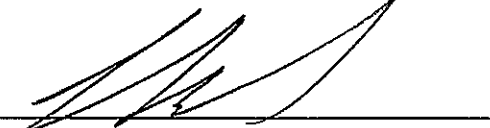


I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 149 (EC), "AN ACT TO ASSIGN THE TEN MILLION DOLLAR (\$10,000,000) PROMISSORY NOTE ISSUED BY TELEGUAM HOLDINGS LLC AS PART OF THE GTA SALE PROCEEDS TO PAY THE COLA JUDGMENT AWARD PURSUANT TO SUPERIOR COURT SP0206-93 AND PUBLIC LAW 28-151", returned without approval of *I Maga'lahen Guåhan*, was reconsidered by *I Liheslaturan Guåhan* and after such consideration, did agree, on the 6th day of September 2007, to pass said bill notwithstanding the veto of *I Maga'lahen Guåhan* by a vote of twelve (12) Members.

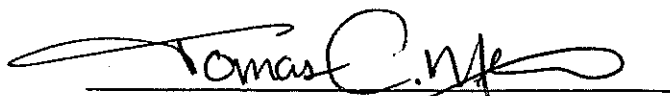
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2007 SEP 12 PM 4:41
GOVT. OF GUAM
OFFICE OF THE CLERK


EDWARD J.B. CALVO
Acting Speaker

Attested:


RAY TENORIO
Senator and Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this ^{Sep.} 6th day of, 2007, at 4:52 o'clock P.M.


Assistant Staff Officer
Maga'lahi's Office

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

Bill No. 149(EC)

As amended by the Committee on
Finance, Taxation, Commerce &
Economic Development.

Introduced by:

v. c. pangelinan
Edward J.B. Calvo
Frank F. Blas, Jr.
James V. Espaldon
Mark Forbes
Judith Paulette Guthertz
Frank T. Ishizaki
J. A. Lujan
Tina Rose Muña Barnes
A. B. Palacios, Sr.
R. J. Respicio
David L.G. Shimizu
Ray Tenorio
A. R. Unpingco
J. T. Won Pat

**AN ACT TO ASSIGN THE TEN MILLION DOLLAR
(\$10,000,000) PROMISSORY NOTE ISSUED BY TELEGUAM
HOLDINGS LLC AS PART OF THE GTA SALE PROCEEDS
TO PAY THE COLA JUDGMENT AWARD PURSUANT TO
SUPERIOR COURT SP0206-93 AND PUBLIC LAW 28-151.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that, of the One Hundred-fifty Million Dollars (\$150,000,000) in proceeds from the
4 sale of GTA to TeleGuam, Ten Million Dollars (\$10,000,000) is in the form of a
5 promissory note that matures on January 1, 2013, paying an annual interest rate of
6 5.25%, and that interest shall accrue thereon until maturity.

1 *I Liheslatura* further finds that the Government of Guam, pursuant to *Rios v.*
2 *Camacho*, Superior Court Case No. SP0206-93, relative to Cost of Living
3 Allowances, owes the prevailing parties a judgment in excess of One Hundred
4 Twenty-three Million Dollars (\$123,000,000). *I Liheslatura* passed Public Law
5 28-151, which authorized partial payment of the COLA judgment and funds
6 appropriated by P.L. 28-151 were withdrawn from the authorized accounts, but no
7 payments were made to the COLA class.

8 *I Liheslatura* further finds that a case-by-case review of all Class Members'
9 personal situations to determine payment priority based upon financial need would
10 disrupt the entire process of calculating payment amounts. It is *I Liheslatura's*
11 intent to ensure equal distribution of all funds earmarked and appropriated for
12 COLA. The plan created herein will pay over ten percent (10%) of the COLA
13 class recipients in full and still make much needed payments to other recipients.
14 Therefore, *I Liheslatura* will honor the government's commitment to pay COLA
15 awards by assigning the Ten Million Dollars (\$10,000,000) promissory note from
16 the GTA sale proceeds for immediate partial payment to the COLA class.

17 It is *not I Liheslatura's* intent to prohibit the COLA class from using any
18 legal remedies available to it to collect the amounts not satisfied by this partial
19 payment.

20 *I Liheslatura* ratifies *I Maga'lahi* Felix Camacho's and the Class's court
21 approved settlement agreement which included a stipulation to terminate any
22 further litigation regarding the Superior Court of Guam Judgment, embodied in
23 the Stipulation and Order filed on November 21, 2006, wherein the parties
24 recognized that any further delay would cause irreparable damage to the Class.

25 *I. Liheslatura*, recognizing the same urgency for paying meaningful
26 compensation to the Class and in light of the unassailable judgment in the COLA

1 case, intend to put to rest fears of further delays or harm to the Retirees' long
2 overdue Cost of Living Allowance.

3 **Section 2. Fund Authorized for COLA Settlement Payment.** The
4 promissory note for Ten Million Dollars (\$10,000,000) plus interest and any
5 proceeds therefrom executed pursuant to the GTA purchase agreement between the
6 government of Guam and TeleGuam Holdings, LLC, as part of the payment for the
7 purchase of the Guam Telephone Authority by TeleGuam Holdings, LLC, are
8 hereby irrevocably assigned and appropriated to payment of the judgment entered
9 in Rios et al. v. Camacho, et al., Superior Court of Guam Case No. SP0206-93.
10 The assignment of the note and appropriation of its proceeds *shall* permit the
11 COLA class to sell, pledge, assign, transfer or otherwise liquidate the note to
12 another party for the purpose of distributing cash payments to eligible COLA class
13 recipients.

14 **Section 3. Conditions on Sale of Note.** The Director of the Retirement
15 Fund, the Attorney General and the Director of Administration *shall* co-operate
16 with the Plaintiffs' Class Counsel in the liquidation of the assigned promissory
17 note through direct negotiation, issuance of Requests for Proposal for purchase of
18 the note *or* other procedure for the sale of the note to a financial entity. The
19 promissory note *shall not* be sold *or* negotiated for *less than* eighty percent (80%)
20 of the principal amount of the note.

21 **Section 4. Tax Conditions on Sale of Note.** The purchaser of the note
22 *shall* pay no government of Guam taxes on any discount of the sale price of the
23 note and *no* government of Guam taxes on the interest earned on the note.

24 **Section 5. Credit Towards the Judgment.** The proceeds from the sale of
25 the note *shall* be credited and paid over towards satisfaction of the judgment
26 entered in Rios, et al. v. Camacho, et al., Superior Court of Guam Case No.

1 SP0206-93.

2 **Section 6. Attorney General to Represent Government.** The Attorney
3 General *shall* represent the Government of Guam regarding the sale of the note,
4 *shall* prepare all legal documents needed to implement this Act and *shall* use all
5 powers necessary to secure the signatures required for this Act's implementation.

6 **Section 7.** The Government of Guam Retirement Fund *shall* receive the
7 proceeds from the liquidation and sale of the GTA promissory note and *shall* issue
8 checks through the Department of Administration to eligible class recipients.

9 **Section 8. Distribution of Funds.** The proceeds from the liquidation and
10 sale of the note and all funds appropriated in existing and future laws for payment
11 of the judgment in SP0206-93 shall be distributed in equal payments to all
12 members of the COLA class, *except* for those class members whose award is *less*
13 *than* the amount of said equal payment, who *shall* receive their award in full. (*If*
14 the liquidation of the GTA Promissory Note yields a net total of Eight Million
15 Dollars (\$8,000,000); the payment amount is calculated to pay in full three hundred
16 fifty (350) awardees with payments *not exceeding* One Thousand Seven Hundred
17 Twenty-five Dollars (\$1,725) with the remaining awardees also receiving the same
18 amount).

19 **Section 9.** Public Law 28-151:2, codified as Title 4 GCA §7101, is hereby
20 *amended* to read:

21 **“§7101. Definitions.** For purposes of this Chapter:

22 (1) *Employee* means all employees of the government of Guam.

23 (2) *Money due* means the pay and allowances due on account of the
24 services of a deceased employee of the government of Guam. It
25 includes the following:

26 (A) Per diem and amounts due in reimbursement of travel

- 1 expenses;
- 2 (B) Overtime or premium pay;
- 3 (C) Payments for accrued annual and sick leave;
- 4 (D) Amounts of checks drawn for pay which were not delivered
5 to the employee during his lifetime;
- 6 (E) Amounts of un-negotiated checks returned to the Government
7 because of the death of the employee.

8 It does *not include* amounts the disposition of which is otherwise
9 expressly prescribed by law.”

10 **Section 10.** New subsections (t), (u), and (v) are hereby *added* to Title 4
11 GCA §8104 to read:

12 “(t) *COLA Award shall* mean the Cost of Living Allowance
13 awarded in connection with Superior Court Case No. SP0206-93.

14 (u) *COLA Awardee shall* mean a retiree of the Fund who is a
15 member of the COLA Class designated in Superior Court Case
16 No. SP0206-93 as entitled to receive a Cost of Living
17 Allowance.

18 (v) *Surviving Spouse* means a living spouse of a deceased, active
19 *or* retired member of the Fund, *or* of a deceased COLA
20 Awardee, in a marriage legally recognized by Title 19, Chapter
21 3 of the Guam Code Annotated, *or* in a marriage recognized by
22 the laws of the jurisdiction where the marriage was contracted.”

23 **Section 11.** Public Law 28-151:5, codified as Title 4 GCA §8140.2, is
24 hereby *amended* to read:

25 “§8140.2 **Duties of the Director Regarding COLA Awards.** The

1 Director of the Fund is authorized to assist the Director of Administration
2 and the Treasurer of Guam in the administration of COLA AWARD
3 payments in connection with Superior Court Case No. SP0206-93.”

4 **Section 12.** Public Law 28-151:6, codified as Title 4 GCA §8140.3 is
5 hereby *repealed*.

6 **Section 13.** A new §8142.1 is hereby *added* to Title 4, Chapter 8, Article 1
7 of the Guam Code Annotated to read:

8 “§8142.1. **Cost of Living Allowance in connection with Superior**
9 **Court Case No. SP0206-93; Priority of Payments.** The Director of the Fund
10 *shall* notify the Treasurer of Guam to pay COLA Awards to the following
11 persons in the priority stated herein. The notification *shall* be based on
12 information available to the Fund as of the date on which notice is delivered to
13 the Treasurer of Guam:

- 14 (a) The COLA Awardee.
- 15 (b) *If* the COLA Awardee is deceased, then the notification *shall*
16 name the COLA Awardee’s surviving spouse, but only *if* the
17 surviving spouse is living on the date notice is delivered to the
18 Treasurer of Guam.
- 19 (c) *If* the COLA Awardee’s surviving spouse is deceased, the
20 notification *shall* name the living beneficiary designated by the
21 COLA Awardee in the Fund’s Designation of Beneficiary Form
22 on record at the Fund. *If* there are multiple beneficiaries, the
23 notification *shall* include each living beneficiary and the
24 proportion of the COLA Award paid to each beneficiary *shall*
25 be based on the percentage stated in the Designation of
26 Beneficiary Form.

1 (d) *If* the sole beneficiary designated by the COLA Awardee in the
2 Fund's Designation of Beneficiary Form is deceased *or* if the
3 Designation of Beneficiary Form cannot be located within
4 thirty (30) days of the Fund being notified of the COLA
5 Awardee's death, the notification *shall* name the COLA
6 Awardee's Estate *or* heirs in accordance with Title 4 GCA
7 §8142.2.

8 (e) *If* there are multiple beneficiaries designated by the COLA
9 Awardee in the Fund's Designation of Beneficiary Form, and *if*
10 any of them are deceased, the notification *shall* name each of
11 the living beneficiaries and the deceased beneficiary's Estate *or*
12 heirs in accordance with Title 4 GCA §8142.2 regarding the
13 deceased beneficiary's percentage interest as designated in the
14 Designation of Beneficiary Form."

15 **Section 14.** A new §8142.2 is hereby *added* to Title 4, Chapter 8, Article 1
16 of the Guam Code Annotated to read:

17 **"§8142.2. Priority of Payments Continued.** When a COLA Award
18 is authorized to be paid in accordance with this Section, such payment *shall*
19 be made as follows:

20 (a) *If* an estate proceeding has been opened for a COLA
21 Awardee and a Personal Representative has been
22 appointed, then the COLA Award (*or* the applicable
23 percentage thereof designated to the deceased
24 beneficiary) *shall* be paid to the duly appointed Personal
25 Representative of the COLA Awardee's Estate to be
26 distributed as part thereof;

1 (b) *If* an estate proceeding has been opened for a COLA
2 Awardee but has since been closed and a Decree of Final
3 Distribution has been issued and filed, then the Fund
4 *shall* pay the COLA Award to the Personal
5 Representative of the COLA Awardee's Estate upon
6 submission of a reappointment, new Letters
7 Testamentary *or* Letters of Administration, as the case
8 may be, in accordance with a reopening of the estate
9 pursuant to Title 15 GCA §3039;

10 (c) *If* an estate proceeding was never opened, then any
11 person claiming to be an heir of the COLA Awardee *or*
12 otherwise claiming to be entitled to distribution of the
13 COLA Award *or* any part thereof may file a Petition in
14 the Superior Court setting forth his *or* her claim and
15 requesting the Superior Court to determine who is
16 entitled to the COLA Award distribution. Upon
17 submission of the Superior Court's Final Decree
18 determining which persons are entitled to distribution of
19 the COLA Award and setting forth the interests of each,
20 the Fund *shall* notify the Treasurer of Guam to make
21 payment in accordance with said Decree; or

22 (d) *If* an estate proceeding was never opened, any person
23 claiming to be an heir of the COLA Awardee *or*
24 otherwise claiming to be entitled to distribution of the
25 COLA Award or any part thereof may file a petition
26 pursuant to Title 15 GCA §3101.1.”

1 **Section 15.** A new Section 8142.3 is hereby *added* to Title 4, Chapter 8,
2 Article 1 of the Guam Code Annotated to read:

3 “**§8142.3. Determination of Priority for COLA Awards.** The
4 Director of the Fund may reasonably rely on any of the documents
5 enumerated herein to analyze information concerning marriage, death,
6 survivorship, and priority of payments under §§8142.1 and 8142.2 *if* a
7 COLA Awardee or a person next in priority is deceased. The Director’s
8 reasonable reliance on said documentation in making payment of the COLA
9 Award *shall* constitute acquittance for said payment and *shall* fully
10 discharge the Director and the Fund from further liability with respect
11 thereto without further investigation or inquiry:

- 12 (a) a certified death certificate (original or copy);
13 (b) a certified marriage certificate, or equivalent (original or
14 copy);
15 (c) the Designation of Beneficiary Form on record at the
16 Fund;
17 (d) Letters Testamentary or Letters of Administration; and
18 (e) applicable court orders determining persons entitled to
19 and directing payment of the COLA Awardee’s COLA Award.”

20 **Section 16.** Public Law 28-151:3, codified as Title 5 GCA §20101.1, is
21 hereby *repealed*.

22 **Section 17.** Public Law 28-151:4, codified as Title 5 GCA §20101.2, is
23 hereby *repealed*.

24 **Section 18.** Public Law 28-151:8, codified as Title 11 GCA §44101(a), is

1 hereby *amended* to read:

2 “§44101(a) ‘COLA AWARDEE’ means a retiree of the Retirement
3 Fund who is a member of the COLA Class designated in Superior Court
4 Case No. SP0206-93 entitled to receive a Cost of Living Allowance.”

5 **Section 19.** Public Law 28-151:9 is hereby *amended* to read:

6 “*I Maga’lahen Guåhan* is hereby authorized to enter into a structured
7 settlement with members of the COLA Class designated in Superior Court
8 Case No. SP0206-93 upon such terms as *I Maga’lahi* determines to be just,
9 to include interest up to seven percent (7%) per annum on sums paid over
10 pursuant to the settlement. *I Maga’lahi* may pledge up to Ten Million
11 Dollars (\$10,000,000) per year from payments received by the government
12 of Guam pursuant to Section 30 of the Organic Act as collateral for said
13 settlement, subject to the approval of *I Liheslaturan Guåhan*.”

14 **Section 20. Severability.** *If* any of the provisions of this Act or the
15 application thereof to any person or circumstance is held invalid, such invalidity
16 shall *not* affect any other provision or application of this Act which can be given
17 effect without the invalid provision or application, and to this end the provisions of
18 this Act are severable.

11

12

13