

PUBLIC DEFENDER SERVICE CORPORATION
Board of Trustees Regular Meeting
Tuesday, March 26, 2016 – 12:30 p.m.
Conference Room
Public Defender Service Corporation

A G E N D A

- I. Call to Order**
- II. Roll Call**
- III. Proof of Due Notice of Meeting:**
 - A. Notice: 5 Working Days The Guam Post, Wednesday, March 20, 2016
 - B. Notice: 48 Hours The Guam Post, Friday, March 22, 2016
- IV. Determination of a Quorum**
- V. Approval of Minutes:** Regular Meeting of Tuesday, March 15, 2016
- VI. Old Business:**
 - A. Financial Status Update (PDSC and Domestic Violence) Allotment Releases
 - B. Financial Status Update (APD) Allotment Releases
 - C. Alternate Public Defender Update
 - D. Board Composition
 - F. APD Corporate Vehicle Acquisition (Procure/Lease)
 - F. APD FY2017 Budget
- VII. New Business:**
 - A. Use Lapsed Funding Advance for the Domestic Violence Program
 - B. NADCP 22nd Annual Training Conference Budget for June 1 – 4, 2016, Anaheim, California
 - C. APD Workstation Up-grades
 - D. Request for Above Step Recruitment – Blanket Authority for Attorney Level 3 and 4
- VIII. Public Discussion:**
- IX. Adjournment and Next Meeting Date:**

Tuesday, May 17, 2016 at 12:30PM

Senate Committee approves \$248M for Guam military construction

(OMZB) – The U.S. Senate Appropriations Committee has approved President Obama's budget request of \$248.658 million for military construction projects in Guam for fiscal year 2017. This follows action by the full House Appropriations Committee that approved identical projects for Guam, according to an announcement from Guam Delegate Madeleine Bordallo.

"This reaffirms the bicameral support that I have worked to build in

Congress for the Marine realignment and the progress we continue to make on the broader Asia-Pacific rebalance strategy," Bordallo said. "Guam continues to be an important defense and economic hub for the U.S. in the region, especially with recent provocations by North Korea, and China's continued assertive actions in the South and East China Seas. I look forward to continuing to work with my colleagues in the House and Senate as the appropriations process continues."

Fiscal year 2017 military construction appropriations for Guam

As approved by the appropriations committees of both houses of the U.S. Congress

Service	Project	Cost
Air Force	Munitions storage igloos, phase 2	\$35.3M
Air Force	Satellite communications C4I facility	\$14.2M
Air Force	Global Hawk block 40 maintenance hangar	\$31.158M
Navy	Power upgrade – Harmon	\$62.21M
Navy	Hardening of Guam POL infrastructure	\$26.975M
Navy	Replace Andersen housing, phase 1	\$78.815M
Total: \$248.658 million		

Source: Office of Guam Delegate Madeleine Bordallo

Erratum

Kevin Kerrigan, spokesman for Guam Regional Medical City, confirmed the condition of the patient who had been treated at the hospital for fatal injuries sustained at the Smokin' Wheels off-road race on Sunday, April 17. Kerrigan did not confirm the victim's identity; he responded to a question from the Post that included the man's name.

Supreme Court of Guam



Notice of Bar Examination

The Guam Board of Law Examiners is accepting applications for the **July 2016** Bar Examination.

Bar Applications are available at the Supreme Court website at: www.guamsupremecourt.com or at the Supreme Court of Guam, Suite 300, Judicial Center Building.

Bar Examination Dates:
JULY 27 & 28, 2016

Applications must be received by:

Timely Filing Deadline:
May 2, 2016, 5:00 p.m.

\$800.00 application fee

Late Filing Deadline:
June 01, 2016, 5:00 p.m.

\$800.00 application fee plus \$250.00 late fee

For more information, you may contact:

Hannah Gutierrez Arroyo
BOARD OF LAW EXAMINERS
Supreme Court of Guam
Suite 300, Guam Judicial Center
120 West O'Brien Drive
Hagåtña, Guam 96910-5174
Office hours: 8:00 am - 5:00 pm
Telephone: (671) 475-3120
Facsimile: (671) 475-3140
Email: bole@guamsupremecourt.com



OFFICE OF THE ATTORNEY GENERAL

590 S. Marine Corps Dr., Ste. 706
Tamuning, GU 96913

PUBLIC NOTICE CRIMINAL INJURIES COMPENSATION COMMISSION MEETING

The Office of the Attorney General of Guam will conduct a Criminal Injuries Compensation Commission (CICC) meeting / hearing on **Friday, April 22, 2016, 2 p.m.** in the Attorney General's Training Room, Suite 228, 2nd floor, ITC Building.

AGENDA

- I. Meeting call to order
- II. Roll call of members
- III. Approval of Last Meeting Minutes of April 8, 2016
- IV. New business
 - a. Report on CICC fund level
 - b. Review and decision of claims submitted
 - i. CICC Case # 15-005
 - ii. CICC Case # 15-007
 - iii. CICC Case #16-001
- V. Open Discussion / Public Testimony or Comment
- VI. Executive Session
- VII. Adjournment

For more information or to arrange ADA accommodations, please contact
Carlina Charfauros at 475-3324 extension 5020.

NOTICE OF PUBLIC MEETING

The Public Defender Service Corporation Board of Trustees will conduct its regular scheduled board meeting on **Tuesday, April 26, 2016 at 2:00 p.m.** at the Judiciary of Guam's Supreme Court, 120 West O'Brien Drive, Hagåtña, Guam 96910.

Copies of the agenda will be available prior to the meeting at the Public Defender Service Corporation.

Individuals requiring special accommodations are asked to contact Ms. Cathy Gogue at 475-3100.

/s/ CHIEF JUSTICE ROBERT J. TORRES, JR.
Chairman

This public notice is paid for with government funds.

ATTENTION READERS:
**WE'RE MOVING
AND
IMPROVING!**

The **Guam Daily Post** is moving its production department to a brand new facility and adding new equipment to further improve its print quality and distribution time. 😊

We will be temporarily printing with another print site from April 10, 2016 until further notice or, actually, until you notice.

We anticipate that it will be more or less than two weeks for us to get settled in. There will be

some minor and some not-so-minor changes in our paper during this transition phase and we ask for your patience and understanding.

As always, we are open to suggestions and comments as we enjoy hearing from you.

THE GUAM DAILY
POST

Scientists: Half of Australia's Great Barrier Reef coral is 'dead or dying'

SYDNEY (Reuters) - Australian scientists said on Wednesday that just 7 percent of the Great Barrier Reef, which attracts around AU\$5 billion (\$3.90 billion) in tourism every year, has been untouched by mass bleaching that is likely to destroy half the coral.

Bleaching occurs when the water is too warm, forcing coral to expel living algae and causing it to calcify and turn white. Mildly bleached coral can recover if the temperature drops, otherwise it may die.

Although the impact has been exacerbated by one of the strongest El Niño weather systems in nearly 20 years, scientists believe climate change is the underlying cause.

"We've never seen anything like this scale of bleaching before. In the northern Great Barrier Reef, it's like 10 cyclones have come ashore all at once," said Professor Terry Hughes, conveyor of the National Coral Bleaching Taskforce, which conducted aerial surveys of the World Heritage site.

"Our estimate at the moment is that close to 50 percent of the coral is already dead or dying," Hughes told Reuters.

The Great Barrier Reef stretches 2,300 km (1,430 miles) along Australia's northeast coast and is the world's largest living ecosystem.

"There were some who said that the worst had passed. We rejected that, and they were wrong," Environment

Minister Greg Hunt told reporters. "Let it be known that this is a significant event. We take it seriously."

U.S. President Barack Obama embarrassed Australia 18 months ago by warning of the risk of climate change to the reef during a G20 meeting.

UNESCO's World Heritage Committee last May stopped short of placing the Great Barrier Reef on an "in danger" list, but the ruling raised long-term concerns about its future.

Australia is one of the largest carbon emitters capita because of its reliance on coal-fired power plants for electricity.

Despite pledging to cut carbon emissions, Australia has continued to support fossil fuel projects, includ-

ing Adani Enterprises Ltd's proposed AU\$10 billion (\$7.7 billion) Carmichael coal project in the Galilee Basin in western Queensland.

"It's not good enough for them to say they care about the reef while they keep backing the coal industry and avoid tackling climate change," said Shani Tager, a Greenpeace campaigner.

The findings will likely place pressure on Prime Minister Malcolm Turnbull ahead of an expected federal election on July 2.

Turnbull is an advocate of carbon trading and supports progressive climate policies, but has left some disappointed over a failure to strengthen his party's commitment to addressing climate change.

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/s/ CHIEF JUSTICE ROBERT J. TORRES, JR.
Chairman

This public notice is paid for with government funds.




PORT OF GUAM
ATURIDAT / PUETTION GUAHAN
Jose D. Leon Guerrero Commercial Port
1026 Cabras Highway, Suite 201, Piti, Guam 96925
Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445
Website: www.pog.guam.com



Eddie Baza Calvo
Governor of Guam
Ray Tenorio
Lieutenant Governor

The Port Authority of Guam Board of Directors will hold its Regular Board meeting on **Friday, April 29, 2016 at 11:45 a.m.**, at the Board Conference Room, Port Authority of Guam, Cabras Island, Piti. Individuals with disabilities who may need special accommodations may contact Mr. Simeon Delos Santos, ADA Coordinator at 477-5931/4, ext. 430



REQUEST FOR PROPOSAL

MARKETING SERVICES IN JAPAN

GVB RFP #2016-009

The Guam Visitors Bureau (GVB), a public non-stock, non-profit, membership corporation, issues this Request for Proposal ("RFP") GVB RFP 2016-009 MARKETING SERVICES IN JAPAN, soliciting proposals from a qualified firm or individual ("Offeror") with specialties in the Japan market for the purpose of assisting GVB in the development and execution of short and longer-term marketing and communication initiatives in Japan as required by the Guam Visitors Bureau. GVB seeks to retain an agency partner ("Agency") with specialties in designing and implementing marketing and communications campaigns in Japan for the purpose of assisting GVB in promoting Guam tourism and achieving visitor arrival goals. Specific duties are outlined in the Scope of Work. The contractual obligation shall be for a one-year period, with three one-year options to renew, total of four (4) years (FY2017, FY2018, FY2019 and FY2020) and is subject to fiscal year-end performance reviews, availability and certification of funds from fiscal year to fiscal year.

The Request for Proposal (USB format) may be obtained at the GVB Office, 401 Pale San Vitores Road, Tumon, Guam, beginning Friday, April 22, 2016, 8:00 AM - 5:00 PM, Monday - Friday. A non-refundable \$25.00 fee is required for each packet picked up at the GVB office. Methods of payment are:

- (1) US\$ Cash
- (2) Bank Wire Transfer
- (3) Major Credit Card (Visa, MasterCard, Discover, JCB)


The packet can also be downloaded at no cost from GVB's website at www.guamvisitorsbureau.com.

Submission deadline is 5:00 p.m. Chamorro Standard Time on Friday, June 3, 2016. Proposals shall be submitted to the attention of the General Manager. Questions, if any, should be made in writing to the General Manager, which can be dropped off at the GVB office, emailed to procurement@visitguam.org, or sent by fax to 646-8861 according to the timeline provided in the RFP.

GVB reserves the right to reject any or all proposals, solicit new proposals, waive minor informalities or irregularities or award **GVB RFP 2016-009 Marketing Services in Japan** in whole or in part. Except to the above person named, direct or indirect contact with the GVB Management or Staff, Board Member, or any person participating in the selection process is prohibited.

/s/ **JON NATHAN DENIGHT**
General Manager

GUAM VISITORS BUREAU • SE'BISSION BISTAN GUZHAN
401 Pale San Vitores Road, Tumon, Guam 96910 • 671-5931-3524 • www.visitguam.com





JUDICIARY OF GUAM

Guam Judicial Center
120 West O'Brien Drive
Hagatna, Guam 96910
www.guamcourts.org

INVITATION FOR BID No. 16-06

The Judiciary of Guam is accepting proposals for Design-build Services for the Alteration of Office Space to create the Judicial Education Center. This is a multi-step RFP. Proposals must include Statement of Qualifications for Design and Construction.

Interested and qualified firms may pick up copies of the RFP at the Procurement Office located in the Guam Judicial Center, 1st floor, 120 West O'Brien Drive in Hagatna beginning April 15, 2016 (Guam Standard Time) from 8:00 a.m. to 5:00 p.m. except holidays or visit the Judiciary's website <http://www.guamcourts.org/information/proc.html> to obtain an electronic copy of the RFP and for any periodic updates.

All proposals must be submitted to the Procurement Office **no later than 2:00 p.m. (Guam Standard Time), April 29, 2016.** Late proposals will not be considered.

For more information, please contact Gloria Long, Procurement & Fac. Mgt. Administrator at 475-3433/3175/3393 or email at glong@guamcourts.org and/or mantonio@guamcourts.org.

/s\ JOSHUA F. TENORIO
Administrator of the Courts

The Judiciary of Guam is an equal opportunity provider and employer.

**PUBLIC DEFENDER SERVICE CORPORATION
BOARD OF TRUSTEES
Regular Meeting
of
Tuesday, March 15, 2016
12:30PM
Public Defender Service Corporation
Conference Room**

M I N U T E S

I. CALL TO ORDER:

The meeting was called to order by the Chairman, Chief Justice Robert J. Torres, Jr., at 12:35 PM.

II. ROLL CALL:

Present: Chief Justice Robert J. Torres, Jr., Chairman
Acting Presiding Vernon Perez
Attorney Jehan'ad G. Martinez, Guam Bar Association President
Mrs. Annette J.U. Ada, Member

Absent: Attorney Donna M. Cruz, Member (Excused)

Others Present: Attorney Stephen P. Hattori, PDSC Executive Director
Attorney AnaMaria C. Gayle, APD Managing Attorney
Cathy Gogue, Administrative Director
Bernadette L.P. Lizama, Personnel Specialist IV
Michael S. Moreno, Chief Fiscal Officer
Julito B. Tingson, MIS Administrator
Kenneth A. Lim, Computer Systems Analyst
Cecelia M. Fernandez, Administrative Assistant
Janet Rosario, Legal Secretary III

III. PROOF OF DUE NOTICE OF MEETINGS:

“Notice of Public Meeting” was published in the Marianas Variety on Wednesday, March 9, 2016 and Friday, March 11, 2016.

IV. DETERMINATION OF QUORUM:

With the presence of all five (5) board members, a quorum was determined for the meeting.

V. APPROVAL OF MINUTES: Minutes of the regular board meeting held on Tuesday, February 25, 2016 were adopted and approved, subject to corrections.

VI.

OLD BUSINESS:

- A. **Financial Status Update (PDSC and APD Allotment Releases).** Chief Fiscal Officer Michael Moreno reported that from the last meeting, PD received the first half of February – bringing us to a sixty-seven percent (67%) budget level. We still have not received the set-aside held by DOA; however, we continue to follow-up with our releases as well as our set-aside.

Chief Justice Robert J. Torres continued with his sentiments that we need to be frugal with our lapsed funds as our releases continue to lag for FY2016.

Domestic Violence (STOP 2014 Grant Funding). CFO Moreno reported that we have enough funds to take us up until the end of March. We will continue to follow up with our STOP 2015 grant submittal so that we know if we are able to carry the program after STOP 2014 funds are depleted. If funds or the grant is not renewed, we need to figure out what to do with the program and our ability or inability to assist victims of domestic abuse.

- B. **APD Allotment.** CFO Moreno reported that there continues to be a healthy amount of lapsed funds in the account. We delayed payment of invoices so that the balance is slightly off. Additionally, Judiciary requested that we submit the 3rd quarter invoice in advance so that they are able to input this amount in their system. Again, we continue to be at 100% funding level for APD.

- C. **Alternate Public Defender Update.** Managing Attorney Annie Gayle reported that with the departure of Executive Director Hattori to the PD, the attorneys have been stretched trying to cover the different courtrooms as well as cases. Attorney Gayle advised the board that we hope to fill the position vacated by Executive Director Hattori soon. The vacancy announcement for the Attorney IV closes tomorrow, Friday, March 16. Chief Justice Torres inquired as to how many applicants have applied to date. Attorney Gayle responded that she believes that there are five (5) applicants but she will know for sure once the announcement closes tomorrow. She added that by the next board meeting, Attorney Gayle hopes to have a selection of the Attorney IV by the next board meeting.

Chief Justice Torres congratulated Executive Director Hattori again on his appointment as the Executive Director. He added that he heard Executive Director Hattori on the Patty Arroyo show on K-57 and looks forward to some of the positive changes he will make to the organization.

- D. **PDSC Board Composition.** Chief Justice Torres advised the board that he was able to set-up meetings with Senator Ada, Senator Aguon, Senator Torres, Executive Director Miller and Administrative Director Gogue. Unfortunately, he was not able to set-up a meeting with Senator Barnes; however, he hopes to do so early next week. Based on the latest meeting with Senators Ada and Torres, there was inquiry relative to changing the board composition when it seems to have been working all these years. Chief Justice Torres requested that Executive Director Hattori provide a write-up relative to the proposed change, and why it would be advantageous for PDSC to move in this direction. Chief Justice Torres advised the board that this request was made to former Executive Director, Eric Miller, and that he did send the board more information about the independence of the board composition. Consequently, Chief Justice Torres asked Executive Director Hattori to set up a meeting with Senator Barnes for the upcoming week and that we have talking

points relative to the proposed changes to the board composition and why such change is being requested at this point in time.

E. APD Corporate Vehicle Acquisition (Procure/Lease).

- F. APD Shanks Training Reimbursement.** Administrative Director Gogue advised the board that when this training was presented to the board, initial budget approval was from the PDSC lapsed fund budget. As attorneys from both PD and APD attended the trial clinic, Administrative Director Gogue distributed the total cost between both organizations based on the number of attorneys attending the clinic. Therefore, approval is being requested for APD to reimburse PDSC in the amount of \$4,145.94 for the Shanks training that occurred in February.

Trustee Ada motioned to approve \$4,145.94 from APD's lapsed funds to reimburse PDSC for the Shanks-Kindlon Training. Seconded by Trustee Martinez and approved by acclamation.

Resolution No. 15-16.

- G. Alternate Public Defender FY2017 Budget:** Managing Attorney Gayle advised the board that the FY2017 APD Budget is due to the Judicial Council (JC) on or before April 8, 2016, and will be discussed at the JC meeting on April 28, 2016. In working with CFO Moreno and AD Gogue, APD will be asking for an Attorney I as well as a Legal Secretary Supervisor and an Administrative Assistant.

Managing Attorney Gayle stated that in FY2016, we asked for an Attorney I that was approved by the Judicial Council; however, it was disapproved at the Legislature during the Judiciary's budget hearing. We are hoping that with the possibility of an 8th Judge, and the difficulty of the APD attorneys to cover the seven (7) court rooms – that the Judicial Council as well as the Legislature will approve the Attorney I position requested in FY2017. Chief Justice Torres advised Attorney Gayle that this fact is important to present at both the Judicial Council as well as the Legislature when the FY2017 Budget is presented.

Relative to the other two (2) positions, Managing Attorney Gayle stated that there is a need for Legal Secretary Supervisor – since there is currently a Secretary I and a Secretary II within the current APD organizational structure. Personnel Specialist Bernie Lizama interjected that we need to correct some of the personnel issues currently existing at APD. What we have right now is the Secretary III overseeing the duties and responsibilities of the Secretary I as well as the Legal Clerks. Janet Rosario, who sits in a Secretary III position, has taken on additional responsibilities that are outside her purview. Consequently, Administrative Director Gogue has taken away some of the duties and responsibilities and is highly recommending that a Secretary Supervisor as well as an Administrative Assistant be included in the FY2017 budget.

Chief Justice Torres asked if there is a pay difference between a Legal Secretary Supervisor and that of a regular Legal Secretary. Attorney Gayle responded that the Legal Secretary Supervisor pay is a higher than the Legal Secretary III pay.

Relative to the Administrative Assistant, Administrative Director Gogue advised the board that we may house the Administrative Assistant at the PDSC. Based on the requirements of APD, we are doing a significant amount of work for APD – using PDSC resources – it only makes sense to have this person reside at PDSC so that they can assist with the large volume of work that is currently handled by PDSC. The responsibilities for the Administrative Assistance will include Time Sheets, Procurement, Price Quotes and Disbursements for APD.

Another item that will be included in the APD budget is the Carbonite Server. MIS Administrator Julito Tingson advised the board that Carbonite is an annual subscription that will provided a backup to APD’s server. During this fiscal year, APD’s server was attacked by a virus that caused the system to go down as well as the loss of information that was not backed-up on the server.

Managing Attorney Gayle advised the board that everything else within the FY2017 budget is at status quo. Chief Justice Torres asked if the board had any questions or concerns regarding APD’s FY2017 Budget Request. There being none, Chief Justice Torres advised the board that he will abstain from voting on the budget so that he is able to bring up the budget at the Judicial Council meeting.

There being no questions or concerns, motion was made by Trustee Ada to approve \$1,239,791 for Alternate Public Defender’s Fiscal Year 2017 Budget. Seconded by Trustee Martinez and approved by acclamation.

Resolution No. 14-16.

VII. PUBLIC DISCUSSION: None.

VIII. ADJOURNMENT AND NEXT MEETING DATE: The meeting scheduled for Tuesday, November 24, 2015 has been rescheduled to Thursday, April 28, 2016 at 12:30PM.

There being no further business to discuss, the meeting adjourned at 1:32PM.

Respectfully submitted,


CATHY GOGUE
Secretary

VII. NEW BUSINESS
ITEM A.

NADCP 22nd Annual Training Conference and Justice for Vets
4th Annual Vet Court Con
June 1-4, 2016; Anaheim, California

National Association of Drug Court Professionals (NADCP) will hold the world's largest conference on substance use disorders, mental health disorders and the criminal justice system is partnering with the only conference devoted exclusively to Veterans Treatment Courts and justice-involved veterans. The NADCP 22nd Annual Training Conference and the Justice for Vets 4th Annual Vet Court Con will be held simultaneously at the Anaheim Convention Center and the Anaheim Marriott in Anaheim, California. The registration fee grants access to both of these conferences!

The NADCP 22nd Annual Training Conference will feature a set of brand new sessions that will assist Drug Court practitioners and others incorporate into their programs safe and effective medication assisted treatment options.

Other highlights include:

- Cutting edge education with 22 tracks and over 225 sessions
- Earn up to 28.5 hours of continuing education credit
- A record number of brand new sessions, as well as the return of your favorite workshops and speakers
- The latest information regarding adult drug courts, DWI Courts, Mental Health Courts, and other problem solving courts, including the first look at the soon-to-be published Guidelines for Juvenile Drug Courts
- Inspiring, informative, and entertaining Opening and Closing Ceremonies featuring remarkable Drug Court recovery stories, surprise celebrity guests, and national leaders in the Drug Court, justice system reform, and long term recovery movements
- Opportunity to network with 5,000 criminal justice and treatment professionals in one of the nation's most beautiful locations

Conference Budget Estimate (5 Days):

NADCP Membership in Order to Register for Conference	\$60.00
Conference Registration.....	\$600.00
Airfare	\$1,522.25
Per Diem 5 Days X \$209/day (Hotel Room / Meals).....	\$1,045.00
TOTAL ESTIMATED BUDGET FROM APD LAPSED FUNDS	\$3,227.25

Agenda Item VII-A

**USE PDSC LAPSED FUNDING
ADVANCE FOR THE
DOMESTIC VIOLENCE
PROGRAM**

**BEFORE THE BOARD OF TRUSTEES
OF THE PUBLIC DEFENDER SERVICE CORPORATION
RELATIVE TO FUNDING ADVANCE FOR THE
DOMESTIC VIOLENCE PROGRAM**

Resolution No. 16-16

WHEREAS, the agency is a sub-grantee of the STOP Violence Against Women federal program, administered by the Office of the Governor; and

WHEREAS, the above mentioned federal grant has historically funded the position of Family Violence Program Specialist, within the agency's Domestic Violence Program, which assists attorneys in the adjudication of legal services to victims of family violence; and

WHEREAS, the STOP 2014 funds provided by the federal grant to fund the position and program will be exhausted by March 2016; and

WHEREAS, the STOP 2015 Grant contract / Memorandum of Understanding for the federal grant is currently being circulated to the sub-grantees for administrative approvals; and

WHEREAS, loss of services, provided by the Domestic Violence Program, due to local and federal contract administration would be detrimental to the overall public image and obligation of the agency and the well-being of clients; therefore be it

RESOLVED, by the Board at its regular meeting, hereby approves the usage of lapsed funds to advance the amount of \$3,778.10 to pay for the salaries and benefits of the Family Violence Program Specialist for April 2016; be it further

RESOLVED, immediately upon receipt of the federal grant's awarding of funds, funds advanced from the Public Defender Service Corporation's account shall be replenished.

DULY AND REGULARLY ADOPTED THIS 26th DAY OF APRIL, 2016.

Chief Justice Robert J. Torres
Chairman

ATTEST:

CATHY GOGUE
Secretary

Agenda Item VII-B

**USE APD LAPSED FUNDS FOR
MANAGING ATTORNEY A.
GAYLE TO ATTEND THE NADCP
CONFERENCE IN ANAHEIM, CA.**

VII. NEW BUSINESS
ITEM B.

NADCP 22nd Annual Training Conference and Justice for Vets
4th Annual Vet Court Con
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TOTAL ESTIMATED BUDGET FROM APD LAPSED FUNDS	\$3,227.25

Agenda Item VII-C

USE APD LAPSED FUNDS FOR WORKSTATION UP-GRADES

**VII. NEW BUSINESS
ITEM C.**

APD Workstation Up-Grades

Approval to use lapses for Software Upgrade (Microsoft Office 2016) at \$6,500.00

Justification: Replace current obsolete Microsoft Office 2003 version; Microsoft no longer support this version.

Approval to use lapses for Upgrade Computer hardware at \$8000.00

Justification: Attorneys requesting to upgrade system to dual monitors on existing equipment also replacing 3 workstations that are no longer under warranty service and parts are obsolete.

Agenda Item VII-D

PDSC BLANKET ABOVE STEP RECRUITMENT

EXECUTIVE DIRECTOR
Stephen P. Hattori



DEPUTY DIRECTOR
Richard S. Dirix
ADMINISTRATIVE DIRECTOR
Cathynn C. Gogue

PUBLIC DEFENDER SERVICE CORPORATION
(*Kotperasion Setbision Defensot Pubbleku*)

GOVERNMENT OF GUAM
779 Route 4
Sinajaña, Guam 96910
Tel: (671) 475-3100 ♦ Fax: (671) 477-5844

STAFF ATTORNEYS
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Peter J. Sablan
All N. Nusbaum
Suresh Sampath
Brian E. Kegerrels
William B. Jones
J. Robert Mortland, III
Kristine B. Borja
Amber J. Robinson

DRAFT

Memo: Regarding the Attorney Pay Scale and 4 GCA §6208

TO: ADMIN DIRECTOR of the PDSC/HR Director of the PDSC
FROM: Stephen P. Hattori, Executive Director of PDSC
Subject: Opinion on the validity of 4 GCA §6208

Chapter XI, Section 2(e) of PL32-68 required the Governor to submit a plan to implement pay raises that were to take effect 30 days after submission to the Legislature. Exhibit A is the relevant portion of PL32-68. The Department of Administration submitted a new attorney schedule as part of the Government of Guam Competitive Wage Act that was submitted by the DOA on January 15, 2014. The CWA became effective February 14, 2014. There are some differences of opinion as to whether this plan was implemented properly.

In any event, the Attorney Pay statute can be found at 4 GCA §6208. Attached as Exhibit B is the relevant statute. 4 GCA §6208 makes clear that the salary schedule "may be modified upwards from time to time by the Director of Administration."

Prior to implementation of the CWA, attorneys had been hired based upon their years of experience. The CWA did not expressly repeal the Attorney Pay Statute found at 4 GCA §6208. Attached as Exhibit C is a 2010 opinion suggesting that the pay schedule in 4 GCA §6208 was implicitly repealed by the Government of Guam Competitive Wage Act of 2010. This Act failed to repeal the Attorney Pay Scale.

The Legislature attempted to repeal the Attorney Pay Scale Statute in Bill 268-32. Bill 268-32 was an attempt to modify the Governor's submission of the CWA of 2014. This Bill was passed by the Legislature on February 2, 2014. It was vetoed by the Governor on February 13, 2014. The veto of Bill 268-32 was not repealed by the Legislature.

Obviously, the Attorney Pay Statute was never repealed by the Competitive Wage Act of 2010. Had it been repealed, Bill 268-32 would have been unnecessary. The passage of Bill 268-32 is Legislative awareness that the Attorney Pay Statute was and is currently the Law of the Land.

The CWA of 2014 and 4 GCA §6208 can be read in conjunction. As envisioned by 4 GCA §6208, the CWA of 2014 provided a new salary schedule. The requirement that DOA comply with the Administrative Adjudicative Act to implement a new attorney pay scale was replaced by PL32-68, Chapter XI, Section 2(e) which required a 30 day period of submission to the Legislature. All remaining provisions of 4 GCA §6208 remain in effect.

CHAPTER XI

MISCELLANEOUS APPROPRIATIONS

1 **Section 1. Government Re-appropriation for Employee Enhancement**
2 **and Development.** In the event *I Maga'låhen Guåhan* selects and signs an
3 exclusive contract for government of Guam employee and retiree health insurance,
4 the amounts for medical and dental insurance from each department and agency,
5 including the Government of Guam Retirement Fund, that receives medical and
6 dental insurance appropriations *shall* be de-appropriated *pro rata* by a percentage
7 equal to the amount so appropriated and allocated for medical and dental insurance
8 in Chapter XIV divided by Thirty Six Million Seven Hundred Fifty Eight
9 Thousand Four Hundred Thirty Four Dollars (\$36,758,434) and multiplying the
10 percentage by Seven Million Eleven Thousand Two Hundred Seventy One Dollars
11 (\$7,011,271). Subject to legislative appropriation, the de-appropriated amounts
12 *shall* fund the full implementation of the Government of Guam Competitive Wage
13 Act of 2014, the GDOE Merit Bonuses, and/or the Unified Judiciary Merit
14 Bonuses above the appropriated levels for Unified Judiciary Merit Bonuses in this
15 Act.

16 **Section 2. The Government of Guam Competitive Wage Act of 2014.**

17 (a) Section 7 of Chapter XI of Public Law 30-196 is hereby *repealed* in its
18 entirety.

19 (b) The appropriation in this Section precedes transmittal by *I Maga'lahi* to *I*
20 *Liheslatura* of a final, implementable plan to adjust compensation, classification
21 and benefits for approval by *I Liheslaturan Guåhan*.

22 (c) *I Maga'lahi shall* include in the final, implementable plan to adjust
23 compensation, classification and benefits to be submitted to *I Liheslatura*, a
24 recommendation to cover one of the following: (1) *Classified personnel only*, or
25 (2) *Classified and Unclassified personnel*.

(d) Implementation of the Government-wide Position Classification, Compensation & Benefits Study. The sum of Seven Million Fifty Five Thousand Three Hundred Fifty Seven Dollars (\$7,055,357) is hereby appropriated from the General Fund to the following branches and agencies by multiplying the total appropriation by the percentage in the column that corresponds to the branches and agencies based on the selection of *I Maga'lahi* in Subsection (c) of this Section:

	Classified Personnel Only	Classified and Unclassified Personnel
(1) Unified Judiciary	9.40%	6.67%
(2) GDOE	35.03%	36.95%
(3) UOG	6.10%	4.33%
(4) GCC	3.10%	2.23%
(5) MCOG	0.12%	7.22%
(6) OPA	0.54%	0.44%
(7) OAG	2.01%	1.88%
(8) PDSC	1.51%	1.07%
(9) Executive Branch Line Agencies	42.19%	39.20%

(e) The final, implementable plan to adjust compensation, classification and benefits shall be submitted by *I Maga'lāhen Guāhan* to the Speaker of *I Liheslaturan Guāhan* no later than January 15, 2014. The implementation of salary increases due from said plan shall be effective 30 calendar days after receipt of the plan by the Speaker of the Legislature unless disapproved or amended. The Legislature may approve, disapprove or amend the plan prior to the effective date to ensure it is implemented fairly and consistent with appropriated amounts.

(f) The use of funds appropriated in Subsection (d) of this Section shall be used only for the salary adjustments of personnel filling authorized full-time

1 equivalent (FTE) positions funded in the department or agency's Fiscal Year 2014
2 budget in this Act and as recommended in the Comprehensive Government-wide
3 Positions, Classifications, and Benefits Study Plan pursuant to Section 13 of Public
4 Law 29-52, and Executive Order 2006-21, or as submitted by *I Maga'låhen*
5 *Guåhan* to *I Liheslaturan Guåhan* and modified by *I Liheslaturan Guåhan*, if
6 necessary, prior to its adoption.

7 (g) §1303 of Chapter 1, Article 3, Title 5 GCA, *shall not* apply to the
8 appropriation contained in Subsection (d) of this Section.

9 (h) Transfer Exemption. The funds appropriated in Subsection (d) of this
10 Section are *not* subject to *I Maga'låhen Guåhan's* transfer authority.

11 **Section 3. Appropriations to Retirees for Supplemental Annuity**
12 **Benefits and for Other Costs.**

13 (a) The sum of Nine Million Six Hundred Sixty Thousand Dollars
14 (\$9,660,000) is appropriated from the General Fund to the Supplemental Annuity
15 Benefits Special Fund for Fiscal Year 2014 for direct payments to government of
16 Guam retirees who retired prior to October 1, 1995, or their survivors, for the
17 continuing payment of Four Thousand Two Hundred Thirty Eight Dollars (\$4,238)
18 per year in supplemental annuity benefits, consisting of the sums of One Thousand
19 Two Hundred Dollars (\$1,200), One Thousand Five Hundred Dollars (\$1,500),
20 Seven Hundred Dollars (\$700), and Eight Hundred Thirty Eight Dollars (\$838) in
21 annual benefits authorized by various General Appropriation Acts.

22 (b) No retiree who is eligible for Retiree Supplemental Annuity Benefits
23 provided for in Subsection (a) *shall* receive said benefits *if* her or his annual
24 retirement annuity, excluding survivor benefits and excluding the supplemental
25 benefits authorized herein, is *greater than* Forty Thousand Dollars (\$40,000). No
26 retiree who is eligible for Retiree Supplemental Annuity Benefits shall receive

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expending funds appropriated by the government of Guam or instrumentalities of the government of Guam, and whether or not the agency is a line, autonomous, or semi-autonomous agency.

(b) Title 4 GCA § 6206.1 shall not apply to persons occupying Director or Deputy Director positions under the terms of a contract in effect on the effective date of this Act, however 4 GCA § 6206.1 shall be effective for any subsequent contract or renewal of a current contract when salary is negotiable.

SOURCE: Added by P.L. 18-32:24(Apr. 24, 1986), and P.L. 18-32:24(Apr. 24, 1986).

§ 6207. Positions in Governor's Office.

The Governor is authorized to establish such positions as may be necessary for the operation of the Office of the Governor including off-island offices and Government House; provided, however, that no person shall be appointed to fill such a position in the absence of an appropriation to pay the salary set for such position. The Governor shall set the salaries for positions for which salaries are not set by law.

SOURCE: GC § 4116.2. Amended by P.L. 11-202:1 (Dec. 12, 1972). Repealed and reenacted by P.L. 21-17:4(May 8, 1991). Amended by P.L. 28-145:3 (August 15, 2006).

§ 6207.1. Positions in Lieutenant Governor's Office.

The Lieutenant Governor is authorized to establish such positions as may be necessary for the operation of the Office of the Lieutenant Governor, the Guam State Clearinghouse, and other offices that are established and placed under the purview or direction of the Lieutenant Governor of Guam; provided, however, that no person shall be appointed to fill such a position in the absence of an appropriation to pay the salary set for that position. The Lieutenant Governor shall set the salaries for positions for which salaries are not set by law.

SOURCE: Added by P.L. 28-145:4 (August 15, 2006).

§ 6208. Government Attorneys Salaries.

It is the intent of *I Liheslatura* that all full-time attorneys working for the government of Guam, its agencies and instrumentalities (including autonomous agencies and instrumentalities), the Judiciary, and the Public Defender Service Corporation be paid according to the following schedule in

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order to make the pay received by full-time attorneys working for different departments and agencies more or less uniform. Therefore, all full-time attorneys now working for or later hired after the effective date of this Section by the government of Guam, its agencies and instrumentalities (including autonomous agencies and instrumentalities), the Judiciary, and the Public Defender Service Corporation including classified, unclassified, and contract hire shall be paid according to the following schedule. However, no attorney working for the government of Guam on the effective date of this Act shall have his or her salary reduced by this schedule below.

ATTORNEY I

(a) An attorney with zero (0) to three (3) years experience as an attorney, working under the supervision of a senior attorney or judge. The pay scale and steps shall be as follows:

Step 1 -- under one (1) year as an attorney, \$40,352;

Step 2 -- more than one (1) year but less than two (2) years as an attorney, \$42,874; and

Step 3 -- more than two (2) years but less than three (3) years as an attorney, \$45,396.

ATTORNEY II

(b) An attorney with three (3) years experience but less than five (5) years experience as an attorney, working under the supervision of a senior attorney. The pay scale and steps shall be as follows:

Step 1 -- more than three (3) years but less than four (4) years experience as an attorney, \$47,008;

Step 2 -- more than four (4) years but less than five (5) years experience as an attorney, \$49,773.

ATTORNEY III

(c) A senior attorney with over five (5) years but less than eight (8) years experience as an attorney, working with minimal supervision, who may supervise and direct other attorneys. The hiring authority may allow up to two (2) years of attorney experience credit or seniority credit for special skills, training, or excellence as an attorney. The pay scale and steps shall be as follows:

Step 1 -- more than five (5) years but less than six (6) years experience as an attorney, \$51,723;

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Step 2 -- more than six (6) years but less than seven (7) years experience as an attorney, \$54,765; and

Step 3 -- more than seven (7) years but less than eight (8) years experience as an attorney, \$59,329.

ATTORNEY IV

(d) An Attorney IV includes all non-supervisory and program-supervisor senior attorneys, to include, the Chief Deputy Attorney General, and the Public Defender. A senior attorney with over eight (8) years as an attorney, working with minimal supervision, with possible supervisory duties over other attorneys. The hiring authority may allow up to three (3) years of attorney experience credit or seniority credit for special skills, trial experience, training, or excellence as an attorney, to the extent the attorney has less than eleven (11) years of experience as an attorney. The pay scale and steps shall be as follows:

Step 1 -- over eight (8) years but less than nine (9) years of experience as an attorney, \$62,114;

Step 2 -- over nine (9) years but less than ten (10) years of experience as an attorney, \$68,493;

Step 3 -- over ten (10) years but less than eleven (11) years of experience as an attorney, \$72,522;

Step 4 -- over eleven (11) years but less than twelve (12) years of experience as an attorney, \$75,208;

Step 5 -- over twelve (12) years but less than fifteen (15) years of experience as an attorney, \$77,894; and

Step 6 -- over fifteen (15) years experience as an attorney, \$80,580.

Any attorney who has sixteen (16) years or more of total experience as an attorney, and who has reached the level of Attorney IV, Step 6, shall thereafter receive a pay increase of 3.5% every two (2) years of service as a government of Guam attorney.

In the case of attorneys working for the government of Guam as of the effective date of this Section, the Department of Administration shall review the current attorney's salaries and slot the attorneys into the appropriate step and grade of the previous salary structure without regard to any freeze on salaries that may have occurred. After placing the attorneys at

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the appropriate step and grade, the attorneys shall then be slotted in accordance with the above schedule closest to, but not below the step and grade established by the Department of Administration and to receive pay increases established by the new salary structure on their anniversary of hire. The slotting into the appropriate steps closest to, but not below their current salaries shall include all experience and seniority credits.

The salary schedules contained in Subsections (a) through (d) above may be modified upwards from time to time by the Director of Administration pursuant to the Administrative Adjudication Act public notice requirements without further legislation.

SOURCE: GC § 4106.1. Added by P.L. 13-117:5 (Dec 27, 1975). Amended by P.L. 15-147:25 (Dec 31, 1980). Repealed and reenacted by P.L. 16-72:11 (Mar 5, 1982), 16-80:7 (May 4, 1982), 17-6:30 (May 5, 1983) and 19-52:8 (Jan 16, 1989). Amended by P.L. 27-106:VI:20 (Sep 30, 2004).

NOTE: Effective January 1, 2006, reference to the “Civil Service Commission,” amended to “Director of Administration” pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

2014 NOTE: P.L. 32-068:XI:2 (Sept. 11, 2013) (FY2014 Annual Appropriations Act), Government of Guam Competitive Wage Act of 2014, provided for funding and implementation of the Government-wide Position Classification, Compensation and Benefits Study, and required transmittal of a final, implementable plan to the Guam Legislature. The Department of Administration (DOA) submitted a plan on January 15, 2014, which included an Attorney Pay Plan. The Guam Legislature passed Bill 268-32 (COR) which amended the plan submitted by DOA. The Governor vetoed this bill and proceeded with implementation of the DOA plan, for employees in executive branch line agencies, effective January 26, 2014. At the time of implementation by DOA, none of the existing statutes in this chapter had been amended or repealed. The Judicial Council of Guam did not implement the new pay plans for Judiciary of Guam attorneys.

The Attorney Pay Plan found in the DOA implementation plan is reproduced below:

Exhibit 4. Attorney Pay Plan (ATTY)

ATTORNEY PAY PLAN (ATTY)					
	Step 1	Step 2	Step 3	Step 4	Step 5
Chief Deputy Attorney General	\$ 97,470	\$ 100,954	\$ 104,563	\$ 108,300	\$ 114,547
Attorney Level 5 (Managing)	\$ 85,950	\$ 89,022	\$ 92,204	\$ 95,500	\$ 101,009
Attorney Level 4	\$ 75,780	\$ 78,489	\$ 81,294	\$ 84,200	\$ 89,057
Attorney Level 3	\$ 66,600	\$ 68,981	\$ 71,446	\$ 74,000	\$ 78,268
Attorney Level 2	\$ 57,375	\$ 59,426	\$ 61,550	\$ 63,750	\$ 67,427
Attorney Level 1	\$ 50,825	-	-	\$ 53,500	-

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ATTORNEY PAY PLAN (ATTY)					
	Step 6	Step 7	Step 8	Step 9	Step 10
Chief Deputy Attorney General	\$ 121,154	\$ 128,142	\$ 135,534	\$ 143,351	\$ 151,620
Attorney Level 5 (Managing)	\$ 106,835	\$ 112,997	\$ 119,515	\$ 126,409	\$ 133,700
Attorney Level 4	\$ 94,194	\$ 99,627	\$ 105,373	\$ 111,451	\$ 117,880
Attorney Level 3	\$ 82,783	\$ 87,558	\$ 92,608	\$ 97,950	\$ 103,600
Attorney Level 2	\$ 71,316	\$ 75,430	\$ 79,781	\$ 84,383	\$ 89,250
Attorney Level 1	-	-	-	-	-

POSITIONS COVERED BY THE EDUCATOR PAY PLAN (EDU)
Administrative Counsel (CSC)
Assistant Principal Tax Attorney
Attorney I
Attorney II
Attorney III
Attorney IV
Attorney V
Chief Deputy Attorney General
Legal Advisor
Staff Attorney (Judicial)
Territorial Principal Tax Attorney
Compiler of Laws
Chief Assistant to Compiler of Laws
Public Guardian
Ethics Prosecutor
Note: Attorney General of Guam salary is recommended in the "Rate of Pay" positions. Attorney Level 1 only includes two steps with the expectation of moving to the Attorney Level 2 upon meeting the minimum requirements.

§ 6208.1. Recruitment of Assistant Attorneys General.

Notwithstanding any other provision of law, the Attorney General may hire Assistant Attorneys General necessary for the operation of the department. Attorneys shall be hired for an initial two-year probationary period in the unclassified service, which shall by the term of the appointment expire two years from the date of the appointment if not sooner terminated by the appointing authority. Attorneys reappointed after completion of their probationary period shall be employed in the unclassified service as provided under Section 4102(16) of Chapter 4 of this Title and may be removed only for cause. Attorneys presently in the classified service shall remain classified.

SOURCE: GC § 6208.1 added by P.L. 17-53:17 (Jun 4, 1984). Repealed and reenacted by P.L. 19-52:7 (Jan 16, 1989).

COURT DECISIONS: This section was declared contrary to the Organic Act of Guam by the Ninth Circuit Court of Appeals. *Haeuser v. Dept. of Law*, (CA9 1996) 97

John M. Weisenberger
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

December 23, 2010

HAND DELIVER

LEGAL MEMORANDUM

Ref. No. CSC 10-1120

To: Executive Director, Civil Service Commission

From: Attorney General *J.W.*

Subject: Request for Opinion on Public Law 30-196 and Governor's Executive Orders 2010-24 and 25 Re: Hay Study Recommendations

Background

On January 3, 2008, the Legislature voted to override the Governor's veto and enacted Public Law 29-52, Section 13, which appropriated funds to hire an expert to conduct a study on updating the government's Unified Pay Scale. The Hay Group Consultants were subsequently hired to conduct the study. On September 1, 2010, Public Law 30-196, Chapter VI, Section 7, (The Government of Guam Competitive Wage Act of 2011) was signed into law. This law authorizes the Governor and the Department of Administration to implement salary adjustments as recommended by the Hay Group Consultants study (hereinafter referred to as the "Hay Study".) As part of the same law, the Legislature appropriated \$13.1 Million for implementation of the Hay Study. Public Law 30-196 specifically provides that the Hay Study recommendations shall be effective only upon formal adoption by the Governor of a plan consistent with the study.

On September 23, 2010, the Governor signed Executive Order 2010-24 adopting the Hay Study and instructing the Department of Administration to implement it "upon an additional legislative appropriation of \$5.5 Million and availability of funding." On October 29, 2010, the Governor signed Executive Order 2010-25, amending the prior executive order and instructing the Department of Administration to implement the Hay Study effective October 1, 2010.

The Hay Study recommends six pay plans: one general pay plan and specialty pay plans for nurses, law enforcement officers, directors, teachers and attorneys. However, the Guam Legislature has failed to explicitly repeal statutes establishing the pay plan in effect prior to the enactment of Public Law 30-196. See e.g., 4 GCA Section 6201 (compensation schedule), 4 GCA Section 6302 (Administration), 4 GCA Section 6303 (Creation of Positions), 4 GCA Section 6208 (Government Attorney Salaries). These statutes establish a different pay plan than the Hay Study.

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You have asked the Attorney General a series of questions regarding the validity of the Governor's Executive Orders and whether the Hay Study is in effect.

ISSUE 1: The Hay Group is recommending six (6) pay plans: one General Pay Plan and five specialty pay plans for nurses, law enforcement officers, directors, teachers and attorneys.

(a) Which compensation schedule should be used when implementing the Government of Guam Competitive Wage Act authorized by PL 30-196?

(b) Should the six pay plans recommended by the Hay Group be used or should the Unified Pay Plan in 4 GCA Section 6201 and the Attorney Pay Plan in 4 GCA Section 6208 be used?

ANSWER:

The six pay plans recommended by the Hay Group should be used. The Unified Pay Plan in 4 GCA Section 6201 and the Attorney Pay Plan in 4 GCA Section 6208 have been repealed by implication. While repeals by implication are disfavored, such repeal may be found when a later statute covers the whole situation of an earlier one and is clearly intended as a substitute. *Topasna v. Superior Court*, 1996 Guam 5, ¶ 13. The two statutory schemes cannot be reconciled. In deciding which statute to give effect, it is a well-settled rule that later statutes repeal by implication earlier irreconcilable statutes. *People v. Quinata*, 1982 WL 30546 (D. Guam A.D.)

Here the General Pay Plan and the Attorney Pay plan within the Hay Study are clearly intended as substitutes for 4 GCA Section 6201 and 4 GCA Section 6208 and cannot be read together to form one statutory scheme.

ISSUE 2: It appears there are new job positions created by the Hay Group.

Are the recommended job creations by the Hay Group to be implemented or does 4 GCA Section 6303 still have force and effect in that Section 6303 requires that job positions being created shall be posted on the agency's website, filed with the Legislature secretary thereafter and cannot be filled until 30 days thereafter?

ANSWER:

4 GCA Section 6303 sets forth a procedure for creating new positions within the government. However, the Hay Study did not create new positions. It created new pay scales which include some reclassifications of existing positions based upon job duties. As such, compliance with the procedures set forth in 4 GCA Section 6303 is not a prerequisite to adoption of the Hay Study pay scales.

However, 4 GCA Section 6303 is still in effect as it has not been repealed or amended. To the extent the executive or judicial branch may create new positions in the future, the procedures set forth in 4 GCA Section 6303 would still apply.

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ISSUE 3: It is apparent the Hay Group's recommended six (6) pay plans were to be accompanied with implementation Rules and Regulations along with legislative amendments to the current statute to transition the Hay's recommendation. These rules and regulations and legislative amendments are currently before the Legislature in the form of Bill 469-30 and have not been enacted into law.

(a) Can the Governor and the Director of Administration implement the Government of Guam Competitive Wage Act, as authorized by PL 30-196 (Chapter VI, Miscellaneous Appropriations, Section 7) using the Hay Group's recommended six (6) pay plans or are they confined by law to stay within the existing codified Compensation Schedule of 4 GCA Sections 6201 and 6208 (for attorneys).

Answer: The Governor and the Director of the Department of Administration must use the Hay Groups' recommended pay plans. (See answers to Issues 1 and 5).

ISSUE 4: Public Law 29-52, Executive Order 2006-21 and Public Law 30-196, direct the Department of Administration to conduct a compensation review to update the Unified Pay Plan. In the DOA Personnel Rules and Regulations and in practice, "compensation" and "classification" are two distinct subjects, albeit, they go hand in hand. Classification involves the assignment of pay grades for job positions based upon the related duties, responsibilities and qualifications for each job position.

(a) Did the Department of Administration exceed their authority when they included a classification review as opposed to merely doing a compensation review?

Answer: No. Classification and compensation are intertwined concepts in a merit system such as Guam's. Public Law 29-52, Section 13, appropriated funds to hire an expert in both "compensation and classification" to update the Unified Pay Scale. Similarly, Executive Order 2006-21 ordered the Department of Administration to hire a private firm to conduct a "comprehensive compensation review to update the Unified Pay Schedule." Emphasis added. It further required the director of the department to notify all employees and agencies that "they may be required to complete a position description (PD) and be interviewed". Clearly, more was contemplated by the Legislative and Executive branches than a mere review of the existing salary amounts within the existing pay scale.

If there was any doubt as to the authority of the Department of Administration to conduct such a study, such doubt was eliminated when the Legislature in Public Law 30-196 ratified the department's actions by appropriating money to implement the Hay Study.

ISSUE 5: Executive Order 2010-25 directs the implementation of the Hay Study recommended salary increases for classified employees and further adopts the implementation of Rules and Regulations accompanying Bill 469-30 which is currently before the Legislature.

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- (a) Can Personnel rules and regulations be adopted for application and use within the government of Guam via executive order or is the adoption of such rules subject to the Administrative Adjudication Law found at 5 GCA Section 9100 et seq.?
(b) Can Executive Order 2010-25 amend statutes?
(c) Are Executive Orders 2010-24 and 25 in direct conflict with existing laws?

The Organic Act expressly provides the Governor with authority to issue executive orders, stating that: "[The Governor] shall have the power to issue executive orders and regulations not in conflict with any applicable law." 48 U.S.C. § 1422. Through Executive Orders 2010-24 and 25, the Governor has instructed the Department of Administration to implement the Hay Study. Such executive orders have the force of law. *In Re Request Of Governor Felix P. Camacho*, 2004 Guam 10, para. 58. Both of these executive orders provide that "[t]hese policies and procedures shall supersede existing pay policies, rules, regulations and procedures that are inconsistent, notwithstanding any other provisions of law."

An executive order is invalid if it usurps legislative authority by acting contrary to the express or implied will of the Legislature. *Communication Workers of America v. Christie*, 994 A.2d 545 (N.J. 2010). Executive orders are not subject to the procedures set forth under the Administrative Adjudication Law. See e.g., *Maryland v. Maryland State Family Child Care Assn.*, 966 A.2d 939 (M.D. 2009). As such, Executive Orders 2010-24 and 25 are valid insofar as they are consistent with existing statutes.

Public Law 30-196 authorized the Governor to implement the Hay Study via executive order and appropriated \$13.1 million to partially fund it. The Legislature provided that implementation of the Hay Study would be effective "only upon formal adoption by I Maga'lahi of a Plan consistent with the Hay Group, Inc. and consistent with this act." Public Law 30-196 does not require the adoption of Rules and Regulations pursuant to the Administrative Adjudication Law in order to become effective. The Governor is only required to adopt a "plan". Executive Orders 2010-24 and 25 adopt such a "plan" and are consistent with Public Law 30-196.



KENNETH ORCUTT
Assistant Attorney General

I Mina'Trentai Dos Na Liheslaturan Guahan
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
268-32 (COR)- VETOED	Michael F.O. San Nicolas	AN ACT TO APPROVE THE DEPARTMENT OF ADMINISTRATION'S IMPLEMENTATION PLANS OF THE 'GOVERNMENT OF GUAM COMPETITIVE WAGE ACT OF 2014', TO REQUIRE A PERFORMANCE-BASED STANDARD FOR DIRECTORS AND DEPUTY DIRECTORS OF LINE AGENCIES AND I MAGA'LAHEN AND I SEGUNDU MAGA'LAHEN	1/24/14 5:42 p.m.	01/27/14	Committee on General Governmental Operations and Cultural Affairs	01/31/14 12 p.m.	2/1/14 4:22 p.m.	Fiscal Note Requested 01/28/14
	DATE PASSED	TITLE	TRANSMITTED	DUE DATE	DATE SIGNED BY I MAGA'LAHEN GUAHAN	PUBLIC LAW NO.	NOTES	
	2/1/2014	AN ACT TO APPROVE THE DEPARTMENT OF ADMINISTRATION'S IMPLEMENTATION PLANS OF THE "GOVERNMENT OF GUAM COMPETITIVE WAGE ACT OF 2014"; AND TO REPEAL §§ 6201, 6202, AND 6208 OF ARTICLE 2, CHAPTER 6, TITLE 4, GUAM CODE ANNOTATED.	2/1/14	10:50 p.m.	2/13/14			Vetoed 2/13/14

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12
13

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

February 13, 2014

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Dos Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

32-14-1282
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date: 2.13.14
Time: 2:42 PM
Received by: [Signature]

2014 FEB 12 PM 4:56

Dear Madam Speaker,


Attached is Bill No. 268-32 (COR), *An act to approve the Department of Administrations' implementation plans of the "Government of Guam Competitive Wage Act of 2014"; and to repeal §§ 6201, 6202, and 6208 of Article 2, Chapter 6, Title 4, Guam Code Annotated*, which I have vetoed and am returning to *I Liheslatura* with my objections. The government of Guam now will move forward with the implementation of the Hay Plan, as authorized by *I Liheslatura* to go into effect tomorrow, February 14, 2014. Our employees will receive their first truly funded competitive wages in 23 years.

Passing Bill 268-32 will accomplish the return of deficit spending, suspension of the Hay raises until July due to funding shortfalls, veiling of senatorial pay raises, inequity in the wage scale, and the dismantling of the expensive investment by human resource professionals all at once. The bill is reckless. My objections follow:

1. **Bill 268-32 will cause a rollback of the Hay raises until July; Appropriation does not meet mandate.** The Legislature appropriated \$7 million to pay for a \$15 million plan for the remainder of Fiscal Year 2014. The mandate in Bill 268-32 to implement all plans in full guarantees the full expenditure of funds no later than July 2014. This means the Legislature intended to roll back the Hay raises to July, leaving no room for the increased salaries until October 1, 2014. What are our employees to do in that time they are waiting for the restoration of pay? Has the Legislature considered the financial burden this policy will place on the employees' families? We welcome legislative appropriation (backed by actual revenue) to fund all plans fully; otherwise, a deficit will be created.
2. **Senatorial pay raises remain hidden.** I continue to be amazed by the hypocrisy displayed by those senators in the majority most vocal about rejecting a senatorial pay raise. It is amazing because: (a) they refuse to reject the pay raise they are taking now; and (b) they voted for a measure that guarantees, yet again, that senators will receive a

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 Eddie Baza Calvo

pay raise. Senators had an opportunity, had they truly believed senatorial pay should be capped at the current level, to do just that. Interestingly, senators decided to affirm the law that ties senatorial salaries to judges, just days after public statements by a court official that judges' salaries are due for an increase and that only the Judicial Council can make such decisions. I object to this provision because, unlike the Hay Plan or even legislation, this method of increase senatorial pay lacks transparency, and has the potential to veil an increase and deceive the public, once again.

- 3. Inequity in GovGuam.** The Hay Plan is not perfect. It does not bring all employees to market. However, it does go a long way to offer competitive wages and fix inequities between positions within agencies and positions between agencies, especially the autonomous ones. I object to *I Liheslatura's* contention that the Fire Chief should be paid far less than his captains and lieutenants. There is a problem when recruiting the best accountant and manager to run the Department of Administration is hampered by non-competitive salaries. Mayors should not be earning only half of what the Democratic majority's legal counsel is paid. For that matter, the Attorney General of Guam should not be paid less than the legislative attorney.

I Liheslatura must not interfere with my Organic duties to administer and manage the Executive Branch. The proposed blockade on competitive wages for the Cabinet interferes with my ability to attract the best and most qualified for these positions. I have been blessed by the patience of these men and women, many of whom volunteered to take a 10 percent pay cut to help pay tax refunds when they were late. Their retention is a different story. We constantly have to compete with either the classified service or the private sector to retain the best and brightest who, it should not go unnoticed, have gone above and beyond and have produced unprecedented results for the people of Guam and their quality of life.

I object to this interference on executive functions. I object to the devaluation of the mayors and vice mayors. I object to the refusal to recognize the need for reasonable wages for the Public Auditor and the Attorney General. Lt. Governor Ray Tenorio and I accept that the wages recommended by the Hay Plan – done through scientific study – should be reserved for the next gubernatorial term. In this way, the people will have been the ones to decide which team should occupy Adelup and receive such a salary. Until then, the increases in our salaries will be diverted to educational and health accounts in the government. You are welcome to examine my pay stub or the AS400 to verify this. We know this is possible because this was done before. Lt. Governor Tenorio and I diverted 10 percent of our paychecks, voluntarily, to the tax refund account for over a year. Senators who believe they should not take their increase in pay can do the same thing. If all 15 senators join the Lt. Governor and I in rejecting the salary increase, then

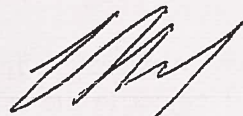
the point will be moot and no money will be spent on the increase in salaries of elected officials except for the mayors and vice mayors, the Public Auditor, and the Attorney General.

I applaud *I Liheslatura* for raising concerns and asking questions. These concerns and questions led to a public discourse about the Hay Plan, and the value of GovGuam employees in general. I have been heartened by the outpour of respect and support for our employees. There were a few uninformed detractors who denounced pay raises, even for the classified service. And I understand the hesitation to give raises to elected officials, which is part of the reason Lt. Governor Tenorio and I are not taking a pay raise. In the end, what is important is that our employees receive their due for what they earn, and that this translates to a more productive and innovative workforce, happier families, and greater confidence in Guam and her government.

And while I applaud *I Liheslatura* for the discourse that resulted in public support for our employees, I highly doubt its motives were so pure and well-intended. Nearly four years ago *the Legislature* appropriated \$13 million that senators knew would not come in to pay for a Hay plan that received no scrutiny or pause for concern. When I informed *I Liheslatura* of the cash crisis and, repeating what I had said as a senator, the massive shortfall in revenues, many of the senators critical today demanded that I reinstate the Hay Plan. The irony is that today we do have the means to pay our employees; and it's not an empty promise. Yet, senators now hesitate.

Do you support our employees or not? If you do, then fight for them, not against them. This issue is black and white.

Senseramente,



EDDIE BAZA CALVO

I MINA'TRENTAI DOS NA LIHESLATURAN GUÁHAN
2014 (SECOND) Regular Session

Bill No. 268-32 (COR)

As amended by the Committee on General
Government Operations and Cultural Affairs;
and further amended on the Floor.

Introduced by:

Michael F. O. San Nicolas
T. C. Ada
V. Anthony Ada
Frank B. Aguon, Jr.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
Vicente (ben) C. Pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

**AN ACT TO APPROVE THE DEPARTMENT OF
ADMINISTRATION'S IMPLEMENTATION PLANS OF
THE "GOVERNMENT OF GUAM COMPETITIVE
WAGE ACT OF 2014"; AND TO REPEAL §§ 6201, 6202,
AND 6208 OF ARTICLE 2, CHAPTER 6, TITLE 4,
GUAM CODE ANNOTATED.**

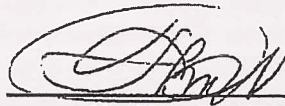
1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Short Title.** This Act *shall* be referred to as the "Responsible
3 Competitive Wage Implementation Act."

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

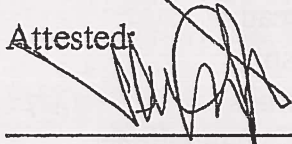
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 268-32 (COR), "AN ACT TO APPROVE THE DEPARTMENT OF ADMINISTRATION'S IMPLEMENTATION PLANS OF THE "GOVERNMENT OF GUAM COMPETITIVE WAGE ACT OF 2014"; AND TO REPEAL §§ 6201, 6202, AND 6208 OF ARTICLE 2, CHAPTER 6, TITLE 4, GUAM CODE ANNOTATED," was on the 1st day of February, 2014, duly and regularly passed.



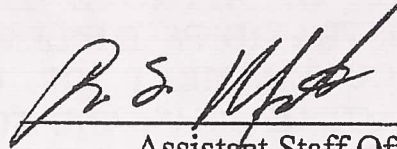
Judith T. Won Pat, Ed.D.
Speaker

Attested:



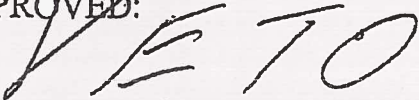
Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 1st day of FEB,
2014, at
10:50 o'clock PM.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: FEB 13 2014

Public Law No. _____

1 **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
2 that Section 2 of Chapter XI of Public Law 32-68 required that by January 15,
3 2014, *I Maga'lahi* submit a final, implementable plan to adjust compensation,
4 classification and benefits to *I Liheslatura*. *I Liheslatura* authorized *I Maga'lahi* to
5 cover either classified personnel only, or classified and unclassified personnel. On
6 January 15, 2014, *I Maga'lahen Guåhan* submitted the General Pay Plan (GPP),
7 Nurse Pay Plan (NPP), Educator Pay Plan (EDU), Attorney Pay Plan (ATTY),
8 Executive Pay Plan (EXEC), and Salary Recommendations for Rate of Pay
9 Positions. The Executive Pay Plan includes many unclassified appointed positions
10 and the Recommendations for Rate of Pay Positions include recommendations to
11 give substantial raises to elected officials.

12 *I Liheslatura* further finds that Section 2(e), Chapter XI of Public Law 32-68
13 mandated *I Maga'lahi* to submit a final, implementable plan to adjust
14 compensation, classification and benefits to *I Liheslatura*; and that the plan
15 submitted by *I Maga'lahi* to *I Liheslatura* on January 15, 2014 *did not* include
16 details of the implementation of such plan, inclusive of the policies and
17 procedures, appeals process(es) for government of Guam employees, if any, and
18 other information regarding the slotting of employees into each Pay Plan, among
19 other cost and financial analyses performed by *I Maga'lahi* and the Executive
20 Branch prior to the submission of said plan. After several attempts by *I Liheslatura*
21 to request for such details of the plan submitted by *I Maga'lahi*, *I Liheslatura*
22 continues to be unable to be provided the necessary data and information from *I*
23 *Maga'lahi* to act responsibly on a final, implementable plan to adjust
24 compensation, classification and benefits for government of Guam employees.

25 Given the omission of such details and the lack of cooperation of *I*
26 *Maga'lahi*, *I Liheslatura* finds that the plan as submitted by *I Maga'lahi* is *not*
27 implementable and that further details are required to be submitted until such time

1 *I Liheslatura* can responsibly authorize the implementation of a final,
2 implementable plan to adjust compensation, classification and benefits for
3 government of Guam employees. Notwithstanding the aforementioned omission of
4 such details and lack of cooperation of *I Maga'lahi*, *I Liheslatura* further finds that
5 the employees *shall* be afforded a plan that is retroactively effective to February 9,
6 2014, upon the submission of the aforementioned details of the plan submitted by *I*
7 *Maga'lahi* to *I Liheslatura*.

8 *I Liheslatura* further finds that classified and unclassified employees of the
9 government of Guam have patiently awaited their salary adjustments since *I*
10 *Maga'lahi* issued Executive Order 2011-02 on January 14, 2011, stopping
11 implementation of the compensation study and the corresponding salary
12 adjustments and transferring such appropriation for the implementation of said
13 compensation study and corresponding salary adjustments to pay for the additional
14 health insurance premium payments required by contract for government of Guam
15 employees and retirees in Fiscal Year 2011, pursuant to Section 3 of Public Law
16 31-74.

17 *I Liheslatura* further finds that the appropriations allocated in Section 2(d),
18 Chapter XI of Public Law 32-68 were calculated with the inclusion of the Law
19 Enforcement Officer (LEO) Pay Plan. In the plan submitted by *I Maga'lahi*, it is
20 stated that "there is no recommendation for the Law Enforcement Officer (LEO)
21 pay plan due to the full implementation of Public Law 29-105 which gave Law
22 Enforcement and Public Safety Officers 30% and 40% adjustments. The recent
23 adjustments have brought salaries of incumbents covered by this pay plan in
24 relative parity with market pay." It is the intent of *I Liheslatura* to reallocate the
25 appropriation.

1 It is, therefore, the intent of *I Liheslaturan Guåhan* that the pay adjustments
2 to the hard-working employees of the government of Guam *shall* be implemented
3 pursuant to Public Law 32-68.

4 **Section 3. Approval of the General Pay Plan (GPP), Nurse Pay Plan**
5 **(NPP), Educator Pay Plan (EDU) and Attorney Pay Plan (ATTY).**
6 Appropriations contained in Chapter XI §2(d) of the General Appropriations Act of
7 2014 *shall* be used for classified and unclassified employees pursuant to §2(e) of
8 Chapter XI of Public Law 32-68. *I Liheslatura* hereby approves the General Pay
9 Plan (GPP) contained in Exhibit 1 appended hereto; the Nurse Pay Plan (NPP)
10 contained in Exhibit 2 appended hereto; the Educator Pay Plan (EDU) contained in
11 Exhibit 3 appended hereto; the Attorney Pay Plan (ATTY) contained in Exhibit 4
12 appended hereto; and the positions included in this Plan indicated in Exhibit 4A,
13 appended hereto; and Exhibit 7, the Miscellaneous Compensation-related
14 Recommendations and Facts, appended hereto with its attachments.

15 **Section 4. Mayor and Vice Mayor Compensation.** Notwithstanding any
16 other provision of law to the contrary, the salary for a Mayor *shall* be raised from
17 Forty-Six Thousand Sixty-Two Dollars (\$46,062) per annum to Fifty-Six
18 Thousand Sixty-Two Dollars (\$56,062) per annum; and the salary for a Vice
19 Mayor *shall* be raised from Forty-Two Thousand Two Hundred Sixty-Four Dollars
20 (\$42,264) per annum to Fifty-Two Thousand Two Hundred Sixty-Four dollars
21 (\$52,264) per annum.

22 **Section 5.** Notwithstanding any other provision of law to the contrary, *I*
23 *Maga'lahen Guåhan, I Segundu Na Maga'lahen Guåhan*, Senators of *I*
24 *Liheslaturan Guåhan*, the Attorney General, the Public Auditor, and executive
25 officers in agencies and instrumentalities of the government of Guam included in
26 Exhibit 5A of this Act, appended hereto, *shall not* receive a salary increase
27 pursuant to this Act or §2 of Chapter XI of Public Law 32-68.

1 **Section 6. Salary Increment Schedule.** Every classified employee in
 2 Pay Grades A through X *shall* be entitled to a one step salary increment for
 3 satisfactory performance. Employees at Step 1 through 6 *shall* be entitled to an
 4 increment after twelve (12) months of satisfactory performance. Employees at
 5 Steps 7 through 9 *shall* be entitled to an increment after eighteen (18) months of
 6 satisfactory performance. Employees at Step 10 *shall* be entitled to an increment
 7 after twenty-four (24) months of satisfactory performance. Any employee due an
 8 increment beyond the final step in each pay plan *shall* be entitled to an equivalent
 9 of a one-step salary increment of 3.17% after twenty-four (24) months of
 10 satisfactory performance.

11 **Section 7.** Section 2(d), Chapter XI of Public Law 32-68 is hereby
 12 *amended* to read:

13 “(d) Implementation of the Government-wide Position
 14 Classification, Compensation & Benefits Study. The sum of Seven Million
 15 Fifty Five Thousand Three Hundred Fifty Seven Dollars (\$7,055,357) is
 16 hereby appropriated from the General Fund to the following branches and
 17 agencies by multiplying the total appropriation by the percentage in the
 18 column that corresponds to the branches and agencies based on the selection
 19 of *I Moga’lahi* in Subsection (c) of this Section:

	Classified	Classified and Unclassified
	Personnel Only	Personnel
23 (1) Unified Judiciary	9.40%	6.68%
24 (2) GDOE	35.03%	41.23%
25 (3) UOG	6.10%	4.83%
26 (4) GCC	3.10%	2.48%
27 (5) MCOG	0.12%	8.06%

1	(6) OPA	0.54%	.50%
2	(7) OAG	2.01%	1.91%
3	(8) PDSC	1.51%	1.20%
4	(9) Executive Branch Line Agencies	42.19%	33.11%”

5 **Section 8. Appropriation to the Judiciary of Guam.** The sum of Four
6 Hundred Seventy One Thousand Two Hundred Ninety-Eight Dollars (\$471,298)
7 appropriated from the General Fund to the Unified Judiciary in Public Law 32-68,
8 Chapter XI, Miscellaneous Appropriations, Section 2, Subsection (d)(1) to pay for
9 the implementation of the Government-wide Position Classification, Compensation
10 and Salary Benefits Study is hereby de-appropriated, and said sum is hereby
11 appropriated herein from the General Fund to the Judiciary of Guam for the
12 purpose of paying the salary adjustments to non-law enforcement classified and
13 unclassified employees of the Judiciary affected in this Act as determined by the
14 Judicial Council of Guam.

15 **Section 9.** In addition to the funds appropriated to GMHA in P.L. 32-68
16 and other laws, *I Maga’lahi shall* identify and transfer additional funds to GMHA
17 to supplement existing appropriations, to ensure GMHA employees are included
18 in the Government of Guam Competitive Wage Act of 2014.

19 **Section 10. Repeal of 4 GCA § 6201.** §6201 of Article 2, Chapter 6, Title
20 4, Guam Code Annotated is hereby *repealed*.

21 **Section 11. Repeal of 4 GCA § 6202.** §6202 of Article 2, Chapter 6, Title
22 4, Guam Code Annotated is hereby *repealed*.

23 **Section 12. Repeal of 4 GCA § 6208.** §6208 of Article 2, Chapter 6, Title
24 4, Guam Code Annotated is hereby *repealed*.

25 **Section 13. Effective Date.** This Act *shall* be effective on or retroactively
26 to February 9, 2014, *provided*, that *I Maga’lahi* submits to *I Liheslaturan Guåhan*
27 the details of the Plan transmitted by *I Maga’lahen Guåhan* that includes, but is *not*

1 limited to: (1) the policies and procedures inclusive of specific details as to the
2 slotting of existing employees into the pay plans; (2) the cost of the
3 implementation of the plan as submitted by *I Maga'lahi* to *I Liheslatura* on
4 January 15, 2014, broken down by agency or instrumentality; (3) any and all
5 changes in the recommendations of either the salary, or the position title, in the
6 classified or unclassified pay scale, that is different from the plan pursuant to
7 Executive Orders Nos. 2010-24 and 2010-25 (the 2010 Hay Plan), and a
8 justification for each change; (4) the identified sources of funding for such
9 implementation; and (5) the policies, procedures, rules, regulations, etc. of the
10 Request for Review process for employees under the Reclassification and
11 Compensation Plan.

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