

I Mina'Trentai Dos Na Liheslaturan Received
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
281-32 (COR)	Chris M. Dueñas	AN ACT TO ADD A NEW SECTION 22401.2 TO ARTICLE 4, CHAPTER 22, OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM, THROUGH THE OFFICE OF THE GOVERNOR, TO RETAIN PROFESSIONALS TO PURSUE CLAIMS OF THE	2/21/14 2:05 p.m.	02/21/14	Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic	08/28/14 10:00 a.m.	9/26/14 11:12 a.m.	Fiscal Note Request 2/27/14 Fiscal Note Recd' 9/19/14



I Mina'trentai Dos na Liheslaturan Guåhan

32nd GUAM LEGISLATURE

Vice Speaker Benjamin J.F. Cruz, Acting Chairman

Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land

SEP 26 2014

2014 SEP 26 AM 11:12

The Honorable Judith T. Won Pat, Ed.D.

Speaker

I Mina'trentai Dos Na Liheslaturan Guåhan

155 Hesler Place

Hagåtña, Guam 96910

VIA: The Honorable Rory J. Respicio

Chairperson, Committee on Rules

RE: Committee Report on Bill No. 281-32 (COR), As Introduced

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on Bill 281-32 (COR), as introduced. "An Act to add a New Section 22401.2 to Article 4, Chapter 22, Title 5 of the Guam Code Annotated Relative to authorizing the Government of Guam, through the Office of the Governor, to retain professionals to pursue claims of the Government of Guam against third parties on a contingency fee basis, authorization to pay for same, and to appropriate to the Office of the Governor \$350,000 to pay for the costs and expenses (not fees) associated with bringing an action against the Federal Government for harms at the Ordot Dump" sponsored by Senator Chris Duenas which was referred to the Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land.

Committee votes are as follows:

0 TO PASS

0 NOT TO PASS

4 TO REPORT OUT ONLY

0 TO ABSTAIN

0 TO PLACE IN INACTIVE FILE

Sincerely,

Vice Speaker Benjamin J.F. Cruz
Acting Chairman

**COMMITTEE REPORT
ON**

Bill No. 281-32 (COR), As Introduced

Sponsored by Senator Chris Duenas

“An act to add a new Section 22401.2 to Article 4, Chapter 22, Title 5 of the Guam Code Annotated relative to authorizing the Government of Guam, through the Office of the Governor, to retain professionals to pursue claims of the Government of Guam against third parties on a contingency fee basis, authorization to pay for same, and to appropriate to the Office of the Governor \$350,000 to pay for the costs and expenses (not fees) associated with bringing an action against the Federal Government for harms at the Ordot Dump.”



I Mina'trentai Dos na Liheslaturan Guåhan

32nd GUAM LEGISLATURE

Vice Speaker Benjamin J.F. Cruz, Acting Chairman

Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land

SEP 26 2014

MEMORANDUM

To: All Members

Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land.

From: Vice Speaker Benjamin J.B. Cruz,
Acting Chairperson

Subject: Committee Report on Bill No. 281-32 (COR), As Introduced


Transmitted herewith for your consideration is the Committee Report on Bill No. 281-32 (COR), as introduced, "An Act to add a New Section 22401.2 to Article 4, Chapter 22, Title 5 of the Guam Code Annotated Relative to authorizing the Government of Guam, through the Office of the Governor, to retain professionals to pursue claims of the Government of Guam against third parties on a contingency fee basis, authorization to pay for same, and to appropriate to the Office of the Governor \$350,000 to pay for the costs and expenses (not fees) associated with bringing an action against the Federal Government for harms at the Ordot Dump", sponsored by Senator Chris Duenas.

This report includes the following:

1. Committee Voting Sheet
2. Committee Report Narrative
3. Copy of Bill No. 281-32 (COR), As Introduced
4. Public Hearing Sign-in Sheet
5. Copies of Written Testimonies
6. Copy of Fiscal Note
7. Copy of COR referral Bill No. 281-32 (COR)
8. Notices of Public Hearing
9. Copy of the Public Hearing Agenda

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



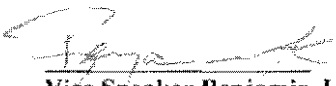



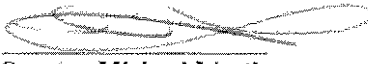
Vice Speaker Benjamin J.F. Cruz
Acting Chairman

I MINA' TRENTAI DOS NA LIHESLATURAN GUÅHAN

Committee Voting Sheet

Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land

Bill 281-32 (COR), as Introduced, "An act to add a new Section 22401.2 to Article 4, Chapter 22, Title 5 of the Guam Code Annotated relative to authorizing the Government of Guam, through the Office of the Governor, to retain professionals to pursue claims of the Government of Guam against third parties on a contingency fee basis, authorization to pay for same, and to appropriate to the Office of the Governor \$350,000 to pay for the costs and expenses (not fees) associated with bringing an action against the Federal Government for harms at the Ordot Dump."

Committee Members	To Pass	Not To Pass	Report Out Only	Abstain	Inactive File
 Vice Speaker Benjamin J. F. Cruz Acting Chairman					
 Speaker Judith T. Won Pat, Ed.D Member			9-26-14		
Senator Tina Rose Muña-Barnes Member					
Senator Dennis Rodriguez, Jr. Member			9-26-14		
 Senator Michael San Nicolas Member					
 Senator Michael Lintiaico Member			9/26/14 ✓		
Senator Tommy Morrison Member					



I Mina'trentai Dos na Liheslaturan Guåhan

32nd GUAM LEGISLATURE

Vice Speaker Benjamin J.F. Cruz, Acting Chairman

Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public
Parks, Recreation, Historic Preservation, and Land

Committee Report

Bill No. 281-32 (COR), An act to add a new Section 22401.2 to Article 4, Chapter 22, Title 5 of the Guam Code Annotated relative to authorizing the Government of Guam, through the Office of the Governor, to retain professionals to pursue claims of the Government of Guam against third parties on a contingency fee basis, authorization to pay for same, and to appropriate to the Office of the Governor \$350,000 to pay for the costs and expenses (not fees) associated with bringing an action against the Federal Government for harms at the Ordot Dump.

I. OVERVIEW

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land convened a public hearing on August 28, 2014 at 10:00 am in *I Liheslatura's* public hearing room.

Public Notice Requirements

Notices were disseminated via hand-delivery and e-mail to all senators and all main media broadcasting outlets and newspaper of general circulation on August 21, 2014 (5-Day Notice), and again on August 26, 2014 (48 Hour Notice).

(a) Committee Members and Senators Present

Vice Speaker Benjamin J. F. Cruz, Acting Chairman
Senator Frank B. Aguon, Jr.
Senator Thomas C. Ada
Senator Dennis G. Rodriguez, Jr.
Senator Chris Duenas
Senator V. Anthony (Tony) Ada

(b) Appearing before the Committee

Mr. Joe U. Garrido
Mr. Pat Mason, Deputy Attorney General, Office of the Attorney General
Mr. Arthur Clark, Chief Policy Advisor, Office of the Governor
Mr. Jonathan Denight, Interim Chairman, Guam Solid Waste Authority
Board

(c) Written Testimonies Submitted

Mr. J. Patrick Mason, Deputy Attorney General, Office of the Attorney General.

Ms. Claudia Acfalle, Chief Procurement Officer, General Services Agency
GSWA Board, Resolution No. 2014-01

II. COMMITTEE PROCEEDINGS

Chairman Benjamin Cruz: We will now here Bill 281-32, introduced by Senator Chris Duenas.

(a) Bill Sponsor Summary

Senator Duenas: Thank you very much, Mr. Chair. I just have a very short opening here. Thank you for hearing Bill 281-32, Mr. Chairman. I'd like to recognize the governor's office and a member of the Guam Solid Waste Authority (GSWA) Board for being here today. There was a resolution that was passed by the GSWA in support of the intent of this legislation, and this was done in collaboration with the governor's office. A little historical background – the Ordot Dump was built, owned and operated by the military for disposal of military waste prior to World War II up until 1950. After this it remained under the federal government and appointed federal administration up until 1970 when it was turned over to the government of Guam. Under federal law, there is a requirement that responsible parties contribute to cleanup in cases like the Ordot Dump. Other US states have successfully recovered costs before under this requirement. The USEPA has stated that the US Navy is a potential responsible party with respect to the environmental contamination of the Ordot Dump and the Comprehensive Environmental Response and Compensation and Liability Act (CERCLA) requires that responsible parties pay their fair share. I am looking forward to your feedback, the members who have signed up to testify, and remain open to modifying this legislation if need be, but clearly, the intent is to give authority to the people of Guam to seek the opportunity to receive funding and assistance to closing the Ordot Dump as related and outlined in federal policy. Thank you, Mr. Chairman.

Chairman Benjamin Cruz: Thank you very much. Also signed up to testify is Mr. Garrido, Joe? If it's ok with everybody, I'll have Mr. Clark speak first, then Mr. Denight, Mr. Mason, and then Mr. Garrido, because I think it will help us understand everything if we go in that order.

Mr. Clark: Thank you for the accommodation on the CLA; I would like to continue practicing law. I know Mr. Denight is...there is a Solid Waste Board meeting scheduled for 11 so he is on his way to the meeting. I would have no problems letting him go first.

Mr. Denight: My name is Jonathan Denight. I am the interim chairman for the Guam Solid Waste Authority (GSWA) Board and I am here to support Bill 281. As mentioned, the GSWA Board had issued a resolution in support of this measure. As it's been mentioned, it's been known to me that the Ordot facility was created by the US Navy and continued to be used by the US Navy after the second world war. I know that recently we had a tour of the Ordot Dump and it was mentioned to us that during the recent construction on the facility they found, if I'm not mistaken, the number has been 62 different incidents of finding of various ordnance in the dump, which we can possibly assume was disposed of there at some point after the second world war. We are in support of 281 and we feel that with the cost to close Ordot, definitely the government of Guam should pursue any venue it can to try and help alleviate the cost of Ordot Dump. Thank you.

Chairman Benjamin Cruz: I understand that you have to a board meeting to attend. Inasmuch as you are one of the very few boards that understand how legislation works and that a resolution is due from the board if they want something from that agency, please submit a copy of the resolution to us.

Mr. Denight: Ok, thank you.

Chairman Benjamin Cruz: Mr Clark?

Mr. Clark: Thank you, Mr. Vice Speaker. Of course, I am here to testify in favor of the bill, on behalf of the governor's office. We are all aware of the cost to close the Ordot Dump and open the Layon Landfill. Initially projected around \$200M, which the government went out and borrowed. Actually, now we are going to spend it all, and the end of the cost is nowhere in sight. So it's going to cost us a lot more, a lot more than what was predicted, a lot more than what was projected, a lot more than what was budgeted for. Short of our trash collection costs going up to exorbitant numbers, the only way I see that we are going to reduce the impact on the taxpayers and the ratepayers of Guam is we are going to have to go out and we're kind of past the point of trying to be able to curtail those costs, so we're going to have to find ways to bring in revenues to offset those costs. I think this is an action...well, the investigation into the action against the Navy and the Department of Defense is a potential claim is something that is long overdue. As Senator Duenas pointed out, it's well-documented that this was opened up as a Navy Dump and the Navy has dumped materials in there. Under the CERCLA, that makes them a potentially responsible party that would have some obligation to the cost to remediate the environmental hazards that are created by this site, which was placed on the Superfund sight. What happened was in 1988 as the Record of Decision came out; one recommendation was that it was premature to bring a CERCLA action against all responsible parties primarily because it was still an operating facility. But that facility has since stopped operating so it seemed to us that...and this ROD was produced by EPA, so it seems to us since it's stopped operating and that was one of the disabling factors that was considered. Apparently, we're not disabled anymore from pursuing this action. so that's why we took a serious interest in determining whether or not we should pursue this action. We have consulted with the Attorney General's Office on this point.

To be frank on the issue, the Attorney General's Office has done their own research. I know they have submitted a letter in response to the introduction of this bill, but as we've met with them, as they've put in the letter, their conclusion is that there's nothing that can be done. That's the conclusion that they have reached. That's what they relayed to us in a discussion. The concern that I have is that we're talking about two federal acts—the Clean Water Act and the CERCLA. We were sued under Clean Water, under Clean Water because the contamination from the facility that the government owned was getting into the water system on Guam. GovGuam became 100% responsible. Personally, I think that was a calculated decision by the federal government so that we would end up bearing the total cost, and then that cost would not have to be shared by other agencies of the federal government. The conclusion, as I've seen it from the Attorney General's Office, was when they came back and said that there's nothing that can be done, that was based upon a Clean Water Act assessment. And we've never disputed that. As a matter of fact, I remember when I was sitting in the Attorney General's Office meeting with Pat Mason and Kat Fokas, as I told them, there's a difference between Clean Water, and we were sued under Clean Water so that we'd absorb 100% of the cost. I remember Kat Fokas jumping up and down saying, "Exactly, exactly, that was right." We agree on that point. Where we diverge is whether or not we can bring a CERCLA action. The Attorney General's Office has concluded that a CERCLA action is not viable. No action against the military is viable. They have actually filed documents in court saying this much. I was surprised then to see the letter they sent to former Speaker Pangelinan, the late Senator Pangelinan, basically saying that they want to be in control of the litigation. My difficulty with that is that they have already opposed the idea. We have had very public disagreements with the Attorney General's Office over environmental issues, the Ordot Dump, in particular. We feel that the representation was sidetracked instead of the government of Guam being represented; it was the Receiver who was being represented. At least from our experience, there was a conflict there, and I think that conflict permeates even to this particular issue because they were asked by the Receiver, so he says, about this potential action, or whether they volunteered that information to them. So there was an alignment of positions relative to the Attorney General's Office and the Receiver that they would not pursue this action. So it became incumbent on the governor's office then to go out and take the necessary action to move this process forward. We have consulted with environmental law firm experts stateside and the conclusion we've got is, "Yes, this is still a viable action," so my concern is that given the opposition of the Attorney General's Office to pursuing this case, them now wanting to step in and take over the case, I don't see how that does not turn into a repeat of the former positions and former disagreements between the administration and the Attorney General's Office where they will dictate policy and they will try to control litigation pursuant to their interpretation of policy, contrary, in the prior instance, to where the administration felt policy should go. Again, we're already at a starting point where we know they are not in favor of the litigation or they've reached the conclusion that the litigation is not viable. I don't see how they then can work with a private law firm that we proposed engaging in order to try to combine this interest and direct this litigation. The firms, the AG being one of them, and a private firm working on this, I just don't see how they're not going to be pulled apart on this. And that you're going to have the Attorney General's Office again stepping trying to dictate the policy in

this situation and control the litigation. We just don't have confidence, based on research they've done, based upon court filings that they've submitted, based our history in regards to the Ordot Dump that they would actually be able to advance this case, where we see it needs to be advanced. Getting to the merits to the bill itself, as most of you know, I've made the rounds and I've talked to almost every senator sitting up here, on the merits of this case. I've advocated it before. We've presented a white paper that was presented to us by one of the environmental law firms. And their conclusion, this is a very well established law firm; we've talked to another one out of Chicago, another one out of the state of Washington. Everybody thinks, the experts in this field, thinks this is a viable case and this is something we should pursue. Now, as is often the case, these environmental experts probably wouldn't have given us a second thought if it was GovGuam suing somebody for illegal dumping in Yigo, for example. But because this is the Navy, the Department of Defense, and the US federal government, deep pockets and large damages, we've got everybody interested in this. As an attorney, a judge, you understand that the contingency component becomes a viable means to fund this. What that does is that that allows the government to join interest with law firms who are going to put themselves at risk, of course, they want compensation commensurate to that risk, but it protects us on the downside so that the idea was that the government itself wouldn't have to go out and fork out \$5M – \$3/4/5M in litigation costs. We see the potential recovery though in the tens of millions dollars. In that sense, it's a worthwhile investment, especially when there is not a lot of upfront money that needs to be put up by the government. That being said though, law firms on a contingency basis often don't fund the expenses that are incurred. In this particular case, we will need expert testimony, and there will be deposition costs, transcripts and filing costs and those kinds of incidental miscellaneous. But primarily it's the retention of experts and those guys will want to get paid. That's where we need that money upfront, in order to be able to absorb those costs and carry those costs so that the firm can contribute its labor, its manpower, its legal hours at no cost to the government and potentially recovered. Now, has anybody signed up to do this? Or have any of the firms said, "We like the contingency?" No, we haven't engaged in any of those discussions. But we believe this will be something that is attractive enough that we will get interest some pretty big hitters, law firms stateside, and that is what we need. If we are going up against the Department of Defense, that is what we need, and quite frankly, we don't need that strategy and that level of expertise being controlled at the Attorney General's Office, where they've acknowledged they lack the expertise in that area. I've seen the letter from the Attorney General's Office. You've got a single Attorney General admitting that she's spending many hours at night trying to teach herself environmental law. We need people who know environmental law to be in charge of this. I'm in favor of the bill; the governor's office is in favor of the bill. We would have some problems though with the revised version that was proposed by the Attorney General's Office.

Chairman Benjamin Cruz: Thank you very much, Mr. Clark. Mr. Mason?

Mr. Mason: Mr. Chairman, Senators, when I came I didn't really realize that this would be an attack on the Attorney General's Office and because we are not opposed to an action against the United States to help pay for the closure of Ordot, and also we are not

opposed to this bill, the intent of this bill. We are also not opposed to the fact that in these particular circumstances we believe that a contingency fee would be appropriate. At the AG's Office we've done some preliminary work on this and we've, for example, a law professor who has written books on environmental law and CERCLA, we specifically had conversations with that person. They're out of Florida. We've had conversations and emails between that person regarding a lawsuit like this to try and find out what the experts do thing about this, and we've consulted with the National Association of Attorney General's environmental lawyers about this to see what cause of actions might be available. We sent an Assistant Attorney General to a seminar on environmental law where that Attorney General specifically with the presenters raised these questions about CERCLA, the Superfund or possibly tort action for contribution against the federal government, just in order to find out what these people that are true experts think. We believe that, in fact, the government of Guam should seek a firm with real expertise in CERCLA, in federal litigation and tort litigation against the United States. As I said, we agree that a contingency fee in this circumstance is appropriate. The firm will obviously have to come from off-island to get the kind of expertise we're talking about. As was stated, the Attorney General's Office does not pretend like it is a high-powered expert in environmental law to bring this suit; however, the Attorney General's Office is the chief law enforcement officer of the government of Guam, and the fact that we would be involved, number one, in the procurement as was mentioned, this might be tens of millions of dollars, and we're always involved with procurements over \$500K. We're not trying to usurp policy and we're certainly not going to tell a stateside firm that's expert in this how to handle the case. But we do believe as the chief law enforcement officer, we should be the local law firm that files the pro hac vice application. For those of you that don't know what that is, that is where an off-island law firm comes in to appear in Guam courts and in a specific case you file an application and to assist the law firm in any way we can. As I said, we tried to get ourselves very educated in the background of this. That's the only thing we believe, is that in this situation, we should be involved as we always are on the up and up, in the procurement and now, we're not going to get involved in policy and we're not going to start telling experts what to do. And we also should be the local firm that files the pro hac vice that admits an expert firm into the courts of Guam. Really, that's our position. We do agree with this concept, totally.

Chairman Benjamin Cruz: Thank you very much. Mr. Garrido?

Mr. Garrido: Good morning, Mr. Vice Speaker and Chairman and all of you up there. My name is Joe Garrido, and in some of what I do in my work, there is some interpretation of what the federal law requires with regards to adverse effects on historic properties and the other agency, the Guam EPA would then be the one to interpret what adverse effect any federal action has on the environment. But these two agencies require assistance from attorneys because the people that are responding to your interpretation would be the legal expert from the federal government, who most of the time are able to win against us. The question that I have on this – I support this bill and move forward with it just to establish any district court ruling whether Guam is wrong in pursuing this or not. The amount of money that is going to be spent here really is a small amount to

the benefit that a finding in our favor would give Guam for many years and just to establish that we are right at least once. The question is, does the federal government have the legal and financial responsibility to mitigate adverse effects created by the Ordot Landfill, and to include Dandan? My answer to that, although these guys will tell me don't make that ruling because you're not an attorney, "yes, of course." Look into NEPA law; look into National Historic Preservation Act law, the CERCLA is there, and quite frankly, my position is that the USEPA is making the legal ruling on behalf of the District Court here on Guam. I know Senator BJ Cruz that your position is right on the head of that nail, but we always fall back because someone threatened us with contempt of court. I guess we can say that it doesn't take a rocket scientist to understand that in some degree the federal government should shoulder the burden in the cleanup of Ordot because they throw a lot of stuff in there. That's the reason why I support this bill. We should move forward with it, and this happens all the time and if Guam files a lawsuit against the federal government they're just really joining the bandwagon. It's not unique for a lawsuit in court against the federal government. The United States does it all the time. So let's not be afraid. We are just joining a lot of other states just to clear the matter up. I don't believe that Guam should shoulder over \$200M worth of costs to cleanup Ordot, establish the landfill and say that it's all our fault. Keep it short. There were actually two tests at Ordot Landfill – the first one showed a higher test result, the second showed a really low test result, but they chose the higher test results that was taken the first time to support the USEPA claim. All these facts and other things that I know personally I feel go with this bill because we have been placed under legal siege for a long time. Why? Because we have not been brave enough to open that door and say, "Hey, I got something to say." Let's find out.

Chairman Benjamin Cruz: Thank you.

Mr. Clark: Mr. Vice Speaker, I just have a response, if I could? Hiring a stateside law firm or hiring any law firm, they need to have a client, as you are well aware. They need to have somebody that makes the client decisions for them. My concern with the Attorney General inserting itself in this process after four years of, really, inaction and reaching the opposite conclusion is if they insert themselves, who will be the client? I can almost assuredly tell you that they are going to insist that they are the client and they are directing the actions of the law firm. I just want to read an Attorney General filing in the condemnation case back in September 2013. This is what the Attorney General's Office writes, "In documents filed in this case, the assertion has been made by the office of the governor that a claim for contribution against the United States exists in this case and that the Attorney General's Office has failed to pursue it. Over the last three years, the AGO has researched this issue extensively. The AGO consultant and expert on the mainland, Professor Robert Kundis Craig," now this is the expert to whom Mr. Mason is referring to as a CERCLA expert. "Prof. Craig is an environmental law professor at the Florida State University College of Tallahassee, Florida. Prof. Craig specializes in the Clean Water Act," not CERCLA; they're different areas, "and as the author of the Clean Water Act and the Constitution, and environmental law contexts and other review articles." She serves as Chair of the American Bar Association's Constitutional Law Committee. "Based on the AGO's research and consultation, it was concluded that the

government of Guam does not have a viable claim for contribution against the United States and the District Court.” If they’re talking about the Clean Water Act, we don’t disagree. “The AGO has also considered whether a separate claim may exist against the United States under the federal CERCLA statute and based on the available evidence, does not believe such a claim against the United States would be successful. The AGO is unaware of any other justifiable claims, which may exist against the United States, including under the federal torts act.” With that premise, being their starting premise, again we have hesitation to let them be in charge of the process going on here. The reason the governor’s office has initiated this and has worked with Senator Duenas to get this bill on the floor, frankly, has been because it has been four years of inaction by the Attorney General’s Office on this issue. So we had to get this process moving. We believe that as evidenced by the relative positions of the parties up to this point, the governor’s office really needs to be the one that controls the policy and the direction of this litigation. We just think that would be difficult to do with the position that the Attorney General’s Office has taken prior to their writing that letter.

Chairman Benjamin Cruz: Thank you. I’ll allow the author to be first and then if anybody else has any questions.

Senator Duenas: Disagreement can play itself out. I just wanted to put one thing on the record – ask a question to both legal representatives and then pursue if they have not seen this testimony, supporting testimony, as far as I’m concerned with regard to this bill. Months ago, Guam Power Authority made a presentation on all of their assets and other representations of what it is currently undertaking, and the statement made by the general manager was when asked about the assets in terms of the navy property and all of the assets sitting on it, they would not even pretty much put any of their equipment or enter that property until it was completely cleaned and ensured that there are no hazardous materials and there are no issues with regard to that property. And they cited CERCLA as the reason saying that if they were to move on that property—just as Mr. Garrido made a great point in terms of his research and what Historic Preservation does and all of the federal laws that are in place—that’s testimony on the record, are you aware of that. I can’t think of a better case that Guam could make that we even understand the federal law so clearly that we’re not going to get on that property and cause enjoinderment of millions of dollars of responsibility if we were to assume that property because that’s how we’re aware of CERCLA law and what it would cost the people of Guam even though we had no possession of that property during the entire time that it was a navy power plant. I pose that question and I ask that we put it on the record eventually for supporting documentation to this legislature.

Mr. Clark: The specific question then is?

Senator Duenas: Were you aware that this is GPA’s position from their management as testified to this legislature?

Mr. Clark: No, I hadn’t seen this testimony. But at the same, I think it’s prudent that we don’t continue a pattern of inheriting...I can’t even say it was inheriting because it

was really ours to begin with, wasn't it? But having returned to us, land to the people of Guam that has been contaminated by any third party with it being properly remediated and without there being some accounting for damages. We could go off on another tangent and talk about Tiyan for another hour [laughs].

Senator Duenas: I think we've got plenty of support. Thank you, Mr. Chairman.

Senator Tom Ada: I just have a question on this \$350K appropriation. I don't know how that was arrived at, how realistic is it that? How far is that going to take us? Is that going to take us to the courthouse? Or once we get \$350K, are going to need another \$350K and then another \$350K, so maybe you can just enlighten me about that amount?

Mr. Clark: The \$350K, in consultation with experts, but any lawyer will tell you they never make guarantees going into litigation. When I was in private practice I would have people come in and try and retain me for a case and it was prudent they ask and my response was usually, "If the demand letter takes care of it, it's this. If we have to go to settlement, it's this. If we have to go to litigations, it's this." And so, it really depends on the level of opposition, what's discovered initially too. What we really need to do is really need to get started on hiring the experts to really kind of direct us in this. Could that number go up? I can't sit here and say, "No, it won't go up, that that is going to be the cap." The investment needs to be analyzed by the client who's looking at the potential for return. I can assure you that anymore money going into it, if there's anymore required. That would really depend on a cost rewards analysis based upon the money that was spent up to that point, and the expert testimony and the research that has come in. We have, at this point, thus far actually, we've gotten lawyers to provide the legal testimony, or I mean, legal research for nothing. That's actually one thing I want to point out that was recommended by the Attorney General's. They actually want to use some of this money to pay for those lawyers to do the research. We've already gotten it done for free, and we would actually insist that any legal research be done for free. I see the bulk of the work that needs to get into this, to make that decision are we going to move forward with that litigation as being more legal than anything. And historical research—we need to do the historical research, but it's a lot of what happened in there, a lot of what got dumped in there is already historically established and so a lot of it is going to be the research. That money, the bulk of it is going to be getting the experts to show up in court to testify. I see that as money that will get us to the court doors and get us into the doors, quite frankly.

Senator Tom Ada: So the experts that you've at least consulted with have...you've just pointed out the three possible scenarios—just a simple demand letter to the other end of actually going into litigation. So it appears then that they've pretty much concluded that that's probably where we are going to be headed with this?

Chairman Benjamin Cruz: I think it probably should be made clear that you guys are talking about two different experts.

Mr. Clark: I'm talking about legal experts, not technical experts.

Chairman Benjamin Cruz: None of this money is going to be going to law firms. This is all going to researchers, technical experts on other issues as it relates to CERCLA...all the legal fees will be contingency related.

Mr. Clark: And all the experts we've consulted with to date are legal...well, that's the proposal. We have to put this out there and see what kinds of responses we get.

Chairman Benjamin Cruz: But very clearly on line 21, it says "Not for attorneys fees."

Mr. Clark: That's what the intent is, yes. I don't know if somebody comes back and proposes a hybrid and we have to bring it to the legislature's attention. But because of the limitations, we wanted to make sure we work with Senator Duenas, the limitations are pretty clear-cut so that it's not open-ended so that people need to be concerned about that. Again, the Attorney General proposed some of this money going to attorneys. We propose the opposite. We really wanted to start with the premise that none of this will go to the attorneys at all.

Chairman Benjamin Cruz: I just wanted to make that clear to the listening audience. Any other question? If not, I thank all three of you for testifying. And you can apologize to the Chief for jumping out in front of him. It was the governor's office that called me on this one.

Mr. Clark: Yes, thank you, sir.

Chairman Benjamin Cruz: Take it up with them.

This concludes the testimony on Bill No. 393-32 (COR). There being no additional individuals to present any additional testimony, this Committee will continue to remain open for the acceptance of any additional information or public testimony on the bill discussed. You can submit those testimonies to the office directly on Soledad Avenue, as well as the Guam Legislature or through any electronic email processes at cipo@guamlegislature.org

This hearing is adjourned.

III. FINDINGS & RECOMMENDATIONS

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land, hereby reports Bill No. 281-32 (COR) with the recommendation TO REPORT OUT ONLY

I MINATRENTAI DOS NA LIHESLATURAN GUAHAN
2014 (SECOND) Regular Session

Bill No. 281-32 (COR)

Introduced by:

Chris M. Duenas *CD*

AN ACT TO ADD A NEW SECTION 22401.2 TO ARTICLE 4, CHAPTER 22, OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM, THROUGH THE OFFICE OF THE GOVERNOR, TO RETAIN PROFESSIONALS TO PURSUE CLAIMS OF THE GOVERNMENT OF GUAM AGAINST THIRD PARTIES ON A CONTINGENCY FEE BASIS, AUTHORIZATION TO PAY FOR SAME, AND TO APPROPRIATE TO THE OFFICE OF THE GOVERNOR \$350,000 TO PAY FOR THE COSTS AND EXPENSES (NOT FEES) ASSOCIATED WITH BRINING AN ACTION AGAINST THE FEDERAL GOVERNMENT FOR HARMS AT THE ORDOT DUMP

2014 FEB 21 PM 2:05

Amended

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* hereby
2 recognizes that the government of Guam has possible claims against third parties,
3 including without limitation, the Federal Government, for tortious and unlawful conduct
4 and omissions, breaches of duty, violations of law, and damage and harm caused by such
5 parties to the government of Guam, the People of Guam, and/or our environment. *I*
6 *Liheslaturan Guahan* further finds that pursuing such claims can be time-consuming and
7 cost prohibitive and the government of Guam may not have the immediate funds and
8 resources available to pay for the fees and expenses associated with pursuing such claims,
9 although action on these claims could result in the recovery of tens of millions of dollars
10 and will help to prevent future unlawful conduct and activities. *I Liheslaturan Guahan*
11 further finds that pursuit of such claims requires the retention of professions with
12 specialized knowledge, experience, and resources. Accordingly, *I Liheslaturan Guahan*
13 finds that considering the importance and significance of pursuing such claims, the lack
14 of immediate funding, the recovery potential and the welfare of the Territory it may be
15 appropriate for the government of Guam to employ professionals and/or service providers
16 on a contingency fee basis so that the fees therefor would only be payable from the
17 recovery on such claims; recovery that will not exist if these claims are not pursued.

1 **Section 2.** A new section 22401.2 is hereby added to Article 4, Chapter 22 of Title 5 of
2 the Guam Code Annotated:

3 **Section 22401.2. Authorization and Appropriation for Contingency Fee**
4 **Agreements in Furtherance of Claims by the Government of Guam.**

5 (a) Authorization to Hire. The government of Guam, through the Office of the
6 Governor, is hereby authorized, subject to compliance with the applicable
7 Guam Procurement Law and Regulations, to retain qualified service providers
8 and/or professionals on a contingency fee basis to pursue claims of the
9 government of Guam against third parties, including, without limitation, the
10 Federal Government and its agents and contractors, for tortious and unlawful
11 conduct and omissions, breaches of duty, violations of law, breaches of
12 covenants and agreements and damage and harm caused by such third parties.

13 (b) Authorization to Pay for Fees. Notwithstanding any other provision of law,
14 the Office of the Governor is hereby authorized to use an amount not to
15 exceed thirty percent (30%) of any monies collected or recovered through the
16 efforts of such private service providers and/or professionals to pay for the
17 fees of such service providers and/or professionals.

18 **Section 3. Appropriation to Pay for Costs Associated with Bringing Action(s)**
19 **against the Federal Government for Harms at the Ordot Dump.** *I Liheslaturan*
20 *Guahan* hereby appropriates \$350,000 from the General Fund to pay for costs and
21 expenses (not attorneys' fees) incurred in the pursuit of claims against the Federal
22 Government for harms caused at the Ordot Dump. The Department of Administration is
23 directed to identify the fund source for this purpose.

24 **Section 4. Effective Date.** This Act shall become effective upon enactment.

25 **Section 5. Severability.** If any provisions of this Act or its application to any person or
26 circumstance is found to be invalid or contrary to law, such invalidity shall not affect other
27 provisions or applications of this Act that can be given effect without the invalid provisions or
28 application, and to this end the provisions of this Act are severable.



Mina'trentai Dos na Liheslaturan Guahan
32ND GUAM LEGISLATURE

①

Vice Speaker Benjamin J.F. Cruz, Chairman

COMMITTEE ON APPROPRIATIONS, PUBLIC DEBT, LEGAL AFFAIRS, RETIREMENT,
PUBLIC PARKS, RECREATION, HISTORIC PRESERVATION AND LAND

August 28, 2014
Bill No. 281-32 (COR)
SIGN UP SHEET

NAME	ADDRESS	PHONE	EMAIL	WRITTEN	ORAL	SUPPORT	
						Yes	No
Joe v. Garrido	-	632-7968			✓	yes	
Pat Mason	DAB				✓		
Arthur Clark	DOG	475-9370			✓	Yes	



Mina'trentai Dos na Liheslaturan Guahan
32ND GUAM LEGISLATURE



Vice Speaker Benjamin J.F. Cruz, Chairman

COMMITTEE ON APPROPRIATIONS, PUBLIC DEBT, LEGAL AFFAIRS, RETIREMENT,
PUBLIC PARKS, RECREATION, HISTORIC PRESERVATION AND LAND

August 28, 2014
Bill No. 281-32 (COR)
SIGN UP SHEET

NAME	ADDRESS	PHONE	EMAIL	WRITTEN	ORAL	SUPPORT	
						Yes	No
JONATHAN DENIGHT	GSWA BOD				✓		

LEONARDO M. RAPADAS
Attorney General

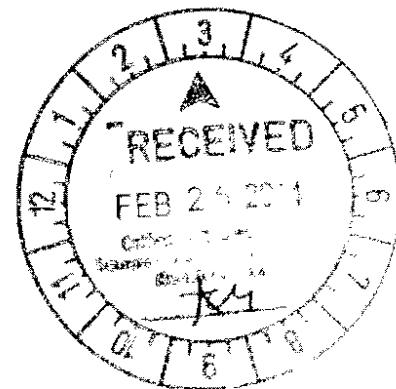


PHILLIP J. TYDINGCO
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

February 26, 2014

Honorable Vicente C. Pangelinan
Senator
Committee on Appropriations, Public Debt,
Legal Affairs, Retirement, Public Parks, Recreation,
Historic Preservation & Land
I Mina'trentai Dos Na Liheslaturan Guåhan
155 Hesler Place
Hagatna, Guam 96910



Re: Written Testimony Regarding Bill No. 281-32 (COR)

Dear Senator Pangelinan:

We have reviewed your proposed Bill No. 281-32 (COR) relating to bringing an action against the Federal Government for contribution or to recover environmental clean-up costs associated with the closure of the Ordot Dump. The Attorney General completely agrees that if there is a viable claim against the Federal Government, it should be pursued. But this is not a novel idea.

I. Background

Our office has researched this issue extensively. We met and discussed a possible suit against the Federal Government with the Governor's former legal counsel, Attorney Maria Cenzone, before she was elevated to a Judge on the Guam Superior Court. Nearly 5 months ago, on October 9, 2013, we met with the Governor's current legal counsel, Sandra Miller, and the Governor's policy adviser, Arthur Clark and shared our legal research and the bases for our conclusions. In fact, many of the legal statements made by Mr. Clark, in the February 24, 2014 Mariana's Variety newspaper article entitled "Solid Waste Woes Continue for Guam" are contained in the Office of the Attorney General's (AGO) legal research. (A copy of the Mariana's Variety February 24, 2014 article is enclosed.)

In a public document filed 6 months ago with the Guam District Court, we responded to false assertions made to the District Court by the Office of the Governor concerning the AGO's failure to pursue a claim against the Federal Government. In that public record, we explained that in addition to conducting legal research, our office consulted informally with an environmental law professor at the Florida State University College of Law in Tallahassee, Florida, who specializes in the Federal Clean Water Act, and authored several environmental law text books. (A copy of the public document entitled "Office of the Attorney General's Court

ORIGINAL

Ordered Response to Motion to Stay and For Further Relief” is attached with the relevant language underlined at pages 11-12.) Based on our research and consultation with a Clean Water Act specialist, the AGO concluded that the Government of Guam does not have a viable claim for contribution against the United States under the federal Clean Water Act. Based on Mr. Clark’s comments in the Marianas Variety February 24, 2014, piece, evidently, the Governor’s Office agrees.

Four years ago, at your behest of Senator Ben Pangelinan, former Attorney General Alicia Limtiaco circulated a request to the National Association of Attorneys General (NAAG) regarding input on whether Guam had any viable claims to access funds from the Federal Superfund program under the Comprehensive Environmental Response, Compensation, and Liability Act (known as CERCLA or Superfund) for any environmental harm caused during the U.S. Navy’s use of the Ordot Dump. (A copy of former Attorney General Limtiaco’s e-mail to NAAG, dated May 10, 2010, is attached and provides a history of the Ordot Dump Superfund issue.)

In October 2010, one of our Assistant Attorneys General attended an environmental law seminar in Bethesda, Maryland and spoke with environmental lawyers about the likelihood of success in a suit against the Federal Government for Superfund monies. Following the Bethesda seminar, letters were sent to the main conference speakers discussing our particular situation on Guam. (Copies of the AGO’s letters are attached providing further background information.)

The AGO also has considered whether a claim may exist against the Federal Government under the federal CERCLA statute and the Federal Torts Act. Costly expert reports are needed in order to determine whether there is sufficient factual technical scientific evidence to substantiate the extent of the U.S. military’s contribution to the pollution from the Ordot Dump which would sustain a viable law suit against the Federal Government.

Both during the AGO’s October 9, 2013, meeting with the Governor’s counsel and policy adviser and in the public document filed in the Guam District Court on September 27, 2013, the AGO suggested that if the Governor’s Counsel has contrary research or information supporting a justifiable claim against the Federal Government, the AGO is willing to review it and work with the Governor’s Counsel. The Governor’s Office has not discussed the matter with the AGO since October 9, 2013.

II. Next Steps

The AGO stands ready, willing, and able to work with the Executive and Legislative branches to effectuate the intent of Bill No. 281-32 (COR): to pursue an action against the Federal Government for Superfund or other federal monies for the clean-up of the Ordot Dump, if viable claims exist.

The complexity of the federal environmental statutes and the legal specialization required to pursue any claims thereunder justify the use of a private law firm specializing in these environmental law statutes. The AGO has no objection to the Office of the Governor retaining an

environmental law firm if the Guam procurement laws and regulations are complied with *and* the final contract is submitted to the AGO for approval pursuant to 5 G.C.A. § 5121(b). We suggest that this language be added to your proposed bill to ensure that the AGO may carry out its duty to approve all legal services contracts. These fail safe provisions will ensure that there is an objective and neutral selection process in retaining outside private counsel. We have enclosed a separate document setting forth this additional language and other suggested changes to your proposed bill.

Also, the AGO suggests that it be allowed to appear as co-counsel with the law firm selected. If an off-island law firm is selected, local counsel will also need to be present. The AGO is best equipped to support outside counsel and would result in a cost-saving device.

Typically, contingency fee agreements are improper when a private law firm is called upon to represent the interest of a government. There are certain cases, however, where contingency fee arrangements have been deemed appropriate. For example, in major tobacco industry tort actions and major asbestos litigation where tortuous activity on a grand scale has caused a public harm, contingency fee arrangements with outside counsel are common. The AGO agrees that there is justification to engage private counsel pursuant to a contingency fee to pursue a viable major environmental lawsuit for public harm against the Federal Government.

The AGO suggests that before spending the full amount of Bill 281-32's proposed appropriation, it may be prudent to seek a preliminary evaluation from the private law firm retained as to whether justifiable claims exist against the Federal Government, and if so, the likelihood of their success. Our proposed changes to your bill include a 2-part process. First the private law firm retained should provide an evaluation of potential viable claims for which a portion of the \$350,000 appropriated may be used to pay for such legal services. If the Government decides to pursue any claims against the Federal Government, then a contingency fee agreement may be entered into. The contingency fee agreement will be exclusive of expert fees and litigation costs and expenses. The remaining portion of the appropriated \$350,000 shall be used to pay for these fees, costs and expenses, but not for the private law firm's attorneys' fees.

Sincerely,



J. PATRICK MASON
Deputy Attorney General

Enclosures

cc: Honorable Judith T. Won Pat, Ed. D., Speaker
Senator Chris Duenas, Assistant Minority Leader
(Sponsor to Bill No. 281-32 (COR))

Suggested Changes to Nill No. 281-32 (COR)

Section 2. A new section 22401.2 is hereby added to Article 4, Chapter 22 of Title 5 of the Guam Code Annotated:

Section 22401.2. Authorization and Appropriation for Private Legal Services in Furtherance of Claims by the Government of Guam Against the Federal Government.

The Government of Guam, through the Office of the Governor, is hereby authorized, subject to (1) compliance with the applicable Guam Procurement Law and Regulations, and (2) approval of the Office of the Attorney General of any legal services contract(s) pursuant to 5 G.C.A § 5121 (b), to retain qualified legal services from a private law firm to pursue justifiable claims of the government of Guam against the Federal Government and its agents or contractors, for any appropriate legal action against the Federal Government, its agents or contractors, relating to the Ordot Dump. The private law firm retained shall provide an evaluation subject to attorney-client and other applicable privileges, to the Government of Guam stating whether any justifiable claims exist against the Federal Government for contribution, damages, penalties, or to recover environmental clean-up costs associated with the closure of the Ordot Dump, and the likelihood of success of such claim(s). Upon review of the evaluation, if the Government of Guam decides to pursue such causes of action, it is hereby authorized to enter into a contingency fee agreement with the private law firm retained and to negotiate a contingency fee agreement not to exceed thirty percent (30%) of any monies collected by the Government of Guam through the services provided by the private law firm to pay for the legal services provided by the private law firm.

Section 3. Appropriation to Pay Costs Associated with Bringing Action(s) against the FEDERAL Government. *I Liheslaturan Guahan* hereby appropriates \$350,000 from the General Fund to pay for litigation costs, litigation expenses and expert fees incurred in the

pursuit of claims by the Government of Guam against the Federal Government, its agents or contractors, relating to the Ordot Dump. The Department of Administration is directed to identify the fund source for this purpose. A portion of the \$350,000 appropriated hereunder may be used to pay the private law firm retained hereunder for legal services to provide the evaluation referred to section 224001.2. Except for the payment for legal services to provide the evaluation referred to section 224001.2, no portion of the \$350,000 appropriated hereunder may be used to pay legal fees for services provided by the private law firm retained hereunder.

Section 4. Office of the Guam Attorney General to Appear As Co-counsel. If suit is filed by the private law firm retained hereunder for appropriate legal action against the Federal Government, its agents or contractors, relating to the Ordot Dump, the Office of the Attorney General, as Guam's Chief Legal Officer, shall file an appearance as co-counsel in any such legal action.

Section 5. Effective Date. This Act shall become effective upon enactment.

Section 6. Severability. If any portion of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

Solid waste woes continue for Guam

Written by BY GINA TABONARES-REILLY | VARIETY NEWS STAFF
Monday, 24 Feb 2014 03:00am

(First in a series)

TWENTY-TWO years after Guam was first put on notice for violation of the federal Clean Water Act, the government's solid waste operation remains problematic with spiraling costs every taxpayer will have to share.

The island's solid waste operations have been through different government leaders, the subject of 12 years of litigation that resulted in a consent decree and the appointment of a receiver.



Despite the millions of dollars in investment, including the \$202 million 2009 bond and the increased tipping fees, the cost of systematic garbage disposal remains a continuing challenge for the island with government projects spiraling out of control and running over budget.

As far as District Court Chief Judge Frances Tydingco-Gatewood is concerned, the consent decree is near its finish line with the remaining projects expected to be done by 2015.

However, when federal receiver Gershman, Brickner & Bratton Inc. (GBB) principal David Manning told the court that there is a budget shortfall to complete all the projects requiring an additional \$60 million at least, the Office of the Governor declared that something has to be done to stop the financial bleeding.

"We just don't want to pay more. We have a receiver who had a great idea but doesn't have a plan to pay the debt service. As of now, if we don't do anything, we will get stuck paying more for tipping fees. We have a receiver that dictates an increase of 70 percent in our tipping fees but will not bring us toward the end of it," said Arthur B. Clark, the governor's chief policy advisor.

Debt service

In order to pay the debt service, the Guam Solid Waste Authority is expected to reimburse GovGuam some \$300,000 a month or 25 percent of the tipping fees collected for a month.

To date, the receiver is \$6 million behind the commitment to cover the debt service, according to Clark.

Manning told the Variety that total debt service on the 2009 bonds is about \$15.7 million per year including the principal repayment and interest.

The receiver said that the debt service is being paid through GovGuam's general fund using

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Monday, 24 Feb 2014 03:00am

Section 30 money. GSWA reimburses the General Fund for a portion of this expense. The reimbursement, which started in December 2011 is \$374,758.08 monthly or \$4.5 million per year.

Environmental lawsuit

The legal team of the governor's office started doing its own research and consultations that brought them to take the route of asserting natural resources damages (NRD) against the federal government specifically the U.S. Department of the Navy using the Comprehensive Environment Response, Compensation and Liability Act of 1980 (CERCLA) or "Superfund," to recover past and future costs of closing the Ordot landfill.

Armed with the 1988 USEPA Superfund Record of Decision which noted that the Navy was a potentially responsible party, Clark said that the liability claims are an opportunity to offset the estimated \$50 million to \$100 million in costs that will be incurred to permanently close the landfill during the next two to three years.

The environmental lawsuit is expected to be costly because it will require the expertise of environmental counsel with a huge federal law background. A further evaluation such as chemical contaminants with the landfill will also be needed therefore requiring significant technical experts.

Clark said that the expenses are recoverable as part of the recovery claim under CERCLA.

CERCLA vs. CWA

CERCLA provides that "any person may seek contribution from any other person who is liable or potentially liable for damages, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss resulting from a release of hazardous substances. Congress explicitly waived the United States immunity to liability.

The liability act of 1980 has opened a door to a number of cases in several states where private companies and government agencies filed claims against the United States for its share of liability in dumping hazardous waste during World War II. The growing trend in the federal government's willingness to settle the pollution cases on Superfund sites has been noted.

After issuing a Superfund Record of Decision in 1988, the USEPA, asserting that any threats to human health and the environment were due to operating practices and could be addressed through better operations including improved leachate control measures consisting of capping and surface water control, concluded that the remedial course of action to take control over landfill operation is through the enforcement of Clean Water Act (CWA) and not via CERCLA.

Before the USEPA filed the CWA case against GovGuam in 2002, GEPA conducted remedial investigation and solicited public comment. However, GEPA received no comment during public meeting and no written comments were received from the community.

Solid waste woes continue for Guam

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Monday, 24 Feb 2014 03:00am

While GEPA was unaware of any community concerns that the agency had decided to choose the alternative no action under CERCLA, former GEPA Administrator Charles Crisostomo informed former USEPA Regional Administrator Daniel McGovern that they are agreeing not to pursue the CERCLA action "until Ordot landfill operation practices are improved and additional environmental monitoring data are gathered."

The improvement was not realized and the USEPA filed a lawsuit in 2002 under the CWA alleging that GovGuam was unlawfully allowing the discharge of leachate from the Ordot landfill to the Lonfit River and two of its tributaries.

Under the CWA case, the GovGuam is the sole respondent and became 100 percent liable.

According to Clark, if GovGuam were being sued for CWA violations, the remediation should only cost between \$20 million and \$40 million as opposed to the CERCLA cleanup which is about \$50 million to \$60 million.

"We have the USEPA plan that will cost us \$60 million. They're the ones who sued us under the Clean Water Act. They picked the course of action, to hold us accountable under CWA and after having a consent decree, the USEPA is now designing the fix. They are trying to fix the problem that we were not sued for. Every time you hear on the radio whether its USEPA, Guam EPA talking about methane gas, Ordot residents complaining about the smell, fires at the dump ... all of that is conversation centered around CERCLA. If the federal government wanted to hold us under CERCLA standard, they should have sued us under CERCLA," Clark said.

Clark said that the decision not to pursue the CERCLA was because GovGuam was barred with the fact that the Ordot landfill was an active dump site and the island could not afford to shut down the only municipal landfill then.

With the closure of the Ordot Dump as a remedial action, GovGuam now has cost-recovery claims that GovGuam may not have had in 2002.

A remedial action under CERCLA, NRD claims must be asserted in an action commenced within three years after completion of the remedial action. The closure of Ordot landfill as a final remedial action has only just begun therefore the CERCLA statute of limitations cannot bar the claim.

Potential party

The Navy built and began using the 60-acre Ordot landfill for the disposal of municipal and military waste shortly before World War II. The Navy operated the landfill until the Japanese military occupied the island in December 1941 and the Japanese used it during the occupation until U.S. forces returned in 1944. The Navy resumed operation of the landfill and continued until 1950, when responsibility for the facility was transferred to GovGuam. Recent sampling data suggest that chemicals causing contamination at the landfill are likely attributable to the Navy's past waste disposal activities.

Solid waste woes continue for Guam

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Monday, 24 Feb 2014 03:00am

In 1983, the USEPA included the Ordot landfill in the National Priorities List or the list of sites given priority for the expenditure of funds to respond to the release or threatened release of hazardous substances.

And because GovGuam inherited the ownership and operation of the landfill, it does not preclude them from recovering environmental response costs under CERCLA.

Clark said the potential involvement of third parties will be the subject of further evaluation with the use of experienced legal counsel and technical experts.

The damage

The NRD claim would cover the affected natural resources of Guam including fish, wildlife and habitat associated with the Lonfit and Pago Rivers and possibly Pago Bay, along with drinking water resources associated with the limestone aquifers underlying Guam's northern plateau.

The extent of damage can only be determined after further evaluation by private environmental experts who are only available off island.

The plan

To bring an NRD claim, the governor must appoint a representative as trustee of the territory's natural resources to recover for such damages on behalf of the public.

Last Thursday, Gov. Eddie Calvo during his state of the island address revealed his plan to sue the federal government to pursue the cost recovery claims against the Navy.

This was followed, on Friday, by the introduction of Bill 281 by Sen. Chris Duenas seeking an appropriation of \$350,000 for the governor to retain professionals to pursue claims against third parties on a contingency basis.

"I want to make very clear, that this is not an effort to circumvent or delay the closure of the Ordot Dump, but rather an effort to recover some of the costs allowable by federal law," Duenas said.

Clark also stressed that the Office of the Governor supports the closure of Ordot Dump and believes that the consent decree is inevitable.

"Everybody wants to close the dump. It should have closed way back in the '60s. We went 20 years beyond the life span of the dump but during the past administrations, there was no political will to get it done -- a lot of people (were) passing the buck," Clark said.

With the Clean Water Act, GovGuam has to shoulder the past and future cost of the landfill.

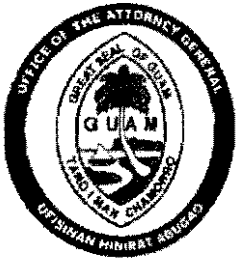
"We could have split the cost with the U.S. government and the military under CERCLA," Clark said.

Solid waste woes continue for Guam

Written by BY GINA TABONARES-REILLY | VARIETY NEWS STAFF

Monday, 24 Feb 2014 03:00am

Under the consent decree, the total amount of funding to complete all the projects is not available, the Solid Waste Operations Fund was not regarded as the exclusive source of funding for the projects leaving GovGuam to seek funding through legislative appropriation, loans, grants and rates charged for commercial and residential tipping or user fees.



Office of the Attorney General

Attorney General of Guam

Civil Division

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Attorneys for the Government of Guam

**IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM**

**UNITED STATES OF
AMERICA,**

Plaintiff,

vs.

GOVERNMENT OF GUAM,

Defendant.

CIVIL CASE NO. 02-00022

**OFFICE OF THE ATTORNEY
GENERAL'S COURT ORDERED
RESPONSE TO MOTION TO STAY
AND FOR FURTHER RELIEF**

I. INTRODUCTION

On September 13, 2013, counsel for the Office of the Governor of Guam ("Office of the Governor") filed a Motion to Stay and for Further Relief ("Motion to Stay"). *See* ECF No. 1177. By order dated September 18, 2013, the Office of the Attorney General ("AGO") was ordered to file a response to the Motion to Stay on September 27, 2013. *See* ECF No. 1188. In its Motion to Stay, the Office of the Governor seeks to stop all action in this case to further the implementation of the Consent Decree until its allegations involving (1) the release of information relating to the Ordot

Dump closure costs is addressed; (2) the Office of the Governor is allowed to participate in the procurement process for contracts relating to the closure of the Ordot Dump; and (3) the Governor's Office's allegations of the AGO's "lack of meaningful representation" of the Government of Guam are addressed.

II. DISCUSSION

A. Ordot Closure Cost Estimates and Bids Have Been Released and GSWA's Contract Procurement Process Does Not Include the Office of the Governor

The Office of the Governor's concerns relating to the estimated costs associated with the closure of the Ordot Dump are moot in light of the Receiver's Special Report dated September 20, setting forth the bid amounts and cost estimates relating to the closure of the Ordot Dump. *See* ECF No. 1193.

The Governor's Office asserts that it should be involved in the process leading to the award of contracts for the closure of Ordot Dump, and until the determination of the propriety of its involvement is addressed by the Court, the closure of the Ordot Dump pursuant to the Consent Decree should be stayed and no further contracts should be awarded. *See* ECF No. 1178 at 19.

This is problematic for two reasons. First, under the Appointment of Receiver, the Guam Federal District Court ordered that "the Receiver shall have the authority required or necessary for the complete management and control of the Consent Decree projects, including but not limited to . . . the entering into future contracts deemed necessary." ECF No. 239 at 16. Moreover, pursuant to 10 G.C.A. § 51A103, the Guam Solid Waste Authority ("GSWA") is an autonomous public corporation, authorized to "enter into contracts and execute all instruments necessary or convenient in the exercise of its powers. . . ." 10 G.C.A. § 51A104 (e). The Governor of Guam was required to sign off on contracts entered into by the Solid Waste Management Division of the Department of Public Works ("SWMD-DPW") because under Guam law the SWMD-DPW (a line agency) was a department

“within the Executive Branch of the Government of Guam.” 5 G.C.A. § 3106. On the other hand, the Governor is not required to execute contracts entered into by the successor agency, the GSWA, an autonomous public corporation.¹ 10 G.C.A. § 51A104 (e). The GSWA is no longer under the control of the Governor’s Office. Rather, it is governed by the GSWA Board of Directors. See 10 G.C.A. § 51A105. Until this Court orders that the control and authority of the GSWA be turned over from the Receiver to the Board, “the Receiver shall continue, status quo, in their day-to-day operations of the GSWA and the Consent Decree Projects.” Order re Transition From Court-Appointed Receiver to GSWA Board, ECF No. 1132.

B. The Doctrine of Law of the Case Precludes the Court from Reconsidering the Issue of The AGO’s Representation of the Government in this Case

The Office of the Governor has been attempting to remove the AGO from this case since April 26, 2013. See Substitution of Counsel ECF No. 1045; Amended Substitution of Counsel ECF No. 1052. Raising concurrent representation issues, the Governor’s Office sought to remove the AGO mistakenly asserting that the AGO represented the Receiver in the Condemnation Case² and that its representation of the Government of Guam in this District Court case constituted a violation of Guam Rules of Professional Conduct 1.7 and 1.9. The Governor’s Office also claimed the existence of litigation strategy differences between the Governor’s Office and the AGO with respect to the payment of the Condemnation Judgment³ with Section 30 Consent Decree bond funds. See ECF No.

¹ As of April 18, 2011, the SWMD-DPW continued in existence as the Guam Solid Waste Authority. 10 G.C.A. § 51A103.

² *Government of Guam v. 1,348,474 sq. m., et. al.*, Superior Court of Guam Case No. 0084-08 (“Condemnation Case”).

³ The Condemnation Judgment entered by the Guam Superior Court awarded just compensation to the Former Landowners in the amount of \$25,115,683.00 (inclusive of the amount of \$3,410,000.00 already deposited with the Court by the Government of Guam) (i.e., \$21,705,683.00) plus interest at a rate of 6% per annum on \$21,705,683.00 from January 24, 2008 until judgment is paid. Some have calculated the amount now due in the area of \$32 million.

1052.⁴ In its Order re Amended Substitution the Court held that the AGO represented the Government of Guam, and not the Receiver, in both this case and the Condemnation Case. *See* ECF No. 1064. Therefore there was no conflict of interest. In a well-reasoned opinion, the Court allowed the Office of the Governor's Amended Substitution only for the limited purpose of allowing the Governor's private law firm, Cabot Mantanona, LLP (the "Cabot Law Firm") to represent the Government of Guam with regard to the issues raised in the Former Landowners' Motion to Intervene.⁵ *See* ECF No. 1064 at 4. The Court held that "for all other purposes, the Attorney General shall remain counsel of record for the Government of Guam". *Id.*

Unsatisfied with the Court's ruling, on May 28, 2013, the Office of the Governor's private law firm, the Cabot Law firm, filed a Motion for Reconsideration of the Court's order allowing limited substitution of the Cabot Law Firm. *See* ECF No. 1075. It was the Cabot Law Firm's position that the AGO should be disqualified from this case altogether, and the Court should approve the full substitution of the Cabot Law Firm to represent the Government of Guam. *Id.* After reviewing extensive briefing, the Court denied the Cabot Law Firm's Motion for Reconsideration on August 13, 2013. *See* ECF No. 1157. Accordingly, the Cabot Law Firm remained as counsel for the Government of Guam for the limited purpose raised by the Former Landowners to use Section 30 Consent Decree bond funds to pay the Condemnation Judgment. For all other purposes, the AGO was to remain counsel of record for the Government of Guam. *Id.* The Court's 28-page order denying the Cabot

⁴ Nowhere in this record has the AGO taken a position on whether the Section 30 Consent Decree Bond Funds should be used to pay the Condemnation Judgment, but instead has referred the Court to the Government of Guam's Bond Counsel's opinion on the propriety of the use of said bonds to pay the judgment. *See* letter from Bond Counsel, ECF No. 1050, Ex. C.

⁵ On April 10, 2013, a Motion to Intervene was filed by former landowners of the Layon Landfill seeking to use the Consent Decree bond funds to pay the Condemnation Judgment. *See* ECF No. 1031. The former landowners include: Oxford Properties & Finance, Ltd., Joaquin C. Arriola, Douglas Cushnie, Calvo's Insurance Underwriters, Inc., Jones & Guerrero Company, Inc., Alfred C. and Diana Z. Ysrael, and Lee M. Holmes, Valencia Investments Corporation and Young Chull Kim ("collectively, the "Former Landowners").

Law Firm's Motion for Reconsideration provides a full chronology of the actions taken and arguments made by the Governor's Legal Counsel, Sandra C. Miller, the Cabot Law Firm, and the Lt. Governor⁶ to disqualify the AGO in this case, and the basis of the Court's conclusions regarding its dismissal of those arguments. *Id.* The Order correctly states the relationship between the AGO and the Receiver, holding that the Receiver is not the AGO's client in these cases. *Id.* See also ECF No. 1189.⁷

Now in its Motion to Stay which is currently under review, the Office of the Governor, yet again, seeks to disqualify the AGO from this case. See ECF Nos. 1177-1178. Yet again, the Office of the Governor raises purported conflicts of interest on the part of the AGO. *Id.*

"Under the 'law of the case' doctrine, a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." *People v. Hualde*, 1999 Guam 3 ¶ 13. See also *Christianson v. Colt Indus. Operating Corp.*, 48 U.S. 800, 816-17 (1988) ("As most commonly defined, the doctrine [of the law of the case] posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.") (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983)). "A court has discretion to depart from the law of the case where: 1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3) the evidence on remand is substantially different; 4) other changed circumstances exist; or 5) a manifest injustice would otherwise result." *Hualde*, 1999 Guam 3 ¶ 13 (citation omitted).

⁶ Due to the Governor of Guam's conflict of interest based on his family's interest in the Condemnation Judgment, the Governor "assigned the power and duty to exercise the Governor's executive authority with respect to this case to the Lt. Governor of Guam, Ray S. Tenorio". Amended Substitution of Counsel, ECF No. 1052 at 2-3 citing Declaration of Raymond S. Tenorio at ¶ 2 (filed May 10, 2013). One of the Former Landowners, Calvo's Insurance Underwriters, Inc., is part of Governor Eddie B. Calvo's family enterprises.

⁷ The Former Landowners Motion to Intervene was denied on August 21, 2013. See ECF No. 1164. With the denial of the Motion to Intervene, the Cabot Law Firm's representation of the Government of Guam ended.

The AGO submits that this Court's Order allowing limited substitution of counsel (ECF No. 1064) and Order denying the Motion of Reconsideration thereof (ECF No. 1157) became the *law of the case* and there are no circumstances warranting re-opening the issues addressed thereunder or departing from this Court's prior decisions. *See also* ECF No. 1189.

The Governor's Office has merely rehashed the same arguments over and over again. It has not presented any credible evidence that the Court has committed clear error, or asserted there has been a change in controlling law, or that substantially different changed circumstances exist that would result in manifest injustice. Instead, the Office of the Governor claims that "new facts" are included in the AGO's Motion for Clarification (ECF No. 1155).⁸ The "new facts" on which the Office of the Governor relies are misstatements it imputes to the AGO. The Office of the Governor alleges that in its Motion for Clarification the AGO (1) makes statements contrary to previous representations to the Court; (2) states that the GSWA is the AGO's "only client"; and (3) admits that its client is the Receiver. *See* ECF No. 1177; 1178 at 11. The AGO's Motion for Clarification does not contain any such statements by the AGO. *See* ECF No. 1155. The Office of the Governor has misconstrued the AGO's comments in its Motion for Clarification. The AGO does and always has represented the Government of Guam in both this case and the Condemnation Case. The Government of Guam includes various agencies and instrumentalities, some of which are under the direct control of the Governor (e.g., Department of Public Works, Guam Environmental Agency), and some which are not (e.g., autonomous public corporations, such as the GSWA). During this

⁸ The AGO's Motion for Clarification dealt only with the limited issue of whether the Receiver or the GSWA Board could exercise the attorney client privilege on behalf of the GSWA. *See* ECF No. 1155. At the request of the newly appointed GSWA Board members the Court held a hearing at 7:30 a.m. on June 26, 2013 to discuss the Board's concerns regarding the transition of authority from the Receiver to the Board. The Court's Orders make clear that the Receiver has full authority until authority is transferred to the Board by Court Order. *See* ECF Nos. 1132 and 1189.

litigation, the AGO has represented each of these agencies, as well as others.⁹ Except for the misstatements attributed by the Office of the Governor to the AGO, the Office of the Governor presents no new information.

The Office of the Governor's claim that it just learned from the AGO's Motion for Clarification that the AGO's representation of the Government of Guam includes the GSWA is baseless. The GSWA enabling statute became effective on April 18, 2011. In its' August 13, 2013 Order, this Court stated: "Throughout the course of this lawsuit, the Attorney General has represented SWMD, DPW and now GSWA, since all are part of the Government of Guam." ECF No. 1157 at 13-14.

This Court's prior holdings became the law of the case and absent a compelling reason to depart from these decisions, the AGO submits that the Court should not re-open already decided points. *United States v. Rosales*, 606 F.2d 888, 889 (9th Cir.1979). The Office of the Governor has provided no circumstances warranting a departure from the law of the case in this action. In its' rulings, the Court has already resolved the issue that the AGO's represents the Government of Guam and not the Receiver and there are no conflicts of interest.

C. Attorney General As Chief Legal Officer Represents the Government of Guam

Relying on the Organic Act of Guam, 48 U.S.C. § 1421 *et seq.*, and Guam case law, this Court has held that the AGO, as Chief Legal Officer of the Government of Guam is granted "cognizance of all legal matters . . . involving the Executive Branch of the Government of Guam, its agencies,

⁹ When the AGO refers to the Government as its client, it is referring to the entire Government of Guam, including both its line and autonomous agencies. When the Office of the Governor refers to the Government in its Motion to Stay, it is referring to the Office of the Governor. For example, the Office of the Governor alleges that the AGO believes it owes a duty of confidentiality to the Receiver instead of to the "Government;" that there have been conflicting instructions from the Receiver and the "Government;" and the AGO's client is the Receiver rather than the "Government." In these instances, the Office of the Governor is using the term "Government" to mean "Office of the Governor." See ECF No. 1178 at 11. To avoid confusion, the AGO separately refers to the "Government" and the "Office of the Governor."

instrumentalities, public corporations, autonomous agencies and the Mayors Council,” represents the Government of Guam in this case. See ECF No. 1157 at 12-14. In its Motion to Stay, the Office of the Governor disagrees and claims that the Governor, as executive officer of the territory “has authority over the Attorney General.” ECF No. 1178 at 15 citing *Santos v. Camacho*, 2006 WL 581251 *6 (D. Guam 2006).

Santos is distinguishable on its face. In *Santos* the Governor was originally represented by the AGO in litigation involving an interpretation of the Guam Territorial Income Tax and was later disqualified from continuing to represent the Government of Guam. The sole authority allowing the Governor to disqualify the AGO was a section in the Organic Act of Guam vesting matters involving the Guam Territorial Income Tax in the Governor. *Santos* at *4 citing 48 U.S.C. §§ 1421i(c) and (d)(2). See also *Santos* at *7. The *Santos* Court held that because the Governor is tasked exclusively with setting policy matters involving the Guam Territorial Income Tax, the AGO could not assume control in the litigation on behalf of the Government of Guam. *Id.* Our case does not involve the Guam Territorial Income Tax and the Governor does not have authority to trump the sections of the Organic Act and cases relied upon by this Court as the basis of its holdings in this case. See ECF No. 1157 at 12-14.

D. Governor's Office's Conclusory Assertions Against the AGO

The hostile assertions made against the AGO by the Office of the Governor in its pleadings are shocking. The AGO has been in this case since its inception in 2002, with the exception of a 4 ½ -month period when the Government was represented by the private law firm, Mair, Mair, Spade & Thompson. See Order, ECF No. 1157 at 13 citing ECF Nos. 6 and 21. Only recently, for the first time and so late in these proceedings, has the Office of the

Governor asserted purported conflicts of interest and negative conclusory assertions against the AGO, claiming that it has been denied meaningful representation in these cases.

The Office of the Governor claims that the AGO has refused to take direction from the Guam Executive, yet has not stated any directions which have been refused. The Office of the Governor claims that the AGO has ceased representing the Government as directed by the Guam Executive, yet has not stated any directives which have been ignored. The Office of the Governor criticizes the AGO for not agreeing with positions stated by the Former Landowners, who are not parties to this case, and oftentimes whose positions are adverse to the Government. The Office of the Governor claims that it has not been afforded the right to be heard in this case and therefore its due process rights have been violated. Yet, hundreds of pages have been filed by the Office of the Governor's Legal Counsel, the Cabot Firm, and by the Calvo Law Firm¹⁰ and Arriola Law Firm¹¹ on behalf of the Former Landowners, whose positions are identical to those of the Office of the Governor. The Court has been made fully aware of the positions of the Office of the Governor, has given them due consideration and has made its rulings. The AGO is criticized by the Lt. Governor for failing to attack the Receiver with information included in the briefs filed by the Former Landowners, who are not parties to this suit. ECF No. 1179 at 2,

¹⁰ In the Condemnation Case, Calvo, Fisher & Jacob LLP, (formerly known as Calvo & Clark, LLP) (the "Calvo Law Firm" represented the following landowners: Calvo's Insurance Underwriters, Inc.; Jones and Guerrero Co., Inc.; Alfred C. and Diane Z. Ysrael; Lee M. and Joan S. Holmes; Valencia Investments Corp.; and Henry Sy (the "Calvo Defendants"). In this case, the Calvo Law Firm represented several of the Calvo Defendants in the Former Landowners' Motion to Intervene.

¹¹ In the Condemnation Case, Arriola & Arriola (the "Arriola Law Firm") appeared on behalf of Joaquin C. Arriola, Douglas F. Cushnie and Oxford Properties & Finance Ltd. (the "Arriola Defendants"). In this case, the Arriola Law Firm represented several of the Arriola Defendants in the Former Landowners' Motion to Intervene.

¶ 7. Yet, the record of this case shows that when appropriate the AGO has opposed either or both the United States or/and the Receiver. For example and as stated in the Governor's Office Motion to Stay, the Court's granting of the United States' motion to enforce the Consent Decree against the Government of Guam was over the Government's vehement objection by the AGO as was the Court's Appointment of the Receiver. *See* ECF No. 1178 at 6.

Through the National Association of Attorney Generals, Maryland Attorney General Douglas Gansler agreed to assist the Guam AGO and graciously provided the services of Maryland Deputy Counsel Janet Bush Handy to assist the Government of Guam in the Condemnation Case because of her extensive eminent domain experience. Ms. Handy's services would be provided at no cost to the Government of Guam, except for her moderate travel expenses. Attorney Handy was admitted to the Guam Bar *pro hac vice* and was appointed as a Guam Special Assistant Attorney General.

The Condemnation Judgment of \$25,115,683.00 (inclusive of the amount of \$3,410,000.00 already deposited with the Court by the Government of Guam) (i.e., \$21,705,683.00) was only a fraction of the Calvo Defendants' individual value opinions of \$185 million to \$300 million. The amount was between that the Government's expert real estate appraiser's highest value of \$13, 900,000.00 and the Arriola Defendants' expert real estate appraiser's value of \$32,295,950.00.

This result was reached in spite of the fact that the Government's own expert witness changed his expert report *after* he had concluded his testimony at trial by submitting an unsolicited appraisal, for which he did not charge the Government, wherein his opinion of just compensation increased by over \$10 million from his original appraisal report. *See* Guam Superior Court's Finding of Fact and Conclusions of Law, ECF No. 1050, Ex. A at 10, ¶ 23. He testified during trial that many of the

Former Landowners were his friends and clients. In awarding the Condemnation Judgment, the Guam Superior Court assigned "no weight to the bulk of Mr. Captain's assessment". *Id.* at 11, ¶ 24

The expiration of the appeals period following the entry of the Condemnation Judgment occurred in January 2013. By that time, the Layon Landfill had been constructed and was in full operation, the Government had acquired title to the Layon Landfill land, and the gates to the Ordot Dump had been locked, with the AGO's involvement. The Court has found that,

The Office of the Attorney General has valuable institutional knowledge, having worked with the United States Environmental Protection Agency, many government agencies, bond counsel and the Receiver over the past five (5) years to bring the Government of Guam into compliance with the Consent Decree. With the opening of the Layon Landfill and the final design plans for the closure of the Ordot Dump awaiting approval, the finish line is in sight. There will soon be an end to an era of non-compliance by the Government of Guam. The court is preparing to end the federal receivership and hand control over the Solid Waste Management Authority to the Board.

ECF No. 4064 at 4-5. In its' May 21, 2013 Report, the Receiver stated that "The work of the Attorney General has saved the Government of Guam hundreds of thousands in legal expenses to date." *See* Receiver's Power Point Presentation to Guam District Court, May 21, 2013, Slide No. 45.

In documents filed in this case, the assertion has been made by the Office of the Governor, the Calvo Law Firm and Arriola Law Firm, as well as by Attorney Arriola during a District Court hearing, that a claim for contribution against the United States exists in this case and the AGO has failed to pursue it. Over the last three years, the AGO has researched this issue extensively. The AGO consulted an expert on the mainland, Professor Robin Kundis Craig. Professor Craig is an environmental law professor at the Florida State University College of Law in Tallahassee, Florida. Professor Craig specializes in the Clean Water Act, *inter alia*, and is the author of *The Clean Water Act and the Constitution* (ELI 2004; 2d Ed. ELI 2009) and *Environmental Law in Context* (Thomson/West 2005; 2d Ed. 2008), plus over 40 law

review articles and book chapters. She serves as Chair of the American Bar Association's Constitutional Environmental Law Committee, among others.

Based on the AGO's research and consultation, it was concluded that the Government of Guam does not have a viable counterclaim for contribution against the United States in the District Court case. The AGO has also considered whether a separate claim may exist against the United States under the federal CERCLA statute, and based on the available evidence, does not believe such a claim against the United States would be successful. The AGO is unaware of any other justifiable claims which may exist against the United States, including a claim under the Federal Torts Act. If the Governor's Counsel has contrary research supporting a justifiable claim against the United States, it has not discussed it with the AGO. If such research exists, the AGO is willing to review it and work with the Governor's Counsel.

Disputed Undisputed Facts

The Office of the Governor's Motion to Stay contains nearly 7 single-spaced typed pages under the heading, "The following facts are, or should be, undisputed." ECF No. 1178 at 6-12. The AGO disagrees with many of the statements contained therein but does not believe that rebutting the inaccurate statements will assist the Court in ruling on the Motion to Stay currently under review. However, the AGO will readily further respond should the Court decide it would be helpful and is necessary for the AGO to address each inaccurate statement made by the Office of the Governor.

E. Motion to Strike for Noncompliance with Rule LR 7.1(g) of the Local Rules of Practice for the District Court of Guam.

LR 7.1(g) of the Local Rules of Practice for the District of Guam provides, in part, "Each party may submit briefs or memoranda in support of or in opposition to any pending motion which shall not exceed a total of twenty (20) pages in length without leave of Court to file additional pages."

LR 7.1 (g). GR 5.1(a) provides, in part, that "All papers shall be double-spaced except for the identification of counsel, title of the case, footnotes, quotations, and exhibits." GR 5.1(a).

The Memorandum of Points and Authorities in Support of the Government of the Governor's Office's Motion to Stay and for Further Relief (the "Brief" ECF No. 1178) does not comply with GR 5.1(a) and LR 7.1(g). The Brief contains nearly 7 pages of single spaced alleged undisputed facts, which are not a proper subject for single spacing under the rules. *See* ECF No. 1178 at 6-12. Had the Rules of Practice been followed and the alleged undisputed facts correctly double-spaced, the Brief would far exceed the 20-page limit. And leave was not requested to exceed the page limit, as required under LR 7.1 (g). Counsel should not be permitted to circumvent the rules to avoid compliance therewith. The AGO therefore requests that the Brief be stricken.

III. CONCLUSION

Pursuant to this Court's existing Orders, the AGO represents the Government of Guam, including its line agencies and autonomous agencies, and not the Receiver, both in this case and in the Condemnation Case. The line agencies fall directly within the Office of the Governor's control, while the autonomous public corporation, i.e., the GSWA, does not. The Court's Orders confirm that the AGO is not conflicted. The Governor's Office has offered no credible evidence of clear error by the Court, or asserted there has been a change in controlling law, or that substantially different changed circumstances exist that would result in manifest injustice. There is no basis for the disqualification of the AGO, under *Santos* or otherwise. These issues have already been extensively briefed and the AGO submits that further briefing is unnecessary.

The bid amounts and estimates of the Receiver regarding the Ordot closure costs have been filed and made public, alleviating the concerns of the Office of the Governor's position raised in its Motion to Stay and Motion to Unseal (ECF No. 1193).

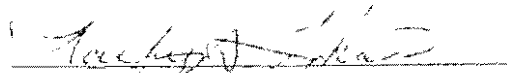
Under Guam law, the Office of the Governor does not sign contracts entered into by the GSWA and its desire to become involved in the procurement of such contracts is not allowed under the GSWA statute.

Therefore, the AGO submits that the Office of the Governor has not provided this Court with a sufficient basis to stay the entire proceedings, including the award of any additional contracts.

Respectfully submitted this 27th day of September, 2013.

OFFICE OF THE ATTORNEY GENERAL

By:



Kathy A. Fokas
Assistant Attorney General

From: Alicia Limtiaco
Sent: Monday, May 10, 2010 8:11 PM
To: Steve Newman; Kathy Fokas
Cc: Alicia Limtiaco; Patrick Mason; Tab Borja; Marie Cruz
Subject: FW: Request for Assistance - Superfund
Steve and Kathy - FYI below. Thank you.

Alicia G. Limtiaco
Attorney General of Guam

Office of the Attorney General
287 West O'Brien Drive
Hagatna, Guam 96910

Email: law@guamattorneygeneral.com
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From: Alicia Limtiaco
Sent: Monday, May 10, 2010 8:10 PM
To: 'McPherson, James'
Cc: Alicia Limtiaco; Patrick Mason; Tab Borja
Subject: Request for Assistance - Superfund

Dear Jim,

Hafa adai! Thank you again for your and NAAG's assistance with our Office's earlier inquiry re: the condemnation matter.

May we ask if NAAG can circulate to the Attorneys General Offices another request for assistance from our Office. The issue involves research relating to the government's (Government of Guam) ability to access funds from the Superfund program to support the closure of Guam's Ordot Dump. Our research has revealed that the issue of using the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended (also known as CERCLA or Superfund) towards the costs to close the Ordot Dump has arisen several times over the years. The Government of Guam will/should be opening a new landfill in the next several months.

The United States Environmental Protection Agency (USEPA) website gives the entire Ordot history as it relates to CERCLA/Superfund. The historical information is available on-line at the following link: <http://yosemite.epa.gov/r9/sfund/r9sfdocw.nsf/vwsoalphabetic/Ordot%20Landfill?OpenDocument>

Originally, the Ordot Dump site was listed on the National Priorities List (NPL) in September 1983 after it was designated by the Governor of Guam as Guam's highest priority site for Superfund

cleanup. In 1987, the USEPA published a site characterization report in which it noted “no imminent and substantial endangerment to human health or welfare or the environment” in connection with the Ordot Dump. In September 1988, USEPA issued a Record of Decision (ROD) under the Superfund. The Clean Water Act (CWA), rather than CERCLA, was deemed to be best suited to address the unpermitted discharge of pollutants from the Ordot Dump to waters of the United States (the Lonfit River). Under the CWA, an order was issued to the Government of Guam to eliminate unpermitted discharge from the Ordot Dump to the Lonfit River.

The determination that remedial action under CERCLA was inappropriate at the time was based on the following:

- 1) Ordot is an operating municipal landfill;
- 2) All but approximately 4-7 acres of the 47 acre site are active waste disposal areas;
- 3) The 4-7 acres are downgradient of the active waste disposal areas or are immediately adjacent to active waste disposal areas;
- 4) Any remedy for the inactive areas will likely be affected by activities at the active waste disposal areas or continued surface flows through the landfill;
- 5) The bulk of the environmental impacts from the landfill will result from activities at the active waste disposal areas;
- 6) The landfill, by applying standard operating practices to control landfill leachate, can effectively reduce or eliminate the surface flow of leachate to receiving waters;
- 7) EPA has issued an order under the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, that requires the Guam Department of Public Works to cease discharge of leachate from Ordot Landfill to Lonfit River; and
- 8) EPA data, although too limited for comprehensive conclusions, has not demonstrated any imminent and substantial endangerment to human health or welfare or the environment.

(EPA Five Year Review of the No Action Decision at the Ordot Landfill Superfund Site in Guam, dated 9/30/93.) (Note also that the reasons are similarly stated in the Introduction Section of EPA's Third 5-Year Review Report, dated September 2007. Both of these reports are available on-line at the above-referenced link.)

On February 11, 2004, a Consent Decree was entered in an action instituted by USEPA against the Government of Guam. Among other things, the Consent Decree requires the closure of Ordot and opening of a new landfill.

USEPA is mandated by statute under CERCLA to conduct five-year reviews and has done so since the issuance of the ROD. In each of its reviews in September 1993, September 2002, and September 2007, USEPA has continued to conclude that its “no action” remedy under Superfund is expected to be protective of human health and the environment upon all actions required under the Consent Decree between the United States and the Government of Guam. USEPA have reiterated in open court that Superfund monies are not available in light of the Consent Decree.

Our Office has initiated additional research to determine whether the USEPA was correct in denying Superfund assistance in the first instance; whether Superfund monies may be accessed once the Ordot Dump is closed and ceases to operate; and whether there is any other basis for obtaining Superfund assistance in connection with the closure of the Ordot Dump. Circumstances have changed since USEPA's original denial and our Office is revisiting this matter.

Thank you again for all of your assistance. The points of contact in our Office for the above matter are:

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Email: kfokas@guamattorneygeneral.com

Sincerely,

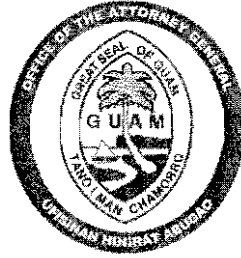
Alicia G. Lintiacó
Attorney General of Guam

Office of the Attorney General
287 West O'Brien Drive
Hagatna, Guam 96910

Email: law@guamattorneygeneral.com
URL: www.guamattorneygeneral.com

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Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

CONFIDENTIAL COMMUNICATION

Bill Shafford
Manager, Voluntary Cleanup Program
Remediation Division
Texas Council on Environmental
Quality Regulations
P.O. Box 13087, MC 221
Austin, Texas 78711

BY E-MAIL: bshaffor@tceq.state.tx.us

January 12, 2011

Re: The Government of Guam's potential CERCLA Contribution Claim Against the
United States Department of Defense

Dear Bill:

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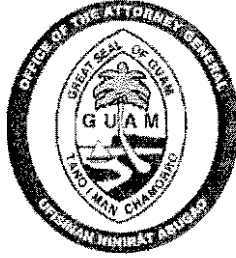
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CONFIDENTIAL COMMUNICATION

Edward Hammerberg
Chief, Technical Services Division
Maryland Department of the Environment
1800 Washington Boulevard
Suite 610
Baltimore, Maryland 21230

BY E-MAIL: ehammerberg@mde.state.md.us

January 12, 2011

Re: The Government of Guam's potential CERCLA Contribution Claim Against the United States Department of Defense

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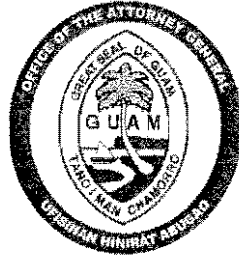
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CONFIDENTIAL COMMUNICATION

Raymond Leclerc
Assistant Deputy Director
California Department of Toxic
Substances Control
8800 Cal Center Drive
Sacramento, CA 95826

BY E-MAIL: rleclerc@dtsc.ca.gov

January 12, 2011

Re: The Government of Guam's potential CERCLA Contribution Claim Against the United States Department of Defense

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cc: Patriek Mason, Deputy Attorney General
Ken Orcutt, Assistant Attorney General

Dear Robin,

I am writing to you from Guam where because of our office's limited resources, I find myself having to learn about federal environmental statutes for the first time. In one instance, I ordered your book, The Clean Water Act and the Constitution, 2nd Ed., and had it shipped priority mail (which cost over \$100). It was very helpful and allowed us to successfully brief, argue and win a motion against the USEPA regarding an issue that arose in our office.

We have another situation on Guam which has been bothering me and I am hoping to be able to discuss with you whether I am on the right track in pursuing a case against the United States Department of Defense for contribution.

The U.S. brought suit against the Government of Guam ("GovGuam") requiring GovGuam to spend hundreds of millions of dollars constructing a new landfill and closing the old dump. The old Ordot Dump has been a longstanding environmental nightmare, and while the end result of the new state-of-the-art landfill is great for our little island, the U.S. Navy contributed to the problem when it operated the Ordot Dump during the 1940's and disposed its munitions at the dump contributing to the pollution. GovGuam does not have a lot of money and it does not seem right to me that it should be burdened with the entire clean up costs, where there is culpability on the part of the Department of Defense.

I've attached a brief summary and would very much appreciate the opportunity to speak with you. Because of the time difference, if you are willing to give me a date, time and telephone number to call, I will reach you. Generally, any time after 6 p.m. (Florida time) is good. Thank you in advance...and

Briefly, as a result of longstanding problems with the island's dump, the United States brought suit against the Government of Guam ("GovGuam") and GovGuam was required to spend hundreds of millions of dollars constructing a state-of-the-art landfill and is in the process of closing the old Ordot Dump, which is expected to cost GovGuam millions of more dollars. As you may know, there has been a U.S. military presence on Guam since the 1940's. It is a well known fact that the U.S. Navy operated the Ordot Dump during the 1940's and disposed its munitions at the dump contributing to the pollution, but the U.S. has consistently refused to award superfund monies to assist in its closure, despite the Ordot Dump being listed on the National Priorities List (NPL) in September 1983 and is a Superfund site under CERCLA.¹

Recovery Under CERCLA

I have recently been reading the cases allowing a claim for contribution or to recover clean up costs against the U.S. which we would file as a counterclaim in the existing District Court case. As I understand, if the Navy was an operator of a facility upon which hazardous substances have been disposed, or an arranger of the production of materials leading to that waste, it may be jointly and severally liable on a retroactive basis for superfund liabilities.² This is not a novel idea and suit has been brought against the Department of Defense where it has been found to be an operator or arranger of the

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² DOD's liability as an "operator" or "arranger" under CERCLA, *Pub. L. No. 111-32, 42 U.S.C.S. §9607 (2009)*.

disposal of former munitions. Evidently, it is widely recognized that DOD has historically been one of the nation's largest polluters in these matters.

It is my understanding that CERCLA allows for two causes of action; under CERCLA §107(a) or §113(f).

§113(f) seems to grant the right to contribution, or the right to collect from other potential responsible parties with common liability, *only if the underlying suit was brought under §106 or §107(a)*. In our case, for some reason which has never been clear to me, the U.S. sued GovGuam under the Clean Water Act (CWA), rather than CERCLA.³ If CERCLA §113(f) is read literally, an action for contribution against the U.S. will not lie under §113(f) because the underlying action was not made *under §106 or §107(a)*. I can't help but wonder if the U.S. filed its case against GovGuam under the CWA instead of CERCLA to circumvent a contribution claim under CERCLA §113(f). Certainly, this cannot be the intended consequence of the environmental protection statutes.

On the other hand, an action against the U.S. under CERCLA §107(a) does not require that an enforcement action under CERCLA exist. §107(a)(4)(B) permits a potential responsible party to recover costs from another potential responsible party, *even in the absence of a CERCLA enforcement action*. In the event that GovGuam has a cause of action under §107(a), I am not clear whether it must actually incur the clean up costs before seeking to recovery from DOD.

Recovery Under CWA

³ See lame reason given by the feds at [UEPA Superfund hyperlink](#)

I'm not sure if recovery for contribution or to recover costs can be had under the CWA. Although I've seen references in articles to similar contribution provisions in the CWA⁴, to me, they do not seem to do the same thing. Then it would have to be wrong to allow the U.S. to circumvent CERCLA's contribution statutes by bringing its claim against GovGuam under the CWA. It looks like this issue is hot and the U.S. Supreme Court has recently dealt with this issue and as a result there are an abundance of articles discussing these issues.

⁴ ADD OIL SPILL ARTICLE

Eddie Baza Calvo
Governor



GENERAL SERVICES AGENCY

(Ahensian Setbision Hinirat)
Department of Administration

Ray Tenorio
Lieutenant Governor

Benita A. Manglona
Director

148 Route 1 Marine Drive, Piti, Guam 96915
Tel: (671) 475-1707 Fax Nos: (671) 475-1727 / 472-4217

John A.B. Pangelinan
Acting Deputy Director

August 25, 2014

The Honorable Benjamin JF. Cruz
Vice-Speaker 32nd Guam Legislature
Chairman of the Committee General Governmental
Operations, Procurement and Cultural Affairs
155 Hesler Street
Hagatna, Guam 96910

Re: Comments on Bill 281-32

Dear Vice-Speaker Cruz:

We are in receipt of your memorandum dated August 21, 2014, in which you requested our comments on Bill 281-32 "An Act add a new Section 22401-2 to Article 4, Chapter 22, Title 5 of the Guam Code Annotated relative to authorizing the Government of Guam, through the Office of the Governor, to retain professionals to pursue claims of the Government of Guam against third parties on a contingency fee basis, authorized to pay for same, and to appropriate to the Office of the Governor \$350,000 for the costs and expenses (not fees) associated with bringing an action against the Federal Government for harms at the Ordot Dump."


We have the following concern: Is it the intent of this legislation that Section two covers cost only associated with the acquisition of services after the effective date of this act or may costs incurred currently, may be paid for?

Otherwise, since the General Services Agency does not handle professional services, we have no comment on this bill.

Vice Speaker Benjamin J.F. Cruz

Date: 8/26/14 Time: 12:54pm

File No.: 32-071

Received By: 


Claudia S. Acfalle
Chief Procurement Officer

TO: THE COMMITTEE ON APPROPRIATIONS, PUBLIC DEBT, LEGAL AFFAIRS, RETIREMENT,
PUBLIC PARKS, RECREATION, HISTORIC PRESERVATION, AND LAND

FROM: GUAM SOLID WASTE AUTHORITY

SUBJECT: GSWA BOARD RESOLUTION NO. 2014-01

DATE: SEPTEMBER 15, 2014

The Guam Solid Waste Authority Board of Directors RESOLUTION No. 2014-01 was passed at the GSWA Board of Directors Meeting on February 20, 2014.

A copy of the Resolution signed by GSWA Board Interim Chairman, Andrew Gayle, and Interim Secretary, Elyze Iriarte, is attached.

**GUAM SOLID WASTE AUTHORITY BOARD OF DIRECTORS
RESOLUTION No. 2014-01**

**RELATIVE TO THE BOARD OF DIRECTORS OF THE GUAM SOLID WASTE
AUTHORITY REQUESTING THE GOVERNOR OF GUAM TO PURSUE A CERCLA
CLAIM AGAINST ALL POTENTIALLY RESPONSIBLE PARTIES FOR DISPOSING
OF HAZARDOUS WASTE IN THE ORDOT LANDFILL**

WHEREAS, the Guam Solid Waste Authority ("GSWA" or "Authority") is an autonomous public corporation that oversees the collection and disposal of all solid waste material within the Territory of Guam; and

WHEREAS, all powers vested in the Authority is exercised by the GSWA Board of Directors which is comprised of five individuals appointed by the Governor and subject to confirmation by the Legislature; and

WHEREAS, the Ordot Landfill, a former facility for disposal of Guam waste matter was ordered to close by the United States District Court in 2008 and all matters concerning solid waste collection and disposal was placed under a Federal Receivership which is in effect to the present time; and

WHEREAS, in order to comply with the District Court's mandates, strapped with limited financial resources, the Guam Legislature had no other recourse than to authorize the Governor to float a bond in the amount of \$202,000,000. The total cost to the people of Guam after repayment of the bond will be \$360,000,000; and

WHEREAS, public records indicate the Ordot Landfill was built by the U.S. Navy and was in use for the disposal of municipal and military waste shortly before World War II and, after the liberation of Guam by the United States armed forces in 1944, the Navy resumed operation of the landfill and continued until 1950, when the responsibility of the facility was transferred to government of Guam. The total time the facility was under exclusive Navy control was approximately 13 years; and

WHEREAS, during the Navy's control of the Ordot Landfill and possibly afterwards, the Navy may have disposed various types of hazardous waste at the facility including industrial and commercial chemicals, PCB-contaminated soils from electrical transformers and possibly munitions. Recent sampling data suggest that

chemicals causing contamination in the landfill are likely attributed (at least in part) to the Navy's past waste disposal activities; and

WHEREAS, the U.S. Environmental Protection Agency ("U.S. EPA") added the Ordot Landfill to the National Priorities List ("NPL") in 1983. The NPL is the U.S. EPA's list of sites given priority for the expenditure of funds to respond to the release or threatened release of hazardous substances; and

WHEREAS, in 1988, the U.S. EPA issued a Superfund Record of Decision ("ROD"), which noted that the Navy was a "potentially responsible party" for environmental contamination at the Ordot Landfill. The ROD concluded, however, that remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or "Superfund") were "inappropriate at this time." The reasons for its conclusion, as stated in the ROD, are: "1) Ordot Landfill is an operating municipal landfill; 2) all but approximately 4-7 acres of the 47 acre site are active waste disposal areas; 3) the 4-7 inactive acres are downgradient or adjacent to the active waste disposal areas; 4) any remedy for these inactive areas likely will be affected by activities at the active waste disposal areas or continued surface flow through the landfill; 5) the bulk of any environmental impacts from the landfill will result from activities at the active waste disposal areas; 6) the landfill, by applying standard operation practices to control landfill leachate, can effectively reduce or eliminate the release of leachate to receiving waters; 7) EPA has issued an order under the Clean Water Act, 33 U.S.C. section 1251 et seq., that requires the Guam Department of Public Works to cease discharge of leachate from Ordot Landfill to the Lonfit River; and 8) EPA data, although too limited for comprehensive conclusions, has not demonstrated an imminent and substantial endangerment to human health or welfare or the environment;" and

WHEREAS, in 2002, the United States filed a lawsuit under the Clean Water Act ("CWA") (not CERCLA), alleging that the government of Guam was unlawfully allowing the discharge of leachate from the Ordot Landfill to the Lonfit River and two of its tributaries. In 2004, the federal district court approved the Consent Decree requiring the government of Guam to close the Ordot Landfill and stop discharging the leachate. The Consent Decree also required the government of Guam to take steps toward opening a new landfill for use going forward. The Consent Decree envisioned that efforts to meet these requirements would be funded in part by the Solid Waste Operations Fund, established by 10 G.C.A. section 51118 (the "SWOF"). However, it

also recognized that the SWOF would not be sufficient to cover the full cost and that the government of Guam should use its "best efforts" to obtain money from other sources.

NOW, THEREFORE, BE IT HEREBY:

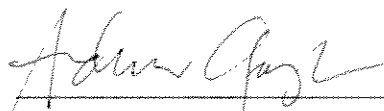
RESOLVED, that given that the majority of the reasons stated in the ROD for not pursuing a CERCLA action have since been remediated by the closure of the Ordot Landfill and the opening of the Layon Landfill, the GSWA Board of Directors requests that the Governor of Guam bring an action under CERCLA to seek contribution from any and all other potentially liable parties for disposing hazardous waste in the Ordot Landfill; and be it

FURTHER RESOLVED, that GSWA Board of Directors requests that the 32nd Guam Legislature provide any necessary legislation to the Governor of Guam that he may need to successfully prosecute the government of Guam's CERCLA claims against any and all potentially responsible parties.

Duly and Regularly Adopted on the 20th Day of February, 2014.



Interim Secretary, Guam Solid Waste
Authority Board of Directors



Interim Chairman, Guam Solid Waste
Authority Board of Directors



BUREAU OF BUDGET & MANAGEMENT RESEARCH

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

EDDIE BAZA CALVO
GOVERNOR

ANTHONY C. BLAZ
ACTING DIRECTOR

RAY TENORIO
LIEUTENANT GOVERNOR

JOSE S. CALVO
ACTING DEPUTY DIRECTOR

SEP 23 2014

Senator Rory J. Respicio
Chairperson, Committee on Rules
I Mina'trentai Dos na Liheslaturan Guåhan
The 32nd Guam Legislature
155 Hesler Place
Hagåtña, Guam 96932

Hafa Adai Senator Respicio:

Transmitted herewith is Fiscal Note on the following Bill Nos.: 281-32(COR), 285-32(COR), 388-32(LS), 395-32(COR) and Fiscal Note Waiver on the following Bill No.: 346-32(COR).

If you have any question(s), please do not hesitate to call the office at 475-9412/9106.

ANTHONY C. BLAZ
Acting Director

Enclosures

**Bureau of Budget & Management Research
Fiscal Note of Bill No. 281-32 (COR)**

AN ACT TO ADD A NEW SECTION 22401.2 TO ARTICLE 4, CHAPTER 22, OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM, THROUGH THE OFFICE OF THE GOVERNOR, TO RETAIN PROFESSIONALS TO PURSUE CLAIMS OF THE GOVERNMENT OF GUAM AGAINST THIRD PARTIES ON A CONTINGENCY FEE BASIS, AUTHORIZATION TO PAY FOR SAME, AND TO APPROPRIATE TO THE OFFICE OF THE GOVERNOR \$350,000 TO PAY FOR THE COSTS AND EXPENSES (NOT FEES) ASSOCIATED WITH BRINGING AN ACTION AGAINST THE FEDERAL GOVERNMENT FOR HARMES AT THE ORDOT DUMP.

Department/Agency Appropriation Information	
Dept./Agency Affected: Office of the Governor	Dept./Agency Head: Eddie Baza Calvo, Governor
Department's General Fund (GF) appropriation(s) to date:	6,522,917
Department's Other Fund (Specify) appropriation(s) to date: Indirect Cost Fund	253,561
Total Department/Agency Appropriation(s) to date:	\$6,776,478

Fund Source Information of Proposed Appropriation			
	General Fund:	(Specify Special Fund):	Total:
FY 2013 Unreserved Fund Balance		\$0	\$0
FY 2014 Adopted Revenues	\$593,827,815	\$0	\$593,827,815
FY 2014 Appra. (P.L. 32-68 through P.L. 32-170)	(\$593,956,429)	\$0	(\$593,956,429)
Sub-total:	(\$128,614)	\$0	(\$128,614)
Less appropriation in Bill	(\$350,000)	\$0	(\$350,000)
Total:	(\$478,614)	\$0	(\$478,614)

Estimated Fiscal Impact of Bill						
	One Full Fiscal Year	For Remainder of FY 2014 (if applicable)	FY 2015	FY 2016	FY 2017	FY 2018
General Fund	\$0	\$350,000	/ /	/ /	/ /	/ /
(Specify Special Fund)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$350,000	/ /	/ /	/ /	/ /

- Does the bill contain "revenue generating" provisions? / / Yes /X/ No
If Yes, see attachment
- Is amount appropriated adequate to fund the intent of the appropriation? /X/ N/A / / Yes / / No
If no, what is the additional amount required? \$ _____
- Does the Bill establish a new program/agency? / / Yes /X/ No
If yes, will the program duplicate existing programs/agencies? / / N/A / / Yes /X/ No
Is there a federal mandate to establish the program/agency? / / Yes /X/ No
- Will the enactment of this Bill require new physical facilities? / / Yes /X/ No
- Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: / / Yes /X/ No
/ / Requested agency comments not received by due date /X/ Other: Time constraints

Analyst: 4/18/14 Date: 4/24/14 Director: [Signature] Date: SEP 13 2014
Angela Flores, BMA IV ANTHONY C. BLAZ, Acting Director

Footnotes: / / A fiscal impact is anticipated relative to authorization of the government of Guam, through the Office of the Governor to retain qualified service providers and/or professionals on a contingency fee basis to pursue claims of the government of Guam against third parties, including, without limitation, the Federal Government and its agents and contractors, for reasons stated in the bill language. In the United States, the Federal Government has sovereign immunity and may not be sued unless it waives its immunity or consents to the suit. The bill does not define funding limitations, and such, will subject the government of Guam to indefinite costs. Notwithstanding any other provision of law, any monies collected or recovered of up to 30% will be authorized to pay such service providers and/or professionals hired on a contingency fee basis. In Section 3 of the bill, the amount of \$350,000 is being appropriated from the General Fund to pay for costs and expenses (not attorneys' fees) incurred in the pursuit of claims against the Federal Government for harms caused at the Ordot Dump. The necessity to include language that the Department of Administration be directed to identify the fund source for this purpose, is not explained since Section 2 provides that the appropriation is made from the General Fund.



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

E-mail: roryfor Guam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael E.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

February 21, 2014

MEMORANDUM

To: Rennae Meno
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: Senator Rory J. Respicio
Chairperson of the Committee on Rules

Subject: Referral of Bill No. 281-32(COR)

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 281-32(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

I Mina'Trentai Dos Na Liheslaturan Guahan
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
281-32 (COR)	Chris M. Dueñas	AN ACT TO ADD A NEW SECTION 22401.2 TO ARTICLE 4, CHAPTER 22, OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM, THROUGH THE OFFICE OF THE GOVERNOR, TO RETAIN PROFESSIONALS TO PURSUE CLAIMS OF THE GOVERNMENT OF GUAM AGAINST THIRD PARTIES ON A CONTINGENCY FEE BASIS, AUTHORIZATION TO PAY FOR SAME, AND TO APPROPRIATE TO THE OFFICE OF THE GOVERNOR \$350,000 TO PAY FOR THE COSTS AND EXPENSES (NOT FEES) ASSOCIATED WITH BRINING AN ACTION AGAINST THE FEDERAL GOVERNMENT FOR HARMS AT THE ORDOT DUMP.	2/21/14 2:05 p.m.	02/21/14	Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land			



Lisa Dames <cipo@guamlegislature.org>

Public Hearing - FIRST NOTICE

Lisa Dames <cipo@guamlegislature.org>
To: PHrg Notice <phnotice@guamlegislature.org>

Thu, Aug 21, 2014 at 9:57 AM

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land will conduct a public hearing on Thursday, August 28, 2014 beginning at 10:00am and 2:00pm in the Guam Legislature Public Hearing Room.

The following is on the agenda:

10:00AM

Bill No. 306-32 (COR) – Introduced by Senator Frank B. Aguon, Jr.

An act to appropriate funds to the Office of Veterans Affairs for the implementation of the Guam Veterans Registry as mandated by Public Law 32-101.

Bill No. 294-32 (COR) – Introduced by Senator Dennis G. Rodriguez, Jr.

An act to establish the "Police Patrol Vehicle & Equipment Revolving Fund" by adding a new Section §77135 to Article 1, Chapter 77, Title 10, Guam Code Annotated; and to provide funding by amending §3602 of Article 6, Chapter 3, Title 16, Guam Code Annotated, relative to the assessment and collection of vehicle safety inspection fees.

Bill No. 281-32 (COR) – Introduced by Senator Christopher M. Duenas

An act to add a new Section 22401.2 to Article 4, Chapter 22, Title 5 of the Guam Code Annotated relative to authorizing the Government of Guam, through the Office of the Governor, to retain professionals to pursue claims of the Government of Guam against third parties on a contingency fee basis, authorization to pay for same, and to appropriate to the Office of the Governor \$350,000 to pay for the costs and expenses (not fees) associated with bringing an action against the Federal Government for harms at the Ordot Dump.

Bill No. 346-32 (COR) – Introduced by Michael T. Lintiac

An act to add new §8138.6, 8138.7, 8138.8 and 8138.9 to Chapter 8 of Title 4 GCA relative to creating a separate Board of Trustees for members of the Defined Contribution Retirement Plan.

2:00PM

Bill No. 213-32 (COR) – Introduced by Senator V. Anthony Ada

An act to authorize *I Magañahan Guahan* to exchange government property in Barrigada for privately owned property located in Barrigada to be used for the Guam Flood Mitigation Plan.

Bill No. 293-32 (COR) – Introduced by Senator Thomas A. Morrison

An act to amend §61542 of Chapter 61 of 21GCA relative to political signs.

Bill No. 354-32 (LS) – Introduced by Senator Michael J.Q. San Nicolas


An act to authorize owners of private property to erect or have erected political signage, by adding a new Item (5) to Subsection (a), a new Item (3) to Subsection (b), a new Item (3) to Subsection (c), each of §61541, Part 5, Article 5, Chapter 61, Title 21, Guam Code Annotated.

Bill No. 285-32 (COR) – Introduced by Senator Tina R. Muña Barnes

An act making an appropriation from the General Fund to the Department of Administration (DOA) for Westcare Pacific Islands for the specific purposes of conducting intense outreach activities, providing informational and referral services to all veterans on Guam.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services or for further information, please call the Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land at 473-4236/7 or email at cipo@guamlegislature.org

.....
Lisa Dames
I MINA'TRENTAI DOS NA LIHESLATURAN GUAHAN
Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public
Parks, Recreation, Historic Preservation, and Land.
(671) 473-4236 (office)
(671) 473-4238 (fax)
email: cipo@guamlegislature.org

 **Agenda PH 08282014.doc**
46K



Lisa Dames <cipo@guamlegislature.org>

Public Hearing - FIRST NOTICE

Lisa Dames <cipo@guamlegislature.org>

Thu, Aug 21, 2014 at 9:55 AM

To: news@guampdn.com, news@k57.com, Sabrina Salas <sabrina@kuam.com>, Jason Salas <jason@kuam.com>, Mindy Aguon <mindy@kuam.com>, Ken Quintanilla <kenq@kuam.com>, Krystal Paco <krystal@kuam.com>, clynt@k57.com, Betsy Brown <betsy@k57.com>, Kevin Kerrigan <kevin@k57.com>, Jon Anderson <editor@mvguam.com>, "Gerardo R. Partido" <gerry@mvguam.com>, Mar-Vic Cagurangan <marvic@mvguam.com>, louella@mvguam.com, rgibson@k57.com, Jerick Sablan <jpsablan@guampdn.com>, Steve Limtiaco <slimtiaco@guampdn.com>, kstokish@gmail.com, "Daleno, Gaynor D" <gdumat-ol@guam.gannett.com>, Lifestyles_PDNI <life@guampdn.com>

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An act to add new §8138.6, 8138.7, 8138.8 and 8138.9 to Chapter 8 of Title 4 GCA relative to creating a separate Board of Trustees for members of the Defined Contribution Retirement Plan.

2:00PM

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—
Lisa Dames
I MINA'TRENTAI DOS NA LIHESLATURAN GUAHAN
Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public
Parks, Recreation, Historic Preservation, and Land.
(671) 473-4236 (office)
(671) 473-4238 (fax)
email: cipo@guamlegislature.org

 **Agenda PH 08282014.doc**
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Lisa Dames <cipo@guamlegislature.org>

Public Hearing - FIRST NOTICELisa Dames <cipo@guamlegislature.org>
To: PHrg Notice <phnotice@guamlegislature.org>

Thu, Aug 21, 2014 at 10:24 AM

PLEASE SEE ATTACHED REVISED AGENDA. THANK YOU.

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land will conduct a public hearing on Thursday, August 28, 2014 beginning at 10:00am and 2:00pm in the Guam Legislature Public Hearing Room.

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~~**Bill No. 293-32 (COR) – Introduced by Senator Thomas A. Morrison**~~~~An act to amend §61542 of Chapter 61 of 21GCA relative to political signs.~~**Bill No. 354-32 (LS) – Introduced by Senator Michael J.Q. San Nicolas**

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On Thu, Aug 21, 2014 at 9:57 AM, Lisa Dames <cipo@guamlegislature.org> wrote:

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An act to add new §8138.6, 8138.7, 8138.8 and 8138.9 to Chapter 8 of Title 4 GCA relative to creating a separate Board of Trustees for members of the Defined Contribution Retirement Plan.

2:00PM

Bill No. 213-32 (COR) – Introduced by Senator V. Anthony Ada

An act to authorize *I Maga'lahaen Guahan* to exchange government property in Barrigada for privately owned property located in Barrigada to be used for the Guam Flood Mitigation Plan.

Bill No. 293-32 (COR) – Introduced by Senator Thomas A. Morrison

An act to amend §61542 of Chapter 61 of 21GCA relative to political signs.

Bill No. 354-32 (LS) – Introduced by Senator Michael J.Q. San Nicolas

An act to authorize owners of private property to erect or have erected political signage, by adding a new Item (5) to Subsection (a), a new Item (3) to Subsection (b), a new Item (3) to Subsection (c), each of §61541, Part 5, Article 5, Chapter 61, Title 21, Guam Code Annotated.

Bill No. 285-32 (COR) – Introduced by Senator Tina R. Muña Barnes

An act making an appropriation from the General Fund to the Department of Administration (DOA) for Westcare Pacific Islands for the specific purposes of conducting intense outreach activities, providing informational and referral services to all veterans on Guam.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services or for further information, please call the Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land at 473-4236/7 or email at cipo@guamlegislature.org

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Lisa Dames <cipo@guamlegislature.org>

Public Hearing - FIRST NOTICE

Lisa Dames <cipo@guamlegislature.org>

Thu, Aug 21, 2014 at 10:24 AM

To: news@guampdn.com, news@k57.com, Sabrina Salas <sabrina@kuam.com>, Jason Salas <jason@kuam.com>, Mindy Aguon <mindy@kuam.com>, Ken Quintanilla <kenq@kuam.com>, Krystal Paco <krystal@kuam.com>, clynt@k57.com, Betsy Brown <betsy@k57.com>, Kevin Kerrigan <kevin@k57.com>, Jon Anderson <editor@mvguam.com>, "Gerardo R. Partido" <gerry@mvguam.com>, Mar-Vic Cagurangan <marvic@mvguam.com>, louella@mvguam.com, rgibson@k57.com, Jerick Sablan <jpsablan@guampdn.com>, Steve Limtiaco <slimtiaco@guampdn.com>, kstokish@gmail.com, "Daleno, Gaynor D" <gdumat-ol@guam.gannett.com>, Lifestyles_PDN <life@guampdn.com>

PLEASE SEE ATTACHED REVISED AGENDA. THANK YOU.

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land will conduct a public hearing on **Thursday, August 28, 2014 beginning at 10:00am and 2:00pm** in the Guam Legislature Public Hearing Room.

The following is on the agenda:

10:00AM

Bill No. 306-32 (COR) – Introduced by Senator Frank B. Aguon, Jr.

An act to appropriate funds to the Office of Veterans Affairs for the implementation of the Guam Veterans Registry as mandated by Public Law 32-101.

Bill No. 294-32 (COR) – Introduced by Senator Dennis G. Rodriguez, Jr.

An act to establish the "Police Patrol Vehicle & Equipment Revolving Fund" by adding a new Section §77135 to Article 1, Chapter 77, Title 10, Guam Code Annotated; and to provide funding by amending §3602 of Article 6, Chapter 3, Title 16, Guam Code Annotated, relative to the assessment and collection of vehicle safety inspection fees.

Bill No. 281-32 (COR) – Introduced by Senator Christopher M. Duenas

An act to add a new Section 22401.2 to Article 4, Chapter 22, Title 5 of the Guam Code Annotated relative to authorizing the Government of Guam, through the Office of the Governor, to retain professionals to pursue claims of the Government of Guam against third parties on a contingency fee basis, authorization to pay for same, and to appropriate to the Office of the Governor \$350,000 to pay for the costs and expenses (not fees) associated with bringing an action against the Federal Government for harms at the Ordot Dump.

Bill No. 346-32 (COR) – Introduced by Michael T. Limtiaco

An act to add new §8138.6, 8138.7, 8138.8 and 8138.9 to Chapter 8 of Title 4 GCA relative to creating a separate Board of Trustees for members of the Defined Contribution Retirement Plan.

2:00PM**Bill No. 213-32 (COR) – Introduced by Senator V. Anthony Ada**

An act to authorize *I Maga'lahen Guahan* to exchange government property in Barrigada for privately owned property located in Barrigada to be used for the Guam Flood Mitigation Plan.

~~**Bill No. 293-32 (COR) – Introduced by Senator Thomas A. Morrison**~~~~An act to amend §61542 of Chapter 61 of 21GCA relative to political signs.~~**Bill No. 354-32 (LS) – Introduced by Senator Michael J.Q. San Nicolas**

An act to authorize owners of private property to erect or have erected political signage, by adding a new Item (5) to Subsection (a), a new Item (3) to Subsection (b), a new Item (3) to Subsection (c), each of §61541, Part 5, Article 5, Chapter 61, Title 21, Guam Code Annotated.

Bill No. 285-32 (COR) – Introduced by Senator Tina R. Muña Barnes

An act making an appropriation from the General Fund to the Department of Administration (DOA) for Westcare Pacific Islands for the specific purposes of conducting intense outreach activities, providing informational and referral services to all veterans on Guam.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services or for further information, please call the Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land at 473-4236/7 or email at cipo@guamlegislature.org

On Thu, Aug 21, 2014 at 9:55 AM, Lisa Dames <cipo@guamlegislature.org> wrote:

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2:00PM

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Lisa Dames <cipo@guamlegislature.org>

Public Hearing - SECOND NOTICE

Lisa Dames <cipo@guamlegislature.org>
To: PHrg Notice <phnotice@guamlegislature.org>

Tue, Aug 26, 2014 at 10:48 AM

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land will conduct a public hearing on **Thursday, August 28, 2014 beginning at 10:00am and 2:00pm** in the Guam Legislature Public Hearing Room.

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An act to add new §8138.6, 8138.7, 8138.8 and 8138.9 to Chapter 8 of Title 4 GCA relative to creating a separate Board of Trustees for members of the Defined Contribution Retirement Plan.

2:00PM

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Lisa Dames <cipo@guamlegislature.org>

Public Hearing - SECOND Notice

Lisa Dames <cipo@guamlegislature.org>

Tue, Aug 26, 2014 at 10:46 AM

To: news@guampdn.com, news@k57.com, Sabrina Salas <sabrina@kuam.com>, Jason Salas <jason@kuam.com>, Mindy Aguon <mindy@kuam.com>, Ken Quintanilla <kenq@kuam.com>, Krystal Paco <krystal@kuam.com>, clynt@k57.com, Betsy Brown <betsy@k57.com>, Kevin Kerrigan <kevin@k57.com>, Jon Anderson <editor@mvguam.com>, "Gerardo R. Partido" <gerry@mvguam.com>, Mar-Vic Cagurangan <marvic@mvguam.com>, louella@mvguam.com, rgibson@k57.com, Jerick Sablan <jpsablan@guampdn.com>, Steve Limtiaco <slimtiaco@guampdn.com>, "Daleno, Gaynor D" <gdumat-ol@guam.gannett.com>, Lifestyles_PDNI <life@guampdn.com>, kstokish@gmail.com

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land will conduct a public hearing on **Thursday, August 28, 2014 beginning at 10:00am and 2:00pm** in the Guam Legislature Public Hearing Room.

The following is on the agenda:

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Public Hearing - SECOND NOTICE Revised

Lisa Dames <cipo@guamlegislature.org>
To: PHrg Notice <phnotice@guamlegislature.org>

Tue, Aug 26, 2014 at 3:02 PM

Hafa Adai,

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land has released a revised agenda for the public hearing scheduled for Thursday, August 28.

Please note that Bill No. 346-32 (COR) has been removed from the agenda.

Thank you.

--
Lisa Dames
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Public Hearing - SECOND NOTICE - Revised Agenda

Lisa Dames <cipo@guamlegislature.org>

Tue, Aug 26, 2014 at 3:01 PM

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Hafa Adai,

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land has released a revised agenda for the public hearing scheduled for Thursday, August 28.

Please note that Bill No. 346-32 (COR) has been removed from the agenda.

Thank you.

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Lisa Dames

I MINA'TRENTAI DOS NA LIHESLATURAN GUAHAN

Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land.

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thebigshow@guamcell.net
thebigshow@k57.com
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I Mina'trentai Dos na Liheslaturan Guåhan

32nd GUAM LEGISLATURE

Vice Speaker Benjamin J.F. Cruz, Chairman

Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks,
Recreation, Historic Preservation, and Land

**INEKUNGOK PUPBLEKO
(PUBLIC HEARING)**

gi Huebes, gi diha 28 gi Agosto, 2014
Thursday, August 28, 2014

Kuátton Inekungok Pupbleko gi I Liheslaturan Guåhan
(Guam Legislature Public Hearing Room)

**TAREHA
(AGENDA)**

Priniponi Siha:
(Bills)

10:00AM

Bill No. 306-32 (COR) – Introduced by Senator Frank B. Aguon, Jr.

An act to appropriate funds to the Office of Veterans Affairs for the implementation of the Guam Veterans Registry as mandated by Public Law 32-101.

Bill No. 294-32 (COR) – Introduced by Senator Dennis G. Rodriguez, Jr.

An act to establish the “Police Patrol Vehicle & Equipment Revolving Fund” by adding a *new* Section §77135 to Article 1, Chapter 77, Title 10, Guam Code Annotated; and to provide funding by amending §3602 of Article 6, Chapter 3, Title 16, Guam Code Annotated, relative to the assessment and collection of vehicle safety inspection fees.

Bill No. 281-32 (COR) – Introduced by Senator Christopher M. Duenas

An act to add a new Section 22401.2 to Article 4, Chapter 22, Title 5 of the Guam Code Annotated relative to authorizing the Government of Guam, through the Office of the Governor, to retain professionals to pursue claims of the Government of Guam against third parties on a contingency fee basis, authorization to pay for same, and to appropriate to the Office of the Governor \$350,000 to pay for the costs and expenses (not fees) associated with bringing an action against the Federal Government for harms at the Ordot Dump.

Bill No. 346-32 (COR) – Introduced by Michael T. Lintiaeo

An act to add new ~~§8138.6, 8138.7, 8138.8 and 8138.9 to Chapter 8 of Title 4 GCA~~ relative to creating a separate Board of Trustees for members of the Defined Contribution Retirement Plan.

2:00PM

Bill No. 213-32 (COR) – Introduced by Senator V. Anthony Ada

An act to authorize *I Maga'Iahen Guahan* to exchange government property in Barrigada for privately owned property located in Barrigada to be used for the Guam Flood Mitigation Plan.

~~**Bill No. 293-32 (COR) – Introduced by Senator Thomas A. Morrison**~~

~~An act to amend §61542 of Chapter 61 of 21GCA relative to political signs.~~

Bill No. 354-32 (LS) – Introduced by Senator Michael J.Q. San Nicolas

An act to authorize owners of private property to erect or have erected political signage, by adding a new Item (5) to Subsection (a), a new Item (3) to Subsection (b), a new Item (3) to Subsection (c), each of §61541, Part 5, Article 5, Chapter 6I, Title 2I, Guam Code Annotated.

Bill No. 285-32 (COR) – Introduced by Senator Tina R. Muña Barnes

An act making an appropriation from the General Fund to the Department of Administration (DOA) for Westcare Pacific Islands for the specific purposes of conducting intense outreach activities, providing informational and referral services to all veterans on Guam.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services or for further information, please call the Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land at 473-4236/7 or email at cipo@guamlegislature.org



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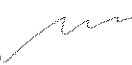
Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

September 19, 2014

Memorandum

To: **Rennae Meno**
Clerk of the Legislature

From: **Senator Rory J. Respicio** 
Majority Leader & Rules Chair

Subject: **Fiscal Notes & Waiver**

Hafa Adai!

Attached please find the fiscal notes and waiver for the bill numbers listed below. Please note that the fiscal note and waiver is issued on the bills as introduced.

FISCAL NOTE:

- Bill No. 281-32 (COR)
- Bill No. 285-32 (COR)
- Bill No. 388-32 (LS)
- Bill No. 395-32 (COR)

WAIVER:

- Bill No. 346-32(COR)

Please forward the same to MIS for posting on our website. Please contact our office should you have any questions regarding this matter.

Si Yu'os ma'åse'!

2014 SEP 19 AM 11:54

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932**EDDIE BAZA CALVO**
GOVERNOR**ANTHONY C. BLAZ**
ACTING DIRECTOR**RAY TENORIO**
LIEUTENANT GOVERNOR**JOSE S. CALVO**
ACTING DEPUTY DIRECTOR**SEP 18 2014**

Senator Rory J. Respicio
Chairperson, Committee on Rules
I Mina'trentai Dos na Liheslaturan Guåhan
The 32nd Guam Legislature
155 Hesler Place
Hagåtña, Guam 96932

Hafa Adai Senator Respicio:

Transmitted herewith is Fiscal Note on the following Bill Nos.: 281-32(COR), 285-32(COR), 388-32(LS), 395-32(COR) and Fiscal Note Waiver on the following Bill No.: 346-32(COR).

If you have any question(s), please do not hesitate to call the office at 475-9412/9106.

A handwritten signature in black ink, appearing to read "Anthony C. Blaz".

ANTHONY C. BLAZ
Acting Director

Enclosures

**Bureau of Budget & Management Research
Fiscal Note of Bill No. 281-32 (COR)**

AN ACT TO ADD A NEW SECTION 22401.2 TO ARTICLE 4, CHAPTER 22, OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM, THROUGH THE OFFICE OF THE GOVERNOR, TO RETAIN PROFESSIONALS TO PURSUE CLAIMS OF THE GOVERNMENT OF GUAM AGAINST THIRD PARTIES ON A CONTINGENCY FEE BASIS, AUTHORIZATION TO PAY FOR SAME, AND TO APPROPRIATE TO THE OFFICE OF THE GOVERNOR \$350,000 TO PAY FOR THE COSTS AND EXPENSES (NOT FEES) ASSOCIATED WITH BRINGING AN ACTION AGAINST THE FEDERAL GOVERNMENT FOR HARMS AT THE ORDOT DUMP.

Department/Agency Appropriation Information	
Dept./Agency Affected: Office of the Governor	Dept./Agency Head: Eddie Baza Calvo, Governor
Department's General Fund (GF) appropriation(s) to date:	6,522,917
Department's Other Fund (Specify) appropriation(s) to date: Indirect Cost Fund	253,561
Total Department/Agency Appropriation(s) to date:	\$6,776,478

Fund Source Information of Proposed Appropriation			
	General Fund:	(Specify Special Fund):	Total:
FY 2013 Unreserved Fund Balance		\$0	\$0
FY 2014 Adopted Revenues	\$593,827,815	\$0	\$593,827,815
FY 2014 Appro. (P.L. 32-68 through P.L. 32-170)	(\$593,956,429)	\$0	(\$593,956,429)
Sub-total:	(\$128,614)	\$0	(\$128,614)
Less appropriation in Bill	(\$350,000)	\$0	(\$350,000)
Total:	(\$478,614)	\$0	(\$478,614)

Estimated Fiscal Impact of Bill						
	One Full Fiscal Year	For Remainder of FY 2014 (if applicable)	FY 2015	FY 2016	FY 2017	FY 2018
General Fund	\$0	\$350,000	1/	1/	1/	1/
(Specify Special Fund)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$350,000	1/	1/	1/	1/

- Does the bill contain "revenue generating" provisions? / / Yes /X/ No
If Yes, see attachment
- Is amount appropriated adequate to fund the intent of the appropriation? /X/ N/A / / Yes / / No
If no, what is the additional amount required? \$ _____
- Does the Bill establish a new program/agency? / / Yes /X/ No
If yes, will the program duplicate existing programs/agencies? / / N/A / / Yes /X/ No
Is there a federal mandate to establish the program/agency? / / Yes /X/ No
- Will the enactment of this Bill require new physical facilities? / / Yes /X/ No
- Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: / / Yes /X/ No
/ / Requested agency comments not received by due date /X/ Other: Time constraints

Analyst: <u>4/10/14</u> Angela Flores, BMA IV	Date: <u>9/29/14</u>	Director:  ANTHONY C. BLAZ, Acting Director	Date: SEP 18 2014
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Footnotes: 1/ A fiscal impact is anticipated relative to authorization of the government of Guam, through the Office of the Governor to retain qualified service providers and/or professionals on a contingency fee basis to pursue claims of the government of Guam against third parties, including, without limitation, the Federal Government and its agents and contractors, for reasons stated in the bill language. In the United States, the Federal government has sovereign immunity and may not be sued unless it waives its immunity or consents to the suit. The bill does not define funding limitations, and such, will subject the government of Guam to indefinite costs. Notwithstanding any other provision of law, any monies collected or recovered of up to 30% will be authorized to pay such service providers and/or professionals hired on a contingency fee basis. In Section 3 of the bill, the amount of \$350,000 is being appropriated from the General Fund to pay for costs and expenses (not attorneys' fees) incurred in the pursuit of claims against the Federal Government for harms caused at the Ordot Dump. The necessity to include language that the Department of Administration be directed to identify the fund source for this purpose, is not explained since Section 2 provides that the appropriation is made from the General



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Senator
V. Anthony Ada
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MINORITY LEADER

Senator
Aline Yamashita
Member

February 27, 2014

VIA E-MAIL

john.rios@bbmr.guam.gov

John A. Rios
Director
Bureau of Budget & Management Research
P.O. Box 2950
Hagåtña, Guam 96910

**RE: Request for Fiscal Notes– Bill Nos. 279-32 (LS), 280-32(LS),
and 281-32(COR)**

Hafa Adai Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

Si Yu'os ma'åse' for your attention to this matter.

Very Truly Yours,

Senator Rory J. Respicio
Chairperson of the Committee on Rules

Attachment (1)

Cc: Clerk of the Legislature

Bill Nos.	Sponsors	Title
279-32 (LS)	T.R. Muna Barnes Aline A. Yamashita, Ph.D.	AN ACT TO PROVIDE FOR A GUAM ENVIRONMENTAL PROTECTION AGENCY- CONDUCTED SUSTAINABLE MATERIALS MANAGEMENT STUDY AND IMPLEMENTATION OF A ONE-YEAR PILOT PROJECT DEMONSTRATING THE ABILITY OF GUAM TO DEVELOP A BENEFICIAL USE FOR DISCARDED GLASS BOTTLES THAT WOULD, AMONG OTHER THINGS, DIVERT GLASS FROM THE LAYON MUNICIPAL SANITARY LANDFILL, AND FOR OTHER PURPOSES .
280-32 (LS)	V. Anthony Ada	AN ACT TO ADD A NEW CHAPTER 72 TO 9GCA RELATIVE TO BIAS-MOTIVATED CRIMES.
281-32 (COR)	Chris M. Dueñas	AN ACT TO ADD A NEW SECTION 22401.2 TO ARTICLE 4, CHAPTER 22, OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM, THROUGH THE OFFICE OF THE GOVERNOR, TO RETAIN PROFESSIONALS TO PURSUE CLAIMS OF THE GOVERNMENT OF GUAM AGAINST THIRD PARTIES ON A CONTINGENCY FEE BASIS, AUTHORIZATION TO PAY FOR SAME, AND TO APPROPRIATE TO THE OFFICE OF THE GOVERNOR \$350,000 TO PAY FOR THE COSTS AND EXPENSES (NOT FEES) ASSOCIATED WITH BRINING AN ACTION AGAINST THE FEDERAL GOVERNMENT FOR HARMS AT THE ORDOT DUMP.



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Member
MINORITY LEADER

Senator
Aline Yamashita
Member

February 21, 2014

MEMORANDUM

To: Rennae Meno
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: Senator Rory J. Respicio
Chairperson of the Committee on Rules

Subject: Referral of Bill No. 281-32(COR)

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 281-32(COR)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

I MINA'TRENTAI DOS NA LIHESLATURAN GUAHAN
2014 (SECOND) Regular Session

Bill No. 281-32 (COR)

Introduced by:

Chris M. Duenas *ST*

AN ACT TO ADD A NEW SECTION 22401.2 TO ARTICLE 4, CHAPTER 22, OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM, THROUGH THE OFFICE OF THE GOVERNOR, TO RETAIN PROFESSIONALS TO PURSUE CLAIMS OF THE GOVERNMENT OF GUAM AGAINST THIRD PARTIES ON A CONTINGENCY FEE BASIS, AUTHORIZATION TO PAY FOR SAME, AND TO APPROPRIATE TO THE OFFICE OF THE GOVERNOR \$350,000 TO PAY FOR THE COSTS AND EXPENSES (NOT FEES) ASSOCIATED WITH BRINING AN ACTION AGAINST THE FEDERAL GOVERNMENT FOR HARMS AT THE ORDOT DUMP

2014 FEB 21 PM 2:05
Amended

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* hereby
2 recognizes that the government of Guam has possible claims against third parties,
3 including without limitation, the Federal Government, for tortious and unlawful conduct
4 and omissions, breaches of duty, violations of law, and damage and harm caused by such
5 parties to the government of Guam, the People of Guam, and/or our environment. *I*
6 *Liheslaturan Guahan* further finds that pursuing such claims can be time-consuming and
7 cost prohibitive and the government of Guam may not have the immediate funds and
8 resources available to pay for the fees and expenses associated with pursuing such claims,
9 although action on these claims could result in the recovery of tens of millions of dollars
10 and will help to prevent future unlawful conduct and activities. *I Liheslaturan Guahan*
11 further finds that pursuit of such claims requires the retention of professions with
12 specialized knowledge, experience, and resources. Accordingly, *I Liheslaturan Guahan*
13 finds that considering the importance and significance of pursuing such claims, the lack
14 of immediate funding, the recovery potential and the welfare of the Territory it may be
15 appropriate for the government of Guam to employ professionals and/or service providers
16 on a contingency fee basis so that the fees therefor would only be payable from the
17 recovery on such claims; recovery that will not exist if these claims are not pursued.

1 **Section 2.** A new section 22401.2 is hereby added to Article 4, Chapter 22 of Title 5 of
2 the Guam Code Annotated:

3 **Section 22401.2. Authorization and Appropriation for Contingency Fee**
4 **Agreements in Furtherance of Claims by the Government of Guam.**

5 (a) Authorization to Hire. The government of Guam, through the Office of the
6 Governor, is hereby authorized, subject to compliance with the applicable
7 Guam Procurement Law and Regulations, to retain qualified service providers
8 and/or professionals on a contingency fee basis to pursue claims of the
9 government of Guam against third parties, including, without limitation, the
10 Federal Government and its agents and contractors, for tortious and unlawful
11 conduct and omissions, breaches of duty, violations of law, breaches of
12 covenants and agreements and damage and harm caused by such third parties.

13 (b) Authorization to Pay for Fees. Notwithstanding any other provision of law,
14 the Office of the Governor is hereby authorized to use an amount not to
15 exceed thirty percent (30%) of any monies collected or recovered through the
16 efforts of such private service providers and/or professionals to pay for the
17 fees of such service providers and/or professionals.

18 **Section 3. Appropriation to Pay for Costs Associated with Bringing Action(s)**
19 **against the Federal Government for Harms at the Ordot Dump.** *I Liheslaturan*
20 *Guahan* hereby appropriates \$350,000 from the General Fund to pay for costs and
21 expenses (not attorneys' fees) incurred in the pursuit of claims against the Federal
22 Government for harms caused at the Ordot Dump. The Department of Administration is
23 directed to identify the fund source for this purpose.

24 **Section 4. Effective Date.** This Act shall become effective upon enactment.

25 **Section 5. Severability.** If any provisions of this Act or its application to any person or
26 circumstance is found to be invalid or contrary to law, such invalidity shall not affect other
27 provisions or applications of this Act that can be given effect without the invalid provisions or
28 application, and to this end the provisions of this Act are severable.