

*I MINA' TRENTAI TRES NA LIHESLATURAN GUÅHAN*  
2015 (FIRST) Regular Session

Bill No. 165 -33 (COR)

Introduced by:

Dennis G. Rodriguez, Jr.  
Tina Rose Muna-Barnes  
Frank B. Aguon, Jr.  
Rory J. Respicio  
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AN ACT TO AMEND § 11311.1 OF TITLE 7 AND ENACT A NEW CHAPTER 16 TO TITLE 21, BOTH OF GUAM CODE ANNOTATED RELATIVE TO ESTABLISHING AN EXPEDITED ADMINISTRATIVE PROCESS TO IDENTIFY LAND TAKINGS BY AGENCIES, ADDRESS CLAIMS, AND DETERMINE APPROPRIATE SETTLEMENTS RELATIVE TO PROPERTY EXPROPRIATED FOR PUBLIC PURPOSES BY THE GOVERNMENT OF GUAM WITHOUT JUST COMPENSATION; AND, TO AMEND SUBSECTION (a) OF § 2101, AND ADD A NEW ARTICLE 5 TO CHAPTER 4, DIVISION 1, BOTH OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO PROVIDING FOR THE CREATION OF A JUDICIAL LAND DIVISION COURT TO EXPEDITIOUSLY REVIEW AND AFFIRM, IF APPROPRIATE, THE SETTLEMENT BETWEEN THE GOVERNMENT AND LANDOWNER.

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

2 **Section 1. Short Title.** This Act *shall* be cited as the “Government Land  
3 Takings Compensation Act of 2015.”

4 **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
5 that the manner and method of taking land for public easements must be in

1 accordance with the Organic Act of Guam and the laws of Guam. However, when  
2 establishing easements, government agencies and instrumentalities have placed  
3 utility infrastructure on private property without the proper exercise of eminent  
4 domain or negotiated transfer. These encroachments have placed an unfair burden  
5 upon citizens seeking redress, and only those who can afford attorney’s fees and  
6 professional surveying services have the capacity to confirm that these  
7 encroachments have violated the law.

8 It is the intent of *I Liheslaturan Guåhan* to place the burden of proof on the  
9 government entity alleged to have established the easement or placed the utility  
10 infrastructure on the private property in question. If it is found that government  
11 encroachment is proven, claimants should be allowed just compensation from the  
12 time of the encroachment determination. Market value should be calculated from  
13 time of the taking pro-rated to the value at the time period, and claimant *shall* be  
14 entitled to receive interest on the fair market amount due accruing from time of  
15 taking. *I Liheslaturan Guåhan* recognizes that each land taking case is different,  
16 and the intent of the mandate provided by this act *shall* preclude a broad class  
17 action without landowner consent, thereby assuring there is individual  
18 consideration of the unique parcels affected unless otherwise deemed appropriate  
19 by the Court.

20 It is therefore the intent of *I Liheslaturan Guåhan* to establish an expedited  
21 judicial process within the courts to address such matters and make determinations  
22 as to claims and determine adequate compensation.

23 **Section 3.** Section 11311.1 of Article 3 of Chapter 11, Title 7, Guam Code  
24 Annotated, is *amended*, to read:

25 “§ 11311.1. **Inverse Condemnation.** (a) (1) Any person whose land  
26 was expropriated for public purposes by the government of Guam between  
27 August 1, 1950, and July 1, 1994, and who has not been compensated by the

1 government of Guam for such taking, may institute an action for inverse  
2 condemnation. In any taking by the government of Guam after July 1, 1994,  
3 in which the government fails to follow the eminent domain provisions of  
4 Title 21, Guam Code Annotated, the person whose land is taken *shall* have  
5 five (5) ~~four (4)~~ years from the time of such taking to institute an action for  
6 inverse condemnation pursuant to 21 GCA Chapter 16. It is further  
7 provided, that for any taking from July 1, 1994 to the date of enactment of  
8 this Chapter, the owner whose land was taken *shall* continue to have five (5)  
9 years to institute an action for inverse condemnation, commencing  
10 henceforth from the date of enactment, or by December 31, 2021, whichever  
11 is later.

12 (2) For purposes of this Section, only the current owner of the land  
13 subject to the claim may seek compensation dating back to the time of the  
14 taking. An action *shall* lie for the taking of a person's fee or for lesser  
15 compensable interest in the property which has been expropriated by the  
16 government of Guam without according the person due process. In any  
17 action for inverse condemnation in which an award is made to a person for a  
18 taking, the court *shall* also award interest and reasonable attorney's fees and  
19 costs.

20 (b) (1) The lands taken pursuant to inverse condemnation by the  
21 government *shall not* be deemed to be subject to a class action *unless* the  
22 members knowingly and explicitly elect to be so included in the class, and  
23 the court finds that for the consenting members of the prospective class and  
24 their respective properties, that the reasons for class certification fully satisfy  
25 the commonality, typicality, adequacy, and all other prerequisites of Guam  
26 Rules of Civil Procedure, Rule 23.

1 (2) This Subsection shall be interpreted with deference to the  
2 circumstance that there is 1) no common issue of law or fact on behalf of all  
3 landowners subject to inverse condemnations due to the unique nature of  
4 each parcel of land, and, 2) the damages are not typical to each and every  
5 landowner and must be calculated on a separate basis.”

6 **Section 4.** A new Chapter 16 is hereby *added* to Division 1 of Title 21,  
7 Guam Code Annotated, to read:

8 **“Chapter 16**

9 **Claims for Government Land Taking and Condemnation Actions**

10 **§ 16101. Policy.** (a) All agencies, departments, authorities and  
11 instrumentalities of the government of Guam (collectively, “the agency”), shall  
12 determine whether or not any land in its inventory, possession, or which is being  
13 utilized by it for public purposes, has been properly acquired from a private  
14 landowner by due process, and that just compensation has been provided and  
15 accepted.

16 (b) An agency shall initiate and complete the process, at its sole expense, of  
17 identifying which lands, if any, were acquired through inverse condemnation and  
18 from whom, and for which no administrative or judicial proceeding was conducted  
19 whereby due process and just compensation was accorded the landowner, as of the  
20 date of enactment of this Chapter.

21 (c) (1) The agency shall provide written notice to the landowner, or heir of  
22 interest, whose land was expropriated by the government of Guam, and for which  
23 the landowner has not been compensated by the government of Guam.

24 (2) The agency shall also be required to publish in a newspaper of  
25 general circulation, the name of the landowner of record as recorded with the

1 Department of Land Management, location, recorded lot description, and  
2 size of area taken through inverse condemnation.

3 (c) The landowner shall be notified, in writing, of the right to file an action  
4 for inverse condemnation and just compensation by the government pursuant to  
5 this Chapter.

6 **§ 16102. Filing a Claim.** Any person whose land was expropriated by the  
7 government of Guam who has not been compensated by the government of Guam  
8 for such taking may file a claim for inverse condemnation with the agency that  
9 expropriated such land. In any taking by the government of Guam after July 1,  
10 1994, in which the government failed to follow the eminent domain provisions of  
11 21 GCA, a claim may be filed for inverse condemnation within five (5) years from  
12 the date of enactment of this Chapter to institute an action for inverse  
13 condemnation, commencing from the date of enactment, or by December 31, 2021,  
14 whichever is later. Such claim shall precede the filing of any action pursuant to  
15 §11311.1 of 7 GCA. All claims shall include documentation that the claimant has  
16 real interest in the property.

17 **§ 16103. Administrative Adjudication by Agency.**

18 (a) Upon receipt of a claim, the head of any agency to which a claim was  
19 filed shall have one hundred eighty (180) days to act, and shall make a written  
20 finding as to whether or not a taking has occurred due to a public benefit  
21 requirement for utilization of the land initiated or caused by the agency.

22 (b) The agency head shall transmit the written finding to the agency's  
23 governing board, if any, and who shall then provide a copy to I Maga'lahaen  
24 Guåhan and the Speaker of I Liheslaturan Guåhan. If the written finding  
25 concludes that the claim is valid, the agency has ninety (90) days to determine just  
26 compensation based on the fair market value of the property at the time of the

1 taking. If, however, the written finding concludes the claim is not valid, the  
2 agency must provide written notice to the claimant. Such notice shall advise the  
3 claimant of the right to file an action for inverse condemnation and just  
4 compensation by the government pursuant to § 11311.1 of Article 3 of Chapter 11,  
5 Title 7 GCA.

6 (c) Cost of Investigation, Confirmation, and Appraisal. The agency alleged  
7 to have taken land without just compensation pursuant to this Chapter shall pay for  
8 the cost of investigating and confirming a claim, and appraising the subject  
9 property. In the event that a claim is determined to be frivolous and/or fraudulent,  
10 the claimant shall be held liable for any amounts expended to investigate or  
11 confirm the claim, and appraise the subject property.

12 (d) The Department of Land Management shall provide assistance to any  
13 agency requesting information in the investigation of a claim, or in the  
14 determination of whether or not any land in its possession, or which is being  
15 utilized by it for public purposes, has been properly acquired from a private  
16 landowner through the conduct of a negotiated settlement or judicial process.

17 (e) All information obtained through the research and investigation of the  
18 status of lands taken shall be deemed public information, and shall be made readily  
19 available to the landowner and the general public.

20 (f) This Chapter shall not be applicable to claims that have been  
21 extinguished by negotiated settlement or judicial process.

22 (g) This Chapter shall not be applicable to any land that has been the subject  
23 of a voluntary subdivision pursuant to 21 GCA, Chapter 62 – Subdivision Law,  
24 and whereby a government of Guam agency had not initiated nor was a party to the  
25 action, except to the extent of ensuring compliance with applicable law, rule or  
26 regulation relative to the subdivision of property.

1        **§ 16104. Land Claims Compensation Fund.** There is hereby established a  
2 special fund to be known as the Land Claims Compensation Fund (“the Fund”) to  
3 be maintained by the Department of Administration. The Fund shall be established  
4 and maintained in a bank account apart and separate from the General Fund or any  
5 other bank account(s) of the government of Guam, and shall not be co-mingled  
6 with, or a part of, the General Fund. The Fund shall be solely utilized to pay  
7 settlements, in whole or in part, to landowners who have had their property taken  
8 by the government of Guam for public purposes. I Maga’lahen Guåhan shall  
9 provide for in the annual Fiscal Year Executive Branch budget request, beginning  
10 Fiscal Year 2017, a request for an appropriation for a minimum Sum of Five  
11 Hundred Thousand Dollars (\$500,000.00), which shall be deposited in the Fund.  
12 The Department of Administration shall be authorized to assess a two percent (2%)  
13 account management service fee for the administration of the Land Claims  
14 Compensation Fund.”

15        **Section 5.** Subsection (a) of § 2101 of Chapter 2, Title 7, Guam Code  
16 Annotated, is hereby *amended*, to read:

17        “(a) The Courts of justice of Guam shall consist of the Supreme Court of  
18 Guam and the Superior Court of Guam. The Supreme Court of Guam shall be the  
19 highest Court of Guam and shall have supervisory, but not administrative authority  
20 over the Superior Court of Guam and all other local courts in Guam in accordance  
21 with rules and regulations promulgated by the Supreme Court Judicial Council.  
22 The Supreme Court may, by rules of court, create such divisions of the Supreme  
23 and Superior Courts as may be desirable, and may designate which of the divisions  
24 of the Superior Court are to be courts of record and which shall be courts not of  
25 record; provided, however, that ~~four (4)~~ five (5) such divisions of the Superior  
26 Court shall continue, one being the Traffic Division, not a court of record; one  
27 being the Small Claims Division, not a court of record; a third being the Family

1 Division, a court of record; ~~and~~ the fourth being the Drug Court, a court of record;  
2 and the fifth, being the Land Division, a court of Record. The Supreme Court of  
3 Guam and the Superior Court of Guam, except for the Traffic and Small Claims  
4 Divisions of the Superior Court, are courts of record.”

5 **Section 6.** A new Article 5 is hereby *added* to Chapter 4, Division 1, Title  
6 7, Guam Code Annotated, to read:

7 **“Article 5**

8 **Land Court**

9 **§ 4501. Creation of Land Division Court.** There is hereby created for the  
10 territory of Guam a division of the Superior Court which shall be called the Land  
11 Division of the Superior Court, and is established for the purposes of judicial  
12 review and determination of civil actions or matters pertaining but not limited to,  
13 land taking by inverse condemnation or eminent domain by the government of  
14 Guam, real property boundary disputes, and land registration proceedings. This  
15 Division of the Superior Court shall be a court of record, having a seal, and the  
16 judge, clerk, hearing officers and referees thereof shall be personnel of the  
17 Superior Court.

18 **§ 4502. Expedited Judicial Process for Claims for Government Land**  
19 **Taking and Condemnation.** The Judiciary of Guam *shall* establish an expedited  
20 judicial process within the Superior Court of Guam to address claims for  
21 government land taking and condemnation actions, which shall be a court of record  
22 administered by a Superior Court Judge or Magistrate Judge (“Land Division  
23 judicial officer”). Such matters shall be filed as Government Takings Proceedings.

24 **§ 4503. Purpose.** The purpose of this expedited process is to provide a  
25 speedy and efficient legal process for government land takings and inverse  
26 condemnation cases that will assist the Superior Court judges in adjudicating such.



1           **§ 4504. Functions and Duties of Land Division Judicial Officers.** The

2 Land Division judicial officer shall have the following duties in relation to  
3 government land takings and inverse condemnation matters only:

4           (a) To take testimony and receive evidence for the record;

5           (b) To hear and decide motions and matters, unless the same are appealed  
6 by any party, including but not limited to the following matters:

7                   (1) Orders to show cause for contempt;

8                   (2) Motions of joinder;

9                   (3) Motions to amend pleadings or to dismiss;

10                  (4) Pretrial settlement conferences;

11                  (5) Motions to withdraw;

12                  (6) Mediation to compel discovery;

13                  (7) To conduct informal office conferences with the parties to discuss and  
14 resolve problems or questions about any matters relating to claims of  
15 government land takings or inverse condemnation;

16                  (8) To refer appropriate cases to mediation; and

17                  (9) To adjudicate the claim.

18           (c) Subpoena powers. A Land Division judicial officer or the clerk of  
19 court may issue subpoenas and subpoenas *duces tecum* at the request of any party  
20 in accordance with the provisions of § 7201, et seq., of Title 6, Guam Code  
21 Annotated.

22           **§ 4505. Decisions Final Unless Timely Appealed.** All decisions of the

23 Land Division judicial officer shall be final unless, within thirty (30) days of the  
24 filing of the decision adjudicating the claim, the claimant or the government  
25 notifies the judicial officer of the intent to appeal the decision to the Supreme  
26 Court of Guam.

1            **§ 4506. Rule of Construction.** This Article shall be construed liberally to  
2 fully effectuate its purposes and intent.

3            **§ 4507. Severability.** If any provision of this Article or its application to  
4 any person or circumstance is found to be invalid or contrary to law, such  
5 invalidity shall not affect other provisions or applications of this Article that can be  
6 given effect without the invalid provisions or application, and to this end the  
7 provisions of this Article are severable.”

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