

MINA' TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

Bill No. 300-32(L5)

Introduced by:

Brant T. McCreadie
T. Morrison
TK Muth Bann
V. ANTHONY ADA

2014 AUG 13 PM 5:48 OF

AN ACT TO ADD A NEW ARTICLE 6 TO CHAPTER 77, DIVISION 2, TITLE 12, GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING THE ISSUANCE OF TAX CREDITS FOR CONTRIBUTORS TO THE RENOVATION AND EXPANSION OF THE TIYAN GYMNASIUM.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that
3 a Memorandum of Understanding between the Guam Department of Parks and
4 Recreation, with the concurrence of the Office of the Attorney General and approval
5 by *I Maga'Lahen Guåhan*, and the Guam Basketball Confederation was entered into
6 in November 2013. *I Liheslaturan Guåhan* further finds that the Department of Parks
7 of Recreation currently does not have the resources to renovate and reopen the Tiyan
8 Gymnasium. Because of this, *I Liheslaturan Guåhan* finds that the public private
9 partnership with the Guam Basketball Confederation presents an opportunity for a
10 positive public-private partnership to renovate and expand the Tiyan Gymnasium and
11 facilities for use by the community.

1 **§ 77608. Rules and Regulations.**

2 **§ 77609. Licensing Agreement for Tiyan Gymnasium to Guam**
3 **Basketball Confederation.**

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5 **§ 77601. Credit Against Eligible Taxes.**

6 (a) To the extent that any business contributes the actual cost of design,
7 labor and materials that are for the rehabilitation and improvement of the
8 Department of Parks and Recreation (DPR) Tiyan Gymnasium and facilities, it
9 shall be entitled to credit of business privilege taxes that are not already pledged
10 for any purpose by Guam law. The basis for contribution to the project shall be
11 the actual cost of the contribution plus the cost of transportation from the point
12 of origin to its destination.

13 (b) Any unused credits not used in the current tax period may be carried
14 over into subsequent tax periods until such credits are exhausted.

15 (c) The total credits allowed under this Act shall not exceed the actual
16 dollar amount of the expenditures on the project.

17 **§ 77602. Limits of Liability.**

18 Unless a contractor, materials supplier, designer or landlord/lessor has
19 direct involvement in the operations of the Tiyan gymnasium and facilities as a
20 director, officer, manager, employee, representative or agent of the Guam
21 Basketball Confederation, they shall not be held liable for any civil or criminal
22 damages or penalties directly or indirectly arising from or related to the
23 operations, any use, or possession of the gymnasium and facilities, unless it can
24 be proven that the materials or design work provided were substandard. As the
25 Tiyan gymnasium and facilities is a private venture operated by the Guam
26 Basketball Confederation, the government of Guam shall not be liable for any

1 claims or damages arising from the operation of the gymnasium and facilities.
2 The Guam Basketball Confederation, its directors, agents, consultants,
3 employees, or other affiliated person or persons shall make no representation
4 that the government of Guam has any interest in the operation of such stadium
5 and facilities.

6 **§ 77603. Fines and Penalties.**

7 To the extent that a company providing materials and services for the
8 project contained herein takes more tax benefits in terms of business privilege
9 taxes than the actual value of the materials or services contributed to the project
10 authorized herein, that company shall be required to pay all interest and
11 penalties applicable under Guam law and the Internal Revenue Code for failure
12 to pay taxes in addition to payment of the actual taxes due. To the extent that
13 any individual, officer, director or other person having interest in a company
14 providing materials or services for the project contained herein knowingly and
15 willingly cause such company to take more tax benefits in terms of business
16 privilege taxes than the actual value of the material or services contributed to
17 the project, such individual shall be guilty of a felony in the third degree
18 punishable by a fine of not less than Five Thousand Dollars (\$5,000) or one (1)
19 year in prison or both.

20 **§ 77604. Cap on Business Privilege Tax Credits for Rehabilitation**
21 **and Improvement of the Tiyan Gymnasium and Facilities.**

22 (a) The total amount of credits against unpledged Business Privilege
23 Taxes for the rehabilitation and improvement of the Tiyan Gymnasium and
24 facilities authorized herein shall not exceed Two Million Five Hundred
25 Thousand Dollars (\$2,500,000) over a ten year period. No more than Two

1 Hundred Fifty Thousand Dollars (\$250,000) in tax credits shall be authorized
2 for each year of the program.

3 (b) If, at the expiration of the ten year period authorized pursuant to this
4 Article, there are still unclaimed authorized tax credits, *I Liheslaturan Guåhan*,
5 may in its discretion, extend the eligible period until such time that all eligible
6 tax credits are exhausted.

7 (c) *I Liheslaturan Guåhan*, may in its discretion, extend the term and
8 modify any part of the program based on future improvement plans and demand
9 for such facilities in this location.

10 **§ 77605. Public Access to Tiyan Gymnasium and Facilities.**

11 As a condition for the Guam Basketball Confederation and its
12 contributors to be entitled to the tax benefits of the program established in this
13 Article, the gymnasium and facilities must be available to the general public in
14 accordance with the Memorandum of Understanding with the Department of
15 Parks and Recreation governing use of the property.

16 **§ 77606. Filing of Annual Reports.**

17 (a) The Guam Basketball Confederation shall annually submit a copy of
18 the financial statement required in 18 GCA §14102 to the Speaker of *I*
19 *Liheslaturan Guåhan*, the Public Auditor, and the Administrator of GEDA.

20 (b) The Guam Basketball Confederation must ensure that it is current
21 with all its Articles and By-Laws, and should there be any amendments to such
22 documents, it should immediately file such amendments to the Department of
23 Revenue and Taxation.

24 **§ 77607. GEDA Report.**

25 GEDA shall submit a report to *I Liheslaturan Guåhan* detailing the
26 impact of the program on the Business Privilege Taxes, sports, and economic

1 activities on Guam. GEDA shall also include in its report its monitoring efforts
2 and any other information related to the program. The report shall be
3 transmitted to *I Liheslatura* on an annual basis until the tax credit cap pursuant
4 to § 77605 of this Article is exhausted.

5 **§ 77608. Rules and Regulations.**

6 The Guam Economic Development Authority shall implement and
7 monitor the tax credit program authorized pursuant to this Article based on
8 rules and regulations already adopted by GEDA for previous tax credit
9 programs.

10 **§ 77609. Licensing Agreement for Tiyan Gymnasium to Guam**
11 **Basketball Confederation.**

12 The Department of Parks and Recreation and the Guam Basketball
13 Confederation shall enter into a license agreement for the improvement,
14 rehabilitation and maintenance of the Tiyan Gymnasium for a period of ten (10)
15 years in accordance with the provisions of the Memorandum of Understanding
16 entered into by the Guam Basketball Confederation and the Department of
17 Parks and Recreation entered into on November 21, 2013. If at any time the
18 Guam Basketball Confederation does not comply with any provision of the
19 Memorandum of Understanding, the license shall be null and void and
20 management of the property shall revert solely to the Department of Parks and
21 Recreation.”

22 **Section 3. Effective Date.** This act shall be effective immediately upon
23 enactment.

24 **Section 4. Severability.** *If* any provision of this Law or its application to any
25 person or circumstance is found to be invalid or contrary to law, such invalidity shall
26 *not* affect other provisions or applications of this Law which can be given effect

- 1 without the invalid provisions or application, and to this end the provisions of this
- 2 Law are severable.