EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

31-12-1478

Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 4/18/12
Time 8:21 AM
Received by

April 17, 2012

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina' Trentai Unu na Liheslaturan Guåhan
155 Hesler Place
Hagåtña, Guam 96932

Dear Madame Speaker,

Transmitted herewith is Substitute Bill No. 414-31, **"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"**, which I have signed into law on March 28, 2012 as **Public Law 31-196**.

I'm grateful to the legislature for its bipartisan support of Series B of the tax refunds bond, something that was clearly a struggle with Series A and with my original push for the payment of tax refunds. But I want to make it abundantly clear to the people of Guam that this new authorization doesn't even come close to funding all the tax refunds for Tax Year 2011. It will only cover between $50- to $60 million out of $122 million needed for tax refunds through Tax Year 2011.

As I warned the legislature last year when I asked it not to tinker with the full $343 million authorization I was seeking, it was critical to prioritize the payment of refunds and not to add new obligations. Any authorizations that are prioritized above the tax refunds would decrease the amount available for tax refunds. My team also discussed the possibility that the payment of tax refunds would motivate a rush of previous non-filers to file their returns, and therefore cause an increase in the amount owed for tax refunds.

Notwithstanding my warning, the legislature only authorized $198 million in refund payments, which were paid in early December. That paid for nearly all of the Status-A refunds from Tax Year 2010 and before. The legislature failed to consider that there were other refunds that at some point would reach Status-A and would need to be paid. Once the refunds were given out in December, the Department of Revenue and Taxation was able to bring other-status refunds up to Status-A and, as we expected, there was a rush of taxpayers filing their returns for prior years. The result was an additional $17 million in new tax refunds liability, which is still climbing.

By the time everyone files, we expect a refund liability of $105 million, which was the provision in last year's budget for this year's refunds; a provision that could not be met since we had to

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deal with the $70 million deficit left over from FY2010's budget. In addition, we have to deal with the $40 million deficit from the FY2011 budget. The government's deficit does not disappear at the end of every fiscal year; it continues to eat into the money appropriated for next year's refunds. You can see how the legislature has made it impossible for the administration to pay Tax Year 2011 refunds even with this year's revenues without a bond.

The bond that this bill authorized for Series B helps, but it does not solve the problem. The decision to subordinate the payment of tax refunds to the payment to the Retirement Fund and for health insurance drastically lowered the amount available for tax refunds. This bond, when sold, will bring in between $50-60 million for tax refunds. If you add the $17 million in prior year refund debt to the estimated $105 million in tax refunds for this year, we will still come up $60-70 million short on the tax refunds.

My administration will be diligent with the use of current year revenues to make up the difference. But I caution the legislature that its actions have caused the government to again play catch-up with the refunds. The use of current revenues to pay the remaining tax refunds for 2011 after bond proceeds are used means those revenues won't be set aside for next year's refunds. The only funds that will be in the bank are the $22 million the Director of Administration has sequestered. Unless there's a sudden windfall of liquidity, we will find ourselves in the same situation next year.

Of course, if there is not even enough to pay the tax refunds, it goes without saying that there will be no money left over in this bond for school repairs and purchases of school buses. I urge you to explore more viable funding sources, if these projects are indeed serious priorities of the legislature. Bill No. 437 by Sens. Judi Guthertz and Aline Yamashita have already received the blessings of the Guam Economic Development Authority, their bond counsel, and my education task force finance action team, with some amendment. If you are serious about prioritizing education, then I urge the legislature and the Committee on Education to move this bill through the process swiftly.

In closing, I want to thank many of your colleagues for switching their positions on the urgency and primacy of paying the people back what they are owed. I know some of them were bitterly opposed to my push for the tax refunds, and would have remained content with the government continuing to owe the people. I am encouraged by the change of heart, but there is more that needs to be done. The government needs to start living within its means. This fiscal responsibility must start with the legislature. It needs to start accounting for the administration's obligation to pay prior year obligations and discontinue whatever faulty logic or calculations has led to the massive budget deficits of the past three years. It is time to stop making empty promises to the people – appropriating money that doesn't exist. It is time to get our house in order.

Senseramente,

EDDIE BAZA CALVO

Attachment: copy of Bill

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. _____

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 _____ day of _____, 2012, at _____ o'clock _____.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: MAR 2 8 2012
Public Law No. 31-196

without engrossment

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN

2011 (FIRST) Regular Session

Date: 03/16/12

VOTING SHEET

A Bill No. 416-31

Resolution No. _____

Question: _____

_____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Thomas C.	✓				
ADA, V. Anthony	✓				
BLAS, Frank F., Jr.	✓				
CRUZ, Benjamin J. F.	✓				
DUENAS, Christopher M.	✓				
GUTHERTZ, Judith Paulette	✓				
MABINI, Sam	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RESPICIO, Rory J.	✓				
RODRIGUEZ, Dennis G., Jr.	✓				
SILVA TAIJERON, Mana					EA
WON PAT, Judith T.	✓				
YAMASHITA, Aline A.	✓				
TOTAL	14	0	0	0	1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

*3 Passes = No vote

EA = Excused Absence

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.

w/o engrossment

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN

2011 (FIRST) Regular Session

Date: 3/16/12

VOTING SHEET

5 Bill No. 414

Resolution No. _____

Question: _____

_____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Thomas C.	✓				
ADA, V. Anthony	✓				
BLAS, Frank F., Jr.	✓				
CRUZ, Benjamin J. F.		✓			
DUENAS, Christopher M.	✓				
GUTHERTZ, Judith Paulette	✓				
MABINI, Sam	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RESPICIO, Rory J.	✓				
RODRIGUEZ, Dennis G., Jr.	✓				
SILVA TAIJERON, Mana					EA
WON PAT, Judith T.	✓				
YAMASHITA, Aline A.	✓				
TOTAL	13	1	0	0	1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

*3 Passes = No vote

EA = Excused Absence

without engrossment

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN

2011 (FIRST) Regular Session

Date: 03/16/12

VOTING SHEET

A Bill No. 416-31

Resolution No. _____

Question: _____

_____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Thomas C.	✓				
ADA, V. Anthony	✓				
BLAS, Frank F., Jr.	✓				
CRUZ, Benjamin J. F.	✓				
DUENAS, Christopher M.	✓				
GUTHERTZ, Judith Paulette	✓				
MABINI, Sam	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RESPICIO, Rory J.	✓				
RODRIGUEZ, Dennis G., Jr.	✓				
SILVA TAIJERON, Mana					EA
WON PAT, Judith T.	✓				
YAMASHITA, Aline A.	✓				
TOTAL	14	0	0	0	1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

*3 Passes = No vote

EA = Excused Absence

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.

w/o engrossment

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN

2011 (FIRST) Regular Session

Date: 3/16/12

VOTING SHEET

5 Bill No. 414

Resolution No. _____

Question: _____

_____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Thomas C.	✓				
ADA, V. Anthony	✓				
BLAS, Frank F., Jr.	✓				
CRUZ, Benjamin J. F.		✓			
DUENAS, Christopher M.	✓				
GUTHERTZ, Judith Paulette	✓				
MABINI, Sam	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RESPICIO, Rory J.	✓				
RODRIGUEZ, Dennis G., Jr.	✓				
SILVA TAIJERON, Mana					EA
WON PAT, Judith T.	✓				
YAMASHITA, Aline A.	✓				
TOTAL	13	1	0	0	1

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

*3 Passes = No vote

EA = Excused Absence

Office of
the People

I Mina'trentai Unu Na Liheslaturan Guåhan

Senator Vicente (ben) Cabrera Pangelinan (D)

MAR 1 2 2012

The Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Una Na Liheslaturan Guåhan
155 Hesler Place
Hagåtña, Guam 96910

VIA: The Honorable Rory J. Respicio
Chairperson, Committee on Rules

RE: Committee Report on Bill No. 414-31 (COR), as Substituted

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on Bill No. 414-31 (COR), As Substituted, "**AN ACT TO *AMEND* 11GCA §§ 24102(f), 24103, and 5GCA § 1512.3(a), (e), (j), (o), AND (q), TO *ADD* A NEW SUBSECTION (r) TO 5GCA § 1512.3, TO *ADD* A NEW SUBSECTION (W) TO 5GCA § 1515(i)(2), AND TO *REPEAL AND RE-ENACT* 5GCA § 1515(i)(2)(G), RELATIVE TO AUTHORIZING A SERIES B OF REVENUE ANTICIPATION FINANCING BONDS AND FOR OTHER PURPOSES**" sponsored by Senator Vicente (ben) Cabrera Pangelinan, which was referred to the Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land.

Committee votes are as follows:

5 TO PASS
0 NOT TO PASS
3 TO REPORT OUT ONLY
0 TO ABSTAIN
0 TO PLACE IN INACTIVE FILE

Si Yu'os Ma'åse'

Vicente (ben) Cabrera Pangelinan
Chairman

Chairman
Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land

Vice Chairman
Committee on Education

Member
Committee on Rules, Federal, Foreign & Micronesian Affairs and Human & Natural Resources

Member
Committee on Municipal Affairs, Tourism, Housing, and Recreation

Member
Committee on the Guam Military Buildup and Homeland Security

Member
Committee on Health and Human Services, Senior Citizens, Economic Development, and Election Reform

324 W. Soledad Ave. Suite 100, Hagåtña, Guam 96910
Tel: (671) 473-(4BEN) 4236 - Fax: (671) 473-4238 - Email: senbenp@guam.net
Website: http://senbenp.com

COMMITTEE REPORT
ON

Bill No. 414-31 (COR), As Substituted

Sponsored by Senator Vicente (ben) Cabrera Pangelinan

AN ACT TO *AMEND* 11GCA §§ 24102(f), 24103, and 5GCA § 1512.3(a), (e), (j), (o), AND (q), TO *ADD* A NEW SUBSECTION (r) TO 5GCA § 1512.3, TO *ADD* A NEW SUBSECTION (W) TO 5GCA § 1515(i)(2), AND TO *REPEAL AND RE-ENACT* 5GCA § 1515(i)(2)(G), RELATIVE TO AUTHORIZING A SERIES B OF REVENUE ANTICIPATION FINANCING BONDS AND FOR OTHER PURPOSES.

Office of
the People

I Mina'trentai Unu Na Liheslaturan Guåhan

Senator Vicente (ben) Cabrera Pangelinan (D)

MAR 12 2012

MEMORANDUM

To: **All Members**
Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land

From: Senator Vicente (ben) Cabrera Pangelinan
Committee Chairperson

Subject: Committee Report on Bill No. 414-31 (COR), As Substituted

Transmitted herewith for your consideration is the Committee Report on Bill No. 414-31 (COR), As Substituted, "**AN ACT TO *AMEND* 11GCA §§ 24102(f), 24103, and 5GCA § 1512.3(a), (e), (j), (o), AND (q), TO *ADD* A NEW SUBSECTION (r) TO 5GCA § 1512.3, TO *ADD* A NEW SUBSECTION (W) TO 5GCA § 1515(i)(2), AND TO *REPEAL AND RE-ENACT* 5GCA § 1515(i)(2)(G), RELATIVE TO AUTHORIZING A SERIES B OF REVENUE ANTICIPATION FINANCING BONDS AND FOR OTHER PURPOSES**" sponsored by Senator Vicente (ben) Cabrera Pangelinan

This report includes the following:

1. Committee Voting Sheet
2. Committee Report Narrative
3. Copy of Bill No.414-31 (COR), As Introduced
4. Copy of Bill No. 414-31 (COR), As Substituted
5. Public Hearing Sign-in Sheet
6. Copies of Written Testimonies
7. Fiscal Note
8. Copy of COR referral Bill No. 414-31 (COR)
9. Notices of Public Hearing
10. Copy of the Public Hearing Agenda

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact my office.

Si Yu'os Ma'åse',

Vicente (ben) Cabrera Pangelinan
Chairman

Chairman
Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land

Vice Chairman
Committee on Education

Member
Committee on Rules, Federal, Foreign & Micronesian Affairs and Human & Natural Resources

Member
Committee on Municipal Affairs, Tourism, Housing, and Recreation

Member
Committee on the Guam Military Buildup and Homeland Security

Member
Committee on Health and Human Services, Senior Citizens, Economic Development, and Election Reform

324 W. Soledad Ave. Suite 100, Hagåtña, Guam 96910
Tel: (671) 473-(4BEN) 4236 - Fax: (671) 473-4238 - Email: senbenp@guam.net
Website: http://senbenp.com

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN

Committee Voting Sheet

Committee on Appropriations, Taxation, Banking, Public Debt, Insurance, Retirement, and Land

---

Bill No. 414-31 (COR), As Substituted, "AN ACT TO *AMEND* 11GCA §§ 24102(f), 24103, and 5GCA § 1512.3(a), (e), (j), (o), AND (q), TO *ADD* A NEW SUBSECTION (r) TO 5GCA § 1512.3, TO *ADD* A NEW SUBSECTION (W) TO 5GCA § 1515(i)(2), AND TO *REPEAL AND RE-ENACT* 5GCA § 1515(i)(2)(G), RELATIVE TO AUTHORIZING A SERIES B OF REVENUE ANTICIPATION FINANCING BONDS AND FOR OTHER PURPOSES".

Committee Members	To Pass	Not To Pass	Report Out Only	Abstain	Inactive File
Senator Vicente (ben) Cabrera Pangelinan Chairman	✓				
Speaker Judith T. Won Pat, Ed.D Vice Chairperson			03/12/12		
Vice Speaker Benjamin J. F. Cruz Member	3/12/12		3/12/12		
Senator Tina Rose Muña-Barnes Member	✓				
Senator Judith P. Guthertz Member	3/12/12				
Senator Dennis Rodriguez, Jr. Member			✓ 3/12/12		
Senator V. Anthony Ada Member					
Senator Christopher M. Duenas Member					
Senator Mana Silva Taijeron Member					

Office of
the People

I Mina'trentai Unu Na Liheslaturan Guåhan

Senator Vicente (ben) Cabrera Pangelinan (D)

Chairman
Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land

Vice Chairman
Committee on Education

Member
Committee on Rules, Federal, Foreign & Micronesian Affairs and Human & Natural Resources

Member
Committee on Municipal Affairs, Tourism, Housing, and Recreation

Member
Committee on the Guam Military Buildup and Homeland Security

Member
Committee on Health and Human Services, Senior Citizens, Economic Development, and Election Reform

Committee Report

Bill No. 414-31 (COR): An Act to Amend 5GCA, §1512.3, 11GCA §§24102(a), 24102(f), 24103, 24401, 21GCA, §75112(i), Sections 2(b) and 7 of Public Law 30-37 and Section 7 of Public Law 31-76, to *Add* Subsection (d) to 5GCA §22704 and Subsection (d) to Section 3 of Public Law 30-37, to *Repeal and Re-Enact* 5GCA §1515(i)(2)(G) and to *Add* a New Subsection (W) to 5GCA §1515(i)(2), Relative to authorizing a Series B of Revenue Anticipation Financing Bonds and for other purposes.

I. OVERVIEW

The Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land convened a public hearing on February 24, 2012 at 4:00pm in *I Liheslatura's* Public Hearing Room.

Public Notice Requirements

Notices were disseminated via hand-delivery and e-mail to all senators and all main media broadcasting outlets on February 17, 2012 (5-Day Notice), and again on February 22, 2012 (48 Hour Notice).

(a) Committee Members and Senators Present

Senator Vicente (ben) Cabrera Pangelinan, Chairman
Speaker Judith Won Pat, Vice Chair
Vice Speaker BJ Cruz, Member
Senator Judith Guthertz, Member
Senator Anthony Ada, Member
Senator Christopher M. Dueñas, Member
Senator Rory Respicio
Senator Tina Muna Barnes
Senator Aline A. Yamashita
Senator Sam Mabini

(b) Appearing before the Committee

Mr. Joe T. San Agustin, Chairman of the Government of Guam Retirement Fund
Mr. Vincent Leon Guerrero, Special Assistant, Chief Education Advisor of the Governor

Mr. Manny Duenas, Guam Fishermen's CoOp
Ms. Tina Garcia, GEDA
Mr. Lester Carlson, GEDA

Written Testimonies Submitted

Mr. Joe T. San Agustin, Chairman of the Government of Guam Retirement Fund
Mr. Vincent Leon Guerrero, Special Assistant, Chief Education Advisor of the Governor
Mr. Karl A. Pangelinan, GEDA Administrator
Mr. Fred Moser, Coordinator, Disaster Recovery, Department of Education
Mr. Manny Duenas, President of the Guam Fishermen's Cooperative Association

II. COMMITTEE PROCEEDINGS

(a) Bill Sponsor Summary

Chairman Pangelinan. For the record, Bill 414 is a bill that was introduced by myself that seeks to provide funding for the Guam Department of Education and other purposes for the repair of schools. It would also recognize that in order to authorize additional borrowing that the debt limit of the government of Guam would need to be raised to 100% and it proposes to do that so we can borrow the additional money.

The bill is in response to my attempt to a "big" picture solution to the problems that we face in terms of providing financial resources for the repair of the public schools. Up until the time that this bill was introduced there had been no proposals put forth by anyone to provide the necessary dollars outside the available ARRA funding that we have at this time that continues to remain unexpended for the capital repairs of our school system or even building any new schools. There had been no proposal presented at that time.

The bill recognizes that an assessment was done by an independent entity hired by the Guam Department of Education to determine what would be needed in order to meet the deferred maintenance requirement of the Guam Department of Education schools. The amount identified at that time was $139,192,418. The bill would allow the last borrowing authority under the 100% cap by the government of Guam and the use of the proceeds of that fund to fund the additional money required for the repair of Guam Department of Education school system to ensure that we provide a healthy and safe learning environment for our children. We all saw the different reports about the needs of the schools in the Department of Education for capital repair and that the remaining ARRA funding that was available was only about $37M; the balance being used for design and consulting payments in order to get to the construction phase of the repairs. It left a shortage of about $100M of needed repairs in our public school system. The bill would, once a bond is issued use the proceeds of the bond towards that $100M shortfall that has been identified as being required by the Guam Department of Education to make these repairs.

In addition, the bill would amend the use of the proceeds of the hotel occupancy tax bond that was issued earlier in which the prioritized expenditures of the proceeds of the HOT bond were for the construction of a museum, which was then segregated out into, I believe about

$27M of the proceeds of the HOT bond would be dedicated to that. We identified projects in order of priority once the museum has been funded and those funds were sequestered. These projects were prioritized to include things like repair of flooding in Tumon, repair of Plaza de Espana and the existing infrastructure and other projects. One of the projects that was made in the order or priority was the purchase of available property in Tumon Bay in Faifai and Gun Beach area for preservation as a park for future generations in Guam.

The bill proposes that that priority be placed at the bottom of the list of projects to be funded by the hotel occupancy tax and in its place would provide funding for the construction of the Guam Fishermen's Coop development at the Greg Perez Marina so that it becomes part of the development of downtown Hagatna that will contribute to our tourism infrastructure while continuing to provide economic development and support of our local fishing industry for both local as well as tourism consumption. That is another element of the bill provided for in this bill.

In addition, the proceeds of the bond would also retire the government of Guam's debt to the GovGuam Retirement Fund for the outstanding retirement fund contributions for Guam Memorial Hospital and the Department of Education. We have approximately $25M of outstanding liability by the government of Guam for payments that were not remitted to the Retirement Fund by these two government agencies. So, portions of the proceeds of the bill would ensure that we pay those outstanding liabilities inclusive of the outstanding interest. Currently, we are only making interest payments on these liabilities. The bill would provide that one of the first uses of the proceeds of the bond would be to retire that liability. We are doing this because the Retirement Fund continues to be under court action and court threat to collect this liability that the government of Guam owes and that the Legislature had authorized and promised basically that the next bond issue would include the retirement of that debt. This would also alleviate the restriction on members of the Retirement Fund that are employed by these agencies who are not able to retire unless their contributions are paid in whole to the to the GovGuam Retirement Fund. So, it would allow those individuals waiting to retire to be able to retire once we paid this liability.

That is the synopsis of Bill 414 and we have signed up former Speaker Joe T. San Agustin. We also have Vincent Leon Guerrero from the Governor's Office and we have Mr. Manny Duenas from the Guam Fishermen's Coop who is also here to testify.

We will start with Mr. San Agustin.

(b) Testimony

Mr. Joe T. San Agustin. Good afternoon. My name is Joe San Agustin, the current Chairman of the Retirement Fund.

[Mr. San Agustin read his testimony verbatim – see attachment in this report]

We don't get involved. Please don't let the fund get involved with your squabbles. We want to get paid to be benefit of 15,000 members of the Fund. Don't put these 15,000 members

between the squabble with the Executive and Legislative branch. Pay us off and then we will step aside. Then, you can fight all you want. Thank you very much.

Chairman Pangelinan. Thank you and *Si Yu'os Ma'ase*, Mr. Speaker. Mr. Leon Guerrero?

Mr. Vincent Leon Guerrero. [Mr. Leon Guerrero read his testimony verbatim – see attachment in this report]

Chairman Pangelinan. Thank you and *Si Yu'os Ma'ase,* Mr. Leon Guerrero. Mr. Duenas?

Mr. Manny Duenas. Thank you Mr. Chairman. My name is Manny Duenas, President of the Guam Fishermen's Cooperative Association. On behalf of organization, I would like to offer our support for Bill 414-31 and congratulate this legislative body for its effort to address the needs of our educational system, as well as support for our organization.

Our organization and cottage industries supported by our existence truly appreciate this body's consideration for our needs. Should funding be made available to the tune of $4M we ask that it be in a form of a low interest loan rather than free money. Although free money is always better. The principle of such be placed in GEDA's Farmer and Fishermen Revolving Fund to assist other marine endeavors in the future. Certainly, there are portions of the GFCA's Greg D. Perez Marina Economic Enhancement Master Plan that would require government funding in the form of a grant to better serve the marine community. That is a side from what the CoOp has in store. In addition, we recognize there are two important components of any government's mission pertaining to this matter. One is the opportunity to provide our children with a great education with the proper environment, which this bill addresses. The second is the government has to set the stage for our youth to properly advance these skill sets through employment, which would equate to providing an economic environment conducive to employment opportunities.

Economic development opportunities for our community are too often overlooked. I suggest that this Legislature, if not already developed a plan to address such opportunities. Allow for the economic development bond for the advancement of such and managed through the Guam Economic Development Authority. The GEDA Economic Development Loan Program must be revitalized and sound management practice implemented. Again, sound management practice in the past is unacceptable today.

In closing, we are encouraged that this Legislature's efforts, especially you and your office, Senator Ben Pangelinan in addressing our community's needs and look forward to more positive actions from this Legislature. I just want to add a little comment because you did mention about the GVB Bond and just want to say that when the GVB bond was created, the $90M and all this hoopla of projects were listed, sadly the fourth largest industry on Guam was totally ignored. The fourth largest industry on Guam is the marine industry. We deal with 40-50% of tourists a day and not one penny was given to marinas to upgrade. All the marina improvements you see now come from the fishing community. It's sad because the marinas we are creating for the fishing industry, they are being overtaken by the tourism industry and we are being asked to use our money to support that effort. Again, I am very concerned that if there is

any opposition – and I am rather sad because I am competing with the needs of the Retirement Fund and the concern for the education of our kids. But, $4M is a good investment for our people that goes to our community and I wish GVB would do more for the community and I think they are very successful, so far. They jus need a little more effort on their part.

Thank you again for the consideration.

Chairman Pangelinan. Thank you very much. I want to clarify; you are not competing with education because these are proceeds from bond issues that for the first time ever, we have been able to take the hotel occupancy tax and issue a bond that goes for projects outside Tumon, basically and that has been through the efforts of Vice Speaker who spearheaded that. We are actually now putting money back into other sectors of community that helps support the tourism industry. So, this is from the hotel occupancy tax. The retirement fund payment would come from a different bond issues, as well as the repair of the public schools. So, you are all alone on this one. I am sure we can get your support with this. I am so glad that you are wiling to work with being provided the seed capital and be willing to pay it back through an economic loan program at GEDA. We will certainly look at that suggestion as we continue to make amendments to the bill, as suggested by testimonies here today.

I have some questions.

Mr. Leon Guerrero, is it conceivable that we would need more than what would be provided in this bill for the repair of the public school systems? Is it conceivable at all?

Mr. Vincent Leon Guerrero. I am guessing it will because we are including the collateral equipment. In the past, we've built schools or renovated schools without properly equipping them.

Chairman Pangelinan. So, if we were to pass this bill to provide those, you are saying we should hold off because we don't know how much we need. We already know this is not enough and by the way, this is all that we have if we go to a 100% of our capacity. So, no matter what, we are going to need at least $77M more.

Mr. Vincent Leon Guerrero. Well, the board and the department are undertaking an examination of the use of its schools and the attendance areas and there may be some impacts there also in terms of which schools will continue.

Chairman Pangelinan. But, this does not tell you which schools to repair. It only makes the money available and as a matter of fact, this could conceivably be turned over to the Governor's Education Task Force and say, OK we've provided $70M available, YOU decide the priorities based on stakeholders and so forth. Our intent here is not to determine which schools to be repaired, which schools to be rebuilt and where to build them. It's just to provide the money so that when those determinations are made by those that are within the stakeholder community and for me, it could very well be that if this should pass and we make this money available for the schools that the Governor's Task Force would be the one that says we have $77M available, let's deploy it in these areas because based on our input from the different meetings, these are the

best priorities that we have now and where we can make the most impact. Our intention is not to undo anything that the Governor's Task Force. I can see this working very well with giving this money once we make it available to the task force and say, based upon all of the community input, you prioritize. I would have no objection to that if that should be the way this flows. I just want to make that very clear.

Any other questions? Speaker Won Pat?

Speaker Won Pat. I am not sure whether I heard you correctly, Vince when you mentioned that the reason why you don't know what the total amount is because you are doing an assessment and one of the things that would determine that would be the use of schools. The possibility of - I forgot what was the word you used. Are you talking about consolidating some schools and that there may be some schools you may not need to use monies to do any renovation because you are going to do some consolidation.

Mr. Vincent Leon Guerrero. That is a intention that the department has share with us. It's something that is within their purview. We are just awaiting their process for determining what they want to use schools for and which schools are going to continue to be needed in the future. Whether they are going to be continued to be elementary schools or they are going to shift them.

Speaker Won Pat. Ok. Thank you.

Chairman Pangelinan. Ok. Vice Speaker?

Vice Speaker Cruz. I was just wondering, Mr. Chairman whether it was intentional or should I withhold my questions to Administration, BBMR and RevTax as it relates to whether or not we can float a bond. It just seems to me that they've purposely not testified in this one, but depending on which one comes out of the Committee, we should have on record whether or not there should be any floating of any bond in each one of these bills as opposed to just in one bill. But the Administration is just purposely just ignoring it.

Chairman Pangelinan. We will ask them when they come up. Vince, would you like to respond to that as the Administration's representative?

Mr. Vincent Leon Guerrero. No, I was just testifying on the educational component of Bill 414.

Chairman Pangelinan. I am assuming then your position or the Administration's position is we can borrow some more money.

Mr. Vincent Leon Guerrero. Through the other bill, yes.

Chairman Pangelinan. So, if we put the bill's use of the funds into here, we couldn't do it through here?

Mr. Vincent Leon Guerrero. I'll let them answer that. I am here on the educational part.

Chairman Pangelinan. Ok. Alright. Thank you very much.

Vice Speaker Cruz. Why don't we excuse the two (Mr. Duenas and Mr. Leon Guerrero) and bring up the Administration and discuss both bills.

Chairman Pangelinan. Yes, that's what we will do. Mr. Duenas and Mr. Leon Guerrero, why don't we go ahead and excuse you and bring up the Administration's representative on Bill No. 423 and ask their opinion on Bill No. 414, since they are both bond issues. Speaker San Agustin, please stay because you were going to testify on Bill No. 423 anyway.

Mr. Joe T. San Agustin. Senator, I just passed you a sheet to highlight of – the auditor just finished it. I think it will give you a sense of urgency. I'd like to invite the members of the Committee to really look at that because now it is not a matter of just between the Administration and bonds, we are talking about long term impact to the Fund. The auditors are very concerned. Speaker Won Pat, you had a question.

Speaker Won Pat. I just wanted to ask Mr. San Agustin a question. On your testimony, on page 2 and I will quote this, you said, "The Fund has been instructed by the Honorable Alberto Lamorena to file a lawsuit against the Government if the outstanding contributions are not paid in this second bond series or if the second bond series it not timely issued".

It's not that you are going to - the Fund is actually going to pursue this on their own, but encouraged by the Judge to file a lawsuit against the government. That is very unusual.

Mr. Joe T. San Agustin. Yes, the judge called us in and demanded what actions have we done to rectify this situation because there is a court suit - a member that has filed a suit against the Fund. The Judge says it has got to be remedied or we are going to held in contempt for fiduciary obligation because there is a promise made it would be paid by the first bond series. We have already been denied the first issuance. We took a second spot in the first issuance. The Judge is concerned that you keep on delaying it, the member's fund is now being jeopardized. As a matter of fact, we are suppose to come back March 19 to answer what happened because he told us to meet with the Governor, which we did and to also pass onto the Legislature, which we are now doing. They are concerned. We will report back on March 19. If the bill is not passed by March 19, we will have to say, Sorry Judge. Then the Judge is going to say, which he was inclined to issue a court order. I don't know what a court order will do – tell the Governor to do it, or does he tell us to suspend all. This is now in the court. We have our fiduciary obligation and I certainly don't want any member to come to my house.

Chairman Pangelinan. Can you sue right now?

Mr. Joe T. San Agustin. Yes. And we have done so before. The question now is, OK we file a suit and once we file a suit we do exercise our fiduciary obligation and we now let the court do….. I want to express publicly to thank you for having this amendment on the other bill. I never thought you would be able to – that it was going to be paid. I thought it was just a matter

of good faith. But, you including it, it's a bail out for us. Because it provides a solution to the deferral and that's what the Judge said, fine you can hold the deferral but how long? We are talking about a long term commitment and I think if every member would go through highlight of the auditor's note, that has a long lasting impact by this outstanding obligation. In two-three years, if this continues, we may not have enough to pay the obligation. The annuities, we may have to start tapping on the principle and then what happens to future retirees? I hope we don't end up like CNMI. That is one thing we are trying to avoid. I don't think any member in this body would even think about having that kind of situation.

Speaker Won Pat. So, let me get this straight. The Judge has advised you to file a lawsuit?

Mr. Joe T. San Agustin. There is already a suit filed. The Judge says we have to come back March 19. If our report is not satisfactory then he says he will issue a court order.

Speaker Won Pat. Ok, then he could issue a court order.

Mr. Joe T. San Agustin. It's a matter of pending now.

Speaker Won Pat. Similar to what the Judge had done with the COLA.

Mr. Joe T. San Agustin. Well, the Judge is just holding back waiting for action by the Legislature and the Governor by passing this bill. If this bill is passed and he is satisfied, then the Judge will say, OK case dismissed. But, if not he will have to take the next action and I don't know what the legal authority is for the Judge – I don't know. This is another branch of government. He could go after us as members of the Board. But he can say, you're not getting paid then you go back to your obligation, stop payment. We are talking about 5,000 retirees and other people who wish to retire and I don't think any one of us wants to do that. We don't want to do that.

Speaker Won Pat. The other thing that could happen is to stop processing any applications. These are for the employees for DOE and GMH?

Mr. Joe T. San Agustin. No, the entire government of Guam.

Speaker Won Pat. The entire government of Guam.

Mr. Joe T. San Agustin. Because the obligation is overall. Although, singly the main culprit is GMH and DOE. But there are others because of this last deferral.

Speaker Won Pat. Let's say you don't get the money and you have eligible applicants but because you have decided to stop processing them because naturally it is going to negatively impact the Fund, what happens to that eligible employee who dies prior to processing his papers for retirement?

Mr. Joe T. San Agustin. Madam Speaker, that has happened in the past where we had a survivor could not be paid because the retiree died. That happened at GMH on several cases. The members of the Fund knows – employees know that. The case is not between you and I. In the case of the employee who wants to retire, he will wonder why he is denied. We have several cases like that.

For purposes of meeting the requirements of a public hearing, Bill No. 414 will be declared duly heard. The Committee will continue, as always to keep the record open so that any individual who wishes to submit testimony at a later time. Once those testimonies are received, they will be incorporated into the appropriate committee report when presented before the body. You may do so, in terms of presenting testimony by dropping them here at the Guam Legislature at central files, you may drop them at our office on West Soledad Avenue, out here parallel to Marine Corps Drive and you may also submit through electronic mail at senbenp@guam.net or through our website at www.senbenp.com

III. FINDINGS & RECOMMENDATIONS

Bill No. 414-31 (COR) proposes to utilize the government of Guam's final borrowing capacity to pay the outstanding amounts owed to GGRF and the balance of the proceeds to fund the repair, renovation, re-construction, rehabilitation, and maintenance of public schools on Guam. With the GGRF under a standing court order to make the fund whole by securing the repayment of the amount stated above, the repayment to GGRF by the government of Guam was prioritized such that the injustice of these underpayments to the government of Guam employees' retirement fund will be rectified in the second bond series issuance, curing any issues related to these outstanding amounts owed. These concerns were raised by the Chairman of the GGRF in testimony provided for Bill No. 414-31 (COR) as introduced by Senator Vicente "ben" Cabrera Pangelinan.

The recent Facility Capital Action Plan (FCAP) conducted by Sodexo, estimated that the funds necessary to repair the schools in the GDOE system would be approximately $139,192,481. At the time Bill No. 414-31 (COR) was introduced, there was no plan to address these deficiencies of the existing public school infrastructure, such that the students of the GDOE could be guaranteed an adequate education, in a safe and healthful environment.

The author of Bill No. 414-31 (COR) presents that there is approximately $126,654,161 budgeted to pay income tax refunds between January 1, 2012 and September 30, 2012. The Office of Public Accountability in its OPA Report No. 11-10 determined that the income tax refund liability as of December 31, 2011 was $127,600,000, inclusive of Tax Year 2011 – only $945,839 less than what was budgeted for the remaining months of Fiscal Year 2012.

Because the author of Bill No. 414-31 (COR) found that the budgeted amount of income tax refunds to be paid for Tax Year 2011 is actually budgeted and appropriated, and that according to the Bureau of Budget and Management Research, actual revenues collections exceeded the budgeted revenue levels, the use of the bond proceeds from a second series was thought to be utilized best for long-term infrastructural needs of the students, teachers, parents, and administrators of GDOE. Additionally, because the

repayment of the second bond series proceeds is planned to take place over the next 30 years, the author of the bill found that future generations, which will be forced to pay this debt, will find intergenerational equity such that their children will be able to take advantage of the educational infrastructure that was paid for by the second series bond proceeds for which they will be paying.

Bill No. 414-31 (COR) also amends §§ 24102(f) and 24103 of Article 4, Chapter 24, Division 2, Title 11 of the Guam Code Annotated, of which the aim is to increase the debt ceiling provisions and capacity of the government of Guam from 90% to 100% and decreases the real property tax levies for land property and improvements from 7/72% and 7/18% to 7/80% and 7/20%, respectively.

The intent of these amendments to the Guam Code Annotated is to provide the Executive Branch the ability to issue a second bond series through the bond authorization enacted in Public Law 31-76.

Public Law 31-76 authorized the first bond series issuance of the Revenue Anticipation Financing bonds of which the bond proceeds were to be used as follows:

1. $198,000,000 for the payment of unpaid income tax refunds plus interest for Tax Year 2010 and prior;
2. $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*;
3. $26,400,000 for payments owed to the Government of Guam Retirement Fund (GGRF) for the Guam Department of Education (GDOE) and the Guam Memorial Hospital Authority (GMHA) principal and interest pursuant to PL 28-38, as amended by PL 31-74; and
4. If no alternate source of funding is available, for the payment of health insurance premiums for Fiscal Year 2012.

The first bond series issue yielded proceeds which only paid numbers 1 and 2 from above. This left GGRF without payment of the almost $25 million owed from the underpayment by GDOE and GMHA to GGRF, the reduction in the retirement contribution rate, and payments to the GGRF as a result of Public Law 31-74, the Supplemental Appropriations Act of FY2011, which authorized the *Health Insurance Bailout Agreement of FY 2011*.

The Committee took into consideration all these aspects and reasons for the use of the second series bond proceeds and substituted Bill No. 414-31 (COR) with the version herein.

Debt Ceiling Calculation and Analysis

GOVERNMENT OF GUAM DEBT CEILING CALCULATION March 9, 2012			
	Land	Improvements	Total
2011 Total Assessed Valuation of Real Property as of November 28, 2011	$6,085,291,937	$5,309,356,590	$11,394,648,526
Assessed Value Less Exemptions (100% of Taxable Appraised Value)	$6,085,291,937	$5,309,356,590	$11,394,648,526
			10%
Debt Limit (Ceiling) - 10% of Aggregate Value			$1,139,464,853
General Obligation Debt as of June 2012			$480,820,843
Limited Obligation Debt as of June 2012			$547,992,440
Amount Available for Future Debt Obligation			**$110,651,570**

The following projects already approved for financing by the Guam Legislature will not be able to proceed by means of a municipal bond offering if the debt ceiling is raised to 100% of the Taxable Appraised Value of Land and the remaining $110 million in debt ceiling capacity is borrowed for other purposes.

6/6/2011	Okkodo Expansion Project P.L. 31-74	$ 21,818,000
12/10/2010	UOG Student Services, Eng. Annex, G.C.C. Lab/Classrooms P.L. 30-201	40,500,000
1/1/1997	Department of Land Management Building P.L. 23-135	15,750,000
9/30/2008	GFD Financing P.L. 29-113	7,800,000
8/14/2010	Guam Institute of Cultural Heritage and Natural History P.L. 30-179	25,000,000
		$ 110,868,000

Estimated Cost of Second Series Bond Issue

The following estimates are presented to provide a reasonable idea of the total cost, interest rate, term and debt service payments. Each variable may vary from estimates presented by GEDA or financial consultants due to the structure used to structure the bond issue. The differences should not be materially significant. However, any drastic changes to interest rates or Guam's bond rating could result in material differences.

Principal	$110,651,570
Interest	$110,355,368
Total Cost	$221,006,938

Interest Rate: 5.15%
Term: 30 Years
Average Annual Debt Service: $7,364,702

Income Tax Refund Liability Analysis

The Office of Public Accountability OPA Report No. 11-01 – Government of Guam Income Tax Refund Efficient Payment Trust Fund Performance Audit which was released in December 2011, estimated that the income tax refund liability as of December 31, 2011 stood at $127,600,000. This amount included Tax Year 2011 income tax refund liability which will be due by June 2012.

The Committee found that the Guam Legislature budgeted and appropriated approximately $126,654,161 for the payment of Tax Year 2011 and prior income tax refunds owed to the taxpayers of Guam. The Public Laws that budget and appropriate this amount are as follows:

1. Public Law 31-77 budgeted $105 million, of which $85,437,913 is due to taxpayers between January 1, 2012 and September 30, 2012;
2. Public Law 31-77 appropriated $4,556,855 for income tax refunds from the reimbursement the government of Guam is expected to receive from its overpayment for the government of Guam employees and retirees health insurance provider Calvo's SelectCare;
3. Public Law 31-76 budgeted $22,007,585 from the Additional Child Tax Credit (ACTC) reimbursement from the United States Treasury which was reimbursed as a result of the payment of Tax Year 2010 and prior income tax refunds, which was received on January 30, 2012 for the payment of income tax refunds;
4. Public Law 31-76 budgeted $13,115,657 of expected ACTC reimbursements from the United States Treasury as the government of Guam paid out Tax Year 2011 income tax refunds, of which funds was to be used to pay out more income tax refunds; and
5. Public Law 31-126 appropriated $1,536,151 from Section 30 funds that the government of Guam received at the beginning of FY 2012 to pay income tax refunds.

The Committee also found that as of the January 2011, Bureau of Budget and Management Research Consolidated Revenue and Expenditure Report, actual General Fund revenue collections are $22,025,398 above the adopted budgeted revenue projections for FY 2012, indicating that the amount set-aside for income tax refunds should be equivalent to what was budgeted for FY 2012.

The Committee understands that the Department of Administration has continued to under-pay the budgeted amount of income tax refunds as mandated by Public Law 31-77 even though actual revenue collections are exceeding its budgeted levels. As a result of these actions, the Committee expresses its concern about the future ability of the Executive Branch to remain current with the payment of Tax Year 2012 income tax refund payments and beyond, when the current practice serves as an indication of potential future financial decisions.

The Committee emphasizes that if Tax Year 2011 income tax refunds are paid for with second series bond proceeds, then the Department of Administration must remain current with all laws applicable to setting-aside and depositing income tax refunds as required by all future budget acts as well as §51102 of Chapter 51, Title 11 of the Guam Code Annotated. Anything less will start the same vicious cycle of having taxpayers wait *years* for their refunds.

GDOE FCAP Discussion

The Committee found that the GDOE has programmed all available ARRA funding for the needed repairs and renovation of its school facilities to ensure safe facilities and healthful learning environments for its students, system-wide. Furthermore, in an assessment of the repair, rehabilitation, and maintenance needs of the GDOE school facilities, the amount estimated to repair, maintain, rehabilitate, and re-construct existing school facilities and construct new facilities amounts to over $139 million dollars.

The independent third party assessment that was performed identified 36 schools in need of repairs ranging from $478,972 to $17,919,657 in estimated cost. The assessment detail or FCAP may be used by the Parents of GDOE students, GDOE, and the Guam Education Board to identify and prioritize capital investments that will be made in school facilities. The FCAP finalized in December 2010 is summarized by school as follows:

School	Assessment Cost to Repair
Agana Heights Elementary - Agana Heights	$2,489,333
Agueda Johnston Middle - Chalan/Pago-Ordot	$8,980,126
Astumbo Elementary - Dededo	$3,113,425
Carbullido Elementary - Barrigada	$2,665,439
Chief Brodie Elementary - Tumon, Tamuning	$2,505,614
D.L. Perez Elementary - Yigo	$2,746,566
Finegayan Elementary - Dededo	$5,084,882
George Washington High School - Mangilao	$6,948,157
Inarajan Elementary - Inarajan	$1,302,568
Inarajan Middle – Inarajan	$7,113,886
Johnson Elementary - Tamuning	$2,919,863
Jose Rios Middle - Piti	$1,835,248
Juan M. Guerrero Elementary - Dededo	$2,682,079
Leon-Guerrero Middle - Yigo	$3,112,728
M.U. Lujan Elementary - Yona	$3,124,537
Machananao Elementary - Yigo	$1,973,501
Marcial Sablan Elementary - Agat	$3,455,368
Merizo Elementary - Merizo	$1,643,111
Oceanview Middle - Agat	$8,840,429
Ordot-Chalan Pago Elementary - Chalan/Pago-Ordot	$478,972
P.C. Lujan Elementary - Barrigada	$2,547,222
Price Elementary - Mangilao	$6,110,970
San Miguel Elementery - Mongmong-Toto-Maite	$2,994,756

Sanchez Elementary - Umatac	$907,226
Sanchez High School - Yigo	$6,786,492
Southern High School	$17,919,657
Taitano Elementary - Sinajana	$1,227,136
Talofofo Elementary - Talofofo	$3,477,229
Tamuning Elementary	$2,227,548
Torres Alternative School - Santa Rita	$1,629,582
Truman Elementary - Santa Rita	$2,898,456
Ulloa Elementary - Dededo	$3,137,793
Untalan Middle School - Barrigada	$3,056,740
UPI Elementary - Yigo	$2,590,344
Vincente Benevente Middle - Dededo	$5,374,331
Wettengel Elementary - Dededo	$3,291,167
Grand Total	**$139,192,481**

The Committee also found that none of these capital improvement needs are budgeted and the resources can only be reasonably made available through debt financing instruments, if the government wishes that these needs are to be addressed at the same time for all school facilities.

The Committee further found that the government of Guam has reached its debt capacity as set in the Organic Act of Guam and the only window of debt capacity remaining is one final increase of the debt limit to 100 percent of the Organic Act limit.

It is the priority of the Committee that the final borrowing capacity of the government be considered for the purpose of providing the financial resources to the GDOE to make the urgent and immediate repairs and maintenance to school facilities for a safe and healthful school environment for our students.

Intergenerational Equity

The future impact of long-term debt financing by the government of Guam to reduce fund balance deficits caused by borrowing from income tax refunds for operations is generally not explored beyond the future debt service payment requirements. The future debt service requirements, if not met by other retiring long-term debt, must be funded by either increased revenues or decreased expenditures.

Aside from the repayment of the long-term debt, the concept of intergenerational equity should also be considered by the decision-makers of today. The traditional use of long-term debt by governments and municipalities is to fund capital intensive projects for education, transportation, utilities, and housing. These projects generally benefit the entire community through building schools or infrastructure that is used by all taxpayers. The intent of another bond proposal is to issue a second bond this fiscal year to pay for current income tax refunds due and payable by June 2012. This will be the fourth government of Guam bond issue since 2007 that uses bond proceeds to pay for income tax refunds.

Guam taxpayers will bear the burden of repaying over $1 billion of principal and interest for the four bond issues used to pay income tax refunds over the next 30 years. Existing taxpayers owed income tax refunds continue to see the "benefit" of using bond proceeds; however, existing taxpayers not owed income tax refunds and future taxpayers contribute to repayment of these bonds but do not receive an equitable benefit from the use of the bond proceeds.

Example of Cost to a Student in 1st Grade in 2012
to Repay Four Bond Issues used to Pay Income Tax Refunds

	Estimated Principal and Interest related to Income Tax Refund Payments	Remaining Years	1st Grader Years to Pay	1st Grader/Cost
2007A GO General Purpose Including Deficit	$84,503,244	27	15	$782
2009 GO Deficit	$255,790,988	29	17	$2,499
2011A Business Privilege Tax	$536,799,465	31	19	$5,483
2011B Business Privilege Tax @ 5.15% for 30 Years	$162,687,757	30	18	$1,627
	$1,039,781,454.00			$10,392

-Assumes 1st Grader becomes taxpayer at age 18
-Bond proceeds and interest prorated based on amount used to pay income tax refunds

Example of Cost to a High School Freshman in 2012
to Repay Four Bond Issues used to Pay Income Tax Refunds

	Estimated Principal and Interest related to Income Tax Refund Payments	Remaining Years	High School Freshman Years to Pay	High School Freshman/ Cost
2007A GO	$84,503,244	27	23	$1,200
2009 GO Deficit	$255,790,988	29	25	$3,675
2011A Business Privilege Tax	$536,799,465	31	27	$7,792
2011B Business Privilege Tax @ 5.15% for 30 Years	$162,687,757	30	26	$2,350
	$1,039,781,454.00			$15,017

-Assumes High School Freshman becomes taxpayer at age 18
-Bond proceeds and interest prorated based on amount used to pay income tax refunds

There are many studies and debates about the concept of "Intergenerational Equity." Intergenerational Equity is often discussed in terms of environmental and educational issues about whether the future generations should pay higher taxes and receive lower benefits. Dr. Isabel V. Sawhill, Senior Fellow and Co-Director of the Center on Children and Families at the Brookings Institution recently presented the topic of governmental investment into children now with the expectation that they will contribute more when they are older. The current situation on Guam is such that poverty is high and student achievement is low. The likelihood of those future

generations of Guam residents being able to pay more in the future to support repayment of bonds and other governmental functions is low considering the current outlook for employment opportunities and students being adequately prepared to seek higher education.

Clearly, the physical conditions of the public school system, lack of supplies and books, harsh classroom environments caused by inadequately maintained and repaired air conditioning units and plumbing may all contribute to the low student achievement. Additional borrowing in addition to the requested Series B bond issue, in the form of leaseback arrangements or tax credits, will severely exacerbate the forecasted difficulties in repayment of these debts and the ability of the government to provide services to Guam's residents and visitors.

Bill No. 414-31 (COR) seeks to authorize the majority of the net proceeds of a second bond series to be used for the repair and maintenance of Guam public schools. This is the last time, the government will have the opportunity to borrow money on the municipal bond market at low interest rates because the statutorily created debt ceiling is maxed out or borrowed at the full capacity. Therefore, unless there is a significant increase in revenue (minimum of $70 million per year), the future generations to come will continue to receive little benefit now and will likely receive less benefits later. In addition, future generations will likely be subjected to higher taxes.

Fiscal Responsibility and Tax Refund Commission Mandates

Executive Order No. 2011-10 executed by Governor Calvo created the Fiscal Responsibility and Tax Refund Commission (FRTRC). This commission was establish as a result of the growing deficit, which included tax refunds owed to the people that was estimated to be $269 million at that time.

Section 5 of Public Law 31-76 mandates a Deficit Reduction and Fiscal Reform Plan by *I Maga'lahen Guåhan's* Fiscal Responsibility and Tax Refund Commission before incurring further debt or increasing Guam's debt limit. Components of the plan were further outlined by the Guam Legislature that are key to Guam's ability to repay additional long term debt. The components include a detailed statement of the FRTRC's findings, conclusions, and recommendations regarding policy initiatives to develop a fiscal strategy for reducing the overall deficit, debt, and liabilities of the government of Guam and to improve the government of Guam's fiscal situation to achieve long-term and effective fiscal sustainability in the government's operating budget. The Plan made by the FRTRC shall include:

> (1) proposals to compel compliance with §51102 of Chapter 51, of Title 11, Guam Code Annotated, regarding the deposit of funds into the Income Tax Refund Efficient Payment Trust Fund toward the timely payment of income tax refunds;
>
> (2) review, analyze, and provide its position and recommendation on all future issuance(s) of long-term debt, including the issuance of general and limited obligation bonds, revenue bonds, and lines of credits. The review and analysis shall include, but is not be limited to, a ten (10)-year revenue and expenditure forecast and/or recommendations for operating cost reductions to support any potential debt service on new debt;

(3) proposals to address the unfunded actuarial accrued liability towards ensuring the solvency of the Government of Guam Retirement Fund;

(4) a plan that addresses the recurring fiscal gap between the annual revenue collections and expenditures of the government of Guam, including, but not limited to, increasing revenues, decreasing expenditures, or a combination of both; and

(5) a signed memorandum of understanding or equivalent document with the Internal Revenue Service or the Department of Treasury or the Department of Interior that outlines the method and terms of repaying the ARRA Make Work Pay overpayments to Guam for Tax Years 2009 and 2010.

Two written reports are mandated to be submitted to the Speaker of *I Liheslaturan Guåhan*. The first report on items #1 and #2 was due on December 18, 2011. The second report on items #3, #4 and #5 were due on January 17, 2012. Both reports required that the FRTRC considered the following in developing said recommendations:

- the schedule of the relocation of the Third Marine Division and other military personnel and support activities from Okinawa and Japan to Guam;
- the realistic projection of the timing and amounts of incremental revenues the government will collect from such relocation;
- The incremental increase in expenditures to support and mitigate such relocation;
- the impact of the recommendations of the Joint Select Committee on Deficit Reduction as required by U.S. Public Law 112-25, if implemented, on the continuance of federal programs and services and the need for local funding to absorb such cuts upon the operations of the government and current debt service requirements of existing debt or any new debt;
- the effect on the continued delay in the issuance of the final ruling on the granting of parole authority by the U.S. Department of Homeland Security for tourists from China and Russia;
- other global, national, and regional economic factors which could affect economic activity and investments on Guam; and
- other matters that the Commissioners may deem appropriate.

Lastly, the FRTRC is required to determine the actual amount of past due income tax refunds not included for payment by an approved authorization for the issuance of a bond. The FRTRC must review, analyze, and provide to *I Maga'lahen Guåhan*, a written report by January 17, 2012 on the viability of issuing additional bonds and recommend the timing for an additional bond issue to pay any remaining past due income tax refunds not included for payment by the December 2011 bond or by the provisions for income tax refunds in the Annual Appropriations Acts of FY 2011 and FY 2012 for the government of Guam.

The membership of the FRTRC is composed of bipartisan members of the Executive and Legislative branch. The Governor of Guam serves as the Chairperson of the commission, while the Co-Chair is a member of the Legislature who is chosen by the Governor. According to the Executive Order, the FRTRC shall meet regularly and the meetings will be noticed and convened by the Chairperson. The FRTRC was to adopt a first report of recommendations after a month of

its execution. The commission was established via an Executive Order executed by the Governor on May 11, 2011.

The first meeting of the FRTRC was held on May 18, 2011. The commission gave suggestions such as: applying for more federal grants, enforcing tax laws for off island companies, outsourcing some parts of tax enforcement to CPA or legal firms, and cost containment measures. Senator Judi Guthertz also submitted a list of recommendations called the Humane Deficit Elimination Plan. This was the last meeting held by the FRTRC. There was supposed to be a meeting held on June 1, 2011; however that meeting never took place.

Public Law 31-76, An Act to Authorize the Issuance of Bonds for the Payment of Unpaid Income Tax Refunds, Cost of Living Allowance, Health Insurance Premiums for Fiscal Year 2012, and for other purposes, required the FRTRC to propose the "Deficit Reduction and Fiscal Reform Plan." The intent of Public Law 31-76 is that the FRTRC must submit these reports before the government of Guam can incur any additional debt or increase to Guam's debt limit.

The bipartisan commission with its intentions to secure the financial sustainability of Guam was introduced with great publicity but has not issued its reports on its mandated tasks. The ability to issue a Series B bond requires an increase Guam's debt limit to 100%. However, the inaction of the FRTRC has sent mixed signals on its commitment to the priority of sustaining Guam's financial future. The main objective of this commission was to provide objective information to guide lawmakers in making the best decision with all the relevant facts and considerations present. Without this information, the Committee is concerned that the FRTRC is ignoring or evading its duty to be open and transparent with Guam's people. The proposed increase to long-term debt combined with current expenditure rate of the government of Guam makes it a forgone conclusion that a tax increase is inevitable. The FRTRC's lack of attention to its duty places taxpayers at future risk for a tax increase and/or reduced services.

Congressional Mandates Stall Relocation of Marines to Guam

Section 2207(a) of the Fiscal Year 2012 National Defense Authorization restricts the use of Federal appropriations and use of the existing and future cash contributions from the Government of Japan until the Department of Defense provides congress with various reports, certifications and assurances of the preferred force lay-down related to the United States and Japan Marine Realignment.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012

SECTION 2207. GUAM REALIGNMENT.

(a) Restriction on Use of Funds- Except as provided in subsection (c), notwithstanding any other provision of law, none of the funds authorized to be appropriated under this Act, and none of the amounts provided by the Government of Japan for military construction activities on land under the jurisdiction of the Department of Defense, may be obligated to implement the realignment of United States Marine Corps forces from Okinawa to Guam as envisioned in the United States-Japan Roadmap for Realignment Implementation issued May 1, 2006, until--

(1) the Commandant of the Marine Corps, in consultation with the Commander of the United States Pacific Command, provides the congressional defense committees the Commandant's preferred force lay-down for the United States Pacific Command Area of Responsibility;

(2) the Secretary of Defense submits to the congressional defense committees a master plan for the construction of facilities and infrastructure to execute the Commandant's preferred force lay-down on Guam, including a detailed description of costs and a schedule for such construction;

(3) the Secretary of Defense certifies to the congressional defense committees that tangible progress has been made regarding the relocation of Marine Corps Air Station Futenma;

(4) a plan coordinated by all pertinent Federal agencies is provided to the congressional defense committees detailing descriptions of work, costs, and a schedule for completion of construction, improvements, and repairs to the non-military utilities, facilities, and infrastructure on Guam affected by the realignment of forces; and

(5) the Secretary of Defense--

(A) submits to the congressional defense committees the report on the assessment of the United States force posture in East Asia and the Pacific region required under section 346 of this Act; or

(B) certifies to the congressional defense committees that the deadline established under such section for the submission of such report has not been met.

Cancellation of Mamizu Multiple Award Construction Contract (MACC) award

As noted above, the U.S. Congress passed legislation through the National Defense Authorization Act (NDAA) which freezes all federal appropriations and cash contributions from the government of Japan related to the military buildup on Guam. The recent release from the Naval Facilities Engineering Command (NAVFAC) Pacific regarding the cancellation of the $4 Billion Mamizu Multiple Award Construction Contract (MACC) and the Apra Harbor Medical Clinic project estimated to cost $100 million are evidence that the Department of Navy/Department of Defense has initiated its compliance with the federal mandates of the NDAA.

Bureau of Budget Management and Research (BBMR) Testimony for Bill No. 1 (3-S), now Public Law 31-76.

During the debate of Bill No. 1 (3-S), now Public Law 31-76 in the Committee of the Whole, the BBMR presented a 10 year General Fund Revenues and Expenditures with Military Buildup (10 year Pro Forma). The main source of revenue growth to support the $580 annual General Fund budget and additional debt service related to both the Series A and B Business Privilege Tax Bonds according to the 10 year Pro Forma is revenues from the economic activity related to the military buildup, including Section 30 estimates for the transfer of 8600 marines to Guam. Table 1 outlines the BBMR military buildup revenue estimates and the corresponding impact to whether the annual General Fund budget is balanced. Clearly, any freeze in military construction and/or reduced scope of the military buildup creates a scenario where the government will need to raise taxes in order to pay income tax refunds on time.

Table 1	Military Buildup Revenues	Projected Current Year Surplus/Deficit with Military Buildup Revenues	Projected Current Year Surplus/Deficit without Military Buildup Revenues
2014	$52,016,300	$4,923,394	($47,092,906)
2015	$82,344,049	$25,553,338	($56,790,711)
2016	$126,537,418	$65,834,155	($60,703,263)
2017	$147,899,843	$78,095,719	($69,804,124)
2018	$152,255,567	$80,374,394	($71,881,173)
2019	$111,087,524	$37,084,309	($74,003,215)
2020	$60,417,349	($15,500,321)	($75,917,670)
2021	$58,757,699	($20,095,621)	($78,853,320)

Conclusion

The Committee considered the requirements of education and fiscal responsibility with regards to the payment of income tax refunds to the taxpayers of Guam. With the demands of adequate education through proper and reformed public school infrastructure as well as the timely payment of income tax refunds for Tax Year 2011, the Office of Finance and Budget recommends Bill No. 414-31 (COR) not be reported out until the FRTRC complete its mandates. If it is the will of the Committee to act regardless of the completion of the reports, then a substituted Bill No. 414-31 (COR) is recommended that fully prioritizes the payment to the GGRF that is owed by the government of Guam and to provide the top priorities expressed by members of the Guam Legislature, as options, to include the repair, renovations, re-construction, rehabilitation, and maintenance of Guam public schools as well as the payment of Tax Year 2011 income tax refunds for the Governor of Guam to decide which priorities to fund with the remaining bond proceeds.

FINDINGS AND RECOMMENDATIONS. The Committee on Appropriation, Taxation, Public Debt, Banking, Insurance, Retirement, and Land, hereby reports Bill No. 414-31(COR) As Substituted, with the recommendation to Report Out Only.

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

Bill No. 414-31 (Cor)

Introduced by: **V.C. Pangelinan**

AN ACT TO *AMEND* 5GCA § 1512.3, 11GCA §§ 24102(a), 24102(f), 24103, 24401, 21GCA § 75112(i), SECTIONS 2(b) AND 7 OF PUBLIC LAW 30-37 AND SECTION 7 OF PUBLIC LAW 31-76, TO *ADD* SUBSECTION (d) TO 5GCA § 22704 AND SUBSECTION (d) TO SECTION 3 OF PUBLIC LAW 30-37, TO *REPEAL AND RE-ENACT* 5GCA § 1515(i)(2)(G) AND TO *ADD* A NEW SUBSECTION (W) TO 5GCA § 1515(i)(2), 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. Legislative Statement and Intent. *I Liheslaturan Guåhan* finds that the GDOE has programmed all available ARRA funding for the needed repairs and renovation of its school facilities to ensure a safe and healthy learning environment for its students, system-wide. Furthermore, in an assessment of the repair, rehabilitation, and maintenance needs of the GDOE school facilities, the amount estimated to repair, maintain, rehabilitate, and re-construct existing school facilities and construct new facilities amounts to over $139 million dollars.

The third party assessment performed, identified 36 schools in need of repairs ranging from $478,972 to $17,919,657. The assessment detail or Facility Capital Action Plan (FCAP) may be used by the Parents of the GDOE students, the GDOE, and the Guam Education Board to identify and prioritize capital investments that will be made in school facilities. The FCAP plan finalized in December 2010 is summarized by school as follows:

	School	Assessment Cost to Repair
2	Agana Heights Elementary - Agana Heights	$2,489,333
3	Agueda Johnston Middle - Chalan/Pago-Ordot	$8,980,126
4	Astumbo Elementary - Dededo	$3,113,425
5	Carbullido Elementary - Barrigada	$2,665,439
6	Chief Brodie Elementary - Tumon, Tamuning	$2,505,614
7	D.L. Perez Elementary - Yigo	$2,746,566
8	Finegayan Elementary - Dededo	$5,084,882
9	George Washington High School - Mangilao	$6,948,157
10	Inarajan Elementary - Inarajan	$1,302,568
11	Inarajan Middle – Inarajan	$7,113,886
12	Johnson Elementary - Tamuning	$2,919,863
13	Jose Rios Middle - Piti	$1,835,248
14	Juan M. Guerrero Elementary - Dededo	$2,682,079
15	Leon-Guerrero Middle - Yigo	$3,112,728
16	M.U. Lujan Elementary - Yona	$3,124,537
17	Machananao Elementary - Yigo	$1,973,501
18	Marcial Sablan Elementary - Agat	$3,455,368
19	Merizo Elementary - Merizo	$1,643,111
20	Oceanview Middle - Agat	$8,840,429
21	Ordot-Chalan Pago Elementary - Chalan/Pago-Ordot	$478,972
22	P.C. Lujan Elementary - Barrigada	$2,547,222
23	Price Elementary - Mangilao	$6,110,970
24	San Miguel Elementery - Mongmong-Toto-Maite	$2,994,756
25	Sanchez Elementary - Umatac	$907,226
26	Sanchez High School - Yigo	$6,786,492
27	Southern High School	$17,919,657

School	Assessment Cost to Repair
Taitano Elementary - Sinajana	$1,227,136
Talofofo Elementary - Talofofo	$3,477,229
Tamuning Elementary	$2,227,548
Torres Alternative School - Santa Rita	$1,629,582
Truman Elementary - Santa Rita	$2,898,456
Ulloa Elementary - Dededo	$3,137,793
Untalan Middle School - Barrigada	$3,056,740
UPI Elementary - Yigo	$2,590,344
Vincente Benevente Middle - Dededo	$5,374,331
Wettengel Elementary - Dededo	$3,291,167
Grand Total	**$139,192,481**

I Liheslaturan Guåhan also finds that none of these capital improvement needs are budgeted and the resources can only be reasonably made available through debt financing instruments, if the government wishes that these needs are to be addressed at the same time for all school facilities.

I Liheslaturan Guåhan further finds that the government of Guam has reached it's debt capacity as set in the Organic Act of Guam and the only window of debt capacity remaining is one final increase of the debt limit to 100 percent of the Organic Act limit.

It is the priority of *I Liheslaturan Guåhan* that the final borrowing capacity of the government *shall be* used for the purpose of providing the financial resources to the GDOE to make the urgent and immediate repairs and maintenance to school facilities for a safe and healthy school environment for our students.

Furthermore, *I Liheslaturan Guåhan* wishes to increase its support to local economic sectors that integrate the activities of our local entrepreneurs and our

tourism activities by providing development funds toward the plans for re-construction and enhancement of the Guam Fisherman's Cooperative facilities.

Section 2. § 1512.3 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 ~~one or more~~ 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, i~~I~~n the following order of priority:

(i) 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;

(A) 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;

(ab) 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;

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

(ad) 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~~2) For the second bond series, in the following order of priority:

(~~i~~) no less than Twenty-Five~~Six~~ Million ~~Four Hundred Thousand~~ Dollars ($25~~6~~,4~~0~~00,000) 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 PL 28-38, as amended by PL 31-74; ~~and~~

(ii) no less than Seventy-Three Million Dollars ($73,000,000) for the design, construction, re-construction, rehabilitation, maintenance, and/or renovation of government of Guam or Guam Department of Education-owned school facilities. 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

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

(2) 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

(3) 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).

(b) **Terms and Conditions Determined by Certificate *or* Indenture.**

(1) The terms and conditions of the first bond series *shall* be as approved by *I Liheslaturan Guåhan*, and as determined by *I Maga'lahen Guåhan* by the execution of a certificate *or* indenture authorizing the issuance of the bonds, prior to the issuance of the bonds; *provided, however*, that such terms and conditions *shall* be consistent with this Section, and that the bonds *shall* mature *not later than* thirty-five (35) years after their date of issuance, *shall* bear interest at such rates and be sold for such price *or* prices as *shall* result in a yield to the bondholders that *does not exceed* six and one half percent (6.5%) per annum, *shall* require interest only payments for Fiscal Years 2012, 2013 and 2014 and *shall not* require bond principal payments until after such Fiscal Years.

(2) The terms and conditions of the second bond series *shall* be as approved by *I Liheslaturan Guåhan*, and as determined by *I Maga'lahen Guåhan* by the execution of a certificate *or* indenture authorizing the issuance of the bonds, prior to the issuance of the bonds; *provided, however*, that such terms and conditions *shall* be consistent with this Section, and that the bonds *shall* mature *not later than* thirty-five (35) years after their date of issuance, *shall* bear interest at such rates and be sold for such price *or* prices as *shall* result in a yield to the bondholders that *does not exceed* six and one half percent (6.5%) per annum, *may*

structure interest only payments for Fiscal Years 2012 and 2013 and *not* require bond principal payments until after such Fiscal Years.

(c) **Valid and Binding General or Limited Obligations.** The certificate or indenture pursuant to which the bonds authorized by this Section are issued *shall* provide that the bonds constitute the valid and legally binding general or limited obligations of the government of Guam payable from the revenues as defined in the certificate or indenture. The validity of any such bonds *shall not* be affected by the validity or regularity of any proceedings for the payment of the costs and expenses funded by such bonds. All officers charged by law with any duty in the collection of the revenues of the government from which debt service on the bonds will be payable *shall* do every lawful thing necessary to collect such sum. The validity of any such bonds *shall not* be affected by the validity *or* regularity of any proceedings for the payment of the expenses paid *or* to be paid with the proceeds of the bonds.

(d) **Cost-Benefit Analysis.**

(1) *I Maga'låhi* (the Governor) Authorized to Pledge Revenues. *I Maga'låhi* (the Governor) *shall* perform or cause to be performed expert independent financial and cost-benefit analysis to determine the more favorable financing for the government using the pledge, either business privilege tax revenues or General Obligation full faith and credit, for the repayment of the bond of which he is authorized to pledge. Such financial and cost-benefit analysis *shall* be performed by an independent, external party that *does not* have any financial interest in the bond financing or any connection to any party who may have a financial interest in the bond financing. The analysis *shall* include, but *not* be limited to, the following:

(i) impact upon existing General Obligation bondholders and/or lines of credit;

(ii) cost of funds differential between a General Obligation and a Limited Obligation bond structure;

(iii) likelihood of investment grade rating on a Limited Obligation bond structure;

(iv) ability to issue future General Obligation debt in the capital markets;

(v) indenture provisions that may limit government of Guam flexibility; and

(vi) additional security requirements that may impact or reduce net proceeds or affect government of Guam liquidity (i.e. reserve funds, coverage requirements, other covenants)

I Maga'låhen Guåhan shall first consult with the University of Guam to identify finance and economics professionals (professors or researchers), if any, within the University of Guam School of Business and Public Administration that hold the relevant experience and expertise necessary to perform the independent financial and cost-benefit analysis, to conduct the said analysis *before* seeking other potential providers. The University of Guam *shall* disclose the name(s) of all the faculty, staff or contracted individuals involved in the independent financial and cost-benefit analysis. The University of Guam *shall* have ten (10) days from the enactment of this Act, to inform *I Maga'låhen Guåhan* whether it agrees to provide the analysis.

Before any marketing of Limited Obligation bonds backed by a pledge of business privilege tax or General Obligation bonds can occur, the expert independent financial and cost-benefit analysis required in

this Subsection *shall be* provided to the Speaker of *I Liheslaturan Guåhan.*

Up to Twenty Five Thousand Dollars ($25,000) is appropriated from the operating fund balance, or its equivalent, of the Guam Economic Development Authority for the independent financial and cost-benefit analysis required in accordance with this Subsection.

(2) Pledge of Business Privilege Tax Revenues. The certificate or indenture pursuant to which the bonds authorized by this Section are issued *may* provide that the tax revenues derived from the levy of up to three (3) percentage points, out of the total number of percentage points levied from time to time, of the business privilege tax levied pursuant to Article 2 of Chapter 26 of Title 11, Guam Code Annotated, or any successor thereto, are pledged to secure the repayment of any bonds issued under this Section and to pay costs incurred in the issuance or administration of the bonds and any required reserves. Any such pledge made to secure the bonds *shall* be valid and binding from the time the pledge is made. The revenues pledged and thereafter received by the government of Guam or by any trustee, depository or custodian *shall* be deposited in a separate account entitled the "RAF Revenue Fund" and *shall* be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The certificate or indenture by which such pledge is created need *not* be recorded, and *shall* direct the distribution and disbursement of revenues from the RAF

Revenue Fund following their deposit therein. All such taxes to the extent so pledged are hereby continuously appropriated for such purpose. So long as any bonds issued pursuant to §1512.3, Title 5, Guam Code Annotated, remain outstanding, the government of Guam may *not* reduce the rate of levy and collection of the pledged business privilege tax below three percent (3%), *nor* may the government of Guam reduce the services, products or activities to which the pledged business privilege tax applies, nor may the government of Guam upwardly adjust any exception or exclusion to, *or* otherwise impair, the pledged business privilege tax.

(3) In the event the independent financial and cost-benefit analysis conclude that the pledge of the more favorable financing option for the repayment of the bond is credit-negative to any and all existing or authorized General Obligation bonds or lines of credit, the authorization of the bond issue *shall* be contingent upon final legislative approval of the financing terms including, but *not* limited to, the bond structure, security, indenture and covenants. *I Maga'lahi* (the Governor) *shall* request such approval from *I Liheslaturan Guåhan prior* to the sale of bonds in the market but *after* the credit rating on the bonds is secured and affirmation of the current General Obligation rating and outlook is received.

(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 ~~Six~~ Three Hundred Forty Three Million Seven Hundred Thousand Dollars (~~$600,0~~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.

(f) **Waiver of Immunity; Submission to Jurisdiction.** Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the government of Guam waives immunity from any suit or action in contract on the bonds or any other agreement or facility entered into in connection with the bonds, but *does not* waive immunity as to the personal liability of elected officials and employees of the government of Guam. Any such suit or action *shall* be brought in the District Court of Guam.

(g) **No Personal Liability.** No employee or elected official of the government of Guam shall be individually or personally liable for the payment of any amounts due on any bonds issued under this Section, or for any other liability arising in connection with the bonds; *provided, however,* that

nothing in this Section shall relieve any employee or elected official from the performance of a ministerial duty required by law.

(h) **Form of Bonds; Covenants; Appointment of Fiduciaries.** The technical form and language of the bonds, including provisions for execution, exchange, transfer, registration, paying agency, lost or mutilated bonds, negotiability, cancellation and other terms or conditions *not* inconsistent with this Section, including covenants relating to the collection and application of revenues, *shall* be as specified in the certificate or indenture executed by *I Maga'lahen Guåhan* authorizing issuance of the bonds. Said certificate or indenture *shall* appoint one or more trustees, co-trustees or other fiduciaries authorized to receive and hold in trust the proceeds of the bonds, the revenues and other moneys relating thereto, to protect the rights of bondholders and to perform such other duties as may be specified in the indenture. *I Maga'lahen Guåhan* is also authorized to execute any appropriate agreements, certificates or other instruments relating to the bonds and the sale of bonds.

(i) **Authorization for Credit Enhancement.** *I Maga'lahen Guåhan* is authorized to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as he determines are necessary or desirable to improve the security and marketability of the bonds issued under this Section. Such contracts or agreements *may* obligate the government to reimburse, with interest, any such banks, insurance companies or other financial institutions for advances they make to pay principal of or interest on the bonds and to indemnify any such banks, insurance companies or other financial institutions for costs and expenses incurred in connection with any such advance. Any such reimbursement obligation and any other obligations of the government of Guam under such contracts or

agreements *shall* be limited obligations of the government of Guam payable from and secured by the revenues as provided by the certificate *or* indenture. Any such reimbursement obligation and any other obligations of the government of Guam under such contracts or agreements *shall* be treated, under § 11 of the Organic Act, as creating an obligation issued to refund the bonds.

(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 PL 28-38, as amended by PL 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 and the Guam Memorial Hospital Authority principal and

interest pursuant to PL 28-38, as amended by PL 31-74; pay for the design, construction, re-construction, rehabilitation, and/or maintenance of School Facilities; 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.

(k) **Permitted Investments.** The bond proceeds and any revenues pledged to secure the payment of the bonds are authorized to be, and *shall only* be, invested in those investments permitted by the certificate or indenture pursuant to which such bonds are issued. Permitted investments *shall* include investment agreements, forward purchase agreements or similar structured contracts as further described in the certificate *or* indenture authorizing the issuance of the bonds.

(l) **Approval by Guam Economic Development Authority.** No bonds authorized by this Section shall be sold until the Board of Directors of GEDA has approved the sale by resolution.

(m) **Approval of Voters *Not* Required.** The issuance of bonds pursuant to this Section *shall not* be subject to the approval of the voters of Guam.

(n) **Approval of Bonds.** *I Liheslaturan Guåhan*, pursuant to Subsection (b) of this Section and §50103(k), Title 12, Guam Code Annotated, hereby approves the issuance and sale by the government of Guam of the bonds for the purposes and in the aggregate principal amount authorized by §1512.3, Title 5, Guam Code Annotated; *provided* that such bonds are issued and sold subject to the terms, conditions, requirements and limitations mandated therein.

(o) **Deposit of Bond Proceeds to Pay Income Tax Refunds.** The portion of the bond proceeds authorized by this Section that is mandated 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.

(p) **Bond Proceeds *Not* Subject to Transfer Authority.** The proceeds of the bonds authorized by this Section *shall not* be subject to any transfer authority of *I Maga'lahen Guåhan.*

(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, and/or maintenance contracts for any School

Facility 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 3. Section 24102(a) of Article 1 Chapter 24 Division 2 of Title 11 Guam Code Annotated is hereby amended to read as follows:

"**§ 24102.** (a) *Property* means land and improvements on land~~, and includes the interest of a lessee or licensee of land owned by the Chamorro Land Trust Commission~~."

Section 4. Section 24102(f) of Article 1 Chapter 24 Division 2 of Title 11 Guam Code Annotated is hereby amended to read as follows:

"**§ 24102.** (f) *Value, full cash value, fair market value* and *cash value* means ~~ninety percent (90%)~~ 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 Title 11 GCA §24306, 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~~."

Section 5. Section 24103 of Article 1 Chapter 24 Division 2 of Title 11 Guam Code annotated is hereby amended to read as follows:

"**§ 24103. Levy**.

There is hereby levied on all land property in Guam a yearly tax at the rate of ~~seven-seventy seconds (7/72%)~~ seven-eightieths percent **(7/80%)** of the value thereof and ~~seven-eighteenths percent (7/18%)~~ 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 Treasury of Guam to the credit of the General Fund."

Section 6. Section 24401 of Article 4 Chapter 24 Division 2 of Title 11 Guam Code Annotated is hereby amended to read as follows:

"**§ 24401. Exemptions: Listed.**

The following property is exempt from real property taxes and shall not be assessed:

(a) All property title to which is in the United States or the government of Guam~~, except for the interest of a lessee or licensee in land owned and leased or licensed by the Chamorro Land Trust Commission~~;

(b) All property which is being used for public roads or easements;

(c) All property used exclusively for educational, religious, or other eleemosynary purposes;

(d) Property included in any cemetery in use as such and not conducted for profit.

(e) Property upon which the provisions of 21 GCA § 61504 prohibit the construction of buildings.

(f) Property use in active farming for at least eight (8) months in any tax year."

Section 7. Section 75112(i) of Chapter 75 Title 21 Guam Code Annotated is hereby amended to read as follows:

"**§ 75112(i). Applicable Taxes on Chamorro Homelands.** Notwithstanding any other provision of law:

(1) Taxes on Chamorro Land Trust Land. The holder of any lease or license for the occupation or beneficial use of Chamorro Homelands shall be subject to all applicable taxes on ~~the lessee's or licensee's interest in the land and on~~ any improvements to any tract ~~land~~ so leased or licensed. Taxes assessed for improvements shall be collected by the Department of Revenue and Taxation, which shall maintain a separate record for all such taxes collected.

(2) Payment in Lieu of Real Property Taxes on Chamorro Land Trust Land. In lieu of payment of real property taxes, the holder of any lease or license for the occupation or beneficial use of Chamorro Homelands shall pay to the Department of Revenue and Taxation the equivalent sum which would otherwise be paid to the government of Guam in real property taxes, as if the tract or tracts were taxable private real property. For the purpose of assessing payment in lieu of taxes, the Department of Revenue and Taxation shall determine and collect an assessment in a manner consistent with the assessment of real property taxes for privately owned real property. The Department of Revenue and Taxation shall maintain a separate record of all payments in lieu of taxes collected.

(3) Deposit and Earmarking of Funds Collected. All taxes on improvements or payments in lieu of taxes identified in Items 1 and 2 of Subsection (i) of this Section shall be deposited in the Chamorro Loan Guarantee Fund, and is earmarked to carry out the purposes set forth pursuant to this Chapter."

Section 8. Subsection (d) is hereby *added* to § 22704 of Chapter 22 of Title 5 of the Guam Code Annotated to read as follows:

"(d) No lease-purchase agreement for office space and other facilities for the purpose of providing office and other space for the departments and agencies of the Judicial and Executive Branches of the government of Guam *shall not* be authorized to be paid for through the issuance of tax credits without the advice and consent of the Guam Legislature."

Section 9. Section 2(b) of Public Law 30-37 is hereby *amended* to read as follows:

"(b) *Lease* shall mean the contract between the Lessor Core Tech International Corporation and the Government of Guam for the lease and maintenance of interim school facilities at the former interim JFK site in *Tiyan* and the purchase of collateral equipment subject to the availability of funds and annual legislative approval of tax credits for said lease."

Section 10. Subsection (d) is hereby *added* to Section 3 of Public Law 30-37 to read as follows:

"(d) **Conflicts Prohibited**. Notwithstanding any provision in this Act, no Covered Person, as such term is defined below, *shall* be eligible to be assigned or transferred, in whole or in part, any tax credit authorized in this Act by the Lessor. For purposes of this Section, the term "Covered Person" *shall* mean any:

(1) elected or appointed official of the government of Guam that executed the Lease or any amendments to the Lease on or after June 1, 2011.

(2) 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 subsection (1) of this Section and his or her sole proprietorship,

partnership, and/or corporation in which he or she has an ownership interest of five percent (5%) or more."

Section 11. Section 7 of Public Law 30-37 is hereby *amended* to read as follows:

"**Section 7. Payment of Lease Expenses.** All government of Guam agencies, divisions, and departments occupying space at the *Tiyan* Campus (former interim JFK site) for any purpose other than as school facilities, and pursuant to an award of an Invitation for Bid, are hereby authorized to pay for lease expenses ~~through the use of tax credits~~ authorized in Section 3, ~~or to pay for lease expenses~~ from approved appropriations for office space rental provided in the Annual Appropriations Act of 2012. FY 2012 appropriations to any agency occupying space at the *Tiyan* Campus for non-school facilities pursuant to this Section *shall* be reduced and deappropriated in the amount of any tax credits given."

Section 12. Section 7 of Public Law 31-76 is hereby *amended* to read as follows:

"**Section 7.** Sections 4 ~~and 6~~ of Public Law 30-37 ~~are~~ is hereby *repealed.*"

Section 13. Section 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 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;*~~

(G) for the design and construction of a Guam Fisherman's Cooperative Association facility at the *Paseo de Susana* in accordance with Public Law 14-149 as amended."

Section 14. Section 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 15. 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.

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;

Introduced by:

V. C. Pangelinan

AN ACT TO *AMEND* 11GCA §§ 24102(f), 24103, and 5GCA § 1512.3(a), (e), (j), (o), AND (q), TO *ADD* A NEW SUBSECTION (r) TO 5GCA § 1512.3, TO *ADD* A NEW SUBSECTION (W) TO 5GCA § 1515(i)(2), AND TO *REPEAL AND RE-ENACT* 5GCA § 1515(i)(2)(G), 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 GCA is hereby *amended* to read:

"(f) *Value, full cash value, fair market value,* and *cash value* means ~~ninety~~ one hundred percent (~~90~~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-seventy-seconds~~ seven-eightieths percent ~~(7/72%)~~ (7/80%) of the value thereof and ~~seven-eighteenths~~ seven-twentieths percent ~~(7/18%)~~ (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 ~~one or more~~ 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, i~~I~~n the following order of priority:

(i) 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;

(A) 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;

(ab) 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;

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

(ad) 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~~2) For the second bond series:

(i) no less than Twenty-Five ~~Six~~ Million One Hundred Thousand Dollars ($25~~6~~,4100,000) for payments owed to the Government of Guam Retirement Fund for the Guam Department of Education, ~~and~~ the Guam Memorial Hospital Authority, and the *Health Insurance Bailout Agreement of FY 2011* principal and interest pursuant to PL 28-38, as amended by PL 31-74, such that the sums owed to the GGRF by the government of Guam pursuant to PL 28-38, as amended, *shall* be extinguished in its entirety; ~~and~~

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

a. the design, construction, re-construction, rehabilitation, maintenance, and/or renovation of government of Guam or Guam Department of Education-owned school facilities. 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

b. the payment of unpaid income tax refunds for tax year 2011; and/or

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

(2) 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

(3) 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)."

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 ~~Six~~ Three Hundred Forty Three Million Seven Hundred Thousand Dollars ($~~600,0~~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 PL 28-38, as amended by PL 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 PL 28-38, as amended by PL 31-74, such that the sums owed to the GGRF by the government of Guam pursuant to PL 28-38, as amended, *shall* be extinguished in its entirety; pay for the design, construction, re-construction, rehabilitation, and/or maintenance of School Facilities; 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 ~~that is mandated~~ 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, and/or maintenance for any School Facility.** The

portion of the bond proceeds authorized by this Section to pay for any Design, Construction, Repair, Renovation, Rehabilitation, and/or maintenance for any School Facility *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, and/or maintenance for any School Facility 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, and/or maintenance contracts for any School Facility 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 withdraw 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 this Chapter 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. Section 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 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;*~~

(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. Section 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.

Mina'trentai Unu Na Liheslaturan Guahan
THIRTY-FIRST GUAM LEGISLATURE

Senator Vicente "ben" Cabrera Pangelinan

COMMITTEE ON APPROPRIATIONS, TAXATION, PUBLIC DEBT, BANKING, INSURANCE, RETIREMENT AND LAND
February 24, 2012

BILL NO. 414

SIGN UP SHEET

NAME	ADDRESS	PHONE	EMAIL	WRITTEN	ORAL	SUPPORT Yes No
Joe T San Agat				✓		
Vincent Lem Guerrero	Gov's Office	475-9390	vincent.lemguerrero @guam.gov	✓	✓	NO
MANNY DUENAS	GUAM FISHERMEN CO-OP			✓		YES
Tina Garcia	GEDA					
Leeta Calvo	GEDA					

324 W. Soledad Ave. Hagatna, Guam 96910
Ph. 473-4236 Fax. 473-4238
Email: senbenp@guam.net

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Katherine T.E. Taitano
Trustee

Wilfred G. Aflague
Trustee

February 23, 2012

Senator Vicente (ben) Cabrera Pangelinan
Chairman, Committee on Appropriations, Taxation,
Public Debt, Banking, Insurance, Retirement, and Land
I Mina'trentai Unu Na Liheslaturan Guåhan

Re: GOVERNMENT OF GUAM RETIREMENT FUND POSITION STATEMENT REGARDING BILL 414-31

Mr. Chairman and Members of the Committee:

The Government of Guam Retirement Fund (the "Fund") hereby submits testimony:

(1) To emphasize that the Legislative and Executive branches should pay off all outstanding contributions to the Fund without any delay. The Fund is under a Superior Court Order to pursue collection of these amounts, and has been advised by the Court to file a lawsuit demanding full payment of the $25 million in outstanding contributions if the second bond series is not passed.

(2) To declare its support for the portions of Bill No. 414-31 which advocate for the full payment of all sums owed to the Fund, interest upon which has been paid under Public Law No. 28-38, as amended by Public Law No. 31-74.

(3) To clarify that the sums to be paid to the Fund by the second bond series will include the roughly $6.9 million withheld from the Fund under Public Law No. 31-74, and to therefore seek revision to the language of the provision of Bill No. 414-31.

THE FUND MUST TAKE FIRST PRIORITY

In discussions with Governor Eddie Calvo on February 20, 2012, the Governor committed to paying all outstanding contributions owed to the Fund in the second bond series. However, he stated it was his intent that the Fund would be paid *concurrently* with tax refunds for 2011.

424 Route 8
Maite, Guam 96910
Tel: 671.475.8900
Fax: 671.475.8922
www.ggrf.com

The Fund reminds the Legislature that the list of priorities stated under Public Law No. 31-76 does *not* include tax refunds for 2011. Public Law No. 31-76 placed the Fund third in a list of priorities, with the higher priorities being unpaid tax refunds for 2010 and prior years, and COLA. It is the Fund's understanding that the first bond series satisfied the first two priorities. The Legislature should not be considering paying any other obligation not listed as a priority over the Fund under Public Law No. 31-76. The Fund emphasizes that it must take ***first*** priority when it comes to the payment of bond proceeds from the second bond series.

The Fund is currently under an Order from the Superior Court of Guam (*Bautista v. Perez*, Superior Court of Guam Civil Case No. 1848-01) to proactively pursue payment of all outstanding contributions. The Fund has been instructed by the Honorable Alberto Lamorena to file a lawsuit against the Government if the outstanding contributions are not paid in this second bond series, or if the second bond series is not timely issued. The Fund will abide by the Court's instructions, and will take other measures such as halting the processing of retirement applications. The Fund urges the Legislative and Executive branches to cooperate to pay the outstanding contributions without delay in order to prevent litigation between the Fund and the Government of Guam.

After payment to the Fund from the second bond series, the Fund is not concerned with any other beneficiary of bond proceeds. It takes no position on the debate of whether bond proceeds should be directed towards the payment of tax refunds or school improvements. However, secondary priorities and beneficiaries must *not* delay payment to the Fund. The Governor has indicated to the Fund that he will veto any bill that directs bond proceeds to new commitments, such as school improvements. The Fund, again, cannot be concerned with other uses except to the extent that they prevent payment to the Fund. The Fund advises the Legislative and Executive branches to move forward on paying the Fund and not condition payment to the Fund with contentious debates on other issues.

THE FUND SUPPORTS BILL NO. 414-31 TO THE EXTENT IT PROVIDES FOR PAYMENT OF OUTSTANDING CONTRIBUTIONS TO THE FUND

Bill No. 414-31 seeks to amend 5 G.C.A. § 1512.3, to clarify that a second bond series will be issued and that the Fund stands at the top of the priority list. If Bill No. 414-31 is passed into law, the Fund will be made whole on the outstanding and unpaid contributions from the Department of Education, the Guam Memorial Hospital Authority, and all non-autonomous agencies granted a reprieve in paying the full amount of contributions under Public Law No. 31-74.

A. Resolving the Outstanding Contributions Owed Under Public Law No. 28-38

Passage of Bill No. 414-31 will resolve a debt that has lasted for seven years, and hopefully end a cycle of improperly raiding the Fund to support government operations.

In 2005, the Legislature enacted Public Law No. 28-38, in response to GMHA's $16 million delinquency in contributions and on a judgment requiring the remittance of past due contributions.[1] Public Law No. 28-38 directs the Treasurer of Guam to make monthly payments to the Fund, and that such payments be considered interest on the principal owed by GMHA. Public Law No. 28-38 also required GMHA to remain current on employer and employee contributions for the applicable fiscal year, however, GMHA has not complied and has a current delinquency of $5,544,929.85. GMHA's delinquency will be solved by the issuance of a second bond series and the payment to the Fund.

The initial five-year life span of Public Law No. 28-38 has been extended, even though it was intended to be a temporary solution to GMHA's delinquency. The Fund supports any efforts which would pay off the balance of the Public Law No. 28-38 funds. As of January 31, 2012, the balance of the Public Law No. 28-38 funds, upon which interest is being paid monthly, consists of:

	Member and Government Contributions	Interest and Penalties	TOTAL
DOE	$5,437,055.06	$1,077,852.80	$6,514,907.86
GMHA Prior Year	$4,838,834.43	$906,818.60	$5,745,653.03
GMHA Current Year	$5,335.659.92	$209,269.93	$5,544,929.85
TOTAL			$ 17,805,490.74

B. Resolving the Outstanding Contributions Owed Under Public Law No. 31-74

On June 6, 2011, Public Law No. 31-74, also known as the Supplemental Appropriations Act of 2011, was enacted into law. Public Law No. 31-74 "intended to reprioritize budgeted appropriations for additional medical and dental insurance for both the retirees and line agencies," and to resolve a $22 million General Fund budget shortfall. Public Law No. 31-74 § 2. In the law, the Fund and *I Maga'låhen Guåhan* were required to execute a "Health Insurance Bailout Agreement of FY 2011". Public Law No. 31-74, § 4. Public Law No. 31-74 and the Agreement, executed on June 24, 2011, took a number of actions, the pertinent one for this discussion being the reduction in the Government rate of contributions for non-autonomous agencies to 78.07% of the contribution rates required under 4 G.C.A. § 8137(e), for the period of June 4 through September 30, 2011.

[1] *See The Gov't of Guam Ret. Fund v. The Guam Mem'l Hosp. Auth., et al.*, SP0231-02, Final J. (Super. Ct. Guam Dec. 23, 2009); PL 28-38 (recognizing GMHA deficiency of $16,860,142.22).

Public Law No. 31-74 also provided the Fund with interest on the outstanding DB Plan obligations owed by GMHA, by adding the outstanding DB Plan balance ($5,526,700) to the monthly payment formula in PL 28-38. Public Law No. 31-74, § 5. Finally, PL 31-74 required the Governor to include the refinancing of the outstanding principal and interest owed to the Fund in the next General Obligation Bond issue. Public Law No. 31-74, § 5. As of January 31, 2012, the balance owed to the Fund under Public Law No. 31-74 is $6,996.664.48.

As discussed earlier, the Governor did not include such refinancing in the first Bond series. The Fund met with the Governor on February 20, 2012, to confirm that the Fund will be paid in the upcoming second bond series. The Governor committed that the debt to Fund will be paid in full in a second bond series. This amount must include payment towards the withheld contributions under Public Law No. 31-74.

THE FUND SEEKS AN AMENDMENT TO THE LANGUAGE OF BILL NO. 414-31

The portion of Bill No. 414-31 pertinent to the Fund places the Fund in the first priority position for the second bond series. It commits to the Fund "no less than Twenty-Five Million Dollars ($25,000,000) 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 PL 28-38, as amended by PL 31-74."

The Fund supports this portion of Bill No. 414-31 because $25 million will cover both GDOE and GMHA principal and interest, payment of which has been delayed by Public Law No. 28-38, and the amounts withheld to the Fund under the Bailout Agreement and Public Law No. 31-74. However, the Fund has concerns that the language could be construed to include only the former.

The Fund respectfully requests that the Legislature amend the aforementioned provision of Bill No. 414-31 to state:

> **For the second bond series, in the following order of priority:**
>
> **(i) no less than Twenty-Five Million Dollars ($25,000,000) 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 PL 28-38, as amended by PL 31-74, as well as contributions owed to the Government of Guam Retirement Fund for the contributions "savings" allowed pursuant to PL 31-74.**

CONCLUSION

In paying off the Public Law No. 28-38 balance and the amounts withheld under Public Law No. 31-74, the Government will eliminate the interest-only payments, thereby saving the Government money. Also, the payoff may end pending litigation between the Fund and GMHA, and litigation concerning Public Law No. 31-74.

Public Law No. 31-76 promised the Fund that the past due contributions would be remitted through bond proceeds. However, the first bond series did not cover the Fund's debt, and the Fund continues to wait. The Superior Court has indicated to the Fund that if payment of the withheld contributions under Public Law No. 31-74 is not made, the Fund must consider initiating a lawsuit against the Government and taking other measures such as stopping the processing of retirement applications. The Fund will not hesitate to take these actions if the second bond series is not issued, or if the Fund is not the first priority in the second bond series.

Therefore, the Fund urges the Legislative and Executive branches to end the cycle of delayed and unpaid contributions, and to immediately pass Bill No. 414-31 with the revisions noted above.

JOE T. SAN AGUSTIN
Director
Government of Guam Retirement Fund

(1) Financial Highlights, continued

- **Critical Issue – Issuance of General Obligation Bond for Repayment of Outstanding Contributions**

A significant portion of the employer and member contributions receivable represent amounts due from the Guam Department of Education (GDOE) and Guam Memorial Hospital Authority (GMHA) for various pay periods during the fiscal years ended September 30, 1988 through 2004.

Public Law 28-38, passed in June 2005, as amended ***by Public Law 29-19*** in September 2007, required the General Fund to remit monthly "interest-only" payments to the GGRF, totaling $192,955 and $190,501 for the aforementioned receivables from GDOE and GMHA, respectively. The monthly payments were mandated to continue until the outstanding balances are fully paid from a general obligation bond or other means. If not paid within ten years, payments for GDOE and GMHA will resume per 4GCA Section 8137.

In accordance with ***Public Law 30-196***, passed in September 2010, the interest-only payments for GDOE and GMHA shall be equal to the outstanding liability multiplied by one twelfth of the most recent historical five (5) year average annual rate of return of the DB Plan investment portfolio, inclusive of performance which yielded negative returns.

As discussed in the prior year's MD&A, as of September 30, 2010 GMHA was delinquent in its remittance of fiscal year 2010 member and employer contributions to GGRF for both the DB and DC Plans. Due to continued delinquencies, on November 12, 2010 GGRF filed a petition for Writ of Mandate with the Superior Court of Guam to order GMHA to remit delinquent contributions, plus interest and penalties to GGRF.

Impact of Late Contributions by GMHA
Not only does GMHA's failure to make timely remittances have a negative effect on GGRF, but also on GMHA and its employees as noted below:

1. GMHA's delinquency has resulted in GGRF liquidating DB Plan investments in order to cover benefit payments. Continued non-remittance of contributions by GMHA will undoubtedly result in continued liquidations by GGRF. However, those assets should remain in the investment portfolio to generate investment income.

2. GMHA's delinquency prevents eligible GMHA employees from retiring in accordance with Public Law 28-38, which requires the full remittance of contributions.

3. In addition to applicable interest, GGRF assesses a 1% penalty for DB contributions not paid within 10 working days after the issuance of the payroll checks.

4. DC contributions not deposited timely may result in harm to the member's account. In addition, GMHA exposes itself to both civil and criminal liability. GMHA employees can seek enforcement assistance through the Guam Department of Labor and through the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division.

(1) Financial Highlights, continued

- **Critical Issue – Issuance of General Obligation Bond for Repayment of Outstanding Contributions, continued**

In addition to GMHA's growing delinquencies to the GGRF as of May 2011, the General Fund also faced a budget shortfall, which threatened the continuation of health benefits and government operations, if not resolved.

In June 2011, ***Public Law 31-74*** was passed, mandating the following:

1. A reduction in the statutory employer contribution rate from 27.46% to 21.44% for agencies receiving appropriations from *I Liheslaturan Guåhan* and for Federally-funded programs, between June 4, 2011 and September 30, 2011.

2. That the GGRF Board and the Governor of Guam enter into the "Health Insurance Bailout Agreement of FY2011" reducing the contribution rate accordingly. This Agreement was entered into on June 15, 2011.

3. An amendment to Public Law 28-38 to include "interest-only" payments on 1) GMHA's fiscal year 2011 delinquent **DB Plan employer and member contributions**, and 2) the savings from the reduction of the government contribution rate.

4. That GMHA remit to GGRF, for fiscal year 2011 delinquent **DC Plan employer and member contributions**:

    a. All of the savings arising from the reduction in the statutory employer contribution rate, for the payment of the delinquent contributions.

    b. Additional GMHA funds as needed to ensure that the entire amount is remitted to GGRF by September 30, 2011.

    As of September 30, 2011, GMHA had a remaining balance on the delinquent contributions totaling approximately $296,000. These delinquent contributions were fully paid by GMHA as of October 13, 2011.

(1) Financial Highlights, continued

- **Critical Issue – Issuance of General Obligation Bond for Repayment of Outstanding Contributions, continued**

5. That "*I Maga'låhen Guåhan* shall include the re-financing of the outstanding principal and interest owed to the Government of Guam Retirement Fund herein in the next General Obligation Bond "Bond" issue of the government of Guam."

   Management of GGRF notes the following:

   a. On November 2011, a Bond was issued. However, it did not include repayment of amounts owed to GGRF in accordance with Public Law 31-74.

   b. GGRF has been in communication with *I Maga'låhen Guåhan* to determine when the next Bond will be issued and plans for repayments to GGRF. During a February 20, 2012 meeting with the GGRF Director and members of the Board of Trustees *I Maga'låhen Guåhan* indicated that repayments to GGRF will be included in the next Bond issue.

   c. Management encourages immediate issuance of a Bond for repayment, otherwise Agencies included in the statutory contribution rate reduction including GDOE and GMHA may be deemed delinquent in the remittance of such contributions to GGRF. If deemed delinquent, GGRF will be forced to suspend retirements by employees of these Agencies until such amounts are paid in full.

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

February 24, 2012

Senator Vicente C. Pangelinan
Chairman, Committee on Appropriations,
Taxation, Public Debt, Banking,
Insurance, Retirement & Land

Hafa Adai Senator Pangelinan and members of the 31st Guam Legislature. Thank you for the opportunity to come before this body to testify on Bill 414. My name is Vincent Leon Guerrero and I am the Governor's Special Assistant and Chief Education Advisor.

We recognize the good intentions of the author as it relates to addressing the needs of repairing and renovating public schools, however, we cannot support this legislation.

Currently, teachers, parents, community members, members of the Department of Education (DOE), members of the Guam Education Board, a Mayor and members of the 31st Guam Legislature are participating in community stakeholder activities that will determine the total costs needed for the repairs and renovations of public schools in DOE. Their tasks have just begun and will take time to complete. One committee has been charged with the overall responsibility of examining the costs necessary to repair and renovate public schools, however their work will first require that DOE and its Board address issues related to the use of schools, school attendance areas, and adjustments to the original assessment of school repair and renovation that did not take into consideration other costs such as covered canopies, replacement of temporary classrooms and collateral equipment needs.

It is on this basis that I believe that this legislation would be premature until a comprehensive assessment of the overall costs is completed.

Si Yu'os Ma'ase'.

Vincent Leon Guerrero
Special Assistant, Chief Education Advisor

Ricardo J. Bordallo Governor's Complex • Adelup, Guam 96910
Tel: (671) 472-8931/6 • Fax: (671) 477-4826 • www.governor.guam.gov

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EDDIE BAZA CALVO
GOVERNOR OF GUAM
I MAGA' LAHEN GUAHAN
RAY TENORIO
LT. GOVERNOR OF GUAM
I SEGUNDO NA MAGA' LAHEN GUAHAN
KARL PANGELINAN
ADMINISTRATOR
ADMINASTRADOT

Testimony on Bill 414-31 (COR)
Karl Pangelinan, Administrator
Guam Economic Development Authority (GEDA)
February 24, 2012

Hafa Adai Senator Vicente C. Pangelinan and members of the Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land. I apologize that I am not present to attend this public hearing as I am traveling off-island on business. Notwithstanding my absence, I am herein providing testimony opposing Bill 414-31 (COR), **"An act to amend 5GCA § 1512.3, 11GCA §§ 24102(a), 24102(f), 24103, 24401, 21GCA § 75112(i), Sections 2(b) and 7 of Public Law 30-37 and Section 7 of Public Law 31-76, to add subsection (d) to 5GCA § 22704 and subsection (d) to Section 3 of Public Law 30-37, to repeal and re-enact 5GCA § 1515(i)(2)(G) and to add a new subsection (W) to 5GCA § 1515(i)(2), relative to authorizing a Series B of Revenue Anticipation Financing Bonds and for other purposes."**

The bill proposes to change the use of proceeds on Page 14 (j) project description to include appropriations for school repairs and renovations. Governor Calvo has declared that the repairs and renovations of the Guam Department of Education (GDOE) is a top priority and has created an executive level task force that brings together stakeholders to explore different options to finance school capital improvements. Despite the debt limit constraints of GovGuam, these repairs must be done as the safety of our children and education administration are at risk. GEDA is working with the task force, including members of the Legislature, in identifying commonly used financing vehicles that will not impact the government debt ceiling, to include public-private partnerships, federal tax credits, joint use financing and energy efficiency financing.

We also caution that to change the use of bond proceeds from the original authorization of addressing the deficit and replacing it with new capital projects is not recommended with this second bond series. Credit rating agencies will question our credibility, as it was just last October that we presented a plan to address the long-standing problem of the deficit. In addition, incurring debt for capital projects may be viewed as credit negative when there is still a large GovGuam deficit balance.

The amendments in Section 4 page 17 on increasing the valuation of real property and adjusting tax rate assessment is consistent with the Administration's original intent to minimize impact to the tax payers. We are however, very concerned with Section 24102 of Article 1 Chapter 24 Division 2 of Title 11 GCA (page 17 of Bill 414) which proposes to remove the interest of a lessee or licensee of land owned by the Chamorro Land Trust Commission which will severely impact our ability to maximize our borrowing in what is described as a record low interest rate environment. If the scenario proposed in Bill 414 removes the inclusion of CLTC property values, our debt capacity would be reduced from $115 million to $81 million, a reduction of approximately $34 million, assuming the assessed value is increased to 100%.

ITC BUILDING, SUITE 511
590 SOUTH MARINE CORPS DRIVE
TAMUNING, GUAM 96913
TEL (671) 647-4332 FAX (671) 649 4146

TEL: (671) 647-4332
FAX (671) 649 4146
EMAIL: HELP@INVESTGUAM.COM
WEB SITE: WWW.INVESTGUAM.COM

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The suggested language in Section 9 page 20 on the Tiyan Tax Credit for the Core Tech lease substantially changes the current lease agreement, inclusive of the First Amendment, by requiring Legislative approval before the government can make payments through tax credits on this lease. The lease term is for 10 years, which could mean that annual appropriated payments could mean additional fees and penalty charges.

Thank you for the opportunity to present testimony on Bill 414-31 (COR). *Senseramente.*

Si Yu'os Ma'ase,

Karl A. Pangelinan
GEDA Administrator

ITC BUILDING, SUITE 511
590 SOUTH MARINE CORPS DRIVE,
TAMUNING, GUAM 96913
TEL. (671) 647-4332 FAX (671) 649-4146

TEL. (671) 647-4332
FAX (671) 649-4146
EMAIL: HELP@INVESTGUAM.COM
WEB SITE: WWW.INVESTGUAM.COM

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lisa cipollone <ecipollone56@gmail.com>

Fwd: Public Hearing Bill 414-31 (Cor) - Testimony

1 message

Senator ben c. pangelinan <senbenp@guam.net> **Fri, Feb 24, 2012 at 3:59 PM**
To: Lisa Cipollone <ecipollone56@gmail.com>
Cc: "Senator ben c. pangelinan" <senbenp@guam.net>

Senator Vicente (ben) Cabrera Pangelinan
Chairman. Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land
Ofisinan i Taotao Siha (Office of the People)
I Mina Trentai Unu Na Liheslaturan Guahan (31th Guam Legislature)
Ph: (671)473-4236
e-mail: senbenp@guam.net
website:senbenp.com

Begin forwarded message:

From: Fred Moser <femoser@gdoe.net>
Date: February 24, 2012 3:45:31 PM GMT+10:00
To: senbenp@guam.net
Cc: Maria Roberto <mdroberto@gdoe.net>, Joyce Kaneshiro <jlgkaneshiro@gdoe.net>, "Higuera, Tracy" <tracy.higuera@sodexo.com>, Randy Romero <rpromero@gdoe.net>, Rodrigo Traya <rbtraya@gdoe.net>, Vivian Hernandez <vshernandez@gdoe.net>, Ricardo Ang <rmang@gdoe.net>, "Kathrine B. Kakigi" <kbkakigi@gdoe.net>, "Marcus Y. Pido" <mypido@gdoe.net>, "Taling M. Taitano" <tmtaitano@gdoe.net>, Taling Taitano 2 <tmt2@gdoe.net>, vincent.leonguerrero@guam.gov, Troy Torres <troy.torres@guam.gov>, senator@senatorbjcruz.com, jssa3gepb@yahoo.com, dfbrooks@guamopa.org, "Aristedes (Al) Erguiza" <averguiza@gdoe.net>
Subject: RE: Public Hearing Bill 414-31 (Cor) - Testimony

Senator Pangelinan, The following testimony is provided for the record relative to Bill 414-31 (Cor):

This Office recognizes the intent of the bill to provide funding for DOEs capital improvement needs and fully supports any efforts to direct monies DOEs way for the dire need of its facilities. Your bill states that a *third party* assessment was performed and we believe it's important to point out for the record that the third Party was Sodexo Services Guam, Inc. We also recognize that the Facilities Capital Action Plan (FCAP) produced by Sodexo is largely ***a financial planning tool*** that can be used, in part, to request monies from the Legislature for current and future funding needs beyond what is currently allocated to DOE whether it be federal, local or trust monies.

Notwithstanding, this office would like to state ***for the record*** that we believe the FCAP and related numbers are currently inaccurate and would caution legislation that "fixes" dollar amounts per school using the Sodexo-produced FCAP in its current form.

For example, the FCAP recommends 100% (285% in one instance) of electrical upgrades including distribution system, panels, switches, outlets, wiring and light fixtures at 18 campuses, between 30-99% electrical upgrades at 11 campuses and no electrical upgrades at 8 campuses at a cost of $21.67M—all designated as **"Priority 1 – Immediate" defined as failure to take action will result in building system failure or creation of a hazardous situation**. In fact, the FCAP reflects nearly $86M of deferred maintenance projects with this designation. If this is accurate, we have staff and students at risk in the schools—why isn't Sodexo ringing the alarm? Yet when asked what the basis for these recommendations was, Sodexo responded "they are not engineers and GDOE needs to enlist electrical engineers to substantiate or refute these recommendations." This is no different than Guam's local regulatory agencies with no certified engineering staff or background citing things like structural issues and threatening to close schools and then requiring GDOE to obtain structural engineers for clearance. Moreover, it appears Sodexo's use of the reference "engineer" is based on how it suits them. For example, Sodexo'sproposal states, in part:

- With over 20 years of infrastructure *engineering* and facility management experience, we offer a series of proven, innovative solutions *uniquely customized* to meet *your distinct requirements*. We provide *excellence in engineering* and professional services you expect for the students, faculty, staff and visitors of the GDOE (cover letter).
- In a 3/22/11 email from Mr. Billy Gipson to Mr. Randy Romero to justify bringing Mr. Bill Call on board in lieu of the ARRA Document Control Specialist (without prior approval from GDOE), Mr. Gipson stated "As an *engineer, we believed* Bill's additional

It's important to note that Sodexo was paid $412K in full for the FCAP despite our best efforts—and yet there are no c
FCAP—415 days after the initial submission on 1/5/11.

Fred

FRED E. MOSER
Coordinator, Disaster Recovery
Department of Education
P.O. Box DE, Hagåtña, Guam 96932
Tel: 671.300.1579 | femoser@gdoe.net

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Leadership is influence. The ideal leader is someone whose life and character motivate people to fol d of leadership derives its authority first from the force of a righteous example,and not merely from the personality, or position. By contrast, much of the world's "leadership" is nothing but manipulation threats and rewards. That is not trueleadership; its exploitation. Real leadership seeks to motivate peop e, by an appeal to the heart, not by external pressure and coercion...John MacArther

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From: Maria Roberto [mailto:mdroberto@gdoe.net]
Sent: Tuesday, February 21, 2012 1:19 PM
To: Joyce Kaneshiro; Higuera, Tracy; Fred Moser; Randy Romero
Subject: Fwd: p h notice for 2/24/12

Pls see notice from Senator ben Pangelinan....

---------- Forwarded message ----------
From: <xrx-doe@guam.net>
Date: Tue, Feb 21, 2012 at 1:12 PM
Subject: p h notice for 2/24/12
To: "mdroberto@gdoe.net" <mdroberto@gdoe.net>

Please open the attached document. It was scanned and sent to you using a Xerox multifunction device.

Attachment File Type: pdf

multifunction device Location: GDOE CENTRAL OFFICES
Device Name: GDOESUPER9201

For more information on Xerox products and solutions, please visit http://www.xerox.com

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Maria Damian Roberto
Office of the Superintendent

3 attachments

Taling Ltr RE Sodexo Inv 102011.pdf
385K

032811 Letter to Billy Gipson RE Invoice.pdf
582K

SI Draft - 022412.doc
114K

Office of the Superintendent

Department of Education
Government of Guam
P.O. Box DE, Agana Guam 96910
Tel: (671) 300-1547 • Fax: (671) 472-5003

Taling Taitano
Interim Superintendent of Education

October 20, 2011

Mr. Billy Gipson
Sodexo Services Guam, Inc.
GCIC Building, Suite 800
Hagatna, GU 96910

RE: Sodexo Invoices

Dear Mr. Gipson:

GDOE is in receipt of six (6) Sodexo invoices and is working expeditiously towards payment of those invoices. Information regarding the six (6) invoices is as follows:

Inv No.	Inv Date	Period	Date Rec'd	Inv Amt
140007	6/8/2011	4/22/11 - 5/21/11	10/18/2011	$ 72,977.57
140009	6/9/2011	2/22/11 - 3/21/11	10/18/2011	$ 77,774.36
140010	6/30/2011	5/22/11 - 6/21/11	10/18/2011	$ 80,066.02
140018	8/24/2011	6/22/11 - 7/21/11	9/6/2011	$ 81,456.19
140019	8/24/2011	7/22/11 - 8/21/11	9/6/2011	$ 74,279.61
140023	8/26/2011	8/22/11 - 8/31/11	10/18/2011	$ 24,146.72
			Subtotal>>>	**$ 410,700.47**

Please consider the following regarding these invoices:

- In GDOEs 6/3/11 letter (**attachment A**) to Sodexo, it was stated before future monthly payments will be approved by GDOE *a breakdown of all project activities and time allocations to each activity for each individual included in the invoiced amount* will be required in each invoice for PMSS services. We are requesting that Sodexo utilize the form (**attachment B**) that GDOE has prepared for this purpose. The form will be sent to you electronically and is basically a table in which you list each position and individual by name, tasks/activities each individual worked on and the dates and total hours associated with the task/activity.
- It appears that Sodexo may have overlooked a monthly invoice for the period 3/22/11 – 4/21/11 and may want to consider submitting that as well when re-submitting invoices using the attached form.

Finally, Sodexo agreed to make FCAP changes in accordance with GDOEs 6/3/11 letter for which Sodexo was paid $412,144 on 6/10/11. Please provide the status of the FCAP updates/changes as part of your invoice re-submissions.

I look forward to working together as a team and completing these and future projects in a manner that the public expects and the children of Guam deserve.

Sincerely,

Taling Taitano
Interim Superintendent of Education

Enclosures
cc: File
Superintendent
Third Party Fiduciary
Project Manager - Randy Romero/Fred Moser
Legal

A&M
received
10/25/11 Taina
10/25-11

Received by: lol C 8:15 am
Date: 10/25/11 P
Location: legal

DEPARTMENT OF EDUCATION
OFFICE OF THE SUPERINTENDENT

www.gdoe.net
P.O. Box D.E., Hagatña, Guam 96932
Telephone: (671)475-0457 or 300-1547/1536•Fax: (671)472-5003
Email: nbunderwood@gdoe.net

Nerissa Bautista Underwood, Ph.D.
Superintendent of Education

June 03, 2011

Mr. Billy Gipson
Sodexo Services Guam, Inc.
GCIC Building, Suite 800
Hagatna, GU 96910

RECEIVED
6/6/11 9:42am
Sodexo Services, Guam Inc.

Dear Mr. Gipson,

Pursuant to our recent discussions and my review and consultations on invoices submitted to the Guam Department of Education (GDOE) by your company, as the GDOE Project Manager I am recommending payment by Alvarez & Marsal of your monthly service invoice numbers 334306-1, 334306-2, 334323, and 334332. The recommendation to pay these invoices is based on the fact that Sodexo has mobilized its team and begun work under its agreement with GDOE. However, as we discussed, before future monthly payments will be approved by GDOE, the following will be required in each invoice for Project Management Support and Services:

- A breakdown of all project activities and time allocations to each activity for each individual included in the invoiced amount

Additionally, ARRA personnel reporting forms for each month and quarter since the beginning of the contract need to be completed by Sodexo. The form will be sent to you electronically and is basically a spreadsheet in which you list each individual by name, total hours worked, and the number of hours funded by ARRA. In the future this report is to be completed and submitted to Joseph Montague (jemontague@gdoe.net) by the tenth of each month. A monthly report is due for the first and second months of each quarter; the quarterly report should be completed every third month.

In regards to invoice 334307 for the Facility Capital Action Plan (FCAP), although the FCAP is a substantial product that describes a basic action plan for GDOE, I do not find it to be a document that is *"uniquely customized to meet GDOEs distinct requirements"* as stated in your submission in response to the RFP. GDOE will approve payment for the FCAP if Sodexo will agree to address issues and modify the document in the following manner:

Establish a review/approval process for each school involving school principals, Maintenance district leaders and project management team and revise the FCAP as necessary based on this process. We believe this process could be part of the requirement for a Quality Assurance/Quality Control (QA/QC) plan for use in reviewing deliverables in accordance with the GDOE Sodexo contract.

Ensure the FCAP includes at a minimum an evaluation on each building and all equipment and identifies the grounds, buildings and assets of each of the 36 schools and provide tabs for each building as was done for the Southern High School building tabs.

Ensure the FCAP is a document that reflects at a minimum an analysis for each building and the assets within, determining the current condition and costs to maintain over five years.

- Update the FCAP to include the data gathered as part of the efforts by Sodexo, GDOE staff and Coeval for our capital improvement projects. This detail facilitates the identification of the number and size of each building on each campus, as well as other assets identified.

ATTACHMENT A

- **Refine the categorization of projects particularly in regards to those items included as critical safety issues in prospective work for year 1.** For example, the FCAP recommends 100% (285% in one instance) of electrical upgrades including distribution system, panels, switches, outlets, wiring and light fixtures at 18 campuses, between 30-99% electrical upgrades at 11 campuses and no electrical upgrades at 8 campuses at a cost of $21.67M – all designated as "Priority 1 – Immediate" defined as *failure to take action will result in building system failure or creation of a hazardous situation.*
- Conduct a presentation to educate GDOE and other appropriate stakeholders on how to decipher, process and use the FCAP.

Please let me know in writing if you agree to the terms herein. I look forward to your response and a continuing successful relationship between GDOE and Sodexo.

Senseramente,

NERISSA BRETANIA UNDERWOOD, Ph.D.

GUAM DEPARTMENT OF EL
Legal Counsel
Rec'd by: W. Mau
Date/Time: 6/6/11 10:32 am

Cc: **Legal Counsel**

Position	Task/Activity	Date(s)	Time(s)
ARRA Project Manager			
Contracts Financial Manager			
Technical Advisor			
ARRA Document Control Specialist			
Office Manager			

ATTACHMENT B

Office of the Superintendent

Department of Education
Government of Guam
P.O. Box DE, Agana Guam 96910
Tel: (671) 300-1547 • Fax: (671) 472-5003

NERISSA BRETANIA UNDERWOOD, Ph.D.
Superintendent of Education

Third Party
RECEIVED
1:56pm 3/28

GUAM DEPARTMENT OF EDUCATION
Office of the Superintendent
Rec'd by: [illegible]
Date/Time 3/28/11

March 28, 2011

3/29/11

GUAM DEPARTMENT OF EDUCATION
Legal Counsel
Rec'd by: M Sagian-Taijeron
Date/Time: 3/28/11 1:57pm

Mr. Billy Gipson
Sodexo Services Guam, Inc.
PO Box 326657
Hagatna, GU 96932

RE: Sodexo Invoices

Dear Mr. Gipson:

GDOE is in receipt of Sodexo invoices and is working expeditiously towards payment of those invoices. GDOE fully recognizes the mobilization efforts of Sodexo and the work involved in the FCAP and Project Management Support and Services and intends to make *contract-compliant* payments as soon as possible and requests your assistance in this effort. Please consider the following Sodexo invoice submission chronology of events:

- A *copy* of the invoice for mobilization (Invoice No. 334305 for $92,632) was provided to me and I provided it to the previous Project Manager, Crispen Bensan. According to Mr. Bensan, verbal requests to submit the invoice as per the contract was made to Richard Bartley as well as a recommendation to submit their monthly billings along with the resubmission of the mobilization billing. Mr. Bensan later requested via email on 1/6/11 to resubmit the following:
  - Original invoice with a cover letter requesting payment.
  - Schedule of values (required in the contract).
  - Resume copies of staff.
  - Accomplishments/Reports for the period covered by the pay request.
- On 3/11/11, the following invoices were received from Sodexo:
  - PMSS Monthly Distribution (10/22/10 – 11/21/10) – Inv. No. 334306 - $82,357.69
  - PMSS Monthly Distribution (11/22/10 – 12/21/10) – Inv. No. 334335 - $82,357.69
  - PMSS Monthly Distribution (12/22/10 – 1/21/11) – Inv. No. 334232 - $82,357.69
  - PMSS Monthly Distribution (1/22/11 – 2/21/11) – Inv. No. 334332 - $82,357.69
  - FCAP – Inv. No. 334307 - $412,144.00
  - Mobilization of ARRA Manager/Tech Advisor - Inv. No. 334305 - $92,632.00
- On 3/15/11, the following *revised* invoices were received from Sodexo:
  - PMSS Monthly Distribution (10/22/10 – 11/21/10) – Inv. No. 334306 - $56,616.44
  - PMSS Monthly Distribution (11/22/10 – 12/21/10) – Inv. No. 334335 - $56,616.44
  - PMSS Monthly Distribution (12/22/10 – 1/21/11) – Inv. No. 334232 - $68,731.53
  - PMSS Monthly Distribution (1/22/11 – 2/21/11) – Inv. No. 334332 - $82,357.69

All of the above invoices were submitted absent a schedule of values as well as the ARRA reporting requirements. Although Sodexo submitted pages 4 and 5 of the contract as the schedule of values, GDOE does not accept this as a schedule of values and stands ready to assist Sodexo with a schedule of values if required. Additionally, please reference Purchase Order No. 201110005 on all invoices related to the GDOE/Sodexo contract.

Received by

The contract states, in part:

- *DOE shall make regular monthly progress payments to the Contractor,* ***on the basis of the submitted schedule of values and applications for payment submitted to the DOE's Project Manager by Contractor as the work progresses, and on the Project Manager's certificate therefore...*** (page 5)
- Contractors Requirements in attachment B states: *Contractors will be responsible for submitting financial and management progress reports along with invoice...* (page 19)
- *Any other information reasonably requested by the Guam Department of Education or required by federal law or regulation. Contractor may be required to submit backup documentation for expenditures of ARRA funds including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Guam Department of Education...* (page 21)

Sodexo invoices and issues will be addressed in the following categories: mobilization, PMMS monthly distribution & FCAP:

Mobilization:

GDOE stands ready to process the $92,632.00 mobilization costs but require the schedule of values and financial & management progress reports to make *contract-compliant* payments.

Project Management Support Services:

GDOE stands ready to process the PMSS costs (with adjustments) but require the schedule of values and financial & management progress reports to make *contract-compliant* payments. The adjusted values are based on proration, non-negotiated substitutions of personnel in lieu of ARRA Document Control Specialist as well as removal of the construction management services that have not been rendered to date. These adjustments are reflected below and GDOE stands ready to review and discuss them with Sodexo:

- PMSS Monthly Distribution (10/22/10 – 11/21/10) – Inv. No. 334306 - $30,707.73
- PMSS Monthly Distribution (11/22/10 – 12/21/10) – Inv. No. 334335 - $37,991.17
- PMSS Monthly Distribution (12/22/10 – 1/21/11) – Inv. No. 334232 - $49,999.71
- PMSS Monthly Distribution (1/22/11 – 2/21/11) – Inv. No. 334332 - $66,971.58

FCAP:

GDOE agrees that the FCAP is a "living" document and desires to work with Sodexo towards a review and approval process that results in a *final* FCAP product that meets GDOEs expectations and needs. Toward this end, the attached document entitled *Review & Analysis of Sodexo Facilities Capital Action Plan (FCAP)* has been provided for your reference. If Sodexo is willing to work with GDOE to attain our objectives, we propose paying 75% of the FCAP immediately and the balance of 25% upon completion of final FCAP product.

Most importantly, I continue to hope and look forward to working together as a team and completing these and future projects in a manner that the public expects and the children of Guam deserve.

Sincerely,

Taling Taitano
Deputy Superintendent, Finance & Administration

Enclosures
cc: File
Superintendent 3/28
Third Party Fiduciary 3/28
Project Manager – Randy Romero 3/28
Legal 3/28.

Review & Analysis of Sodexo Facilities Capital Action Plan (FCAP) - by Fred Moser & Randy Romero – As of 3/23/11

This is an *accelerated* review and analysis of the Sodexo FCAP intended to detail GDOEs *expectations* and *needs* regarding the final FCAP product as well as to facilitate expedited payment of invoices in accordance with the contract which states, in part: *DOE shall make regular monthly progress payments to the Contractor, **on the basis of the submitted schedule of values and applications for payment submitted to the DOEs Project Manager**; Progress payments will be **based upon work completed, satisfactory work performance based on individual responsibilities as outlined in Section 22**; Payments on invoices will be made **within thirty (30) days upon approval of invoice by Project Manager**; Contractor agrees to comply with all requirements of ARRA as specified in attachment B, including but not limited to the reporting requirements* (which includes *submitting financial & management progress reports along with invoices*).

Background: The FCAP was delivered on 1/4/11 and the FCAP invoice (along with mobilization and monthly billings) was delivered on 3/11/11—66 days later—absent a schedule of values as well as the above-referenced ARRA reporting requirements.

As part of the FCAP review, it's important to understand that the $32 to $50M GDOE could potentially receive for district-wide CIP needs, while sorely needed and will go a long way to improve Guam's schools—*it will not be enough to do all that is needed*. Therefore, good stewardship of these entrusted funds dictates that we be prudent and apply these funds to where they are most critically needed—especially related to the health and safety of the students and staff. GDOE contracted Sodexo, clearly articulating that time was of the essence, to perform a *comprehensive* facilities assessment that would provide sufficiently detailed and usable data that would enable GDOE to go out on bid. The FCAP Executive Summary referencing the process employed includes *conducting **comprehensive** visual inspections of **each building and infrastructure components** including facilities (buildings & structures), utilities/infrastructure, grounds/landscape*. Moreover, one objective was *to improve **accuracy** of forecasting future capital renewal, capital improvement, and deferred maintenance needs to effectively lobby for additional funding*. GDOE expects that *Sodexo be fully responsible for the professional and technical accuracy of the FCAP process employed and data contained therein*. GDOE seeks to have *more detailed* information for *each building and structure* on each of the campuses assessed and have those details input into FCAP, Section VI: Building Reports and a tab included for each building on each campus. Additionally, GDOE seeks to have building system comments validated and revised (if required) to provide more precise cost estimates to lobby for additional funding. It is expected that such changes effectuates changes in other portions of the FCAP such as Summary Reports, Cost Reports, FCI Reports etc. More specifically, GDOE seeks to have the level of detail described in the FCAP Users Manual including all 13 items detailed under Assessment of Existing Conditions (pages 6 & 7). Excerpt references:

- ***All buildings** and infrastructure will be inspected and their conditions entered into an electronic database* (page 2).
- *The Facilities Status Report **for the campuses buildings** and infrastructure is intended to serve as a **comprehensive planning database for financial and facilities planning**; The database is generated from field inspection survey forms and is used to generate reports to **describe individual buildings and infrastructure conditions as well as overall campus conditions**; Sodexo's project engineers will conduct **comprehensive visual inspections of each building and infrastructure component** to determine current physical condition deficiencies and capital renewal* (page 3).
- *The detailed assessment shall include the following: **identification of individual buildings** for each campus site **with original building construction and addition dates; description of major building construction components, types of systems and major equipment*** (page 6).
- *Prioritization of needs: Determine, **with client facilities input and approval**, a process to establish priorities for the entire facilities program. Propose criteria, which will allow ranking of work scope across all facilities* (page 7).

Issues that are replicated for every school and need addressed are as follows:

- Provide source/document that Facility Inventory Report data was obtained; Work with school principals, DOE Maintenance Manager and DPW officials to review and validate information.
- Data is not broken down by building/structure for all campuses except for Southern High.
- Building systems/comments are arranged in a disorganized fashion. Please arrange the building systems/comments in an organized manner (i.e., all HVAC sorted in one area by building, all plumbing sorted in one area by building etc.)
- Identify all buildings/structures on all campuses including basic *building-specific* information such as construction type, footprint, roof type/SF, precise number of doors (interior/exterior/type/dimensions/SF/condition), number of windows (interior/exterior/type/dimensions/SF/condition), HVAC (type/size/location/condition), etc. for other infrastructure components.

- Assess to determine and make a distinction between what needs repair and what *scrupulously* requires replacement, by building.
- Assess and determine electrical needs such as *measured demand* to determine whether main distribution panels need upgraded and other *specific* electrical recommendations as opposed to *wholesale blanket* recommendations for complete electrical replacements/upgrades at considerable cost.
- Emphasis on the *envelope* (roof/walls) of the building as *priority* due to roof leak-related citations that result in additional interior citations. Assess and recommend complete roof infrastructure components (HVAC, Electrical, ERATE, misc lines, conduits, drains, etc.) Develop master plan/schedule on how to deal with current conditions toward a district-wide organized installation/management that is necessary to properly proceed on any roofing work.

In an effort to define what GDOE seeks to achieve in the FCAP, Agana Heights Elementary is reflected below (as presented in the FCAP) to use an *example* and to *facilitate* an understanding of what GDOE is seeking to achieve for all schools.

Building System	Justification	Comments	Priority Year	Qty	Unit	Est. Cost ($)	Comments - Requested Correction/Additional Data
Exterior Enclosure	Repair/Replace/ DM	Steel Single Door, Frame and Hardware	1	84	EA	126000	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 84 doors, their frames and hardware. Many of the current doors are wooden and are in good repair, and others were replaced with single/double aluminum doors a couple years ago. Is the recommendation to replace with steel doors as opposed to aluminum in light of Guam's corrosive environment? At $1,500 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair (hinge, handle, jamb), and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 100 doors need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 5 are of doors and none appeared to *require* replacement. Please respond/provide: 1. Is this the total door count for exterior single doors? 2. Total number of doors including type/size/condition/SF by building?
Exterior Enclosure	Repair/Replace/ DM	Steel Double Door, Frame and Hardware	1	3	EA	10695	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 3 doors, their frames and hardware. Many of the current doors are wooden and are in good repair, and others were replaced with single/double aluminum doors a couple years ago. Is the recommendation to replace with steel doors as opposed to aluminum in light of Guam's corrosive environment? At $3,565 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair (hinge, handle, jamb), and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 100 doors need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 5 are of doors and none appeared to *require* replacement. Please respond/provide: 1. Is this the total door count for exterior double doors? 2. Total number of doors including type/size/condition/SF by building?
Exterior Enclosure	Repair/Replace/ DM	Metal Casement Window, Double Pane, Small Opening	1	165	EA	69795	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 165 windows and frames. What type of metal (aluminum/steel)? Many of the current windows are in good repair. At @ $422.50 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair/weatherizing and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 200 windows need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, @ 22 reflect windows and few appeared to *require* replacement. Please respond/provide: 1. Total number of windows in this category including type/size/condition/SF by building?
Interior Construction	Repair/Replace/ DM	Steel Single Door, Frame and Hardware	1	27	EA	33210	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 27 doors, their frames and hardware. Many of the current doors are wooden and are in good repair, and others were replaced

Building System	Justification	Comments	Priority Year	Qty	Unit	Est. Cost ($)	Comments - Requested Correction/Additional Data
							with single/double aluminum doors a couple years ago. Is the recommendation to replace with steel doors as opposed to aluminum in light of Guam's corrosive environment? At $1,230 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair (hinge, handle, jamb), and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 100 doors need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 5 are of doors and none appeared to *require* replacement. Please respond/provide: 1. Is Sodexo recommending replacing all interior single doors to steel? 2. Is this the total door count for interior single doors? 3. Total number of doors including type/size/condition/SF by building?
Interior Construction	Repair/Replace/ DM	Steel Double Door, Frame and Hardware	1	5	EA	13750	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 5 doors, their frames and hardware. Many of the current doors are wooden and are in good repair, and others were replaced with single/double aluminum doors a couple years ago. Is the recommendation to replace with steel doors as opposed to aluminum in light of Guam's corrosive environment? At $2,750 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair (hinge, handle, jamb), and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 100 doors need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 5 are of doors and none appeared to *require* replacement. Please respond/provide: 1. Is Sodexo recommending replacing all interior double doors to steel? 2. Is this the total door count for interior double doors? 3. Total number of doors including type/size/condition/SF by building?
Exterior Enclosure	Repair/Replace/ DM	Metal Casement Window, Double Pane, Large Opening	1	391	EA	404294	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 391 windows and frames. What type of metal (aluminum/steel)? Many of the current windows are in good repair. At $1,034 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair/weatherizing and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 200 windows need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, @ 22 reflect windows and none appeared to *require* replacement. Please respond/provide: 1. Total number of windows in this category including type/size/condition/SF by building?
Plumbing	Repair/Replace/ DM	Restroom, 2 Fixtures, 1 Wall Plumbing (complete renovation)	1	10	EA	71850	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *complete renovation* of 10 restrooms. What does 2 fixtures, 1 wall plumbing refer to? The pictures provided by Sodexo do not show any restrooms in such disrepair as to require a complete renovation. At $7,184 per renovation, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair/weatherizing and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states $406,460 worth of plumbing needs addressed. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 6 are of restrooms and none appeared to *require* complete renovations. Please respond/provide: 1. Total number of restrooms in this category including fixture-specific numbers and condition/SF by building? (i.e., Building B, boys restroom, 5 urinals (1 cracked/needs replacement), 6 toilets (2 need repair), 3 sinks (1 needs faucet and shut-offs replaced etc.)
Plumbing	Repair/Replace/	Restroom/Bathroom, 7 Fixtures, 2	1	2	JOB	47930	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *complete renovation*

Building System	Justification	Comments	Priority Year	Qty	Unit	Est. Cost ($)	Comments - Requested Correction/Additional Data
	DM	Wall Plumbing (complete renovation)					of 2 restrooms. What does 7 fixtures, 2 wall plumbing refer to? The pictures provided by Sodexo do not show any restrooms in such disrepair as to require a complete renovation. At $23,965 per renovation, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair/weatherizing and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states $406,460 worth of plumbing needs addressed. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 6 are of restrooms and none appeared to *require* complete renovations Please respond/provide: 1. Total number of restrooms in this category including fixture-specific numbers and condition/SF by building? (i.e., Building B, boys restroom, 5 urinals (1 cracked/needs replacement), 6 toilets (2 need repair), 3 sinks (1 needs faucet and shut-offs replaced etc.)
Roofing	Repair/Replace/ DM	Gutters, Stainless Steel, Hung	1	2020	LF	19493	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 2020 LF of stainless steel gutters. At $9.65 per LF, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair/weatherizing and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Please respond/provide: 1. Are existing gutters stainless steel and the idea is to upgrade gutters? Does the 2020 LF capture all gutters campus-wide on concrete structures, wood/tin classrooms and walkway canopies? 2. Total LF of gutters, current condition/type/location by building?
Interior Finishes	Repair/Replace/ DM	Vinyl Composition Tile IN Library	1	1200	SF	3552	Clearly defined and understood that 1200 SF of VCT needs to be replaced in the Library.
Electrical	Repair/Replace/ DM	Upgrade building's electrical distribution system, including panels, switches, outlets and wiring. Includes light fixture replacement	1	40646	SF/BLDG	447106	According to the FCAP manual, the detailed assessment should include *identification of current facility condition deficiencies.* This does not identify *current electrical condition deficiencies* or provide *deficient-specific recommendations.* Assess and determine electrical needs such as *measured demand* to determine whether main distribution panels need upgraded and other *specific* electrical recommendations as opposed to *wholesale blanket* recommendations for complete electrical replacements/upgrades at considerable cost. This item is replicated for other schools as well. Assessing current electrical conditions (especially related to life safety concerns) is a pre-requisite to detailing current electrical deficiencies and subsequent recommendations to address the deficiencies. This process will not only provide a *truer* picture for GDOE, but would affect the modules tied in such as FCI indicators etc. as well. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states $128,034 worth of electrical projects need addressing. Why the disparity? Information that would be very valuable for GDOE: 1. Where is the MDP? Is it sufficient for current demand or is upgrade needed? 2. Which buildings have electrical rooms? How many panel boxes and their labels? What do the feed?
Roofing	Repair/Replace/ DM	Coated foamed roofing sprayed polyurethane foam topped with 20-mil silicone rubber coating,1" thick	1	56423	SF	225692	GDOE & Sodexo staffs have spent much time and effort in obtaining roofing square footage and existing conditions in the past weeks in order to get the necessary data for the roofing bid. How was this square footage computed? If gross square footage of 40,646 SF is based on the footprint, 56,423 SF equates to 38.82% more than footprint. The recommendation here and replicated for other schools is inconsistent with the specifications provided by Sodexo for the upcoming roofing bid. Why the disparity? Both planned executions have been pegged at $4 a SF by Sodexo. Please respond/provide: 1. Roofing construction type and SF by building.
Fire Protection	ADA CI	Fire Alarm System (includes horn, strobe, annuciator panel, etc.)	1	40646	SF/BLDG	81292	OK.
HVAC	Improvement/	Install/upgrade energy management	1	40646	SF/BLDG	60969	OK.

Building System	Justification	Comments	Priority Year	Qty	Unit	Est. Cost ($)	Comments - Requested Correction/Additional Data
	Functionality/ CI	system.					
Fire Protection	Code Compliance/ DM	Install Fire Suppression System, Wet Pipe (greater than 10,000 & less than 50,000 SF)	1	40646	SF/BLDG	203230	Please cite the code and requirement and detail when GDOE is required to come into compliance. (If over 30% of existing facility renovations are undertaken etc.)
HVAC	Repair/Replace/ DM	Multi-Zone A/C Unit Systems	1	40646	SF/BLDG	614974	This is an area that GDOE spends significantly on each year. GDOE has a combination of Central units, DX units, split units, window units etc. Do we continue with "hodge podge" replacement efforts? Some recommend installing central systems toward efficiency and utility savings, but others worry that when the central unit goes out the whole school is affected and advocate for split units per room. GDOE needs your assistance in developing HVAC master plan for organized and orderly district-wide installation/management. Information that would be very valuable for GDOE: 1. Detail A/C (SEER Rating/type/model/SN/age/warranty info) by building and what rooms they're cooling.
Fire Protection	Code Compliance / DM	Emergency Exit Light (with circuitry)	1	40	EA	6480	Please cite the code and requirement and detail when GDOE is required to come into compliance. Do all existing emergency lights need replacement? Are all existing emergency lights not code compliant?
Electrical	Repair/Replace/ DM	P.A. System	1	40646	SF/BLDG	40646	OK.
Exterior Decking	New Construction	Add canopy from C to D	2	335	SF	8375	At $25 a SF, what type of construction is recommended?
						2,489,333	

Sodexo Contract Tasks, Deliverables & Performance Issues

(As of 5/5/11 by Fred Moser & Randy Romero – PMs as assigned)

Sodexo's District Manager, Mr. Billy Gipson's stated the following in his letter to Taling Taitano received on 4/7/11: Many of the criticisms of the FCAP seem to flow [from] expectations that were not grounded in what an FCAP is. We have heard much mention of an expectation that the document would, as stated in this analysis, "provide sufficiently detailed and usable data that would enable GDOE to go out on bid." This is not the function of an FCAP.

We merely tried to articulate that the FCAP was funded under the *Comprehensive Assessment of Schools* ARRA allocation and expressed our understanding of the line of thinking and viewpoint that was discussed with the previous GDOE attorney, Mr. Fred Nishihara in terms of the expectations during contract formulation and negotiations. Unfortunately when asked for the audio recordings to verify, the GDOE Procurement Office has not been able to locate the audio recordings that the previous Administrator recorded during the meetings, discussions and negotiations nor have they offered any notes or other documentation that is required to be part of the procurement file in accordance with the Attorney Generals Procurement Checklist. Further, GDOEs legal counsel, Rebecca Perez, as well as the TPF agent, Jim Pearson, has asserted that much of what we've documented and shared verbally is irrelevant. Nevertheless, it was expressed to reflect GDOEs *intent*—something we felt would be of interest to Sodexo considering President Verone's statements in the Sodexo proposal relative to "embracing every assignment and responsibility ***with complete focus on, and commitment to, the needs of our customer*** as well as *meeting and exceeding* GDOEs mission." *Understanding of the scope and* ***unique requirements of this GDOE project*** necessitates working with GDOE to understand our needs and expectations. Personally, in our opinion, it is presumptuous and insulting to attempt to submit a $412K deliverable as a final product without an approval process or even a course of action to educate GDOE on how to decipher, process and use the document going forward. Even more baffling is that GDOE management, GDOE Attorney Perez & the TPF Agent Jim Pearson have disagreed with us at best and opposed us and worked around us at worst. More still, they have essentially removed us from the communication process relative to invoice & deliverables disputes and have instructed Sodexo to move forward with project & construction management activities without resolving these issues. Moreover, the Superintendent has responded in an intimidating and unreceptive manner toward us—this despite assigning us as Project Managers.

Consequently, in an effort to express and articulate our understanding of what the FCAP should be and it's function, we strongly believe it's only proper and fitting to reference Sodexo's *representations* about the FCAP. As such, we'll look at **Sodexo's proposal** (the vendor submittal document by which the evaluation team reviewed, rated, and made recommendations for subsequent award to Sodexo); **Sodexo correspondence** that is required to be part of the procurement file in accordance with the Attorney Generals Procurement Checklist; **the GDOE-Sodexo contract**; **Sodexo presentations** to GDOE and the Guam Education Board relative to the FCAP; and **the FCAP itself**. We will list what we believe to be FCAP-related information and references in each of the preceding categories. Then, based on the information and references, we believe it to be fair, fitting and reasonable to ask what we believe to be germane category-related questions of both GDOE management and Sodexo as well as point out performance-related issues with respect to Sodexo and issues of apparent *interference* and *abuse of authority* with respect to GDOE management, TPF and Legal Counsel.

Please consider the following references:

SODEXO'S PROPOSAL:

- The Sodexo team embraces every assignment and responsibility *with complete focus on, and commitment to, the needs of our customer* (cover letter).
- With over 20 years of infrastructure *engineering* and facility management experience, we offer a series of proven, innovative solutions *uniquely customized* to meet *your distinct requirements*. We provide *excellence in engineering* and professional services you expect for the student, faculty, staff and visitors of the GDOE (cover letter).
- Our proposal highlights the powerful benefits that Sodexo will bring to the GDOE, notably:
    - *Understanding of the scope and unique requirements of this GDOE, project.*
    - A phased-in approach to the tasks, starting with a discovery phase when Sodexo subject-matter experts perform a FCAP site visit...with your Principals, key managers and personnel. This site visit enables us to *completely identify the grounds, buildings and assets of each of the 37 schools* and formulate a plan to satisfy the requirements of the tasks to be performed (cover letter).
- *We fully understand the uniqueness of supporting the 37 schools in the Guam district and know that it will certainly be different from the mainland*, due to the rain, high humidity, typhoons and earthquakes. *Buildings and equipment will be evaluated for their condition* and any *outstanding issues* (page 2).
- Contractor agrees to commence the work within ten (10) calendar days after receipt of this Agreement signed by the Governor of Guam and issuance of written "Notice to Proceed" (NTP), by DOE, with official date to commence the work affixed to the NTP *and submission of Schedule of Values and Performance Bond.* (page 4).
- Task 6-Implementation of a Facilities Management Program – We propose a 3-week site visit by Sodexo SMEs. The team of four individuals will join the GDOE staff and perform an *extensive evaluation on each building and all equipment*. At the conclusion of this visit, *a survey report will be produced as a deliverable* and provided to the GDOE (page 8).
- *All work to be performed must be approved and assigned by* the UOG or the *GDOE* prior to commencement. Additionally, *each job is meticulously planned* so that all coordination to the Principal, teachers, staff and students is accomplished prior to performing the work. All negative impacts on the learning environment are minimized to emergencies only, when possible, with timely notification in all cases (page 9).
- The categories above are representative samples of the tools our project team has available *to meet and exceed* the mission of GDOE (pages 10-11).

Questions/Performance Issues:

- Is the FCAP ***uniquely customized*** to meet ***GDOEs distinct requirements*** or is it a "this is how Sodexo does an FCAP" approach?
- Does the FCAP ***completely*** *identify the* ***grounds***, ***buildings*** *and* ***assets*** *of each of the 36 schools?*
- Does Sodexo's actions thus far relative to the FCAP reflect a company that *fully understands* ***the uniqueness*** *of supporting the 36 schools in the Guam district and knew that it will certainly be* ***different*** *from the mainland* or reflect a company occupied with trying to show what they've done in the mainland or at UOG?
- Is the FCAP currently a document that reflects ***buildings and equipment evaluated for their condition*** and any ***outstanding issues****?*
- Is the FCAP currently a document that reflects an ***extensive evaluation on each building and all equipment****?*
- Did Sodexo work with GDOE regarding what GDOE would like to see in the FCAP and/or seek to work with GDOE regarding a review and approval process relative to the FCAP in

line with the proposal reference that *all work to be performed must be approved and assigned by GDOE* prior to commencement?

- Sodexo commenced work prior to submission of a schedule of values and performance bond. In fact, a performance bond has yet to be submitted to date.
- Does Sodexo's actions thus far—490 days after signing of the contract (10/22/10)—reflect a company that has embraced the FCAP assignment/deliverable, the Project Management & Contract Administration as well as the Facilities Management Program *with complete focus on, and commitment to, the needs of GDOE* as well as a desire and commitment to *meet and exceed* the mission of GDOE?

SODEXO CORRESPONDENCE:

- (6/14/10 letter from Joe Majka to Fred Nishihira, Laura Mooney, Taling Taitano & Sonny Perez) We believe the GDOE will derive the following benefits from these Sodexo services:
  - Complete oversight of the ARRA fund project by planning, direction and coordinating all activities of the designated capital projects.
  - Review project proposals and establish work plans and managing contractors to ensure each project progresses on schedule and within the established budget.
  - Provide a complete file of each project that is compliant with the established USDOE guidelines, reviewable at any time.
  - Manage all contracts and finances completely, thoroughly and auditable at all times.
- (7/2/10 letter from Joe Majka responding to GDOE Procurement Administrator's Requests for Clarification & Additional Information) ***The Facility Capital Action Plan survey*** *is a separately priced option that* ***provides an in-depth analysis for each building and the assets within, determining the current condition*** *and costs to maintain over five years.*

Questions/Performance Issues:

- What activities has Sodexo performed to date to substantiate *complete oversight of the ARRA fund project by planning, direction and coordinating all activities of the designated capital projects?*
- What activities has Sodexo performed to date to substantiate *review of project proposals and establishing work plans and managing contractors to ensure each project progresses on schedule and within the established budget?*
- What current files has Sodexo prepared for *each project that is compliant with the established USDOE guidelines, reviewable at any time?*
- Is the FCAP a document that currently ***provides an in-depth analysis for each building and the assets within, determining the current condition*** *and costs to maintain over five years?*

THE GDOE-SODEXO CONTRACT:

- **SECTION 2. DESCRIPTION OF WORK**

The Contractor shall perform the following described work, in accordance with the plans and specifications attached **and the proposal submitted** by Contractor dated September 11, 2009. The plans, specifications, and communication as referred to herein are attached hereto and incorporated by reference. The plans and specifications referred to are as follows:

1. **Department of Education RFP Package, GSA/DOE RFP-018-2009:** Engineering and Other Professional Services
2. **Negotiated Price Proposal submitted by:** Sodexo Services Guam, Inc. dated July 7, 2010.
3. **Other Reference Documents:** Scope of Work provided in RFP package. (page 2)

- Contractor shall ensure that all work packages for future bidding purposes include the requirement for a Quality Assurance/Quality Control (QA/QC) plan ***and that such plan shall be utilized for use in reviewing deliverables for this contract*** and when conducting reviews of submissions/packages prepared by other contractor's and/or A & E firms. (pages 2 & 3).
- Components to the FMPS may include, but not limited to, *facility condition assessments, repair/replace recommendations*, maintenance schedules, and other work included in the list below.
  - Conduct *comprehensive* analysis of all facilities.
  - Conduct site visits at each school to verify current use of existing facilities, *verify existing conditions* and identify readily observable maintenance and capital improvement needs.
  - Prepare report of potential maintenance, *needed upgrades*, and recommendations for conceptual level, *program-driven building and site improvements including photo documentation and site and floor plans of existing conditions*. (page 3).
- Final FCAP Report due *within 60 days of notice to proceed.* (page 4).
- Progress payments may be withheld if;
  - a) *Work is found defective and not remedied,*
  - b) Contractor does not make prompt and proper payments to subcontractors;
  - c) Contractor does not make prompt and proper payments for labors, materials, or equipment furnished to him;
  - d) Claims or liens are filed on the job;
  - e) *In the opinion of Project Manager, Contractor's Services and deliverables described in Task 5 & 6 are not progressing satisfactorily*;
  - f.) Reporting timelines are not met in accordance with ARRA reporting requirements; or
  - g) Failure to abide or correct deficiencies of necessities in accordance with ARRA requirements (page 6).
- **SECTION 7. <u>DESIGNATION OF PROJECT MANAGER</u>**

The Project Manager for this project is **Crispin Bensan, Engineer III** of the Department of Education. The duties and authority of the Project Manager are as follows:

a) **General Administration of Agreement:** *The primary function of the Project Manager is to* ***provide the general administration of the Agreement****. In performing these duties,* ***he is the DOE's representative during the entire period of the Agreement****.*

b) **Inspections, Opinions, and Progress Reports:** The Project Manager shall keep familiar with the progress and quality of work by making periodic visits to the work site. *He will make general determinations as to whether the work is proceeding in accordance with the Agreement. He will keep the DOE informed of such progress,* ***and will use his best efforts to protect the DOE from defects and deficiencies in the work***. He will not be responsible for the means of construction, or for the sequences, methods, and procedures used therein, or for Contractor's failure to perform the work in accordance with the Agreement.

c) **Access to Work Site for Inspections:** The Project Manager shall be given free access to the work at all times during its preparation and progress. However, he is not required to make exhaustive or continuous on-site inspections to perform his duties of checking and reporting on work progress.

d) **Interpretation of Agreement:** *The Project Manager will be the* ***initial interpreter of the Agreement requirements, and make primary decisions on claims and disputes between Contractor and DOE. The Project Manager's decisions are subject to mediation and arbitration as provided in Section 13 herein.***

e) **Rejection of Certificates:** ***The Project Manager will determine the amounts owing to Contractor as the work progresses, based on Contractor's applications and his inspections and observations***, and will issue certificates for progress payments and final payment in accordance with the terms herein (pages 6 & 7).

- The Contractor agrees that ***RFP 018-09 Tasks #5 & #6 and the proposal submitted*** *by Contractor shall be incorporated by reference and made part of this contract* (page 10).
- Scope of Services: Facilities Capital Action Plan (FCAP): Analysis of thirty-six (36) School Facilities (Attachment A). *The FCAP is a comprehensive assessment* and facilities action plan *which will identify deficiencies* and provide a Capital Improvement Plan (Page 10).
- *The Contractor shall be responsible for the professional and technical accuracy of all work and materials furnished under this Agreement. The Contractor shall, without additional cost to DOE, correct or revise all errors or deficiencies in his/her work.* (Page 13).

Questions/Performance Issues:

- What Quality Assurance/Quality Control (QA/QC) review occurred with the FCAP in accordance with the contract reference relative **to *including the requirement for a Quality Assurance/Quality Control (QA/QC) plan for use in reviewing deliverables for this contract*?**
- Does the FCAP, as submitted, reflect a ***comprehensive analysis of all facilities, verify current use of existing facilities, verify existing conditions*** **and** ***provide recommendations for conceptual level, program-driven building and site improvements including photo documentation and site and floor plans of existing conditions***?
- Was the final FCAP Report submitted within 60 days of notice to proceed?
- Have the Project Managers (Crispen Bensan, Randy Romero & Fred Moser as assigned) been given the support, latitude and autonomy, *without interference*, to perform their responsibilities, as detailed in the contract and subsequent assignments by the Superintendent, with respect to Sodexo invoicing and performance relative to the following GDOE-Sodexo contract citations: ***[Project Manager] will use his best efforts to protect the DOE from defects and deficiencies in the work...make primary decisions on claims and disputes between Contractor and DOE...will determine the amounts owing to Contractor as the work progresses, based on Contractor's applications and his inspections and observations. The Project Manager's decisions are subject to mediation and arbitration*** as well as the Third Party Fiduciary Agent contract reference in Attachment B, Item #15 which states, in part,...the Agent must...***ensure the services can be inspected, accepted, & rejected by GDOE staff?***
- Is the FCAP currently a document that ***provided a comprehensive assessment*** and facilities action plan ***which identified deficiencies*** and provide a Capital Improvement Plan ***that is being used to drive the projects?***
- What specific activities has Sodexo performed relative to Tasks #5 & #6 in the contract?

SODEXO PRESENTATIONS TO GDOE/GEB RELATIVE TO THE FCAP

FCAP Executive Summary & Next Steps

Questions/Performance Issues:

- Initial Presentation by Richard Bartley: Sometime during the 1st or 2nd week of March, 2011, Jack Taitague, during a discussion about Sodexo invoices, stated that he was informed that Richard Bartley after his presentation turned and asked Joe Majka how he did and Joe's response was that it was "shit and not representative of the Sodexo brand" or words to that effect.
- 2nd presentation by Virginia Fullwood: Sometime after this presentation I was called by Mr. Robert Holm to come down to the TPF Office. Upon arrival the following people were present. Jim Pearson, Jim Musselwhite, Mr. Roberti, Attorney Perez, Robert Holm, Joe Montague & myself. Discussion centered around security issues relative to the technology being put in the classrooms and Virginia's presentation document. During a discussion between Fred Moser and Mr. Roberti regarding this document, Jim Pearson stated that "had since retracted that presentation." Additionally, Virginia Fullwood made statements relative to being able to get roof work bids out within a week necessitating GDOE involvement in local media coverage management.
- John Harrington & Jim Pearson (TPF), Joe Montague, Attorney Perez, Billy Cruz, Crispen Bensan, Franklin Cruz, Fred Moser, Randy Romero, Rod Traya (DOE) & Sonny Perez, PE (UOG) were all recipients of the 1/19/11 email from Taling Taitano forwarding the documents presented at the 1/18/11 GEB work session. Data such as numbers of items and associated costs in this document are inconsistent with what is reflected in the FCAP. We have pointed this out in our FCAP review as well as in an email to Jim Pearson and GDOE Senior Management on 5/12/11.
- Randy Romero, Fred Moser & Crispen Bensan respectfully cautioned GDOE management that it was not a good idea to have Sodexo present to the GEB without at least a dry-run or some other method of review by GDOE PM and GDOE management.
- On 5/26/11, the Superintendent reiterated her disappointment with both presentations commenting that they were substandard and not reflective of a the quality GDOE should expect from a professional firm and a $2.4M contract.
- The GDOE-Sodexo contract clearly states, in part, *Contractor shall commence said work thereafter* ***diligently and continuously to completion*** (page 4)*...Payment amounts are subject to additions, deductions* ***and performance*** *in accordance with the provisions of this Agreement, payment terms defined in Sections 5 and 6 and Scope of Services defined in Section 22 and of other documents to which the Agreement is subject* (page 5)*...Progress payments will be based upon work completed,* ***satisfactory work performance*** *based on individual responsibilities as outlined in Section 22...Invoices submitted will be based on the schedule of values provided by Contractor and the above payment* ***schedule and work performance*** (page 6). Are these presentations not performance-related issues?

THE FACILITIES CAPITAL ACTION PLAN (FCAP)

(Including **FCAP Executive Summary** as presented to GDOE Management & Board)

Notwithstanding the previous submission entitled *Review & Analysis of Sodexo Facilities Capital Action Plan (FCAP) - by Fred Moser & Randy Romero – As of 3/23/11*, please consider the following:

The **FCAP Users Manual** states that the detailed assessment shall include the following:

1. *Identification of individual buildings* for each campus site with original building construction *and addition dates; description of major building construction components, types of systems and major equipment.*
2. *Identification of current facility condition deficiencies, recommended corrections for all deficiencies, cost estimates for each correction* and forecast of future capital renewal costs.
3. The assessment review *will include a review of the following building elements and systems*:
   - Structure, including foundations and waterproofing
   - Roofing, including flashings, penetrations, hatchways and ladders
   - Exterior envelope, including caulking
   - Windows, including security aspects and weatherproofing
   - Ceiling and ceiling finishes
   - Walls and wall finishes
   - Flooring
   - Stairs, including code aspects
   - Doors, including hardware and security issues
   - Heating systems and equipment
   - Ventilation *I* Air Conditioning systems and equipment
   - Plumbing systems and equipment
   - Electrical systems and equipment, including security and communications
   - Lighting, interior and exterior
   - Fire protection systems and equipment
   - Cafeterias and kitchens, excluding equipment
   - Auditorium AV systems
   - Built in equipment
4. *Review and documentation of site conditions*
   - Parking areas
   - Walkways
   - Athletic fields, play surfaces and equipment
   - Athletic areas
   - Campus transit drop-off zones
   - Outdoor classrooms
   - Available expansion areas
   - Environmental (only to the extent that it affects repairs or modifications)
5. Review of Hazardous Materials
   - Review existing Client documentation related to location of asbestos-containing materials and lead paint. Relate known location to repairs and upgrade areas included in assessments.
6. *Roof Repair/Replacement*
   - *Incorporate in the overall assessment the campus wide roof assessment data. Incorporate completed and ongoing repair and replacement projects.*
7. Mechanical Systems Upgrades
   - Incorporate in the overall assessment all upgrades to systems due to an Energy Management Program.
8. *Building Assessment Studies*
   - *Incorporate any and all pertinent building assessment surveys performed by Client personnel or their agents.*
9. Code Issues
   - Incorporate in the overall assessment data related to building occupancy recertification and correction of violations to building codes, life safety codes and health codes.
   - *Incorporate any costs associated with a major renovation of a site that would change the code requirements for that site.*

10. *Prioritization of Needs*
    - Determine, *with Client facilities input and approval*, a process to establish priorities for the entire facilities program. Propose criteria, which will allow ranking of work scope across all facilities.
    - Assign a priority to each item included in the facilities program.
    - Prepare an overall ranking of facilities based on prioritized needs.
11. Cost Estimating, Budgets and Schedules
    - *Provide specific work scopes and cost estimates for each individual item in all categories.*
    - RS Means Facilities Data for the Rhode Island, Florida and North Carolina Areas will be the basis for all cost estimates.
    - All items will be designated and grouped either as a deferred maintenance item or a Capital renewal project.
        - The use of life cycle cost analysis and remaining useful life will be used to determine if an item should be repaired or replaced.
        - *Provide all documentation and calculations to support repair or replace recommendations.*
        - Provide related budgets for each priority ranking.
    - Provide plan for 5-year capital budget plan.
    - Calculate the Facility Condition Index (FCI) for each structure.
12. Photographs
    - Provide digital camera photographs for each facility (use the lowest setting possible on the digital camera (<100KB) to capture the pictures).
    - *Exterior photographs will be used for campus identification and documentation of structural problems, major site deficiencies or special conditions.*
13. Assessment Software

All assessment data will be stored in Sodexo's proprietary Capital Needs Assessment software. This software supports the project objectives and requirements as described in this proposal document. The software was developed with an online database with a visual basic front end. Crystal Reports is used for report development. This system was designed to allow for easy customization by the University facilities management staff. The information is stored in an online program and each user must request a User Name and Password to access the online program. Deanna Carroll in the Bowling Green, KY office is the administrator of the online program.

Questions/Performance Issues:

- Since one objective as stated in the Executive Summary is to improve ***accuracy*** of forecasting future capital renewal, capital improvement, and deferred maintenance needs and to compile ***an accurate database*** to effectively lobby for additional funding as well as to provide input to Business Office as an Institutional Strategic Plan, then it necessarily has to be correct, right and tight first—then can be used and updated as a "living document." Although working with GDOE to correct it would be valuable for future project planning and tracking, it does little to assist GDOE when it needed to be usable back in January 2011. Now we are simply in the "use it or lose it" mode. Unsubstantiated wholesale campus-wide electrical replacement recommendations at 18 schools at $21.6M (and the like) artificially inflates the costs as well as affects the FCI and other modules of the FCAP database. Moreover, because the FCAP is the Institutional Strategic Plan as well as the starting point for the Facilities Management Program, it necessarily is part of and critical to both Tasks #5 & #6 as it is supposed to be to tool and the basis for managing projects for the next 5 years.

- The FCAP recommends 100% (285% in one instance) of electrical upgrades including distribution system, panels, switches, outlets, wiring and light fixtures at 18 campuses, between 30-99% electrical upgrades at 11 campuses and no electrical upgrades at 8 campuses at a cost of $21.67M—all designated as "Priority 1 – Immediate" defined as ***failure to take action will result in building system failure or creation of a hazardous situation***. In fact, the FCAP reflects nearly $86M of deferred maintenance projects with this designation. If this is accurate, we have staff and students at risk in the schools—why isn't Sodexo ringing the alarm? Yet when asked what the basis for these recommendations was, Sodexo responded "they are not engineers and GDOE needs to enlist electrical engineers to substantiate or refute these recommendations." This is no different than Guam's local regulatory agencies with no certified engineering staff or background citing things like structural issues and threatening to close schools and then requiring GDOE to obtain structural engineers for clearance. Moreover, it appears Sodexo's use of the reference "engineer" is based on how it suits them. For example, Sodexo's proposal states, in part:
  - With over 20 years of infrastructure *engineering* and facility management experience, we offer a series of proven, innovative solutions *uniquely customized* to meet *your distinct requirements*. We provide *excellence in engineering* and professional services you expect for the students, faculty, staff and visitors of the GDOE (cover letter).
  - In a 3/22/11 email from Mr. Billy Gipson to Mr. Randy Romero to justify bringing Mr. Bill Call on board in lieu of the ARRA Document Control Specialist (without approval from GDOE), Mr. Gipson stated "As an *engineer*, *we believed* Bill's additional field experience would be of more value at the time than the document control specialist."
- Executive Summary-Section II: Summary Reports Tab, Items A.6, A.7 & A.9 all have a heading that reads: "The data below provides cost estimates by priority year for ***each building*** which represents the predicted spending activity for ***each building***" yet the only school to reflect building breakdowns on campus is Southern High School and it does not reflect *all* buildings on the Southern High campus.
- Executive Summary-Section II: The Process Employed states *review building drawings, specifications, and manufacturer's equipment data to evaluate capital renewal requirements*. One of GDOEs problems is that Facilities & Maintenance has few building drawings and/or equipment data. Please list what building drawings and equipment data were reviewed and where.
- Executive Summary-Section II: The Process Employed states ***conduct comprehensive visual inspections of each building and infrastructure components*** as well as ***inspect facilities to determine functional suitability deficiencies*** yet there is no building-specific (other than SHS) or infrastructure component-specific data in the FCAP nor any functional suitability deficiency determinations. Additionally it states ***facilities (buildings & structures), utilities/infrastructure & grounds/landscape*** was included, but they are not.
- GDOE seeks to have the level of detail described in the FCAP Users Manual including all 13 items detailed under Assessment of Existing Conditions (pages 6 & 7) which the FCAP currently does not.
- Sodexo has been overall unresponsive to verbal/written requests and questions from their GDOE client.

Review & Analysis of Sodexo Facilities Capital Action Plan (FCAP) - by Fred Moser & Randy Romero – As of 3/23/11

This is an *accelerated* review and analysis of the Sodexo FCAP intended to detail GDOEs *expectations* and *needs* regarding the final FCAP product as well as to facilitate expedited payment of invoices in accordance with the contract which states, in part: *DOE shall make regular monthly progress payments to the Contractor,* ***on the basis of the submitted schedule of values and applications for payment submitted to the DOEs Project Manager****; Progress payments will be* ***based upon work completed, satisfactory work performance based on individual responsibilities as outlined in Section 22****; Payments on invoices will be made* ***within thirty (30) days upon approval of invoice by Project Manager****; Contractor agrees to comply with all requirements of ARRA as specified in attachment B, including but not limited to the reporting requirements* (which includes *submitting financial & management progress reports along with invoices*).

Background: The FCAP was delivered on 1/4/11 and the FCAP invoice (along with mobilization and monthly billings) was delivered on 3/11/11—66 days later—absent a schedule of values as well as the above-referenced ARRA reporting requirements.

As part of the FCAP review, it's important to understand that the $32 to $50M GDOE could potentially receive for district-wide CIP needs, while sorely needed and will go a long way to improve Guam's schools—*it will not be enough to do all that is needed.* Therefore, good stewardship of these entrusted funds dictates that we be prudent and apply these funds to where they are most critically needed—especially related to the health and safety of the students and staff. GDOE contracted Sodexo, clearly articulating that time was of the essence, to perform a *comprehensive* facilities assessment that would provide sufficiently detailed and usable data that would enable GDOE to go out on bid. The FCAP Executive Summary referencing the process employed includes *conducting* ***comprehensive*** *visual inspections of* ***each building and infrastructure components*** *including facilities (buildings & structures), utilities/infrastructure, grounds/landscape.* Moreover, one objective was *to improve* ***accuracy*** *of forecasting future capital renewal, capital improvement, and deferred maintenance needs to effectively lobby for additional funding.* GDOE expects that *Sodexo be fully responsible for the professional and technical accuracy of the FCAP process employed and data contained therein.* GDOE seeks to have *more detailed* information for *each building and structure* on each of the campuses assessed and have those details input into FCAP, Section VI: Building Reports and a tab included for each building on each campus. Additionally, GDOE seeks to have building system comments validated and revised (if required) to provide more precise cost estimates to lobby for additional funding. It is expected that such changes effectuates changes in other portions of the FCAP such as Summary Reports, Cost Reports, FCI Reports etc. More specifically, GDOE seeks to have the level of detail described in the FCAP Users Manual including all 13 items detailed under Assessment of Existing Conditions (pages 6 & 7). Excerpt references:

- ***All buildings*** *and infrastructure will be inspected and their conditions entered into an electronic database* (page 2).
- *The Facilities Status Report* ***for the campuses buildings*** *and infrastructure is intended to serve as a* ***comprehensive planning database for financial and facilities planning****; The database is generated from field inspection survey forms and is used to generate reports to* ***describe individual buildings and infrastructure conditions as well as overall campus conditions****; Sodexo's project engineers will conduct* ***comprehensive visual inspections of each building and infrastructure component*** *to determine current physical condition deficiencies and capital renewal* (page 3).
- *The detailed assessment shall include the following:* ***identification of individual buildings*** *for each campus site* ***with original building construction and addition dates****;* ***description of major building construction components, types of systems and major equipment*** (page 6).
- *Prioritization of needs: Determine,* ***with client facilities input and approval****, a process to establish priorities for the entire facilities program. Propose criteria, which will allow ranking of work scope across all facilities* (page 7).

Issues that are replicated for every school and need addressed are as follows:

- Provide source/document that Facility Inventory Report data was obtained; Work with school principals, DOE Maintenance Manager and DPW officials to review and validate information.
- Data is not broken down by building/structure for all campuses except for Southern High.
- Building systems/comments are arranged in a disorganized fashion. Please arrange the building systems/comments in an organized manner (i.e., all HVAC sorted in one area by building, all plumbing sorted in one area by building etc.)
- Identify all buildings/structures on all campuses including basic *building-specific* information such as construction type, footprint, roof type/SF, precise number of doors (interior/exterior/type/dimensions/SF/condition), number of windows (interior/exterior/type/dimensions/SF/condition), HVAC (type/size/location/condition), etc. for other infrastructure components.

- Assess to determine and make a distinction between what needs repair and what *scrupulously* requires replacement, by building.
- Assess and determine electrical needs such as *measured demand* to determine whether main distribution panels need upgraded and other *specific* electrical recommendations as opposed to *wholesale blanket* recommendations for complete electrical replacements/upgrades at considerable cost.
- Emphasis on the *envelope* (roof/walls) of the building as *priority* due to roof leak-related citations that result in additional interior citations. Assess and recommend complete roof infrastructure components (HVAC, Electrical, ERATE, misc lines, conduits, drains, etc.) Develop master plan/schedule on how to deal with current conditions toward a district-wide organized installation/management that is necessary to properly proceed on any roofing work.

In an effort to define what GDOE seeks to achieve in the FCAP, Agana Heights Elementary is reflected below (as presented in the FCAP) to use an *example* and to *facilitate* an understanding of what GDOE is seeking to achieve for all schools.

Building System	Justification	Comments	Priority Year	Qty	Unit	Est. Cost ($)	Comments - Requested Correction/Additional Data
Exterior Enclosure	Repair/Replace/ DM	Steel Single Door, Frame and Hardware	1	84	EA	126000	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 84 doors, their frames and hardware. Many of the current doors are wooden and are in good repair, and others were replaced with single/double aluminum doors a couple years ago. Is the recommendation to replace with steel doors as opposed to aluminum in light of Guam's corrosive environment? At $1,500 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair (hinge, handle, jamb), and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 100 doors need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 5 are of doors and none appeared to *require* replacement. Please respond/provide: 1. Is this the total door count for exterior single doors? 2. Total number of doors including type/size/condition/SF by building?
Exterior Enclosure	Repair/Replace/ DM	Steel Double Door, Frame and Hardware	1	3	EA	10695	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 3 doors, their frames and hardware. Many of the current doors are wooden and are in good repair, and others were replaced with single/double aluminum doors a couple years ago. Is the recommendation to replace with steel doors as opposed to aluminum in light of Guam's corrosive environment? At $3,565 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair (hinge, handle, jamb), and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 100 doors need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 5 are of doors and none appeared to *require* replacement. Please respond/provide: 1. Is this the total door count for exterior double doors? 2. Total number of doors including type/size/condition/SF by building?
Exterior Enclosure	Repair/Replace/ DM	Metal Casement Window, Double Pane, Small Opening	1	165	EA	69795	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 165 windows and frames. What type of metal (aluminum/steel)? Many of the current windows are in good repair. At @ $422.50 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair/weatherizing and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 200 windows need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, @ 22 reflect windows and few appeared to *require* replacement. Please respond/provide: 1. Total number of windows in this category including type/size/condition/SF by building?
Interior Construction	Repair/Replace/ DM	Steel Single Door, Frame and Hardware	1	27	EA	33210	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 27 doors, their frames and hardware. Many of the current doors are wooden and are in good repair, and others were replaced

Building System	Justification	Comments	Priority Year	Qty	Unit	Est. Cost ($)	Comments - Requested Correction/Additional Data
							with single/double aluminum doors a couple years ago. Is the recommendation to replace with steel doors as opposed to aluminum in light of Guam's corrosive environment? At $1,230 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair (hinge, handle, jamb), and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 100 doors need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 5 are of doors and none appeared to *require* replacement. Please respond/provide: 1. Is Sodexo recommending replacing all interior single doors to steel? 2. Is this the total door count for interior single doors? 3. Total number of doors including type/size/condition/SF by building?
Interior Construction	Repair/Replace/ DM	Steel Double Door, Frame and Hardware	1	5	EA	13750	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 5 doors, their frames and hardware. Many of the current doors are wooden and are in good repair, and others were replaced with single/double aluminum doors a couple years ago. Is the recommendation to replace with steel doors as opposed to aluminum in light of Guam's corrosive environment? At $2,750 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair (hinge, handle, jamb), and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 100 doors need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 5 are of doors and none appeared to *require* replacement. Please respond/provide: 1. Is Sodexo recommending replacing all interior double doors to steel? 2. Is this the total door count for interior double doors? 3. Total number of doors including type/size/condition/SF by building?
Exterior Enclosure	Repair/Replace/ DM	Metal Casement Window, Double Pane, Large Opening	1	391	EA	404294	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 391 windows and frames. What type of metal (aluminum/steel)? Many of the current windows are in good repair. At $1,034 a set, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair/weatherizing and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states a total of 200 windows need replacement. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, @ 22 reflect windows and none appeared to *require* replacement. Please respond/provide: 1. Total number of windows in this category including type/size/condition/SF by building?
Plumbing	Repair/Replace/ DM	Restroom, 2 Fixtures, 1 Wall Plumbing (complete renovation)	1	10	EA	71850	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *complete renovation* of 10 restrooms. What does 2 fixtures, 1 wall plumbing refer to? The pictures provided by Sodexo do not show any restrooms in such disrepair as to require a complete renovation. At $7,184 per renovation, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair/weatherizing and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states $406,460 worth of plumbing needs addressed. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 6 are of restrooms and none appeared to *require* complete renovations. Please respond/provide: 1. Total number of restrooms in this category including fixture-specific numbers and condition/SF by building? (i.e., Building B, boys restroom, 5 urinals (1 cracked/needs replacement), 6 toilets (2 need repair), 3 sinks (1 needs faucet and shut-offs replaced etc.)
Plumbing	Repair/Replace/	Restroom/Bathroom, 7 Fixtures, 2	1	2	JOB	47930	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *complete renovation*

Building System	Justification	Comments	Priority Year	Qty	Unit	Est. Cost ($)	Comments - Requested Correction/Additional Data
	DM	Wall Plumbing (complete renovation)					of 2 restrooms. What does 7 fixtures, 2 wall plumbing refer to? The pictures provided by Sodexo do not show any restrooms in such disrepair as to require a complete renovation. At $23,965 per renovation, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair/weatherizing and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states $406,460 worth of plumbing needs addressed. Why the disparity? Of the 277 pictures provided by Sodexo for Agana Heights, 6 are of restrooms and none appeared to *require* complete renovations Please respond/provide: 1. Total number of restrooms in this category including fixture-specific numbers and condition/SF by building? (i.e., Building B, boys restroom, 5 urinals (1 cracked/needs replacement), 6 toilets (2 need repair), 3 sinks (1 needs faucet and shut-offs replaced etc.)
Roofing	Repair/Replace/ DM	Gutters, Stainless Steel, Hung	1	2020	LF	19493	Justification for this item reflects repair/replacement/deferred maintenance, but appears to recommend *replacement* of 2020 LF of stainless steel gutters. At $9.65 per LF, assessing and documenting the *current condition* will determine which are good and need no action, which specifically needs repair/weatherizing and which need replaced. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Please respond/provide: 1. Are existing gutters stainless steel and the idea is to upgrade gutters? Does the 2020 LF capture all gutters campus-wide on concrete structures, wood/tin classrooms and walkway canopies? 2. Total LF of gutters, current condition/type/location by building?
Interior Finishes	Repair/Replace/ DM	Vinyl Composition Tile IN Library	1	1200	SF	3552	Clearly defined and understood that 1200 SF of VCT needs to be replaced in the Library.
Electrical	Repair/Replace/ DM	Upgrade building's electrical distribution system, including panels, switches, outlets and wiring. Includes light fixture replacement	1	40646	SF/BLDG	447106	According to the FCAP manual, the detailed assessment should include *identification of current facility condition deficiencies*. This does not identify *current electrical condition deficiencies* or provide *deficient-specific recommendations*. Assess and determine electrical needs such as *measured demand* to determine whether main distribution panels need upgraded and other *specific* electrical recommendations as opposed to *wholesale blanket* recommendations for complete electrical replacements/upgrades at considerable cost. This item is replicated for other schools as well. Assessing current electrical conditions (especially related to life safety concerns) is a pre-requisite to detailing current electrical deficiencies and subsequent recommendations to address the deficiencies. This process will not only provide a *truer* picture for GDOE, but would affect the modules tied in such as FCI indicators etc. as well. This data should be used to *drive* priority year decisions as well as affect lobbied funding levels that are *scrupulously scrutinized* by the legislature. Information reflected here is inconsistent with the information presented to Education Board members during the working session of 1/18/11 which states $128,034 worth of electrical projects need addressing. Why the disparity? Information that would be very valuable for GDOE: 1. Where is the MDP? Is it sufficient for current demand or is upgrade needed? 2. Which buildings have electrical rooms? How many panel boxes and their labels? What do the feed?
Roofing	Repair/Replace/ DM	Coated foamed roofing sprayed polyurethane foam topped with 20-mil silicone rubber coating,1" thick	1	56423	SF	225692	GDOE & Sodexo staffs have spent much time and effort in obtaining roofing square footage and existing conditions in the past weeks in order to get the necessary data for the roofing bid. How was this square footage computed? If gross square footage of 40,646 SF is based on the footprint, 56,423 SF equates to 38.82% more than footprint. The recommendation here and replicated for other schools is inconsistent with the specifications provided by Sodexo for the upcoming roofing bid. Why the disparity? Both planned executions have been pegged at $4 a SF by Sodexo. Please respond/provide: 1. Roofing construction type and SF by building.
Fire Protection	ADA CI	Fire Alarm System (includes horn, strobe, annuciator panel, etc.)	1	40646	SF/BLDG	81292	OK.
HVAC	Improvement/	Install/upgrade energy management	1	40646	SF/BLDG	60969	OK.

Building System	Justification	Comments	Priority Year	Qty	Unit	Est. Cost ($)	Comments - Requested Correction/Additional Data
	Functionality/ CI	system.					
Fire Protection	Code Compliance/ DM	Install Fire Suppression System, Wet Pipe (greater than 10,000 & less than 50,000 SF)	1	40646	SF/BLDG	203230	Please cite the code and requirement and detail when GDOE is required to come into compliance. (if over 30% of existing facility renovations are undertaken etc.)
HVAC	Repair/Replace/ DM	Multi-Zone A/C Unit Systems	1	40646	SF/BLDG	614974	This is an area that GDOE spends significantly on each year. GDOE has a combination of Central units, DX units, split units, window units etc. Do we continue with "hodge podge" replacement efforts? Some recommend installing central systems toward efficiency and utility savings, but others worry that when the central unit goes out the whole school is affected and advocate for split units per room. GDOE needs your assistance in developing HVAC master plan for organized and orderly district-wide installation/management. Information that would be very valuable for GDOE: 1. Detail A/C (SEER Rating/type/model/SN/age/warranty info) by building and what rooms they're cooling.
Fire Protection	Code Compliance / DM	Emergency Exit Light (with circuitry)	1	40	EA	6480	Please cite the code and requirement and detail when GDOE is required to come into compliance. Do all existing emergency lights need replacement? Are all existing emergency lights not code compliant?
Electrical	Repair/Replace/ DM	P.A. System	1	40646	SF/BLDG	40646	OK.
Exterior Decking	New Construction	Add canopy from C to D	2	335	SF	8375	At $25 a SF, what type of construction is recommended?
						2,489,333	

Show how their Focus driven by what Sodexo corporate suppliers could provide rather than actual needs of the school.

Row Labels	Sum of Estimated
Agana Heights Elementary - Agana Heights	$2,489,333
Agueda Johnston Middle - Chalan/Pago-Ordot	$8,980,126
Astumbo Elementary - Dededo	$3,113,425
Carbullido Elementary - Barrigada	$2,665,439
Chief Brodie Elementary - Tumon, Tamuning	$2,505,614
D.L. Perez Elementary - Yigo	$2,746,566
Finegayan Elementary - Dededo	$5,084,882
George Washington High School - Mangilao	$6,948,157
Inarajan Elementary - Inarajan	$1,302,568
Inarajan Middle - Inarajan	$7,113,886
Johnson Elementary - Tamuning	$2,919,863
Jose Rios Middle - Piti	$1,835,248
Juan M. Guerrero Elementary - Dededo	$2,682,079
Leon-Guerrero Middle - Yigo	$3,112,728
M.U. Lujan Elementary - Yona	$3,124,537
Machananao Elementary - Yigo	$1,973,501
Marcial Sablan Elementary - Agat	$3,455,368
Merizo Elementary - Merizo	$1,643,111
Oceanview Middle - Agat	$8,840,429
Ordot-Chalan Pago Elementary - Chalan/Pago-Ordot	$478,972
P.C. Lujan Elementary - Barrigada	$2,547,222
Price Elementary - Mangilao	$6,110,970
San Miguel Elementery - Mongmong-Toto-Malte	$2,994,756
Sanchez Elementary - Umatac	$907,226
Sanchez High School - Yigo	$6,786,492
Southern A1-Admin Offices	$948,980
Southern Athletic Fields	$469,440
Southern Blg 1000	$1,164,258
Southern Blg 2000	$1,511,946
Southern Blg 3000	$1,427,266
Southern Blg 4000	$1,824,136
Southern Blg 5000	$3,034,771
Southern Blg 6000	$442,485
Southern Blg 7000	$525,914
Southern Blg 8000	$547,350
Southern Cafeteria	$1,035,911
Southern Fine Arts	$1,442,669
Southern Gym	$1,628,355
Southern High A2- Counseling	$235,341
Southern High -A3- Nursing	$184,567
Southern Library	$613,656
Southern Student Center ROTC	$382,612
Southern Swimming Pool Complex	$500,000
Taitano Elementary - Sinajana	$1,227,136
Talofofo Elementary - Talofofo	$3,477,229
Tamuning Elementary	$2,227,548
Torres Alternative School - Santa Rita	$1,629,582
Truman Elementary - Santa Rita	$2,898,456
Ulloa Elementary - Dededo	$3,137,793
Untalan Middle - Rm 5-6	$11,157
Roofing	$7,581
HVAC	$3,576

Untalan Middle School - Barrigada	**$3,000,246**
Exterior Enclosure	$468,124
Plumbing	$343,200
Roofing	$276,725
Interior Finishes	$376,700
Electrical	$413,431
Fire Protection	$361,008
HVAC	$651,258
Furnishings	$90,000
Site Improvements	$19,800
Untalan Middle-Cafeteria and Rm3-4	**$45,337**
Plumbing	$2,375
Roofing	$29,192
HVAC	$13,770
UPI Elementary - Yigo	**$2,590,344**
Vincente Benevente Middle - Dededo	**$5,374,331**
Wettengel Elementary - Dededo	**$3,291,167**
Grand Total	**$139,192,481**

Sodexo

Facility Capital Action Plan (FCAP)

Guam Dept. of Education

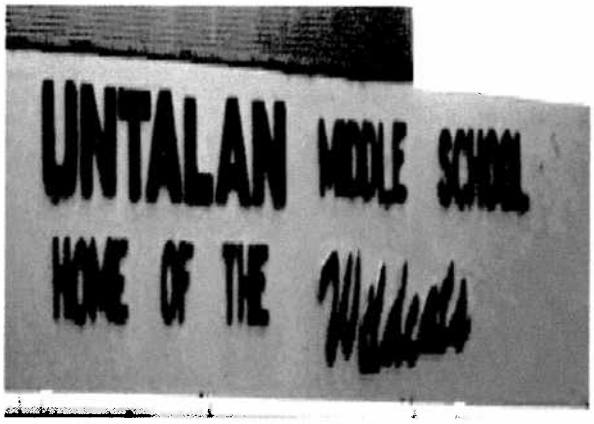
City Agana

State GU

Date: 8/31/2010

Print Date: 1/5/2012

Building Id : 7897 **Building Name :** **Untalan Middle School - Barrigada**



Year Built	1958
Year Renovated	
GSF	15,216
CRV	$3,043,200
Building Usage	OFFICE FACILITIES
Secondary Usage	OFFICE FACILITIES

Capital Plan Summary

Deferred Maintenance	$1,825,017
Capital Renewal	$10,810
Capital Improvement	$1,164,418
New Construction	$0
TOTAL	$3,000,246
Facility Condition Index (%)	59.97
FC/QI (%)	98.59

General Conditions

Comments: 1,187 Students

Overall Condition :

Functional Suitability :

1

Sodexo
Facility Capital Action Plan (FCAP)

Guam Dept. of Education

City Agana

State GU

Date: 8/31/2010

Print Date: 1/5/2012

Building Id : 8394 **Building Name :** **Untalan Middle - Gym**

Year Built	1958
Year Renovated	2011
GSF	7,000
CRV	$1,400,000
Building Usage	ACADEMIC FACILITIES
Secondary Usage	SUPPORTING FACILITIES

Capital Plan Summary

Deferred Maintenance	$0
Capital Renewal	$0
Capital Improvement	$0
New Construction	$0
TOTAL	$0
Facility Condition Index (%)	0.00
FC/QI (%)	0.00

General Conditions

Comments: Complete renovation in 2011.

Overall Condition :

Functional Suitability :

Sodexo

Facility Capital Action Plan (FCAP)

Guam Dept. of Education

City Agana
State GU
Postal Code 96992

Date : 8/31/2010
Print Date : 1/5/2012

Building Name **Untalan Middle - Rm 5-6**

Building ID : **8395**
Year Built : **1958**
Year Renovated :
Gross Square Feet : **2,384**
Building Type : **5300 - MIDDLE SCHOOL**
Current Replace Value : **$476,800**
FC/QI (%) : **2.34**

Building System	Justification	Comments	Priority Year	Quantity	Unit	Estimated Cost ($)	Date Scheduled	Date Complete	Actual Cost ($)	Variance ($)
Roofing	Repair/Replace / DM	Single Ply Roof, Fully Adhered	1	2,384	SF	7,581				
HVAC	Energy / DM	Install/upgrade energy management system.	3	2,384	SF/BLDG	3,576				

Building Total : $11,157 **Building DM Total : $11,157** **Building CR Total : $0** **Building CI Total : $0**

Percent Of Building Value (FCI): 2.34 %

Sodexo

Facility Capital Action Plan (FCAP)

Guam Dept. of Education

City Agana
State GU
Postal Code 96992

Date : 8/31/2010
Print Date : 1/5/2012

Building Name **Untalan Middle School - Barrigada**

Building ID : **7897**
Year Built : **1958**
Year Renovated :
Gross Square Feet : **15,216**
Building Type : **300 - OFFICE FACILITIES**
Current Replace Value : **$3,043,200**
FC/QI (%) : **98.59**

Building System	Justification	Comments	Priority Year	Quantity	Unit	Estimated Cost ($)	Date Scheduled	Date Complete	Actual Cost ($)	Variance ($)
Electrical	Energy / CI	Upgrade lighting fixtures from T12 to T8 flouresent tubes (academic bldgs)	1	49,145	SF/BLDG	61,431				
Fire Protection	Code Compliance / CI	Emergency Exit Light (with circuitry)	1	49	EACH	17,738				
Fire Protection	Code Compliance / CI	Install Fire Suppression System, Wet Pipe (greater than 10,000 & less than 50,000 SF)	1	49,000	SF/BLDG	245,000				
Roofing	ADA / CI	Single Ply Roof, Fully Adhered, repar all cracks w/epoxy injection repar all expansion joints	1	49,145	SF	245,725				
HVAC	Repair/Replace / DM	Split Systems w/Air Cooled Condensing Units	1	49,145	SF/BLDG	571,065				
Exterior Enclosure	Energy / CI	Metal Casement Window, Double Pane, Small Opening	1	110	EACH	46,530				
Exterior Enclosure	Cyclical / CR	Metal Casement Window, Double Pane, Medium Opening	1	10	EACH	10,810				

3

Sodexo

Facility Capital Action Plan (FCAP)

Guam Dept. of Education

City Agana
State GU
Postal Code 96992

Date : 8/31/2010
Print Date : 1/5/2012

Building Name Untalan Middle School - Barrigada

Building System	Justification	Comments	Priority Year	Quantity	Unit	Estimated Cost ($)	Date Scheduled	Date Complete	Actual Cost ($)	Variance ($)
Roofing	Repair/Replace / DM	Coated foamed roofingsprayed polyurethane foam topped with 20-mil silicone rubber coating,1" thick	1	10,000	SF	31,000				
Electrical	Improvement/ Functionality / CI	Upgrade building's electrical distribution system, including panels switches, outlets and wiring	2	20,000	SF/BLDG	180,000				
Exterior Enclosure	Aesthetic / DM	Painting, Exterior on Masonry, Primer and 2 Coats	2	162,000	SF	243,000				
Interior Finishes	Repair/Replace / DM	Carpet Tile	2	7,000	SF	39,060				
Site Improvements	Repair/Replace / DM	Line striping and repair	2	330	MLF	19,800				
Exterior Enclosure	Energy / CI	Metal Casement Window, Double Pane, Large Opening	2	86	EACH	54,524				
Exterior Enclosure	Repair/Replace / DM	Steel Single Door, Frame and Hardware	3	33	EACH	49,500				
Interior Finishes	Aesthetic / DM	Painting, Interior on Masonry, Primer and 2 Coats	3	35,000	SF	51,800				
Plumbing	Repair/Replace / DM	Upgrade all domestic and sanitary water system piping including drain, waste and vent	3	25,000	SF/BLDG	150,000				
Interior Finishes	Repair/Replace / DM	Acoustical Ceiling Tile, Suspended Grid, 2'x4'	3	25,000	SF	100,000				
Interior Finishes	Repair/Replace / DM	Acoustical Ceiling Tile, Suspended Grid, 2'x4'	5	25,000	SF	100,000				

3

Sodexo

Facility Capital Action Plan (FCAP)

Guam Dept. of Education

City Agana
State GU
Postal Code 96992

Date : 8/31/2010
Print Date : 1/5/2012

Building Name **Untalan Middle-Cafeteria and Rm3-4**

Building ID : **8393**
Year Built : **1958**
Year Renovated :
Gross Square Feet : **9,180**
Building Type : **700 - SUPPORTING FACILITIES**
Current Replace Value : **$1,836,000**
FC/QI (%) : **2.47**

Building System	Justification	Comments	Priority Year	Quantity	Unit	Estimated Cost ($)	Date Scheduled	Date Complete	Actual Cost ($)	Variance ($)
Roofing	Repair/Replace / DM	Single Ply Roof, Fully Adhered	1	9,180	SF	29,192				
Plumbing	Repair/Replace / DM	Restroom/Bathroom, 2 Fixtures, 1 Wall Plumbing (fixtures & adjacent plumbing only)	3	1	EACH	2,375				
HVAC	Energy / DM	Install/upgrade energy management system.	3	9,180	SF/BLDG	13,770				

Building Total : $45,337 **Building DM Total : $45,337** **Building CR Total : $0** **Building CI Total : $0**

Percent Of Building Value (FCI): 2.47 %

(3)

GUAM FISHERMEN'S
COOPERATIVE ASSOCIATION

P. O. Box 24023
G.M.F., Guam 96921
Tel: (671) 472-6323 • Fax: (671) 477-2986

February 24, 2012

Honorable Vicente "ben" C. Pangelinan
Chairman,
Committee on Appropriations, Taxation, Public Debt,
Banking, Insurance, Retirement and Land
I Mina' Trentai Unu Na Liheslaturan Guahan

Re: Testimony in support of Bill 414-31 (COR)

Buenas yan Hafa Adai Senator Pangelinan:

On behalf of our organization I would like to offer our support for Bill 414-31 and congratulate this Legislative Body in its effort to address the needs of our Educational System as well as support for our organization.

Our organization and the cottage industries supported by our existence truly appreciate this Body's consideration of our needs. Should funding be made available to the tune of $4 million dollars we ask that it be in the form of a low-interest (to cover administrative cost at GEDA) loan but as we all know free money is always better. The Principle of such placed in GEDA's Farmer's and Fishermen Loan Revolving Fund to assist other marine endeavors. Certainly, there are certain portions of the GFCA's Greg D. Perez Marina Economic Enhancement Master Plan that will require government funding in the form of a grant to better serve the marine community.

In addition, we recognize that there are two important components of any government's mission pertaining to this matter: One is the opportunity we provide our children a great education within a proper environment which this Bill addresses. The second is the government has to set the stage for our youth to properly advance these skills set through employment which would equate to providing an Economic Environment conducive for employment opportunities.

Economic Development opportunities for the community are too often overlooked. I suggest that this Legislature if it has not already developed; a plan to address such opportunities. Allow for an Economic Development Bond for the advancement of such and managed through the Guam Economic Development Authority (GEDA). The GEDA Economic Development Loan Program must be revitalized and sound management practices implemented.

In closing, we are encouraged that this Legislature's efforts especially you and your Office in addressing community needs and look forward to more positive actions.

Sincerely,

Manuel P. Duenas II

BUREAU OF BUDGET & MANAGEMENT RESEARCH

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

EDDIE BAZA CALVO
GOVERNOR

RAY TENORIO
LIEUTENANT GOVERNOR

JOHN A. RIOS
DIRECTOR

STEPHEN J. GUERRERO
DEPUTY DIRECTOR

FEB 20 2012

Senator Rory J. Respicio
Chairperson, Committee on Rules
I Mina'trentai Unu na Liheslaturan Guåhan
The 31st Guam Legislature
155 Hesler Place
Hagåtna, Guam 96932

Hafa Adai Senator Respicio:

Transmitted herewith is the Fiscal Note on the following Bill Nos.: **414-31(COR) and 416-31(COR)**.

If you have any question(s), please do not hesitate to call the office at 475-9412/9106.

/JOHN A. RIOS
Director

Enclosures

cc: Senator Vicente (ben) Pangelinan

RECEIVED
MAR 1 2012

Bureau of Budget & Management Research
Fiscal Note of Bill No. 414-31 (COR)

An act to amend 5GCA § 1512.3, 11GCA §§ 24102(a), 24102(f), 24103, 24401, 21GCA § 75112(i), Sections 2(b) and 7 of Public Law 30-37 and Section 7 of Public Law 31-76, to add subsection (d) to 5GCA § 22704 and subsection (d) to Section 3 of Public Law 30-37, to repeal and re-enact 5GCA § 1515(i)(2)(G) and to add a new subsection (W) to 5GCA § 1515(i)(2), relative to authorizing a Series B of Revenue Anticipation Financing Bonds and for other purposes.

Department/Agency Appropriation Information		
Dept./Agency Affected: Department of Administration	Dept./Agency Head: Benita A. Manglona	
Department's General Fund (GF) appropriation(s) to date:		29,055,631
Department's Other Fund (Specify) appropriation(s) to date:		6,952,628
Total Department/Agency Appropriation(s) to date:		$36,008,259

Fund Source Information of Proposed Appropriation	General Fund:	(Specify Special Fund):	Total:
FY 2011 Unreserved Fund Balance[1]		$0	$0
FY 2012 Adopted Revenues	$0	$0	$0
FY 2012 Appro. (P.L. 31-75 & 31-77)	$0	$0	$0
Sub-total:	$0	$0	$0
Less appropriation in Bill	$0	$0	$0
Total:	$0	$0	$0

Estimated Fiscal Impact of Bill	One Full Fiscal Year	For Remainder of FY 2012 (if applicable)	FY 2013	FY 2014	FY 2015	FY 2016
General Fund	$0	$0	$0	$0	$0	$0
(Specify Special Fund)	$0	$0	$0	$0	$0	$0
Total	$0	$0	$0	$0	$0	$0

1. Does the bill contain "revenue generating" provisions? /X/ Yes / / No
   If Yes, see attachment N/A
2. Is amount appropriated adequate to fund the intent of the appropriation? /X/ N/A / / Yes / / No
   If no, what is the additional amount required? $ _____ /X/ N/A
3. Does the Bill establish a new program/agency? / / Yes /X/ No
   If yes, will the program duplicate existing programs/agencies? /X/ N/A / / Yes / / No
   Is there a federal mandate to establish the program/agency? / / Yes / / No
4. Will the enactment of this Bill require new physical facilities? / / Yes /X/ No
5. Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: / / Yes /X/ No
   / / Requested agency comments not received by due date /X/ Other: Time Constraint

2/16/12

Analyst (s): Joe Certeza Date: 02/09/2012 Director: Date: 2/16/12
John A. Rios, Director

Footnotes:

1/ The Bill has a potential fiscal impact for additional funding requirements. However, in its present form, such impact cannot be determined at this time.

COMMITTEE ON RULES

I Mina'trentai Unu na Liheslaturan Guåhan • The 31st Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • *www.guamlegislature.com*
E-mail: *roryforguam@gmail.com* • Tel: (671)472-7679 • Fax: (671)472-3547

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Judith P. Guthertz
VICE CHAIRPERSON
ASST. MAJORITY LEADER

MAJORITY
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Senator
vicente c. pangelinan

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ASST. MINORITY LEADER

Senator
Christopher M. Duenas

January 31, 2012

MEMORANDUM

To: **Pat Santos**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Rory J. Respicio**

Subject: **Referral of Bill Nos. 414-31(COR) through 416-31 (COR)**

As the Chairperson of the Committee on Rules, I am forwarding my referral of Bill Nos. 414-31 (COR) through 416-31 (COR).

Please ensure that the subject bills are referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Unu na Liheslaturan Guåhan.*

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

(3) Attachment

I Mina'Trentai Unu Na Liheslaturan Guahan

Bill Log Sheet

BILL NOS.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	120 DAY DEADLINE	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	Status
414-31 (COR)	V.C. Pangelinan	AN ACT TO AMEND 5GCA § 1512.3, 11GCA §§ 24102(a), 24102(f), 24103, 24401, 21GCA § 75112(i), SECTIONS 2(b) AND 7 OF PUBLIC LAW 30-37 AND SECTION 7 OF PUBLIC LAW 31-76, TO ADD SUBSECTION (d) TO 5GCA § 22704 AND SUBSECTION (d) TO SECTION 3 OF PUBLIC LAW 30-37, TO REPEAL AND RE-ENACT 5GCA § 1515(i)(2)(G) AND TO ADD A NEW SUBSECTION (W) TO 5GCA § 1515(i)(2), RELATIVE TO AUTHORIZING A SERIES B OF REVENUE ANTICIPATION FINANCING BONDS AND FOR OTHER PURPOSES	1/30/12 12:12 p.m.	1/31/2012		Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement and Land			

Bill Introduced/History
1/31/2012 6:31 PM

Office of
the People

I Mina'trentai Unu Na Liheslaturan Guåhan

Senator Vicente (ben) Cabrera Pangelinan (D)

Chairman
Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land

Vice Chairman
Committee on Education

Member
Committee on Rules, Federal, Foreign & Micronesian Affairs and Human & Natural Resources

Member
Committee on Municipal Affairs, Tourism, Housing, and Recreation

Member
Committee on the Guam Military Buildup and Homeland Security

Member
Committee on Health and Human Services, Senior Citizens, Economic Development, and Election Reform

February 17, 2012

Memorandum

To: Senators

From: Senator Vicente (ben) Cabrera Pangelinan

Re: Public Hearing Notice – FIRST NOTICE

The Committee on Appropriations, Taxation, Public Debt, Banking, Insurance and Land will conduct a public hearing beginning at **9:00am, 4:00pm and 5:30pm** on **Friday, February 24, 2012** at the Guam Legislature's Public Hearing Room. The following is on the agenda:

9:00 am
Bill No 377-31 (COR): An Act to add a New §61217 to Title 21, Guam Code Annotated, Relative to designating all excess land returned by the US Government to the government of Guam, as Agriculture ("A") Zone.

Bill No. 378-31 (COR): An Act to Add a New Item (i) to §62108 of Title 21, Guam Code Annotated, Relative to requiring that the Subdivision of any land *Not* result in the land-locking of any other land.

Bill No. 411-31 (COR): An Act to authorize *I Maga'lahen Guahan* to transfer abandoned properties located within Tract Number 1113, also known as the Sagan Linahyan Subdivision, from the *Dipattamenton Minanehan Tano'* (Department of Land Management) to the Guam Housing Corporation for the purposes of affordable housing.

Bill No. 416-31 (COR): An Act to Approve and ratify the transfer of certain property relative to the Lada Estates Project by the Guam Housing Corporation for the purpose of developing affordable housing for the people of Guam.

4:00 pm
Resolution No. 311: Relative to expressing the sense of *I Liheslaturan Guahan's* expenditure priority of Compact Impact Act funds for Fiscal Year 2012 to *Maga'låhen Guåhan* and to the Secretary of Interior to support capital improvement projects

324 W. Soledad Ave. Suite 100, Hagåtña, Guam 96910
Tel: (671) 473-(4BEN) 4236 - Fax: (671) 473-4238 - Email: senbenp@guam.net
Website: http://senbenp.com

and operations of various impacted government agencies and departments.

Bill No. 414-31 (COR): An Act to Amend 5GCA, §1512.3, 11GCA §§24102(a), 24102(f), 24103, 24401, 21GCA, §75112(i), Sections 2(b) and 7 of Public Law 30-37 and Section 7 of Public Law 31-76, to *Add* Subsection (d) to 5GCA §22704 and Subsection (d) to Section 3 of Public Law 30-37, to *Repeal and Re-Enact* 5GCA §1515(i)(2)(G) and to *Add* a New Subsection (W) to 5GCA §1515(i)(2), Relative to authorizing a Series B of Revenue Anticipation Financing Bonds and for other purposes.

Bill No. 423-31 (LS): An Act to authorize the issuance of bonds for the payment of Income Tax Refunds for calendar year 2011.

5:30 pm
Bill No. 415-31 (COR): An act to support women and save children, by adding a new Chapter 94 to Title 10 of the Guam Code Annotated, which may be cited as the *Acto Para Ma Sapotte I Fama'lao'an Yan Para Ma Satba I Famagu'on.*

Yanggen un nisisita espesiåt na setbision, put fabot ågang i Ifisinan Sinadot Vicente (ben) Cabrera Pangelinan gi 473-4236/7. Yanggen un nisisita kopian i priniponi siha ginen este na tareha, hålom gi i uepsait i Liheslaturan Guåhan gi www.guamlegislature.com. Yanggen para un na'hålom testigu-mu, chule' para i ifisinan-måmi gi 324 West Soledad Avenue gi iya Hagåtña, pat guatto gi i Kuatton Katta gi i Liheslatura, pat faks gi 473-4238, patsino imel gi senbenp@guam.net. Este na nutisiu inapåsi nu i fendon gubetnamento.

If you require any special accommodations, auxiliary aids or other special services or for further information, please call the Office of Senator Vicente (ben) Cabrera Pangelinan at 473-4236/7. For copies of any of the Bills or Resolution listed on this agenda, you may log on to the Guam Legislature's website at www.guamlegislature.com Testimonies may be submitted directly to our office at 324 West Soledad Avenue in Hagåtña or at the Mail Room of the Guam Legislature, via fax at 473-4238, or via email at senbenp@guam.net

Lisa Dames <cipo@guamlegislature.org>

Public Hearing - FIRST Notice

1 message

Lisa Dames <cipo@guamlegislature.org> **Fri, Feb 17, 2012 at 1:28 PM**
To: phnotice@guamlegislature.org

Hafa Adai,
The Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement and Land will hold a public hearing on **Friday, February 24, 2012 beginning at 9:00am, 4:00pm and 5:30pm** at the Guam Legislature Public Hearing Room. Please refer to attached letter for further details.

Thank you.

--
Lisa Dames
Chief of Staff
Office of Senator ben c pangelinan
(671) 473-4236
cipo@guamlegislature.org

FIRSTNotice_022412.pdf
139K

Listserv: phnotice@guamlegislature.org
As of Feb. 27, 2012

aguon4guam@gmail.com
alerta.jermaine@gmail.com
aline4families@gmail.com
ashelton.senatordrodriguez@gmail.com
audrey@judiwonpat.com
chechsantos@gmail.com
cherbert.senatordrodriguez@gmail.com
cipo@guamlegisalature.org
clerks@guamlegisalature.org
colleen@judiwonpat.com
cor@guamlegislature.org
cyrus@senatorada.org
doc.wyttenbachsantos@gmail.com
duenasenator@gmail.com
edleonguerrero@gmail.com
edpocaigue@judiwonpat.com
edwardglee671@yahoo.com
elaine@tinamunabarnes.com
etajalle@guamlegislature.org
evelyn4families@gmail.com
faith.r@senatormabini.com
fbtorres@judiwonpat.com
floterlaje@gmail.com
frank.blasjr@gmail.com
gavin@tinamunabarnes.com
guamnativesun@yahoo.com
jamespcastro@gmail.com
jane@tinamunabarnes.com
jason@senatorpalacios.com
jcamacho@senatorada.com
jean@tinamunabarnes.com
jeff.m@senatormabini.com
jennifer@senatorpalacios.com
jimespaldon@yahoo.com
jmesngon.senatordrodriguez@gmail.com
john.calvo@noaa.gov
jtenorio@guamcourts.org
judiguthertz@gmail.com
julian@senatorpalacios.com
leonguerrero.angela@gmail.com
lou4families@gmail.com
louise_atalig@yahoo.com
markaflague@gmail.com
maryfejeran@gmail.com
mcarlson@guamlegislature.org
mis@guamlegislature.org
baza.matthew@gmail.com
berlene@senatorpalacios.com
bruce.lloyd.media@gmail.com
candasofrank@gmail.com
charissatenorio@gmail.com
msuarez.senatordrodriguez@gmail.com
mtorres.senatordrodriguez@gmail.com
myracle.m@senatormabini.com
ncruz.senatordrodriguez@gmail.com
nsantos@senatorada.org
office@senatorada.org
oliviampalacios@gmail.com
peterlg@gmail.com
phillipsguam@gmail.com
pris@senatorpalacios.com
regine@tinamunabarnes.com
rfteehan@yahoo.com
rob.tupaz@gmail.com
roryforguam@gmail.com
Santos.duenas@gmail.com
sem@guamlegislature.org
senator@senatorbjcruz.com
senator@senatorpalacios.com
senator@tinamunabarnes.com
senatordrodriguez@gmail.com
senatormabini@senatormabini.com
senatorsam@senatormabini.com
senatortonyada@guamlegislature.org
senbenp@guam.net
sgrarmes@guamlegislature.org
speaker@judiwonpat.com
tanya4families@gmail.com
tcastro@guam.net
telo.taitague@guam.gov
tinaokada@gmail.com
tom@senatorada.org
tterlaje@guam.net
uriah@tinamunabarnes.com
val.g@senatormabini.com
vkomiyama.senatordrodriguez@gmail.com
wilcastro671@gmail.com



Lisa Dames <cipo@guamlegislature.org>

Public Hearing - FIRST Notice

2 messages

Lisa Dames <cipo@guamlegislature.org> **Fri, Feb 17, 2012 at 1:38 PM**
To: news@guampdn.com, news@k57.com, Sabrina Salas <sabrina@kuam.com>, Jason Salas <jason@kuam.com>, Mindy Aguon <mindy@kuam.com>, nick@kuam.com, Ken Quintanilla <kenq@kuam.com>, Josh Tyquiengco <jtyquiengco@k57.com>, clynt@k57.com, Betsy Brown <betsy@k57.com>, Kevin Kerrigan <kevin@k57.com>, gerry@mvguam.com, Therese Hart <therese.hart.writer@gmail.com>, zita@mvguam.com, Janela <janela@gmail.com>, Mar-vic Cagurangan <marvic.cagurangan@yahoo.com>, rgibson@k57.com, ALICIA PEREZ <aliciaperez69@hotmail.com>, Alicia Perez <perezksto@gmail.com>, Gaynor Daleno <gdumat-ol@guampdn.com>, slimtiaco@guampdn.com, bmkelman@guampdn.com, Erin Thompson <egthompson@guampdn.com>, Oyaol Ngirairikl <odngirairikl@guampdn.com>, "Alladi, Amritha" <aalladi@guam.gannett.com>, "Melyan, Catriona" <cmelyan@guam.gannett.com>

Hafa Adai,
the Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement and Land will hold a public hearing on Friday, February 24, 2012 beginning at 9:00am, 4:00pm and 5:30pm the Guam Legislature Public Hearing Room. The following is on the agenda:

INEKUNGOK PUPBLEKO

(PUBLIC HEARING)

***gi Betnes, gi diha 24 gi Fibreru*, 2012**

(Friday, February 24, 2012)

Kuåtton Inekungok Pupbleko gi I Liheslaturan Guåhan

(Guam Legislature Public Hearing Room)

Alas nuebi gi egga'an despues

(9:00 AM)

TAREHA

(AGENDA)

Priniponi Siha

Media ora para alas sais gi pipuengi

(5:30 PM)

TAREHA

(AGENDA)

Bill No. 415-31 (COR): An act to support women and save children, by adding a new Chapter 94 to Title 10 of the Guam Code Annotated, which may be cited as the *Acto Para Ma Sapotte I Fama'lao'an Yan Para Ma Satba I Famagu'on*.

Yanggen un nisisita espesiåt na setbisio put fabot ågang i Ifisinan Senadot ben pangelinan gi 473- Yanggen un nisisita espesiåt na setbision, put fabot ågang i Ifisinan Sinadot Vicente (ben) Cabrera Pangelinan gi 473-4236/7. Yanggen un nisisita kopian i priniponi siha ginen este na tareha, hålom gi i uepsait i Liheslaturan Guåhan gi www.guamlegislature.com Yanggen para un na'hålom testigu-mu, chule' para i ifisinan-måmi gi 324 West Soledad Avenue gi iya Hagåtña, pat guatto gi i Kuatton Katta gi i Liheslatura, pat faks gi 473-4238, patsino imel gi senbenp@guam.net. Este na nutisiu inapåsi nu i fendon gubetnamento.

If you require any special accommodations, auxiliary aids or other special services or for further information, please call the Office of Senator Vicente (ben) Cabrera Pangelinan at 473-4236/7. For copies of any of the Bills or Resolution listed on this agenda, you may log on to the Guam Legislature's website at www.guamlegislature.com Testimonies may be submitted directly to our office at 324 West Soledad Avenue in Hagåtña or at the Mail Room of the Guam Legislature, via fax at 473-4238, or via email at senbenp@guam.net

--
Lisa Dames
Chief of Staff
Office of Senator ben c. pangelinan
(671) 473-4236
cipo@guamlegislature.org

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Office of
the People

I Mina'trentai Unu Na Liheslaturan Guåhan

Senator Vicente (ben) Cabrera Pangelinan (D)

Chairman
Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land

Vice Chairman
Committee on Education

Member
Committee on Rules, Federal, Foreign & Micronesian Affairs and Human & Natural Resources

Member
Committee on Municipal Affairs, Tourism, Housing, and Recreation

Member
Committee on the Guam Military Buildup and Homeland Security

Member
Committee on Health and Human Services, Senior Citizens, Economic Development, and Election Reform

February 22, 2012

Memorandum

To: Senators

From: Senator Vicente (ben) Cabrera Pangelinan

Re: Public Hearing Notice – SECOND NOTICE

The Committee on Appropriations, Taxation, Public Debt, Banking, Insurance and Land will conduct a public hearing beginning at **9:00am, 4:00pm and 5:30pm** on **Friday, February 24, 2012** at the Guam Legislature's Public Hearing Room. The following is on the agenda:

9:00 am
Bill No 377-31 (COR): An Act to add a New §61217 to Title 21, Guam Code Annotated, Relative to designating all excess land returned by the US Government to the government of Guam, as Agriculture ("A") Zone.

Bill No. 378-31 (COR): An Act to Add a New Item (i) to §62108 of Title 21, Guam Code Annotated, Relative to requiring that the Subdivision of any land *Not* result in the land-locking of any other land.

Bill No. 411-31 (COR): An Act to authorize *I Maga'lahen Guahan* to transfer abandoned properties located within Tract Number 1113, also known as the Sagan Linahyan Subdivision, from the *Dipattamenton Minanehan Tano'* (Department of Land Management) to the Guam Housing Corporation for the purposes of affordable housing.

Bill No. 416-31 (COR): An Act to Approve and ratify the transfer of certain property relative to the Lada Estates Project by the Guam Housing Corporation for the purpose of developing affordable housing for the people of Guam.

4:00 pm
Resolution No. 311: Relative to expressing the sense of *I Liheslaturan Guahan's* expenditure priority of Compact Impact Act funds for Fiscal Year 2012 to *Maga'låhen Guåhan* and to the Secretary of Interior to support capital improvement projects

324 W. Soledad Ave. Suite 100, Hagåtña, Guam 96910
Tel: (671) 473-(4BEN) 4236 - Fax: (671) 473-4238 - Email: senbenp@guam.net
Website: http://senbenp.com

and operations of various impacted government agencies and departments.

Bill No. 414-31 (COR): An Act to Amend 5GCA, §1512.3, 11GCA §§24102(a), 24102(f), 24103, 24401, 21GCA, §75112(i), Sections 2(b) and 7 of Public Law 30-37 and Section 7 of Public Law 31-76, to *Add* Subsection (d) to 5GCA §22704 and Subsection (d) to Section 3 of Public Law 30-37, to *Repeal and Re-Enact* 5GCA §1515(i)(2)(G) and to *Add* a New Subsection (W) to 5GCA §1515(i)(2), Relative to authorizing a Series B of Revenue Anticipation Financing Bonds and for other purposes.

Bill No. 423-31 (LS): An Act to authorize the issuance of bonds for the payment of Income Tax Refunds for calendar year 2011.

5:30 pm
Bill No. 415-31 (COR): An act to support women and save children, by adding a new Chapter 94 to Title 10 of the Guam Code Annotated, which may be cited as the *Acto Para Ma Sapotte I Fama'lao'an Yan Para Ma Satba I Famagu'on.*

Yanggen un nisisita espesiåt na setbision, put fabot ågang i Ifisinan Sinadot Vicente (ben) Cabrera Pangelinan gi 473-4236/7. Yanggen un nisisita kopian i priniponi siha ginen este na tareha, hålom gi i uepsait i Liheslaturan Guåhan gi www.guamlegislature.com. Yanggen para un na'hålom testigu-mu, chule' para i ifisinan-måmi gi 324 West Soledad Avenue gi iya Hagåtña, pat guatto gi i Kuatton Katta gi i Liheslatura, pat faks gi 473-4238, patsino imel gi senbenp@guam.net. Este na nutisiu inapåsi nu i fendon gubetnamento.

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Lisa Dames <cipo@guamlegislature.org>

Public Hearing - SECOND NOTICE

1 message

Lisa Dames <cipo@guamlegislature.org> **Wed, Feb 22, 2012 at 4:26 PM**
To: phnotice@guamlegislature.org

Hafa Adai,
The Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement and Land will hold a public hearing on **Friday, February 24, 2012 beginning at 9:00am, 4:00pm and 5:30pm** at the Guam Legislature Public Hearing Room. Please refer to attached letter for further details.

--
Lisa Dames
Chief of Staff
Office of Senator ben c pangelinan
(671) 473-4236
cipo@guamlegislature.org

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Lisa Dames <cipo@guamlegislature.org>

Public Hearing - SECOND NOTICE

1 message

Lisa Dames <cipo@guamlegislature.org> **Wed, Feb 22, 2012 at 4:29 PM**
To: news@guampdn.com, news@k57.com, Sabrina Salas <sabrina@kuam.com>, Jason Salas <jason@kuam.com>, Mindy Aguon <mindy@kuam.com>, nick@kuam.com, Ken Quintanilla <kenq@kuam.com>, Josh Tyquiengco <jtyquiengco@k57.com>, clynt@k57.com, Betsy Brown <betsy@k57.com>, Kevin Kerrigan <kevin@k57.com>, gerry@mvguam.com, Therese Hart <therese.hart.writer@gmail.com>, zita@mvguam.com, Janela <janela@gmail.com>, Mar-vic Cagurangan <marvic.cagurangan@yahoo.com>, rgibson@k57.com, ALICIA PEREZ <aliciaperez69@hotmail.com>, Alicia Perez <perezksto@gmail.com>, Gaynor Daleno <gdumat-ol@guampdn.com>, slimtiaco@guampdn.com, bmkelman@guampdn.com, Oyaol Ngirairikl <odngirairikl@guampdn.com>, "Alladi, Amritha" <aalladi@guam.gannett.com>, tritonscall@gmail.com

Hafa Adai,
The Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement and Land will hold a public hearing on **Friday, February 24, 2012 beginning at 9:00am, 4:00pm and 5:30pm** at the Guam Legislature Public Hearing Room. The agenda is as follows:

INEKUNGOK PUPBLEKO

(PUBLIC HEARING)

***gi Betnes, gi diha 24 gi Fibreru*, 2012**

(Friday, February 24, 2012)

Kuåtton Inekungok Pupbleko gi I Liheslaturan Guåhan

(Guam Legislature Public Hearing Room)

Alas nuebi gi egga'an despues

(9:00 AM)

TAREHA

(AGENDA)

Priniponi Siha

(Bills)

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Alas kuåtro gi despues di talo'åni

(4:00 PM)

TAREHA

(AGENDA)

Resolution No. 311: Relative to expressing the sense of *I Liheslaturan Guahan's* expenditure priority of Compact Impact Act funds for Fiscal Year 2012 to *Maga'låhen Guåhan* and to the Secretary of Interior to support capital improvement projects and operations of various impacted government agencies and departments.

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Media ora para alas sais gi pipuengi

(5:30 PM)

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I Mina'Trenta Na Liheslaturan Guåhan
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INEKUNGOK PUPBLEKO
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gi Betnes, gi diha 24 gi Fibreru, 2012
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(PUBLIC HEARING)

***gi Betnes, gi diha 24 gi Fibreru,* 2012**
(Friday, February 24, 2012)

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

Bill No. 414-31(cor)

Introduced by: **V.C. Pangelinan**

AN ACT TO *AMEND* 5GCA § 1512.3, 11GCA §§ 24102(a), 24102(f), 24103, 24401, 21GCA § 75112(i), SECTIONS 2(b) AND 7 OF PUBLIC LAW 30-37 AND SECTION 7 OF PUBLIC LAW 31-76, TO *ADD* SUBSECTION (d) TO 5GCA § 22704 AND SUBSECTION (d) TO SECTION 3 OF PUBLIC LAW 30-37, TO *REPEAL AND RE-ENACT* 5GCA § 1515(i)(2)(G) AND TO *ADD* A NEW SUBSECTION (W) TO 5GCA § 1515(i)(2), 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. Legislative Statement and Intent. *I Liheslaturan Guåhan* finds that the GDOE has programmed all available ARRA funding for the needed repairs and renovation of its school facilities to ensure a safe and healthy learning environment for its students, system-wide. Furthermore, in an assessment of the repair, rehabilitation, and maintenance needs of the GDOE school facilities, the amount estimated to repair, maintain, rehabilitate, and re-construct existing school facilities and construct new facilities amounts to over $139 million dollars.

The third party assessment performed, identified 36 schools in need of repairs ranging from $478,972 to $17,919,657. The assessment detail or Facility Capital Action Plan (FCAP) may be used by the Parents of the GDOE students, the GDOE, and the Guam Education Board to identify and prioritize capital investments that will be made in school facilities. The FCAP plan finalized in December 2010 is summarized by school as follows:

School	Assessment Cost to Repair
Agana Heights Elementary - Agana Heights	$2,489,333
Agueda Johnston Middle - Chalan/Pago-Ordot	$8,980,126
Astumbo Elementary - Dededo	$3,113,425
Carbullido Elementary - Barrigada	$2,665,439
Chief Brodie Elementary - Tumon, Tamuning	$2,505,614
D.L. Perez Elementary - Yigo	$2,746,566
Finegayan Elementary - Dededo	$5,084,882
George Washington High School - Mangilao	$6,948,157
Inarajan Elementary - Inarajan	$1,302,568
Inarajan Middle – Inarajan	$7,113,886
Johnson Elementary - Tamuning	$2,919,863
Jose Rios Middle - Piti	$1,835,248
Juan M. Guerrero Elementary - Dededo	$2,682,079
Leon-Guerrero Middle - Yigo	$3,112,728
M.U. Lujan Elementary - Yona	$3,124,537
Machananao Elementary - Yigo	$1,973,501
Marcial Sablan Elementary - Agat	$3,455,368
Merizo Elementary - Merizo	$1,643,111
Oceanview Middle - Agat	$8,840,429
Ordot-Chalan Pago Elementary - Chalan/Pago-Ordot	$478,972
P.C. Lujan Elementary - Barrigada	$2,547,222
Price Elementary - Mangilao	$6,110,970
San Miguel Elementery - Mongmong-Toto-Maite	$2,994,756
Sanchez Elementary - Umatac	$907,226
Sanchez High School - Yigo	$6,786,492
Southern High School	$17,919,657

School	Assessment Cost to Repair
Taitano Elementary - Sinajana	$1,227,136
Talofofo Elementary - Talofofo	$3,477,229
Tamuning Elementary	$2,227,548
Torres Alternative School - Santa Rita	$1,629,582
Truman Elementary - Santa Rita	$2,898,456
Ulloa Elementary - Dededo	$3,137,793
Untalan Middle School - Barrigada	$3,056,740
UPI Elementary - Yigo	$2,590,344
Vincente Benevente Middle - Dededo	$5,374,331
Wettengel Elementary - Dededo	$3,291,167
Grand Total	**$139,192,481**

I Liheslaturan Guåhan also finds that none of these capital improvement needs are budgeted and the resources can only be reasonably made available through debt financing instruments, if the government wishes that these needs are to be addressed at the same time for all school facilities.

I Liheslaturan Guåhan further finds that the government of Guam has reached it's debt capacity as set in the Organic Act of Guam and the only window of debt capacity remaining is one final increase of the debt limit to 100 percent of the Organic Act limit.

It is the priority of *I Liheslaturan Guåhan* that the final borrowing capacity of the government *shall be* used for the purpose of providing the financial resources to the GDOE to make the urgent and immediate repairs and maintenance to school facilities for a safe and healthy school environment for our students.

Furthermore, *I Liheslaturan Guåhan* wishes to increase its support to local economic sectors that integrate the activities of our local entrepreneurs and our

tourism activities by providing development funds toward the plans for re-construction and enhancement of the Guam Fisherman's Cooperative facilities.

Section 2. § 1512.3 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 ~~one or more~~ 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, i~~I~~n the following order of priority:

(i) 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;

(A) 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;

(ab) 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;

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

(ad) 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~~2) For the second bond series, in the following order of priority:

(~~i~~) no less than Twenty-Five~~Six~~ Million ~~Four Hundred Thousand~~ Dollars ($25~~6~~,4000,000) 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 PL 28-38, as amended by PL 31-74; ~~and~~

(ii) no less than Seventy-Three Million Dollars ($73,000,000) for the design, construction, re-construction, rehabilitation, maintenance, and/or renovation of government of Guam or Guam Department of Education-owned school facilities. 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

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

(2) 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

(3) 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).

(b) **Terms and Conditions Determined by Certificate *or* Indenture.**

(1) The terms and conditions of the first bond series *shall* be as approved by *I Liheslaturan Guåhan*, and as determined by *I Maga'lahen Guåhan* by the execution of a certificate *or* indenture authorizing the issuance of the bonds, prior to the issuance of the bonds; *provided, however*, that such terms and conditions *shall* be consistent with this Section, and that the bonds *shall* mature *not later than* thirty-five (35) years after their date of issuance, *shall* bear interest at such rates and be sold for such price *or* prices as *shall* result in a yield to the bondholders that *does not exceed* six and one half percent (6.5%) per annum, *shall* require interest only payments for Fiscal Years 2012, 2013 and 2014 and *shall not* require bond principal payments until after such Fiscal Years.

(2) The terms and conditions of the second bond series *shall* be as approved by *I Liheslaturan Guåhan*, and as determined by *I Maga'lahen Guåhan* by the execution of a certificate *or* indenture authorizing the issuance of the bonds, prior to the issuance of the bonds; *provided, however*, that such terms and conditions *shall* be consistent with this Section, and that the bonds *shall* mature *not later than* thirty-five (35) years after their date of issuance, *shall* bear interest at such rates and be sold for such price *or* prices as *shall* result in a yield to the bondholders that *does not exceed* six and one half percent (6.5%) per annum, *may*

structure interest only payments for Fiscal Years 2012 and 2013 and *not* require bond principal payments until after such Fiscal Years.

(c) **Valid and Binding General or Limited Obligations.** The certificate or indenture pursuant to which the bonds authorized by this Section are issued *shall* provide that the bonds constitute the valid and legally binding general or limited obligations of the government of Guam payable from the revenues as defined in the certificate or indenture. The validity of any such bonds *shall not* be affected by the validity or regularity of any proceedings for the payment of the costs and expenses funded by such bonds. All officers charged by law with any duty in the collection of the revenues of the government from which debt service on the bonds will be payable *shall* do every lawful thing necessary to collect such sum. The validity of any such bonds *shall not* be affected by the validity *or* regularity of any proceedings for the payment of the expenses paid *or* to be paid with the proceeds of the bonds.

(d) **Cost-Benefit Analysis.**

(1) *I Maga'låhi* (the Governor) Authorized to Pledge Revenues. *I Maga'låhi* (the Governor) *shall* perform or cause to be performed expert independent financial and cost-benefit analysis to determine the more favorable financing for the government using the pledge, either business privilege tax revenues or General Obligation full faith and credit, for the repayment of the bond of which he is authorized to pledge. Such financial and cost-benefit analysis *shall* be performed by an independent, external party that *does not* have any financial interest in the bond financing or any connection to any party who may have a financial interest in the bond financing. The analysis *shall* include, but *not* be limited to, the following:

(i) impact upon existing General Obligation bondholders and/or lines of credit;

(ii) cost of funds differential between a General Obligation and a Limited Obligation bond structure;

(iii) likelihood of investment grade rating on a Limited Obligation bond structure;

(iv) ability to issue future General Obligation debt in the capital markets;

(v) indenture provisions that may limit government of Guam flexibility; and

(vi) additional security requirements that may impact or reduce net proceeds or affect government of Guam liquidity (i.e. reserve funds, coverage requirements, other covenants)

I Maga'låhen Guåhan shall first consult with the University of Guam to identify finance and economics professionals (professors or researchers), if any, within the University of Guam School of Business and Public Administration that hold the relevant experience and expertise necessary to perform the independent financial and cost-benefit analysis, to conduct the said analysis *before* seeking other potential providers. The University of Guam *shall* disclose the name(s) of all the faculty, staff or contracted individuals involved in the independent financial and cost-benefit analysis. The University of Guam *shall* have ten (10) days from the enactment of this Act, to inform *I Maga'låhen Guåhan* whether it agrees to provide the analysis.

Before any marketing of Limited Obligation bonds backed by a pledge of business privilege tax or General Obligation bonds can occur, the expert independent financial and cost-benefit analysis required in

this Subsection *shall be* provided to the Speaker of *I Liheslaturan Guåhan*.

Up to Twenty Five Thousand Dollars ($25,000) is appropriated from the operating fund balance, or its equivalent, of the Guam Economic Development Authority for the independent financial and cost-benefit analysis required in accordance with this Subsection.

(2) Pledge of Business Privilege Tax Revenues. The certificate or indenture pursuant to which the bonds authorized by this Section are issued *may* provide that the tax revenues derived from the levy of up to three (3) percentage points, out of the total number of percentage points levied from time to time, of the business privilege tax levied pursuant to Article 2 of Chapter 26 of Title 11, Guam Code Annotated, or any successor thereto, are pledged to secure the repayment of any bonds issued under this Section and to pay costs incurred in the issuance or administration of the bonds and any required reserves. Any such pledge made to secure the bonds *shall* be valid and binding from the time the pledge is made. The revenues pledged and thereafter received by the government of Guam or by any trustee, depository or custodian *shall* be deposited in a separate account entitled the "RAF Revenue Fund" and *shall* be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The certificate or indenture by which such pledge is created need *not* be recorded, and *shall* direct the distribution and disbursement of revenues from the RAF

Revenue Fund following their deposit therein. All such taxes to the extent so pledged are hereby continuously appropriated for such purpose. So long as any bonds issued pursuant to §1512.3, Title 5, Guam Code Annotated, remain outstanding, the government of Guam may *not* reduce the rate of levy and collection of the pledged business privilege tax below three percent (3%), *nor* may the government of Guam reduce the services, products or activities to which the pledged business privilege tax applies, nor may the government of Guam upwardly adjust any exception or exclusion to, *or* otherwise impair, the pledged business privilege tax.

(3) In the event the independent financial and cost-benefit analysis conclude that the pledge of the more favorable financing option for the repayment of the bond is credit-negative to any and all existing or authorized General Obligation bonds or lines of credit, the authorization of the bond issue *shall* be contingent upon final legislative approval of the financing terms including, but *not* limited to, the bond structure, security, indenture and covenants. *I Maga'lahi* (the Governor) *shall* request such approval from *I Liheslaturan Guåhan prior* to the sale of bonds in the market but *after* the credit rating on the bonds is secured and affirmation of the current General Obligation rating and outlook is received.

(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 ~~Six~~ Three Hundred Forty Three Million Seven Hundred Thousand Dollars (~~$600,0~~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.

(f) **Waiver of Immunity; Submission to Jurisdiction.** Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the government of Guam waives immunity from any suit or action in contract on the bonds or any other agreement or facility entered into in connection with the bonds, but *does not* waive immunity as to the personal liability of elected officials and employees of the government of Guam. Any such suit or action *shall* be brought in the District Court of Guam.

(g) **No Personal Liability.** No employee or elected official of the government of Guam shall be individually or personally liable for the payment of any amounts due on any bonds issued under this Section, or for any other liability arising in connection with the bonds; *provided, however,* that

nothing in this Section shall relieve any employee or elected official from the performance of a ministerial duty required by law.

(h) **Form of Bonds; Covenants; Appointment of Fiduciaries.** The technical form and language of the bonds, including provisions for execution, exchange, transfer, registration, paying agency, lost or mutilated bonds, negotiability, cancellation and other terms or conditions *not* inconsistent with this Section, including covenants relating to the collection and application of revenues, *shall* be as specified in the certificate or indenture executed by *I Maga'lahen Guåhan* authorizing issuance of the bonds. Said certificate or indenture *shall* appoint one or more trustees, co-trustees or other fiduciaries authorized to receive and hold in trust the proceeds of the bonds, the revenues and other moneys relating thereto, to protect the rights of bondholders and to perform such other duties as may be specified in the indenture. *I Maga'lahen Guåhan* is also authorized to execute any appropriate agreements, certificates or other instruments relating to the bonds and the sale of bonds.

(i) **Authorization for Credit Enhancement.** *I Maga'lahen Guåhan* is authorized to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as he determines are necessary or desirable to improve the security and marketability of the bonds issued under this Section. Such contracts or agreements *may* obligate the government to reimburse, with interest, any such banks, insurance companies or other financial institutions for advances they make to pay principal of or interest on the bonds and to indemnify any such banks, insurance companies or other financial institutions for costs and expenses incurred in connection with any such advance. Any such reimbursement obligation and any other obligations of the government of Guam under such contracts or

agreements *shall* be limited obligations of the government of Guam payable from and secured by the revenues as provided by the certificate *or* indenture. Any such reimbursement obligation and any other obligations of the government of Guam under such contracts or agreements *shall* be treated, under § 11 of the Organic Act, as creating an obligation issued to refund the bonds.

(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 PL 28-38, as amended by PL 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 and the Guam Memorial Hospital Authority principal and

interest pursuant to PL 28-38, as amended by PL 31-74; pay for the design, construction, re-construction, rehabilitation, and/or maintenance of School Facilities; 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.

(k) **Permitted Investments.** The bond proceeds and any revenues pledged to secure the payment of the bonds are authorized to be, and *shall only* be, invested in those investments permitted by the certificate or indenture pursuant to which such bonds are issued. Permitted investments *shall* include investment agreements, forward purchase agreements or similar structured contracts as further described in the certificate *or* indenture authorizing the issuance of the bonds.

(l) **Approval by Guam Economic Development Authority.** No bonds authorized by this Section shall be sold until the Board of Directors of GEDA has approved the sale by resolution.

(m) **Approval of Voters *Not* Required.** The issuance of bonds pursuant to this Section *shall not* be subject to the approval of the voters of Guam.

(n) **Approval of Bonds.** *I Liheslaturan Guåhan*, pursuant to Subsection (b) of this Section and §50103(k), Title 12, Guam Code Annotated, hereby approves the issuance and sale by the government of Guam of the bonds for the purposes and in the aggregate principal amount authorized by §1512.3, Title 5, Guam Code Annotated; *provided* that such bonds are issued and sold subject to the terms, conditions, requirements and limitations mandated therein.

(o) **Deposit of Bond Proceeds to Pay Income Tax Refunds.** The portion of the bond proceeds authorized by this Section that is mandated 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.

(p) **Bond Proceeds *Not* Subject to Transfer Authority.** The proceeds of the bonds authorized by this Section *shall not* be subject to any transfer authority of *I Maga'lahen Guåhan.*

(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, and/or maintenance contracts for any School

Facility 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 3. Section 24102(a) of Article 1 Chapter 24 Division 2 of Title 11 Guam Code Annotated is hereby amended to read as follows:

"**§ 24102.** (a) *Property* means land and improvements on land~~, and includes the interest of a lessee or licensee of land owned by the Chamorro Land Trust Commission~~."

Section 4. Section 24102(f) of Article 1 Chapter 24 Division 2 of Title 11 Guam Code Annotated is hereby amended to read as follows:

"**§ 24102.** (f) *Value, full cash value, fair market value* and *cash value* means ~~ninety percent (90%)~~ 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 Title 11 GCA §24306, 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~~."

Section 5. Section 24103 of Article 1 Chapter 24 Division 2 of Title 11 Guam Code annotated is hereby amended to read as follows:

"**§ 24103. Levy**.

There is hereby levied on all land property in Guam a yearly tax at the rate of ~~seven-seventy seconds (7/72%)~~ seven-eightieths percent (**7/80**%) of the value thereof and ~~seven-eighteenths percent (7/18%)~~ 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 Treasury of Guam to the credit of the General Fund."

Section 6. Section 24401 of Article 4 Chapter 24 Division 2 of Title 11 Guam Code Annotated is hereby amended to read as follows:

"**§ 24401. Exemptions: Listed.**

The following property is exempt from real property taxes and shall not be assessed:

(a) All property title to which is in the United States or the government of Guam~~, except for the interest of a lessee or licensee in land owned and leased or licensed by the Chamorro Land Trust Commission~~;

(b) All property which is being used for public roads or easements;

(c) All property used exclusively for educational, religious, or other eleemosynary purposes;

(d) Property included in any cemetery in use as such and not conducted for profit.

(e) Property upon which the provisions of 21 GCA § 61504 prohibit the construction of buildings.

(f) Property use in active farming for at least eight (8) months in any tax year."

Section 7. Section 75112(i) of Chapter 75 Title 21 Guam Code Annotated is hereby amended to read as follows:

"**§ 75112(i). Applicable Taxes on Chamorro Homelands.** Notwithstanding any other provision of law:

(1) Taxes on Chamorro Land Trust Land. The holder of any lease or license for the occupation or beneficial use of Chamorro Homelands shall be subject to all applicable taxes on ~~the lessee's or licensee's interest in the land and on~~ any improvements to any tract ~~land~~ so leased or licensed. Taxes assessed for improvements shall be collected by the Department of Revenue and Taxation, which shall maintain a separate record for all such taxes collected.

(2) Payment in Lieu of Real Property Taxes on Chamorro Land Trust Land. In lieu of payment of real property taxes, the holder of any lease or license for the occupation or beneficial use of Chamorro Homelands shall pay to the Department of Revenue and Taxation the equivalent sum which would otherwise be paid to the government of Guam in real property taxes, as if the tract or tracts were taxable private real property. For the purpose of assessing payment in lieu of taxes, the Department of Revenue and Taxation shall determine and collect an assessment in a manner consistent with the assessment of real property taxes for privately owned real property. The Department of Revenue and Taxation shall maintain a separate record of all payments in lieu of taxes collected.

(3) Deposit and Earmarking of Funds Collected. All taxes on improvements or payments in lieu of taxes-identified in Items 1 and 2 of Subsection (i) of this Section shall be deposited in the Chamorro Loan Guarantee Fund, and is earmarked to carry out the purposes set forth pursuant to this Chapter."

Section 8. Subsection (d) is hereby *added* to § 22704 of Chapter 22 of Title 5 of the Guam Code Annotated to read as follows:

"(d) No lease-purchase agreement for office space and other facilities for the purpose of providing office and other space for the departments and agencies of the Judicial and Executive Branches of the government of Guam *shall not* be authorized to be paid for through the issuance of tax credits without the advice and consent of the Guam Legislature."

Section 9. Section 2(b) of Public Law 30-37 is hereby *amended* to read as follows:

"(b) *Lease* shall mean the contract between the Lessor Core Tech International Corporation and the Government of Guam for the lease and maintenance of interim school facilities at the former interim JFK site in *Tiyan* and the purchase of collateral equipment subject to the availability of funds and annual legislative approval of tax credits for said lease."

Section 10. Subsection (d) is hereby *added* to Section 3 of Public Law 30-37 to read as follows:

"(d) **Conflicts Prohibited**. Notwithstanding any provision in this Act, no Covered Person, as such term is defined below, *shall* be eligible to be assigned or transferred, in whole or in part, any tax credit authorized in this Act by the Lessor. For purposes of this Section, the term "Covered Person" *shall* mean any:

(1) elected or appointed official of the government of Guam that executed the Lease or any amendments to the Lease on or after June 1, 2011.

(2) 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 subsection (1) of this Section and his or her sole proprietorship,

partnership, and/or corporation in which he or she has an ownership interest of five percent (5%) or more."

Section 11. Section 7 of Public Law 30-37 is hereby *amended* to read as follows:

"**Section 7. Payment of Lease Expenses.** All government of Guam agencies, divisions, and departments occupying space at the *Tiyan* Campus (former interim JFK site) for any purpose other than as school facilities, and pursuant to an award of an Invitation for Bid, are hereby authorized to pay for lease expenses ~~through the use of tax credits~~ authorized in Section 3, ~~or to pay for lease expenses~~ from approved appropriations for office space rental provided in the Annual Appropriations Act of 2012. FY 2012 appropriations to any agency occupying space at the *Tiyan* Campus for non-school facilities pursuant to this Section *shall* be reduced and deappropriated in the amount of any tax credits given."

Section 12. Section 7 of Public Law 31-76 is hereby *amended* to read as follows:

"**Section 7.** Sections 4 ~~and 6~~ of Public Law 30-37 ~~are~~ is hereby *repealed."*

Section 13. Section 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 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;*~~

(G) for the design and construction of a Guam Fisherman's Cooperative Association facility at the *Paseo de Susana* in accordance with Public Law 14-149 as amended."

Section 14. Section 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 15. 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.