I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

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

This is to certify that **Bill No. 286-31 (COR), "AN ACT TO *AMEND* §§ 30109 AND 30118, AND TO *ADD* NEW §§ 30121, 30121.1 AND §30121.2, ALL OF CHAPTER 30 OF DIVISION 3, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO GRANTING INCREASED AUTONOMY TO THE OFFICE OF THE ATTORNEY GENERAL ON FINANCIAL AND PERSONNEL MATTERS,"** was on the 8th day of November, 2011, 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'lahen Guåhan* this 9th day of Nov., 2011, at 4:25 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 286-31 (COR)
As amended by the Committee on Public Safety,
Law Enforcement and Judiciary; and further amended on the Floor.

Introduced by: Adolpho B. Palacios, Sr.
T. C. Ada
V. Anthony Ada
F. F. Blas, Jr.
B. J.F. Cruz
Chris M. Dueñas
Judith P. Guthertz, DPA
Sam Mabini, Ph.D.
T. R. Muña Barnes
M. Silva Taijeron
v. c. pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
Aline A.Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO *AMEND* §§ 30109 AND 30118, AND TO *ADD* NEW §§ 30121, 30121.1 AND §30121.2, ALL OF CHAPTER 30 OF DIVISION 3, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO GRANTING INCREASED AUTONOMY TO THE OFFICE OF THE ATTORNEY GENERAL ON FINANCIAL AND PERSONNEL MATTERS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the people of Guam first elected an Attorney General for the government of

Guam in 2002. The election of the position of the Attorney General provides for more independence of that office from *I Maga'lahi* and *I Liheslatura*, which is appropriate for the wide-ranging duties of the Attorney General as the chief legal officer of the government of Guam.

I Liheslatura further finds that the Office of the Attorney General experiences difficulties with government bureaucracy, specifically concerning personnel recruitment and the release of funds appropriated to the Office. These problems have diminished the ability of the Office of the Attorney General to effectively and efficiently execute its responsibilities as the government of Guam's chief legal representative.

I Liheslaturan Guåhan finds that the Public Defender Service Corporation (PDSC), as provided in Title 12, Guam Code Annotated, is authorized to administer its budgetary resources and matters pertaining to personnel. This level of autonomy allows for the PDSC to efficiently manage its financial resources and to recruit in a timely manner, and retain personnel critical to supporting the mandates of the PDSC.

I Liheslaturan Guåhan further finds that it is manifestly in the interest of the people of Guam that the Attorney General shall have more autonomy over the operations of the agency in which he heads. It is only appropriate that the Attorney General have more control over the administration of the Office's budgetary resources and the management of its personnel, including the recruitment, hiring and retention process. This will only enhance its independence and its credibility in the rendering of legal opinions, carrying out its prosecutorial responsibilities and performing the other duties of the Office.

Therefore, it is the intent of *I Liheslaturan Guåhan* to amend and add provisions in Title 5, Guam Code Annotated, which grant the Office of the Attorney General a level of autonomy similar to the PDSC relative to the

recruitment, hiring and retention of agency personnel, and the proper administration of its financial matters.

Section 2. Duties of the Attorney General. § 30109 of Chapter 30, Division 3 of Title 5, Guam Code Annotated, is hereby *amended* to read:

"**§ 30109. Duties.**

The Attorney General is the public prosecutor and, by himself, a deputy or assistant, *shall*:

(a) conduct on behalf of the government of Guam the prosecution of all offenses against the laws of Guam which are prosecuted in any of the courts of Guam, the District Court of Guam, and any appeals therefrom;

(b) draw all information, conduct grand jury proceedings, prosecute all recognizances forfeited in the courts and all actions for the recovery of debts, fines, penalties and forfeitures accruing to the government of Guam, *except* as otherwise provided in this Act;

(c) conduct on behalf of the government of Guam all civil actions in which the government is an interested party; provided that those branches, departments or agencies which are authorized to employ their own legal counsel may use them instead of the Attorney General;

(d) deliver receipts of money or property received by him in his official capacity and file duplicates thereof with the Director of Administration;

(e) as soon as practical after the receipt of any money in his official capacity, turn the money over to the Director of Revenue and Taxation, and on the first (1st) Monday of each month file with the Director of Administration, an account, verified by his oath, of all

monies received by him in his official capacity for the government of Guam during the preceding month;

(f) be diligent in protecting the rights and properties of the government of Guam;

(g) institute by any appropriate action proceedings on behalf of himself or any other public officers (*not* an employee) to have determined by the courts the validity of any law, rule or regulation of the government of Guam;

(h) prepare and submit annual budgets for approval by *I Liheslaturan Guåhan*;

(i) administer federal funds/programs on behalf of the Office of the Attorney General;

(j) serve as the Office of the Attorney General's approving authority for the expenditure of funds;

(k) serve as the Office of the Attorney General's appointing authority for all personnel employed at the Office of the Attorney General, hiring employees from an established list of qualified applicants in accordance with established criteria and assigning, detailing, and transferring employees as the Attorney General deems necessary for the effective operation of the Office of the Attorney General; and

(l) perform such other duties as are required by law."

Section 3. Budget and Financial Matters of the Attorney General's Office. § 30118 of Chapter 30, Division 3 of Title 5, Guam Code Annotated, is hereby *amended* to read:

"**§ 30118. Budget and Financial Matters.**

The Office of the Attorney General *shall* receive an annual budget pursuant to appropriation by *I Liheslaturan Guåhan*, which is *not* subject to the allotment process or the control of the Bureau of Budget and Management Research, nor shall *I Maga'lahen Guåhan* impound or transfer funds appropriated to the Office of the Attorney General. The Office of the Attorney General *shall* receive from the Department of Administration, or its successor, an amount *no less than* one twelfth (1/12) of its budget on the first (1st) day of every month of the fiscal year until such budget has been exhausted. In a month in which more than two (2) pay periods occur, the Department of Administration *shall* release such funds required for the purpose of meeting the operational needs of the Office of the Attorney General for that month, provided a sufficient balance of the appropriation remains."

Section 4. Fiscal Authority of the Attorney General's Office. A new §30118.1 is hereby *added* to read:

"§30118.1. Fiscal Authority Accounting; Expenditures.

(a) The Office of the Attorney General *shall* be responsible for the conduct of operational matters addressing its financial activities, in accordance with and consistent with the provisions contained herein.

(b) The Department of Administration *shall* establish, for the benefit of the Office of the Attorney General, a fund to be known as the "Office of the Attorney General Operations Fund", hereafter referred to as the "Fund", which *shall* be maintained by the general administrative services of the Department of Administration separate and apart from other funds of the government of Guam, and independent records and accounts *shall* be maintained in connection

therewith. Financial statements detailing the revenues generated and expenses incurred of the Fund *shall* be submitted to the Speaker of *I Liheslaturan Guåhan* quarterly, or as otherwise required by law.

(c) All monies, *except* for monies required by law to be deposited in a special fund, received by the Office of the Attorney General, from whatever source derived, *shall* be deposited in the Fund bank account of an eligible bank, as defined in 5GCA §21112, which is procured by the Department of Administration.

(d) All expenditures from the Fund *shall* be made by the Department of Administration, at the direction of the Office of the Attorney General.

(e) The Department of Administration *shall* adopt a uniform system of accounting, consistent with other government of Guam requirements, for the Fund and special funds of the Office of Attorney General."

Section 5. Administration of Personnel Matters by the Office of the Attorney General of Guam. New §§ 30121, 30121.1 and 30121.2 are hereby *added* to Chapter 30, Division 3, Title 5, Guam Code Annotated, to read:

"**§ 30121. Administration of General Personnel Matters.**

The Office of the Attorney General *shall* be responsible for the conduct of operational matters addressing its personnel activities, in accordance with and consistent with the provisions contained herein.

§ 30121.1. Administration of Personnel.

The Attorney General of Guam is authorized to hire and appoint such personnel, and to fix their duties and responsibilities under and in accordance with Title 4, Guam Code Annotated, as may be necessary for the purposes of this Chapter.

§ 30121.2. Employment.

(a) Pursuant to the provisions of § 4105 of Title 4, Guam Code Annotated, the Attorney General may establish rules and regulations governing selection, promotion, performance evaluation, demotion, suspension and other disciplinary action for the employees of the Office of the Attorney General. Until such time as the Office of the Attorney General adopts its own rules and regulations as provided herein, the rules and regulations adopted by the Department of Administration *shall* continue to apply to the Office of the Attorney General.

(b) Employees of the Office of the Attorney General *shall* continue to be members of the Government of Guam Retirement Fund, subject to the provisions of §8105 of Title 4, Guam Code Annotated. The Office of the Attorney General *shall* contribute to the Government of Guam Retirement Fund on the basis of annual billings as determined by *I Liheslaturan Guåhan* or the Government of Guam Retirement Fund, for the government share of the cost of the retirement benefits applicable to the Office of the Attorney General employees and their beneficiaries. The Office of the Attorney General *shall* also contribute to the Workmen's Compensation Fund, on the basis of annual billings as determined by the Workmen's Compensation Commissioner, for the benefit payments made from the Workmen's Compensation Fund on account of the Office of the Attorney General's employees.

(c) Notwithstanding any other provision of law the Office of the Attorney General may provide one (1) way airfare for newly-hired classified, unclassified and/or limited term appointment attorney(s), to

Guam and may seek reimbursement from the attorney(s) who do *not* serve the full term of their contract with the Office of the Attorney General."

Section 6. Effective Date. The provisions contained herein *shall* be fully effective *no later than* one hundred eighty (180) days following the enactment of this Act. From the period of enactment until the full effect of this Act, the Office of the Attorney General and the Department of Administration may effect a transitional arrangement toward full implementation.

Section 7. Severability. *If* any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.