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

Bill No. 489-30(cov)

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, TO FUND INFRASTRUCTURE, CONSTRUCTION OF THE GUAM MUSEUM AND TO ACQUIRE REAL PROPERTY KNOWN AS FAIFAI ESTATE, LOT NO. 10116 IN TUMON, MUNICIPALITY OF DEDEDO.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **SECTION 1. Legislative Statement and Intent.** It is the intent of *I*
2 *Liheslaturan Guåhan* 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 whereby the use of bond proceeds
6 shall include the construction of the Guam Museum facility and to acquire
7 real property in the Municipality of Dededo (Tumon Bay), known as Faifai
8 Estate, Territory of Guam, designated Estate No.10116, District of Tumon,
9 Municipality of Dededo, Guam.

1 *I Liheslatura* recognizes the importance and role the Guam Museum
2 would serve in promoting the culture, tradition, and history of the island.
3 The significance of such facility as a tourist destination and also as a revenue
4 generating attraction, for the island lends interest and credibility to this
5 endeavor. Moreover, the government of Guam and private parties who
6 collect and maintain memorabilia, artwork, objects of archaeological
7 interest, and other typical museum and historical artifacts would be
8 encouraged to avail such items for the educational benefit of the general
9 public and visitors to the island. It is further the intent of *I Liheslaturan*
10 *Guåhan* for the Guam Museum to be established as a revenue-generating
11 facility with the capacity to generate sufficient funds to financially sustain its
12 annual operating and maintenance expenditures.

13 With respect to the other component of this Act, *I Liheslaturan*
14 *Guåhan* recognizes the importance of preserving the natural environment
15 and the wealth of archaeological artifacts found in and around the property
16 known as Faifai Estate in Tumon, designated (Department of Land
17 Management, government of Guam) Lot No.10116, situated in the northern
18 tip abutting the coastal shoreline of Tumon Bay, Municipality of Dededo.
19 This site serves as a popular beach-front frequented by residents who enjoy
20 its largely undeveloped nature. The area is known to possess archaeological,
21 historical, and spiritual importance to the native population of Guam. It is
22 determined to be the most accessible route or unobstructed corridor leading
23 to the northern Tumon Bay coastline properties aesthetically enhanced by its
24 isolated and natural features. *I Liheslaturan Guåhan* would like to acquire
25 this valuable territorial asset (Gun Beach) for present and future generations
26 to enjoy with the understanding that this particular property is sacred to

1 ancestral identity, Chamorro culture, and island history. The overriding
2 intent stated simply is “Prutehi i Tano’-ta.”

3 The Legislature has learned that the Faifai Estate is for sale in the
4 currently depressed real estate market of Guam thus providing a prime
5 opportunity for local and off-island buyers to purchase this valuable
6 property. At present market value, the government of Guam could
7 potentially acquire this property without succumbing to inflated or
8 speculative factors. This initiative, if undertaken pragmatically, would be
9 seen in the future as a landmark policy initiative that reflects wholesome
10 foresight and monumental wisdom for the benefit of generations to come.

11
12 **SECTION 2. Authorization to Issue Refunding Bonds and**
13 **New Money Bonds.** A new Chapter 82 is hereby added to Division 2 of
14 Title 12 of the Guam Code Annotated to read as follows:

15 **“Chapter 82**

16 **REFINANCING LIMITED OBLIGATION INFRASTRUCTURE**
17 **IMPROVEMENT BONDS 1997 SERIES A.**

18 **§82101. Short Title.** This Chapter shall be referred to as the
19 “Refinancing of the Infrastructure Improvement Bond 1997 Series A”.

20 **§82102. Definitions.** The following words and phrases are defined to
21 mean:

22 (1) **‘Hotel tax revenues’** means all revenues derived from taxes of
23 the type now imposed by §30101 of Chapter 30 of Title 11 of the Guam
24 Code Annotated.

1 (2) **‘Capital improvement project’** means any capital
2 improvement project approved by statute for implementation with moneys
3 derived from new bonds issued under this Chapter.

4 (3) **‘New money bond’** means a bond issued pursuant to this
5 Chapter as part of the same issue at the refunding bonds, but for the purpose
6 of providing moneys for one (1) or more capital improvement projects,
7 funding any necessary bond reserves allocable to the new bonds or paying
8 expenses incurred in connection with the issuance of such new money
9 bonds.

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

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

18 **§82103. Authorization of Issuance of Limited Obligation**
19 **Infrastructure Improvement Bonds.** The Governor of Guam is authorized
20 to issue on behalf of the Government an issue of bonds of the Government
21 consisting of refunding bonds and new money bonds, subject to the
22 following requirements and limitations:

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

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

6 (3) The aggregate principal amount of refunding bonds issued shall
7 not exceed the amount necessary to pay the prior obligations, including by
8 funding the refunding escrow, establish a bond reserve fund allocable to the
9 refunding bonds, and pay expenses incurred in connection with the issuance
10 of the refunding bonds.

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

15 (5) The aggregate principal amount of the bonds issued shall not
16 exceed Seventy Million Dollars (\$70,000,000).

17 **§82104. Source of and Security for Payment of the Bonds.** The
18 bonds of the new issue shall be limited obligations of the Government
19 payable from and secured by a pledge of all or any part of the hotel tax
20 revenues. Any pledge made to secure the bonds shall be valid and binding
21 from the time the pledge is made. The hotel tax revenues received by the
22 Government or any trustee, depository and custodian shall be deposited in a
23 separate account and shall be immediately subject to the lien of such pledge
24 without physical delivery thereof or further act, and the lien of such pledge
25 shall be valid and binding against all parties having claims of any kind in
26 tort, contract or otherwise, against the Government of such trustee,

1 depository or custodian, irrespective of whether the parties have notice
2 thereof. The indenture by which such pledge is created need not be
3 recorded. Hotel tax revenues pledged for the purpose of paying the bonds
4 are hereby continuously appropriated for such purpose and for the purposes
5 of paying the charges of any trustee, custodian, depository, auditor or credit
6 enhancement provider for the bonds and any other necessary bond expenses
7 under the indenture. All such revenues not needed for such purpose shall be
8 transferred periodically by any trustee or other fiduciary under the indenture
9 to the Tourist Attraction Fund.

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

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

18 **§82105. Terms and Conditions Determined by Indenture;**
19 **Form of Bonds; Covenants; Appointment of Fiduciaries; Other Related**
20 **Agreements.** The terms and conditions of the new issue shall be as
21 determined by the Governor by the execution of an indenture authorizing the
22 issuance of the issue. The indenture shall contain such terms and conditions
23 as are consistent with this Chapter. The technical form and language of the
24 bonds of the new issue, including provisions for execution, exchange,
25 transfer, registration, paying agency, lost or mutilated bonds, negotiability,
26 cancellation and other terms, covenants or conditions not inconsistent with

1 this Chapter, shall be as specified in the indenture executed by the Governor
2 authorizing the issuance of the bonds pursuant to the terms contained in the
3 act. The indenture may appoint one (1) or more trustees or other fiduciaries
4 authorized to receive and hold in trust the proceeds of the bonds and moneys
5 relating thereto, to protect the rights of bondholders and to perform such
6 other duties as may be specified in the indenture. The Governor is also
7 authorized to execute, on behalf of the Government, any appropriate
8 agreements, certificates or other instruments relating to the bonds and the
9 sale of the bonds.”

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

21 **§82107. Valid and Binding Obligations, Collection of Revenue.**

22 The bonds of the issue authorized by this Article shall constitute the
23 valid and binding limited obligations of the Government. All officers
24 charged by law with any duty in the collection of any revenues from which
25 debt service on the issue is payable shall do every lawful thing necessary to
26 collect the money necessary for such purpose. The validity of any such

1 bonds shall not be affected by the validity or regularity of any proceedings
2 for the implementation of the capital improvement project (the Guam
3 Museum) funded by the new money bonds.

4 **§82108. Waiver of Immunity.** Notwithstanding any substantive
5 or procedural provision of the Government Claims Act, Chapter 6 of Title 5
6 of the Guam Code Annotated, the Government waives immunity from any
7 suit or action in contract on the bonds authorized by this Act, but does not
8 waive sovereign immunity as to the personal liability of elected officials and
9 employees of the Government.

10 **§82109. No Personal Liability.** No employee or elected official
11 of the Government shall be individually or personally liable for the payment
12 of any amounts due on any bonds issued under this Act, or for any other
13 liability arising in connection with the bonds; provided, however, that
14 nothing in this §82007 shall relieve any employee or elected official from
15 the performance of any ministerial duty required by law.

16 **§82110. Project** (a) Capital Improvement Project. The proceeds
17 of the new money bonds issued under this Act is hereby appropriated for the
18 construction of a Guam Museum.

19 (b) Acquisition and development of public park known as
20 Faifai Estate in Tumon, designated (Department of Land Management,
21 government of Guam) Lot No.10116.

22 **§82111. Approval of Guam Economic Development Authority.**
23 Title 12 Guam Code Annotated §50103(k) provides that agencies and
24 instrumentalities of the Government shall issue bonds and other obligations
25 only by means of and through the agency of the Guam Economic

1 Development Authority ('GEDA'). No issue of bonds authorized by this
2 Article shall be sold until the board of directors of GEDA has adopted a
3 resolution approving the sale of such issue.

4 **§82112. Approval of Terms and Conditions.** Title 12 Guam
5 Code Annotated §50103(k) also provides that GEDA shall not sell any bond
6 without the approval of the Guam Legislature of the terms and conditions of
7 the issuance of the bonds. The Guam Legislature hereby approves the
8 issuance, terms and conditions of the bonds authorized by this Chapter in an
9 aggregate principal amount not to exceed Seventy Million Dollars
10 (\$70,000,000), with a final maturity not exceeding twenty (20) years and
11 bearing interest at fixed rates not exceeding seven and one-half percent
12 (7.5%) per annum.

13 **§82113. Permitted Investments.** The proceeds of the bonds
14 issued pursuant to this Article, and any revenues relating to such bonds, may
15 be invested in, but only in, the types of investments permitted by the
16 indenture pursuant to which such bonds are issued.

17 **§82114. Local Sale of Bonds.** GEDA shall undertake its best
18 efforts to cause a portion of any bonds issued or sold by the Guam Economic
19 Development Authority on behalf of the government of Guam or any entity
20 of the government, to be offered for sale to residents of Guam, as well as to
21 residents of other jurisdictions, if and to the extent that such offer and any
22 sales resulting from such offer do not increase the costs to the government of
23 issuing and repaying such bonds. GEDA shall announce such bond issue in
24 the local media outlets and solicit interest from local financial institutions,
25 investments companies, and investor representatives. GEDA shall accept
26 pre-issuance subscription orders for such bonds prior to such bonds being

1 offered to the non-local market. Upon the determination of market pricing of
2 such bonds, GEDA shall notify the local purchaser who shall inform GEDA
3 of a decision and commit to the purchase and execute all documents
4 necessary to complete such purchase.

5 **SECTION 3. Severability.** If any provisions of this Act or the
6 application thereof to any person or circumstance is held invalid, such
7 invalidity shall not affect any other provision or application of this Act
8 which can be given effect without the invalid provision or application, and to
9 this end the provisions of this Act are severable.