

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

Bill No. 151-33 (COR)

Introduced by:

BJF Cruz 

AN ACT TO *ADD A NEW* §22437 TO 5 GCA,
RELATIVE TO REFUNDING THE GOVERNMENT
OF GUAM GENERAL OBLIGATION (GO) BOND
SERIES 2007A AND 2009A, RESPECTIVELY, BY
ISSUING A GOVERNMENT OF GUAM GENERAL
OBLIGATION BOND SERIES.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the General Obligation Bond Series 2007A and the General Obligation Bond
4 Series 2009A have combined balances of over four hundred four million nine
5 hundred fifty thousand dollars (\$404,950,000). Since the issuance of these bonds,
6 in 2007 and 2009, respectively, the credit rating of the government of Guam as a
7 whole and those bonds, in particular, have been upgraded. Furthermore, the market
8 interest rates for bonds have declined significantly and the current market yields on
9 these two (2) bond series have likewise declined. This presents an opportunity for
10 the government of Guam to realize savings over the lifetime of these bonds, should
11 they be refinanced at the lower prevailing market rates.

12 *I Liheslaturan Guåhan* finds that the 2007A Bond interest coupon rates of
13 five to five and one quarter percent (5-5.25%) is significantly higher than the
14 current yields, ranging from three and one-tenth percent (3.1%) to four and seven-
15 tenths percent (4.7%).

1 *I Liheslaturan Guåhan* finds that the 2009 A Bond interest coupon rates of
2 five to seven percent (5-7%) is significantly higher than the current yields, ranging
3 from three and four-tenth percent (3.4%) to four and seven-tenths percent (4.7%).

4 *I Liheslaturan Guåhan* further finds that this would not be additional debt,
5 as it specifically replaces existing debt with more favorable terms and conditions.

6 It is therefore the intent of *I Liheslaturan Guåhan* to authorize *I Maga'låhen*
7 *Guåhan* to issue a new Geneneral Obligation Bond Series to refund the
8 Government of Guam General Obligation Bond Series 2007A and the Government
9 of Guam General Obligation Bond Series 2009A, for the sole intended purpose of
10 savings as a result of more favorable interest rate conditions.

11 **Section 2. General Obligation Bond Series Authorized to Refund**
12 **Government of Guam General Obligation Bond Series 2007A and**
13 **Government of Guam General Obligation Bond Series 2009A.** A new § 22437
14 is hereby added to 5 GCA, to read:

15 **“§ 22437. General Obligation Bond Series Authorized to Refund**
16 **Government of Guam General Obligation Bond, Series 2007A, and**
17 **Government of Guam General Obligation Bond, Series 2009A.**

18 (a) Authorization to Issue General Obligation Bonds to Refund
19 Government of Guam General Obligation Bond Series 2007A and
20 Government of Guam General Obligation Bond Series 2009A. *I Maga'låhen*
21 *Guåhan* is authorized to issue a general obligation bond series of the
22 government of Guam in an aggregate principal amount not to exceed such
23 principal amount as *may* be necessary for the purposes of refunding the
24 Government of Guam General Obligation Bonds, 2007 Series A, and the
25 Government of Guam General Obligation Bonds, 2009 Series A, and related
26 expenses, as provided in Subsection (i) of this Section; provided, however,

1 that the issuance of the bonds *shall* not cause a violation of the debt
2 limitation provisions of 48 USC 1423a (§ 11 of the Organic Act of Guam).

3 (b) Terms and Conditions Determined by Certificate. The terms and
4 conditions of the bonds *shall* be as determined by *I Maga'låhi* by the
5 execution of a certificate authorizing the issuance of the bonds upon or prior
6 to the issuance of the bonds; provided, however, that such terms and
7 conditions *shall* be consistent with this Section, and that the bonds *shall*
8 mature not later than November 15, 2039, *shall* bear interest at such rates
9 and be sold for such price or prices as *shall* result in a yield to the
10 bondholders not exceeding five and one quarter percent (5.25%) per annum,
11 and *may* have capitalized interest and/or interest only payments until the end
12 of Fiscal Year 2016 as determined by *I Maga'låhi*, provided that the annual
13 debt service for each fiscal year shall be less than the combined annual debt
14 service as required under the existing Government of Guam General
15 Obligation Bond, Series 2007A, and the Government of Guam General
16 Obligation Bond, Series 2009A.

17 (c) Valid and Binding General Obligation. Any bonds authorized by
18 this Section *shall* constitute the valid and binding general obligations of the
19 government of Guam. The government of Guam pledges its full faith and
20 credit for the punctual payment of both principal of and interest on the
21 bonds. There *shall* be collected annually in the same manner and at the same
22 time as government revenue for other purposes is collected, such sum as is
23 required to pay the principal of and interest on the bonds. All officers
24 charged by law with any duty in the collection of the revenues of the
25 government *shall* do every lawful thing necessary to collect such sum. The
26 validity of any such bonds *shall* not be affected by the validity or regularity
27 of any proceedings for the implementation of the capital projects funded by

1 the bonds or for the payment of the general fund expenses funded by the
2 bonds.

3 (d) Appropriations from the General Fund. There are hereby
4 appropriated from the General Fund such sums as will equal in each year the
5 amount of money necessary to pay the principal and interest on such bonds.

6 (e) Additional Bonds. Nothing herein *shall* be construed to prohibit
7 the government of Guam from issuing, after appropriate enabling legislation,
8 other obligations of the government secured by the general obligation of the
9 government on a parity with or subordinate to the bonds authorized hereby
10 on such terms as are created by the bond indenture or certificate.

11 (f) Waiver of Immunity; Submission to Jurisdiction. Notwithstanding
12 any substantive or procedural provision of Chapter 6 of Title 5, Guam Code
13 Annotated, the government of Guam waives immunity from any suit or
14 action in contract on the bonds, but does not waive sovereign immunity as to
15 the personal liability of elected officials and employees of the government of
16 Guam. Any such action *may* be brought in the District Court of Guam.

17 (g) Form of Bonds; Covenants; Appointment of Fiduciaries. The
18 technical form and language of the bonds, including provisions for
19 execution, exchange, transfer, registration, paying agency, lost or mutilated
20 bonds, negotiability, cancellation and other terms or conditions not
21 inconsistent with this Section, including covenants relating to the collection
22 of revenues, *shall* be as specified in the certificate executed by *I Maga'låhi*
23 authorizing the issuance of the bonds. The certificate *may* appoint one (1) or
24 more trustees, co-trustees or other fiduciaries authorized to receive and hold
25 in trust the proceeds of the bonds and monies relating thereto, to protect the
26 rights of bondholders and to perform such other duties as *may* be specified in
27 the certificate. *I Maga'låhi* is also authorized to execute, on behalf of the

1 government of Guam, any appropriate agreements, certificates or other
2 instruments relating to the bonds and the sale of the bonds.

3 (h) Authorization for Credit Enhancement. The Governor is
4 authorized to enter into such contracts or agreements with such banks,
5 insurance companies or other financial institutions as he determines are
6 necessary or desirable to improve the security and marketability of the bonds
7 issued under this Section. Such contracts or agreements *may* contain an
8 obligation to reimburse, with interest, any such banks, insurance companies
9 or other financial institutions for advances used to pay principal of or
10 interest on the bonds. Any such reimbursement obligation *shall* be a general
11 obligation of the government of Guam, and any such advance, if necessary,
12 *shall* be treated as creating a reimbursement obligation issued to refund the
13 bonds.

14 (i) Use of Proceeds from the Sale of the Bonds. Proceeds from the sale
15 of the bonds *shall* be used solely to fund an escrow to pay principal, interest,
16 and redemption price of Government of Guam General Obligation Bonds,
17 2007 Series A and the Government of Guam General Obligation Bonds,
18 2009 Series A, respectively, any capitalized interest as determined by *I*
19 *Maga'låhi* pursuant to Subsection (b) of this Section and to pay expenses
20 relating to the authorization, sale and issuance of the bonds, including,
21 without limitation, printing costs, costs of reproducing documents, credit
22 enhancement fees, underwriting, legal, feasibility, financial advisory and
23 accounting fees and charges, fees paid to banks or other financial institutions
24 providing credit enhancement, costs of credit ratings and other costs, charges
25 and fees in connection with the issuance, sale and delivery of the bonds;
26 provided, however, that bonds *may* not be issued for this purpose unless (a)
27 all obligation of the government to pay debt service on, and the redemption

1 price of, the bonds being refunded *shall* be discharged concurrently with the
2 issuance of the refunding bonds, (b) thereafter, the refunded bonds *shall* be
3 payable solely from and secured solely by the escrow established for such
4 purpose, (c) the present value of debt service on the refunding bonds *shall* be
5 at least two percent (2%) less than the present value of debt service on the
6 bonds being refunded, inclusive of all fees, for bond counsel and bond
7 underwriters and other cost of issuance, and (d) the issuance of the refunding
8 bonds *shall* not result in any increase in the aggregate amount of the
9 government's outstanding 'public indebtedness' as that term is used in 48
10 USC §1423a (§11 of the Organic Act of Guam).

11 (j) No Personal Liability. No employee or elected official of the
12 government of Guam *shall* be individually or personally liable for the
13 payment of any amounts due on any bonds issued under this Section, or for
14 any other liability arising in connection with the bonds; provided, however,
15 that nothing in this Section *shall* relieve any employee or elected official
16 from the performance of any ministerial duty required by law.

17 (k) *I Maga'lahaen Guåhan shall* utilize the most recent Real Property
18 Tax Assessment Roll certified by the Board of Equalization in accordance
19 with § 24518 of Chapter 24, Title 11, Guam Code Annotated, in calculating
20 the amount available for future debt obligation under the Debt Limit
21 (Ceiling) for the bond issuance authorized in this Section.

22 (l) Permitted Investments. The bond proceeds and any revenues
23 pledged to secure the payment of the bonds are authorized to be, and *shall*
24 only be, invested in those investments permitted by the certificate or
25 indenture pursuant to which such bonds are issued. Permitted investments
26 *shall* include investment agreements, forward purchase agreements or

1 similar structured contracts as further described in the certificate or
2 indenture authorizing the issuance of the bonds.

3 (m) Approval by the Guam Economic Development Authority
4 (GEDA). No bonds authorized by this Section *shall* be sold until the Board
5 of Directors of GEDCA has adopted a resolution approving the sale.

6 (n) Approval of Voters Not Required. Notwithstanding Title 3 Guam
7 Code Annotated §§17311 and 17312, the issuance of the bonds authorized
8 hereby *shall* not be subject to the approval of the voters of Guam.

9 (o) Approval of Bonds. *I Liheslaturan Guåhan*, pursuant to
10 Subsection (b) of this section and § 50103(k), Title 12, Guam Code
11 Annotated, hereby approves the issuance and sale by the government of
12 Guam of the bonds for the purposes and in the aggregate principal amount
13 authorized by this Section; provided that such bonds are issued and sold
14 subject to the terms, conditions, requirements and limitations mandated
15 therein.

16 (p) Bond Proceeds Not Subject to Transfer Authority. The proceeds of
17 the bonds authorized by this Section *shall* not be subject to any transfer
18 authority of *I Maga'lahen Guåhan*.

19 (q) Conflicts Prohibited. No Covered Person, as such term is defined
20 below, *shall* be eligible to provide or be paid for, in whole or in part, any
21 services related to the authorization, sale and issuance of the bonds,
22 including, without limitation, printing costs, costs of reproducing
23 documents, credit enhancement fees, underwriting, legal, feasibility,
24 financial advisory and accounting fees and charges, fees paid to banks or
25 other financial institutions providing credit enhancement, costs of credit
26 ratings and other costs, charges and fees in connection with the issuance,

1 sale and delivery of the bonds authorized in this Act. For the purposes of this
2 Section, the term “Covered Person” *shall* mean any:

3 (1) elected or appointed official of the government of Guam,
4 unclassified managers of the Guam Economic Development Authority
5 (GEDA), members of the GEDA Board of Directors, and members of
6 *I Liheslaturan Guåhan* who hold office at the time of the approval and
7 issuance of the bonds and bond indentures authorized by this Act;

8 (2) advisors or consultants of *I Liheslaturan Guåhan* who are
9 advising or working with *I Liheslaturan Guåhan* with respect to the
10 approval and issuance of the bonds and bond indentures authorized by
11 this Act;

12 (3) person or spouse of such person related by consanguinity of
13 the third degree, which for the purposes of this Act *shall* include
14 spouses, all children, parents, grandchildren, siblings, grandparents,
15 great-grandchildren, nieces, nephews, uncles, aunts, and great-
16 grandparents, to any person described in Subsections (a) and (b) of
17 this Section.

18 (r) Reporting Requirements by all appointed trustees, co-trustees or
19 other fiduciaries. For the second bond series proceeds, the Department of
20 Administration (DOA) *shall* submit a written request to withdraw bond
21 proceeds to all appointed trustees, co-trustees or other fiduciaries (trustee).
22 The written request *shall* unequivocally state the purpose of said withdrawal
23 specific to the authorized use mandated or selected pursuant to Subsection
24 (i) of this Section. The trustee *shall* provide a copy of all documents
25 submitted by the DOA to withdraw funds to *I Maga'lahren Guåhan* and to
26 the Speaker of *I Liheslaturan Guåhan* five (5) days prior to the disbursement
27 of request funds.

1 (s) The Guam Economic Development Authority (GEDA) *shall* waive
2 all fees relative to the issuance of the bond authorized in this Section.”

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