UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR

JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

HAND DELIVERED

35GL-19-0539
Speaker Tina Rose Muña Barnes

May 20, 2019

MAY 21 2019
Time 9:16 (X)AM ( )PM
Received By:

Honorable Tina Rose Muña-Barnes
Speaker
I Mina'trentai Singko Na Liheslaturan Guåhan
Guam Congress Building
Hagåtña, Guam 96910

RE: ***An Act to Add a New §1512.4 to Article 5 of Chapter 1, Title 5, Guam Code Annotated, Relative to Authorizing I Maga'hågan Guåhan (the Governor of Guam) to Issue Government of Guam Bonds for the Purpose of Financing a New Landfill cell for the Layon Landfill.***

2019 MAY 21 AM 9:16

Dear Madame Speaker:

It was with great pleasure that I announced that Chief Judge Frances Tydingco-Gatewood had determined that it was appropriate to return the responsibility for the daily operations of the Guam Solid Waste Authority to the government of Guam and partially end the receivership that has been in place since 2008. Bill 79-35, which allows the government of Guam to undertake the necessary financial steps to construct Cell 3, furthers our goal to ending the receivership completely.

I thank Senator Sabina Perez and the Legislature for acting swiftly to ensure that authorization for this bond issuance received consideration and approval. Representatives from the Guam Economic Development and Guam Solid Waste Authorities, the Bureau of Budget Management and Research and the Department of Administration, along with the Chief Fiscal Advisor for the Office of the Governor, worked in a collaborative team to satisfy the District Court's requirement to develop a financing plan for construction of Cell 3. This team will continue to work diligently to secure bond financing which will allow the people of Guam to continue to have a safe, environmentally responsible manner to dispose of its solid waste.

Senseremente,

Lou Leon Guerrero

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

Enclosure: Bill 79-35 nka **P.L. 35-21**

cc: *Sigundo Maga'låhi* (via email)
Compiler of Laws (via email)

RICARDO J. BORDALLO GOVERNOR'S COMPLEX · HAGÅTÑA, GUAM 96910
P.O. BOX 2950 · HAGÅTÑA, GUAM 96932
671.472.8931 · 671.472.8932/6

0539

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

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

This is to certify that **Bill No. 79-35 (COR), "AN ACT TO *ADD* A NEW § 1512.4 TO ARTICLE 5 OF CHAPTER 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING *I MAGA'HÅGAN GUÅHAN* (THE GOVERNOR OF GUAM) TO ISSUE GOVERNMENT OF GUAM BONDS FOR THE PURPOSE OF FINANCING A NEW LANDFILL CELL FOR THE *LAYON* LANDFILL,"** was on the 17th day of May 2019, duly and regularly passed.

Tina Rose Muña Barnes
Speaker

Attested:

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 17th day of May, 2019, at 6:34 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 5/20/2019

Public Law No. 35-21

2019-3006
RCVD AT CENTRAL FILES
MAY 17'19 PM6:34
Elaine Tajalle

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. 79-35 (COR)
As amended by the Committee on General Government Operations, Appropriations, and Housing.

Introduced by: Sabina Flores Perez
Joe S. San Agustin
Tina Rose Muña Barnes
Telo T. Taitague
Louise B. Muña
William M. Castro
James C. Moylan
Jose "Pedo" Terlaje
Kelly Marsh (Taitano), PhD
Régine Biscoe Lee
Telena Cruz Nelson
Clynton E. Ridgell
Amanda L. Shelton
Therese M. Terlaje
Mary Camacho Torres

AN ACT TO *ADD* A NEW § 1512.4 TO ARTICLE 5 OF CHAPTER 1, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING *I MAGA'HÅGAN GUÅHAN* (THE GOVERNOR OF GUAM) TO ISSUE GOVERNMENT OF GUAM BONDS FOR THE PURPOSE OF FINANCING A NEW LANDFILL CELL FOR THE *LAYON* LANDFILL.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new § 1512.4 is hereby *added* to Article 5 of Chapter 1, Title 5 of Guam Code Annotated, to read as follows:

"**§ 1512.4. Authorization to Issue Bonds to Finance New Landfill Cell Development for the Benefit of the Guam Solid Waste Authority.**

(a) Definitions. The following terms wherever used or referred to in this Section or in any indenture or certificate entered into pursuant hereto (except to the extent modified therein in accordance with this Section) *shall* have the following meanings, respectively, unless a different meaning appears from the context:

(1) *Authority* means the Guam Solid Waste Authority, or its successors and assigns.

(2) *Pledged Revenue* means any revenue of the System pledged to the payment of bonds or the obligations of the Authority with respect thereto.

(3) *Revenue of the System* means all lawfully available gross income and other amounts received by or on behalf of the Authority as revenues of any kind from the ownership or operation of any part of the System, including all rates, fees and charges received by the Authority, and all proceeds of insurance or grants covering business interruption loss (and related losses and expenses) relating to the System, and all other income and revenue howsoever derived by the Authority from the ownership or operation of, or arising from, the System, together with all interest, profits or other income derived from the investment of amounts in the Solid Waste Operations Fund, to be deposited to the Solid Waste Operations Fund in accordance with 10 GCA § 51A833.

(4) *Solid Waste Operations Fund* means the fund by that name established pursuant to 10 GCA § 51A301.

(5) *System* means the solid waste management system, now or hereafter existing, owned and/or operated by the Authority or its

contractors, agents or subcontractors, including, but not limited to, landfills (whether closed or open), transfer stations, recycling facilities, collection trucks, appurtenant equipment such as scales, ground water monitoring equipment and pollution control equipment, and administrative facilities supporting the provision of solid waste management services, including facilities for payroll, billing and collections.

(b) Authorization of Issuance of Bonds. *I Maga'hågan Guåhan* is authorized to issue one (1) or more series of bonds of the government of Guam from time to time as provided in this Section, in an aggregate principal amount not to exceed Thirty Million Dollars ($30,000,000) to finance the construction of a new cell for the *Layon* Landfill for the benefit of the Guam Solid Waste Authority (Authority), including construction management services and related costs (the *Layon* Landfill Cell Project), and, in addition, to fund any necessary reserves and pay any expenses incurred in connection with the issuance of such bonds not already included in an existing appropriation for or the regular budget of any government agency or instrumentality or public corporation providing any service in connection with the issuance of such bonds; provided, however, that bonds 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).

(c) Terms and Conditions Determined by Certificate or Indenture. The terms and conditions of the bonds *shall* be as determined by *I Maga'hågan Guåhan* by the execution of a certificate or indenture authorizing the issuance of the bonds upon or prior to the issuance of the bonds; provided, however, that such terms and conditions *shall* be consistent with this Section, and that the bonds *shall* mature not later than the date twelve and one-half

(12.5) years after their date of issuance and such bonds *shall* bear interest at such rates and be sold for such price or prices as *shall* result in a yield to the bondholders not exceeding six percent (6.0%) per annum.

(d) Source of and Security for Payment. The bonds or the Authority's obligations with respect thereto *shall* be secured by a first lien pledge of any or all of the Pledged Revenues as may be further specified in the certificate or the indenture described in Subsection (c) of this Section or an agreement between the Authority and the government. Such pledge made hereunder *shall* be valid and binding from the time the bonds are issued. The Pledged Revenues pledged and thereafter received by the government of Guam or by any trustee, depository or custodian *shall* be deposited in a separate account and *shall* be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Authority or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The indenture or certificate or agreement by which the bonds are issued or such pledge is created need not be recorded. Any such pledge *shall* be a first lien, and *shall* not be subordinate to any other use of Pledged Revenues.

All bonds issued pursuant to this Section or obligations of the Authority with respect thereto, may be secured by a statutory lien on the Pledged Revenues. This lien *shall* arise automatically without the need for any action or authorization by *I Maga'hågan Guåhan*, the government of Guam, the Authority, or any other person or entity. Such lien *shall* be valid and binding from the time such bonds are issued. The Pledged Revenues *shall* immediately be subject to such lien, and the lien *shall* automatically attach to the Pledged Revenues and be effective, binding, and enforceable against the Authority, its

successors, assignees, and creditors, and all others asserting 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. Pledged Revenues that are not required to make payments on the bonds *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 System. The statutory lien described in this Subsection *shall not* be subject to Division 9 of Title 13, Guam Code Annotated, or any successor statute. The Pledged 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 in this Subsection, all or any part of the Pledged Revenues may be pledged, if and to the extent determined by *I Maga'hågan Guåhan*, to secure the payment of any bonds or any obligation of the Authority with respect thereto. Any such pledge *shall* be 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, Guam Code Annotated or any successor statute. The indenture or certificate or agreement by which such pledge is created need not be recorded. All Pledged Revenue so pledged is hereby appropriated for the purpose for which it has been pledged. Indebtedness issued by the government pursuant to this Section and that is payable from Pledged 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.

The Authority may contract with the government of Guam for the purposes of effectuating this pledge of Pledged Revenues to secure the bonds or the Authority's obligations with respect thereto and to agree to other covenants and conditions that may be required to issue the bonds.

(e) Valid and Binding. Such bonds may alternatively or additionally be secured by a pledge by the government of Guam of its full faith and credit for the punctual payment of both principal of and interest on the bonds 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 bonds, in the event Pledged Revenues are insufficient to support the payment thereof, all as specified in a certificate or an indenture described in Subsection (c) hereof. The bonds authorized by this Section *shall* constitute the valid and binding general and/or limited obligations of the government of Guam, additionally secured by a pledge of the Pledged Revenues described in Subsection (d) of this Section, all as further specified below in such Subsection. The government of Guam pledges its full faith and credit for the punctual payment of both principal of and interest on the bonds 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 bonds. There are hereby appropriated from the General Fund such sums as may be necessary in each year in addition to the amounts appropriated under Subsection (f) of this Section to equal the amount of money necessary to pay the principal and interest on such bonds. All officers charged by law with any duty in the collection of the revenues of the government from which debt service on the bonds will be payable shall do every lawful thing necessary to collect such sum. The validity of any such

bonds *shall not* be affected by the validity or regularity of any proceedings for the payment of the General Fund expenses paid or to be paid with the proceeds of the bonds.

(f) Appropriation of Revenues. All revenues are hereby appropriated for the purposes of paying the principal and interest on the bonds issued pursuant to this Section. Revenues released from the lien of the indenture or certificate pursuant to which the bonds are issued *shall* be available for appropriation by *I Liheslaturan Guåhan* for any other lawful purpose.

(g) Additional Bonds. Nothing in this Section shall be construed to prevent the Authority from issuing, after appropriate enabling legislation, other obligations secured by Pledged Revenues on a parity with or subordinate to the bonds or the Authority's obligations with respect thereto authorized by this Section on such terms as may be provided by the indenture or certificate pursuant to which the bonds are issued. Nothing in this Section shall be construed to prevent the government of Guam from issuing, after appropriate enabling legislation, other obligations of the government secured by the general obligation of the government on a parity with or subordinate to the bonds authorized by this Section on such terms as may be provided by the indenture or certificate pursuant to which the bonds are issued.

(h) 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 bonds, but does not waive sovereign immunity as to the personal liability of elected officials and employees of the government of Guam. The government hereby submits to jurisdiction of the

Federal District Court for the District of Guam for purposes of any such suit or action in contract on the bonds.

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

(j) Form of Bonds; Covenants; Appointment of Fiduciaries. The technical form and language of the bonds, including provisions for execution, exchange, transfer, registration, paying agency, lost or mutilated bonds, negotiability, cancellation and other terms or conditions not inconsistent with this Section, including covenants relating to the collection of Pledged Revenues, *shall* be as specified in the certificate or indenture executed by *I Maga'hågan Guåhan* authorizing the issuance of the bonds. The certificate or indenture *shall* appoint one (1) or more trustees, co-trustees or other fiduciaries authorized to receive and hold in trust the proceeds of the bonds, the Pledged Revenues and other moneys relating thereto, to protect the rights of bondholders and to perform such other duties as may be specified in the indenture. *I Maga'hågan Guåhan* is also authorized to execute, on behalf of the government of Guam, any appropriate agreements, certificates or other instruments relating to the bonds and the sale of bonds.

(k) Authorization for Credit Enhancement. *I Maga'hågan Guåhan* is authorized to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as she determines are necessary or desirable to improve the security and marketability of the bonds issued under this Section, if and only if such contracts or agreements reduce

the cost of the debt by more than the cost of credit enhancement. 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 bonds and to indemnify any such banks, insurance companies or other financial institutions for costs and expenses incurred in connection with any such advance. Any such reimbursement obligation and any other obligations of the government under such contracts or agreements *shall* be general obligations of the government of Guam and *shall* additionally be secured by a pledge of Pledged Revenues, and any such advance, if necessary, *shall* be treated for Organic Act purposes as creating an obligation issued to refund the bonds.

(l) Use of Proceeds from the Sale of the Bonds. The proceeds from the sale of the bonds *shall* be used and are hereby appropriated to (i) finance the *Layon* Landfill Cell Project; (ii) establish any necessary reserves in connection with the foregoing project; (iii) pay expenses relating to the authorization, sale and issuance of the bonds, including, without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, 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 bonds; and (iv) fund capitalized interest on the bonds for a period not longer than thirty (30) months from the date of issuance of such bonds.

(m) Permitted Investments. The proceeds of the bonds, and any Pledged Revenues relating to such bonds, may be invested in, but only in, the types of investments permitted by the certificate or indenture pursuant to which such bonds are issued.

(n) Approval by the Guam Economic Development Authority. 12 GCA § 50103(k) provides that agencies and instrumentalities of the government of Guam *shall* issue bonds and other obligations only by means of and through the agency of the Guam Economic Development Authority (GEDA). No issue of bonds authorized by this Section shall be sold until the Board of Directors of GEDA has adopted a resolution approving the sale of such issue.

(o) Approval of Voters Not Required. Notwithstanding 17 GCA §§ 17311 and 17312, the issuance of the bonds authorized by this Section *shall not* be required to be subject to the approval of, or placed before, the voters of Guam.

(p) Alternate Authority for Loan. *I Maga'hågan Guåhan* is authorized to borrow on behalf of the government of Guam as provided in this Subsection from one (1) or more banks, banking syndicates, commercial lending institutions, or investment funds an amount not to exceed the amount necessary to provide Thirty Million Dollars ($30,000,000) for the purpose of financing the *Layon* Landfill Cell Project and related costs, including reserves, as a short-term construction loan for a period of not to exceed twenty-four (24) months, or a long-term loan for a period not to exceed twelve and one-half (12.5) years.

(1) The terms and conditions of any such loan *shall* be as determined by *I Maga'hågan Guåhan* by the execution of a loan agreement; provided, however, that the loan (A) *shall* be subject to prepayment from the proceeds of the bonds authorized by Subsection (b) of this Section; (B) may be secured in a substantially similar manner to the bonds authorized by Subsection (b) of this Section; (C) *shall*, if not paid with the proceeds of revenue bonds, have annual principal

payments over the five (5) year period commencing one (1) year after its funding date; and (D) *shall* bear interest at such fixed or variable rate or rates as may be negotiated by *I Maga'hågan Guåhan* in the best interests of the government.

(2) No loan authorized by this Section shall be entered into until the Board of Directors of GEDA has approved the loan by resolution.

(3) The loan *shall not* be subject to the approval of the voters of Guam.

(4) *I Liheslaturan Guåhan*, pursuant to 12 GCA § 50103(k), hereby approves a borrowing by the government of Guam for the purposes and in the principal amount authorized by this Section; provided, that the loan is entered into subject to the terms and conditions mandated in this Section.

(q) Approval of Guam Public Utilities Commission Not Required. Notwithstanding 12 GCA § 12106, neither the issuance of the bonds nor the loan authorized by this Section shall be subject to the approval of the Guam Public Utilities Commission."

Section 2. Local Sales of Bonds. *I Maga'hågan Guåhan shall* undertake her best efforts to cause a portion of any bonds issued pursuant to Section 1 of this Act (5 GCA § 1512.4) to be offered for sale to residents of Guam, as well as to residents of other jurisdictions, if and to the extent that such offer and any sales resulting from such offer do not increase the costs to the government of Guam of issuing and repaying such bonds.

Section 3. Approval of Bonds. *I Liheslaturan Guåhan,* pursuant to 12 GCA § 50103(k), hereby approves the issuance and sale by the government of Guam of bonds for the purposes and in the principal amounts not to exceed the purpose and

limits set forth in Section 1 of this Act; provided, that the conditions to the issuance of such bonds *shall* have been met, such bonds have a final maturity date not later than twelve and one-half (12.5) years after their date of issuance, bear interest at such rate and are sold for such price or prices as *shall* result in a yield to the bondholders not exceeding six percent (6.0%) per annum, and are issued and sold in the manner, for the purposes and subject to the requirements and limitations provided in 5 GCA § 1512.4.

Section 4. Bond Proceeds Not Subject to Transfer Authority. The proceeds of the bonds approved by Section 3 of this Act *shall not* be subject to any transfer authority of *I Maga'hågan Guåhan*.

Section 5. 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 provision or application, and to this end the provisions of this Act are severable.