

Public law 25-187

Bill No. 450 (LS)

As substituted on the Floor and amended.

Introduced by:

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AN ACT TO ADD ARTICLE 12 AND TO AMEND §221108 OF TITLE 5 AND §6123 OF TITLE 11, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE HEALTH CARE SECURITY FUND AND THE HIGHER EDUCATION ENDOWMENT FUND THROUGH THE SECURITIZATION OF THE TOBACCO SETTLEMENT PAYMENTS MADE UNDER THE MASTER SETTLEMENT AGREEMENT, TO MAKE OTHER APPROPRIATIONS AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Statement. *I Liheslaturan Guåhan* finds that the declining revenues of the General Fund along with the other revenue sources of the government have resulted in hardships and pressures placed upon the ability of the government to provide essential services to the residents of Guam. Given the constraints imposed upon the General Fund to fully pay for these services — health care and higher education, in particular, it is incumbent that alternative sources are found and creative use of future revenues be implemented. One (1) such revenue source is the tobacco Master Settlement Agreement reached and signed between the major United States tobacco manufacturers and forty-six States, Guam, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands.

I Liheslaturan Guåhan further finds that the signing of a Master Settlement Agreement should result in Guam receiving substantial sums of money in perpetuity. Guam has reached State-specific finality, the Master Settlement Agreement has become effective in accordance with its terms, and Guam has agreed to its allocation of the first tobacco settlement payments made under the Master Settlement Agreement as an allocation to Guam.

I Liheslaturan Guåhan further finds that several jurisdictions have sold their allocations of payments under the Master Settlement Agreement and applied the sale proceeds toward their most critical needs. By doing so they have accelerated the realization of the tobacco settlement payments receivable under the Master Settlement Agreement, and reduced their exposure to the payment risks associated with the Master Settlement Agreement and the credit risks associated with the tobacco industry.

It is the intent of *I Liheslaturan Guåhan* to establish a policy that responds to the current funding requirements of the services it wishes to provide to the people by securitizing the tobacco settlement payments. This method of financing will be non-recourse to, and requires no credit support by, the government of Guam.

Section 2. Article 12 is hereby *added* to Chapter 22 of Title 5 of the Guam Code Annotated to read as follows:

“ARTICLE 12. Securitization of Tobacco Settlement Payments.

Section 221201. Definitions. As used in this Article:

- (a) ‘*Guam Allocation*’ means all moneys payable to Guam pursuant to the MSA, without giving effect to any sale of any portion thereof.
- (b) ‘*Master Settlement Agreement*’ or ‘*MSA*’ means the settlement agreement and related documents between Guam and leading United States tobacco product manufacturers dated November 23, 1998.

Section 221202. Guam Economic Development Authority Designated. The Guam Economic Development Authority shall solicit through the request for proposal process for qualified and licensed investment banking firms for investment services for the purpose of selling or securitizing the Guam Allocation made under the Master Settlement Agreement entered into between the government of Guam and leading tobacco manufacturers. The method of financing shall be non-recourse to, and require no credit support by, the government of Guam. The terms of the sale and securitization shall be submitted to *I Liheslaturan Guåhan* for approval.

Section 221203. Distribution of Proceeds. Proceeds of the sale and securitization of the Guam Allocation received by the government of Guam shall be distributed in the following manner:

- (1) fifty percent (50%) into the Health Security Trust Fund;
- (2) fifteen percent (15%) into the UOG Endowment Fund;
- (3) fifteen percent (15%) into the GCC Endowment Fund;
- (4) ten percent (10%) into the Youth Tobacco Education and Prevention Fund; *and*
- (5) ten percent (10%) into the Health and Human Services Fund.

Section 221204. Health Security Trust Fund.

- (a) There is hereby created, separate and apart from other funds of the government of Guam, a fund known as the Health Security Trust Fund. The Health Security Trust Fund shall *not* be commingled with the General Fund and shall be kept in a separate bank account, and shall be *subject to* legislative appropriation and expended exclusively

for the purpose of funding the operations and capital expenditure at the Guam Memorial Hospital.

- (b) The Health Security Trust Fund, *subject to* legislative approval, may be invested or reinvested in bonds or in securities that are approved for the Retirement Fund, or according to modern investment practices of similar funds. The appropriations from the Health Security Trust Fund shall be limited to fifty percent (50%) of the initial deposit from the proceeds of the sale for the first three (3) years. Thereafter, expenditures shall be limited to ninety percent (90%) of the earnings of the Fund.

Section 221205. UOG Higher Education Endowment Funds. There is hereby created, separate and apart from other funds of the government of Guam, a fund known as the UOG Higher Education Endowment Fund. The UOG Higher Education Endowment Fund shall *not* be commingled with the General Fund and shall be kept in a separate bank account and administered by the University of Guam. The UOG Higher Education Endowment Fund may be invested or reinvested by the UOG Board of Regents in bonds or in securities that are approved for the Retirement Fund, or according to modern investment practices of similar funds. The appropriations from the UOG Higher Education Endowment Fund shall be limited to fifty percent (50%) of the initial deposit from the proceeds of the sale for the first three (3) years. Thereafter, expenditures shall be limited to ninety percent (90%) of the earnings of the Fund. The proceeds from the investments shall remain within the UOG Higher Education Endowment Fund. All monies deposited into the UOG Higher Education Endowment Fund shall be expended *exclusively* for enhancement of learning resources and technology, including but *not* limited to the following:

- (a) purchase of computer equipment, books, subscriptions, periodical materials and other library supplies and materials;
- (b) training; *and*
- (c) management of library materials and resources;

The University of Guam shall determine the allocation of this appropriation in compliance with this Section.

Section 221206. GCC Endowment Funds. There is hereby created, separate and apart from other funds of the government of Guam, a fund known as the ‘GCC Endowment Fund.’ The GCC Endowment Fund shall *not* be commingled with the General Fund and shall be kept in a separate bank account and administered by the Guam Community College (‘GCC’). The GCC Endowment Fund may be invested or reinvested by the GCC Board of Trustees in bonds or in securities that are approved for the Retirement Fund, or according to modern investment practices of similar funds. The appropriations from the GCC Endowment Fund shall be *limited to* fifty percent (50%) of the initial deposit from the proceeds of the sale for the first three (3) years. Thereafter, expenditures shall be limited to ninety percent (90%) of the earnings of the Fund. The proceeds from the investments shall remain within the GCC Endowment Fund. All monies deposited into the GCC Endowment Fund shall be expended *exclusively* for enhancement of learning resources and technology, including, but *not* limited to, the following:

- (a) purchase of computer equipment, books, subscriptions, periodical materials and other library supplies and materials;
- (b) training; *and*
- (c) management of library materials and resources;

GCC shall determine the allocation of this appropriation in compliance with this Section.”

Section 3. Section 221108 of Article 11, Chapter 22, Division 2 of Title 5 of the Guam Code Annotated is hereby *amended* to read as follows:

“Section 221108. Deposit.

- (a) All monies deposited into the HAHS Fund shall be expended exclusively for the purposes enumerated in §221103 and the general intent of this Act.
- (b) HAHS Fund, *subject to* legislative approval, may be invested or reinvested in bonds or in securities that are approved for the Retirement Fund, or according to modern investment practices of similar funds. The appropriations from the HAHS Fund received pursuant to §221203 of Title 5 of the Guam Code Annotated shall be limited to fifty percent (50%) of the initial deposit from the proceeds of the sale for the first three (3) years. Thereafter, expenditures shall be limited to ninety percent (90%) of the earnings of the Fund.”

Section 4. Section 6123 of Division 1 of Title 11 of the Guam Code Annotated is hereby *amended* to read as follows:

“Section 6123. Youth Tobacco Education and Prevention Fund.

- (a) There is created, separate and apart from any other funds of the government of Guam, under the administration and control of the Department, the Youth Tobacco Education and Prevention Fund (‘YTEPF’). YTEPF shall be held in an account or accounts at a Guam financial institution, or institutions, separate and apart from all other accounts and funds of the government of Guam, and shall *not* be subject to the transfer authority of *I Maga’lahen Guåhan*. One hundred percent (100%) of the funds in the YTEPF shall be utilized by the Department of Mental Health and Substance Abuse, for youth compliance monitoring and tobacco and drug prevention and education programs.
- (b) YTEPF, *subject to* legislative approval, may be invested or reinvested in bonds or in securities that are approved for the Retirement Fund or according to modern investment practices of similar funds. The appropriations from the YTEPF received pursuant to §221203 of Title 5 of the Guam Code Annotated, shall be limited to fifty percent (50%) of the initial deposit from the proceeds of the sale for the first three (3) years. Thereafter, expenditures shall be limited to ninety percent (90%) of the earnings of the Fund.”