

**I MINA' TRENTAI TRES NA LIHESLATURAN GUAHAN
2016 (SECOND) Regular Session**

Bill No. 346-33 (COR)

Introduced by:

D.G. RODRIGUEZ, JR. *DR*
V. Anthony Ada *VA*
Rory J. Respicio *RR*

AN ACT TO (1) ADD §80125 TO CHAPTER 80, DIVISION 4 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE ISSUANCE OF ONE OR MORE SERIES OF GOVERNMENT OF GUAM LIMITED OBLIGATION (SECTION 30) BONDS TO REFINANCE ALL OR A PORTION OF GOVERNMENT OF GUAM LIMITED OBLIGATION (SECTION 30) BONDS, SERIES 2009A, INCLUDING, BUT NOT LIMITED TO, REFINANCING OF THE OUTSTANDING LOAN OF THE BANK OF GUAM TO THE GUAM MEMORIAL HOSPITAL, AND TO REFINANCE ALL OR A PORTION OF THE GOVERNMENT'S OBLIGATIONS WITH RESPECT TO THE SERIES 2013A AND SERIES 2013B GUAM EDUCATION FINANCING FOUNDATION II, INC. CERTIFICATES OF PARTICIPATION (OKKODO HIGH SCHOOL EXPANSION PROJECT), ALL FOR THE PURPOSE OF ACHIEVING SIGNIFICANT SAVINGS TO THE PEOPLE OF GUAM AND TO USE THOSE SAVINGS TO SOLELY PAY OFF OUTSTANDING THE GUAM MEMORIAL HOSPITAL VENDOR PAYABLES THAT SHALL NOT EXCEED \$30 MILLION DOLLARS.

2016 JUN 21 09:49:18
RJR

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

2 **Section 1. Legislative Findings and Intent:** *I Liheslaturan Guåhan* finds
3 that under current market conditions, all or a portion of the outstanding
4 Government of Guam Limited Obligation (Section 30) Bonds, Series 2009A (the
5 "2009A Bonds") can be refunded with Government of Guam Limited Obligation

1 (Section 30) Bonds, with significant savings for the General Fund. An effort was
2 previously made by way of Bill No. 240-33 to address this matter, in part, through
3 a Business Privilege Tax offset for GMH debts, however, concerns were raised as
4 to possibly violating existing bond covenants.

5 It is the intent of *I Liheslaturan Guåhan* to authorize a transaction that would
6 assist in facilitating the financial sustainability and flexibility of the Government of
7 Guam by taking advantage of present favorable market conditions, as provided in
8 this Act in a manner so as not to violate bond covenants.

9 In addition, the Guam Memorial Hospital has to date incurred vendor
10 payables of approximately \$30 million. As a result, *I Liheslaturan Guåhan* further
11 intends to authorize one or more series of Government of Guam Limited
12 Obligation (Section 30) Bonds, the refinancing of the Bank of Guam loan to the
13 Guam Memorial Hospital Authority, and to refinance all or a portion of the
14 Government's obligations with respect to the Series 2013A and Series 2013B
15 Guam Education Financing Foundation II, Inc. Certificates of Participation
16 (Okkodo High School Expansion Project) (the "2013 Certificates") to payoff
17 outstanding Guam Memorial Hospital Authority vendor payables not to exceed the
18 sum of \$30 million.

19 **Section 2. § 80125 of Chapter 80, Division 4 of Title 10, Guam Code**
20 **Annotated.** § 80125 of Chapter 80, Division 4 of Title 10, Guam Code Annotated
21 is hereby *added* as follows:

22 (a) **Authorization of One or More Series of Limited Obligation (Section**
23 **30) Bonds.** *I Liheslaturan Guåhan*, pursuant to §50103(k) of Title 12 of the Guam
24 Code Annotated, hereby authorizes *I Maga'lahaen Guåhan* to issue one or more
25 additional series of tax-exempt and/or taxable Limited Obligation (Section 30)
26 Bonds of the Government of Guam, as provided in this Section, in an aggregate

1 principal amount *not to exceed* the existing amount for bond indebtedness, to
2 include the sum not to exceed Thirty Million Dollars (\$30,000,000) for one or
3 more of the following purposes: (1) to capitalize interest on the Limited
4 Obligation (Section 30) Bonds, (2) to refund all or a portion of the 2009A Bonds,
5 (3) to refinance the outstanding loan of the Bank of Guam to the Guam Memorial
6 Hospital, currently outstanding in the approximate principal amount of \$20.1
7 million, (4) to refinance all or a portion of the Government's obligations with
8 respect to the Series 2013A and Series 2013B Guam Education Financing
9 Foundation II, Inc. Certificates of Participation (Okkodo High School Expansion
10 Project) (the "2013 Certificates"), and (6) to pay expenses relating to the
11 authorization, sale and issuance of the bonds, including without limitation, printing
12 costs, costs of reproducing documents, credit enhancement fees, underwriting,
13 legal, feasibility, financial advisory and accounting fees and charges, fees paid to
14 banks or other financial institutions providing credit enhancement, costs of credit
15 ratings and other costs, charges and fees in connection with the issuance, sale and
16 delivery of the bonds, subject to the following additional conditions:

17 (1) The terms and conditions of the bonds shall be as determined
18 by *I Maga'lahaen Guåhan* by the execution of a certificate or indenture
19 authorizing the issuance of the bonds, prior to the issuance of the bonds and
20 shall be issued under the master indenture pursuant to which the 2009A
21 Bonds were issued (including any amendments thereto) or under a new
22 master indenture; provided, however, that such terms and conditions shall
23 be consistent with this Section, that the bonds shall mature not later than
24 thirty-one (31) years after their date of issuance, shall bear interest at such
25 rates and be sold for such price or prices as shall result in a yield to the
26 bondholders that does not exceed six percent (6%) per annum; [the maturity

1 of the 2009A Bonds refunded may be extended through the issuance of the
2 refunding bonds]; and that the combined present value of debt service on the
3 bonds issued to refund the 2009A Bonds, the above-referenced Bank of
4 Guam loan and the 2013 Certificates shall be at least two percent (2%) less
5 than the present value of debt service on the bonds and loan being refunded
6 or refinanced, inclusive of all fees for bond counsel and bond underwriters
7 and other costs of issuance.

8 (2) The proceeds from such bonds shall be used and are hereby
9 appropriated (i) to finance the payment of the Guam Memorial Hospital
10 Authority outstanding vendor payables, (ii) to capitalize interest on such
11 bonds, (iii) to refund all or a portion of the 2009A Bonds and the 2013
12 Certificates, refinancing of the outstanding loan of the Bank of Guam to the
13 Guam Memorial Hospital, currently outstanding in the approximate principal
14 amount of \$20.1 million, and (v) to pay expenses relating to the
15 authorization, sale and issuance of the bonds including, without limitation,
16 printing costs, costs of reproducing documents, credit enhancement fees,
17 underwriting, legal, feasibility, financial advisory and accounting fees and
18 charges, fees paid to banks or other financial institutions providing credit
19 enhancement, costs of credit ratings and other costs, charges and fees in
20 connection with the issuance, sale and delivery of the bonds.

21 (3) No bonds authorized by this Section shall be sold until the
22 Board of Directors of Guam Economic Development Authority has
23 approved the sale by resolution.

24 The issuance of bonds pursuant to this Section shall not be subject to the
25 approval of the voters of Guam.

1 All bonds issued pursuant to this Section shall be secured by a statutory lien
2 on all revenues derived by the government of Guam under Section 30 of the
3 Organic Act (“Section 30 revenues”), subject to any previously created lien on or
4 pledge of such revenues. This lien shall arise automatically without the need for
5 any action or authorization by *I Maga’lahen Guåhan*, the government of Guam, or
6 any other person or entity. Such lien shall be valid and binding from the time such
7 bonds are issued. The Section 30 revenues shall immediately be subject to such
8 lien, and the lien shall automatically attach to the Section 30 revenues and be
9 effective, binding, and enforceable against *I Maga’lahen Guåhan*, the government
10 of Guam, their successors, assignees, and creditors, and all others asserting the
11 rights therein, irrespective of whether those parties have notice of the lien and
12 without the need for any physical delivery, recordation, filing, or further act.
13 Section 30 revenues that are not required to make payments on the bonds shall
14 automatically, and without the need for any further action, be released from such
15 lien and shall be available for appropriation for any other lawful purpose of the
16 government. The statutory lien described in this paragraph shall not be subject to
17 Division 9 of Title 13 of the Guam Code Annotated or any successor statute. The
18 Section 30 revenues received by the government of Guam or by any trustee,
19 depository or custodian shall be deposited in accordance with the provisions of the
20 applicable indenture.

21 In addition to the statutory lien provided for above, all or any part of the
22 Section 30 revenues may be pledged, if and to the extent determined by *I*
23 *Maga’lahen Guåhan*, to secure the payment of any bonds issued pursuant to this
24 subsection (a), subject to any previously created lien on or pledge of such
25 revenues. Any such pledge shall be valid and binding against all parties in
26 accordance with its terms and have priority against all parties in accordance with

1 its terms from the time the pledge is made, and property so pledged shall
2 immediately be subject to the lien of the pledge without the need for physical
3 delivery, recordation, filing, or other further act. The pledge shall not be subject to
4 Division 9 of Title 13 of the Guam Code Annotated or any successor statute. The
5 indenture by which such pledge is created need not be recorded. All Section 30
6 revenue so pledged is hereby appropriated for the purpose for which it has been
7 pledged. Indebtedness issued by the government pursuant to this Article and that is
8 payable from Section 30 revenue may not be issued in an amount that would cause
9 a violation of the debt limitation provisions of Section 11 of the Organic Act.

10 (b) Waiver of Immunity; No Personal Liability. Notwithstanding any
11 substantive or procedural provision of the Government Claims Act, Chapter 6 of
12 Title 5 of the Guam Code Annotated, the government of Guam waives immunity
13 from any suit or action in contract on the bonds issued pursuant to this Section, but
14 does not waive sovereign immunity as to the personal liability of elected officials
15 and full-time employees of the government of Guam. No employee or elected
16 official of the government of Guam shall be individually or personally liable for
17 the payment of any amounts due on any bonds issued under this Section, or for any
18 other liability arising in connection with the bonds; provided, however, that
19 nothing in this Section shall relieve any employee or elected official from the
20 performance of any ministerial duty required by law.

21 **Section 3. Severability.** If a provision of this act or its application to any
22 person or circumstance is held invalid, the invalidity does not affect other
23 provisions or applications of the act that can be given effect without the invalid
24 provision or application, and to this end the provisions of this act are severable.