



# COMMITTEE ON RULES

*I Mina'trentai Unu na Libeslaturan Guåhan* • The 31<sup>st</sup> Guam Legislature  
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2011 MAR 23 AM 8:33  
*[Handwritten signature]*

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March 22, 2011

MEMORANDUM

**To:** Patricia C. Santos  
*Clerk of the Legislature*

**From:** Senator Judith P. Guthertz, DPA  
*Acting Chairperson, Committee on Rules*

*[Handwritten initials]*

**Subject:** Written Testimonies -Bill No. 35-31 (COR) as Substituted

*Hafa Adai!*

Please attach the enclosed Written Testimonies for Bill No. 35-31 (COR) as Substituted to the Committee Report on Bill No. 35-31 (COR) as Substituted.

Please make the appropriate indication in your records; and forward to MIS for posting on our website.

*Si Yu'os ma'åse'!*

Leonardo M. Rapadas  
Attorney General



Phillip J. Tydingco  
Chief Deputy Attorney General

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## OFFICE OF THE ATTORNEY GENERAL

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March 14, 2011

Honorable Thomas C. Ada  
Chairman  
Committee on Utilities, Transportation, Public Works and Veterans Affairs  
Senator, Thirty-First Guam Legislature  
Suite 207, Ada Plaza Center  
173 Aspinall Ave.  
Hagatna, Guam 96910

Subject: **Bill 35-31 re: Guam Solid Waste Authority**

Dear Chairman Ada,

*Buenas yan Håfa Adai!* The Office of the Attorney General respectfully submits this written testimony on Bill 35-31 with regard to two issues.

We first observed that the proposed new Chapter 15 of Title 12 G.C.A. (that creates the Guam Solid Waste Authority) does not appear to include any provisions that address the statutory authority that Mayors' Offices have "to dump for free trash or debris at the Ordot dump, the Agat transfer station and any other permitted dump site operated by the Department of Public Works (DPW)." See 5 G.C.A. §40113(d). Although it is certainly a policy call to leave that matter alone for another day, we anticipate there may be a future dispute over whether the new Guam Solid Waste Authority as contemplated by Bill 35-31 can charge the Mayors' Offices' statutory authority to dump trash and debris that they have collected. The Guam Legislature may want to make certain that there is no inconsistency or ambiguity between these two laws.

The second issue concerns the hiring and compensation of the Guam Solid Waste Authority's attorney. On page 19 of Bill 35-31, subsection ( c ) of §15017 of Title 12 G.C.A. reads as follows:

( c ) Notwithstanding any other provisions of law, neither the General Manager, Assistant General Managers, Secretary, Chief Financial Officer, *nor Attorney* of the Authority shall be within the classified service of the government of Guam but shall be hired, compensated under the terms and conditions fixed by, and at the pleasure of the Board.

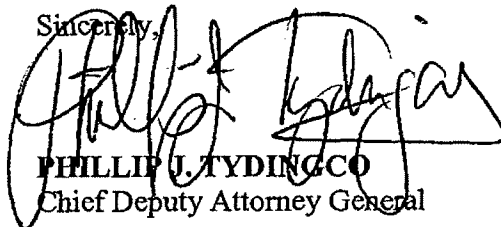
(emphasis added). This subsection of the bill indicates that the attorney for the Authority is not within the classified service. This raises the same issue that was before the court in *Haesuer v. Department of Law*, 97 F.3d 1152 (9th Cir. 1996). The *Haesuer* case provides that the Organic Act requires that government attorneys must be included within the merit system unless it is "impracticable" to do so.<sup>1</sup>

[A]lthough we do not micromanage Guam's civil service system, we must ensure that the legislature had a reasonable basis for concluding that it was impracticable to include assistant attorneys general within the classified system. Our inquiry is somewhat like rational basis review, (citation omitted) but stricter and more focused. The government cannot exempt a position from the merit system simply for some legitimate governmental purpose, (citation omitted), but only if it is "impracticable" to include the position within the merit system. If it is "practicable" to include the position within the merit system, the position must be included in the merit system. (citation omitted) Moreover, the government cannot rely on mere assertions as to the impracticability of including the position within the merit system. Rather, it must demonstrate-either in the legislative record or in the record before the court-that it is not practicable to include assistant attorneys general within the merit system. (citation omitted).

*Haesuer* at \*1157 (internal quotation marks for citing cases omitted). Hence, if it is "practicable," attorneys – not procured or hired under a contract – who are hired as regular government employees, must receive the same government benefits, including being subject to the same pay scale, as all government attorneys and must receive the same classified employee rights as all other government attorneys.

It is the recommendation of the Office of the Attorney General that the Legislature take into consideration the *Haesuer* case when considering this bill

Should you have any questions do not hesitate to contact me. *Dangkolo na Agradesimiento!*

Sincerely,  
  
**PHILLIP J. TYDINGCO**  
Chief Deputy Attorney General

cc: Hon. Leonardo M. Rapadas  
Attorney General of Guam  
Patrick Mason  
Deputy Attorney General (Civil/Solicitors Division)

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<sup>1</sup> This would not include attorneys who are under contract with the government and receive full payment for invoices submitted to the government, which invoices are based upon an hourly rate established by contract, and who receive no government benefits.



The Honorable  
**Eddie Baza Calvo**  
Governor

The Honorable  
**Ray Tenorio**  
Lieutenant Governor



**JOANNE M.S. BROWN**  
Acting Director

**CARL V. DOMINGUEZ**  
Deputy Director

March 17, 2011

The Honorable Thomas C. Ada, Chairperson  
Committee on Utilities, Transportation, Public Works and Veterans Affairs  
I Mina'trentai Unu Na Liheslaturan Guåhan  
Suite 207, Ada Plaza Center  
Hagåtña, Guam 96910

**Re: Bill No. 35-31**

Buenas yan Hafa Adai Senator Ada!

AT 03/18/11  
RECEIVED by the  
Office of Senator  
Thomas C. Ada

Thank you for permitting the Department of Public Works (DPW) an opportunity to present the following views and written testimony on the above referenced Bill.

For several decades the DPW has had the responsibility for collecting and disposing of residential trash and operating the island's only municipal solid waste disposal facility, the Ordot Dump. This responsibility was removed from the DPW in March, 2008, when the U.S. District Court of Guam appointed a solid waste management consultant, Gershman, Brickner & Bratton, Inc. (GBB), as Receiver to insure the government of Guam's compliance with the 2004 Consent Decree to close the Ordot Dump and open a new sanitized landfill. GBB occupies a two story building and a portion of DPW's compound in upper Tumon and has administrative oversight of approximately sixty-five DPW employees for its operations. Monthly payments for residential trash pick-up and tipping fees for disposal at the Ordot Dump are used by GBB to finance current solid waste disposal operations.

In response to Bill No. 35-31, DPW supports the creation of a Guam Solid Waste Authority (GSWA). We agree that to insure the future success for solid waste management on Guam would be best served with the existence of the Solid Waste Authority. This issue has been discussed for a number of years and was originally proposed in the Solid Waste Management Plan that was developed by Guam EPA to address the best alternatives for waste management.

We are in agreement with the most components of Bill No. 35-31, however, DPW recommends the governing of structure of the GSWA be placed under a Board of Directors appointed by the Governor of Guam, with confirmation of the members by *I Liheslaturan Guahan*, similar to the boards of directors of the Guam International Airport Authority (GIAA) and the Port Authority of Guam (PAG). This arrangement would be beneficial and preferable than governance by the Consolidated Commission on Utilities (CCU) as the CCU is already burdened with the important responsibility of two large utilities, the Guam Power Authority (GPA) and the Guam Waterworks Authority (GWA). DPW is of the

position that the operation of the new Layon landfill, closure of the Ordot Dump which is anticipated to take two years or more, the continued collection of residential trash, improved recycling programs and the impact to solid waste disposal due to the impending military buildup will require the utmost and full attention of a dedicated Board of Directors.

The DPW appreciates your forth sidedness and vision in introducing legislation that will address the transition process from the Solid Waste Receivership to returning the oversight of solid waste management to the governance of the people of Guam. We appreciate the opportunity to provide comment.

Si Yu'os Ma'ase',



JOANNE M. S. BROWN

cc: Speaker J.T. Won Pat  
Vice Speaker B.J. Cruz  
Senator Tina Muna-Barnes  
Senator Rory J. Respicio  
Senator Judith P. Guthertz  
Senator Vicente C. Pangelinan  
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Senator Mana Silva Taijeron  
Chrono