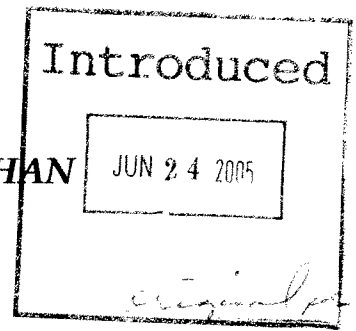


I MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
2005 (FIRST) Regular Session



Bill No. 155 (EC)

Introduced By:

R.J. Respicio
B.J.F. Cruz

AN ACT TO CONSTRUCT A GUAM NATIONAL MUSEUM AND 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 a permanent museum for Guam, so that the numerous treasures of our
7 past, which now must languish in storage that often provides insufficient
8 protection for valuable, fragile and irreplaceable artifacts, can finally be
9 given the treatment they deserve and be viewed and enjoyed by all.
10 Surveys taken by the Guam Visitors Bureau have indicated that most
11 visitors to Guam have a desire for more cultural activities and experiences.

12 *I Liheslaturan Guåhan* finds that, with both the local population and
13 our visitors expressing their desire for more cultural attractions, and with

1 funding being the primary impediment to the development of cultural and
2 historic facilities, identification of a dedicated source of funding would
3 provide the impetus needed to begin the process of constructing a
4 museum, a performing arts center and other needed attractions.

5 *I Liheslaturan Guåhan* finds that that a surcharge of three dollars
6 (\$3.00) on each hotel room rented each day in Guam, if used as a dedicated
7 source of funding, would be sufficient to serve as “seed money” to seek
8 grants, loans and other sources of funds with which to build a Guam
9 National Museum and other facilities. Based on current visitor arrivals,
10 such a surcharge would yield about Four Million Dollars (\$4,000,000) per
11 year. As a source separate and apart from the Tourist Attraction Fund
12 (TAF), and unlike the TAF from which appropriations are made for a
13 variety of purposes, including the bonds that improved Tumon, the Guam
14 Visitors Bureau’s annual budget and a long list of other expenses, the funds
15 from the surcharge described in this act may only be used for the purposes
16 specified herein.

17

18 It is therefore the intent of *I Liheslaturan Guåhan* to implement a
19 *Guåhan* Heritage Facilities Hotel Room Surcharge, establish the *Guåhan*
20 Heritage Facilities Fund and establish a *Guåhan* Heritage Facilities Board in
21 order to construct a Guam National Museum and assist in furthering the
22 preservation and presentation of Guam’s culture, heritage and history.

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

25

“CHAPTER 89

26

***Guåhan* Heritage Facilities Board**

27

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

28

§89002. Membership.

- 1 §89003. Duties.
- 2 §89004. *Guåhan* Heritage Facilities Master Plan.
- 3 §89005. Administration.
- 4 §89006. Operation of Properties.
- 5 §89007. Contracts.
- 6 §89008. Source of Funding.

7 **§89001. *Guåhan* Heritage Facilities Board, Creation.** There is
8 hereby created a *Guåhan* Heritage Facilities Board, (hereinafter “GHF
9 Board”) comprised of eleven (11) members, four (4) of whom are
10 appointed by *I Maga’lahen Guåhan*. The GHF Board shall be
11 independent from, but associated with *the Dipattamenton I Kaohao*
12 *Guinahan Chamorro* (Department of Chamorro Affairs), as provided in
13 §87104 (y) of Title 5 GCA.

14 **§89002. Membership.** The GHF Board is comprised of the
15 following members:

- 16 (a) The Administrator or designee of the Guam
17 Economic Development and Commerce Authority or its
18 successor agency;
- 19 (b) The President or designee of the Department of
20 Chamorro Affairs or its successor agency;
- 21 (c) The General Manager or designee of the Guam
22 Visitors Bureau or its successor agency;
- 23 (d) The Director or designee of the Guam Council on
24 the Arts and Humanities Agency or its successor agency;
- 25 (e) A representative from the Department of Education,
26 to be selected by the Superintendent of the Department who
27 may select himself;

1 (f) A representative from the University of Guam's
2 Micronesian Area Research Center, to be selected by the
3 President of the University;

4 (g) A member of the Historic Preservation Review
5 Board who shall be selected by the Chairperson of the Board
6 who may select himself;

7 (h) A member of the Governor's Guam Museum Task
8 Force who shall be selected by *I Maga'lahaen Guåhan*;

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

11 (j) Two members of the general public who shall have
12 expert knowledge in any or all of the fields of Guam history,
13 heritage and culture and who shall be appointed by *I*
14 *Maga'lahaen Guåhan*.

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

17 **§89003. Duties.** The GHF Board shall:

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

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

28 (c) Seek technical assistance and grants from the federal

1 government and private agencies and foundations for the
2 purposes of carrying out the mandates of this Chapter;

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

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

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

17 **§89004. *Guåhan* Heritage Facilities Master Plan.** The GHF
18 Board shall establish a comprehensive *Guåhan* Heritage Facilities
19 Master Plan (hereinafter “Master Plan”) for the coordinated planning,
20 design and construction of projects that advance the historic
21 preservation, restoration, and presentation of Guam’s history,
22 heritage and culture, which shall be annually updated. Such facilities
23 described in the Master Plan shall provide our community and our
24 visitors an environment that promotes learning, study and
25 entertainment related to our island’s history, heritage and culture in
26 an atmosphere and manner that will be as self-sufficient as
27 practicable. The Master Plan shall include but not be limited to the
28 following:

1 (a) The development and construction of a Guam
2 National Museum, which shall be the GHF Board's first project.
3 The Museum facility shall be constructed in a manner that will
4 provide for proper artifact storage and display that meets
5 generally accepted requirements for perpetual preservation.
6 The Museum facility shall be located on grounds that are
7 sufficient to provide for adequate parking, attendant concession
8 facilities and future expansion.

9 (b) A plan for the future development of other necessary
10 facilities to promote, preserve and protect our island's culture,
11 heritage and history, to include a *Guåhan* Performing Arts
12 center and such other facilities that the GHF Board deems to be
13 necessary and relevant to its mission.

14 (c) Five-year projections of income, investments and
15 expenditures relative to the GHF Fund and its projects, as well
16 as proposed appropriations necessary for the upcoming Fiscal
17 Year.

18 (d) An annually updated and prioritized listing of all
19 projects proposed by the GHF Board, with the Guam National
20 Museum as the top priority until such project is completed.

21 (e) The Master Plan shall serve as an annual report and
22 budget and shall be transmitted to *I Maga'lahaen Guåhan* and to *I*
23 *Liheslaturan Guåhan* on February 1st of each year.

24 **§89005. Administration.** All projects and programs relating to
25 planning, design and construction of projects that advance the
26 presentation of Guam's history, heritage and culture shall come
27 under the authority of the GHF Board.

28 **§89006. Operation of Properties.** Any historic property

1 acquired, whether in fee or otherwise, may be used, maintained,
2 improved, restored, or operated by the Department for any public
3 purpose within its powers and not inconsistent with the purpose of
4 the continued preservation of the property. Such historic property
5 shall not be subject to condemnation unless such method of
6 acquisition is first approved by the Governor.

7 **§89007. Contracts.** The Department may enter into and carry
8 out contracts with the Federal government or any agency thereof
9 under which the Federal government or agency grants financial or
10 other assistance to the Department to further the purposes of this
11 Chapter. The Department may agree to and comply with any
12 reasonable conditions not inconsistent with territorial law which are
13 imposed on such grants. Such grant funds or other assistance may be
14 accepted from the Federal government or agency and expended
15 whether or not pursuant to a contract. The Department may further
16 enter into and carry out contracts with any private party to further
17 the purpose of this Chapter.

18 **§89008. Source of Funding.** Expenses of the GHF Board,
19 inclusive of its employees, shall be the Guam Heritage Facilities Fund
20 in accordance with appropriations by *I Liheslaturan Guåhan*."

21 **Section 3. A new Chapter 29, is added to Title 11 Guam Code**
22 **Annotated to read:**

23 **"CHAPTER 29**

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

25 §29001. Surcharge levied.

26 §29002. Definitions.

27 §29003. Monthly Payment of Surcharge; Penalties.

28 §29004. Records to be Kept.

1 §29005. Willful Failure to Collect or Pay Over Surcharge.

2 §29006. Exclusions and Exemptions.

3 §29007. Creation of *Guåhan* Heritage Facilities Fund.

4 §29008. Uses of *Guåhan* Heritage Facilities Fund.

5 §29009. No Expenditures Without Legislative Authorization.

6 §29010. Unused GHF Fund Appropriations.

7 **§29001. Surcharge Levied.** There is a *Guåhan* Heritage Facilities
8 Hotel Room Surcharge (hereinafter “surcharge”) which is hereby
9 levied and imposed against the sale of a room or rooms in a hotel,
10 lodging house, or similar facility located in Guam in the amount of
11 Three Dollars (\$3.00) per room for each day the room or rooms are
12 rented and remitted to the Commissioner on a monthly basis. If the
13 room or rooms are rented more than once within a twenty-four (24)
14 hour period, each time of occupancy shall be subject to the surcharge
15 for such accommodations. This surcharge applies and is collectible
16 when the sale is made, regardless of the time when the price is paid
17 or delivered. The surcharge shall be paid by the consumer to the
18 operator or owner of the hotel or rooming house facility.

19 **§29002. Definitions. As used in this Chapter.**

20 (a) *Commissioner* shall mean and include the person who
21 is performing the duties of Director of Revenue and Taxation
22 for the government of Guam and who is charged with the
23 administration and enforcement of the provisions of this Act.

24 (b) *Person* means any individual, firm, co-partnership,
25 cooperative, nonprofit membership corporation, joint venture,
26 association, corporation, estate, trust, business trust, trustee in
27 bankruptcy, receiver, auctioneer, syndicate, assignee, club,
28 society, or other group or combination acting as unit, whether

1 public or private, or quasi-public, and plural as well as the
2 singular number.

3 (c) *Sale* means the sale or charges for any room or rooms,
4 lodging, or accommodations furnished to transients by any
5 hotel, motel, inn, tourist camp, tourist cabin, camping grounds,
6 club, or any other place in which rooms, lodging, space, or
7 accommodations are furnished regularly to transients for
8 consideration.

9 (d) "*Surcharge*" and "*Guåhan Heritage Facilities Hotel Room*
10 *Surcharge*" means the amount of Three Dollars (\$3.00) added to
11 the total cost of any room sold for each day the room is sold.
12 The surcharge is applied after the total cost of the room is
13 determined, and shall not be included as part of the room rental
14 amount on which the Hotel Occupancy Tax is calculated.

15 **§29003. Payment of Surcharge; Penalties.** The surcharge levied
16 by §29001 of this chapter shall be paid to the Commissioner with the
17 monthly return which shall be filed on or before the 20th day of the
18 month following the month during which such taxable incidents
19 occurred. The general provisions of 11 GCA, Chapter 26, Article 1 are
20 applicable with respect to penalties for failure to file timely returns,
21 informal hearings, adjustments, review, stay of collection, suits for
22 refund, perfecting appeals, decisions, interest, perjury, examination
23 of books and witnesses, and inspection of tax returns and
24 information and other administrative matters referred to therein.

25 **§29004. Records to be Kept.** Every taxpayer shall keep, in the
26 English language, in Guam, and preserve for a period of five (5)
27 years, suitable records of room sales, and such other books, records of
28 accounts, registers of occupants, cash register tapes, and invoices as

1 may be required by the Commissioner, and all such books, records,
2 and invoices shall be open for examination at any time by the
3 Commissioner or his duly designated representative. Any person
4 violating this Section shall be guilty of a misdemeanor; and any
5 director, president, secretary, or treasurer of a corporation who
6 permits, aids, or abets the corporation to violate this Section shall
7 likewise be guilty of a misdemeanor. On conviction thereof by a court
8 of competent jurisdiction, any license issued for the operation of such
9 business shall be suspended upon such conviction for at least the
10 period of any imprisonment imposed therefore plus six (6) months,
11 and if no imprisonment is ordered, for a period of at least six (6)
12 months.

13 **§29005. Willful Failure to Collect or Pay Over Surcharge.** Any
14 person, required under this Chapter to collect, account for, and pay
15 over the surcharge imposed by this Chapter, who willfully fails to
16 collect or truthfully account for and pay over such surcharge shall be
17 guilty of a felony. Evidence of personal use of any such surcharge so
18 collected by the person charged with collection, either in his business
19 or otherwise, shall constitute prima facie evidence for willful failure
20 to truthfully account for and pay over such surcharge in violation of
21 this Chapter.

22 **§29006. Exclusions and Exemptions.**

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

26 (b) The surcharge imposed by this Chapter shall not
27 apply to any property, or consumption of such property, which
28 cannot be legally so taxed under the constitution or laws of the

1 United States, but only so long as, and only to the extent to
2 which, the government of Guam is without power to impose
3 such surcharge.

4 (c) The surcharge imposed by this Chapter shall not apply
5 to any transaction involving a sale to the government of Guam,
6 the government of the United States, the government of any
7 Foreign Sovereignty, or any agency or instrumentality of any of
8 the foregoing governments in regard to any activity or function
9 engaged in.

10 (d) The surcharge imposed by this Chapter shall not
11 apply to the proceeds of any transaction entered into by any of
12 the following persons: corporations, associations, or societies
13 organized and operated exclusively for religious, charitable,
14 scientific or educational purposes, hospitals, infirmaries and
15 sanitariums, business leagues, chambers of commerce, boards
16 of trade, civic leagues, public schools, and organizations
17 operated exclusively for the benefit of the community and for
18 the promotion of social welfare; provided, such persons have
19 applied for and obtained exempt status under the provisions of
20 11 GCA, Chapter 26.

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

25 **§29007. Creation of *Guåhan* Heritage Facilities Fund.** There is
26 hereby created, separate and apart from other funds of the
27 government of Guam, a fund known as the *Guåhan* Heritage Facilities
28 Fund (hereinafter "GHF Fund"). The GHF Fund shall not be

1 commingled with the General Fund or any other Fund and shall be
2 kept in a separate interest-earning bank account. All proceeds from
3 the Hotel Room Surcharge collected under this Chapter shall be
4 deposited in the GHF Fund and shall be expended exclusively for
5 purposes authorized in this chapter.

6 (a) **Monthly Reporting.** The Department of
7 Administration shall on a monthly basis provide a statement to
8 the *Guåhan* Heritage Facilities Board containing a record of all
9 transactions taking place in the previous month within the GHF
10 Fund account, including interest earned, and shall provide the
11 account's balance for the previous month.

12 (b) **Interest.** Notwithstanding the provisions of 5 GCA
13 §21103, §21107 and §21110 or any other provision of Guam law,
14 all interest earned on investments funded by the GHF Fund or
15 on GHF Fund accounts shall be retained by the GHF Fund.

16 **§29008. Uses of *Guåhan* Heritage Facilities Fund.** Monies from
17 the GHF Fund shall be expended exclusively for the funding, in part
18 or in full, capital improvement projects as enumerated in this chapter,
19 and projects as determined by the *Guåhan* Heritage Facilities Board in
20 Title 5 GCA Chapter 89, that will assist in the preservation, display
21 and presentation of Guam's culture, heritage and history. The funds
22 may also be used for the following purposes that have been deemed
23 by the *Guåhan* Heritage Facilities Board as necessary for the
24 enhancing or enabling of culture, heritage and history projects:

25 (a) The creation, improvement, landscaping or
26 beautification of means of access to such approved projects and
27 the development and restoration of adjacent areas of natural
28 beauty or historic, social or cultural significance relevant to

1 such approved projects;

2 (b) The construction of monuments, memorials, statues,
3 fountains, arches, and other appurtenances adjacent to and
4 relevant to approved projects;

5 (c) Accessory capital improvement projects reasonably
6 necessary to projects as approved by the *Guåhan* Heritage
7 Facilities Board;

8 (d) Capital improvement projects identified in the *Guåhan*
9 Heritage Facilities Master Plan developed by the *Guåhan*
10 Heritage Facilities Board.

11 **§29009. No Expenditures Without Legislative Authorization.**

12 All expenditures of the GHF Fund shall be made exclusively by
13 appropriation of the Legislature. The GHF Fund shall not be used for
14 any purposes other than those enumerated or reasonably inferred
15 herein or for purposes other than those relating to *Guåhan* heritage,
16 culture and history projects. The GHF Fund shall not be used as a
17 pledge of security or as collateral for government loans without prior
18 authorization by the Legislature.

19 **§29010. Unused GHF Fund Appropriations.** All de-
20 appropriated or unused funds appropriated from the GHF Fund
21 shall, in all circumstances, and whether in whole or in part, be
22 returned to the GHF Fund in accordance with the provisions of 5
23 GCA §22406. Any provisions of law that require that unused or de-
24 appropriated funds revert to the General Fund, do not apply to the
25 GHF Fund.”

26 **Section 4. A new Sub-item (y) is added to §87104 of Chapter 87,**
27 **Division 8, Title 5 Guam Code Annotated to read:**

28 “(y) to construct a Guam National Museum and assist in

1 furthering the preservation and presentation of Guam's culture,
2 heritage and history in accordance with the provisions of Chapter 89,
3 Division 8 of this Title."

4 **Section 5. Effective Date.** The provisions of this act shall take effect
5 on April 1, 2006.