**EDDIE BAZA CALVO**
*Governor*

**RAY TENORIO**
*Lieutenant Governor*

*Office of the Governor Of Guam*

August 8, 2017

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

GL# 34-17-863
Speaker Benjamin J.F. Cruz

AUG 0 8 2017
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Dear Mr. Speaker:

Attached is Bill No. 38-34 (LS) entitled, *"An act to amend §§ 6229.2 and 6229.3 of Article 2 and § 6301(c) of Article 3, all of Chapter 6, Title 4, Guam Code Annotated, Relative to Requiring that all Salary and/or Class Specification Appeals be Administratively Adjudicated before a Three (3) Year Review of Salary and/or Class Specification for Nurses and other Public Employees is Conducted.* I have **VETOED** this bill.

Bill 38-34 seeks to require that "all salary appeals" be "administratively adjudicated" before any compensation study can be done. Although labeled as "responsible," the bill is actually quite irresponsible and deeply flawed for a number of reasons.

First, by prohibiting a compensation study unless and until such time as "all salary appeals" have been "adjudicated," but then failing to define what exactly constitutes a "salary appeal,"[1] Bill 38-34 unfairly penalizes those nurses and other employees who do not have a "salary appeal" pending because it holds their salaries hostage pending resolution of actions filed by co-workers. And because government employees have a right, and indeed are encouraged, to come forward with any grievances they may have,

[1] For example, does a request for a position reclassification, performance evaluation review, or desk audit constitute a "salary appeal"? What about appeals filed with the Civil Service Commission, the timing and procedures over which a government agency has no control?

Second, since grievances and "salary appeals" can be filed anytime all year around by any employee, it is certain that if Bill 38-34 were to become law, no compensation study and class specification would ever get done. By law in Guam, "administrative adjudication" is a term of art that refers to a specific quasi-judicial dispute resolution process and is governed by the Administrative Adjudication Law (AAL).[2] The purpose of administrative adjudication is to determine a party's legal rights and duties, and therefore due process must be afforded. Under the AAL, it is required that there be an investigation and a hearing overseen by a qualified hearing officer who is an attorney (usually assigned by the Attorney General's office).[3]

In contrast, compensation studies and class specification reviews are economic tools used to gather and analyze data in order to measure how much pay should be attributed to a specific job. Such studies objectively compare all positions within a certain agency or job field with comparable labor markets. Any recommendations or changes arising these studies are applied to all employees affected. This is completely different and unrelated to the administrative adjudication process, which subjectively affects only the single employee involved in the dispute.

Moreover, unlike administrative adjudication, economic compensation or class specification studies do not trigger the right to file a petition for judicial review with the Superior Court.[4] Even assuming that the administrative adjudication of a "salary appeal" as contemplated by Bill 38-34 could be completed swiftly (including the statutorily mandated investigation and hearing before an appointed and qualified hearing officer), what happens if the employee or the agency files a petition for judicial review? Is it the intention of Bill 38-34 to require that even AAL petitions pending before the Superior Court be resolved before a compensation study or class specification review can be undertaken?

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[2] Codified at 5 G.C.A. Chapter 9.

[3] *See*, 5 G.C.A. § 9108 (defining the term "administrative adjudication") and 5 G.C.A. § 9106, § 9220 (qualifications of hearing officer).

[4] *See*, 5 G.C.A. § 9240, § 9241. Under the AAL, any party adversely affected by an administrative decision -- whether it be the agency or the employee -- has a right to petition the Superior Court for review of the decision.


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If so, then this means that even the singular appeal of one employee over his personal salary would be able to completely halt a purely objective economic review of the jobs, performances, and salaries of all other employees who are in no way involved in the grievance would be put on indefinite hold for what could very well be years. The effect of this would be devastating, especially in the recruitment and retention of public health and safety vocations such as nurses, police officers, and firefighters.

As the largest employer in Guam, it is the Government's obligation to curate and maintain a workplace where an employee who has a concern over his pay or performance be allowed the opportunity and freedom to initiate a "salary appeal" or to take whatever administrative action is appropriate to engage management without the action adversely affecting the job standing, performance, or value of either the employee or his fellow co-workers. Bill 38-34 discourages the legitimate exercise of this right because it turns what is strictly a personal personnel issue into an agency-wide economic freeze that indiscriminately and unfairly affects all employees without any regard to respective job demands, situation, or need. This denigration of the basic workplace right to a regular and consistent salary/performance review is an affront to the hard working employees who struggle to balance public service and family life. Ultimately, Bill 38-34 holds the entire community hostage.

*Senseramente,*

EDDIE BAZA CALVO


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*I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN*
Thirty-Fourth Guam Legislature

July 27, 2017

The Honorable Edward J.B. Calvo
*I Maga'låhen Guåhan*
*Ufisinan I Maga'lahi*
*Hagåtña,* Guam

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill Nos. 38-34 (LS), 118-34 (COR), 105-34 (COR), 106-34 (COR), 107-34 (COR), 115-34 (COR), 117-34 (COR); and Substitute Bill No. 49-34 (COR) which were passed by *I Mina'Trentai Kuåttro Na Liheslaturan Guåhan* on July 26, 2017.

Sincerely,

RÉGINE BISCOE LEE
Legislative Secretary

Enclosure (8)

OFFICE OF THE GOVERNOR
CENTRAL FILES
RECEIVED BY
DATE 7.27.17



Doc. No. 34GL-17-0863.

*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. 38-34 (LS), "AN ACT TO *AMEND* §§ 6229.2 AND 6229.3 OF ARTICLE 2 AND § 6301(c) OF ARTICLE 3, ALL OF CHAPTER 6, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THAT ALL SALARY AND/OR CLASS SPECIFICATION APPEALS BE ADMINISTRATIVELY ADJUDICATED BEFORE A THREE (3) YEAR REVIEW OF SALARY AND/OR CLASS SPECIFICATION FOR NURSES AND OTHER PUBLIC EMPLOYEES IS CONDUCTED,"** was on the 26th day of July 2017, duly and regularly passed.

**Benjamin J.F. Cruz**
**Speaker**

Attested:

**Régine Biscoe Lee**
**Legislative Secretary**

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This Act was received by *I Maga'låhen Guåhan* this 27th day of July, 2017, at 1:55 o'clock P.M.

Assistant Staff Officer
*Maga'låhi's* Office

APPROVED:
VETO

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. 38-34 (LS)**
As amended on the Floor.

Introduced by: Michael F.Q. San Nicolas
Thomas C. Ada
FRANK B. AGUON, JR.
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
Therese M. Terlaje
Mary Camacho Torres

**AN ACT TO *AMEND* §§ 6229.2 AND 6229.3 OF ARTICLE 2 AND § 6301(c) OF ARTICLE 3, ALL OF CHAPTER 6, TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO REQUIRING THAT ALL SALARY AND/OR CLASS SPECIFICATION APPEALS BE ADMINISTRATIVELY ADJUDICATED BEFORE A THREE (3) YEAR REVIEW OF SALARY AND/OR CLASS SPECIFICATION FOR NURSES AND OTHER PUBLIC EMPLOYEES IS CONDUCTED.**

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

**Section 1. Short Title.** This Act *shall* be cited as the "Responsible Salary Adjudication Act."

**Section 2.** § 6229.2 of Article 2, Chapter 6, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 6229.2. Salary Schedule Three (3) Year Review.**

The Director of Administration *shall* meet annually with the Guam Nurses Association Commission on Nursing Leadership to address recruitment and retention incentives for nurses. Upon administrative adjudication of all salary appeals of any prior compensation study, the salary schedules of the nurses *shall* be reviewed by the Director of Administration every three (3) years, and upgraded as needed. The salary for each of the nursing classifications under the government of Guam *shall* be competitive with the national average."

**Section 3.** § 6229.3 of Article 2, Chapter 6, Title 4, Guam Code Annotated, is hereby *amended* to read:

"**§ 6229.3. Class Specifications Three (3) Year Review.**

The Director of Administration, in collaboration with the government of Guam agencies' nursing administrators, *shall* update the class specifications pertaining to duties, requirements and experience of all nursing classifications. Upon administrative adjudication of all class specification appeals of any prior compensation study, the class specifications *shall* be re-evaluated every three (3) years, and changes *shall* be made as indicated."

**Section 4.** § 6301(c) of Article 3, Chapter 6, Title 4, Guam Code Annotated, is hereby *amended* to read:

"(c) Upon administrative adjudication of all salary appeals of any prior compensation study, internal equity should be reviewed annually and external competitiveness at least every three (3) years."