

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (SECOND) Regular Session

Bill No. 305-31 (CS)

Introduced by:

V.C. Pangelinan

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AN ACT TO ADD A NEW SECTION 1512.3 TO ARTICLE 5 OF CHAPTER 1 OF TITLE 5, GUAM CODE ANNOTATED RELATIVE TO AUTHORIZING THE GOVERNMENT OF GUAM TO ISSUE GENERAL OBLIGATION BONDS FOR THE PURPOSE OF PAYING INCOME TAX REFUNDS, OBLIGATIONS TO THE GOVERNMENT OF GUAM RETIREMENT FUND PURSUANT TO PUBLIC LAW 28-38 AS AMENDED, AND TO ESTABLISH A WORKING CAPITAL FUND.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new §1512.3 is *added* to Article 5 of Chapter 1, Title 5, Guam Code Annotated, to read as follows:

“§1512.3. Authorization to Issue Bonds for Deficit Financing.

(a) **Authorization of Issuance of Bonds.** *I Maga’lahen Guåhan* 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 One Hundred Eighty Million Dollars (\$180,000,000) for the payment of authorized expenses listed in Subsection (j) 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).

(b) **Terms and Conditions Determined by Certificate or Indenture.** The terms and conditions of the bonds *shall* be as determined by *I Maga'lahaen Guåhan*, and approved by *I Liheslaturan Guahan*, 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, 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%) per annum. The indenture *shall* be subject to the approval of *I Liheslaturan Guåhan*.

(c) **Valid and Binding.** The bonds authorized by this Section *shall* constitute the valid and binding general obligations of the government of Guam. The government of Guam pledges its full faith and credit for the punctual payment of both principal of and interest on the bonds 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. 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. The certificate *or* indenture *shall* require interest only payments for Fiscal Year 2012 and *shall not* require bond principal payments until after such Fiscal Year. All officers charged by law with any duty in the collection of the revenues of the government

from which debt service on the bonds will be payable *shall* do every lawful thing necessary to collect such sum. The validity of any such bonds *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.

(d) *I Maga 'lahi* (the **Governor**) **Authorized to Pledge Revenues.** *I Maga 'lahi* (the Governor) *shall* perform or cause to be performed expert financial analysis to calculate the most favorable and least costly financing cost to the government using the pledge, either Section 30 revenues or the business privilege tax revenues, for the repayment of the bond of which he is authorized to pledge.

(1) *If* and to the extent determined by *I Maga 'lahen Guahan*, all *or* any part of the revenues derived by the government of Guam under Section 30 of the Organic Act (Section 30 revenue) may be pledged to secure the payment of any bonds issued pursuant to this Article, subject to any previously created lien on *or* pledge of such Section 30 revenue and to any parity lien created pursuant to Article 9 of this Chapter. Any such pledge *shall* be valid and binding against all parties in accordance with its terms and have priority against all parties in accordance with its terms from the time the pledge is made, and property so pledged *shall* immediately be subject to the lien of the pledge without the need for physical delivery, recordation, filing, *or* other further act. The pledge *shall not* be subject to Division 9 of Title 13 of the Guam Code Annotated *or* any successor statute. The Section 30 revenue pledged and thereafter received by the government of Guam *or* by any trustee, depository *or* custodian *shall* be deposited in accordance with the provisions of the applicable indenture. The

indenture by which such pledge is created need *not* be recorded. All Section 30 revenue so pledged is hereby appropriated for the purpose for which it has been pledged. Pledged Section 30 revenue released from the lien of the indenture *or* certificate pursuant to which the bonds are issued *shall* be available for appropriation for any other lawful purpose of the government. Indebtedness issued by the government pursuant to this Article and that is payable from Section 30 revenue may *not* be issued in an amount that would cause a violation of the debt limitation provisions of Section 11 of the Organic Act.

(2) Pledge of Business Privilege Tax Revenues. The certificate or indenture pursuant to which the bonds authorized by this Section are issued *may* provide that the tax revenues derived from the levy of up to two (2) percentage points, out of the total number of percentage points levied from time to time, of the business privilege tax levied pursuant to Article 2 of Chapter 26 of Title 11 of the Guam Code Annotated, or any successor thereto, are pledged to secure the repayment of any bonds issued under this Section and to pay costs incurred in the issuance or administration of the bonds and any required reserves. Any such pledge made to secure the bonds *shall* be valid and binding from the time the pledge is made. The revenues pledged and thereafter received by the government of Guam or by any trustee, depository or custodian *shall* be deposited in a separate account entitled the “BPT Debt Service Fund” and *shall* be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort,

contract or otherwise against the government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The certificate or indenture by which such pledge is created need *not* be recorded, and *shall* direct the distribution and disbursement of revenues from the BPT Debt Service Fund following their deposit therein. All such taxes to the extent so pledged are hereby continuously appropriated for such purpose. So long as any bonds issued pursuant to §1512.3, Title 5 Guam Code Annotated remain outstanding, the government of Guam may *not* reduce the rate of levy and collection of the pledged business privilege tax below two percent (2%), *nor* may the government of Guam reduce the services, products or activities to which the pledged business privilege tax applies, nor may the government of Guam upwardly adjust any exception or exclusion to, *or* otherwise impair, the pledged business privilege tax.

(e) **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 authorized by this Section on such terms as are created by the indenture *or* certificate pursuant to which the bonds are issued.

(f) **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, 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 *shall* be brought in the District Court of Guam.

(g) **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 issued under this Section, *or* for any other liability arising in connection with the bonds; *provided, however,* that nothing in this Section *shall* relieve any employee *or* elected official from the performance of a ministerial duty required by law.

(h) **Form of Bonds; Covenants; Appointment of Fiduciaries.** The technical form and language of the bonds, including provisions for execution, exchange, transfer, registration, paying agency, lost *or* mutilated bonds, 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. Said certificate *or* indenture *shall* appoint one (1) *or* more trustees, co-trustees *or* other fiduciaries authorized to receive and hold in trust the proceeds of the bonds with local depository accounts and administrative service capabilities, the revenues and other moneys relating thereto, to protect the rights of bondholders 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 and the sale of bonds. The indenture *shall* be subject to the approval of *I Liheslaturan Guåhan*.

(i) **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 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 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.

(j) **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) pay the General Fund expenses described below in this Subsection; (ii) establish necessary reserves; (iii) 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. 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) 2010 and prior year individual income tax refunds, including interest, *if* any, thereon paying the refunds owed on the tax

returns with the oldest filing date first: One Hundred Twenty Million Dollars (\$120,000,000);

(2) Guam Department of Education and Guam Memorial Hospital Authority principal and interest deficiency to the Government of Guam Retirement Fund pursuant to PL 28-38, as amended by PL 31-74. Payments *shall* be applied to principal and interest: Twenty-Six Million Dollars (\$26,000,000);

(3) Working Capital Fund: All remaining bond proceeds after the payment of the above *shall* be deposited into the Working Capital Fund. Payments made pursuant to this Subsection *shall* only apply to Section 5, Part I of Chapter XIV of this Act and to Section 7, Part I of Chapter XIV of this Act should the GWA Reimbursement *or* the Section 2718 Fund funds *not* be sufficient. This *shall not* constitute a double appropriation. *Any* other use of the Working Capital Fund funds *shall* be subject to legislative appropriation.

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

(l) **Approval by Guam Economic Development Authority.** *No* bonds authorized by this Section *shall* be sold until the Board of Directors of GEDA has approved the sale by resolution.

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

(n) **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 §1512.3(a), Title 5 Guam Code Annotated; *provided* that the bonds are issued and sold subject to the terms, conditions, requirements and limitations mandated therein.

(o) **Approval of Form of Certificate of Issuance.** The certificate of issuance *shall* be presented to and subject to approval of *I Liheslatura* (the Legislature), subject to such modifications to and changes in such certificate of issuance as *I Maga'lahen Guåhan* may approve consistent with §1512.3, Title 5, Guam Code Annotated, and subject to the terms, conditions, requirements and limitations therein.”

Section 2. A new §1512.4 is *added* to Chapter 1 of Title 5, Guam Code Annotated, to read:

“§1512.4. Redemption of Bonds *Prior* to Maturity. An indenture may provide that bonds may be redeemed prior to maturity upon such terms, conditions and upon such notice as are stated in the indenture and upon the payment of such premium as may be fixed by the indenture.”

Section 3. Uses of Fees. The Guam Economic Development Authority *shall* remit all of the fees earned on any bond issue authorized in §1512.3 of Article 5 of Chapter 1 of Title 5, Guam Code Annotated to be deposited into the cash account that disburses income tax refunds. GEDA *shall* issue a *new* Request for Proposal for underwriter services for the bond issued pursuant to §1512.3 of Title 5 of the Guam Code Annotated.

Section 4. Severability. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity *shall* not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.