

*I Mina'trentai Singko Na Liheslaturan Guåhan*  
**BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
105-35 (LS)	Telena Cruz Nelson Jose "Pedro" Terlaje	AN ACT TO APPROPRIATE ONE MILLION TWO HUNDRED TWENTY-NINE THOUSAND FIVE HUNDRED THIRTY-THREE DOLLARS (\$1,229,533) FROM THE FISCAL YEAR 2020 BUDGET TO THE DEPARTMENT OF CORRECTIONS FOR OVERTIME COMPENSATION OF DEPARTMENT OF CORRECTIONS EMPLOYEES UNDER CIVIL CASE NO. CV1360-10.	4/23/19 2:39 p.m.	5/2/19	Committee on General Government Operations, Appropriations, and Housing			Request: 5/3/19  Fiscal Note: 5/28/19	

Senator Amanda L. Shelton,  
Vice Chairperson

Speaker Tina Rose Muña Barnes,  
Member

Vice Speaker Telen Cruz Nelson,  
Member

Senator Kelly Marsh (Taitano), Ph.D.,  
Member

Senator Sabina Flores Perez  
Member

Senator Clynton E. Ridgell  
Member



**COMMITTEE ON RULES**  
**SENATOR RÉGINE BISCOE LEE, CHAIR**  
*I MINA 'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN*  
35<sup>TH</sup> GUAM LEGISLATURE

May 28, 2019

Senator Joe S. San Agustin,  
Member

Senator Jose "Pedo" Terlaje,  
Member

Senator Therese M. Terlaje,  
Member

Senator James C. Moylan,  
Member

Senator Mary Camacho Torres,  
Member and  
Chair, Subcommittee on Protocol

# MEMO

**To:** **Rennae Meno**  
Clerk of the Legislature

**From:** **Senator Régine Biscoe Lee**  
Chairperson, Committee on Rules

**Re:** **Fiscal Notes**

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*Buenas yan Håfa adai.*

Attached, please find the fiscal note for the following bills:

**Bill No. 42-35 (COR) As amended; and further amended**  
**Bill No. 81-35 (COR)**  
**Bill No. 104-35 (LS)**  
**Bill No. 105-35 (LS)**  
**Bill No. 139-35 (COR)**

Please forward the same to Management Information Services (MIS) for posting on our website.

For any questions or concerns, please feel free to contact Mary Maravilla, Committee on Rules Director at 472-2461.

Thank you for your attention to this important matter.



**Bureau of Budget & Management Research  
Fiscal Note of Bill No. 105-35 (LS)**

**AN ACT TO APPROPRIATE ONE MILLION TWO HUNDRED TWENTY-NINE THOUSAND FIVE HUNDRED THIRTY-THREE DOLLARS (\$1,229,533) FROM THE FISCAL YEAR 2020 BUDGET TO THE DEPARTMENT OF CORRECTIONS FOR OVERTIME COMPENSATION OF DEPARTMENT OF CORRECTIONS EMPLOYEES UNDER CIVIL CASE NO. CV1360-10.**

Department/Agency Appropriation Information	
Dept./Agency Affected: Department of Corrections	Dept./Agency Head: Samantha J. Brennan, Director
Department's General Fund (GF) appropriation(s) to date:	\$24,649,150
Department's Other Fund (Specify) appropriation(s) to date: Department of Corrections Inmate Revolving Fund - \$1,495,582; Safe Street Fund - \$104,084.	1,599,666
<b>Total Department/Agency Appropriation(s) to date:</b>	<b>\$26,248,816</b>

Fund Source Information of Proposed Appropriation			
	General Fund:	Special Fund (specify)	Total:
FY 2018 Unreserved Fund Balance		\$0	\$0
FY 2019 Adopted Revenues	\$0	\$0	\$0
FY 2019 Appro. (P.L. 34-116 thru P.L. 34-162)	\$0	\$0	\$0
Sub-total:	\$0	\$0	\$0
Less appropriation in Bill	\$0	\$0	\$0
<b>Total:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Estimated Fiscal Impact of Bill						
	One Full Fiscal Year	For Remainder of FY 2019 (if applicable)	FY 2020	FY 2021	FY 2022	FY 2023
General Fund 1/	\$0	\$0	\$0	\$0	\$0	\$0
Special Fund (specify) 1/	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total 1/</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

1. Does the bill contain "revenue generating" provisions? / / Yes /X/ No  
If Yes, see attachment
2. Is amount appropriated adequate to fund the intent of the appropriation? / / N/A /X/ Yes / / No  
If no, what is the additional amount required? / / N/A
3. Does the Bill establish a new program/agency? / / Yes /X/ No  
If yes, will the program duplicate existing programs/agencies? / / N/A / / Yes /X/ No  
Is there a federal mandate to establish the program/agency? / / Yes /X/ No
4. Will the enactment of this Bill require new physical facilities? / / Yes /X/ No
5. Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: /X/ Yes / / No  
/ x / Requested agency comments not received by due date / / Other:

Analyst: <u>Diana e. Pobre</u> Diana e. Pobre, BMA III	Date: <u>5/24/19</u>	Director: <u>Lester L. Carlson, Jr.</u> Lester L. Carlson, Jr., Director	Date: <u>MAY 28 2019</u>
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Footnotes: 1/ See attached comments.

**Bureau of Budget & Management Research**  
**Comments on Bill No. 105-35 (LS)**

Bill No. 105-35 (LS) seeks to appropriate "the unrestricted amount of One Million Two Hundred Twenty-Nine Thousands Five Hundred Thirty-Three Dollars (\$1,229,533)" from Fiscal Year 2020 Budget to the Department of Corrections (DOC). The intent is to provide funding for Civil Case No. CV1360-10, a prior year obligation, to address the unpaid overtime hours of approximately two hundred four (204) DOC employees. A copy of the Case is attached.

It should be noted that the FY2020 Executive Budget Request fully-appropriates all General Fund and Special Fund revenues so there would not be any "unrestricted amount" to appropriate. Additionally, it is not clear if the intent is to make an outright appropriation of the \$1.2M or if such funds are to come from DOC's FY2020 certified funding level of \$24,988,738. Also, the source of funding (General Fund or Special Fund) is not identified.

Per correspondence with DOC, if they are to pay out the \$1.2M from its FY2020 Budget, they would have to look at its funding request for operations and make a decision on what not to fund. However, they note that a separate appropriation to DOC is welcomed as it would be beneficial to all recipients so that this prior year obligation can finally be cleared.

Lastly, it should be noted that in the legislation transmitted with the FY2020 Governor's Executive Budget Request, it is specified under Administrative Provision Section 10, that an authorization for payment of prior year obligations is requested and that appropriations made in the act may be expended for the payment, provided it does not negatively impact the current operation needs of the department or agency

FILED  
SUPERIOR COURT  
OF GUAM

2011 JUN -7 PM 2:17

1 SOMERFLECK & ASSOCIATES, PLLC  
148 Hernan Cortez Avenue  
2 Hagåtña, Guam 96910  
Telephone No.: (671) 477-8020  
3 Facsimile No.: (671) 477-8019

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2:23p  
APR 15/2011

4 Counsel for Plaintiffs.

SUPERIOR COURT  
OF GUAM  
GATED OFFICE

SUPERIOR COURT OF GUAM

6 ANTONE F. AGUON,  
7 ISAAC J. MANTANONA,  
8 MARYLOU S. SABLAN,  
9 HERBERT H. PETREE,  
10 JOHN P. SIQUENZA,  
11 LEODEGARIO M. BUAN,  
12 PAUL A. CRUZ,  
13 PETER J. CRUZ,  
14 CATHERINE M. CRUZ,  
15 JESSICA D. CONCEPCION,

CIVIL CASE NO.: CV1360-10

12 Plaintiffs,

DECISION AND JUDGMENT

13 vs.

14 JOSE B. PALACIOS, in his capacity as  
15 Director of the Guam Department of  
16 Corrections;  
17 And,  
18 LOURDES M. PEREZ, in her capacity as  
19 Director of the Guam Department of  
20 Administration

20 Defendant.

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JUN 08 2011  
4:06pm  
Office of the Attorney General of Gua  
Civil/Solicitor Division

SOMERFLECK & ASSOCIATES, PLLC  
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JUN 07 2011

21 I.

22 PROCEDURAL FACTS

Time: at box By: [Signature]

23 On August 13, 2010, Plaintiff filed a Complaint for Declaratory Judgment and Preliminary  
24 and Permanent Injunctive Relief "on behalf of themselves and those similarly situated whom are  
25 Department of Corrections Employees." The relief sought by Plaintiffs included six requests:

26 "1. The Defendants be required to calculate the amount of  
27 overtime compensation work performed over forty-three (43) hours,  
28 hazardous duty pay, and night differential pay due and owing since  
pay period ending February 27, 2010 to present and compensate  
Plaintiffs and those similarly situated all such amounts owed together  
with interest due to the Plaintiffs at the rate of ten percent (10%) per

ORIGINAL

1  
2 annum from fifteen (15) days after each payment was due until  
3 Plaintiffs are fully paid for all claims for unpaid wages as set forth  
4 herein.

5 2. Preliminary and Permanently enjoin the Defendants from  
6 failing to provide hazardous pay to Plaintiffs, calculated at the rate  
7 of his or her regular wage, plus ten percent (10%), for all periods he  
8 or she is on duty and suffered such exposure; and,

9 3. Preliminary and Permanently enjoin the Defendants from  
10 failing to provide night differential pay to Plaintiffs, calculated at the  
11 rate of his or her regular wage, plus ten percent (10%), for all periods  
12 worked between the hours of 6:00 p.m. and 6:00 a.m.

13 4. Permanently enjoin the Defendants from failing to provide  
14 compensation to Plaintiffs at one and one half (1 ½) times their  
15 regular rate of pay for all hours worked over 40 hours; and,

16 5. That Defendants be required to calculate retroactive for a three  
17 (3) year period the amount of overtime due and owing for work  
18 performed over forty (40) hours within a week that was not  
19 compensated at one and one half (1 ½) times their regular rate of pay  
20 and compensate Plaintiffs and those similarly situated all such  
21 amounts owed with interest at the rate of ten percent (10%) per  
22 annum from fifteen (15) days after each payment was due until  
23 Plaintiffs are fully paid.

24 6. The Defendants shall pay reasonable attorney's fees and costs  
25 as provided in 4 GCA §6221.1." See Plaintiffs' Complaint at pages  
26 5 - 6.

27 Also on August 13, 2010, Plaintiffs filed an *Ex Parte* Motion for Preliminary Mandatory  
28 Injunction and Order to Show Cause.

On August 17, 2010, the Honorable Alberto C. Lamorena III granted Plaintiffs' request for  
an Order to Show Cause and set this matter for hearing on August 27, 2010.

On August 27, 2010, this Court received just prior to the Order to Show Cause hearing a  
Stipulation and Order prepared by the Office of the Attorney General and executed by Assistant  
Attorney General Benjamin Abrams and Plaintiffs' counsel Daniel S. Somerfleck, Esq. stipulating  
"an Order granting the relief sought in VIII of the Complaint paragraphs 1 - 6. Which based upon  
the parties stipulation, this Court entered as an Order on August 27, 2010.

This Judgment now follows:

## II.

### DISCUSSION

In each of six (6) reliefs sought by Plaintiffs, the relief sought on behalf of Plaintiffs and  
those similarly situated as is specifically provided for in Guam law under 4 G.C.A. §6621.1.

1  
2 In the interest of providing a equality amongst the Department of Corrections employees and  
3 consistency with applications of legislatively mandated benefits for those employees, this Court finds  
4 good cause to apply the remedies herein requested to all Department of Corrections employees and  
5 those similarly situated to the ten (10) Plaintiffs herein.

6 Based upon the parties Stipulated Order, the Court enters the following Judgment:

7 1. That the Defendants be required to calculate the amount of overtime compensation  
8 work performed over forty-three (43) hours, hazardous duty pay, and night differential pay due and  
9 owing since pay period ending February 27, 2010 to present and compensate Plaintiffs and those  
10 similarly situated all such amounts owed together with interest due to the Plaintiffs and those  
11 similarly situated at the rate of ten percent (10%) per annum from fifteen (15) days after each  
12 payment was due until Plaintiffs and those similarly situated are fully paid for all claims for unpaid  
13 wages as set forth herein.

14 2. That the Defendants are permanently enjoined from failing to provide hazardous pay  
15 to Plaintiffs and those similarly situated, calculated at the rate of his or her regular wage, plus ten  
16 percent (10%), for all periods he or she is on duty and suffered such exposure; and,

17 3. That the Defendants are permanently enjoined from failing to provide night  
18 differential pay to Plaintiffs and those similarly situated, calculated at the rate of his or her regular  
19 wage, plus ten percent (10%), for all periods worked between the hours of 6:00 p.m. and 6:00 a.m.

20 4. That the Defendants are permanently enjoined from failing to provide compensation  
21 to Plaintiffs and those similarly situated at one and one half (1 ½) times their regular rate of pay for  
22 all hours worked over 40 hours; and,

23 5. That the Defendants are required to calculate retroactive for a three (3) year period  
24 the amount of overtime due and owing for work performed over forty (40) hours within a week that  
25 was not compensated at one and one half (1 ½ ) times their regular rate of pay and compensate  
26 Plaintiffs and those similarly situated and those similarly situated all such amounts owed with  
27 interest at the rate of ten percent (10%) per annum from fifteen (15) days after each payment was due  
28 until Plaintiffs and those similarly situated are fully paid.

DECISION AND JUDGMENT

Re: Antone F. Aguon, et al. vs. Jose B. Palacios; Civil Case No. CV1360-10

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6. That the Defendants shall pay Plaintiffs' reasonable attorney's fees and costs as provided in 4 GCA §6221.1 in the amount of Nine Thousand Eight Hundred Twenty-One Dollars and Fifty Cents (\$9,821.50).


**IT IS FURTHER ORDERED** that the parties appear on 7.13.11 @ 3:30 PM, on or about thirty (30) days from the entry of this order at which time the Court shall assess compliance with this Court's order and receive from the Defendants the calculations required in paragraphs 1 and 5.

**SO ORDERED:** 6.3.11

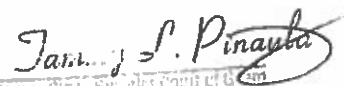
  
**HONORABLE ELIZABETH BARRETT-ANDERSON**  
JUDGE, Superior Court of Guam

**APPROVED AS TO FORM AND CONTENT:**

**OFFICE OF THE ATTORNEY GENERAL**  
*Counsel for Defendants*

By:   
**BENJAMIN ABRAMS, ESQ.**  
Assistant Attorney General

CLERK OF THE COURT  
SUPERIOR COURT OF GUAM

JUN 9 / 2011  
  
Janice S. Pinayba  
Clerk of the Court, Superior Court of Guam