EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

October 13, 2017

Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåttro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

GL#34-17-1081
Speaker Benjamin J.F. Cruz
OCT 13 2017
Time: 3:40 [ ] AM [ ] PM File No. 34-1026
Received By:

Dear Mr. Speaker:

Attached is Bill No. 111-34 (COR) entitled *"An Act to Add New Subsections (d), (e), and (f) to § 51A117. . . all of Guam Code Annotated, Relative to the Transition of the Guam Solid Waste Authority out of Federal Receivership and the Delegation of Procurement Authority."*

It is with regret that I have **VETOED** this bill.

As originally introduced, Bill 111-34 laid out a clear and sound path for guiding the transition of GSWA out of federal receivership and into autonomy. The bill ensured the stability of the Authority's operations and strengthened its autonomy. Most importantly, the bill provided protection for the employees of GSWA, both classified and unclassified.

Unfortunately after the public hearing, Bill 111-34 was amended by the Legislature's Committee on General Government Operations. Although there is no issue with two of the three amendments made,[1] the amendment to add language to proposed new Section 51A121(b) so as to permit GSWA to acquire from the federal receiver all existing obligations, assets duties of the Authority *"other than the 2016 Limited Obligation Section 30 Bonds"* (the 2016 Bonds) is impermissible because it violates the covenants made in the bond indenture.

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[1] The amendment to Section 5 on the merit system that was recommended by the Attorney General and the amendment to delegate procurement authority to GSWA are sound.

According to the Report Digest published after the public hearing by the Legislature's Committee on General Government Operations,[2] the amended language excluding the 2016 Bonds from being transferred to GSWA was intentionally included in order to *"ensure that GSWA does not automatically take on the debt service burden of the bond borrowing, which is currently serviced by Section 30 funds."* The Committee's finding on this point reveals a fundamental misunderstanding of the Section 30 bonds, including the policy and history underlying their issuance.

As the Legislature knows, Public Law 33-183[3] authorized the refunding of the original Series 2009A Limited Obligation Section 30 Bonds (the 2009 Bonds) that were issued to pay for costs associated in complying with the federal Consent Decree related to closure of the Ordot Dump and the opening of the Layon Landfill. Because the 2016 Bonds refunded the 2009 Bonds, all of the terms and conditions contained in the original 2009 Bond's Supplemental Indenture were incorporated and reaffirmed into the indenture of the 2016 Bond (i.e., the "First Supplemental Indenture"). Under Section XV of the original 2009 Supplemental Indenture, and as restated in the identical Section XV of the 2016 First Supplemental Indenture, GSWA is obligated to apply a portion of its solid waste collection and disposal service revenues towards reimbursing the General Fund for payment of the bond's debt service.

After consulting with bond counsel and with Attorney General Elizabeth Barrett-Anderson, I have been advised that Bill 111-34 violates the covenants made in the bond indenture because it attempts to exclude GSWA from this reimbursement obligation. The exclusion attempt is misguided because the reimbursement requirement is a legal and contractual obligation of GSWA, and the Legislature may not pass a law that releases, extinguishes, or otherwise impairs it or the indenture itself. In this respect, Bill 111-34's attempt to avoid the requirements of the bond indenture is unlawful because it violates the Contracts Clause of the Organic Act. *See, Pangelinan v. Gutierrez*, 2004 Guam 16, ¶¶ 40, 42.

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[2] *See,* COMMITTEE ON GENERAL GOV'T OPERATIONS AND FEDERAL, FOREIGN, AND REGIONAL AFFAIRS COMMITTEE REPORT DIGEST FOR BILL NO. 111-34 (COR), AS AMENDED BY THE COMMITTEE, *Findings and Recommendations,* p. 14, Section (2).

[3] P.L. 33-183 was enacted into law by the Guam Legislature on June 22, 2016.

The Committee's report justifies that the amendment is necessary because purportedly *"the debt service burden for the bonds is a matter that will require deliberation at the legislative policy level."* The Committee is apparently unaware that the Legislature has already deliberated on this issue and that the requirements of the bond indenture on the issue of debt service payments were included because they reflect duly established legislative policy.

In May 2009, Public Law 30-07 was enacted to authorize the issuance of the Series 2009A Section 30 bonds. As required by 12 G.C.A. Section 50103(k), the Legislature was required to approve the terms and conditions of the bond issuance, including the provisions governing debt service payments and their reimbursement. As set forth in P.L. 30-07, the Section 30 bond indebtedness was to be *"payable only from funds in the Solid Waste Operations Fund available therefor and from revenue of the system [and] will not be and shall not be deemed to be public indebtedness of Guam. . ."*[4] Thus because legislative policy on the bond debt service reimbursement was made, relied upon, and incorporated into the indenture since 2009 (and reaffirmed in 2016) as a contractual condition of the bond's issuance, the Legislature may not lawfully now attempt to extinguish the obligation through the lawmaking process.

Although I must veto Bill 111-34 because of the bond violation amendment made by the Committee on General Government, I support the remaining provisions of the bill. In this regard, I wish to thank Sen. Tom Ada for introducing Bill 111-34 and for his consistent leadership and initiative in guiding GSWA out of federal receivership. I share Sen. Ada's concerns about the status of the GSWA employees, and agree that it critical that the employees (classified, unclassified, and contractual) be protected during the transition. I therefore urge the Legislature to immediately reintroduce a new and legally compliant version of Bill 111-34, and to expedite its consideration and passage as quickly as possible.

Senseramente,

EDDIE BAZA CALVO

[4] P.L. 30-07:2 (Power to Incur Indebtedness), *codified as* 10 G.C.A. § 51803.

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

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

This is to certify that **Substitute Bill No. 111-34 (COR), "AN ACT TO *ADD* NEW SUBSECTIONS (d), (e), AND (f) TO § 51A117, AND NEW §§ 51A118, 51A119, 51A120, AND 51A121, ALL OF ARTICLE 1, CHAPTER 51A, TITLE 10, GUAM CODE ANNOTATED; TO *AMEND* § 4403(f) OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED; AND TO *ADD* A NEW § 5117A TO SUBARTICLE B OF ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE TRANSITION OF THE GUAM SOLID WASTE AUTHORITY OUT OF FEDERAL RECEIVERSHIP AND THE DELEGATION OF PROCUREMENT AUTHORITY,"** was on the 29th day of September 2017, duly and regularly passed.

Benjamin J.F. Cruz
Speaker

Attested:

Dennis G. Rodriguez, Jr.
Acting Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 2nd day of Oct, 2017, at 4:40 o'clock P.M.

Assistant Staff Officer
Maga'låhi's Office

APPROVED:
VETO

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date:_____

Public Law No._____

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

Bill No. 111-34 (COR)
As amended by the Committee on General Government Operations and Federal, Foreign, and Regional Affairs; and substituted and further amended on the Floor.

Introduced by: Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
B. J.F. Cruz
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Michael F.Q. San Nicolas
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *ADD* NEW SUBSECTIONS (d), (e), AND (f) TO § 51A117, AND NEW §§ 51A118, 51A119, 51A120, AND 51A121, ALL OF ARTICLE 1, CHAPTER 51A, TITLE 10, GUAM CODE ANNOTATED; TO *AMEND* § 4403(f) OF ARTICLE 4, CHAPTER 4, TITLE 4, GUAM CODE ANNOTATED; AND TO *ADD* A NEW § 5117A TO SUBARTICLE B OF ARTICLE 2, CHAPTER 5, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO THE TRANSITION OF THE GUAM SOLID WASTE AUTHORITY OUT OF FEDERAL RECEIVERSHIP AND THE DELEGATION OF PROCUREMENT AUTHORITY.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. New Subsections (d), (e), and (f) are hereby *added* to § 51A117 of Article 1, Chapter 51A, Title 10, Guam Code Annotated, to read:

"(d) The Board *shall* establish a Compensation and Classification Plan to include the compensation and classification of the employees. The Compensation and Classification Plan *shall* apply to all positions, classified and unclassified. The Board may amend from time to time, the compensation rates and classification plan of the employees. Such rates and plan *shall* be effective upon approval by the Governor.

(e) A new position *shall* include justification, an analysis of the similarities and/or differences between the position to be created and positions listed pursuant to 4 GCA § 4101.1, the position description, the proposed pay range and demonstration of compliance with 4 GCA § 6301, a fiscal note as that term is described in 2 GCA § 9101 *et seq.*, and any other pertinent information.

(f) The General Manager of the Authority and the Director of the Department of Administration *shall* post the position on their respective websites for ten (10) working days."

Section 2. A new § 51A118 is *added* to Article 1, Chapter 51A, Title 10 Guam Code Annotated, to read:

"**§ 51A118.** The following Subsections *shall* apply for purposes of effectuating the transition of personnel, procurement authority, and financial management from federal receivership to full management and operation of the Authority by the Authority upon termination of said receivership:

(a) All existing classified employees *shall* remain classified with no diminution in any benefits or rights as established in this Chapter;

(b) Notwithstanding any other provisions of law, the Authority, in order to effect a stabilization of services during and after transition from federal receivership, *shall* be empowered to retain any

non-government of Guam employee through employment contracts, who is not within the classified service of the government of Guam, and who is not entitled to any government benefits under this Chapter, for no more than three (3) years from the date of transfer of management from federal receivership; and

(c) All short term operational contracts, obligations, services, and procurement in effect at the time of transition *shall* remain in effect until they terminate pursuant to the terms of their respective agreements. Notwithstanding Chapter 5 of Title 5 GCA, in the event that the contract(s) to provide labor, supplies, and services determined by the Authority to be essential to the uninterrupted operation of the Authority, expires on the day of turnover or within three (3) years from the date of turnover, the Authority is authorized to extend those contracts for a period of up to three (3) years, but in no event shall an extension under this Section exceed three (3) years from the date of turnover."

Section 3. A new § 51A119 is *added* to Article 1 of Chapter 51A, Title 10, Guam Code Annotated, to read:

"**§ 51A119. Management Audit by Public Utilities Commission.**

The Public Utilities Commission (PUC) *shall* perform a management audit of the existing operations of the Guam Solid Waste Authority. Said audit *shall* be initiated within sixty (60) days from the date of enactment of this Act and, to the maximum extent possible, completed by December 30, 2017. The PUC *shall* have the full authority and powers conferred upon it by its enabling legislation in Chapter 12 of Title 12 GCA."

Section 4. A new § 51A120 is *added* to Article 1, Chapter 51A, Title 10, Guam Code Annotated, to read:

"**§ 51A120. Service Rates.**

(a) Rates and charges for the collection, transportation, disposal, storage, recycling and processing of solid waste in effect at the time of enactment of this Act *shall* remain in effect and be adopted by the Authority until the Public Utilities Commission (PUC) has approved a petition for adjustment of rates.

(b) The Authority *shall* prepare a petition for adjustment of rates and transmit the petition to the PUC. Transmittal to the PUC *shall* be accomplished no later than one hundred eighty (180) days from the date of termination of the federal receivership.

(c) The Authority *shall not* submit any proposed rate change to the PUC until the following actions have occurred:

(1) the Authority *shall* publish notice of any proposed rate change in a newspaper of general circulation, as defined in 5 GCA § 8104, at least sixty (60) days prior to submitting the proposed rate change to the PUC. The notice required herein *shall* include the Authority's intention to submit its proposed rate change to the PUC, its current rate, the proposed rate, the difference in the current and proposed rates stated in percentage form, a justification for the change, and an electronic mail address and physical location where comments on the proposed rate change may be submitted; and

(2) the Authority *shall* publish notice of any proposed rate change on its website at least sixty (60) days prior to submitting the proposed rate change to the PUC. The notice required herein *shall* include the Authority's intention to submit its proposed rate change to the Commission, its current rate, the proposed rate, the difference in the current and proposed rates stated in percentage form, a justification for

the change, and an electronic mail address and physical location where comments on the proposed rate change may be submitted."

Section 5. A new § 51A121 is *added* to Chapter 51A, Title 10, Guam Code Annotated, to read:

"**§ 51A121. Acquisition of Existing Systems, Employees and Debt.** No later than thirty (30) days before the effective date of transfer of operational control from the federal receiver to the Authority, the Authority *shall* assume in writing from the federal receiver:

(a) all real property under the federal receiver's administration, and items of property, materials, and supplies under the custody of the federal receiver, including construction work in progress; and

(b) all working capital, cash, accounts payable and receivable, deposits, advances payable and receivable, all books, records and maps, and all other rights, obligations, assets, operational obligations and liabilities, agreements and privileges of the Authority or attributable to the Authority, other than the 2016 Limited Obligation Section 30 Bond."

Section 6. § 4403(f) of Article 4, Chapter 4, Title 4, Guam Code Annotated, is hereby *amended* to read:

"(f) The jurisdiction of the Commission *shall* also apply to the adverse action appeals of certified, technical, and professional personnel of the Guam Power Authority and the Guam Waterworks Authority; the jurisdiction of the Commission *shall* apply to all classified personnel of the Guam Memorial Hospital Authority and the Guam Solid Waste Authority;"

Section 7. A new § 5117A is *added* to Subarticle B of Article 2, Chapter 5, Title 5, Guam Code Annotated, to read:

"**§ 5117A. Procurement Authority Shall Be Delegated to the Guam Solid Waste Authority.**

(a) Notwithstanding any other provision of the Guam Procurement Law, the authority to procure supplies and services and construction for the Guam Solid Waste Authority (GSWA) *shall* be delegated by the Chief Procurement Officer and the Director of the Department of Public Works to the Board of Directors of the Guam Solid Waste Authority.

(b) GSWA *shall* ensure that its procurement officials undergo and successfully complete procurement training pursuant to 5 GCA § 5141, and are enrolled in the earliest training class that becomes available."

Section 8. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.