

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via email to: speaker@guamlegislature.org

August 11, 2023

HONORABLE THERESE M. TERLAJE, Speaker

I Mina'trentai Siette Na Liheslaturan Guåhan

37th Guam Legislature

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

Re: Bill No. 7-37 (COR) - AN ACT TO ADD A NEW § 19406, AND AMEND §§ 19405(b), 19405(c), and 19805(c) OF CHAPTER 19, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO PROHIBITING THE SUSPENSION OF CONSTITUTIONAL RIGHTS, AND TO REPEAL CRIMINAL PENALTIES FOR VIOLATIONS OF EXECUTIVE ORDERS

Håfa Adai Madame Speaker,

On March 14, 2020, in Executive Order No. 2020-03, I declared a state of emergency to respond to the Novel Coronavirus 2019 (COVID-19). The COVID-19 pandemic was unprecedented in magnitude and scope. Despite years of mitigation measures and the rapid development of life-saving vaccines, the virus devastated communities across the globe. Our public health emergency in Guam ended on January 6, 2023, but the virus remains active in our community even today.

As of the time of this writing, the World Health Organization reports nearly 770 million confirmed cases of COVID-19 worldwide, including nearly 7 million COVID-induced deaths, and COVID-induced excess deaths¹ estimated at 14.8 million during 2020 and 2021. *The Economist* further developed a machine-learning model to estimate the number of COVID-induced excess deaths as of August 6, 2023, estimating the global figure to fall between 17.88 million and 31.83 million deaths.

¹ The CDC defines excess deaths as the difference between the observed numbers of deaths in specific time periods and expected numbers of deaths in the same time periods. Excess mortality is a more comprehensive measure of the total impact of the pandemic on deaths than the confirmed COVID-19 death count alone. It captures not only the confirmed deaths, but also COVID-19 deaths that were not correctly diagnosed and reported as well as deaths from other causes that are attributable to the overall crisis conditions.

We lost 416 members of our community to COVID-19. They were our grandparents, our parents, our siblings and our children. The majority of those who succumbed to this disease suffered from comorbidities, including many of our *Manāmko* – our greatest generation. Due to the high incidence of medical conditions such as heart disease and diabetes on our island, our people were uniquely susceptible to COVID-19. This vulnerability was compounded by limitations in available medical resources that pre-existed the pandemic, including hospital space and personnel, resulting in an overburdened healthcare delivery system. While protecting the lives of our community was of paramount importance as we developed policies implemented during the pandemic, ensuring the continued viability of our healthcare delivery system, on which our entire island relied for both COVID-19 and non-COVID-related needs, was also a crucial consideration in light of our geographic distance from other U.S. jurisdictions that may have alleviated the additional strain the pandemic imposed on our healthcare system.

Despite the enhanced risk COVID-19 posed to our community, proportionally, our island suffered significantly fewer deaths than the rest of the nation. The U.S. reported approximately 1,123,836 COVID-induced deaths, representing 341.11 deaths per 100,000 individuals. Our island endured approximately 252.12 deaths per 100,000 individuals, placing Guam among the fifteen U.S. jurisdictions (including territories) with the lowest rate of COVID-19 deaths. At the onset of the pandemic, it was estimated that COVID-19 would claim over 3,000 lives in Guam.

By all objective measures, our island defied staggering odds. Despite our enhanced medical vulnerabilities and limited healthcare resources, we endured without resorting to the crisis level of care that other jurisdictions were forced to implement. Our ability to weather wave after wave of new COVID-19 variants is a credit to the tireless efforts of our healthcare professionals and frontliners who risked their own safety to care for our community, and to our people, who steadfastly endured community-wide restrictions to protect their family, friends, and neighbors.

Without question, COVID-19 restrictions we implemented on our island were more rigorous than those imposed in other U.S. jurisdictions. As a community, we saved lives by observing these mitigation strategies. Other jurisdictions that employed similar strategies, like New Zealand and Iceland, experienced similar positive outcomes. The notable impact of these restrictions is reflected in our low overall COVID-19 mortality rate as compared to jurisdictions that implemented significantly more lenient measures, such as Arizona (455 deaths/100k), Oklahoma (454 deaths/100k), Mississippi (449 deaths/100k), and West Virginia (444 deaths/100k).

It is against this backdrop that we must evaluate Bill No. 7-37, and consider the efficacy of implementing health policy based on partisan politics instead of scientific data. This bill is an expansion of the failed prior bill introduced by the same author, Bill No. 11-36. The new bill is based on the same false premise as the last bill – that a declaration of a public health emergency somehow suspends or terminates the strict application of the United States Constitution. The author of this bill suggests that the Guam Legislature must, by statute, proscribe the implementation of public health regulations that violate constitutional rights in order for these rights to be enforceable, including the freedom of assembly, the free exercise of religion, the right

to bear arms, just compensation for government takings, due process, and the freedom from excessive fines.

However, government actions, including executive orders, are already subject to legal challenge on constitutional grounds, whether through a writ of *habeas corpus* or civil claims brought on the basis that agency action is arbitrary, capricious, or an abuse of discretion. Asserting these claims does not require duplicative local legislation. In fact, Guam courts presided over several cases during the pandemic challenging quarantine regulations and community restrictions on constitutional grounds. In the 2021 case *In re Leon Guerrero*, the Supreme Court of Guam determined that the Organic Act of Guam vests ultimate authority over quarantine in the Governor of Guam, and that the legislature's laws related to quarantine cannot overrule the Governor's quarantine regulations.

The Court further determined that while quarantine orders may be challenged on constitutional grounds, pursuant the U.S. Supreme Court precedent, broad deference is given to the decisions of elected officials charged with determining such policies. Section 2 of Bill No. 7-37 does nothing to protect rights that are already protected under the U.S. Constitution and the Organic Act of Guam.

Some of the testimony presented during the hearing on Bill No. 7-37 focused on government action that allegedly constitutes a taking without just compensation. However, the Emergency Health Powers Act provides for compensation for any facilities or materials taken or appropriated by DPHSS for use during the emergency. If individuals believe they did not receive appropriate compensation for alleged government takings during a public health emergency, the solution to this issue is not to *end* public health emergencies. Rather, these individuals may proceed with recovering any amounts to which they believe they are entitled through the established government claims process. Nothing is stopping these individuals from suing for what they believe they are owed.

The Emergency Health Powers Act *already* provides that the Legislature may terminate an emergency declaration at any time by a majority vote. Notably, the author of Bill No. 7-37 introduced a resolution attempting to terminate the public health emergency for COVID-19 during the 36th Guam Legislature, but his measure failed. A *resolution* is not an appropriate measure to terminate a public health emergency, because it is merely an expression of sentiments and does not carry the force of law. For the Legislature's decision to become binding law, *legislation* is necessary. It appears that the author of Bill No. 7-37 is seeking to implement a resolution process for termination of a public health emergency to circumvent the veto process, which is a power the Organic Act grants to the Governor of Guam.

In the months since the local and national public health emergencies expired, I have reflected on the course of the pandemic on our island, and on the measures our Administration implemented to slow the spread of COVID-19 in our community. I am proud of our people, and what we accomplished in the face of overwhelming odds. While certain individuals in our community might have preferred fewer restrictions or no restrictions at all, I believe the majority of our island agrees


To: Therese M. Terlaje, *Speaker*, 37th Guam Legislature
Fr: Lourdes A. Leon Guerrero, *Governor of Guam*
Date: August 11, 2023
Re: Bill No. 7-37 (COR)

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island agrees that these measures saved lives and protected our people, which is why they reelected me to serve as their Governor even before the local public health emergency expired.

Bill No. 7-37 does not protect our people. It merely prioritizes the political views and preferences of the few over the safety of our community as a whole. It is for these reasons that I veto Bill No. 7-37 (COR).

Senseramente,



LOURDES A. LEON GUERRERO

Maga'hågan Guåhan

Governor of Guam

Enclosure: Bill No. 7-37 (COR) - VETO

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*, Lt. Governor of Guam
Compiler of Laws

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

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*


This is to certify that **Bill No. 7-37 (COR), "AN ACT TO ADD A NEW § 19406, AND AMEND §§ 19405(b), 19405(c), AND 19805(c) OF CHAPTER 19, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO PROHIBITING THE SUSPENSION OF CONSTITUTIONAL RIGHTS, AND TO REPEAL CRIMINAL PENALTIES FOR VIOLATIONS OF EXECUTIVE ORDERS,"** was on the 28th day of July 2023, duly and regularly passed.


Therese M. Terlaje
Speaker

Attested:


Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 31st day of July,
2023, at 1:09 o'clock P.M.


Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 8/11/2023

Public Law No. _____

2023-19649
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I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 7-37 (COR)

As amended by the Committee on
Health, Land, Justice, and Culture; and
further amended on the Floor.

Introduced by:

Christopher M. Dueñas
Jesse A. Lujan
Frank Blas, Jr.
Thomas J. Fisher
Joanne Brown
Telo T. Taitague
Chris Barnett
Dwayne T.D. San Nicolas
Tina Rose Muña Barnes
William A. Parkinson
Roy A. B. Quinata
Joe S. San Agustin
Amanda L. Shelton
Therese M. Terlaje

**AN ACT TO *ADD* A NEW § 19406, AND *AMEND* §§
19405(b), 19405(c), AND 19805(c) OF CHAPTER 19, TITLE
10, GUAM CODE ANNOTATED, RELATIVE TO
PROHIBITING THE SUSPENSION OF
CONSTITUTIONAL RIGHTS, AND TO REPEAL
CRIMINAL PENALTIES FOR VIOLATIONS OF
EXECUTIVE ORDERS.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the Organic Rights of citizens of Guam include:

1 48 U.S.C. § 1421b(a), which states “No law shall be enacted in Guam
2 respecting an establishment of religion or prohibiting the free exercise thereof, or
3 abridging the freedom of speech, or of the press, or the right of the people peaceably
4 to assemble and to petition the government for a redress of their grievances.”

5 48 U.S.C. § 1421b(e) and (f), which state that “No person shall be deprived
6 of life, liberty, or property without due process of law.” And “Private property shall
7 not be taken for public use without just compensation.”

8 48 U.S.C. § 1421b(u), which statutorily incorporates the “First through Ninth
9 Amendments” to the Constitution of the United States, and which include the First
10 and Second amendments.

11 48 U.S.C. § 1423b gives *I Liheslatura* the sole authority to create laws. Courts
12 throughout the United States have held that criminal acts (felonies and
13 misdemeanors) can be created exclusively by enactment of law and not
14 administratively or through an executive order. Additionally, in a unanimous
15 decision in the case of *Timbs v. Indiana*, 586 U.S. ____ (2019), the United States
16 Supreme Court incorporated the Excessive Fines Clause of the Eighth Amendment
17 in 2019.

18 *I Liheslaturan Guåhan* further finds that the U.S. Supreme Court, in the case
19 of *Roman Catholic Diocese of Brooklyn, New York v. Andrew M. Cuomo, Governor*
20 *Of New York on Application for Injunctive Relief* 592 U. S. ____ (2020), granted
21 requests from the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish
22 synagogues to block enforcement of a New York executive order restricting
23 attendance at houses of worship. Both the diocese and the synagogues claimed that
24 the executive order violated the right to the free exercise of religion guaranteed by
25 the First Amendment, particularly when secular businesses in the area are allowed
26 to remain open.

As it was the intent of the framers of the Bill of Rights in 1789 to limit the powers of government over the people, it is also the intent of *I Liheslaturan Guåhan* to reaffirm such fundamental rights of Guam's residents during public health emergencies. The first nine (9) amendments to the United States Constitution that are guaranteed to the people of Guam by 48 U.S.C. § 1421b(u) were never intended for the government to grant or withhold rights and privileges to the governed. Instead, these and other amendments to the United States Constitution are strict limitations and proscriptions on governmental power. Such rights are often referred to as *negative rights*, that instead of granting individual rights to its citizens, it prevents government from taking away specified privileges, immunities, freedoms and protections from the citizens of this country.

Therefore, it is the intent of *I Liheslaturan Guåhan* to reaffirm that such fundamental rights on Guam continue to exist during declared public health emergencies.

Section 2. A new § 19406 is *added* to Article 4 of Chapter 19, Title 10, Guam Code Annotated, to read:

“§ 19406. Rights During Public Health Emergencies.

No executive order, agency directive, or administrative rule or regulation issued or promulgated pursuant to a declaration of a state of public health emergency, or in anticipation or contemplation of a declaration of a state of public health emergency, shall:

- (a) prohibit freedom of assembly in or on one's residential property;
- (b) prohibit the free exercise of religion;
- (c) diminish or suspend a person's Second (2nd) Amendment Constitutional rights as specified in Chapter 60 of Title 10 Guam Code Annotated;
- (d) deprive any person of liberty without due process of law;

1 (e) permit the confiscation or seizure of any lawfully owned
2 property without due process and just compensation;

3 (f) create or have the effect to create criminal acts or redefine or
4 expand the scope of existing criminal acts or civil violations that are defined
5 by public law;

6 (g) impose excessive fines; or

7 (h) deny access to public information as required by the *Freedom of*
8 *Information Act* (Chapter 10, 5 GCA)."

9 **Section 3.** § 19405(b) of Article 4, Chapter 19, Title 10, Guam Code
10 Annotated, is *amended* to read as follows:

11 "(b) Automatic Termination. Notwithstanding any other provision of
12 this Chapter, the declaration of a state of public health emergency shall be
13 terminated automatically after sixty (60) days, unless renewed by *I*
14 *Liheslaturan Guåhan* under the same standards and procedures set forth in
15 this Article. Any such renewal shall also be terminated automatically after
16 sixty (60) days, unless renewed by *I Liheslaturan Guåhan* under the same
17 standards and procedures set forth in this Article."

18 **Section 4.** § 19405(c) of Article 4, Chapter 19, Title 10, Guam Code
19 Annotated, is *amended* to read as follows:

20 "(c) *I Liheslaturan Guåhan* by a resolution passed by a majority vote
21 of its members, may terminate, in part or in whole, the declaration of a state
22 of public health emergency at any time from the date of original declaration
23 upon finding that the occurrence of an illness or health condition that caused
24 the emergency does not or no longer poses a high probability of a large
25 number of deaths in the affected population, a large number of incidents of
26 serious permanent or long-term disability in the affected population or a
27 significant risk of substantial future harm to a large number of people in the

1 affected population. Any request, attempt, or renewal of such earlier
2 termination or partial termination by *I Maga'låhen/Maga'hågan Guåhan* shall
3 be of no force or effect without a majority vote of *I Liheslaturan Guåhan*.”

4 **Section 5.** § 19805(c) of Article 8, Chapter 19, Title 10, Guam Code
5 Annotated, is *amended* to read as follows:

6 “(c) Amount. The amount of compensation shall be calculated in the
7 same manner as compensation due for taking of property pursuant to non-
8 emergency eminent domain procedures, as provided in Chapter 15 of Title 21,
9 Guam Code Annotated, except that the amount of compensation calculated
10 for items obtained under §19505 shall be the replacement cost of the item on
11 the date of seizure plus the cost of shipping. If the government of Guam fails
12 to pay the importer within thirty (30) days of seizure, the government of Guam
13 shall pay a penalty of ten percent (10%) of the replacement value of the item
14 seized on the date of seizure plus the cost of shipping.”