

*I Mina'trentai Sais Na Lihelaturan Guåhan*  
**BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
40-36 (COR)	Committee on Rules	AN ACT TO ADD §1512.5 TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE REFUNDING OF GOVERNMENT OF GUAM BUSINESS PRIVILEGE TAX BONDS, SERIES 2011A, GOVERNMENT OF GUAM BUSINESS PRIVILEGE TAX BONDS, SERIES 2012B, AND GOVERNMENT OF GUAM BUSINESS PRIVILEGE TAX REFUNDING BONDS, SERIES 2015D, AND RELATED MATTERS.	1/25/21 11:51 a.m.						

*I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN*  
2021 (FIRST) REGULAR SESSION

Bill No. 40-36 (COR)

Introduced by:

  
Committee on Rules

At the request of *I Maga'hågan Guåhan*, the Governor of Guam, in accordance with the Organic Act of Guam

**AN ACT TO ADD §1512.5 TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE REFUNDING OF GOVERNMENT OF GUAM BUSINESS PRIVILEGE TAX BONDS, SERIES 2011A, GOVERNMENT OF GUAM BUSINESS PRIVILEGE TAX BONDS, SERIES 2012B, AND GOVERNMENT OF GUAM BUSINESS PRIVILEGE TAX REFUNDING BONDS, SERIES 2015D, AND RELATED MATTERS.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

1           **Section 1.** Section 1512.5 is hereby added to Title 5, Guam Code Annotated as follows:

2                   **“§1512.5. Authorization of Refunding of Government of Guam Business**  
3 **Privilege Tax Bonds, Series 2011A, Government of Guam Business Privilege Tax Bonds,**  
4 **Series 2012B, and Government of Guam Business Privilege Tax Refunding Bonds, Series**  
5 **2015D.**

6                   (a)       **Authorization of Issuance of Bonds.** Pursuant to § 50103(k), Title 12,  
7 Guam Code Annotated, *I Maga'hågan Guåhan* is authorized to issue one or more series of tax-  
8 exempt or taxable bonds of the government of Guam from time to time, including, but not limited  
9 to, on a forward basis, for the purpose of refunding all or a portion of the Government of Guam's  
10 outstanding Business Privilege Tax Bonds, Series 2011A (the “2011A Bonds”), its Business  
11 Privilege Tax Bonds, Series 2012B (the “2012B Bonds”), and/or its Business Privilege Tax

1 Refunding Bonds, Series 2015D (the “2015D Bonds”) and, together with the 2011A Bonds and  
2 the 2012B Bonds, (herein the “Prior Bonds”), in accordance with the following requirements,  
3 limitations, terms and conditions:

4 (1) All obligations of the Government to pay debt service on, and  
5 the redemption price of, the Prior Bonds refunded shall be discharged  
6 concurrently with the issuance of the refunding bonds. Thereafter, such  
7 Prior Bonds shall be payable solely from and secured solely by an escrow  
8 established for such purpose in accordance with the Government’s existing  
9 bond indenture or otherwise shall be redeemed on the closing date of the  
10 refunding bonds.

11 (2) The debt service savings resulting from the issuance of the  
12 refunding bonds shall be not less than an amount equal to two percent (2%)  
13 of the principal amount of the Prior Bonds refunded, inclusive of all charges  
14 and fees for bond counsel and bond underwriters and other costs of issuance  
15 in connection with the issuance, sell and delivery of the bonds. Debt service  
16 savings is defined for this purpose to be the amount by which the present  
17 value of debt service on the Prior Bonds exceeds the present value of debt  
18 service on the refunding bonds, using the yield on the refunding bonds as  
19 the discount rate for purposes of calculating present value. This provision  
20 shall not apply to the refunding of Prior Bonds for the primary purpose of  
21 providing cash flow relief to the Government.

22 (3) Such refunding bonds shall have a principal amount or principal  
23 amounts sufficient to provide funds for the payment of all or a portion of  
24 the Prior Bonds refunded, and in addition, for the payment of all expenses  
25 incident to the calling, retiring or paying of such Prior Bonds and the  
26 issuance of such refunding bonds, including:

1 (i) the difference in amount between the par value of the  
2 refunding bonds and any amount less than par for which the  
3 refunding bonds are sold;

4 (ii) any amount necessary to be made available for the  
5 payment of interest upon such refunding bonds from the date of sale  
6 thereof to the date of payment of the Prior Bonds or to the date upon  
7 which the Prior Bonds will be paid pursuant to the call thereof or  
8 agreement with the holders thereof;

9 (iii) the premium, if any, necessary to be paid in order to  
10 call or retire the Prior Bonds and the interest accruing thereon to the  
11 date of the call or retirement; and

12 (iv) any additional amount needed to provide for a  
13 deposit to the debt service reserve in connection with the issuance  
14 of the refunding bonds.

15 (4) The issuance of the refunding bonds shall not result in any  
16 increase in the aggregate amount of the government's outstanding "public  
17 indebtedness" as that term is used in 48 USC 1423a (§11 of the Organic Act  
18 of Guam).

19 (5) The refunding bonds shall have a final maturity not later than the  
20 final maturity of the Prior Bonds; *provided, however*, that this provision  
21 shall not apply to the refunding of Prior Bonds for the primary purpose of  
22 providing cash flow relief to the Government.

23 **(b) Terms and Conditions Determined by Certificate or Indenture.** The  
24 terms and conditions of the bonds shall be as determined by *I Maga'hagan Guåhan*  
25 by the execution of a certificate or indenture authorizing the issuance of the bonds  
26 upon or prior to the issuance of the bonds.

1                   (c) **Pledge of Business Privilege Tax Revenues.** All bonds authorized by  
2                   Subsection 1512.5 (a) of Article 5, Chapter 1, Title 5, Guam Code Annotated, as  
3                   may be amended from time to time (the “BPT Bonds”), shall be secured by a statutory  
4                   lien on all tax revenues derived from the levy of the first three (3) percentage points,  
5                   out of the total number of percentage points levied from time to time, of the business  
6                   privilege tax levied pursuant to Article 2 of Chapter 26 of Title 11, Guam Code  
7                   Annotated, or any successor thereto (“Pledged business privilege tax revenues”).  
8                   This lien shall arise automatically without the need for any action or authorization  
9                   by *I Maga’hågan Guåhan*, the government of Guam, or any other person or entity.  
10                  Such lien shall be valid and binding from the time such BPT Bonds are issued. The  
11                  Pledged business privilege tax revenues shall immediately be subject to such lien,  
12                  and the lien shall automatically attach to the Pledged business privilege tax  
13                  revenues and be effective, binding, and enforceable against *I Maga’hågan Guåhan*,  
14                  the government of Guam, their successors, assignees, and creditors, and all others  
15                  asserting rights therein, irrespective of whether those parties have notice of the lien  
16                  and without the need for any physical delivery, recordation, filing, or further act.  
17                  Pledged business privilege tax revenues received by the government of Guam or by  
18                  any trustee, depository or custodian shall be deposited in a separate account entitled  
19                  the “BPT Revenue Fund”. Pledged business privilege tax revenues that are not  
20                  required to make payments on the BPT Bonds shall automatically, and without the  
21                  need for any further action, be released from such lien and shall be available for  
22                  appropriation for any other lawful purpose of the government. The statutory lien  
23                  described in this paragraph shall not be subject to Division 9 of Title 13 of the  
24                  Guam Code Annotated or any successor statute.

25                  (d) In addition to the statutory lien provided for above, all or any part of the  
26                  Pledged business privilege tax revenues may be pledged, if and to the extent  
27                  determined by *I Maga’hågan Guåhan*, to secure the payment of any BPT Bonds

1 issued pursuant to that certain Indenture, dated as of December 1, 2011, by and  
2 among the government of Guam, Bank of Guam, as trustee, and U.S. Bank National  
3 Association, as co-trustee, as amended or supplemented from time to time in  
4 accordance with its terms (the "BPT Indenture"). Any such pledge shall be valid  
5 and binding against all parties in accordance with its terms and have priority against  
6 all parties in accordance with its terms from the time the pledge is made, and  
7 property so pledged shall immediately be subject to the lien of the pledge without  
8 the need for physical delivery, recordation, filing, or other further act. The pledge  
9 shall not be subject to Division 9 of Title 13 of the Guam Code Annotated or any  
10 successor statute. The BPT Indenture by which such pledge is created need not be  
11 recorded, and shall direct the distribution and disbursement of revenues from the  
12 BPT Revenue Fund following their deposit therein. All such taxes to the extent so  
13 pledged are hereby continuously appropriated for such purpose. So long as any  
14 bonds issued pursuant to the BPT Indenture, including but not limited to those  
15 authorized under § 1512.5(a), Title 5, Guam Code Annotated, as may be amended  
16 from time to time, remain outstanding, the government of Guam may not reduce  
17 the rate of levy and collection of the pledged business privilege tax below three  
18 percent (3%), nor may the government of Guam reduce the services, products or  
19 activities to which the pledged business privilege tax applies, nor may the  
20 government of Guam upwardly adjust any exception or exclusion to, or otherwise  
21 impair, the pledged business privilege tax.

22 (e) **Valid and Binding.** The bonds authorized by this Section shall  
23 constitute the valid and binding limited obligations of the government of Guam,  
24 secured by a pledge of the Pledged business privilege tax revenues described in  
25 subsection (c) of this Section, all as further specified below in such subsection. All  
26 officers charged by law with any duty in the collection of the revenues of the

1 government from which debt service on the bonds will be payable shall do every  
2 lawful thing necessary to collect such sum.

3 (f) **Appropriation of Revenues.** All revenues are hereby appropriated for  
4 the purposes of paying the principal and interest on the bonds issued pursuant to  
5 this Section. Revenues released from the lien of the indenture or certificate  
6 pursuant to which the bonds are issued shall be available for appropriation by *I*  
7 *Maga'hågan Guåhan* for any other lawful purpose.

8 (g) **Additional Bonds.** Nothing in this Section shall be construed to  
9 prevent the government from issuing, after appropriate enabling legislation, other  
10 obligations secured by Pledged business privilege tax revenues on a parity with or  
11 subordinate to the bonds or the government's obligations with respect thereto  
12 authorized by this Section on such terms as may be provided by the indenture or  
13 certificate pursuant to which the bonds are issued. Nothing in this Section shall be  
14 construed to prevent the government of Guam from issuing, after appropriate  
15 enabling legislation, other obligations of the government secured by the general  
16 obligation of the government on a parity with or subordinate to the bonds authorized  
17 by this Section on such terms as may be provided by the indenture or certificate  
18 pursuant to which the bonds are issued.

19 (h) **Waiver of Immunity; Submission to Jurisdiction.** Notwithstanding  
20 any substantive or procedural provision of Chapter 6 of Title 5, Guam Code  
21 Annotated, the government of Guam waives immunity from any suit or action in  
22 contract on the bonds, but does not waive sovereign immunity as to the personal  
23 liability of elected officials and employees of the government of Guam. The  
24 government hereby submits to jurisdiction of the Federal District Court for the  
25 District of Guam for purposes of any such suit or action in contract on the bonds.

26 (i) **No Personal Liability.** No employee or elected official of the  
27 government of Guam shall be individually or personally liable for the payment of

1 any amounts due on any bonds issued under this Section, or for any other liability  
2 arising in connection with the bonds; provided, however, that nothing in this  
3 Section shall relieve any employee or elected official from the performance of any  
4 ministerial duty required by law.

5 (j) **Form of Bonds; Covenants; Appointment of Fiduciaries.** The  
6 technical form and language of the bonds, including provisions for execution,  
7 exchange, transfer, registration, paying agency, lost or mutilated bonds,  
8 negotiability, cancellation and other terms or conditions not inconsistent with this  
9 Section, including covenants relating to the collection of Pledged business privilege  
10 tax revenues, shall be as specified in the certificate or indenture executed by *I*  
11 *Maga'hågan Guåhan* authorizing the issuance of the bonds. The certificate or  
12 indenture shall appoint one or more trustees, co-trustees or other fiduciaries  
13 authorized to receive and hold in trust the proceeds of the bonds, the Pledged  
14 business privilege tax revenues and other moneys relating thereto, to protect the  
15 rights of bondholders and to perform such other duties as may be specified in the  
16 indenture. *I Maga'hågan Guåhan* is also authorized to execute, on behalf of the  
17 government of Guam, any appropriate agreements, certificates or other instruments  
18 relating to the bonds and the sale of bonds.

19 (k) **Authorization for Credit Enhancement.** *I Maga'hågan Guåhan* is  
20 authorized to enter into such contracts or agreements with such banks, insurance  
21 companies or other financial institutions as she determines are necessary or  
22 desirable to improve the security and marketability of the bonds issued under this  
23 Section, if and only if such contracts or agreements reduce the cost of the debt by  
24 more than the cost of credit enhancement. Such contracts or agreements may  
25 contain an obligation to reimburse, with interest, any such banks, insurance  
26 companies or other financial institutions for advances used to pay principal of or  
27 interest on the bonds and to indemnify any such banks, insurance companies or



1 other financial institutions for costs and expenses incurred in connection with any  
2 such advance. Any such reimbursement obligation and any other obligations of the  
3 government under such contracts or agreements shall be general obligations of the  
4 government of Guam and shall additionally be secured by a pledge of, Pledged  
5 business privilege tax revenues, and any such advance, if necessary, shall be treated  
6 for Organic Act purposes as creating an obligation issued to refund the bonds.

7 (l) **Use of Proceeds from the Sale of the Bonds.** The proceeds from the  
8 sale of the bonds shall be used and are hereby appropriated to (i) fund an escrow to  
9 pay principal, interest and redemption price of Government of Guam Business  
10 Privilege Tax Bonds, Series 2011A, Government of Guam Business Privilege Tax  
11 Bonds, Series 2012B, and Government of Guam Business Privilege Tax Refunding  
12 Bonds, Series 2015D, or otherwise to pay in full such 2011A Bonds, 2012B Bonds  
13 or 2015D Bonds; (ii) pay expenses relating to the authorization, sale and issuance  
14 of the bonds, including, without limitation, printing costs, costs of reproducing  
15 documents, credit enhancement fees, underwriting, legal, financial advisory and  
16 accounting fees and charges, fees paid to banks or other financial institutions  
17 providing credit enhancement, costs of credit ratings and other costs, charges and  
18 fees in connection with the issuance, sale and delivery of the bonds, and (iii) fund  
19 capitalized interest on the bonds for a period not longer than twelve (12) months  
20 from the date of issuance of such bonds.

21 (m) **Permitted Investments.** The proceeds of the bonds, and any Pledged  
22 business privilege tax revenues relating to such bonds, may be invested in, but only  
23 in, the types of investments permitted by the certificate or indenture pursuant to  
24 which such bonds are issued.

25 (n) **Approval by Guam Economic Development Authority.** §50103(k),  
26 Title 12, Guam Code Annotated, provides that agencies and instrumentalities of the  
27 Government of Guam shall issue bonds and other obligations only by means of and

1 through the agency of the Guam Economic Development Authority (“GEDA”). No  
2 issue of bonds authorized by this Section shall be sold until the board of directors  
3 of GEDA has adopted a resolution approving the sale of such issue.

4 (o) **Approval of Voters Not Required.** Notwithstanding any law to the  
5 contrary, the issuance of the bonds authorized by this Section shall not be required  
6 to be subject to the approval of, or placed before, the voters of Guam.

7 **Section 2. Local Sales of Bonds.** *I Maga’hagan Guåhan* shall undertake their best efforts  
8 to cause a portion of any bonds issued pursuant to Section 1 of this Act (Section 1512.5, Title 5,  
9 Guam Code Annotated), to be offered for sale to residents of Guam, as well as to residents of other  
10 jurisdictions, if and to the extent that such offer and any sales resulting from such offer do not  
11 increase the costs to the government of Guam of issuing and repaying such bonds.

12 **Section 3. Bond Proceeds Not Subject to Transfer Authority.** The proceeds of the  
13 bonds approved by Section 3 of this Act shall not be subject to any transfer authority of *I*  
14 *Maga’hagan Guåhan*.

15 **Section 4. Severability.** If a provision of this act or its application to any person or  
16 circumstance is held invalid, the invalidity does not affect other provisions or applications of the  
17 act that can be given effect without the invalid provision or application, and to this end the  
18 provisions of this act are severable.