MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
TWENTY-NINTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

FILE COPY

August 17, 2007

OFFICE OF THE GOVERNOR
AUG 17 2007
CENTRAL FILES

The Honorable Felix P. Camacho
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910

Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill No. 149(EC) & Substitute Bill No. 68(EC) which were passed by *I Mina'Bente Nuebi Na Liheslaturan Guåhan* on August 16, 2007.

Sincerely,

RAY TENORIO
Senator and Secretary of the Legislature

Enclosures (2)

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

FILE COPY

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

This is to certify that **Bill No. 149(EC), "AN ACT TO ASSIGN THE TEN MILLION DOLLAR ($10,000,000) PROMISSORY NOTE ISSUED BY TELEGUAM HOLDINGS LLC AS PART OF THE GTA SALE PROCEEDS TO PAY THE COLA JUDGMENT AWARD PURSUANT TO SUPERIOR COURT SP0206-93 AND PUBLIC LAW 28-151,"** was on the 16th day of August, 2007, duly and regularly passed.

Mark Forbes
Speaker

Attested:

Ray Tenorio
Senator and Secretary of the Legislature

This Act was received by *I Maga'lahen Guåhan* this 17TH day of August, 2007, at 2:42 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

Bill No. 149(EC)
As amended by the Committee on
Finance, Taxation, Commerce &
Economic Development.

Introduced by: v. c. pangelinan
Edward J.B. Calvo
Frank F. Blas, Jr.
James V. Espaldon
Mark Forbes
Judith Paulette Guthertz
Frank T. Ishizaki
J. A. Lujan
Tina Rose Muña Barnes
A. B. Palacios, Sr.
R. J. Respicio
David L.G. Shimizu
Ray Tenorio
A. R. Unpingco
J. T. Won Pat

AN ACT TO ASSIGN THE TEN MILLION DOLLAR ($10,000,000) PROMISSORY NOTE ISSUED BY TELEGUAM HOLDINGS LLC AS PART OF THE GTA SALE PROCEEDS TO PAY THE COLA JUDGMENT AWARD PURSUANT TO SUPERIOR COURT SP0206-93 AND PUBLIC LAW 28-151.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that, of the One Hundred-fifty Million Dollars ($150,000,000) in proceeds from the sale of GTA to TeleGuam, Ten Million Dollars ($10,000,000) is in the form of a promissory note that matures on January 1, 2013, paying an annual interest rate of 5.25%, and that interest shall accrue thereon until maturity.

I Liheslatura further finds that the Government of Guam, pursuant to *Rios v. Camacho*, Superior Court Case No. SP0206-93, relative to Cost of Living Allowances, owes the prevailing parties a judgment in excess of One Hundred Twenty-three Million Dollars ($123,000,000). *I Liheslatura* passed Public Law 28-151, which authorized partial payment of the COLA judgment and funds appropriated by P.L. 28-151 were withdrawn from the authorized accounts, but no payments were made to the COLA class.

I Liheslatura further finds that a case-by-case review of all Class Members' personal situations to determine payment priority based upon financial need would disrupt the entire process of calculating payment amounts. It is *I Liheslatura's* intent to ensure equal distribution of all funds earmarked and appropriated for COLA. The plan created herein will pay over ten percent (10%) of the COLA class recipients in full and still make much needed payments to other recipients. Therefore, *I Liheslatura* will honor the government's commitment to pay COLA awards by assigning the Ten Million Dollars ($10,000,000) promissory note from the GTA sale proceeds for immediate partial payment to the COLA class.

It is *not I Liheslatura's* intent to prohibit the COLA class from using any legal remedies available to it to collect the amounts not satisfied by this partial payment.

I Liheslatura ratifies *I Maga'lahi* Felix Camacho's and the Class's court approved settlement agreement which included a stipulation to terminate any further litigation regarding the Superior Court of Guam Judgment, embodied in the Stipulation and Order filed on November 21, 2006, wherein the parties recognized that any further delay would cause irreparable damage to the Class.

I Liheslatura, recognizing the same urgency for paying meaningful compensation to the Class and in light of the unassailable judgment in the COLA

case, intend to put to rest fears of further delays or harm to the Retirees' long overdue Cost of Living Allowance.

Section 2. Fund Authorized for COLA Settlement Payment. The promissory note for Ten Million Dollars ($10,000,000) plus interest and any proceeds therefrom executed pursuant to the GTA purchase agreement between the government of Guam and TeleGuam Holdings, LLC, as part of the payment for the purchase of the Guam Telephone Authority by TeleGuam Holdings, LLC, are hereby irrevocably assigned and appropriated to payment of the judgment entered in *Rios et al. v. Camacho*, et al., Superior Court of Guam Case No. SP0206-93. The assignment of the note and appropriation of its proceeds *shall* permit the COLA class to sell, pledge, assign, transfer or otherwise liquidate the note to another party for the purpose of distributing cash payments to eligible COLA class recipients.

Section 3. Conditions on Sale of Note. The Director of the Retirement Fund, the Attorney General and the Director of Administration *shall* co-operate with the Plaintiffs' Class Counsel in the liquidation of the assigned promissory note through direct negotiation, issuance of Requests for Proposal for purchase of the note *or* other procedure for the sale of the note to a financial entity. The promissory note *shall not* be sold *or* negotiated for *less than* eighty percent (80%) of the principal amount of the note.

Section 4. Tax Conditions on Sale of Note. The purchaser of the note *shall* pay no government of Guam taxes on any discount of the sale price of the note and *no* government of Guam taxes on the interest earned on the note.

Section 5. Credit Towards the Judgment. The proceeds from the sale of the note *shall* be credited and paid over towards satisfaction of the judgment entered in *Rios, et al. v. Camacho,* et al., Superior Court of Guam Case No.

SP0206-93.

Section 6. Attorney General to Represent Government. The Attorney General *shall* represent the Government of Guam regarding the sale of the note, *shall* prepare all legal documents needed to implement this Act and *shall* use all powers necessary to secure the signatures required for this Act's implementation.

Section 7. The Government of Guam Retirement Fund *shall* receive the proceeds from the liquidation and sale of the GTA promissory note and *shall* issue checks through the Department of Administration to eligible class recipients.

Section 8. Distribution of Funds. The proceeds from the liquidation and sale of the note and all funds appropriated in existing and future laws for payment of the judgment in SP0206-93 shall be distributed in equal payments to all members of the COLA class, *except* for those class members whose award is *less than* the amount of said equal payment, who *shall* receive their award in full. (*If* the liquidation of the GTA Promissory Note yields a net total of Eight Million Dollars ($8,000,000), the payment amount is calculated to pay in full three hundred fifty (350) awardees with payments *not exceeding* One Thousand Seven Hundred Twenty-five Dollars ($1,725) with the remaining awardees also receiving the same amount).

Section 9. Public Law 28-151:2, codified as Title 4 GCA §7101, is hereby *amended* to read:

"**§7101. Definitions**. For purposes of this Chapter:

(1) *Employee* means all employees of the government of Guam.

(2) *Money due* means the pay and allowances due on account of the services of a deceased employee of the government of Guam. It includes the following:

(A) Per diem and amounts due in reimbursement of travel

expenses;

(B) Overtime or premium pay;

(C) Payments for accrued annual and sick leave;

(D) Amounts of checks drawn for pay which were not delivered to the employee during his lifetime;

(E) Amounts of un-negotiated checks returned to the Government because of the death of the employee.

It does *not include* amounts the disposition of which is otherwise expressly prescribed by law."

Section 10. New subsections (t), (u), and (v) are hereby *added* to Title 4 GCA §8104 to read:

"(t) *COLA Award shall* mean the Cost of Living Allowance awarded in connection with Superior Court Case No. SP0206-93.

(u) *COLA Awardee shall* mean a retiree of the Fund who is a member of the COLA Class designated in Superior Court Case No. SP0206-93 as entitled to receive a Cost of Living Allowance.

(v) *Surviving Spouse* means a living spouse of a deceased, active *or* retired member of the Fund, *or* of a deceased COLA Awardee, in a marriage legally recognized by Title 19, Chapter 3 of the Guam Code Annotated, *or* in a marriage recognized by the laws of the jurisdiction where the marriage was contracted."

Section 11. Public Law 28-151:5, codified as Title 4 GCA §8140.2, is hereby *amended* to read:

"**§8140.2 Duties of the Director Regarding COLA Awards.** The

Director of the Fund is authorized to assist the Director of Administration and the Treasurer of Guam in the administration of COLA AWARD payments in connection with Superior Court Case No. SP0206-93."

Section 12. Public Law 28-151:6, codified as Title 4 GCA §8140.3 is hereby *repealed.*

Section 13. A new §8142.1 is hereby *added* to Title 4, Chapter 8, Article 1 of the Guam Code Annotated to read:

"**§8142.1. Cost of Living Allowance in connection with Superior Court Case No. SP0206-93; Priority of Payments.** The Director of the Fund *shall* notify the Treasurer of Guam to pay COLA Awards to the following persons in the priority stated herein. The notification *shall* be based on information available to the Fund as of the date on which notice is delivered to the Treasurer of Guam:

(a) The COLA Awardee.

(b) *If* the COLA Awardee is deceased, then the notification *shall* name the COLA Awardee's surviving spouse, but only *if* the surviving spouse is living on the date notice is delivered to the Treasurer of Guam.

(c) *If* the COLA Awardee's surviving spouse is deceased, the notification *shall* name the living beneficiary designated by the COLA Awardee in the Fund's Designation of Beneficiary Form on record at the Fund. *If* there are multiple beneficiaries, the notification *shall* include each living beneficiary and the proportion of the COLA Award paid to each beneficiary *shall* be based on the percentage stated in the Designation of Beneficiary Form.

(d) *If* the sole beneficiary designated by the COLA Awardee in the Fund's Designation of Beneficiary Form is deceased *or* if the Designation of Beneficiary Form cannot be located within thirty (30) days of the Fund being notified of the COLA Awardee's death, the notification *shall* name the COLA Awardee's Estate *or* heirs in accordance with Title 4 GCA §8142.2.

(e) *If* there are multiple beneficiaries designated by the COLA Awardee in the Fund's Designation of Beneficiary Form, and *if* any of them are deceased, the notification *shall* name each of the living beneficiaries and the deceased beneficiary's Estate *or* heirs in accordance with Title 4 GCA §8142.2 regarding the deceased beneficiary's percentage interest as designated in the Designation of Beneficiary Form."

Section 14. A new §8142.2 is hereby *added* to Title 4, Chapter 8, Article 1 of the Guam Code Annotated to read:

"**§8142.2. Priority of Payments Continued.** When a COLA Award is authorized to be paid in accordance with this Section, such payment *shall* be made as follows:

(a) *If* an estate proceeding has been opened for a COLA Awardee and a Personal Representative has been appointed, then the COLA Award (*or* the applicable percentage thereof designated to the deceased beneficiary) *shall* be paid to the duly appointed Personal Representative of the COLA Awardee's Estate to be distributed as part thereof;

(b) *If* an estate proceeding has been opened for a COLA Awardee but has since been closed and a Decree of Final Distribution has been issued and filed, then the Fund *shall* pay the COLA Award to the Personal Representative of the COLA Awardee's Estate upon submission of a reappointment, new Letters Testamentary *or* Letters of Administration, as the case may be, in accordance with a reopening of the estate pursuant to Title 15 GCA §3039;

(c) *If* an estate proceeding was never opened, then any person claiming to be an heir of the COLA Awardee *or* otherwise claiming to be entitled to distribution of the COLA Award *or* any part thereof may file a Petition in the Superior Court setting forth his *or* her claim and requesting the Superior Court to determine who is entitled to the COLA Award distribution. Upon submission of the Superior Court's Final Decree determining which persons are entitled to distribution of the COLA Award and setting forth the interests of each, the Fund *shall* notify the Treasurer of Guam to make payment in accordance with said Decree; or

(d) *If* an estate proceeding was never opened, any person claiming to be an heir of the COLA Awardee *or* otherwise claiming to be entitled to distribution of the COLA Award or any part thereof may file a petition pursuant to Title 15 GCA §3101.1."

Section 15. A new Section 8142.3 is hereby *added* to Title 4, Chapter 8, Article 1 of the Guam Code Annotated to read:

"**§8142.3. Determination of Priority for COLA Awards.** The Director of the Fund may reasonably rely on any of the documents enumerated herein to analyze information concerning marriage, death, survivorship, and priority of payments under §§8142.1 and 8142.2 *if* a COLA Awardee or a person next in priority is deceased. The Director's reasonable reliance on said documentation in making payment of the COLA Award *shall* constitute acquittance for said payment and *shall* fully discharge the Director and the Fund from further liability with respect thereto without further investigation or inquiry:

(a) a certified death certificate (original or copy);

(b) a certified marriage certificate, or equivalent (original or copy);

(c) the Designation of Beneficiary Form on record at the Fund;

(d) Letters Testamentary or Letters of Administration; and

(e) applicable court orders determining persons entitled to and directing payment of the COLA Awardee's COLA Award."

Section 16. Public Law 28-151:3, codified as Title 5 GCA §20101.1, is hereby *repealed.*

Section 17. Public Law 28-151:4, codified as Title 5 GCA §20101.2, is hereby *repealed.*

Section 18. Public Law 28-151:8, codified as Title 11 GCA §44101(a), is

hereby *amended* to read:

"§44101(a) 'COLA AWARDEE' means a retiree of the Retirement Fund who is a member of the COLA Class designated in Superior Court Case No. SP0206-93 entitled to receive a Cost of Living Allowance."

Section 19. Public Law 28-151:9 is hereby *amended* to read:

"*I Maga'lahen Guåhan* is hereby authorized to enter into a structured settlement with members of the COLA Class designated in Superior Court Case No. SP0206-93 upon such terms as *I Maga'lahi* determines to be just, to include interest up to seven percent (7%) per annum on sums paid over pursuant to the settlement. *I Maga'lahi* may pledge up to Ten Million Dollars ($10,000,000) per year from payments received by the government of Guam pursuant to Section 30 of the Organic Act as collateral for said settlement, subject to the approval of *I Liheslaturan Guåhan.*"

Section 20. Severability. *If* any of the provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall *not* affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.