

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
RESOLUTION STATUS

Resolution No.	Sponsor	Title	Date Intro	Date of Presentation	Date Adopted	Date Referred	Referred to	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
62-34 (COR)	FRANK B. AGUON JR.	Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts Of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.	03/20/17 8:27 a.m.							

I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUAHAN
2017 (FIRST) Regular Session

Resolution No. 62-34(002)

Introduced by:

FRANK B. AGUON, JR.

**RELATIVE TO AUTHORIZING THE LEGISLATIVE
COUNSEL, OR OTHER RETAINED COUNSEL, TO
APPLY FOR AND FILE AN *AMICUS CURIAE* BRIEF
BEFORE THE SUPERIOR AND SUPREME COURTS OF
GUAM AFFIRMING THE GUAM LEGISLATURE'S
POSITION RELATIVE TO SOVEREIGN IMMUNITY
AND THE UPHOLDING OF GUAM LAW.**

2017 MAR 20 AM 8:27

1 **BE IT RESOLVED BY *I MINA'TRENTAI KUATTRO NA***
2 ***LIHESLATURAN GUAHAN:***

3 **WHEREAS, *I Liheslatura*** affirmed and asserted in Section 2 of Public 26-28
4 that the Port Authority of Guam be given the authority “to enter into a commercial lease,
5 or issue a permit or license for the use of its real property and other related facilities for
6 a *term* not to exceed five (5) years;” and

7 **WHEREAS,** on December 14, 2001, Guam YTK Corporation (“YTK”) and the
8 Port Authority of Guam (“Port”) signed a Development Agreement and Lease (“Lease
9 Agreement”) to develop and manage a state of the art fisheries facility at Hotel Wharf;
10 and

11 **WHEREAS,** the term of the Lease Agreement was for an initial term of five (5)
12 years with automatic options to renew for eight (8) consecutive five-year terms for a
13 total lease term of forty-five (45) years;

14 **WHEREAS,** the Lease Agreement with the Port exceeded the five-year
15 maximum the Legislature set in Public Law 26-28; and

1 **WHEREAS**, Port counsel, in 2011, advised the Port that the Lease Agreement
2 was expired and terminated as a matter of law and was void; and

3 **WHEREAS**, on October 16, 2012, YTK Filed a Complaint to Compel
4 Arbitration in the Superior Court of Guam bearing Superior Court of Guam Civil Case
5 No. CV 1170-12; and

6 **WHEREAS**, on December 12, 2012, the Superior Court of Guam heard oral
7 arguments on YTK’s Motion to Compel Arbitration; and

8 **WHEREAS**, on March 12, 2013, Honorable Anita A. Sukola, Judge of the
9 Superior Court of Guam issued a Decision and Order in CV 1170-12, denying YTK’s
10 Motion to Compel Arbitration. The Superior Court found that the Government Claims
11 Act was a jurisdictional bar to YTK’s claims against the Port; that the Lease Agreement
12 with the Port was in violation of law because the lease term exceeded the five-year
13 maximum permitted by law; that because the Lease Agreement was in violation of law,
14 it was unenforceable; and that the Government Claims Act was YTK’s exclusive
15 remedy; and

16 **WHEREAS**, following the Superior Court’s March 12, 2013 Decision and
17 Order, YTK filed an appeal to the Guam Supreme Court seeking to compel the Port into
18 arbitration; and

19 **WHEREAS**, on April 17, 2014, the Guam Supreme Court reversed the Superior
20 Court’s denial of YTK’s Motion to Compel Arbitration, finding that the trial court
21 should have focused on the issue of whether the arbitration agreement itself—instead
22 of the Lease Agreement as a whole—was valid and enforceable. The Supreme Court
23 remanded the matter to the Superior Court to compel arbitration; and

24 **WHEREAS**, in its April 17, 2014 Opinion, the Supreme Court also found that
25 sovereign immunity is not implicated or threatened in cases where a valid and

1 enforceable arbitration agreement exists, and further found that YTK’s claims were not
2 barred by sovereign immunity or the Government Claims Act; and

3 **WHEREAS**, on April 4, 2016, the arbitration panel issued its Arbitration Award,
4 concluding that PAG’s notice to terminate the Lease Agreement on July 30, 2008 was
5 invalid. The panel terminated YTK’s Lease Agreement with the Port, effective April 4,
6 2016, awarding \$12.7 Million to YTK plus ten percent (10%) interest per annum on the
7 unpaid balance of the Award; \$1,257,852 million in attorney fees; and \$137,788.28 in
8 costs; and

9 **WHEREAS**, on December 29, 2016, the Superior Court confirmed YTK’s \$12.7
10 million arbitration award and announced that the Court will adhere to the Supreme
11 Court’s mandate that “courts may not review the merits of the controversy, the validity
12 of the arbitrator's reasoning, or the correctness of the arbitration award”; and

13 **WHEREAS**, on December 29, 2016, the Court did not find Section 2 of Guam
14 Public Law 26-28 to be “well defined, explicit, and clearly applicable” under the
15 manifest disregard of the law standard for vacating an arbitration award, concluding
16 that “the Guam Legislature has not provided further clarity as to the policy behind the
17 statute”; and

18 **WHEREAS**, *Ilheslatura* finds that it necessary to register its position regarding
19 Public Law 26-28 through an *amicus curiae* brief to provide its position and policy
20 behind the statute; and

21 **WHEREAS**, in the same case the Supreme Court highlighted that the Organic
22 Act provides that there is no question that the Government of Guam possesses inherent
23 sovereign immunity from suit without its consent pursuant to the Organic Act; and that
24 the Organic Act is not subservient to the laws made by the Legislature but it grants the
25 Legislature the power to waive sovereign immunity as it sees fit; and

1 **WHEREAS**, *I Liheslatura* finds that it has specifically provided a limited waiver
2 of the Government of Guam’s sovereign immunity through the Government Claims Act
3 (“Claims Act”) pursuant to 5 GCA § 6101 *et. seq.*; however, the same waiver of
4 sovereign immunity is not provided in Guam’s arbitration laws; and

5 **WHEREAS**, *I Liheslatura* finds that it must assert its position regarding its
6 limited waiver of sovereign immunity; and

7 **WHEREAS**, *I Liheslatura* finds the need to protect a vital and intrinsic power
8 retained by the legislative branch of government, specifically its exclusive authority to
9 waive the Government of Guam’s sovereign immunity; and

10 **WHEREAS**, by applying for and filing an *amicus curiae* brief before the
11 Superior and Supreme Courts of Guam regarding the specific rulings on Public Law 26-
12 28 and the Courts’ findings that the Guam Legislature waived sovereign immunity to
13 an extent greater than is contained in the Government Claims Act, it is the intent of *I*
14 *Mina'Trentai Kuåttro Na Liheslaturan Guåhan* that the Courts of Guam and all
15 applicable government agencies interpret the relevant statutes in line with *I*
16 *Liheslaturan Guåhan*’s clear mandates contained therein; now, therefore, be it

17 **RESOLVED**, that *I Mina 'Trentai Kuåttro Na Liheslaturan Guåhan* does hereby,
18 on behalf of *I Liheslaturan Guåhan* and the people of Guam, authorize the Legislative
19 Legal Counsel, or other retained counsel, to apply for and file an *amicus curiae* brief
20 before the Superior and Supreme Courts of Guam affirming the Guam Legislature’s
21 position relative to sovereign immunity and the upholding of Guam law; and be it
22 further

23 **RESOLVED**, that the Speaker and the Legislative Secretary attest to the
24 adoption hereof, and that copies of the same be thereafter transmitted to the Honorable
25 Elizabeth Barrett-Anderson, Attorney General of Guam; and to the Honorable Edward
26 J.B. Calvo, *I Maga'lahen Guåhan*.

DULY AND REGULARLY ADOPTED BY *I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN* ON THE _____TH DAY OF _____.