony produced pursuant to a civil investigative  
2 demand under this section, or in the event of the official relief of such  
3 custodian from responsibility for the custody and control of such material,  
4 answers, or transcripts, the Attorney General *shall* promptly—

5 (1) designate another false claims law investigator to serve  
6 as custodian of such material, answers, or transcripts, and

7 (2) transmit in writing to the person who produced such  
8 material, answers, or testimony notice of the identity and address of  
9 the successor so designated.

10 Any person who is designated to be a successor under this paragraph  
11 *shall* have, with regard to such material, answers, or transcripts, the same  
12 duties and responsibilities as were imposed by this section upon that  
13 person's predecessor in office, except that the successor *shall* not be held  
14 responsible for any default or dereliction which occurred before that  
15 designation.

16 **§ 46.738. Judicial Proceedings.**

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17 (a) Petition for enforcement. Whenever any person fails to comply  
18 with any civil investigative demand issued under §46.731, or whenever  
19 satisfactory copying or reproduction of any material requested in such  
20 demand cannot be done and such person refuses to surrender such material,  
21 the Attorney General *may* file, in the Unified Judiciary of Guam, and serve  
22 upon such person a petition for an order of such court for the enforcement of  
23 the civil investigative demand.

24 (b) Petition to modify or set aside demand.

25 (1) Any person who has received a civil investigative  
26 demand issued under §46.731 *may* file, in the Unified Judiciary of  
27 Guam, is found, or transacts business, and serve upon the false claims

1 law investigator identified in such demand a petition for an order of  
2 the court to modify or set aside such demand. In the case of a petition  
3 addressed to an express demand for any product of discovery, a  
4 petition to modify or set aside such demand *may* be brought only in  
5 the Unified Judiciary of Guam. Any petition under this item must be  
6 filed:

7 (A) within twenty (20) days after the date of service of  
8 the civil investigative demand, or at any time before the return  
9 date specified in the demand, whichever date is earlier, or

10 (B) within such longer period as *may* be prescribed in  
11 writing by any false claims law investigator identified in the  
12 demand.

13 (2) The petition *shall* specify each ground upon which the  
14 petitioner relies in seeking relief under item (1), and *may* be based  
15 upon any failure of the demand to comply with the provisions of this  
16 section or upon any constitutional or other legal right or privilege of  
17 such person. During the pendency of the petition in the court, the  
18 court *may* stay, as it deems proper, the running of the time allowed for  
19 compliance with the demand, in whole or in part, except that the  
20 person filing the petition *shall* comply with any portions of the  
21 demand not sought to be modified or set aside.

22 (c) Petition to modify or set aside demand for product of discovery.

23 (1) In the case of any civil investigative demand issued under  
24 §46.731 which is an express demand for any product of discovery, the  
25 person from whom such discovery was obtained *may* file, in the  
26 Unified Judiciary of Guam, and serve upon any false claims law  
27 investigator identified in the demand and upon the recipient of the

1 demand, a petition for an order of such court to modify or set aside  
2 those portions of the demand requiring production of any such product  
3 of discovery. Any petition under this subparagraph must be filed:

4 (A) within twenty (20) days after the date of service of  
5 the civil investigative demand, or at any time before the return  
6 date specified in the demand, whichever date is earlier, or

7 (B) within such longer period as *may* be prescribed in  
8 writing by any false claims law investigator identified in the  
9 demand.

10 (2) The petition *shall* specify each ground upon which the  
11 petitioner relies in seeking relief under item (1), and *may* be based  
12 upon any failure of the portions of the demand from which relief is  
13 sought to comply with the provisions of this section, or upon any  
14 constitutional or other legal right or privilege of the petitioner. During  
15 the pendency of the petition, the court *may* stay, as it deems proper,  
16 compliance with the demand and the running of the time allowed for  
17 compliance with the demand.

18 (d) Petition to require performance by custodian of duties. At any  
19 time during which any custodian is in custody or control of any documentary  
20 material or answers to interrogatories produced, or transcripts of oral  
21 testimony given, by any person in compliance with any civil investigative  
22 demand issued under §46.731, such person, and in the case of an express  
23 demand for any product of discovery, the person from whom such discovery  
24 was obtained, *may* file, in the Unified Judiciary of Guam, and serve upon  
25 such custodian, a petition for an order of such court to require the  
26 performance by the custodian of any duty imposed upon the custodian by  
27 this section.

1 (e) Jurisdiction. Whenever any petition is filed in the Unified  
2 Judiciary of Guam under this section, such court *shall* have jurisdiction to  
3 hear and determine the matter so presented, and to enter such order or orders  
4 as *may* be required to carry out the provisions of this section. Any final order  
5 so entered *shall* be subject to appeal to the Supreme Court of Guam. Any  
6 disobedience of any final order entered under this section by any court *shall*  
7 be punished as a contempt of the court.

8 (f) Applicability of federal rules of civil procedure. The Guam  
9 Rules of Civil Procedure *shall* apply to any petition under this subsection, to  
10 the extent that such rules are not inconsistent with the provisions of this  
11 section.

12 **§ 46.739. Disclosure Exemption.**

13 Any documentary material, answers to written interrogatories, or oral  
14 testimony provided under any civil investigative demand issued under  
15 §46.731 *shall* be exempt from disclosure under Chapter 10 of Title 5, Guam  
16 Code Annotated.

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17 **§ 46.740. Definitions.**

18 For purposes of this subarticle:

19 (a) the term ‘false claims law’ means this Article;

20 (b) the term ‘false claims law investigation’ means any inquiry  
21 conducted by any false claims law investigator for the purpose of  
22 ascertaining whether any person is or has been engaged in any violation of  
23 the false claims law;

24 (c) the term ‘false claims law investigator’ means any attorney or  
25 investigator employed by the Office of the Attorney General who is charged  
26 with the duty of enforcing or carrying into effect any false claims law, or any  
27 officer or employee of the Government of Guam acting under the direction

1 and supervision of such attorney or investigator in connection with a false  
2 claims law investigation;

3 (d) the term 'person' means any natural person, partnership,  
4 corporation, association, or other legal entity, including any State or political  
5 subdivision of a State;

6 (e) the term 'documentary material' includes the original or any  
7 copy of any book, record, report, memorandum, paper, communication,  
8 tabulation, chart, or other document, or data compilations stored in or  
9 accessible through computer or other information retrieval systems, together  
10 with instructions and all other materials necessary to use or interpret such  
11 data compilations, and any product of discovery;

12 (f) the term 'custodian' means the custodian, or any deputy  
13 custodian, designated by the Attorney General under §46.737(a);

14 (g) the term 'product of discovery' includes:

15 (1) the original or duplicate of any deposition, interrogatory,  
16 document, thing, result of the inspection of land or other property,  
17 examination, or admission, which is obtained by any method of  
18 discovery in any judicial or administrative proceeding of an  
19 adversarial nature;

20 (2) any digest, analysis, selection, compilation, or derivation  
21 of any item listed in item (1); and

22 (3) any index or other manner of access to any item listed in  
23 item (1); and

24 (h) the term 'official use' means any use that is consistent with the  
25 law, and the regulations and policies of the Office of the Attorney General,  
26 including use in connection with internal Office of the Attorney General  
27 memoranda and reports; communications between the Office of the Attorney

1       General and a Government of Guam agency, or a contractor of a  
2       Government of Guam agency, undertaken in furtherance of an Office of the  
3       Attorney General investigation or prosecution of a case; interviews of any  
4       qui tam relator or other witness; oral examinations; depositions; preparation  
5       for and response to civil discovery requests; introduction into the record of a  
6       case or proceeding; applications, motions, memoranda and briefs submitted  
7       to a court or other tribunal; and communications with Government  
8       investigators, auditors, consultants and experts, the counsel of other parties,  
9       arbitrators and mediators, concerning an investigation, case or proceeding.”