


I Mina'Trentai Kuáttro Na Liheslaturan
BILL STATUS


BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
110-34 (COR)	Dennis G. Rodriguez, Jr. FRANK B. AGUON, JR. Therese M. Terlaje Joe S. San Agustin	AN ACT TO ADD A NEW §60704 TO ARTICLE 7 OF CHAPTER 60, 21 GCA, RELATIVE TO VERIFICATION OF INVERSE CONDEMNATION, TO AMEND § 11311.1 OF 7 GCA, EXTENDING THE TIME TO FILE CLAIMS FOR INVERSE CONDEMNATION; TO ADD A NEW § 11311.2 RELATIVE TO PAST INVERSE CONDEMNATION CLAIMS, TO ADD A NEW § 11311.3 RELATIVE TO PROHIBITING CLASS ACTION CLAIMS, TO ADD A NEW CHAPTER 48 TO 21 GCA RELATIVE TO ESTABLISHING AN INVERSE CONDEMNATION CLAIMS FUND, TO ADD A NEW ARTICLE 5 TO CHAPTER 11 OF 7 GCA, RELATIVE TO PROVIDING FOR JUDICIAL PROCESSES, AND TO ADD A NEW SUBSECTION (d) TO § 2101 OF CHAPTER 2, 7 GCA, RELATIVE TO EXPEDITED PROCESS TO REVIEW PAST INVERSE CONDEMNATION APPEALS.	6/6/17 4:25 p.m.						

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

Bill No. 110 -34 (COR)

Introduced by:

Dennis G. Rodriguez, Jr.
FRANK B. AGUON, JR. 

Therese M. Terlaje
Joe S. San Agustin 

AN ACT TO ADD A NEW §60704 TO ARTICLE 7 OF CHAPTER 60, 21 GCA, RELATIVE TO VERIFICATION OF INVERSE CONDEMNATION, TO AMEND § 11311.1 OF 7 GCA, EXTENDING THE TIME TO FILE CLAIMS FOR INVERSE CONDEMNATION; TO ADD A NEW § 11311.2 RELATIVE TO PAST INVERSE CONDEMNATION CLAIMS, TO ADD A NEW § 11311.3 RELATIVE TO PROHIBITING CLASS ACTION CLAIMS, TO ADD A NEW CHAPTER 48 TO 21 GCA RELATIVE TO ESTABLISHING AN INVERSE CONDEMNATION CLAIMS FUND, TO ADD A NEW ARTICLE 5 TO CHAPTER 11 OF 7 GCA, RELATIVE TO PROVIDING FOR JUDICIAL PROCESSES, AND TO ADD A NEW SUBSECTION (d) TO § 2101 OF CHAPTER 2, 7 GCA, RELATIVE TO EXPEDITED PROCESS TO REVIEW PAST INVERSE CONDEMNATION APPEALS.

2017 JUN -6 PM 4: 25 

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 2017.”

4 **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
5 that the manner and method of taking land for public easements must always be in
6 accordance with the Organic Act of Guam and the laws of Guam. However, when
7 establishing easements, government agencies and instrumentalities have historically
8 placed utility infrastructure on private property without the proper exercise of
9 eminent domain or negotiated transfer. These encroachments have placed an unfair

1 burden upon citizens seeking redress, and only those who can afford attorney's fees
2 and professional surveying services have the capacity to confirm that these
3 encroachments have violated the law.

4 *I Liheslaturan Guåhan* further finds that many landowners are unaware that
5 an inverse condemnation taking of their land has even occurred, and that their rights
6 to due process and just compensation has expired due to a four-year statute of
7 limitations beginning from the time of taking.

8 Audit Report No. 93-I-226 published in November 1992 by the Office of the
9 Inspector General of the U.S. Department of the Interior brought glaringly to light
10 the inappropriate taking of land by the government of Guam for easements, with
11 significant attention in the report placed on Route 4 as an example. In such cases, it
12 would be common practice for a highway easement map developed by the
13 Department of Public Works and recorded with the Department of Land
14 Management to exist without any notification to landowners, yet still constituting a
15 taking with the clock on the four-year statute of limitations long expired.

16 It is the intent of *I Liheslaturan Guåhan* to equitably share the burden of proof
17 upon both the government entity alleged to have established the public utilization,
18 easement or placed the utility infrastructure on the private property in question, and
19 the landowner, thereby alleviating a portion of the onerous burden currently borne
20 solely by the landowner. Further, that upon receipt of a claim by an agency as
21 provided for in this statute, the agency *shall* initiate a review and investigation of the
22 claim, with the assistance of the Department of Land Management and the Office of
23 the Attorney General. If it is found that government encroachment is proven,
24 claimants should be allowed just compensation from the time of the encroachment
25 determination. Market value should be calculated from time of the taking pro-rated
26 to the value at the time period, and a claimant *shall* be entitled to receive interest on
27 the fair market amount due accruing from time of taking. *I Liheslaturan Guåhan*

1 recognizes that each land taking case is different, and the intent of the mandate
2 provided by this Act *shall* preclude a broad class action, thereby assuring there is
3 individual consideration of the unique parcels affected unless otherwise deemed
4 appropriate by the Court.

5 It is therefore the intent of *I Liheslaturan Guåhan* to establish a process
6 dedicated to these matters, make determinations as to claims, and determine
7 adequate compensation; which may include but is not limited to, the Supreme Court
8 creating a specialized court or docket, and promulgating or amending court rules and
9 procedures. In creating this process, the Supreme Court shall take into consideration
10 the time that these claimants have been seeking compensation.

11 **Section 3. Inverse Condemnation Verification.** A new §60704 is *added* to
12 Article 7 of Chapter 60 of Title 21, Guam Code Annotated, to read:

13 **“§ 60704. Verification of Inverse Condemnation Takings.**

14 The Land Records Division of the Department of Land Management shall
15 provide assistance to any member of the public who wishes to verify whether a
16 parcel of land has been expropriated for public purposes by the government of Guam
17 between August 1, 1950, and July 1, 1994. The Department shall have 60 (sixty)
18 calendar days to respond to a written request filed with the Director of the
19 Department.”

20 **Section 4.** §11311.1 of Article 3 of Chapter 11, Title 7 of the Guam Code
21 Annotated, is *amended* to read:

22 **“§ 11311.1. Inverse Condemnation.**

23 Any person whose land was expropriated for public purposes by the
24 government of Guam between August 1, 1950, and July 1, 1994, and who has not
25 been compensated by the government of Guam for such taking may institute an
26 action for inverse condemnation. In any taking by the government of Guam after
27 July 1, 1994, in which the government fails to follow the eminent domain provisions

1 of Title 21, Guam Code Annotated, the person whose land is taken shall have ~~four~~
2 ~~(4)~~ five (5) years from the time of such taking to institute an action for inverse
3 condemnation. An action shall lie for the taking of a person's fee or for lesser
4 compensable interest in the property which has been expropriated by the government
5 of Guam without according the person due process. In any action for inverse
6 condemnation in which an award is made to a person for a taking, the court shall
7 also award reasonable attorney's fees and costs."

8 **Section 5.** A new §11311.2 is *added* to Article 3 of Chapter 11, Title 7 of the
9 Guam Code Annotated, to read:

10 **"§11311.2. Window to File Past Inverse Condemnation Claims.**

11 For any taking from July 1, 1994 to the date of the enactment of this statute,
12 the owner whose land was taken, the estate of the owner, or the current owner if he
13 or she is within the lineal or collateral consanguinity of the owner whose land was
14 taken, shall have five (5) years from the date of the enactment of this section or until
15 December 31, 2022, whichever is later, to make a claim for inverse condemnation."

16 **Section 6.** A new §11311.3 is *added* to Article 3 of Chapter 11, Title 7 of the
17 Guam Code Annotated, to read:

18 **"§11311.3 Inverse Condemnation Class Action Suits Prohibited.**

19 Claims for past inverse condemnation by the government *shall* not be subject
20 to a class action. This section shall be interpreted with deference to the circumstance
21 that there is no common issue of law or fact on behalf of all landowners' subject to
22 inverse condemnations due to the unique nature of each parcel of land, and the
23 damages are not typical to each and every landowner and must be calculated on a
24 separate basis."

25 **Section 7.** A new Chapter 48 is *added* to Division 1 of Title 21 of the Guam
26 Code Annotated, to read:

27 **"Chapter 48**

1 **Inverse Condemnation Claims Fund**

2 **§48101. Inverse Condemnation Claims Fund.**

3 There is hereby established a special fund to be known as the Land Claims
4 Compensation Fund (“the Fund”) to be maintained by the Judiciary of Guam. The
5 Fund shall be established and maintained in a bank account apart and separate from
6 the General Fund or any other bank account(s) of the government of Guam, and shall
7 not be co-mingled with, or a part of, the General Fund. The Fund shall be solely
8 utilized to pay settlements, in whole or in part, to landowners who have had their
9 property taken by the government of Guam for public purposes. *I Maga’lahen*
10 *Guåhan* shall provide for in the annual Fiscal Year Executive Branch budget request,
11 beginning Fiscal Year 2018, a request for an appropriation for a minimum sum of
12 Five Hundred Thousand Dollars (\$500,000.00), which shall be deposited in the
13 Fund.

14 **§48102. Deposit of payments-in-lieu-of-taxes due pursuant to 5 GCA §22421.**

15 Notwithstanding any other provision of law, rule or regulation, any
16 outstanding payments-in-lieu-of-taxes due pursuant to 5 GCA §22421, as of the date
17 of enactment of this Act and pursuant to the stipulations of a settlement agreement
18 outlined in the Guam Public Utilities Commission GPA Docket 11-08, shall be
19 deposited into the Land Claims Compensation Fund.

20 **§48103. Quarterly Appropriations and Tracking.**

21 *I Maga’lahen Guåhan* shall on a quarterly basis, submit a request for an
22 appropriation to *I Liheslaturan Guåhan* for tracking purposes and the eventual
23 payment of the settlement agreements negotiated or ordered by the Court as to
24 inverse condemnation for the settlement of inverse condemnation takings by the
25 government of Guam.”

1 (5) All claims filed pursuant to this Article shall be signed by the claimant,
2 his agent or his legal guardian, and verified by him, or may be signed
3 as being under the penalties prescribed for perjury.

4 **§ 11503. Claims Officer.**

5 The Attorney General shall appoint a Claims Officer to determine the merits
6 of the claim and compel information and assistance from any agency of the
7 government of Guam to make a determination. In making his investigation, the
8 Claims Officer, shall have the authority to administer oaths to claimants and
9 witnesses, and to require the production of any books, records, or documents that
10 may be material or relative as evidence in connection with the claim.

11 **§ 11504. Hearing.**

12 The Claims Officer, may, at his discretion, conduct a formal hearing in
13 connection with the investigation of the claim.

14 **§ 11505. Settlement of Claim Before Action.**

15 (a) The Attorney General may facilitate the settlement of a claim for past
16 inverse condemnations at any time subject to the approval of *I Maga'lahi Guåhan*
17 and *I Liheslaturan Guåhan*. Any settlement of any claim shall not be sealed and shall
18 be open to public inspection. The Attorney General shall send a copy of any
19 settlement to the Speaker of *I Liheslaturan Guåhan* within five (5) days of approval
20 by *I Maga'lahen Guåhan*.

21 **§ 11506. False Swearing.**

22 All claimants and witnesses concerning any claim under this Article are
23 subject to the penalties and provisions of Chapter 52 of Title 9 of the Guam Code
24 Annotated with respect to false swearing and perjury.

25 **§ 11507. Action Against the Government.**

26 A claimant may institute an action against the government of Guam in the
27 event the claim is made against a line agency, or against the specific agency involved

1 in the event the claim is made against an autonomous agency, in the Superior Court
2 of Guam, provided that:

- 3 (1) The claimant has been notified by registered or certified mail, return
4 receipt requested, that his claim has been rejected in whole or in part; or
- 5 (2) One hundred eighty (180) days have elapsed since the date of filing a claim
6 and no public notice of finding has been published.

7 **§ 11508. Determinations on Past Inverse Condemnation Claims.**

8 (a) The Claims Officer shall consider of claims for Past Inverse
9 Condemnation cases as follows:

- 10 (1) The Office of the Attorney General *shall* be the lead agency responsible
11 for the coordination and determination of the validity of an action for
12 inverse condemnation pursuant to this Article.
- 13 (2) All agencies, departments, authorities and instrumentalities, to include
14 autonomous agencies, of the government of Guam (collectively, “the
15 agency”), as directed by the Office of the Attorney General, *shall* upon the
16 filing of an inverse condemnation action, determine whether or not the
17 subject property is in its inventory, possession, or is being utilized by it for
18 public purposes, or has been legally acquired from a private landowner with
19 due process.
- 20 (3) The Department of Land Management, Guam Waterworks Authority, the
21 Guam Power Authority, and the Department of Public Works, *shall* utilize
22 their agency’s expertise and resources relative to the placement and
23 utilization of easements, and the development of public facilities, to fully
24 facilitate the conduct of the investigation and determination by the
25 Department of Land Management and the Office of the Attorney General
26 of the validity of actions filed for inverse condemnation for property in their
27 inventory, possession, or which is being utilized by the Guam Power

1 Authority, Guam Waterworks Authority or Department of Public Works for
2 public purposes.

3 (4) Upon receipt of a claim and the review and consideration of relevant
4 information, documentation or evidence, the Claims Officer *shall* have one
5 hundred eighty (180) days to investigate the claim, and *shall* make written
6 findings as to whether or not an inverse condemnation taking has occurred
7 due to a public benefit requirement for utilization of the land initiated or
8 caused by the agency without due process.

9 (5) If the written findings conclude that the claim is valid, the Claims Officer
10 shall direct the agency with possession of the property to obtain two (2)
11 appraisals of the fair market value of the property at the time of the taking.
12 The deadline for the submission of such appraisals shall be within one
13 hundred fifty (150) days of the written finding.

14 (6) If the written findings conclude the claim is not valid, the agency must
15 provide written notice to the claimant by registered or certified mail, return
16 receipt requested, that his claim has been rejected in whole or in part.

17 (7) The Attorney General *shall* transmit (1) the written findings as to whether
18 or not an inverse condemnation taking has occurred and (2) the
19 recommendations for fair market value or negotiated settlement arrived at
20 pursuant to Subsection (k) to the agency's governing board, if any, who
21 *shall* then provide a copy to the Superior of Court of Guam and to *I*
22 *Maga'lahaen Guåhan*, who shall submit a request to *I Liheslaturan Guåhan*
23 for a settlement authorization and appropriation.

24 (8) If the written findings of the Claims Officer concludes that the claim is
25 valid, the agency with possession of the property shall provide public notice
26 by publishing in a newspaper of general circulation, for five (5) days and
27 on its website, the name of the landowner of record as of the date of taking,

1 property location, recorded lot description, size of area taken; and affirming
2 or denying the claim for inverse condemnation.

3 **§11509. Cost of Investigation, Confirmation, and Appraisals.**

4 The agency with the land in its inventory, possession, or which is being
5 utilized by it for public purposes, *shall* pay for the cost of investigating and
6 confirming a claim, surveys, and two (2) appraisals of the subject property for claims
7 found to be valid.

8 In the event that an action for inverse condemnation is determined not to be
9 valid, is frivolous and/or fraudulent, the claimant *shall* be held liable for any amounts
10 expended to investigate the claim, to include the survey and appraisal of the subject
11 property.

12 **§ 11510. Department of Land Management Support.**

13 The Department of Land Management *shall* provide assistance to any agency
14 requesting information in the investigation of an action upon land in its possession,
15 or which is being utilized by it for public purposes, has been legally acquired from
16 a private landowner through the conduct of a negotiated settlement or judicial
17 process. The agency may review any records, documentation or pertinent evidence
18 in its consideration of an action.

19 **§ 11511. Public Record.**

20 All information obtained through the research and investigation of an action
21 for inverse condemnation *shall* be deemed public information, and *shall* be made
22 readily available to the claimant and the general public.

23 **§ 11512. Exclusions.**

24 (a) This Article *shall* not be applicable to claims that have been extinguished
25 by negotiated settlement or judicial process and for which any settlement has been
26 duly recorded and may be reviewed to substantiate a settlement.

1 (b) This Article *shall not* be applicable to any land that has been the subject
2 of a voluntary subdivision pursuant to 21 GCA, Chapter 62 – Subdivision Law, and
3 whereby a government of Guam agency had not initiated nor was a party to the
4 action, except to the extent of ensuring compliance with applicable law, rule or
5 regulation relative to the subdivision of property.”

6 **Section 9. Expedited Process to Review Past Inverse Condemnation**

7 **Appeals.** A new subsection (d) is *added* to § 2101 of Chapter 2, Title 7, Guam Code
8 Annotated, to read:

9 “(d) (1) Authorization and Purpose. The Supreme Court of Guam is hereby
10 authorized to establish processes and procedures within the courts of Guam for the
11 purposes of judicial review and determination of civil actions or matters pertaining
12 but not limited to, land taking by inverse condemnation or eminent domain by the
13 government of Guam.

14 The purpose of this dedicated process is to provide a speedy and efficient legal
15 process for government land takings and inverse condemnation cases appealed from
16 agency decisions that will assist the Superior Court judicial officers in adjudicating
17 such.

18 (2) Functions and Duties. Upon establishment of such process by the
19 Supreme Court, the judicial officer *shall* have the following duties in relation to
20 government land takings and inverse condemnation matters only:

21 (A) To take testimony and receive evidence for the record;

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

24 (i) Orders to show cause for contempt;

25 (ii) Motions of joinder;

26 (iii) Motions to amend pleadings or to dismiss;

27 (iv) Pretrial settlement conferences;

1 (v) Motions to withdraw;

2 (vi) Mediation to compel discovery;

3 (vii) To conduct informal office conferences with the parties to
4 discuss and resolve problems or questions about any matters relating to
5 claims of government land takings or inverse condemnation;

6 (viii) To refer appropriate cases to mediation; and

7 (ix) To adjudicate the claim.

8 (C) Subpoena powers. A judicial officer or the clerk of court
9 may issue subpoenas and subpoenas *duces tecum* at the request of any
10 party in accordance with the provisions of § 7201, *et seq.*, of Title 6,
11 Guam Code Annotated.

12 (3) All decisions of the judicial officer *shall* be final unless, within thirty (30)
13 days of the filing of the written decision adjudicating the claim, the claimant or the
14 government files a notice of appeal with the clerk of the Superior Court. The notice
15 of appeal shall specify the party or parties taking the appeal. The clerk of the
16 Superior Court shall service notice of the filing of a notice of appeal by mailing a
17 copy thereof to the head of the agency that adjudicated the claim. For purposes of
18 the appeal, the record on appeal shall consist of the record created pursuant to the
19 claims status review process, which shall be filed by the party taking the appeal.”

20 **Section 10. Severability.** If any provision of this Act or its application to
21 any person or circumstance is found to be invalid or contrary to law, such invalidity
22 shall not affect other provisions or applications of this Act which can be given effect
23 without the invalid provisions or application, and to this end the provisions of this
24 Act are severable.

25 **Section 11. Effective Date.** This Act shall become effective upon enactment.