

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN
2017 (FIRST) Regular Session

Resolution No. 312-34 (COR)

Introduced by:

Michael F.Q. San Nicolas 

Relative to respectfully petitioning the United States Congress, pursuant to 48 USC §1423k, to enact legislation amending the Organic Act of Guam to include a provision of Guam Public Law 24-222 such that any provision enacted by the Government of Guam which increases the public indebtedness of the Government of Guam by at least Twenty-Five Million Dollars (\$25,000,000), backed by the full faith and credit of the Government of Guam, must be approved by a majority of votes cast in an election before any such borrowing may be undertaken, with allowances for a state of emergency if so ratified by a two-thirds (2/3) vote of the Guam Legislature.

BE IT RESOLVED BY I LIHESLATURAN GUÁHAN:

WHEREAS, in the Twenty-Fourth (24th) Guam Legislature, Speaker Mark Forbes introduced Bill No. 539, which was enacted as Public Law 24-222, appended hereto as Exhibit 1, that requires locally enacted and administered tax increases and the issuance of a General Obligation Bond in an amount of greater than Twenty-Five Million Dollars (\$25,000,000) to go into effect only with the approval of the voters of Guam in a referendum held during an election; and

WHEREAS, Public Law 24-222 recognizes the need for direct involvement of the local electorate to make ultimate decisions on the question of substantially increasing the amount of local debt by the government by requiring the approval of the people for the issuance of any government General Obligations Bond of greater than Twenty-Five Million Dollars (\$25,000,000); and

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1 **WHEREAS**, since the enactment of Public Law 24-222, excluding
2 autonomous and semi-autonomous agency borrowing, the Government of Guam
3 has borrowed twenty-eight (28) times, with the individual borrowings and
4 borrowed amounts as follows:

<i>Year</i>	<i>Name of Issue</i>	<i>Amount Issued</i>
1999	Promissory Note of 1999	\$25,000,000
2001	Tobacco Settlement Asset-Backed Bonds, Series 2001 A, B	\$25,477,459
2001	LO Highway Refunding Bonds, 2001 Series A	\$51,705,000
2001	LO (Section 30) Bonds, Series 2001A	\$76,895,000
2002	GO Loan 2002	\$10,000,000
2003	LO University of Guam Loan 2003	\$13,500,000
2004	GEFF Certificate of Participation, Series 2006 A, B	\$64,895,000
2005	Guam Public School System \$6M Line of Credit 2007	\$6,000,000
2007	Tobacco Settlement Asset-Backed Bonds, Series 2007A	\$36,982,077
2007	GO 2007 Bonds, Series A	\$151,935,000
2008	GEFF Certificates of Participation, Series 2008	\$7,520,000
2008	GO Loan 2008	\$13,800,000
2009	2009 Term Financing	\$20,103,875
2009	LO (Section 30) Bonds, 2009 Series A	\$202,425,000
2009	GO 2009 Bonds, Series A	\$271,070,000
2010	GDOE Certificates of Participation Series 2010A	\$65,735,000
2011	GO Guam Memorial Hospital Authority Loan 2011	\$12,000,000
2011	LO Hotel Occupancy Tax Revenue Bonds Series 2011A	\$90,665,000
2011	LO Business Privilege Tax Bonds Series 2011A	\$235,000,000
2012	LO Business Privilege Tax Bonds Series 2012B	\$108,700,000
2013	LO Business Privilege Tax Bonds Series 2013C	\$22,640,000
2013	GEFF Certificate of Participation 2013 A, B	\$22,818,000

1	<i>Year</i>	<i>Name of Issue</i>	<i>Amount Issued</i>
2	2014	GO Guam Legislature Building Loan 2014	\$4,000,000
3	2014	GO Guam Memorial Hospital Loan 2014	\$25,000,000
4	2014	Lease Revenue Bonds, Series 2014	\$107,405,000
5	2015	LO Business Privilege Tax Bonds Series 2015D	\$410,485,000
6	2016	GEFF Certificate of Participation, Series 2016 A, B	\$38,570,000
7	2016	LO (Section 30) Bonds, 2016 Series A	\$236,605,000

8 **WHEREAS**, as of March 2017 the Government of Guam owed One Billion
9 Eighty-Two Million Six Hundred Ninety Thousand Forty-Five Dollars
10 (\$1,082,690,045), or about Seventy-Eight Percent (78%) of the Government of
11 Guam’s Organic Act debt limitation of One Billion Three Hundred Eighty-Eight
12 Million Six Hundred Sixty-Three Thousand Nine Hundred Fifty-Nine Dollars
13 (\$1,388,663,959); and

14 **WHEREAS**, the original par amount of the debt counted toward the debt
15 ceiling totals Eight Hundred Seventy Million Five Hundred Twenty Thousand
16 Dollars (\$870,520,000)¹, which will cost about One Billion Six Hundred Twenty-
17 Five Million Four Hundred Ninety-Five Thousand Twenty Dollars
18 (\$1,625,495,020) over the lifetimes of each borrowing; and

19 **WHEREAS**, the Government of Guam Retirement Fund has a large
20 Unfunded Actuarially-Accrued Liability, which was One Billion Two Hundred
21 Forty-Nine Million Three Hundred Sixteen Thousand Four Hundred Eighty-Seven
22 Dollars (\$1,249,316,487), as of September 30, 2016; and

23 **WHEREAS**, the borrowing that has been undertaken since the enactment of
24 Public Law 24-222 demonstrates that the law neither conclusively prevents the
25 Government of Guam from issuing additional bonds of Twenty-Five Million
26 Dollars (\$25,000,000) or greater nor does it effectively constrain the actions taken

¹ Excluding the refinanced portion of the Government of Guam General Obligation Bonds, 2009 Series A.

1 by the Government of Guam to authorize additional borrowing without the
2 approval of the voters; and

3 **WHEREAS**, the Commonwealth of Puerto Rico in recent years has faced a
4 worsening debt crisis, rising from a per capita debt of \$10,000 per person in 2005
5 to \$19,000 per person in 2014, an average increase of seven and four-tenths
6 percent (7.4%) per year; and

7 **WHEREAS**, the Territory of Guam has faced a debt problem similar to
8 Puerto Rico's, with Guam's per capita debt of \$6,270 per person in 2005 rising to
9 \$15,323 per person in 2015, an average increase of nine and three-tenths percent
10 (9.3%) per year, documented in the U.S. Government Accountability Office
11 excerpt appended hereto as Exhibit 2; and

12 **WHEREAS**, President Barack Obama signed the Puerto Rico Oversight,
13 Management, and Economic Stability Act ('PROMESA') into law on June 30,
14 2016, which established an oversight board and a means for restructuring debt and
15 approving critical infrastructure projects to address the Puerto Rico government
16 debt crisis, which has resulted in an austerity plan that cuts funding for health care,
17 pensions, and education; and

18 **WHEREAS**, investors and ratings agencies are more wary of U.S.
19 territories' debts, with Fitch in part citing the enactment of PROMESA as a
20 concern that contributed to the downgrade of the Government of Guam Limited
21 Obligations Business Privilege Tax Bonds ('BPT Bonds') from A- with a Stable
22 Outlook to BB with a Stable Outlook, as documented in FitchRatings' release
23 appended hereto as Exhibit 3; and

24 **WHEREAS**, in addition to PROMESA's impact on Fitch's bond rating
25 downgrade of Guam's BPT Bonds, Fitch cited weak financial operations, high debt
26 levels, exceptionally high long-term liabilities, and the Government of Guam's
27 inability to "reach and sustain a structurally balanced budget"; and

1 **WHEREAS**, the Government of Guam does not have a locally enacted
2 Constitution and, instead, operates under the Organic Act of Guam, and the
3 enactment of an amendment to the Organic Act of Guam requiring voter approval
4 for increase in public indebtedness would prevent any future circumvention of the
5 peoples' sovereign authority in that matter; and

6 **WHEREAS**, the enactment of such an amendment would create an
7 additional safeguard to prevent the Government of Guam from reaching a similar
8 crisis as is faced by Puerto Rico; now therefore be it

9 **RESOLVED**, that *I Mina'Trentai Kuåtтро Na Liheslaturan Guåhan* does
10 hereby, on behalf of the people of Guam, respectfully petition the United States
11 Congress, pursuant to 48 USC §1423k, to enact legislation amending the Organic
12 Act of Guam to include a provision of Guam Public Law 24-222, such that any
13 provision enacted by the Government of Guam which increases the public
14 indebtedness of the Government of Guam by at least Twenty-Five Million Dollars
15 (\$25,000,000), backed by the full faith and credit of the Government of Guam,
16 must be approved by a majority of votes cast in an election before any such
17 borrowing may be undertaken, with allowances for a state of emergency if so
18 ratified by a two-thirds (2/3) vote of the Guam Legislature; and be it further

19 **RESOLVED**, that the Speaker certify, and the Legislative Secretary attest
20 to, the adoption hereof, and that copies of the same be thereafter transmitted to the
21 Honorable Mike Pence, Vice President of the United States; the Honorable Paul
22 Ryan, Speaker of United States House of Representatives; the Honorable Mark
23 Forbes, Speaker of the Twenty-Eighth (28th) and Twenty-Ninth (29th) Guam
24 Legislatures; the Honorable Madeleine Z. Bordallo, Guam's Delegate to the United
25 States House of Representatives; and the Honorable Eddie Baza Calvo, *I*
26 *Maga'låhen Guåhan*.

DULY AND REGULARLY ADOPTED BY *I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN* ON THE ___ DAY OF _____, 2017.

BENJAMIN J.F. CRUZ
Speaker

RÉGINE B. LEE
Legislative Secretary



OFFICE OF THE GOVERNOR
GUAM

Refer to
Legislative Secretary

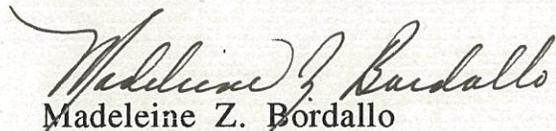
AUG 03 1998

The Honorable Antonio R. Unpingco
Speaker
Mina'Bente Kuattro na Liheslaturan Guåhan
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagåtña, Guam 96910

Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 539 (COR), "AN ACT TO ADD §§17320 AND 17321 TO ARTICLE 3, CHAPTER 17 OF TITLE 3 OF THE GUAM CODE ANNOTATED, RELATIVE TO REQUIRING A POPULAR REFERENDUM ON ANY PROPOSED INCREASE IN LOCAL TAXES OR CERTAIN GENERAL OBLIGATION BONDS PRIOR TO THEIR TAKING EFFECT", which was vetoed by the Governor and overridden by the Legislature. This legislation is designated as **Public Law No. 24-222**.

Very truly yours,


Madeleine Z. Bordallo
I Maga'lahaen Guåhan
Acting Governor of Guam

Attachment: copy attached for signed bill
 original attached for vetoed bill

cc: The Honorable Joanne M. S. Brown
 Legislative Secretary

011922

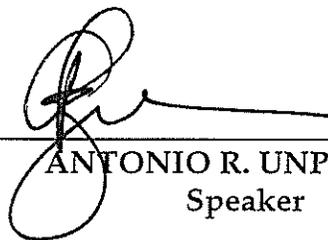
OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	
Time	3:33pm
Date	8.4.98

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 8/4/98
Time: 2:40pm
Rec'd by: 
Print Name: Janice

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session

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

This is to certify that Substitute Bill No. 539 (COR), "AN ACT TO ADD §§17320 AND 17321 TO ARTICLE 3, CHAPTER 17 OF TITLE 3 OF THE GUAM CODE ANNOTATED, RELATIVE TO REQUIRING A POPULAR REFERENDUM ON ANY PROPOSED INCREASE IN LOCAL TAXES OR CERTAIN GENERAL OBLIGATION BONDS PRIOR TO THEIR TAKING EFFECT," returned without approval of *I Maga'lahren Guahan*, was reconsidered by *I Liheslaturan Guahan* and after such consideration, did agree, on the 29th day of July, 1998, to pass said bill notwithstanding the veto of *I Maga'lahren Guahan* by a vote of fourteen (14) members.



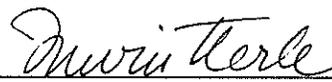
ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I MAGA'LAHEN GUAHAN* this 3rd day of August
 , 1998, at 9:05 o'clock 9.M.



Muwii Terle
Assistant Staff Officer
Governor's Office

**MINA' BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session**

Bill No. 539 (COR)

As substituted and amended
on the Floor.

Introduced by:

Mark Forbes
V. C. Pangelinan
F. E. Santos
W. B.S.M. Flores
F. B. Aguon, Jr.
A. C. Blaz
J. M.S. Brown
Felix P. Camacho
Francisco P. Camacho
M. C. Charfauros
E. J. Cruz
L. F. Kasperbauer
A. C. Lamorena, V
C. A. Leon Guerrero
J. C. Salas
A. L.G. Santos
A. R. Unpingco
J. Won Pat-Borja

**AN ACT TO ADD §§17320 AND 17321 TO ARTICLE
3, CHAPTER 17 OF TITLE 3 OF THE GUAM CODE
ANNOTATED, RELATIVE TO REQUIRING A
POPULAR REFERENDUM ON ANY PROPOSED
INCREASE IN LOCAL TAXES OR CERTAIN
GENERAL OBLIGATION BONDS PRIOR TO
THEIR TAKING EFFECT.**

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

2 **Section 1.** Section 17320 is hereby added to Article 3, Chapter 17 of
3 Title 3 of the Guam Code Annotated to read as follows:

4 **"Section 17320. Referendum on Tax Increases Required.**

5 Notwithstanding any other provision of law, no increase in real
6 property tax, liquid fuel tax, gross receipts tax or any locally enacted
7 and administered tax on Guam shall go into effect without the approval
8 of the voters of Guam in a referendum held during a General Election.
9 The manner in which a proposed tax increase shall be placed in
10 referendum before the voters of Guam pursuant to this Section shall be
11 as follows:

12 1. *I Liheslaturan Guahan* must pass, in bill form, a
13 proposed tax increase, the effective date to be thirty (30) days after
14 ratification by the voters of Guam in a referendum, such
15 ratification to be certified by the Guam Election Commission. The
16 bill must detail the amount and nature of the proposed increase
17 and the purpose to which such proposed increase shall be applied.

18 2. No more than ten (10) days after the bill is enacted into
19 law, the full text of the law shall be transmitted to the Guam
20 Election Commission by the Legislative Secretary of *I Liheslaturan*
21 *Guahan*. The Guam Election Commission shall place before the
22 voters of Guam the question of whether the voters approve or
23 disapprove of the proposed tax increase at the next General
24 Election, provided that the date of transmittal of the proposed tax

1 increase from *I Liheslaturan Guahan* to the Guam Election
2 Commission is at least ninety (90) days prior to the date of the
3 next General Election.

4 3. The Guam Election Commission shall cause to appear
5 in a daily periodical of mass publication on Guam a full text of the
6 proposed tax increase to be submitted to the voters in referendum
7 pursuant to this Section, at a date no less than thirty (30) days
8 prior to the General Election during which the referendum shall
9 be held. *I Liheslaturan Guahan* shall make such provisions as are
10 deemed necessary to provide the public with information
11 necessary to arrive at an informed position with respect to the
12 proposal.

13 4. Any submission to the voters made pursuant to this
14 Section shall be treated as an initiative for the purpose of
15 determining the number of votes needed to ratify a proposal
16 placed before the voters pursuant to this Section.

17 This Section shall not be interpreted as requiring voter
18 ratification of a tax imposed by the government of the United
19 States of America, provided that this Section shall apply upon de-
20 linkage of the Guam income tax from the Federal Internal
21 Revenue Code."

22 **Section 2.** Section 17321 is hereby added to Article 3, Chapter 17 of
23 Title 3 of the Guam Code Annotated to read as follows:

24 **"Section 17321. Voter Approval Required on General**
25 **Obligation Bonds and Certain Fees.** The provisions of §17320 of this

1 Article and Chapter shall apply in the case of any general obligation
2 bond of the government of Guam in excess of Twenty-five Million
3 Dollars (\$25,000,000), as well as in the case of the creation of any new
4 fee for service proposed to be established in such cases where the fee is
5 for a service already provided by the government of Guam prior to the
6 establishment of the new fee, and where such service was previously
7 funded through other revenues.”

8 **Section 3.** Notwithstanding any provision of law, all campaign
9 contribution and expenditure laws for referendums, as contained in
10 Title 3, GCA, shall apply to 3 GCA §17320 and §17321, as added by this
11 Act.

Guam

Guam's Total Public Debt More Than Doubled and It Grew from 24 to 44 Percent of GDP between Fiscal Years 2005 and 2015

Total Public Debt Outstanding



Guam

AGANA

Anderson Air Force Base

Agana Naval Air Station

Source: Map Resources.

LOCATION
Western Pacific, 3,700 miles from Hawaii

PHYSICAL SIZE
214 square miles (1 main island)

POPULATION SIZE IN 2015
162,000

GROSS DOMESTIC PRODUCT (GDP) IN FISCAL YEAR 2015
\$5,692 million

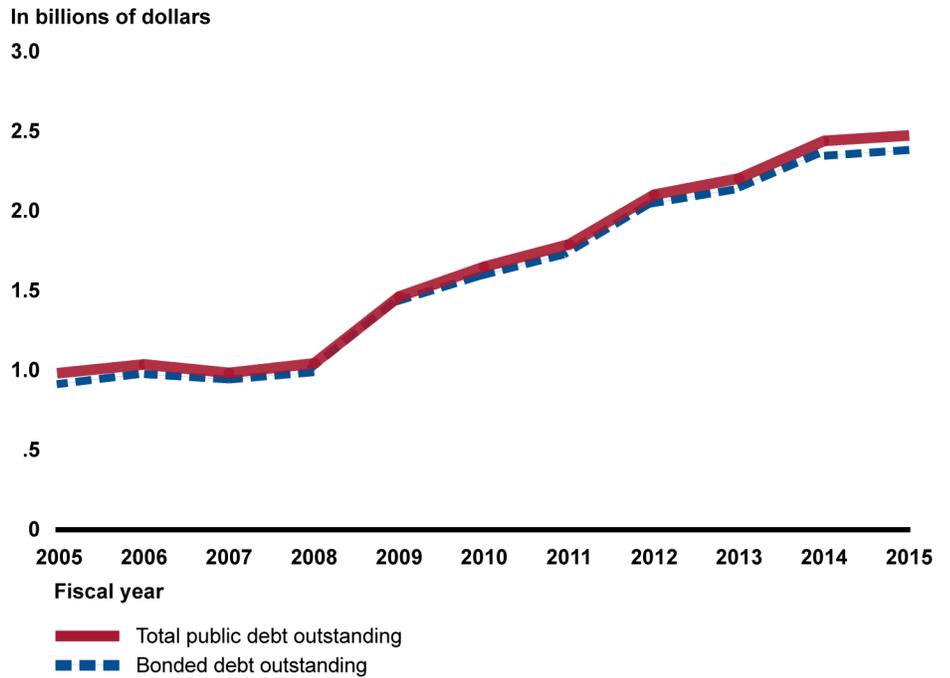
PRIMARY INDUSTRIES
Tourism, Defense

Source: GAO summary data. | GAO-18-160

Guam's total public debt outstanding increased from almost \$1 billion in fiscal year 2005 to \$2.5 billion fiscal year 2015, with the majority of the increase occurring between fiscal years 2008 and 2015 when total outstanding public debt grew 13 percent on average per year. (See figure 15.) In fiscal year 2015, 54 percent of Guam's total public debt outstanding was issued by component units. Territory officials told us component unit debt is backed solely by the revenue component units generate and cannot be used to service debt issued by the primary government.

The majority of Guam's total public debt is in the form of bonds. Bonded debt outstanding comprised between 93 and 97 percent of total public debt outstanding from fiscal years 2005 through 2015. Most of Guam's bonded debt outstanding will mature in 2027 or afterwards. The remainder of Guam's public debt outstanding between fiscal years 2005 and 2015 was primarily comprised of notes and loans, including loans from the federal government.

Figure 15: Guam's Bonded Debt Outstanding as a Component of Total Public Debt Outstanding, Fiscal Years 2005-2015



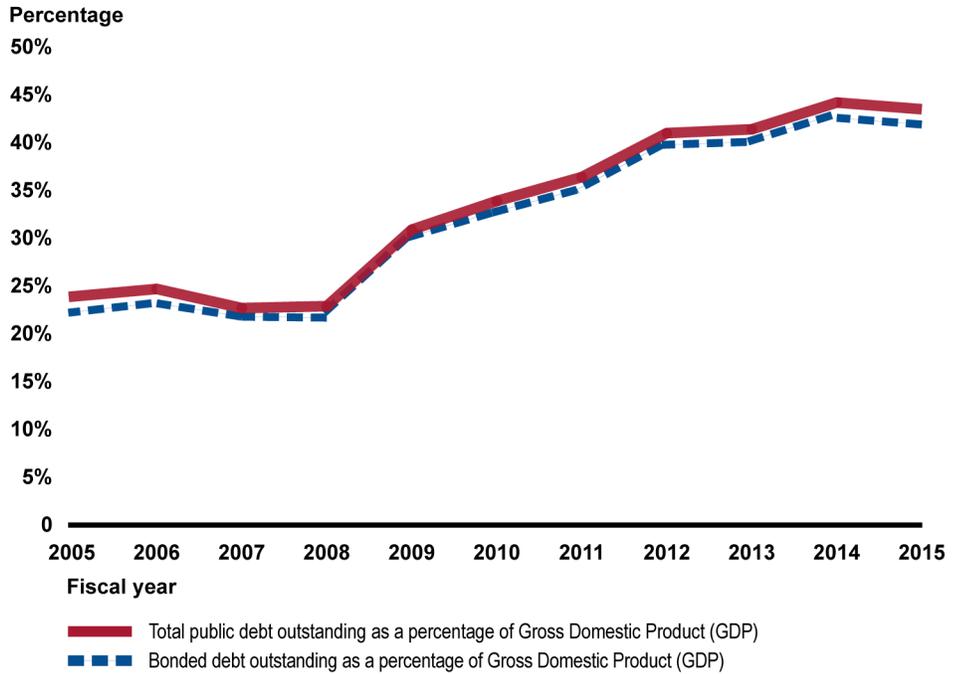
Source: GAO analysis of Guam single audit reports for fiscal years 2005-2015. | GAO-18-160

Note: Public debt outstanding includes debt issued by the primary government and component units as enumerated in the single audit reports.

Public Debt as a Share of GDP

Between fiscal years 2005 and 2015, Guam's total public debt outstanding as a share of GDP increased from 24 percent to 44 percent, with bonded debt outstanding growing similarly from 22 percent of GDP to 42 percent. (See figure 16.)

Figure 16: Guam's Public Debt Outstanding as a Share of GDP, Fiscal Years 2005-2015



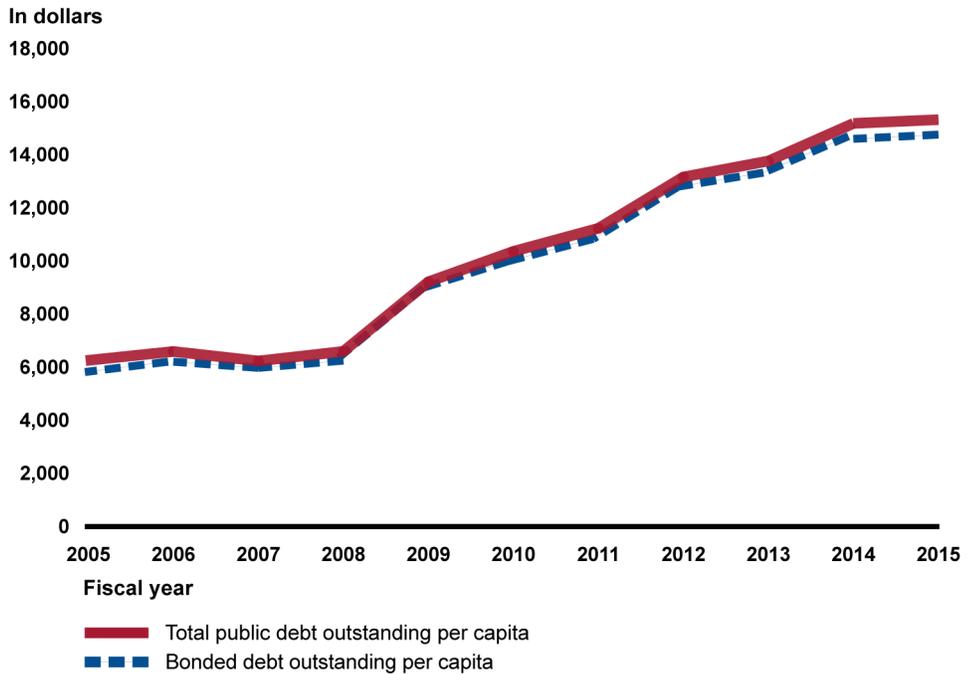
Source: GAO analysis of Guam data. | GAO-18-160

Note: Public debt outstanding includes debt issued by the primary government and component units as enumerated in the single audit reports.

Public Debt Per Capita

Both total public debt and bonded public debt outstanding per capita more than doubled between fiscal years 2005 and 2015. Total public debt outstanding per capita rose from about \$6,270 per person to \$15,323 per person, while bonded public debt outstanding increased from \$5,810 per person to \$14,759 per person. (See figure 17.)

Figure 17: Guam's Public Debt Outstanding Per Capita, Fiscal Years 2005-2015



Source: GAO analysis of Guam data. | GAO-18-160

Note: Public debt outstanding includes debt issued by the primary government and component units as enumerated in the single audit reports.

Guam's General Revenue Grew and Net Position Fluctuated Significantly between Fiscal Years 2005 and 2015

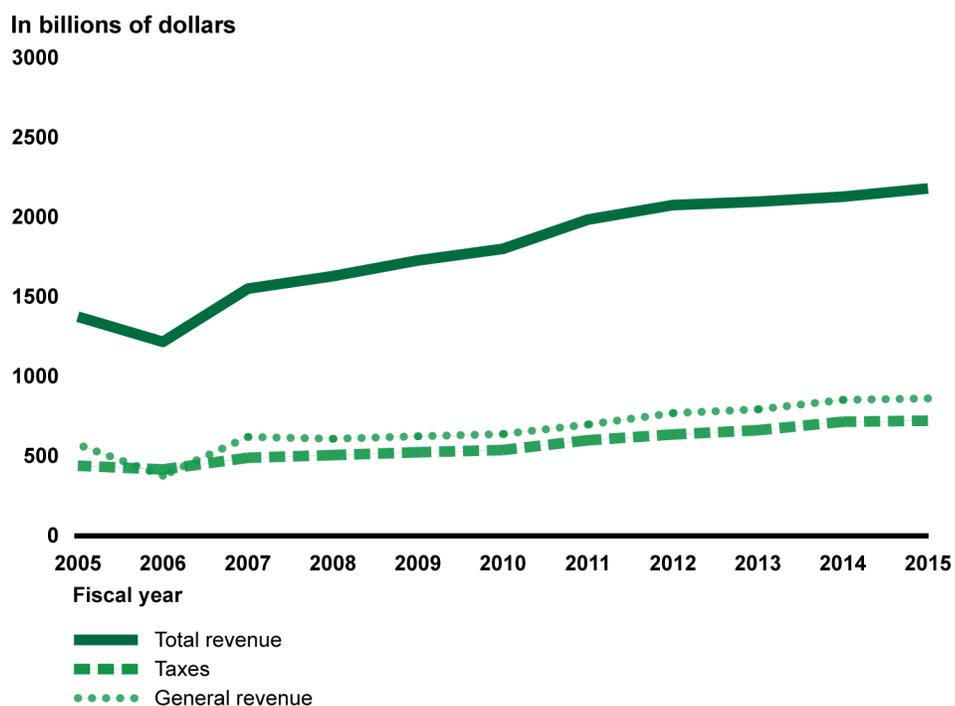
Guam's general revenue grew by 6 percent on average, per year, between fiscal years 2005 and 2015, from \$573.2 million to \$862.7 million. General revenue declined sharply in fiscal year 2006, recovered in fiscal year 2007, and then increased steadily through fiscal year 2015. According to territory officials, this increase in revenue can largely be attributed to economic development, with significant growth in tourism and new construction. A 2015 report to Guam's bondholders noted that there was an increase in visitors to the island each month between 2014 and 2015. The report attributed this increase to several factors, such as the expanded number of airline routes to Guam, the favorable exchange rate for Asian visitors, and the relative improvement of the overall global economy.⁴⁹ Guam's total revenue, or general revenue and program

⁴⁹Government of Guam, *Continuing Disclosure Annual Report for the Fiscal Year Ended September 30th, 2015* (Guam: 2015).

revenue combined, also grew by 5 percent on average, per year, between fiscal years 2005 and 2015, from \$1.4 billion to \$2.2 billion. (See figure 18.)

To project revenues, Guam officials use a model comprised of statistical weights that are calculated and assigned to each revenue source, which is derived from historical collections data from the prior fiscal years.

Figure 18: Guam’s Revenue, Fiscal Years 2005-2015



Source: GAO analysis of Guam single audit reports for fiscal years 2005-2015. | GAO-18-160

Note: Revenue includes general revenue and program revenue generated by the primary government and component units as enumerated in the single audit reports. Taxes are part of general revenue.

While revenue generally grew, Guam’s net position for the primary government fluctuated significantly between fiscal years 2005 and 2015. Since fiscal year end 2006, Guam’s net position for the primary government has been negative and trending downward. Specifically, Guam’s net position for the primary government declined from a positive \$79.8 million as of fiscal year end 2005 to a negative \$194.2 million as of fiscal year end 2012. Net position improved significantly and was positive in fiscal years 2013 and 2014, but then declined from a positive \$174.4

million as of fiscal year end 2014 to a 10-year low of a negative \$670.9 million as of fiscal year end 2015. Guam's net position for the primary government as of fiscal year end 2014 is shown prior to restatement. In fiscal year 2015, Guam implemented GASB Statement No. 68 and adjusted its beginning net position by \$815.6 million, resulting in a restated net position as of fiscal year end 2014 of a negative \$641.2 million. The implementation of GASB Statement No. 68 resulted in the territory recognizing previously unrecognized net pension liabilities and, therefore, a decline in ending net position in the year of recognition.

Guam's total net position for the primary government and component units combined also fluctuated significantly. Specifically, Guam's total net position increased from a positive \$788.8 million as of fiscal year end 2012 to a 10-year high of positive \$1.2 billion as of fiscal year end 2014. It declined to a 10-year low of positive \$47.3 million as of fiscal year end 2015 due to the implementation of GASB Statement No. 68.

Guam Has Used Public Debt to Meet Federal Requirements and Court Orders

According to territory officials, Guam's bonded debt outstanding has primarily been used to comply with federal requirements and court orders.⁵⁰ Guam has issued debt in several cases when compelled to meet federal and territorial requirements. For example, since Guam adheres to the mirror tax code, the territory is required to fund the Earned Income Tax Credit (EITC) and is not reimbursed for this by the federal government. In June 2004, the territory agreed to pay \$60 million over 9 years in settlement of unpaid EITC refunds from 1996, and in September 2006, the territory reached a new settlement replacing the 2004 agreement in which it agreed to pay up to \$90 million.

Moreover, in 2006, the Superior Court of Guam held that a territorial statutory provision⁵¹ required the retirement fund for government employees to pay past due annual lump sum Cost of Living (COLA) payments plus interest to eligible retirees and survivors. This resulted in an award of \$123.5 million plus interest to those individuals. In response, Guam issued a general obligation bond in 2007 in the amount of \$151.9 million to finance these past due tax refunds and outstanding COLA settlement payments, as well as to refinance prior debt and help fund infrastructure projects. In 2009, it issued another general obligation bond

⁵⁰This debt has also been used for infrastructure projects and to refinance prior debt.

⁵¹4 Guam Code Ann. § 8137.1 (repealed in 1995).

in the amount of \$271 million for similar purposes. According to a Guam government report, the largest increase in the territory's indebtedness occurred between fiscal year 2008 and fiscal year 2009, and was due in part to issuing bonds to pay for past due tax refunds and unpaid COLA expenses.⁵² In Guam's 2017 draft debt management policy, the Governor cited the administration's commitment to ensuring that tax refunds will be paid on time and no later than 6 months after filing.

In addition, in February 2004 the U.S. Environmental Protection Agency (EPA) and the Department of Justice filed a consent decree in the U.S. District Court of Guam.⁵³ The consent decree set forth the settlement terms agreed to by the federal government and Guam settling a lawsuit alleging Guam violated the Clean Water Act. The consent decree included deadlines for opening a new landfill and adopting a dump closure plan. In response to a 2009 District Court order that Guam comply with the terms of the consent order, the territory chose to issue a \$202.4 million limited obligation bond to fund closing the Ordot dump and constructing a new landfill to meet the terms of the settlement agreement.

Guam also issued revenue bonds between fiscal years 2005 and 2015 to finance infrastructure projects. For example, in 2011 a revenue bond backed by hotel occupancy taxes was issued in the amount of \$90.6 million in part to fund the construction of a museum on the island and other projects to benefit Guam's tourism industry. In addition, in 2013 Guam's Airport Authority issued \$247 million in bonds that were used, in part, to fund airport enhancements.

As established under its Organic Act, Guam has the authority to issue bonds, but Guam's public indebtedness is not authorized or allowed to exceed 10 percent of the aggregate tax valuation of property in the territory; tax valuation of property is currently set at 90 percent of appraised value of property.⁵⁴ The limit applies to both general obligation and limited obligation debt. In fiscal year 2007, to increase borrowing capacity to address a \$524 million deficit, the government changed the

⁵²Government of Guam Office of Public Accountability, *Government of Guam Public Debt Report, Report No. 14-01* (Guam: April 2014).

⁵³Consent Decree, *United States v. Guam*, No. 1:02-cv-00022 (D. Guam 2004).

⁵⁴48 U.S.C. § 1423a.

percentage of appraised value which constitutes the assessed value.⁵⁵ The debt ceiling still limits the amount of public debt Guam can issue to 10 percent of the aggregate tax valuation of property. However, in September 2007, Guam amended its statutory definition of assessed value from 35 percent of appraised property values to 70 percent.⁵⁶ In May 2009, the definition tax valuation of property was again amended to 90 percent of appraised property values.⁵⁷ This second increase was imposed so Guam could issue bonds to comply with the requirement to close the Ordot dump and open a new landfill. In fiscal year 2012, the government increased borrowing capacity a third time by amending the definition of assessed value to 100 percent of appraised value in order to fund past due tax refunds.⁵⁸ In fiscal year 2016, the statutory definition of assessed value was decreased back down to 90 percent of appraised value.⁵⁹

Despite Guam's Recent and Expected Economic Growth, Growing Pension Fund Liabilities May Present a Risk

Despite economic growth, we found that Guam faces large fiscal risks related to unfunded pension liabilities and other post-employment benefits (OPEB) that, if unaddressed, may hamper its ability to repay existing debt and increase its need to issue debt. A number of factors may contribute to continued economic growth in Guam. Specifically, according to a government report, visitor arrivals to Guam are projected to continue increasing and higher room rates and occupancy are leading to continued hotel development. Moreover, the Marine Corps has plans to consolidate bases in Okinawa, Japan, and relocate 4,100 Marines to Guam. The Department of Defense (DOD) expects this relocation to Guam to occur between fiscal years 2022 and 2026. Officials from Guam predict that the military buildup will result in significant additional investment in Guam's economy. In July 2016, DOD agreed to give Guam approximately \$55.6 million in grants to fund civilian water and wastewater projects linked to the military buildup; additional investments in the power infrastructure will also be funded by DOD. A 2014 study conducted by the Department of

⁵⁵The U.S. Supreme Court held that "tax valuation" for purposes of Guam's debt limitation means the value to which the tax rate is applied, or assessed valuation, and not appraised value. *Limtiaco v. Camacho*, 549 U.S. 483 (2007).

⁵⁶Guam Pub. L. 29-19, chap. X, § 5 (Sept. 29, 2007).

⁵⁷Guam Pub. L. 30-7, § 12 (May 11, 2009).

⁵⁸Guam Pub. L. 31-196, § 1(a) (Mar. 28, 2012).

⁵⁹Guam Pub. L. 33-185, chap. XIV, § 2 (Sept. 10, 2016).

the Navy on the effect of the military buildup on Guam's economy concluded that it would increase civilian labor force demand, increase civilian labor force income, and increase tax revenues.⁶⁰

While it maintained Guam's debt as investment grade as of 2017, the rating agency Standard and Poor's expressed concern about Guam's extremely high debt burden and vulnerability to economic changes in its tourism and military industries. In addition, Guam has large pension and OPEB liabilities that may stress current debt service payment arrangements if anticipated savings from changes to the government pension system are not realized. In fiscal year 2015, pension liabilities were \$1.2 billion and OPEB liabilities were \$2 billion, 22 and 37 percent of GDP, respectively. Territory officials told us that they have taken a variety of steps to address their unfunded pension and OPEB liabilities. In 1995, the government closed the defined benefit plan⁶¹ to new members with all new employees participating in a defined contribution plan,⁶² which resulted in a decrease in accrued liabilities. To address insufficient savings by members in the defined contribution plan, the legislature created two new retirement plans in 2016.⁶³ The government estimates that the new retirement plans could add an additional \$173 million to the pension fund. Territory officials said the government is meeting its actuarial contributions on an annual basis and is on track to pay off the existing unfunded pension liability in approximately 15 years.⁶⁴

⁶⁰The Naval Facilities Engineering Command Pacific, *Socioeconomic Impact Assessment Study: Guam and CNMI Military Relocation* (Washington, D.C.: December 2014).

⁶¹A defined benefit plan promises a specified monthly benefit at retirement. The plan may state this promised benefit as an exact dollar amount, such as \$100 per month at retirement. Or, more commonly, it may calculate a benefit through a plan formula that considers such factors as salary and service.

⁶²A defined contribution plan does not promise a specific amount of benefits at retirement. In these plans, the employee, the employer, or both contribute to the employee's individual account under the plan, sometimes at a set rate, such as 5 percent of earnings annually. These contributions generally are invested on the employee's behalf. The employee will ultimately receive the balance in their account, which is based on contributions plus or minus investment gains or losses. The value of the account will fluctuate due to the changes in the value of the investments.

⁶³Guam Pub. L. 33-186 (Sept. 14, 2016).

⁶⁴We did not independently confirm this estimate.

FitchRatings

Fitch Downgrades Guam BPT Bonds; Rating Withdrawn

Fitch Ratings-New York-22 December 2016: Fitch Ratings has downgraded the rating on the following bonds of the Government of Guam to 'BB' from 'A-':

--\$763.315 million Business Privilege Tax (BPT) Revenue Bonds.

Fitch has removed the ratings on the BPT bonds from Rating Watch Negative.

The downgrade is based on Fitch's assessment that the BPT bond security can no longer be rated distinct from the general operations of the Government of Guam following the passage of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). While PROMESA does not apply to the Government of Guam, Fitch believes an avenue has been created for the federal government to adopt future legislation allowing for a restructuring of Guam-backed debt even though Guam is not eligible to file for bankruptcy under current federal law. To determine the appropriate rating for the BPT bonds Fitch has analyzed the general credit quality of Guam and assigned an Issuer Default Rating (IDR) of 'BB'.

The Rating Outlook is Stable.

In conjunction with the downgrade, Fitch has withdrawn the ratings as the Government of Guam has chosen to stop participating in the rating process. Therefore, Fitch will no longer have sufficient information to maintain the ratings. Accordingly, Fitch will no longer provide analytical coverage for the Government of Guam's IDR and BPT bonds.

SECURITY

The BPT bonds are special limited obligations of the government of Guam secured by a lien on 3% of the 4% business privilege tax levied on goods and services.

KEY RATING DRIVERS

Guam's 'BB' IDR reflects the very long trend of weak financial operations and high debt levels. While Guam's economy is more diverse than that of other territories, and continues to experience growth in its economy and revenues, it has been unable to reach and sustain a structurally balanced budget.

EXPOSURE TO GENERAL GOVERNMENT OPERATIONS: The rating on the BPT bonds is not considered to be distinct from the general operations of the Government of Guam following the passage of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which fundamentally altered the premise used to rate certain tax backed debt issued by territorial governments.

SOLID GROWTH IN REVENUE STREAM: The BPT is a broad, diversified tax, levied on goods and services, which tracks the Guam economy. Given expected growth in the economy, driven primarily

by U.S. military investment and tourism, revenues are expected to grow above the level of inflation.

REVENUE STREAM SENSITIVITY: Given limited additional leveraging of pledged revenues and current high debt service coverage, the structure can absorb a decline in revenues expected to result from a moderate recession scenario.

LEVERAGE PROTECTION: Legal protections include an additional bonds test of 3x MADS from historical revenues and a covenant to not reduce the rate of levy and collection of the pledged BPT below 3% or otherwise impair the pledged BPT.

Economic Resource Base

Located closer to Asia than to the mainland United States, Guam is the westernmost territory of the U.S. with a local economy that depends on its growing tourism sector and the stabilizing presence of the U.S. military. Given its location and small size, Guam is susceptible to natural disasters that can also affect its tourism-based economy.

Revenue Framework: 'aa' factor assessment

Growth prospects for revenues are solid given ongoing growth in an economy that did not experience the most recent U.S. recession and which is expected to benefit from an expansion of the U.S. military presence. Guam has no legal limitations on its independent ability to raise revenues.

Expenditure Framework: 'a' factor assessment

Expenditure growth is expected to be at or slightly above revenue growth in the absence of policy action, reflecting Guam's role as sole provider of government services on the Island. Guam's ability to control spending is adequate and carrying costs, while still moderate, reflect in part slow debt amortization.

Long-Term Liability Burden: 'bb' factor assessment

Long-term liabilities are exceptionally high, estimated at more than 100% of personal income, reflecting both sizable outstanding debt obligations and the unfunded pension liability for the closed defined benefit plan.

Operating Performance: 'bb' factor assessment

Guam has limited gap closing capacity and would likely experience fiscal distress in a moderate downturn. It has had difficulty reaching budgetary balance even during this extended period of economic expansion.

RATING SENSITIVITIES

BUDGET BALANCE: The IDR is sensitive to the government's ability to reach and sustain budgetary balance.

GOVERNMENT OPERATIONS: The BPT rating is sensitive to changes in the general credit quality of the Government of Guam.

CREDIT PROFILE

In July 2016, following passage of PROMESA, Fitch transitioned the analysis of dedicated tax bonds

issued by U.S. territories to criteria applicable to local governments rather than state governments, at which point Guam's BPT bonds were placed on Rating Watch Negative. As a result, Guam's BPT bonds, while still retaining the debt service coverage and revenue resilience to support a higher rating, have become subject to a limit on the rating related to the general operations of the issuer, as is reflected in the IDR. Fitch now considers the Government of Guam as analogous to a local government in applying dedicated tax bond criteria. The BPT security does not meet the criteria exceptions for raising the rating above the general credit quality of the issuer.

Economic Resource Base

There are approximately 6,115 active military personnel and 7,200 military dependents on Guam (out of a total population of 159,538), a number that is projected to grow over the next 10 years. Although the planned relocation of the Third Marine Expeditionary Force from Okinawa, Japan to Guam has been delayed and reduced from earlier forecasts, Guam officials still expect approximately 5,000 troops to be relocated to Guam.

Tourism is a strong and growing part of Guam's economy. Guam receives over 1.37 million visitor arrivals annually, with approximately 57% derived from Japan; this proportion has declined with growth in other markets. The government is working to develop the visitor base, having successfully expanded a visa waiver program to include Russia, and is working to add mainland China, an effort that if successful has the potential to significantly increase income to the island.

Revenue Framework

The Government of Guam is the only taxing entity in Guam, and relies on a combination of local taxes and federal revenues to support general fund operations. Local taxes consist primarily of an income tax (44% of general fund revenues in fiscal 2015) and a business privilege tax (BPT 31%). Residents do not pay federal income taxes; the Territorial Income Tax Code mirrors the U.S Internal Revenue code with the resulting taxes payable to the Government of Guam. Real property taxes are levied with property taxes deposited into the Territorial Educational Facilities Fund to fund education, although a portion is used to reimburse the general fund for GO debt service. Federal contributions to general fund operations come in part in the form of "section 30" revenues, which include federal income taxes paid by members of the armed forces as well as customs duties and other fees.

Historical revenue growth in Guam has been strong. Guam did not experience a recession coincident with the U.S. recession; its economy is linked to both the U.S. economy and economies in Asia, and continued to grow through the downturn. Given increased investment by the U.S. military and continued expansion in tourism, growth prospects for revenues are generally solid; however, some uncertainty arises from potential changes in the federal tax code that could have a dampening effect on Guam revenues going forward.

Under the Organic Act of Guam (passed in 1950), the Government of Guam has no legal limitations on its ability to raise revenues through base broadenings, rate increases, or the assessment of new taxes or fees.

Expenditure Framework

Similar to U.S. states, a large share of spending -- slightly more than half of the Government of Guam's general fund expenditures -- is for education (27% in fiscal 2015) and public health (24%).

The natural pace of expenditure growth is expected to be somewhat above revenue growth, despite

spending controls put into place by the government. The government's fiscal stabilization plan, which included controls over hiring and wages, also included legislation to limit expenditures to 98% of estimated revenue until the then existing deficit was eliminated. These efforts tempered the growth in expenditures relative to revenues but have not completely closed the gap.

Guam has an adequate ability to adjust spending in response to economic downturn or revenue shortfall. Carrying costs for debt service, pensions, and other post-employment benefits are moderate at approximately 17% of governmental expenditures, reflecting in part slow debt amortization.

Long-Term Liability Burden

Guam's liabilities are quite high with tax supported debt and pension liabilities estimated at over 100% of personal income net tax-supported debt totaled \$1.4 billion as of Oct. 31, 2016, or 65% of estimated personal income. Guam has limited capacity under its debt limit, set in the Organic Act, the U.S. law under which it operates, which limits public indebtedness to 10% of aggregate tax valuation of property in Guam. The Guam Supreme Court has interpreted aggregate tax valuation to mean assessed value and statute sets assessed value to 100% of appraised value.

Although pension liabilities remain a significant portion of long-term liabilities, pension funding has improved as the government continues to make sizeable contributions to the closed defined benefit plan. As of its 2015 financial statements, the system had a reported ratio of assets to liabilities of 56.6% and a closed amortization period of 15.6 years.

Operating Performance

The government of Guam has limited gap closing capacity and its operations could become distressed in a moderate downturn scenario. The government maintains limited reserves and, since it is near its debt cap, limited ability to use borrowing for budget balancing purposes, which it has done in the past. The government has delayed tax refunds for budget balancing, and having brought these current with the issuance of the BPT bonds, could again utilize payment deferrals for short-term budget balancing.

The government of Guam has been attempting in recent years to reverse a twenty year history of operating at a deficit. The current administration put into place a plan to gradually shrink the operating deficit by controlling expenditures, improving revenue estimation and collection, while using debt issuance to pay overdue tax refunds and other general fund expenses that in total had accumulated to \$340 million. Between fiscal 2011 and fiscal 2014, the government showed progress, gradually shrinking the operating deficit and bringing the budget slowly toward structural balance.

However, ultimately, budget balance has not been reached. The negative fund balance has grown again, to \$120 million as of the end of fiscal 2015, when unbudgeted expenses, accounting adjustments, and a revenue shortfall resulted in an operating deficit. Fiscal 2016 results are reportedly better but details are not available. It is important to note that Guam's difficulty in achieving and maintaining budgetary balance has occurred during a period of economic growth, while benefitting from growing revenues.

BPT RATING LIMITED BY GENERAL GOVERNMENT OPERATIONS:

The rating on Guam's Business Privilege Tax Bonds is not distinct from the general operations of the Government of Guam and does not meet the criteria exceptions for raising the rating above the

general credit quality of the issuer.

GROWTH IN PLEDGED REVENUES

The BPT is a broad, diversified tax, levied on goods and services, which tracks the Guam economy. Although the Guam economy is relatively small and is heavily reliant on tourism, some balance is provided by the strategic importance of Guam to U.S. military operations in the Pacific. Although expansion has been delayed, Guam officials continue to expect the military presence on Guam to increase over the next ten years. Given this expected growth in the economy, revenues are expected to grow above the level of inflation.

The BPT tax paying base is not highly concentrated as it is paid by a wide range of small, medium, and large businesses. Almost half of the tax base (43%) is derived from retail trade with the service sector contributing another 24%. Tax revenues have generally been growing since experiencing large declines in the middle of the last decade and experienced only a minor drop-off (1.7% in 2009) during the most recent recession.

Recent performance has been uneven with receipts up 7.5% year-over-year in 2014, but dropping 4.9% in 2015. Revenues provide satisfactory coverage of projected debt service requirements at 3x coverage of MADS. It is Fitch's expectation that Guam will maintain leverage of the revenue stream up to the additional bonds test of 3x when it has capacity under its debt limitation.

SOLID RESILIENCE IN VOLATILE REVENUE STREAM

To evaluate the sensitivity of the dedicated revenue stream to cyclical decline, Fitch considers the results of the Fitch Analytical Sensitivity Tool (FAST), using a 1% decline in national GDP scenario, as well as assessing the largest decline in revenues over the period covered by the revenue sensitivity analysis. Based on a 15-year pledged revenue history, FAST generates a 7% scenario decline in pledged revenues. Pledged revenues could withstand a 67% decline, assuming full leveraging to the ABT, or 9.6x the scenario output, a very high level of resiliency.

However, tax revenues are somewhat volatile and collections have fluctuated following typhoons and other natural disasters, health epidemics in Asia, and worldwide economic conditions. Revenues declined a cumulative 35% between 1997 and 2002, before resuming generally steady growth. The revenue stream, fully leveraged to the ABT, could absorb a similar decline and maintain adequate coverage of debt service.

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In addition to the sources of information identified in the applicable criteria specified below, this action was informed by information from Lumesis and InvestorTools.

Applicable Criteria

U.S. Tax-Supported Rating Criteria (pub. 18 Apr 2016) (<https://www.fitchratings.com/site/re/879478>)

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