



Office of the Governor of Guam

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Felix Perez Camacho  
Governor

Kaleo Scott Moylan  
Lieutenant Governor

Copy to: Speaker  
Vicente C. Pangelinan

DEC 31 2004

4:40  
[Signature]

31 DEC 2004

The Honorable Vicente C. Pangelinan  
Speaker  
Mina' Bente Siete Na Liheslaturan Guåhan  
155 Hessler Street  
Hagåtña, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 391 (COR), "AN ACT TO REFORM THE GOVERNMENT CLAIMS ACT, THROUGH THE AMENDMENTS OF SECTIONS 6201, 6302, 6401(a), 6402, 6102, AND 6403, ALL FROM TITLE 5 OF THE GUAM CODE ANNOTATED," now designated as **Public Law 27-142**.

Sinseru yan Magåhet,

FELIX P. CAMACHO  
I Maga'låhen Guåhan  
Governor of Guam

Attachment: copy attached of signed bill

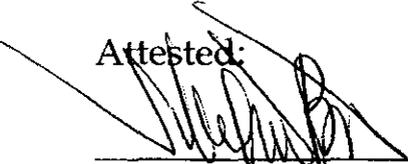
cc: The Honorable Tina Rose Muna-Barnes  
Senator and Legislative Secretary

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN  
2004 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Substitute Bill No. 391 (COR), "AN ACT TO REFORM THE GOVERNMENT CLAIMS ACT, THROUGH THE AMENDMENTS OF SECTIONS 6201, 6302, 6401(a), 6402, 6102, AND 6403, ALL FROM TITLE 5 OF THE GUAM CODE ANNOTATED,"** was on the 20<sup>th</sup> day of December, 2004, duly and regularly passed.

Attested:

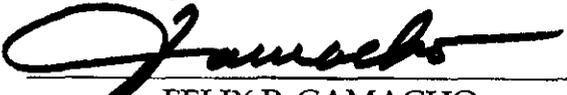
  
Tina Rose Muña Barnes  
Senator and Legislative Secretary

  
vicente (ben) c. pangelinan  
Speaker

This Act was received by *I Maga'lahaen Guåhan* this 20 day of December, 2004,  
at 5:50 o'clock P.M.

  
Assistant Staff Officer  
*Maga'lahaen's Office*

APPROVED:

  
FELIX P. CAMACHO  
*I Maga'lahaen Guåhan*

Date: December 30, 2004

Public Law No. 27-142

**I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN**  
**2004 (SECOND) Regular Session**

**Bill No. 391 (COR)**

As substituted and amended  
on the Floor.

Introduced by:

v. c. pangelinan  
L. A. Leon Guerrero  
F. B. Aguon, Jr.  
J. M.S. Brown  
F. R. Cunliffe  
Carmen Fernandez  
Mark Forbes  
L. F. Kasperbauer  
R. Klitzkie  
J. A. Lujan  
T. R. Muña Barnes  
J. M. Quinata  
R. J. Respicio  
Toni Sanford  
Ray Tenorio

**AN ACT TO REFORM THE GOVERNMENT CLAIMS ACT,  
THROUGH THE AMENDMENTS OF SECTIONS 6201, 6302,  
6401(a), 6402, 6102, AND 6403, ALL FROM TITLE 5 OF THE  
GUAM CODE ANNOTATED.**

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

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 finds that the current Government Claims Act does not properly address the  
4 needs of many claimants, as money from the Government Claims Fund  
5 ("Fund") is quickly depleted for several reasons: despite Guam law that  
6 requires a department or an agency to certify that funds are available to pay

1 for a contract, contract claims are paid out from the Fund, sometimes costing  
2 more than the entire amount appropriated to the Fund; and compensation to a  
3 government employee for back wages are drawn off from the Fund, rather  
4 than from the agency's or department's personnel budget.

5 It is the intent of *I Liheslaturan Guåhan* to ensure that money remains in  
6 the Fund for payments of claims that have no other source of funding tort  
7 claims.

8 In addition, the rapid depletion of the Fund has also resulted in  
9 "bumping" of claims by those who are fortunate enough to hire an attorney to  
10 obtain a *writ of mandamus*, thereby giving their claims first priority. It is,  
11 therefore, the intent of *I Liheslatura* to require payment of claims on a "first  
12 come, first served" basis to give equity to all claimants.

13 **Section 2.** §6201 of Article 2 of Chapter 6 of Division 1 of Title 5,  
14 Guam Code Annotated, is hereby *amended* to read as follows:

15 **"§6201. Procedure for Filing Claims.** All claims shall be filed in  
16 duplicate with the Claims Officers responsible for the department or  
17 agency against which the claim is made. Each claim shall contain the  
18 following information:

19 (a) The complete name and address of the claimant. If the  
20 claimant should change his address, or retain an attorney to whom  
21 all notices should be sent after filing the claim, he shall file an  
22 amendment to the claim, so stating the changes. If no amendment  
23 is filed, all notices sent to the address stated in the claim shall be  
24 deemed properly sent and served. Notice, if sent by mail, shall be  
25 return receipt, certified or registered mail.

1 (b) The amount of damage or other relief claimed.

2 (c) A concise statement of the facts upon which the claim is  
3 made, including the time, place and other circumstances and the  
4 department or agency or fund of the government of Guam that is  
5 concerned.

6 (d) A copy of any contract or other instrument in writing  
7 upon which the claim is based.

8 (e) A statement of whether or not the claimant has received  
9 any payment on account of such claim, and if so, the amount  
10 received.

11 (f) A statement whether or not any third person has any  
12 interest in the claim, and if so, the name and address of such  
13 person having such interest and the nature of such interest.

14 (g) If the claimant is an executor, administrator, guardian,  
15 or other representative appointed by a judicial tribunal, a duly  
16 certified copy of the record of appointment.

17 (h) A statement as to whether or not the claimant has any  
18 insurance covering the damage alleged to have been suffered by  
19 him or her, and of any payments, if any, he or she has received  
20 from such insurance carrier."

21 **Section 3.** §6302 of Article 3 of Chapter 6 of Division 1 of Title 5,  
22 Guam Code Annotated, is hereby *amended* to read as follows:

23 "§6302. **Limitations on Contract Obligations.** Each  
24 autonomous and line agency shall be liable for its own contract  
25 obligations. Payments pursuant to this Section shall be paid from the

1 funds certified for payment of the contract pursuant to the budget of the  
2 agency or appropriation against which the contract claim is made.”

3 **Section 4.** §6401(a) of Article 4 of Chapter 6 of Division 1 of Title 5,  
4 Guam Code Annotated, is hereby *amended* to read as follows:

5 “§6401. (a) **Creation.** The Government Claims Fund is hereby  
6 created and established as an account which shall be separately  
7 identified and maintained by the Department of Administration. It shall  
8 consist of such funds as have been appropriated by *I Liheslatura*, for the  
9 purpose of paying tort claims pursuant to this Chapter and unspent on  
10 the effective date of this Chapter, and such appropriations made for this  
11 purpose thereafter.”

12 **Section 5.** §6402 of Article 4 of Chapter 6 of Division 1 of Title 5,  
13 Guam Code Annotated, is hereby *amended* to read as follows:

14 “§6402. **Payments for Line Agency Obligations.** (a) The  
15 Director of Administration shall pay from the Government Claims Fund  
16 for tort claims made against any line agency of the government, or the  
17 government of Guam in general, in order of the date of approved  
18 settlement or final judgment. In the event funds are insufficient to fully  
19 pay a claim, the claim shall be paid *pro rata* until the total claim is paid  
20 in full. All tort payments under this Chapter not made on account of the  
21 liability of autonomous agencies shall be made out of the Government  
22 Claims Fund *only*.

23 (b) Payments pursuant to Subsection (a) of Section 6105 of Article  
24 1 of Chapter 6 of Division 1 of Title 5, Guam Code Annotated, shall be  
25 paid from the funds certified for payment of the contract pursuant to the

1 budget of the agency or appropriation against which the contract claim  
2 is made.

3 (c) Payments pursuant to Subsection (b) of Section 6105 of Article  
4 1 of Chapter 6 of Division 1 of Title 5, Guam Code Annotated, shall be  
5 paid from the Government Claims Fund.

6 (d) Compensation for back wages shall come from the employee's  
7 agency's personnel budget and *not* from the Government Claims Fund."

8 **Section 6.** §6102 of Article 1 of Chapter 6 of Division 1 of Title 5,  
9 Guam Code Annotated, is hereby *amended* to read as follows:

10 "§6102. **Coverage of Chapter.** This Chapter applies, except as  
11 provided in Section 6104 of the Chapter, to the entire government of  
12 Guam, as specifically stated herein. No government agency, whether  
13 denominated as a line department, an agency or a public corporation, is  
14 excluded from the scope of this Chapter. The fact that an agency or  
15 instrumentality has or has not the right to sue or to be sued in its own  
16 name does not exclude such agency or instrumentality from the scope of  
17 this Chapter. For purposes of this Chapter, reference to an 'autonomous  
18 agency' shall include public corporations, autonomous and semi-  
19 autonomous agencies, including the Antonio B. Won Pat International  
20 Airport, Guam; the Guam Telephone Authority (but *only* as to claims  
21 that do not arise from the activities of any private owner or operator of  
22 the Telephone Authority); the Guam Power Authority; the Guam  
23 Housing & Urban Renewal Authority; the Guam Housing Corporation;  
24 the Guam Economic Development and Commerce Authority; the Guam  
25 Memorial Hospital Authority; the University of Guam; the Jose D. Leon

1 Guerrero Commercial Port; the Guam Community College; the Guam  
2 Waterworks Authority; the Government of Guam Retirement Fund; and  
3 the Guam Visitors Bureau.”

4 **Section 7.** §6403 of Article 4 of Chapter 6 of Division 1 of Title 5,  
5 Guam Code Annotated, is hereby *amended* to read as follows:

6 **“§6403. Autonomous Agency Operating Funds Available.**

7 Each autonomous agency shall pay the amount claimed under this  
8 Chapter in order of the date of approved settlement or final judgment  
9 from its own operating funds *not* specifically restricted by any other  
10 Guam or United States law or from applicable insurance proceeds.”

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



**FRANK B. AGUON, JR.**

*Vice Speaker*

December 15, 2004

**MEMORANDUM**

The Honorable ben c. pangelinan  
Speaker, *I Mina' Bente Siete Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96910

Via: Honorable Senator Lou Leon Guerrero, Committee on Rules & Health

Dear Speaker pangelinan:

The Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform, to which was referred, Bill No. 391 (COR) - An Act to reform Government Claims Act, through the amendments of Sections 6104, 6105, 6201, 6302, 6401(a), 6402, and 6403, all from Title 5 of the Guam Code Annotated, has had the same under consideration, and now wishes to report back the same with the recommendation **TO DO PASS**.

The voting record is as follows:

TO PASS	<u>8</u>
NOT TO PASS	<u>0</u>
TO ABSTAIN DUE TO POTENTIAL CONFLICT	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached. Thank you for your attention to this matter. **Dangkolo' Na Si Yu'os Ma'ase.**

Respectfully,

**FRANK BLAS AGUON, JR.**

Vice Speaker/Senator

*I Mina' Bente Siete Na Liheslaturan Guåhan*

*Respetu Para Todu (Respect for All)*

I Mina Bente-Siete Na Liheslaturan Guåhan \* Twenty-Seventh Guam Legislature  
Suite 101-A \* Ada's Commercial and Professional Center \* 118 East Marine Drive \* Hagåtña, Guam 96910  
Phone (671) 479-4GUM (4486/4828) \* Fax (671) 479-4827





**FRANK B. AGUON, JR.**

*Vice Speaker*

November 19, 2004

**MEMORANDUM**

**TO:** Members, Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform

**FROM:** Vice Speaker Frank B. Aguon, Jr.  
Chairman, Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform

**SUBJECT:** Committee Report – Bill No. 391 (COR): An Act to reform Government Claims Act, through the amendments of Sections 6104, 6105, 6201, 6302, 6401(a), 6402, and 6403, all from Title 5 of the Guam Code Annotated.

Transmitted herewith for your information and action is the report on Bill No. 391 (COR) from the Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform.

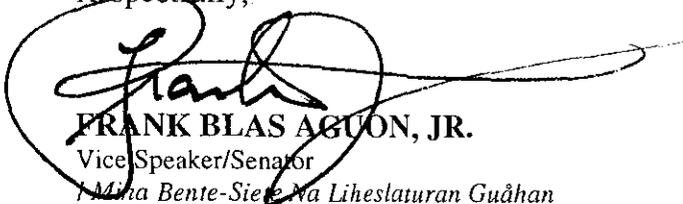
This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill 391 (COR)
4. Public Hearing Sign-in Sheet
5. Notice of Public Hearing

Please take the appropriate action on the attached voting sheet. Your attention and cooperation in this matter is greatly appreciated.

Should you have any questions regarding the report or accompanying documents, please do not hesitate to contact me. **Dangkolo' Na Si Yu'os Ma'ase.**

Respectfully,

  
**FRANK BLAS AGUON, JR.**  
Vice Speaker/Senator  
*I Mina Bente-Siete Na Liheslaturan Guåhan*

*Respetu Para Todu (Respect for All)*

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**FRANK B. AGUON, JR.**

*Vice Speaker*

**Committee on Appropriations and Budgeting, General Governmental  
Operations, Reorganization and Reform  
VOTING SHEET**

**Bill 391:** An Act to reform Government Claims Act, through the amendments of Sections 6104, 6105, 6201, 6302, 6401(a), 6402, and 6403, all from Title 5 of the Guam Code Annotated.

Committee Members	To Pass	Not to Pass	To Abstain due to potential Conflict	To place in Inactive File
 FRANK B. AGUON, JR. Chair	✓	_____	_____	_____
ANTOINETTE D. SANFORD Vice Chair	✓	_____	_____	_____
 LOU LEON GUERRERO Member	✓	_____	_____	_____
TINA R. MUÑA-BARNES Member	✓	_____	_____	_____
 JOHN M. QUINATA Member	✓	_____	_____	_____
 RORY J. RESPICIO Member	✓	_____	_____	_____
 CARMEN FERNANDEZ Member	✓	_____	_____	_____
 MARK FORBES Member	✓	_____	_____	_____
LAWRENCE F. KASPERBAUER Member	_____	_____	_____	_____

*Respetu Para Todu (Respect for All)*





**FRANK B. AGUON, JR.**

*Vice Speaker*

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***I MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN***

Committee on Appropriations and Budgeting,  
General Governmental Operations,  
Reorganization and Reform

**VICE SPEAKER FRANK B. AGUON, JR.  
CHAIRMAN**

Committee Report  
On  
Bill No. 391 (COR)

**“AN ACT TO REFORM GOVERNMENT CLAIMS ACT, THROUGH THE AMENDMENTS OF SECTIONS 6104, 6105, 6201, 6302, 6401(A), 6402, AND 6403, ALL FROM TITLE 5 OF THE GUAM CODE ANNOTATED.”**



*Respetu Para Todu (Respect for All)*

I Mina Bente-Siete Na LiHeslaturan Guåhan \* Twenty-Seventh Guam Legislature  
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## **I. Overview**

The Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform held a public hearing on Bill No. 391 (COR) at 9:00 a.m. on Friday, November 19, 2004 in the Public Hearing Room, *I Liheslaturan Guåhan*. Public notice for this hearing was made on: Friday, November 12, 2004 and Thursday, November 18, 2004 in the Pacific Daily News in the form of a paid advertisement.

### **Senators present at the public hearing were:**

Vice Speaker Frank B. Aguon, Jr., Chairman  
Senator Toni Sanford, Vice-Chair  
Senator Carmen Fernandez, Member  
Senator Mark Forbes, Member  
Speaker ben pangelinan  
Senator Robert Klitzkie

## **II. Summary of testimony**

**Speaker pangelinan**, main sponsor of this bill, explained Bill 391's intent. Under current law, claims are not paid out in order of adjudication. Claimants without access to aggressive lawyers lose priority in Claims Fund payouts, and reinstated government employees are compensated before successful citizen claimants. The Claims Fund is used even when appropriated funds are available.

**Deputy Attorney General Charles Troutman** offered substantive verbal comments on Bill 391.

**Speaker pangelinan** noted the concerns of Mr. Troutman, and will provide a duly amended bill for consideration.

## **III. Recommendation**

The Committee on Appropriations and Budgeting, General Governmental Operations, Reorganization and Reform, to which Bill No. 391 (COR) was referred does hereby submit to *I Mina' Bente Siete Na Liheslaturan Guåhan* **TO DO PASS** Bill No. 391 (COR): "An Act to reform Government Claims Act, through the amendments of Sections 6104, 6105, 6201, 6302, 6401(a), 6402, and 6403, all from Title 5 of the Guam Code Annotated".

DOUGLAS B. MOYLAN  
ATTORNEY GENERAL



CHARLES H. TROUTMAN  
CONSUMER COUNSEL

## OFFICE OF THE ATTORNEY GENERAL

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November 18, 2004

Honorable Frank Blas Aguon, Jr.  
Vice Speaker  
27<sup>th</sup> Guam Legislature  
Hagåtña, Guam

Re: Bill No. 391

Dear Senator Aguon,

I wish to testify today on Bill No391 relative to amending the Government Claims Act. While the Attorney General strongly supports such a law, there are several changes that must be made, otherwise the bill will cause more harm than good.

First, § 6104 needs revision. Guam courts have consistently held that the Civil Service Commission has no authority to order back wages. There is good reason for this and we are litigating a case with these issues at the present time. The CSC has a tendency to ignore the law on such matters as mitigation of damages, so court review is almost always necessary to protect the government from raids on the treasury. However, it is well that back wages come from an agency's own personnel funds, but this is often impossible because the claim may be for years past and the Legislature often, in budget bills, forbids payment from this year's funds for past obligations. Also, you should make some provision for the case where there are no surplus personnel funds to make such a bak wage payment. The best idea is to separate the means of payment for a claim from the applicability of the Chapter. Ironically, you could, by the present section, keep employees from receiving any back pay whatsoever, since there would no forum for them to go to.

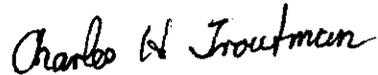
Second, on §5105, toy should move the payment provisions to a separate portion of the law dealing with payments, and not complicate matters of waiver of sovereign immunity with payments on claims where the immunity has been waived.

Third, in §6201, you need to delete the amendment which would repeal subsection (d). It is unreasonable to require the government to guess which documents the claimant is relying upon for the claim. Rather, the claimant has the burden of proving the claim, and ti should remain so. To delete subsection (d) would lead only to more litigation and misunderstandings.

Fourth, Sections 6-8 are good but leave a large gap in the possibility of payments. Should there be a valid claim which results in payments which would exceed the contract amount certified, there is no guidance for this payment, nor any indication where it would come from.

Finally, § 6102 is very necessary. Our courts have been doing everything that they can do limit the scope of this chapter. The Legislature needs to make it absolutely clear what it wants. My only suggestion is to place in parentheses following reference to the Guam Telephone Authority “(but only as to claims that do not arise from the activities of any private owner or operator of the Telephone Authority)”. Unless you know otherwise, I do not believe that the government of Guam assumed all of the tort and contract liabilities of the new owners of GTA.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles H. Troutman".

CHARLES H. TROUT MAN  
Deputy Attorney General



Committee on Appropriations and Budgeting, General Governmental Operations,  
Reorganization and Reform  
Vice Speaker Frank B. Aguon, Jr., Chairman

Public Hearing: Friday, November 19, 2004 • 9:00 a.m.

*I Liheslaturan Guahan, Hagatna*

Witness sign in sheet

**Bill 391:** An Act to reform Government Claims Act, through the amendments of Sections 6104, 6105, 6201, 6302, 6401(a), 6402, and 6403, all from Title 5 of the Guam Code Annotated.

NAME (Please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT NUMBER
Charles H. Troutman	AG		✓	?		475-3309