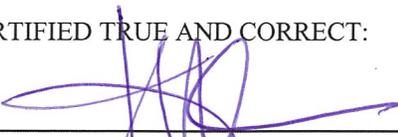


I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2021 (FIRST) Regular Session
VOTING RECORD

Bill No. 40-36 (COR) As amended in the Committee of the Whole.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building March 26, 2021					
NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator V. Anthony Ada	✓					
Senator Frank Blas Jr.	✓					
Senator Joanne Brown	✓					
Senator Christopher M. Dueñas	✓					
Senator James C. Moylan	✓					
Vice Speaker Tina Rose Muña Barnes	✓					
Senator Telena Cruz Nelson	✓					
Senator Sabina Flores Perez	✓					
Senator Clynton E. Ridgell	✓					
Senator Joe S. San Agustin	✓					
Senator Amanda L. Shelton	✓					
Senator Telo T. Taitague	✓					
Senator Jose "Pedo" Terlaje	✓					
Speaker Therese M. Terlaje	✓					
Senator Mary Camacho Torres	✓					

TOTAL	15	0			
	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent Excused

CERTIFIED TRUE AND CORRECT:



 RENNAE V. C. MENO
 Clerk of the Legislature

I = Pass

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2021 (FIRST) Regular Session

Bill No. 40-36 (COR)

As amended in the Committee of Whole.

*

Introduced by:

Committee on Rules

By request of *I Maga'hågan*
Guåhan in accordance with the
Organic Act of Guam.

**AN ACT TO ADD A NEW § 1512.5 TO ARTICLE 5 OF
CHAPTER 1, TITLE 5, GUAM CODE ANNOTATED,
RELATIVE TO AUTHORIZING THE REFUNDING OF
GOVERNMENT OF GUAM BUSINESS PRIVILEGE TAX
BONDS, SERIES 2011A, GOVERNMENT OF GUAM
BUSINESS PRIVILEGE TAX BONDS, SERIES 2012B,
AND GOVERNMENT OF GUAM BUSINESS PRIVILEGE
TAX REFUNDING BONDS, SERIES 2015D, AND
RELATED MATTERS.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new § 1512.5 is hereby *added* to Article 5 of Chapter 1, Title 5, Guam Code Annotated, to read as follows:

**“§ 1512.5. Authorization of Refunding of Government of Guam
Business Privilege Tax Bonds, Series 2011A, Government of Guam
Business Privilege Tax Bonds, Series 2012B, and Government of Guam
Business Privilege Tax Refunding Bonds, Series 2015D.**

(a) Authorization of Issuance of Bonds. Pursuant to § 50103(k) of Title 12, Guam Code Annotated, *I Maga'hågan Guåhan* is authorized to issue one or more series of tax-exempt or taxable bonds of the government of Guam

1 from time to time, including, but not limited to, on a forward basis, for the
2 purpose of refunding all or a portion of the government of Guam's outstanding
3 Business Privilege Tax Bonds, Series 2011A (2011A Bonds), its Business
4 Privilege Tax Bonds, Series 2012B (2012B Bonds), and/or its Business
5 Privilege Tax Refunding Bonds, Series 2015D (2015D Bonds) and, together
6 with the 2011A Bonds and the 2012B Bonds (Prior Bonds), in accordance
7 with the following requirements, limitations, terms and conditions:

8 (1) All obligations of the government to pay debt service on,
9 and the redemption price of, the Prior Bonds refunded shall be
10 discharged concurrently with the issuance of the refunding bonds.
11 Thereafter, such Prior Bonds shall be payable solely from and secured
12 solely by an escrow established for such purpose in accordance with the
13 government's existing bond indenture or otherwise shall be redeemed
14 on the closing date of the refunding bonds.

15 (2) The debt service savings resulting from the issuance of the
16 refunding bonds shall be not less than an amount equal to two percent
17 (2%) of the principal amount of the Prior Bonds refunded, inclusive of
18 all charges and fees for bond counsel and bond underwriters and other
19 costs of issuance in connection with the issuance, sell and delivery of
20 the bonds. Debt service savings is defined for this purpose to be the
21 amount by which the present value of debt service on the Prior Bonds
22 exceeds the present value of debt service on the refunding bonds, using
23 the yield on the refunding bonds as the discount rate for purposes of
24 calculating present value. This provision shall not apply to the
25 refunding of Prior Bonds for the primary purpose of providing cash
26 flow relief to the government.

1 (3) Such refunding bonds shall have a principal amount or
2 principal amounts sufficient to provide funds for the payment of all or
3 a portion of the Prior Bonds refunded, and in addition, for the payment
4 of all expenses incident to the calling, retiring or paying of such Prior
5 Bonds and the issuance of such refunding bonds, including:

6 (A) the difference in amount between the par value of
7 the refunding bonds and any amount less than par for which the
8 refunding bonds are sold;

9 (B) any amount necessary to be made available for the
10 payment of interest upon such refunding bonds from the date of
11 sale thereof to the date of payment of the Prior Bonds or to the
12 date upon which the Prior Bonds will be paid pursuant to the call
13 thereof or agreement with the holders thereof;

14 (C) the premium, if any, necessary to be paid in order to
15 call or retire the Prior Bonds and the interest accruing thereon to
16 the date of the call or retirement; and

17 (D) any additional amount needed to provide for a
18 deposit to the debt service reserve in connection with the
19 issuance of the refunding bonds.

20 (4) The issuance of the refunding bonds shall not result in any
21 increase in the aggregate amount of the government's outstanding
22 "public indebtedness" as that term is used in 48 USC 1423a (§11 of the
23 Organic Act of Guam).

24 (5) The refunding bonds shall have a final maturity not later
25 than the final maturity of the Prior Bonds; provided, however, that this
26 provision shall not apply to the refunding of Prior Bonds for the primary
27 purpose of providing cash flow relief to the government.

1 (b) Terms and Conditions Determined by Certificate or Indenture.

2 The terms and conditions of the bonds shall be as determined by *I Maga'hågan*
3 *Guåhan* by the execution of a certificate or indenture authorizing the issuance
4 of the bonds upon or prior to the issuance of the bonds.

5 (c) Pledge of Business Privilege Tax Revenues. All bonds

6 authorized by Subsection (a) of this Section, as may be amended from time
7 (BPT Bonds), shall be secured by a statutory lien on all tax revenues derived
8 from the levy of the first three (3) percentage points, out of the total number
9 of percentage points levied from time to time, of the business privilege tax
10 levied pursuant to Article 2 of Chapter 26, Title 11, Guam Code Annotated,
11 or any successor thereto (pledged business privilege tax revenues). This lien
12 shall arise automatically without the need for any action or authorization by *I*
13 *Maga'hågan Guåhan*, the government of Guam, or any other person or entity.
14 Such lien shall be valid and binding from the time such BPT Bonds are issued.
15 The pledged business privilege tax revenues shall immediately be subject to
16 such lien, and the lien shall automatically attach to the pledged business
17 privilege tax revenues and be effective, binding, and enforceable against *I*
18 *Maga'hågan Guåhan*, the government of Guam, their successors, assignees,
19 and creditors, and all others asserting rights therein, irrespective of whether
20 those parties have notice of the lien and without the need for any physical
21 delivery, recordation, filing, or further act. Pledged business privilege tax
22 revenues received by the government of Guam or by any trustee, depository
23 or custodian shall be deposited in a separate account entitled the “BPT
24 Revenue Fund.” Pledged business privilege tax revenues that are not required
25 to make payments on the BPT Bonds shall automatically, and without the need
26 for any further action, be released from such lien and shall be available for
27 appropriation for any other lawful purpose of the government. The statutory

1 lien described in this Subsection shall not be subject to Division 9 of Title 13,
2 Guam Code Annotated, or any successor statute.

3 (d) In addition to the statutory lien provided for in Subsection (c) of
4 this Section, all or any part of the pledged business privilege tax revenues may
5 be pledged, if and to the extent determined by *I Maga'hågan Guåhan*, to
6 secure the payment of any BPT Bonds issued pursuant to that certain
7 indenture, dated as of December 1, 2011, by and among the government of
8 Guam, the Bank of Guam, as trustee, and the U.S. Bank National Association,
9 as co-trustee, as amended or supplemented from time to time in accordance
10 with its terms (BPT Indenture). Any such pledge shall be valid and binding
11 against all parties in accordance with its terms and have priority against all
12 parties in accordance with its terms from the time the pledge is made, and
13 property so pledged shall immediately be subject to the lien of the pledge
14 without the need for physical delivery, recordation, filing, or other further act.
15 The pledge shall not be subject to Division 9 of Title 13, Guam Code
16 Annotated, or any successor statute. The BPT Indenture by which such pledge
17 is created need not be recorded and shall direct the distribution and
18 disbursement of revenues from the BPT Revenue Fund following their deposit
19 therein. All such taxes to the extent so pledged are hereby continuously
20 appropriated for such purpose. So long as any bonds issued pursuant to the
21 BPT Indenture, including, but not limited to, those authorized under
22 Subsection (a) of this Section, as may be amended from time to time, remain
23 outstanding, the government of Guam may not reduce the rate of levy and
24 collection of the pledged business privilege tax below three percent (3%), nor
25 may the government of Guam reduce the services, products or activities to
26 which the pledged business privilege tax applies, nor may the government of

1 Guam upwardly adjust any exception or exclusion to, or otherwise impair, the
2 pledged business privilege tax.

3 (e) Valid and Binding. The bonds authorized by this Section shall
4 constitute the valid and binding limited obligations of the government of
5 Guam, secured by a pledge of the pledged business privilege tax revenues
6 described in Subsection (c) of this Section, all as further specified below in
7 such Subsection. All officers charged by law with any duty in the collection
8 of the revenues of the government from which debt service on the bonds will
9 be payable shall do every lawful thing necessary to collect such sum.

10 (f) Appropriation of Revenues. All revenues are hereby
11 appropriated for the purposes of paying the principal and interest on the bonds
12 issued pursuant to this Section. Revenues released from the lien of the
13 indenture or certificate pursuant to which the bonds are issued shall be subject
14 to appropriation by *I Liheslaturan Guåhan* for any other lawful purpose. Up
15 to Five Million Dollars (\$5,000,000) of said revenues shall be appropriated to
16 the Department of Public Health and Social Services in FY 2021 and FY 2022
17 for the sole purpose of providing temporary assistance in the form of grants
18 which shall be distributed to local non-profit organizations that provide food
19 and commodities for homeless individuals, unemployed individuals, children,
20 and low-income families. These funds shall not lapse and shall be available to
21 DPHSS until fully expended; provided, that this appropriation of revenues
22 shall not take effect if federal funds, to include funds from the American
23 Rescue Plan Act of 2021, are expended for substantially similar purposes
24 stated in this Subsection by the end of FY 2021.

25 (g) Additional Bonds. Nothing in this Section shall be construed to
26 prevent the government from issuing, after appropriate enabling legislation,
27 other obligations secured by pledged business privilege tax revenues on a

1 parity with or subordinate to the bonds or the government's obligations with
2 respect thereto authorized by this Section on such terms as may be provided
3 by the indenture or certificate pursuant to which the bonds are issued. Nothing
4 in this Section shall be construed to prevent the government of Guam from
5 issuing, after appropriate enabling legislation, other obligations of the
6 government secured by the general obligation of the government on a parity
7 with or subordinate to the bonds authorized by this Section on such terms as
8 may be provided by the indenture or certificate pursuant to which the bonds
9 are issued.

10 (h) Waiver of Immunity; Submission to Jurisdiction.
11 Notwithstanding any substantive or procedural provision of Chapter 6 of Title
12 5, Guam Code Annotated, the government of Guam waives immunity from
13 any suit or action in contract on the bonds but does not waive sovereign
14 immunity as to the personal liability of elected officials and employees of the
15 government of Guam. The government of Guam hereby submits to the
16 jurisdiction of the U.S. District Court for the District of Guam for purposes of
17 any such suit or action in contract on the bonds.

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

24 (j) Form of Bonds; Covenants; Appointment of Fiduciaries. The
25 technical form and language of the bonds, including provisions for execution,
26 exchange, transfer, registration, paying agency, lost or mutilated bonds,
27 negotiability, cancellation and other terms or conditions not inconsistent with

1 this Section, including covenants relating to the collection of pledged business
2 privilege tax revenues, shall be as specified in the certificate or indenture
3 executed by *I Maga'hågan Guåhan* authorizing the issuance of the bonds. The
4 certificate or indenture shall appoint one or more trustees, co-trustees or other
5 fiduciaries authorized to receive and hold in trust the proceeds of the bonds,
6 the pledged business privilege tax revenues and other moneys relating thereto,
7 to protect the rights of bondholders and to perform such other duties as may
8 be specified in the indenture. *I Maga'hågan Guåhan* is also authorized to
9 execute, on behalf of the government of Guam, any appropriate agreements,
10 certificates or other instruments relating to the bonds and the sale of bonds.

11 (k) Authorization for Credit Enhancement. *I Maga'hågan Guåhan* is
12 authorized to enter into such contracts or agreements with such banks,
13 insurance companies or other financial institutions as she determines are
14 necessary or desirable to improve the security and marketability of the bonds
15 issued under this Section, if and only if such contracts or agreements reduce
16 the cost of the debt by more than the cost of credit enhancement. Such
17 contracts or agreements may contain an obligation to reimburse, with interest,
18 any such banks, insurance companies or other financial institutions for
19 advances used to pay principal of or interest on the bonds and to indemnify
20 any such banks, insurance companies or other financial institutions for costs
21 and expenses incurred in connection with any such advance. Any such
22 reimbursement obligation and any other obligations of the government under
23 such contracts or agreements shall be general obligations of the government
24 of Guam and shall additionally be secured by a pledge of, pledged business
25 privilege tax revenues, and any such advance, if necessary, shall be treated for
26 Organic Act purposes as creating an obligation issued to refund the bonds.

1 (l) Use of Proceeds from the Sale of the Bonds. The proceeds from
2 the sale of the bonds shall be used and are hereby appropriated to (1) fund an
3 escrow to pay principal, interest and redemption price of Government of
4 Guam Business Privilege Tax Bonds, Series 2011A, Government of Guam
5 Business Privilege Tax Bonds, Series 2012B, and Government of Guam
6 Business Privilege Tax Refunding Bonds, Series 2015D, or otherwise to pay
7 in full such 2011A Bonds, 2012B Bonds or 2015D Bonds; (2) pay expenses
8 relating to the authorization, sale and issuance of the bonds, including, without
9 limitation, printing costs, costs of reproducing documents, credit enhancement
10 fees, underwriting, legal, financial advisory and accounting fees and charges,
11 fees paid to banks or other financial institutions providing credit enhancement,
12 costs of credit ratings and other costs, charges and fees in connection with the
13 issuance, sale and delivery of the bonds; and (3) fund capitalized interest on
14 the bonds for a period not longer than twelve (12) months from the date of
15 issuance of such bonds.

16 (m) Permitted Investments. The proceeds of the bonds, and any
17 pledged business privilege tax revenues relating to such bonds, may be
18 invested in, but only in, the types of investments permitted by the certificate
19 or indenture pursuant to which such bonds are issued.

20 (n) Approval by Guam Economic Development Authority. §
21 50103(k), Title 12, Guam Code Annotated, provides that agencies and
22 instrumentalities of the government of Guam shall issue bonds and other
23 obligations only by means of and through the agency of the Guam Economic
24 Development Authority (GEDA). No issue of bonds authorized by this
25 Section shall be sold until the Board of Directors of GEDA has adopted a
26 resolution approving the sale of such issue.

1 (o) Approval of Voters Not Required. Notwithstanding any law to
2 the contrary, the issuance of the bonds authorized by this Section shall not be
3 required to be subject to the approval of, or placed before, the voters of
4 Guam.”

5 **Section 2. Local Sales of Bonds.** *I Maga'hågan Guåhan* shall undertake
6 her best efforts to cause a portion of any bonds issued pursuant to Section 1 of this
7 Act (codified as § 1512.5, Article 5, Chapter 1, 5 GCA) to be offered for sale to
8 residents of Guam, as well as to residents of other jurisdictions, if and to the extent
9 that such offer and any sales resulting from such offer do not increase the costs to
10 the government of Guam of issuing and repaying such bonds.

11 **Section 3. Bond Proceeds Not Subject to Transfer Authority.** The
12 proceeds of the bonds approved pursuant to Section 1 of this Act shall not be subject
13 to any transfer authority of *I Maga'hågan Guåhan*.

14 **Section 4. Severability.** If any provision of this Act or its application to any
15 person or circumstance is found to be invalid or contrary to law, such invalidity shall
16 not affect other provisions or applications of this Act that can be given effect without
17 the invalid provision or application, and to this end the provisions of this Act are
18 severable.