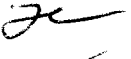





I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (First) Regular Session

Bill No. 279-31 (cor)

Introduced by:

T.C. Ada 
R.J. Respicio 
A.B. Palacios, Sr. 

AN ACT TO AMEND 11 GCA §§26403, 26404, 26203(K)(21) AND 26504; TO ADD §26403.1 AND §26403.2 TO 11 GCA CHAPTER 26; TO AMEND 10 GCA CHAPTER 45; TO ADD §40105.1 TO 5 GCA CHAPTER 40; TO AMEND 10 GCA §67105.1; TO ADD §77135 TO 10 GCA CHAPTER 77; TO ADD §72109 TO 10 GCA CHAPTER 72, RELATIVE TO ELIMINATING THE TAX EXEMPTION ON LIQUID FUEL TRANSSHIPPED THROUGH GUAM, AND TO APPROPRIATE REVENUES TO THE GUAM ENVIRONMENTAL PROTECTION AGENCY, MAYORS COUNCIL OF GUAM, OFFICE OF VETERANS AFFAIRS, GUAM POLICE DEPARTMENT AND GUAM FIRE DEPARTMENT.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that approximately Twenty-Six Million (26,000,000) gallons of liquid
4 fuel are transferred annually from petroleum storage facilities in Guam to
5 distribution points outside of Guam. Fuel to be transshipped is off-loaded at
6 the Port of Guam, stored in the Distributor's storage tanks for a period of
7 time, and later back-loaded onto smaller fuel tankers for distribution
8 throughout the Micronesian region. It is estimated that elimination of the tax
9 exemption on liquid fuels exported from Guam may generate as much as
10 Two Million dollars (\$2,000,000) annually.

1 *I Liheslatura* further finds that the handling of hazardous materials
2 (i.e. liquid fuel) exposes Guam’s environment to risks. Recent spills in the
3 Gulf of Mexico and along the Great Barrier Reef highlight the significance
4 of such threats. A similar accidental fuel leak, even on a far smaller scale,
5 would pose a substantial and costly impact to our terrestrial and marine
6 environment. There is also local precedent for such environmental concerns
7 due to spill incidents in Guam, such as the GORCO oil spill of 1980 that
8 severely impacted the Laguas Mangroves, and the more recent violations of
9 the Clean Air Act involving a \$2.4M civil suit filed by the US
10 Environmental Protection Agency against a local liquid fuel distributor for
11 noncompliance of performance and emission standards for hazardous air
12 pollutants at their bulk storage terminal. Although Guam’s environment
13 bears this risk exposure during the period of transshipment (i.e. off-loading,
14 storage and back-loading, no fees or taxes are assessed on these exported
15 liquid fuel volumes to compensate for Guam’s exposure to the risk.

16 *I Liheslatura* recognizes that the island of Guam takes on a significant
17 risk in the transshipment of fuel, and as such, finds it prudent and necessary
18 to remove the fuel tax exemption granted by current law in order to generate
19 revenue to fund environmental protection efforts and other community
20 needs. It is therefore the intent of *I Liheslatura* to assess a risk mitigation
21 fee on all liquid fuel transferred for export from Guam. The revenue
22 generated from the assessment will be deposited into funds to be used
23 strictly by the Guam Environmental Protection Agency (GEPA), Mayors
24 Council of Guam, Office of Veterans Affairs, Guam Police and Guam Fire
25 Departments for environmental and community related projects as specified
26 below.

1 **Section 2.** §26404 of Chapter 26 of Title 11 Guam Code Annotated is
2 *amended* to read:

3 **§26404. Exemption from Levy Under §26402 and Special Rule**
4 **Regarding Drawbacks.** The following transfer of liquid fuel in Guam
5 made by a distributor shall be exempt from liquid fuel tax levied under
6 §26402:

7 (a) Liquid fuel transferred to ~~vessels engaged in commercial fishing~~
8 nonprofit fishing and agricultural cooperative associations legally
9 recognized by the Government of Guam or United States.

10 (b) Liquid fuel transferred to the United States Department of
11 Defense, or any agency or instrumentality thereof for its use or consumption.

12 (c) Liquid fuel transferred for aviation purposes and used solely in
13 aircraft under charter to the United States Department of Defense.

14 (d) Transfer of liquid fuel by an on-island distributor to another on-
15 island distributor for local transportation consumption.

16 (e) Transfer of liquid fuel to the Government of Guam or any of its
17 instrumentalities.

18 ~~(f) Transfer of liquid fuel to a point outside of Guam.~~

19 ~~(g)~~ (f) Net stock losses of less than one half of one percent (.5%) or
20 (.005) during the fiscal year of the taxpayer. In computing taxable or non-
21 taxable stock losses, any gross stock gains shall be off-set against any gross
22 stock losses in determining net stock losses for the purposes of assessing the
23 tax.

24 **Section 3.** §26403 of Chapter 26 of Title 11 Guam Code Annotated is
25 *amended* to read:

26 **§26403. Rates.** The following rates shall apply in computing,
27 assessing and collecting the liquid fuel tax:

1 (a) A tax at the rate of Ten Cents (\$0.10) per gallon on diesel fuel; and

2 (b) A tax at the rate of Eleven Cents (\$0.11) per gallon on all other
3 liquid fuel as defined herein except liquid fuel used for commercial aviation
4 purposes which is taxed at a rate of Four Cents (\$0.04) per gallon.

5 (c) A tax at the same rate as that of the liquid fuel tax charged in
6 accordance with §26403 (a) and (b) on liquid fuels transferred for export or
7 used by vessels engaged in commercial fishing, other than those belonging
8 to nonprofit fishing or agricultural cooperative associations legally
9 recognized by the Government of Guam or United States.

10 **Section 4.** §26403.1 is hereby *added* to Chapter 26, of Title 11 Guam
11 Code Annotated, and shall read:

12 **§26403.1 Tax Revenues from Exported Liquid Fuels.**

13 a. Thirty-five percent (35%) of revenues collected pursuant to
14 §26403(c) of Chapter 26 of Title 11 Guam Code Annotated
15 shall be deposited into the Guam Environmental Trust Fund, a
16 Fund established pursuant to §45200 of Chapter 45 of Title 10
17 Guam Code Annotated;

18 b. Twenty percent (20%) of revenues collected pursuant to
19 §26403(c) of Chapter 26 of Title 11 Guam Code Annotated
20 shall be deposited into the Mayors Council and Village Fund, a
21 Fund established pursuant to §40105.1 of Chapter 40 of Title 5
22 Guam Code Annotated;

23 c. Eleven percent (11%) of revenues collected pursuant to
24 §26403(c) of Chapter 26 of Title 11 Guam Code Annotated
25 shall be deposited into the Veterans Cemetery Trust Fund, a
26 fund established pursuant to §67105.1 of Chapter 67 of Title 10
27 Guam Code Annotated;

- 1 d. Seventeen percent (17%) of revenues collected pursuant to
2 §26403(c) of Chapter 26 of Title 11 Guam Code Annotated
3 shall be deposited into the Guam Police Department Vehicle
4 Preventative Maintenance Fund, a Fund established pursuant to
5 §77135 of Chapter 77 of Title 10 Guam Code Annotated; and
6 e. Seventeen Percent (17%) of revenues collected pursuant to
7 §26403(c) of Chapter 26 of Title 11 Guam Code Annotated
8 shall be deposited into the Guam Fire Department Vehicle
9 Preventative Maintenance Fund, a Fund established pursuant to
10 §72109 of Chapter 72 of Title 10 Guam Code Annotated.

11 **Section 5.** §26403.2 is hereby *added* to Chapter 26 of Title 11 Guam
12 Code Annotated, and shall read:

13 **§26403.2 Restriction of Tax Revenues from Exported Liquid Fuels.**

14 All revenues collected pursuant to §26403(c) or §26403.1 of Chapter
15 26 of Title 11 Guam Code Annotated shall not be subject to the
16 transfer authority of *I Maga'låhen Guåhan*, and shall not be used for
17 travel.

18 **Section 6.** Article 2 of Chapter 45 of Title 10 Guam Code Annotated
19 is hereby *amended to read*:

20 **ARTICLE 2**

21 **GUAM ENVIRONMENTAL TRUST FUND**

22 § 45200. Guam Environmental Trust Fund.

23 § 45201. Use of Funds and Keeping a Safe and Healthy Environment.

24 § 45202. Authorized Expenditure and Emergency Declaration

25 § 45203. Submission of Detailed Report of Expenditures on a Quarterly
26 Basis

27 **§ 45200. Guam Environmental Trust Fund.**

1 (a) There is hereby created, separate and apart from other funds of the
2 government of Guam, a fund known as the Guam Environmental Trust Fund
3 ('Fund'). The Fund *shall not* be commingled with the General Fund and
4 *shall* be kept in a separate bank account, ~~subject to legislative appropriation,~~
5 to be used by the Administrator of the Guam Environmental Protection
6 Agency ('Administrator') to fund enforcement and programs relative to the
7 prevention of environmental problems and promotion of keeping a safe and
8 healthy environment, and which is approved by the Board. The Fund shall
9 not lapse at the end of the fiscal year but shall rollover. Notwithstanding the
10 Central Accounting Act, revenue collected or received pursuant to
11 §26403.1(a) of Chapter 26 of Title 11 Guam Code Annotated shall be
12 deposited into the Fund. The Fund shall be kept in a bank licensed to do
13 business in Guam, and funds shall be paid out only upon a request for
14 payment or requisition submitted by the Administrator. ~~to clean up~~
15 ~~hazardous materials and restore and repair damage done to Guam's~~
16 ~~environment, as well as to collect, transport, process and dispose of~~
17 ~~household waste in accordance with the provisions of the Ordot Dump~~
18 ~~Consent Decree Supplemental Environmental Project (SEP).~~

19 (b) The Fund *shall* be financed by the collection of a two percent (2%)
20 assessment fee on all commercial and industrial liability insurance premiums
21 paid in Guam for the coverage of companies or individuals, and by revenues
22 collected pursuant to §26403.1(a) of Chapter 26 of Title 12 Guam Code
23 Annotated. Such assessment fees shall be collected from the insurance
24 companies providing such coverage on Guam and from companies who are
25 in the business of transferring liquid fuels such as diesel, gasoline, and jet
26 fuel.

27 (c) For purposes of this section, *commercial and industrial liability*

1 *insurance* is defined as liability or indemnity insurance against injury to
2 third persons, with the insured being engaged in commercial or industrial
3 activities within Guam, such activities being included in the definition of
4 *business and engaging in business* defined in §26101(a) of Title 11 Guam
5 Code Annotated.

6 (d) The Department of Revenue and Taxation (the *Department*) shall
7 collect such fees and transmit them to the Treasurer of Guam for deposit in
8 the Fund. The Department shall:

9 (i) Develop the necessary forms and instructions to be sent to all
10 insurance companies issuing commercial and industrial liability insurance.
11 Such forms and instructions shall direct these insurance companies to pay
12 the two percent (2%) assessment as a condition of continuing to do business
13 of Guam;

14 (ii) Act as the repository for the Fund for use by the Administrator
15 in carrying out the purpose of the Fund.

16 (e) The Administrator *shall* be the disbursing and certifying officer for
17 the Fund, and shall comply with the provisions of Chapter 14 of Title 46,
18 Guam Code Annotated. The Director of Administration shall maintain
19 appropriate records of the Fund and shall provide accounting and auditing
20 services for the Fund.

21 **§ 45201. Use of Funds and Keeping a Safe and Healthy Environment.**

22 a. Funds may be expended by GEPA for the following purposes or
23 programs:

- 24 1. Hazardous waste removal, recycling or mitigation; or
- 25 2. Solid Waste Management Program established by Public Law
26 24-304; or
- 27 3. Hazardous Waste Management Program established by

1 Public Law 24-304.

2 ~~Up to Twenty five percent (25%) of the funds in the Guam~~
3 ~~Environmental Trust Fund may be utilized by the Administrator of the~~
4 ~~Guam Environmental Protection Agency for programs relative to the~~
5 ~~prevention of environmental problems, and the promotion of keeping~~
6 ~~a safe and healthy environment.~~

7 **§ 45202. Authorized Expenditure and Emergency Declaration.**

8 Notwithstanding §45200(a) of this Chapter, the Administrator of the Guam
9 Environmental Protection Agency is hereby authorized to spend up to
10 Fifteen Thousand Dollars (\$15,000) ~~no more than Five Thousand Dollars~~
11 ~~(\$5,000.00)~~ for the purposes of assessment, cleaning up hazardous materials
12 and restoring and repairing damages done to the Guam environment per
13 declaration, without legislative appropriation; provided, that an Emergency
14 Declaration has been declared by *I Maga'lahaen Guåhan* [the Governor].

15 **§ 45203. Submission of Detailed Report of Expenditures on a Quarterly**
16 **Basis.**

17 The Administrator of the Guam Environmental Protection Agency *shall*
18 submit to *I Liheslaturan Guåhan* and *I Maga'lahaen Guåhan* a detailed report
19 of the expenditures of the Guam Environmental Trust Fund on a quarterly
20 basis.

21 **Section 7.** §40105.1 is hereby added to Chapter 40 of Title 5
22 Guam Code Annotated, and *shall* read:

23 **§40105.1 Mayors Council and Village Fund.**

- 24 a. There is hereby created, separate and apart from other funds of
25 the government of Guam, a fund known as the Mayors Council
26 and Village Fund ('Fund'). The Fund shall not be commingled
27 with the General Fund and shall be kept in a separate bank

1 account to be used by the Mayors Council. The Fund shall not
2 lapse at the end of the fiscal year but shall rollover.

3 Notwithstanding the Central Accounting Act, revenues received
4 or collected pursuant to §26403.1(b) of Chapter 26 of Title 11
5 Guam Code Annotated, shall be deposited into the Fund. The
6 Fund shall be kept in a bank account licensed to do business in
7 Guam, and funds shall be paid out only upon a request for
8 payment or requisition submitted by the Mayors Council.

9 b. Funds may be expended by the Mayors Council in support of
10 §§40112 (c), (d), (f), and (o), and §40113(a) of Chapter 40 of
11 Title 5 Guam Code Annotated.

12 **Section 8.** §67105.1 of Chapter 67 of Title 10 Guam Code Annotated
13 is hereby *amended* to read:

14 **§ 67105.1. Veterans Cemetery Trust Fund.**

15 a. The Veterans Cemetery Trust Fund is transferred from the
16 Guam Parks Commission to the Guam Veterans
17 Commission. Any money paid by the Federal government
18 to Guam in connection with the use of the cemetery and
19 revenue collected pursuant to §26403.1(c) of Chapter 26 of
20 Title 12 Guam Code Annotated shall be deposited in the
21 Veterans Cemetery Trust Fund ('Fund'), and used for the
22 maintenance of the cemetery and purposes specified below.
23 The Fund shall not be commingled with the General Fund
24 and shall be kept in a separate bank account to be used by
25 the Office of Veterans Affairs. The Fund shall not lapse at
26 the end of the fiscal year but shall rollover. Notwithstanding
27 the Central Accounting Act, revenue collected or received

1 pursuant to §26403.1(c) of Chapter 26 of Title 12 Guam
2 Code Annotated shall be deposited into the Fund. The Fund
3 shall be kept in a bank licensed to do business in Guam, and
4 funds shall be paid out only upon a request for payment or
5 requisition submitted by the Guam Veterans Commission.
6 Expenditures from the Fund shall be by direction of the
7 Guam Veterans Commission, which shall annually account
8 to *I Liheslaturan Guåhan* for the use of the Fund.

- 9 b. Expenditure of funds shall be for purposes related to the
10 improvement and maintenance of the cemetery, to include:
11 1. Purchase of required tools, equipment, meals for
12 volunteer maintenance workers, and supplies; and
13 2. Matching funds for competitive grants.

14 **Section 9.** §77135 is hereby *added* to Chapter 77 of Title 10 Guam
15 Code Annotated, and shall read:

16 **§77135 Guam Police Department Vehicle Preventative**
17 **Maintenance Fund.**

- 18 a. There is hereby created, separate and apart from other funds of
19 the government of Guam, a fund known as the Guam Police
20 Department Vehicle Preventative Maintenance Fund ('Fund').
21 The Fund shall not be commingled with the General Fund and
22 shall be kept in a separate bank account to be used by the Guam
23 Police Department. The Fund shall not lapse at the end of the
24 fiscal year but shall rollover. Notwithstanding the Central
25 Accounting Act, revenues received or collected pursuant to
26 §26403.1(d) of Chapter 26 of Title 11 Guam Code Annotated,
27 shall be deposited into the Fund. The Fund shall be kept in a

1 bank account licensed to do business in Guam, and funds shall be
2 paid out only upon a request for payment or requisition submitted
3 by the Guam Police Department Chief or his designee.

- 4 b. Funds shall be expended solely for performance of regularly
5 scheduled Preventative Maintenance on Guam Police Department
6 marked patrol cars and motorcycles in accordance with the
7 specifications recommended by the original equipment
8 manufacturer (OEM). Said Preventative Maintenance services
9 shall be outsourced to a private vendor.

10 **Section 10.** §72109 is hereby added to Chapter 72 of Title 10 Guam
11 Code Annotated, and shall read:

12 **§72109. Guam Fire Department Vehicle Preventative Maintenance**
13 **Fund.**

- 14 a. There is hereby created, separate and apart from other funds of
15 the government of Guam, a fund known as the Guam Fire
16 Department Vehicle Preventative Maintenance Fund ('Fund').
17 The Fund shall not be commingled with the General Fund and
18 shall be kept in a separate bank account to be used by the Guam
19 Fire Department. The Fund shall not lapse at the end of the
20 fiscal year but shall rollover. Notwithstanding the Central
21 Accounting Act, revenues received or collected pursuant to
22 §26403.1(e) of Chapter 26 of Title 11 Guam Code Annotated,
23 shall be deposited into the Fund. The Fund shall be kept in a
24 bank account licensed to do business in Guam, and funds shall be
25 paid out only upon a request for payment or requisition submitted
26 by the Guam Fire Department.
- 27 b. Funds shall be expended solely for the performance of regularly

1 scheduled Preventative Maintenance on Guam Fire Department
2 Advance Life Support vehicles, ambulances, sea rescue vehicles
3 and fire trucks motorcycles in accordance with the specifications
4 recommended by the original equipment manufacturer (OEM).
5 Said Preventative Maintenance services shall be outsourced to a
6 private vendor.

7 **Section 11.** §26203(k)(21) of Chapter 26 of Title 11 Guam Code
8 Annotated is *amended* as follows:

9 §26203(k)(21). Amounts received from the sale of liquid fuel
10 ~~vessels engaged in commercial fishing~~ transferred to nonprofit
11 fishing and agricultural cooperative associations legally
12 recognized by the Government of Guam or United States.

13 **Section 12.** §26504 of Chapter 26 of Title 11 Guam Code Annotated is
14 *amended* as follows:

15 §26504. Automotive Surcharges. The Automotive Surcharges levied
16 pursuant to §§26502 and 26503 of this Title *shall* not apply to liquid fuel
17 which is exempt from the liquid fuel tax and to liquid fuels transferred for
18 export from Guam under this Article 4. If any Automotive Surcharges is
19 levied pursuant to §§26501 and 26503 of this Title regarding liquid fuel
20 taxed pursuant to this Article 4, and a drawback of the liquid tax is allowed,
21 there *shall* be allowed a drawback of such Automotive Surcharges along
22 with the drawback of the liquid fuel tax.

23 **Section 13. Effective Date.** This Act *shall* become effective sixty
24 (60) days after enactment.

25 **Section 14. Severability.** If any of the provisions of this law or its
26 application to any person or circumstance is found to be invalid or contrary
27 to law, such invalidity *shall not* affect other provisions or applications of this

- 1 law which can be given effect without the invalid provisions or application,
- 2 and to this end the provisions of this law are severable.