I Mina'trentai Siette Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
227-37 (COR) As amended by the Committee on General Government Operations and Appropriations	Joanne M. Brown Telo T. Taitague	AN ACT TO *AMEND* § 1909(i) RELATIVE TO ENHANCING THE INDEPENDENT STATUS OF THE OFFICE OF PUBLIC ACCOUNTABILITY (OPA) BY CONTINUOUSLY APPROPRIATING ONE-QUARTER (0.25) OF ONE PERCENT (1%) OF THE GOVERNMENT OF GUAM'S ANNUAL BUDGET TO THE OPA.	12/29/23 3:19 p.m.	1/3/24	Committee on General Government Operations and Appropriations	Request: 1/3/24 1/10/24	4/3/24 2:00 p.m.	5/15/24 3:49 p.m. As amended by the Committee on General Government Operations and Appropriations	

SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	VETOED	NOTES
5/28/24	AN ACT TO *AMEND* § 1909(i) OF CHAPTER 19, TITLE 1, GUAM CODE ANNOTATED, RELATIVE TO ENHANCING THE INDEPENDENT STATUS OF THE OFFICE OF PUBLIC ACCOUNTABILITY (OPA) BY CONTINUOUSLY APPROPRIATING ONE-QUARTER (0.25) OF ONE PERCENT (1%) OF THE GOVERNMENT OF GUAM'S ANNUAL BUDGET TO THE OPA.	5/31/24	5/31/24	6/12/24	6/5/24	Received: 6/5/24 Messages and Communications Doc. No. 37GL-24-2171

LOURDES A. LEON GUERRERO
GOVERNOR

JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via Email to: officeofsenatorshelton@guamlegislature.org

June 5, 2024

Doc Type: 37GL-24-2171
OFFICE OF THE SPEAKER
THERESE M. TERLAJE
JUN 06 2024
Time: 8:30am
Received:

THE HON. AMANDA SHELTON, *Acting Speaker*
I Mina'trentai Siette Na Liheslaturan Guåhan
37th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: Bill No. 227-37 (COR) – AN ACT TO *AMEND* § 1909(i) OF CHAPTER 19, TITLE 1, GUAM CODE ANNOTATED, RELATIVE TO ENHANCING THE INDEPENDENT STATUS OF THE OFFICE OF THE PUBLIC ACCOUNTABILITY (OPA) BY CONTINUOUSLY APPROPRIATING ONE-QUARTER (0.25) OF ONE PERCENT (1%) OF THE GOVERNMENT OF GUAM'S ANNUAL BUDGET TO THE OPA.

Håfa Adai Acting Speaker,

The Guam Legislature passed Bill No. 227-37 (COR) with the aim to enhance the independence of the Office of Public Accountability (OPA) by guaranteeing it a continuing annual budget of not less than one-quarter (0.25) of one percent (1%) of the government's annual budget. Public Auditor Benjamin Cruz gave testimony in favor of the bill, indicating that implementing a set budget would be consistent with the practice in other jurisdictions in the region, and that the measure would guarantee the OPA's ability to perform its statutory mandate objectively and professionally by providing a safeguard against political interests that may seek to discourage negative audits by simply withholding or otherwise interfering with the OPA's budget.

This bill is inconsistent with sound fiscal policy. Each year, Government agencies submit detailed budget requests to the Legislature, summarizing their department's needs, and justifying their estimates of the funds necessary to their operations for the following fiscal year. Not all requests are fully funded; during lean budgetary years, the Legislature is often forced to make the difficult choice of which critical services to fund and which to cut. During the course of any fiscal year, additional unanticipated obligations and liabilities may arise that further impact the availability of funds. It is simply impossible to predict with the necessary accuracy the degree to which our government can afford to dedicate continuing appropriations to a specific agency. And, to be clear, every year there are needs that remain unmet.

RECEIVED
6/10/24 8:38am

RICARDO J. BORDALLO GOVERNOR'S COMPLEX
513 W. Marine Corps Drive Hagåtña, Guam 96910
governor.guam.gov | (671) 472-8931

received
6/5/24 6:25pm
Legislative Secretary

The Fiscal Note for Bill No. 227-37 illustrates that the proposed budget in this bill would have resulted in funding for the OPA dramatically exceeding the amounts the Legislature ultimately appropriated in prior years. For example, had this measure been in effect, it would have yielded $2,009,104 and $1,936,743, respectively, for Fiscal Years 2020 and 2021. The specific appropriations adopted for the OPA for 2020 and 2021 were $1,253,599 and $1,311,828, respectively. This means that the OPA would have received a windfall of 60% more funding in 2020, and 48% more funding in 2021, than their budget required had it received the budget contemplated in this bill instead of the appropriation tailored by the Legislature in each of those years to meet the agency's needs. In fact, in every year since, this measure would have yielded amounts that significantly exceed the amount ultimately appropriated.

Without question, our government has performed remarkably well fiscally since our administration took office. But even as we work to ensure this growth continues, the excess amounts of OPA funding that would result from this guaranteed percentage should not languish unused in OPA accounts or be utilized for unnecessary purposes. The test for every dollar spent should be–must be–where it will matter most. It should be used to fund other critical government priorities, of which we have no shortage. We do not have set appropriations for education or public health, for example, which are of vital importance to our entire community.

I acknowledge that the converse is also true. It is impossible to predict or protect against future circumstances that may negatively affect our overall budget, and allocating resources to important government entities based on a percentage of our government's budget may not adequately provide for the needs of these agencies during economic downturns, which may affect their ability to perform their critical functions.

Balancing these considerations, from a fiscal perspective, I believe it is better policy to fund the OPA according to its needs. I understand the OPA's concern that annual appropriations do not provide as much insulation for the agency from the will of other political bodies, but the OPA is in fact subject to the Legislature's oversight. It is not an independent branch of government. In any event, the branches are themselves subject to checks and balances from other branches. The Executive and Judicial branches are subject to the power of the purse, held by the Legislature.

While I agree that the OPA serves an important function within our government by promoting accountability and transparency in the use of public funds, if enacted this measure would eliminate our government's primary means of oversight over the OPA itself. As Senator Jesse Lujan aptly stated during the hearing on Bill 227, "who is auditing the auditor?" The budget process enables the Legislature and the wider public to scrutinize the OPA's use of public funds, and determine the appropriate level of funding for an agency whose activities are mostly shielded from public view.

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Importantly, the OPA *is* substantially funded according to its needs. I am not aware of any allegations that the OPA's operations have been underfunded or that lack of funding has hindered its audit activities. If the Legislature does withhold funding from the OPA to disrupt its audit activities, I will be the first to condemn such actions. It is of vital importance to our government that the OPA is sufficiently funded to meet its mandate of ensuring accountability in the use of public funds. I trust that the OPA will continue to operate to the highest standards even without a set aside.

To this end, I must further highlight another notable issue that arose in the Legislature's consideration of Bill No. 227-37. During the public hearing on the measure, the co-sponsors of the bill highlighted the importance of ensuring that public funds are being spent properly and for their intended purpose, and urged the public auditor to work in tangent with the Attorney General to root out bad actors in our government, who should be held to account for the misuse of public funds. I join the sentiment that government officials should demonstrate the highest level of integrity, honesty, and responsibility, and believe that these standards should be applied consistently among all government officials.

Recent media reports have revealed that the Attorney General employs both his fiancée and his brother. Those reports also indicate that Attorney General Moylan's brother was hired as an unclassified employee, which appears to violate Guam law. Similarly, the Superior Court recently found that the Attorney General appears to have improperly procured a private attorney to provide legal services for his Office. Finally, though the OPA issued a report about the escalating cost of government leases, the Attorney General recently entered into a new lease agreement for an office space at a rate $1.5M higher than his previous rate.

Due to the confidential nature of ongoing audits, it is unclear whether the OPA has initiated audits of the questionable spending within the Office of the Attorney General. If it has not, it appears it has ample, objective reason to do so.

Finally, I must note defects in the statutory language of the bill. First, the title of the bill is inconsistent with the content of the bill. While the title indicates that the bill would amend the law to continuously appropriate one-quarter (0.25) of one percent (1%) of the government's annual budget to the OPA, Section two of the substance of the bill indicates that the OPA "shall receive a continuing annual budget equal to, *at a minimum* one quarter (0.25) of one percent (1%)" of the government's budget. The statutory language is defective because it does not define the actual sum certain or percentage of the intended set aside. Additionally, the same section states that the calculation of general fund revenues include federal sources, which should not be included in such calculations. Finally, the bill indicates that "[w]hen more than two (2) pay periods occur in one (1) month, the Department of Administration shall release funds required for the purpose of meeting the operational needs of the OPA for such month…" However, the preceding sentence states that the OPA shall receive from the DOA no less than one twelfth (1/12) of its budget every month. These provisions are plainly irreconcilable.

I agree that public officials should be held accountable for their management and use of public funds, and I know the Public Auditor will agree that those responsible for auditing government spending and uncovering potential violations must uphold the highest standards of integrity and accountability. These

highest standards are well served by honoring the established process of requiring the OPA to annually specify its needs, answer questions about its spending, and engage the budget discussion alongside every other instrument of government.

For these reasons, I hereby veto Bill No. 227-37 (COR).

Senseramente,

LOURDES A. LEON GUERRERO
I Maga'hågan Guåhan
Governor of Guam

Enclosure(s): Bill No. 227-37 (COR) - VETO

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*, Lt. Governor of Guam
Compiler of Laws

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2024 (SECOND) Regular Session

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

This is to certify that **Bill No. 227-37 (COR), "AN ACT TO *AMEND* § 1909(i) OF CHAPTER 19, TITLE 1, GUAM CODE ANNOTATED, RELATIVE TO ENHANCING THE INDEPENDENT STATUS OF THE OFFICE OF PUBLIC ACCOUNTABILITY (OPA) BY CONTINUOUSLY APPROPRIATING ONE-QUARTER (0.25) OF ONE PERCENT (1%) OF THE GOVERNMENT OF GUAM'S ANNUAL BUDGET TO THE OPA,"** was on the 31st day of May 2024, duly and regularly passed.

Therese M. Terlaje

Therese M. Terlaje
Speaker

Attested:

Amanda L. Shelton

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 31st day of MAY, 2024, at 5:22 o'clock P.M.

ICARIO E. PEYES

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 6/5/2024

Public Law No. _____

2024-21724
OFFICE OF THE GOVERNOR
CENTRAL FILES OFFICE
Rec'd By: Jomichael C. Quinata
Date: 6-3-24 Time: 8:12AM

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 227-37 (COR)
As amended by the Committee on General Government Operations and Appropriations.

Introduced by: Joanne M. Brown
Telo T. Taitague
Chris Barnett
Frank Blas, Jr.
Christopher M. Dueñas
Thomas J. Fisher
Jesse A. Lujan
Tina Rose Muña Barnes
William A. Parkinson
Sabina Flores Perez
Roy A. B. Quinata
Joe S. San Agustin
Dwayne T.D. San Nicolas
Amanda L. Shelton
Therese M. Terlaje

AN ACT TO *AMEND* § 1909(i) OF CHAPTER 19, TITLE 1, GUAM CODE ANNOTATED, RELATIVE TO ENHANCING THE INDEPENDENT STATUS OF THE OFFICE OF PUBLIC ACCOUNTABILITY (OPA) BY CONTINUOUSLY APPROPRIATING ONE-QUARTER (0.25) OF ONE PERCENT (1%) OF THE GOVERNMENT OF GUAM'S ANNUAL BUDGET TO THE OPA.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslatura* finds that historically, the Public Auditor was originally appointed for a term of six (6) years, after which it became an elected position through the retention method. There was

no limit on the number of times in which voters could retain a Public Auditor in office; and their salary and that of his or her staff was determined by the Civil Service Commission, and the budget for the office came from the General Fund.

Before the expiration of the term of the first appointed Public Auditor, the section on the election of the Public Auditor was repealed and replaced by a new section calling for an independent Public Auditor elected by the people of Guam for a term of four (4) years with the term limited to no more than two (2) consecutive terms. Also, the budget of the Office of the Public Auditor was given a sustainable funding source set at one quarter of one percent (.25%) of General Fund revenue.

Shortly after the election of the first Public Auditor, the law was further amended to reduce the percentage of General Fund revenue to one hundred thirty-four thousandths of one percent (.134%) for that budget year only. Thereafter, the funding source reverted to the General Fund.

I Liheslatura finds that a truly independent Public Auditor requires the position be an elected position and a reliable source of funding be provided. The Public Auditor position is currently an elected position but the source of funding being an appropriation from the General Fund does place a limit on the independence of the Public Auditor on executing his or her duties and responsibilities. Accordingly, it is the intent of *I Liheslatura* to provide a stable funding source to the OPA.

Section 2. § 1909(i) of Chapter 19, Title 1, Guam Code Annotated, is *amended* to read:

"(i) The Office of Public Accountability (OPA) shall receive a continuing annual budget equal to, at minimum one-quarter (1/4) of one percent (1%) of the total General Fund Available for Appropriation Revenues of the Government of Guam, after all debt service requirements have been met. General Fund Revenues are Income Taxes and Business Privilege Taxes;

Federal Sources, Section 30 funds include all customs duties and federal income taxes, quarantine, passport, immigration and naturalization fees collected in Guam; Use of Money and Property; Licenses, Fees and Permits; Department Charges. The budget of the OPA shall be exempt from the Bureau of Budget and Management Research budgetary allotment control generally provided in 5 GCA § 1303. *I Maga'hågan Guåhan* shall not impound nor transfer funds appropriated to the OPA. The OPA shall receive from the Department of Administration no less than one twelfth (1/12) of its budget on the first day of every month of each fiscal year. When more than two (2) pay periods occur in one (1) month, the Department of Administration shall release funds required for the purpose of meeting the operational needs of the OPA for such month, subject to the availability of funds appropriated to the OPA, to employ such necessary staff to carry out the functions and responsibilities of the office; and for such employment, the Public Auditor shall serve as the Office of Public Accountability's appointing authority for all personnel employed at the Office of Public Accountability, hiring employees from an established list of qualified applicants in accordance with established criteria, and assigning, detailing, and transferring employees as the Public Auditor deems necessary for the effective operations of the Office of Public Accountability."