I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No._____

Introduced by:

Committee on Rules_____

by request of *I Maga'lahen Guåhan, the Governor of Guam,* in accordance with the Organic Act of Guam.

AN ACT TO ADD §1512.4 TO ARTICLE 5, CHAPTER 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION TAX AND REVENUE ANTICIPATION NOTES OF THE GOVERNMENT OF GUAM

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan,* hereby finds as follows: (a) that the government of Guam has budgeted tax income tax refund payments of $125 million in fiscal year 2017 relating to 2016 and earlier; (b) that the administration has been paying its Status A income tax refunds within six months of filing since 2013; (c) that although payment within six months is a significant improvement from prior years, the taxpayers of Guam desire their tax refunds more timely, and furthermore the government of Guam becomes liable to pay interest on tax refunds that are not paid within 45 days of April 15 of each year, (d) that the six-month period, in combination with the timing mismatch between tax revenues (which tend to be received later in the fiscal year) and general fund expenditures (which are concentrated earlier in the fiscal year) creates a burden on the general fund that increases its costs and delays payments to vendors and taxpayers; (e) that tax and revenue anticipation notes (TRANs) are a common financial vehicle that are used by major state and local governments throughout the United States to manage the timing of disbursements more

effectively; and (f) that the use of TRANs would reduce the amount of interest payable to Guam taxpayers.

It is, therefore, the intent of *I Liheslaturan Guåhan* to authorize the issuance of TRANs to assist the government of Guam to pay its taxpayers within 45 days of filing.

Section 2. §1512.4 to Article 5, Chapter 1, Title 5, Guam Code Annotated is hereby added as follows:

"§ 1512.4. Tax and Revenue Anticipation Notes.

(a) Authorization of Issuance of Notes. *I Maga'lahen Guåhan* is authorized to issue taxable and/or tax-exempt general obligation notes of the government of Guam as provided in this Section, in anticipation of the receipt of taxes and other revenues, in any Fiscal Year commencing with the current Fiscal Year ending September 30, 2017 and ending with the Fiscal Year ending September 1, 2019, subject to the following conditions:

(1) that the aggregate principal amount at any one time outstanding of any notes issued in a particular Fiscal Year shall not exceed Seventy-Five Million Dollars ($75,000,000);

(2) that notes 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);

(3) the proceeds of the notes shall be issued and the proceeds expended for the purpose of paying unpaid tax refund plus interest, as well as to to 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, feasibility, 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;

(4) that the notes shall mature at such time not later than the last day of the Fiscal Year in the Fiscal Year in which such notes are issued; and

(5) that such notes shall bear interest at such rates and be sold for such price or prices as shall result in a yield to the noteholders that does not exceed (i) three percent (3%) per annum for notes issued in the Fiscal Year ending September 30, 2017, (ii) four percent (4%) per annum for notes issued in the Fiscal Year ending September 30, 2018, and (iii) and five percent (5%) per annum for notes issued in the Fiscal Year ending September 30, 2019.

(b) Terms and Conditions Determined by Certificate. The terms and conditions of the notes shall be as determined by *I Maga'lahen Guåhan* by the execution of a certificate authorizing the issuance of the notes upon or prior to the issuance of the notes. The certificate shall contain such terms and conditions as are consistent with this Section.

(c) Valid and Binding General Obligations; Pledge of Revenues. Any notes authorized by this Section constitute the valid and legally binding general obligations of the government of Guam payable from the sources described in the certificate or indenture. The government of Guam pledges its full faith and credit for the punctual payment of both principal of and interest on 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 notes. There are hereby appropriated from the General Fund such sums as will equal the amount of money necessary to pay the principal of and interest on such notes.

In addition, all notes issued pursuant to this Section shall be secured by a statutory lien on all revenues derived by the government of Guam under Section 30 of the Organic Act ("Section 30 revenues"), subject to the immediately succeeding paragraph. This lien shall arise automatically without the need for any action or authorization by *I Maga'lahen Guåhan*, the government of Guam, or any other person or entity. Such lien shall be valid and binding from the time such notes are issued. The Section 30 revenues shall immediately be subject to such lien, and the lien shall automatically attach to the Section 30 revenues and be effective, binding, perfected and enforceable against *I Maga'lahen Guåhan*, the government of Guam, their successors, assignees, and creditors, and all others asserting the rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act. Section 30 revenues that are not required to make payments on the notes shall automatically, and without the need for any further action, be released from such lien and shall be available for appropriation for any other lawful purpose of the government. The statutory lien described in this paragraph shall not be subject to Division 9 of Title 13 of the Guam Code Annotated or any successor statute. The Section 30 revenues 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.

In addition to the statutory lien provided for above, all or any part of the Section 30 revenues may be pledged, if and to the extent determined by *I Maga'lahen Guåhan*, to secure the payment of any notes issued pursuant to this subsection (c); provided, however, that any such pledge of Section 30 revenues shall be expressly subordinate to: (1) the government's pledge of Section 30 revenues securing the Government of Guam Limited Obligation (Section 30) Bonds Series 2016A, and any additional bonds issued pursuant

to the Amended and Restated Indenture, dated as of August 1, 2016, by and among the government of Guam, Bank of Guam, as trustee, and U.S. Bank National Association, as co-trustee, as the same may be amended and supplemented from time to time, and (2) the government's obligations in connection the Series 2013A Certificates of Participation (Okkodo High School Expansion Project) (the "Series 2013A Certificates").

Any such pledge shall be perfected, 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 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. 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.

All officers charged by law with any duty in the collection of the revenues of the government shall do every lawful thing necessary to collect such sum.

(d) Additional Parity Obligations. The government of Guam, after appropriate enabling legislation, may issue other general obligations of the government secured on a parity with such notes by the general obligation of the government, if such notes are issued as general obligations of the Government of Guam.

(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 notes, but does not waive sovereign immunity as to the personal liability of elected officials and employees of the government of Guam.

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

(g) Authorization for Credit Enhancement. *I Maga'lahen 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 notes issued under this Section. Such contracts or agreements may contain an obligation to reimburse, with interest, any such banks, insurance companies or other financial institutions for advances used to pay principal of or interest on the notes. Any such reimbursement obligation shall be an obligation of the government of Guam of the same character, and shall be payable from the same sources, as provided by the certificate or indenture.

Any such reimbursement obligation and any other obligations of the government of Guam under such contracts or agreements shall be treated, under § 11 of the Organic Act, as creating an obligation issued to refund the notes.

(h) Use of Proceeds from the Sale of the Notes. Proceeds from the sale of the notes may be used for purposes as set forth in Subsection (a)(3) of this Section, and also shall include payment of expenses relating to the authorization, sale and issuance of the notes, including, without limitation, printing costs, costs of reproducing documents, note insurance premiums, underwriting, legal and accounting fees and charges, fees paid to banks or other financial institutions providing credit enhancement, costs of credit ratings, fees and charges for execution, transportation and safekeeping of notes and other costs, charges and fees in connection with the issuance, sale and delivery of the notes.

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

(l) Permitted Investments. The proceeds of notes issued pursuant to this Section, and any revenues relating to such notes, may be invested in, but only in, the types of investments permitted by the certificate of *I Maga'lahen Guåhan* pursuant to which the notes are issued.

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

(n) Approval of Voters Not Required. The issuance of notes

pursuant to this Section shall not be subject to the approval of the voters of Guam.

(o) Approval of Notes. *I Liheslaturan Guåhan*, pursuant to Subsection (b) of this section and § 50103(k), Title 12, Guam Code Annotated, hereby approves the issuance and sale by the government of Guam of the notes for the purposes and in the aggregate principal amount authorized by § 1512.4, Title 5, Guam Code Annotated; provided that such notes are issued and sold subject to the terms, conditions, requirements and limitations mandated therein.

Section 3. Local Sale of Notes. *I Maga'lahen Guåhan* shall undertake his best efforts to cause a portion of any notes issued pursuant to §1512.4 to Article 5, Chapter 1, Title 5, Guam Code Annotated, to be offered for sale in Guam, as well as in other jurisdictions, if and to the extent that such offer and any sales resulting from such offer do not increase the cost to the government of Guam of issuing and repaying such notes.

Section 4. § 24102(f) of Article 4, Chapter 24, Division 2, Title 11 GCA is hereby amended to read:

"(f) Value, full cash value, fair market value, and cash value means ninety percent (90%) of the <u>sum of (1)</u> appraised value<u>, and (2) the aggregate principal amount at any one time outstanding of any notes issued pursuant to §1512.4 to Article 5, Chapter 1, Title 5, Guam Code Annotated, so long as such sum does not does not exceed one hundred percent (100%) of the appraised value</u>; appraised value means the amount at which property would be taken in payment of a just debt from a solvent debtor as determined by the last completed valuation conducted pursuant to § 24306, Title 11, Guam Code Annotated, as amended by the annual adjustments mandated in this

Chapter. The appraised value of the interest of a lessee or licensee of land owned by the Chamorro Land Trust Commission shall be the appraised value of the land, not including improvements."

Section 5. Severability. If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.