


I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
275-36 (COR)	Telo T. Taitague	AN ACT TO REPEAL AND REENACT SECTION 22421 OF CHAPTER 22, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO RECOGNIZING PUBLIC SERVICE CONTRIBUTIONS MADE BY AUTONOMOUS AGENCIES OF THE GOVERNMENT OF GUAM.	3/14/22 1:59 p.m.						

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 275-36 (COR)

Introduced by:

Telo T. Taitague 

**AN ACT TO REPEAL AND REENACT SECTION 22421
OF CHAPTER 22, TITLE 5, GUAM CODE
ANNOTATED, RELATIVE TO RECOGNIZING
PUBLIC SERVICE CONTRIBUTIONS MADE BY
AUTONOMOUS AGENCIES OF THE GOVERNMENT
OF GUAM.**

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Intent. The Office of Public Accountability (OPA), on
3 March 2022, submitted an audit report for the Autonomous Agency Collections
4 Fund (AACF) and found that the special revenue fund was not being utilized for its
5 intended purpose.

6 The AACF was created in 1985 as a transfer policy, or payment-in-lieu-of-
7 taxes, for the Guam Power Authority (GPA), Port Authority of Guam (PAG), and
8 Guam International Airport Authority (GIAA) for their benefit of services provided
9 by the General Fund. The three agencies were required to transfer a proportioned
10 contribution of \$3.5 million to the General Fund annually. However, the OPA audit
11 discovered little to no activity since the fund was created.

12 Federal regulations, laws, and bond covenants prohibit GIAA from
13 transferring any funds from its operating surplus to the General Fund. Any diversion
14 of their revenues under any formula will place them in breach of the Bond Indentures
15 and jeopardize ongoing and future federal funding and may subject GIAA to millions

1 of dollars in federal civil penalties. Accordingly, GIAA has transferred none of its
2 revenues to the AACF Fund.

3 PAG also asserts that it funds certain government services provided by the
4 Guam Customs and Quarantine Agency, the Guam Environmental Protection
5 Agency, the Guam Police Department, and the Guam Fire Department through
6 ongoing operations at PAG. PAG was the only agency to have made a transfer to the
7 AACF in 2011.

8 The OPA's audit noted that the AACF had not been presented as a special
9 revenue fund in Guam's (GovGuam) Basic Financial Statements from 2012 through
10 2020. The three agencies must represent this information in the footnotes of their
11 financial statements as it remains a liability and an active Guam Public Law. The
12 absence of this information in the footnotes in the financial audit is consistent in the
13 three agencies.

14 Since its creation in 1985, the intended purpose of the AACF has not been
15 met, and there has been little to no activity due to various barriers in transferring
16 surplus revenues from GPA, GIAA, and PAG.

17 The barriers include a raise in power rates to offset the surcharge, a prohibition
18 from bond covenants, and certain government services already provided by the
19 agencies. The Office of Public Accountability (OPA) audit coverage on the AACF
20 recommends that *I Liheslaturan Guåhan* repeal the Autonomous Agency
21 Collections Fund.

22 While the closure of the AACF addresses findings in OPA Report No. 22-01,
23 *I Liheslatura* also intends through this Act that in the absence of the payment-in-
24 lieu-of-taxes policy established initially by the 18th Guam Legislature in 1985,
25 autonomous agencies of the government of Guam shall be required to report their
26 public service contributions on an annual basis to *I Maga'håga Guåhan* and *I*
27 *Liheslaturan Guåhan*.

1 **Section 2. Closure of the Autonomous Agency Collections Fund.** The
2 autonomous Agency Collections Fund shall be closed.

3 a. Any amounts remaining in the Autonomous Agency Collections Fund,
4 including all new revenues and previously earmarked revenues, shall be
5 deposited into the General Fund and subject to legislative appropriation.

6 b. All references within the Guam Code Annotated and the Guam
7 Administrative Rules and Regulations on the Autonomous Agency
8 Collections Fund shall have no effect.

9 c. The Department of Administration is responsible for the timely
10 administration of this Act and shall accordingly work with appropriate
11 agencies of the government of Guam affected herein.

12 **Section 3.** Section 22421 of Chapter 22, Title 5, Guam Code Annotated, is
13 hereby *repealed* and *reenacted* to read:

14 ~~“§ 22421. Transfer of Autonomous Agency Revenues to Autonomous~~
15 ~~Agency Collections Fund.~~

16 ~~(a) It is *I Liheslatura’s* (the Legislature’s) findings that for the risk assumed~~
17 ~~by Guam’s taxpayers in operating the power, water, sewer, and air and sea~~
18 ~~port operations, a fund transfer policy should be instituted as a General~~
19 ~~Fund reimbursement. It is furthermore found that these non-tax paying~~
20 ~~utilities benefit from services provided by the General Fund, such as police~~
21 ~~and fire protection, road systems and other governmental facilities. In~~
22 ~~many cases, several of the services require additional General Fund~~
23 ~~expenditures. Further, rather than assess the actual levy of real estate taxes,~~
24 ~~as if they were of a private venture which is commonly called payment in-~~
25 ~~lieu of taxes, a transfer policy would be more equitable and fair.~~

26 ~~(b) Notwithstanding any other provision of law, *I Maga’lahi* (the Governor)~~
27 ~~and the Boards of Directors of the Jose D. Leon Guerrero Commercial Port~~

1 of Guam, the Guam Power Authority, and the A. B. Won Pat International
2 Airport Authority Guam shall transfer in the aggregate the sum of Three
3 Million Five Hundred Thousand Dollars (\$3,500,000.00) from operating
4 surpluses generated by these agencies to the General Fund of the
5 government of Guam by the end of each fiscal year. The proportionate
6 contribution of each of the above agencies which will in the aggregate
7 make up the Three Million Five Hundred Thousand Dollars
8 (\$3,500,000.00) transferred shall be determined by a formula decided
9 upon by *I Maga'lahi* (the Governor) in consultation with the Boards of
10 Directors of the above agencies. In no event shall the formula decided
11 upon or the transfer of sums from the agencies to the General Fund violate
12 the terms and conditions of any bond covenant of any of the above
13 agencies that is in effect on the effective date of this Section.”

14 **“§ 22421. Autonomous Agency Public Service Contributions Annual**
15 **Reporting Requirement.**

16 Notwithstanding any other provision of law, and in the absence of a
17 payment-in-lieu-of-taxes policy, the Jose D. Leon Guerrero Commercial Port
18 of Guam, the Guam Power Authority, the Guam Waterworks Authority, and
19 the A. B. Won Pat International Airport Authority Guam shall each report
20 their prior fiscal year public service contributions to *I Maga'håga Guåhan*
21 and *I Liheslaturan Guåhan* no later than December 31st annually. The report
22 may include but is not limited to information on the aggregate expenditure of
23 autonomous agency funds and the cost for services and materials that augment
24 the operations of any government of Guam agency, department, or enhance
25 public infrastructure supporting socio-economic programs for households or
26 business establishments in lieu of taxes that may be garnished through the
27 actual levy of real estate taxes, corporate taxes, and business privilege taxes

1 as if a private venture. The report shall be published on their respective
2 website no later than December 31st annually.”

3 **Section 4. Reporting Requirements.** The Department of Administration
4 shall provide a comprehensive written report to the Speaker of *I Lihelsaturan*
5 *Guåhan* and *I Maga'hågan Guåhan* on the status and closure of the Autonomous
6 Agency Collections Fund no later than ninety (90) days after enactment of this Act.

7 **Section 5. Severability.** If any portion of this Act is for any reason held
8 invalid or unconstitutional by any court of competent jurisdiction, such portion shall
9 be deemed a separate provision and shall not affect the validity of the remaining
10 portions of the Act.

11 **Section 6. Effective Date.** This Act shall be effective upon enactment. The
12 Department of Administration shall close the Autonomous Agency Collections Fund
13 of the government of Guam and comply with the provisions contained herein no later
14 than sixty (60) days after enactment of this Act.