

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
112-37 (LS)	Thomas J. Fisher	AN ACT TO <i>AMEND</i> § 5150 OF SUBARTICLE F, ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED RELATIVE TO GUAM PROCUREMENT LAW.	5/8/23 11:23 a.m.						

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

Bill No. 112-37 (LS)

Introduced by:

Thomas J. Fisher 

**AN ACT TO *AMEND* § 5150 OF SUBARTICLE F,
ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE
ANNOTATED RELATIVE TO GUAM PROCUREMENT
LAW.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. There exist on Guam numerous governmental agencies which are known as “autonomous.” An autonomous agency is one which is funded from sources that do not touch the general fund. These agencies are also empowered to hire attorneys to advise and represent them. See, for example, §12103(b) of Article 1, Chapter 12, Title 12, Guam Code Annotated, “(b) The [Public Utilities Commission] *may* also appoint an attorney, who *shall* serve at the pleasure of the Commission and whose duties, which *may* include service as the Commission’s administrative law judge, *shall* be fixed by the Commission.”

Current Guam law allows the Office of the Attorney General of Guam to advise an agency, including autonomous agencies, when a procurement of goods or services is to exceed \$500,000.00. “The Attorney General or his designees, including one (1) or more Special Assistant Attorneys General who *may* be so designated or appointed by the Attorney General . . . *shall* act as legal advisor during all phases of the solicitation or procurement process.” §5150 of Chapter 5,

1 Title 5 Guam Code Annotated. While not true of non-autonomous agencies,
2 autonomous agencies conduct procurements in all amounts subject to Guam law
3 and their attorney's review for legality.

4 *I Liheslaturan Guåhan* finds that this provision allowing the office of the
5 Attorney General to review autonomous agency procurements through a "Special
6 Attorney General" is unnecessary, duplicative, and overly time-consuming. As
7 such, it materially impedes the autonomous agency from fully accomplishing its
8 mission. By this act then, *I Liheslaturan Guåhan* removes the authority of the
9 Office of the Attorney General of Guam to advise an autonomous agency during
10 the course of a procurement.

11 **Section 2.** § 5150 of Subarticle F, Article 2, Chapter 5, Title 5, Guam
12 Code Annotated is hereby *amended* to read as follows:

13 **"§ 5150. Duties of the Attorney General.**

14 The Attorney General, the Deputy Attorney General or such Assistant
15 Attorneys General, or such Special Assistant Attorneys General as the
16 Attorney General *may* designate, *shall* serve as legal counsel and provide
17 necessary legal services to the Policy Office and the General Services
18 Agency. Whenever the Chief Procurement Officer, the Director of Public
19 Works, or the head of any executive branch agency, ~~autonomous agency~~
20 ~~with the exception of autonomous agencies and instrumentality or public~~
21 ~~corporation of the government of Guam~~ instrumentalities or public
22 corporations of the government of Guam, conducts any solicitation or
23 procurement which is estimated to result in an award of Five Hundred
24 Thousand Dollars (\$500,000) or more, the Attorney General or his
25 designees, including one (1) or more Special Assistant Attorneys General
26 who *may* be so designated or appointed by the Attorney General and subject
27 to any reasonable requirements or conditions determined by the Attorney

1 General, *shall* act as legal advisor during all phases of the solicitation or
2 procurement process. The Attorney General, or his designee, including one
3 (1) or more Special Assistant Attorneys General *shall*, in addition, when he
4 approves contracts, determine not only the correctness of their form, but
5 their legality. In making such a determination of legality, he *may* require any
6 or all agencies involved in the contract to supply him with evidence that the
7 required procedures precedent to executing the contract were carried out. He
8 or his designees *may* prescribe the forms and format required to be followed
9 by the agencies in aiding him in his determination of form and legality.”

10 **Section 3. Severability.** If any provision of this Act or its application to
11 any person or circumstance is found to be invalid or inorganic, such invalidity
12 *shall not* affect other provisions or applications of this Act that can be given effect
13 without the invalid provision or application, and to this end the provisions of this
14 Act are severable.