

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

Bill No. 245-32 (COR)

Introduced By: V.C. Pangelinan

2013
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AN ACT TO AMEND SECTIONS 8144, 8145, AND
8149, ARTICLE 1, CHAPTER 8, TITLE 4 OF THE
GUAM CODE ANNOTATED RELATIVE TO
CUSTODIANS, INVESTMENT AGENTS, AND BANK
DEPOSITS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1.** Legislative Findings and Intent. *I Liheslaturan Guahan* finds that
2 Sections 8144, 8145, and 8149 of Article 1, Chapter 8, Title 4 of the Guam Code
3 Annotated, were recently amended and passed into law in Public Law No. 32-086
4 as part of a broader effort to improve the Government of Guam's ability to meet its
5 obligations to fund the Government of Guam Retirement Fund Defined Benefit
6 Plan.

7 *I Liheslaturan Guahan* finds that one of the purposes of the amendments in
8 Public Law No. 32-086 was to remove certain statutory limitations that may result
9 in unintended consequences adversely impacting the investment goals of the
10 Government of Guam Retirement Fund.

11 *I Liheslaturan Guahan* finds that further amendments are needed to
12 minimize unintended consequences, and therefore intends to amend Sections 8144,
13 8145, and 8149 of Article 1, Chapter 8, Title 4 of the Guam Code Annotated to
14 repeal certain requirements that will result in unintended consequences that are not
15 in the best interest of the Government of Guam Retirement Fund.

1 **Section 2.** Section 8144, Article 1, Chapter 8, Title 4 of the Guam Code
2 Annotated, amended by Public Law No. 32-086 is hereby further amended to read:

3 “§8144. Custodian. The Board *shall* engage one or more custodians to
4 assume responsibility for the physical possession of fund assets or evidences of
5 assets. The custodian shall submit such reports, accountings and other information
6 in such form and at such times as requested by the Board. All costs incurred for
7 custodial services *shall* be a direct charge to Investment Income. The custodian
8 *shall* hold all assets for the account of the Government of Guam Retirement Fund
9 and *shall* act *only* upon the instructions of the Board, its *ex-officio* director or a
10 member, committee or agent so authorized by the Board. No custodian shall be
11 engaged unless it:

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

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

16 (c) has Tier 1 capital in excess of One Billion Dollars
17 (\$1,000,000,000) ~~in any rolling 12-month period~~; and

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

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

23 **Section 3.** Section 8145, Article 1, Chapter 8, Title 4 of the Guam Code
24 Annotated, amended by Public Law No. 32-086 is hereby further amended to read:

25 “§ 8145. **Investment Agent.**

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

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

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

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

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

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

23 (4) such person, firm or corporation is registered as an
24 investment adviser under the laws of the United States of America as
25 from time to time in effect; and ~~is in good standing with the Financial~~

1 ~~Industry Regulatory Authority (FINRA) and the Security and~~
2 ~~Exchange Commission (SEC) on a continuous and ongoing basis; and~~

3 (5) the contract between the Board and the investment agent
4 is of no specific duration and is voidable at any time by either party;
5 and

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

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

11 (1) certifies in writing, to the Board, that the assets under its
12 direct investment supervision are in excess of One Billion Dollars
13 (\$1,000,000,000) ~~in any rolling 12 month period;~~ and

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

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

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

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

24 (e) The Board or its designee under § 8143(a), shall establish and
25 may from time to time change operating arrangements with the Investment

1 Agent in order to facilitate efficient management and timely investment
2 action.

3 (f) *No investment shall be made unless in the opinion of the*
4 *Investment Agent it is an appropriate investment for the Fund and is an*
5 *authorized investment under §§ 8143 through § 8159, inclusive, or in the*
6 *absence of such opinion, unless preceded by a resolution of the Board*
7 *directing the investment.”*

8 **Section 4.** Section 8149, Article 1, Chapter 8, Title 4 of the Guam Code
9 Annotated, amended by Public Law No. 32-086 is hereby further amended to read:

10 “§ 8149. Same: Bank Deposits; Other Cash Equivalents.

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

14 (1) has Tier 1 capital in excess of One Billion Dollars
15 (\$1,000,000,000) ~~in any rolling 12-month period~~; and

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

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

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

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

1 **Section 5.** Effective Date. This Act shall become effective retroactively to
2 the enactment date of Public Law No. 32-86, November 27, 2013.

3 **Section 6.** Severability. If any provision of this Act or its application to any
4 person or circumstance is held invalid, the invalidity shall not affect any other
5 provision or applications of this Act which can be given effect without the invalid
6 provision or application, and to this end the provisions of the Act are severable.