



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam.

33-16-2256

December 13, 2016

Office of the Speaker
Judith T. Won Pat, Ed.D

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

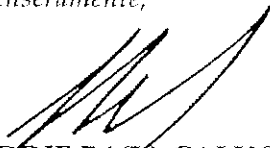
Date: 12-15-16
Time: 8:54 AM
Received By: [Signature]

2016 DEC 15 PM 1:48 [Signature]

Dear Madame Speaker:

Transmitted herewith is Bill No. 285-33 (COR), "AN ACT TO ADD A NEW ARTICLE 7 TO CHAPTER 77, DIVISION 2, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING CERTAIN BUSINESS PRIVILEGE TAX CREDITS AND USE EXCISE TAX CREDITS FOR THE REHABILITATION AND IMPROVEMENT OF THE HARMON INDUSTRIAL PARK ROADWAY," which was signed into law on December 13, 2016, as Public Law 33-191.

Senseramente,


EDDIE BAZA CALVO

2256

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that Bill No. 285-33 (COR), "AN ACT TO ADD A NEW ARTICLE 7 TO CHAPTER 77, DIVISION 2, TITLE 12, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING CERTAIN BUSINESS PRIVILEGE TAX CREDITS AND USE EXCISE TAX CREDITS FOR THE REHABILITATION AND IMPROVEMENT OF THE HARMON INDUSTRIAL PARK ROADWAY," was on the 2nd day of December 2016, duly and regularly passed.

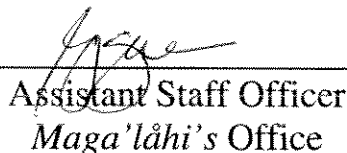


Judith T. Won Pat, Ed.D.
Speaker

Attested:


Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 5th day of Dec,
2016, at 4:50 o'clock P.M.



Assistant Staff Officer
Maga'låhi's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: DEC 13 2016

Public Law No. 33-191

OFFICE OF THE GOVERNOR
CENTRAL FILES

RECEIVED BY
TIME 4:50 DATE 12-13-16

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2016 (SECOND) Regular Session

Bill No. 285-33 (COR)

As amended by the Committee on Finance and Taxation,
General Government Operations, and Youth Development;
and further amended on the Floor.

Introduced by:

FRANK B. AGUON, JR.

T. C. Ada

V. Anthony Ada

Frank F. Blas, Jr.

B. J.F. Cruz

James V. Espaldon

Brant T. McCreadie

Tommy Morrison

T. R. Muña Barnes

R. J. Respicio

Dennis G. Rodriguez, Jr.

Michael F.Q. San Nicolas

Mary Camacho Torres

N. B. Underwood, Ph.D.

Judith T. Won Pat, Ed.D.

**AN ACT TO *ADD* A NEW ARTICLE 7 TO CHAPTER 77,
DIVISION 2, TITLE 12, GUAM CODE ANNOTATED,
RELATIVE TO AUTHORIZING CERTAIN BUSINESS
PRIVILEGE TAX CREDITS AND USE EXCISE TAX
CREDITS FOR THE REHABILITATION AND
IMPROVEMENT OF THE HARMON INDUSTRIAL
PARK ROADWAY.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds

3 that the Harmon Industrial Park is a vital component of economic activity on Guam

1 that houses several of the larger business entities on Guam, specifically in the
2 industrial, distribution, construction, retail, auto mechanical, maintenance, recycling
3 and storage industries. This famous commercial zone also houses hundreds of
4 families in the many condominium and apartment complexes within the mile-and-a-
5 half-long district.

6 *I Liheslaturan Guåhan* further finds that thirty-six (36) business entities,
7 which employ almost four thousand (4,000) employees, have recently created the
8 Harmon Industrial Park Association (HIPA); and this does not include the several
9 other business entities that have yet to submit their membership into the
10 organization.

11 The most important objective of the HIPA is to work with the government of
12 Guam in finding a way to permanently repair the primary roadway of the Harmon
13 Industrial Park. There have been several “patchwork” projects conducted over the
14 years, however, the conditions of the primary road continue to be deplorable. The
15 organization wishes to see the repair and expansion of the roadway, along with
16 certain improvements along the secondary roads in this district as well.

17 *I Liheslaturan Guåhan* further finds that the Harmon Industrial Park also
18 serves as a critical path that not only connects Marine Corps Drive through the
19 adjacent Hamburger Road which exits into the village of *Dededo*, but also provides
20 an exit into the road that enters and exits The Home Depot, and eventually into the
21 Guam Airport, *Tiyan*, and upwards to *Barrigada*. In other words, this economic zone
22 also plays a vital role in maintaining traffic flows that would alleviate travel woes.
23 In the long run, this provides additional longevity for the road condition of Marine
24 Corps Drive.

25 While all road construction projects should be prioritized equally, due to
26 economic conditions the government’s ability to fund all projects is challenging. The
27 Territorial Highway Fund (THF) has funding limitations each year, and typically

1 gets tapped for emergency road repairs which are unpredictable; thus legislating an
2 allocation of the funds from this account does not guarantee the project will be
3 repaired in a stated timeline.

4 The members of the HIPA are willing to dig into their pockets to provide the
5 funding for the rehabilitation and improvement of the roadway which they drive
6 through on a daily basis. However, they request that in lieu of their contributions, a
7 tax credit against unpledged business privilege taxes and excise taxes be provided,
8 by utilizing a similar program legislated and managed by the Guam Economic
9 Development Agency for other projects, such as the construction and/or repairs of
10 the Guam Raceway Park, the Guam Soccer Stadium, the University of Guam Sports
11 Complex, and the *Tiyan* Gymnasium.

12 *I Liheslaturan Guåhan* further finds that the estimated cost to rehabilitate and
13 improve the Harmon Industrial Park’s primary roadway, including the secondary
14 roads that connect into Hamburger Road and the Home Depot, amounts to around
15 Four Million Dollars (\$4,000,000) for the first phase. HIPA understands that the
16 government cannot afford to either fund this directly or provide this amount in tax
17 credits in one (1) year. The intent of this Act is to extend the financing of this project
18 over a four (4) year period, with a limitation on the amount of tax credits issued per
19 year.

20 Therefore, it is the intent of *I Liheslaturan Guåhan* to add a new Article 7 to
21 Chapter 77, Division 2, Title 12, Guam Code Annotated, relative to tax credits for
22 the rehabilitation and improvement of the Harmon Industrial Park roadway.

23 **Section 2.** A new Article 7 is hereby *added* to Chapter 77, Division 2, Title
24 12, Guam Code Annotated, to read:

25 **“ARTICLE 7**
26 **TAX CREDITS FOR THE HARMON INDUSTRIAL PARK**
27 **ROADWAY REHABILITATION AND IMPROVEMENT PROJECT**

- 1 § 77701. Applicability of Article.
- 2 § 77702. Credits Against Unpledged Business Privilege Tax.
- 3 § 77703. Cap on Business Privilege Tax Credits for the
- 4 Rehabilitation and Improvement of the Harmon Industrial
- 5 Park Roadway.
- 6 § 77704. Credits Against Use Excise Tax.
- 7 § 77705. Cap on Use Excise Tax Credits for the Rehabilitation and
- 8 Improvement of the Harmon Industrial Park Roadway.
- 9 § 77706. GEDA Report.
- 10 § 77707. Rules and Regulations.
- 11 § 77708. Approval of Contributions.
- 12 § 77709. Fines and Penalties.
- 13 § 77710. Architectural and Engineering Design.
- 14 **§ 77701. Applicability of Article.**

15 The provisions of this Article are applicable to the Harmon Industrial

16 Park roadway as authorized by this Act.

17 **§ 77702. Credits Against Unpledged Business Privilege Tax.**

18 (a) A business, to the extent that such business contributes to the cost

19 of design, labor, and materials that is for the rehabilitation and improvement

20 of the Harmon Industrial Park roadway, as identified and approved by GEDA,

21 *shall* be entitled to credit of unpledged business privilege taxes. The basis for

22 contribution to the project *shall* be the actual cost of the contribution plus the

23 cost of transportation from the point of origin to its destination.

24 (b) Any unused credits not used in the current tax period may be

25 carried over into subsequent tax periods until such credits are exhausted.

26 (c) The total credits allowed under this Act *shall not* exceed the

27 actual dollar amount of the expenditures on the project.

1 **§ 77703. Cap on Business Privilege Tax Credits for the**
2 **Rehabilitation and Improvement of the Harmon Industrial Park**
3 **Roadway.**

4 (a) The total amount of credits against unpledged business privilege
5 taxes for the rehabilitation and improvement of the Harmon Industrial Park
6 roadway authorized herein *shall not exceed* One Million Dollars (\$1,000,000)
7 over a four (4) year period. No more than Two Hundred Fifty Thousand
8 Dollars (\$250,000) in tax credits shall be authorized for each year of the
9 program.

10 (b) If, at the expiration of the four (4) year period authorized
11 pursuant to this Article, there are still unclaimed authorized tax credits, then *I*
12 *Liheslaturan Guåhan* may, in its discretion, extend the eligible period until
13 such time that all eligible tax credits are exhausted.

14 (c) *I Liheslaturan Guåhan* may, in its discretion, extend the term and
15 modify any part of the program based on future improvement plans and
16 demand in this location.

17 (d) Construction and professional services and equipment and
18 materials *shall* be competitively procured.

19 **§ 77704. Credits Against Use Excise Tax.**

20 (a) A business, to the extent that such business contributes to the cost
21 of design, labor, and materials that are for the rehabilitation and improvement
22 of the Harmon Industrial Park roadway, as identified and approved by GEDA,
23 *shall* be entitled to credit of use excise taxes, excluding those pledged to the
24 Healthy Futures Fund. The basis for contribution to the project *shall* be the
25 actual cost of the contribution plus the cost of transportation from the point of
26 origin to its destination.

1 (b) Any unused credits not used in the current tax period may be
2 carried over into subsequent tax periods until such credits are exhausted.

3 (c) The total credits allowed under this Article *shall not* exceed the
4 actual dollar amount of the expenditures on the project.

5 **§ 77705. Cap on Use Excise Tax Credits for the Rehabilitation**
6 **and Improvement of the Harmon Industrial Park Roadway.**

7 (a) The total amount of credits against use excise taxes, excluding
8 those pledged for the Healthy Futures Fund, for the rehabilitation and
9 improvement of the Harmon Industrial Park roadway authorized herein *shall*
10 *not* exceed Three Million Dollars (\$3,000,000) over a four (4) year period. No
11 more than Seven Hundred Fifty Thousand Dollars (\$750,000) in tax credits
12 *shall* be authorized for each year of the program.

13 (b) If, at the expiration of the four (4) year period authorized
14 pursuant to this Article, there are still unclaimed authorized tax credits, then *I*
15 *Liheslaturan Guåhan* may, in its discretion, extend the eligible period until
16 such time that all eligible tax credits are exhausted.

17 (c) *I Liheslaturan Guåhan* may, in its discretion, extend the term and
18 modify any part of the program based on future improvement plans and
19 demand in this location.

20 (d) Construction and professional services and equipment and
21 materials *shall* be competitively procured.

22 **§ 77706. GEDA Report.**

23 GEDA *shall* submit a report to *I Liheslaturan Guåhan* detailing the
24 impact of the program on the business privilege taxes, use excise taxes, and
25 economic activities on Guam. GEDA *shall* also include in its report its
26 monitoring efforts and any other information related to the program. The
27 report *shall* be transmitted to *I Liheslaturan Guåhan* on an annual basis until

1 the tax credit caps pursuant to §§ 77703 and 77705 of this Article are
2 exhausted.

3 **§ 77707. Rules and Regulations.**

4 The Guam Economic Development Authority *shall* implement and
5 monitor the tax credit program authorized pursuant to this Article based on
6 rules and regulations already adopted by GEDA for previous tax credit
7 programs.

8 **§ 77708. Approval of Contributions.**

9 GEDA or its designee *shall* be responsible for approving the
10 contributions made towards the development, construction, financing,
11 maintenance, rehabilitation, and improvement of the Harmon Industrial Park
12 roadway project as identified in this Article.

13 **§ 77709. Fines and Penalties.**

14 To the extent that a company providing materials and services for the
15 project contained herein takes more tax benefits in terms of unpledged
16 business privilege taxes or use excise taxes than the actual value of the
17 materials or services contributed to the project authorized herein, that
18 company *shall* be required to pay all interest and penalties applicable under
19 Guam law and the Internal Revenue Code for failure to pay taxes, in addition
20 to payment of the actual taxes due. To the extent that any individual, officer,
21 director, or other person having interest in a company providing materials or
22 services for the project contained herein knowingly and willingly causes such
23 company to take more tax benefits in terms of business privilege taxes than
24 the actual value of the material or services contributed to the project, such
25 individual *shall* be guilty of a felony in the third degree punishable by a fine
26 of not less than Five Thousand Dollars (\$5,000) or one (1) year in prison or
27 both.

1 **§ 77710. Architectural and Engineering Design.**

2 (a) Prior to the approval of any tax credits under §§ 77702 and 77704
3 of this Article, as well as the initiation of any rehabilitation or improvement
4 projects identified in this Article, up to Three Hundred Thousand Dollars
5 (\$300,000) *shall* be expended for an Architectural and Engineering Design for
6 the Harmon Industrial Park roadway project identified in this Article. This
7 design must identify all the projects, including the total costs that would
8 qualify under the tax credits of this Act. The design must be completed within
9 ninety (90) days after the enactment of this Act.

10 (b) Upon completion of the Architectural and Engineering Design, *I*
11 *Liheslaturan Guåhan* may authorize the initiation of the rehabilitation and
12 improvement of the Harmon Industrial Park roadway, along with the approval
13 of the remaining credits under §§ 77702 and 77704 of this Article.

14 (c) Any costs associated with the Architectural and Engineering
15 Design, with a maximum amount of Three Hundred Thousand Dollars
16 (\$300,000), *shall* qualify for the credits identified under §§ 77702 and 77704
17 of this Article, and *shall* be subject to the cap of the credits identified in §§
18 77703 and 77705 of this Chapter.

19 (d) The Architectural and Engineering Design that is approved and
20 incorporated by *I Liheslaturan Guåhan shall* be the framework for the project
21 identified in this Article.

22 (e) The Department of Public Works *shall* have regulatory
23 oversight, to the extent appropriate, of the rehabilitation and improvement of
24 the Harmon Industrial Park roadway envisaged by this Act, to include, but *not*
25 be limited to, the Architectural and Engineering Design described in this
26 Section.”

1 **Section 3. Effective Date.** This Act *shall* be effective upon enactment,
2 except that no tax credits authorized in Section 2 of this Act *shall* be applied toward
3 the payment of business privilege taxes or use excise taxes until October 1, 2017.
4 Such credits *shall only* be applied toward the payment of taxes which become due
5 and payable thereafter.

6 **Section 4. No Waiver of Immunity.** Nothing in this Act shall be
7 construed as a waiver of sovereign immunity by the government of Guam for which
8 any action, either in law or in equity, may lie.

9 **Section 5. Severability.** If any provision of this law or its application to
10 any person or circumstance is found to be invalid or contrary to law, such invalidity
11 *shall not* affect other provisions or applications of this law that can be given effect
12 without the invalid provisions or application, and to this end the provisions of this
13 law are severable.