

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 45 (COR)

Introduced By:

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B.J.F. CRUZ

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EAM

AN ACT TO CONSTRUCT A GUÅHAN PERFORMING ARTS /CULTURAL CENTER AND A GUAM NATIONAL MUSEUM, AND TO ASSIST IN FURTHERING THE PRESERVATION AND PRESENTATION OF GUAM'S CULTURE, HERITAGE AND HISTORY BY CREATING THE GUÅHAN HERITAGE FACILITIES BOARD, THE GUÅHAN HERITAGE FACILITIES HOTEL ROOM SURCHARGE, AND THE GUÅHAN HERITAGE FACILITIES FUND BY ADDING A NEW SUBITEM (y) TO §87104 OF CHAPTER 87, DIVISION 8, TITLE 5 GUAM CODE ANNOTATED; ADDING A NEW CHAPTER 89 TO DIVISION 8, TITLE 5 GUAM CODE ANNOTATED; AND ADDING A NEW CHAPTER 29 TO TITLE 11 GUAM CODE ANNOTATED.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. **Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that protecting, preserving and promoting our culture and history
4 deserves to be a top priority of our government, but a lack of funding has
5 always been an impediment to progress. Many agree that there is a need
6 for facilities such as a performing arts theater, a cultural center, and a
7 permanent museum for Guam, so that our culture may be properly
8 presented, demonstrated and displayed, and so that the numerous
9 treasures of our past can finally be given the treatment they deserve and be
10 viewed and enjoyed by all.

11 Surveys taken by the Guam Visitors Bureau have repeatedly
12 indicated that most visitors to Guam have a desire for more cultural

1 activities and experiences, and yet the visitor industry has been slow in
2 developing activities and experiences that would serve to promote and
3 display the Chamorro culture to our many visitors.

4 The news that Guam has been named as the host country for the 12th
5 Festival of the Pacific Arts to be held in 2016, makes it even more urgent
6 that a fully functional performing arts center must be ready to host the
7 more than 2,000 delegates from about 25 Pacific island nations and
8 territories, and take advantage of the opportunity to showcase our island to
9 our visitors.

10 With both the local population and our visitors expressing their
11 desire for more cultural attractions, *I Liheslaturan Guåhan* has identified the
12 primary impediments to the development of cultural and historic facilities:
13 The first is a dedicated source of funding to begin the process of
14 constructing the facilities that are needed for such attractions; the second is
15 demonstrating to members of Guam's visitor industry that the Government
16 of Guam will provide the impetus needed to begin the process of
17 constructing a performing arts center, a museum, and other needed
18 attractions, and the industry must work hand-in-hand with GovGuam.

19 *I Liheslaturan Guåhan* finds that that a surcharge of three dollars
20 (\$3.00) per day on each hotel room rented in Guam, would yield nearly
21 Four Million Dollars (\$4,000,000) per year, based on current visitor arrivals.
22 Such a sum, if used as a dedicated source of funding, would be sufficient to
23 begin the process of obtaining financing with which to build a *Guåhan*
24 Performing Arts and Cultural Center, a Guam National Museum and other
25 facilities.

26 Surveys of travelers to Guam indicate that a majority of visitors
27 would not be adverse to this small amount being added to their hotel room
28 charge, and some would support such a fee if it meant more cultural

1 attractions. In fact, the daily tax and fee burden on the average visitor to
2 Guam is the lowest in the entire United States, and only about half of that
3 which is imposed on the average visitor to Honolulu. Even with this
4 proposed surcharge added on, the total tax and fee burden for visitors to
5 Guam would continue to be well below the tax and fee burden in Honolulu
6 and elsewhere in the United States.

7 As a source separate and apart from the Tourist Attraction Fund
8 (TAF), and unlike the TAF from which appropriations are made for a
9 variety of purposes (including the bonds that improved Tumon, the Guam
10 Visitors Bureau’s annual budget and a long list of other expenses) the
11 funds from the surcharge described in this act may only be used for the
12 purposes specified herein.

13 It is therefore the intent of *I Liheslaturan Guåhan* to implement a
14 *Guåhan* Heritage Facilities Hotel Room Surcharge, establish the *Guåhan*
15 Heritage Facilities Fund and establish a *Guåhan* Heritage Facilities Board in
16 order to construct a *Guåhan* Performing Arts and Cultural Center, a Guam
17 National Museum, and other facilities, and assist in furthering the
18 preservation and presentation of Guam’s culture, heritage and history.

19 **Section 2. A new Chapter 89 is added to Division 8, Cultural**
20 **Affairs, of Title 5 Guam Code Annotated to read:**

21 **“CHAPTER 89**

22 ***Guåhan* Heritage Facilities Board**

23 §89001. *Guåhan* Heritage Facilities Board, Creation.

24 §89002. Membership.

25 §89003. Duties.

26 §89004. *Guåhan* Heritage Facilities Master Plan.

27 §89005. Administration.

28 §89006. Operation of Properties.

1 §89007. Contracts.

2 §89008. Source of Funding.

3 **§89001. *Guåhan* Heritage Facilities Board, Creation.** There is
4 hereby created a *Guåhan* Heritage Facilities Board, (hereinafter “GHF
5 Board”) comprised of eleven (11) members, four (4) of whom are
6 appointed by *I Maga’lahen Guåhan*. The GHF Board shall be
7 independent from, but associated with *the Dipattamenton I Kaohao*
8 *Guinahan Chamorro* (Department of Chamorro Affairs), as provided in
9 §87104 (y) of Title 5 GCA.

10 **§89002. Membership.** The GHF Board is comprised of the
11 following members:

12 (a) The Administrator or designee of the Guam
13 Economic Development and Commerce Authority or its
14 successor agency;

15 (b) The President or designee of the Department of
16 Chamorro Affairs or its successor agency;

17 (c) The General Manager or designee of the Guam
18 Visitors Bureau or its successor agency;

19 (d) The Director or designee of the Guam Council on
20 the Arts and Humanities Agency or its successor agency;

21 (e) A representative from the Department of Education,
22 to be selected by the Superintendent of the Department who
23 may select himself;

24 (f) A representative from the University of Guam’s
25 Micronesian Area Research Center, to be selected by the
26 President of the University;

1 (g) A member of the Historic Preservation Review
2 Board who shall be selected by the Chairperson of the Board
3 who may select himself;

4 (h) A member of the Guam Museum Foundation who
5 shall be selected by the Foundation's membership;

6 (i) A member of the Guam Hotel and Restaurant
7 Association who shall be selected by *I Maga'lahaen Guåhan*; and

8 (j) Two members of the general public who shall have
9 expert knowledge in any or all of the fields of Guam history,
10 heritage and culture, one of whom shall be appointed by *I*
11 *Maga'lahaen Guåhan*, and one of whom shall be appointed by *I*
12 *LiheSlaturan Guåhan's* Chairperson of the Committee with
13 oversight over culture.

14 The GHF Board shall select a Chairperson and Vice
15 Chairperson from among their members.

16 **§89003. Duties.** The GHF Board shall:

17 (a) Meet on a regular basis but no less than once each
18 month on a schedule to be determined by its membership. Six
19 members shall constitute a quorum. Six affirmative votes shall
20 be necessary for any motion to be successful. At the initial
21 meeting of the GHF Board, a Chairperson, Vice Chairperson
22 and Board Secretary shall be chosen, each by a majority of votes
23 of the full membership, or six (6) votes;

24 (b) Annually prepare and submit a *Guåhan* Heritage
25 Facilities Master Plan according to the provisions of this
26 chapter;

27 (c) Seek technical assistance and grants from the federal
28 government and private agencies and foundations for the

1 purposes of carrying out the mandates of this Chapter;

2 (d) Employ sufficient professional and technical staff for
3 the purposes of this Chapter. The employees under the
4 supervision of the GHF Board shall be in the classified service
5 of the Government of Guam;

6 (e) Advise and cooperate with other public and private
7 agencies engaged in similar work;

8 (f) Acquire such properties, together with such adjacent
9 or associated lands as may be necessary for carrying out the
10 mandates of this Chapter, which may be acquired by gift, grant,
11 bequest, or purchase. Property may be acquired by the GHF
12 Board, using such funds as may be appropriated for such
13 purpose. The Department may receive gifts and grants from
14 public and private sources to be used for the purposes of this
15 Chapter;

16 (g) Assist the Guam Museum Foundation in meeting their
17 goals, and as much as practicable incorporate the Foundation's
18 plans into the *Guåhan* Heritage Facilities Master Plan.

19 **§89004. *Guåhan* Heritage Facilities Master Plan.** The GHF
20 Board shall establish a comprehensive *Guåhan* Heritage Facilities
21 Master Plan (hereinafter "Master Plan") for the coordinated planning,
22 design and construction of projects that advance the historic
23 preservation, restoration, and presentation of Guam's history,
24 heritage and culture, which shall be annually updated. Such facilities
25 described in the Master Plan shall provide our community and our
26 visitors an environment that promotes learning, study and
27 entertainment related to our island's history, heritage and culture in
28 an atmosphere and manner that will be as self-sufficient as

1 practicable. The Master Plan shall include but not be limited to the
2 following:

3 (a) The development and construction of a *Guåhan*
4 Performing Arts and Cultural Center, which shall be the GHF
5 Board's first project. The Performing Arts and Cultural Center
6 facility shall be constructed in a manner that will provide areas
7 for cultural displays and demonstrations, as well as rehearsal
8 and practice rooms and a properly and suitably equipped
9 theater and stage for presentation of cultural performing arts
10 performances, to also include general music and arts
11 performances. The Performing Arts and Cultural Center facility
12 shall be located on grounds that are sufficient to provide for
13 adequate parking, attendant concession facilities and future
14 expansion. The Performing Arts and Cultural Center facility
15 may be co-located with the Guam National Museum.

16 (b) In close cooperation with the Guam Museum
17 Foundation, the development and construction of a Guam
18 National Museum. The Museum facility shall be constructed in
19 a manner that will provide for proper artifact storage and
20 display that meets generally accepted requirements for
21 perpetual preservation. The Museum facility shall be located
22 on grounds that are sufficient to provide for adequate parking,
23 attendant concession facilities and future expansion, and may
24 be co-located with the Performing Arts and Cultural Center.

25 (c) A plan for the future development of other necessary
26 facilities to promote, preserve and protect our island's culture,
27 heritage and history, to include such other facilities that the
28 GHF Board deems to be necessary and relevant to its mission.

1 (c) Five-year projections of income, investments and
2 expenditures relative to the GHF Fund and its projects, as well
3 as proposed appropriations necessary for each upcoming Fiscal
4 Year.

5 (d) An annually updated and prioritized listing of all
6 projects proposed by the GHF Board, with the *Guåhan*
7 Performing Arts and Cultural Center and Guam National
8 Museum as the top priorities until both projects are completed.

9 (e) The Master Plan shall serve as an annual report and
10 budget and shall be transmitted to *I Maga'lahaen Guåhan* and to *I*
11 *Lihselaturan Guåhan* on February 1st of each year.

12 **§89005. Administration.** All projects and programs relating to
13 planning, design and construction of projects that advance the
14 presentation of Guam's history, heritage and culture shall come
15 under the authority of the GHF Board.

16 **§89006. Operation of Properties.** Any historic property
17 acquired, whether in fee or otherwise, may be used, maintained,
18 improved, restored, or operated by the Department for any public
19 purpose within its powers and not inconsistent with the purpose of
20 the continued preservation of the property. Such historic property
21 shall not be subject to condemnation unless such method of
22 acquisition is first approved by the Governor.

23 **§89007. Contracts.** The Department may enter into and carry
24 out contracts with the Federal government or any agency thereof
25 under which the Federal government or agency grants financial or
26 other assistance to the Department to further the purposes of this
27 Chapter. The Department may agree to and comply with any
28 reasonable conditions not inconsistent with territorial law which are

1 imposed on such grants. Such grant funds or other assistance may be
2 accepted from the Federal government or agency and expended
3 whether or not pursuant to a contract. The Department may further
4 enter into and carry out contracts with any private party to further
5 the purpose of this Chapter.

6 **§89008. Source of Funding.** Expenses of the GHF Board,
7 inclusive of its employees, shall be paid from the *Guåhan* Heritage
8 Facilities Fund in accordance with appropriations by *I Liheslaturan*
9 *Guåhan.*”

10 **Section 3. A new Chapter 29, is added to Title 11 Guam Code**

11 **Annotated to read:**

12 **“CHAPTER 29**

13 ***Guåhan* Heritage Facilities Hotel Room Surcharge and Fund**

- 14 §29001. Surcharge levied.
- 15 §29002. Definitions.
- 16 §29003. Monthly Payment of Surcharge; Penalties.
- 17 §29004. Records to be Kept.
- 18 §29005. Willful Failure to Collect or Pay Over Surcharge.
- 19 §29006. Exclusions and Exemptions.
- 20 §29007. Creation of *Guåhan* Heritage Facilities Fund.
- 21 §29008. Uses of *Guåhan* Heritage Facilities Fund.
- 22 §29009. No Expenditures Without Legislative Authorization.
- 23 §29010. Unused GHF Fund Appropriations.

24 **§29001. Surcharge Levied.** There is a *Guåhan* Heritage Facilities
25 Hotel Room Surcharge (hereinafter “surcharge”) which is hereby
26 levied and imposed against the sale of a room or rooms in a hotel,
27 lodging house, or similar facility located in Guam in the amount of
28 Three Dollars (\$3.00) per room for each day the room or rooms are

1 rented and remitted to the Commissioner on a monthly basis. If the
2 room or rooms are rented more than once within a twenty-four (24)
3 hour period, each time of occupancy shall be subject to the surcharge
4 for such accommodations. This surcharge applies and is collectible
5 when the sale is made, regardless of the time when the price is paid
6 or delivered. The surcharge shall be paid by the consumer to the
7 operator or owner of the hotel or rooming house facility.

8 **§29002. Definitions. As used in this Chapter.**

9 (a) *Commissioner* shall mean and include the person who
10 is performing the duties of Director of Revenue and Taxation
11 for the government of Guam and who is charged with the
12 administration and enforcement of the provisions of this Act.

13 (b) *Person* means any individual, firm, co-partnership,
14 cooperative, nonprofit membership corporation, joint venture,
15 association, corporation, estate, trust, business trust, trustee in
16 bankruptcy, receiver, auctioneer, syndicate, assignee, club,
17 society, or other group or combination acting as unit, whether
18 public or private, or quasi-public, and plural as well as the
19 singular number.

20 (c) *Sale* means the sale or charges for any room or rooms,
21 lodging, or accommodations furnished to transients by any
22 hotel, motel, inn, tourist camp, tourist cabin, camping grounds,
23 club, or any other place in which rooms, lodging, space, or
24 accommodations are furnished regularly to transients for
25 consideration.

26 (d) "*Surcharge*" and "*Guåhan Heritage Facilities Hotel Room*
27 *Surcharge*" means the amount of Three Dollars (\$3.00) added to
28 the total cost of any room sold for each day the room is sold.

1 The surcharge is applied after the total cost of the room is
2 determined, and *shall not* be included as part of the room rental
3 amount on which the Hotel Occupancy Tax is calculated.

4 **§29003. Payment of Surcharge; Penalties.** The surcharge levied
5 by §29001 of this chapter shall be paid to the Commissioner with the
6 monthly tax filings due on the 20th day of the month following the
7 month during which such taxable incidents occurred. The general
8 provisions of 11 GCA, Chapter 26, Article 1 are applicable with
9 respect to penalties for failure to file timely returns, informal
10 hearings, adjustments, review, stay of collection, suits for refund,
11 perfecting appeals, decisions, interest, perjury, examination of books
12 and witnesses, and inspection of tax returns and information and
13 other administrative matters referred to therein.

14 **§29004. Records to be Kept.** Every taxpayer shall keep, in the
15 English language, in Guam, and preserve for a period of five (5)
16 years, suitable records of room sales, and such other books, records of
17 accounts, registers of occupants, cash register tapes, and invoices as
18 may be required by the Commissioner, and all such books, records,
19 and invoices shall be open for examination at any time by the
20 Commissioner or his duly designated representative. Any person
21 violating this Section shall be guilty of a misdemeanor; and any
22 director, president, secretary, or treasurer of a corporation who
23 permits, aids, or abets the corporation to violate this Section shall
24 likewise be guilty of a misdemeanor. On conviction thereof by a court
25 of competent jurisdiction, any license issued for the operation of such
26 business shall be suspended upon such conviction for at least the
27 period of any imprisonment imposed therefore plus six (6) months,
28 and if no imprisonment is ordered, for a period of at least six (6)

1 months.

2 **§29005. Willful Failure to Collect or Pay Over Surcharge.** Any
3 person, required under this Chapter to collect, account for, and pay
4 over the surcharge imposed by this Chapter, who willfully fails to
5 collect or truthfully account for and pay over such surcharge shall be
6 guilty of a felony. Evidence of personal use of any such surcharge so
7 collected by the person charged with collection, either in his business
8 or otherwise, shall constitute prima facie evidence for willful failure
9 to truthfully account for and pay over such surcharge in violation of
10 this Chapter.

11 **§29006. Exclusions and Exemptions.**

12 (a) *Sales or retail sales* shall not include specific, individual
13 transactions in which the price or charge for the commodity,
14 property, or service being sold is less than One Dollar (\$1.00).

15 (b) The surcharge imposed by this Chapter shall not
16 apply to any property, or consumption of such property, which
17 cannot be legally so taxed under the constitution or laws of the
18 United States, but only so long as, and only to the extent to
19 which, the government of Guam is without power to impose
20 such surcharge.

21 (c) The surcharge imposed by this Chapter shall not apply
22 to any transaction involving a sale to the government of Guam,
23 the government of the United States, the government of any
24 Foreign Sovereignty, or any agency or instrumentality of any of
25 the foregoing governments in regard to any activity or function
26 engaged in.

27 (d) The surcharge imposed by this Chapter shall not
28 apply to the proceeds of any transaction entered into by any of

1 the following persons: corporations, associations, or societies
2 organized and operated exclusively for religious, charitable,
3 scientific or educational purposes, hospitals, infirmaries and
4 sanitariums, business leagues, chambers of commerce, boards
5 of trade, civic leagues, public schools, and organizations
6 operated exclusively for the benefit of the community and for
7 the promotion of social welfare; provided, such persons have
8 applied for and obtained exempt status under the provisions of
9 11 GCA, Chapter 26.

10 (e) Hotels, lodging houses, or similar facilities located in
11 Guam are not required to remit any surcharge for a room or
12 rooms sold to residents of Guam and the surcharge shall not be
13 levied on a room or rooms sold to residents of Guam.

14 **§29007. Creation of *Guåhan* Heritage Facilities Fund.** There is
15 hereby created, separate and apart from other funds of the
16 government of Guam, a fund known as the *Guåhan* Heritage Facilities
17 Fund (hereinafter "GHF Fund"). The GHF Fund shall not be
18 commingled with the General Fund or any other Fund and shall be
19 kept in a separate interest-earning bank account. All proceeds from
20 the Hotel Room Surcharge collected under this Chapter shall be
21 deposited in the GHF Fund and shall be expended exclusively for
22 purposes authorized in this chapter.

23 (a) **Monthly Reporting.** The Department of
24 Administration shall on a monthly basis provide a statement to
25 the *Guåhan* Heritage Facilities Board containing a record of all
26 transactions taking place in the previous month within the GHF
27 Fund account, including interest earned, and shall provide the
28 account's balance for the previous month.

1 (b) **Interest.** Notwithstanding the provisions of 5 GCA
2 §21103, §21107 and §21110 or any other provision of Guam law,
3 all interest earned on investments funded by the GHF Fund or
4 on GHF Fund accounts shall be retained by the GHF Fund.

5 **§29008. Uses of *Guåhan* Heritage Facilities Fund.** Monies from
6 the GHF Fund shall be expended exclusively for the funding, in part
7 or in full, capital improvement projects as enumerated in this chapter,
8 and projects as determined by the *Guåhan* Heritage Facilities Board in
9 Title 5 GCA Chapter 89, that will assist in the preservation, display
10 and presentation of Guam’s culture, heritage and history. The funds
11 may also be used for the following purposes that have been deemed
12 by the *Guåhan* Heritage Facilities Board as necessary for the
13 enhancing or enabling of culture, heritage and history projects:

14 (a) The creation, improvement, landscaping or
15 beautification of means of access to such approved projects and
16 the development and restoration of adjacent areas of natural
17 beauty or historic, social or cultural significance relevant to
18 such approved projects;

19 (b) The construction of monuments, memorials, statues,
20 fountains, arches, and other appurtenances adjacent to and
21 relevant to approved projects;

22 (c) Accessory capital improvement projects reasonably
23 necessary to projects as approved by the *Guåhan* Heritage
24 Facilities Board;

25 (d) Capital improvement projects identified in the *Guåhan*
26 Heritage Facilities Master Plan developed by the *Guåhan*
27 Heritage Facilities Board.

28 **§29009. No Expenditures Without Legislative Authorization.**

1 All expenditures of the GHF Fund shall be made exclusively by
2 appropriation of the Legislature. The GHF Fund shall not be used for
3 any purposes other than those enumerated or reasonably inferred
4 herein or for purposes other than those relating to *Guåhan* heritage,
5 culture and history projects. The GHF Fund shall not be used as a
6 pledge of security or as collateral for government loans without prior
7 authorization by the Legislature.

8 **§29010. Unused GHF Fund Appropriations.** All de-
9 appropriated or unused funds appropriated from the GHF Fund
10 shall, in all circumstances, and whether in whole or in part, be
11 returned to the GHF Fund in accordance with the provisions of 5
12 GCA §22406. Any provisions of law that require that unused or de-
13 appropriated funds revert to the General Fund, do not apply to the
14 GHF Fund.”

15 **Section 4. A new Subitem (y) is added to §87104 of Chapter 87,**
16 **Division 8, Title 5 Guam Code Annotated to read:**

17 “(y) to construct a *Guåhan* Performing Arts and Cultural Center
18 and in cooperation with the Guam Museum Foundation a Guam
19 National Museum, and assist in furthering the preservation and
20 presentation of Guam’s culture, heritage and history in accordance
21 with the provisions of Chapter 89, Division 8 of this Title.”

22 **Section 5. Effective Date.** The provisions of this act shall take effect
23 on January 1, 2010.

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