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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

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

This is to certify that **Bill No. 388-32 (LS), "AN ACT TO *ADD* A NEW ARTICLE 6 TO CHAPTER 77, DIVISION 2, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE ISSUANCE OF TAX CREDITS FOR CONTRIBUTORS TO THE RENOVATION AND EXPANSION OF THE *TIYAN* GYMNASIUM,"** was on the 3rd day of October, 2014, 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 6 day of Oct, 2014, at 6:32 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____
Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

Bill No. 388-32 (LS)
As amended on the Floor.

Introduced by: Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
V. Anthony Ada
Chris M. Dueñas
Aline A. Yamashita, Ph.D.
Michael T. Limtiaco
Dennis G. Rodriguez, Jr.
FRANK B. AGUON, JR.
T. C. Ada
B. J.F. Cruz
R. J. Respicio
Michael F. Q. San Nicolas
Judith T. Won Pat, Ed.D.

AN ACT TO *ADD* A NEW ARTICLE 6 TO CHAPTER 77, DIVISION 2, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE ISSUANCE OF TAX CREDITS FOR CONTRIBUTORS TO THE RENOVATION AND EXPANSION OF THE *TIYAN* GYMNASIUM.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that a Memorandum of Understanding between the Guam Department of Parks and Recreation, with the concurrence of the Office of the Attorney General and approval by *I Maga'lahen Guåhan,* and the Guam Basketball Confederation was entered into in November 2013. *I Liheslaturan Guåhan* further finds that the Department of Parks of Recreation currently *does not* have the resources to

renovate and reopen the *Tiyan* Gymnasium. Because of this, *I Liheslaturan Guåhan* finds that the public-private partnership with the Guam Basketball Confederation presents an opportunity for the renovation and expansion of the *Tiyan* Gymnasium and facilities for use by the community.

I Liheslaturan Guåhan further finds that partnerships such as these have the potential to spawn new programs aimed at the health and wellness of our community, especially our youth. Based on the commitments of the Guam Basketball Confederation and the cooperation of the Department of Parks and Recreation, there is immense potential for the comprehensive rehabilitation of the *Tiyan* Gymnasium. Based on the success of this proposed tax credit program, *I Liheslaturan Guåhan* sees the potential for additional tax credit programs that can provide a responsible avenue for the construction of new facilities, and the rehabilitation of sports and recreation facilities island wide, most especially in the southern villages, such as *Agat*, *Umatac* and *Merizo*, and other villages that currently lack facilities.

Therefore, it is the intent of *I Liheslaturan Guåhan* to establish a controlled plan that authorizes the issuance of unpledged business privilege tax credits for contributors to the renovation and expansion of the *Tiyan* Gymnasium and facilities by adding a new Article 6 to Chapter 77, Division 2 of Title 12, Guam Code Annotated.

Section 2. A new Article 6 is hereby *added* to Chapter 77, Division 2, Title 12, Guam Code Annotated, to read:

"ARTICLE 6

TAX CREDITS FOR THE *TIYAN* GYMNASIUM

§ 77601. Credit Against Eligible Taxes.

§ 77602. Limits of Liability.

§ 77603. Fines and Penalties.

§ 77604. Cap on Business Privilege Tax Credits for the Rehabilitation and Improvement of the *Tiyan* Gymnasium and Facilities.
§ 77605. Public Access to *Tiyan* Gymnasium and Facilities.
§ 77606. Filing of Annual Reports.
§ 77607. GEDA Report.
§ 77608. Rules and Regulations.
§ 77609. Licensing Agreement for *Tiyan* Gymnasium to Guam Basketball Confederation.
§ 77610. Ancestral Lands.

§ 77601. Credit Against Eligible Taxes.

(a) To the extent that any business contributes the actual cost of design, labor and materials that are for the rehabilitation and improvement of the Department of Parks and Recreation (DPR) *Tiyan* Gymnasium and facilities, it *shall* be entitled to credit of business privilege taxes that are *not* already pledged for any purpose by Guam law. The basis for contribution to the project *shall* be the actual cost of the contribution plus the cost of transportation from the point of origin to its destination.

(b) Any unused credits *not* used in the current tax period may be carried over into subsequent tax periods until such credits are exhausted.

(c) The total credits allowed under this Act *shall not* exceed the actual dollar amount of the expenditures on the project.

§ 77602. Limits of Liability.

Unless a contractor, materials supplier, designer or landlord/lessor has direct involvement in the operations of the *Tiyan*

Gymnasium and facilities as a director, officer, manager, employee, representative or agent of the Guam Basketball Confederation, they *shall not* be held liable for any civil or criminal damages or penalties directly or indirectly arising from or related to the operations, any use, or possession of the gymnasium and facilities, *unless* it can be proven that the materials or design work provided were substandard. As the *Tiyan* Gymnasium and facilities is a private venture operated by the Guam Basketball Confederation, the government of Guam *shall not* be liable for any claims or damages arising from the operation of the gymnasium and facilities. The Guam Basketball Confederation, its directors, agents, consultants, employees, or other affiliated person or persons shall make no representation that the government of Guam has any interest in the operation of such gymnasium and facilities.

§ 77603. Fines and Penalties.

To the extent that a company providing materials and services for the project contained herein takes more tax benefits in terms of business privilege taxes than the actual value of the materials or services contributed to the project authorized herein, that company *shall* be required to pay all interest and penalties applicable under Guam law and the Internal Revenue Code for failure to pay taxes, in addition to payment of the actual taxes due. To the extent that any individual, officer, director or other person having interest in a company providing materials or services for the project contained herein knowingly and willingly causes such company to take more tax benefits in terms of business privilege taxes than the actual value of the material or services contributed to the project, such individual *shall* be guilty of a felony in the third degree punishable by a fine of

not less than Five Thousand Dollars ($5,000), or one (1) year in prison, or both.

§ 77604. Cap on Business Privilege Tax Credits for Rehabilitation and Improvement of the *Tiyan* Gymnasium and Facilities.

(a) The total amount of credits against unpledged business privilege taxes for the rehabilitation and improvement of the *Tiyan* Gymnasium and facilities authorized herein *shall not* exceed Two Million Five Hundred Thousand Dollars ($2,500,000) over a ten (10) year period. No more than Two Hundred Fifty Thousand Dollars ($250,000) in tax credits shall be authorized for each year of the program.

(b) If, at the expiration of the ten (10) year period authorized pursuant to this Article, there are still unclaimed authorized tax credits, *I Liheslaturan Guåhan* may, in its discretion, extend the eligible period until such time that all eligible tax credits are exhausted.

(c) *I Liheslaturan Guåhan* may, in its discretion, extend the term and modify any part of the program based on future improvement plans and demand for such facilities in this location.

(d) Construction and professional services and equipment and materials *shall* be competitively procured.

§ 77605. Public Access to *Tiyan* Gymnasium and Facilities.

As a condition for the Guam Basketball Confederation and its contributors to be entitled to the tax benefits of the program established in this Article, the gymnasium and facilities must be available to the general public in accordance with the Memorandum

of Understanding with the Department of Parks and Recreation governing the use of the property. The Memorandum of Understanding *shall* incorporate provisions that support opportunities for access to the gymnasium and facilities by individuals with disabilities.

§ 77606. Filing of Annual Reports.

(a) The Guam Basketball Confederation *shall* annually submit a copy of the financial statement required in § 14102, Chapter 14 of Title 18 GCA to the Speaker of *I Liheslaturan Guåhan*, the Public Auditor, and the Administrator of GEDA.

(b) The Guam Basketball Confederation must ensure that it is current with all its articles and by-laws, and should there be any amendments to such documents, it should immediately file such amendments to the Department of Revenue and Taxation.

§ 77607. GEDA Report.

GEDA *shall* submit a report to *I Liheslaturan Guåhan* detailing the impact of the program on the business privilege taxes, sports, and economic activities on Guam. GEDA *shall* also include in its report its monitoring efforts and any other information related to the program. The report shall be transmitted to *I Liheslaturan Guåhan* on an annual basis until the tax credit cap pursuant to §77604 of this Article is exhausted.

§ 77608. Rules and Regulations.

The Guam Economic Development Authority *shall* implement and monitor the tax credit program authorized pursuant to this Article based on rules and regulations already adopted by GEDA for previous tax credit programs.

§ 77609. Licensing Agreement for *Tiyan* Gymnasium to Guam Basketball Confederation.

The Department of Parks and Recreation and the Guam Basketball Confederation *shall* enter into a license agreement for the improvement, rehabilitation and maintenance of the *Tiyan* Gymnasium for a period of ten (10) years, in accordance with the provisions of the Memorandum of Understanding entered into by the Guam Basketball Confederation and the Department of Parks and Recreation on November 21, 2013. If at any time the Guam Basketball Confederation *does not* comply with any provision of the Memorandum of Understanding, the license *shall* be null and void, and management of the property *shall* revert solely to the Department of Parks and Recreation.

§ 77610. Ancestral Lands. Nothing in this Article shall prevent the return of ancestral lands upon such time that such ownership is fully reconciled."

Section 3. Effective Date. This Act *shall* be effective upon enactment.

Section 4. Severability. *If* any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.