

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

MAR 10 2014

Honorable Judith T. Won Pat, Ed.D
Speaker
I Mina'trentai Dos Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

32-14-1389
Office of the Speaker
Judith T. Won Pat, Ed.D
Date: 3-10-14
Time: 4:47 PM
Received by: [Signature]
JUN 10 10 PM 5:01
[Signature]

Dear Madame Speaker:

Attached is Bill No. 245-32 (COR), entitled, **“An act to amend §§ 8144, 8145 and 8149 of Article 1, Chapter 8 of title 4, Guam Code Annotated, Relative to Custodians, Investment Agents, and Bank Deposits,”** which lapsed into law as new **Public Law 32-135.**

Senseramente,

EDDIE BAZA CALVO

1389

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 245-32 (COR)

As amended by the Committee on Appropriations,
Public Debt, Legal Affairs, Retirement, Public Parks,
Recreation, Historic Preservation, and Land; and
further amended on the Floor.

Introduced by:

Vicente (ben) C. Pangelinan

T. C. Ada

V. Anthony Ada

FRANK B. AGUON, JR.

B. J.F. Cruz

Chris M. Dueñas

Michael T. Limtiaco

Brant T. McCreddie

Tommy Morrison

T. R. Muña Barnes

R. J. Respicio

Dennis G. Rodriguez, Jr.

Michael F. Q. San Nicolas

Aline A. Yamashita, Ph.D.

Judith T. Won Pat, Ed.D.

**AN ACT TO AMEND §§ 8144, 8145 AND 8149 OF
ARTICLE 1, CHAPTER 8 OF TITLE 4, GUAM
CODE ANNOTATED, RELATIVE TO
CUSTODIANS, INVESTMENT AGENTS, AND
BANK DEPOSITS.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that §§ 8144, 8145 and 8149 of Article 1, Chapter 8, Title 4 of the Guam Code
4 Annotated, were recently amended by Public Law No. 32-086 as part of a broader

1 effort to improve the government of Guam’s ability to meet its obligations to fund
2 the Government of Guam Retirement Fund Defined Benefit Plan.

3 *I Liheslaturan Guåhan* finds that one of the purposes of the amendments in
4 Public Law No. 32-086 was to remove certain statutory limitations that may result
5 in unintended consequences adversely impacting the investment goals of the
6 Government of Guam Retirement Fund.

7 *I Liheslaturan Guåhan* finds that further amendments are needed to
8 minimize unintended consequences, and therefore intends to amend §§ 8144, 8145
9 and 8149 of Article 1, Chapter 8, Title 4, Guam Code Annotated, to repeal certain
10 requirements that will result in unintended consequences that are *not* in the best
11 interests of the Government of Guam Retirement Fund.

12 **Section 2.** § 8144 of Article 1, Chapter 8, Title 4, Guam Code Annotated,
13 as *amended* by Public Law No. 32-086, is hereby further *amended* to read:

14 **“§ 8144. Custodian.**

15 The Board *shall* engage one or more custodians to assume
16 responsibility for the physical possession of fund assets or evidences
17 of assets. The custodian *shall* submit such reports, accountings and
18 other information in such form and at such times as requested by the
19 Board. All costs incurred for custodial services *shall* be a direct
20 charge to Investment Income. The custodian *shall* hold all assets for
21 the account of the Government of Guam Retirement Fund and *shall*
22 act *only* upon the instructions of the Board, its *ex-officio* director, or a
23 member, committee or agent so authorized by the Board. No
24 custodian shall be engaged *unless* it:

- 25 (a) has been continuously engaged in rendering custody
26 services for a period of ten (10) or more years; and

1 (b) is organized under the laws of the United States or a state
2 or territory thereof; and

3 (c) has Tier 1 capital in excess of One Billion Dollars
4 (\$1,000,000,000); and

5 (d) is a member of the Federal Reserve System whose
6 deposits are insured by the Federal Deposit Insurance Corporation or
7 any successor thereto; or

8 (e) notwithstanding any of the above, any locally chartered
9 bank may be a custodian of the Retirement Fund.”

10 **Section 3.** § 8145 of Article 1, Chapter 8, Title 4, Guam Code Annotated,
11 as *amended* by Public Law No. 32-086, is hereby further *amended* to read:

12 “§ 8145. **Investment Agent.**

13 (a) In order to secure expert advice and counsel, the Board
14 may engage an investment agent to serve as investment counsel which
15 *shall* be either an investment counsel or a bank trust department as
16 hereinafter qualified; and one or more investment agents to serve as
17 investment manager(s) to manage asset classes identified by the Board
18 upon the recommendation of investment counsel. All costs incurred in
19 this connection *shall* be a direct charge to Investment Income.

20 (b) *No* person, firm or corporation shall be eligible for
21 employment as investment counsel which acts as principal for its own
22 account or as broker for a client other than the Fund in connection
23 with the sale of any security to or the purchase of any security from
24 the Fund.

25 (c) *No* investment agent shall be engaged *unless*:

26 (1) the principal business of the person, firm or
27 corporation selected by the Board consists of rendering

1 investment supervisory services, that is, the giving of
2 continuous advice as to the investment of Funds on the basis of
3 the individual needs of each client; and

4 (2) the principal ownership or control of such person,
5 firm or corporation rests with individuals who are actively
6 engaged in such business; and

7 (3) such person, firm or corporation and its
8 predecessors have been continuously engaged in such business
9 for a period of ten (10) or more years; and

10 (4) such person, firm or corporation is registered as an
11 investment adviser under the laws of the United States of
12 America, as from time to time in effect, such as the Securities
13 Exchange Act of 1934, and the Investment Advisers Act of
14 1940, as amended; and

15 (5) the contract between the Board and the investment
16 agent is of no specific duration and is voidable at any time by
17 either party; and

18 (6) such person, firm or corporation certifies in
19 writing, to the Board, that the assets under its direct investment
20 supervision are in excess of One Billion Dollars
21 (\$1,000,000,000).

22 (d) The Board *shall not* engage a bank trust department
23 *unless* it:

24 (1) certifies in writing, to the Board, that the assets
25 under its direct investment supervision are in excess of One
26 Billion Dollars (\$1,000,000,000); and

1 (2) has been, together with its predecessors,
2 continuously engaged in supervising investments for a period of
3 ten (10) or more years; and

4 (3) is organized under the laws of the United States, or
5 a state or territory thereof; and

6 (4) has Tier 1 capital in excess of One Billion Dollars
7 (\$1,000,000,000); and

8 (5) is a member of the Federal Reserve System whose
9 deposits are insured by the Federal Deposit Insurance
10 Corporation or any successor thereto.

11 (e) The Board, or its designee under § 8143(a), *shall*
12 establish and may from time to time change operating arrangements
13 with the Investment Agent in order to facilitate efficient management
14 and timely investment action.

15 (f) No investment shall be made *unless* in the opinion of the
16 Investment Agent it is an appropriate investment for the Fund and is
17 an authorized investment under §§ 8143 through § 8159, inclusive, or
18 in the absence of such opinion, *unless* preceded by a resolution of the
19 Board directing the investment.”

20 **Section 4.** § 8149 of Article 1, Chapter 8, Title 4, Guam Code Annotated,
21 as *amended* by Public Law No. 32-086, is hereby further *amended* to read:

22 “§ 8149. **Same: Bank Deposits; Other Cash Equivalents.**

23 (a) Interest-bearing time deposits, demand deposits, and cash
24 sweep deposit accounts in banks organized under the laws of the
25 United States, or any state or territory thereof; *provided*, that said
26 bank:

1 (1) has Tier 1 capital in excess of One Billion Dollars
2 (\$1,000,000,000); and

3 (2) is a member of the Federal Reserve System; and

4 (3) together with any predecessors, have been
5 conducting a banking business for a continuous period of ten
6 (10) or more years; or

7 (4) any bank or savings and loan association chartered
8 in Guam, and a member of the Federal Deposit Insurance
9 Corporation or the Federal Home Loan Bank System.

10 (b) Cash equivalents purchased in investment funds
11 authorized under § 8158 or in exchange-traded funds authorized under
12 § 8158.1; in amounts and for durations approved by the Board in
13 connection with the management of uninvested cash balances; such
14 purchases *shall* be excluded from limitations of § 8158(e) and §
15 8158.1(b).”

16 **Section 5. Effective Date.** This Act *shall* become effective retroactively
17 to the enactment date of Public Law No. 32-86, November 27, 2013.

18 **Section 6. Severability.** *If* any provision of this Act or its application to
19 any person or circumstance is held invalid, the invalidity *shall not* affect any other
20 provision or applications of this Act which can be given effect without the invalid
21 provision or application, and to this end the provisions of the Act are severable.