

**5 GCA GOVERNMENT OPERATIONS
CH. 6 GOVERNMENT CLAIMS ACT**

**CHAPTER 6
GOVERNMENT CLAIMS ACT**

SOURCE: The Government Claims Act was added to the Government Code of Guam by P.L. 03-078 (June 29, 1956), as Chapter 6 of Title VII, and originally entitled “Claims Against the Government of Guam.” The entire chapter was repealed and added by P.L. 09-175 (March 14, 1968 and by P.L. 17-029:1 (Nov. 9, 1983). The entire chapter was codified as part of Title 5 GCA during or after the 17th Guam Legislature.

NOTE: Unless otherwise specified, the Comments found in this Chapter are the original Comments included in P.L. 17-029 and published in the Session Laws of the 17th Guam Legislature and have been retained in this Chapter as part of the legislative history.

- Article 1. Scope and Definitions.
- Article 2. Procedure for Filing Claims and Actions.
- Article 3. Liability and Insurance.
- Article 4. Payments.

**ARTICLE 1
SCOPE AND DEFINITIONS**

- § 6101. Short Title.
- § 6102. Coverage of Chapter.
- § 6103. Definitions.
- § 6104. Exclusions.
- § 6105. Waiver of Immunity.
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- § 6107. Continuation of Law.
- § 6108. This Chapter Applicable to All Claims.

§ 6101. Short Title.

This Chapter shall be known as the Government Claims Act.

SOURCE: GC § 6500.00. Repealed and reenacted by P.L. 17-029:1 (Nov. 9, 1983). Codified as 5 GCA § 6101.

COMMENT: The name of this Chapter is unchanged since the fundamental purpose of this Act is to continue the policies of the former Chapter, but clarifying the relationship between the various government departments, line and autonomous agencies. Also, this Chapter will authorize insurance to be purchased for both the government and its employees. However, it is to be deemed a continuation of the old law, not a departure from it.

§ 6102. Coverage of Chapter.

This Chapter applies, except as provided in Section 6104 of the Chapter, to the entire government of Guam, as specifically stated herein. No government agency, whether denominated as a line department, an agency or a public corporation, is excluded from the scope of this Chapter. The fact that an agency or instrumentality has or has not the right to sue or to be sued in its own name does not exclude such agency or instrumentality from the scope of this Chapter. For purposes of this Chapter, reference to an 'autonomous agency' shall include public corporations, autonomous and semi-autonomous agencies, including the Antonio B. Won Pat International Airport, Guam; the Guam Telephone Authority (but only as to claims that do not arise from the activities of any private owner or operator of the Telephone Authority); the Guam Power Authority; the Guam Housing & Urban Renewal Authority; the Guam Housing Corporation; the Guam Economic Development and Commerce Authority; the Guam Memorial Hospital Authority; the University of Guam; the Jose D. Leon Guerrero Commercial Port; the Guam Community College; the Guam Waterworks Authority; the Government of Guam Retirement Fund; and the Guam Visitors Bureau.

SOURCE: GC § 6500.01. Repealed and reenacted by P.L. 17-029:1 (Nov. 9, 1983). Codified as 5 GCA § 6102. Amended by P.L. 27-142:6.

COMMENT: A number of law suits have been instituted against the Guam Memorial Hospital and the Guam Power Authority claiming exemption, in whole or in part, from the former Government Claims Act. No case has gone to appeal on this point. Existing law is extremely unclear. Section § 6500.19, as amended, of the former law indicates that the procedure of the Act should apply to all agencies, but payment be made from the accounts of the stated autonomous or semi-autonomous agencies. Yet the law of the individual agencies states that they may sue and be sued. The Superior Court, in some cases, has interpreted the latter as prevailing over the Claims Act, so as to give no sovereign immunity whatsoever to the autonomous agencies. This Section makes clear that this Act covers the entire government, with no exceptions.

2013 NOTE: This section was originally entitled, "*Waiver of Immunity.*" Repealed and reenacted by P.L. 17-029:1 (Nov. 9, 1983) as GC § 6500.04.

§ 6103. Definitions.

As used in this Chapter, the following words and phrases shall have the meaning stated herein, unless such meaning is clearly inapplicable in the context:

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(a) Government of Guam shall include all agencies, departments, instrumentalities, public corporations, and all other entities of the government, no matter how designated, and whether or not such agencies may sue or be sued in their own name.

(b) Chief Claims Officer means the Attorney General of Guam, and for the autonomous agencies the Attorney General shall designate as claims officers those persons so designated by the Board of such agency, or by its chief executive officer if there be no Board.

(c) Line Agency means any department, agency, or instrumentality of the Government of Guam which is funded by an annual appropriation from the Legislature. Such appropriations do not include subsidies.

(d) Autonomous agency means any department, agency, or instrumentality which generates, or is intended to generate, as evidenced in law, all of its own operating revenues apart from annual appropriations from the General Fund. Annual appropriations do not include amounts appropriated to line agencies to pay for services rendered by autonomous agencies. Subsidies appropriated from the General Fund to an autonomous agency, whether or not annually appropriated, shall not mean that an autonomous agency becomes a line agency for purposes of this Chapter.

(e) House Patient means a patient who presents themselves to Guam Memorial Hospital who does not have a private practitioner or who does not request and/or is unable to identify an accepting practitioner. For the purposes of the Government Claims Act and for Agent for Hospital Reimbursement, 'House Patient' designation is given to the care provided by agents of the hospital.

SOURCE: Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.02. Codified as 5 GCA § 6103. Subsection (e) added by P.L. 29-076:2 (May 9, 2008).

COMMENT: This section is added to define the terms that will be used in this Chapter. The organization of the Chapter will treat the line agencies separately from the autonomous agencies as far as payment is concerned, but unify the procedure by which claims may be made, so that a person does not have to face one procedure for a line agency and another for each autonomous agency.

§ 6104. Exclusions.

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This Chapter shall not apply to any claim pertaining to any tax refund, the Workers Compensation Law, or the Government of Guam Retirement Fund.

SOURCE: GC § 6500.02. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.03. Codified as 5 GCA § 6104.

COMMENT: Prior law is continued here. However, the Commercial Port is treated as any other autonomous agency under this Chapter.

§ 6105. Waiver of Immunity.

Pursuant to Section 3 of the Organic Act of Guam, the Government of Guam hereby waives immunity from suit, but only as hereinafter provided:

(a) for all expenses incurred in reliance upon a contract to which the Government of Guam is a party, but if the contract has been substantially completed, expectation damages may be awarded;

(b) for claims in tort, arising from the negligent acts of its employees acting for and at the direction of the government of Guam, even though occurring in an activity to which private persons do not engage. For the purposes of this chapter, any officer or enlisted person of the Guam National Guard on territorial duty or any nursing student acting for and at the direction of the University of Guam or of the Guam Community College shall be deemed an employee of the government.

(c) The Government of Guam shall not be liable for claims arising from an exercise of discretion in making policy.

SOURCE: GC § 6500.01 as amended by P.L. 14-050. Subsection (b) amended by P.L. 16-018 (June 5, 1981). Added by P.L. 17-029:1 (Nov. 9, 1983) as GC § 6500.04. Subsection (b) amended by P.L. 21-137:1 (Sept. 29, 1992). Codified as 5 GCA § 6105.

CROSS-REFERENCES: See 9 GCA § 80.93 for a declaration of absolute immunity from claims by persons who are serving in a community service program as a part of a criminal sentence.

COMMENT: Again, this Section is continued from prior law, but the source of its authority, the Organic Act, is emphasized. Some suits have, unsuccessfully, tried to challenge this law on the basis of various state court rulings. However, those states do not have the constitutional equivalent of § 3 of the Organic Act. This Section emphasizes the law for clarity. It cannot create or amend the Organic Act.

§ 6106. Limitations on Actions and Filing.

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(a) All claims under this Act must be filed within 18 months from the date the claim arose, but any claims timely filed under the predecessor of this Act shall be considered to have been timely filed under this Chapter.

(b) Every action filed under this Chapter shall be barred unless commenced within 18 months from the time the notice that the claim was rejected was served as provided in Article 2 of this Chapter, or within 24 months after the claim was filed in cases where the government does not reject the claim.

SOURCE: GC § 6500.05 (as to subsection (a)) and § 6500.21 (as to subsection (b)). Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.05. Codified as 5 GCA § 6106.

COMMENT: The 15th Guam Legislature amended the limitations applicable to this Chapter to be equivalent to the limitations applicable to actions in general. However, that amendment failed to address the issue of time of filing a claim as it relates to filing an action on a rejected claim. These two limitations are closely related, both for the government and for the claimant. Therefore, this section takes a middle ground, giving the claimant 18 months from the time the claim arose to file his claim and another 18 months after the claim was rejected or 24 months after the claim was filed in cases where the government takes no action on his claim. This gives both parties a reasonable and certain time within which to file both claims and actions against all government entities.

§ 6107. Continuation of Law.

This Chapter shall be deemed a continuation of the former law so far as sections of the former law are continued unamended. No claim which accrued under the former law shall be increased, lessened, or extinguished by any provision of this law, but if the claim has not been filed or suit commenced, the procedures provided in Article 2 and the methods of payment prescribed in Article 4 shall apply to said claim. Sections of the former Government Claims Act amended by this Chapter shall be deemed amendments only and not new enactments.

SOURCE: Added by P.L. 17-029:1 (Nov. 9, 1983) as GC § 6500.06. Codified as 5 GCA § 6107.

COMMENT: This section makes clear that this Chapter merely amends and clarifies the former law. The basic philosophy of the former Government Claims Act is not changed.

§ 6108. This Chapter Applicable to All Claims.

This Chapter shall apply to all pending litigation in the courts of Guam, or which are on appeal, which were commenced without first filing an administrative claim as would be required by this Chapter had it applied at

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the time the suit was filed. If such pending litigation was timely filed under the laws existing at the time of filing, the plaintiffs may, notwithstanding § 6106 of this Chapter, file a claim under this Chapter, but such claims shall not be filed later than June 30, 1984, or not later than six months after the effective date of this Chapter, whichever is later.

SOURCE: Added by P.L. 17-029 (Nov. 9, 1983) as GC § 6500.07. Codified as 5 GCA § 6107.

1986 NOTE: According to the Compiler's Notes, this section was added by the Legislature after the Second Reading of the bill.

The purpose of this section is to take all suits then filed against the various autonomous agencies out of the courts, no matter where in the process they were, and restart them in the manner prescribed by this Chapter. There was considerable opinion in the Legislature at the time of passage that the court opinions declaring that no sovereign immunity existed in the affected autonomous agencies was wrong, and should not be allowed to continue. This section deprives the courts of jurisdiction in those pending cases, mostly against the Guam Memorial Hospital Authority, but permits the claims to go forward under this Chapter.

**ARTICLE 2
PROCEDURE FOR FILING CLAIMS AND ACTIONS**

- § 6201. Procedure for Filing Claims.
- § 6202. Claim to be Signed and Verified.
- § 6203. Investigations.
- § 6204. Ancillary Powers of Claims Officer.
- § 6205. Hearing.
- § 6206. Settlement of Claim Before Action.
- § 6207. False Swearing.
- § 6208. Action Against the Government.
- § 6208.1. Rejecting a Claim.
- § 6208.2. Outside Adjuster Authorized.
- § 6209. Procedure in Court.
- § 6210. Settlement of Suit.
- § 6211. Appeals.
- § 6212. Limitation on Proceedings.
- § 6213. Limitation on Awards in Actions.

§ 6201. Procedure for Filing Claims.

All claims shall be filed in duplicate with the Claims Officers responsible for the department or agency against which the claim is made. Each claim shall contain the following information:

(a) The complete name and address of the claimant. If the claimant should change his address, or retain an attorney to whom all notices should be sent after filing the claim, he shall file an amendment to the claim, so stating the changes. If no amendment is filed, all notices sent to the address stated in the claim shall be deemed properly sent and served. Notice, if sent by mail, shall be return receipt, certified or registered mail.

(b) The amount of damage or other relief claimed.

(c) A concise statement of the facts upon which the claim is made, including the time, place and other circumstances and the department or agency or fund of the government of Guam that is concerned.

(d) A copy of any contract or other instrument in writing upon which the claim is based.

(e) A statement of whether or not the claimant has received any payment on account of such claim, and if so, the amount received.

(f) A statement whether or not any third person has any interest in the claim, and if so, the name and address of such person having such interest and the nature of such interest.

(g) If the claimant is an executor, administrator, guardian, or other representative appointed by a judicial tribunal, a duly certified copy of the record of appointment.

(h) A statement as to whether or not the claimant has any insurance covering the damage alleged to have been suffered by him or her, and of any payments, if any, he or she has received from such insurance carrier.

SOURCE: GC § 6500.03. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.10. Codified as 5 GCA § 6201. Amended by P.L. 27-142:2.

COMMENT: With the aim of separating the claims of autonomous agencies from those of line agencies, and from the Claims Fund, this section requires that claims filed be filed with the Claims Officer of the agency against whom the claim is

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made. This separates the filing of claims against autonomous agencies from the Attorney General, who is responsible for all line agencies and is their Claims Officer. From the time of the claim is filed with the autonomous agency until its settlement, only the autonomous agency will be involved, unless, of course, the government of Guam is also a party.

§ 6202. Claim to be Signed and Verified.

All claims filed pursuant to this Chapter shall be signed by the claimant, his agent or his legal guardian, and verified by him, or may be signed as being under the penalties prescribed for perjury.

SOURCE: GC § 6500.04. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.11. Codified as 5 GCA § 6202.

CROSS-REFERENCES: 9 GCA § 52.10(f)(2) [Penalties for Perjury]. Also, 6 GCA § 4208 regarding the form for unsworn declarations.

COMMENT: (1) The first words of this Section are changed to “All claims” to show that this Section refers to claims made both to the Attorney General and to the Claims Officers of the appropriate autonomous agencies.

(2) The claims made may be either sworn to before a Notary Public or signed “under the penalty for perjury” as permitted by the Criminal Code (9 GCA § 52.10(f)(2)). This should eliminate one unnecessary bit of red tape for claimants.

§ 6203. Investigations.

The Claims Officer shall cause each claim received by him to be investigated to determine its merits.

SOURCE: GC § 6500.06. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.12. Codified as 5 GCA § 6203.

COMMENT: The modification is to refer to “Claims Officers.” Thus, the Attorney General investigates claims received by him against the line agencies. Each Claims Officer within his own autonomous agency will investigate claims made against that agency. If, and when, he refers the claim to an attorney for evaluation, he will do so according to the practice of the agency involved and will give it to the attorney responsible for that agency, whether it be the Attorney General or a private attorney.

§ 6204. Ancillary Powers of Claims Officer.

In making his investigation, the Claims Officer, or person designated by him within the agency, shall have the authority to administer oaths to claimants and witnesses, and to require the production of any books, records or documents that may be material or relative as evidence in connection with the claim.

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SOURCE: GC § 6500.07. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.13. Codified as 5 GCA § 6204.

§ 6205. Hearing.

The Claims Officer, or a person designated by him, may, at his discretion, conduct a formal hearing in connection with the investigation of any claim.

SOURCE: GC § 6500.09. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.14. Codified as 5 GCA § 6205.

§ 6206. Settlement of Claim Before Action.

(a) The Attorney General, subject to the approval of *I Maga'lahaen Guåhan* for settlements of over Fifteen Thousand Dollars (\$15,000.00) for a claim for damages to a motor vehicle incurred in an accident involving the motor vehicle of the claimant filed exclusively pursuant to § 6105(b), where the aggregate of the claim for the motor vehicle of the claimant, not including any claim, or any portion of the claim, for personal injury, is for less than Fifteen Thousand Dollars (\$15,000.00); and Three Thousand Dollars (\$3,000.00) for all other claims, may settle for money damages any claim against a line agency or autonomous agency under this Chapter. The Attorney General may recommend other relief, if appropriate.

(b) In the case of autonomous agencies, the Claims Officer, subject to the approval of the Board, the Attorney General and *I Maga'lahaen Guåhan*, or if there be no Board, the highest official of such agency, the Attorney General and *I Maga'lahaen Guåhan* for settlements of over Fifteen Thousand Dollars (\$15,000.00) for a claim for damages to a motor vehicle incurred in an accident involving the motor vehicle of the claimant filed exclusively pursuant to § 6105(b), where the aggregate of the claim for the motor vehicle of the claimant, not including any claim, or any portion of the claim, for personal injury, is for less than Fifteen Thousand Dollars (\$15,000.00); and Three Thousand Dollars (\$3,000.00) for all other claims, may settle for money damages any claim filed against said agency under this Chapter. The Attorney General may recommend other relief as may be appropriate.

(c) Settlement of any claims concerning the government of Guam *shall not* be sealed and *shall* be open to public inspection. The Attorney General or the attorney for the agency *shall* send a copy of each

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settlement to the Speaker of *I Liheslaturan Guåhan* within five (5) days of approval by *I Maga'lahen Guåhan*.

(d) Approved settlements shall not be subject to fiscal year limitations on the authority of government agencies to make full payments in resolution of a claim.

SOURCE: GC § 6500.10. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.15. Codified as 5 GCA § 6206. Amended by P.L. 25-130:2 (May 22, 2000). Subsection (c) added by P.L. 32-076:2 (Nov. 27, 2013). Subsection (d) added by P.L. 33-185:22 (Sept. 10, 2016).

COMMENT: This Section separates the line agencies from the autonomous agencies as far as settlement goes. Subsection (a) continues the procedure, with amendments, as is now law with respect to the line agencies. Subsection (b) follows the same procedure, but makes the approving authority the governing board of the autonomous agency as well as the Attorney General and the Governor.

The dollar limit in former law has been eliminated from this Section. There is no reason, particularly with inflation and court awards being as high as they are, for such a limitation, especially when the approval of the Governor is required for all settlements above \$3,000. Approval by the governing board is required for the settlement of autonomous agency claims as well as the Attorney General and the Governor. We should not encourage court suits by such limitation when litigation could be avoided.

1986 NOTE: (Original) This section separates the line agencies from the autonomous agencies as far as settlement goes. Subsection (a) continues the former procedure, with amendments. Subsection (b) follows the same procedure with respect to autonomous agencies, but adds their board or chief officer as an approving authority for settlements of over \$3,000.

Former law, with a short exception, provided that the Attorney General could approve settlements only if they were under \$3,000. This section retains the limit of \$3,000 for the Attorney General or Claims Officer acting alone, but permits greater settlements with the approval of the Governor, in the case of line agencies, and the Board or chief officer, Attorney General and Governor in the case of autonomous agencies. This should encourage settlements before court suits, but keep the policy makers aware of the settlement and permit them to bring other policy considerations into the larger settlements. We should not encourage suits where settlement is possible.

Settlements involving other than money may not be approved by the Attorney General or Claims Officer, but only recommended to those having the power to make the necessary agreements. Neither Attorney General, nor the individual Claims Officer has authority to bind other departments, or even the director of the agency involved to make changes in policy or procedure.

§ 6207. False Swearing.

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All claimants and witnesses concerning any claim under this Chapter are subject to the penalties and provisions of Chapter 52 of Title 9 Guam Code Annotated with respect to false swearing and perjury.

SOURCE: GC § 6500.08. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.16. Codified as 5 GCA § 6207.

§ 6208. Action Against the Government.

A claimant may institute an action in contract or tort, for money damages only, against the government of Guam in the event the claim is made against a line agency, or against the specific agency involved in the event the claim is made against an autonomous agency, in the Superior Court of Guam, provided that:

(a) The claimant has been notified by registered or certified mail, return receipt requested, that his claim has been rejected in whole or in part; or

(b) Thirty (30) calendar days have elapsed since the date of filing a claim for damages to a motor vehicle incurred in an accident involving the motor vehicle of the claimant filed exclusively pursuant to § 6105(b), where the aggregate of the claim for the motor vehicle of the claimant, not including any claim, or any portion of the claim, for personal injury, is for less than Fifteen Thousand Dollars (\$15,000.00); or six (6) months have elapsed since the date of filing any other claim with the Claims Officer.

SOURCE: GC § 6500.11. Added by P.L. 17-029:1(Nov. 9, 1983) as § 6500.17. Codified as 5 GCA § 6208. Subsection (b) amended by P.L. 25-130:3.

COMMENT: There have been questions as to whether the government of Guam, as an entity, may be sued when an autonomous agency is the one against whom the claim is filed. This Section clears up that doubt by making it clear that such is not the case.

Subsection (a) has been modernized to reflect current mail practices. See also 1 GCA §717.

Subsection (b) continues the former time limit. A proposal would reduce this limit to two months. However, testimony on that proposal was opposed as two months is not sufficient time to complete a complex investigation.

§ 6208.1. Rejecting a Claim.

When a government Claims Officer rejects a claim pursuant to § 6208(a), the notice of rejection shall set forth the grounds therefore,

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including the findings of fact, the legal basis relied on for such denial, and any investigative reports reviewed by the Claims Officer or initiated by that office during the pendency of the investigative period

SOURCE: Added by P.L. 25-130:4.

§ 6208.2. Outside Adjuster Authorized.

For the purposes of this Chapter, the Attorney General is hereby authorized to contract with a licensed insurance claims adjuster, or with various insurance claims adjusters on a rotating basis to assist in assessing the value of claims filed pursuant to this Chapter.

SOURCE: Added by P.L. 25-130:5.

§ 6209. Procedure in Court.

All actions brought under this Chapter shall be governed by the law and rules of procedure of the Superior Court of Guam. Service of process shall be made upon the Claims Officer and upon the Attorney General. Trial shall be without a jury.

SOURCE: GC § 6500.14 and § 6500.15. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.18. Codified as 5 GCA § 6209.

COMMENT: Service of process is required to be made on both the Claims Officer and the Attorney General. Obviously, if the Attorney General is the Claims Officer for the agency involved, only one service need be made. However, where such is not the case, the Attorney General, having cognizance over all legal matters concerning the government of Guam, must be made aware of all suits against the government, or any of its parts, as soon as possible. Waiting upon delivery by the affected agency could lose, and has lost under prior law, valuable time and sometimes money.

§ 6210. Settlement of Suit.

(a) Subject to the approval of the court in which the case is pending, the Attorney General is authorized to settle a suit at any time before final judgment; *provided*, that if government funds are to be paid in excess of the balance in the Government Claims Fund, an appropriation for that purpose or authorization to transfer resources of the government for that purpose *shall* have been previously authorized by law.

(b) In the case of autonomous agencies, the attorney representing such agency is authorized to settle a suit against the agency he represents subject to the approval of the governing board of the agency, or if no board exists, to the approval of the chief executive officer of said agency.

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(c) Settlement of any claims concerning the government of Guam *shall not* be sealed and *shall* be open for public inspection. A copy of each settlement *shall* be sent to the Speaker of *I Liheslaturan Guåhan*.

SOURCE: GC § 6500.17. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.19. Codified as 5 GCA § 6210. Subsection (a) amended by P.L. 32-076:3 (Nov. 27, 2013). Subsection (c) added by P.L. 32-076:3 (Nov. 27, 2013).

COMMENT: This Section notes the difference between line and autonomous agencies and their legal representation. If a law should be passed making the Attorney General the legal representative of such agencies, this Section would still apply, as it recognizes the semi-independent character of these agencies.

§ 6211. Appeals.

Judgments shall be subject to review on appeal in the same manner and to the same extent as other judgments of the Superior Court of Guam.

SOURCE: GC § 6500.18. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.20. Codified as 5 GCA § 6211.

§ 6212. Limitation on Proceedings.

(a) The filing of a suit under this Chapter against the government of Guam or against any specific entity thereof shall suspend any proceedings against individual employees alleged to be liable in the same action until such time as the suit against the government of Guam or against any specific entity thereof has been brought to final judgment.

(b) Settlement of a claim before suit, or final judgment in a suit filed under this Chapter shall bar the claimant from any further proceedings against the employee or employees whose acts or omissions gave rise to the claim unless:

(1) the Court finds that the employee was acting outside the scope of his employment; or

(2) the Court certifies that it would have awarded the claimant more but for the limitations of § 6301 of this Chapter.

(c) Satisfaction of a settlement with or of a judgment against an employee of the government shall constitute a forfeiture by the claimant of all rights against the government by reason of the same subject matter.

SOURCE: GC § 6500.20. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.21. Codified as 5 GCA § 6212.

§ 6213. Limitations on Awards in Actions.

No action shall be instituted, nor judgment granted, for a sum in excess of the amount of the claim presented to the Claims Officer, unless the increased amount of the claim is shown to be based upon new evidence not reasonably discoverable at the time the claim was filed with the Claims Officer.

SOURCE: GC § 6500.12. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.22. Codified as 5 GCA § 6213.

ARTICLE 3
LIABILITY AND INSURANCE

- § 6301. Maximum Limits of Governmental Liability.
- § 6302. Limitations on Contract Obligations.
- § 6303. Insurance Authorized.
- § 6304. Insurance for Government Employees.

§ 6301. Maximum Limits of Governmental Liability.

(a) In all cases, neither line agencies nor autonomous agencies nor the government of Guam shall be liable for interest prior to the date of judgment, nor for any punitive damages, nor for attorney's fees of the claimant; provided, that attorney's fees may be awarded a successful claimant as part of a final court judgment if the court finds that suit was filed only because the government of Guam failed to act upon the claim before the expiration of the time specified in § 6208(b) of this Chapter and such failure resulted from failure to investigate the claim.

(b) The government of Guam, in the case of line agencies, shall be liable in tort for not more than \$100,000 in an action for wrongful death, nor for more than \$300,000 in any other tort action.

(c) Each autonomous agency shall be liable for torts committed by it for not more than the amounts stated in subsection (b), above.

(d) (1) In the case of the Guam Memorial Hospital Authority, it shall also be liable in tort, not to exceed the limits stated in subsection (b), above, for damages arising from negligent acts of Government Health Professionals performed within facilities

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operated by said Authority as agents of the government of Guam at the request of the Government or performed at the private medical facility of a private physician acting as a Government Health Professional for follow up care to a house patient limited to specific treatment for the condition(s) medically diagnosed by the physician or the Emergency Room physician while treating House Patients at the Guam Memorial Hospital. Government Health Professionals shall be considered agents of the government of Guam within the meaning of §6212 of this Chapter.

(2) Government Health Professionals performing services in government facilities other than those operated by the Guam Memorial Hospital Authority shall be considered agents of the line department or autonomous agency they serve.

(3) A Government Health Professional is any person who is licensed or certified to practice a healing art in Guam and

(A) is practicing that art within a government of Guam facility as an agent of the government of Guam; or

(B) performing follow up care to a House Patient within a private medical facility, which follow up care is limited to specific treatment for the condition(s) medically diagnosed by the physician or the Emergency Room physician while treating the House Patient at the Guam Memorial Hospital.

(4) Government Health Professionals, including independent contractors serving as agents of the government and government employees covered under the provisions of the Government Claims Act, shall not be liable for more than the amount stated in Subsection (b). Any award against the government employer as herein provided bars further award from the Health Professional or the government employee in the same cause of action for injuries arising out of the same acts or omissions unless:

(A) to the extent that any liability of the government of Guam or all other government agencies, (including, but not limited to, all instrumentalities, autonomous agencies, semiautonomous agencies, public corporations), is covered by a policy or policies of insurance, the government waives the limitation of liability found in Title 5 of the Guam Code

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Annotated, §6301; provided, that the government shall not be liable in damages for tort in any amount which exceeds the coverage of insurance and the limitation of liability contained in 5 GCA §6213; or

(B) the Court finds that the agent or the government employee was acting outside the scope of her/his employment.

SOURCE: GC § 6500.13 as amended by P.L. 13-116 (Dec. 24, 1975). Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.30. Codified as 5 GCA § 6301. Subsection (d)(4) added by P.L. 24-080:2. Subsection (d) amended by P.L. 29-076:3 (May 9, 2008).

2013 NOTE: Pursuant to the authority granted by 1 GCA § 1606, numbers and/or letters in subsections (d) (3) and (4) were altered to adhere to the Compiler's alpha-numeric scheme.

COMMENT: GC § 6500.13 became permanent law in the 14th Guam Legislature. It is continued here in its existing form modified to suit the format of this Chapter. Since the Guam Memorial Hospital is an autonomous agency, it must be treated differently than the Department of Public Health and Social Services, which is a line agency. Also, Government Health Professionals may be acting as agents of the government through other line agencies.

This Section also clears up a number of difficulties that have arisen in suits over the years, but never resolved on appeal. Thus, it is clear that the government is liable, as a government, only for the obligations of line agencies. The autonomous agencies are liable for their own torts. For contract obligations see § 6500.31.

The rationale for providing the same limitations for all of the government is that, unlike private parties, the government has a continuing responsibility for the whole people of Guam. One or two suits cannot defeat the rationale for the government's existence by so depleting the treasury that the government cannot function. A similar rationale applies to the Hospital, the Telephone and Power Authorities, and any other such autonomous agencies as the Legislature may see fit to create.

The tort limitations are raised to take into account inflation, increased court awards and the needs of the victims of the torts.

1986 NOTE: The reference in this section as published in P.L. 17-029 to § 6500.5 is a typographical error. As enacted, § 6500.05 has nothing to do with the time in which the government may investigate a claim. That limit of six months is found in § 6500.17 of P.L. 17-029 and, accordingly, § 6208(b) of this Chapter.

§ 6302. Limitations on Contract Obligations.

Each autonomous and line agency shall be liable for its own contract obligations. Payments pursuant to this Section shall be paid from the funds certified for payment of the contract pursuant to the

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budget of the agency or appropriation against which the contract claim is made.

SOURCE: Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.31. Codified as 5 GCA § 6301. Amended by P.L. 27-142:3.

COMMENT: At least one claimant has argued, unsuccessfully, that the government of Guam can be jointly liable with an autonomous agency under the former chapter. Such was never the intent of the Legislature, but the former law was at least doubtful on the point. See *Aetna Life Ins. Co. v. Guam Memorial Hospital Authority and Government of Guam*, 1 Guam R. 592 (1979).

§ 6303. Insurance Authorized.

(a) The government of Guam may use any funds authorized for general operations to purchase liability insurance to cover the liabilities incurred by it under this Chapter or under any other law of Guam or of the United States. Such insurance may cover the government as a whole, or any part, department, line agency, or autonomous agency, as appropriate under the circumstances.

(b) The government of Guam may use any funds authorized for general operations to purchase property insurance to cover the loss, for any reason and by any cause, incurred by the government, or by any appropriate line agency or autonomous agency, of any property owned by the government. Any monies recovered pursuant to this subsection shall be used for the repair or replacement of the facilities insured, and if the facilities are not to be repaired or replaced, then the funds shall be deposited in the General Fund. Such insurance coverage may cover the general government or any appropriate portion, agency, autonomous agency or specific facility thereof.

(c) The authority given by this Section shall be in addition to any authority for the purchase of insurance given by any other law of Guam.

(d) No insurance company writing insurance pursuant to this Section shall have a defense of sovereign immunity if sued directly by a claimant unless the government, itself, would have such a defense.

SOURCE: Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.32. Codified as 5 GCA § 6303.

COMMENT: Under an old Attorney General's Opinion (pre-1970), the government cannot purchase any insurance unless specifically authorized by law. This Section provides that authorization, both for liability and for property insurance. The lack of this section caused much argument and delay, and even potential loss of funds, after Typhoon Pamela when one requirement of the federal

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relief funds for construction was that the finished construction be adequately covered by insurance against typhoon damage. Guam is “self-insured”, but only barely so and not really self-insured as there is no fund created nor means of replacing damaged property other than by general appropriation. This section provides a means by which claims of the government can be paid promptly.

§ 6304. Insurance for Government Employees.

The government of Guam and each of the autonomous agencies is authorized to purchase insurance, if advisable and available, to cover the liability of government employees which they may incur pursuant to § 6212 of this Chapter, unless such liability is incurred for acts or omissions which occurred outside the scope of the employees’ employment. The authority granted by this Section shall be in addition to any other grant of authority contained in any law of Guam or of the United States. Each agency, department, or entity purchasing such insurance shall have the discretion to determine what dollar limitations are reasonable considering the positions to be covered and the risks involved.

SOURCE: Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.33. Codified as 5 GCA § 6304.

COMMENT: Ever since the adoption of the first Government Claims Act, government employees have been liable for any amount of tort damages in excess of the limitations placed on judgments against the government of Guam. Until recently, this problem has been negligible. However, with damage awards and grounds for suit increasing, the employees have become increasingly vulnerable. The Legislature has recognized this with respect to false arrest insurance for police. The Guam Federation of Teachers has recognized this with respect to its membership. This section recognizes the fact with respect to all government employees.

Note that the coverage is only for liability incurred by this Chapter. If an employee becomes liable for something that is done outside the scope of his employment, then this Chapter provides no protection nor does it govern the liability incurred.

**ARTICLE 4
PAYMENTS**

- § 6401. Claims Fund Created.
- § 6402. Payments for Line Agency Obligations.
- § 6403. Autonomous Agency Operating Funds Available.

§ 6404. Budgeting for Claims.

§ 6401. Claims Fund Created.

(a) Creation. The Government Claims Fund is hereby created and established as an account which shall be separately identified and maintained by the Department of Administration. It shall consist of such funds as have been appropriated by *I Liheslatura*, for the purpose of paying tort claims pursuant to this Chapter and unspent on the effective date of this Chapter, and such appropriations made for this purpose thereafter.

(b) Upon the settlement of any claim by the Attorney General, or final judgment in any action under this Chapter, the Attorney General *shall* designate which line agency incurred the liability, which requires payment, and whether the liability arose under tort or contract. A report of settlements or judgments in any action under this Chapter *shall* be made to the Speaker of *I Liheslaturan Guåhan* every thirty (30) days.

(c) Records of the Department of Administration. The Department of Administration shall keep records of amounts paid out of the Government Claims Fund under the provisions of this Chapter on behalf of each line agency. This record shall be based on the designations as to agency and legal basis, the latter being made pursuant to subsection (b) of this Section.

SOURCE: Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.40. Codified as 5 GCA § 6401. Subsection (a) amended by P.L. 27-142:4. Subsection (b) amended by P.L. 32-076:4 (Nov. 27, 2013).

§ 6402. Payments for Line Agency Obligations.

(a) The Director of Administration shall pay from the Government Claims Fund for tort claims made against any line agency of the government, or the government of Guam in general, in order of the date of approved settlement or final judgment. In the event funds are insufficient to fully pay a claim, the claim shall be paid pro rata until the total claim is paid in full. All tort payments under this Chapter not made on account of the liability of autonomous agencies shall be made out of the Government Claims Fund only.

(b) Payments pursuant to Subsection (a) of Section 6105 of Article 1 of Chapter 6 of Division 1 of Title 5, Guam Code Annotated, shall be paid from the funds certified for payment of the contract pursuant to the

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budget of the agency or appropriation against which the contract claim is made.

(c) Payments pursuant to Subsection (b) of Section 6105 of Article 1 of Chapter 6 of Division 1 of Title 5, Guam Code Annotated, shall be paid from the Government Claims Fund.

(d) Compensation for back wages shall come from the employee's agency's personnel budget and not from the Government Claims Fund.

SOURCE: GC § 6500.19. Added by P.L. 17-029:1 (Nov. 9, 1983) as § 6500.41. Codified as 5 GCA § 6402. Amended by P.L. 27-142:5.

§ 6403. Autonomous Agency Operating Funds Available.

Each autonomous agency shall pay the amount claimed under this Chapter in order of the date of approved settlement or final judgment from its own operating funds not specifically restricted by any other Guam or United States law or from applicable insurance proceeds.

SOURCE: Added by P.L. 17-029:1 (Nov. 9, 1983) as GC § 6500.42. Codified as 5 GCA § 6403. Amended by P.L. 27-142:7.

§ 6404. Budgeting for Claims.

(a) The annual budget recommendations for governmental operations transmitted from the Governor to the Legislature, or the annual budget of each autonomous agency, shall include an amount for each agency, line or autonomous, as the case may be, for payment of claims made pursuant to this Chapter and generated by the activities of such agency. The amount shall be at least equal to the arithmetic average of amounts paid out of the Government Claims Fund, or operating fund, as the case may be, on behalf of such line or autonomous agency, as determined and recorded by the Department of Administration, or by the autonomous agency, for the three fiscal years immediately preceding the year in which the recommendation is being made. The amounts requested may be decreased by the amount of insurance coverage purchased and in force.

(b) The first such budget request shall be made for the fiscal year following passage of this Chapter. [FY 1985]

(c) Between the passage of this Chapter [Dec. 8, 1983] and Fiscal Year 1985, the budget recommendation required by this Section shall be based upon the amounts paid in claim settlements or judgments on behalf of each line agency during the preceding fiscal year.

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(d) Certificates Authorized for COLA Settlement.

(1) The Government of Guam shall finally and permanently implement the settlement agreement entered into between the Government of Guam and the COLA Class as ordered by the Judgment in *Rios v. Camacho*, Superior Court Case No. SP0206-93. *I Liheslatura* acknowledges, adopts, and affirms the government's obligation to immediately pay all monies due and ordered by said Judgment and the Stipulation and Order of November 21, 2006.

(2) To expedite payment to COLA claimants in *Rios v. Camacho*, and in addition to any other available remedies, the Director of Administration shall issue to each COLA Awardee, within thirty (30) calendar days after enactment hereof, a serial Certificate of Claim stating the amount due the awardee, excluding attorney's fees and costs, but including such terms as would affect the redeemable value of the Certificate, such as the rate of interest on undisputed unpaid government claims of seven percent (7%) per annum calculated from date of settlement, that the Certificate is renewable, and confirmation that the entire amount paid upon redemption shall be exempt from any and all Guam taxes. Plaintiffs' Attorneys in the *Rios* case may request and receive a Certificate for no more than fifty percent (50%) of the amount owed them pursuant to the Judgment. The Director of Administration shall inscribe on the Certificates only those names of awardees and corresponding amounts provided by the Guam Retirement Fund, minus attorney's fees and costs, and shall create and retain a list of Certificates issued. The Director of Administration may request that the Guam Retirement Fund assist in the disbursement of Certificates to claimants, their successors and assignees.

(3) Any person who willfully fails to perform a ministerial duty to prepare or issue Certificates of Claim in a timely manner as directed herein, shall be personally liable for the reasonable attorney's fees and costs incurred by claimants to legally compel performance.

(4) Said Certificates are evidence of amounts payable by the government of Guam, and are valid until redeemed or replaced by a Certificate issued to a registered successor as subsequently provided

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in this Section. Certificates may be sold, transferred or assigned to a third party. Any transferee or of a claimant shall have the same rights as said claimant when the government disburses payments pursuant to the judgment in Superior Court Case No. SP0206-93. The holder must surrender the Certificate to receive payment of the award it represents. If a Certificate is not redeemed by the end of a fiscal year, it shall be reissued to the owner upon demand. Upon the sale, assignment or transfer of a Certificate of Claim, the purchaser, assignee or transferee may register said sale, assignment or transfer with the Department of Administration. The first person to register a sale, assignment or transfer shall have a superior right against all subsequently registered claims to the Certificate and shall be substituted by the Superior Court in place of the claimant in *Rios v. Camacho*, Superior Court Case No. SP0206-93.

(5) Nothing in this Subsection restricts or eliminates any legal remedies available to COLA claimants as obligees of the *Rios* Judgment, including the remedies provided by Title 5 GCA § 22415.

(e) Sale of Certificates of Claim in whole or part as General Obligation Promissory Notes.

(1) Authorization to Borrow. *I Maga'låhen Guåhan* is authorized to issue General Obligation Promissory Notes (the "Notes") not to exceed the total amount of all outstanding and unredeemed Certificates of Claim issued to "COLA" Awardees in reference to Superior Court Case No. SP0206-93 and as authorized in Title 5 GCA § 6404(d). The Notes shall be general obligations of the government of Guam secured by the full faith and credit of the government of Guam. *I Maga'låhen Guåhan* shall within sixty (60) days after the enactment of this Act issue a Request for Proposal for the sale of the general obligation promissory notes authorized herein.

(2) Terms and Conditions. The terms and conditions of the Notes shall be as determined by *I Maga'låhen Guåhan*; provided that the notes:

(A) shall not be secured by a pledge of Section 30 revenues;

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(B) shall be redeemed in full, including accrued interest within twenty (20) years or thereafter automatically convert to Certificates of Claim subject to the terms and conditions defined in 5 GCA § 6404(d);

(C) shall bear interest at such fixed or variable rate or rates as may be negotiated by *I Maga'låhen Guåhan* in the best interests of the government, such interest rate shall not exceed eight percent (8%) and shall be computed on a three-hundred sixty-five (365) day calendar year upon the actual amount issued by the government of Guam.

(3) Sale of Promissory Notes.

(A) Sale of the Notes shall be in denominations no less than Five Thousand Dollars (\$5,000.00);

(B) Investor purchase quantity shall not be limited;

(C) Investor access to purchase of the Notes shall be in the following order of priority:

(i) the Government of Guam Retirement Fund;

(ii) residents of Guam;

(iii) banks or other financial institutions licensed to conduct business on Guam;

(iv) other entities licensed to conduct business on Guam;

(v) all other interested institutions as determined by *I Maga'låhen Guåhan*.

(4) Use of Proceeds From the Sale of the Notes. The proceeds from the sale of the Notes shall only be used and are hereby appropriated to redeem and pay outstanding Certificates of Claims issued to COLA awardees in Superior Court Case No. SP0206-93.

(5) Approval by the Guam Economic Development Authority. Notes authorized in this section shall not be sold until the Board of Directors of the Guam Economic Development Authority approves the terms and conditions of the Note sale.

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(6) Approval of Voters Not Required. The Notes shall not be subject to the approval of voters of Guam.

(7) Continuing Annual Appropriation of Principal and Interest. Effective October 1, 2011 and each October 1 thereafter, there is hereby appropriated sums from the General Fund required for all payments of principal and interest based on a maturity schedule to repay any general obligation promissory notes authorized in § 6404(e)(1). This annual appropriation shall be a continuing appropriation and shall not lapse at the end of the fiscal year. In addition to any funds specifically appropriated by this Act, all moneys received from any other source as contributions or supplements for repayment of the notes established in this Act, and any interest or income earned, shall be paid into a Fund established for repayment and shall be a continuing appropriation.

SOURCE: Added by P.L. 17-029:1 (Nov. 9, 1983) as GC § 6500.43.. Codified as 5 GCA § 6404. Subsection (d) added by P.L. 29-018:2 (Sept. 24, 2007). Subsection (e) added by P.L. 30-239:4 (Jan. 20, 2011).
