

MINA'TRENTA NA LIHESLATURAN GUÅHAN
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Bill No. ___ ()

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AN ACT TO REPEAL AND REENACT SECTION
1514 OF TITLE 5, GUAM CODE ANNOTATED, TO
AUTHORIZE THE ISSUANCE OF GOVERNMENT
OF GUAM LIMITED OBLIGATION BONDS FOR
THE PURPOSE OF ACQUIRING,
CONSTRUCTING AND EQUIPPING AN
EDUCATIONAL CULTURAL FACILITY, A
COMMUNITY CULTURAL CENTER AND
CERTAIN OTHER PROJECTS THAT BENEFIT
GUAM'S TOURISM INDUSTRY AND FOR THE
PURPOSE OF REFUNDING GOVERNMENT OF
GUAM LIMITED OBLIGATION
INFRASTRUCTURE IMPROVEMENT BONDS,
1997 SERIES A, AND TO APPROVE THE TERMS

1 **AND CONDITIONS OF SUCH BOND ISSUE**

2 BE IT ENACTED BY THE PEOPLE OF GUAM:

3 **Section 1.** Section 1514 of Title 5, Guam Code Annotated, is hereby
4 repealed and reenacted to read as follows:

5 **“Section 1514. Authorization to Borrow For the Purpose of Acquiring,**
6 **Constructing and Equipping an Educational Cultural Facility, a Community**
7 **Cultural Center and Certain Other Projects That Benefit Guam's Tourism**
8 **Industry and For the Purpose of Refunding the Outstanding Government of**
9 **Guam Limited Obligation Infrastructure Improvement Bonds**

10 (a) Definitions. The following terms shall have the following meanings
11 when used in this Section:

12 (1) *Debt service* means the scheduled principal of and interest on
13 bonds plus fees, if any, to be paid for credit enhancement of such bonds.

14 (2) *Debt service savings* means the amount by which the present
15 value of debt service on refunding bonds is less than the present value of the
16 remaining debt service on the prior obligations refunded by such refunding
17 bonds. Present value shall be calculated for this purpose using the yield on
18 the bond issue as the discount rate.

19 (3) *Hotel tax revenues* means all revenues derived from taxes of the
20 type now imposed by § 30101 of Chapter 30 of Title 11 of the Guam Code
21 Annotated.

22 (4) *New money bond* means a bond issued pursuant to this Article
23 as part of the same issue as the refunding bonds, but for the purpose of
24 providing moneys for the projects authorized by subsection (i) of this
25 Section, funding a debt service reserve fund, or paying expenses incurred in
26 connection with the issuance of such new money bonds not already included
27 in an existing appropriation for, or the regular budget of any government
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1 agency or instrumentality or public corporation providing any service in
2 connection with the issuance of such debt.

3 (5) *Prior obligations* means the outstanding Government of Guam
4 Limited Obligation Infrastructure Improvement Bonds, 1997 Series A, being
5 refunding in connection with the issuance of bonds pursuant to this Section.

6 (6) *Refunding bond* means a bond issued pursuant to this Section
7 for the purpose of providing moneys to redeem or otherwise retire prior
8 obligations, funding any appropriate reserves allocable to the refunding
9 bonds, or paying expenses incurred in connection with the issuance of such
10 refunding bonds not already included in an existing appropriation for, or the
11 regular budget of any government agency or instrumentality or public
12 corporation providing any service in connection with the issuance of such
13 debt.

14 (7) *Yield* means the annual discount rate which, when used to
15 discount all payments of net debt service on a bond issue to the date of
16 issuance of the bonds, using a semiannual compounding interval, results in
17 the aggregate present value of such payments being equal to the re-offering
18 price to the public of the bonds. For this purpose, “net debt service” means
19 debt service minus the amount of any direct subsidy payment to be received
20 from the United States in connection with debt service.

21 (b) Authorization of Issuance of Limited Obligation Infrastructure
22 Improvement Bonds. *I Maga’lahen Guåhan* is authorized to issue on behalf of the
23 Government an issue of bonds of the Government consisting of refunding bonds
24 and new money bonds, subject to the following requirements and limitations:

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

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

6 (3) The present value of debt service on the refunding bonds shall
7 be at least two percent (2.0%) less than the present value of debt service on
8 the refunded bonds, using the yield on the refunding bonds as the discount
9 rate.

10 (4) The aggregate principal amount of refunding bonds issued shall
11 not exceed the amount necessary to redeem or otherwise retire the prior
12 obligations, fund any appropriate reserves allocable to the refunding bonds,
13 and pay expenses incurred in connection with the issuance of the refunding
14 bonds not already included in an existing appropriation for, or the regular
15 budget of any government agency or instrumentality or public corporation
16 providing any service in connection with the issuance of such debt.

17 (5) The aggregate principal amount of new money bonds issued
18 shall not exceed the amount necessary to fund the sum of the amounts
19 appropriated for the projects listed in subsection (i) of this Section, establish
20 a debt service reserve fund allocable to the new money bonds, pay
21 capitalized interest on the bonds and pay expenses incurred in connection
22 with the issuance of the new money bonds not already included in an
23 existing appropriation for, or the regular budget of any government agency
24 or instrumentality or public corporation providing any service in connection
25 with the issuance of such debt.

26 (6) Aggregate net debt service in each fiscal year on the bonds
27 issued pursuant to this Section and any Government of Guam Infrastructure
28 Improvement Bonds, 1997 Series A, remaining outstanding after the

1 issuance of such bonds shall not exceed Seven Million Dollars (\$7,000,000)
2 per fiscal year.

3 (c) Source of Payment and Security for the Bonds. The bonds issued
4 pursuant to this Section shall be limited obligations of the Government payable
5 from and secured by a pledge of all or any part of the hotel tax revenues. Any
6 pledge made to secure the bonds shall be valid and binding from the time the
7 pledge is made. The hotel tax revenues received by the Government or any trustee,
8 depository and custodian shall be deposited in a separate account and shall be
9 immediately subject to the lien of such pledge without physical delivery thereof or
10 further act, and the lien of such pledge shall be valid and binding against all parties
11 having claims of any kind in tort, contract or otherwise, against the Government of
12 such trustee, depository or custodian, irrespective of whether the parties have
13 notice thereof. The indenture by which such pledge is created need not be
14 recorded. Hotel tax revenues pledged for the purpose of paying the bonds are
15 hereby continuously appropriated for such purpose and for the purposes of paying
16 the charges of any trustee, custodian, depository, auditor or credit enhancement
17 provider for the bonds and any other necessary bond expenses under the indenture.
18 All such revenues not needed for such purpose or for the purposes of paying any
19 Government of Guam Limited Obligation Infrastructure Improvement Bonds, 1997
20 Series A, remaining outstanding and any expenses related thereto shall be
21 transferred periodically by any trustee or other fiduciary under the indenture as
22 follows:

23 (1) first, to the fund or account designated by the Guam Visitors
24 Bureau ("GVB"), such amount as is specified by the budget enacted by the
25 Guam Legislature for the GVB, and

26 (2) second, the balance of such revenues to the Tourist Attraction
27 Fund.

28 The obligation to make these transfers to the GVB and the Tourist Attraction Fund

1 *shall not* be a part of the contract with the bondholders, and shall be subject to the
2 modification by amendment of this subsection (c) of this Section.

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

7 (d) Terms and Conditions Determined by Indenture; Form of Bonds;
8 Covenants; Appointment of Fiduciaries; Other Related Agreements. The terms
9 and conditions of the new issue shall be as determined by *I Maga'lahaen Guåhan*
10 by the execution of an indenture authorizing the issuance of the issue. The
11 indenture shall contain such terms and conditions as are consistent with this
12 Section. The technical form and language of the bonds of the new issue, including
13 provisions for execution, exchange, transfer, registration, paying agency, lost or
14 mutilated bonds, negotiability, cancellation and other terms, covenants or
15 conditions not inconsistent with this Section, shall be as specified in the indenture
16 executed by *I Maga'lahaen Guåhan* authorizing the issuance of the bonds. The
17 indenture may appoint one (1) or more trustees or other fiduciaries authorized to
18 receive and hold in trust the proceeds of the bonds and moneys relating thereto, to
19 protect the rights of bondholders and to perform such other duties as may be
20 specified in the indenture. The proceeds of the bonds issued pursuant to this
21 Section, and any revenues relating to such bonds, may be invested in, but only in,
22 the types of investments permitted by the indenture. *I Maga'lahaen Guåhan* is also
23 authorized to execute, on behalf of the Government, any appropriate agreements,
24 certificates or other instruments relating to the bonds and the sale of the bonds.

25 (e) Authorization for Credit Enhancement. *I Maga'lahaen Guåhan* is
26 authorized to enter into such contracts or agreements with such banks, insurance
27 companies or other financial institutions as he determines are necessary or
28 desirable to improve the security and marketability of any bonds authorized by this

1 Section. Such contracts or agreements may contain an obligation to reimburse,
2 with interest, any such banks, insurance companies or other financial institutions
3 for advances used to pay principal of or interest on the issue. Any such
4 reimbursement obligation shall be payable solely from the same sources as debt
5 service on the issue is payable, and any such advance, if necessary, shall be treated
6 as creating a reimbursement obligation issued to refund the issue.

7 (f) Valid and Binding Obligations, Collection of Revenue. The bonds of the
8 issue authorized by this Section shall constitute the valid and binding limited
9 obligations of the Government. All officers charged by law with any duty in the
10 collection of any revenues from which debt service on the issue is payable shall do
11 every lawful thing necessary to collect the money necessary for such purpose. The
12 validity of any such bonds shall not be affected by the validity or regularity of any
13 proceedings for the implementation of the infrastructure improvement projects
14 funded by either the prior obligations or the new money bonds.

15 (g) Waiver of Immunity. Notwithstanding any substantive or procedural
16 provision of the Government Claims Act, Chapter 6 of Title 5 of the Guam Code
17 Annotated, the Government waives immunity from any suit or action in contract on
18 the bonds authorized by this Section, but does not waive sovereign immunity as to
19 the personal liability of elected officials and employees of the Government.

20 (h) No Personal Liability. No employee or elected official of the
21 Government shall be individually or personally liable for the payment of any
22 amounts due on any bonds issued under this Section, or for any other liability
23 arising in connection with the bonds; provided, however, that nothing in this
24 Section 221608 shall relieve any employee or elected official from the
25 performance of any ministerial duty required by law.

26 (i) Infrastructure Improvement Projects. The proceeds of the new money
27 bonds issued under this Section are hereby appropriated in amounts not to exceed
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1 the following amounts for the purposes of implementing the following projects, in
2 the following order of priority:

3 (1) \$30,000,000 for the acquisition, construction and equipping of
4 an educational facility that reflects a sense of Guam and the Chamorro
5 culture and will be the permanent home for the preservation and continuance
6 of the Chamorro people; provides for the display of artifacts and historical
7 documents; stimulates community involvement; fosters research and
8 conveys the results of research to the public primarily through the medium
9 of public exhibits, demonstrations, lectures, public programs and
10 publications using the theme: I Hinanao-ta, the journey of the Chamorro
11 people, *provided, however*, that the location of such educational facility shall
12 have been approved by *I Maga'lahañ Guåhan* prior to acquisition (if any) or
13 construction thereof;

14 (2) \$30,000,000 for the construction of a performing arts and
15 cultural center, including open floor space, arena seating, a seminar facility,
16 meeting rooms and kitchen facilities, *provided, however*, that the location of
17 such facility shall have been approved by *I Maga'lahañ Guåhan* prior to
18 acquisition (if any) or construction thereof;

19 (3) \$2,344,000 for the preservation and restoration of the Plaza de
20 Espana and other structures within the Plaza;

21 (4) \$200,000 for the restoration of the Inarajan community center;

22 (5) \$800,000 for the restoration and rehabilitation of the Malesso
23 Bell Tower, including landscaping and lighting improvements; and

24 (6) \$3,900,000 for the development of a Guam Farmers
25 Cooperative Association facility and to relocate the Dededo Flea Market.

26 (j) Approval of Guam Economic Development Authority. Section 50103(k)
27 of Title 12, Guam Code Annotated provides that agencies and instrumentalities of
28 the Government shall issue bonds and other obligations only by means of and

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

4 **Section 2. Approval of Terms and Conditions.** Section 50103(k) of Title
5 12, Guam Code Annotated provides that GEDA shall not sell any bond without the
6 approval of *I Liheslaturan Guåhan* of the terms and conditions of the issuance of
7 the bonds. *I Liheslaturan Guåhan* hereby approves the issuance, terms and
8 conditions of the bonds authorized by Section 1514 of Title 5, Guam Code
9 Annotated in an aggregate principal amount not to exceed the amount authorized
10 by said Section 1514, with a final maturity not exceeding thirty (30) years and
11 bearing interest at a yield of not to exceed seven and one-half percent (7.5%) per
12 annum, after subtracting from bond interest the amount of any direct subsidy
13 payment to be received from the United States in connection with such bonds.

14 **Section 3. Amendment of Prior Hotel Tax Flow of Funds.** Section
15 22952 of Title 5, Guam Code Annotated, hereby amended to read as follows:

16 **"Section 22952. Source of and Security for Payment of the Bonds.** The
17 bonds of the new issue shall be limited obligations of the Government payable
18 from and secured by a pledge of all or any part of the hotel tax revenues. Any
19 pledge made to secure the bonds shall be valid and binding from the time the
20 pledge is made. The hotel tax revenues received by the Government or any trustee,
21 depository and custodian shall be deposited in a separate account and shall be
22 immediately subject to the lien of such pledge without physical delivery thereof or
23 further act, and the lien of such pledge shall be valid and binding against all parties
24 having claims of any kind in tort, contract or otherwise, against the Government of
25 such trustee, depository or custodian, irrespective of whether the parties have
26 notice thereof. The indenture by which such pledge is created need not be
27 recorded. Hotel tax revenues pledged for the purpose of paying the bonds are
28 hereby continuously appropriated for such purpose and for the purposes of paying

1 the charges of any trustee, custodian, depository, auditor or credit enhancement
2 provider for the bonds and any other necessary bond expenses under the indenture.
3 All such revenues not needed for such purpose or for the purpose of paying any
4 bonds issued pursuant to Section 1514 of Title 5, Guam Code Annotated, and any
5 expenses relating thereto shall be transferred periodically by any trustee or other
6 fiduciary under the indenture as provided by said Section 1514. The obligation to
7 make such transfers *shall not* be a part of the contract with the bondholders, and
8 shall be subject to the modification by amendment of this § 22952 by the Guam
9 Legislature.”

10 **Section 4. Repeal of Inapplicable Sections of P.L. 30-179.** Sections 2 and
11 3 of P.L. 30-179 are hereby repealed.

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