

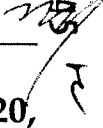


**I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) REGULAR SESSION**

2009 MAY 15 PM 2:45

Resolution No. 119 (COR)

Introduced by:

B.J.F. Cruz 
R.J. Respicio 
J.P. Guthertz, DPA 

RELATIVE TO AN ACTION REGARDING THE MARCH 20, 2009 "ORDER RE: CONTEMPT," ISSUED BY THE CHIEF JUDGE OF THE DISTRICT COURT OF GUAM, FRANCES M. TYDINGCO-GATEWOOD; AND TO AUTHORIZING THE LEGISLATIVE COUNSEL, OR OTHER RETAINED COUNSEL, TO FILE SAID ACTION BEFORE THE NINTH CIRCUIT COURT.

1 **BE IT RESOLVED BY THE COMMITTEE ON RULES OF I**
2 **MINA'TRENTA NA LIHESLATURAN GUÅHAN:**

3 **WHEREAS**, on February 13, 2009, in her Order Re: Cash Payments in
4 Civil Case No. 02-00022, the Chief Judge of the District Court of Guam,
5 Frances M. Tydingco-Gatewood, ordered the Government of Guam to
6 make weekly payments in the amount of Nine Hundred Ninety-Three
7 Thousand Seven Hundred Dollars (\$993,700) to cover the costs of a new
8 landfill and the closure of the Ordot dump; the suspension of such weekly
9 payments to be ordered only upon presentation of a viable, alternative
10 financing plan to the court by the Government of Guam; and

11 **WHEREAS**, on February 26, 2009, in an attempt to avoid the sanction
12 of weekly payments in the amount of Nine Hundred Ninety-three
13 Thousand Seven Hundred Dollars (\$993,700), *I Liheslatura* passed Bill No.

1 51 (COR): "AN ACT TO *ADD* A NEW ARTICLE 8 TO DIVISION 2 OF
2 CHAPTER 51 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO
3 AUTHORIZING THE GOVERNMENT OF GUAM TO ISSUE SOLID
4 WASTE MANAGEMENT SYSTEM BONDS FOR THE PURPOSE OF
5 FINANCING FACILITIES OF THE SOLID WASTE MANAGEMENT
6 SYSTEM OF GUAM, AND APPROVING THE TERMS AND
7 CONDITIONS OF THE ISSUANCE OF ONE (1) OR MORE SERIES OF
8 SUCH BONDS PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF
9 A NEW LANDFILL AND THE CLOSURE OF THE ORDOT DUMP AND
10 OTHER SYSTEM COSTS; TO *ADD* A NEW ARTICLE 9 TO DIVISION 2 OF
11 CHAPTER 51 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO
12 AUTHORIZING THE GOVERNMENT OF GUAM TO ENTER INTO A
13 LEASE AND A LEASE-BACK FOR THE PURPOSE OF FINANCING
14 FACILITIES OF THE SOLID WASTE MANAGEMENT SYSTEM OF
15 GUAM, AND APPROVING THE TERMS AND CONDITIONS OF SUCH
16 LEASES PURSUANT TO SUCH ARTICLE TO PAY THE COSTS OF A
17 NEW LANDFILL AND THE CLOSURE OF THE ORDOT DUMP AND
18 OTHER SYSTEM COSTS; TO AUTHORIZE THE ISSUANCE OF PRIVATE
19 ACTIVITY BONDS FOR THE CONSTRUCTION OF SOLID WASTE
20 DISPOSAL FACILITIES; TO PROHIBIT PAYMENTS WITHOUT
21 APPROPRIATIONS; AND TO DIRECT THE GUAM ECONOMIC

1 DEVELOPMENT AUTHORITY TO SOLICIT ALTERNATIVE
2 FINANCING,” and was subsequently signed into law on February 27, 2009
3 as Public Law 30-1; and

4 **WHEREAS**, In addition to providing several viable, alternative
5 financing plans as required by the Court, Public Law 30-1, in Section 6,
6 “Prohibition on Payments Without Appropriations,” stipulates:
7 “Notwithstanding any other provision of law, and pursuant to the
8 authority granted to the Legislature by §1423j of Subchapter 3 of the
9 Organic Act of Guam, *I Liheslaturan Guåhan* hereby asserts its authority to
10 appropriate funds and determine the conditions for expending such
11 appropriations. *No* public official of the government of Guam, including,
12 *but not limited to, I Maga’lahen Guåhan*, the Treasurer of Guam, the Director
13 of the Department of Administration, and the Director of the Bureau and
14 Management Research, *shall* transfer *or* expend any public funds to comply
15 with the February 13, 2009 Order of the Chief Judge of the District Court of
16 Guam, relative to Civil Case No. 02-00022, to deposit the amount of Nine
17 Hundred Ninety-three Thousand Seven Hundred Dollars (\$993,700) *or* any
18 other amount beginning March 1, 2009 weekly to Citibank *or* any other
19 order that purports to legally direct any official of the government of Guam
20 to expend funds without any legislative authorization *or* appropriation.
21 Any transfer authority granted to the Governor in any previous law *shall* be

1 deemed restricted to the purposes of said law and *shall not* be extended to
2 authorize any transfer of funds *or* for deposit to Citibank as directed in the
3 February 13, 2009, Order of the District Court. Any payment of fines
4 pursuant to the Consent Decree *shall not* be paid *except* by specific
5 appropriation by the Legislature for that purpose, and the Governor’s
6 transfer authority *shall not* extend *or* apply to transfers for the payment of
7 Court fines;” and

8 **WHEREAS**, *I Liheslatura* affirmed and asserted in Section 6 of Public
9 Law 30-1 the Constitutional right of legislative bodies to retain and to
10 exercise the power to appropriate, based on the doctrine of Separation of
11 Powers, and that Section 6 was enacted based on the direct and specific
12 authority granted by the Organic Act of Guam – a constitutional act passed
13 by the United States Congress; and

14 **WHEREAS**, on March 20, 2009, in her Order Re: Contempt in Civil
15 Case No. 02-00022, the Chief Judge of the District Court of Guam, Frances
16 M. Tydingo-Gatewood, declared Section 6 of Guam Public Law 30-1 to be
17 “null and void under the Supremacy Clause of the U.S. Constitution,”
18 further admonishing that “The Government should not have resorted to
19 frivolous modes of self-help, such as enacting patently unconstitutional
20 laws designed to relieve it of its obligations under the court’s February 13,
21 2009 Order;” and

1 **WHEREAS**, *I Liheslatura* finds that it must challenge this ruling of the
2 Chief Judge of the District Court of Guam in order to protect a vital and
3 intrinsic power retained by Guam’s Legislative branch of government,
4 specifically *I Liheslatura’s* authority to appropriate funds and to determine
5 the conditions for expending such appropriations; and

6 **WHEREAS**, by challenging this ruling, it is the intent of *I Mina’*
7 *Trenta Na Liheslaturan Guåhan* that the sanction in the form of weekly
8 payments in the amount of Nine Hundred Ninety-three Thousand Seven
9 Hundred Dollars (\$993,700), will be revoked and that such funds as were
10 taken from the Government of Guam by way of the Order Re: Contempt
11 shall be returned; now, therefore, be it

12 **RESOLVED**, that the Committee on Rules of *I Mina’Trenta Na*
13 *Liheslaturan Guåhan*, on behalf of *I Liheslatura* and the people of Guam,
14 herein directs the Legislative Legal Counsel, pursuant to Rule XVI, Section
15 16.08.ix of the Standing Rules, or alternate legal counsel designated by
16 Vice-Speaker Benjamin J.F. Cruz, to provide legal representation for *I*
17 *Liheslatura* in this matter; and be it further

18 **RESOLVED**, that the Committee on Rules of *I Mina’Trenta Na*
19 *Liheslaturan Guåhan*, on behalf of *I Liheslatura* and the people of Guam,
20 herein directs said counsel, under authority of Rule XVII, Section 17.11.13
21 (vii), to file before the 9th Circuit Court an action regarding the March 20,

1 2009 ruling of the Chief Judge of the District Court of Guam, Frances M.
2 Tydingo-Gatewood; and be it further

3 **RESOLVED**, that the Speaker and the Chairperson of the Committee
4 on Rules certify, and the Secretary of the Legislature attest to the adoption
5 hereof, and that copies of the same be thereafter transmitted to the
6 Honorable Alicia G. Limtiaco, Attorney General of Guam; and to the
7 Honorable Felix P. Camacho, *I Maga'lahaen Guåhan*.

**DULY AND REGULARLY ADOPTED BY THE COMMITTEE ON
RULES OF I MINA'TRENTA NA LIHESLATURAN GUÅHAN ON THE
15TH DAY OF MAY 2009.**

JUDITH T. WON PAT, ED.D.
Speaker

RORY J. RESPICIO
Chairperson, Committee on Rules

TINA ROSE MUÑA BARNES
Legislative Secretary