

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

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Bill No. 526-31 (OR)

Introduced By:

Sam Mabini, Ph.D. *SM*
Aline A. Yamashita, Ph.D. *ay*

AN ACT TO AMEND SUBSECTIONS (a) and (j) OF §1512.3 OF ARTICLE 5, CHAPTER 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE REFUNDING OF GOVERNMENT OF GUAM GENERAL OBLIGATION BONDS, 1993 SERIES A, AND TO SUPPORT USE OF GUAM WATERWORKS AUTHORITY 2010 BOND PROCEEDS TO FUND A GILL BREEZE BOOSTER PUMP PROJECT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings.

I Liheslaturan Guåhan finds as follows: (a) that under current market conditions, the outstanding Government of Guam General Obligation Bonds, 1993 Series A, can be refunded with Government of Guam Business Privilege Tax Bonds, with significant savings for the General Fund, (b) that the refunding can be accomplished with no increase in the outstanding amount of “public indebtedness” (as that term is defined in 48 USC § 1423a, §11 of the Organic Act of Guam), because of the retirement of the bonds being refunded, and (c) that the refunding can be accomplished with no reduction or impairment in the amount of government revenues available in the General Fund for other purposes.

1 *I Liheslaturan Guåhan* further finds as follows: (a) that funding for GWA
2 system additions or improvements to bring water and sewer service to the Gill
3 Breeze subdivision (the “Gill Breeze project”) is urgently needed, (b) that the
4 Guam Waterworks Authority has previously issued its Water and Wastewater
5 System Revenue Bonds, Series 2010 (the “2010 GWA Bonds”), and that proceeds
6 of such 2010 GWA Bonds still remain, (c) that § 14207 of Article 2, Chapter 14,
7 Title 12, Guam Code Annotated provides that the Board of Directors of the
8 Consolidated Commission on Utilities (the “CCU”) shall declare the purpose for
9 which a series of bonds of the Guam Waterworks Authority shall be issued, (d) that
10 the order of the Public Utilities Commission (the “PUC”) authorizing the issuance
11 of the 2010 GWA Bonds required that the Guam Waterworks Authority obtain the
12 PUC’s prior approval of each project to be financed with proceeds of the 2010
13 GWA Bonds before procurement can begin on the projects or before such proceeds
14 can be expended or committed on the projects; and (e) that *I Liheslaturan Guåhan*
15 wishes to express support for the approval by the CCU and the PUC of expenditure
16 of proceeds of the 2010 GWA Bonds on the Gill Breeze project.

17 **Section 2. Authorization of Refunding of General Obligation Bonds,**
18 **1993 Series A.**

19 § 1512.3(a) of Article 5, Chapter 1, Title 5, Guam Code Annotated is hereby
20 *amended* to read as follows:

21 "(a) **Authorization of Issuance of Bonds.** *I Maga'lahaen Guåhan* is
22 authorized to issue ~~two~~ three series of bonds of the government of Guam as
23 provided in this Section, in an aggregate principal amount *not to exceed*
24 *Three Hundred Forty-Three Million Seven Hundred Thousand Dollars*
25 *(\$343,700,000) plus such principal amount as may be necessary for the*
26 *purposes of the refunding of Government of Guam General Obligation*

1 Bonds, 1993 Series A, as provided in and subject to the conditions of
2 paragraph (2)(B)(iv) of this subsection (a), to provide the following:

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

4 (A) up to One Hundred Ninety-Eight Million Dollars
5 (\$198,000,000) for payment of unpaid income tax refunds plus
6 interest to include for 2010 and prior;

7 (i) Set-aside for Tax Refunds for Humanitarian
8 Purposes. Of the total amount of proceeds available to
9 issue tax refund payments, the sum of Twenty Million
10 Dollars (\$20,000,000) *shall* be set aside and appropriated
11 to the Department of Revenue and Taxation for the
12 purpose of paying tax refunds for humanitarian purposes.
13 The provisions of this Section *shall* supplement other
14 guiding provisions of law regarding the processing of
15 emergency tax refund payments. Requests submitted for
16 the following humanitarian purposes *shall* qualify to be
17 processed from this Twenty Million Dollars
18 (\$20,000,000) set-aside:

19 (aa) off-island medical treatment, inclusive
20 of the need to purchase medication; or death of a
21 family member, within two (2) degrees of
22 consanguinity;

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

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

5 (dd) delinquent loan payments owed to
6 legally qualified and licensed lenders, which have
7 become delinquent due to financial hardships. For
8 the purposes of this Section, a request for tax
9 refunds *shall* be submitted by the taxpayer to the
10 Director of Revenue and Taxation. All such
11 requests are subject to the review and approval of
12 the Director.

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

17 (iii) Twenty-Six Million Four Hundred Thousand
18 Dollars (\$26,400,000) for payments owed to the
19 Government of Guam Retirement Fund for the Guam
20 Department of Education and the Guam Memorial
21 Hospital Authority principal and interest pursuant to
22 Public Law 28-38, as amended by Public Law 31-74; and

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

26 (2) For the second bond series:

1 (A) no less than Twenty-Five Million One Hundred
2 Thousand Dollars (\$25,100,000) for payments owed to the
3 Government of Guam Retirement Fund for the Guam
4 Department of Education, the Guam Memorial Hospital
5 Authority, and the *Health Insurance Bailout Agreement of*
6 *FY2011* principal and interest pursuant to Public Law 28-38, as
7 amended by Public Law 31-74, such that the sums owed to the
8 GGRF by the government of Guam pursuant to Public Law 28-
9 38, as amended, *shall be extinguished in its entirety*;

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

14 (i) the design, construction, re-construction,
15 rehabilitation, maintenance, renovation of government of
16 Guam or Guam Department of Education-owned school
17 facilities, and/or procurement and preventive
18 maintenance of school buses. A "School Facility" *shall*
19 *mean school campus facilities including any structure or*
20 *structures, together with all ancillary facilities, including*
21 *parking facilities, utilities, infrastructure and equipment*
22 *associated with providing the educational or related*
23 *services required by the Guam Department of Education*
24 *and may include an existing school facility being*
25 *rehabilitated; and/or*

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

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

4 (3) For the third bond series, to fund an escrow to pay principal,
5 interest and redemption price of Government of Guam General
6 Obligation Bonds, 1993 Series A and to pay expenses relating to the
7 authorization, sale and issuance of the bonds, including, without
8 limitation, printing costs, costs of reproducing documents, credit
9 enhancement fees, underwriting, legal, feasibility, financial advisory
10 and accounting fees and charges, fees paid to banks or other financial
11 institutions providing credit enhancement, costs of credit ratings and
12 other costs, charges and fees in connection with the issuance, sale and
13 delivery of the bonds; provided, however, that bonds may not be
14 issued for this purpose unless (a) all obligation of the government to
15 pay debt service on, and the redemption price of, the bonds being
16 refunded shall be discharged concurrently with the issuance of the
17 refunding bonds, (b) thereafter, the refunded bonds shall be payable
18 solely from and secured solely by the escrow established for such
19 purpose, (c) the present value of debt service on the refunding bonds
20 shall be at least two percent (2%) less than the present value of debt
21 service on the bonds being refunded, and (d) the issuance of the
22 refunding bonds shall not result in any increase in the aggregate
23 amount of the government's outstanding "public indebtedness" as that
24 term is used in 48 USC 1423a (§11 of the Organic Act of Guam);
25 provided further, however, that General Fund revenues equal to the
26 amount of the savings realized from such refunding for the fiscal
27 years ending September 30, 2013 and 2014 are hereby appropriated to

1 fund (i) ONE MILLION DOLLARS (\$1,000,000.00) to provide
2 funding to the University of Guam to avert any tuition increases that
3 would otherwise have been required during such fiscal years; (ii) the
4 sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) to
5 pay for educational research initiatives at the School of Education,
6 University of Guam, that directly addresses local issues; and (iii) with
7 the remainder of the savings realized, if any remain, tax refund
8 payments in a manner consistent with the final Order in *Paeste v.*
9 *Government of Guam*, Civil Case No. CV00008, District Court of
10 Guam;

11 (3) For the first and second bond series, such amount as may be
12 needed to capitalize and pay from bond proceeds interest on the bonds
13 due, accruing or required to be set aside in Fiscal Years 2012 and
14 2013; and

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

22 (5) *I Maga'lahañ Guåhan shall* utilize the 2011 Real Property
23 Tax Assessment Roll as certified by the Board of Equalization in
24 accordance with §24215 of Chapter 24, Title 11, Guam Code
25 Annotated, in calculating the amount available for future debt
26 obligation under the Debt Limit (Ceiling) for the bond issuance

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

3 **Section 3. Terms and Conditions of Bonds.**

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

6 "(b) **Terms and Conditions Determined by Certificate *or* Indenture.** The
7 terms and conditions of the bonds shall be as approved by *I Liheslaturan Guåhan*,
8 and as determined by *I Maga'lahaen Guåhan* by the execution of a certificate *or*
9 indenture authorizing the issuance of the bonds, prior to the issuance of the bonds;
10 *provided, however*, that such terms and conditions shall be consistent with this
11 Section, ~~and~~ that the first and second series of the bonds shall mature *not* later than
12 thirty-five (35) years after their date of issuance, shall bear interest at such rates
13 and be sold for such price *or* prices as shall result in a yield to the bondholders that
14 does *not* exceed six and one half percent (6.5%) per annum, shall require interest
15 only payments for Fiscal Years 2012, 2013 and 2014 and shall not require bond
16 principal payments until after such Fiscal Years, and that the third series of the
17 bonds shall mature *not* later than December 31, 2018, and shall bear interest at
18 such rates and be sold for such price *or* prices as shall result in the present value of
19 debt service on the third series of the bonds being at least two percent less than the
20 present value of debt service on the bonds being refunded, using the yield on the
21 third series of the bonds as the discount rate."

22 **Section 4. Authorization of Use of Proceeds for Refunding.**

23 A new subparagraph (3) is hereby added to § 1512.3(j) of Article 5, Chapter
24 1, Title 5, Guam Code Annotated, as follows:

25 "(3) The proceeds from the sale of the third bond series shall be used and are
26 hereby appropriated to (i) fund an escrow to pay principal, interest and redemption
27 price of Government of Guam General Obligation Bonds, 1993 Series A; and

1 (ii) pay expenses relating to the authorization, sale and issuance of the bonds,
2 including, without limitation, printing costs, costs of reproducing documents, credit
3 enhancement fees, underwriting, legal, feasibility, financial advisory and
4 accounting fees and charges, fees paid to banks or other financial institutions
5 providing credit enhancement, costs of credit ratings and other costs, charges and
6 fees in connection with the issuance, sale and delivery of the bonds."

7 **Section 5. Support for Gill Breeze Project.** *I Liheslaturan Guåhan*
8 expresses its support for the approval by the Consolidated Commission on Utilities
9 and the Public Utilities Commission of expenditure of proceeds of the 2010 GWA
10 Construction Bonds to fund a "Gill Breeze Booster Pump Station", needed water
11 pipe replacement and any needed equipment at the Gill Breeze Subdivision for the
12 health, safety and welfare of its residents, pursuant to the authority granted to the
13 CCU set forth in 12 G.C.A. §14207.

14 **Section 6. Severability.** If a provision of this act or its application to any
15 person or circumstance is held invalid, the invalidity does not affect other
16 provisions or applications of the act that can be given effect without the invalid
17 provision or application, and to this end the provisions of this act are severable.