

*I Mina'Trentai Dos Na Liheslaturan Guahan*  
**Bill Log Sheet**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
<b>170-32 (LS), P.L. 32-086</b>	Vicente (ben) C. Pangelinan	AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.	08/16/13 4:29 p.m.	08/21/13	Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land		10/29/13 8:25 a.m.	<b>Fiscal Note Request Received 08/21/13</b>  <b>Fiscal Note Waiver Received 11/22/13</b>
	DATE PASSED	TITLE	TRANSMITTED		DUE DATE	DATE SIGNED BY I MAGA'LAHEN GUAHAN	PUBLIC LAW NO.	NOTES
	11/12/2013	AN ACT TO ADD A NEW SUBSECTION (w) TO § 8104, AND TO AMEND §§ 8139.1, 8143(j), 8144, 8145, 8146, 8149, 8150, 8151, 8152, 8153, 8154, 8156, 8157, 8158 AND 8158.1, ALL OF ARTICLE 1, CHAPTER 8 OF TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.	11/15/13	11:28 a.m.	11/27/2013	11/27/2013	32-086	<b>As amended on the Floor.</b>

EDDIE BAZA CALVO  
Governor



RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

NOV 27 2013

Honorable Judith T. Won Pat, Ed.D.  
Speaker  
*I Mina' trentai Dos Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96910

32-13-1027  
Office of the speaker  
Judith T. Won Pat, Ed. D.  
Date 11-27-13  
Time 9:58am  
Received by: J

2013 NOV 29 AM 11:12

Dear Madame Speaker:

Transmitted herewith is Bill No. 170-32 (LS) "AN ACT TO ADD A NEW SUBSECTION (w) TO § 8104, AND TO AMEND §§ 8139.1, 8143(j), 8144, 8145, 8146, 8149, 8150, 8151, 8152, 8153, 8154, 8156, 8157, 8158 AND 8158.1, ALL OF ARTICLE 1, CHAPTER 8 OF TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND" which I signed into law on November 27, 2013 as Public Law 32-086.

*Senseramente,*

EDDIE BAZA CALVO



*I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN*  
2013 (FIRST) Regular Session

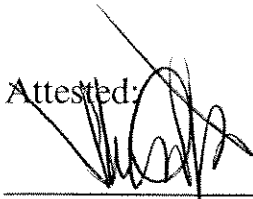
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

This is to certify that **Bill No. 170-32 (LS), "AN ACT TO ADD A NEW SUBSECTION (w) TO § 8104, AND TO AMEND §§ 8139.1, 8143(j), 8144, 8145, 8146, 8149, 8150, 8151, 8152, 8153, 8154, 8156, 8157, 8158 AND 8158.1, ALL OF ARTICLE 1, CHAPTER 8 OF TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND"**, was on the 12<sup>th</sup> day of November 2013, duly and regularly passed.



Judith T. Won Pat, Ed.D.  
Speaker

Attested:



Tina Rose Muña Barnes  
Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 15<sup>th</sup> day of Nov.,  
2013, at 11:28 o'clock A.M.



Assistant Staff Officer  
*Maga'lahi's* Office

APPROVED:



EDWARD J.B. CALVO  
*I Maga'lahaen Guåhan*

Date:

NOV 27 2013

Public Law No. 32-086

*I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN*  
**2013 (FIRST) REGULAR SESSION**

**Bill No. 170-32 (LS)**

As amended on the Floor.

Introduced by:

Vicente (ben) C. Pangelinan  
Michael F. Q. San Nicolas  
T. C. Ada  
V. Anthony Ada  
FRANK B. AGUON, JR.  
B. J.F. Cruz  
Chris M. Dueñas  
Michael T. Lintiaco  
Brant T. McCreadie  
Tommy Morrison  
T. R. Muña Barnes  
R. J. Respicio  
Dennis G. Rodriguez, Jr.  
Aline A. Yamashita, Ph.D.  
Judith T. Won Pat, Ed.D.

**AN ACT TO ADD A NEW SUBSECTION (w) TO § 8104,  
AND TO AMEND §§ 8139.1, 8143(j), 8144, 8145, 8146,  
8149, 8150, 8151, 8152, 8153, 8154, 8156, 8157, 8158 AND  
8158.1, ALL OF ARTICLE 1, CHAPTER 8 OF TITLE 4,  
GUAM CODE ANNOTATED, RELATIVE TO THE  
DEFINED BENEFITS PLAN OF THE GOVERNMENT  
OF GUAM RETIREMENT FUND.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 finds that legislative action is needed to improve the government of Guam's  
4 ability to meet its obligations to fund the Retirement Fund Defined Benefits Plan.

1 The statutory limitations in the Defined Benefits Plan pertaining to investments  
2 should *not* result in unintended consequences, such as encouraging the  
3 Government of Guam Retirement Fund (Fund) to take undue investment risks, or  
4 permitting disproportionate risks for some asset classes and some investment  
5 vehicles, which might result in an imprudent investment portfolio.

6 *I Liheslaturan Guåhan* finds that the investment limitations in current law  
7 must be updated and revised to expand the Fund’s opportunity to improve the risk  
8 adjusted return of the investment portfolio for the benefit of the Retirement Fund  
9 as a whole.

10 *I Liheslaturan Guåhan* finds inconsistent treatment in provisions allowing  
11 investments in various equity categories, while prohibiting investments in non-  
12 investment grade corporate bonds, even though all bond categories (including  
13 high-yield) can be safer and more protected under stress scenarios than equities  
14 because of established capital structure priorities.

15 *I Liheslaturan Guåhan* further finds similar inconsistent treatment in  
16 provisions that allow bond investments so long as they are included in the  
17 applicable bond benchmark (e.g., the U.S. Aggregate Index), while prohibiting  
18 equity investments in certain non-U.S. headquartered companies even though  
19 such companies do most of their businesses in the U.S. and are included in  
20 applicable U.S. equity benchmarks (e.g., the Russell 1000 Index and the Russell  
21 2000 Index).

22 *I Liheslaturan Guåhan* further finds that current statutes limiting non-U.S.  
23 investments, which had a historical purpose of controlling risks in under-  
24 developed markets, are no longer relevant today and may be significantly  
25 inconsistent with global opportunity sets.

26 *I Liheslaturan Guåhan* further finds that, for purposes of quantitative  
27 limitations, further clarity is needed when classifying investments by asset classes

1 (e.g., stocks and bonds) and by the vehicles used to purchase such stocks and  
2 bonds (e.g., in mutual funds, exchange traded funds, index funds).

3 *I Liheslaturan Guðhan* further finds that capital requirements for non-  
4 locally chartered bank custodians and for investment agents should be updated  
5 and more clearly defined in accordance with Federal Deposit Insurance  
6 Corporation Regulations, and increased in accordance with the level of assets  
7 under Fund management since the statute was enacted.

8 *I Liheslaturan Guðhan* further finds that the fiduciary duties of the Board  
9 of Trustees of the Fund should expressly reflect that their investment decisions  
10 respecting individual assets should be evaluated not in isolation, but in the context  
11 of the Fund’s portfolio as a whole, and as part of an overall investment strategy  
12 having risk and return objectives reasonably suited to the Fund.

13 Accordingly, the Board of Trustees’ decisions or actions in discharging  
14 their fiduciary duties should be reviewed in light of the facts and circumstances  
15 existing at the time of such decision or action, and not by hindsight.

16 Based on these findings, *I Liheslaturan Guðhan* intends to amend the  
17 Defined Benefits Plan statute: (1) to allow investments in non-investment grade  
18 U.S. corporate bonds, up to eight percent (8%) of the Fund at cost and  
19 investments in U.S. and non-U.S. stocks, either directly or indirectly through  
20 purchases in investment funds or exchange traded funds, up to seventy percent  
21 (70%) of the Fund at cost; (2) to clarify that such quantitative limitations on direct  
22 and indirect investments in specific asset classes are separate from the  
23 quantitative limitations for the investment vehicles (e.g., investment funds or  
24 exchange traded funds); (3) to increase the capital base required for non-locally  
25 chartered bank custodians and for investment agents to One Billion Dollars  
26 (\$1,000,000,000); and (4) to expressly state how the Board of Trustees’

1 investment decisions should be evaluated based on risk and return objectives  
2 reasonably suited to the Fund.

3 **Section 2.** A new Subsection (w) is hereby *added* to §8104 of Article 1,  
4 Chapter 8, Title 4, Guam Code Annotated, to read:

5 “(w) *Tier 1 Capital shall* have the meaning set forth in regulations  
6 promulgated by the Federal Deposit Insurance Corporation as codified in the  
7 Code of Federal Regulations, 12 C.F.R. § 325, as amended from time to  
8 time.”

9 **Section 3.** §8139.1 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
10 is hereby *amended* to read:

11 **“§ 8139.1. Fiduciary Duties.**

12 (a) The members of the Board of Trustees stand in a fiduciary  
13 relationship to the beneficiaries of the Retirement Fund in regard to the  
14 management of the Fund.

15 (b) The members of the Board of Trustees *shall* discharge their  
16 duties with respect to management of the Retirement Fund:

17 (1) solely in the interest of the members and beneficiaries of  
18 the Fund, and for the exclusive purpose of providing benefits to  
19 members and beneficiaries and defraying reasonable expenses of  
20 administering the Fund;

21 (2) with the care, skill, and prudence and diligence under the  
22 circumstances then prevailing that a prudent person acting in a like  
23 capacity and familiar with such matters would use in the conduct of an  
24 enterprise of a like character and with like aims;

25 (3) by diversifying the investments of the Fund so as to  
26 minimize the risk of large losses, unless under the circumstances it is  
27 clearly prudent not to do so; and

1 (4) in accordance with the documents and instruments  
2 governing the Fund.

3 (c) *Unless* otherwise provided in this Chapter, investment and  
4 management decisions respecting individual assets *shall* be evaluated *not* in  
5 isolation, but in the context of the Fund's portfolio as a whole, and as a part  
6 of an overall investment strategy having risk and return objectives  
7 reasonably suited to the Fund.

8 (d) A Trustee's decision or action in discharging his or her  
9 fiduciary duties *shall* be reviewed in light of the facts and circumstances  
10 existing at the time of such decision or action, and *not* by hindsight."

11 **Section 4.** Subsection (j) of §8143 of Article 1, Chapter 8, Title 4, Guam  
12 Code Annotated, is hereby *amended* to read:

13 "(j) Before the Board may approve by resolution the acquisition of  
14 real property consisting of physical assets under §4225.16 of the  
15 Government Code, as amended, codified as §8159 of Title 4 GCA, the  
16 following steps must be taken:

17 (1) the proposed acquisition must be reviewed and  
18 recommendations must be submitted to the Board by an investment  
19 agent as defined under §8145 of this Chapter;

20 (2) the completion of an in-house evaluation of the proposed  
21 acquisition must be completed;

22 (3) a review of the proposed acquisition as to legal  
23 sufficiency must be made by the Attorney General; and

24 (4) a review and recommendation must be submitted by  
25 three (3) members of the Board of Trustees.

26 At *no* time *shall* an acquisition considered under this Subsection (j) be  
27 made that would provide an immediate investment return which is less than



1 the average rate of investment return that the Fund is receiving overall on its  
2 alternative investment portfolio.”

3 **Section 5.** §8144 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
4 is hereby *amended* to read:

5 “§ 8144. **Custodian.** The Board *shall* engage one or more  
6 custodians to assume responsibility for the physical possession of fund  
7 assets or evidences of assets. The custodian *shall* submit such reports,  
8 accountings and other information in such form and at such times as  
9 requested by the Board. All costs incurred for custodial services *shall* be a  
10 direct charge to Investment Income. The custodian *shall* hold all assets for  
11 the account of the Government of Guam Retirement Fund, and *shall* act *only*  
12 upon the instructions of the Board, its *ex-officio* director or a member,  
13 committee or agent so authorized by the Board. No custodian shall be  
14 engaged unless it:

15 (a) has been continuously engaged in rendering custody  
16 services for a period of ten (10) or more years; and

17 (b) is organized under the laws of the United States or a  
18 state or territory thereof; and

19 (c) has Tier 1 capital in excess of One Billion Dollars  
20 (\$1,000,000,000) in any rolling 12 month period; and

21 (d) is a member of the Federal Reserve System whose  
22 deposits are insured by the Federal Deposit Insurance Corporation or  
23 any successor thereto; or

24 (e) notwithstanding any of the above, any locally chartered  
25 bank may be a custodian of the Retirement Fund.”

26 **Section 6.** §8145 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
27 is hereby *amended* to read:

1           “§ 8145.     **Investment Agent.**

2           (a)     In order to secure expert advice and counsel, the Board  
3     may engage an investment agent to serve as investment counsel,  
4     which *shall* be either an investment counsel or a bank trust  
5     department as hereinafter qualified; and one or more investment  
6     agents to serve as investment manager(s) to manage asset classes  
7     identified by the Board upon the recommendation of investment  
8     counsel. All costs incurred in this connection *shall* be a direct charge  
9     to investment income.

10          (b)     No person, firm or corporation *shall* be eligible for  
11     employment as investment counsel which acts as principal for its  
12     own account or as broker for a client other than the Fund in  
13     connection with the sale of any security to or the purchase of any  
14     security from the Fund.

15          (c)     No investment agent *shall* be engaged *unless*:

16                 (1)     the principal business of the person, firm or  
17     corporation selected by the Board consists of rendering  
18     investment supervisory services, that is, the giving of  
19     continuous advice as to the investment of Funds on the basis of  
20     the individual needs of each client; and

21                 (2)     the principal ownership or control of such person,  
22     firm or corporation rests with individuals who are actively  
23     engaged in such business; and

24                 (3)     such person, firm or corporation and its  
25     predecessors have been continuously engaged in such business  
26     for a period of ten (10) or more years; and

1 (4) such person, firm or corporation is registered as  
2 an investment adviser under the laws of the United States of  
3 America as from time to time in effect; and is in good standing  
4 with the Financial Industry Regulatory Authority (FINRA) and  
5 the Security and Exchange Commission (SEC) on a continuous  
6 and ongoing basis; and

7 (5) the contract between the Board and the investment  
8 agent is of no specified duration and is voidable at any time by  
9 either party; and

10 (6) such person, firm or corporation certifies in  
11 writing, to the Board, that the assets under its direct investment  
12 supervision are in excess of One Billion Dollars  
13 (\$1,000,000,000) in any rolling 12 month period.

14 (d) The Board *shall not* engage a bank trust department  
15 *unless* it:

16 (1) certifies in writing, to the Board, that the assets  
17 under its direct investment supervision are in excess of One  
18 Billion Dollars (\$1,000,000,000) in any rolling 12 month  
19 period; and

20 (2) has been, together with its predecessors,  
21 continuously engaged in supervising investments for a period of  
22 ten (10) or more years; and

23 (3) is organized under the laws of the United States or  
24 a state or territory thereof; and

25 (4) has Tier 1 capital in excess of One Billion Dollars  
26 (\$1,000,000,000) in any rolling 12 month period; and

1 (5) is a member of the Federal Reserve System whose  
2 deposits are insured by the Federal Deposit Insurance  
3 Corporation or any successor thereto.

4 (e) The Board, or its designee under § 8143(a), *shall*  
5 establish and may from time to time change operating arrangements  
6 with the investment agent in order to facilitate efficient management  
7 and timely investment action.

8 (f) *No investment shall be made unless* in the opinion of the  
9 investment agent it is an appropriate investment for the Fund and is an  
10 authorized investment under §§ 8143 through 8159, inclusive, or in  
11 the absence of such opinion, unless preceded by a resolution of the  
12 Board directing the investment.”

13 **Section 7.** § 8146 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
14 is hereby *amended* to read:

15 “§ 8146. **General Investment Limitations.** *No investment shall*  
16 *be made if, after such investment, the Fund would own:*

17 (a) any combination of obligations of any one political  
18 subdivision, corporation or other single issuing entity in excess of five  
19 percent (5%) of Fund assets at cost. This limitation *shall not* apply to  
20 general obligations of the United States, investments authorized under  
21 § 8150, or general obligations of the government of Guam.

22 (b) any combination of investment instruments as covered by  
23 § 8151, Subsection (b) of § 8154, Subsection (b) of § 8156, and  
24 Subsection (b) of § 8157 in excess of thirty-five percent (35%) of  
25 Fund assets at cost.

26 (c) Obligations or other investments issued or guaranteed by  
27 the government of Guam in excess of ten percent (10%) of Fund

1 assets at cost; provided, however, that this limitation *shall not* apply to  
2 such obligations or other investments that are unconditionally  
3 guaranteed as to principal and interest by, or supported by lease  
4 assignment from, another entity whose principal business is outside of  
5 Guam, and whose obligations are authorized investments under §§  
6 8143 through 8159, inclusive.”

7 **Section 8.** § 8149 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
8 is hereby *amended* to read:

9 **“§ 8149. Same: Bank Deposits; Other Cash Equivalents.**

10 (a) Interest-bearing time deposits, demand deposits, and cash  
11 sweep deposit accounts in banks organized under the laws of the United  
12 States or any state or territory thereof; provided, that said bank:

13 (1) has Tier 1 capital in excess of One Billion Dollars  
14 (\$1,000,000,000) in any rolling 12 month period; and

15 (2) is a member of the Federal Reserve System; and

16 (3) together with any predecessors, have been conducting a  
17 banking business for a continuous period of ten (10) or more years; or

18 (4) any bank or savings and loan association chartered in  
19 Guam, and is a member of the Federal Deposit Insurance Corporation  
20 or the Federal Home Loan Bank System.

21 (b) Cash equivalents purchased in investment funds authorized  
22 under §8158, or in exchange-traded funds authorized under §8158.1; in  
23 amounts and for durations approved by the Board in connection with the  
24 management of uninvested cash balances; such purchases *shall* be excluded  
25 from limitations of §8158(e) and § 8158.1(b).”

26 **Section 9.** §8150 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
27 is hereby *amended* to read:

1           “§ 8150.   **Same: Bonds of United States and Federal**  
2   **Instrumentalities.**

3           (a) Bonds or other evidence of indebtedness of the United States of  
4   America, or any of its agencies or instrumentalities, when such obligations  
5   are guaranteed as to principal and interest by the United States of America or  
6   by any agency or instrumentality thereof;

7           (b) Debt securities issued by the Federal National Mortgage  
8   Association or the Federal Home Loan Mortgage Corporation that are  
9   backed by pools of mortgage loans and guaranteed as to timely repayment of  
10   principal and interest by the Federal National Mortgage Association or the  
11   Federal Home Loan Mortgage Corporation; or

12          (c) Non-mortgage-related bonds or other evidence of indebtedness  
13   of the Federal National Mortgage Association or the Federal Home Loan  
14   Mortgage Corporation.

15          (d) Bonds authorized under this Section may be purchased and held  
16   in investment funds authorized under §8158, or in exchange-traded funds  
17   authorized under §8158.1; such purchases *shall* be excluded from the  
18   limitations of §8158(e) and §8158.1(b).”

19   **Section 10.** § 8151 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
20   is hereby *amended* to read:

21           “§ 8151.   **Same: Bonds Issued by National Governments Other**  
22   **Than the United States.** Bonds and other evidences of indebtedness  
23   which are direct obligations of, or secured by, the full faith and credit of  
24   national governments other than the United States, where there exists the  
25   power to levy taxes for the prompt payment of the principal and interest of  
26   such bonds or evidences of indebtedness, provided that:

1 (a) the issuer *shall not* be in default in the payment of  
2 principal or interest on any bonds or other evidences of indebtedness;  
3 and

4 (b) the investment agent determines that such an investment  
5 would be employed by a prudent person acting in a like capacity and  
6 familiar with such matters would use in the investment of a fund with  
7 like character and with like aims; and

8 (c) *no* investment *shall* be made in any one (1) issue  
9 described in this Section in an amount in excess of ten percent (10%)  
10 of such issues.

11 (d) Bonds authorized under this Section may be purchased  
12 and held in investment funds authorized under §8158, or in exchange-  
13 traded funds authorized under §8158.1; such purchases *shall* be  
14 excluded from the limitations of §8158(e) and §8158.1(b).”

15 **Section 11.** §8152 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
16 is hereby *amended* to read:

17 **“§ 8152. Same: Bonds of States and Territories.**

18 (a) Bonds or other evidences of indebtedness which are direct  
19 obligations of or secured by the full faith and credit of, any state or territory  
20 of the United States, or the District of Columbia, where there exists the  
21 power to levy taxes for the prompt payment of the principal and interest of  
22 such bonds or evidences of indebtedness; but the issuer *shall not* be in default  
23 in the payment of principal or interest on any bonds or other evidences of  
24 indebtedness.

25 (b) Bonds authorized under this Section may be purchased and held  
26 in investment funds authorized under §8158, or in exchange-traded funds

1 authorized under §8158.1; such purchases *shall* be excluded from the  
2 limitations of §8158(e) and §8158.1(b).”

3 **Section 12.** §8153 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is  
4 hereby *amended* to read:

5 “§ 8153. **Same: Public Revenue Bonds.** Bonds or other  
6 obligations which are payable from revenues or earnings specifically pledged  
7 therefore of a public utility, state, municipally or territorially owned, either  
8 directly or through civil division, authority or public instrumentality of a state  
9 or territory or municipality; provided that:

10 (a) the laws of the state or territory or municipality  
11 authorizing the issuance of such bonds or other obligations require  
12 that rates for service *shall* be fixed, maintained and collected at all  
13 times so as to produce sufficient revenue or earnings to pay all  
14 operating and maintenance charges, and both principal and interest of  
15 such bonds or obligations; and

16 (b) *no* such bonds or other *obligations* shall be in default in  
17 the payment of principal or interest.

18 Bonds authorized under this Section may be purchased and held in  
19 investment funds authorized under §8158, or in exchange-traded funds  
20 authorized under §8158.1; such purchases *shall* be excluded from the  
21 limitations of §8158(e) and §8158.1(b).”

22 **Section 13.** §8154 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
23 is hereby *amended* to read:

24 “§ 8154. **Same: Bonds of Domestic and Foreign Corporations;  
25 Index-Eligible Securities.**

26 (a) Bonds of Domestic Corporations. Bonds, debentures, notes and  
27 other evidences of indebtedness of any corporation, or corporations created



1 or existing under the laws of the United States, or of any of the states or  
2 territories of the United States, or the District of Columbia, which are *not* in  
3 default either as to principal or interest, provided that:

4 (1) such bonds or other evidence of indebtedness are rated  
5 within the four (4) highest categories of two (2) nationally recognized  
6 and published rating services which have been approved by the Board  
7 and the investment agent; or

8 (2) in case such bonds or other evidence of indebtedness are  
9 *not* so rated by two (2) such services, investments in such lesser-  
10 ranked domestic corporate bonds *shall not* exceed eight percent (8%)  
11 of the Fund at cost; *unless* the net earnings available for fixed charges  
12 over a prior period of five (5) fiscal years next preceding the date of  
13 investment have averaged per year and during either of the last two (2)  
14 years have been, after depreciation and after taxes, *not less than*:

15 (A) two (2) times its average annual fixed charges over  
16 the same period, in the case of any public utility company;

17 (B) one and one-half (1½) times its average annual  
18 fixed charges over the same period, in the case of any finance  
19 company; or

20 (C) three (3) times its average annual fixed charges  
21 over the same period, in the case of any other company.

22 (3) *No more than* two percent (2%) of the Fund at cost *shall*  
23 be invested in the obligations of any one (1) domestic corporation or  
24 other single domestic issuing entity described in this Subsection.

25 (b) Bonds of Foreign Corporations. Bonds, debentures, notes and  
26 other evidences of indebtedness of any corporation, or corporations created  
27 or existing under the laws of nations other than the United States which are

1        *not* in default either as to principal or interest; provided, that the investment  
2        agent in its informed opinion, determines that such an investment would be  
3        employed by a prudent person acting in a like capacity and familiar with such  
4        matters would use in the investment of a fund of like character and with like  
5        aims. *No more than* one and one-half percent (1½%) of the Fund at cost *shall*  
6        be invested in the obligations of any one (1) foreign corporation or other  
7        single issuing foreign entity described in this Subsection.

8            (c) *No* investment *shall* be made in any one (1) issue described in  
9        Subsections (a) and (b) of this Section in an amount in excess of ten percent  
10       (10%) of such issues.

11           (d) Other Securities in the U.S. Aggregate Bond Index. Bonds,  
12        debentures, notes and other evidences of indebtedness which are  
13        denominated in U.S. dollars, investment-grade, fixed-rate and of the quality  
14        of fixed income securities covered by the U.S. Aggregate Bond Index.

15           (e) Bonds authorized under this Section may be purchased and held  
16        in investment funds authorized under §8158, or in exchange-traded funds  
17        authorized under §8158.1; such purchases *shall* be excluded from the  
18        limitations of §8158(e) and §8158.1(b).”

19        **Section 14.** §8156 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is  
20        hereby *amended* to read:

21            “§ 8156.     **Same: Domestic and Foreign Preferred Stock.**

22           (a) Domestic Preferred Stock. Domestic preferred or guaranteed  
23        stock or shares of any institution created or existing under the laws of the  
24        United States or of any state, district or territory thereof or the District of  
25        Columbia; provided that:

1 (1) All publicly held prior obligations and prior preferred  
2 stock, if any, of such institution at the date of acquisition are eligible as  
3 investments under §§ 8143 through 8160; and

4 (2) the net earnings of the institution available for fixed  
5 charges over a period of five (5) fiscal years next preceding the date of  
6 investment have averaged per year, and during either of the last two (2)  
7 years have been, after depreciation and after income taxes, *no less*  
8 *than:*

9 (A) two times its average annual fixed charges,  
10 maximum contingent interest and preferred dividend  
11 requirements over the same period, in the case of any public  
12 utility company; or

13 (B) three (3) times its average annual fixed charges,  
14 maximum contingent interest and preferred dividend  
15 requirements over the same period, in the case of any other  
16 company.

17 For purposes of this Subsection, the term *preferred dividend*  
18 *requirements shall* mean cumulative and noncumulative dividends on  
19 all preferred stock of the issuer, whether paid or not.

20 (b) Foreign Preferred Stock. Foreign preferred or guaranteed stock  
21 or shares of any institution created or existing under the laws of nations other  
22 than the United States which are *not* in default either as to principal or  
23 interest; provided, that the investment agent in its informed opinion,  
24 determines that such an investment would be employed by a prudent person  
25 acting in a like capacity and familiar with such matters would use in the  
26 investment of a fund of like character and with like aims.

27 (c) Limitations:

1 (1) *No investment shall* be made in any one issue described in  
2 Item (1) of Subsection (a) of this Section in an amount in excess of ten  
3 percent (10%) of such issues.

4 (2) *No more than two percent (2%)* of the Fund at cost shall  
5 be invested in the preferred stock of any one issuing domestic  
6 company.

7 (3) *No more than two percent (2%)* of the Fund at cost shall be  
8 invested in the preferred stock of any one issuing foreign company.

9 (4) The aggregate of all investments authorized under this  
10 Section *shall not* exceed fifteen percent (15%) of Fund assets at cost.

11 (5) Preferred stock authorized under this Section may be  
12 purchased and held in investment funds authorized under §8158, or in  
13 exchange-traded funds authorized under §8158.1; such purchases *shall*  
14 be excluded from the limitations of §8158(e) and §8158.1(b).”

15 **Section 15.** §8157 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is  
16 hereby *amended* to read:

17 “§ 8157. **Same; Common Stock.**

18 (a) Common or capital stock of any institution or entity created or  
19 existing under the laws of the United States, or any state, district, or territory  
20 thereof, or of the District of Columbia or of any foreign country; provided  
21 that, with respect to *at least* fifty percent (50%) of the investments at cost  
22 purchased directly under this Section:

23 (1) the issuing institution, entity, or a predecessor thereto, has  
24 reported a profit in *at least* four (4) of the five (5) fiscal years next  
25 preceding the date of investment, or alternatively in *at least* seven (7) of  
26 the ten (10) fiscal years next preceding the date of investment; and

1           (2) the institution, entity or such predecessor has paid cash  
2 dividends on its common or capital stock in *at least* four (4) of the five  
3 (5) years next preceding the date of investment, or alternatively in *at*  
4 *least* seven (7) of the ten (10) fiscal years next preceding the date of  
5 investment; and

6           (3) total cash dividends have *not* exceeded total earning in the  
7 five (5) years next preceding the date of investment; and

8           (4) on the date of investment, the issuer *shall not* be in default  
9 in payment of principal or interest on any of its publicly held bonds or  
10 other evidences of indebtedness; and any contingent interest,  
11 cumulative and noncumulative preferred dividends and dividends on  
12 prior common or capital stock *shall* have been paid in full.

13           *No more than* five percent (5%) of the Fund *shall* be invested directly in  
14 the common or capital stock of anyone issuing domestic company described in  
15 this Section.

16           (b) Common or capital stock of any institution or entity created or  
17 existing under the laws of nations other than the United States; provided, that  
18 the investment agent determines that such an investment would be employed  
19 by a prudent person acting in a like capacity and familiar with such matters  
20 would use in the investment of a fund with like character and with like aims.  
21 *No more than* one and one-half percent (1½%) of the Fund at cost *shall* be  
22 invested directly in the common or capital stock of anyone issuing foreign  
23 company described in this Section.

24           (c) *No* direct investment *shall* be made in any one (1) issue described  
25 in this Section in an amount in excess of ten percent (10%) of such issues.

26           (d) Common or capital stock of any institution or entity created or  
27 existing under the laws of the United States, or any state, district, or territory

1           thereof, or of the District of Columbia, or of any foreign country, purchased  
2           and held in investment funds authorized under §8158, or in exchange-traded  
3           funds authorized under §8158.1; such purchases being excluded from the  
4           limitations of §8158(e) and §8158.1(b).

5           (e)     The aggregate amount of all direct and indirect investments under  
6           this Section at cost *shall not* exceed seventy percent (70%) of the Fund.”

7           **Section 16.** § 8158 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is  
8           hereby *amended* to read:

9                     **“§ 8158.     Investment Funds.**

10           (a)     Common or capital shares of any investment trust or mutual fund  
11           (including any index fund) registered with the Securities and Exchange  
12           Commission under the Investment Company Act of 1940, as from time to time  
13           amended; provided, that the cost of the shares acquired is no greater than their  
14           net asset value on the date of acquisition.

15           (b)     Units in any common trust fund or commingled fund (including  
16           any index fund) maintained by a custodian meeting the requirements of Title 4  
17           GCA, § 8144, and advised or sub-advised by an investment management  
18           organization meeting the requirements of Title 4 GCA, § 8145.

19           (c)     Preferred shares of any investment trust or mutual fund  
20           (including any index fund) registered with the Securities and Exchange  
21           Commission under the Investment Company Act of 1940, as from time to time  
22           amended; provided that:

23                     (1)     the number of issued and outstanding common or capital  
24                     shares multiplied by their asset value per share, plus;

25                     (2)     the number of issued and outstanding preferred shares,  
26                     multiplied by their par or stated value, is *at least* fifty percent (50%)  
27                     greater than the number of issued and out-standing preferred shares,

1 multiplied by their par or stated value. For purposes of this Section, the  
2 number of issued and outstanding shares *shall* be taken as of the latest  
3 available public report of such investment trust or mutual fund.  
4 Preferred shares as described in this Subsection *shall not* be subject to  
5 the provisions of §8156.

6 (d) The term *net asset value* as used in this Section *shall* mean the  
7 total quoted or estimated market value of all securities or other assets owned,  
8 less that total of all determinable liabilities, as reported by such common trust  
9 fund, commingled fund, investment trust or mutual fund.

10 (e) Limitation:

11 (1) The investment in units, preferred, common and capital  
12 stock of any one common trust fund, commingled fund, investment trust  
13 or mutual fund *shall not* exceed five percent (5%) of the Fund at cost;  
14 and

15 (2) The aggregate of all investments under this Section, *except*  
16 for investment fund purchases of cash equivalents authorized under  
17 §8149, bonds authorized under §§8150 through 8154, domestic and  
18 foreign preferred stock authorized under §8156, and common or capital  
19 stock authorized under §8157, *shall not* exceed thirty percent (30%) of  
20 the Fund at cost.”

21 **Section 17.** §8158.1 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
22 is hereby *amended* to read:

23 **“§ 8158.1. Exchange Traded Funds.**

24 (a) Units *or* shares of any exchange traded fund (ETF) established as  
25 an open-end investment management company *or* a unit investment trust  
26 registered with the Securities and Exchange Commission under the Investment  
27 Company Act of 1940, as from time to time amended. Although ETFs may

1 trade at prices established throughout the trading day, like any other listed  
2 equity security trading in the secondary market on an exchange, the units *or*  
3 shares described in this Subsection *shall not* be subject to the provisions of  
4 §8157. Although ETFs are unit investment trusts, the units *or* shares described  
5 in this Subsection *shall not* be subject to the provisions of §8158.

6 (b) The investment in units *or* shares of any one exchange traded fund  
7 *shall not exceed* twenty percent (20%) of the Fund at cost.”

8 **Section 18. Effective Date.** This Act *shall* become effective upon enactment.

9 **Section 19. Severability.** *If* any provision of this Act or its application to any  
10 person or circumstances is held invalid, the invalidity *shall* not affect any other  
11 provision or applications of this Act which can be given effect without the invalid  
12 provision or application, and to this end the provisions of this Act are severable.





# COMMITTEE ON RULES

*I Mina'trentai Dos na Liheslaturan Guåhan* • The 32nd Guam Legislature  
155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)  
E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER

Senator  
Vicente (Ben) C. Pangelinan  
Member

Speaker  
Judith T.P. Won Pat, Ed.D.  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Legislative Secretary  
Tina Rose Muña Barnes  
Member

Senator  
Frank Blas Aguon, Jr.  
Member

Senator  
Michael F.Q. San Nicolas  
Member

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Senator  
Aline Yamashita  
Member

November 22, 2013

## MEMORANDUM

**To:** **Rennae Meno**  
*Clerk of the Legislature*

**From:** **Senator Rory J. Respicio**

**Subject:** **Fiscal Notes & Waivers**

*Hafa Adai!*

Transmitted herewith are fiscal notes received from BBMR on the following Bill Nos. 91-32(COR), 98-32(LS), 116-32(COR), 153-32(COR), 176-32(COR), 181-32(COR), 194-32(COR), 195-32(COR), 202-32(COR), 209-32(COR), 211-32(COR) and Fiscal Note Waivers on the following Bill Nos. 94-32(COR), 165-32(COR), 170-32(COR), 189-32(COR), 193-32(COR), 210-32(COR).

Please include fiscal notes and waivers with their respective Committee Reports.

Please make the appropriate indication in your records; and forward to MIS for posting on our website. I also request that the same be forwarded to all Senators of *I Mina'trentai Dos na Liheslaturan Guåhan*.

*Si Yu'os Ma'ase'!*

2013 NOV 22 PM 4:16

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR

Post Office Box 2950, Hagåtña Guam 96932

EDDIE BAZA CALVO  
GOVERNORJOHN A. RIOS  
DIRECTORRAY TENORIO  
LIEUTENANT GOVERNOR

NOV 15 2013

Senator Rory J. Respicio  
Chairperson, Committee on Rules  
I Mina'trentai Unu na Liheslaturan Guåhan  
The 31<sup>st</sup> Guam Legislature  
155 Hester Place  
Hagåtña, Guam 96932

*Hafa Adai* Senator Respicio:

Transmitted herewith is Fiscal Note on the following Bill Nos.: 91-32(COR), [REDACTED], 181-32(COR), 202-32(COR), [REDACTED], 209-32(COR), 211-32(COR) and Fiscal Note Waiver on the following Bill Nos.: 170-32(COR).

If you have any question(s), please do not hesitate to call the office at 475-9412/9106.



JOHN A. RIOS  
Director

Enclosures  
cc: Senator Vicente (ben) Pangelinan

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR  
Post Office Box 2950, Hagåtña Guam 96932

**EDDIE BAZA CALVO**  
GOVERNOR

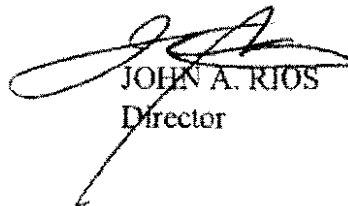
**JOHN A. RIOS**  
DIRECTOR

**RAY TENORIO**  
LIEUTENANT GOVERNOR

NOV 15 2013

The Bureau requests that Bill No(s). 170-32 (LS) be granted a waiver pursuant to Public Law 12-229 as amended for the following reason(s):

Bill No. 170-32 is an Act to add a New Subsection (w) to §8104, to amend §8139.1, to amend Subsection 8143(j), to amend §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 all of Article 1, Chapter 8, Title 4 of the Guam Code Annotated Relative to the Defined Benefits Plan of the Government of Guam Retirement Plan. The intent of the aforementioned bill is administrative in nature in that it gives the Retirement Fund greater flexibility to diversify its investments for the maximization of its assets to the benefit of its members.

  
JOHN A. RIOS  
Director



FILE COPY

**I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN**  
THIRTY-SECOND GUAM LEGISLATURE  
155 Hesler Place, Hagåtña, Guam 96910

November 13, 2013

The Honorable Edward J.B. Calvo  
*I Maga'lahen Guåhan*  
*Ufisinan I Maga'lahi*  
*Hagåtña, Guam 96910*

OFFICE OF THE GOVERNOR  
CENTRAL FILES  
*J. Delo Rosa*  
RECEIVED BY  
TIME 11:28 AM. DATE 11/15/13

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 35-32(COR), 74-32(LS), 75-32(LS), 91-32(COR), 94-32(COR), 98-32(LS), 99-32(LS), 108-32(COR), 112-32(COR), 116-32(COR), 133-32(COR), 134-32(COR), 140-32(COR), 141-32(COR), 143-32(COR), 145-32(LS), 150-32(COR), 153-32(COR), 154-32(COR), 156-32(COR), 157-32(COR), 158-32(COR), 160-32(COR), 161-32(COR), 162-32(LS), 165-32(COR), 170-32(LS), 176-32(COR), 189-32(COR), 193-32(COR), 194-32(COR), 195-32(COR), 196-32(COR), 200-32(COR), 205-32(COR), 210-32(COR), 211-32(COR) and 217-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on November 12, 2013.

Sincerely,

Tina Rose Muña Barnes  
Legislative Secretary

Enclosures (38)

**I MINA TRENDAI DOS NA LIHESLATURAN GUÅHAN**  
**2013 (FIRST) Regular Session**

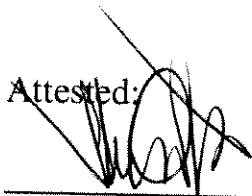
**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN**

This is to certify that Bill No. 170-32 (LS), "AN ACT TO ADD A NEW SUBSECTION (w) TO § 8104, AND TO AMEND §§ 8139.1, 8143(j), 8144, 8145, 8146, 8149, 8150, 8151, 8152, 8153, 8154, 8156, 8157, 8158 AND 8158.1, ALL OF ARTICLE 1, CHAPTER 8 OF TITLE 4, GUAM CODE ANNOTATED, RELATIVE TO THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND", was on the 12<sup>th</sup> day of November 2013, duly and regularly passed.



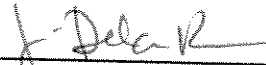
**Judith T. Won Pat, Ed.D.**  
**Speaker**

Attested:



**Tina Rose Muña Barnes**  
**Legislative Secretary**

-----  
This Act was received by *I Maga'lahen Guåhan* this 15<sup>th</sup> day of Nov,  
2013, at 11:28 o'clock A.M.



**Assistant Staff Officer**  
***Maga'lahi's Office***

APPROVED:

\_\_\_\_\_  
**EDWARD J.B. CALVO**  
***I Maga'lahen Guåhan***

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

***I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN***  
**2013 (FIRST) REGULAR SESSION**

**Bill No. 170-32 (LS)**

As amended on the Floor.

Introduced by:

Vicente (ben) C. Pangelinan  
Michael F. Q. San Nicolas  
T. C. Ada  
V. Anthony Ada  
FRANK B. AGUON, JR.  
B. J.F. Cruz  
Chris M. Dueñas  
Michael T. Limtiaco  
Brant T. McCreddie  
Tommy Morrison  
T. R. Muña Barnes  
R. J. Respicio  
Dennis G. Rodriguez, Jr.  
Aline A. Yamashita, Ph.D.  
Judith T. Won Pat, Ed.D.

**AN ACT TO ADD A NEW SUBSECTION (w) TO § 8104,  
AND TO AMEND §§ 8139.1, 8143(j), 8144, 8145, 8146,  
8149, 8150, 8151, 8152, 8153, 8154, 8156, 8157, 8158 AND  
8158.1, ALL OF ARTICLE 1, CHAPTER 8 OF TITLE 4,  
GUAM CODE ANNOTATED, RELATIVE TO THE  
DEFINED BENEFITS PLAN OF THE GOVERNMENT  
OF GUAM RETIREMENT FUND.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 finds that legislative action is needed to improve the government of Guam's  
4 ability to meet its obligations to fund the Retirement Fund Defined Benefits Plan.

1 The statutory limitations in the Defined Benefits Plan pertaining to investments  
2 should *not* result in unintended consequences, such as encouraging the  
3 Government of Guam Retirement Fund (Fund) to take undue investment risks, or  
4 permitting disproportionate risks for some asset classes and some investment  
5 vehicles, which might result in an imprudent investment portfolio.

6 *I Liheslaturan Guåhan* finds that the investment limitations in current law  
7 must be updated and revised to expand the Fund’s opportunity to improve the risk  
8 adjusted return of the investment portfolio for the benefit of the Retirement Fund  
9 as a whole.

10 *I Liheslaturan Guåhan* finds inconsistent treatment in provisions allowing  
11 investments in various equity categories, while prohibiting investments in non-  
12 investment grade corporate bonds, even though all bond categories (including  
13 high-yield) can be safer and more protected under stress scenarios than equities  
14 because of established capital structure priorities.

15 *I Liheslaturan Guåhan* further finds similar inconsistent treatment in  
16 provisions that allow bond investments so long as they are included in the  
17 applicable bond benchmark (e.g., the U.S. Aggregate Index), while prohibiting  
18 equity investments in certain non-U.S. headquartered companies even though  
19 such companies do most of their businesses in the U.S. and are included in  
20 applicable U.S. equity benchmarks (e.g., the Russell 1000 Index and the Russell  
21 2000 Index).

22 *I Liheslaturan Guåhan* further finds that current statutes limiting non-U.S.  
23 investments, which had a historical purpose of controlling risks in under-  
24 developed markets, are no longer relevant today and may be significantly  
25 inconsistent with global opportunity sets.

26 *I Liheslaturan Guåhan* further finds that, for purposes of quantitative  
27 limitations, further clarity is needed when classifying investments by asset classes

1 (e.g., stocks and bonds) and by the vehicles used to purchase such stocks and  
2 bonds (e.g., in mutual funds, exchange traded funds, index funds).

3 *I Liheslaturan Guåhan* further finds that capital requirements for non-  
4 locally chartered bank custodians and for investment agents should be updated  
5 and more clearly defined in accordance with Federal Deposit Insurance  
6 Corporation Regulations, and increased in accordance with the level of assets  
7 under Fund management since the statute was enacted.

8 *I Liheslaturan Guåhan* further finds that the fiduciary duties of the Board  
9 of Trustees of the Fund should expressly reflect that their investment decisions  
10 respecting individual assets should be evaluated not in isolation, but in the context  
11 of the Fund’s portfolio as a whole, and as part of an overall investment strategy  
12 having risk and return objectives reasonably suited to the Fund.

13 Accordingly, the Board of Trustees’ decisions or actions in discharging  
14 their fiduciary duties should be reviewed in light of the facts and circumstances  
15 existing at the time of such decision or action, and not by hindsight.

16 Based on these findings, *I Liheslaturan Guåhan* intends to amend the  
17 Defined Benefits Plan statute: (1) to allow investments in non-investment grade  
18 U.S. corporate bonds, up to eight percent (8%) of the Fund at cost and  
19 investments in U.S. and non-U.S. stocks, either directly or indirectly through  
20 purchases in investment funds or exchange traded funds, up to seventy percent  
21 (70%) of the Fund at cost; (2) to clarify that such quantitative limitations on direct  
22 and indirect investments in specific asset classes are separate from the  
23 quantitative limitations for the investment vehicles (e.g., investment funds or  
24 exchange traded funds); (3) to increase the capital base required for non-locally  
25 chartered bank custodians and for investment agents to One Billion Dollars  
26 (\$1,000,000,000); and (4) to expressly state how the Board of Trustees’



1 investment decisions should be evaluated based on risk and return objectives  
2 reasonably suited to the Fund.

3 **Section 2.** A new Subsection (w) is hereby *added* to §8104 of Article 1,  
4 Chapter 8, Title 4, Guam Code Annotated, to read:

5 “(w) *Tier 1 Capital shall* have the meaning set forth in regulations  
6 promulgated by the Federal Deposit Insurance Corporation as codified in the  
7 Code of Federal Regulations, 12 C.F.R. § 325, as amended from time to  
8 time.”

9 **Section 3.** §8139.1 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
10 is hereby *amended* to read:

11 “§ 8139.1. **Fiduciary Duties.**

12 (a) The members of the Board of Trustees stand in a fiduciary  
13 relationship to the beneficiaries of the Retirement Fund in regard to the  
14 management of the Fund.

15 (b) The members of the Board of Trustees *shall* discharge their  
16 duties with respect to management of the Retirement Fund:

17 (1) solely in the interest of the members and beneficiaries of  
18 the Fund, and for the exclusive purpose of providing benefits to  
19 members and beneficiaries and defraying reasonable expenses of  
20 administering the Fund;

21 (2) with the care, skill, and prudence and diligence under the  
22 circumstances then prevailing that a prudent person acting in a like  
23 capacity and familiar with such matters would use in the conduct of an  
24 enterprise of a like character and with like aims;

25 (3) by diversifying the investments of the Fund so as to  
26 minimize the risk of large losses, unless under the circumstances it is  
27 clearly prudent not to do so; and

1 (4) in accordance with the documents and instruments  
2 governing the Fund.

3 (c) *Unless* otherwise provided in this Chapter, investment and  
4 management decisions respecting individual assets *shall* be evaluated *not* in  
5 isolation, but in the context of the Fund’s portfolio as a whole, and as a part  
6 of an overall investment strategy having risk and return objectives  
7 reasonably suited to the Fund.

8 (d) A Trustee’s decision or action in discharging his or her  
9 fiduciary duties *shall* be reviewed in light of the facts and circumstances  
10 existing at the time of such decision or action, and *not* by hindsight.”

11 **Section 4.** Subsection (j) of §8143 of Article 1, Chapter 8, Title 4, Guam  
12 Code Annotated, is hereby *amended* to read:

13 “(j) Before the Board may approve by resolution the acquisition of  
14 real property consisting of physical assets under §4225.16 of the  
15 Government Code, as amended, codified as §8159 of Title 4 GCA, the  
16 following steps must be taken:

17 (1) the proposed acquisition must be reviewed and  
18 recommendations must be submitted to the Board by an investment  
19 agent as defined under §8145 of this Chapter;

20 (2) the completion of an in-house evaluation of the proposed  
21 acquisition must be completed;

22 (3) a review of the proposed acquisition as to legal  
23 sufficiency must be made by the Attorney General; and

24 (4) a review and recommendation must be submitted by  
25 three (3) members of the Board of Trustees.

26 *At no time shall* an acquisition considered under this Subsection (j) be  
27 made that would provide an immediate investment return which is less than

1 the average rate of investment return that the Fund is receiving overall on its  
2 alternative investment portfolio.”

3 **Section 5.** §8144 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
4 is hereby *amended* to read:

5 “§ 8144. **Custodian.** The Board *shall* engage one or more  
6 custodians to assume responsibility for the physical possession of fund  
7 assets or evidences of assets. The custodian *shall* submit such reports,  
8 accountings and other information in such form and at such times as  
9 requested by the Board. All costs incurred for custodial services *shall* be a  
10 direct charge to Investment Income. The custodian *shall* hold all assets for  
11 the account of the Government of Guam Retirement Fund, and *shall* act *only*  
12 upon the instructions of the Board, its *ex-officio* director or a member,  
13 committee or agent so authorized by the Board. No custodian shall be  
14 engaged unless it:

15 (a) has been continuously engaged in rendering custody  
16 services for a period of ten (10) or more years; and

17 (b) is organized under the laws of the United States or a  
18 state or territory thereof; and

19 (c) has Tier 1 capital in excess of One Billion Dollars  
20 (\$1,000,000,000) in any rolling 12 month period; and

21 (d) is a member of the Federal Reserve System whose  
22 deposits are insured by the Federal Deposit Insurance Corporation or  
23 any successor thereto; or

24 (e) notwithstanding any of the above, any locally chartered  
25 bank may be a custodian of the Retirement Fund.”

26 **Section 6.** §8145 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
27 is hereby *amended* to read:

1           “§ 8145.     **Investment Agent.**

2           (a)     In order to secure expert advice and counsel, the Board  
3     may engage an investment agent to serve as investment counsel,  
4     which *shall* be either an investment counsel or a bank trust  
5     department as hereinafter qualified; and one or more investment  
6     agents to serve as investment manager(s) to manage asset classes  
7     identified by the Board upon the recommendation of investment  
8     counsel. All costs incurred in this connection *shall* be a direct charge  
9     to investment income.

10          (b)     No person, firm or corporation *shall* be eligible for  
11     employment as investment counsel which acts as principal for its  
12     own account or as broker for a client other than the Fund in  
13     connection with the sale of any security to or the purchase of any  
14     security from the Fund.

15          (c)     No investment agent *shall* be engaged *unless*:

16                 (1)     the principal business of the person, firm or  
17     corporation selected by the Board consists of rendering  
18     investment supervisory services, that is, the giving of  
19     continuous advice as to the investment of Funds on the basis of  
20     the individual needs of each client; and

21                 (2)     the principal ownership or control of such person,  
22     firm or corporation rests with individuals who are actively  
23     engaged in such business; and

24                 (3)     such person, firm or corporation and its  
25     predecessors have been continuously engaged in such business  
26     for a period of ten (10) or more years; and

1           (4) such person, firm or corporation is registered as  
2 an investment adviser under the laws of the United States of  
3 America as from time to time in effect; and is in good standing  
4 with the Financial Industry Regulatory Authority (FINRA) and  
5 the Security and Exchange Commission (SEC) on a continuous  
6 and ongoing basis; and

7           (5) the contract between the Board and the investment  
8 agent is of no specified duration and is voidable at any time by  
9 either party; and

10          (6) such person, firm or corporation certifies in  
11 writing, to the Board, that the assets under its direct investment  
12 supervision are in excess of One Billion Dollars  
13 (\$1,000,000,000) in any rolling 12 month period.

14          (d) The Board *shall not* engage a bank trust department  
15 *unless* it:

16           (1) certifies in writing, to the Board, that the assets  
17 under its direct investment supervision are in excess of One  
18 Billion Dollars (\$1,000,000,000) in any rolling 12 month  
19 period; and

20           (2) has been, together with its predecessors,  
21 continuously engaged in supervising investments for a period of  
22 ten (10) or more years; and

23           (3) is organized under the laws of the United States or  
24 a state or territory thereof; and

25           (4) has Tier 1 capital in excess of One Billion Dollars  
26 (\$1,000,000,000) in any rolling 12 month period; and

1 (5) is a member of the Federal Reserve System whose  
2 deposits are insured by the Federal Deposit Insurance  
3 Corporation or any successor thereto.

4 (e) The Board, or its designee under § 8143(a), *shall*  
5 establish and may from time to time change operating arrangements  
6 with the investment agent in order to facilitate efficient management  
7 and timely investment action.

8 (f) *No investment shall be made unless* in the opinion of the  
9 investment agent it is an appropriate investment for the Fund and is an  
10 authorized investment under §§ 8143 through 8159, inclusive, or in  
11 the absence of such opinion, unless preceded by a resolution of the  
12 Board directing the investment.”

13 **Section 7.** § 8146 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
14 is hereby *amended* to read:

15 “§ 8146. **General Investment Limitations.** *No investment shall*  
16 *be made if, after such investment, the Fund would own:*

17 (a) any combination of obligations of any one political  
18 subdivision, corporation or other single issuing entity in excess of five  
19 percent (5%) of Fund assets at cost. This limitation *shall not* apply to  
20 general obligations of the United States, investments authorized under  
21 § 8150, or general obligations of the government of Guam.

22 (b) any combination of investment instruments as covered by  
23 § 8151, Subsection (b) of § 8154, Subsection (b) of § 8156, and  
24 Subsection (b) of § 8157 in excess of thirty-five percent (35%) of  
25 Fund assets at cost.

26 (c) Obligations or other investments issued or guaranteed by  
27 the government of Guam in excess of ten percent (10%) of Fund

1 assets at cost; provided, however, that this limitation *shall not* apply to  
2 such obligations or other investments that are unconditionally  
3 guaranteed as to principal and interest by, or supported by lease  
4 assignment from, another entity whose principal business is outside of  
5 Guam, and whose obligations are authorized investments under §§  
6 8143 through 8159, inclusive.”

7 **Section 8.** § 8149 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
8 is hereby *amended* to read:

9 **“§ 8149. Same: Bank Deposits; Other Cash Equivalents.**

10 (a) Interest-bearing time deposits, demand deposits, and cash  
11 sweep deposit accounts in banks organized under the laws of the United  
12 States or any state or territory thereof; provided, that said bank:

13 (1) has Tier 1 capital in excess of One Billion Dollars  
14 (\$1,000,000,000) in any rolling 12 month period; and

15 (2) is a member of the Federal Reserve System; and

16 (3) together with any predecessors, have been conducting a  
17 banking business for a continuous period of ten (10) or more years; or

18 (4) any bank or savings and loan association chartered in  
19 Guam, and is a member of the Federal Deposit Insurance Corporation  
20 or the Federal Home Loan Bank System.

21 (b) Cash equivalents purchased in investment funds authorized  
22 under §8158, or in exchange-traded funds authorized under §8158.1; in  
23 amounts and for durations approved by the Board in connection with the  
24 management of uninvested cash balances; such purchases *shall* be excluded  
25 from limitations of §8158(e) and § 8158.1(b).”

26 **Section 9.** §8150 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
27 is hereby *amended* to read:

1           “§ 8150.   **Same: Bonds of United States and Federal**  
2   **Instrumentalities.**

3           (a) Bonds or other evidence of indebtedness of the United States of  
4   America, or any of its agencies or instrumentalities, when such obligations  
5   are guaranteed as to principal and interest by the United States of America or  
6   by any agency or instrumentality thereof;

7           (b) Debt securities issued by the Federal National Mortgage  
8   Association or the Federal Home Loan Mortgage Corporation that are  
9   backed by pools of mortgage loans and guaranteed as to timely repayment of  
10   principal and interest by the Federal National Mortgage Association or the  
11   Federal Home Loan Mortgage Corporation; or

12          (c) Non-mortgage-related bonds or other evidence of indebtedness  
13   of the Federal National Mortgage Association or the Federal Home Loan  
14   Mortgage Corporation.

15          (d) Bonds authorized under this Section may be purchased and held  
16   in investment funds authorized under §8158, or in exchange-traded funds  
17   authorized under §8158.1; such purchases *shall* be excluded from the  
18   limitations of §8158(e) and §8158.1(b).”

19   **Section 10.** § 8151 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
20   is hereby *amended* to read:

21           “§ 8151.   **Same: Bonds Issued by National Governments Other**  
22   **Than the United States.** Bonds and other evidences of indebtedness  
23   which are direct obligations of, or secured by, the full faith and credit of  
24   national governments other than the United States, where there exists the  
25   power to levy taxes for the prompt payment of the principal and interest of  
26   such bonds or evidences of indebtedness, provided that:



1 (a) the issuer *shall not* be in default in the payment of  
2 principal or interest on any bonds or other evidences of indebtedness;  
3 and

4 (b) the investment agent determines that such an investment  
5 would be employed by a prudent person acting in a like capacity and  
6 familiar with such matters would use in the investment of a fund with  
7 like character and with like aims; and

8 (c) *no* investment *shall* be made in any one (1) issue  
9 described in this Section in an amount in excess of ten percent (10%)  
10 of such issues.

11 (d) Bonds authorized under this Section may be purchased  
12 and held in investment funds authorized under §8158, or in exchange-  
13 traded funds authorized under §8158.1; such purchases *shall* be  
14 excluded from the limitations of §8158(e) and §8158.1(b).”

15 **Section 11.** §8152 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
16 is hereby *amended* to read:

17 “§ 8152. **Same: Bonds of States and Territories.**

18 (a) Bonds or other evidences of indebtedness which are direct  
19 obligations of or secured by the full faith and credit of, any state or territory  
20 of the United States, or the District of Columbia, where there exists the  
21 power to levy taxes for the prompt payment of the principal and interest of  
22 such bonds or evidences of indebtedness; but the issuer *shall not* be in default  
23 in the payment of principal or interest on any bonds or other evidences of  
24 indebtedness.

25 (b) Bonds authorized under this Section may be purchased and held  
26 in investment funds authorized under §8158, or in exchange-traded funds

1 authorized under §8158.1; such purchases *shall* be excluded from the  
2 limitations of §8158(e) and §8158.1(b).”

3 **Section 12.** §8153 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is  
4 hereby *amended* to read:

5 “§ 8153. **Same: Public Revenue Bonds.** Bonds or other  
6 obligations which are payable from revenues or earnings specifically pledged  
7 therefore of a public utility, state, municipally or territorially owned, either  
8 directly or through civil division, authority or public instrumentality of a state  
9 or territory or municipality; provided that:

10 (a) the laws of the state or territory or municipality  
11 authorizing the issuance of such bonds or other obligations require  
12 that rates for service *shall* be fixed, maintained and collected at all  
13 times so as to produce sufficient revenue or earnings to pay all  
14 operating and maintenance charges, and both principal and interest of  
15 such bonds or obligations; and

16 (b) *no* such bonds or other *obligations* shall be in default in  
17 the payment of principal or interest.

18 Bonds authorized under this Section may be purchased and held in  
19 investment funds authorized under §8158, or in exchange-traded funds  
20 authorized under §8158.1; such purchases *shall* be excluded from the  
21 limitations of §8158(e) and §8158.1(b).”

22 **Section 13.** §8154 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
23 is hereby *amended* to read:

24 “§ 8154. **Same: Bonds of Domestic and Foreign Corporations;  
25 Index-Eligible Securities.**

26 (a) Bonds of Domestic Corporations. Bonds, debentures, notes and  
27 other evidences of indebtedness of any corporation, or corporations created

1 or existing under the laws of the United States, or of any of the states or  
2 territories of the United States, or the District of Columbia, which are *not* in  
3 default either as to principal or interest, provided that:

4 (1) such bonds or other evidence of indebtedness are rated  
5 within the four (4) highest categories of two (2) nationally recognized  
6 and published rating services which have been approved by the Board  
7 and the investment agent; or

8 (2) in case such bonds or other evidence of indebtedness are  
9 *not* so rated by two (2) such services, investments in such lesser-  
10 ranked domestic corporate bonds *shall not* exceed eight percent (8%)  
11 of the Fund at cost; *unless* the net earnings available for fixed charges  
12 over a prior period of five (5) fiscal years next preceding the date of  
13 investment have averaged per year and during either of the last two (2)  
14 years have been, after depreciation and after taxes, *not less than*:

15 (A) two (2) times its average annual fixed charges over  
16 the same period, in the case of any public utility company;

17 (B) one and one-half (1½) times its average annual  
18 fixed charges over the same period, in the case of any finance  
19 company; or

20 (C) three (3) times its average annual fixed charges  
21 over the same period, in the case of any other company.

22 (3) *No more than* two percent (2%) of the Fund at cost *shall*  
23 be invested in the obligations of any one (1) domestic corporation or  
24 other single domestic issuing entity described in this Subsection.

25 (b) Bonds of Foreign Corporations. Bonds, debentures, notes and  
26 other evidences of indebtedness of any corporation, or corporations created  
27 or existing under the laws of nations other than the United States which are

1        *not* in default either as to principal or interest; provided, that the investment  
2        agent in its informed opinion, determines that such an investment would be  
3        employed by a prudent person acting in a like capacity and familiar with such  
4        matters would use in the investment of a fund of like character and with like  
5        aims. *No more than* one and one-half percent (1½%) of the Fund at cost *shall*  
6        be invested in the obligations of any one (1) foreign corporation or other  
7        single issuing foreign entity described in this Subsection.

8            (c)    *No* investment *shall* be made in any one (1) issue described in  
9        Subsections (a) and (b) of this Section in an amount in excess of ten percent  
10       (10%) of such issues.

11           (d)    Other Securities in the U.S. Aggregate Bond Index. Bonds,  
12        debentures, notes and other evidences of indebtedness which are  
13        denominated in U.S. dollars, investment-grade, fixed-rate and of the quality  
14        of fixed income securities covered by the U.S. Aggregate Bond Index.

15           (e)    Bonds authorized under this Section may be purchased and held  
16        in investment funds authorized under §8158, or in exchange-traded funds  
17        authorized under §8158.1; such purchases *shall* be excluded from the  
18        limitations of §8158(e) and §8158.1(b).”

19        **Section 14.** §8156 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is  
20        hereby *amended* to read:

21            “§ 8156.     **Same: Domestic and Foreign Preferred Stock.**

22            (a)    Domestic Preferred Stock. Domestic preferred or guaranteed  
23        stock or shares of any institution created or existing under the laws of the  
24        United States or of any state, district or territory thereof or the District of  
25        Columbia; provided that:

1 (1) All publicly held prior obligations and prior preferred  
2 stock, if any, of such institution at the date of acquisition are eligible as  
3 investments under §§ 8143 through 8160; and

4 (2) the net earnings of the institution available for fixed  
5 charges over a period of five (5) fiscal years next preceding the date of  
6 investment have averaged per year, and during either of the last two (2)  
7 years have been, after depreciation and after income taxes, *no less*  
8 *than:*

9 (A) two times its average annual fixed charges,  
10 maximum contingent interest and preferred dividend  
11 requirements over the same period, in the case of any public  
12 utility company; or

13 (B) three (3) times its average annual fixed charges,  
14 maximum contingent interest and preferred dividend  
15 requirements over the same period, in the case of any other  
16 company.

17 For purposes of this Subsection, the term *preferred dividend*  
18 *requirements shall* mean cumulative and noncumulative dividends on  
19 all preferred stock of the issuer, whether paid or not.

20 (b) Foreign Preferred Stock. Foreign preferred or guaranteed stock  
21 or shares of any institution created or existing under the laws of nations other  
22 than the United States which are *not* in default either as to principal or  
23 interest; provided, that the investment agent in its informed opinion,  
24 determines that such an investment would be employed by a prudent person  
25 acting in a like capacity and familiar with such matters would use in the  
26 investment of a fund of like character and with like aims.

27 (c) Limitations:

1 (1) *No* investment *shall* be made in any one issue described in  
2 Item (1) of Subsection (a) of this Section in an amount in excess of ten  
3 percent (10%) of such issues.

4 (2) *No* more than two percent (2%) of the Fund at cost shall  
5 be invested in the preferred stock of any one issuing domestic  
6 company.

7 (3) *No* more than two percent (2%) of the Fund at cost shall be  
8 invested in the preferred stock of any one issuing foreign company.

9 (4) The aggregate of all investments authorized under this  
10 Section *shall not* exceed fifteen percent (15%) of Fund assets at cost.

11 (5) Preferred stock authorized under this Section may be  
12 purchased and held in investment funds authorized under §8158, or in  
13 exchange-traded funds authorized under §8158.1; such purchases *shall*  
14 be excluded from the limitations of §8158(e) and §8158.1(b).”

15 **Section 15.** §8157 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is  
16 hereby *amended* to read:

17 “§ 8157. **Same; Common Stock.**

18 (a) Common or capital stock of any institution or entity created or  
19 existing under the laws of the United States, or any state, district, or territory  
20 thereof, or of the District of Columbia or of any foreign country; provided  
21 that, with respect to *at least* fifty percent (50%) of the investments at cost  
22 purchased directly under this Section:

23 (1) the issuing institution, entity, or a predecessor thereto, has  
24 reported a profit in *at least* four (4) of the five (5) fiscal years next  
25 preceding the date of investment, or alternatively in *at least* seven (7) of  
26 the ten (10) fiscal years next preceding the date of investment; and

1           (2) the institution, entity or such predecessor has paid cash  
2 dividends on its common or capital stock in *at least* four (4) of the five  
3 (5) years next preceding the date of investment, or alternatively in *at*  
4 *least* seven (7) of the ten (10) fiscal years next preceding the date of  
5 investment; and

6           (3) total cash dividends have *not* exceeded total earning in the  
7 five (5) years next preceding the date of investment; and

8           (4) on the date of investment, the issuer *shall not* be in default  
9 in payment of principal or interest on any of its publicly held bonds or  
10 other evidences of indebtedness; and any contingent interest,  
11 cumulative and noncumulative preferred dividends and dividends on  
12 prior common or capital stock *shall* have been paid in full.

13           *No more than* five percent (5%) of the Fund *shall* be invested directly in  
14 the common or capital stock of anyone issuing domestic company described in  
15 this Section.

16           (b) Common or capital stock of any institution or entity created or  
17 existing under the laws of nations other than the United States; provided, that  
18 the investment agent determines that such an investment would be employed  
19 by a prudent person acting in a like capacity and familiar with such matters  
20 would use in the investment of a fund with like character and with like aims.  
21 *No more than* one and one-half percent (1½%) of the Fund at cost *shall* be  
22 invested directly in the common or capital stock of anyone issuing foreign  
23 company described in this Section.

24           (c) *No* direct investment *shall* be made in any one (1) issue described  
25 in this Section in an amount in excess of ten percent (10%) of such issues.

26           (d) Common or capital stock of any institution or entity created or  
27 existing under the laws of the United States, or any state, district, or territory

1       thereof, or of the District of Columbia, or of any foreign country, purchased  
2       and held in investment funds authorized under §8158, or in exchange-traded  
3       funds authorized under §8158.1; such purchases being excluded from the  
4       limitations of §8158(e) and §8158.1(b).

5       (e)     The aggregate amount of all direct and indirect investments under  
6       this Section at cost *shall not* exceed seventy percent (70%) of the Fund.”

7       **Section 16.** § 8158 of Article 1, Chapter 8, Title 4, Guam Code Annotated, is  
8       hereby *amended* to read:

9               **“§ 8158.     Investment Funds.**

10       (a)     Common or capital shares of any investment trust or mutual fund  
11       (including any index fund) registered with the Securities and Exchange  
12       Commission under the Investment Company Act of 1940, as from time to time  
13       amended; provided, that the cost of the shares acquired is no greater than their  
14       net asset value on the date of acquisition.

15       (b)     Units in any common trust fund or commingled fund (including  
16       any index fund) maintained by a custodian meeting the requirements of Title 4  
17       GCA, § 8144, and advised or sub-advised by an investment management  
18       organization meeting the requirements of Title 4 GCA, § 8145.

19       (c)     Preferred shares of any investment trust or mutual fund  
20       (including any index fund) registered with the Securities and Exchange  
21       Commission under the Investment Company Act of 1940, as from time to time  
22       amended; provided that:

- 23               (1)     the number of issued and outstanding common or capital  
24               shares multiplied by their asset value per share, plus;
- 25               (2)     the number of issued and outstanding preferred shares,  
26               multiplied by their par or stated value, is *at least* fifty percent (50%)  
27               greater than the number of issued and out-standing preferred shares,



1 multiplied by their par or stated value. For purposes of this Section, the  
2 number of issued and outstanding shares *shall* be taken as of the latest  
3 available public report of such investment trust or mutual fund.  
4 Preferred shares as described in this Subsection *shall not* be subject to  
5 the provisions of §8156.

6 (d) The term *net asset value* as used in this Section *shall* mean the  
7 total quoted or estimated market value of all securities or other assets owned,  
8 less that total of all determinable liabilities, as reported by such common trust  
9 fund, commingled fund, investment trust or mutual fund.

10 (e) Limitation:

11 (1) The investment in units, preferred, common and capital  
12 stock of any one common trust fund, commingled fund, investment trust  
13 or mutual fund *shall not* exceed five percent (5%) of the Fund at cost;  
14 and

15 (2) The aggregate of all investments under this Section, *except*  
16 for investment fund purchases of cash equivalents authorized under  
17 §8149, bonds authorized under §§8150 through 8154, domestic and  
18 foreign preferred stock authorized under §8156, and common or capital  
19 stock authorized under §8157, *shall not* exceed thirty percent (30%) of  
20 the Fund at cost.”

21 **Section 17.** §8158.1 of Article 1, Chapter 8, Title 4, Guam Code Annotated,  
22 is hereby *amended* to read:

23 **“§ 8158.1. Exchange Traded Funds.**

24 (a) Units *or* shares of any exchange traded fund (ETF) established as  
25 an open-end investment management company *or* a unit investment trust  
26 registered with the Securities and Exchange Commission under the Investment  
27 Company Act of 1940, as from time to time amended. Although ETFs may

1 trade at prices established throughout the trading day, like any other listed  
2 equity security trading in the secondary market on an exchange, the units *or*  
3 shares described in this Subsection *shall not* be subject to the provisions of  
4 §8157. Although ETFs are unit investment trusts, the units *or* shares described  
5 in this Subsection *shall not* be subject to the provisions of §8158.

6 (b) The investment in units *or* shares of any one exchange traded fund  
7 *shall not exceed* twenty percent (20%) of the Fund at cost.”

8 **Section 18. Effective Date.** This Act *shall* become effective upon enactment.

9 **Section 19. Severability.** *If* any provision of this Act or its application to any  
10 person or circumstances is held invalid, the invalidity *shall* not affect any other  
11 provision or applications of this Act which can be given effect without the invalid  
12 provision or application, and to this end the provisions of this Act are severable.

# LEGISLATIVE SESSION

## I MINA'TRENTAI DOS NA LIHESLATURAN

### 2013 (FIRST) Regular Session

### Voting Sheet

**Bill No. 170-32 (LS)**

As amended on the Floor.

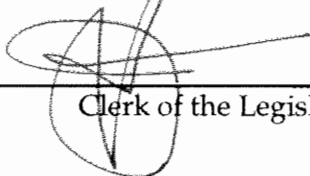
Speaker Antonio R. Unipingco Legislative Session Hall  
November 12, 2013

NAME	Yea	Nay	<u>Not Voting/ Abstained</u>	<u>Out During Roll Call</u>	Absent
Senator Thomas "Tom" C. ADA	✓				
Senator V. Anthony "Tony" ADA	✓				
Senator Frank Blas AGUON Jr.	✓				
Vice-Speaker Benjamin J.F. CRUZ	✓				
Senator Christopher M. DUENAS	✓				
Senator Michael LIMTIACO	✓				
Senator Brant McCREADIE	✓				
Senator Thomas "Tommy" MORRISON	✓				
Senator Tina Rose MUÑA BARNES	✓				
Senator Vicente (ben) Cabrera PANGELINAN	✓				
Senator Rory J. RESPICIO	✓				
Senator Dennis G. RODRIGUEZ, Jr.	✓				
Senator Michael F. Q.SAN NICOLAS	✓				
Speaker Judith T. WON PAT, Ed.D.	✓				
Senator Aline A. YAMASHITA, Ph.D.	✓				

**TOTAL**

<u>15</u>	<u>    </u>	<u>    </u>	<u>    </u>	<u>    </u>
Yea	Nay	Not Voting/ Abstained	Out During Roll Call	Absent

CERTIFIED TRUE AND CORRECT:

  
 \_\_\_\_\_  
 Clerk of the Legislature

I = Pass



I Mina'trentai Dos na Liheslaturan Guåhan

Senator Vicente (ben) Cabrera Pangelinan (D)

OCT 25 2013

**The Honorable Vice Speaker BJ Cruz**  
Acting Speaker  
I Mina'trentai Dos Na Liheslaturan Guåhan  
155 Hesler Place  
Hagåtña, Guam 96910

**VIA: The Honorable Rory J. Respicio**  
Chairperson, Committee on Rules

**RE: Committee Report on Bill No. 170-32 (COR), As Introduced**

Dear Speaker Won Pat:

Transmitted herewith is the Committee Report on Bill No. 170-32 (COR), as introduced, "An Act to add a New Subsection (w) to §8104, to amend §8139.1 to amend Subsection 8143 (j), to amend §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 all of Article 1, Chapter 8, Title 4 of the Guam Code Annotated Relative to the Defined Benefits Plan of the Government of Guam Retirement Fund" sponsored by Senator Vicente (ben) Cabrera Pangelina, which was referred to the Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land.

Committee votes are as follows:

2 TO PASS  
0 NOT TO PASS  
4 TO REPORT OUT ONLY  
0 TO ABSTAIN  
0 TO PLACE IN INACTIVE FILE

*Si Yu'os Ma'åse'.*

Vicente (ben) Cabrera Pangelinan  
Chairman

Chairman  
Committee on Appropriations,  
Public Debt, Legal Affairs,  
Retirement, Public Parks,  
Recreation, Historic Preservation  
and Land

Member  
Committee on Education,  
Public Libraries  
and Women's Affairs

Member  
Committee on General  
Government Operations and  
Cultural Affairs

Member  
Committee on Municipal  
Affairs, Tourism, Housing and  
Hagåtña Restoration and  
Development Authority

Member  
Committee on Health &  
Human Services, Health  
Insurance Reform, Economic  
Development and Senior  
Citizens

Member  
Committee on Aviation, Ground  
Transportation, Regulatory  
Concerns and Future  
Generations

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# COMMITTEE REPORT

ON

Bill No. 170-32(COR)<sup>(LS) mod.</sup>, As Introduced

Sponsored by

Senator Vicente (ben) Cabrera Pangelinan

AN ACT TO ADD A NEW SUBSECTION (w) TO  
§8104, TO AMEND §8139.1, TO AMEND  
SUBSECTION 8143(j), TO AMEND §8144, §8145,  
§8146, §8149, §8150, §8151, §8152, §8153,  
§8154, §8156, §8157, §8158, and §8158.1 ALL  
OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM  
CODE ANNOTATED RELATIVE THE DEFINED  
BENEFITS PLAN OF THE GOVERNMENT OF GUAM  
RETIREMENT FUND.



Office of

the People

# I Mina'trentai Dos na Liheslaturan Guahan

Senator Vicente (ben) Cabrera Pangelinan (D)

OCT 25 2013

## MEMORANDUM

**To:** All Members  
Committee on Appropriations, Public Debt, Legal Affairs, Retirement,  
Public Parks, Recreation, Historic Preservation and Land.

**From:** Senator Vicente (ben) Cabrera Pangelinan  
Committee Chairperson

**Subject:** Committee Report on Bill No. 170-32 (COR) As Introduced


Transmitted herewith for your consideration is the Committee Report on Bill No. 170-32 (COR), as introduced], " An Act to add a New Subsection (w) to §8104, to amend §8139.1, to amend Subsection 8143 (j), to amend §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 all of Article 1, Chapter 8, Title 4 of the Guam Code Annotated Relative to the Defined Benefits Plan of the Government of Guam Retirement Fund" sponsored by Senator Vicente (ben ) Cabrera Pangelinan.

This report includes the following:

1. Committee Voting Sheet
2. Committee Report Narrative
3. Copy of Bill No. 170-32 (COR), As Introduced
4. Public Hearing Sign-in Sheet
5. Copies of Written Testimony
6. Copy of letter requesting Fiscal Note
7. Copy of COR referral Bill No. 170-32 (COR)
8. Notices of Public Hearing
9. Copy of the Public Hearing Agenda

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact my office.

*Si Yu'os Ma'ase',*

  
Vicente (ben) Cabrera Pangelinan  
Chairman

Chairman  
Committee on Appropriations,  
Public Debt, Legal Affairs,  
Retirement, Public Parks,  
Recreation, Historic Preservation  
and Land

Member  
Committee on Education,  
Public Libraries  
and Women's Affairs

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Committee on General  
Government Operations and  
Cultural Affairs

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Committee on Municipal  
Affairs, Tourism, Housing and  
Hagåtña Restoration and  
Development Authority

Member  
Committee on Health &  
Human Services, Health  
Insurance Reform, Economic  
Development and Senior  
Citizens

Member  
Committee on Aviation, Ground  
Transportation, Regulatory  
Concerns and Future  
Generations


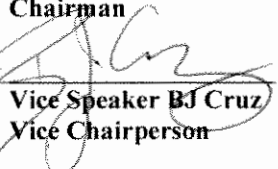
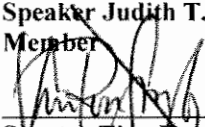
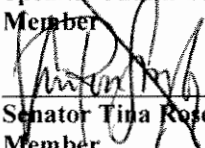


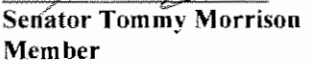
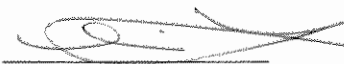
I MINA' TRENTAI DOS NA LIHESLATURAN GUÅHAN

Committee Voting Sheet

Committee on Appropriations, Public Debt, Legal Affairs, Retirement,  
Public Parks, Recreation, Historic Preservation and Land

(15) 30

Bill No. 170-32 (COR). An Act to add a New Subsection (w) to §8104, to amend §8139.1, to amend Subsection 8143 (j), to amend §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 all of Article 1, Chapter 8, Title 4 of the Guam Code Annotated Relative to the Defined Benefits Plan of the Government of Guam Retirement Fund.

Committee Members	To Pass	Not To Pass	Report Out Only	Abstain	Inactive File
 Senator Vicente (ben) Cabrera Pangelinan Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Vice Speaker BJ Cruz Vice Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Speaker Judith T. Won Pat Member	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Tina Rose Muña-Barnes Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Dennis Rodriguez, Jr. Member	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Michael San Nicolas Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Tommy Morrison Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Michael Lintiac Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



**Committee Report**

Bill No. 170-32 (CORR) <sup>(15)</sup> An Act to add a New Subsection (w) to §8104, to amend §8139.1, to amend Subsection 8143 (j), to amend §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 all of Article 1, Chapter 8, Title 4 of the Guam Code Annotated Relative to the Defined Benefits Plan of the Government of Guam Retirement Fund.

**I. OVERVIEW**

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land convened a public hearing on August 30, 2013 at 5:30 pm in *Liheslatura's* public hearing room.

**Public Notice Requirements**

Notices were disseminated via hand-delivery and e-mail to all senators and all main media broadcasting outlets on August 23, 2013 (5-Day Notice), and again on August 28, 2013 (48 Hour Notice).

**(a) Committee Members and Senators Present**

Senator Vicente (ben) C. Pangelinan, Chairman  
Vice Speaker BJ Cruz, Vice Chairman  
Senator Michael Limtiaco, Member

**(b) Appearing before the Committee**

Former Speaker Joe T. San Agustin, Chairman of the Government of Guam Retirement Fund Board of Trustees  
Mr. Gerry Cruz, Member of the Government of Guam Retirement Fund Board  
Ms. Paula Blas, Director of Government of Guam Retirement Fund  
Ms. Maggie Ralbovsky, CFA, Wilshire Associates, Government of Guam Retirement Fund Consultant for the Defined Benefit Plan

**(c) Written Testimonies Submitted**

Summary Position from the Government of Guam Retirement Fund

Chairman  
Committee on Appropriations,  
Public Debt, Legal Affairs,  
Retirement, Public Parks,  
Recreation, Historic Preservation  
and Land

Member  
Committee on Education,  
Public Libraries  
and Women's Affairs

Member  
Committee on General  
Government Operations and  
Cultural Affairs

Member  
Committee on Municipal  
Affairs, Tourism, Housing and  
Hagåtña Restoration and  
Development Authority

Member  
Committee on Health &  
Human Services, Health  
Insurance Reform, Economic  
Development and Senior  
Citizens

Member  
Committee on Aviation, Ground  
Transportation, Regulatory  
Concerns and Future  
Generations



## I. COMMITTEE PROCEEDINGS

**Chairman Pangelinan.** Good evening, ladies and gentlemen and welcome to this public hearing duly noticed according to the open government law. With regards to the agenda this afternoon, only have one item on the agenda that is Bill No. 170-32, An Act to add a New Subsection (w) to §8104, to amend §8139.1, to amend Subsection 8143 (j), to amend §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 all of Article 1, Chapter 8, Title 4 of the Guam Code Annotated Relative to the Defined Benefits Plan of the Government of Guam Retirement Fund.

I would like to thank my colleagues who are with me this afternoon. To my immediate right is Vice Speaker BJ Cruz and to my left is Senator Michael Limtiaco. Thank you gentlemen for joining us this afternoon. I would also like to thank the Retirement Fund who are here and welcome to testify. I would like to ask the Chairman of the Retirement Fund Board to join us at the witness table and anyone else you wish to have support your testimony.

**Sponsor Summary.** Very briefly, Bill No. 170 - which I am sure will be dealt with in greater detail during this public hearing - is an act to amend certain sections of the Retirement Fund investment authorities and allow certain provisions of law to be amended so that the flexibility for investment vehicles available to the Retirement Fund will maximize its investment return. We want to thank the Retirement Fund Board for working with the Committee in working on this piece of legislation and we look forward to its successful conclusion at this public hearing and of course the Retirement Fund presentation to the Legislature for consideration for Bill No. 170 to be enacted into policy to help guide and govern the Retirement Fund investment authorities and parameters.

Mr. (former) Speaker and Chairman (Joe T. San Agustin), I would like to give you the opportunity to open and have anybody else you wish to provide testimony to also proceed.

**Mr. Joe T. San Agustin.** Thank you, Mr. Chairman. I would like to express my appreciation on behalf of the Board for allowing us to discuss these very important amendments to our existing Retirement Fund statutes to enhance the capability of the Fund to maximize its assets to the benefit of its members. We have a position setup for the budget and I want to thank you Mr. Chairman for working with the Board and our consultants in crafting this legislation. It has been almost a year since we started discussing these kinds of changes, which is something that we need to do in order for the Fund to enhance itself and take advantage the various investment opportunities so we can be sure that our members are getting a good return of their investment.

This bill is still conservative. We want additional leverage or some expansion of the opportunities to invest our asset, but not low enough to the point that you can be very – almost like a blank check. I am sure you share my concern that we need to have as in the past, establish by our own traditional rule that the investment is there, but you still provide some limitations. Once you start experiencing that limitation, then you start expanding at the same time, but still be conservative to be able to be protective so that there is not much risk involved that would jeopardize the assets of the Fund. Our job is basically to ensure the financial integrity of the

Fund, to make sure that it enhances its returns and at the same time ensure maximum benefits to its members. I think we have lived up to our goals. There are some details in the bill itself, Mr. Chairman and I will let Maggie [Ralbovsky] answer specific questions.

As you know, the investment law was crafted way back in 1952 or 1956 and over the years, we made amendments, expanding it in such a way that provided more latitude to the Board, but the Board itself needs some guidelines and the statutory guidelines provide those guidelines to enhance --- up to date since the emergence of the Funds in 1950, I think we show with pride that our forefathers looked beyond what can happen to the Fund. We have now been able to enjoy - despite the market fluctuation with the low interest rate – a two-digit return for the last two years and that is because of the diversification of the portfolio; that you spread out your risk. You don't concentrate all your eggs in one basket.

We pride ourselves and are gifted by having good people on the Board; we were able to attract good people as investment managers and advisors both Maggie [Ralbovsky] and Terri Denison of Mercer. For years, they have guided us in developing the portfolio guidelines and objectives. So far, we have been able to excel ourselves. We maintain our independence, we maintain our financial integrity, and we maintain our main fiduciary responsibility; that is to the Trust of the Fund and to the members of the Fund itself. We owe it to the leaders of the Legislature, such as you Mr. Chairman and Vice Speaker and to others before you that have been in the forefront in protecting the Fund's integrity. I can always rely on the Legislature and the Administration in making sure that this valuable asset of our employees who have actually worked hard to develop it, must be protected at all times.

With that Mr. Chairman, we can proceed with the various details. Maggie [Ralbovsky] can explore what are the ramifications of this particular bill. Are there other Trustees who want to address anything? Paula? Let's go ahead and move forward with the details.

**Chairman Pangelinan.** Thank you Mr. Speaker.

**Ms. Maggie Ralbovsky.** We know that to generate returns in the capital market, we have to take risks. But we also know that not all risks are equal. The truth of the matter is that the Retirement Fund portfolio as it stands today; we will not be able to diversify any further because of the statutes. As it stands the statutes have many, many limitations that is constraining to the current portfolio. So, if we do not make any changes to the statute, we will have no way to diversify further and we know diversification is the best way to control risk. To generate better risk adjusted return, we have to be able to use all the opportunities that is afforded to an institutional investor like GGRF. We have done some benchmarking analysis.

There is a page included in your packet that has many pie charts – three pie charts. This is a benchmarking [inaudible] asset allocation verses the available market opportunities set that can be accessed by institutional investors in the world by their weighing in the total world portfolio. I also prepared a benchmarking of GGRF as allocation verses the peer group. The peer group is the public pension fund of the United States. You can see by just looking at the pie chart at the bottom, GGRF currently has participation in three colors; each color represents an asset class and that is significantly fewer as a class than both the global opportunity set as well as the peer group

asset allocation, which points out to the fact that our asset allocation is heavily concentrated in three asset classes because we are bumping into the constraints of the current statute. We cannot diversify further. It is the most prudent thing to do for us to be able to utilize all the opportunities out there to get the best return for the same risk level we are taking, or even reduce the risk. That is the goal for making all the proposed changes.

**Vice Speaker Cruz.** I note on the Public Fund (referring to one of the pie charts – Public Fund Average), they have an ability to ---- or they have a fairly sizeable percentage in private real estate. At the present time, the GGRF is precluded from investing in private real estate. What kind of private real estate could we or should we be investing in?

**Ms. Maggie Ralbovsky.** Thank you for the question. Private real estate as opposed to public traded real estate – they are all trying to gain rent the property can generate. For example, if there is an office building that is leased out to tenants and the office building will be paying rent to whomever owns the building, the difference between private real estate versus public real estate - which is REITS - is that REITS are investment vehicles that is heavily levered and private real estate vehicles tend to be less levered and most of the time it is entirely just equity. Therefore the returns on private real estate tend to be more stable than publicly traded real estate because when you are levered, you are subject to the market fluctuation of the different parts of your capital structure and when you are not levered, you are basically collecting rent. So, it represents a good diversification versus the publicly traded real estate security, which the GGRF currently are allowed to invest in. We are hoping we could supplement the public real estate investment with private real estate investment to improve diversification and lower the volatility of their allocation.

To directly answer your question, the properties included in private real estate mainly are office buildings, apartment complexes, warehouses, and industrial buildings – basically commercial real estate, not residential.

**Vice Speaker Cruz.** About fifteen years ago, I tried to convince the Retirement Fund to invest in re-building the Governor's Palace in Hagatna as a museum. Would that be allowed if one could show that the return on that could be..... ?

**Ms. Maggie Ralbovsky.** It is our intent to actually participate in co-mingled funds that are diversified across the world, not just concentrating in one particular location or one property type. It is very hard for any advisor to tell you 'yes, this is the particular property we should get into'. I do believe diversification is the most important thing and we intend to participate in this as a class three diversified vehicles.

**Vice Speaker Cruz.** One of the other things that I was concerned about as it relates to GGRF was when I was interested in trying to get the Retirement Fund to do some investment locally, I was given the impression that that was precluded. It would seem to me that if GGRF could and did invest locally, that would increase the number of employees in the government of Guam and would provide a new group of individuals that will continue to assist in keeping the Retirement Fund afloat, whereas if you only invested your funds off-island and did nothing to assist the local economy and assist in increasing employment that would be members of the

Retirement Fund. Is there a way that we could do that where the investment would result in increasing the number of Fund members to continue. Otherwise, if we are the last set there is nobody going to be putting in after us and we will all starve to death.

**Ms. Maggie Ralbovsky.** There are many goals for an investment program. We need to put our fiduciary hats on in this particular case. I do believe this Fund is a trust for the benefit of the retirees and obviously it is possible for certain entities to institute some value based guideline for investment, but the guiding principle is to compare the marginal opportunity across the board. With that as the guiding principle, I believe that is the principle we all adhere to.

**Vice Speaker Cruz.** The investment or at least the amount of money that the younger members of the Fund provide - the DC Plan – if we didn't have a growing [number of] DCs we would not be able to afford to keep up the DBs. It would seem to me that doing something locally that would increase the number of DC members of the Fund would continue to feed. I am just wondering whether or not there has ever been a comparison to determine what the contribution is from the contributions of the DC members and whether or not that is necessary to keep the Fund afloat.

**Ms. Maggie Ralbovsky.** The contribution to the Retirement Fund is actuarially determined. It is the amortized unfunded liability of GovGuam. It is irrelevant as to how many members are in DC.

**Vice Speaker Cruz.** It was my understanding that if it were not for the DC members contributing we might have a difficult time meeting our obligations to the DBs.

**Mr. Gerry Cruz.** No, I think there has always been that misconception. The DC member contributes 5% and the government matches the DC member another 5%. That's it.

**Ms. Maggie Ralbovsky.** And that goes to the DC plan, not the DB plan.

**Mr. Gerry Cruz.** It does not touch the DC side – it is a separately managed plan managed by the DC member. There is no contribution from the DC member to the DB side.

**Chairman Pangelinan.** I think the Vice Chair is referring to the fact that the contribution towards the unfunded liability is based on total payroll cost.

**Mr. Gerry Cruz.** That is correct. But the unfunded liability is a fixed cost. So, whether the government's contribution to pay down that unfunded liability is calculated based on total payroll or based on just the DB payroll, the number at the end of the equation is going to be the same. There has been that misconception that DC member's contribution from the government side is subsidizing the DB unfunded liability. But that's not a logically correct statement. The \$120M is a fixed cost and however you come up with the percentage to get to that number; whether you use DB or DC or just DC and/or both, it's the same number.

**Vice Speaker Cruz.** I really do think there is a responsibility of the Board to make that clear because I know of a number of people believe in that misconception and many DBs are

being criticized because of that. We really have to underscore that because there are many DCs out there that believe if not for them the DBs would have withered in the vine.

**Mr. Gerry Cruz.** You are correct. Every time we hear that argument, we do what we can to speak up against it. Because it is a misconception and it is widely held by many DC members.

**Ms. Maggie Ralbovsky.** The only way to reduce future required contribution to the Retirement Fund is to reduce the unfunded liability. One way to reduce the unfunded liability is to increase the return of the retirement program and that is precisely why we are here today trying to give us the tools to do the job.

**Chairman Pangelinan.** You make some distinction in terms of counting investment vehicles towards these caps. For example, in one of the changes we are proposing in determining the total amount that the Fund can own of an investment fund, you would not count US debt. Can you explain why you are making that kind of distinction in terms of counting when you would reach the cap for investment in that fund?

**Ms. Maggie Ralbovsky.** A security being held directly by GGRF verses being held through an investment vehicle, like a co-mingled fund currently is treated differently under the statute limits, which is illogical. The reason we wanted to hold certain securities in an investment vehicle is because it might be cheaper to do that. For example, if you want to hold a security that is issued by India and if you participate in a co-mingled vehicle with other investors, you are not going to be required to hire a tax attorney on the ground in New Delhi, which is a very expensive proposition, but, that responsibility will be taken by the fund provider. So it is a much cheaper way to hold an Indian security through a co-mingled fund verses direct ownership. The current statute makes a distinction of these two routes and punishes us for holding certain securities within the co-mingled fund vehicle by giving us a very stringent limit, which makes the decision in the market sometimes inefficient since I do not have the ability to hold anything in co-mingled funds. I may have to hold certain securities in a separate account, which is more expensive.

I do not believe that is the initial intent for putting that limit there. Therefore, I do believe that the decision of using whatever vehicle should be irrelevant. We should look at what the security is about instead of how this security is being held.

**Chairman Pangelinan.** One of the basic limits is the difference between allowing increasing to foreign equity and foreign investment portfolio of the Fund, correct?

**Ms. Maggie Ralbovsky.** Yes, that is correct. The reason for that is because if you look at the global opportunity set, US equity is about \$17 trillion, international equity is about \$16 trillion. That is the collective view as to how the investments are allocated in the world. It's the collection of all investors in the world, which represents the opportunity set.

The current constraint of 15% international equity is severely constraining us from diversifying outside the US. Therefore, we have a portfolio that is heavily concentrated in the US, which a concentration is never a good way to control risk. We would like to bring our

opportunity set closer to our guidelines. Bring our guideline closer to the opportunity set to expand the limit on international holdings.

**Senator Michael Limtiaco.** Thank you, Mr. Chair. My question is in regards to the references to the Tier 1 capital and the changes that are being made to the Tier 1 capital limits. Initially, when I saw it I had put down the questions, but thank you for providing the detailed section-by-section explanation. Just to be clear, these are FDIC promulgated rules and regulations and not just based on a number that the Retirement Fund is necessarily choosing to use?

**Ms. Maggie Ralbovsky.** Yes, that is correct. There is an international treaty by G10. Basically, a group of ten countries that are the most developed countries in the world. They formed a treaty in 1974 called the Basil Forum. The Basil Forum is an international protocol to regulate all the banks because all the banks deal with each other, across the borders. If there is no international guidelines we could enter into a situation where somebody says something, the other bank interprets differently and could cause a global financial crisis. The Basil Forum was formed to regulate all the bank industries in the world with the same standard. Currently, all the major countries are part of the Basil Forum.

In the Basil Forum, there are set standards that require all the banks to meet. One other requirement is that all the banks need to have – according to Basil 3 (They have different generations. Currently Basil 3 is the governing forum) all the banks need to maintain 10.5% Tier 1 capital. Tier 1 capital has a globally accepted definition. It includes only common stock and retained earnings. So, it is a true capital, not those exotic ways of defining capital. The current statute requires banks that do business with GGRF to have adequate capital, but does not define capital. We want to bring that to the international standard of Tier 1 capital.

**Senator Michael Limtiaco.** Thank you very much for your answer.

**Chairman Pangelinan.** There being no further questions, we want to thank you very much for your presentation this evening. Si Yu'os Ma'ase.

This concludes the testimony on Bill No. 170-32. There being no additional individuals to present any additional testimony, this Committee will continue to remain open for the acceptance of any additional information or public testimony on the bill discussed. You can submit those testimonies to my office directly on Soledad Avenue, as well as the Guam Legislature or through any of the electronic processes either email at office@senbenp.com or through our website at senbenp.com

This hearing is adjourned.

## **FINDINGS & RECOMMENDATIONS.**

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation and Land, hereby reports Bill No. 170-32 (COR), with the recommendation Report Out Only.

(LS)  
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I MINA 'TRENTAI DOS NA LIHESLATURAN GUAHAN  
2013 (FIRST) REGULAR SESSION

2013 AUG 16 PM 4: 29

Bill No. 170-32(US)

Introduced by:

V.C. Pangelinan 

AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 SECTION 1. **Legislative Findings and Intent.** *I Liheslaturan*

3 *Guahan* finds that legislative action is needed to improve the Government of

4 Guam's ability to meet its obligations to fund the Retirement Fund Defined

5 Benefit Plan. The statutory limitations in the Defined Benefit Plan pertaining

6 to investments should not result in unintended consequences such as

7 encouraging the Government of Guam Retirement Fund ('Fund') to take

8 undue investment risks, or permitting disproportionate risks for some asset

9 classes and some investment vehicles, which might result in an imprudent

10 investment portfolio.

1            *I Liheslaturan Guahan* finds that the investment limitations in current  
2 law must be updated and revised to expand the Fund's opportunity to improve  
3 the risk adjusted return of the investment portfolio for the benefit of the  
4 Retirement Fund as a whole.

5            *I Liheslaturan Guahan* finds inconsistent treatment in provisions  
6 allowing investments in various equity categories, while prohibiting  
7 investments in non-investment grade corporate bonds, even though all bond  
8 categories (including high-yield) can be safer and more protected under stress  
9 scenarios than equities because of established capital structure priorities.

10           *I Liheslaturan Guahan* further finds similar inconsistent treatment in  
11 provisions that allow bond investments so long as they are included in the  
12 applicable bond benchmark (e.g., the U.S. Aggregate Index), while  
13 prohibiting equity investments in certain non-U.S. headquartered companies  
14 even though such companies do most of their businesses in the U.S. and are  
15 included in applicable U.S. equity benchmarks (e.g., the Russell 1000 Index  
16 and the Russell 2000 Index).

17           *I Liheslaturan Guahan* further finds that current statutes limiting non-  
18 U.S. investments, which had a historical purpose of controlling risks in under-  
19 developed markets, are no longer relevant today and may be significantly  
20 inconsistent with global opportunity sets.



1            *I Liheslaturan Guahan* further finds that, for purposes of quantitative  
2 limitations, further clarity is needed when classifying investments by asset  
3 classes (e.g., stocks and bonds) and by the vehicles used to purchase such  
4 stocks and bonds (e.g., in mutual funds, exchange traded funds, index funds).

5            *I Liheslaturan Guahan* further finds that capital requirements for non-  
6 locally chartered bank custodians and for investment agents should be  
7 updated and more clearly defined in accordance with Federal Deposit  
8 Insurance Corporation Regulations, and increased in accordance with the  
9 level of assets under Fund management since the statute was enacted.

10           *I Liheslaturan Guahan* further finds that the fiduciary duties of the  
11 Board of Trustees of the Fund should expressly reflect that their investment  
12 decisions respecting individual assets should be evaluated not in isolation, but  
13 in the context of the Fund's portfolio as a whole and as part of an overall  
14 investment strategy having risk and return objectives reasonably suited to the  
15 Fund.

16           Accordingly, the Board of Trustees' decisions or actions in discharging  
17 their fiduciary duties should be reviewed in light of the facts and  
18 circumstances existing at the time of such decision or action, and not by  
19 hindsight.

1           Based on these findings, *I Liheslaturan Guahan* intends to amend the  
2 Defined Benefit Plan statute: (1) to allow investments in non-investment  
3 grade U.S. corporate bonds, up to eight percent (8%) of the Fund at cost and  
4 investments in U.S. and non-U.S. stocks, either directly or indirectly through  
5 purchases in investment funds or exchange traded funds, up to seventy  
6 percent (70%) of the Fund at cost; (2) to clarify that such quantitative  
7 limitations on direct and indirect investments in specific asset classes are  
8 separate from the quantitative limitations for the investment vehicles (e.g.,  
9 investment funds or exchange traded funds); (3) to increase the capital base  
10 required for non-locally chartered bank custodians and for investment agents  
11 to One Billion Dollars (\$1,000,000,000); and (4) to expressly state how the  
12 Board of Trustees' investment decisions should be evaluated based on risk  
13 and return objectives reasonably suited to the Fund.

14           **SECTION 2. A new subsection (w) is hereby added to Section 8104,**  
15 **Article 1, Chapter 8, Title 4 of the Guam Code Annotated, to read:**

16           “(w) *Tier 1 Capital* shall have the meaning set forth in regulations  
17 promulgated by the Federal Deposit Insurance Corporation as codified in the  
18 Code of Federal Regulations, 12 C.F.R. § 325, as amended from time to time.”

19           **SECTION 3. Section 8139.1, Article 1, Chapter 8, Title 4 of the**  
20 **Guam Code Annotated, is hereby amended to read:**

21           “§ 8139.1. Fiduciary Duties.

1 (a) The members of the Board of Trustees stand in a fiduciary  
2 relationship to the beneficiaries of the Retirement Fund in regard to the  
3 management of the Fund.

4 (b) The members of the Board of Trustees shall discharge their duties  
5 with respect to management of the Retirement Fund;

6 (1) solely in the interest of the members and beneficiaries of the  
7 Fund and for the exclusive purpose of providing benefits to members and  
8 beneficiaries and defraying reasonable expenses of administering the Fund.  
9 ~~The members of the Board of Trustees shall discharge their duties;~~

10 (2) with the care, skill, and prudence and diligence under the  
11 circumstances then prevailing that a prudent person acting in a like capacity  
12 and familiar with such matters would use in the conduct of an enterprise of a  
13 like character and with like aims. ~~The members of the Board of Trustees shall~~  
14 ~~discharge their duties;~~

15 (3) by diversifying the investments of the Fund so as to minimize  
16 the risk of large losses, unless under the circumstances it is clearly prudent not  
17 to do so. ~~The members of the Board of Trustees shall discharge their duties;~~  
18 and

19 (4) in accordance with the documents and instruments governing  
20 the fund Fund.

21 (c) Unless otherwise provided in this Chapter, investment and  
22 management decisions respecting individual assets shall be evaluated not in  
23 isolation, but in the context of the Fund's portfolio as a whole and as a part of  
24 an overall investment strategy having risk and return objectives reasonably  
25 suited to the Fund.

1           (d) A Trustee’s decision or action in discharging his or her fiduciary  
2 duties shall be reviewed in light of the facts and circumstances existing at the  
3 time of such decision or action, and not by hindsight.”

4           **SECTION 4. Subsection (j) of Section 8143, Article 1, Chapter 8,**  
5 **Title 4 of the Guam Code Annotated is hereby amended to read:**

6           “§8143(j). Before the Board may approve by resolution the acquisition  
7 of real property consisting of physical assets under §4225.16 of the  
8 Government Code, as amended, codified as §8159, of Title 4 GCA, the  
9 following steps must be taken:

10           (1) the proposed acquisition must be reviewed and recommendations  
11 must be submitted to the Board by an investment agent as defined under §8145  
12 of this Chapter;

13           (2) completion of an in-house evaluation of the proposed acquisition  
14 must be completed;

15           (3) a review of the proposed acquisition as to legal sufficiency must be  
16 made by the Attorney General; and

17           (4) a review and recommendation must be submitted by three (3)  
18 members of the Board of Trustees.

19           At no time shall an acquisition considered under this ~~Section~~ Subsection  
20 (j) be made that would provide an immediate investment return which is less  
21 than the average rate of investment return that the Fund is receiving overall on  
22 its alternative investment portfolio.”

23           **SECTION 5. Section 8144, Article 1, Chapter 8, Title 4 of the Guam**  
24 **Code Annotated is hereby amended to read:**

25           “§ 8144. Custodian.

26           The Board shall engage one or more ~~bank trust departments~~ custodians  
27 to assume responsibility for the physical possession of fund assets or

1 evidences of assets. The custodian shall submit such reports, accountings and  
2 other information in such form and at such times as requested by the Board.  
3 All costs incurred for custodial services shall be a direct charge to Investment  
4 Income. The custodian shall hold all assets for the account of the Government  
5 of Guam Retirement Fund and shall act only upon the instructions of the  
6 Board, its ex-officio director or a member, committee or agent so authorized  
7 by the Board. No custodian shall be engaged unless it:

8 (a) Has been continuously engaged in rendering ~~trust~~ custody services  
9 for a period of ten (10) or more years; and

10 (b) Is organized under the laws of the United States or a state or  
11 territory thereof; and

12 (c) Has Tier 1 capital and surplus in excess of ~~Ten Million One Billion~~  
13 Dollars (\$10,000,000,000); and

14 (d) Is a member of the Federal Reserve System whose deposits are  
15 insured by the Federal Deposit Insurance Corporation or any successor  
16 thereto; or

17 (e) Notwithstanding any of the above, any locally chartered bank may  
18 be a custodian of the Retirement Fund.”

19 **SECTION 6. Section 8145, Article 1, Chapter 8, Title 4 of the**  
20 **Guam Code Annotated is hereby amended to read:**

21 “§8145. Investment Agent.

22 (a) In order to secure expert advice and counsel, the Board may engage  
23 an investment agent to serve as investment counsel which shall be either an  
24 investment counsel or a bank trust department as hereinafter qualified; and  
25 one or more Investment Agents to serve as investment manager(s) to manage  
26 asset classes identified by the Board upon the recommendation of investment

1 counsel. All costs incurred in this connection shall be a direct charge to  
2 Investment Income.

3 (b) No person, firm or corporation shall be eligible for employment as  
4 investment counsel which acts as principal for its own account or as broker for  
5 a client other than the Fund in connection with the sale of any security to or  
6 the purchase of any security from the Fund.

7 (c) No investment ~~counsel~~ agent shall be engaged unless:

8 (1) The principal business of the person, firm or corporation selected  
9 by the Board consists of rendering investment supervisory services, that is, the  
10 giving of continuous advice as to the investment of Funds on the basis of the  
11 individual needs of each client; and

12 (2) The principal ownership or ~~and~~ control of such person, firm or  
13 corporation rests with individuals who are actively engaged in such business;  
14 and

15 (3) Such person, firm or corporation and its predecessors have been  
16 continuously engaged in such business for a period of ten (10) or more years;  
17 and

18 (4) Such person, firm or corporation is registered as an investment  
19 adviser under the laws of the United States of America as from time to time in  
20 effect; and

21 (5) The contract between the Board and the investment ~~counsel~~ agent  
22 is of no specified duration and is voidable at any time by either party; and

23 (6) Such person, firm or corporation certifies in writing, to the Board,  
24 that the assets under its direct investment supervision are in excess of ~~Two~~  
25 Hundred Million One Billion Dollars (\$200,000,000 1,000,000,000).

26 (d) The Board shall not engage a bank trust department unless it:

1 (1) Certifies in writing, to the Board, that the assets under its direct  
2 investment supervision are in excess of ~~Two Hundred Million~~ One Billion  
3 Dollars (\$200,000,0001,000,000,000); and

4 (2) Has been, together with its predecessors, continuously engaged in  
5 supervising investments for a period of ten (10) or more years; and

6 (3) Is organized under the laws of the United States or a state or  
7 territory thereof; and

8 (4) Has Tier 1 capital ~~and surplus~~ in excess of ~~Ten Million~~ One  
9 Billion Dollars (~~\$10,000,0001,000,000,000~~); and

10 (5) Is a member of the Federal Reserve System whose deposits are  
11 insured by the Federal Deposit Insurance Corporation or any successor thereto.

12 (e) The Board or its designee under § 8143(a), shall establish and may  
13 from time to time change operating arrangements with the Investment Agent in  
14 order to facilitate efficient management and timely investment action.

15 (f) No investment shall be made unless in the opinion of the Investment  
16 Agent it is an appropriate investment for the Fund and is an authorized  
17 investment under §§ 8143 through § 8159, inclusive, or in the absence of such  
18 opinion, unless preceded by a resolution of the Board ~~direction~~ directing the  
19 investment.”

20 **SECTION 7. Section 8146, Article 1, Chapter 8, Title 4 of the**  
21 **Guam Code Annotated is hereby amended to read:**

22 “§8146. General Investment Limitations.

23 No investment shall be made if, after such investment, the Fund would  
24 own:

25 (a) Any combination of obligations of any one political subdivision,  
26 corporation or other single issuing entity in excess of five percent (5%) of  
27 Fund assets at cost. This limitation shall not apply to general obligations of the

1 United States, investments authorized under § 8150, or general obligations of  
2 the territory of Guam.

3 (b) Any combination of investment instruments as covered by § 8151,  
4 Subsection (b) of § 8154, Subsection (b) of § 8156, and Subsection (b) of §  
5 8157 in excess of ~~Fifteen~~ Thirty-Five Percent (~~15~~35%) of Fund assets at cost.

6 (c) Obligations or other investments issued or guaranteed by the territory  
7 of Guam in excess of Ten Percent (10%) of Fund assets at cost, provided  
8 however, that this limitation shall not apply to such obligations or other  
9 investments that are unconditionally guaranteed as to principal and interest by,  
10 or supported by lease assignment from, another entity whose principle business  
11 is outside of said Territory and whose obligations are authorized investments  
12 under §§ 8143 through 8159, inclusive.”

13 **SECTION 8. Section 8149, Article 1, Chapter 8, Title 4 of the**  
14 **Guam Code Annotated is hereby amended to read:**

15 ‘§8149. Same: Bank Deposits; Other Cash Equivalents.

16 (a) Interest-bearing time deposits, demand deposits, and cash sweep  
17 deposit accounts in banks organized under the laws of the United States or any  
18 state or territory thereof, provided that said bank:

19 ~~(a)(1)~~ Has Tier 1 capital ~~and surplus~~ in excess of One Billion Dollars  
20 ~~(\$1,000,000,000)~~\$10,000,000; and

21 ~~(b)(2)~~ Is a member of the Federal Reserve System; and

22 ~~(c)(3)~~ Together with any predecessors, have been conducting a  
23 banking business for a continuous period of ten (10) or more years; or

24 ~~(d)(4)~~ Any bank or savings and loan association chartered in Guam  
25 and a member of the Federal Deposit Insurance Corporation or the Federal  
26 Home Loan Bank System.



1       (b) Cash equivalents purchased in investment funds authorized under  
2 Section 8158 or in exchange-traded funds authorized under §8158.1; in  
3 amounts and for durations approved by the Board in connection with the  
4 management of uninvested cash balances; such purchases shall be excluded  
5 from limitations of § 8158(e) and § 8158.1(b)."

6       **SECTION 9. Section 8150, Article 1, Chapter 8, Title 4 of the Guam**  
7 **Code Annotated is hereby amended to read:**

8       "§8150. Same: Bonds of United States and Federal Instrumentalities.

9       (a) Bonds or other evidence of indebtedness of the United States of  
10 America, or any of its agencies or instrumentalities, when such obligations are  
11 guaranteed as to principal and interest by the United States of America or by  
12 any agency or instrumentality thereof;

13       (b) Debt securities issued by the Federal National Mortgage Association  
14 or the Federal Home Loan Mortgage Corporation that are backed by pools of  
15 mortgage loans and guaranteed as to timely repayment of principal and interest  
16 by the Federal National Mortgage Association or the Federal Home Loan  
17 Mortgage Corporation; or

18       (c) Non-mortgage-related bonds or other evidence of indebtedness of the  
19 Federal National Mortgage Association or the Federal Home Loan Mortgage  
20 Corporation.

21       (d) Bonds authorized under this Section may be purchased and held in  
22 investment funds authorized under §8158 or in exchange-traded funds  
23 authorized under §8158.1; such purchases shall be excluded from the  
24 limitations of §8158(e) and §8158.1(b)."

25       **SECTION 10. Section 8151, Article 1, Chapter 8, Title 4 of the**  
26 **Guam Code Annotated is hereby amended to read:**

1           “§8151. Same: Bonds Issued by National Governments Other Than The  
2 United States.

3           Bonds and other evidences of indebtedness which are direct obligations  
4 of, or secured by, the full faith and credit of national governments other than  
5 the United States, where there exists the power to levy taxes for the prompt  
6 payment of the principal and interest of such bonds or evidences of  
7 indebtedness, provided that:

8           (a) The issuer shall not be in default in the payment of principal or  
9 interest on any bonds or other evidences of indebtedness; and

10           (b) The Investment Agent determines that such an investment would be  
11 employed by a prudent ~~man~~ person acting in a like capacity and familiar with  
12 such matters would use in the investment of a fund with like character and with  
13 like aims; and

14           (c) No investment shall be made in any one (1) issue described in this  
15 Section in an amount in excess of ten percent (10%) of such issues.

16           (d) Bonds authorized under this Section may be purchased and held in  
17 investment funds authorized under §8158 or in exchange-traded funds  
18 authorized under §8158.1; such purchases shall be excluded from the  
19 limitations of §8158(e) and §8158.1(b).”

20           **SECTION 11. Section 8152, Article 1, Chapter 8, Title 4 of the Guam**  
21 **Code Annotated is hereby amended to read:**

22           “§8152. Same: Bonds of States and Territories.

23           (a) Bonds or other evidences of indebtedness which are direct obligations  
24 of or secured by the full faith and credit of, any state or territory of the United  
25 States or the District of Columbia where there exists the power to levy taxes for  
26 the prompt payment of the principal and interest of such bonds or evidences of

1 indebtedness; but the issuer shall not be in default in the payment of principal or  
2 interest on any bonds or other evidences of indebtedness.

3 (b) Bonds authorized under this Section may be purchased and held in  
4 investment funds authorized under §8158 or in exchange-traded funds  
5 authorized under §8158.1; such purchases shall be excluded from the  
6 limitations of §8158(e) and §8158.1(b)."

7 **SECTION 12. Section 8153, Article 1, Chapter 8, Title 4 of the Guam**  
8 **Code Annotated is hereby amended to read:**

9 **"§8153. Same: Public Revenue Bonds.**

10 Bonds or other obligations which are payable from revenues or earnings  
11 specifically pledged there for of a public utility, state, municipally or  
12 territorially owned, either directly or through civil division, authority or public  
13 instrumentality of a state or territory or municipality; provided that:

14 (a) The laws of the state or territory or municipality authorizing the  
15 issuance of such bonds or other obligations require that rates for service shall  
16 be fixed, maintained and collected at all times so as to produce sufficient  
17 revenue or earnings to pay all operating and maintenance charges and both  
18 principal and interest of such bonds or obligations; and

19 (b) No such bonds or other obligations shall be in default in the payment  
20 of principal or interest.

21 Bonds authorized under this Section may be purchased and held in  
22 investment funds authorized under §8158 or in exchange-traded funds  
23 authorized under §8158.1; such purchases shall be excluded from the  
24 limitations of §8158(e) and §8158.1(b)."

25 **SECTION 13. Section 8154, Article 1, Chapter 8, Title 4 of the**  
26 **Guam Code Annotated is hereby amended to read:**

1       “§8154. Same: Bonds of Domestic and Foreign Corporations; Index-  
2 Eligible Securities.

3       (a) Bonds of Domestic Corporations. Bonds, debentures, notes and other  
4 evidences of indebtedness of any corporation *or* corporations created *or*  
5 existing under the laws of the United States, *or* of any of the states *or* territories  
6 of the United States *or* the District of Columbia which are *not* in default either  
7 as to principal *or* interest, provided that:

8           (1) Such bonds *or* other evidence of indebtedness are rated within the  
9 four (4) highest categories of two (2) nationally recognized and published rating  
10 services which have been approved by the Board and the Investment Agent; *or*

11           (2) In case such bonds *or* other evidence of indebtedness are not so  
12 rated by two (2) such services, investments in such lesser-ranked domestic  
13 corporate bonds shall not exceed eight percent (8%) of the Fund at cost; unless  
14 the net earnings available for fixed charges over a prior period of five (5) fiscal  
15 years next preceding the date of investment have averaged per year and during  
16 either of the last two (2) years have been, after depreciation and after taxes, *not*  
17 *less than:*

18           (A) two (2) times its average annual fixed charges over the same  
19 period, in the case of any public utility company;

20           (B) one and one-half (1-1/2) times its average annual fixed charges  
21 over the same period, in the case of any finance company; *or*

22           (C) three (3) times its average annual fixed charges over the same  
23 period, in the case of any other company.

24           (3) *No more than* two percent (2%) of the Fund at cost *shall be*  
25 invested in the obligations of any one (1) domestic corporation or other single  
26 domestic issuing entity described in this Subsection.

1 (b) Bonds of Foreign Corporations. Bonds, debentures, notes and other  
2 evidences of indebtedness of any corporation or corporations created *or* existing  
3 under the laws of nations other than the United States which are *not* in default  
4 either as to principal *or interest*, provided that the Investment Agent in its  
5 informed opinion, determines that such an investment would be employed by a  
6 prudent ~~man~~ person acting in a like capacity and familiar with such matters  
7 would use in the investment of a fund of like character and with like aims. *No*  
8 *more than* one and one-half percent (1-1/2%) of the Fund at cost *shall* be  
9 invested in the obligations of any one (1) foreign corporation *or* other single  
10 issuing foreign entity described in this Subsection.

11 (c) *No* investment *shall* be made in any one (1) issue described in  
12 Subsections (a) and (b) of this Section in an amount in excess of ten percent  
13 (10%) of such issues.

14 (d) Other Securities in the U.S. Aggregate Bond Index. Bonds,  
15 debentures, notes and other evidences of indebtedness which are denominated  
16 in U.S. Dollars, investment-grade, fixed-rate and of the quality of fixed income  
17 securities covered by the U.S. Aggregate Bond Index.

18 (e) Bonds authorized under this Section may be purchased and held in  
19 investment funds authorized under §8158 or in exchange-traded funds  
20 authorized under §8158.1; such purchases shall be excluded from the  
21 limitations of §8158(e) and §8158.1(b)."

22 **SECTION 14. Section 8156, Article 1, Chapter 8, Title 4 of the Guam**  
23 **Code Annotated is hereby amended to read:**

24 "§8156. Same: Domestic and Foreign Preferred Stock.

25 (a) Domestic Preferred Stock. Domestic preferred or guaranteed stock or  
26 shares of any institution created or existing under the laws of the United States

1 or of any state, district or territory thereof or the District of Columbia, provided  
2 that:

3 (1) All publicly held prior obligations and prior preferred stock, if  
4 any, of such institution at the date of acquisition are eligible as investments  
5 under §§ 8143 through 8160; and

6 (2) The net earnings of the institution available for fixed charges over  
7 a period of five (5) fiscal years next preceding the date of investment have  
8 averaged per year, and during either of the last two (2) years have been, after  
9 depreciation and after income taxes. no less than:

10 (i) Two times its average annual fixed charges, maximum  
11 contingent interest and preferred dividend requirements over the same  
12 period, in the case of any public utility company; or

13 (ii) Three (3) times its average annual fixed charges, maximum  
14 contingent interest and preferred dividend requirements over the same  
15 period, in the case of any other company.

16 For purposes of this Subsection, the term 'preferred dividend  
17 requirements' shall mean cumulative and noncumulative dividends on all  
18 preferred stock of the issuer, whether paid or not.

19 (b) Foreign Preferred Stock. Foreign preferred or guaranteed stock or  
20 shares of any institution created or existing under the laws of nations other than  
21 the United States which are not in default either as to principal or interest,  
22 provided that the Investment Agent in its informed opinion, determines that  
23 such an investment would be employed by a prudent ~~man~~ person acting in a like  
24 capacity and familiar with such matters would use in the investment of a fund  
25 of like character and with like aims.

26 (c) Limitations:

1 (1) No investment shall be made in any one issue described in Item (1)  
2 of Subsection (a) of this Section in an amount in excess of ten percent (10%) of  
3 such issues.

4 (2) No more than two percent (2%) of the Fund at cost shall be  
5 invested in the preferred stock of any one issuing domestic company.

6 (3) No more than two percent (2%) of the Fund at cost shall be invested  
7 in the preferred stock of any one issuing foreign company.

8 (4) The aggregate of all investments authorized under this Section shall  
9 not exceed fifteen percent (15%) of Fund Assets at cost.

10 (5) Preferred stock authorized under this Section may be purchased and  
11 held in investment funds authorized under §8158 or in exchange-traded funds  
12 authorized under §8158.1; such purchases shall be excluded from the limitations  
13 of §8158(e) and § 8158.1(b)."

14 **SECTION 15. Section 8157, Article 1, Chapter 8, Title 4 of the Guam**  
15 **Code Annotated is hereby amended to read:**

16 "§8157. Same; Common Stock.

17 (a) Common or capital stock of any institution or entity created or existing  
18 under the laws of the United States or any state, district, or territory thereof, or  
19 of the District of Columbia or of any foreign country; provided that, with respect  
20 to at least fifty percent (50%) of the investments at cost purchased directly under  
21 this Section:

22 (i) The issuing institution, entity or a predecessor thereto, has reported a  
23 profit in at least four (4) of the five (5) fiscal years next preceding the date of  
24 investment or alternatively in at least seven (7) of the ten (10) fiscal years next  
25 preceding the date of investment; and

1 (ii) The institution, entity or such predecessor has paid cash dividends on  
2 its common or capital stock in at least four (4) of the five (5) years next  
3 preceding the date of investment, or alternatively in at least seven (7) of the ten  
4 (10) fiscal years next preceding the date of investment; and

5 (iii) Total cash dividends have not exceeded total earning in the five (5)  
6 years next preceding the date of investment; and

7 (iv) On the date of investment, the issuer shall not be in default in  
8 payment of principal or interest on any of its publicly held bonds or other  
9 evidences of indebtedness and any contingent interest, cumulative and  
10 noncumulative preferred dividends and dividends on prior common or capital  
11 stock shall have been paid in full.

12 No more than five percent (5%) of the Fund shall be invested directly in the  
13 common or capital stock of any one issuing domestic company described in this  
14 Section.

15 (b) Common or capital stock of any institution or entity created or existing  
16 under the laws of nations other than the United States provided that the  
17 Investment Agent determines that such an investment would be employed by a  
18 prudent ~~man~~ person acting in a like capacity and familiar with such matters  
19 would use in the investment of a fund with like character and with like aims. No  
20 more than one and one-half percent (1-1/2%) of the Fund at cost shall be  
21 invested directly in the common or capital stock of any one issuing foreign  
22 company described in this Section.

23 (c) No direct investment shall be made in any one (1) issue described in this  
24 Section in an amount in excess of ten percent (10%) of such issues.

25 (d) Common or capital stock of any institution or entity created or existing  
26 under the laws of the United States or any state, district, or territory thereof, or  
27 of the District of Columbia or of any foreign country purchased and held in



1 investment funds authorized under §8158 or in exchange-traded funds  
2 authorized under §8158.1; such purchases being excluded from the limitations of  
3 §8158(e) and §8158.1(b).

4 (e) The aggregate amount of all direct and indirect investments under this  
5 Section at cost shall not exceed  ~~fifty~~ seventy percent (570%) of the Fund.”

6 SECTION 16. Section 8158, Article 1, Chapter 8, Title 4 of the Guam Code  
7 Annotated is hereby amended to read:

8 “§ 8158. Investment Funds.

9 (a) Common or capital shares of any investment trust or mutual fund  
10 (including any index fund) registered with the Securities and Exchange  
11 Commission under the Investment Company Act of 1940, as from time to time  
12 amended, provided that the cost of the shares acquired is no greater than their net  
13 asset value on the date of acquisition.

14 (b) Units in any common trust fund or commingled fund (including any  
15 index fund) maintained by a custodian meeting the requirements of Title 4 GCA  
16 § 8144 and advised or sub-advised by an investment management organization  
17 meeting the requirements of Title 4 GCA § 8145.

18 (c) Preferred shares of any investment trust or mutual fund (including any  
19 index fund) registered with the Securities and Exchange Commission under the  
20 Investment Company Act of 1940, as from time to time amended, provided that:

21 (1) The number of issued and outstanding common or capital shares  
22 multiplied by their asset value per share, plus;

23 (2) The number of issued and outstanding preferred shares multiplied  
24 by their par or stated value, is at least fifty percent (50%) greater than the  
25 number of issued and out-standing preferred shares multiplied by their par or  
26 stated value. For purposes of this Section, the number of issued and outstanding  
27 shares shall be taken as of the latest available public report of such investment

1 trust or mutual fund. Preferred shares as described in this Subsection shall not be  
2 subject to the provisions of §8156.

3 (d) The term ‘net asset value’ as used in this Section shall mean the total  
4 quoted or estimated market value of all securities or other assets owned, less that  
5 total of all determinable liabilities, as reported by such common trust fund,  
6 commingled fund, investment trust or mutual fund.

7 (e) Limitation:

8 (1) The investment in units, preferred, common and capital stock of  
9 any one common trust fund, commingled fund, investment trust or mutual fund  
10 shall not exceed five percent (5%) of the Fund at cost; and

11 (2) The aggregate of all investments under this Section, except for  
12 investment fund purchases of cash equivalents authorized under §8149, bonds  
13 authorized under §§8150-8154, preferred stock authorized under §8156, and  
14 common or capital stock authorized under §8157, shall not exceed thirty percent  
15 (30%) of the Fund at cost.”

16 **SECTION 17. Section 8158.1, Article 1, Chapter 8, Title 4 of the Guam**  
17 **Code Annotated is hereby amended to read:**

18 “§8158.1. Exchange Traded Funds.

19 (a) Units *or* shares of any exchange traded fund (ETF) established as an  
20 open-end investment management company *or* a unit investment trust registered  
21 with the Securities and Exchange Commission under the Investment Company  
22 Act of 1940, as from time to time amended. Although ETFs may trade at prices  
23 established throughout the trading day, like any other listed equity security  
24 trading in the secondary market on an exchange, the units *or* shares described in  
25 this subsection *shall not* be subject to the provisions of §8157. Although ETFs  
26 are unit investment trusts, the units *or* shares described in this subsection *shall*  
27 *not* be subject to the provisions of §8158.

1        (b) The investment in units *or* shares of any one exchange traded fund *shall*  
2 *not exceed* twenty percent (20%) of the Fund at cost.”

3        **SECTION 18. Effective Date.** This Act shall become effective upon  
4 enactment.

5        **SECTION 19. Severability.** If any provision of this Act or its application to  
6 any person or circumstances is held invalid, the invalidity shall not affect any  
7 other provision or applications of this Act which can be given effect without the  
8 invalid provision or application, and to this end the provisions of this Act are  
9 severable.



**Mina'trentai Dos na Liheslaturan Guahan**  
**32ND GUAM LEGISLATURE**

**Senator Vicente "ben" Cabrera Pangelinan**

**COMMITTEE ON APPROPRIATIONS, PUBLIC DEBT, LEGAL AFFAIRS, RETIREMENT,  
PUBLIC PARKS, RECREATION, HISTORIC PRESERVATION AND LAND**

**Friday, August 30, 2013**

**Bill No. 170**

**SIGN UP SHEET**

NAME	ADDRESS	PHONE	EMAIL	WRITTEN	ORAL	SUPPORT	
						Yes	No
Joe T. San Agustin				X		yes	
Gerry Cruz					✓	yes	
Maggie Rabolovsky	Raboborsky, CPA Wiltshire Associates				✓	yes	
Paula M. Blas							



GOVERNMENT OF GUAM  
**RETIREMENT FUND**  
STABILITY · SECURITY · REWARDS

**Eddie Baza Calvo**  
Governor

**Ray Tenorio**  
Lieutenant Governor

**Paula M. Blas**  
Director

*Trustees:*

**Joe T. San Agustin**  
Chairman

**Wilfred P. Leon Guerrero, Ed.D.**  
Vice-Chairman  
Investment Committee, Chairman

**Antolina S. Leon Guerrero**  
Secretary

**Gerard A. Cruz**  
Treasurer  
Audit & Operations Committee,  
Chairman

**(Vacant)**  
Members' & Benefits Committee,  
Chairman

**Katherine T.E. Taitano**  
Trustee

**James R.F. Duenas**  
Trustee

**GOVERNMENT OF GUAM RETIREMENT FUND  
BOARD OF TRUSTEES' POSITION STATEMENT  
REGARDING BILL 170-32**

August 30, 2013

**SUMMARY OF POSITION**

The Board of Trustees supports Bill 170-32 as a means to improve the Government of Guam's ability to meet its obligations to fund the Retirement Fund Defined Benefit Plan ("Fund") by easing some of the statutory investment limitations and expanding maximum caps on investments currently mandated under Title 4, Chapter 8, Article 1, of the Guam Code Annotated.

Milliman Consultants & Actuaries, the actuary firm retained by the Board of Trustees, reported that as of September 30, 2012, the Fund's unfunded actuarial accrued liability was \$1.482.6 million.<sup>1</sup> Wilshire Associates, Inc., ("Wilshire"), the Fund's investment consultant for the Defined Benefit Plan, has commented on the proposed amendments in Bill 170-32, observing that the Fund's target investment portfolio significantly deviates from the available investment opportunity set, significantly differs from peer group averages, and has a significant concentration in U.S. equity. The current statutory investment constraints negatively impact the Fund's ability to achieve the actuarial expected return of seven percent (7%), and are likely increasing both the costs and risks associated with the Fund's investments. The amendments in Bill 170-32 would allow the Fund to invest in a broader range of investments, and a broader range of investment vehicles, reducing both costs and risks, and providing the government with greater opportunities to reduce its unfunded liability to the Fund. Based on Wilshire's recommendations, by amending certain investment limitations, the Board of Trustees expects that the Fund will be able to pursue an investment strategy that is reasonably anticipated to improve the risk adjusted return of the investment portfolio for the benefit of the Retirement Fund as a whole.

<sup>1</sup>Government of Guam Retirement Fund Actuarial Valuation as of September 30, 2012, prepared by Milliman Consultants & Actuaries.

## STATEMENT OF SUPPORT

### **I. SUPPORT FOR KEY CHANGES TO CURRENT INVESTMENT LIMITATIONS**

#### **A. CHANGES TO LIMITATIONS ON FIXED INCOME INVESTMENTS**

Currently, the Fund is limited to fixed income investments only in “investment grade” bonds, thus prohibiting investment in lower-grade (high yield) bonds, although in principle fixed income investments generally are safer and more protected under stress than equity categories, due to established capital structure priorities (“pecking order”). Bill 170-32 would remove the “investment grade-only” limitation, yet limit investments in non-investment grade bonds to eight percent (8%) of the Fund, at cost. The Fund agrees with the intent of Bill 170-32 to remedy inconsistent treatment in current provisions essentially allowing full investment in various equity categories, while prohibiting investments in non-investment grade bonds. The Fund supports the eight percent (8%) cap on non-investment grade bonds.

#### **B. CHANGES TO LIMITATIONS ON EQUITY INVESTMENTS**

Currently, under Section 8157(e), the Fund is prohibiting from investing in domestic and foreign equity investments if, after such investment, the Fund would own, in the aggregate, an amount greater than fifty percent (50%) of the Fund at cost. The Fund agrees with the intent of Bill 170-32 to increase this cap to seventy percent (70%) of the Fund at cost, noting that: (1) all equity purchases, direct or indirect (in mutual funds, investment trusts, or exchange traded funds) would be counted toward the cap; and (2) fifty percent (50%) of direct equity purchases remain subject to dividend requirements.

#### **C. CHANGES TO LIMITATIONS ON NON-US (FOREIGN) INVESTMENTS**

##### **1. INCREASE FOREIGN INVESTMENT CAP TO 35%**

Currently, under Section 8146(b), the Fund is prohibiting from making non-U.S. investments if, after such investment, the Fund would own any combination of the following investment instruments -- foreign government bonds, foreign corporate bonds, foreign preferred stock, foreign capital or common stock -- in an amount greater than fifteen percent (15%) of the Fund at cost. The Fund agrees with the intent of Bill 170-32 to raise this cap to thirty-five percent (35%) of the Fund at cost, to be consistent with global opportunity sets, and in recognition that the historical purposes of limiting foreign investments to control risks in under-developed markets are less relevant today.

##### **2. CONSISTENT TREATMENT OF US AND NON-US INVESTMENTS, WHETHER FIXED INCOME OR EQUITY**

The Fund also agrees with the intent of Bill 170-32 to remedy inconsistent treatment in current provisions that permit bond investments so long as they are included in the applicable bond index but prohibiting equity investments in non-U.S. headquartered companies even if such

companies do most of their business in the U.S. and are included in applicable U.S. equity benchmarks.

#### **D. CHANGES TO CAPS ON INVESTMENTS IN MUTUAL FUNDS, INVESTMENT TRUSTS, AND EXCHANGE TRADED FUNDS**

Currently, under Section 8158, the Fund may purchase units, preferred, common and capital stock of investment funds (common trust funds, commingled funds, mutual funds) in an amount not to exceed thirty percent (30%) of the Fund at cost. Similarly, under Section 8158.1, the Fund may purchase units or shares of exchange traded funds in an amount not to exceed twenty percent (20%) of the Fund at cost. Bill 170-32 would not increase these percentage caps in these investment vehicles.

Instead, Bill 170-32 would clarify that purchases within an investment vehicle of certain fixed income and equity investments (as well as cash deposits and cash equivalents) that are investment classes permitted under other applicable provisions of Article 1, should not be counted toward the quantitative caps simply because they are purchased in the vehicles described in Sections 8158 and 8158.1. The Fund agrees with the intent of Bill 170-32 to exclude investments in the investment classes (cash, fixed income and equities) permitted by existing statute from being counted toward the quantitative caps imposed on investment vehicles in Sections 8158 and 8158.1, which vehicles are meant to be used for investments not otherwise defined in the statute, to recognize diversification opportunities in the constantly evolving capital markets.

## **II. SUPPORT FOR AMENDMENTS, SECTION-BY-SECTION**

### **A. New Subsection (w) to Section 8104.**

The Board of Trustees supports the addition of Subsection 8104(w) to add the definition of "Tier 1 Capital" as codified in the Code of Federal Regulations, 12 C.F.R. § 325, the meaning of which will be used to measure the minimum capital requirements of custodians and investment agents engaged by the Retirement Fund.

### **B. Amendments to Section 8139.1.**

The Board of Trustees supports amendments to Section 8139.1 to reflect that the Board's investment decisions respecting individual assets should be evaluated not in isolation, but in the context of the Fund's portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the Fund. The Board also supports amendments clarifying that the Board's decisions or actions in discharging their fiduciary duties should be reviewed in light of the facts and circumstances existing at the time of such decision or action, and not in hindsight. The criteria for such evaluation and review of the Board's decisions and actions is consistent with criteria applicable to trustees of modern public and private sector trusts.

### **C. Amendment to Section 8143(j).**

The Board of Trustees supports the amendment to Section 8143(j) to unambiguously clarify that a previously enacted acquisition restriction is applicable only to real property

investments under Subsection 8143(j) and was not intended to apply to all investments under Section 8143.

**D. Amendments to Section 8144.**

The Board of Trustees supports amendments to Section 8144 to reflect that custody services may be offered by custodians other than bank trust departments. The Board also supports increased capital requirements (to \$1 billion) as measured by Tier 1 capital in regulations promulgated by the Federal Deposit Insurance Corporation.

**E. Amendments to Section 8145.**

The Board of Trustees supports amendments to Section 8145 to reflect that Investment Agents include investment counsel and investment managers. The Board also supports increased capital requirements (to \$1 billion) as measured by Tier 1 capital in regulations promulgated by the Federal Deposit Insurance Corporation, applicable to bank trust departments serving as Investment Agents. The Board also supports the increases (to \$1 billion) to the minimum level of assets under direct investment supervision, applicable to all Investment Agents.

**F. Amendments to Section 8146.**

The Board of Trustees supports amendments to Section 8146 to raise the statutory cap on aggregate (all categories) non-U.S. investments to thirty-five percent (35%) from fifteen percent (15%) to take advantage of global opportunity sets.

**G. Amendments to Section 8149.**

The Board of Trustees supports amendments to Section 8149 to raise capital requirements (to \$1 billion) for banks holding the Fund's deposits of cash and cash equivalents. The Board of Trustees also supports amendments to Section 8149 to clarify that cash equivalents purchased in investment funds or exchange-traded funds, in amounts and for durations approved by the Board, shall be excluded from the maximum caps applicable to investment funds or exchange-traded funds, because cash and cash equivalents purchased in such vehicles should not be valued for purposes of determining whether an investment vehicle, at cost, has reached its maximum investment cap (30% for investment funds, 20% for exchange-traded funds) within the overall investment portfolio.

**H. Amendments to Section 8150.**

The Board of Trustees supports amendments to Section 8150 to clarify that bonds and other evidences of indebtedness of the United States or its agencies or instrumentalities may be purchased and held in investment funds or in exchange-traded funds, and such purchases shall be excluded from the maximum caps applicable to investment funds or exchange-traded funds, because U.S. debt instruments purchased in such vehicles should not be valued for purposes of determining whether an investment vehicle, at cost, has reached its maximum investment cap (30% for investment funds, 20% for exchange-traded funds).



**I. Amendments to Section 8151.**

The Board of Trustees supports amendments to Section 8151 to clarify that non U.S. government bonds and other evidences of indebtedness may be purchased and held in investment funds or in exchange-traded funds, and such purchases shall be excluded from the maximum caps applicable to investment funds or exchange-traded funds, because such purchases of non-U.S. debt instruments should not be valued for purposes of determining whether an investment vehicle, at cost, has reached its maximum investment cap (30% for investment funds, 20% for exchange-traded funds).

**J. Amendments to Section 8152.**

The Board of Trustees supports amendments to Section 8152 to clarify that bonds and other evidences of indebtedness issued by states and territories of the United States may be purchased and held in investment funds or in exchange-traded funds, and such purchases shall be excluded from the maximum caps applicable to investment funds or exchange-traded funds, because such purchases of state and territorial debt instruments should not be valued for purposes of determining whether an investment vehicle, at cost, has reached its maximum investment cap (30% for investment funds, 20% for exchange-traded funds).

**K. Amendments to Section 8153.**

The Board of Trustees supports amendments to Section 8153 to clarify that public revenue bonds payable from revenues or earnings pledged by public utilities, states, municipalities, or territories, may be purchased and held in investment funds or in exchange-traded funds, and such purchases shall be excluded from the maximum caps applicable to investment funds or exchange-traded funds, because such purchases of public revenue bonds should not be valued for purposes of determining whether an investment vehicle, at cost, has reached its maximum investment cap (30% for investment funds, 20% for exchange-traded funds).

**L. Amendments to Section 8154.**

The Board of Trustees supports amendments to Section 8154 to place a statutory limit of eight percent (8%) on the purchase, at cost, of domestic corporate bonds that do not otherwise comply with the fixed charge coverage ratios of Section 8154(a)(2). The Fund believes that it is appropriate to permit the purchase of non-investment grade bonds, including high-yield corporate bonds, so long as such purchases remain subject to maximum caps.

The Board of Trustees also supports amendments to Section 8154 to clarify that corporate bonds issued by domestic or foreign corporations may be purchased and held in investment funds or in exchange-traded funds, and such purchases shall be excluded from the maximum caps applicable to investment funds or exchange-traded funds, because such purchases of corporate bonds should not be valued for purposes of determining whether an investment vehicle has reached its maximum investment cap (30% at cost for investment funds, 20% at cost for exchange-traded funds).

**M. Amendments to Section 8156.**

The Board of Trustees supports amendments to Section 8156 to clarify that domestic and foreign preferred stock may be purchased and held in investment funds or in exchange-traded funds, and such purchases shall be excluded from the maximum caps applicable to investment funds or exchange-traded funds, because such purchases of preferred stock should not be valued for purposes of determining whether an investment vehicle, at cost, has reached its maximum investment cap (30% for investment funds, 20% for exchange-traded funds).

**N. Amendments to Section 8157.**

The Board of Trustees supports amendments to Section 8157 to increase the statutory limit on direct and indirect purchases of domestic and foreign common stock to seventy percent (70%) from fifty percent (50%), at cost.

The Board of Trustees also supports amendments to Section 8157 to clarify that common stock may be purchased and held in investment funds or in exchange-traded funds, and such purchases shall be excluded from the maximum caps applicable to investment funds or exchange-traded funds, because such direct purchases of common stock should not be valued for purposes of determining whether an investment vehicle, at cost, has reached its maximum investment cap (30% for investment funds, 20% for exchange-traded funds).

**O. Amendments to Section 8158.**

The Board of Trustees supports amendments to Section 8158 to clarify that the aggregate of all investments in units, preferred, common and capital stock of any common trust fund, commingled fund, investment trust, or mutual fund shall not exceed thirty percent (30%) of the Fund at cost, but the purchase of cash equivalents, bonds, preferred stock, common stock shall not be valued for purposes of determining whether an investment vehicle, at cost, has reached its maximum investment cap (30% of the overall portfolio).

**CONCLUSION**

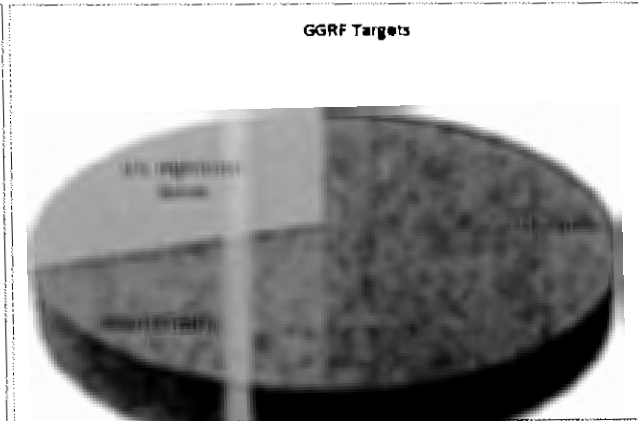
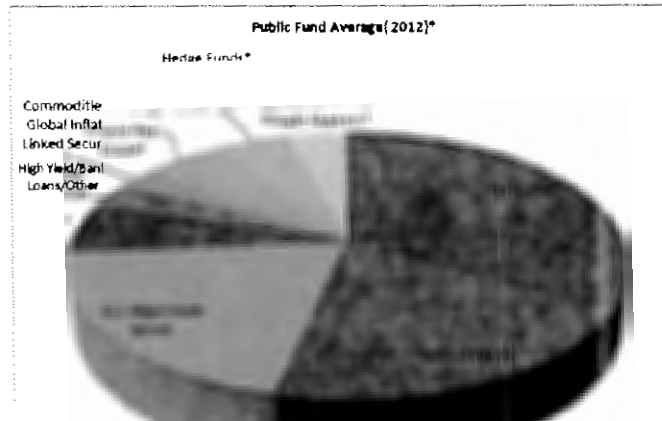
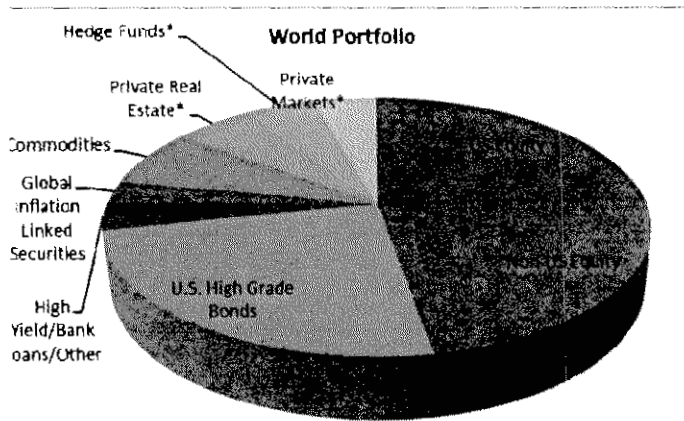
For the reasons set forth in this position statement, the Board of Trustees approves the proposed amendments to 4 G.C.A. §§ 8139.1, 8143(j), 8144, 8145, 8146, 8149, 8150, 8151, 8152, 8153, 8154, 8156, 8157, 8158, and 8158.1, and the addition of a new subsection (w) to Section 8104. The Board believes that the amendments will further the intent of the Legislature to meet its obligation to fund the Retirement Fund Defined Benefit Plan, and reduce the Fund's unfunded liability.

  
JOE T. SAN AGUSTIN

# The Investment Opportunity Set

	\$ Billion	World Portfolio	Public Fund Average( 2012)*	GGRF Targets	Notes
US Equity	17,000	24%	33%	50%	
Non-US Equity	16,000	23%	21%	20%	
<b>Total Equity</b>		<b>47%</b>	<b>54%</b>	<b>70%</b>	
U.S. High Grade Bonds	17,000	24%	20%	30%	
High Yield/Bank Loans	2,400	3%	6%		
Global Inflation Linked Securities	2,000	3%	3%		
<b>Total Fixed Income</b>		<b>31%</b>	<b>29%</b>	<b>30%</b>	
Commodities	5,000	7%	2%		Estimated annual tradable futures volume
Private Real Estate*		6%	6%		Typical institutional allocation *
Hedge Funds*		5%	5%		Typical institutional allocation *
Private Markets*		4%	4%		Typical institutional allocation *
<b>Total Alternative</b>		<b>22%</b>	<b>17%</b>	<b>0%</b>	
<b>Total</b>	<b>59,400</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	

\* Greenwich Associates Market Trends-US Institutional Investors 2012 Survey, Public Funds \$1-\$5 Billion Universe



\* Greenwich Associates Market Trends-US Institutional Investors 2012 Survey, Public Funds \$1-\$5 Billion Universe



## COMMITTEE ON RULES

*I Mina'trentai Dos na Liheslaturan Guåhan* • The 32nd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)

E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER

Senator  
Vicente (Ben) C. Pangelinan  
Member

Speaker  
Judith T.P. Won Pat, Ed.D.  
Member

Senator  
Dennis G. Rodriguez, Jr.  
Member

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Legislative Secretary  
Tina Rose Muña Barnes  
Member

Senator  
Frank Blas Aguon, Jr.  
Member

Senator  
Michael F.Q. San Nicolas  
Member

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Senator  
Aline Yamashita  
Member

## Certification of

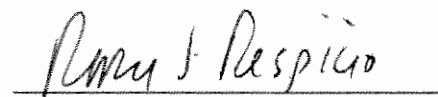
## Waiver of

## Fiscal Note Requirement

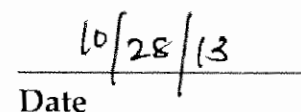
This is to certify that the Committee on Rules submitted to the Bureau of Budget and Management Research (BBMR) a request for a fiscal note, or applicable waiver, on **BILL NO. 170-32 (COR)** – “AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.” – on October 28, 2013. COR hereby certifies that BBMR confirmed receipt of this request on August 21, 2013 at 9:30 A.M.

COR further certifies that a response to this request was not received. **Therefore, pursuant to 2 GCA §9105, the requirement for a fiscal note, or waiver thereof, on Bill 170-32 (COR) to be included in the committee report on said bill, is hereby waived.**

Certified by:



Senator Rory J. Respicio  
Chairperson, Committee on Rules

  
Date



**COMMITTEE ON RULES**

*I Mina'trentai Dos na Liheslaturan Guåhan* • The 32nd Guam Legislature  
155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)  
E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

Senator  
Rory J. Respicio  
CHAIRPERSON  
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Senator  
Thomas C. Ada  
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Senator  
Vicente (Ben) C. Pangelinan  
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Member

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Legislative Secretary  
Tina Rose Muña Barnes  
Member

Senator  
Frank Blas Aguon, Jr.  
Member

Senator  
Michael E.Q. San Nicolas  
Member

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Senator  
Aline Yamashita  
Member

August 21, 2013

VIA E-MAIL  
[john.rios@hbm.guam.gov](mailto:john.rios@hbm.guam.gov)

**John A. Rios**  
Director  
Bureau of Budget & Management Research  
P.O. Box 2950  
Hagåtña, Guam 96910

**RE: Request for Fiscal Notes– Bill Nos. 166 through 171-32 (LS)**

*Hafa Adai* Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

*Si Yu'os ma'åse'* for your attention to this matter.

Very Truly Yours,

**Senator Rory J. Respicio**  
*Chairperson, Committee on Rules*

Attachments (1)

Cc: Clerk of the Legislature

2013 AUG 21 AM 9:37  
P

Bill Nos.	Sponsor	Title
166-32 (LS)	Judith T. Won Pat, Ed.D., Aline A. Yamashita, Ph.D., B.J.F. Cruz	AN ACT TO TRANSFER TITLE OF LOT NO. 5397 MUNICIPALITY OF BARRIGADA, GUAM TO THE UNIVERSITY OF GUAM.
167-32 (LS)	R.J. Respicio	AN ACT TO REPEAL § 23113 OF CHAPTER 23, TITLE 22 OF THE GUAM CODE ANNOTATED TO REMOVE THE CURRENT TAX EXEMPTION ON PREMIUMS COLLECTED BY INSURANCE COMPANIES AS PART OF THE QC PROGRAM.
168-32 (LS)	T.R. MUÑA Barnes	AN ACT TO REZONE LOT NOS. 22 AND 23, BLOCK NO. 4, TRACT NO. 170, WEST ACRESUBDIVISION, DEDEDO, GUAM FROM SINGLE- FAMILY DWELLING ZONE (R-1) TO MULTIPLE- FAMILY DWELLING ZONE (R-2)
169-32 (LS)	T.R. MUÑA Barnes	AN ACT TO REZONE LOT NO. 5168-4, LOCATED IN THE MUNICIPALITY OF TAMUNING, FROM SINGLE-FAMILY DWELLING ZONE (R1) TO LIGHT INDUSTRIAL ZONE (M1).
170-32 (LS)	Vicente (ben) C. Pangelinan	AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.
171-32 (LS)	V. Anthony Ada, B. J.F. Cruz	AN ACT TO AMEND §§ 3114 OF 16GCA, 57103 OF 10GCA, 4121 OF 4GCA AND 1107 OF 17GCA RELATIVE TO GOVERNMENT OF GUAM ID CARDS ISSUED TO PERSONS UNDER 21 YEARS OF AGE.



# COMMITTEE ON RULES

*I Mina'trentai Dos na Liheslaturan Guåhan* • The 32nd Guam Legislature  
155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)  
E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

August 19, 2013

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER

## MEMORANDUM

Senator  
Vicente (Ben) C. Pangelinan  
Member

To: **Rennae Meno**  
*Clerk of the Legislature*

**Attorney Therese M. Terlaje**  
*Legislative Legal Counsel*

Speaker  
Judith T.P. Won Pat, Ed.D.  
Member

From: **Senator Rory J. Respicio**  
*Majority Leader & Rules Chair*

Senator  
Dennis G. Rodriguez, Jr.  
Member

Subject: **Referral of Bill No. 170-32(LS)**

Vice-Speaker  
Benjamin J.F. Cruz  
Member

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 170-32(LS)**.

Legislative Secretary  
Tina Rose Muña Barnes  
Member

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Senator  
Frank Blas Aguon, Jr.  
Member

Should you have any questions, please feel free to contact our office at 472-7679.

Senator  
Michael F.Q. San Nicolas  
Member

*Si Yu'os Ma'åse!*

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Attachment

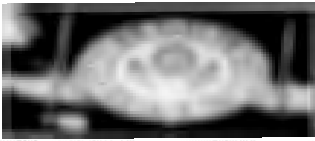
Senator  
Aline Yamashita  
Member

*I Mina'Trentai Dos Na Liheslaturan Guahan*

**Bill Log Sheet**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
170-32 (LS)	Vicente (ben) C. Pangelinan	AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.	8/16/13, 4:29pm	8/21/13	Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land			





Lisa Dames <cipo@guamlegislature.org>

## Public Hearing - FIRST NOTICE

Lisa Dames <cipo@guamlegislature.org>  
To: PHrg Notice <phnotice@guamlegislature.org>

Fri, Aug 23, 2013 at 5:36 PM


The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Debt, Recreation, Historic Preservation and Land will hold a public hearing on Friday, August 30, 2013 at the Guam Legislature Public Hearing Room beginning at 5:30pm. The following is on the agenda:

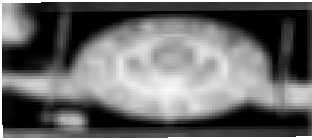
**Bill No. 170-32 (LS) – Introduced by Senator Vicente Pangelinan - AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.**

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Lisa Dames  
Chief of Staff  
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Senator Vicente (ben) Cabrera Pangelinan  
Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public  
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 **Bill No. 170\_.pdf**  
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Lisa Dames <cipo@guamlegislature.org>

## Public Hearing - FIRST NOTICE

Lisa Dames <cipo@guamlegislature.org>

Fri, Aug 23, 2013 at 5:35 PM

To: news@k57.com, news@guampdn.com, Sabrina Salas <sabrina@kuam.com>, Jason Salas <jason@kuam.com>, nick@kuam.com, Mindy Aguon <mindy@kuam.com>, Ken Quintanilla <kenq@kuam.com>, Krystal Paco <krystal@kuam.com>, Josh Tyquiengco <jtyquiengco@k57.com>, clynt@k57.com, Betsy Brown <betsy@k57.com>, Kevin Kerrigan <kevin@k57.com>, rgibson@k57.com, Jon Anderson <jontalk@gmail.com>, Jon Anderson <editor@mvguam.com>, gerry@mvguam.com, marvic@mvguam.com, louella@mvguam.com, Frank Whitman <frank@mvguam.com>, ALICIA PEREZ <aliciaperez69@hotmail.com>, Gaynor Daleno <gdumat-ol@guampdn.com>, slimtiaco@guampdn.com, Oyaol Ngirairikl <odngirairikl@guampdn.com>, Jerick Sablan <jpsablan@guampdn.com>, life@guampdn.com

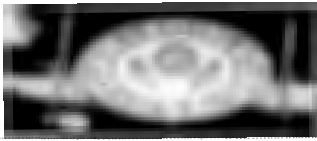
The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Debt, Recreation, Historic Preservation and Land will hold a public hearing on Friday, August 30, 2013 at the Guam Legislature Public Hearing Room beginning at 5:30pm. The following is on the agenda:

**Bill No. 170-32 (LS) – Introduced by Senator Vicente Pangellinan - AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.**

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--  
 Lisa Dames  
 Chief of Staff  
 I MINA'TRENTAI DOS NA LIHESLATURAN GUAHAN  
 Senator Vicente (ben) Cabrera Pangelinan  
 Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public  
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Lisa Dames &lt;cipo@guamlegislature.org&gt;

## Public Hearing - SECOND Notice

Lisa Dames <cipo@guamlegislature.org>  
 To: PHrg Notice <phnotice@guamlegislature.org>

Wed, Aug 28, 2013 at 3:14 PM

The Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Debt, Recreation, Historic Preservation and Land will hold a public hearing on Friday, August 30, 2013 at the Guam Legislature Public Hearing Room beginning at 5:30pm.

The following is on the agenda:

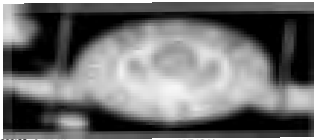
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Lisa Dames  
 Chief of Staff  
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Lisa Dames <cipo@guamlegislature.org>

## Public Hearing - SECOND Notice

Lisa Dames <cipo@guamlegislature.org>

Wed, Aug 28, 2013 at 3:13 PM

To: news@k57.com, news@guampdn.com, Sabrina Salas <sabrina@kuam.com>, Jason Salas <jason@kuam.com>, Mindy Aguon <mindy@kuam.com>, nick@kuam.com, Ken Quintanilla <kenq@kuam.com>, Krystal Paco <krystal@kuam.com>, Josh Tyquiengco <jtyquiengco@k57.com>, clynt@k57.com, Betsy Brown <betsy@k57.com>, Kevin Kerrigan <kevin@k57.com>, Jon Anderson <jontalk@gmail.com>, Jon Anderson <editor@mvguam.com>, gerry@mvguam.com, marvic@mvguam.com, louella@mvguam.com, Frank Whitman <frank@mvguam.com>, rgibson@k57.com, ALICIA PEREZ <aliciaperez69@hotmail.com>, Alicia Perez <perezksto@gmail.com>, Gaynor Daleno <gdumat-ol@guampdn.com>, slimtiaco@guampdn.com, Oyaol Ngirairikl <odngirairikl@guampdn.com>, Jerick Sablan <jpsablan@guampdn.com>, life@guampdn.com

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Lisa Dames  
Chief of Staff

I MINA'TRENTAI DOS NA LIHESLATURAN GUAHAN

Senator Vicente (ben) Cabrera Pangelinan

Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land.

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I Mina'trentai Dos na Liheslaturan Guåhan

32<sup>nd</sup> GUAM LEGISLATURE

Senator Vicente (ben) Cabrera Pangelinan

Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public  
Parks, Recreation, Historic Preservation, and Land

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**INEKUNGOK PUPBLEKO**  
**(PUBLIC HEARING)**

***gi Betnes, gi diha 30 gi Agosto, 2013***  
**Friday, August 30, 2013**

***Kuåtton Inekungok Pupbleko gi I Liheslaturan Guåhan***  
**(Guam Legislature Public Hearing Room)**

***media ora para alas sals gi pipuengl***  
**( 5:30 PM)**

**TAREHA**  
**(AGENDA)**

***Priniponi Siha:***  
**(Bills)**

**Bill No. 170-32 (LS) – Introduced by Senator Vicente Pangelinan - AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.**







## I Mina'trentai Dos na Liheslaturan Guáhan 32<sup>nd</sup> GUAM LEGISLATURE

Senator Vicente (ben) Cabrera Pangelinan

Committee on Appropriations, Public Debt, Legal Affairs, Retirement, Public Parks, Recreation, Historic Preservation, and Land

### INEKUNGOK PUPBLEKO (PUBLIC HEARING)

gi Betnes gi diha 30 gi Agosto, 2013  
(Friday, August 30, 2013)

Kuátton Inekungok Pubbleko gi I Liheslaturan Guáhan  
(Guam Legislature Public Hearing Room)

media ora para alas saís gi pipuengi  
(5:30 PM)

TAREHA  
(AGENDA)

#### Priniponi Siha: (Bills)

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Section-by-Section Description of Changes and Rationale for Proposed Changes to Statute

Section of Article 1, Chapter 8, Title 4	Description of Changes	Rationale for Proposed Changes
8104	<p><i>Added to the list of definitions:</i></p> <p>( ) Tier 1 capital shall have the meaning set forth in regulations promulgated by the Federal Deposit Insurance Corporation as codified in the Code of Federal Regulations, 12 C.F.R. § 325, as amended from time to time.</p>	<p>Adds a generally accepted externally-sourced definition for “capital” by citing to “Tier 1 capital” defined in FDIC regulations, as amended from time to time. To be applied to custodians, and bank trust departments that are not locally chartered.</p>
8139.1	<p><i>Subsection (b) edited and renumbered, and new subsections (c) and (d) added:</i></p> <p><b>§ 8139.1. Fiduciary Duties.</b></p> <p>(a) The members of the Board of Trustees stand in a fiduciary relationship to the beneficiaries of the Retirement Fund in regard to the management of the Fund.</p> <p>(b) The members of the Board of Trustees shall discharge their duties with respect to management of the Retirement Fund:</p> <p>(1) solely in the interest of the members and beneficiaries of the Fund and for the exclusive purpose of providing benefits to members and beneficiaries and defraying reasonable expenses of administering the Fund. <del>The members of the Board of Trustees shall discharge their duties;</del></p> <p>(2) with the care, skill, and prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. <del>The members of the</del></p>	<p>Eliminates duplicative prefatory statement applicable to all subsections “The members of the Board of Trustees shall discharge their duties . . . .”</p> <p>Clarifies the fiduciary standards under which the Trustees will be reviewed in connection with investment decisions, specifically, that:</p>

	<p><del>Board of Trustees shall discharge their duties;</del></p> <p>(3) by diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. <del>The members of the Board of Trustees shall discharge their duties; and</del></p> <p>(4) in accordance with the documents and instruments governing the <del>fund</del>Fund.</p> <p>(c) <u>Unless otherwise provided in this Chapter, investment and management decisions respecting individual assets shall be evaluated not in isolation, but in the context of the Fund's portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the Fund.</u></p> <p>(d) <u>A Trustee's decision or action in discharging his or her fiduciary duties shall be reviewed in light of the facts and circumstances existing at the time of such decision or action, and not by hindsight.</u></p>	<ul style="list-style-type: none"> <li>• investment and management decisions respecting individual assets shall be evaluated not in isolation, but in the context of the Fund's portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the Fund; and</li> <li>• a trustee's decision or action in discharging his or her fiduciary duties shall be reviewed in light of the facts and circumstances existing at the time of such decision or action, and not by hindsight.</li> </ul>
<p><b>8143(j)</b></p>	<p><i>Correction made to the section reference in the last paragraph:</i></p> <p>At no time shall an acquisition considered under this Section Subsection (j) be made that would provide an immediate investment return which is less than the average rate of investment return that the Fund is receiving overall on its alternative investment portfolio.</p>	<p>Clarifies intent of prior legislation that had added a new provision (j) to Section 8143, including a conditional provision that should have been applicable only to Section 8143(j) and not the entire Section 8143.</p>
<p><b>8144</b></p>	<p><i>Changes made as follows:</i></p> <p><b>§ 8144. Custodian.</b></p> <p>The Board shall engage one or more <del>bank trust departments</del>custodians to assume responsibility for the physical possession of fund assets or evidences of assets. The custodian shall submit such reports, accountings and other information in such form and at such times as</p>	<p>To encourage competitive pricing, the revisions clarify that custodians need not be bank trust departments, in recognition that today's largest global custodians are not organized as bank trust departments yet are well-recognized and capable of providing custodial services.</p>

	<p>requested by the Board. All costs incurred for custodial services shall be a direct charge to Investment Income. The custodian shall hold all assets for the account of the Government of Guam Retirement Fund and shall act only upon the instructions of the Board, its ex-officio director or a member, committee or agent so authorized by the Board. No custodian shall be engaged unless it:</p> <p>(a) Has been continuously engaged in rendering <del>trust</del> custody services for a period of ten (10) or more years; and</p> <p>(b) Is organized under the laws of the United States or a state or territory thereof; and</p> <p>(c) Has Tier 1 capital <del>and surplus</del> in excess of <del>Ten Million</del> <u>One Billion</u> Dollars (<del>\$10,000,000</del> <u>1,000,000,000</u>); and</p> <p>(d) Is a member of the Federal Reserve System whose deposits are insured by the Federal Deposit Insurance Corporation or any successor thereto; or</p> <p>(e) Notwithstanding any of the above, any locally chartered bank may be a custodian of the Retirement Fund.</p>	<p>As an enhancement to risk management, to increase the capital requirements for custodians except if the custodian is locally chartered in Guam.</p>
<p><b>8145</b></p>	<p><i>Changes made as follows:</i></p> <p><b>§ 8145. Investment Agent.</b></p> <p>(a) In order to secure expert advice and counsel, the Board may engage an investment agent <u>to serve as investment counsel</u> which shall be either an investment counsel or a bank trust department as hereinafter qualified; and <u>one or more Investment Agents to serve as investment manager(s) to manage asset classes identified by the Board upon the recommendation of investment counsel.</u> All costs incurred in</p>	<p>To provide consistency of definitional terms: “Investment Agent” includes Investment Counsel and Investment Managers.</p>

	<p>this connection shall be a direct charge to Investment Income.</p> <p>(b) No person, firm or corporation shall be eligible for employment as investment counsel which acts as principal for its own account or as broker for a client other than the Fund in connection with the sale of any security to or the purchase of any security from the Fund.</p> <p>(c) No investment <del>counsel</del>agent shall be engaged unless:</p> <p>(1) The principal business of the person, firm or corporation selected by the Board consists of rendering investment supervisory services, that is, the giving of continuous advice as to the investment of Funds on the basis of the individual needs of each client; and</p> <p>(2) The principal ownership <del>or</del>and control of such person, firm or corporation rests with individuals who are actively engaged in such business; and</p> <p>(3) Such person, firm or corporation and its predecessors have been continuously engaged in such business for a period of ten (10) or more years; and</p> <p>(4) Such person, firm or corporation is registered as an investment adviser under the laws of the United States of America as from time to time in effect; and</p> <p>(5) The contract between the Board and the investment <del>counsel</del>agent is of no specific duration and is voidable at any time by either party; and</p> <p>(6) Such person, firm or corporation certifies in writing, to the Board, that the assets under its direct investment supervision are in excess of <del>Two Hundred Million</del>One Billion Dollars (\$<del>200,000,000</del>1,000,000,000).</p>	<p>To resolve ambiguity and clearly eliminate an impractical requirement that principal ownership of a firm be actively engaged in investment supervisory services, because publicly traded corporations serving as investment agents may have principal ownership spread among many shareholders who are not actively engaged in the business of investment management.</p> <p>To increase the amount of assets under management requirement.</p>
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	<p>(d) The Board shall not engage a bank trust department unless it:</p> <p>(1) Certifies in writing, to the Board, that the assets under its direct investment supervision are in excess of <del>Two Hundred Million</del><u>One Billion</u> Dollars (<del>\$200,000,000</del><u>\$1,000,000,000</u>); and</p> <p>(2) Has been, together with its predecessors, continuously engaged in supervising investments for a period of ten (10) or more years; and</p> <p>(3) Is organized under the laws of the United States or a state or territory thereof; and</p> <p>(4) Has Tier 1 capital <del>and surplus</del> in excess of <del>Ten Million</del><u>One Billion</u> Dollars (<del>\$10,000,000</del><u>\$1,000,000,000</u>); and</p> <p>(5) Is a member of the Federal Reserve System whose deposits are insured by the Federal Deposit Insurance Corporation or any successor thereto.</p> <p>(e) The Board or its designee under § 8143(a), shall establish and may from time to time change operating arrangements with the Investment Agent in order to facilitate efficient management and timely investment action.</p> <p>(f) No investment shall be made unless in the opinion of the Investment Agent it is an appropriate investment for the Fund and is an authorized investment under §§ 8143 through § 8159, inclusive, or in the absence of such opinion, unless preceded by a resolution of the Board <del>direction</del><u>directing</u> the investment.</p>	<p>To increase the amount of assets under management requirement.</p> <p>To increase the capital requirements for investment agents.</p> <p>To correct a typographical error.</p>
<p><b>8146</b></p>	<p><i>Changes made as follows:</i></p> <p><b>§ 8146. General Investment Limitations.</b></p>	

	<p>No investment shall be made if, after such investment, the Fund would own:</p> <p>(a) Any combination of obligations of any one political subdivision, corporation or other single issuing entity in excess of five percent (5%) of Fund assets at cost. This limitation shall not apply to general obligations of the United States, investments authorized under § 8150, or general obligations of the territory of Guam.</p> <p>(b) Any combination of investment instruments as covered by § 8151, Subsection (b) of § 8154, Subsection (b) of § 8156, and Subsection (b) of § 8157 in excess of <del>Fifteen</del> <del>Thirty-Five</del> Percent (<del>15</del><del>35</del>%) of Fund assets at cost.</p> <p>(c) Obligations or other investments issued or guaranteed by the territory of Guam in excess of Ten Percent (10%) of Fund assets at cost, provided however, that this limitation shall not apply to such obligations or other investments that are unconditionally guaranteed as to principal and interest by, or supported by lease assignment from, another entity whose principle business is outside of said Territory and whose obligations are authorized investments under §§ 8143 through 8159, inclusive.</p>	<p>To clarify that the 5% cap does not apply to any investment authorized under Section 8150 (Bonds of United States and Federal Instrumentalities), so as to resolve ambiguity about exposure to debt securities issued by Fannie Mae and Freddie Mac.</p> <p>In recognition of the increased globalization and geographical diversity of the public securities market, to increase the percentage of Fund assets at cost that can be invested in non-U.S. government bonds, non-U.S. corporate bonds, non-U.S. preferred stock, and non-U.S. common stock to 35% from 15%. This allows the Fund portfolio to achieve higher levels of diversification and potentially higher risk-adjusted long-term return.</p>
<p><b>8149</b></p>	<p><i>Changes made, section renumbered and new subsection (b) added:</i></p> <p><b>§ 8149. Same: Bank Deposits; Other Cash Equivalents.</b></p> <p>(a) Interest-bearing time deposits, demand deposits, and cash sweep deposit accounts in banks organized under the laws of the United States or any state or territory thereof, provided that said bank:</p> <p><del>(a)(1) Has Tier 1 capital and surplus in excess of One Billion Dollars (\$1,000,000,000)</del><del>\$10,000,000</del>; and</p>	<p>To include cash equivalents, generally accepted to be high grade debt instruments maturing within 12 months from time of purchase, as permissible investments. This allows for consistency in the definition of “cash” within the investing community.</p> <p>To increase capital requirements at banks holding cash and cash equivalent deposits,</p>

	<p>(b)(2) Is a member of the Federal Reserve System; and</p> <p>(e)(3) Together with any predecessors, have been conducting a banking business for a continuous period of ten (10) or more years; or</p> <p>(d)(4) Any bank or savings and loan association chartered in Guam and a member of the Federal Deposit Insurance Corporation or the Federal Home Loan Bank System.</p> <p>(b) <u>Cash equivalents purchased in investment funds authorized under Section 8158 or in exchange-traded funds authorized under Section 8158.1; in amounts and for durations approved by the Board in connection with the management of uninvested cash balances; such purchases shall be excluded from limitations of § 8158(e) and § 8158.1(b).</u></p>	<p>except for banks that are locally chartered in Guam.</p> <p>To clarify that cash and cash equivalents, including those purchased as units in investment funds or ETFs, are not subject to percentage limitations under this section or under the limitations of Section 8158(e) applicable to investment funds or Section 8158.1 applicable to ETFs, and to clarify that quantitative limitations on direct and indirect investments in specific asset classes are separate from such limitations for investment vehicles.</p>
<p><b>8150</b></p>	<p><i>New subsection (d) added as follows:</i></p> <p><b>§ 8150. Same: Bonds of United States and Federal Instrumentalities.</b></p> <p>(a) Bonds or other evidence of indebtedness of the United States of America, or any of its agencies or instrumentalities, when such obligations are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality thereof;</p> <p>(b) Debt securities issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation that are backed by pools of mortgage loans and guaranteed as to timely repayment of principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or</p> <p>(c) Non-mortgage-related bonds or other evidence of indebtedness of the Federal National Mortgage Association or the Federal Home Loan</p>	



	<p>Mortgage Corporation.</p> <p>(d) Bonds authorized under this Section may be purchased and held in investment funds authorized under §8158 or in exchange-traded funds authorized under §8158.1; such purchases shall be excluded from the limitations of §8158(e) and §8158.1(b).</p>	<p>To clarify that U.S. and federal agency bonds purchased and held as units of investment funds or ETFs are not subject to percentage limitations under this section or under the limitations of Section 8158(e) applicable to investment funds or Section 8158.1 applicable to ETFs, to clarify that quantitative limitations on direct and indirect investments in specific asset classes are separate from such limitations for investment vehicles.</p>
<p><b>8151</b></p>	<p><i>Change made and new subsection (d) added:</i></p> <p><b>§ 8151. Same: Bonds Issued by National Governments Other Than The United States.</b></p> <p>Bonds and other evidences of indebtedness which are direct obligations of, or secured by, the full faith and credit of national governments other than the United States, where there exists the power to levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness, provided that:</p> <p>(a) The issuer shall not be in default in the payment of principal or interest on any bonds or other evidences of indebtedness; and</p> <p>(b) The Investment Agent determines that such an investment would be employed by a prudent <del>man</del> person acting in a like capacity and familiar with such matters would use in the investment of a fund with like character and with like aims; and</p> <p>(c) No investment shall be made in any one (1) issue described in this Section in an amount in excess of ten percent (10%) of such issues.</p> <p>(d) Bonds authorized under this Section may be purchased and held in</p>	<p>Replaces “prudent man” with “prudent person”.</p> <p>To clarify that non-U.S. bonds purchased and held as units of investment funds or</p>

	<p>investment funds authorized under §8158 or in exchange-traded funds authorized under §8158.1; such purchases shall be excluded from the limitations of §8158(e) and §8158.1(b).</p>	<p>ETFs are not subject to the limitations of Section 8158(e) applicable to investment funds or Section 8158.1 applicable to ETFs, to clarify that quantitative limitations on direct and indirect investments in specific asset classes are separate from such limitations for investment vehicles.</p>
8152	<p><i>Renumbered as subsection (a) and a new subsection (b) added:</i></p> <p><b>§ 8152. Same: Bonds of States and Territories.</b></p> <p>(a) Bonds or other evidences of indebtedness which are direct obligations of or secured by the full faith and credit of, any state or territory of the United States or the District of Columbia where there exists the power to levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness; but the issuer shall not be in default in the payment of principal or interest on any bonds or other evidences of indebtedness.</p> <p>(b) Bonds authorized under this Section may be purchased and held in investment funds authorized under §8158 or in exchange-traded funds authorized under §8158.1; such purchases shall be excluded from the limitations of §8158(e) and §8158.1(b).</p>	<p>To clarify that state and territorial bonds purchased and held as units of investment funds or ETFs are not subject to the limitations of Section 8158(e) applicable to investment funds or Section 8158.1 applicable to ETFs, to clarify that quantitative limitations on direct and indirect investments in specific asset classes are separate from such limitations for investment vehicles.</p>
8153	<p><i>New paragraph added at the end as follows:</i></p> <p><b>§ 8153. Same: Public Revenue Bonds.</b></p> <p>Bonds or other obligations which are payable from revenues or earnings specifically pledged there for of a public utility, state, municipally or territorially owned, either directly or through civil division, authority or public instrumentality of a state or territory or</p>	

	<p>municipality; provided that:</p> <p>(a) The laws of the state or territory or municipality authorizing the issuance of such bonds or other obligations require that rates for service shall be fixed, maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and both principal and interest of such bonds or obligations; and</p> <p>(b) No such bonds or other obligations shall be in default in the payment of principal or interest.</p> <p><u>Bonds authorized under this Section may be purchased and held in investment funds authorized under §8158 or in exchange-traded funds authorized under §8158.1; such purchases shall be excluded from the limitations of §8158(c) and §8158.1(b).</u></p>	<p>To clarify that public revenue bonds purchased and held as units of investment funds or ETFs are not subject to the limitations of Section 8158(e) applicable to investment funds or Section 8158.1 applicable to ETFs, to clarify that quantitative limitations on direct and indirect investments in specific asset classes are separate from such limitations for investment vehicles.</p>
<p><b>8154</b></p>	<p><i>Changes made and new subsection (e) added:</i></p> <p><b>§ 8154. Same: Bonds of Domestic and Foreign Corporations; Index-Eligible Securities.</b></p> <p>(a) Bonds of Domestic Corporations. Bonds, debentures, notes and other evidences of indebtedness of any corporation or corporations created or existing under the laws of the United States, or of any of the states or territories of the United States or the District of Columbia which are not in default either as to principal or interest, provided that:</p> <p>(1) Such bonds or other evidence of indebtedness are rated within the four (4) highest categories of two (2) nationally recognized and published rating services which have been approved by the Board and the Investment Agent; or</p> <p>(2) In case such bonds or other evidence of indebtedness are not so</p>	

<p>rated by two (2) such services, investments in such lesser-ranked domestic corporate bonds shall not exceed eight percent (8%) of the Fund at cost; unless the net earnings available for fixed charges over a prior period of five (5) fiscal years next preceding the date of investment have averaged per year and during either of the last two (2) years have been, after depreciation and after taxes, not less than:</p> <p>(A) two (2) times its average annual fixed charges over the same period, in the case of any public utility company;</p> <p>(B) one and one-half (1-1/2) times its average annual fixed charges over the same period, in the case of any finance company; or</p> <p>(C) three (3) times its average annual fixed charges over the same period, in the case of any other company.</p> <p>(3) No more than two percent (2%) of the Fund at cost shall be invested in the obligations of any one (1) domestic corporation or other single domestic issuing entity described in this Subsection.</p> <p>(b) Bonds of Foreign Corporations. Bonds, debentures, notes and other evidences of indebtedness of any corporation or corporations created or existing under the laws of nations other than the United States which are not in default either as to principal or interest, provided that the Investment Agent in its informed opinion, determines that such an investment would be employed by a prudent <del>man</del> person acting in a like capacity and familiar with such matters would use in the investment of a fund of like character and with like aims. No more than one and one-half percent (1-1/2%) of the Fund at cost shall be invested in the obligations of any one (1) foreign corporation or other single issuing foreign entity described in this Subsection.</p> <p>(c) No investment shall be made in any one (1) issue described in Subsections (a) and (b) of this Section in an amount in excess of ten</p>	<p>To permit investments in higher yielding non-investment grade bonds, but in amounts not to exceed 8% of the Fund at cost. This allows consistent treatment with comparable equity provisions because it allows investment in high-yield bonds which can be safer and more protected under stress scenarios compared with equities because of established capital structure priorities.</p> <p>To replace “prudent man” with “prudent person”.</p>
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	<p>percent (10%) of such issues.</p> <p>(d) Other Securities in the U.S. Aggregate Bond Index. Bonds, debentures, notes and other evidences of indebtedness which are denominated in U.S. Dollars, investment-grade, fixed-rate and of the quality of fixed income securities covered by the U.S. Aggregate Bond Index.</p> <p>(e) Bonds authorized under this Section may be purchased and held in investment funds authorized under §8158 or in exchange-traded funds authorized under §8158.1; such purchases shall be excluded from the limitations of §8158(e) and §8158.1(b).</p>	<p>To clarify that corporate bonds purchased and held as units of investment funds or ETFs are not subject to the limitations of Section 8158(e) applicable to investment funds or Section 8158.1 applicable to ETFs, to clarify that quantitative limitations on direct and indirect investments in specific asset classes are separate from such limitations for investment vehicles.</p>
<p><b>8156</b></p>	<p><i>New subsection (c)(5) added:</i></p> <p><b>§ 8156. Same: Domestic and Foreign Preferred Stock.</b></p> <p>(a) Domestic Preferred Stock. Domestic preferred or guaranteed stock or shares of any institution created or existing under the laws of the United States or of any state, district or territory thereof or the District of Columbia, provided that:</p> <p>(1) All publicly held prior obligations and prior preferred stock, if any, of such institution at the date of acquisition are eligible as investments under §§ 8143 through 8160; and</p> <p>(2) The net earnings of the institution available for fixed charges over a period of five (5) fiscal years next preceding the date of investment have averaged per year, and during either of the last two (2) years have been, after depreciation and after income taxes. no less than:</p> <p>(i) Two times its average annual fixed charges, maximum contingent interest and preferred dividend requirements over the same period, in</p>	

	<p>the case of any public utility company; or</p> <p>(ii) Three (3) times its average annual fixed charges, maximum contingent interest and preferred dividend requirements over the same period, in the case of any other company.</p> <p>For purposes of this Subsection, the term ‘preferred dividend requirements’ shall mean cumulative and noncumulative dividends on all preferred stock of the issuer, whether paid or not.</p> <p>(b) Foreign Preferred Stock. Foreign preferred or guaranteed stock or shares of any institution created or existing under the laws of nations other than the United States which are not in default either as to principal or interest, provided that the Investment Agent in its informed opinion, determines that such an investment would be employed by a prudent <del>man</del> person acting in a like capacity and familiar with such matters would use in the investment of a fund of like character and with like aims.</p> <p>(c) Limitations:</p> <p>(1) No investment shall be made in any one issue described in Item (1) of Subsection (a) of this Section in an amount in excess of ten percent (10%) of such issues.</p> <p>(2) No more than two percent (2%) of the Fund at cost shall be invested in the preferred stock of any one issuing domestic company.</p> <p>(3) No more than two percent (2%) of the Fund at cost shall be invested in the preferred stock of any one issuing foreign company.</p> <p>(4) The aggregate of all investments authorized under this Section shall not exceed fifteen percent (15%) of Fund Assets at cost.</p>	<p>To replace “prudent man” with “prudent person”.</p> <p>To clarify that preferred stock purchased and held as units of investment funds or ETFs are not subject to the limitations of Section 8158(e) applicable to investment funds or Section 8158.1 applicable to ETFs, to clarify that quantitative</p>
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	<p>(5) Preferred stock authorized under this Section may be purchased and held in investment funds authorized under §8158 or in exchange-traded funds authorized under §8158.1; such purchases shall be excluded from the limitations of §8158(e) and § 8158.1(b).</p>	<p>limitations on direct and indirect investments in specific asset classes are separate from such limitations for investment vehicles.</p>
<p><b>8157</b></p>	<p><i>Changes made, new subsection (d) inserted and current subsection (d) renumbered as (e):</i></p> <p><b>§ 8157. Same; Common Stock.</b></p> <p>(a) Common or capital stock of any institution or entity created or existing under the laws of the United States or any state, district, or territory thereof, or of the District of Columbia or of any foreign country; provided that, with respect to at least fifty percent (50%) of the investments at cost purchased directly under this Section:</p> <p>(i) The issuing institution, entity or a predecessor thereto, has reported a profit in at least four (4) of the five (5) fiscal years next preceding the date of investment or alternatively in at least seven (7) of the ten (10) fiscal years next preceding the date of investment; and</p> <p>(ii) The institution, entity or such predecessor has paid cash dividends on its common or capital stock in at least four (4) of the five (5) years next preceding the date of investment, or alternatively in at least seven (7) of the ten (10) fiscal years next preceding the date of investment; and</p> <p>(iii) Total cash dividends have not exceeded total earning in the five (5) years next preceding the date of investment; and</p> <p>(iv) On the date of investment, the issuer shall not be in default in payment of principal or interest on any of its publicly held bonds or other evidences of indebtedness and any contingent interest, cumulative and noncumulative preferred dividends and dividends on prior common</p>	<p>To clarify that the dividend requirement applicable to 50% of common stock purchased under this Section applies only to common stock purchased and held directly (rather than indirectly by an investment fund or ETF).</p>

	<p>or capital stock shall have been paid in full.</p> <p>No more than five percent (5%) of the Fund shall be invested directly in the common or capital stock of anyone issuing domestic company described in this Section.</p> <p>(b) Common or capital stock of any institution or entity created or existing under the laws of nations other than the United States provided that the Investment Agent determines that such an investment would be employed by a prudent <del>man</del> person acting in a like capacity and familiar with such matters would use in the investment of a fund with like character and with like aims. No more than one and one-half percent (1-1/2%) of the Fund at cost shall be invested directly in the common or capital stock of anyone issuing foreign company described in this Section.</p> <p>(c) No direct investment shall be made in anyone (1) issue described in this Section in an amount in excess of ten percent (10%) of such issues.</p> <p>(d) <u>Common or capital stock of any institution or entity created or existing under the laws of the United States or any state, district, or territory thereof, or of the District of Columbia or of any foreign country purchased and held in investment funds authorized under §8158 or in exchange-traded funds authorized under §8158.1; such purchases being excluded from the limitations of §8158(e) and §8158.1(b).</u></p> <p>(e) The aggregate amount of all direct and indirect investments under this Section at cost shall not exceed <del>five</del> <u>seventy</u> percent (<del>5</del><u>70</u>%) of the Fund.</p>	<p>To replace “prudent man” with “prudent person”.</p> <p>To clarify that common stock purchased and held as units of investment funds or ETFs are not subject to the limitations of Section 8158(e) applicable to investment funds or Section 8158.1 applicable to ETFs, to clarify that quantitative limitations on direct and indirect investments in specific asset classes are separate from such limitations for investment vehicles.</p> <p>To aggregate direct and indirect investments in common stock and subject them to a cap of no more than 70% of the Fund at cost. Higher cap recognizes the increased global opportunity sets, and the principle of managing risk through diversification in a wholesome portfolio.</p>
<p><b>8158</b></p>	<p><i>Changes made as follows:</i></p>	



	<p><b>§ 8158. Investment Funds.</b></p> <p>(a) Common or capital shares of any investment trust or mutual fund (including any index fund) registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended, provided that the cost of the shares acquired is no greater than their net asset value on the date of acquisition.</p> <p>(b) Units in any common trust fund or commingled fund (including any index fund) maintained by a custodian meeting the requirements of Title 4 GCA § 8144 and advised or sub-advised by an investment management organization meeting the requirements of Title 4 GCA § 8145.</p> <p>(c) Preferred shares of any investment trust or mutual fund (including any index fund) registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended, provided that:</p> <p>(1) The number of issued and outstanding common or capital shares multiplied by their asset value per share, plus;</p> <p>(2) The number of issued and outstanding preferred shares multiplied by their par or stated value, is at least fifty percent (50%) greater than the number of issued and out-standing preferred shares multiplied by their par or stated value. For purposes of this Section, the number of issued and outstanding shares shall be taken as of the latest available public report of such investment trust or mutual fund. Preferred shares as described in this Subsection shall not be subject to the provisions of § 8156.</p> <p>(d) The term ‘net asset value’ as used in this Section shall mean the total quoted or estimated market value of all securities or other assets owned, less that total of all determinable liabilities, as reported by such</p>	<p>To clarify that common or capital shares of investment trusts and mutual funds include common or capital shares of index funds.</p> <p>To clarify that units of common trust funds or commingled funds include units of index funds.</p> <p>To clarify that preferred shares of investment trusts and mutual funds include preferred shares of index funds.</p>
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	<p>common trust fund, commingled fund, investment trust or mutual fund.</p> <p>(e) Limitation:</p> <p>(1) The investment in units, preferred, common and capital stock of anyone common trust fund, commingled fund, investment trust or mutual fund shall not exceed five percent (5%) of the Fund at cost; and</p> <p>(2) The aggregate of all investments under this Section, <i>except</i> for investment fund purchases of cash equivalents authorized under §8149, bonds authorized under §§8150-8154, preferred stock authorized under §8156, and common or capital stock authorized under §8157, shall not exceed thirty percent (30%) of the Fund at cost.</p>	<p>To carve out certain asset classes from the quantitative limitations of this Section, by clarifying that the 30% cap on investment trusts, mutual funds, common trust funds, and commingled funds, including index funds, shall not include purchases of cash and cash equivalents, bonds, preferred stock, common and capital stock in these investment vehicles. The 30% cap is meant to be applied to investment funds purchases of asset classes not otherwise authorized under other statutory sections.</p>
<p><b>8158.1</b></p>	<p><i>Renumbered by adding a new subsection (b) as follows:</i></p> <p><b>§ 8158.1. Exchange Traded Funds.</b></p> <p>(a) Units or shares of any exchange traded fund (ETF) established as an open-end investment management company or a unit investment trust registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended. Although ETFs may trade at prices established throughout the trading day, like any other listed equity security trading in the secondary market on an exchange, the units or shares described in this subsection shall not be subject to the provisions of §8157. Although ETFs are unit investment trusts, the units or shares described in this subsection shall not be subject to the provisions of §8158.</p> <p>(b) The investment in units or shares of any one exchange traded fund shall not exceed twenty percent (20%) of the Fund at cost.</p>	<p>To conform formatting with similar sections, in which quantitative limitations (“caps”) are separate from qualitative requirements.</p>



# COMMITTEE ON RULES

*I Mina'trentai Dos na Liheslaturan Guahan* • The 32nd Guam Legislature  
155 Hesler Place, Hagåtña, Guam 96910 • [www.guamlegislature.com](http://www.guamlegislature.com)  
E-mail: [roryforguam@gmail.com](mailto:roryforguam@gmail.com) • Tel: (671)472-7679 • Fax: (671)472-3547

Senator  
Rory J. Respicio  
CHAIRPERSON  
MAJORITY LEADER

August 21, 2013

VIA E-MAIL  
[john.rios@bbmr.guam.gov](mailto:john.rios@bbmr.guam.gov)

Senator  
Thomas C. Ada  
VICE CHAIRPERSON  
ASSISTANT MAJORITY LEADER

Senator  
Vicente (Ben) C. Pangelinan  
Member

**John A. Rios**  
**Director**  
**Bureau of Budget & Management Research**  
**P.O. Box 2950**  
**Hagåtña, Guam 96910**

Speaker  
Judith T.P. Won Pat, Ed.D.  
Member

**RE: Request for Fiscal Notes– Bill Nos. 166 through 171-32 (LS)**

Senator  
Dennis G. Rodriguez, Jr.  
Member

*Hafa Adai* Mr. Rios:

Vice-Speaker  
Benjamin J.F. Cruz  
Member

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guahan's* most recently introduced bills. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bills.

Legislative Secretary  
Tina Rose Muña Barnes  
Member

*Si Yu'os ma'äse'* for your attention to this matter.

Senator  
Frank Blas Aguon, Jr.  
Member

Very Truly Yours,

**Senator Rory J. Respicio**  
*Chairperson, Committee on Rules*

Senator  
Michael F.Q. San Nicolas  
Member

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Attachments (1)

Senator  
Aline Yamashita  
Member

Cc: Clerk of the Legislature

2013 AUG 21 AM 9:37

Bill Nos.	Sponsor	Title
166-32 (LS)	Judith T. Won Pat, Ed.D., Aline A. Yamashita, Ph.D., B.J.F. Cruz	AN ACT TO TRANSFER TITLE OF LOT NO. 5397 MUNICIPALITY OF BARRIGADA, GUAM TO THE UNIVERSITY OF GUAM.
167-32 (LS)	R.J. Respicio	AN ACT TO REPEAL § 23113 OF CHAPTER 23, TITLE 22 OF THE GUAM CODE ANNOTATED TO REMOVE THE CURRENT TAX EXEMPTION ON PREMIUMS COLLECTED BY INSURANCE COMPANIES AS PART OF THE QC PROGRAM.
168-32 (LS)	T.R. MUÑA Barnes	AN ACT TO REZONE LOT NOS. 22 AND 23, BLOCK NO. 4, TRACT NO. 170, WEST ACRESSUBDIVISION, DEDEDO, GUAM FROM SINGLE- FAMILY DWELLING ZONE (R-1) TO MULTIPLE- FAMILY DWELLING ZONE (R-2)
169-32 (LS)	T.R. MUÑA Barnes	AN ACT TO REZONE LOT NO. 5168-4, LOCATED IN THE MUNICIPALITY OF TAMUNING, FROM SINGLE-FAMILY DWELLING ZONE (R1) TO LIGHT INDUSTRIAL ZONE (M1).
170-32 (LS)	Vicente (ben) C. Pangelinan	AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.
171-32 (LS)	V. Anthony Ada, B. J.F. Cruz	AN ACT TO AMEND §§ 3114 OF 16GCA, 57103 OF 10GCA, 4121 OF 4GCA AND 1107 OF 17GCA RELATIVE TO GOVERNMENT OF GUAM ID CARDS ISSUED TO PERSONS UNDER 21 YEARS OF AGE.



## COMMITTEE ON RULES

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Senator  
Michael F.Q. San Nicolas  
Member

Senator  
V. Anthony Ada  
Member  
MINORITY LEADER

Senator  
Aline Yamashita  
Member

August 19, 2013

### MEMORANDUM

**To: Rennae Meno**  
*Clerk of the Legislature*

**Attorney Therese M. Terlaje**  
*Legislative Legal Counsel*

**From: Senator Rory J. Respicio**  
*Majority Leader & Rules Chair*

**Subject: Referral of Bill No. 170-32(LS)**

As the Chairperson of the Committee on Rules, I am forwarding my referral of **Bill No. 170-32(LS)**.

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

*Si Yu'os Ma'åse!*

Attachment

I MINA 'TRENTAI DOS NA LIHESLATURAN GUAHAN  
2013 (FIRST) REGULAR SESSION

2013 AUG 16 PM 4:29

Bill No. 170-32(LS)

Introduced by:

V.C. Pangelinan 

AN ACT TO ADD A NEW SUBSECTION (w) TO §8104, TO AMEND §8139.1, TO AMEND SUBSECTION 8143(j), TO AMEND §8144, §8145, §8146, §8149, §8150, §8151, §8152, §8153, §8154, §8156, §8157, §8158, and §8158.1 ALL OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED RELATIVE THE DEFINED BENEFITS PLAN OF THE GOVERNMENT OF GUAM RETIREMENT FUND.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 SECTION 1. Legislative Findings and Intent. *I Liheslaturan*

3 *Guahan* finds that legislative action is needed to improve the Government of

4 Guam's ability to meet its obligations to fund the Retirement Fund Defined

5 Benefit Plan. The statutory limitations in the Defined Benefit Plan pertaining

6 to investments should not result in unintended consequences such as

7 encouraging the Government of Guam Retirement Fund ('Fund') to take

8 undue investment risks, or permitting disproportionate risks for some asset

9 classes and some investment vehicles, which might result in an imprudent

10 investment portfolio.

1           *I Liheslaturan Guahan* finds that the investment limitations in current  
2 law must be updated and revised to expand the Fund’s opportunity to improve  
3 the risk adjusted return of the investment portfolio for the benefit of the  
4 Retirement Fund as a whole.

5           *I Liheslaturan Guahan* finds inconsistent treatment in provisions  
6 allowing investments in various equity categories, while prohibiting  
7 investments in non-investment grade corporate bonds, even though all bond  
8 categories (including high-yield) can be safer and more protected under stress  
9 scenarios than equities because of established capital structure priorities.

10           *I Liheslaturan Guahan* further finds similar inconsistent treatment in  
11 provisions that allow bond investments so long as they are included in the  
12 applicable bond benchmark (e.g., the U.S. Aggregate Index), while  
13 prohibiting equity investments in certain non-U.S. headquartered companies  
14 even though such companies do most of their businesses in the U.S. and are  
15 included in applicable U.S. equity benchmarks (e.g., the Russell 1000 Index  
16 and the Russell 2000 Index).

17           *I Liheslaturan Guahan* further finds that current statutes limiting non-  
18 U.S. investments, which had a historical purpose of controlling risks in under-  
19 developed markets, are no longer relevant today and may be significantly  
20 inconsistent with global opportunity sets.

1            *I Liheslaturan Guahan* further finds that, for purposes of quantitative  
2 limitations, further clarity is needed when classifying investments by asset  
3 classes (e.g., stocks and bonds) and by the vehicles used to purchase such  
4 stocks and bonds (e.g., in mutual funds, exchange traded funds, index funds).

5            *I Liheslaturan Guahan* further finds that capital requirements for non-  
6 locally chartered bank custodians and for investment agents should be  
7 updated and more clearly defined in accordance with Federal Deposit  
8 Insurance Corporation Regulations, and increased in accordance with the  
9 level of assets under Fund management since the statute was enacted.

10           *I Liheslaturan Guahan* further finds that the fiduciary duties of the  
11 Board of Trustees of the Fund should expressly reflect that their investment  
12 decisions respecting individual assets should be evaluated not in isolation, but  
13 in the context of the Fund's portfolio as a whole and as part of an overall  
14 investment strategy having risk and return objectives reasonably suited to the  
15 Fund.

16           Accordingly, the Board of Trustees' decisions or actions in discharging  
17 their fiduciary duties should be reviewed in light of the facts and  
18 circumstances existing at the time of such decision or action, and not by  
19 hindsight.



1           Based on these findings, *I Liheslaturan Guahan* intends to amend the  
2 Defined Benefit Plan statute: (1) to allow investments in non-investment  
3 grade U.S. corporate bonds, up to eight percent (8%) of the Fund at cost and  
4 investments in U.S. and non-U.S. stocks, either directly or indirectly through  
5 purchases in investment funds or exchange traded funds, up to seventy  
6 percent (70%) of the Fund at cost; (2) to clarify that such quantitative  
7 limitations on direct and indirect investments in specific asset classes are  
8 separate from the quantitative limitations for the investment vehicles (e.g.,  
9 investment funds or exchange traded funds); (3) to increase the capital base  
10 required for non-locally chartered bank custodians and for investment agents  
11 to One Billion Dollars (\$1,000,000,000); and (4) to expressly state how the  
12 Board of Trustees' investment decisions should be evaluated based on risk  
13 and return objectives reasonably suited to the Fund.

14           **SECTION 2. A new subsection (w) is hereby added to Section 8104,**  
15 **Article 1, Chapter 8, Title 4 of the Guam Code Annotated, to read:**

16           “(w) *Tier 1 Capital* shall have the meaning set forth in regulations  
17 promulgated by the Federal Deposit Insurance Corporation as codified in the  
18 Code of Federal Regulations, 12 C.F.R. § 325, as amended from time to time.”

19           **SECTION 3. Section 8139.1, Article 1, Chapter 8, Title 4 of the**  
20 **Guam Code Annotated, is hereby amended to read:**

21           “§ 8139.1. Fiduciary Duties.

1 (a) The members of the Board of Trustees stand in a fiduciary  
2 relationship to the beneficiaries of the Retirement Fund in regard to the  
3 management of the Fund.

4 (b) The members of the Board of Trustees shall discharge their duties  
5 with respect to management of the Retirement Fund;

6 (1) solely in the interest of the members and beneficiaries of the  
7 Fund and for the exclusive purpose of providing benefits to members and  
8 beneficiaries and defraying reasonable expenses of administering the Fund.  
9 ~~The members of the Board of Trustees shall discharge their duties;~~

10 (2) with the care, skill, and prudence and diligence under the  
11 circumstances then prevailing that a prudent person acting in a like capacity  
12 and familiar with such matters would use in the conduct of an enterprise of a  
13 like character and with like aims. ~~The members of the Board of Trustees shall~~  
14 ~~discharge their duties;~~

15 (3) by diversifying the investments of the Fund so as to minimize  
16 the risk of large losses, unless under the circumstances it is clearly prudent not  
17 to do so. ~~The members of the Board of Trustees shall discharge their duties;~~  
18 and

19 (4) in accordance with the documents and instruments governing  
20 the fund Fund.

21 (c) Unless otherwise provided in this Chapter, investment and  
22 management decisions respecting individual assets shall be evaluated not in  
23 isolation, but in the context of the Fund's portfolio as a whole and as a part of  
24 an overall investment strategy having risk and return objectives reasonably  
25 suited to the Fund.

1        (d) A Trustee’s decision or action in discharging his or her fiduciary  
2 duties shall be reviewed in light of the facts and circumstances existing at the  
3 time of such decision or action, and not by hindsight.”

4        **SECTION 4. Subsection (j) of Section 8143, Article 1, Chapter 8,**  
5 **Title 4 of the Guam Code Annotated is hereby amended to read:**

6        “§8143(j). Before the Board may approve by resolution the acquisition  
7 of real property consisting of physical assets under §4225.16 of the  
8 Government Code, as amended, codified as §8159, of Title 4 GCA, the  
9 following steps must be taken:

10        (1) the proposed acquisition must be reviewed and recommendations  
11 must be submitted to the Board by an investment agent as defined under §8145  
12 of this Chapter;

13        (2) completion of an in-house evaluation of the proposed acquisition  
14 must be completed;

15        (3) a review of the proposed acquisition as to legal sufficiency must be  
16 made by the Attorney General; and

17        (4) a review and recommendation must be submitted by three (3)  
18 members of the Board of Trustees.

19        At no time shall an acquisition considered under this ~~Section~~ Subsection  
20 (j) be made that would provide an immediate investment return which is less  
21 than the average rate of investment return that the Fund is receiving overall on  
22 its alternative investment portfolio.”

23        **SECTION 5. Section 8144, Article 1, Chapter 8, Title 4 of the Guam**  
24 **Code Annotated is hereby amended to read:**

25        “§ 8144. Custodian.

26        The Board shall engage one or more ~~bank-trust departments~~ custodians  
27 to assume responsibility for the physical possession of fund assets or

1 evidences of assets. The custodian shall submit such reports, accountings and  
2 other information in such form and at such times as requested by the Board.  
3 All costs incurred for custodial services shall be a direct charge to Investment  
4 Income. The custodian shall hold all assets for the account of the Government  
5 of Guam Retirement Fund and shall act only upon the instructions of the  
6 Board, its ex-officio director or a member, committee or agent so authorized  
7 by the Board. No custodian shall be engaged unless it:

8 (a) Has been continuously engaged in rendering ~~trust~~ custody services  
9 for a period of ten (10) or more years; and

10 (b) Is organized under the laws of the United States or a state or  
11 territory thereof; and

12 (c) Has Tier 1 capital and surplus in excess of ~~Ten Million One Billion~~  
13 Dollars (\$10,000,0001,000,000,000); and

14 (d) Is a member of the Federal Reserve System whose deposits are  
15 insured by the Federal Deposit Insurance Corporation or any successor  
16 thereto; or

17 (e) Notwithstanding any of the above, any locally chartered bank may  
18 be a custodian of the Retirement Fund.”

19 **SECTION 6. Section 8145, Article 1, Chapter 8, Title 4 of the**  
20 **Guam Code Annotated is hereby amended to read:**

21 “§8145. Investment Agent.

22 (a) In order to secure expert advice and counsel, the Board may engage  
23 an investment agent to serve as investment counsel which shall be either an  
24 investment counsel or a bank trust department as hereinafter qualified; and  
25 one or more Investment Agents to serve as investment manager(s) to manage  
26 asset classes identified by the Board upon the recommendation of investment

1 counsel. All costs incurred in this connection shall be a direct charge to  
2 Investment Income.

3 (b) No person, firm or corporation shall be eligible for employment as  
4 investment counsel which acts as principal for its own account or as broker for  
5 a client other than the Fund in connection with the sale of any security to or  
6 the purchase of any security from the Fund.

7 (c) No investment ~~counsel~~ agent shall be engaged unless:

8 (1) The principal business of the person, firm or corporation selected  
9 by the Board consists of rendering investment supervisory services, that is, the  
10 giving of continuous advice as to the investment of Funds on the basis of the  
11 individual needs of each client; and

12 (2) The principal ownership or ~~and~~ control of such person, firm or  
13 corporation rests with individuals who are actively engaged in such business;  
14 and

15 (3) Such person, firm or corporation and its predecessors have been  
16 continuously engaged in such business for a period of ten (10) or more years;  
17 and

18 (4) Such person, firm or corporation is registered as an investment  
19 adviser under the laws of the United States of America as from time to time in  
20 effect; and

21 (5) The contract between the Board and the investment ~~counsel~~ agent  
22 is of no specified duration and is voidable at any time by either party; and

23 (6) Such person, firm or corporation certifies in writing, to the Board,  
24 that the assets under its direct investment supervision are in excess of ~~Two~~  
25 Hundred Million One Billion Dollars (\$200,000,000,000,000,000).

26 (d) The Board shall not engage a bank trust department unless it:

1 (1) Certifies in writing, to the Board, that the assets under its direct  
2 investment supervision are in excess of ~~Two Hundred Million~~ One Billion  
3 Dollars (~~\$200,000,000~~1,000,000,000); and

4 (2) Has been, together with its predecessors, continuously engaged in  
5 supervising investments for a period of ten (10) or more years; and

6 (3) Is organized under the laws of the United States or a state or  
7 territory thereof; and

8 (4) Has Tier 1 capital ~~and surplus~~ in excess of ~~Ten Million~~ One  
9 Billion Dollars (~~\$10,000,000~~1,000,000,000); and

10 (5) Is a member of the Federal Reserve System whose deposits are  
11 insured by the Federal Deposit Insurance Corporation or any successor thereto.

12 (e) The Board or its designee under § 8143(a), shall establish and may  
13 from time to time change operating arrangements with the Investment Agent in  
14 order to facilitate efficient management and timely investment action.

15 (f) No investment shall be made unless in the opinion of the Investment  
16 Agent it is an appropriate investment for the Fund and is an authorized  
17 investment under §§ 8143 through § 8159, inclusive, or in the absence of such  
18 opinion, unless preceded by a resolution of the Board ~~direction~~ directing the  
19 investment.”

20 **SECTION 7. Section 8146, Article 1, Chapter 8, Title 4 of the**  
21 **Guam Code Annotated is hereby amended to read:**

22 “§8146. General Investment Limitations.

23 No investment shall be made if, after such investment, the Fund would  
24 own:

25 (a) Any combination of obligations of any one political subdivision,  
26 corporation or other single issuing entity in excess of five percent (5%) of  
27 Fund assets at cost. This limitation shall not apply to general obligations of the

1 United States, investments authorized under § 8150, or general obligations of  
2 the territory of Guam.

3 (b) Any combination of investment instruments as covered by § 8151,  
4 Subsection (b) of § 8154, Subsection (b) of § 8156, and Subsection (b) of §  
5 8157 in excess of ~~Fifteen~~ Thirty-Five Percent (~~15~~35%) of Fund assets at cost.

6 (c) Obligations or other investments issued or guaranteed by the territory  
7 of Guam in excess of Ten Percent (10%) of Fund assets at cost, provided  
8 however, that this limitation shall not apply to such obligations or other  
9 investments that are unconditionally guaranteed as to principal and interest by,  
10 or supported by lease assignment from, another entity whose principle business  
11 is outside of said Territory and whose obligations are authorized investments  
12 under §§ 8143 through 8159, inclusive.”

13 **SECTION 8. Section 8149, Article 1, Chapter 8, Title 4 of the**  
14 **Guam Code Annotated is hereby amended to read:**

15 ‘§8149. Same: Bank Deposits; Other Cash Equivalents.

16 (a) Interest-bearing time deposits, demand deposits, and cash sweep  
17 deposit accounts in banks organized under the laws of the United States or any  
18 state or territory thereof, provided that said bank:

19 ~~(a)(1)~~ (1) Has Tier 1 capital ~~and surplus~~ in excess of One Billion Dollars  
20 (\$1,000,000,000)~~\$10,000,000~~; and

21 ~~(b)(2)~~ (2) Is a member of the Federal Reserve System; and

22 ~~(c)(3)~~ (3) Together with any predecessors, have been conducting a  
23 banking business for a continuous period of ten (10) or more years; or

24 ~~(d)(4)~~ (4) Any bank or savings and loan association chartered in Guam  
25 and a member of the Federal Deposit Insurance Corporation or the Federal  
26 Home Loan Bank System.

1       (b) Cash equivalents purchased in investment funds authorized under  
2 Section 8158 or in exchange-traded funds authorized under §8158.1; in  
3 amounts and for durations approved by the Board in connection with the  
4 management of uninvested cash balances; such purchases shall be excluded  
5 from limitations of § 8158(e) and § 8158.1(b)."

6       **SECTION 9. Section 8150, Article 1, Chapter 8, Title 4 of the Guam**  
7 **Code Annotated is hereby amended to read:**

8       "§8150. Same: Bonds of United States and Federal Instrumentalities.

9       (a) Bonds or other evidence of indebtedness of the United States of  
10 America, or any of its agencies or instrumentalities, when such obligations are  
11 guaranteed as to principal and interest by the United States of America or by  
12 any agency or instrumentality thereof;

13       (b) Debt securities issued by the Federal National Mortgage Association  
14 or the Federal Home Loan Mortgage Corporation that are backed by pools of  
15 mortgage loans and guaranteed as to timely repayment of principal and interest  
16 by the Federal National Mortgage Association or the Federal Home Loan  
17 Mortgage Corporation; or

18       (c) Non-mortgage-related bonds or other evidence of indebtedness of the  
19 Federal National Mortgage Association or the Federal Home Loan Mortgage  
20 Corporation.

21       (d) Bonds authorized under this Section may be purchased and held in  
22 investment funds authorized under §8158 or in exchange-traded funds  
23 authorized under §8158.1; such purchases shall be excluded from the  
24 limitations of §8158(e) and §8158.1(b)."

25       **SECTION 10. Section 8151, Article 1, Chapter 8, Title 4 of the**  
26 **Guam Code Annotated is hereby amended to read:**



1           “§8151. Same: Bonds Issued by National Governments Other Than The  
2 United States.

3           Bonds and other evidences of indebtedness which are direct obligations  
4 of, or secured by, the full faith and credit of national governments other than  
5 the United States, where there exists the power to levy taxes for the prompt  
6 payment of the principal and interest of such bonds or evidences of  
7 indebtedness, provided that:

8           (a) The issuer shall not be in default in the payment of principal or  
9 interest on any bonds or other evidences of indebtedness; and

10          (b) The Investment Agent determines that such an investment would be  
11 employed by a prudent ~~man~~ person acting in a like capacity and familiar with  
12 such matters would use in the investment of a fund with like character and with  
13 like aims; and

14          (c) No investment shall be made in any one (1) issue described in this  
15 Section in an amount in excess of ten percent (10%) of such issues.

16          (d) Bonds authorized under this Section may be purchased and held in  
17 investment funds authorized under §8158 or in exchange-traded funds  
18 authorized under §8158.1; such purchases shall be excluded from the  
19 limitations of §8158(e) and §8158.1(b)."

20           **SECTION 11. Section 8152, Article 1, Chapter 8, Title 4 of the Guam**  
21 **Code Annotated is hereby amended to read:**

22           “§8152. Same: Bonds of States and Territories.

23           (a) Bonds or other evidences of indebtedness which are direct obligations  
24 of or secured by the full faith and credit of, any state or territory of the United  
25 States or the District of Columbia where there exists the power to levy taxes for  
26 the prompt payment of the principal and interest of such bonds or evidences of

1 indebtedness; but the issuer shall not be in default in the payment of principal or  
2 interest on any bonds or other evidences of indebtedness.

3 (b) Bonds authorized under this Section may be purchased and held in  
4 investment funds authorized under §8158 or in exchange-traded funds  
5 authorized under §8158.1; such purchases shall be excluded from the  
6 limitations of §8158(e) and §8158.1(b)."

7 **SECTION 12. Section 8153, Article 1, Chapter 8, Title 4 of the Guam**  
8 **Code Annotated is hereby amended to read:**

9 **"§8153. Same: Public Revenue Bonds.**

10 Bonds or other obligations which are payable from revenues or earnings  
11 specifically pledged there for of a public utility, state, municipally or  
12 territorially owned, either directly or through civil division, authority or public  
13 instrumentality of a state or territory or municipality; provided that:

14 (a) The laws of the state or territory or municipality authorizing the  
15 issuance of such bonds or other obligations require that rates for service shall  
16 be fixed, maintained and collected at all times so as to produce sufficient  
17 revenue or earnings to pay all operating and maintenance charges and both  
18 principal and interest of such bonds or obligations; and

19 (b) No such bonds or other obligations shall be in default in the payment  
20 of principal or interest.

21 Bonds authorized under this Section may be purchased and held in  
22 investment funds authorized under §8158 or in exchange-traded funds  
23 authorized under §8158.1; such purchases shall be excluded from the  
24 limitations of §8158(e) and §8158.1(b)."

25 **SECTION 13. Section 8154, Article 1, Chapter 8, Title 4 of the**  
26 **Guam Code Annotated is hereby amended to read:**

1       “§8154. Same: Bonds of Domestic and Foreign Corporations; Index-  
2 Eligible Securities.

3       (a) Bonds of Domestic Corporations. Bonds, debentures, notes and other  
4 evidences of indebtedness of any corporation *or* corporations created *or*  
5 existing under the laws of the United States, *or* of any of the states *or* territories  
6 of the United States *or* the District of Columbia which are *not* in default either  
7 as to principal *or* interest, provided that:

8           (1) Such bonds *or* other evidence of indebtedness are rated within the  
9 four (4) highest categories of two (2) nationally recognized and published rating  
10 services which have been approved by the Board and the Investment Agent; *or*

11           (2) In case such bonds *or* other evidence of indebtedness are not so  
12 rated by two (2) such services, investments in such lesser-ranked domestic  
13 corporate bonds shall not exceed eight percent (8%) of the Fund at cost; unless  
14 the net earnings available for fixed charges over a prior period of five (5) fiscal  
15 years next preceding the date of investment have averaged per year and during  
16 either of the last two (2) years have been, after depreciation and after taxes, *not*  
17 *less than:*

18           (A) two (2) times its average annual fixed charges over the same  
19 period, in the case of any public utility company;

20           (B) one and one-half (1-1/2) times its average annual fixed charges  
21 over the same period, in the case of any finance company; *or*

22           (C) three (3) times its average annual fixed charges over the same  
23 period, in the case of any other company.

24           (3) *No more than* two percent (2%) of the Fund at cost *shall be*  
25 *invested in the obligations of any one (1) domestic corporation or other single*  
26 *domestic issuing entity described in this Subsection.*

1 (b) Bonds of Foreign Corporations. Bonds, debentures, notes and other  
2 evidences of indebtedness of any corporation or corporations created *or* existing  
3 under the laws of nations other than the United States which are *not* in default  
4 either as to principal *or interest*, provided that the Investment Agent in its  
5 informed opinion, determines that such an investment would be employed by a  
6 prudent ~~man~~ person acting in a like capacity and familiar with such matters  
7 would use in the investment of a fund of like character and with like aims. *No*  
8 *more than* one and one-half percent (1-1/2%) of the Fund at cost *shall* be  
9 invested in the obligations of any one (1) foreign corporation *or* other single  
10 issuing foreign entity described in this Subsection.

11 (c) *No* investment *shall* be made in any one (1) issue described in  
12 Subsections (a) and (b) of this Section in an amount in excess of ten percent  
13 (10%) of such issues.

14 (d) Other Securities in the U.S. Aggregate Bond Index. Bonds,  
15 debentures, notes and other evidences of indebtedness which are denominated  
16 in U.S. Dollars, investment-grade, fixed-rate and of the quality of fixed income  
17 securities covered by the U.S. Aggregate Bond Index.

18 (e) Bonds authorized under this Section may be purchased and held in  
19 investment funds authorized under §8158 or in exchange-traded funds  
20 authorized under §8158.1; such purchases shall be excluded from the  
21 limitations of §8158(e) and §8158.1(b)."

22 **SECTION 14. Section 8156, Article 1, Chapter 8, Title 4 of the Guam**  
23 **Code Annotated is hereby amended to read:**

24 "§8156. Same: Domestic and Foreign Preferred Stock.

25 (a) Domestic Preferred Stock. Domestic preferred or guaranteed stock or  
26 shares of any institution created or existing under the laws of the United States

1 or of any state, district or territory thereof or the District of Columbia, provided  
2 that:

3 (1) All publicly held prior obligations and prior preferred stock, if  
4 any, of such institution at the date of acquisition are eligible as investments  
5 under §§ 8143 through 8160; and

6 (2) The net earnings of the institution available for fixed charges over  
7 a period of five (5) fiscal years next preceding the date of investment have  
8 averaged per year, and during either of the last two (2) years have been, after  
9 depreciation and after income taxes. no less than:

10 (i) Two times its average annual fixed charges, maxi mum  
11 contingent interest and preferred dividend requirements over the same  
12 period, in the case of any public utility company; or

13 (ii) Three (3) times its average annual fixed charges, maximum  
14 contingent interest and preferred dividend requirements over the same  
15 period, in the case of any other company.

16 For purposes of this Subsection, the term 'preferred dividend  
17 requirements' shall mean cumulative and noncumulative dividends on all  
18 preferred stock of the issuer, whether paid or not.

19 (b) Foreign Preferred Stock. Foreign preferred or guaranteed stock or  
20 shares of any institution created or existing under the laws of nations other than  
21 the United States which are not in default either as to principal or interest,  
22 provided that the Investment Agent in its informed opinion, determines that  
23 such an investment would be employed by a prudent ~~man~~ person acting in a like  
24 capacity and familiar with such matters would use in the investment of a fund  
25 of like character and with like aims.

26 (c) Limitations:

1 (1) No investment shall be made in any one issue described in Item (1)  
2 of Subsection (a) of this Section in an amount in excess of ten percent (10%) of  
3 such issues.

4 (2) No more than two percent (2%) of the Fund at cost shall be  
5 invested in the preferred stock of any one issuing domestic company.

6 (3) No more than two percent (2%) of the Fund at cost shall be invested  
7 in the preferred stock of any one issuing foreign company.

8 (4) The aggregate of all investments authorized under this Section shall  
9 not exceed fifteen percent (15%) of Fund Assets at cost.

10 (5) Preferred stock authorized under this Section may be purchased and  
11 held in investment funds authorized under §8158 or in exchange-traded funds  
12 authorized under §8158.1; such purchases shall be excluded from the limitations  
13 of §8158(e) and § 8158.1(b)."

14 **SECTION 15. Section 8157, Article 1, Chapter 8, Title 4 of the Guam**  
15 **Code Annotated is hereby amended to read:**

16 "§8157. Same; Common Stock.

17 (a) Common or capital stock of any institution or entity created or existing  
18 under the laws of the United States or any state, district, or territory thereof, or  
19 of the District of Columbia or of any foreign country; provided that, with respect  
20 to at least fifty percent (50%) of the investments at cost purchased directly under  
21 this Section:

22 (i) The issuing institution, entity or a predecessor thereto, has reported a  
23 profit in at least four (4) of the five (5) fiscal years next preceding the date of  
24 investment or alternatively in at least seven (7) of the ten (10) fiscal years next  
25 preceding the date of investment; and

1 (ii) The institution, entity or such predecessor has paid cash dividends on  
2 its common or capital stock in at least four (4) of the five (5) years next  
3 preceding the date of investment, or alternatively in at least seven (7) of the ten  
4 (10) fiscal years next preceding the date of investment; and

5 (iii) Total cash dividends have not exceeded total earning in the five (5)  
6 years next preceding the date of investment; and

7 (iv) On the date of investment, the issuer shall not be in default in  
8 payment of principal or interest on any of its publicly held bonds or other  
9 evidences of indebtedness and any contingent interest, cumulative and  
10 noncumulative preferred dividends and dividends on prior common or capital  
11 stock shall have been paid in full.

12 No more than five percent (5%) of the Fund shall be invested directly in the  
13 common or capital stock of any one issuing domestic company described in this  
14 Section.

15 (b) Common or capital stock of any institution or entity created or existing  
16 under the laws of nations other than the United States provided that the  
17 Investment Agent determines that such an investment would be employed by a  
18 prudent ~~man~~ person acting in a like capacity and familiar with such matters  
19 would use in the investment of a fund with like character and with like aims. No  
20 more than one and one-half percent (1-1/2%) of the Fund at cost shall be  
21 invested directly in the common or capital stock of any one issuing foreign  
22 company described in this Section.

23 (c) No direct investment shall be made in any one (1) issue described in this  
24 Section in an amount in excess of ten percent (10%) of such issues.

25 (d) Common or capital stock of any institution or entity created or existing  
26 under the laws of the United States or any state, district, or territory thereof, or  
27 of the District of Columbia or of any foreign country purchased and held in

1 investment funds authorized under §8158 or in exchange-traded funds  
2 authorized under §8158.1; such purchases being excluded from the limitations of  
3 §8158(e) and §8158.1(b).

4 (e) The aggregate amount of all direct and indirect investments under this  
5 Section at cost shall not exceed fifty seventy percent (570%) of the Fund.”

6 SECTION 16. Section 8158, Article 1, Chapter 8, Title 4 of the Guam Code  
7 Annotated is hereby amended to read:

8 “§ 8158. Investment Funds.

9 (a) Common or capital shares of any investment trust or mutual fund  
10 (including any index fund) registered with the Securities and Exchange  
11 Commission under the Investment Company Act of 1940, as from time to time  
12 amended, provided that the cost of the shares acquired is no greater than their net  
13 asset value on the date of acquisition.

14 (b) Units in any common trust fund or commingled fund (including any  
15 index fund) maintained by a custodian meeting the requirements of Title 4 GCA  
16 § 8144 and advised or sub-advised by an investment management organization  
17 meeting the requirements of Title 4 GCA § 8145.

18 (c) Preferred shares of any investment trust or mutual fund (including any  
19 index fund) registered with the Securities and Exchange Commission under the  
20 Investment Company Act of 1940, as from time to time amended, provided that:

21 (1) The number of issued and outstanding common or capital shares  
22 multiplied by their asset value per share, plus;

23 (2) The number of issued and outstanding preferred shares multiplied  
24 by their par or stated value, is at least fifty percent (50%) greater than the  
25 number of issued and out-standing preferred shares multiplied by their par or  
26 stated value. For purposes of this Section, the number of issued and outstanding  
27 shares shall be taken as of the latest available public report of such investment



1 trust or mutual fund. Preferred shares as described in this Subsection shall not be  
2 subject to the provisions of §8156.

3 (d) The term 'net asset value' as used in this Section shall mean the total  
4 quoted or estimated market value of all securities or other assets owned, less that  
5 total of all determinable liabilities, as reported by such common trust fund,  
6 commingled fund, investment trust or mutual fund.

7 (e) Limitation:

8 (1) The investment in units, preferred, common and capital stock of  
9 any one common trust fund, commingled fund, investment trust or mutual fund  
10 shall not exceed five percent (5%) of the Fund at cost; and

11 (2) The aggregate of all investments under this Section, except for  
12 investment fund purchases of cash equivalents authorized under §8149, bonds  
13 authorized under §§8150-8154, preferred stock authorized under §8156, and  
14 common or capital stock authorized under §8157, shall not exceed thirty percent  
15 (30%) of the Fund at cost.”

16 **SECTION 17. Section 8158.1, Article 1, Chapter 8, Title 4 of the Guam**  
17 **Code Annotated is hereby amended to read:**

18 “§8158.1. Exchange Traded Funds.

19 (a) Units *or* shares of any exchange traded fund (ETF) established as an  
20 open-end investment management company *or* a unit investment trust registered  
21 with the Securities and Exchange Commission under the Investment Company  
22 Act of 1940, as from time to time amended. Although ETFs may trade at prices  
23 established throughout the trading day, like any other listed equity security  
24 trading in the secondary market on an exchange, the units *or* shares described in  
25 this subsection *shall not* be subject to the provisions of §8157. Although ETFs  
26 are unit investment trusts, the units *or* shares described in this subsection *shall*  
27 *not* be subject to the provisions of §8158.

1        (b) The investment in units *or* shares of any one exchange traded fund *shall*  
2 *not exceed* twenty percent (20%) of the Fund at cost.”

3        **SECTION 18. Effective Date.** This Act shall become effective upon  
4 enactment.

5        **SECTION 19. Severability.** If any provision of this Act or its application to  
6 any person or circumstances is held invalid, the invalidity shall not affect any  
7 other provision or applications of this Act which can be given effect without the  
8 invalid provision or application, and to this end the provisions of this Act are  
9 severable.