

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (First) Regular Session

Bill No. B5-32 (COR)

Introduced by:

v.c. pangelinan 

2013 APR -9 PM 1:03
WPC

AN ACT TO PROHIBIT THE USE OF GOVERNMENT FUNDS FOR THE APPEAL OF CIVIL CASE 1:11-CV-00008, REA MIALIZA O. PAESTE ET AL V. GOVERNMENT OF GUAM AND EDDIE BAZA CALVO, BENITA MANGLONA, AND JOHN CAMACHO, IN THEIR OFFICIAL CAPACITIES AND TO ADD A NEW SUBSECTION (i) TO SECTION 30109, CHAPTER 30 OF TITLE 5 GUAM CODE ANNOTATED.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the Office of the Attorney General (OAG) initially represented the government of Guam, *I Maga'låhen Guåhan* and his Directors in Civil Case No. 1:11-cv-00008, Rea Mializa O. Paeste et al v. Government of Guam and Eddie Baza Calvo, Benita Manglona, and John Camacho, in their official capacities, the Income Tax Refund Class Action Lawsuit and *did not represent* the taxpayers of Guam. The OAG's representation of these individuals continued to occur after the 31st Guam Legislature, adopted Resolution No. 539-31 (COR) and introduced Resolution No. 579-31 (COR) urging the OAG to discontinue representing *I Maga'låhen Guåhan* and his Directors who continued to violate the requirements of § 51102, Chapter 51, Title 11 of the Guam Code Annotated, which mandates a certain percentage of

13 Income Tax collections be deposited into the Income Tax Refund Efficient
14 Payment Trust Fund for the sole purpose of paying Income Tax Refunds.

15 *I Liheslaturan Guåhan* further finds that on January 30, 2013, District Court
16 Judge Consuelo B. Marshall issued a Permanent Injunction and Final Judgment
17 directing *I Maga'låhen Guåhan* and his Directors to timely pay Income Tax
18 Refunds within six (6) months of the date Income Tax Returns are filed with the
19 Department of Revenue and Taxation.

20 Eddie Baza Calvo, *I Maga'låhen Guåhan* responded to the decision by
21 stating that District Court Judge Consuelo Marshall's order was moot because
22 "[w]e've been paying refunds within the six-month period for a year now."

23 *I Liheslaturan Guåhan* further finds that on February 28, 2013, the OAG, in
24 representing *I Maga'låhen Guåhan* and his Directors, filed a notice of appeal for
25 Civil Case No. 1:11-cv-00008, Rea Mializa O. Paeste et al v. Government of Guam
26 and Eddie Baza Calvo, Benita Manglona, and John Camacho, in their official
27 capacities, to the United States Court of Appeals for the Ninth Circuit. *I*
28 *Liheslaturan Guåhan* finds that this appeal by *I Maga'låhen Guåhan* and his
29 Directors and any legal counsel representing such defendants will cost the people
30 and taxpayers of Guam hundreds of thousands of dollars of scarce government
31 funds, which have not been budgeted for this purpose. Use of any government
32 funds or other government entity funds in this appeal would not reflect the
33 spending priorities of the government of Guam, and would bring little benefit to
34 the people of Guam.

35 Furthermore, *I Liheslaturan Guåhan* finds that the use and expenditure of
36 any taxpayer money to appeal and overturn the judgment by the District Court of
37 Guam which effectively promoted the repayment of money that the taxpayers
38 essentially overpaid to the government through the timely payment of tax refunds,
39 is not in the best interest of the people of Guam. Any expenditure by *I Maga'låhen*

40 *Guåhan* and his Directors or any other government entity to attempt to preserve the
41 right of *I Maga'låhen Guåhan* to not pay income tax refunds in a timely manner is
42 an egregious injustice to the people of Guam and will not be condoned by *I*
43 *Liheslatura*.

44 Further to that fact, the OAG requested on March 21, 2013 to withdraw from
45 the appeal of Civil Case No. 1:11-cv-00008, Rea Mializa O. Paeste et al v.
46 Government of Guam and Eddie Baza Calvo, Benita Manglona, and John
47 Camacho, in their official capacities which *I Liheslatura* believes exemplifies the
48 need to stop the use of taxpayer money for any appeal of the aforementioned civil
49 case as the OAG believed itself that they could not continue to appeal such civil
50 case.

51 Therefore, *I Liheslaturan Guåhan* intends to prohibit the use of any
52 additional government funds for legal services by both government attorneys or
53 contract attorneys toward the appeal of the January 30, 2013, Permanent Injunction
54 and Final Judgment in Civil Case No. 1:11-cv-00008, Rea Mializa O. Paeste et al
55 v. Government of Guam and Eddie Baza Calvo, Benita Manglona, and John
56 Camacho, in their official capacities, the Income Tax Refund Class Action Lawsuit
57 by any department, agency, division, office, department, instrumentality or any
58 public corporation of the government of Guam.

59 **Section 2. Prohibition of Expenditure of Government Funds for Appeal**
60 **of Civil Case No. 1:11-cv-00008.** A new Section 27 is added to Chapter XIII of
61 Public Law 31-233:

62 “Section 27. No existing or future funds appropriated to or generated by any
63 department, agency, division, office, or instrumentality thereof, and any public
64 corporation of the government of Guam may be used, in whole or in part to pay for
65 legal services of government attorneys or contract attorneys, to appeal the January
66 30, 2013, Permanent Injunction and Final Judgment in Civil Case No. 1:11-cv-

67 00008, Rea Mializa O. Paeste et al v. Government of Guam and Eddie Baza Calvo,
68 Benita Manglona, and John Camacho, in their official capacities.”

69 **Section 3. A new Subsection (i) is added to Section 30109 of Chapter 30**
70 **of Title 5 Guam Code Annotated as follows:**

71 “(i) The Attorney General of Guam as the Chief Legal Officer for the
72 government of Guam *shall* promptly submit to the Speaker of *I Liheslaturan*
73 *Guåhan* a copy of and an electronic on-line link to each document filed by any
74 party in all cases in which the government of Guam or an entity of the government
75 of Guam is a party, or where the AG represents the people of Guam.

76 The AG *shall* also provide prompt notice to the Speaker of *I Liheslaturan*
77 *Guåhan* of all court hearings, settlement conferences, depositions, or other
78 meetings scheduled in those cases in which the government of Guam or any of its
79 instrumentalities is a party, or where the AG represents the people of Guam.

80 For the purpose of this section, “prompt” *shall* be defined as within three (3)
81 calendar days of the date of document filing and court hearing, settlement
82 conference, deposition and other meeting notifications in which the government of
83 Guam or any of its instrumentalities is a party, or where the AG represents the
84 people of Guam.

85 The AG *shall* apprise the Speaker of *I Liheslaturan Guåhan* and members of
86 *I Liheslaturan Guåhan* on the status of all cases, including potential liability of the
87 government of Guam, recommendations to reduce litigation costs or liability for
88 the government of Guam on a quarterly basis. This section *shall not* apply to
89 claims filed pursuant to the Worker’s Compensation or to criminal cases.

90 **Section 4. Effective Date.** This Act *shall* take effect upon enactment.

91 **Section 5. Severability.** If any provision of this Law or its application to any
92 person or circumstances is found to be invalid or contrary to law, such invalidity
93 *shall not* affect other provisions or applications of this Law which can be given

94 effect without the invalid provisions or application and to this end the provisions of
95 this Act are severable.
96