

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (SECOND) Regular Session

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Bill No. 344-31 (cor)

Introduced by:

V.C. Pangelinan



AN ACT TO *AMEND* §24102(a) AND §24102(f) AND §24103 of ARTICLE 1 CHAPTER 24 DIVISION 2 OF TITLE 11 GUAM CODE ANNOTATED AND TO *AMEND* §24401 OF ARTICLE 4 CHAPTER 24 DIVISION 2 OF TITLE 11 GUAM CODE ANNOTATED AND TO *AMEND* §75112(i) OF CHAPTER 75 OF TITLE 21 GUAM CODE ANNOTATED RELATIVE TO CHAMORRO LAND TRUST PROPERTIES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Statement and Intent.** The Guam Legislature
2 finds that the recent law to remove Chamorro Land Trust (CLT) properties from
3 the exempt status of properties and place CLT properties leased or licensed on the
4 property tax rolls was done for the purpose of increasing the amount the
5 government of Guam can borrow under Section 11 of the Organic Act and keeping
6 the “aggregate value” of properties at ninety percent (90%) of the appraised value
7 when calculating the debt limit.

8 The addition of the CLT properties to the tax roll would have resulted in a
9 debt ceiling, which yields debt available for future obligations of approximately
10 \$243.6 million, the amount desired by the Administration. In reviewing the list of
11 CLT properties placed on the tax roll there are duplications in lots, properties
12 placed on the tax rolls without names of licensees or lessees and no tax assessed on
13 the lots, all which would require the removal of the lots from the tax roll, thus
14 reducing the total debt limit.

1 In placing the CLT properties on the tax rolls, the law was correspondingly
2 changed so that the payment in lieu of taxes (PILT) assessed on CLT licensees and
3 lessees are now assessed a property tax instead. This change could effectively
4 subject CLT property to tax foreclosure which may result in CLT properties being
5 lost by the Trust.

6 Of even greater concern is the changes to the enabling legislation
7 establishing the Chamorro Land Trust may open up the Trust to legal challenges
8 which could threaten the legal viability of the Trust as litigated and decided by the
9 Courts of Guam. Restoring the law establishing the Trust to its enabling legislation
10 structure will place the legal footing of the Trust on the solid foundation, which has
11 withstood the test of Court action.

12 Furthermore, the law requires that each CLT property must be licensed or
13 leased to be placed in the tax roll for the value to be included in the debt ceiling
14 calculation. The current roll provided to the Legislature has presented more
15 questions than answers on which CLT lands are properly on the tax roll. This
16 presents an incalculable value and may result in lower borrowing that could be
17 certified by the Board of Equalization.

18 The passage of Public Laws 31-76 and 31-78 authorize the issuance of
19 bonds up to a debt ceiling of 10% of 90% of the appraised property value inclusive
20 of the leased and licensed taxable CLT property.

21 Exhibit A calculates the debt ceiling and amount available for future debt
22 obligation based on the 2011 Preliminary Property Tax Roll, Exemptions and the
23 appraised value of proposed CLT taxable property values presented to *I*
24 *Liheslaturan Guåhan* during the discussion of now Public Law 31-78 by the
25 Department of Revenue and Taxation (DRT).

26 **Exhibit A**

27 **Amount Available for Future Debt Obligation at 90% of Taxable Appraised Value**

with Chamorro Land Trust Appraised Land Values

	Land	Improvements	Total
2011 Total Assessed Valuation of Real Property as of 9/2/2011	\$6,081,643,193	\$4,870,628,080	\$10,952,271,27
Less 2011 Total Assessed Valuation of Real Property Exempted			
Pursuant to 11GCA § 24401			
(a) All property title to which is in the United States or the government of Guam;	\$637,379,498	\$10,373,816	\$647,753,31
(b) All property which is being used for public roads or easements;	\$22,673,937	\$0	\$22,673,93
(c) All property used exclusively for educational, religious, or other eleemosynary purposes;	\$50,861,470	\$39,317,926	\$90,179,39
(d) Property included in any cemetery in use as such and not conducted for profit;	\$22,870,990	\$1,425,101	\$24,296,09
(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.	\$114,874,453	\$69,791,614	\$184,666,06
	<u>\$848,660,347</u>	<u>\$120,908,457</u>	<u>\$969,568,80</u>
Less 2011 Total Assessed Valuation of Real Property Exempted			
Pursuant to 11GCA § 24402	\$0	\$0	\$
Less 2011 Total Assessed Valuation of Real Property Exempted			
Pursuant to 11GCA § 24408	?	?	
Add CLTC Assigned Real Property Tax Values for leased/licensed			
Property	b/t \$55.8 and \$357M	---	\$357,263,22
Assessed Value Less Exemptions (95% of Taxable Appraised Value)	\$5,590,246,068	\$4,749,719,623	\$10,339,965,69
Debt Limit (Ceiling) - 10% of Aggregate Value			<u>10%</u>
Prospective Total GOG Debt Subject to 10% Assessed Value			\$1,033,996,56
Limitation (Ceiling) as of December 31, 2011			<u>\$790,331,31</u>
Amount Available for Future Debt Obligation			\$243,665,25

29 The maximum amount available to borrow based on Public Laws 31-76 and
30 31-78 is approximately \$244 million. Based on the review of the 2011 Preliminary
31 Property Tax Roll and the appraised value of proposed CLT taxable property
32 values provided by the DRT, it is likely that the amount available to borrow will be
33 much lower than \$244 million because bond counsel will not be able to ascertain

1 with any degree of certainty the value of taxable CLT property added to the 2011
2 Preliminary Property Tax Roll.

3 The distinction between registered and unregistered CLT leases is based on
4 CLT property surveyed with an accompanying certified registered map at the
5 Department of Land Management (DLM). CLT property surveyed and registered
6 with the DLM are then placed in a separate CLT property roll by the DRT that
7 determines and collects an assessment in a manner consistent with the assessment
8 of real property taxes for privately owned real property. Unsurveyed and
9 unregistered CLT property leased and licensed are not taxable due to lack of
10 assignable land area and the ability to appraise said unknown land area.

11 The Governor's Chief Policy Advisor testified during the discussion of now
12 Public Law 31-78 that it is impossible to reconcile which Government of Guam
13 lands owned by the CLT in the 2011 Preliminary Property Tax Roll are in fact
14 leased or licensed prior to the issuance of the bond authorized in P.L. 31-76; nor is
15 the DRT able to provide proof that Payment in Lieu of Taxes for use of the
16 estimated \$357 million assessed value of leased and licensed CLT land was billed
17 and collected since the issuance of said leases and licenses between August 1993
18 and present.

19 The current CLT official list of registered and unregistered leases totals
20 2700. Compared to the CLT official residential lease list of 2700, only 361
21 residential properties are on the DRT CLT Property Roll. The remaining 2,339
22 leases are unregistered and therefore not able to be taxed. The total assessed value
23 of 361 CLT leased and 48 CLT licensed properties currently in the DRT CLT
24 Property Roll is \$55.8 million or \$301 million less than the amount presented to *I*
25 *Liheslaturan Guåhan* by Administration officials. Therefore the verifiable debt
26 ceiling amount only yields \$213.5 million available for future debt obligations
27 which is \$30 million less than the anticipated amount of \$243.6 million.

1 Even more detrimental to the bond authorization granted is the fact that it
 2 will jeopardize the issuance of an “unqualified” opinion by the government’s bond
 3 counsel, which threatens the issuance of the bond in a timely manner. Due to large
 4 number of leases not yet surveyed and lessees without recorded maps, the
 5 unregistered CLT properties leave the issuance of all futures bonds subject to
 6 challenge by litigation which is contrary to the intent of *I Liheslaturan Guåhan*.

7 *I Liheslaturan Guåhan* seeks to avoid the delay of issuing the bond
 8 authorized in P.L. 31-76 by reversing P.L. 31-78 and raising the debt ceiling to
 9 10% of 93% of the appraised value of taxable property. The effectuated change to
 10 current property tax laws in this Act guarantee the amount available for future debt
 11 obligation at \$241 million and documented in Exhibit B.

12 **Exhibit B**

13 **Amount Available for Future Debt Obligation at 93% of Taxable Appraised Value**
 14 **without Chamorro Land Trust Appraised Land Values**

	Land	Improvements	Total
15 2011 Total Assessed Valuation of Real Property as of 9/2/2011	\$6,284,364,632	\$5,032,982,349	\$11,317,346,982
16 Less 2011 Total Assessed Valuation of Real Property Exempted			
17 Pursuant to 11GCA § 24401			
18 (b) All property title to which is in the United States			
19 or the government of Guam;	\$658,625,481	\$10,719,610	\$669,345,091
20 (h) All property which is being used for public roads or easements;	\$23,429,734	\$0	\$23,429,734
21 (i) All property used exclusively for educational, religious, or			
22 other eleemosynary purposes;	\$52,556,852	\$40,628,524	\$93,185,376
23 (j) Property included in any cemetery in use as such and not			
24 conducted for profit;	\$23,633,357	\$1,472,604	\$25,105,961
25 (k) Property upon which the provisions of 21 GCA §61504 prohibit			
26 the construction of buildings;	?	?	?
27 (l) Property use in active farming for at least eight (8) months			
28 in any tax year.	\$118,703,601	\$72,118,001	\$190,821,602
29	\$876,949,025	\$124,938,739	\$1,001,887,765
30			
31 Less 2011 Total Assessed Valuation of Real Property Exempted			

1	Pursuant to 11GCA § 24402	\$0	\$0	\$0
2	Less 2011 Total Assessed Valuation of Real Property Exempted			
3	Pursuant to 11GCA § 24408	_____	_____	_____
4	Assessed Value Less Exemptions (93% of Taxable Appraised Value)	\$5,407,415,607	\$4,908,043,610	\$10,315,459,217
5	Debt Limit (Ceiling) - 10% of Aggregate Value			<u>10%</u>
6	Prospective Total GOG Debt Subject to 10% Assessed Value			\$1,031,545,922
7	Limitation (Ceiling) as of December 31, 2011			<u>\$790,331,312</u>
8	Amount Available for Future Debt Obligation			\$241,214,609

9 It is the desire of *I Liheslaturan Guåhan* to ensure that the amount of
10 borrowing capacity intended to be achieved by the additional CLT properties is
11 made available to the Administration for the payment of income tax refunds,
12 COLA, retirement fund obligations and other authorized uses through the issuance
13 of bonds.

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

16 “§ 24102. (a) *Property* means land and improvements on land, ~~and includes~~
17 ~~the interest of a lessee or licensee of land owned by the Chamorro Land Trust~~
18 ~~Commission.”~~

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

21 “§ 24102. (f) *Value, full cash value, fair market value and cash value*
22 means ~~ninety percent (90%)~~ ninety-three percent (93%) of the appraised value;
23 *appraised value* means the amount at which property would be taken in payment of
24 a just debt from a solvent debtor as determined by the last completed valuation
25 conducted pursuant to Title 11 GCA §24306, as amended by the annual
26 adjustments mandated in this Chapter. ~~The appraised value of the interest of a~~
27 ~~lessee or licensee of land owned by the Chamorro Land Trust Commission shall be~~
28 ~~the appraised value of the land, not including improvements.”~~

1 **Section 4.** Section 24103 of Article 1 Chapter 24 Division 2 of Title 11 Guam Code
2 annotated is hereby amended to read as follows:

3 “**§ 24103. Levy.** There is hereby levied on all land property in Guam a
4 yearly tax at the rate of ~~seven-seventy seconds (7/72%)~~ one hundred seventy five-
5 one hundred eighty sixths percent (175/186%) of the value thereof and ~~seven-~~
6 ~~eighteenths percent (7/18%)~~ thirty five-ninety thirds percent (35/93%) of the value
7 of the improvements thereon. Such tax shall be assessed and collected in the
8 manner prescribed in this Chapter. All proceeds derived by the government under
9 any provision of this Chapter *shall* be deposited in the Treasury of Guam to the
10 credit of the General Fund.”

11 **Section 5.** Section 24401 of Article 4 Chapter 24 Division 2 of Title 11 Guam
12 Code Annotated is hereby amended to read as follows:

13 “**§ 24401. Exemptions: Listed.**

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

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

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

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

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

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

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

26 **Section 6.** Section 75112(i) of Chapter 75 Title 21 Guam Code Annotated is
27 hereby amended to read as followso:

1 “§ 75112(i). **Applicable Taxes on Chamorro Homelands.** Notwithstanding
2 any other provision of law:

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

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

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

24 **Section 7. Severability.** If any provisions of this Act or the application
25 thereof to any person or circumstance is held invalid, such invalidity *shall* not
26 affect any other provision or application of this Act which can be given effect

1 without the invalid provision or application, and to this end the provisions of this
2 Act are severable.

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