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MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

Bill No. 244 (LS)

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AN ACT TO ADD A NEW CHAPTER 44 TO TITLE 10 GUAM CODE ANNOTATED RELATIVE TO THE "RECYCLING ACT OF 2009" AND TO ESTABLISH A RECYCLING DEPOSIT FUND SEPARATE AND APART FROM ALL OTHER FUNDS WITHIN THE GOVERNMENT OF GUAM; TO ADD NEW §76221 TO CHAPTER 76 ARTICLE 2 OF TITLE 11 GUAM CODE ANNOTATED, RELATIVE TO ENDORSEMENT OF RECYCLING REDEMPTION CENTERS; TO ADD NEW §15104 TO CHAPTER 15, DIVISION 2 OF CHAPTER 11 GUAM CODE ANNOTATED RELATIVE TO REMITTANCE OF RECYCLING DEPOSIT FEES; TO AMEND SUBITEM (8) OF § 26102 TITLE 11 GUAM CODE ANNOTATED RELATIVE TO FORMS; AND TO REQUIRE THE CONFIRMATION OF THE VOLUNTARY COOPERATION OF MILITARY COMMANDS WITH A GUAM BEVERAGE CONTAINER RECYCLING PROGRAM PRIOR TO ASSESSMENT AND COLLECTION OF ANY BEVERAGE CONTAINER DEPOSIT FEES.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahån*

3 finds that the residents of Guam have become members of a disposable

4 society, and our people generate an enormous quantity of solid waste,

5 up to three pounds per person per day, or nearly 100,000 tons of refuse

1 per year. As our population and number of visitors increase, and the
2 military buildup continues, our volume of solid waste rises in
3 proportion.

4 *I Liheslaturan* further finds that any environmentally and
5 economically sound solid waste management system must incorporate a
6 number of different features, and recycling is included among them.
7 Recycling is a means of further protecting our environment and
8 reducing the volume of refuse that will either take up valuable space in
9 our landfills or be eliminated through other means.

10 *I Liheslaturan* further finds that the implementation of laws that
11 impose fees or deposits on recyclable items will promote recycling and
12 give people the financial incentive to get into a recycling habit. Deposits
13 on recyclable items will also assist in preserving our environment, make
14 our island home more attractive and greatly reduce litter, which some
15 have estimated is 50% beverage containers.

16 A common recycling deposit program implemented in a number
17 of communities across the nation is commonly referred to as a “bottle
18 bill.” The first bottle bill became law in the state of Vermont in 1953,
19 requiring that beer be sold only in refillable bottles. Current bottle bills
20 impose fees or deposits on beverage containers of all kinds, even those

1 that are not bottles, and encourage the use of containers that are
2 refillable or otherwise recyclable.

3 *I Liheslaturan* further finds that at present, 11 states have
4 implemented bottle bills requiring refundable deposits on certain
5 beverage containers. They are: California, Connecticut, Delaware,
6 Hawaii, Iowa, Maine, Massachusetts, Michigan, New York, Oregon and
7 Vermont. Seven additional states are considering bottle bills at this time:
8 Arkansas, Illinois, Maryland, North Carolina, South Carolina, Tennessee
9 and West Virginia. More than half of the population of the United States
10 lives in an area where container deposit programs are in place.

11 Bottle bills have proven to be effective in some areas within
12 Micronesia, assisting in providing a cleaner, healthier environment:
13 Both the Republic of Kiribati and Kosrae in the Federated States of
14 Micronesia have enacted container recycling programs, and the
15 Republic of Palau has considered implementing a bottle bill program.

16 Despite the presence of voluntary recycling programs, the states
17 that do not have bottle bills recycle less than 40% of their beverage
18 containers, as opposed to the 80% recycling rate for bottle bill states. The
19 11 bottle bill states recycle more beverage containers than the other 39
20 states combined.

1 *I Liheslaturan* further finds that previous efforts to implement a
2 bottle bill recycling program have failed primarily because of the refusal
3 of military commands to be an active participant. A Judge Advocate
4 General officer once replied to a request concerning a bottle bill program
5 by stating that the military cannot be subject to “monetary schemes”
6 without “a waiver of sovereign immunity.” This refusal flies in the face
7 of the military’s standard practice across the 50 states in which they
8 voluntarily participate in local bottle bill programs.

9 This strong indication of the lack of intent of the military
10 commands to cooperate with the local community has led to delays in
11 the local community putting a beverage container deposit recycling
12 program into place because of the high number of beverages sold at
13 commissaries and exchanges that end up in the local community.

14 Recent conversations concerning recycling with Assistant Navy
15 Secretary B.J. Penn and Major General David Bice, Executive Director of
16 the Joint Guam Program Office have led to a more reasonable position
17 between the military and civilian communities, with Secretary Penn and
18 General Bice agreeing that where recycling efforts are concerned, the
19 Federal government should treat Guam no differently than it treats the
20 50 states.

1 Rear Admiral William D. French, Commander Naval Forces
2 Marianas, and Brigadier General Douglas Owens, Commander 36th
3 Wing, have indicated through their JAG offices that their previous
4 position has changed and they are now very motivated to work with the
5 local community to implement and voluntarily participate in a bottle bill
6 program.

7 In addition, *I Liheslatura* finds that the most recent defense
8 authorization act is now requiring commissaries and exchanges to begin
9 obtaining certain beverages from Guam wholesale distributors, an act
10 that adds an additional avenue to utilize to impose and collect deposits.

11 It is therefore the intent of *I Liheslaturan* to create the “Recycling
12 Act of 2009,” under the direction of the Guam Environmental Protection
13 Agency, to begin the process of implementing a deposit bottle bill in
14 Guam with the goal of full implementation by October 1, 2009.

15 It is the additional intent of *I Liheslaturan* to provide the caveat that
16 the “Recycling Act of 2009” shall not be implemented unless and until
17 the military commissaries and exchanges in Guam also voluntarily
18 participate in the program in order to ensure that all retail facilities in
19 Guam, in both the civilian and military communities, collect deposits on
20 beverage containers under the guidelines of the Act.

1 §44112. Rules to be Adopted.

2 §44113. Certain Beverage Wholesalers to Collect and Remit
3 Deposits.

4 **§44101. Short Title.** This Act shall be known as the *Recycling*
5 *Act of 2009.*

6 **§44102. Statement of Policy.** Communities throughout the
7 world including many in the mainland United States and even in
8 our island neighbors of Kiribati and Kosrae have found that
9 recycling has been effective in reducing their enormous volume of
10 solid waste and reducing threats to their environment caused by
11 pollution.

12 In Guam, our environment is precious, vulnerable and
13 irreplaceable. No individual, public entity or private corporation
14 has the right to pollute our air, water, or soil. The people of Guam
15 have an ongoing responsibility to conserve, preserve, and enhance
16 our natural resources and island beauty, and to guarantee their
17 continued existence and enjoyment now and for future
18 generations.

19 The rapidly rising volume of waste deposited by society has
20 already created a biological nightmare at our present dump, and
21 will likely threaten the capacity of future landfills unless action is

1 taken. The nature of waste disposal today means that unknown
2 quantities of potentially toxic and hazardous materials are being
3 improperly disposed of by dumping and burial. These materials
4 pose a constant threat to our precious groundwater supply. In
5 addition, the nature of the waste and disposal methods utilized
6 allow the waste to remain basically inert for decades, if not
7 centuries, without decomposition.

8 Some of the waste filling our dump today and bound for our
9 landfills tomorrow may represent a potential resource, but
10 without proper management these wastes will continue to be
11 hazards to the environment and to life itself.

12 The reduction of solid waste at its source and the recycling
13 of reusable waste materials will reduce the flow of waste to dumps
14 and landfills and increase the supply of reusable materials for use
15 and reuse by the public.

16 The United States Government, our Armed Forces,
17 numerous businesses and many concerned citizens in Guam have
18 already adopted environmentally friendly policies and habits to
19 encourage the purchase, use and re-use of biodegradable,
20 recyclable and recycled products. Many are presently recycling
21 those products for which recycling avenues are available in Guam.

1 It is therefore the policy of this department to establish a
2 mechanism that will provide incentives to aid the entire recycling
3 process as it relates to those products for which additional use
4 may be found, either in Guam or off-island, and to set achievable
5 goals for waste stream reduction in the coming years.

6 **§44103. Definitions.** As used in this Chapter:

7 (a) *Administrator* means the Administrator of the Guam
8 Environmental Protection Agency.

9 (b) *Beverage* means all beverages for human
10 consumption. For purposes of this Chapter the term *beverage*
11 shall not include items sold in a non-liquid, or frozen form
12 or liquid intended for medicinal purposes only.

13 (c) *Beverage container* means the individual, separate,
14 sealed glass, high density polyethylene, metal, plastic bottle,
15 can, jar, or carton, with a total volume of less than or equal
16 to sixty-four fluid ounces, used for containing, at the time of
17 sale to the consumer, a beverage intended for use or
18 consumption. Beverage containers may be for single use or
19 for multiple use.

20 (d) *Board* means the Board of Directors of the Guam
21 Environmental Protection Agency.

1 (e) *Consumer* means every person who purchases a
2 recyclable product for use or consumption.

3 (f) *Dealer* means every person who engages in the sale
4 of recyclable products to a consumer for use or consumption
5 off the premises.

6 (g) *Department* means the Guam Environmental
7 Protection Agency.

8 (h) *Deposit fee* means the amount added to the listed
9 price of a product that the consumer must pay to the dealer
10 or distributor as a deposit for each individual beverage
11 container that has been identified by the department as
12 recyclable and requiring a deposit. An amount equivalent to
13 at least 75% of the deposit fee shall be returned to the
14 redeemer when the redeemer sells the container to a
15 redemption center. No taxes shall be assessed or collected on
16 deposit fees accepted by dealers for products approved in
17 this Chapter 44 for recycling purposes.

18 (i) *Distributor* means every person who engages in the
19 sale or distribution of recyclable products to a dealer in
20 Guam, including any manufacturer who engages in such
21 sales.

1 (j) *Import* means to buy, bring, or accept delivery of
2 deposit beverage containers from an address, supplier, or
3 any entity outside of Guam.

4 (k) *Importer* means any person who buys, brings, or
5 accepts delivery of deposit beverage containers from outside
6 of Guam for sale or use within Guam.

7 (l) *Manufacturer* means every person producing
8 recyclable products including those who package or fill
9 recyclable products for sale to distributors or dealers.

10 (m) *On-premises consumption* means to consume
11 deposit beverages by a consumer immediately and within
12 the area under control of the establishment, including bars,
13 restaurants, passenger ships, and airplanes.

14 (n) *Person* means an individual, corporation, company,
15 association, partnership, federal agency, or agency of the
16 government of Guam.

17 (o) *Recycling facility* means all contiguous land and
18 structures and other appurtenances, and improvements on
19 the land used for the collection, separation, recovery, and
20 sale or reuse of resources that would otherwise be disposed
21 of as municipal solid waste, and is an integral part of a

1 manufacturing process aimed at producing a marketable
2 product made of post-consumer material whether
3 manufactured locally or produced off-island.

4 (p) *Redeemer* means a person, other than a dealer or
5 distributor, who demands at least 75% of the refund value in
6 exchange for an empty deposit beverage container.

7 (q) *Redemption center* means an operation that accepts
8 empty deposit beverage containers from redeemers and
9 provides at least 75% of the refund value for empty deposit
10 beverage containers intended to be recycled and ensures that
11 the empty deposit beverage containers are properly
12 recycled.

13 (r) *Refillable beverage container* means any deposit
14 beverage container, which ordinarily would be returned to
15 the manufacturer to be refilled and resold.

16 (s) *Refund amount* means the amount of the deposit fee
17 refunded to a redeemer, which shall be at least 75% of the
18 total amount of deposit fee paid per container.

19 (t) *Reverse vending machine* means a mechanical device,
20 which accepts one or more types of empty deposit beverage

1 containers and issues coins or a redeemable credit slip with a
2 value not less than the container's refund value.

3 **§44104. Goals for Waste Stream Reduction.**

4 The goal of this Act is to reduce the amount of material in
5 our waste stream by a minimum of five percent (5%) each year
6 from 2010 to 2016, achieving a thirty-five percent (35%) reduction
7 by the year 2016 through the practice of waste volume reduction at
8 the source and through recycling. Should a facility or facilities that
9 employ combustion of solid waste and refuse-derived fuel with
10 energy recovery become operational in Guam prior to 2016 as a
11 component of an approved comprehensive plan, then waste
12 reduction goals shall increase by an additional five percent (5%)
13 each year, beginning with the first full year that the waste to
14 energy plant is in operation.

15 **§44105. Recycling Deposit Fee and Payout.**

16 (a) A deposit fee of not less than five cents (5¢) shall be
17 levied upon and paid by the consumer on each beverage
18 container described in §44103 (c) and sold in Guam by a
19 dealer for consumption off the premises, subject to the
20 following:

1 (1) Types of containers upon which deposit fees
2 shall be levied must be first approved by the Board for
3 placement upon a list of containers identified for
4 recycling;

5 (2) Containers may not be placed upon list of
6 containers identified for recycling unless a process to
7 recycle, reuse, or physically remove containers from
8 Guam has been established or will be established
9 concurrent with placement upon said list.

10 (b) Except as contained in § 44113 of this chapter,
11 retailers selling beverages in containers described in
12 §44105(a) of this chapter shall collect such deposit fee for
13 each container and remit collections as provided in §44107 of
14 this chapter.

15 (c) Collection of the deposit fee imposed upon all
16 beverage containers shall begin effective July 1, 2009.

17 (d) Upon return of an empty beverage container upon
18 which a deposit fee has been paid to a Redemption Center
19 and acceptance of the empty beverage container by the
20 redemption center, at least seventy-five percent (75%) of the
21 amount of the refund value shall be returned to the

1 redeemer. Refunds of deposits shall begin effective October
2 1, 2009.

3 (1) The provisions of subsection (d) of this
4 section apply only to beverage containers approved by
5 rules adopted by the Board.

6 (e) A person operating a redemption center may
7 compact empty metal beverage containers with the approval
8 of the recycling facility required to accept the containers.

9 (f) The Board upon recommendation of the director
10 shall from time to time examine and may elect to increase
11 either the deposit fee or the percentage of the refund value
12 returned to the redeemer or both as provided in §44109 of
13 this Act.

14 **§44106. Acceptance of Containers.** Except as may be
15 provided elsewhere in this act, a redemption center shall not
16 refuse to accept from a consumer any empty beverage container
17 described in §44103 (b), or refuse to pay to the consumer the
18 refund value of a beverage container as provided in §44104.

19 **§44107. Redemption Centers.**

20 (a) To facilitate the return of empty beverage
21 containers, any person may establish a redemption center,

1 subject to the approval of the department and appropriate
2 business licensing, at which consumers may return empty
3 beverage containers and receive payment of the refund
4 value of such beverage containers.

5 (b) An application for approval of a Redemption
6 Center shall be filed with the department. The application
7 shall state the name and address of the person responsible
8 for the establishment and operation of the Redemption
9 Center, the kind of beverage containers that will be accepted
10 at the Redemption Center, and the names of the distributor
11 or distributors that will be handling and exporting their
12 recyclables, if different from the name of the operator of the
13 Redemption Center. The application shall contain such other
14 information as the director may reasonably require.

15 (c) The department shall approve a Redemption Center
16 if it finds that the Redemption Center will provide a
17 convenient service to consumers for the return of empty
18 beverage containers. The order of the department approving
19 a Redemption Center shall state the kind of empty beverage
20 containers which the Redemption Center must accept. The
21 order may contain such other provisions to insure that the

1 Redemption Center will provide a convenient service to the
2 public as the director may determine. Applicants shall be
3 appropriately licensed by the Department of Revenue and
4 Taxation.

5 (d) The department may review the approval of any
6 Redemption Center at any time. After written notice to the
7 person responsible for the establishment and operation of
8 the Redemption Center, the department may, after hearing,
9 withdraw approval of a Redemption Center if the
10 department finds there has not been compliance with the
11 department's order approving the Redemption Center, or if
12 the Redemption Center no longer provides a convenient
13 service to the public.

14 (e) All approved Redemption Centers shall meet
15 applicable health standards.

16 (f) The department shall prepare printed material to be
17 posted at dealer locations in conspicuous areas identifying
18 the location of approved Redemption Centers and specifying
19 what type of recyclable materials may be deposited at each
20 center.

21 **§44108. Remitting Collected Deposit Fees.** Dealers shall

1 remit all deposits collected each month in the same manner and on
2 the same form utilized to remit Gross Receipts Taxes, payable to
3 the Treasurer of Guam, and subject to the requirements of the
4 department and of the Department of Revenue & Taxation.

5 **§44109. Recycling Deposit Fund.**

6 (a) There is within the Government of Guam and
7 under the control of the department a Recycling Deposit
8 Fund, which is hereby created, into which the proceeds from
9 recycling deposit fees as provided in §44108 of Chapter 44 of
10 Title 10 Guam Code Annotated are deposited.

11 (b) The Recycling Deposit Fund shall be administered
12 separate and apart from any other fund of the Government
13 and shall not be subject to any transfer authority of the
14 Governor or appropriation by the Legislature except as
15 provided in this Chapter 44.

16 (c) The funds remitted into the Recycling Deposit Fund
17 shall be used only for the following purposes:

18 (1) reimbursements to Redemption Centers of
19 amounts refunded to redeemers;

20 (2) expenses related to administer the provisions
21 of this Chapter 44.

1 **§44110. Claims for Reimbursement.** Claims for
2 reimbursements to Redemption Centers of refund amount shall be
3 made in the manner and on the forms specified by the
4 department.

5 **§44111. Reverse Vending Machine Requirements.** Reverse
6 vending machines may be used by redemption centers to satisfy
7 the requirements of Chapter 44, provided that the reverse vending
8 machine shall accept one or more types of empty deposit beverage
9 containers and shall pay out appropriate refunds as coins or via a
10 redeemable credit slip with a value not less than the refund value
11 of the container or containers being redeemed. Reverse vending
12 machines shall be routinely serviced to ensure proper operation
13 and continuous acceptance of containers and payment of refunds.

14 **§44112. Rules to be Adopted.**

15 (a) The Board shall convene an advisory committee to
16 assist in the development of all rules needed to implement
17 this Chapter 44. Members of the committee shall be selected
18 to assess the impact on consumers, recyclers, the military,
19 and the beverage industry. Members of the committee shall
20 be appointed by the administrator and shall serve at the
21 administrator's pleasure. A simple majority of the committee

1 members shall constitute a quorum for the purposes of
2 recommending rules and providing input to the Board.

3 (b) The Board may adopt rules pursuant to this chapter
4 44 as may be necessary to carry out its provisions.
5 Amendments to such Rules may be considered and adopted
6 from time to time to replace or supplement such rules as
7 may be in existence, to include:

8 (1) identifying items to be recycled in addition
9 to beverage containers;

10 (2) establishing or revising appropriate
11 deposit fees and refund values;

12 (3) regulating redemption centers and the
13 redemption process for recyclable items; and

14 (4) establishing and revising appropriate
15 forms and procedures to reimburse Redemption
16 Centers applying for refund amounts.

17 **§ 44113. Certain Beverage Wholesalers to Collect and**
18 **Remit Deposits.**

19 Wholesalers licensed in Guam that meet the conditions
20 described in items 1 through 3 below shall, on a monthly basis,
21 remit an amount for deposits for such beverage containers as

1 described pursuant to § 44112 of this chapter equal to the amount
2 of the deposit as described in § 44105 (a) of this chapter multiplied
3 by the number of containers that have been purchased on which
4 the deposit is applied, and for which payment has been received
5 by the wholesaler in the previous calendar month, in the same
6 manner and on the same form utilized to remit Gross Receipts
7 Taxes, payable to the Treasurer of Guam, and subject to the
8 requirements of this Chapter 44 and the Department of Revenue &
9 Taxation.

10 **Conditions:**

11 1) The business wholesales beverages that may include
12 any and all alcoholic and non-alcoholic beverages, juices,
13 flavored drinks, milk, coffee, tea and water; and

14 2) The beverages are distributed in containers that
15 have been identified by the Guam Environmental Protection
16 Agency as that which can be recycled pursuant to § 44112 of
17 this chapter; and

18 3) The business is a distributor in Guam of any such
19 beverage product for sale to customers by retailers located
20 on both federal and private property to both military and
21 local retailers.”

1 **Section 3. A new §76221 is added to Chapter 76 Article 2 of Title**
2 **11 Guam Code Annotated to read:**

3 **“§76221. Recycling Redemption Center Endorsements.** An
4 endorsement for a Recycling Redemption Center must be obtained
5 by any person who engages in the business of receiving recyclable
6 products and remitting a portion of deposit fees to redeemers.
7 Such required endorsement is approval by the Guam
8 Environmental Protection Agency.”

9 **Section 4. A new §15104 is added to Chapter 15, Division 2, of**
10 **Title 11 Guam Code Annotated to read:**

11 **“§15104. Remittance of Recycling Deposit Fees.**

12 (a) Dealers who engage in the sale of recyclable
13 products as defined in §44103 (f) of Title 10 Guam Code
14 Annotated Chapter 44 shall remit all Recycling Deposit Fees
15 collected each month no later than the twentieth (20th) day
16 of the following month in the same manner and on the same
17 form utilized to remit Gross Receipts Taxes on a monthly
18 basis. Recycling deposit fees collected for any calendar
19 month shall be deposited at authorized financial institutions
20 or at designated offices of the government of Guam.

21 (b) All Recycling Deposit Fees received by the

1 department shall be deposited into the Recycling Deposit
2 Fund within 30 days of receipt.”

3 **Section 5. Subitem (8) of § 26102 Title 11 Guam Code Annotated**
4 **is amended to read:**

5 “(8) Forms. He shall prescribe by regulation the forms
6 required for the administration and collection of all taxes
7 levied by this Chapter, and for collection of beverage
8 container deposit fees as required in Title 10 Guam Code
9 Annotated Chapter 44.”

10 **Section 6. Effective Date.** The provisions of this Act, except where
11 otherwise noted and subject to the conditions included in Section 8 of
12 this Act, shall take effect on October 1, 2009.

13 **Section 7. Military Cooperation.** Deposit fees shall not be
14 assessed or collected on beverage containers, as defined in this act, until
15 the Government of Guam and the U.S. Navy and U.S. Air Force
16 commands in Guam shall have established a voluntary agreement in
17 writing that provides for such deposit fees to be assessed and collected
18 throughout Guam, including all locations both on and off federal
19 property, in the manner described in such voluntary agreement.
20 Assessment and collection of deposit fees on beverage containers shall

1 continue only for the period of time that such voluntary agreement is in
2 effect.

3 **Section 8. Severability.** *If* any provision of this Law or its
4 application to any person or circumstance is found to be invalid or
5 contrary to law, such invalidity shall not affect other provisions or
6 applications of this Law which can be given effect without the invalid
7 provisions or application, and to this end the provisions of this Law are
8 severable.

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