



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

July 1, 2016

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

Dear Madame Speaker:

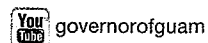
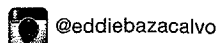
Attached is Bill No. 30-33 (COR), entitled, *"An act to amend § 30102 of Article 1 of Chapter 30, Title 5, Guam Code Annotated, to require agencies permitted to retain counsel other than the Attorney General, to hire classified in-house counsel, and to strengthen the Attorney General of Guam's cognizance of legal matters before the Government of Guam"* which I have **VETOED**.

Like Bill 180-32 which was introduced and vetoed two years ago, Bill 30-33 is similarly flawed. The premise of the bill assumes that it is wasteful for government agencies to retain outside legal counsel, and that therefore such agencies should only be permitted to retain outside counsel on a case-by-case basis for a "sole and specific legal matter." Even then, the agency must certify the need for legal counsel to the Attorney General, as well as to the Legislature. As I stated in my veto message to Bill 180-32, requiring that an autonomous or executive branch agency certify to the Legislature its need for legal counsel is an act that intrudes upon the Governor's Organic Act authority to administer the Executive Branch.

Bill 30-33 further presumes that the Attorney General has the full capacity and manpower to represent and handle the legal affairs of dozens of executive branch agencies, boards, commissions, and councils. It is a well known reality, however, that like many of the agencies it represents, the Office of the Attorney General is understaffed and struggles with a heavy caseload that includes providing the government of Guam and its line agencies with procurement assistance, reviewing

P.O. Box 2950 • Hagatna, Guam 96932

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government contract and proposed agency rules and regulations, and providing general legal advice. The specialized complex business of large autonomous agencies such as the Guam Airport Authority and the Port Authority of Guam would be especially handicapped by Bill 30-33's requirements to the extent that those agencies would simply not be able to operate if they are unable to have experienced legal counsel on call from whom they can receive immediate and timely responses.

In attempting to promote cost savings, Bill 30-33 viciously insinuates that outside legal counsel is to blame for the recent award of \$14 million rendered against the Port Authority by an arbitration panel in the Guam YTK case. However, it is a fact that the Office of the Attorney General signed and approved the YTK contract back in 2001, even though the contract contained a glaring arbitration provision that contradicted and waived the Guam Government Claim's Act. The Guam Supreme Court cited this arbitration provision as the exclusive reason for holding the Port Authority liable under the contract.¹ And if this was not enough, in September 2004, the Office of the Attorney General advised the Port Authority *against* terminating the contract with YTK and to *instead go forward* and issue YTK a notice to proceed.

Suffice to say, if the Office of the Attorney General had not approved the lease or the arbitration provision, the liability of the Port Authority would have been limited to \$300,000, instead of \$14 million. And if the Attorney General had not advised the Port Authority against terminating the contract, a number of steps could have been taken at that early stage to prevent the future \$14 million award.

It is clear to me that in addition to being inorganic and violative of the doctrine of separation of powers, the economy promoted by Bill 30-33 is false. And it is for those reasons that I veto it today.

Senseramente,



EDDIE BAZA CALVO

Governor of Guam

¹ See, *Guam YTK Corp. v. Port Authority of Guam*, 2014 Guam 7 at ¶¶ 42-43 (arbitration provision in YTK contract waives sovereign immunity under the Government Claims Act and the Port Authority must therefore comply with it).