

MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) REGULAR SESSION

Bill No. 383 (ES)
Introduced:

Committee on Calendar
By request of *I Maga'lahaen Lahaen*
Guåhan in accordance with the
Organic Act of Guam

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EFM

AN ACT TO AMEND 5 GCA § 1512.1, RELATIVE TO THE
AUTHORIZATION TO ISSUE BONDS AND BOND ANTICIPATION
NOTES FOR DEFICIT FINANCING.

Section 1. Section 1512.1 of Title 5, Guam Code Annotated, is hereby amended to read:

§ 1512.1. Authorization to Issue Bonds and Bond Anticipation Notes for Deficit Financing.

(a) **Authorization of Issuance of Bonds and Notes.** *I Maga'lahaen Guahan* is authorized to issue one or more series of bonds of the Government of Guam as provided in this Section, in an aggregate principal amount not to exceed the amount necessary to provide Two Hundred Forty-six Million Eight Hundred Twenty Thousand Eight Hundred Fifty-six Dollars (\$246,820,856) for the payment of authorized expenses listed in Subsection (i) hereof, to fund necessary reserves and to pay expenses incurred in connection with the issuance of such bonds not already included in an existing appropriation for or the regular budget of any government agency or instrumentality or public corporation providing any service in connection with the issuance of such bonds; *provided, however,* that bonds may not be issued in an amount that would cause a violation of the debt limitation provisions of 48 USC 1423a (§ 11 of the Organic Act of Guam).

The Governor, *I Maga'lahaen Guahan*, of Guam is also authorized to issue one or more series of bond anticipation notes of the government of Guam as provided in this Section, in an aggregate principal amount not to exceed the amount

necessary to provide twenty million dollars (\$20,000,000) for the payment of costs of the new Layon Landfill.

(b) **Terms and Conditions Determined by Certificate or Indenture.** The terms and conditions of the bonds *shall* be as determined by *I Maga'lahen Guåhan*, ~~and approved by *I Liheslaturan Guåhan*~~, by the execution of a certificate or indenture authorizing the issuance of the bonds prior to the issuance of the bonds; provided, however, that such terms and conditions *shall* be consistent with this Section **as approved by *I Liheslaturan Guåhan***, and that the bonds *shall* mature not later than the date thirty (30) years after their date of issuance and *shall* bear interest at such rates and be sold for such price or prices as *shall* result in a yield to the bondholders that does *not exceed* eight percent (8.0%) per annum.

The terms and conditions of the notes shall be as determined by *I Maga'lahen Guåhan* by the execution of a certificate or indenture authorizing the issuance of the notes prior to the issuance of the notes; provided, however, that such terms and conditions shall be consistent with this Section as approved by *I Liheslaturan Guåhan*, and that the notes shall mature not later than the date five (5) years after their date of issuance and shall bear interest at such rates and be sold for such price or prices as shall result in a yield to the bondholders that does not exceed eight percent (8.0%) per annum.

(c) **Valid and Binding.** The bonds **and notes** authorized by this Section *shall* constitute the valid and binding general obligations of the government of Guam. **Any notes authorized by this Section may also be payable from and secured by a pledge of the proceeds of the bonds authorized by this Section.** The government of Guam

pledges its full faith and credit for the punctual payment of both principal of and interest on the bonds **and the notes** and covenants that there *shall* be collected annually in the same manner and at the same time as government revenue for other purposes is collected, such sum as is required to pay the principal of and interest on the bonds **and the notes**. There are hereby appropriated from the General Fund such sums as may be necessary in each year to equal the amount of money necessary to pay the principal and interest on such bonds **and the notes**. The certificate *or* indenture **pursuant to which the bonds are issued** shall require interest only payments for Fiscal Years 2009 and 2010 and shall not require bond principal payments until after such Fiscal Years. All officers charged by law with any duty in the collection of the revenues of the government from which debt service on the bonds **and the notes** will be payable *shall* do every lawful thing necessary to collect such sum. The validity of any such bonds **and notes** *shall* not be affected by the validity *or* regularity of any proceedings for the payment of the General Fund expenses paid *or* to be paid with the proceeds of the bonds **or the notes**.

(d) Additional Bonds. This Section does not prohibit the government of Guam from issuing, after appropriate enabling legislation, other obligations of the government secured by the general obligation of the government on a parity with *or* subordinate to the bonds **and the notes** authorized by this Section on such terms as are created by the indenture *or* certificate pursuant to which the bonds **and the notes** are issued.

(e) Waiver of Immunity; Submission to Jurisdiction. Notwithstanding any substantive *or* procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the government of Guam waives immunity from any suit or action in contract on the bonds **and the notes**, but does not waive immunity as to the personal liability of elected

officials and employees of the government of Guam. Any such suit *or* action, **if brought in federal court**, shall be brought in the District Court of Guam.

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

(g) Form of Bonds and Notes; Covenants; Appointment of Fiduciaries. The technical form and language of the bonds **and the notes**, including provisions for execution, exchange, transfer, registration, paying agency, lost *or* mutilated bonds **or notes**, negotiability, cancellation and other terms *or* conditions not inconsistent with this Section, ~~including covenants relating to the collection of Revenues,~~ *shall* be as specified in the certificate *or* indenture executed by *I Maga'lahaen Guåhan* authorizing issuance of the bonds **or the notes**. Said certificate *or* indenture *shall* appoint one *or* more trustees, co-trustees *or* other fiduciaries authorized to receive and hold in trust the proceeds of the bonds **or notes** ~~the Revenues~~ and other moneys relating thereto, to protect the rights of bondholders **or noteholders** and to perform such other duties as may be specified in the indenture. *I Maga'lahaen Guåhan* is also authorized to execute any appropriate agreements, certificates *or* other instruments relating to the bonds **or the notes** and the sale of bonds **or notes**.

(h) Authorization for Credit Enhancement. *I Maga'lahaen Guåhan* is authorized to enter into such contracts *or* agreements with such banks, insurance

companies or other financial institutions as he determines are necessary *or* desirable to improve the security and marketability of the bonds **or the notes** issued under this Section. Such contracts *or* agreements may obligate the government to reimburse, with interest, any such banks, insurance companies *or* other financial institutions for advances they make to pay principal of *or* interest on the bonds **or the notes** and to indemnify any such banks, insurance companies *or* other financial institutions for costs and expenses incurred in connection with any such advance. Any such reimbursement obligation and any other obligations of the government under such contracts *or* agreements *shall* be general obligations of the government of Guam. Any such reimbursement obligation and any other obligations of the government under such contracts *or* agreements *shall* be treated, under §11 of the Organic Act, as creating an obligation issued to refund the bonds **or the notes**.

(i) Use of Proceeds from the Sale of the Bonds. The proceeds from the sale of the bonds shall be used and are hereby appropriated to (i) **retire any outstanding notes issued under this Section,** (ii) pay the General Fund expenses described below in this Subsection, **to the extent such expenses have not already been paid using proceeds of notes issued under this Section,** (iii) establish necessary reserves, (iiii) pay expenses relating to the authorization, sale and issuance of the bonds, including, without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, financial advisory and accounting fees and charges, fees paid to banks or other financial institutions providing credit enhancement, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale and delivery of the bonds, and (iv) fund capitalized interest on the bonds for a period ending not later than thirty (30) months after their issuance. **Proceeds from the sale of the bonds that are used to retire notes shall be deemed to have been used for the purposes for which the proceeds of the notes were used.** The General Fund expenses authorized to be paid with the proceeds of the bonds are as follows and shall be paid in the following order of priority:

(1) Cost of Living Adjustment (COLA) to discharge finally and permanently the obligations of the government incurred pursuant to the settlement agreement entered into between the Government of Guam and the COLA Class as ordered by the Judgment in Rios v. Camacho, Superior Court Case No. SP0206-93: \$92,000,000;

(2) 2006 and prior year individual and corporate tax refunds including interest, if any, thereon and individual tax refunds shall be paid first: \$112,000,000;

(3) Health Care Capital Improvement Projects at the Guam Memorial Hospital: \$11,000,000;

(4) amounts past due as contributions to the Government of Guam Retirement Fund, including interest, if any, thereon, on behalf of the following:

(a) Guam Memorial Hospital: \$14,953,216

(b) Guam Public School System: \$16,867,640.

Total **\$246,820,856**

Payments made pursuant to this Subsection *shall* apply to any other appropriations for the same items and *shall not* constitute double appropriations.

The proceeds of the bonds may also be used, as a first priority, to pay up to \$20,000,000 of the costs of the new Layon Landfill or to retire notes issued pursuant to this Section to pay such costs, pending reimbursement of such costs with the proceeds of revenue bonds or other obligations issued to pay costs of the Layon Landfill. To the extent proceeds of the bonds are used to pay such costs or to retire notes issued to pay such costs, the proceeds of the first revenue bonds or other obligations issued by the government to finance such costs shall be used so to reimburse the General Fund, whereupon such reimbursement amounts shall be used to pay the General Fund expenses listed in subparagraphs (1) through (4) of this Subsection in amounts not exceeding the amounts therein provided.

(j) Use of Proceeds from the Sale of the Notes. The proceeds from the sale of the notes shall be used and are hereby appropriated to (i) pay up to \$20,000,000 of

the costs of the Layon Landfill, (ii) pay expenses relating to the authorization, sale and issuance of the notes, including, without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, financial advisory and accounting fees and charges, fees paid to banks or other financial institutions providing credit enhancement, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale and delivery of the notes, and (iii) fund capitalized interest on the notes for a period ending not later than thirty (30) months after their issuance.

(jk) Permitted Investments. The ~~bond~~ proceeds of the bonds and the notes and any revenues generated by said bonds and notes shall be invested only in those investments permitted by the certificate *or* indenture pursuant to which such bonds or notes are issued.

(kl) Approval by Guam Economic Development and Commerce Authority. No bonds or notes authorized by this Section shall be sold until the Board of Directors of GEDCA has approved the sale by resolution.

(lm) Approval of Voters Not Required. The issuance of bonds or notes pursuant to this Section shall not be subject to the approval of the voters of Guam.

(mn) Approval of Bonds. *I Liheslaturan Guåhan*, pursuant to §50103(k), Title 12 Guam Code Annotated, hereby approves the issuance and sale by the government of Guam of bonds for the purposes and in the principal amounts mandated by §1512.1, Title 5 Guam Code Annotated; provided that the bonds are issued and sold subject to the terms, conditions, requirements and limitations mandated therein.

(no) Approval of Notes. *I Liheslaturan Guåhan*, pursuant to §50103(k), Title 12 Guam Code Annotated, hereby approves the issuance and sale by the government of Guam of bond anticipation notes for the purposes and in the principal amounts mandated by §1512.1, Title 5 Guam Code Annotated; provided that the notes are issued and sold subject to the terms, conditions, requirements and limitations mandated therein.

(p) Approval of Form of Certificate of Issuance. The bonds shall be issued pursuant to ~~an~~ certificate of issuance in substantially the form of the certificate of issuance presented to this Legislature, as evidenced by the attached “Exhibit A” made part of this Act, subject to such modifications to and changes in such certificate of issuance as *I Maga’lahen Guåhan* may approve consistent with §1512.1, Title 5 Guam Code Annotated and subject to the terms, conditions, requirements and limitations therein.