

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) REGULAR SESSION

2010 JUL -9 AM 10:17

Bill No. 437-30 (COR)

Introduced by:

v.c. pangelinan



AN ACT TO ADD A NEW CHAPTER 82 TO TITLE 12 OF THE GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE ISSUANCE OF GOVERNMENT OF GUAM BONDS TO REFUND THE GOVERNMENT OF GUAM LIMITED OBLIGATION INFRASTRUCTURE IMPROVEMENT BONDS 1997 SERIES A AND TO FUND ADDITIONAL CAPITAL IMPROVEMENT PROJECTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **SECTION 1. Legislative Statement and Intent.** It is the intent of *I*
2 *Liheslaturan Guahan* to authorize the Guam Economic Development
3 Authority (GEDA) to facilitate the issuance of bonds through which
4 proceeds from sale of such bonds shall be used to refund the 1997 Series A
5 Limited Obligation Infrastructure Bonds and to fund the construction of the
6 Guam Museum. The addition of the Guam Museum to the number of
7 existing tourist attractions throughout the island would be welcomed by both
8 residents and visitors alike.

9 It is further the intent of *I' Liheslaturan Guahan* for such project to be
10 established as a revenue generating facility of the government with the

1 (4) **‘Prior obligations’** means the outstanding Government of
2 Guam Limited Obligation Infrastructure Improvement Bonds, 1997 Series
3 A.

4 (5) **‘Refunding bond’** means a bond issued pursuant to this
5 Chapter for the purpose of providing moneys to redeem or otherwise retire
6 prior obligations, funding any necessary bond reserves allocable to the
7 refunding bonds, or paying expenses incurred in connection with the
8 issuance of such refunding bonds.

9 **§82103. Authorization of Issuance of Limited Obligation**
10 **Infrastructure Improvement Bonds.** The Governor of Guam is authorized
11 to issue on behalf of the Government an issue of bonds of the Government
12 consisting of refunding bonds and new money bonds, subject to the
13 following requirements and limitations:

14 (1) The issuance of the bonds shall not cause a violation of the debt
15 limitation provision of Title 48 USC §1423a (§11 of the Organic Act of
16 Guam).

17 (2) All obligation of the Government to pay debt service on the
18 prior obligations shall be discharged concurrently with the issuance of the
19 refunding bonds. Thereafter, any remaining debt service on the prior
20 obligations shall be payable solely from and secured solely by a refunding
21 escrow established for such purpose.

22 (3) The aggregate principal amount of refunding bonds issued shall
23 not exceed the amount necessary to pay the prior obligations, including by
24 funding the refunding escrow, establish a bond reserve fund allocable to the

1 refunding bonds, and pay expenses incurred in connection with the issuance
2 of the refunding bonds.

3 (4) The aggregate principal amount of new money bonds issued shall
4 not exceed the amount necessary to fund the capital project establish a bond
5 reserve fund allocable to the new money bonds and to pay expenses incurred
6 in connection with the issuance of the new money bonds.

7 (5) The aggregate principal amount of the bonds issued shall not
8 exceed Fifty-two Million Dollars (\$52,000,000).

9 **§82104. Source of and Security for Payment of the Bonds.** The
10 bonds of the new issue shall be limited obligations of the Government
11 payable from and secured by a pledge of all or any part of the hotel tax
12 revenues. Any pledge made to secure the bonds shall be valid and binding
13 from the time the pledge is made. The hotel tax revenues received by the
14 Government or any trustee, depository and custodian shall be deposited in a
15 separate account and shall be immediately subject to the lien of such pledge
16 without physical delivery thereof or further act, and the lien of such pledge
17 shall be valid and binding against all parties having claims of any kind in
18 tort, contract or otherwise, against the Government of such trustee,
19 depository or custodian, irrespective of whether the parties have notice
20 thereof. The indenture by which such pledge is created need not be
21 recorded. Hotel tax revenues pledged for the purpose of paying the bonds
22 are hereby continuously appropriated for such purpose and for the purposes
23 of paying the charges of any trustee, custodian, depository, auditor or credit
24 enhancement provider for the bonds and any other necessary bond expenses
25 under the indenture. All such revenues not needed for such purpose shall be

1 transferred periodically by any trustee or other fiduciary under the indenture
2 to the Tourist Attraction Fund.

3 The obligation to make these transfers to the Tourist Attraction Fund
4 shall not be a part of the contract with the bondholders, and shall be subject
5 to the modification by amendment of §82104 of this Act by the Guam
6 Legislature.

7 The Director of Administration shall provide to the Guam Legislature
8 a copy of each monthly trustee's or other fiduciary's report on collections
9 and disbursements of hotel tax revenues within five (5) working days of the
10 Director's receipt of such report.

11 **§82105. Terms and Conditions Determined by Indenture;**
12 **Form of Bonds; Covenants; Appointment of Fiduciaries; Other Related**
13 **Agreements.** The terms and conditions of the new issue shall be as
14 determined by the Governor by the execution of an indenture authorizing the
15 issuance of the issue. The indenture shall contain such terms and conditions
16 as are consistent with this Chapter. The technical form and language of the
17 bonds of the new issue, including provisions for execution, exchange,
18 transfer, registration, paying agency, lost or mutilated bonds, negotiability,
19 cancellation and other terms, covenants or conditions not inconsistent with
20 this Chapter, shall be as specified in the indenture executed by the Governor
21 authorizing the issuance of the bonds pursuant to the terms contained in the
22 act. The indenture may appoint one (1) or more trustees or other fiduciaries
23 authorized to receive and hold in trust the proceeds of the bonds and moneys
24 relating thereto, to protect the rights of bondholders and to perform such
25 other duties as may be specified in the indenture. The Governor is also
26 authorized to execute, on behalf of the Government, any appropriate

1 agreements, certificates or other instruments relating to the bonds and the
2 sale of the bonds.”

3 **§82106. Authorization for Credit Enhancement.** The Governor
4 is authorized to enter into such contracts or agreements with such banks,
5 insurance companies or other financial institutions as he determines are
6 necessary or desirable to improve the security and marketability of any
7 bonds authorized by this Article. Such contracts or agreements may contain
8 an obligation to reimburse, with interest, any such banks, insurance
9 companies or other financial institutions for advances used to pay principal
10 of or interest on the issue. Any such reimbursement obligation shall be
11 payable solely from the same sources as debt service on the issue is payable,
12 and any such advance, if necessary, shall be treated as creating a
13 reimbursement obligation issued to refund the issue.

14 **§82107. Valid and Binding Obligations, Collection of Revenue.**

15 The bonds of the issue authorized by this Article shall constitute the
16 valid and binding limited obligations of the Government. All officers
17 charged by law with any duty in the collection of any revenues from which
18 debt service on the issue is payable shall do every lawful thing necessary to
19 collect the money necessary for such purpose. The validity of any such
20 bonds shall not be affected by the validity or regularity of any proceedings
21 for the implementation of the capital improvement project (the Guam
22 Museum) funded by the new money bonds.

23 **§82108. Waiver of Immunity.** Notwithstanding any substantive
24 or procedural provision of the Government Claims Act, Chapter 6 of Title 5
25 of the Guam Code Annotated, the Government waives immunity from any
26 suit or action in contract on the bonds authorized by this Act, but does not

1 waive sovereign immunity as to the personal liability of elected officials and
2 employees of the Government.

3 **§82109. No Personal Liability.** No employee or elected official
4 of the Government shall be individually or personally liable for the payment
5 of any amounts due on any bonds issued under this Act, or for any other
6 liability arising in connection with the bonds; provided, however, that
7 nothing in this §82007 shall relieve any employee or elected official from
8 the performance of any ministerial duty required by law.

9 **§82110. Capital Improvement Project.** The proceeds of the
10 new money bonds issued under this Act is hereby appropriated for the
11 construction of a Guam Museum.

12 **§82111. Approval of Guam Economic Development Authority.**
13 Title 12 Guam Code Annotated §50103(k) provides that agencies and
14 instrumentalities of the Government shall issue bonds and other obligations
15 only by means of and through the agency of the Guam Economic
16 Development Authority ('GEDA'). No issue of bonds authorized by this
17 Article shall be sold until the board of directors of GEDA has adopted a
18 resolution approving the sale of such issue.

19 **§82112. Approval of Terms and Conditions.** Title 12 Guam
20 Code Annotated §50103(k) also provides that GEDA shall not sell any bond
21 without the approval of the Guam Legislature of the terms and conditions of
22 the issuance of the bonds. The Guam Legislature hereby approves the
23 issuance, terms and conditions of the bonds authorized by this Chapter in an
24 aggregate principal amount not to exceed Fifty-two Million Dollars
25 (\$52,000,000), with a final maturity not exceeding twenty (20) years and
26 bearing interest at fixed rates not exceeding seven percent (7%) per annum.

1 **§82113. Permitted Investments.** The proceeds of the bonds
2 issued pursuant to this Article, and any revenues relating to such bonds, may
3 be invested in, but only in, the types of investments permitted by the
4 indenture pursuant to which such bonds are issued.

5 **§82114. Local Sale of Bonds.** GEDA shall undertake its best
6 efforts to cause a portion of any bonds issued or sold by the Guam Economic
7 Development Authority on behalf of the government of Guam or any entity
8 of the government, to be offered for sale to residents of Guam, as well as to
9 residents of other jurisdictions, if and to the extent that such offer and any
10 sales resulting from such offer do not increase the costs to the government of
11 issuing and repaying such bonds. GEDA shall announce such bond issue in
12 the local media outlets and solicit interest from local financial institutions,
13 investments companies, and investor representatives. GEDA shall accept
14 pre-issuance subscription orders for such bonds prior to such bonds being
15 offered to the non-local market. Upon the determination of market pricing of
16 such bonds, GEDA shall notify the local purchaser who shall inform GEDA
17 of a decision and commit to the purchase and execute all documents
18 necessary to complete such purchase.

19 **SECTION 3. Severability.** If any provisions of this Act or the
20 application thereof to any person or circumstance is held invalid, such
21 invalidity shall not affect any other provision or application of this Act
22 which can be given effect without the invalid provision or application, and to
23 this end the provisions of this Act are severable.

24