

MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (SECOND) Regular Session

Bill No. 296 (e)

Introduced by:

Mark Forbes



AN ACT TO AMEND SECTION 8157 OF ARTICLE 1, CHAPTER 8, TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO PERMITTING LIMITED INVESTMENTS IN COMPANIES LACKING MULTI-YEAR TRACK RECORDS FOR PROFIT AND DIVIDENDS SO AS TO ALLOW THE DEFINED BENEFIT PLAN TO OWN STOCK IN MULTI-SIZED AND GROWTH COMPANIES IN ROUGH PROPORTION TO THE WEIGHT THEY COLLECTIVELY REPRESENT IN THE OVERALL MARKET.

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

2 **Section 1. Legislative Findings and Intent** *I Liheslaturan Guahan* finds that
3 legislative action is needed to improve the Government of Guam's ability to
4 meet its obligations to fund the Retirement Fund Defined Benefit Plan. In
5 particular, *I Liheslaturan Guahan* finds that statutory investment limitations
6 should not result in the unintended consequence of encouraging the Fund to
7 increase overall portfolio investment risk to achieve expected returns.
8 Currently, the requirements of Section 8157 of the Defined Benefit Plan statute
9 do not permit the Retirement Fund's investment in companies that do not

1 have a multi-year record of profits and dividends. *I Liheslaturan Guahan* finds
2 that these requirements may limit the Retirement Fund's ability to invest in
3 companies and strategies that could reasonably be expected to produce, on
4 average over time, additional returns net of fees, without increasing
5 investment risk. *I Liheslaturan Guahan* therefore intends to permit investments
6 of Defined Benefit Plan assets in domestic common and capital stock that a
7 prudent man acting in a like capacity and familiar with such matters would
8 use in the investment of a fund with like character and with like aims, and
9 further allowing investment of up to one-half of those investments in
10 companies that may not have a multi-year record of profits and dividends.
11 This amendment to Section 8157 would permit the Retirement Fund to
12 allocate domestic equity assets across the entire stock market, investing in
13 multi-sized and growth companies in rough proportion to the weight they
14 collectively represent in the overall market, provided that at least fifty percent
15 (50%) of the investments at cost under Section 8157 have a multi-year record
16 of profits and dividends.

17 **SECTION 2. Section 8157 of Article 1, Chapter 8, Title 4 of the Guam**
18 **Code Annotated is hereby amended to read as follows:**

19 **§8157. Same; Common Stock.**

20 (a) Common or capital stock of any institution or entity created or
21 existing under the laws of the United States or any state, district,
22 or territory thereof, or of the District of Columbia or of any foreign
23 country; provided that, with respect to at least fifty percent (50%)
24 of the investments at cost under this Section:

25 (i) The issuing institution, entity or a predecessor thereto, has
26 reported a profit in at least four (4) of the five (5) fiscal years next
27 preceding the date of investment or alternatively in at least seven
28 (7) of the ten (10) fiscal years next preceding the date of
29 investment; and

1 (ii) The institution, entity or such predecessor has paid cash
2 dividends on its common or capital stock in at least four (4) of the
3 five (5) years next preceding the date of investment, or
4 alternatively in at least seven (7) of the ten (10) fiscal years next
5 preceding the date of investment; and

6 (iii) Total cash dividends have not exceeded total earning in the
7 five (5) years next preceding the date of investment; and

8 (iv) On the date of investment, the issuer shall not be in default in
9 payment of principal or interest on any of its publicly held bonds
10 or other evidences of indebtedness and any contingent interest,
11 cumulative and noncumulative preferred dividends and
12 dividends on prior common or capital stock shall have been paid
13 in full.

14 No more than Five Percent (5%) of the Fund shall be invested in
15 the common or capital stock of any one issuing domestic company
16 described in this Section.

17 (b) Common or capital stock of any institution or entity created
18 or existing under the laws of nations other than the United States
19 provided that the Investment Agent determines that such an
20 investment would be employed by a prudent man acting in a like
21 capacity and familiar with such matters would use in the
22 investment of a fund with like character and with like aims. No
23 more than One and One-Half Percent (1-1/2%) of the Fund at cost
24 shall be invested in the common or capital stock of any one issuing
25 foreign company described in this Section.

26 (c) No investment shall be made in any one (1) issue described in
27 this Section in an amount in excess of ten percent (10%) of such
28 issues.

1 (d) The aggregate of all investments under this Section shall not
2 exceed fifty percent (50%) of the Fund at cost.

3 **SECTION 3. Effective Date.** The provisions contained within this
4 Chapter shall become effective upon enactment.

5 **SECTION 4. Severability.** If any provision of this Act or its
6 application to any person or circumstances is held invalid, the invalidity shall
7 not affect other provisions or applications of this Act which can be given effect
8 without the invalid provision or application, and to this end the provisions of
9 this Act are severable.

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