


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

Bill No. 47-32(LS)

Introduced by:

v.c. pangelinan 

AN ACT TO ADD A NEW SECTION 8103.1 TO
ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE
ANNOTATED, TO COMPLY WITH INTERNAL REVENUE
CODE REQUIREMENTS APPLICABLE TO THE
GOVERNMENT OF GUAM RETIREMENT FUND

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BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **SECTION 1. Legislative Findings and Intent.** *I Liheslaturan Guahan* finds that
2 Article 1, Chapter 8, Title 4 of the Guam Code Annotated must be amended to comply with the
3 requirements for tax-qualified governmental pension plans under section 401(a) of the United
4 States Internal Revenue Code of 1986, as amended, applicable to Guam under the mirror
5 provisions of the Guam Territorial Income Tax Code.

6 **SECTION 2. A new Section 8103.1 of Article 1, Chapter 8, Title 4 of the Guam**
7 **Code Annotated is hereby added to read as follows:**

8 **“§ 8103.1. Tax Qualification Requirements.**

9 (a) The Fund shall maintain its status as a tax-qualified governmental pension plan
10 under section 401(a) of the Code. As used in this Article, “Code” means the United States
11 Internal Revenue Code of 1986, as amended, applicable to Guam under the mirror provisions of
12 the Guam Territorial Income Tax Code.

13 (b) The Fund shall be administered in accordance with the requirements of section
14 401(a)(1), (2), (7), (8), (9), (16), (17), (25), (31), and (37) of the Code, as such provisions, as
15 amended, apply to a governmental pension plan sponsored by the Government of Guam.
16 Without limiting the generality of the foregoing and notwithstanding any other provision of this
17 Article to the contrary:

1 (b) The Fund shall be administered in accordance with the requirements
2 of section 401(a)(1), (2), (7), (8), (9), (16), (17), (25), (31), and (37) of the Code, as
3 such provisions, as amended, apply to a governmental pension plan sponsored by
4 the Government of Guam. Without limiting the generality of the foregoing and
5 notwithstanding any other provision of this Article to the contrary:

6 (1) In accordance with sections 401(a)(1) and 401(a)(2) of the
7 Code, the Board shall hold the corpus and income of the Fund in trust, and at
8 no time prior to the satisfaction of all liabilities with respect to members and
9 their beneficiaries shall any part of the corpus or income of the Fund be used
10 for, or diverted to, purposes other than for the exclusive benefit of the
11 members and their beneficiaries.

12 (2) In accordance with section 401(a)(7) of the Code, in the event
13 of the termination of or complete discontinuance of contributions to the
14 Fund, the rights of all members to benefits accrued as of the date of such
15 termination or discontinuance, to the extent then funded, shall be fully
16 vested and nonforfeitable.

17 (3) In accordance with section 401(a)(8) of the Code, benefits
18 forfeited by a member for any reason shall not be applied to increase the
19 benefits any other member or beneficiary would otherwise receive under this
20 Article.

21 (4) All benefit distributions shall be administered in accordance

1 with a reasonable good-faith interpretation of section 401(a)(9) of the Code.

2 The following describes the statutory requirements of section 401(a)(9) of
3 the Code:

4 (i) The member's entire interest shall be distributed to the
5 member no later than the member's required beginning date, or the
6 member's entire interest must begin to be distributed to the member
7 no later than the member's required beginning date and must be paid
8 over the life of the member or the lives of the member and a
9 designated beneficiary (or over a period that does not extend beyond
10 the life expectancy of the member or the life expectancy of the
11 member and a designated beneficiary). The "required beginning date"
12 is April 1 of the calendar year following the later of (1) the calendar
13 year in which the member attains age 70½ or (2) the calendar year in
14 which the member retires.

15 (ii) If the distribution of the member's interest has begun in
16 accordance with paragraph (i) and the member dies before the
17 member's entire interest has been distributed, the remaining portion
18 must be distributed at least as rapidly as under the method of
19 distribution being used to satisfy paragraph (i).

20 (iii) If the member dies before distribution of the member's
21 interest has begun under paragraph (i), the member's entire interest

1 shall be distributed, or begin to be distributed, no later than as follows:

2 (A) If the member's surviving spouse is the member's
3 sole designated beneficiary, distributions to the surviving
4 spouse shall begin by December 31 of the calendar year
5 immediately following the calendar year in which the member
6 dies, or by December 31 of the calendar year in which the
7 member would have attained age 70½, if later;

8 (B) If the member's surviving spouse is not the
9 member's sole designated beneficiary, distributions to the
10 designated beneficiary shall begin by December 31 of the
11 calendar year immediately following the calendar year in which
12 the member died, and shall be paid over the life of such
13 designated beneficiary (or over a period not extending beyond
14 the life expectancy of such beneficiary); or

15 (C) If there is no designated beneficiary, the member's
16 entire interest shall be distributed by December 31 of the
17 calendar year containing the fifth anniversary of the member's
18 death.

19 (iv) All death benefits shall be administered to comply with
20 the incidental death benefit requirement in section 401(a)(9)(G) of the
21 Code.

1 (5) In accordance with section 401(a)(16), benefits paid from, and
2 mandatory employee contributions made to, the Fund shall not exceed the
3 maximum benefits and the maximum annual additions, respectively,
4 permissible under section 415 of the Code with respect to governmental
5 plans.

6 (i) Specifically, the “annual benefit,” which is a benefit
7 payable in the form of a straight life annuity, may not exceed the
8 dollar limit described in section 415(b)(1)(A) of the Code, as
9 automatically adjusted for increases in the cost of living under section
10 415(d) of the Code. For benefits payable in the plan year ending
11 September 30, 2010, the dollar limit is \$195,000. The 12-month plan
12 year ending each September 30 shall be the “limitation year” for
13 purposes of applying the limitations under section 415 of the Code.
14 Section 415 of the Code and the Treasury Regulations thereunder
15 require that adjustments be made to the dollar limit for benefits that
16 commence prior to age 62 or after age 65 and for benefits payable to
17 members with less than ten years of membership. The Code and
18 Treasury Regulations require that any benefit payable in a form other
19 than a straight life annuity must be converted to an actuarially
20 equivalent straight life annuity in applying the applicable limit to the
21 “annual benefit”.

1 (ii) The “annual benefit” does not include the portion of the
2 member’s benefit attributable to mandatory employee contributions
3 under section 8136. Rather, mandatory employee contributions are
4 treated as contributions to a defined contribution plan for purposes of
5 section 415 of the Code, and are therefore subject to the limits on
6 annual additions under section 415(c)(1) of the Code. The annual
7 additions may not exceed the lesser of the two limits. The first limit is
8 the dollar limit described in section 415(c)(1)(A) of the Code, as
9 automatically adjusted for increases in cost of living under section
10 415(d) of the Code. For the limitation year ending September 30,
11 2010, the dollar limit is \$49,000. The second limit is the
12 compensation limit described in section 415(c)(1)(B) of the Code
13 which provides that the annual additions may not exceed 100% of the
14 member’s “section 415 compensation” for the limitation year.

15 (iii) “Section 415 compensation” means the member’s Box 1,
16 W-2 earnings for the year, modified to include any pre-tax elective
17 deferrals pursuant to sections 403(b), 457(b), 125, or 132(f)(4) of the
18 Code. Generally, section 415 compensation does not include amounts
19 paid after severance from employment. However, section 415
20 compensation does include amounts paid by the later of 2½ months
21 after the member’s severance from employment or the end of the

1 limitation year that includes the date of the member's severance from
2 employment if the payment is regular compensation for services
3 during the member's regular working hours, or compensation for
4 services outside the member's regular working hours (such as
5 overtime or shift differential), commissions, bonuses, or similar
6 payments, and, absent the severance from employment, the payments
7 would have been paid to the member while the member continued in
8 employment with the Government. Section 415 compensation also
9 includes any payments to or for the benefit of a member who does not
10 currently perform services for the Government by reason of Qualified
11 Military Service, as defined in subsection (9) below, to the extent
12 those payments do not exceed the amounts the member would have
13 received if the member had continued to perform services for the
14 Government rather than entering Qualified Military Service. Section
15 415 compensation also includes "differential wage payments" within
16 the meaning of section 3401(h)(2) of the Code with respect to the
17 period during which the member is on active duty in Qualified
18 Military Service. Finally, section 415 compensation includes
19 payments awarded by an administrative agency or court or pursuant to
20 a bona fide agreement by the Government to compensate a member
21 for lost wages. Such payments for back pay are treated as section 415

1 compensation for the limitation year to which the back pay relates to
2 the extent the back pay represents wages and compensation that would
3 otherwise be included as section 415 compensation under this
4 subsection.

5 (6) In accordance with section 401(a)(17) of the Code, for purposes
6 of calculating contributions payable to the Fund and benefits payable from
7 the Fund, “salary,” “annual salary,” and “average annual salary” shall be
8 subject to the annual limit on compensation under section 401(a)(17) of the
9 Code, which limit is adjusted automatically for increases in the cost of living
10 under sections 401(a)(17)(B) and 415(d) of the Code. For the plan year
11 ending September 30, 2010, the limit is \$245,000.

12 (7) In accordance with section 401(a)(25) of the Code, in the case
13 that the amount of member's benefit payable by the Fund is to be determined
14 on the basis of actuarial assumptions, such assumptions shall be specified
15 under Fund documents.

16 (8) In accordance with section 401(a)(31) of the Code, a
17 “Distributee” who is entitled to a distribution may elect, at the time and in
18 the manner determined by the Board, to have any portion of an “Eligible
19 Rollover Distribution” that is equal to at least \$500 (or such other minimum
20 amount required under the Code or Treasury Regulations) paid directly in a
21 “Direct Rollover” to an “Eligible Retirement Plan”. For purposes of these

1 rules, the following definitions apply:

2 (i) "Eligible Rollover Distribution" means any distribution
3 of all or any portion of a member's vested benefit, except that an
4 Eligible Rollover Distribution shall not include:

5 (A) any distribution that is one of a series of
6 substantially equal periodic payments made no less frequently
7 than annually for the life (or life expectancy) of the Distributee
8 or the joint lives (or joint life expectancies) of the Distributee
9 and the Distributee's beneficiary, or for a specified period of
10 ten years or more;

11 (B) any distribution to the extent such distribution is
12 required under section 401(a)(9) of the Code; and

13 (C) the portion of any distribution that is not includible
14 in gross income.

15 Notwithstanding the foregoing, a distribution shall not fail to be an
16 Eligible Rollover Distribution merely because the distribution consists
17 of after-tax employee contributions that are not includible in gross
18 income. However, such portion may be transferred only to an
19 individual retirement account described in section 408(a) of the Code
20 or an individual retirement annuity described in section 408(b) of the
21 Code (other than an endowment contract), or to a qualified retirement

1 plan (defined contribution or defined benefit) described in section
2 401(a) of the Code or an annuity contract described in section 403(b)
3 of the Code, provided that the qualified trust or annuity contract
4 agrees to separately account for amounts so transferred (and the
5 earnings thereon), including separately accounting for the portion of
6 such distribution which is includible in gross income and the portion
7 which is not so includible.

8 (ii) "Eligible Retirement Plan" shall mean any of the
9 following accounts or plans to the extent it accepts the Distributee's
10 Eligible Rollover Distribution:

11 (A) A qualified retirement plan described in section
12 401(a) of the Code;

13 (B) An individual retirement account described in
14 section 408(a) of the Code;

15 (C) An individual retirement annuity described in
16 section 408(b) of the Code (other than an endowment contract);

17 (D) An annuity plan described in section 403(a) of the
18 Code;

19 (E) An annuity contract described in section 403(b) of
20 the Code, or

1 (F) An eligible deferred compensation plan described
2 in section 457(b) of the Code that is maintained by an eligible
3 governmental employer described in section 457(e)(1)(A) of the
4 Code and that agrees to separately account for amounts
5 transferred into such plan from this Plan.

6 (iii) A “Distributee” includes a member, the surviving spouse
7 of a deceased member, and the current or former spouse of a member
8 who is an alternate payee under a qualified domestic relations order
9 that has been approved by the Board.

10 (iv) A “Direct Rollover” is a direct payment by the Fund to
11 the Eligible Retirement Plan specified by the Distributee.

12 (v) A non-spouse beneficiary may elect a Direct Rollover to
13 an individual retirement account or individual retirement annuity
14 described in paragraph (ii)(B) or (C) established for the purpose of
15 receiving the distribution on behalf of the non-spouse beneficiary.

16 (vi) A Distributee may elect a Direct Rollover to a Roth IRA
17 as described in section 408A of the Code if the Distributee meets the
18 requirements that apply to rollovers from a traditional IRA to a Roth
19 IRA (i.e., for tax years prior to January 1, 2010, the Distributee’s
20 modified adjusted gross income cannot exceed \$100,000, and the
21 Distributee must not be married filing a separate return).

1 (vii) In prescribing the manner of making elections with
2 respect to Eligible Rollover Distributions, as described above, the
3 Board may provide for the uniform application of any restrictions
4 permitted under applicable sections of the Code and Treasury
5 Regulations, including a requirement that a Distributee may not elect
6 to make a direct rollover from a single eligible rollover distribution to
7 more than one eligible retirement plan. The Board may require a
8 recipient plan to provide a written statement that it will accept the
9 rollover and separately account for the amount rolled over, where
10 appropriate.

11 (viii) Prior to making an Eligible Rollover Distribution, the
12 Board shall provide the Distributee a notice describing the
13 Distributee's right to make a Direct Rollover to an Eligible Retirement
14 Plan (the "402(f) Notice"). The Board shall issue the 402(f) Notice at
15 least 30 days but no more than 180 days prior to the date a distribution
16 is made. However, such Eligible Rollover Distribution may
17 commence less than 30 days after the notice is given provided that the
18 402(f) Notice clearly informs the Distributee that the Distributee has
19 the right to a period of at least 30 days after receiving the notice to
20 consider the decision of whether or not to elect a Direct Rollover, and

1 the Distributee, after receiving the notice, affirmatively elects a
2 distribution.

3 (9) In accordance with section 401(a)(37) of the Code, the
4 Uniformed Services Employment and Reemployment Rights Act of 1994
5 (“USERRA”), as amended, provides certain pension benefit rights to
6 employees who return to employment with their employer following a leave
7 of absence for "Qualified Military Service" as defined hereunder. Section
8 8137.2 also provides certain rights to employees who are on leave without
9 pay and on active duty with the Guam National Guard or the reserve
10 components of any of the Armed Services of the United States. Any
11 member who returns to employment with the Government following
12 Qualified Military Service shall be entitled to the greater of the rights the
13 member is entitled to under section 8137.2 or the reemployment pension
14 rights in section 414(u) of the Code. In the case of a member who dies while
15 performing Qualified Military Service, the survivors of the member are
16 entitled to any additional benefits (other than benefit accruals relating to the
17 period of Qualified Military Service) provided under the Fund had the
18 member resumed and then terminated employment on account of death.
19 This would include the death benefits provided under sections 8131 and
20 8134. For purposes of this section and applying the requirements of
21 USERRA, “Qualified Military Service” means such term as defined in

1 section 414(u)(5) of the Code (any service in the Armed Forces (Army, Air
2 Force, Navy, Marines, or Coast Guard), the Army National Guard and the
3 Air National Guard when engaged in active duty for training, inactive duty
4 training, or full-time National Guard duty, the commissioned corps of the
5 Public Health Service, and any other category of persons designated by the
6 President in time of war or national emergency).

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

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