FILE COPY

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2012 (SECOND) Regular Session

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

This is to certify that **Substitute Bill No. 414-31 (COR), "AN ACT TO *AMEND* §§ 24102(f) AND 24103 OF ARTICLE 4, CHAPTER 24, DIVISION 2 OF TITLE 11; TO AMEND SUBSECTIONS (a), (e), (j), (o), AND (q) OF §1512.3; *ADD* A NEW SUBSECTION (r) TO §1512.3; *ADD* A NEW SUBSECTION (W) TO §1515(i)(2); AND *REPEAL AND RE-ENACT* §1515(i)(2)(G), ALL OF ARTICLE 5, CHAPTER 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING A *SERIES B* OF REVENUE ANTICIPATION FINANCING BONDS AND FOR OTHER PURPOSES"**, was on the 16th day of March, 2012, 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'lahen Guåhan* this 16th day of March, 2012, at 9:41 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____
Public Law No. _____

FILE COPY

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2012 (SECOND) Regular Session

Bill No. 414-31 (COR)
As substituted by the Committee on Appropriations,
Taxation, Public Debt, Banking, Insurance, Retirement, and Land,
and amended on the Floor.

Introduced by:

v. c. pangelinan
R. J. Respicio
Judith P. Guthertz, DPA
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
Dennis G. Rodriguez, Jr.
V. Anthony Ada
F. F. Blas, Jr.
Chris M. Dueñas
Sam Mabini, Ph.D.
M. Silva Taijeron
Aline A.Yamashita, Ph.D.
T. C. Ada
B. J.F. Cruz
Judith T. Won Pat, Ed.D.

AN ACT TO *AMEND* §§ 24102(f) AND 24103 OF ARTICLE 4, CHAPTER 24, DIVISION 2 OF TITLE 11; TO *AMEND* SUBSECTIONS (a), (e), (j), (o), AND (q) OF §1512.3; *ADD* A NEW SUBSECTION (r) TO §1512.3; *ADD* A NEW SUBSECTION (W) TO §1515(i)(2); AND *REPEAL AND RE-ENACT* §1515(i)(2)(G), ALL OF ARTICLE 5, CHAPTER 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING A *SERIES B* OF REVENUE ANTICIPATION FINANCING BONDS AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Amendment of Real Property Tax Provisions.

(a) § 24102 (f) of Article 4 Chapter 24 Division 2 of Title 11 Guam Code Annotated is hereby *amended* to read:

"(f) *Value, full cash value, fair market value,* and *cash value* means one hundred percent (100%) of the appraised value; *appraised value* means the amount at which property would be taken in payment of a just debt from a solvent debtor as determined by the last completed valuation conducted pursuant to § 24306, Title 11, Guam Code Annotated, as amended by the annual adjustments mandated in this Chapter. The appraised value of the interest of a lessee or licensee of land owned by the Chamorro Land Trust Commission *shall* be the appraised value of the land, *not* including improvements."

(b) § 24103 of Article 4 Chapter 24 Division 2 of Title 11 GCA is hereby *amended* to read:

"§ 24103. Levy.

There is hereby levied on all land property in Guam a yearly tax at the rate of seven-eightieths percent (7/80%) of the value thereof and seven-twentieths percent (7/20%) of the value of the improvements thereon. Such tax shall be assessed and collected in the manner prescribed in this Chapter. All proceeds derived by the government under any provision of this Chapter shall be deposited in the General Fund."

Section 2. § 1512.3(a) of Article 5, Chapter 1, Title 5, Guam Code Annotated is hereby *amended* to read as follows:

"§ **1512.3. Authorization to Issue Bonds for Revenue Anticipation Financing.**

(a) **Authorization of Issuance of Bonds**. *I Maga'lahen Guåhan* is authorized to issue two series of bonds of the government of Guam as provided in this Section, in an aggregate principal amount *not to exceed* Three Hundred Forty-Three Million Seven Hundred Thousand Dollars ($343,700,000) to provide the following:

(1) For the first bond series, in the following order of priority:

(A) up to One Hundred Ninety-Eight Million Dollars ($198,000,000) for payment of unpaid income tax refunds plus interest to include for 2010 and prior;

(i) Set-aside for Tax Refunds for Humanitarian Purposes. Of the total amount of proceeds available to issue tax refund payments, the sum of Twenty Million Dollars ($20,000,000) *shall* be set aside and appropriated to the Department of Revenue and Taxation for the purpose of paying tax refunds for humanitarian purposes. The provisions of this Section *shall* supplement other guiding provisions of law regarding the processing of emergency tax refund payments. Requests submitted for the following humanitarian purposes *shall* qualify to be processed from this Twenty Million Dollars ($20,000,000) set-aside:

(aa) off-island medical treatment, inclusive of the need to purchase medication; or

death of a family member, within two (2) degrees of consanguinity;

(bb) delinquent billing payments owed to the Guam Power Authority, the Guam Waterworks Authority, the Guam Housing and Urban Renewal Authority, and the Judiciary of Guam, which have become delinquent due to financial hardships;

(cc) delinquent loan payments owed to the Guam Housing and Urban Renewal Authority, which have become delinquent due to financial hardships; and

(dd) delinquent loan payments owed to legally qualified and licensed lenders, which have become delinquent due to financial hardships.

For the purposes of this Section, a request for tax refunds *shall* be submitted by the taxpayer to the Director of Revenue and Taxation. All such requests are subject to the review and approval of the Director.

(ii) Twenty Million Dollars ($20,000,000) for the payment of cost of living allowance to certain retired government of Guam employees pursuant to the case known as *Rios v. Camacho*;

(iii) Twenty-Six Million Four Hundred Thousand Dollars ($26,400,000) for payments owed to the Government of Guam Retirement Fund for the Guam Department of Education and the Guam Memorial

Hospital Authority principal and interest pursuant to Public Law 28-38, as amended by Public Law 31-74;and

(iv) if no alternate source of funding is available, for the payment of health insurance premiums for Fiscal Year 2012.

(2) For the second bond series:

(A) no less than Twenty-Five Million One Hundred Thousand Dollars ($25,100,000) for payments owed to the Government of Guam Retirement Fund for the Guam Department of Education, the Guam Memorial Hospital Authority, and the *Health Insurance Bailout Agreement of FY 2011* principal and interest pursuant to Public Law 28-38, as amended by Public Law 31-74, such that the sums owed to the GGRF by the government of Guam pursuant to Public Law 28-38, as amended, *shall* be extinguished in its entirety;

(B) the remaining balance of bond proceeds such that the debt to the GGRF identified in §1512.3(a)(2)(A) of Article 5, Chapter 1, Title 5, Guam Code Annotated is paid, *shall* be used, in any amount, for any of the following:

(i) the design, construction, re-construction, rehabilitation, maintenance, renovation of government of Guam or Guam Department of Education-owned school facilities, and/or procurement and preventive maintenance of school buses. A "School Facility" *shall* mean school campus facilities including any structure or structures, together with all ancillary facilities, including

parking facilities, utilities, infrastructure and equipment associated with providing the educational or related services required by the Guam Department of Education and may include an existing school facility being rehabilitated; and/or

(ii) the payment of unpaid income tax refunds for tax year 2011; and/or

(iii) if no alternate source of funding is available, the payment of health insurance premiums for Fiscal Year 2012.

(3) such amount as may be needed to capitalize and pay from bond proceeds interest on the bonds due, accruing or required to be set aside in Fiscal Years 2012 and 2013; and

(4) expenses incurred in connection with the issuance of such bonds *not* already included in an existing appropriation for or the regular budget of any government agency or instrumentality or public corporation providing any service in connection with the issuance of such bonds; *provided, however*, that bonds may *not* be issued in an amount that would cause a violation of the debt limitation provisions of 48 USC 1423a (§ 11 of the Organic Act of Guam).

(5) *I Maga'lahen Guåhan shall* utilize the 2011 Real Property Tax Assessment Roll as certified by the Board of Equalization in accordance with § 24518 of Chapter 24, Title 11, Guam Code Annotated, in calculating the amount available for future debt obligation under the Debt Limit (Ceiling) for the bond issuance

authorized in this §1512.3(a) of Article 5 of Chapter 1 of Title 5, Guam Code Annotated."

Section 3. § 1512.3(e) of Article 5, Chapter 1, Title 5, Guam Code Annotated, is hereby *amended* to read as follows:

"(e) **Additional Bonds.** This Section *does not* prohibit the government of Guam from issuing, after appropriate enabling legislation, other obligations of the government that are general obligations of the government. This Section does not prohibit the government of Guam from issuing, after appropriate enabling legislation, other obligations of the government that are secured by pledged business privilege tax revenues on a parity with or subordinate to the bonds authorized by this Section on such terms as are provided by the certificate or indenture pursuant to which the bonds are issued. Such certificate or indenture *may* also provide that the aggregate principal amount of all bonds outstanding on a parity with the bonds authorized pursuant to this Section with respect to pledged business privilege tax revenues *shall not* exceed Three Hundred Forty Three Million Seven Hundred Thousand Dollars ($343,700,000). Notwithstanding anything to the contrary in this Subsection (e), the certificate or indenture pursuant to which the bonds are issued *shall* provide that such limitation *shall not* apply to additional bonds issued for the *sole* purpose of refunding outstanding bonds authorized under by this Section, paying costs of issuance and funding any required debt service reserves associated therewith, and *may* otherwise provide for the raising of such limitation under such circumstances as may be specified therein."

Section 4. § 1512.3(j) of Article 5, Chapter 1, Title 5, Guam Code Annotated is hereby *amended* to read as follows:

"(j) **Use of Proceeds from the Sale of the Bonds.**

(1) The proceeds from the sale of the first bond series *shall* be used and are hereby appropriated to (i) pay unpaid income tax refunds and pay cost of living allowance to certain retired government of Guam employees pursuant to the case known as *Rios v. Camacho*; payments owed to the government of Guam Retirement Fund for the Guam Department of Education and the Guam Memorial Hospital Authority principal and interest pursuant to Public Law 28-38, as amended by Public Law 31-74; and, if *no* alternate source of funding is available, pay health insurance premiums for Fiscal Year 2012; (ii) fund capitalized interest due, accruing or required to be set aside on the bonds prior to the end of Fiscal Year 2013; and (iii) pay expenses relating to the authorization, sale and issuance of the bonds, including, without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, feasibility, financial advisory and accounting fees and charges, fees paid to banks *or* other financial institutions providing credit enhancement, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale and delivery of the bonds.

(2) The proceeds from the sale of the second bond series *shall* be used and are hereby appropriated to (i) pay monies owed to the government of Guam Retirement Fund for the Guam Department of Education, the Guam Memorial Hospital Authority, and the *Health Insurance Bailout Agreement of FY 2011* principal and interest pursuant to Public Law 28-38, as amended by Public Law 31-74, such that the sums owed to the GGRF by the

government of Guam pursuant to Public Law 28-38, as amended, *shall* be extinguished in its entirety; pay for the design, construction, re-construction, rehabilitation, maintenance of School Facilities, and/or procurement and preventive maintenance of school buses; pay unpaid income tax refunds for tax year 2011; and/or, if *no* alternate source of funding is available, pay health insurance premiums for Fiscal Year 2012; (ii) fund capitalized interest due, accruing or required to be set aside on the bonds prior to the end of Fiscal Year 2012, 2013, and 2014; and (iii) pay expenses relating to the authorization, sale and issuance of the bonds, including, without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, feasibility, financial advisory and accounting fees and charges, fees paid to banks *or* other financial institutions providing credit enhancement, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale and delivery of the bonds."

Section 5. § 1512.3(o) of Article 5, Chapter 1, Title 5, Guam Code Annotated is hereby *amended* to read as follows:

"(o) **Deposit of Bond Proceeds to:**

(1) **Pay Income Tax Refunds.** The portion of the bond proceeds authorized by this Section to pay income tax refunds *shall* be transferred immediately after receipt thereof by the bond trustee into the Income Tax Reserve Fund and *shall* be considered separate and apart from any required deposits in Title 11, Guam Code Annotated, Chapters 50 and 51, and *shall not* be credited toward any required deposits in Title 11, Guam Code Annotated, Chapters 50 and 51.

(2) **Pay for any Design, Construction, Repair, Renovation, Rehabilitation, Maintenance for any School Facility and/or procurement and preventive maintenance of school buses.** The portion of the bond proceeds authorized by this Section to pay for any Design, Construction, Repair, Renovation, Rehabilitation, Maintenance for any School Facility and/or procurement and preventive maintenance of school buses *shall* be transferred immediately after receipt thereof by the bond trustee into the Adequate Education Trust Account created in Public Law 31-40. Notwithstanding any other provision of law, the bond proceeds deposited into the Adequate Education Trust Account *shall* be available to pay for the Design, Construction, Repair, Renovation, Rehabilitation, Maintenance for any School Facility and/or procurement and preventive maintenance of school buses as approved by the Guam Education Board."

Section 6. § 1512.3(q) of Article 5, Chapter 1, Title 5, Guam Code Annotated is hereby *amended* to read as follows:

"(q) **Conflicts Prohibited.** No Covered Person, as such term is defined below, shall be eligible to provide or be paid for, in whole or in part, any services related to the authorization, sale and issuance of the bonds, including, without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, feasibility, financial advisory and accounting fees and charges, fees paid to banks or other financial institutions providing credit enhancement, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale and delivery of the bonds authorized in this Act and for any design,

construction, repair, renovation, rehabilitation, maintenance contracts for any School Facility and/or procurement and preventive maintenance of school buses; that are authorized to be paid for with the bond proceeds in this Act. For the purposes of this Section, the term "Covered Person" *shall* mean any:

(1) elected or appointed official of the government of Guam, unclassified managers of the Guam Economic Development Authority (GEDA), members of the GEDA Board of Directors, and members of *I Liheslaturan Guåhan* who hold office at the time of the approval and issuance of the bonds and bond indentures authorized by this Act;

(2) advisors or consultants of *I Liheslaturan Guåhan* who are advising or working with *I Liheslaturan Guåhan* with respect to the approval and issuance of the bonds and bond indentures authorized by this Act;

(3) person or spouse of such person related by consanguinity of the third degree, which for the purposes of this Act *shall* include spouses, all children, parents, grandchildren, siblings, grandparents, great-grandchildren, nieces, nephews, uncles, aunts, and great-grandparents, to any person described in Subsections (a) and (b) of this Section."

Section 7. § 1512.3(r) is hereby *added* to Article 5, Chapter 1, Title 5, Guam Code Annotated to read as follows:

"(r) Reporting Requirements by all appointed trustees, co-trustees or other fiduciaries. For the second bond series proceeds, the Department of Administration (DOA) *shall* submit a written request to

withdraw bond proceeds to all appointed trustees, co-trustees or other fiduciaries (trustee). The written request shall unequivocally state the purpose of said withdrawal specific to the authorized use mandated or selected pursuant to § 1512.3(2) of Article 5, Chapter 1, Title 5, Guam Code Annotated. The trustee *shall* provide a copy of *all* documents submitted by the DOA to withdraw funds to *I Maga'lahen Guåhan* and to the Speaker of *I Liheslaturan Guåhan* five (5) days prior to the disbursement of request funds."

Section 8. Protest Procedure for Procurement for Capital Improvement Projects for the Guam Department of Education.

(a) Notwithstanding any other provision of the Guam Procurement Law and any rules promulgated therefore, *if* an actual or non-selected vendor, contractor, or service provider is aggrieved by an award or a contract funded, in whole or in part, by funds allotted to the Guam Department of Education for Capital Improvement Projects and air conditioning repair and maintenance, the procedure for protest outlined in this Section *shall* apply and *shall* be the exclusive means available to resolve the concerns of persons aggrieved in connection with awards or solicitations involving Capital Improvement Projects and air conditioning repair and maintenance, in whole or in part. The protest *shall* be submitted to the Public Auditor who may settle and resolve a protest by one (1) or more of the following means:

(1) amending or canceling the solicitation;

(2) terminating the contract that was awarded;

(3) declaring the contract null and void from the time of its award; *or*

(4) affirming the contract award decision. If the protest is *not* resolved by mutual agreement, the Public Auditor *shall* issue a decision, in writing, within *no more than* ten (10) working days of receipt of the protest. The decision *shall* state the reasons taken. A copy of the written decision *shall* be mailed, using certified mail, *or* otherwise furnished to the vendor, contractor, or service provider who initiated the protest, the person awarded the contract, and to all other non-selected bidders or offerors.

(b) For purposes of this Section, the determination of facts and decision by the Public Auditor for the resolution of protests *shall* be final and conclusive with *no* right of appeal *or* judicial review. The fact that a protest has been filed pursuant to this Section *shall not* stay the procurement process or award of any contract, whether in whole or in part, *unless* so ordered by the Public Auditor. A request for reconsideration *shall also not* stay the award of any contract, whether in whole or in part, *unless* so ordered by the Public Auditor. This Section is repealed effective December 31, 2012.

Section 9. §1515(i)(2)(G), Article 5, Chapter 1, Title 5 of the Guam Code Annotated is hereby *repealed and re-enacted* to read as follows:

"(G) for the purposes of issuing a loan of no less than Five Million Dollars (**$5,000,000**) to the Guam Fishermen's Cooperative Association (GFCA) for the development of the Greg D. Perez Marina Economic Enhancement Master Plan. The loan *shall* be structured and administered by the Guam Economic Development Authority (GEDA) for the term of up to forty (40) years at a maximum interest rate of no more than Four percent

(4%) per annum. Proceeds from the repayment of the loan *shall* be deposited into the Agricultural Development Fund."

Section 10. §1515(i)(2)(W) is hereby *added* to Article 5, Chapter 1, Title 5 of the Guam Code Annotated to read as follows:

"(W) for the acquisition of available real estate that is offered for sale, and the development of a public park, within the area known as *Faifai* and *Gognga* (Gun Beach) in *Tumon.*"

Section 11. Severability. *If* any 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.