EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

GL#34-17-128
Speaker Benjamin J.F. Cruz

January 27, 2017

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Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåtro Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

Dear Mr. Speaker:

Attached is Bill No. 389-33 (COR) which was passed by the 33rd Guam Legislature and entitled, *"An act to Appropriate Fiscal Year 2016 General Fund Revenues to the Government of Guam Retirement Fund. . ."* I have signed this appropriation measure into law as **Public Law 33-238**, *except* for Section 4 (Excess Section Fund Revenues), which I have line-item VETOED pursuant to my authority under Organic Act Section 1423i.

Section 4 appropriates any FY2017 Section 30 funds received above $74,900,290 into a special cash contingency account to be established in the Rainy Day Fund. The contingency account can only be used to cover government payroll and cost of living allowance emergency shortfalls. If expenditure needs to be made from the contingency account, an Executive Order declaring an emergency must first be issued. Any funds withdrawn to cover the emergency must be replenished at the end of the fiscal year.

The way the contingency account is funded and managed is objectionable for several reasons. First, by appropriating and segregating away what may potentially be millions of dollars into an exclusive payroll account, Section 4 unduly restricts the Governor's Organic Act authority to manage the cash flow of the government. It is ridiculous to require that an Executive Order be issued in order to make payroll. Such an unnecessary administrative layer over General Fund revenues[1] threatens not only the prompt remuneration of

[1] "Section 30 refers to a provision of the Organic Act of Guam as originally numbered, although it has since been codified as 48 U.S.C. Section 1421h. As set forth in the Organic Act, "Section 30 funds" are General Fund revenues because they are "covered into the treasury of Guam and

government employees, but also the timely payment of tax refunds, vendor payables, and the government's ability to respond to health and safety hazards.

Second, Section 4 of Bill 389 only appropriates into the contingency account those monies that represent FY2017 Section 30 funds received above $74,900,290. But in the event that a withdrawal is made from the account, the Rainy Day Fund is to be replenished *"by the end of the fiscal year in which such withdrawal and/or expenditure occurred."* Presumably, Section 4 contemplates that the funds used to replenish the contingency account will come from General Fund revenues and not from future Section 30 reimbursements. This is unfair, however, because General Fund revenues should not have to bear the burden of reimbursing Section 30 funds.

Finally, Section 4 is potentially inconsistent with the Guam war claims legislation that was signed into law by President Barrack Obama on December 23, 2016, as part of the FY2017 National Defense Authorization Act. Specifically, according to the newly enacted GUAM WORLD WAR II LOYALTY RECOGNITION ACT,[2] any excess Section 30 amounts remitted to Guam are to be deposited into a special claims fund earmarked specifically for the purpose of paying war claim reparations.[3]

As a federal law, the Guam WWII Loyalty Recognition Act trumps the payroll contingency account sought to be established by Section 4. Because the Act requires that excess Section 30 funds be used to pay war claim reparations, it is impossible for those same funds to instead be put aside into a local contingency account or to be otherwise appropriated for purposes other than war claim reparations.

Senseramente,

EDDIE BAZA CALVO

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held in account for the government of Guam, and shall be expended for the benefit and government of Guam in accordance with the annual budgets. . . ."

2 U.S. PUB. L. 114-328 at §§ 1701 *et. seq.*

3 P.L. 114-328 at § 1703.

Doc. No. 34GL-17-0128.

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that **Substitute Bill No. 389-33 (COR), "AN ACT TO APPROPRIATE FISCAL YEAR 2016 GENERAL FUND REVENUES TO THE GOVERNMENT OF GUAM RETIREMENT FUND; TO FURTHER *AMEND* SECTION 6 OF CHAPTER XI OF PUBLIC LAW 33-66, AS AMENDED BY SECTION 18 OF CHAPTER XII OF PUBLIC LAW 33-185; AND TO *AMEND* SECTION 8 OF CHAPTER I OF PUBLIC LAW 33-66, AS ADDED BY SECTION 17 OF CHAPTER XII OF PUBLIC LAW 33-185, RELATIVE TO THE PAYMENT OF FISCAL YEAR 2016 RETIREE MEDICAL, DENTAL, AND LIFE INSURANCE EXPENSES, AND TO PROVIDE A CASH CONTINGENCY FOR ANTICIPATED FISCAL YEAR 2017 RETIREE MEDICAL, DENTAL, AND LIFE INSURANCE EXPENSES,"** was on the 30th day of December 2016, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 30 m day of DEC, 2016, at 8:50 o'clock P .M.

PATRICK G. CORPUZ #374
Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: JAN 0 9 2017

Public Law No. 33-238

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

Bill No. 389-33 (COR)
As substituted by the Committee on Appropriations and Adjudication; and amended on the Floor.

Introduced by:

B. J. F. Cruz
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
Frank F. Blas, Jr.
James V. Espaldon
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F.Q. San Nicolas
Mary Camacho Torres
N. B. Underwood, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO APPROPRIATE FISCAL YEAR 2016 GENERAL FUND REVENUES TO THE GOVERNMENT OF GUAM RETIREMENT FUND; TO FURTHER *AMEND* SECTION 6 OF CHAPTER XI OF PUBLIC LAW 33-66, AS AMENDED BY SECTION 18 OF CHAPTER XII OF PUBLIC LAW 33-185; AND TO *AMEND* SECTION 8 OF CHAPTER I OF PUBLIC LAW 33-66, AS ADDED BY SECTION 17 OF CHAPTER XII OF PUBLIC LAW 33-185, RELATIVE TO THE PAYMENT OF FISCAL YEAR 2016 RETIREE MEDICAL, DENTAL, AND LIFE INSURANCE EXPENSES, AND TO PROVIDE A CASH CONTINGENCY FOR ANTICIPATED FISCAL YEAR 2017 RETIREE MEDICAL, DENTAL, AND LIFE INSURANCE EXPENSES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslalturan Guåhan* finds that Public Law 33-66, the General Appropriations Act of 2016, adopted a General Fund revenue projection of Eight Hundred Twenty-Four Million Nine Hundred Ninety-Eight Thousand Two Dollars (**$824,998,002**). *I Liheslaturan Guåhan* further finds that § 22436, Article 4, Chapter 22, Title 5, Guam Code Annotated, sets a General Fund Appropriations Cap wherein *I Liheslaturan Guåhan shall not* appropriate more than ninety-eight percent (98%) of the total revenues projected for the General Fund for the fiscal year until such time as the General Fund deficit is eliminated. All unappropriated annual General Fund revenues collected in excess of appropriations *shall* be used to liquidate obligations for refunds, earned income tax credits and prior years' vendor payables.

I Liheslaturan Guåhan further finds that *I Maga'låhen Guåhan*, in his submission of the Executive Budget Request for FY 2016, did not include such a General Fund Appropriations Cap and that *I Liheslatura*, after having received the results of the Government-Wide Audited Financial Statements for FY 2014 discovered that there was a cumulative General Fund deficit as of the end of FY 2014 of Fifty-Nine Million Six Hundred Fifteen Thousand Sixty-Five Dollars (**$59,615,065**) which prompted the General Fund Appropriations Cap mandated in § 22436, Article 4, Chapter 22, Title 5, Guam Code Annotated.

I Liheslaturan Guåhan further finds that Public Law 33-66 includes such General Fund Appropriations Cap of ninety-eight percent (98%) whereby two percent (2%) was set aside for deficit reduction in accordance with § 22436, Article 4, Chapter 22, Title 5, Guam Code Annotated. The two percent (2%) General Fund reserve for deficit reduction amounted to Thirteen Million Five Hundred Seventy-Two Thousand Two Hundred Eighty-Nine Dollars (**$13,572,289**). As a result of this

General Fund Appropriations Cap, this sum was *not* appropriated in Public Law 33-66.

I Liheslaturan Guåhan further finds that as of October 18, 2016, according to the government of Guam financial management system, the AS400, the sum of Eight Hundred Twenty-Four Million Nine Hundred Thirty-Eight Thousand Three Hundred Eight Dollars (**$824,938,308**) was collected in General Fund revenue in FY 2016. The adopted General Fund revenue in Public Law 33-66 was Eight Hundred Twenty-Four Million Nine Hundred Ninety-Eight Thousand Two Dollars (**$824,998,002**) which represents a variance of *only* Fifty-Nine Thousand Six Hundred Ninety-Four Dollars (**$59,694**) or seven thousandths of a percent (0.007%).

As a result of the government of Guam collecting over ninety-nine and ninety-nine hundredths percent (99.99%), there remains over Thirteen Million Five Hundred Thousand Dollars (**$13,500,000**) available to appropriate toward liquidating obligations for such things as vendor payables.

I Liheslaturan Guåhan further finds that *I Maga'låhen Guåhan*, in his Executive Budget Request for FY 2016, requested an appropriation of Twenty-Four Million Two Hundred Five Thousand Nine Hundred Eighty-One Dollars (**$24,205,981**) for Retiree Medical, Dental, and Life insurance premiums and that *I Liheslatura* appropriated the exact same amount as requested by *I Maga'låhen Guåhan* in Public Law 33-66.

I Liheslaturan Guåhan further finds that as a result of increased retiree premiums in FY 2016, a spending/appropriation authority shortfall has been estimated by the Department of Administration of approximately Thirteen Million Eight Hundred Thousand Dollars (**$13,800,000**). *I Liheslatura* understands that the Director of Administration has stated that cash is not an issue, rather spending/appropriation authority is all that is necessary to be able to expend government funds to cover this shortfall.

Therefore, it is the intent of *I Liheslaturan Guåhan* to appropriate the available sum from the FY 2016 two percent (2%) General Fund reserve revenues that remains unappropriated toward the payment of FY 2016 retiree medical, dental, and life insurance premiums.

Section 2. Appropriation for Retiree Medical, Dental, and Life Insurance Premiums in FY 2016. The sum of Thirteen Million Five Hundred Twelve Thousand Five Hundred Ninety-Five Dollars (**$13,512,595**) is hereby appropriated from FY 2016 General Fund revenues to the Government of Guam Retirement Fund for the sole purpose of paying retiree group medical and dental insurance premiums and coverage and life insurance subsidy for Judiciary of Guam retirees, to continue existing programs currently contained in the semi-monthly payments. The appropriation in this Section *shall not* lapse and *shall* continue in FY 2017.

Section 3. Section 6 of Chapter XI, Public Law 33-66, as *amended* by Section 18 of Chapter XII, Public Law 33-185, is further *amended* to read:

"**Section 6. Retiree Medical, Dental and Life Insurance Expenses Appropriated to the Government of Guam Retirement Fund (GGRF).** The sum of Twenty-Three Million Five Thousand Nine Hundred Eighty-One Dollars (**$23,005,981**) is appropriated from the General Fund, and One Million Two Hundred Thousand Dollars (**$1,200,000**) is appropriated from the Section 2718 Fund to the GGRF to pay for retiree group medical and dental insurance premiums and life insurance subsidy, including retiree group medical and dental insurance premiums and coverage and life insurance subsidy for Judiciary of Guam retirees, to continue existing programs currently contained in the semi-monthly payments. The appropriation from the unappropriated fund balance of the Section 2718 Fund in this Section *shall* continue to be available until fully expended. In addition to General Fund transfer authority authorized

in Section 9, Chapter XIII of this Act, *I Maga'låhen Guåhan* is authorized to transfer *up to* Six Hundred Thousand Dollars (**$600,000**) from General Fund appropriations in Part IV of Chapter II, Parts II, III, and IV of Chapter III, and Chapter V to cover government of Guam retiree medical, dental, and life insurance expenses for FY 2016. Such transfer pursuant to this Section *shall* be reported to the Speaker of *I Liheslaturan Guåhan no later than* five (5) calendar days after such transfer is made. Such report *shall* include the amount transferred, the agency, division, program, and AS400 account number from which such appropriation was transferred."

Section 4. Section 8 of Chapter I, Public Law 33-66, as *added* by Section 17 of Chapter XII, Public Law 33-185, is *amended* to read:

"**Section 8. Excess Section 30 Fund Revenues.** Notwithstanding §§ 22903 and 22904, Article 9, Chapter 22, Title 5, Guam Code Annotated, and any other provision of law, rule, or regulation, any Section 30 Funds received by the government of Guam during Fiscal Year 2017 above the sum of Seventy-Four Million Nine Hundred Thousand Two Hundred Ninety Dollars (**$74,900,290**) is hereby appropriated to the Rainy Day Fund (Article 9, Chapter 22, Title 5, Guam Code Annotated) for the *sole* purpose of establishing a cash contingency account for the government of Guam bi-weekly payroll and cost of living allowance cash shortfalls, and *shall* continue to be available.

Notwithstanding §§ 22903 and 22904 of Article 9, Chapter 22, Title 5, Guam Code Annotated, the Director of Administration: (1) *shall* establish a separate and restricted bank account solely for the Rainy Day Fund; (2) *shall* deposit the cash from excess Section 30 Funds received in accordance with this Section *no later than* three (3) days after receipt of said funds; and (3) *shall not* withdraw, expend, transfer, or otherwise displace any cash from the

Line Item Veto

Rainy Day Fund deposited pursuant to this Section *unless* otherwise authorized by this Section. Notwithstanding any other provision of law, *I Maga'låhen Guåhan shall not* authorize the withdrawal, expenditure, or transfer of any cash deposited into the Rainy Day Fund pursuant to this Section *unless* an Executive Order is issued and delivered to the Speaker of *I Liheslaturan Guåhan* declaring an emergency relative to the need to utilize such cash contingency for: (1) bi-weekly payroll for the government of Guam employees; or (2) payment of Fiscal Year 2017 retiree medical, dental, and life insurance expenses. Such Executive Order *shall* include the details of such emergency declared and the specific use of the cash deposited into the Rainy Day Fund. The Executive Order *shall* include a certification from the Director of Administration on the proposed withdrawal, transfer, or expenditure from the Rainy Day Fund. The Rainy Day Fund *shall* be replenished by the government of Guam by the end of the fiscal year in which such withdrawal, transfer, and/or expenditure occurred including any interest, penalties, or fees due to the withdrawal, if such withdrawal was made for the purposes of bi-weekly payroll for government of Guam employees. It *shall* be a ministerial duty of the Director of Administration to adhere to the requirements in this Section."

Line item veto GL

Section 5. Construction. *I Liheslaturan Guåhan* finds that nothing in this Act shall be construed as conflicting with the command in 5 GCA § 22401 respecting expenditures in excess of appropriated amounts. Moreover, nothing in this Act shall be construed as legislative ratification of, or concurrence with, the Fiscal Year 2017 group health insurance contract for government of Guam employees and retirees, and foster children.

Section 6. Effective Date. This Act *shall* become effective upon enactment.

Section 7. Severability. *If* any provision of this Act or its application to any person or circumstance is held invalid, the invalidity *shall not* affect other provisions or applications of this Act that can be given effect without the invalid provision or application and to this end the provisions of this Act is severable.