EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

MAR 2 0 2017

The Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåttro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Speaker Benjamin J.F. Cruz

MAR 2 2 2017

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Dear Mr. Speaker:

2017 MAR 22 PM 4:27

Attached is Bill No. 4-34 COR) entitled, *"An act. . . Relative to Excluding I Maga'Låhen Guåhan, I Segundu na Maga'Låhen Guåhan, and Senators of I Liheslaturan Guåhan from the Competitive Wage Act of 2014, and to Reducing the Salaries of the Same. . .,"* which I have VETOED.

I transmitted the Competitive Wage Act (CWA)[1] to the Legislature on January 15, 2014. Prior to the 2014 CWA, the last time government-wide salary adjustments had been implemented was in 1991. The 2014 CWA sought to address the disparities that had grown in the 23 years since 1991 between government of Guam jobs and their private sector counterparts. Truly, the salary adjustments were long overdue.

The 2014 CWA covered only the Executive and Legislative branches. The Judiciary and the autonomous agencies like GWA and GPA were not included because by law, they control their and set their own salaries. And unlike the Executive and Legislative branches, over the years the Judiciary and autonomous agencies had generously adjusted and raised their pay scales to be line with the current economy.

Despite this fact, in April 2014, Sen. Frank Aguon introduced Bill No. 307-32, which sought to go ahead and include the Judiciary in the 2014 CWA. Moreover, Bill 307-32 allowed for the Judiciary's pay adjustment to be made *retroactive back to January 15, 2014,*

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[1] Bill No. 1 (8-S), *"An Act to Repeal and Reenact Certain Sections of Public Law 32-136 and set Salary Rates Pursuant to the Competitive Wage Act of 2014."*

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initially surprised by the retroactive inclusion of the Judiciary in the CWA, I went ahead and signed Bill 307-32 into law as P.L. 32-166 on June 24, 2014.

On November 21, 2014, the CWA that had been transmitted back in January was finally signed into law as P.L. 32-208. With its enactment, the employees of the government of Guam finally received the long-overdue pay adjustments that they deserved. And since the Judiciary was belatedly added into the CWA per P.L. 32-166, they also received a pay adjustment that was retroactive back to January 15, 2014.

In the months following the enactment of the CWA and P.L. 32-208, the Legislature has engaged in intense political grandstanding and mock outrage at its own actions. Several attempts have been made to roll back the pay adjustments, and Bill 4 represents the latest go-around. In this iteration, Bill 4 seeks to reduce not just the Legislature's salaries, but also those of the Governor and Lt. Governor's as well.

In the past, I have stood up for the Legislature. I vetoed Bill 204-33 (and before that, Bill 268-32) which would have reduced the Legislature's salaries back to what they were before P.L. 32-208. Today, my feeling is that if the Legislature is so bent on reducing the salaries of the senators because it so strongly believes that they are not worth the pay, then I will not stand in the way. In fact, I am now convinced that given the amount of time that senators actively spend on the job in relation to the compensation and the number of staff, a part-time legislature would be a more efficient and effective body than what the People have now.

This is evident is the lack of thought that obviously went into Bill 4. By reducing the Governor and Lt. Governor's salaries, Bill 4 also the negative effect of reducing the salaries of the cabinet directors and deputy directors, even though the Legislature has publically acknowledged that the cabinet salaries should be left alone. This is where I draw the line.

Under Title 4 G.C.A. Section 6206.1, the salary level of an Executive Branch director cannot exceed the salary level of the Governor. And the salary level of a deputy director cannot exceed the salary of the Lt. Governor. This means that by law, if the Governor and the Lt. Governor's salaries are reduced, the director and deputy director's salaries must likewise also be reduced.

There has been some speculation made in the media that because P.L. 32-208 and the 2014 CWA were enacted *after* Section 6206.1,[2] the director and deputy directors' salaries would not be affected because of the general rule of statutory construction that later enacted statutes supersede and repeal earlier statutes. In other words, the cabinet salaries established in 2014 by P.L. 32-208 would survive and take precedence over a 1986 law like Section 6206.1.

This is an incorrect understanding and application of statutory construction and the law. It is not always the case that newer statutes supersede and repeal older statutes.

According to the Guam Supreme Court in a case decided by a panel that included you as one of the justices, the rule about newer statutes repealing older statutes by implication only applies in one of two situations: (1) the old and the new acts must be "in irreconcilable conflict"; or (2) the later act must cover the whole subject of the earlier one and be "clearly intended as a substitute. *Sumitomo Construction v. Govt. of Guam,* 2001 Guam 23 at ¶ 16. *See also, Topasna v. Superior Court of Guam,* 1996 Guam 5 at ¶ 13 ("While repeals by implication are disfavored, such repeal may be found when a later statute, covers the whole situation of an earlier one and is clearly intended as a substitute"); and *Lujan v. Lujan,* 2000 Guam 21 at ¶ 11 (same).[3]

Neither of these two scenarios exists with respect to the relationship between Bill 4 and Section 6206.1. In the first, if Bill 4 were to be enacted, then the cabinet pay could and would be decreased to comply with Section 6206.1. The old and the new laws would not be "in irreconcilable conflict" because it is not impossible for both statutes to co-exist and be lawfully executed.

The second situation also does not apply because Bill 4 has nothing to do with maintaining the cabinet or other salaries implemented by the CWA, nor does Bill 4 relate or otherwise touch upon the subject matter of Section 6206.1. Because Bill 4 does not "cover the whole situation" of Section 6206.1, and because it is not "clearly intended as a substitute" for that statute, it cannot be concluded that that Section 6206.1 does not apply or that Bill 4 allows the cabinet salaries to be maintained.

The idea that a later enacted statute impliedly repeals an older statute is one that is universally disfavored. The Guam Supreme Court and the U.S. Supreme Court "where

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[2] 4 G.C.A. § 6206.1 was enacted on April 24, 1986 by P.L. 18-32:4.

[3] Interestingly Speaker Cruz, you also sat on the Supreme Court panel that decided the *Lujan* case.

two statutes have both stated that when two statutes are capable of co-existence as Bill 4 and Section 6206.1 are, *both* laws must be given effect. "When two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Bank of Guam v. Guam Banking Bd.*, 2003 Guam 9 at ¶ 46, citing *Morton v. Mancari*, 417 U.S. 535 (1974); *Santos v. Camacho*, No. CIV.04-00006, 2006 WL 581251 at *4 (D. Ct. Guam Mar. 10, 2006), citing *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1017-1018 (1984).

In this regard, there is nothing to even remotely suggest, much less "clearly express" that Bill 4 was ever intended as a substitute for Section 6206.1, or that the cabinet salaries are excluded notwithstanding Section 6206.1. During the last legislative session when senators were discussing what has become a very political debate with Bill 4, a group of senators showed they were willing to stay in their own house. Other senators, however, continued the political shenanigans.

Sen. Telena Nelson introduced an amendment to remove the sections of Bill 4 that would have excluded the Governor and Lt. Governor from the pay reduction — and by extension the directors as well. She and six others supported the amendment. And even though there was no objection, you as the Speaker made an odd call for a vote. Normally, the vote is called for ONLY if there is an objection. Why was this call for a vote made, and what purpose could there be for it other than for political gain?

And the shenanigans weren't just contained to that incident.

Sen. Fernando Esteves raised the idea of parity between the three branches of government, calling attention to the fact that the Judiciary (who originally did not want to be included in the CWA), had changed its mind about not participating in the CWA and had lobbied for retroactive inclusion *after* it was transmitted down in January 2014. Sen. Frank Aguon wrote *both* the legislation that allowed the Judiciary their salary increase (Bill 307-32/P.L. 32-166), *as well as* Bill 4-34

In response to Sen. Esteves, you replied that adding the Judiciary to the discussion "would change the complexion of the bill." After calling for a recess, you returned and said that the Judiciary's salary and the question of parity between the three branches is "non-germane."

Really? Three equal branches of government should NOT be equal?

Using the rules as a means to advance a political agenda and maneuver around the will of fellow senators is, at best, undemocratic. At worse it is unethical.

Be that as it may. I want to thank Sen. Nelson and Sen. Esteves for listening to the voices of the men and women who called to explain their respective views on Bill 4. They see and understand that similar to the positions at the Judiciary (e.g., Administrator of the Courts, Chief Marshall, Deputy Chief Marshal, or Clerk of Court), the Executive Branch counterparts like the Chief of Police, the Fire Chief, the Directors of Administration, Public Health, Labor, Integrated Services for Individuals with Disabilities, and all of the other cabinet-level directors and their deputies, must remain competitive.

In the not too distant past, the Government of Guam was regularly criticized for hiring political appointees who did not possess the education and qualifications to run the agencies, especially in technical professional fields such as utilities, budget and finance, or hospitals and public health. Like it or not, it is a reality that in order to attract qualified persons to enter public service, the compensation must be competitive enough to reflect the level of responsibility required.

I am proud of my executive cabinet. Every single one is more than qualified to run their respective agency, and their skills would earn more in the private sector than what is provided for in the CWA. Yet each cabinet member has freely and unselfishly chosen to serve the public and take less. And in doing so, even their families take less.

I've been consistent and repeated in saying this: If the senators of the Legislature feel that they are not worth the pay, then they can go fill out the necessary forms to voluntarily reduce it. Otherwise, perhaps it is time to consider a part-time legislature.

Sincerely,



EDDIE BAZA CALVO

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

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

This is to certify that **Bill No. 4-34 (COR), "AN ACT TO *AMEND* SECTION 1 OF PUBLIC LAW 32-208; TO *ADD* A NEW § 1106.1 TO CHAPTER 1 OF TITLE 2, GUAM CODE ANNOTATED; AND TO *ADD* A NEW § 1103 TO ARTICLE 1 OF CHAPTER 1, AND A NEW § 2100.1 TO ARTICLE 1 OF CHAPTER 2, BOTH OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO EXCLUDING *I MAGA'LÅHEN GUÅHAN, I SEGUNDU NA MAGA'LÅHEN GUÅHAN*, AND SENATORS OF *I LIHESLATURAN GUÅHAN* FROM THE COMPETITIVE WAGE ACT OF 2014, AND TO REDUCING THE SALARIES OF THE SAME,"** was on the 9th day of March 2017, duly and regularly passed.

Benjamin J.F. Cruz
Speaker

Attested:

Régine Biscoe Lee
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 10th day of March, 2017, at 12:09 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 KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 4-34 (COR)
As amended by the Committee on Appropriations and Adjudication.

Introduced by: FRANK B. AGUON, JR.
Thomas C. Ada
William M. Castro
B. J.F. Cruz
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Michael F.Q. San Nicolas
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *AMEND* SECTION 1 OF PUBLIC LAW 32-208; TO *ADD* A NEW § 1106.1 TO CHAPTER 1 OF TITLE 2, GUAM CODE ANNOTATED; AND TO *ADD* A NEW § 1103 TO ARTICLE 1 OF CHAPTER 1, AND A NEW § 2100.1 TO ARTICLE 1 OF CHAPTER 2, BOTH OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO EXCLUDING *I MAGA'LÅHEN GUÅHAN, I SEGUNDU NA MAGA'LÅHEN GUÅHAN*, AND SENATORS OF *I LIHESLATURAN GUÅHAN* FROM THE COMPETITIVE WAGE ACT OF 2014, AND TO REDUCING THE SALARIES OF THE SAME.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Section 1 of Public Law 32-208 is hereby *amended* to read:

"**Section 1.** Notwithstanding any other provision of law, rule or regulation, policy, or procedure, the salary of the Attorney General of Guam *shall* be set to the salary rate pursuant to the Competitive Wage Act of 2014, which was transmitted and received by *I Liheslaturan Guåhan* on January 15, 2014. The appropriation from FY 2015 is hereby authorized for the payment of the salary for the position identified in this Section. The salaries of the Public Auditor of Guam and staff of the Office of Public Accountability *shall* be set pursuant to § 1907 of Chapter 19 of Title 1, Guam Code Annotated. Nothing in this section shall repeal or negate the provisions contained in Public Law 32-166."

Section 2. A new § 1106.1 is *added* to Chapter 1 of Title 2, Guam Code Annotated, to read:

"**§ 1106.1. Senatorial Salaries.** Notwithstanding any other provision of law, rule or regulation, policy, or procedure, the salary of each member of *I Liheslaturan Guåhan* [the Guam Legislature] *shall* be paid at the rate of Fifty-five Thousand Three Hundred Three Dollars ($55,303) per annum; and the salary of the Speaker of *I Liheslaturan Guåhan shall* be paid at the rate of Sixty Thousand Eight Hundred Fifty Dollars ($60,850) per annum. Such compensation *shall* be paid out of funds to be appropriated to *I Liheslaturan Guåhan* [the Guam Legislature]."

Section 3. A new § 1103 is *added* to Article 1 of Chapter 1, Division 1, Title 5, Guam Code Annotated, to read:

"**§ 1103. Salary of *I Maga'låhen Guåhan.*** Notwithstanding any other provision of law, rule or regulation, policy, or procedure, the salary of *I Maga'låhen Guåhan* [the Governor of Guam] *shall* be paid at the rate of Ninety Thousand Dollars ($90,000) per annum."

Section 4. A new § 2100.1 is *added* to Article 1 of Chapter 2, Division 1, Title 5, Guam Code Annotated, to read:

"**§ 2100.1. Salary of *I Segundu Na Maga'låhen Guåhan*.** Notwithstanding any other provision of law, rule or regulation, policy, or procedure, the salary of *I Segundu Na Maga'låhen Guåhan* [the Lieutenant Governor of Guam] *shall* be paid at the rate of Eighty-five Thousand Dollars ($85,000) per annum."

Section 5. Effective Date. Notwithstanding any other provision of law, rule or regulation to the contrary, the provisions of this Act *shall* become effective ten (10) days after enactment.